

(2011) 09 DEL CK 0478

In the Delhi High Court

Case No : Criminal M.C. No. 1545 of 2001

S/S. Bhagat Motor Co. P. Ltd.

APPELLANT

Vs

S.K. Abrol DCIT

RESPONDENT

Date of Decision : 30-09-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 482
Income Tax Act, 1961 — Section 143(2), 271(1), 276C(1), 277, 279

Citation : (2011) 09 DEL CK 0478

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : Raman Gandhi, for the Appellant; Anshul Sharma, for the Respondent

Judgement

V.K. Shali, J.—This is a petition filed by the petitioners u/s 482 Cr.P.C. for quashing of a complaint titled S.K. Abrol, Deputy Commissioner of Income Tax v. M/s. Bhagat Motors Pvt. Ltd. & Ors. for the assessment year 1983-84 and the order dated 20th December, 2000 directing framing of the charges u/s 276C(1) and Section 277 of the Income Tax Act, 1961.

2. Briefly stated, the facts of the case are that the respondent/complainant who is the Deputy Commissioner of Income Tax, in capacity of a public servant and in the discharge of his official duties instituted a complaint against the petitioner for violation of Section 276C(1) and Section 277 of the Income Tax Act, 1961. It was alleged that the petitioner No.1 had filed its return of income tax for the assessment year 1983-84, for which the accounting period ended on 31.03.1983, declaring a total income of Rs.84,480/-. The return of income was in the prescribed form and verification therein was made and signed by the petitioner No.2 in his capacity as Managing Director. The return of income was accompanied by the statement of assessable income, auditor's report, balance sheet, manufacturing and trading account, profit and loss account and other documents for the year ending upto 31st March, 1983. All these documents were signed by the petitioners.

3. On the basis of the return of income, assessment proceedings for the relevant assessment year were initiated by issuing a notice u/s 143(2) of the Act. On 23rd December, 1985 a detailed questionnaire was issued to the Managing Director and Principal Officer of the petitioner No.1 calling for information on various points. The Assessing Officer asked for a note on conversion charges indicating the process relating to purchase of copper inward challan and their dispatch to the Bombay party from where the petitioners were getting copper and zinc converted into brass strips, indicating that the job was done and the goods were dispatched from Bombay. The petitioners in response thereto gave various details vide letter dated 4th January, 1986 which indicated that against the total quantity of 8264.200 kg. of copper and zinc sent to the said party, brass strips weighing 7621.5 kg. were received back by the petitioners, thereby some material belonging to the petitioner company was still lying with the Bombay party as on 31st March, 1983 whereas, in the list of closing stock as on 31st March, 1983 filed along with the letter dated 4th January, 1986 nothing was shown as closing stock of the raw material lying with the Bombay party.

4. Summons were issued to the Bombay party on 24th January, 1986 and they were requested to furnish the stock of raw material and goods lying with them belonging to the petitioners as on 31st March, 1982, 1983 and 1984. The said Bombay party, vide their letter dated 5th February, 1986, furnished a copy of the account of the petitioner No.1 and requested for some more time to furnish the remaining details. This resulted in investigation by the Assessing Officer detecting that the petitioner company had suppressed closing stock of copper and zinc valued at Rs.15,424/-. The petitioners have not got the summons of the investigation made by the Assessing Officer from the Bombay party and finding themselves in a tight corner, they revised their income tax return by sending a covering letter giving reasons for revising their return. The above said facts were clearly taken to be reflecting the conduct of the petitioners and it was assumed that for the assessment year the total income on the basis of the stocks available with the Bombay party was to the tune of Rs.3,47,252/- against the original income of Rs.84,480/-. On the basis of these averments, penalty proceedings u/s 271(1)(c) of the Act against the petitioner No. 1 for concealing the aforesaid income and furnishing inaccurate particulars of its closing stock were initiated. On the basis of the aforesaid averment, it was alleged that the petitioner No.1 through petitioner No.2 had made a statement in verification in the form of return of income filed on 27th September, 1983 and delivered accounts statement which were false which all the accused persons knew or believed to be false or did not believe to be true and thus they have committed an offence u/s 277 of the Act.

