(1983) 02 P&H CK 0024

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 481-DBA of 1981

Income Tax Officer (Central Circle)-V and Another — APPELLANT

Vs

Sawan Mal and Others — RESPONDENT

Date of Decision : 14-02-1983

Acts Referred:
Income Tax Act, 1961 — Section 277

Citation : (1983) 35 CTR 402 : (1984) 147 ITR 123 : (1983) 14 TAXMAN 156

Hon'ble Judges : B.S. Yadav, J;A.S. Bains, J

Bench : Division Bench

Advocate : Ashok Bhan and A.K. Mittal, for the Appellant; Mohinderjit Singh Sethi and Ranjan Lakhanpal and P.S. Ghai, for the Respondent

Judgement

A.S. Bains, J.—The ITO, A-Ward (now Distt. 1(2), Ludhiana, filed a complaint u/s 277 of the I.T. Act, 1961 (hereinafter called as "the Act"), and Sections 193, 196 420 and 511 of the Indian Penal Code, pertaining to the assessment year 1965-66, in the court of the Judicial Magistrate at Ludhiana, against the respondents, who are partners of M/s. Variety Hosiery Mills, Ludhiana. However, they were acquitted by the Trial Magistrate, vide his order dated 24th May, 1980. Hence, this appeal by the ITO against their acquittal.

2. The prosecution case as set up at the trial was that the respondents were partners of the firm, M/s. Variety Hosiery Mills, Ludhiana, in the financial year relevant to the assessment year 1965-66. Return of income for the assessment year 1965-66 was filed on behalf of M/s. Variety Hosiery Mills on 13th August, 1965, showing an income of Rs. 85,909, along with the statement of accounts like trading accounts (i.e., malkhata, wooltops account, woollen yarn account, colour account), profit and loss account and balance-sheets. This return was filed by Sawan Mal, partner, in the prescribed manner. Later on, the respondents filed details of colour and chemicals purchased, consumed and sold on 9th July, 1968, as Rs. 11,232.04, Rs. 6,124.04 and Rs. 5,097.60, respectively.

3. The Income Tax Department found that the aforesaid details were inflated

ones and that the respondents as assessee had not shown as to what happened to the imported dyes and colours purchased by them for Rs; 4,530. The respondents had stated that those were used in the manufacture of cotton hosiery goods and that the same had been supplied to the fabricators who dyed and fabricated cotton hosiery goods for the respondents. One of such fabricators was mentioned as M/s. Maghera Knitting Works, whose proprietor, Dalip Singh, was summoned and examined by the Income Tax authorities. Dalip Singh, however, denied, having received the dyes and colours from the respondents. The respondents further showed sale of imported dyes and colours to a firm, M/s. Dina Nath and Sons, Amritsar, for Rs. 5,098 on 24th February, 1965. M/s. Dina Nath and Sons, in turn, had shown the sales of these very goods to M/s. Ajay Textiles, Amritsar, and the latter firm had shown the sale of these very goods to M/s. New Egerton Woollen Mills Ltd., Dhariwal (hereinafter referred to as "the Dhariwal Mills"), for Rs. 8,255, These two firms of Amritsar admitted before the Income Tax authorities that the goods were sold by the respondents to the Dhariwal Mills, whereas they (Amritsar firms) only acted intermediaries by charging a nominal commission. The respondents, thus, reduced their profits and tried to conceal their true account. Not only the dyes and chemicals account, but the wooltops account of the respondents also, was found to be false by the Income Tax authorities. The respondents had disclosed having sold wooltops weighing 12,322 lbs. to M/s. Asha Wool Trading Co., Panipat (hereinafter referred to as "the Panipat firm") @ Rs. 6.50 per lb. for a total sale price of Rs. 80,093 through Bill No. 20, dated 11th August, 1964. The Panipat firm, on enquiries, alleged to have sold the same goods to M/s. British India Corporation Ltd., Kanpur (hereinafter referred to as "the B.I.C., Kanpur"), on 6th August, 1964, @ Rs. 13.70 per lb. and the Panipat firm issued the bill on 6th August, 1964, in favour of the B.I.C., Kanpur, which bill was earlier in date than that issued by the respondents firm on 11th August, 1964, to the Panipat firm. The goods were sold at Ludhiana. Thus, the allegation is that the respondents had allegedly introduced bogus intermediaries to reduce their profits, and in this manner the respondents had wilfully and knowingly concealed income of Rs. 1,04,500 as confirmed by the Income Tax Appellate Tribunal, vide its order dated 31st May, 1973, by making false statements of accounts, making wrong entries in the books of account and also making wrong declarations in the Income Tax return.

