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(1993) 08 GAU CK 0023

In the Gauhati High Court

Case No : Criminal Appeal No. 118 of 1986

Income Tax OFFICER — APPELLANT

Vs

SUNANDA RAM DEKA AND OTHERS. — RESPONDENT

Date of Decision : 04-08-1993

Acts Referred:
Income Tax Act, 1961 — Section 144B, 276C, 277, 278B, 278E

Citation : (1995) 216 ITR 483

Hon'ble Judges : S.N. Phukan, J;S. N. Phukan, J

Bench : Division Bench

Judgement

S. N. PHUKAN J. - This appeal has been filed by the complainant-appellant, viz., Income Tax Officer, A-Ward, Tezpur, against the judgment and order of acquittal passed by the learned Chief Judicial Magistrate, Darrang at Mangaldoi in C.R. Case No. 1354 of 1985. By the impugned judgment and order, the accused-firm and its partners were found not guilty of the charge u/s 276C and section 277 of the Income Tax Act, 1961.

The accused-respondent No. 1 is the partnership-firm, viz., Sunandaram Deka. The firm had partners, viz., Sunandaram Deka, Promode Chandra Deka, Mukul Chandra Deka, Sanjeeb Kumar Deka and Rajib Kumar Deka and the late Kulen Deka. All the other partners were sons of Shri Sunandaram Deka.

The prosecution was started under the aforesaid sections for the assessment year 1981-82. The partnership firm filed the first return on April 3, 1982, which was marked as exhibit-1 and duly signed and verified by its partner, Sunandaram Deka. In the return, the total income was shown as Rs. 1,50,720 which included income from house property at Rs. 1,16,444 and income from business at Rs. 34,275. The assets were shown at Rs. 12,03,027 and the value of the stores at Rs. 3,25,524. The firm filed another revised return voluntarily on January 7, 1983, which was marked as exhibit-6. In the said revised return, the income shown was Rs. 1,88,740 and the income from house property was Rs. 1,16,589. Business income was shown as Rs. 72,152, and the value of the assets at Rs.

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19,43,145. This revised return was also verified by Sunandaram Deka. It may be stated that the cash credit entry was shown at exhibit-6, but it was not shown at exhibit-1. The Income Tax Officer, by exercising the power u/s 144B of the Income Tax AM, 1961, proposed to add Rs. 5,00,000 as income and as required under the law the draft assessment order was sent to the firm and also to the higher authorities. The assessee admitted the addition of Rs. 4,54,652 out of the above Rs. 5,00,000 and a third return was filed on March 31, 1984, marked as exhibit-15. The total income was Rs. 6,43,390. I may add here that the assessment was completed on the basis of these returns and the society, viz., the partnership-firm, has cleared all the taxes, etc.

In view of the above facts, a complaint petition was filed by the Income Tax Officer and the present proceeding commenced which ended in the acquittal as stated above. Except the Income Tax Officer, P.W.-1, no other evidence was produced on behalf of the prosecution, whereas on behalf of the accused-firm one independent witness was produced to show the circumstances under which the revised return was filed voluntarily.

This being an appeal against acquittal, this court is quite conscious of the self-imposed restrictions in such appeal. I may state here that in such an appeal if two views are possible, the view in favour of the accused has to be accepted and that apart, the impugned judgment and order can be interfered with only if it is perverse or based on no evidence on record. In this connection, Mr. Gogoi, learned counsel appearing on behalf of the accused-respondent has placed reliance on two decisions of the apex court in Ashok Kumar Vs. State of Rajasthan, more particularly on paragraph 12 and Sham Kant Vs. State of Maharashtra, The apex court in the above two decisions has reiterated the well-settled law regarding appreciation of an appeal against acquittal by a higher court.

Heard also Mr. Talukdar, learned counsel for the appellant. I have perused the judgment of the learned trial court. I find from the judgment that the learned trial court has considered the entire material on record including the sanction for prosecution and by a reasoned judgment has acquitted the above accused persons. I agree with Mr. Gogoi that on going through the judgment, a second view against the accused persons is not at all tenable. On this ground alone, the appeal is liable to be dismissed.

To bring home a charge u/s 276C of the Income Tax Act, it is the duty of the prosecution to prove that the accused wilfully attempted in any manner whatsoever to evade any tax, penalty, etc. In other words, the burden is squarely on the prosecution to prove wilful attempt to evade tax on the part of the accused.

Similarly, u/s 277 of the Income Tax Act, the charge is said to be proved provided the prosecution can establish that the verification, as required under the above Act or Rules framed thereunder, of the account or statements is false

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and the accused knew or believed it to be false or did not believe it to be true.

Mr. Gogoi has fairly pointed out the provisions of section 278E of the Income Tax Act which were subsequently inserted in the Income Tax Act by the amending Act of 1986 with effect from September 10, 1986. This section is regarding presumption as to culpable mental state in a criminal trial under the Act. I accept the contention of Mr. Gogoi that, as this section was inserted subsequent to the present prosecution, the Income Tax Department is not entitled to get the benefit of the said provision. In other words, just like any other criminal case, in the present case also, it is the duty of the prosecution to prove the case beyond all reasonable doubt. I make it clear that I am not entering into the effect of section 278E and I leave the matter open to be decided in future if any such occasion arises as to what extent the liability of the prosecution is relieved in such prosecution.

From the evidence of the independent witnesses and other witnesses on record I find that exhibit-1 and exhibit-6 were submitted under very unfortunate circumstances which has been rightly pointed out by the learned trial court. The accused, Sunandaram Deka, the seniormost partner of the firm and the father of the other accused was a very old person and his demeanour has been recorded by the learned trial court stating, inter alia, that he could not even stand properly in the court being an aged and old person. That apart, during the period in question, the first two persons who were actually running the business, viz., the late Kulen, the then partner of the firm and the accountant, Loknath Dey, who was working for about 15 years, died prior to the filing of the return. The firm appointed one Jatin Choudhury as manager-cum-accountant, but he committed some anomalies and, therefore, the learned trial court has rightly taken into account the above facts regarding the revised return, exhibit-6, which was filed voluntarily.

It is not necessary to burden the judgment by elaborate discussion recorded by the learned trial court, I accept the findings of the learned trial court that the prosecution has miserably failed to show who was the manager of the business of the firm as required u/s 278B of the Income Tax Act and that apart, there was no wilful attempt to evade tax or penalty on the part of any of the partners, more particularly, Sunandaram Deka in filing the return and also signing the verification, etc., was not done knowing it to be false. In fact, I find that the accused persons have taken the very fair step of an honest businessman by admitting a sum of Rs. 4,00,000 odd for adding in the total income for the purpose of assessment.

According to the firm, a sum of Rs. 5,00,000 was borrowed from Malchand Matilal Kothari, Gauhati, and a copy of the same was also furnished to the Income Tax Officer. But the prosecution wants to bring home the charge only on the ground that the said firm did not send any confirmation letter and that on the basis of the letter from the Income Tax Officer, Gauhati, it tried to establish that there was evasion of tax. The letter from the Income Tax Officer was not

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produced. The accounts of the said firm, Malchand Matilal Kothari, filed before the Income Tax Officer, Gauhati, was also not produced and, therefore, merely on the statement of the Income Tax Officer in a criminal proceeding the above charges cannot be accepted to be proved.

Regarding the sanction for the prosecution, exhibit-20, the learned trial court has rightly held that there was no application of mind by the sanctioning authority inasmuch as the relevant papers were not produced including the file in question and I do not find any ground to interfere with the said finding.

For what has been stated above, I hold that the present appeal has no merit and, accordingly, it is dismissed.

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