(1975) 05 AHC CK 0005

In the Allahabad High Court

Laxmi Ratan Cotton Mills etc. APPELLANT

Vs

S.K. Bhatnagar RESPONDENT

Date of Decision : 16-05-1975

Acts Referred:
Income Tax Act, 1961 — Section 192, 194, 2, 200, 204

Citation : (1975) CriLJ 1881

Hon'ble Judges : P.N. Bakshi, J

Bench : Single Bench

Judgement

P.N. Bakshi, J.—A complaint u/s 276-B of the Income Tax Act, 1961 was filed in the Court of the City Magistrate, Kanpur by Sri S. K. Bhatnagar. Income Tax Officer, Salary Circle, Special Ward. Kanpur against:

1. M/s. Laxmi Ratan Cotton Mills Company Ltd.. Kanpur through Sri Ram Gopal Gupta, Director, Behari Niwas. Kanpur.

2. Ram Prasad Gupta son of L. Behari Lal Gupta Director and Principal Officer of M/s. Laxmi Ratan Cotton Mills Co. Ltd., Kalpi Road, Kanpur.

3. K. N. Agarwal. Secretary and Principal Officer, Laxmi Ratan Cotton Mills Company Ltd., Kanpur.

It was alleged in the complaint that under the provisions of Section 192(1) of the Income Tax Act, 1961 any person responsible for paving any income chargeable under the head ''salaries'' shall at the time of payment, deduct Income Tax on the amount payable at the average rate of Income Tax computed on the basis of the rates in force for the financial year in which the payment is made on the estimated income of the assessee under this Act for that financial year. The complaint case is that it was the duty of the accused Nos. 1, 2 and 3 to have deposited to the credit of the Central Government the sum So deducted as Income Tax u/s 192(1) of the Income Tax Act within one week of the date of such deduction, or the date of the receipt of the Ohalan, as provided for in Rule 30(3) of the Income Tax Rules, 1962. The tax deducted at source from the salaries of the employees of the company for the period 16-9-1969 to 15-11-1969 was Paid to the credit of the Central Government on 9-1-1970 and the tax deducted for the period 16-11-1969 to 15-12-1969 was paid to the credit of the Central Government on 15-11-1970. This tax should have been paid by the accused within a week from the date of the deduction which has not been done. The accused did not show any reasonable cause or excuse for the late payment of the deducted tax. No request for challan was made to the Income Tax Officer by the accused Nos. 1 to 3 as required under Rule 30(3) of the Income Tax Rules, 1967. In short, the complaint case was that the accused had failed without reasonable cause or excuse to pay the Income Tax deducted at source within the prescribed time as required under the provisions contained in Chapter XVIII of the Income Tax Act, 1961. In these circumstances it was alleged that the accused had committed an offence punishable u/s 276-B of the Income Tax Act. 1961.

2. On receipt of summonses the accused put in appearance before the Court. An application was filed on their behalf on 26th May, 1972 praying that any two out of the above three accused may be discharged. It was alleged in this objection that either the company or the Principal Officer can be held responsible, for the breaches contemplated by Section 276-B of the Income Tax Act. The prosecution should have come forward with a definite case as to who is responsible for deducting tax and payment of salaries. This not having been done the prosecution was value and evasive.

3. The City Magistrate, Kanpur rejected the prayer of the opposite parties vide his order dated 26th May. 1972. It was observed by the City Magistrate that u/s 204(1) of the Income Tax Act the person responsible for payment for purposes of Section 192 is the company itself including the Principal Officer thereof. The question as to who is the Principal Officer and whether there can be more than one Principal Officer is a Question depending on evidence to be produced by the complainant and the accused. The City Magistrate was of the view that this was too premature stage for raising this objection.

4. Aggrieved thereby a revision was filed before the Additional District Magistrate (Judicial) Kanpur, who has made the present recommendation to this Court for setting aside the order of the City Magistrate dated 26th May 1970.

5. I have heard learned Counsel for the parties in support of their respective submissions. Section 276-B of the Income Tax Act lays down that:

If a person, without reasonable cause or excuse, fails to deduct or after deducting fails to pay the tax as required by or under the provisions of Sub-section (9) of Section 80-E or Chapter XVII-B he shall be punishable with rigorous imprisonment for a term which may extend to six months and shall also be liable to fine.