4. The complainant examined P.W. 1, Shri A.C. Nanda (the then ITO, A-Ward, Ludhiana, from 1966 to May/1968); P.W. 2, Shri R.N. Bhagat (the then ITO, A-Ward, Ludhiana, from May, 1968, till June, 1970); P.W. 3, Shri Ganpat Rai, ITO; P.W. 4, Tilak Raj of M/s. Ajay Textiles, Amritsar; P.W. 5, Shri S.R. Mahajan, Income Tax Inspector; P.W. 6, Dalip Singh of M/s. Maghera Knitting Works; P.W. 7, S.K. Shukla, Accountant of B.I.C., Kanpur, and P.W. 8, V.N. Jajoo, general manager of Dhariwal Mills, in support of its case.

5. At the trial, the respondents denied the prosecution allegations and gave their own explanation of the account and also produced in their defence Gurcharan Singh, D.W. 1, D.S. Joshi, special assistant, United Commercial Bank, as D. W. 2,

Kishori Lal Sharma of the I. T. Office, Panipat, as D.W. 3, Raghabji of Azad Shipping Agency, Bombay, as D.W. 4, Pawan Kumar, clearing agent of railway station, Ludhiana, as D.W. 5, Tirath Dass, ex-broker in wooltaps business, as D.W. 6, Thakar Dass as D.W. 7 and also got re-examined R. N. Bhagat (P.W. 2).

6. The case of the respondents is that the respondents had a settlement of fabrication of hosiery goods with Dalip Singh (P. W. 6) that if the firm, M/s. Variety Hosiery Mills, provided colours, then the charges would be lesser, otherwise Dalip Singh would charge Rs. 20 per dozen and that the disputed dyes/ colours were purchased by the respondent-firm against the import licence from M/s. Volkart Brothers, Switzerland (hereinafter referred to as "the Swiss firm)", the payment having been, made through the United Commercial Bank, the goods having been released from the ship by Azad Shipping Agency, who sent the same to the respondents-firm through the railway receipts and D.W. 5, Pawan Kumar, cleared the goods from the railway station, Ludhiana, and delivered the same at the factory of the respondents, and that M/s. Asha Wool Trading Company, Panipat, was a genuine firm having genuine transaction with the respondents'' firm and others.

7. Mr. Ashok Bhan, learned counsel for the appellants, urged that the concealment of income is on account of three items. First item is the disposal of the dyes/colours imported by the respondents against an import licence. In their books of account, the respondents-firm showed that the dyes had been sold to M/ s. Dina Nath and Sons, Amritsar, on 24th February, 1965, for Rs. 5,098. M/s. Dina Nath and Sons sold these very goods to M/s. Ajay Textiles, Amritsar, for Rs. 8,150 and the latter, in turn, had shown these to have been sold to the Dhariwal Mills for Rs. 8,255. The second allegation against the respondents is that they did not show the purchase of imported dyes and colours worth Rs. 4,530. It was explained that this was used in the manufacture of cotton hosiery goods. The third item is regarding the sale of wooltops weighing 12,322 lbs. to M/s. Asha Wool Trading Co., Panipat, at the rate of Rs. 6.50 on 11th August, 1964, for Rs. 80,093. The argument of Mr. Ashok Bhan is that the assessee-firm had entered business transactions with third parties with whom it had no affinity other than business at the rate merely half of the prevailing rate in the market and, thus, apparently goods worth Rs. 8,255 were shown as sold to M/s. Dina Nath and Sons on 24th February, 1965, for Rs. 5,098 and similarly wooltops imported from Australia were shown to have been sold to the Panipat firm, vide Bill No. 20, dated 11th August, 1964, for Rs. 80,093 thus yielding the rate of Rs. 6.50 per lb. and nearly a week earlier to that the Panipat firm apparently stipulated to sell the same commodity at Rs. 13.70 per lb. and that these basic facts point towards the transaction of the intermediaries being collusive and with a view to suppressing profits and that the findings of the learned Trial Magistrate are erroneous.

