

(1986) 09 DEL CK 0018

In the Delhi High Court

Case No : Criminal Revision Appeal No. 351 of 1985 and Criminal Revision Appeal No"s. 352 of 1985 and 355 of 1985

Rishikesh Balkishan Das and Others

APPELLANT

Vs

I.D. Manchanda

RESPONDENT

Date of Decision : 12-09-1986

Acts Referred:

Citation : (1987) 1 Crimes 374 : (1986) ILR Delhi 280

Hon'ble Judges : Gian Chand Jain, J

Bench : Single Bench

Advocate : R.N. Mathur and D.K. Jain, for the Appellant;

Judgement

G. C. Jain, J.

(1) This order shall also dispose Criminal Revisions No. 352 to 355 of 1985 between the same parties as they raise common questions.

(2) Rishikesh Balkishandas is a partnership firm. A. N. Dhawan. P. K. Das, K. K. Dhawan and S. S. Dhawan are its partners. They are assessed to income tax. During the assessment year 1978-79 they credited/paid interest to 17 parties. They were required to deduct income tax thereon at the rates in force. The amount deducted was required to be paid to the credit of the Central Government within the prescribed time. They, however, without reasonable cause or excuse failed to deduct income tax at the rates in force and, or failed to pay the tax as required under law.

(3) On these allegations, I. D. Manchanda, Income Tax Officer concerned, having been authorised and directed by the Commissioner of Income Tax, filed six complaints u/s " 276B of the Income Tax Act 1961 (for short "the Act") against the said firm and its partners. Five complaints were in respect of payment and alleged non-deduction/short deduction and non-deposit of tax to three persons each and the sixth was in respect of the remaining two. These were registered as complaints No. 77/1 to 82/1.

(4) Learned Metropolitan Magistrate by order dated May 7, 1983 discharged the accused in case No. 8211 relating to payment and non-deduction of tax to two persons mentioned at Seriall No. 16 and 17 of the complaint, holding that according to the statement contained in the complaint itself the tax had been duly deducted. By order dated November 30, 1983 Learned Metropolitan Magistrate held that the authorisation was for prosecuting the accused for non-deduction of tax and not for non-deposit of tax and the complainant could not be allowed to change the character of the complaint. In the remaining five cases Learned Metropolitan Magistrate, after examining the evidence of the complainant, by separate orders. all dated August 20, 1985 came to the conclusion that a prima facie case u/s 276B of "the Act" had been made out in respect of payment of interest without deduction of tax at the rate in force, to persons mentioned at Seriall Nos. 3 to 5 and 9 to 15 in the complaint. The accused were charged accordingly.

(5) Feeling aggrieved the accused except K. K. Dhawan have filed these revision petitions u/s 397 and 401 of the Criminal Procedure Code.

(6) SUB-SECTIONS 1 & 4 of Section 194A and 276B of "the Act", read as under :

194A(1)"Any person, not being an individual or a, Hindu undivided family, who is responsible for paying to a resident any income by way of interest other than income chargeable under the head "Interest on securities", shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier deduct Income Tax thereon at the rates in force."

(4)"The person responsible for making the payment referred to in sub-section (1) may at the time of making any deduction, increase or reduce the amount to be deducted under this section for the purpose of adjusting any excess or deficiency arising out or any previous deduction or failure to deduct during the financial year."

276B.If a person, without reasonable cause or excuse. fails to deduct or after deducting, fails to pay the tax as required by or under the provisions of sub-section (9) of section 80E or Chapter XVII-B. he shall be punishable,-

(I)in a case where the amount of tax which he has failed to deduct or pay 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 rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine."

(7) Section 194A imposes a liability to deduct tax at the rate in force from the interest paid to a resident or credited to his account. The deduction of tax has to be made at the time of credit or payment of interest. This liability is imposed on the person, not being an individual or Hindu undivided family, who is responsible

for paying or crediting the interest amount. The breach or contravention of this requirement attracts prosecution and punishment u/s 276B of "the Act".

