
(1989) 03 P&H CK 0138

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 4775 M of 1984

Jarnail Singh

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 10-03-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Income Tax Act, 1961 — Section 132, 139, 245D, 245D(1), 245D(2D)

Citation : (1989) 47 TAXMAN 422

Hon'ble Judges : Ujagar Singh, J

Bench : Single Bench

Advocate : P.S. Patwalia, for the Appellant; L.K. Sood, for the Respondent

Judgement

Ujagar Singh, J.—By this order - Avtar Chand v. ITO [Cri. Misc. No. 3228-M of 1984], Kailash Bhushan v. ITO [Cri. Misc. No. 4496-M of 1984], Jarnail Singh v. ITO [Cri. Misc. No. 4775-M of 1984] and Rundarpal Singh v. ITO [Cri. Misc. No. 4777-M of 1984] are being decided as the facts and the law points involved are similar and the same can be disposed of by one judgment. For reference, I will be referring to the facts mentioned in Criminal Miscellaneous No. 4775-M of 1984, which is a petition u/s 482 of the Code of Criminal Procedure for quashing the complaints filed by the respondent in the Court of the Chief Judicial Magistrate, Jalandhar, under sections 276C and 277 of the income tax Act, 1961 ("the Act") and all proceedings in pursuance thereof. The brief facts of the case are that the petitioner filed three separate income tax returns for the accounting years ending on 31-3-1976, 31-3-1977 and 31-3-1978, i.e. for the assessment years 1976-77, 1977-78 and 1978-79. These returns were filed on 12-10-1977, 10-10-1977 and 9-6-1977, respectively, and the income disclosed was Rs. 9,000, Rs. 11,000 and Rs. 12,400, respectively. No books of account such as cash-book or ledger were being maintained. Income was disclosed on estimate basis in a bona fide manner. The income tax Department searched the premises of Shri M.P.S. Minhas, who is the son of the petitioner, on 4-12-1978. Some days after this search, a survey of the working of the petitioner was done and the income

tax authorities started harassing the petitioner and other relations of the abovesaid M.P.S. Minhas. The conclusion derived by the authorities concerned was that the said M.P.S. Minhas was the real owner of the various business concerns which were being run by his various relations including the petitioner. Seven relations of Shri M.P.S. Minhas were contacted and it was projected to them that they all formed a group managed by M.P.S. Minhas and the said seven relations of M.P.S. Minhas were treated by the income tax authorities as members of one group, i.e., Minhas group.

2. All the assesseees of the group had filed their returns and some of the assessments had been completed while the remaining were pending. The matter was discussed with the authorities who persuaded the petitioners and other members of the said groups to file revised returns and as a result thereof revised returns were filed under an assurance that if revised returns are filed, no penalties, interest or prosecution would be initiated against them.

3. Although no concealed assets had come to light in the hands of the petitioner, all the same he filed revised returns on 18-2-1980, on the basis of the specific assurance and undertaking given by the income tax Department as a result of detailed deliberations and discussions with the officers of the department. The revised returns showed income (as voluntarily disclosed) of Rs. 51,650, Rs. 40,800 and Rs. 40,600, respectively. But, later on, on 13-2-1981, a letter is said to have been written by the counsel for the petitioner and therein the income surrendered by the said M.P.S. Minhas and also seven members of his alleged group were shown to be Rs. 9,25,850. It is also mentioned in the petition that in the wealth-tax assessment order dated 26-3-1983, in the case of Shri M.P.S. Minhas, the following has been specifically mentioned:

After detailed scrutiny and deliberation, the assessee has come up with an offer of settlement to surrender.

4. In spite of all these assurances and averments, a complaint has been filed by the ITO and the said complaint is annexure "B"; the list of witnesses as also the list of documents to support the complaint is shown at internal page 5 of this annexure. Further complaint is at annexure "C" and the list of witnesses and the list of documents are also shown at internal page 3 of the said annexure. Yet another complaint is at annexure "D" and, similarly, the list of witnesses and documents is at page 4 - internal thereof.

5. Reply thereto has been filed by the ITO controverting the averments in the petition. In reply, an objection has been taken that there being three complaints, one petition for quashing of all the complaints is not maintainable. The assessee had declared additional income in each revised return. It is stated that the income tax Department searched the residential premises of Shri M.P.S. Minhas and the concern of which he was either the proprietor or which he was controlling. In the course of search of various premises covered by the department on 14-12-1978, documents relating to the business activity of Shri

