

(1986) 11 DEL CK 0005

In the Delhi High Court

Case No : Criminal Revision Appeal No. 172 of 1986

R.P. Gupta

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 11-11-1986

Acts Referred:

Citation : (1987) 1 Crimes 564 : (1986) ILR Delhi 249

Hon'ble Judges : Jagdish Chandra, J

Bench : Single Bench

Advocate : S.C. Gupta and R.D. Jolly, for the Appellant;

Judgement

Jagdish Chandra, J.

(1) A complaint under Sections 276 to 277 of the Income Tax Act, 1961 (in short the Act) and under Sections 193/196 Indian Penal Code was made by Shri R. R. Gupta Inspecting Assistant Commissioner (hereinafter to be referred to as IAC) of Income Tax (Assessment). Range Xiv, New Delhi against the present petitioner Dr. R. P. Gupta in respect of the assessment of the petitioner for the assessment year 1980-81 alleging that the petitioner had willfully attempted to evade tax. interest and penalty and had made a statement in verification. delivered an account and statement which are false, which he knew or believed to be false or did not believe the same to be true and had also fabricated false evidence. Fertile purpose of using the same in the course of Income Tax proceedings and that he dishonestly and fraudulently used that evidence in the course of the assessment proceedings which are judicial proceedings. It is alleged that after investigation the assessment of the petitioner was completed for the assessment year 1980-81 and the next income of the petitioner was assessed at Rs. 1,77,433.00 vide assessment order dated 21-3-1983. It was also asserted that for the aforesaid assessment order the petitioner had shown gross profit of Rs. 30,254 on the sales of Rs. 1,45,016 but. however. after the completion of the assessment proceedings the gross profit of the accused was assessed at Rs. 1,12,500 resulting in the addition of Rs. 82,246.

(2) The petitioner was summoned in the complaint as an accused person.

(3) An application dated 25-4-1986 was made by the petitioner in the court of Smt. Manju Goel Acmm praying for dropping the proceedings against him for the reason that the order passed on 3-3-1986 on appeal by the Commissioner of Income Tax (Appeals), it had been declared that the petitioner had not concealed his income and then the case had been remanded for that purpose. That application was, however, dismissed by the learned Acmm Delhi vide her order dated 23-7-1986. The order dated 3-3-1986 passed in appeal by Shri U. P. Singh, Commissioner of Income Tax (Appeals) : Iv, New Delhi is a brief one and is reproduced in its entirety below :-

"The appeal is against the order U/S. 143(3) of the Income Tax Act, 1961. The appellant Along with Shri U. P. Sharma appeared.

c ground is against the addition of Rs. 82,246 in the trading account as against the receipt shown of Rs. 96,000. The I.A.C. enhanced the receipt to Rs. 2,25,000. He also estimated the gross profit @ 50 per cent on the above and added the difference of the g.p. estimated and the g.p. returned amounting to Rs. 82,246. It is pointed out by the learned counsel that first of all there was no basis for enhancement in receipt and secondly the g.p. rate applied is very arbitrary and high. The I.A.C. went through the books of accounts and could not find the accounts fully maintained. He went through the circumstantial evidence as well as the papers available at that time with him. The appellant has produced documents now which show complete variation with the determination of the profit by the learned I.A.C. It will be proper that these documents are looked by the assessing authority and formulate and calculate the income accordingly. The case is set aside to him for the purpose.

(4) It is pointed out by Mr. Gupta learned counsel for the petitioner that the only thing against him in the complaint was set at naught by the aforesaid order dated 3-3-1986 as a result of which the assessment for the year 1980-81 stood set aside in view of certain new document produced by the petitioner before the Commissioner of Income Tax (Appeals) appears to have been complete variation with the determination of the profit by the Iac who was directed to look into those documents and to formulate and calculate the income accordingly. This order of the Commissioner of Income Tax (Appeals) appears to have been passed u/s 251(1)(a) of the Act which reads as follows ;-

"c appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment. or he may set aside the assessment and refer the case back to the Income-tax Officer for making a fresh assessment in accordance with the directions given by the Appellate Assistant Commissioner or, as the case may be, the Commissioner (Appeals) and after making such further enquiry as may be necessary, and the Income Tax Officer shall thereupon proceed to make such fresh assessment and determine, where necessary, the amount of tax payable on the basis of such fresh assessment."