(8) Evidence of the complainant T. D. Manchanda. read with the copy of the reply filed by the accused before him during the assessment proceedings, prima facie, proves that the accused had not deducted the tax at the rate in force at the time of crediting/making payment of the interest to the said persons. In other words, prima facie, there was contravention of the provisions contained in Section 194A of "the Act" against the accused in all the five cases.

(9) Mr. R. N. Mathur, learned counsel for the accused, contended that the entire amount of tax, required to be deducted from the interest paid to the persons mentioned in the complaint, had been deposited to the credit of the Central Government before the filing of the complaint. Sub-section 4 of Section 194A permitted deduction of excess amount of tax in case of deficient or no deduction previously and Therefore, there was no contravention of the provisions contained in Section 194A and the accused could not be charged for offence u/s 276B of "the Act".

(10) SUB-SECTION (1) of Section 194A requires deduction of tax at the rates in force at the time of credit or payment of interest. Sub-section (4) of Section 194A is a sort of exception to sub-section (1). It permits excess or deficient/no deduction provided previously, during the same financial year, there was deficient/no deduction or excess deduction. In other words. in a case of excess or deficient/no deduction adjustment is permitted during the same financial year. It, however, does not permit adjustment at any time. These provisions, in my view. apply to a case where during a financial year interest is paid more than once. If on the first occasion there is excess or deficient/no deduction of tax then on the later occasion, but in the same financial year, the amount of tax deducted could be reduced or increased, as the case may be. No other interpretation is possible. To hold that adjustment could be made at any time the person concerned desired, would amount to deleting the words "during the financial year from sub-section (4), which cannot be done. Moreover, if the contention of the learned counsel was accepted, the entire purpose of Section 194A would be frustrated.

(11) In the present case. there is no suggestion even that short deduction/non deduction was for adjusting the excess payment made during the financial year corresponding to application year 1978-79. Sub-section (4). Therefore, has no application.

(12) Mr. R. N. Mathur, learned counsel for the accused next submitted that the firm Rishikesh Balkishandas accused No. 1, being a firm, was a Juridical person. It could not be imprisoned. Consequently, it could not be prosecuted for offence u/s 276B for which minimum punishment was six months or three months imprisonment as the case may be.

(13) A firm under the partnership law, as such, has no existence. It is a mere abbreviated name for the partners who constitute the firm. It is not a legal entity

as a corporation. The definition of "person" given in Section 2(31) of "the Act, however, includes a firm. Section 4 of "the Act" brings to charge the total income of the previous year of every person. A firm was thus an independent assessable unit for the purpose of "the Act". Therefore, for Income Tax law a firm was a legal entity, [see State of Punjab Vs. Jullunder Vegetables Syndicate,].(1)

(14) The firm, though a legal entity for the purpose of income tax laws, is not a natural person. It cannot be imprisoned. Section 276B of "the Act", as noticed above, provides a minimum punishment for a term which shall not be less than six months or three months as the case may be. Is the firm still liable to be prosecuted for such an offence ? Similar question was examined by a Full Bench of this Court in Municipal Corporation of Delhi Vs. J.B. Bottling Company Private Limited, . (2) It was a case under the Prevention of Food Adulteration Act, 1954. u/s 16 of the said Act if any person, whether by himself or by any other person on his behalf, imports into India or manufacturers for sale or stores, sells or distributes any article of food which was adulterated, he was liable to be punished with imprisonment for a term which shall not be less than six months but which may extend to six years and with fine which shall not be less than Rs. 1,000.00 . Under the provision certain cases the Court was competent to impose a sentence of imprisonment for a term less than six months or with fine of less than one thousand rupees or both for adequate and special reasons to be mentioned in the judgment. u/s 17(1) where an offence under the said Act had been committed by a company, every person. who at the time the offence was committed was in charge of. and was responsible to the company for the conduct of. the business of the company as well as the company, guilty of the offence and was liable to be proceeded against and punished accordingly.

