

(1996) 07 PAT CK 0023

In the Patna High Court

Case No : Criminal Miscellaneous No. 2168 of 1995

Prem Kumar Keshri

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 23-07-1996

Acts Referred:

Income Tax Act, 1961 — Section 271(1), 276C, 277

Citation : (1998) 230 ITR 252 : (1997) 1 PLJR 39 : (1996) 2 PLJR 766

Hon'ble Judges : D.P. Wadhwa, C.J

Bench : Single Bench

Advocate : Jai Prakash, for the Appellant; K.K. Jhunhunwala, for the Respondent

Judgement

D.P. Wadhwa, C.J.—This petition u/s 482 of the Code of Criminal Procedure has been filed seeking quashing of the prosecution against the petitioner for the offences under Sections 276C and 277 of the Income Tax Act, 1961 (for short "the Act").

2. The complaint against the petitioner pertains to offences for the assessment year 1988-89 and was filed in January, 1993. On the same day, the learned Judicial Magistrate took cognizance of the offences and issued summons to the petitioner requiring him to appear in the court. The complainant is the Income Tax Officer and was himself the Assessing Officer of the petitioner. It was stated in the complaint that the petitioner was the assessee under the Act and derived income from manufacturing steel boxes, trunks, tools, etc., and that he filed his return of income for the assessment year 1988-89 on April 19, 1990, showing an income of Rs. 16,280. The assessment was completed on a total income of Rs. 1,55,700. The complainant then stated that during the assessment proceeding it was found that the books of account kept by the petitioner were not reliable and the receipts/vouchers, etc., could not be verified and as such Rs. 20,000 was enhanced in the "trading account" of the petitioner on estimate basis. He further made an addition of Rs. 10,000 under the head "remuneration account". Again an addition of Rs. 94,500 was made towards the construction of a house by the

petitioner, treating the same to be income from undisclosed sources. It was also mentioned that penalty proceedings u/s 271(1)(c) of the Act had also been initiated against the petitioner for concealment of his income. On these facts, it was alleged that the petitioner wilfully attempted to evade tax chargeable or imposable under the Act and he deliberately concealed the particulars of income. It was also alleged that the petitioner signed the verification of the return knowing it to be false and made a statement in verification under the Act or the Rules made thereunder or delivered an account or statement which was false and which he either knew or believed to be false or did not believe to be true. On these averments, it was stated that the petitioner committed offences under Sections 276C and 277 of the Act. Lastly, it was mentioned that the complaint was being instituted at the instance of the Commissioner of Income Tax as required u/s 279(1) of the Act.

3. At this stage, I may refer to the brief history of the assessment for the assessment year in question. The Income Tax Officer, apart from the three additions mentioned above, had also added Rs. 15,000 in the income of the petitioner on the ground that the petitioner had shown low withdrawals for his maintenance and that of his family. The petitioner had shown Rs. 6,100 as withdrawals for this purpose. This addition as noted above is not the subject-matter of prosecution. In the appeal filed by the petitioner under the Act, the Commissioner of Income Tax (Appeals) while giving certain reliefs to the petitioner remitted the matter back to the Income Tax Officer for a fresh assessment in terms of the order in appeal. The Commissioner of Income Tax (Appeals) found that the addition of Rs. 20,000 in trading account was not reasonable and he accordingly gave relief of Rs. 10,000 on this score. However, he maintained the addition of Rs. 10,000 in the remuneration account on estimate basis, as according to him the addition was not excessive.

4. As regards the amount of Rs. 94,500, the Commissioner of Income Tax (Appeals) struck down the same from the addition made by the Assessing Officer on the ground that the house on which this amount was stated to have been incurred, did not belong to the petitioner. This amount which was the principal source of addition was thus not considered as income of the petitioner from undisclosed sources.

5. After effect was given to the order of the Commissioner of Income Tax (Appeals), the Assessing Officer passed another order on March 28, 1995, and this time, the assessment of the petitioner was for a total income of Rs. 48,130. After this order was passed, the petitioner sought for quashing of the prosecution.

