(1997) 07 MP CK 0059

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 780 of 1993

Sureshchand Gupta APPELLANT

Vs

Union of India (UOI) RESPONDENT

Date of Decision : 02-07-1997

Acts Referred:
Income Tax Act, 1961 — Section 256(2), 276C, 277

Citation : (1998) 148 CTR 218 : (1998) 233 ITR 783 : (1998) 1 MPLJ 49

Hon'ble Judges : N.K. Jain, J

Bench : Single Bench

Advocate : Y.Z. Mehta, for the Appellant; P.K. Saxena, for the Respondent

Judgement

N.K. Jain, J.

By this application u/s 482 of the Criminal Procedure Code, 1973, the applicant seeks quashment of the order dated February 9, 1993, of A. C. J. M., Indore, as also the criminal prosecution launched against him under Sections 276C and 277 of the Income Tax Act, 1961 (for short "the Act").

The brief facts of the case are these. The applicant-assessee furnished a return for the assessment year 1985-86 on March 10, 1986, declaring his income as Rs. 13,850. The Income Tax Officer then issued a letter on July 16, 1986, to furnish details of the expenses claimed at Rs. 36,023 on truck. The assessee then furnished a revised return on February 26, 1988, showing the income of Rs. 49,880 and surrendered the expenses claimed earlier. The assessment was completed on January 16, 1989. Penalty proceedings u/s 271(1)(c) of the Act were initiated. The assessee filed objections. After consideration of the same, the Income Tax Officer levied penalty of Rs. 15,000. This order was confirmed by the Commissioner of Income Tax (Appeals). The assessee then filed an appeal before the Tribunal. The Tribunal deleted the penalty holding that there is no concealment. The Department filed an application u/s 256(1) of the Act which was also rejected by the Tribunal. The Department moved this court u/s 256(2) of the Act for a direction to the Tribunal to make a reference. This court, vide its order dated April 2, 1996, rejected the application observing "no case of conscious concealment is visible".

The respondent-Department had in the meantime lodged a complaint in the court below alleging commission of offences under Sections 276C and 277 of the Act against the applicant-accused. The applicant moved an application before the court below for dropping of the complaint on the ground that in view of the decision of the Tribunal, the complaint no more survives. The learned A. C. J. M. by his order dated February 9, 1993, has rejected the application and directed the framing of charges against the applicant for the said two offences.

The moot question requiring consideration is whether in view of the deletion of penalty by the Tribunal, the criminal proceedings against the applicant accused deserve to be quashed.

The point projected in this case stands resolved by a Supreme Court decision in the case of G.L. Didwania and Another Vs. Income Tax Officer and Another, wherein the apex court under the similar circumstances held as under (page 690):

"In the instant case, the crux of the matter is attracted and whether the prosecution can be sustained in view of the order passed by the Tribunal. As noted above, the assessing authority held that the appellant-assessee made a false statement in respect of income of Young India and Transport Company and that finding has been set aside by the Income Tax, Appellate Tribunal. If that is the position then we are unable to see as to how criminal proceedings can be sustained."

The High Court of Patna in the case of SMT. MOHINI DEVI AGRAWAL AND OTHERS Vs. COMMISSIONER OF Income Tax AND ANOTHER., has taken a similar view and held that since the basis of the prosecution had vanished in view of the deletion of the addition by the Tribunal, the prosecution was liable to be quashed.

In the instant case also not only has the Tribunal set aside the order of penalty but this court in reference has also held that the case of con, scious concealment is not made out. In view of this finding, the very foundation of the prosecution of the applicant-accused is demolished.

In the result, I allow the application, quash the order dated February 9, 1993, as also the prosecution of the applicant-accused initiated on the basis of the complaint of the respondent-Department.