(15) T. B. Bottling Co. was prosecuted on the allegations that that out of the carbonated water bottles manufactured by it and which were in a truck for delivery to various customers. a food Inspector found a bottle of "Gold Crush Orange" which contained a dead fly in it. It was convicted by a judicial magistrate. In appeal the learned Additional Sessions Judge relying on a Division Bench decision of this Court in M/s. Hameshwar Dass Chotte Lal Vs. Union of India, 2nd (1969) Delhi 1196, (3) accepted the appeal and set aside the conviction and the sentence. Municipal Corporation of Delhi came up in appeal after obtaining the special leave of this Court. The appeal came up for hearing before a Division Bench. The said Division Bench referred the following point for being considered by a larger Bench.

""WHETHER a company as defined in Section 17 of the Prevention of Food Adulteration Act 1954, enjoys immunity from prosecution when under the said Act it is alleged to have committed an offence to which the proviso to sub section (1) of Section 16 is not applicable and for which the minimum penalty of imprisonment for a term of not less than six months and fine of not less than one thousand rupees is provided and further if such a company does not enjoy the immunity from prosecution then on its being found guilty of such an offence can

a punishment of fine be imposed on it."

The Full Bench after examining the question in detail held that a company, as defined u/s 17 of the Prevention of Food Adulteration Act, 1954 does not enjoy immunity from prosecution when under the said Act it is alleged to have committed an offence to which the proviso to sub-section (1) of Section 16 is not applicable ; and in case the company is found guilty for such offence it can be punished with fine. In other words, the Full Bench in the said case ruled that a company, which is not a natural person, can be prosecuted and convicted for an offence where the minimum punishment was of imprisonment. In such a case, it could be punished with fine only. In view of this Full Bench decision the contention of the learned counsel for the petitioner that the firm-a Juridical person. could not be prosecuted for an offence u/s 276B which provided a minimum punishment of imprisonment cannot be accepted.

(16) Mr. Mathur, learned counsel for the accused, relied on a decision by a learned Single Judge of this Court in D. C Goel & Others Vs. B. L. Verma & Others 1973 Tax L.R. 912.(4) It was a case of prosecution under S. 276B of "the Act". Learned Single Judge held that no trial could be held as the company or the firm being a juridical person is not liable to be prosecuted u/s 276B of "the Act" inasmuch as it cannot be imprisoned. This decision was no doubt a decision direct on the point under consideration but cannot be accepted as good law in view of the Full Bench decision of this Court in J. B. Bottimg CO.'s case (supra) Learned Single Judge in D. C. Goel's case (supra) had relied on the Division Bench decision in M/s. Rameshwar Dass Chotey Lal Vs. Union of India, 2nd (1969) Delhi 1196 which was over-ruled by the Full Bench.

(17) It is correct that the decision of the learned Single Judge in D. C. Goel's case (supra) has not been referred in the Full Bench case. That however, makes no difference. The question of law which was examined by the Full Bench was the same.

(18) Learned Single Judge had also relied on a decision of the Supreme Court in State of Maharashtra Vs. Jugamander Lal, . The question which arose for determination in that case was however, entirely different. That was a case u/s 3(1) of the Suppression of Immoral Traffic in Women and Girls Act 1956 which provides "Any person who keeps or manages or acts or assists in the keeping of management of a brothel shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees....." The High Court took the view that word "punishable" in the aforesaid Section instead of "punished" necessarily postulates a certain discretion on the Court to impose a sentence of imprisonment or sentence of fine or both. The question which fell for determination before the Supreme Court was "Whether it is obligatory upon the Court which convicts a person for an offence u/s 3(1) of the Suppression of Immoral Traffic in Women & Girls Act 1956 to Toss a sentence of imprisonment where the conviction is, in respect of, a first offence for a term not less than one

year and not merely to a sentence of fine." The Supreme Court held that the sentence of imprisonment for a period not less than one year was a must. This decision nowhere says that a juridical person cannot be prosecuted for an offence where the minimum punishment was of imprisonment. or that punishment of imprisonment was a must in the case of a juridical person also.