Section 192 of the Income Tax Act enjoins a liability upon any person responsible for paving any income chargeable under the head ''salaries'' to deduct Income

Tax and super tax at the time of payment on the estimated income of the assessee under this head for that financial year. Section 204 of the Income Tax Act lays down that for the purposes of Section 192 the expression ''person responsible for paying'' means:

in the case of payments of income chargeable under the head ''salaries'' ...the employer himself or, if the employer is a company, the company itself including the ''Principal Officer thereof.

Section 2(31) of the aforesaid Act defines ''Person.'' It includes:

(i) an individual,

(ii) A Hindu undivided family,

(iii) a company,

(iv) a firm.

Section 2(35) of the aforesaid Act defines the expression ''Principal Officer''. It lays down that the expression ''Principal Officer'' used with reference to company means:

(a) a secretary, treasurer, manager, or agent of the ... company ... or

(b) any person connected with the management or the administration of the ... company ... upon whom the Income Tax Officer has served a notice of his intention to treat him as the Principal Officer.

A perusal of the relevant sections mentioned above makes it clear that under the scheme of the Act prosecution u/s 276-B of the Income Tax Act could be lodged against the company itself including its Principal Officer i. e. the Secretary, Treasurer, Manager or Agent or any person connected with the management on whom the Income Tax Officer has served a notice of his intention of treating him as the Principal Officer. In other words such a prosecution could be launched against the company through its Principal Officer as also against the Principal Officer himself. From the array of the parties given above opposite party No. 1 has been described as M/s. Laxmi Ratan Cotton Mills Company Ltd., Kanpur through Sri Ram Gopal Gupta, Director. Having regard to the definition of the words ''Principal Officer'' mentioned above, there can be no doubt that a Director is not one of the entities who is included within the definition of the ''Principal Officer''. As such, in my opinion, the nomenclature of opposite party No. 1 as given in the complaint is defective. If it was sought to prosecute M/s. Laxmi Ratan Cotton Mills Company Ltd., Kanpur for the offence u/s 276-B of the Income Tax Act, it should have been through its Principal Officer. In my view, therefore, opposite party No. 1, as described in the complaint, cannot be prosecuted in law for the offence in question.

6. Learned Counsel appearing on behalf of opposite party No. 1 has submitted that since the company is a juristic person and cannot be punished with rigorous

imprisonment for six months, as has been laid down in Section 276-B of the Income Tax Act, it cannot be prosecuted for the said offence. Reliance for this submission is placed on a single Judge decision of the Delhi High Court reported in D.C. Goel and Others Vs. B.L. Verma and Others, . In that case it has been held as follows:

A company or a firm being a juridical person was not liable to be prosecuted u/s 276-B of the Act inasmuch as it could not have been imprisoned. The provision left no discretion to the Court to impose the fine contemplated by it as an alternative to imprisonment. The accused was in any case to be punished with rigorous imprisonment for a term which could extend to six months. A juridical person could not have been imprisoned and could not have been prosecuted for the purpose of being convicted u/s 276-B of the Act. The trial Court showed complete disregard to that aspect of Section 276-B of the Act.

I am not inclined to agree with the view expressed by the learned single Judge of the Delhi High Court. u/s 204 of the Income Tax Act persons responsible for paying mean the company itself including the Principal Officer thereof. It is true that the company by itself is a juristic entity and therefore, it has to act through some individual who may be responsible for paying. As such when a company is impleaded as a party for an offence u/s 276-B it should be made a party through its Principal Officer. In that event the sentence of imprisonment which is imposed upon the company acting through its Principal Officer would have to be, undergone by the Principal Officer himself, who is responsible for making payment on behalf of the company. If the interpretation put by the Delhi High Court in the decision cited above is accepted it would mean that the company cannot be prosecuted at all. even though Section 204 of the Act lays down that the expression ''person responsible for paying'' means the company itself. Section 192 of the Income Tax Act casts a responsibility on any person responsible for paving salaries to deduct the Income Tax at the time the payment is made under the head salary to the assessee and thereafter to credit the same within one week to the Central Government. u/s 2(31) of the Income Tax Act person includes (1) an individual... (3) a company. Therefore, it is clear that under the scheme of the Act both the company as well as the Principal Officer can be impleaded as opposite parties, who are liable to be convicted for an offence u/s 276-B of the Act. In my view, therefore, when the company is impleaded as an accused it should be impleaded through its Principal Officer, which has not been done in the present case. For these reasons therefore I am of the opinion that the complaint cannot proceed against opposite Party No. 1 as described in the complaint filed by the Income Tax Officer in the instant case.

