
(2002) 11 MP CK 0031

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 521 of 1998 & Criminal Revision No. 521/98

Narendra Kumar Khandelwal and Others

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 26-11-2002

Acts Referred:

Income Tax Act, 1961 — Section 271C, 276B, 278B

Citation : (2003) 1 MPHT 445

Hon'ble Judges : S.L. Kochar, J

Bench : Single Bench

Advocate : S.C. Bagadia and Mr. Chhabra, for the Appellant; G. Desai, Dy. A.G. for Non-applicant No. 2, for the Respondent

Judgement

S.L. Kochar, J.—Applicants are hereby taking exception to the order of conviction passed by Additional Chief Judicial Magistrate (Economic Offences), Indore in Criminal Case No. 14/87 on 12th April, 1996 for the offence punishable u/s 276B/278B of the Income Tax Act, 1961 (for brevity, "the Act") thereby sentencing 6 months RI with fine of Rs. 2000/- to applicant Nos. 1 and 2 and fine of Rs. 2000/- to the applicant No. 3 ID. 1 month SI as also the order dated 21-9-98 passed by learned ASJ, Indore in Criminal Appeal No. 72/96 thereby maintaining conviction and sentence.

2. Indisputably, applicants No. 1 Narendrakumar and No. 2 Pramodkumar are partners of Applicant No. 3 M/s. Khandelwal Steel Sales, 27, South Hathipala, Indore. The non-applicants had filed criminal complaint against applicants on 30-3-87. The allegation made in the complaint was that in the previous relevant Assessment Year 1986-87, accused persons had paid interest amount of Rs. 23,158.75 to various creditors but they failed to deduct and deposit in time the corresponding TDS amount of Rs. 2,314/-.

3. The Trial Court framed charge on 21-10-92 against the applicants for commission of breach of Section 200 of the Act punishable u/s 276B/278B of the Act. It was stated in the charge that applicants paid interest to Shri Dayanand

Mishra, Shri Rajendra S. Bhandari, Meja Vaidya Sports, Neeta Lonia, Rashi Khandelwal, Sanjeev Laxmikant Choudhari, Shyam Kumar Agrawal and Smt. Shantabai Dharamchand, for the Assessment Year 1986-87 but failed to deduct tax at source and deposit the same in the Government treasury within time. To prove its case, the prosecution has examined solitary witness N. Ahirwal in place of original complainant Shri Nav Rajan Gupta, who died during pendency of the complaint.

4. Applicants have submitted before the Court that there was no valid sanction as per Provisions u/s 279 of the Act because Authority was not apprised of the fact that TDS deposits or Form No. 15-A were ultimately deposited though late. If this fact could have been disclosed to the sanctioning authority, probably, the sanction for prosecution would not have been granted. It was also contended that delay in depositing TDS and Form No. 15-A was neither intentional nor deliberate. Because of bona fide delay, no offence was made out against them.

5. The Trial Court found the applicants guilty for the aforesaid offence. On appeal, the Appellate Court has also affirmed the same.

6. The contention of the Counsel for the applicants is that prior to 1-4-1989, Provision u/s 276B of the Act, prescribing that if a person fails to deduct or after deducting fails to pay any advance as required by or under the Provisions of Sub-section (9) of Section 80E of Chapter XVII-B, was punishable. This Provision of Section 276B, has been amended by Direct Tax Law (Amendment) Act, 1987 with effect from 1-4-1989, which prescribes punishment for failure to pay tax deducted at source. Thus upto 1-4-89, failure to deduct TDS was also an offence but after 1-4-89 only if a person deducted TDS but did not pay tax then it was an offence for which a person concerned is liable for punishment.

7. He has also submitted that new Section 271C was introduced with effect from 1-4-89 to provide for penalty imposable on a person who fails to deduct the TDS cease to be an offence, but was liable for penalty under the Act and this has been explained by the respondent/department Circular No. 551, dated 23-1-1990 which reads as under :--

"17.2. Substitution of a new Section for Section 276B to exclude failure to deduct tax at source from prosecution provisions and to provide prosecution only for failure to pay tax deducted at source to the Government. Under the old provisions of Section 276B, the following defaults were liable to prosecutions :--

(i) failure to deduct tax at source under the provisions of Chapter XVII-B.