(19) Learned counsel for the accused contended that the Full Bench decision had no application because the Prevention of Food Adulteration Act and the Income Tax Act and the respective sections were not in para materia. The objections of the two acts were wholly different, and the principles of interpretation applicable to the two Acts were diametrically different. This contention has no substance. The question involved is not the question of interpreting any of the provisions of the Income Tax Act or the Prevention of Food Adulteration Act. The question was a pure question of law, namely, whether a juridical person is liable to be prosecuted for an offence where the minimum punishment was imprisonment. This was the question for consideration before the Full Bench in J.B. Bottling Co. and this is the question for determination in this case. The reasons given by the Full Bench in support of its view equally apply to prosecution for offence u/s 276B of "the Act". Following the Full Bench decision I hold that the firm, though a juridical person, was liable to be prosecuted for offence u/s 276B which provides a minimum punishment of imprisonment. In case of conviction a sentence of fine only could be imposed on the firm.

(20) It was next contended that there was no evidence to prove that the partners of the firm, accused No. 2 to 5, were in overall control of the day-to-day business of the firm, accused No. 1, and in the absence of such evidence no charge could be framed against those accused.

(21) As held by the Supreme Court in State of Karnataka Vs. Pratap Chand and Others, (6) a person is liable to be convicted for an offence committed by the firm if he was in charge of and responsible to the firm for the conduct and business of the firm or if it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of the partner/ concerned. In the present case. It has been specifically averred in the complaint that accused No. 2 to 5 were partners and were in charge of and responsible to accused No. 1 for the conduct of its business at the time when the offence, subject matter of the complaint, was committed. I. D. Manchanda, the complainant in his statement deposed that no declaration had been received that any of the partners was benami of any other persons or that he was a sleeping partner. He was not at all cross-examined on this point. This evidence in my view was sufficient for framing the charge against all the partners also.

(22) The next contention raised was that the charges framed by the learned Metropolitan Magistrate were vague. The charge framed in complaint No 7711 reads as under :

"That during the period relevant to assessment year 1978-79 you had paid/

credited interest to M/s. Brij Mohari Saksaria & Co. to the tune of Rs. 20500.00 and you were required to deduct tax at source amounting to Rs. 2050.00 but in fact you deducted Rs. 1091- that you paid/credited interest to the tune of Rs. 13281- to M/s. Sham Sunder Hari Ram and were required to deduct tax at the source amounting to Rs. 1331- but you deducted only Rs. 23.00 as tax and that you paid/credited Rs. 71890.00 as interest to M/s. Tek Charid Daulat Rai, Sri Ganga Nagar and were required to deduct tax amounting to Rs. 71891- but you deducted only Rs. 1068.00 . Thus you deducted tax at source which was short and the short deduction of tax in the aforesaid cases was without any reasonable or sufficient cause and excuse and thereby you committed an offence punishable u/s 276B of the Income Tax Act 1961 within my cognizance and I hereby direct you to stand trial by this Court."

(23) In this charge, all the details namely, the amount of interest credited paid, name of the person to whom it was paid, the amount of tax which the accused were required to deduct under the law and the amount actually deducted, if deducted. have been given. Such a charge cannot be termed vague. Similar is the case with the charges in other complaints.

(24) Mr. Mathur relied on the provisions contained in Section 200 of "the Act" and rule 30 of the Income Tax Rules, 1962. Section 200 imposes a duty on the person deducting the tax to pay, in the prescribed time. the sum so deducted to the credit of the Central Government or as the Board directs. Rule 30 prescribed the time and mode of payment of tax deducted at source to Government account. These provisions have no relevancy whatsoever. As mentioned earlier, learned Metropolitan Magistrate, by order dated November 30, 1983, had dropped the case so far as it related to the non-deposit of tax.

(25) Lastly, it was argued that there was no averment or evidence of means read which was a necessary ingredient of offence u/s 276B and consequently the accused could not be charged.

