

(2010) 07 MAD CK 0229

In the Madras High Court

Case No : Criminal R.C. No's. 578 to 580 of 2010 and M.P. No. 1 of 2010

R. Inbavalli

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 07-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 218, 219, 245
Income Tax Act, 1961 — Section 115WD(1), 115WD(2), 115WH, 139, 139(1)

Citation : (2010) 236 CTR 613 : (2010) 327 ITR 226

Hon'ble Judges : T. Sudanthiram, J

Bench : Single Bench

Advocate : C.R. Sathindran, for the Appellant; K. Ramasamy, Sr. Special Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

T. Sudanthiram, J.—The revision petitioner in all these three cases is one and the same. A complaint was filed against the petitioner in these three cases for not filing the income tax returns before the statutory due date as per Section 139(1) of the Income Tax Act (hereinafter referred to as the Act) and thereby liable u/s 276CC of the Act, 1961.

2. In E.O.C.C. No. 95 of 2005, a complaint was filed for not filing the returns before the statutory due date i.e., on 31.08.1996 but filed only on 24.03.1999 with a delay of 2 years and 7 months; in E.O.C.C. No. 96 of 2005, a complaint was filed for not filing the returns before the statutory due date i.e., on 31.10.1997 but filed only on 26.03.2001 with a delay of 41 months and in E.O.C.C. No. 94 of 2005, a complaint was filed for not filing the returns before the statutory due date i.e., on 30.11.1998 but filed only on 26.03.2001 with a delay of 28 months.

3. On the side of the prosecution, three witnesses were examined as P.Ws.1 to 3 and thereafter the petitioner had filed a petition before the learned Additional Chief Metropolitan Magistrate, E.O.I, Egmore, Chennai, u/s 245 of Cr.P.C. in all

the three cases, seeking discharge and the said petitions were dismissed. Aggrieved by the order of the learned Magistrate, the petitioner has preferred these three criminal revision cases.

4. The learned Counsel for the petitioner submitted that in all these three cases, subsequently a notice was issued to the petitioner u/s 148 of the Act granting 30 days time to file the returns. In the case in E.O.C.C. No. 94 of 2005, a notice was given u/s 148 of the Act on 23.03.1999 and the petitioner filed the returns on 26.03.1999. Similarly, in other two cases, the returns were filed within the time, after receiving the notice u/s 148 of the Act. Once the notice is given u/s 148 of the Act, the time for filing the returns is extended and as such, there is no violation of Section 139 of the Act and no prosecution could have been initiated against the petitioner. The learned Counsel for the petitioner also relied on a decision reported in K. Inbasagaran Vs. Assistant Commissioner of Income Tax, and also another decision reported in Sudarshan Jain Vs. Assistant Commissioner of Income Tax, .

5. The learned Counsel for the petitioner has further submitted that in the complaint filed by the respondent, it is not averred as to how the petitioner committed wilful default in filing the returns and even P.Ws.1 to 3 have not let in any evidence that there was a wilful default on the part of the petitioner in not filing the income tax returns within the due date.

6. Per contra, the learned Senior Special Public Prosecutor for IT Cases submitted that 276CC of the Act is attracted if there is a default in filing the returns within the statutory due date as per Section 139(1) or if there is default as per Section 142(1) or if there is default even after issuing notice u/s 148 of the Act. The petitioner would not be exonerated from the offence committed by him for not filing the income tax returns within the statutory period prescribed as per Section 139(1) of the Act, by filing returns subsequently beyond the statutory due date. There are separate ingredients in Section 276CC for contravention of Sections 139(1) or 142(1) or 148 of the Act.

7. The learned Senior Special Public Prosecutor also relied on a decision of the Hon"ble Supreme Court reported in (2004) 266 ITR 1 .

8. This Court has considered the submissions made by the learned Counsel on either side and perused the records.

9. The fact that the petitioner has not filed the income tax returns before the statutory due date as per Section 139 of the Act is not denied. It appears that even after the notice had been given u/s 142 of the Act, the returns were not filed but only after issuance of the notice u/s 148 of the Act, the returns were filed by the petitioner.