6. Mr. Jai Prakash, learned counsel for the petitioner, submitted that from the facts of the case, no offence either u/s 276C or Section 277 of the Act could be said to have been made out, and any continuation of prosecution would be an abuse of the process of the court. He referred to the subsequent events where the authorities did not say that there was any undisclosed income and additions were made merely on estimate basis, from which it could not be said that any

offence under the Act was made out. In my view, he is right in his submissions.

7. The principal ground on which the prosecution was launched against the petitioner appeared to be the amount of Rs. 94,500 which was stated to be the income of the assessee from undisclosed sources, as held by the Assessing Officer. This has been struck down in appeal. It is impossible to believe that any offence can be said to have been made out on the basis of the estimate arrived at by the assessing authority. As a matter of fact, I do not find that in the complaint there are any ingredients of the offences u/s 276C or 277 of the Act. The prosecution is only on the basis of guesswork. While the Income Tax Officer made an addition of Rs. 20,000 in the trading account on estimate basis, the Commissioner of Income Tax (Appeals) thought that the estimate was on the higher side and he reduced it to Rs. 10,000. It is difficult to comprehend any conviction based on such evidence. Merely mentioning the section in the complaint is not enough and that would not mean that the offence has been committed. The complaint must give the facts containing the ingredients of the offence, which is lacking in the present case and whatever facts have been stated cannot be said to be correct at least after the assessment order was passed incorporating the direction given by the Commissioner of Income Tax (Appeals), while deciding the appeal.

8. Section 276C of the Act deals with wilful attempt to evade tax and what it is has been mentioned in the Explanation to section which though inclusive is as under ;

"Explanation.--For the purposes of this section, a wilful attempt to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof shall include a case where any person-

(i) has in his possession or control any books of account or other documents (being books of account or other documents relevant to any proceeding under this Act) containing a false entry or statement ;

(ii) makes or causes to be made any false entry or statement in such books of account or other documents ; or

(iii) wilfully omits or causes to be omitted any relevant entry or statement in such books of account or other documents ; or

(iv) causes any other circumstance to exist which will have the effect of enabling such person to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof."

9. The facts which have been narrated above do not bring out a case at least under any of the clauses mentioned above. And as to how there is wilful attempt to evade any tax, etc., nothing has been said or specified. Then merely because the Income Tax Officer did not accept the correctness of the account of the assessee and made addition in two accounts on estimate basis which was not wholly accepted by the Commissioner of Income Tax (Appeals) could it be said

that the assessee made a false statement in the verification in the return of income. The assessment also does not show as to how the estimate was arrived at. I do not think that in such a state of affairs, any offence u/s 277 can be said to be made out. Then it is a moot question, when the Commissioner of Income Tax (Appeals) ordered deletion altogether of the addition of Rs. 94,500 and reduced the addition on estimate basis in one account, if the Commissioner of Income Tax would have at all authorised the filing of the prosecution at his instance. Again I think not.

10. Mr. Jhunjhunwala, learned counsel for the Revenue, in support of his submission referred to the cases of Mukesh Kumar and Others Vs. Commissioner of Income Tax and Others and that of the Supreme Court in P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, . He stated that it is for the court to consider if any offence is made out on the basis of the complaint originally filed and that reassessment proceedings or the proceedings after remand by the appellate authority would not be relevant to decide if the prosecution is sustainable. There cannot be any dispute as to the law laid down by the Supreme Court in the aforementioned case. But the Supreme Court has nowhere stated that the trial court is barred from taking into consideration the subsequent events. As a matter of fact the Supreme Court has observed that a criminal case can be adjourned or postponed, if disposal of any proceeding under the Act, in the meanwhile, has any bearing on the proceedings before the court. There is no bar on the court to take into consideration the order passed in appeal and subsequent order of assessment.

11. The case of Mukesh Kumar and Others Vs. Commissioner of Income Tax and Others has no relevance to the facts of the present case.

12. Accordingly, I hold that the prosecution of the petitioner under Sections 276C and 277 of the Act is not sustainable. No offence can be said to have been made out against the petitioner on the facts of the case, taking into consideration the subsequent events and the law applicable thereto. Any continuance of prosecution in a case like this would certainly be an abuse of the process of the court.

13. The criminal prosecution against the petitioner is, therefore, quashed and he is discharged from the bail bonds.