(26) Generally speaking, the means read is an essential ingredient of a criminal offence. And it is a sound rule of construction to construe a statutory provision creating an offence in conformity with this rule rather than against it. But there might be offences even without means rea. The statute itself might be so framed as to indicate that means read was not to be considered as an element of a particular offence. The subject matter of the statute and its aim and object might necessarily exclude the application of the doctrine of means rea. There might be quasi criminal offences in which the question of means read might not arise. There might be offences at which the compelling considerations of public justice might require its exclusion. "In the large numbers of modern statutes many have been interpreted by the courts as using language which, in prescribing punishment for specified deeds (each of which is thus an actus reus), has excluded any requirement to means read at all. Where this is so, the question whether the accused may have committed the deed intentionally, recklessly, negligently, or by mistake, is irrelevant so far as his liability to conviction is

concerned. Such a crime is often, and suitably, termed a crime of strict liability, or of absolute liability." (Russell on Crime, Twelfth Edition, Vol. 1 page 62-63).

(27) Does the offence created u/s 276B of "the Act" belong to the group of offences which do not call for consideration of means read ? The reply, in my view, must be in the affirmative. It is for the reason that the liability to deduct tax out of the amount of interest paid or credited, created by Section 194A of "the Act" is an absolute liability. It does not depend on the wrongful intention or blameworthy condition of mind.

(28) Supreme Court examined this question in State of Maharashtra Vs. Hans George, . That was a case u/s 8(1) read with Section 23(I A) of the Foreign Exchange Regulation Act. Section 8(1) of the said Act provided : "The Central Government may, by notification in the Official Gazette, order that, subject to such exemptions, it any, as may be contained in the notification, no person shall, except with the general or special permission of the Reserve Bank and on payment of the fee, if any prescribed, bring or send into India any gold or silver or any currency notes or bank notes or coin whether Indian or foreign." Contravention of this order was punishable u/s 23(1A) with imprisonment for a term which may be extended up to two years or with fine or with both. On examining these provisions the Supreme Court held :-

"Where the statute does not contain the word "knowingly", the first thing to do is to examine the statute to see whether the ordinary presumption that means read is required applies or not. When one turns to the main provision whose contravention is the subject of the penalty imposed by S. 23(1A) viz. S. 8(1) in the present context, one reaches the conclusion that there is no scope for the invocation" of the rule of means rea. It lays an absolute embargo upon persons who without the special or general permission of the Reserve Bank and after satisfying the conditions, if any, prescribed by the bank bring or send into India any gold etc., the absoluteness being emphasised, as we have already pointed out, by the terms of S. 24(1) of the Act. No doubt, the very concept of "bringing" or "sending" would exclude an involuntary bringing or an involuntary sending. Thus, for instance, if without the knowledge of the person a packet of gold was slipped into his pocket it is possible to accept the contention that such a person did not "bring" the gold into India within the meaning of S. 8(1). Similar consideration would apply to a case where the aircraft took a through flight which did not include any landing in India has to make a force landing in India owing say to engine trouble. But if the bringing into India was a conscious act and was done with the intention of bringing it into India the mere "bringing" constitutes the offence and there is no other ingredient that is necessary in order to constitute the contravention of section 8(1) then that conscious physical act of bringing". If then under S. 8(1) the conscious physical act of "bringing" constitutes the offence, S. 23(1A) does not import any further condition for the imposition of liability, than what is provided for in S. 8(1). On the language, Therefore, of S. 8(1) read with S. 24(1) we are clearly of the opinion that there

is no scope for the invocation of the rule that besides the mere act of voluntarily bringing gold into India any further mental condition is postulated as necessary to constitute an offence of the contravention referred to in S. 23(1-A).

(29) Section 276B of "the Act" also does not contain the word "knowingly". It provides punishment for contravention of the provisions contained in Section 194A(1) etc. Section 194A requires the person making any payment of interest to deduct the tax at the rate in force. This liability is an absolute liability. Deficient deduction or non-deduction was a conscious act. Therefore, in a case under S. 276B read with Section 194A of "the Act" mens rea was not required. The principles laid down by the Supreme Court in the above case Cully apply to the present case.

(30) For all these reasons I find no merit in these revision petitions and dismiss the same.