10. The question for consideration is that whether by issuing a notice u/s 148 of the Act to the petitioner and thereafter by filing the returns within the time prescribed as per the said notice, he is exonerated from the prosecution u/s

276CC of the Act for not filing the returns within the statutory due date as per Section 139(1) of the Act?

11. The decisions cited by the learned Counsel for the petitioner are not on the points raised by the learned Counsel for the petitioner. In the decision reported in *K. Inbasagaran Vs. Assistant Commissioner of Income Tax*, , the accused was only acquitted from the offence u/s 276CC on the ground that there was a misjoinder of charges and there was defect in framing of charge in violation of Sections 218 and 219 of Cr.P.C. As per the decision reported in *Sudarshan Jain Vs. Assistant Commissioner of Income Tax*, , the proceedings against the accused were quashed for the reason that the penalties imposed on the accused u/s 271(1)(c) of the Act were struck down by the Tribunal and as such, the criminal prosecution would be only an idle and empty formality.

12. Section 276CC of the Income Tax Act reads as follows:

If a person wilfully fails to furnish in due time [the return of fringe benefits which he is required to furnish under Sub-section (1) of Section 115WD or by notice given under Sub-section (2) of the said section or Section 115WH or] the return of income which he is required to furnish under Sub-section (1) of Section 139 or by notice given under [Clause (i) of Sub-section (1) of Section 142] or Section 148 [or Section 153A], he shall be punishable,-

(i) in a case where the amount of tax, which would have been evaded if the failure had not been discovered, exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(ii) in any other case, with imprisonment for a term which shall not be less than three months but which may extend to three years and with fine;

Provided that a person shall not be proceeded against under this Section for failure to furnish in due time the [return of fringe benefits under Sub-section (1) of Section 115WD or] return of income under Sub-section (1) of Section 139-

(i) for any assessment year commencing prior to the 1st day of April, 1975; or

(ii) for any assessment year commencing on or after the 1st day of April 1975, if-

(a) the return is furnished by him before the expiry of the assessment year; or

(b) the tax payable by him on the total income determined on regular assessment, as reduced by the advance tax, if any, paid, and any tax deducted at source, does not exceed three thousand rupees.]

13. The Hon'ble Supreme Court in the decision reported in *Prakash Nath Khanna and Another Vs. Commissioner of Income Tax and Another*, has held as follows:

The heading of the section or the marginal note may be relied upon to clear any doubt or ambiguity in the interpretation of the provision and to discern the legislative intent. In *Commissioner of Income Tax, Bombay Vs. Ahmedbhai*

Umarbhai and Co., Bombay, , after referring to the view expressed by Lord Macnaghten in *Balraj Kunwar v. Jagatpal Singh* ILR (1904) All 393, it was held that marginal notes in an Indian statute, as in an Act of Parliament cannot be referred to for the purpose of construing the statute. Similar view was expressed in *Board of Muslim Wakfs, Rajasthan Vs. Radha Kishan and Others*, and *Kalawatibai Vs. Soiryabai and others*, . Marginal note certainly cannot control the meaning of the body of the section if the language employed there is clear. See *Nandini Satpathy Vs. P.L. Dani and Another*, . In the present case as noted above, the provisions of Section 276-CC are in clear terms. There is no scope for trying to clear any doubt or ambiguity as urged by learned Counsel for the appellants. Interpretation sought to be put on Section 276-CC to the effect that if a return is filed under Sub-section (4) of Section 139 it means that the requirements of Sub-section (1) of Section 139 (are satisfied) cannot be accepted for more reasons than one.

