
(2004) 04 P&H CK 0040
In the Punjab And Haryana At Chandigarh
Case No : Criminal M. No. 6373-M of 2002

Sudarshan Jain

APPELLANT

Vs

Assistant Commissioner of Income Tax

RESPONDENT

Date of Decision : 15-04-2004

Acts Referred:

Income Tax Act, 1961 — Section 276C, 276CC

Citation : (2004) 270 ITR 312

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Advocate : Akshay Bhan and Varun Gupta, for the Appellant; R.P. Sawhney and Kishan Singh, for the Respondent

Final Decision : Allowed

Judgement

Satish Kumar Mittal, J.—The petitioner has filed the instant petition u/s 482 of the Code of Criminal Procedure for quashing of the complaint (annexure P5) filed against her by the Assistant Commissioner of Income Tax (respondent herein) u/s 276CC of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), for not furnishing her return of income for the assessment year 1983-84 within the statutory period.

2. The assessing authority issued notice to the petitioner under Sections 143(2) and 142(1) of the Act requiring her to furnish the details of the income. Thereafter, the assessing authority vide its order dated December 31, 1985, made certain additions for the assessment year 1983-84 while disbelieving certain facts stated by the petitioner. In respect of the said addition, the assessing authority vide its order dated December 31, 1987 (annexure P2), imposed a penalty upon the petitioner u/s 271(1)(a) of the Act. Aggrieved against the said order of penalty, the assessee filed an appeal before the Commissioner of Income Tax (Appeals), who vide his order dated January 27, 1988, dismissed the same. Aggrieved against the said order, the petitioner preferred the second appeal before the Income Tax Appellate Tribunal. The said

appeal was allowed by the Income Tax Appellate Tribunal vide order dated August 26, 1992, and the penalty imposed upon the petitioner by the assessing authority was deleted. Against the said order of the Income Tax Appellate Tribunal, the Commissioner of Income Tax, Patiala, filed an application u/s 256(1) of the Act for reference of the case to the High Court. The said application was dismissed by the Income Tax Appellate Tribunal vide its order dated May 10, 1993 (annexure P6).

3. During the pendency of the aforesaid proceedings before the appellate authorities, the respondent filed a complaint against the petitioner in the court of Chief Judicial Magistrate, Ludhiana, u/s 276CC of the Act for not furnishing her return of income for the assessment year 1983-84 within the statutory period.

4. Now the petitioner has filed the instant petition for quashing of the aforesaid complaint on the ground that once the order of penalty itself has been set aside, then continuation of the criminal proceedings in such a case is an abuse of the process of court and the same is liable to be quashed.

5. Learned counsel for the petitioner contends that this petition is squarely covered by the decisions of the hon"ble Supreme Court in G.L. Didwania and Another Vs. Income Tax Officer and Another, and K.C. Builders and Another Vs. The Assistant Commissioner of Income Tax, .

6. In the aforesaid judgments, it has been held that if in appeal, the order of penalty is set aside by the appellate authority or the Tribunal, while setting aside the finding recorded by the assessing authority about the making of false statement in respect of the Income Tax return, then the criminal proceedings launched on the same ground can no longer be sustained. It has been also held that levy of penalties and prosecution u/s 276C of the Act are simultaneous. Hence, once the penalties are deleted on the ground that there is no concealment, the quashing of prosecution u/s 276C is automatic. The assessee cannot be made to suffer and face the rigours of criminal trial when the same cannot be sustained in the eye of law because the entire prosecution in view of a conclusive finding of the appellate authority/Tribunal that there is no concealment of income becomes devoid of jurisdiction. Once the finding of concealment and subsequent levy of penalties u/s 271(1)(c) has been struck down by the Tribunal, the assessing authority has no other alternative except to correct his order u/s 154 of the Act as per the directions of the Tribunal. It was further held that even if the charge has been framed and the matter is at the stage of prosecution evidence, the criminal prosecution is liable to be quashed because if the trial is allowed to proceed further after the order of the Tribunal, it will be an idle and empty formality to require the assessee to have the order of the Tribunal exhibited as a defence document.

7. Learned counsel for the respondent could not dispute the aforesaid factual and legal position and almost conceded that the case of the petitioner is covered by the aforesaid decisions of the hon"ble Supreme Court.

8. In view of the aforesaid, this petition is allowed and the complaint (annexure P5) filed against the petitioner u/s 276CC of the Act and all the consequential proceedings are hereby quashed.