
(2005) 04 P&H CK 0023

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 27 DBA of 1990

Income Tax Officer

APPELLANT

Vs

Shiv Kumar

RESPONDENT

Date of Decision : 06-04-2005

Acts Referred:

Income Tax Act, 1961 — Section 276C, 277

Citation : (2006) 282 ITR 406 : (2005) 2 RCR(Criminal) 833

Hon'ble Judges : M.M. Aggarwal, J

Bench : Single Bench

Advocate : Rajesh Bindal, for the Appellant; R.K. Garg, for the Respondent

Judgement

M.M. Aggarwal, J.—This is a criminal appeal filed by the Income Tax Department against the judgment of the Court of Sessions Judge, Sirsa, whereby the appeal filed by Shiv Kumar, the respondent, against the judgment of the Chief Judicial Magistrate, Sirsa, dated August 12, 1988, convicting him for offence under Sections 276C and 277 of the Income Tax Act, 1961, had been accepted and Shiv Kumar had been acquitted. Aggrieved by the judgment of acquittal of Shiv Kumar, the present appeal has been filed by the Income Tax Officer, Sirsa.

2. Shiv Kumar, the respondent, along with others, had been prosecuted by the Income Tax Department, i.e., Income Tax Officer, A-Ward, Sirsa, on the allegations that M/s. Shiv Kumar Ramesh Kumar—a partnership firm, through its partners, had filed the return for the assessment year 1979-80. That return duly signed and verified by its managing partner, Shiv Kumar, showed the income of Rs. 68,100 but during the course of assessment it was found that there were two refunds of the market fee amounting to Rs. 1,28,001.45 and of Rs. 83,195.66. Rupees 1,28,001.45 had been duly accounted for in its profit and loss account. However, instead of crediting in the profit and loss account, Rs. 83,195.66 was directly taken to the capital accounts of the partners and, therefore, this refund of Rs. 83,195.66 which was to be shown as income, had been concealed.

3. While making the assessment order, this amount was added in the income. Penalty was also imposed. Further prosecution was launched for offence under Sections 276C and 277 of the Income Tax Act against the firm and its partners. The Chief Judicial Magistrate, Sirsa, found that the return was signed and verified by Shiv Kumar. The case was found to be proved against him. He was accordingly convicted whereas other partners, namely, Tarsem Chand, Shanti Devi and Sita Devi were acquitted.

4. On appeal filed by Shiv Kumar, the Sessions Judge, Sirsa, found that the return had been filed through Income Tax advocate and also that there was no wilful concealment. He accordingly accepted the appeal and acquitted Shiv Kumar.

5. In this appeal, it was argued by counsel for the appellant that two refunds of market fee?one of the refunds, i.e., Rs. 1,28,001.45 had been duly accounted for in the profit and loss account but the second refund, i.e., the amount of Rs. 83,195.66 was not accounted for and was straightaway taken to the capital account. This will show that there was intentional wilful concealment and as such, Shiv Kumar, who had signed and verified the return, was liable for conviction for offence under Sections 276C and 277 of the Income Tax Act.

6. From the assessment order, exhibit PE, it would come out that when the explanation of the assessee was called by the Income Tax Officer, then the assessee had submitted written reply that this was not included since it was a liability and will have to be refunded back to the Market Committee in view of the Ordinance issued by the Governor of Haryana. After considering this contention of the assessee, the Income Tax Officer had added this amount towards the income, observing that in case the sum is refunded by the assessee to the Market Committee, then it will be allowed necessary deduction in the year/years in which the amount is paid back.

7. Section 276C of the Income Tax Act, 1961 will be applicable only in case a person wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable under this Act. Section 277 applies to a false statement in verification and it is applicable where the statement is false which a person either knows or believes to be false or does not believe to be true.

8. The hon"ble Supreme Court in a judgment reported as Prem Dass Vs. Income Tax Officer, has held that for attracting the provisions of Section 276 the prosecution has to establish that the accused wilfully attempted in any manner to evade any tax or interest chargeable or imposable under the Income Tax Act.

9. In the present case, the accused had just taken the amount to the capital account instead of showing in the income. They had shown the amount in the books of account. They were assisted by an advocate who might have advised them to take it to the capital account instead of profit and loss account. Moreover, they had valid explanation in not adding the amount to the income feeling that it is a liability and might have to be refunded back to the Market Committee in view of the Ordinance issued by the Governor. The Income Tax

Officer while adding the amount had observed that if the fee is refunded to the Market Committee then necessary deduction shall be allowed.

10. Under these circumstances, it cannot be said that there had been wilful 10 attempt. As such, I hold that the case for offence under Sections 276C and 277 of the Income Tax Act was not proved as against the respondent. He had been rightly acquitted by the Sessions Judge, Sirsa, after accepting the appeal. I find no merit in this appeal and the same is accordingly dismissed.