(2008) 08 CAL CK 0008

In the Calcutta High Court

Case No : C.R.R. No. 1722 of 2007

Shiv Kumar Poddar APPELLANT

Vs

Commissioner of Income Tax and Another RESPONDENT

Date of Decision : 19-08-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Direct Tax Laws (Amendment) Act, 1987 — Section 269SS
General Clauses Act, 1897 — Section 6
Income Tax Act, 1961 — Section 269SS, 271D, 276DD, 278B, 278DD

Citation : (2008) 4 CHN 926

Hon'ble Judges : Arunabha Basu, J

Bench : Single Bench

Advocate : Amit Bhattacharyya, Indarani Roy, Mayukhi Mitra, Ayan Bhattacharyya and Indrajit Adhikari, Krishna Ghosh and Debabrata Roy, for the Appellant;

Judgement

Arunabha Basu, J.—Heard Id. Advocate for the petitioner and the Id. Advocate for the State. Supplementary affidavit filed in Court today. Same be kept with the record.

2. The revisional application u/s 482 of the Code of Criminal Procedure is directed to quash the proceeding in connection with Complaint Case No. 2382 of 1989 u/s 276DD read with Section 278B of the Income Tax Act, 1961 (hereinafter called the Act).

3. Mr. Amit Bhattacharyya, Id. Advocate appearing on behalf of the petitioner, submitted that the offence u/s 278DD which deals with failure to comply with the provisions of Section 269SS has since been omitted by the Direct Taxes Laws (Amendment) Act, 1987 with effect from 1st April, 1989. It is the contention of the Id. Advocate for the petitioner that the petition of complaint was presented before the Court of the Id. Chief Judicial Magistrate by the complainant on 14th December, 1989, i.e., after the omission of the said provision consequent to the

amendment which came into force with effect from 1st April, 1989.

4. It is also the contention of the Id. Advocate for the petitioner that a new section being Section 27ID came into force by the Finance Act, 1990 with effect from 1st April, 1990 whereby the penalty for failure to comply with the provisions of Section 269SS is stipulated. The said section runs as follows:

[(1)] If a person takes or accepts any loan or deposit in contravention of the provisions of Section 269SS, he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit so taken or accepted.]

[(2) Any penalty imposable under Sub-section (1) shall be imposed by the Deputy Commissioner.]

5. In support of his contention the Id. Advocate for the petitioner referred to the decision of the Supreme Court in the case of General Finance Co. and Another Vs. Assistant Commissioner of Income Tax, Punjab, . In this case the Supreme Court dealt with the scope of Sections 269SS and 276DD of the Act. At paragraph (9) of the aforesaid decision, the Supreme Court held as follows:

Net result of this discussion is that the view taken by the High Court is not consistent with what has been stated by this Court in the two decisions aforesaid and the principle underlying Section 6 of the General Clauses Act as saving the right to initiate proceedings for liabilities incurred during the currency of the Act will not apply to omission of a provision in an Act but only to repeal, omission being different from repeal as held in the aforesaid decisions. In the Income Tax Act, Section 276DD stood omitted from the Act but not repealed and hence a prosecution could not have been launched or continued by invoking Section 6 of the General Clauses Act after its omission.

6. It is evident that Section 271D of the Act which came into force with effect from 1" April, 1990 does not deal with any offence. The section deals with penalty that a person may be liable to pay in cases where there is contravention of Section 269SS. It is also evident that consequent to the amendment effected the non-compliance of Section 269SS of the Act can no more become a subject-matter of offence as Section 276DD as originally framed by the Legislature has since been omitted with effect from 1st April, 1989. Needless to add, the petition of complaint in order to initiate criminal case against the petitioner herein was instituted after the omission of Section 276DD from the statute book. So far as the violation of Section 269SS is concerned, I have already pointed out that the same is taken out from the purview of offence and as such, for the violation of Section 269SS, no criminal prosecution can be instituted. The position as highlighted above has been approved by the Supreme Court in the case of General Finance Co. and Anr. (supra).

7. In view of my above discussion it is clear that further continuation of the proceeding against the petitioner being Complaint Case No. 2382 of 1989 for commission of offence punishable u/s 276DD of the Act will be a clear abuse of

the process of the Court as because the said section has been omitted. No offence can be committed in terms of the provisions of Section 276DD of the Act.

8. In view of my above discussion, the Complaint Case No. 2382 of 1989 cannot continue so far as the petitioner herein is concerned and the said proceeding is hereby quashed.

9. In view of my above discussion it is clear that no compliant could be instituted before the Id. Magistrate and the Id. Magistrate also is not competent to take cognizance on the basis of the said compliant and to issue process against the petitioner as accused. In fact the Id. Magistrate was dealing with the offence which is no more in existence on the date the cognizance for the said offence was taken by him.

10. The revisional application is disposed of.

11. Criminal Section is directed to forward a copy of the order to the Id. Court below as early as possible.

12. Criminal Section is directed to supply urgent xerox certified copy of this order to the Id. Advocate for the petitioner as and when applied for.