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(2009) 03 P&H CK 0172

In the Punjab And Haryana At Chandigarh

Parveen Kumar APPELLANT

Vs

Income Tax Officer RESPONDENT

Date of Decision : 03-03-2009

Acts Referred:
Income Tax Act, 1961 — Section 143, 276C, 277

Citation : (2010) 321 ITR 282 : (2009) 180 TAXMAN 575

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J

Bench : Single Bench

Judgement

Kanwaljit Singh Ahluwalia, J.—Petitioner has been convicted and sentenced by the Court of the Chief Judicial Magistrate, Jind, vide judgment and order dated 30-8-1996 u/s 277 of the Income Tax Act (''the Act'') to undergo rigorous imprisonment for two years and to pay a fine of Rs. 3,000 and in default of payment of fine to further undergo rigorous imprisonment for one month. The petitioner was also convicted and sentenced u/s 276C(i) of the Act to undergo rigorous imprisonment for two years and to pay a fine of Rs. 3,000 and in default to further undergo rigorous imprisonment for one month. Both the sentences were ordered to run concurrent. Aggrieved against the same, the appeal filed by the petitioner, was also dismissed by the Sessions Judge, Jind, vide judgment and order dated 22-3-2001.

2. The Appellate Court had reduced the sentence from two years to one year rigorous imprisonment under Sections 276C(i) and 277 of the Act.

3. Counsel for the petitioner has submitted that petitioner was working as Property Dealer. He was Income Tax assessee having a status of individual. He had concealed certain properties and plots purchased in the return filed for assessment year 1985-86. It is stated that notice u/s 143(1) of the Act was received on 17-7-1986. Notice was also issued to petitioner to participate in Selective Scrutiny Scheme. It is stated that petitioner, on appearance, admitted the lapse and had given the details of the properties which were not mentioned in the Income Tax returns and had also paid the penalty.

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4. Counsel for the petitioner has stated that he will not contest the petition on merits as two Courts below have upheld the conviction of the petitioner. Counsel further states that even though the Act has provided minimum sentence of three months rigorous imprisonment, long pendency of the case be taken as special reason for reduction of sentence to already undergone. Counsel has further submitted that petitioner has undergone about seven days of his actual sentence.

5. To fortify his submissions, counsel for the petitioner relied upon R.V. Lyngdoh v. State (Delhi) Special Establishment 1999(1) RCC 858, Harbans Singh v. State 2003 (2) RCC 60 and Ztes Raj v. State of Haryana 1996 (1) RCC 689 to contend that protracted trial in itself has been taken into consideration by Courts as mitigating circumstance. Counsel further submitted that at the very outset when the notice was received, petitioner accepted non-disclosure of the properties and had paid the penalty before the competent authority. Counsel has further submitted that instead of sending the petitioner behind the bars, he may be given an opportunity to reform himself. It has been further submitted that in the last 23 years, responsibilities of the petitioner to look after his family have increased. Counsel for the petitioner has further submitted that heavy fine can be imposed instead of sending he petitioner behind the bars.

6. Mr. Kapil Aggarwal, Advocate, has stated that awarding of penalty in itself does not absolve the petitioner of his guilt.

7. Taking into consideration the ratio of law laid down in R.V. Lyngdoh''s case (supra), Harbans Singh''s case (supra), andDes Raj''s case (supra), I am of the view that after 23 years, no useful purpose will be served by sending the petitioner behind the bars and the protracted trial in itself is a mitigating circumstance. Therefore, sentence awarded upon the petitioner is reduced to already undergone. However, he is fastened with the fine of Rs. 50000 which on deposit shall be disbursed to the Income Tax Department. The entire amount of fine be deposited within three months from the receipt of certified copy of judgment. In case the amount of fine is not deposited, benefit of reduction in sentence shall not accrue to the petitioner.

8. With the observations made above, the present petition is disposed of.

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