7. Applicant No. 2 Sri Ram Prasad Gupta has been impleaded as the Director and Principal Officer of M/s Lakshmi Ratan Cotton Mills Company Ltd., Behari Niwas, Kanpur. Learned Counsel appearing on his behalf has submitted that having regard to the provisions of law narrated above, opposite party No. 2 being a Director of the concern cannot be impleaded as an accused in this case. I would

have agreed with this submission if Ram Prasad Gupta has merely been designated as the Director of M/s. Lakshmi Ratan Cotton Mills Company Ltd., but as the description shows he has also been designated as the Principal Officer of the said concern. Section 192 enjoins upon the person responsible for paving, the duty of deducting the Income Tax. Section 204 of the Act defines the ''person responsible for paying'' as the company including the Principal Officer and the ''Principal Officer'' u/s 2(35) includes the secretary, Treasurer, Manager or the Agent of the company. In what capacity Ram Prasad Gupta has been impleaded as the ''Principal Officer'' has not been disclosed in the complaint. There may be two secretaries responsible for paying. Ram Prasad Gupta may also be the Treasurer or Manager of the company. These are matters which can only be clarified when the trial commences and evidence is led before the- Court. I am in agreement with the view expressed by the City Magistrate Kanpur, that it is too premature to judge whether Ram Prasad Gupta would be covered by the expression ''Principal Officer'' as defined u/s 2(35) of the Indian Income Tax Act. In my opinion, therefore, it will not be in the interest of justice to set aside the prosecution of opposite party No. 2 at this stage.

8. Learned Counsel appearing on behalf of opposite party No. 2 has cited a decision reported in Income Tax Officer Vs. Joseph and Others, . In this case complaints under Sections 276(d) and 276-B of the Income Tax Act were brought against the respondents, J and D designating them as ''Principal Officers'' of the company which had declared dividend on December 20 1961 and distributed the same on 1-2-1962 and had failed to pay the tax deducted therefrom to the credit of the Central Government within seven days from the date of deduction, as provided in Section 18(6) of the Indian Income Tax Act, 1922 and Section 200 of the Income Tax Act, 1961. The tax was paid on 26th May, 1969. The accused were convicted and sentenced to fine by the District Magistrate, but were acquitted, on appeal by the Sessions Judge. The Income Tax Officer filed an appeal in the High Court. The High Court held that the liability to deduct the tax from the dividend and pay it u/s 194 of the Income Tax Act, 1961 is on the "Principal Officer" of the company. The Managing Director is not one of the persons falling under the category of the principal officer enumerated u/s 2(35)(a) or 2(35)(b) of the Income Tax Act, 1961. The Managing Director cannot be equated with the Manager. No notice had been served upon the Managing Director by the Income Tax Officer of his intention to treat him as the Principal Officer so as to brine him u/s 2(b) of Section 2(35) of the Act. As such the Managing Director could not be held liable for the offence u/s 276-B of the Income Tax Act. It is noticeable that in this case the entire trial had been concluded before the District Magistrate who passed an order of conviction. The appellate Court on a consideration of the evidence on the record came to the conclusion that the Managing Director was not the principal officer of the company and as such recorded an order of acquittal. The High Court of Kerala dismissed the appeal filed by the Income Tax Officer and confirmed the order of acquittal. In my opinion, this ruling is not applicable to the facts of the present

case. On the contrary the facts mentioned above clearly disclose that the question whether the Managing Director was a Principal Officer or not was considered by the Courts concerned, not at any preliminary stage, but or. the conclusion of the trial. In my view, therefore this case, far from supporting the applicant, indirectly supports the contention of the counsel for the complainant that it is too premature at this stage to throttle the prosecution without the parties going to trial. In my view, therefore, the prosecution of opposite party No. 2 cannot be set aside at this stage.

9. So far as opposite party No. 3 is concerned there can be no doubt that he has been correctly impleaded. K. N. Agarwal has been described as the Secretary and the Principal Officer of Lakshmi Ratan Cotton Mills Company Ltd., Kanpur. Learned Counsel appearing on his behalf could not urge any argument for setting aside the impugned order in so far as opposite party No. 3 is concerned.

10. In the result, therefore, Criminal Reference No. 166 of 1974 and Criminal Reference. No. 167 of 1974 made by the Additional District Magistrate (Judicial). Kanpur are rejected. Criminal Reference No. 165 of 1974 for setting aside the prosecution of accused No. 1 as described in the complaint is accepted and the impugned order of the City Magistrate. Kanpur dated 26-5-1972 is set aside to that limited extent.

11. Let the record of the case be sent back to the Court below within ten days from today so that the trial may proceed expeditiously.