8. We have carefully gone through the evidence produced by the complainant as well as by the respondents. To prove the first item, the complainant examined

Shri A.C. Nanda as P.W. 1, who stated that the respondents for the purposes of assessment had furnished details of colour imported against import licences during the relevant year and he issued notice u/s 143(3) of the Act and asked the respondents to furnish details of dyes/chemicals imported or sales consumption thereof during the relevant period. The respondents-firm thus filed the requisite details and showed the total purchases as Rs. 11,232-04 and the sale as Rs. 5,097.60 leaving the balance value of the colour in the malkhata as Rs. 6,124.44. This balance was shown to have been consumed by the respondents-firm itself. As regards the colour sale worth Rs. 5,097''60, Shri Nanda found that the books of the respondents-firm showed that dyes had been sold to M/s. Dina Nath and Sons, Amritsar, on 24th February, 1965, for Rs. 5,098. However, during the assessment proceedings, Shri Nanda received secret information that the respondents-firm had sold two drums of dyes and chemicals, which were imported into India by it, to Dhariwal Mills and not to M/s. Dina Nath and Sons, Amritsar, as shown in the books of account and that the sale in favour of Dhariwal Mills was made by the respondents-firm through two bogus intermediaries, the first being M/s. Dina Nath and Sons, who sold these goods to M/s. Ajay Textiles'' Amritsar, for Rs. 8,150 and the latter in turn had sold these goods to Dhariwal Mills for Rs. 8,255. Dina Nath of M/s. Dina Nath and Sons had admitted before the ITO that he was merely acting as a name-lender and had not purchased any goods from the respondents-firm nor had he sold these goods to M/s. Ajay Textiles, Amritsar. It was Dina Nath who supplied the secret information to the ITO, but he could not be produced as he had died during the pendency of the case and his son, Manohar Lal, who admittedly dealt in the disputed transactions, was also not produced before the trial court. The learned Magistrate has rightly observed that the statement allegedly made by Dina Nath before Shri Nanda cannot he used against the respondents in a criminal matter. Although the statement of Dina Nath was in writing, yet it had not been placed on record. The prosecution has also withheld the bills by which the goods in question were sold to Dina Nath and for the same reason, it seems, Manohar Lal was also not produced and examined before the court lest those documents would have been put to him. Admittedly, Dina Nath and Sons was a sales tax assessee. ''D'' form for the purchase of goods in dispute had been issued.

9. P. W. 2, Shri R.L. Bhagat, the then ITO, dealt with the case of alleged intermediary, M/s. Ajay Textile. Tilak Raj (P.W. 4) was one of its partners while the other partner was Sat Pal. Shri Bhagat deposed that he examined Tilak Raj Aggarwal of M/s. Ajay Textiles on 30th January, 1970, and that Tilak Raj Aggarwal revealed to him that his firm had only purchased the import licences of the respondents-firm and not the goods from it. He further disclosed that the licences were further sold by him to Dhariwal Mills at a handsome premium, and that he charged only 1- 1/2% or 2% as commission. Letter dated 4th March, 1970, Ex. PW-8/B from Dhariwal Mills to Shri Bhagat (P.W. 2) was placed on record, wherein it was mentioned that the Dhariwal Mills had purchased 43 kgs.