Jarnail Singh were also found and seized by the raiding party. The assessee was required to give clarifications regarding the nature of the documents and the business being carried on by him. There was no question of harassment caused to the petitioner. Records seized in the course of search and seizure revealed that Shri M.P.S. Minhas was the main person who was carrying on the business activity on behalf of his near relations, viz., father, mother, wives and brothers. If at all there is any Minhas group, it was not the creation of the department. After the examination of the material documents, the department was in a position to establish that higher income than the income returned by the petitioner had been earned by Shri M.P.S. Minhas and the other persons of his group including the petitioner. The petitioner is admitted to have submitted various proposals to settle his income tax matters and those were examined by the then officer holding jurisdiction over the assessee but the petitioner was not persuaded to file revised returns. The department is said to have given no assurance to the petitioner or the other members of this group that if revised returns were filed, no penalty/interest or prosecution would be initiated against/ charged from the petitioner. The department has also denied about any settlement having been made with the petitioner by the department. It was only on a proposal made by the petitioner that the same were examined and some of them were found to be acceptable to the department. It is reiterated that no settlement whatsoever has been arrived at between the petitioner and the department as alleged. Assessments are said to have been made on protective basis and the protective assessment is not a paper transaction but is a good assessment for all purposes except that on the basis of some information and facts, if the department comes to the conclusion that the income belongs to a third person, the assessment framed in the hands of the petitioner would not stand as a bar against inclusion of that income in the hands of another person and income of the petitioner has not so far been included in the hands of any other person. Lastly, the prayer made in the return is for dismissal of the petition.

6. After a reading of the complaints, it becomes clear that the petitioner is sought to be prosecuted for having filed original returns with a false verification, the verification being that the facts and figures contained therein are correct to the best of his knowledge, information and belief and since the petitioner has concealed a major part of his income for the relevant year, he at the time of making the verification knew or believed to be false and did not believe it to be true and yet made the verification declaring the contents of the return to be correct and, therefore, the petitioner was liable to be punished u/s 277.

7. Before proceeding further, it may be mentioned that section 139 of the Act requires the filing of the return of income if his income is assessable under the Act during the previous year, i.e., exceeded the maximum amount which is not chargeable to income tax. Sub-section (5) thereof provides that if any person having furnished a return under sub-section(1) or sub-section (2), discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the assessment is made. There is no dispute that the returns filed by

the petitioner do not attract the provisions of sub-section (5) of section 139. As the new returns are not based on the discovery of any omission or any wrong statement made in the original return, this provision, therefore, is not of any help to the petitioner. Section 276C makes punishable the person liable if he wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable under this Act to rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine, if the amount sought to be evaded exceeds one hundred thousand rupees and in any other case, to rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine. This punishment is without prejudice to any penalty that may be imposable on him under any other provision of the Act. Sub-section (2) of this section makes the person liable to rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and shall, in the discretion of the Court, also be liable to fine if he wilfully attempts to evade the payment of any tax, penalty or interest under this Act and this punishment is also without prejudice to any penalty imposable on him under any other provision of this Act. Section 277 makes a person liable for making a statement in any verification under this Act or under any rule made thereunder or delivers any account or statement which is false, and which he either knows or believes to be false, or does not believe to be true to the same punishment as u/s 276C. The counsel for the petitioner has also referred to section 273A and urges that if any application is made by an assessee, the Commissioner may reduce or waive the amount of penalty imposed or imposable if the Commissioner is satisfied that such person has, prior to the issue of a notice to him under sub-section (2) of section 139, voluntarily and in good faith made full and true disclosure of his income. The learned counsel proceeds on the basis that since the application before the Commissioner was pending and had not been decided, the complaints were not maintainable.

8. The counsel for the respondent has referred to certain authorities and on that basis he has urged that mere pendency of penalty proceeding wherein the Commissioner is still to exercise his discretion cannot be contended to mean that no criminal case can be instituted u/s 277 before exercise of this power.

9. In *M.R. Pratap Vs. V.M. Muthukrishnan, Income Tax Officer*, *P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin*, and *Vijay Kumar Vs. Income Tax Officer, Taxman 202 (Punj. & Har.)*, it has been held that there was no legal bar to the prosecution of the petitioner u/s 276C or section 277 in the absence of a favourable decision for him u/s 273A and, therefore, the assessee's contention could not be upheld and quashing of complaints under the said sections was declined and it was specifically held that the prosecution was not premature before completion of proceedings.

10. Another argument raised by the learned counsel for the petitioner is that since the petitioner's assessment was protective, it becomes a nullity after the

petitioner's income is decided to be benami for the other assessee. He sought support from *Sunil Kumar Vs. Commissioner of Income Tax, Vidarbha and Marathwada and Others*,) and *Commissioner of Income Tax Vs. Behari Lal Pyare Lal*, . Here also, he cannot depend upon this provision of protective assessment because in a complaint like the present, the department is concerned that all persons filing returns should make truthful statements so as not to conceal any facts relating to the income and once a verification of any statement is found to be false, the offence is complete and the assessee is liable to be prosecuted.

