

(2005) 11 MP CK 0073

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 223 of 1999

Rameshwar Prasad Sunderlal and Others

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 18-11-2005

Acts Referred:

Income Tax Act, 1961 — Section 139(1), 276CC, 278B

Citation : (2006) 203 CTR 287 : (2008) 296 ITR 173 : (2006) 154 TAXMAN 3

Hon'ble Judges : Ashok Kumar Tiwari, J

Bench : Single Bench

Advocate : H.S. Oberai and P. Prasad, for the Appellant; Mamta Shandilya, for the Respondent

Final Decision : Allowed

Judgement

Ashok Kumar Tiwari, J.—This revision is directed against the order dt. 31st March, 1999 passed by the 5th Addl. Sessions Judge, Indore in CrI. Appeal No. 81 of 1998 against the conviction of the applicants and the sentence imposed on him by the learned 3rd Addl. Chief Judicial Magistrate, Indore. .

2. Applicant No. 1 Rameshwar Prasad Sunderlal was a partnership firm and applicant Nos. 2 (since dead) and 3 were the partners of the aforesaid firm. The other partners of the firm namely, Balaram and Janabai has expired during the trial. The aforesaid firm was Income Tax payer. The IT returns on behalf of the firm had to be filed for the asst. yr. 1980-81 u/s 139(1) of the IT Act on 30th June, 1980, but the return was filed on 29th June, 1981. Thus, the return was filed after 11 months from the due date. According to the Department this delay was caused wilfully. Therefore, the prosecution was launched against the firm and its partners Jai Narayan, Balaram, Jana Bai and Radheshyam who were responsible for causing the delay. As already mentioned, two of the partners of the firm, i.e., Balaram, son of Motilal and Jana Bai, wife of Motilal died during the pendency of the trial.

3. After holding the trial, the learned Magistrate found that the delay was wilful and the applicants were convicted under Sections 276CC and 278B and the sentence of fine of Rs. 2,000 was imposed on applicant No. 1st firm while the applicant Nos. 2 and 3 were sentenced to 3 months imprisonment and fine of Rs. 2,000. Applicants preferred an appeal against their conviction, but their appeal was rejected and the order of conviction of sentence passed by the learned Addl. Chief Judicial Magistrate was maintained by the 5th Addl. Sessions Judge, Indore by judgment and order passed on 31st March, 1999 in CrI. Appeal No. 81 of 1998. Hence, the applicants have preferred this criminal revision before this Court.

4. The learned trial Court has held the applicants guilty on the ground that applicants have failed to explain the delay caused in filing the return, therefore, the delay was wilful. A Krishnan (PW 2) has stated in para 4 of his statement that he had considered the reply of the firm in which the firm has said that its Munim was in bad health and the firm was trying for filing the return but failed in furnishing the returns, The reason was not considered satisfactory by the Department. The learned trial Court has held that since the IT Department did not find the reason for delay satisfactory and imposed penalty, therefore, the delay was wilful. The learned trial Court was not correct in basing conviction on the findings of the taxing authority. The considerations for imposing penalty and those for prosecution are quite different. Prem Prakash Saxena (PW 1) has admitted in para 7 of his statement that he had come to know that some partners of the firm were old and one partner was women who was not literate. Learned trial Court did not consider the facts in the proper perspective.

5. According to the proviso (ii)(b) of Section 276CC of the IT Act, 1961, a person shall, not be proceeded against under this section for failure to furnish in due time the return of income under Sub-section (1) of Section 139, if 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. The prosecution has not laid any evidence to show that the case did not fall under this proviso. The learned trial Court has held in para 15 of its judgment dt. 11th March, 1998 that tax was insufficient and remaining tax was deposited with the return which was filed delayed, therefore, it cannot be said that intention of the applicants was not to cause delay. According to the learned trial Court, if the entire tax had been deposited earlier and then the return had been filed after a delay then it could have been inferred that applicants did not intend to cause delay. But the learned trial Court did not consider the aforementioned proviso and did not consider the fact whether the tax payable by the applicants on the total income determined on regular assessment, as reduced by the advance tax paid by them exceeded Rs. 3,000 or not. In case, it does not exceed Rs. 3,000, the applicants could have not been proceeded against u/s 276CC of the IT Act. The applicants have been proceeded and convicted without taking the aforementioned situation into consideration. Hence, their conviction cannot be sustained in law. The

prosecution is also unduly delayed. The learned appellate Court has also not considered the vital aspects of the matter.

6. In the result, this revision is allowed. The conviction and the sentence imposed u/s 276CC of the IT Act are set aside and the accused/applicants are acquitted of the charges aforesaid. The fine if deposited, be refunded to them. Their bail bonds stand discharged.