

(1987) 08 AP CK 0006

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 320 of 1986. (Criminal Revision Petition No. 313 of 1986)

Rudmul

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 07-08-1987

Acts Referred:

Income Tax Act, 1961 — Section 277

Citation : (1987) 66 CTR 60 : (1989) 175 ITR 276 : (1987) 34 TAXMAN 440

Hon'ble Judges : G. Radhakrishna Rao, J

Bench : Single Bench

Advocate : C. Padmanabha Reddy, for the Appellant; N.V.S.R. Gopala Krishnamacharyulu, for the Respondent

Judgement

Radhakrishna Rao, J.—The special judge for Economic Offences, Hyderabad, convicted the accused for the offences u/s 277 of the Income Tax Act, 1961, and section 193 and 196 of the Indian Penal Code, 1860. He accordingly sentenced the accused to undergo rigorous imprisonment for six months for the offence u/s 277 of the Income-tax Act, The accused is further sentenced to undergo rigorous imprisonment for six months and also to pay a fine of Rs. 500 in default to undergo rigorous imprisonment for two months under each count u/s 193 and 196 Of the Indian Penal Code. The sentences were directed to run concurrently. On appeal, the lower appellate court found that no case has been made out so far as the offence u/s 193 and 196 of the Indian Penal Code are concerned, and acquitted the accused of those charges. So far as the conviction of the accused for the offence u/s 277 of the Income tax Act is concerned, it has been confirmed by the lower appellate court. Against the conviction and the sentence, the present revision has been preferred. The case that has been set up against the accused—petitioner is as follows : For the accounting year ending on October 21, 1969, i.e., for the assessment year 1969-70, the petitioner submitted exhibit P-1 return with exhibit P-2 enclosure dated September 9, 1970, declaring an income of Rs. 9,910 for the purpose of assessment. On the basis of the said

return by him and after due enquiry under exhibit P-3, his assessment has been completed on March 10, 1971, whereunder the taxable income of the petitioner was fixed at Rs. 11,490 by PW-3, the Income Tax Officer, B-Ward. The income declared by the petitioner in exhibit P-1 return shows the source of income as from two firms as per exhibit P-2. Exhibit P-2 shows that six annas share of income of the petitioner from Kaluram Babulal is Rs. 4,717; 20% share of income of the petitioner received from Deccan Bharat Khandasari Factory is Rs. 4,717; 20% share of income of the petitioner received from Deccan Steel Agencies is Rs. 5,193. The petitioner is a partnership firm of Deccan Bharat Khandasari Factory. He is also one of the major shareholders in it. The said firm was treated as an "association of persons". After the raid has been conducted, it has come to light that the petitioner has invested huge amount in that factory and he has not disclosed either the income or the investment and the allegation is that he has committed the offences mentioned above. The two lower courts found that he has not disclosed the income that has been derived from Deccan Bharat Khandasari Factory.

2. Sri Padmanabha Reddy contended that there is no column to show the investment that has been made in exhibit P-1 and so, there is no question of suppression or non-disclosure.

3. The counsel for the Income Tax Department submitted that there is an enclosure to exhibit P-1. In that enclosure, he ought to have made a mention of the same and the petitioner has suppressed the investment or the income and the final proceedings also have been taken, including a portion of that amount as income. It is the admitted case that after the raid, proceedings have been initiated and that income has been added. The Commissioner of Income Tax satisfied himself that the petitioner deliberately suppressed his real income and the material investment he had made in Deccan Bharat Khandasari Factory and that he is responsible for the submission of the false returns. Exhibit p-24 is the final order that has been passed by the Income Tax Appellate Tribunal. PW-2 noticed that the petitioner has suppressed income and so he issued exhibit P-19 notice. Due enquiry has been made the assessment of the income of the petitioner by an order dated 29, 1973, is fixed at Rs. 1,61,741 under exhibit P-22. Exhibit P-25, sworn statement of the petitioner recorded by PW-3, shows that the petitioner stated before him that he was attending to sales and settlement of transactions, etc., at Hyderabad and stayed most of the time at Hyderabad and attended to the office work of Deccan Bharat Khandasari Factory, Kishengunj, and he used to go to the factory at Ramanakpalli twice or thrice every month and was now and then discussing with Haridwarimal who along with Ganapatilal attended to the accounts maintained at the factory and about the running of the factory. The petitioner being the person who has invested such a huge amount, is expected to know and his participation shows that he has deliberately suppressed the income and he has made a false return for which he is liable for punishment u/s 277 of the Income Tax Act. It is also noticed here that the petitioner has given a go-by to his earlier statement made before PW-3

and has introduced a new version that Haridwarimal was responsible for submitting the false return. Exhibit P-2, statement of account, also bears the signature of the petitioner. The fact that he filed exhibit p-1 return and exhibit P-2 statement after verifying the return clearly demonstrates that he has got knowledge about the suppression of facts. The evidence that has been adduced on his behalf does not throw any light on the fact that he has no connection with the khandasari factory or that he was not aware of the same. It is easy to procure witnesses like Dws. Nos. 1 and 2. When the evidence adduced on behalf of the prosecution is consistent and it has come to light that there is suppression, the lower appellate court was justified in arriving at the conclusion that the offence u/s 277 of the Income Tax Act has been made out.

4. It is contended that when once the petitioner was acquitted of the offences under sections 193 and 196, Indian Penal Code, by the lower appellate court, he ought to have been acquitted u/s 277 of the Income Tax Act. I am unable to agree with that contention. The view that has been taken by the lower appellate court in acquitting the petitioner for the offences under sections 193 and 196, Indian Penal Code, is not correct. But as no appeal has been filed against that order, I do not like to interfere with that finding. Suppression of the investment or the income in the return filed by the petitioner has been done deliberately with a view to suppress the real income. I hold that an offence u/s 277 of the Income Tax Act has been made out. The conviction of the petitioner for the offence u/s 277 of the Income Tax Act is accordingly confirmed. The petitioner is sentenced to suffer imprisonment till the rising of the court and also to pay a fine of Rs. 1,000 in default to undergo simple imprisonment for three months.

5. The revision is dismissed.