
(2002) 03 MP CK 0038
In the Madhya Pradesh High Court
Case No : Criminal Rev. No. 621 of 2001

Shadilal

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 13-03-2002

Acts Referred:

Income Tax Act, 1961 — Section 276(1), 276C, 277

Citation : (2002) 177 CTR 583 : (2002) 256 ITR 669 : (2003) 130 TAXMAN 132

Hon'ble Judges : S.L. Kochar, J

Bench : Single Bench

Advocate : V.P. Saraf, for the Appellant; Patankar, for the Respondent

Final Decision : Partly Allowed

Judgement

S.L. Kochar, J.—Against the impugned judgment dated October 8, 2001, passed by the 14th Additional Sessions Judge, Indore, in Cr. Appeal No. 37 of 1996, arising out of Cr. Case No. 3 of 1987 passed by the Additional Chief Judicial Magistrate (Economic Offences), Indore, dated January 29, 1996, convicting the applicant for the offence u/s 276C of the Income Tax Act, 1961, and sentencing him to rigorous imprisonment for one year and a fine of Rs. 3,000, in default, further simple imprisonment for two months. He was also convicted for breach of Section 277 of the Income Tax Act and sentenced to rigorous imprisonment for one year and a fine of Rs. 2,000, in default further simple imprisonment for one month, this revision has been filed.

2. The necessary facts in a narrow compass before the courts below were that the applicant submitted his Income Tax return for the year 1982-83 on December 19, 1983. In the said return, he had shown the sale of his truck bearing Registration No. RRN 9872 to one Avtarsingh and Co., for a consideration of Rs. 80,000. But, when the matter was enquired into by the Income Tax Department, it was found to be sold for Rs. 1,30,000. Therefore, the charge against the applicant was that knowingly in the return, he had submitted false information. Thereafter, the applicant had submitted a revised return on March 31, 1983,

wherein he had shown the sale of the truck for Rs. 1,30,000 and thus, concealed income of Rs. 50,000. It has also been alleged that the applicant is not entitled for benefit of the amnesty scheme since he was caught by the Department in an enquiry. Therefore, he has committed the offences punishable under Sections 277 and 276C of the Income Tax Act.

3. The applicant was charged with the aforesaid offences before the trial court and his defence was that in fact the truck was sold at Rs. 80,000, but if the truck would have been given to said Avtarsingh and Co., after changing the tyres, it would have been cost Rs. 1,30,000. Since the applicant did not change the tyres, the sale was only for a consideration of Rs. 80,000. The tyres were purchased later on by Avtarsingh and Co. The trial court, after recording the evidence and hearing both the parties, found the applicant guilty of the aforesaid offences, against which the applicant went up in appeal and the same has also been dismissed by the first appellate court. Therefore, the applicant has filed this revision before this court.

4. It has been contended by learned counsel for the applicant that the sale agreement was not filed by the prosecution and the purchaser Avtarsingh also was not examined. The conviction is based on the solitary testimony of PW-2 S. L. Kulkarni which is not sufficient to prove the guilt of the applicant. He has also submitted that the applicant was not having any mens rea for suppressing his income. He relied on the judgment reported in Daulatram v. State [1974] MPLJ 51 and B.T.X. Chemicals (P.) Ltd. and Others Vs. Suraj Bhan and Another, .

5. The revised return was submitted by the applicant in which, he had shown the sale of the truck at the cost of Rs. 1,30,000, whereas in the first return, the cost of the truck was shown only at Rs. 80,000 and while considering the first return, the Department had traced and pointed out this fact. Thereafter, the revised return was filed saying that by mistake in the first return, the cost was shown at Rs. 80,000. The defence of the applicant in his statement u/s 313 of the Code of Criminal Procedure is that there was a settlement between him and the purchaser Avtarsingh that if the applicant would have purchased new tyres for the truck, in that situation, the purchaser Avtarsingh was required to pay Rs. 1,30,000, but since he did not purchase new tyres for the said truck, therefore, he had received only Rs. 80,000 as consideration for the sale of the truck. This defence of the applicant is contrary to his revised return. If this was so why he had filed the revised return in which he has shown the cost of the truck as Rs. 1,30,000. This revised return was filed after taking the suppression of income by the taxing authority. So the version of the applicant is contrary and, therefore, it cannot be said that he had no mens rea for evading the tax because of bona fide mistake he had wrongly mentioned the price of the truck Rs. 80,000 in the first return and, thereafter, corrected the same by filing the revised return.

6. The contention of the applicant is also not acceptable that he had filed the revised return under the amnesty scheme. When he was caught for suppressing the cost of the truck, only thereafter, he had filed the revised return. The points

raised by learned counsel for the applicant that the sale agreement was not filed and Avtarsingh, the purchaser was not examined, have no serious bearing on the matter in controversy because, the applicant himself has filed two returns. In one return, he has shown the price of the truck as Rs. 80,000 and in the second, the price is mentioned as Rs. 1,30,000. Therefore, both the aforesaid authorities are not helpful to the applicant. In the case of B.T.X. Chemicals (P.) Ltd. and Others Vs. Suraj Bhan and Another, , the court had come to the conclusion that by filing the return the assessee had made a bona fide mistake discovered subsequently, there was no mens rea, and therefore, the assessee was not liable for prosecution u/s 276C. The facts of this case are altogether different than the case on hand. In the case of Daulatram v. State, the assessee had made the admission in the nature of concession during the course of assessment proceedings. On the basis of solitary admission, the criminal charge cannot be levelled u/s 277 of the Income Tax Act against the assessee. In the present case, this is not the situation and the applicant was caught. Thereafter, he filed the revised return showing the cost of the truck as Rs. 1,30,000. Even otherwise, in his statement u/s 313 of the Criminal Procedure Code he has not stated that the truck was sold for Rs. 1,30,000 but had stated that in fact the truck was sold only at Rs. 80,000, because he did not change and fix the tyres in the truck.

7. The two courts below have given concurrent findings of fact after considering the matter in detail. This court does not find any illegality, irregularity or perversity to sustain conviction illegally.

8. The further submission of learned counsel for the applicant is that looking to the facts and circumstances of the matter, minimum sentence of jail may be awarded. There is some force in this submission. The case of the applicant will fall u/s 276C, Sub-section (1)(ii), in which the minimum three months jail sentence and fine is provided and for Section 277(ii) the minimum jail sentence is prescribed three months with fine. Looking to the amount of tax evaded by the applicant, the case of the applicant would fall under Sections 276(1)(ii) and 277(ii) of the Income Tax Act. This court deems it just, proper and appropriate in the interest of justice to impose minimum jail sentence of three months" simple imprisonment and fine as imposed by the courts below in both the sections. The jail sentences are directed to run concurrently.

9. With this modification this revision is partly allowed.