5. After obtaining the requisite sanction u/s 279 of the Act, a complaint was filed against the present petitioners u/s 276C(1) and Section 277 of the Act. The petitioners were summoned, as the complaint was filed by the public servant in discharge of his official duties and no pre-summoning evidence was recorded. The charges were framed by the Trial Court after recording pre-charge evidence

vide impugned order dated 20th December, 2000. The petitioner feeling aggrieved, against the framing of charge filed a petition u/s 482 Cr.P.C. for quashing of the complaint. The matter came up before the High Court for the first time on 30th April, 2001 and it was adjourned to 16th May, 2001. Ultimately after couple of adjournments, on 20th September, 2001 arguments were heard and since the case was fixed for recording of the statement of the accused persons u/s 313 Cr.P.C. before the ACMM, this Court was pleased to pass and order that ACMM shall not pass any final order in the complaint, which stay order has continued till date.

6. The main contention of the learned counsel for the petitioners is that apart from the prosecution of the petitioners for the aforesaid offences u/s 276C(1) and Section 277 of the Income Tax Act, the respondents had proceeded for adjudication proceedings against the petitioners for the alleged concealment of their income to the tune of Rs.3,47,252/- for the assessment year 1983-84. The petitioners had reflected in the return an income of approximately Rs.84,000/- while the respondent/complainant has prima facie held the assessed income for the said period to the tune of Rs.3,47,252/-. It is contended by the learned counsel for the petitioners that in the departmental proceedings this plea of the Department that the petitioner had concealed the income of Rs.3,47,252/- was not upheld and the Income Tax Appellate Tribunal as it came to the conclusion that the total income which was alleged to have been concealed by the petitioners was only to the tune of Rs.15,424/- and not Rs.3,47,272/-. It is contended by the learned counsel that the respondent itself has issued guidelines for prosecution under the Direct Tax laws on 7th February, 1991 wherein it has been laid down that with regard to prosecution u/s 276C(1) of the Income Tax Act, 1961 and the corresponding provisions of the Wealth Tax Act, 1967, the proceedings need not be initiated

(a) where the income sought to be evaded is less than Rs.20,000/-; and

(b) wealth sought to be evaded is less than Rs.50,000/-.

7. It is contended that the said parameter will equally apply to an offence u/s 277 for making a false statement in verification. It was contended by the learned counsel for the petitioners that in the light of this departmental circular, as the Income Tax Appellate Tribunal has come to a finding that the total income in respect of which the assessment is alleged to have been concealed and the penalty imposed is less than the aforesaid limit of Rs. 25,000/- fixed by the circular, therefore it was not open to the respondent to have initiated the proceedings against the present petitioners for having committed the offence u/s 276C(1) and Section 277 of the Income Tax Act.

8. The learned counsel for the respondent was not able to dislodge this submission of the learned counsel for the petitioners. Since the learned counsel for the petitioners did not raise any other issue with regard to the quashing of the complaint and the consequent charge sheet, this Court does not find it

necessary to deal with any other issue which, though urged in the petition but was not raised before this Court.

9. I have carefully considered the submissions of the respective sides. I have also gone through the record. Section 276C(1) of the Income Tax Act reads as under:

276C. Wilful attempt to evade tax, etc. (1) If a person willfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable,

(i) in a case where the amount sought to be evaded exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.

10. Similarly, Section 277 of the Act reads as follows:

277. False statement in verification, etc. - If a person makes a statement in any verification under this Act or under any rule made thereunder, or delivers an account or statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable,

(i) in a case where the amount of tax, which would have been evaded if the statement or account had been accepted as true, exceeds one hundred thousand rupees, with rigorous imprisonment for a term which

shall not be less than six months but which may extend to seven years and with fine;

(ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.

11. Further the Ministry of Finance, Government of India has issued guidelines for prosecution:

F.No. 285/160/90-IT (Inv)

Government of India

Ministry of Finance

Department of Revenue

Central Board of Direct Taxes

New Delhi, the 7th February, 1991

To

All Chief Commissioners of income tax.

All Directors General of income tax

Sir,

Sub:- Guidelines for prosecution under the Direct Tax Laws.

Under the Direct Tax, Laws prosecution against tax offences and tax frauds is a significant provision and requires to be effectively deployed to create an appropriate impact and to subserve as a deterrence against tax evasion. During the last few years the department has stepped up the number of cases where proceedings for prosecution have been initiated. Considering the mounting pendency and the inability of the judicial administration to speed up the disposal, it has become necessary to re-examine the strategy in regard to initiating prosecution proceedings.