of Foron Black 2 BL and 2''25 kgs. of Lanasyn Brilliant Blue FRL 200% against the import licence of the respondents-firm through M/s. Ajay Textiles of Amritsar for Rs. 274, Rs. 921, Rs. 147, Rs. 185, Rs. 1,153 and Rs. 305, respectively, and that M/s. Ajay Textiles had despatched these dyes by Amritsar Transport Co. under goods receipt No. 20334, dated 8th February, 1965, Dhariwal firm asked the ITO to write to M/s Ajay Textiles for further information. Shri Bhagat could have collected the relevant record but he had not done so even when admittedly Tilak Raj of Ajay Textiles had stated before him, in his cross-examination, that it was not he but his partner, Sat Pal, who along with Manohar Lal, son of Dina Nath, had come to Ludhiana and after making payment of Rs. 3,615.60, had taken delivery of two drums of dyes and chemicals from the respondents-firm and this amount of Rs. 3,615.60 had been shown in the cash book of M/s. Ajay Textiles as having been withdrawn on 8th February, 1965, and given to Manohar Lal, son of Dina Nath of M/s. Dina Nath and Sons, Amritsar. Thus, Shri Bhagat himself admits that he had come to know that the transaction was conducted by Manohar Lal, son of Dina Nath, and Sat Pal of M/s Ajay Textiles, As observed earlier, Manohar Lal and Sat Pal were not examined.

10. Tilak Raj of M/s. Ajay Textiles, Amritsar, has been examined as P.W. 4. He stated that in July, 1964, he had purchased the import licences which were in the name of the respondents-firm for Dhariwal Mills through one Ved Parkash Malhotra of Amritsar. He then changed his statement and said that in fact he procured these licences through the said Shri Malhotra for M/s. Dina Nath and Sons of Amritsar and not from the respondents-firm. He further changed his statement to state that in fact these import licences of the respondents-firm and some other concerns were purchased through M/s. Dina Nath and Sons and after purchasing the same on behalf of the Dhariwal Mills, the payment was made by his firm (Ajay Textiles) to M/s. Dina Nath and Sons and the licences were given to the Mills. He ultimately stated that in fact the premium over the price of the licences was paid to M/s. Dina Nath and Sons. He further asserted that "the Dhariwal Mills had booked the goods of this licence to M/s. Sandoz" and that he had paid the amount of Rs. 3,625 pertaining to this bill of the import licences through his brother, Sat Pal, who had been sent to Ludhiana and after the delivery of the goods through the bank, Sat Pal had sent the same to the Dhariwal Mills. According to this witness, it was Sat Pal who had made the payment of Rs. 3,615 and not he himself. In fact, Tilak Raj did not come to Ludhiana at all, and according to him, the delivery of the goods was taken through the bank by Sat Pal. No evidence from the bank side has been produced before the trial court to show that such a delivery was taken by Sat Pal nor was Sat Pal produced. Admittedly, the sale bills relating to these transactions were produced by Tilak Raj before the Income Tax authorities, but the same were also not produced by the prosecution before the trial court. This witness also admits that there is no entry in his books of account as to the purchase or sale of the licences although there was mention about the sale of dyes and chemicals. Thus, in this situation, no reliance can be placed on the testimony of this witness.

11. Raghbji (D.W. 4), a partner of M/s. Azad Shipping Agency, Bombay, has deposed to the effect that on the advice of the respondents-firm and on receipt of the documents, bank draft Ex. DW 2/A, Invoice Ex. DW 2/D, Bill of Lading Ex. DW 2/E, Insurance Policy Ex. DW 2/F and import licences mentioned on the back of Ex. DW-4/A; his firm approached the concerned authorities and paid the customs duty on 24th December, 1964, and got the goods cleared on 26th December, 1964.

12. D.W. 5 is Pawan Kumar, who is a clearing agent at the goods office, railway station, Ludhiana. According to him, on 30th January, 1965, he had cleared the goods and delivered the same to the respondents-firm.

13. P.W. 8, Shri V.N. Jajoo, the general manager of the Dhariwal Mills, was examined to prove letters, Ex. PW-8/A and PW-8/B. He admitted that he had no knowledge as to how, by whom, and where the import duty on these goods was paid nor had he knowledge as to who got the goods released from the Customs authorities. He deposed that he had not looked into the records from this angle and that he had looked into the records only to the extent of enquiries made by the ITO. Thus, in our view, the trial Magistrate, after considering the whole evidence, has rightly observed that it is not proved that the respondents had not sold their goods to M/s. Dina Nath and Sons as stated in their Income Tax statement.

