(2002) 12 MP CK 0020

In the Madhya Pradesh High Court

Case No : Criminal Appeal No''s. 621 and 623 of 1993

Union of India (UOI) APPELLANT

Vs

Smt. Birdibai Garg RESPONDENT

Date of Decision : 17-12-2002

Acts Referred:

Income Tax Act, 1961 — Section 276C

Citation : (2003) 179 CTR 545 : (2003) 260 ITR 389 : (2003) 127 TAXMAN 182

Hon'ble Judges : S.B. Sakrikar, J

Bench : Single Bench

Advocate : R.L. Jain, for the Appellant; H.S. Oberai and P. Prasad, for the Respondent

Judgement

S.B. Sakrikar, J.—This order shall govern the disposal of the aforesaid two appeals filed on behalf of the Union of India respectively against the order dated November 24, 1992, passed by the Additional Chief Judicial Magistrate, Economic Offence, Indore, in Criminal Case No. 57 of 1990 and Criminal Case No. 56 of 1990 whereby the accused-respondent was acquitted of the offence u/s 276C of the Income Tax Act, 1961 (for short "the Act").

2. For both the aforesaid appeals the facts in brief are that the respondent-assessee filed returns of her income for the assessment years 1985-86 and 1986-87 on March 31, 1987, showing her income respectively Rs. 16,676 and Rs. 19,890 for the aforesaid periods. The assessment was completed on July 21, 1987, and thereafter a notice u/s 148 of the Act was issued to the respondent-assessee, as it was found that the assessee has not disclosed the income received by her by way of rent from the house property of Rs. 40,000. In reply to the aforesaid notice, the assessee filed additional returns for both the assessment years, offering to pay the tax on the income received by way of rent from the house property. The Assessing Officer opined that the assessee has deliberately concealed the income from the house property for the assessment years 1985-86 and 1986-87, with the intention to escape from the payment of

tax on the said income. The Assessing Officer, imposed a penalty of Rs. 20,000 and Rs. 15,000, respectively, for the assessment years 1985-86 and 1986-87 u/s 271(1)(c) of the Act and also filed a complaint before the trial court for initiating prosecution against the respondent-assessee for the offence u/s 276C of the Act. It also emerged from the record that the respondent-assessee aggrieved by the order of the Assessing Officer imposing penalty of Rs. 20,000 and Rs. 15,000 filed appeals before the Commissioner of Income Tax which were dismissed. The assessee preferred appeals against the orders of the Commissioner of Income Tax to the Income Tax Appellate Tribunal, Indore Bench, and the Appellate Tribunal by order dated November 21, 1994, allowed the appeals filed on behalf of the respondent-assessee and set aside the orders of the lower Tribunal imposing penalty on the assessee u/s 271(1)(c) of the Act.

3. In the light of the "said" facts, the learned court below on evaluation of the evidence adduced by the parties in the respective criminal cases, by the impugned orders acquitted the accused-respondent of the offence u/s 276C of the Act. Aggrieved, the appellant has filed these two appeals u/s 378 of the Criminal Procedure Code. Leave to appeal as prayed for, was granted in both the appeals vide order dated December 3, 1998, by this court.

4. I have heard Shri R.L. Jain, learned counsel appearing for the appellant, and Shri H.S. Oberai, learned senior counsel with Shri P. Prasad for the respondent.

5. Learned counsel for the respondent relying on the decision of this court in the case of Sureshchand Gupta Vs. Union of India (UOI), has submitted that the matter in controversy in the aforesaid appeals stands resolved by the aforesaid decision of this court based on the decision of the apex court in the case of G.L. Didwania and Another Vs. Income Tax Officer and Another, . As such, no grounds are made out for reversal of the impugned judgment acquitting the respondent of the offence u/s 276C of the Act.

6. Considering the submission of learned counsel and on a perusal of the record as also the decision of this court in the case of Sureshchand Gupta Vs. Union of India (UOI), , I find that in the instant case also the Income Tax Appellate Tribunal has set aside the order of penalty holding that the case of deliberate concealment of the income is not made out. In view of the aforesaid finding of the Tribunal, the very foundation of the prosecution of the respondent-accused, stands demolished.

7. In the result, the two appeals filed on behalf of the appellant, deserve the fate of dismissal and they are accordingly dismissed. The accused-respondent is recording her presence in the trial court on bail. Her bail bonds stand cancelled. A copy of this judgment be placed on the record of the connected Cr. R. No. 623 of 1993.