(5) This order is in contra-distinction to the order contemplated by sub-section (4) of Section 250 of the Act which reads as follows :-

"The appellate Assistant Commissioner or, as the case may be, the Commissioner (Appeals) may, before disposing of any appeal, make such further enquiry as he thinks fit, or may direct the Income Tax Officer to make further enquiry and report the result of the same to the Appellate Assistant Commissioner, or, as the case may be, the Commissioner (Appeals)."

(6) The order dated 3-3-1986 does not call for the report of the result of the further enquiry from the Income Tax Officer. The distinction between the two provisions of law is that whereas under S. 251(1)(a) the initial assessment is set aside and is no longer alive till it is made afresh by the Income Tax Officer after compliance of the directions given by the Appellate Authority; under sub-section (4) of Section 250 the initial assessment is not set aside and is kept alive and only the result of further enquiry is called for by the Appellate Authority from the assessing authority.

(7) So, in the case in hand the Commissioner of Income Tax (Appeals) set aside the assessment and directed the assessing authority to formulate and calculate the income of the petitioner afresh after taking into consideration the new documents produced by the petitioner before the Commissioner of Income Tax (Appeals).

(8) It is pointed out by the learned counsel for the petitioner that the Appellate order dated 3-3-86 set aside the entire assessment of the petitioner for the year 1980-81 whereas according to Mr. Jolly learned counsel representing the respondent that order set aside only the determination of the profit of Rs. 82,246 by the assessing authority and not the entire assessment which included the other additions.

(9) The learned counsel for the revisionist has filed a copy of the Income Tax Assessment/Refund Form (Annexure "E") for the relevant assessment year 1980-81 prepared on 20-3-1986 and which shows on the last page (page 4) thereof that the assessment had been set aside vide Commissioner of Income Tax (A) Iv, New Delhi's letter dated 3-3-1986. The order of the Commissioner, Income-tax (Appeals) was passed on 3-3-1986 as a result of which the aforesaid document showed the balance tax chargeable from the petitioner as "Nil" and this could happen only when the entire assessment against the petitioner was set aside. This confirms the contention of the petitioner and sets at naught that of Mr. Jolly representing the respondent.

(10) When the entire assessment order pertaining to the petitioner which contained objectionable items on the basis of which the complaint was lodged by the respondent against the petitioner, was set aside in its entirety vide order dated 3-3-1986 passed by the Commissioner, Income Tax (Appeals) : Iv, New Delhi, the respondent is now left with no basis or material on the basis of which he can prosecute the petitioner regarding that complaint. It is an entirely

different proposition that when the fresh assessment regarding the income of the petitioner is made in compliance with the directions made in the order dated 3-3-1986 and if something objectionable pertaining to the same against the petitioner is detected, there would be no impediment in the way of the respondent to file a fresh complaint, if so advised, against the petitioner, but as at present the entire substratum of the present complaint having been taken away by the setting aside of the assessment order, the present complaint cannot continue and has to be quashed and in this view of the matter the impugned order dated 23-7-1986 passed by Smt. Manju Goel, Additional Chief Metropolitan Magistrate, Delhi being erroneous cannot be allowed to stand. If in support of this proposition any authority is needed the same is furnished by a decision of this Court reported as W.L. Kohli and Vijay Kohli Vs. Commissioner of Income Tax and Another, .

(11) In view of the above discussion the impugned order dated 23-7-1986 of the learned Acmm is set aside and the complaint at present pending against the petitioner as also all the subsequent proceedings therein are quashed.