
(2008) 01 MP CK 0101
In the Madhya Pradesh High Court

Union of India (UOI)

APPELLANT

Vs

Dinesh

RESPONDENT

Date of Decision : 11-01-2008

Acts Referred:

Income Tax Act, 1961 — Section 276CC, 277

Citation : (2008) 304 ITR 345 : (2008) 173 TAXMAN 176

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.S. Garg, J.—The appellant-Union of India being aggrieved by the judgment dated 25-4-1994, passed by the learned Additional Chief Judicial Magistrate (Economic Offences), Indore, in Criminal Case No. 10/1989 acquitting the present respondent for offences punishable under Sections 276CC and 277 of the Income Tax Act, 1961 (for short "the Act"), are before this court with a submission that the learned court below committed legal folly and factual error in acquitting the accused.

2. After taking me through the evidence available on the record, learned Counsel for the appellant submitted that for the assessment year 1981-82 the accused has shown income of Rs. 52,997 and thereafter filed his amended return on 16-4-1983. The case of the prosecution is that in accordance with Section 139 of the Act, the return was not filed in time but was filed after a lapse of almost about 20 months. It is submitted that in both the returns the income was not shown correctly and, therefore, the accused has committed offences punishable under Sections 276CC and 277 of the Act. It is also submitted that the court below took a hyper technical view of the matter and wrongly acquitted the accused.

3. Shri H. S. Oberoi, learned Counsel for the respondent, on the other hand, submitted that from the facts it would clearly appear that there was no wrong on

the part of the accused especially when it is proved on the record that the accused had supplied all his papers to his Counsel and there were some lapses on the part of the counsel. It is also submitted that if the view taken by the court below appears to be plausible and probable then simply because there is a scope of yet another view, the High Court in an appeal against acquittal should not interfere in the matter. It is also submitted that if the court comes to the conclusion that there was no wilful default then the court should not interfere in the matter and award no sentence.

4. I have gone through the order passed by the court and the judgment of this court in the matter of NARAYAN Vs. UNION OF INDIA, , wherein this court has observed that if except the length of delay, there is nothing on the record and there does not appear to be any wilful default then the court would not be unjustified in acquitting the accused. In the said matter, the appellant-accused was convicted by the lower court but the High Court after finding that there was no wilful default acquitted the accused. The High Court has also observed that mere failure to file the return in time in itself would not be sufficient but the burden is upon the department to prove that the return was not filed in time and there must be clear, cogent, clinching and reliable evidence to prove that non-action or inaction was a wilful default. In the present case, the court below after giving its anxious consideration to the facts of the case has come to the conclusion that there was no wilful default on the part of the accused. It would be trite to say that the High Court would not interfere in an acquittal simply because yet another view is possible.

5. Taking into consideration the totality of the circumstances, I hold that the appellant has failed in making out a case for interference. The appeal deserves to be dismissed and is accordingly dismissed. The bailbonds of the accused are discharged.