

(2001) 09 MAD CK 0057

In the Madras High Court

Case No : Criminal Appeal No"s. 266 to 269 of 1994

Income Tax Officer

APPELLANT

Vs

Sreevatsa Trading Co. and Another

RESPONDENT

Date of Decision : 04-09-2001

Acts Referred:

Income Tax Act, 1961 — Section 276B

Citation : (2002) 172 CTR 169 : (2001) 252 ITR 133 : (2002) 125 TAXMAN 131

Hon'ble Judges : R. Balasubramanian, J

Bench : Single Bench

Advocate : K. Ramasamy, Public Prosecutor, for the Appellant; D. Shivakumaran, for the Respondent

Judgement

R. Balasubramanian, J.—All the appeals can be disposed of by a common judgment. In each appeal the Income Tax Department is

challenging the judgment of acquittal rendered by the learned trial magistrate in each calendar case acquitting the respondents in each appeal. The

appellant in each appeal and the respondents in each appeal are one and the same.

2. The offence complained of is u/s 276B of the Income Tax Act, 1961, i.e., the failure to pay the tax deducted at source for the assessment years

1982-83 and 1983-84. A-1 is the partnership firm and A-2 is arrayed as an accused in his capacity as the partner of the said firm. There is no

dispute from either side that for the assessment years referred to above. A-1 firm deducted tax at source, but however, they have not paid it in

time. It is also not in dispute that the tax deducted at source, namely, Rs. 17,799, Rs. 10,800, Rs. 9,450 and Rs. 33,860, respectively, in each of

the four appeals have been deposited with the Revenue with a delay of 40

months, 28 months, 40 months and 33 months, respectively. The learned trial judge acquitted the accused basing his conclusion, on a reading of Section 276B of the Income Tax Act as in the statute book on the date of the judgment, namely, September 29, 1993. It is needless to state that the guilt of the accused has to be necessarily decided in accordance with law as it stood during the relevant time, namely, during 1982-83 and 1983-84. The law in the statute book during the offence period was, a failure to deduct or after deducting tax at source, failure to pay would be an offence. The law as it stood on the date of the judgment is only the failure to pay the tax deducted is made an offence and not the failure to deduct the tax is made an offence. This position in law, which was in the statute book as on the date of the judgment cannot be taken into account at all while deciding the guilt or otherwise of the accused in each case.

The said section also underwent a change with effect from September 10, 1986, by the Amending Act of 1986. As a result of the Amending Act of 1986, the explanation available to the accused that he had a reasonable cause or excuse for not complying with the said section had also been taken out. But, however, it is clear that prior to the Amending Act of 1986, the accused firm had an opportunity to explain that the non-compliance of the requirement of Section 276B of the Income Tax Act was due to a reasonable cause or excuse.

3. The accused firm had come forward with two excuses, namely, that during the relevant time the firm was running at a loss ; and the tax deducted, which had been paid over later on to the Revenue had in fact been directed to be refunded to the depositor himself on the ground that the depositor is not liable to pay tax. These excuses, in my opinion, would not be of any use to the accused firm. The accused firm had deducted the tax and the firm is legally bound to pay it over to the Government. The fact that the firm is running at a loss cannot come to the advantage of the accused with reference to the funds of the depositor, namely, the tax deducted at source which would have otherwise been payable to the depositor. As already stated, the two excuses put forward by the accused firm cannot be excuses in the eye of law to avoid the liability that has to be fastened upon him u/s 276B of the Income Tax Act. Therefore, I have no doubt at all in my mind that the acquittal of the accused in each

calendar case is definitely opposed to law.

4. The next question to be decided is as to who all can be found guilty. A-2, as already stated, is shown as a partner of the first accused firm. The

finding rendered by the learned trial magistrate is that there is no evidence to show that A-2 is in actual management of the day-to-day affairs of the

first accused firm. There is also a finding by the learned trial magistrate that the record produced by the Department itself shows that one P.R.

Subramaniam is the person who has been acting for and on behalf of the firm at all times. On this finding, there cannot be any difficulty at all in

holding that A-2 cannot be held to be guilty of the offence falling u/s 276B of the Income Tax Act since the affairs of the firm are shown to be

managed by only P.R. Subramaniam. Therefore, going by the finding rendered by the learned trial magistrate himself, I am inclined to give the

benefit of doubt to A-2 and accordingly the acquittal of A-2 is sustained.

5. Coming to the question of A-1, the liability of A-1 stands fully established especially when the firm had not even disputed that it had deducted

tax at source but paid it only belatedly. I have already found that the explanations offered by the firm are not explanations in the eye of law which

would be taken into account to give a loophole for A-1 to escape from the liability u/s 276B of the Income Tax Act. On the materials noted there

is no scope at all for acquitting A-1. Consequently, A-1 in each calendar case is found guilty of the offence u/s 276B of the Income Tax Act. On

the question of punishment to be imposed, Clause (ii) of Section 276B of the Income Tax Act alone is attracted. That clause provides for the

minimum punishment of three months which may extend to three years and with fine. A-1, being a firm, cannot be sentenced to any imprisonment.

But, however, there will be no difficulty at all in sentencing A-1 to pay fine. I applied my mind as to the quantum of fine which can be imposed on

A-1 taking into account the various facts as noted earlier. In this context, I am of the considered opinion that a fine amount of Rs. 2,500 on A-1 in

each calendar case would be an appropriate and just punishment. Accordingly, the judgment under challenge in each appeal so far as A-1 is

concerned is set aside and consequently, A-1 is found guilty of the offence u/s 276B of the Income Tax Act and for each offence A-1 in each

calendar case stands sentenced to pay a fine of Rs. 2,500. Time for payment of

fine is two weeks from the date of receipt of the order. All the appeals are, accordingly, partly allowed.