(ii) failure to pay to the Government the tax so deducted at source."

8. Section 80E of the Act has been omitted by Amending Act of 1987. Therefore, reference to Section 276B is no longer necessary. Failure to deduct tax at source now attracts penalty under the new Section 271C. In view of the aforesaid changed law that on the date when the complaint was pending failure to deduct tax was no more an offence and only if the tax was deducted, but not paid, then

it was an offence and for not deducting tax at source and non-payment thereof, the law has provided for imposition of penalty. In the case of the applicants, they did not deduct TDS and also did not deposit the same within prescribed period but of course, deposited the same late in time. Therefore, no offence could be made out against them. Learned Counsel in support of his submissions placed reliance on the following decisions :--

- (1) Kolhapur Canesugar Works Ltd. and Another Vs. Union of India and Others, ;
- (2) General Finance Co. and Another Vs. Assistant Commissioner of Income Tax, Punjab, ;
- (3) Kaushal Kishore Biyani Vs. Union of India (UOI), .

9. Learned Counsel for the non-applicants submitted that there is no saving clause in the Amendment Act about retrospective applicability. Therefore, complaint was filed well within the purview of old Law because the incident had taken place when the old Law was prevalent and the applicants will not get any benefit of omission of their penal provision by amended Act.

10. The Supreme Court in the case of Kolhapur Canesugar Works Ltd. (supra), in Paragraph 38 has held as under :--

"At common law, the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute book as completely as if it had never been passed, and the statute must be considered as a law that never existed. To this rule, an exception is engrafted by the provisions of Section 6(1). If a provision of a statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop where the omission finds them, and if final relief has not been granted before the omission goes into effect, it cannot be granted afterwards. Savings of the nature contained in Section 6 or in special Acts may modify the position. Thus the operation of repeal or deletion as to the future and the past largely depends on the savings applicable. In a case where a particular provision in a statute is omitted and in its place another provision dealing with the same contingency is introduced without a saving clause in favour of pending proceedings then it can be reasonably inferred that the intention of the legislature is that the pending proceedings shall not continue, but a fresh proceeding for the same purpose may be initiated under the new provision."

11. Again, the Supreme Court in case of General Finance Co. and Anr. (supra), after considering the observations in the Constitutional Bench decision in Rayala Corporation (P) Ltd. and M.R. Pratap Vs. Director of Enforcement, New Delhi, and Kolhapur Canesugar Works Ltd. (supra) has held as under:--

"The view taken by the High Court is not consistent with what has been stated by the Supreme Court in the two decisions aforesaid and the principle underlying Section 6 of the General Act as saving the right to initiate proceedings for liabilities incurred during the currency of the Act will not apply to omission of a

provision in an Act but only to repeal, omission being different from repeal as held in the aforesaid decisions. In the Income Tax Act, Section 276DD stood omitted from the Act but not repealed and hence, a prosecution could not have been launched or continued by invoking Section 6 of the General Clauses Act after its omission."

12. On behalf of the Income Tax Department, arguments were advanced before the Supreme Court that in view of the Provision of Section 6 of the General Clauses Act, pending proceedings will be saved in absence of any specific provision in the amended Act, since the Amended Act is silent about retrospective applicability. The Supreme Court has answered this, holding that Section 6 of the General Clauses Act will not apply to omission of any provision in the Act but will apply only to repeal. In the present case penal provision was completely omitted, therefore, it would be considered as if it had never been in the statute book and for the same no prosecution could be launched or continued. In view of the aforesaid legal position about the effect of applicability of Amendment Act of 1987 omitting the Provision 276-B from the statute book, the applicants could not have been held guilty for the offence on the date of delivery of judgment by the Trial Court on 12-4-1996. On that date, the act of not deducting and not depositing TDS, was not the offence and for this only penalty was prescribed. Therefore, conviction and sentence of the applicants as imposed by the Trial Court is hereby set aside.

13. Ex consequenti, this revision is allowed in the terms indicated above.