11. The main argument of the counsel for the petitioner is that the revised returns were filed under settlement talks and the IAC (Investigation) sent his report to the Commissioner on 13-2-1981, which report is reproduced in para 9 of the petition. The specific portion refers to the fact that the search and seizure operations were conducted on the business as well as residential premises of various members of this group on 14-12-1979, u/s 132 of the Act and after detailed investigation of the seized records and discussion with the assessee of this group, the ITO submitted a comprehensive report, vide which the ITO has recommended that settlement on the additional income of Rs. 9,25,850 disclosed by various members of this group be made. The amount surrendered by various members was mentioned and the IAC (Investigation) had clearly admitted that the ITO, during the course of examination, discussed the case with him from time to time and apprised him with the working of the settlement proposals and so far as three ladies of this group were concerned, the amount disclosed was suggested to be assessed in the hands of Shri M.P.S. Minhas. Ultimately, the IAC (Investigation) suggested that surrender proposals of various members of the group including the aforesaid three ladies as contained in the ITO's report enclosed may be accepted. To this para of the petition, the reply is that the averments made therein are admitted to the extent that the ITO submitted a comprehensive report and the Assistant Commissioner, Special Range, Jalandhar, wrote the said letter to the Commissioner. However, it is mentioned in the reply that no settlement had been arrived at between the petitioner and the department as alleged, and, therefore, the Commissioner was not bound by the report of the IAC. While the case was being argued, the counsel for the petitioner filed Criminal Miscellaneous No. 7611 of 1988 seeking permission that the order u/s 245D(1) of the Act passed on 9-9-1988, by the income tax Settlement Commission, Principal Branch, New Delhi, be allowed to be placed on the record. He was allowed to place this order on record after notice to counsel opposite. This order is annexure A-I and deals with the matter in detail. The substance of the order is as under:

We have considered the submissions made. For the reasons stated in our order of even date passed in the case of Shri M.P.S. Minnas, we hold that the proceedings for the assessment years 1976-77, 1978-79, 1980-81 and 1981-82 were pending on 6-3-1986. We hold that as in the case of Shri M.P.S. Minhas, in this case also, the material placed on record by the department did not justify the inference that concealment of particulars of income was likely to be

established in this case for various other assessment years covered by the application, on or before 6-3-1986. We, therefore, admit the assessee's application and allow it to be proceeded with.

In accordance with the provisions of sub-section (2A) of section 245D, the applicant shall, within 35 days of the receipt of this order, pay the additional amount of income tax payable on the income disclosed in the application and shall furnish proof of such payment to the Settlement Commission and the Assessing Officer assessing him within 15 days of making the aforesaid payment. If the applicant does not pay the additional amount of income tax payable as above within the time specified in sub-section (2A) of section 245D, the amount of income tax remaining unpaid, together with any interest payable thereon under sub-section (2C) of section 245D, shall be recovered by the Assessing Officer in accordance with the provisions of section 245D(2D).

A copy of the annexure to the settlement application, together with statements and other documents accompanying such annexure, is being separately forwarded to the Commissioner along with a copy of this order with a direction that the Commissioner shall furnish a "further report" within 90 days as required under rule 9 of the income tax Settlement Commission (Procedure) Rules, 1987.

12. This order makes it clear that the settlement application made by the petitioner was accepted.

13. To bring an act under the provisions of section 276C, the action of the person concerned has to be a wilful attempt to evade any tax, penalty or interest chargeable or imposable under the Act and this word "wilful" imparts the concept of mens rea and if mens rea is absent no offence under this section is made out. Case of B.T.X. Chemicals (P.) Ltd. and Others Vs. Suraj Bhan and Another, has come to my notice where D.G. Gheewala, Justice of the Gujarat High Court, has held that dishonest intention or mala fide intention for committing a particular crime is a must before an assessee can be prosecuted. According to this judgment, what is to be found by the Court is as to whether the assessee wanted to defraud the revenue. In the present case, the earlier returns filed by the petitioners cannot be said to be false. The petitioner filed the new returns only because of the settlement talks going on with the income tax Department and ultimately a recommendation was made for the surrendering of more income by the petitioner by way of filing the said new returns. In any case, the new returns have to be considered as protective returns and in case it had been found out that the petitioner's business was actually the business of Shri M.P.S. Minhas, the assessment of the petitioner, being a protective assessment, has to become a nullity.

14. In the other three petitions, the facts are almost the same with the only difference of return of assessable incomes for different years. In the other three petitions, there were also protective returns and it was yet to be found out as to whether the business of those three petitioners was that of Mr. M.P.S. Minhas and

their protective assessment order had also to become a nullity in case the department finds the ownership of these concerns to be of Shri. M.P.S. Minhas. In view of the above observations, I accept all the four petitions and quash the criminal complaints involved therein.