2. The efforts of the department should be to concentrate on relatively important cases in filing prosecution complaints. For achieving this, it is essential that greater stress is laid on offences involving tax frauds, fabrication of evidence and major defaults relating to various other offences. While selecting cases for filing prosecution complaints, it is necessary to examine the facts of the case properly so that complaints are filed in really strong and sustainable cases.

3. Once a default has been properly examined and it falls within the parameters of prosecution guidelines, the assessing officer should send a notice to the defaulter intimating the nature of the offence committed and requiring the assessee to show cause why prosecution proceedings may not be initiated.

No such notice will be sent in any case where the offence committed is under sections 276C(1) and 277. All relevant enquiries regarding the default should be made by the assessing officer before the issue of the above mentioned notice.

4. Prosecution need not normally be initiated against persons who have attained the age of 70 years at the time of commission of the offence.

5. The guidelines for initiation of prosecution proceedings for specific offences are given below:

iii) Section 276C(1) - Wilful attempt to evade tax etc.

Prosecution u/s 276C(1) of the Income tax Act, 1961 or the corresponding provision of the wealth tax Act 1957 need not be initiated if:

a) The income sought to be evaded is less than Rs. 25000/- or

b) the net wealth sought to be evaded is less than Rs. 50000/-

The same will apply to an offence u/s 277 for false statement in verification etc.

12. A perusal of the circular purported to have been issued by the respondent in the year 1991 with regard to setting down the guidelines for prosecution of the

persons, violating the provisions of the Income Tax Act is not in dispute. Therefore, the only question to be seen is whether the benefit of the circular can be extended and claimed by the present petitioners and the proceedings u/s 276C(1) and Section 277 of the Act can be continued or whether the proceedings are liable to be quashed along with the impugned order dated 20th December, 2000 by virtue of which the charges were directed to be framed against the petitioners.

13. In order to appreciate this contention, it may be pertinent to mention that there is no dispute about the year of assessment which is 1983-84. It is also not in dispute that the petitioners on the basis of their return had reflected their income to be Rs.84,480/- or so and the complaint was initiated against the petitioners under aforesaid two provisions on the ground that the petitioners had concealed correct income which was on the basis of stock available with the party of the petitioners in Bombay to the tune of Rs.3,47,252/-. This was the basis of the proceedings against the petitioners for assessment and he was visited with the penalty. This finding of the assessing officer that the petitioner had concealed income to the tune of Rs. 3,47,252/- had been set aside by the Income Tax appellate Tribunal in the adjudication proceedings and it was held that the concealment was to the tune of Rs. 15000/- or so. Further this fact has not been challenged by the Department before any forum and thus it has attained finality. If it has attained finality then the very substratum of the complaint regarding the concealment of income to the tune of Rs. 3,47,252/- goes and in terms of the departmental adjudication the proceedings have no basis to continue. Since the alleged concealment is less than Rs. 25000/- that the prosecution would not lie. I find force in this contention of the learned counsel for the petitioners that it is not open to the respondents to continue with the complaint which is against their own circular. The circular of the respondent is very clear that wherever the income sought to be evaded by the petitioners happens to be less than Rs.25,000/-, the prosecution ought not to have been initiated against such delinquent persons. The reason for this is not far to seek. The reason for this is that these small insignificant cases should not be taken for prosecution as it results in considerable wastage of time, energy and resources of the Government and they must actually go after big fish who are indulging in large scale and rampant concealment of the income and evasion of income tax. In order to attain this object, the circular seems to have been passed. The entire basis of initiating the complaint against the petitioners was that they had concealed the income to the tune of Rs.3,47,252/-. But since the petitioners had taken the said decision of the Department in appeal to the various quasi-judicial bodies culminating in a finding by the Income Tax Appellate Tribunal which upheld the plea of the petitioners and held that the income which was concealed by the petitioners was less than Rs.25,000/-, therefore, complaint against the petitioners need not be continued.

14. Similar view has been taken by a number of judgments of the Supreme Court and High Courts, which are K.C. Builders and Another Vs. The Assistant

Commissioner of Income Tax, , S.P. Sales Corp. & Ors. v. S.R. Sikdar 1993 (113) Taxation 203 (SC), Madan Lal & Ors. v. IT Officer 1998 (144) CTR 57 and Smt. Sheela Gupta v. Inspecting Asstt. Commissioner and Ors. 2002 (253) ITR 552

15. In view of the aforesaid facts and circumstances of the case, the complaint as well as the impugned order dated 20th December, 2000 stands quashed.