One of the significant terms used in Section 276-CC is "in due time". The time within which the return is to be furnished is indicated only in Sub-section (1) of Section 139 and not in Sub-section (4) of Section 139. That being so, even if a return is filed in terms of Sub-section (4) of Section 139 that would not dilute the infraction in not furnishing the return in due time as prescribed under Sub-section (1) of Section 139. Otherwise, the use of the expression "in due time" would lose its relevance and it cannot be said that the said expression was used without any purpose. Before substitution of the expression "Clause (i) of Sub-section (1) of Section 142" by the Direct Tax Laws (Amendment) Act, 1987, with effect from April 1, 1989, the expression used was "Sub-section (2) of Section 139". At the relevant point of time the assessing officer was empowered to issue a notice requiring furnishing of a return within the time indicated therein. That means the infractions which are covered by Section 276-CC relate to non-furnishing of return within the time in terms of Sub-section (1) or indicated in the notice given under Sub-section (2) of Section 139. There is no condonation of the said infraction, even if a return is filed in terms of Sub-section (4). Accepting such a plea would mean that a person who has not filed a return within the due time as prescribed under Sub-section (1) or (2) of Section 139 would get benefit by filing the return u/s 139(4) much later. This cannot certainly be the legislative intent.

Another plea which was urged with some amount of vehemence was that the provisions of Section 276-CC are applicable only when there is discovery of the failure regarding evasion of tax. It was submitted that since the return under Sub-section (4) of Section 139 was filed before the discovery of any evasion, the provision has no application. The case at hand cannot be covered by the expression "in any other case". This argument though attractive has no substance.

The provision consists of two parts. First relates to the infractions warranting penal consequences and the second, measure of punishment. The second part in

turn envisages two situations. The first situation is where there is discovery of the failure involving the evasion of tax of a particular amount. For the said infraction stringent penal consequences have been provided. Second situation covers all cases except the first situation elaborated above.

The term of imprisonment is higher when the amount of tax which would have been evaded but for the discovery of the failure to furnish the return exceeds one hundred thousand rupees. If the plea of the appellants is accepted, it would mean that in a given case where there is infraction and where a return has not been furnished in terms of Sub-section (1) of Section 139 or even in response to a notice issued in terms of Sub-section (2), the consequences flowing from non-furnishing of return would get obliterated. At the relevant point of time Section 139(4)(a) permitted filing of return where return has not been filed within Sub-section (1) and Sub-section (2). The time-limit was provided in clause (b). Section 276-CC refers to "due time" in relation to Sub-sections (1) and (2) of Section 139 and not to Sub-section (4). Had the legislature intended to cover Sub-section (4) also, use of the expression "Section 139" alone would have sufficed. It cannot be said that the legislature without any purpose or intent specified only Sub-sections (1) and (2) and the conspicuous omission of Sub-section (4) has no meaning or purpose behind it. Sub-section (4) of Section 139 cannot by any stretch of imagination control the operation of Sub-section (1) wherein a fixed period for furnishing the return is stipulated. The mere fact that for purposes of assessment and carrying forward and to set off losses it is treated as one filed within Sub-section (1) or (2) cannot be pressed into service to claim it to be actually one such, though it is factually and really not by extending it beyond its legitimate purpose.

14. In view of the ratio laid down by the Hon'ble Supreme Court, the contention raised by the learned Counsel for the petitioner is only to be rejected. It was contended by the learned Counsel for the petitioner that there is no mens rea on the part of the petitioner and the prosecution has not let in any evidence for willful default.

15. Section 278E of the Income Tax Act reads as follows:

278E. Presumption as to culpable mental state.- (1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.- In this sub-section, "culpable mental state" includes intention, motive or knowledge of a fact or belief in, or reason to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

As there is a statutory presumption prescribed, the burden is on the petitioner to show that there was no wilful default. The Court has to presume the existence of culpable mental state and absence of such mental state can be pleaded by an accused as a defence and it is for the trial Court to decide the said issue at the stage of conclusion of trial.

16. This Court does not find any infirmity in the order passed by the learned Magistrate dismissing the petitions filed by the petitioner. Therefore, these Criminal Revisions are dismissed. Consequently, the connected miscellaneous petitions are also dismissed.