14. Regarding the balance of Rs. 6,124.44, which is shown to have been consumed by the respondents-firm itself, that has also been proved by the defence evidence and the prosecution has failed to prove that this was not used by them. The prosecution tried to prove this charge through Shri Dalip Singh (P.W. 6), but no reliance can be placed on this witness. According to the respondents, the dyes and chemicals had been given for consumption to M/s. Maghera Knitting Works only whom they had paid fabrication expenses to the tune of Rs, 11,613, but they showed their inability to produce a certificate from that concern regarding the consumption of dyes and chemicals. The case of the respondents is that the respondents-firm paid fabrication charges to the following firms :

Rs.

(i) M/s. Maghera Knitting Works

13,758

(ii) M/s. Kapoor Chand Madan Lal

1,505

(iii) M/s. Baldev Hosiery Factory

2,250

15. According to the respondents, the above three firms in their respective

fabrication jobs done by them for the respondents had not utilised their own colours and dyes but they had utilised only those which had been supplied to them by the respondents-firm. Reliance cannot be placed on the testimony of Dalip Singh, P.W. 6 who denied having received the dyes from the respondents. Shri Nanda (P.W. 1) in his cross-examination deposed as follows:

"I did not calculate the fabrication charges disclosed by the accused (to verify whether these were correct or not). I did not verify whether the fabrication charges of Maghera Knitting Works were lower than the prevailing market rate charged by the other fabricators from the accused. I would not be able to say that the difference of the total amount charged by Maghera Knitting Works and the amount of fabrication charges for the same quality of goods worked out at the rate of other parties, would be equal to the worth of dyes and colours alleged to have been consumed by the assessee. I did not examine the matter from this angle as the contention was not made by the assessee at any stage, Dalip Singh himself stated that he did charge from the accused the same rate as he was charging from the other parties."

16. Thus, from the statement of Shri Nanda, it is clear that whatever Dalip Singh told him was believed by him to be true without himself verifying the true facts. As observed earlier, much reliance cannot be placed on Dalip Singh (P.W. 6). In his cross-examination, he admitted that the respondents had supplied him undyed cotton yarn for fabricating the same into hosiery goods. He also stated that the respondents had got fabricated thousands of dozens of pieces and he was charging Rs. 10 or Rs. 11 per dozen for the normal sizes and Rs. 5 to Rs. 6 per dozen for small sizes and something more for the middle sizes. He also stated that during this period, he was fabricating the goods of M/s. Kishore Hosiery Mills also and that this firm had also placed orders for thousands of dozens of pieces for fabrication, yet he was charging Rs. 14 per dozen for the normal sizes from them and similarly proportionately less amount for the lesser sizes. He, however, denied that this difference of rates was due to the fact that the respondents supplied him dyes while Kishore Hosiery Mills did not do so. In reply to the question in re-examination conducted on behalf of the Department itself, the witness states that he cannot explain the difference in charging the rates from the respondents-firm and the other parties. Thus, it cannot be understood as to why Dalip Singh, PW. 6, was charging lower rates from the respondents-firm for the same items for fabrication than, from the other firms. In this matter, the respondents examined Gurcharan Singh as D.W. 1 and Thakar Dass as D.W. 7 to support their defence version that lower charges were paid to Maghera Knitting Works than were actually payable for fabricating hosiery goods from cotton yarn, because the colours and dyes for that purpose were supplied by the respondents. In this situation, we are of the view that the Magistrate has rightly held that the dyes and colours were consumed by the respondents-firm for fabricating cotton yarn.

