(1985) 11 P&H CK 0025

In the Punjab And Haryana At Chandigarh

Case No : Criminal Revision No. 577 of 1984

Jog Raj APPELLANT

Vs

State of Punjab RESPONDENT

Date of Decision : 21-11-1985

Acts Referred:

Income Tax Act, 1961 — Section 276C, 277

Citation : (1987) 59 CTR 22 : (1987) 164 ITR 763 : (1986) 1 RCR(Criminal) 488

Hon'ble Judges : K.P.S. Sandhu, J

Bench : Single Bench

Advocate : C.D. Dewan and S.K. Sharma, I.S. Rai, for A.G, for the Appellant; Ashok Bhan and Rakesh Garg, for the Respondent

Judgement

K.P.S. Sandhu, J.—Jog Raj, the petitioner, has come up in revision against his conviction and sentence of rigorous imprisonment for four months and a fine of Rs. 500, in default, further rigorous imprisonment for sixty days, u/s 227 of the Income Tax Act.

2. The petitioner is an active partner in a firm known by the name and style of Messrs Himalaya Medical Store, Hoshiarpur. The petitioner filed a return under his own signature for the firm for the assessment year 1977-78. This return included the income of the business at Hoshiarpur as well as a branch of the concern at Gagret. The assessable income shown by the petitioner was Rs. 1,42,402. The return came up for scrutiny before the Income Tax Officer, Hoshiarpur. Since he entertained some doubts as to the correctness of the information supplied in the return, he issued a notice to the petitioner calling upon the petitioner to show cause as to why an amount of Rs. 60,570 should not be added to the income.

3. The petitioner filed a reply and took up the plea that the aforesaid amount of Rs. 60,570 was not part of his income. Not accepting the explanation of the petitioner, the Income Tax Officer added the amount of Rs. 60,570. The petitioner went up in appeal which was partly allowed by the Commissioner of

Income Tax (Appeals) in the sense that the amount was reduced to Rs. 39,534. The petitioner then went up before the Income Tax Appellate Tribunal but the appeal was dismissed and the order of the Commissioner of Income Tax (Appeals) was upheld. The Income Tax Officer after the decision of the appeal by the Tribunal issued a notice to the petitioner to show cause as to why penalty should not be levied on him. However, after the receipt of the reply from the petitioner, the Income Tax Officer did not pursue the penalty proceedings. But, the Income Tax Officer filed a complaint under Sections 276C and 277 of the Income Tax Act in the Court of the Judicial Magistrate, First Class, Hoshiarpur. The complaint is exhibit PA-1. The learned trial court found that the case against the petitioner u/s 276C of the Income Tax Act was not made out. It, however, recorded the conviction of the petitioner u/s 277 of the Income Tax Act and imposed the aforesaid sentence on the petitioner. The petitioner went up in appeal. The appellate court upheld the conviction and sentence of the petitioner. Hence, this petition.

4. On going through the order of the learned Additional Sessions Judge, it appears that the main consideration which prevailed with the learned Additional Sessions Judge was that the petitioner offered the peak credit to the Department for the purpose of securing peace with it so that the learned Additional Sessions Judge thought that the surrender made by the petitioner amounted to an admission on his part regarding concealment of income. But I am afraid that the learned Additional Sessions Judge was not justified in treating the statement of the petitioner as a confession in the sense that he did not confess that he had actually concealed income but merely offered the peak credit to the Department only to seek peace with the Department. Apart from this so called admission of the petitioner, the prosecution failed to bring on record any evidence showing that the petitioner had concealed his income in the return and had wrongly verified the same. The prosecution only proved on record the assessment order, the notice issued to the petitioner and the replies sent by him. No evidence was led by the prosecution to show what was the actual income of the petitioner for the year in dispute. The evidence of the Income Tax Officers that the petitioner concealed his actual income remains an opinion of the officers, while in a criminal case, a heavy onus is cast on the prosecution to prove its case against the accused beyond reasonable doubt. I am afraid that the prosecution has failed in its duty in this case. Consequently, I allow this revision petition and acquit the petitioner of the charge. The fine, if recovered, would be refunded to him.

