(2002) 08 MP CK 0001

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 614 of 1999

Shewaram and Sons APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 13-08-2002

Acts Referred:
Income Tax Act, 1961 — Section 276E

Citation : (2003) 181 CTR 316 : (2003) 263 ITR 656 : (2003) 263 ITR 626 : (2004) 141 TAXMAN 16

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

Bench : Single Bench

Advocate : O.P. Soni, R.L. Jain, for the Appellant;

Final Decision : Allowed

Judgement

S.L. Kochar, J.—This revision has been preferred by the applicants against the judgment dt. 18th Aug., 1999, rendered by IASJ, Indore in Criminal Appeal No. 69/95 arising out of the judgment dt. 27th June, 1995, delivered in Criminal Case No. 02/86 by ACJM, Indore (Economic Offence), remanding the case back to the trial Court for framing the charge u/s 278B of the IT Act, 1961 (for brevity, ''the Act''), and proceeding against the applicants in accordance with law.

2. The contention of the counsel for the applicants is that penal provision i.e., Section 276E of the Act, has been removed from the statute by an amendment dt. 1st April, 1989, by the Direct Tax Laws (Amendment) Act, 1987. In the case on hand, the complaint against the applicants was filed only a day before the said omission. The substantive offence for which the conviction could be recorded after framing of charge u/s 269T and u/s 278B of the Act has been omitted from the statute. Charges levelled against applicants were that during the asst. yr. 1984-85, they have shown transaction of Rs. 31,886 but the same was shown in different amount in the cash, instead of draft or cheque. Therefore, they have committed offences under Sections 269T and 278B of the Act punishable u/s 276E of the Act.

3. Since the penal Section 276E of the Act, has been omitted by the aforesaid amendment, the applicants cannot be prosecuted for breach of the aforesaid offences. In support of the contention, learned counsel for the applicants placed reliance on a judgment passed by this Court in Parmanand Das Brij Bhushan Das and Ors. v. Union of India and Anr. (Criminal Reyn. Nos. 528 to 531 of 97 decided on 14th Feb., 2001). Similar view has also been taken by this Court in the case of Ramchandra and Ors. v. State of M.P. 2002 (1) Vidhi Bhaswar 44. This view is based on a judgment passed by the apex Court in the case of Kolhapur Canesugar Works Ltd. and Another Vs. Union of India and Others, . The Supreme Court has held that in a case where a particular provision in a statute is omitted and, in its place, another provision dealing with the same contingency is introduced without a saving clause in favour of pending proceedings then it can be reasonably inferred that the intention of the legislature is that the pending proceeding shall not continue but a fresh proceeding for the same purpose may be initiated under the new provision.

4. In the present case, no saving clause, has been prescribed in the Amendment Act. Therefore, applying the dictum as held by the Supreme Court, present prosecution against the applicants is not permissible for imposing punishment u/s 276E of the Act. Therefore, orders passed by the appellate Court dt. 18th Aug., 1999, passed in Cri. Appeal No. 69/95 remanding the case back as well as judgment dt. 27th June, 1995, delivered in Cri. Case No. 02/86, are liable to be set aside and the same are, accordingly, set aside. However, the IT Department is free to proceed against the applicants u/s 271E of the provisions of Direct Tax Laws (Amendment) Act, 1987.

5. Consequently, this Criminal Revision is allowed. The amount of fine, if deposited by the applicants, be refunded to them.