17. Coming to the wooltops matter, Shri R.L. Bhagat (P.W. 2) (the then ITO)

looked into the trading account of the wooltops put in by the respondents-firm under the signature of Madan Gopal, respondent. This account revealed that on 11th August, 1964, vide Bill No. 20, the respondents had sold wooltops weighing 12,322 lbs. @ Rs. 6.50 per lb. for a sum of Rs. 80,093 to M/s. Asha Wool Trading Company, Panipat It also revealed that on 6th November, 1964, through another transaction, wooltops weighing 4,014 lbs. were sold vide Bill No. 28 to the same concern @ Rs. 6 per lb. for a sum of Rs. 24,084. Shri Bhagat made enquiries from the Panipat concern about these two transactions and received a reply dated 24th January, 1970, through which the Panipat concern confirmed about these two transactions with the respondents-firm and that they made payment in hard cash. The prosecution allegation is that the Panipat concern was a bogus concern having a capital of Rs. 740 only and was run by a lady and that it was the respondents-firm which earned more profits and concealed its income deliberately and introduced the Panipat concern. This is also not proved by the prosecution. Shri Bhagat (PW) has admitted that he made enquiries and could not find out whether the Panipat concern was an Income Tax assessee or not. Even then he asserts that the Panipat firm did not exist since it was raised only as a bogus intermediary. His conclusion is based on mere conjectures and surmises and not on evidence. He has further admitted that he had been informed by the Kanpur concern that they had five sale transactions with the Panipat firm and the total amount of those sales was Rs. 7,09,605.78 for the year ending 3Ist December, 1964, and that for the year 1965, there was another set of transactions of Rs. 12,92,753.55 between the same parties, i.e., Kanpur concern and the Panipat concern. From this it is evident that the Panipat concern was not a bogus concern and it was a concern subjected to Income Tax and also sales-tax. If the Panipat concern had been an intermediary for the respondents-firm, then there would have been more transactions and not only two. It seems to be a concern of Kanpur people, because there were more transactions between the Panipat and Kanpur concerns for the year ending 1964. Shri S.K. Shukla (P.W. 7), an accountant of the Kanpur concern, admitted that the invoice dated 6th August, 1964, of the Panipat concern was not traceable in their records. The original invoice was thus missing. He had produced Ex. PW-7/B, a copy of the ledger of the Panipat concern, but he admitted that Ex. PW-7/B had not been compared by him with the originals. He also stated that his firm had no dealings with the respondents-firm at Ludhiana. On the other hand, he asserts that his firm had paid over seven lakhs to the Panipat firm in 1964 and that they did not pay any sum in cash to that "firm out of this huge payment of Rs. 7 lakhs. According to him, the amounts were paid, by bank drafts, telegraphic transfers and by cheques through banks. Shri V.N. Jajoo (P.W. 8) admitted even if the goods came earlier, the bill can come later on and that it was not necessary that although the bill through which the sale was made of the wooltops by the respondents-firm to the Panipat concern was dated 11th August, 1964, the sale should have also been made on 11th August, 1964, and that it could have been made earlier to 11th August, 1964, i.e., on 6th August, 1964, or even earlier. In defence, the position has been clarified by the respondents. They have produced

Kishori Lal Sharma (D.W. 3), an official of the I. T. Office, Panipat, who brought the assessment record of the Panipat concern for the accounting year 1964-65 and 1965-66 which continued up to the year 1969-70. He produced copies of assessment records for the years 1965-66. and 1966-67 as Ex. D.W. 3/1 and D.W. 3/2. It is mentioned in the office note, Ex. P-X/1, of the ITO, Panipat, that the Panipat concern belonged to a lady who is an educated one and who came from a business family of Panipat ,and has business connections at Kanpur. She had invested Rs. 831 in the initial stage, but in fact the business was started by advance of Rs. 1,18,550 on 23rd July, 1964, by the Kanpur concern and against that, advance she had been making purchases from various concerns. Thus,- it is clear that the Panipat concern was not the creation of the respondents but was the creation of the Kanpur concern. The Kanpur concern was manipulating things in such a manner so as to give benefit and income to the proprietor of the Panipat concern, by showing more costs on production and lessening the profit margin.

18. Thus, we are of the view that no case is made out for taking a different view than that taken by the trial magistrate. The trial court has minutely discussed every piece of evidence and the conclusions arrived at are reasonable and based on evidence. It is settled law that even if two views are possible, the view/taken by the trial court cannot be upset on appeal against acquittal.

19. In the result, the appeal fails and is dismissed.

