HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Appeal No. 543/1991

The Income Tax Officer,
Ward-2, Ajmer (Raj.)

----Appellant

Versus

Rajendra Prasad Vaish, S/o Shri Banshidhar Vaish,
Resident of 4, Gulraj Quarters, Nasirabad Road, District Ajmer (Raj.)

----Respondent

For Appellant(s)	:	Mr. Siddharth Bapna, Adv.
For Respondent(s)	:	Mr. Shiv Pratap Singh Rathore, Adv.

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

Order

02/04/2024

Reportable

1. Present appeal has been preferred against the impugned judgment dated 31.08.1991, passed by the Special Magistrate (Economic Offences), Rajasthan, Jaipur by which the accused-respondent therein after referred as 'the respondent' has been acquitted of the charge under Section 276 CC of the Income Tax Act, 1961 (for short "the Act of 1961").

2. Facts in brief of the case are that the Income Tax Officer after getting sanction from the Commissioner of Income Tax submitted a criminal complaint against the respondent under Section 276 CC of the Act and it was alleged that the respondent did not submit his Income Tax Returns under Section 139(1) of the Act of 1961, within the stipulated time on or before 31.07.1978 and the assessee filed his returns on 31.12.1980.

Thereafter, proceedings under Section 271(1) of the Act of 1961, were initiated vide notice dated 31.12.1981, but the respondent failed to submit any explanation. Then a reminder was issued but no reply was submitted. Thereafter the Income Tax Officer imposed penalty of Rs.2200/- on the respondent under Section 271(1) of the Act of 1961, vide order dated 10.11.1984.

3. In support of the complaint, the appellant examined PW-1 D.P Govil. Thereafter charges were framed against the respondent under Section 276 CC of the Act of 1961. The accused-respondent denied the charges and claimed trial. Thereafter statements of PW-1 D.P Govil were again recorded with PW-2 H.C Nagpal. Thereafter explanation of the respondent was recorded under Section 313 Cr.P.C. The respondent denied the allegations but no defence evidence was produced. The respondent was acquitted vide judgment dated 31.08.1991.

4. Learned counsel for the appellant submits that the allegation against the respondent was that a delayed income tax return, pertaining to the assessment year 1978-79 was submitted by him after a lapse of more than 28 months and this fact has also been established on the record, by way of leading evidence furnished by the Income Tax Department. Counsel submits that under these circumstances there was no reason or occasion available with the Trial Court to acquit the respondent from the above charges. Counsel submits that under these circumstances interference of this Court is warranted.

5. Per contra, learned respondent opposed the arguments raised by the counsel for the petitioner and submitted that though

there was some delay in filing the income tax return but the delay was neither willful nor any intention was there which attracts the principle of 'mensrea'. Counsel submits that after appreciating the evidence available on the record, a cogent & reasoned judgment has been passed in favour of the respondent by giving him benefit of doubt. Hence under these circumstances interference of this court is not warranted.

6. Heard and considered the submissions made at Bar and perused the material available on the record.

7. The sole case of the prosecution is that the respondent has failed to comply with the provisions contained under Section 139(1) of the Act of 1961 and he has submitted the income tax returns after a delay of 28 months which amounts to an offence under Section 276CC of the Act, 1961. It is relevant to extract the provisions under Sections 139(1) and 276CC of the Act of 1961, hereunder:-

> "**139. Return of income.**—
>
> (1) Every person,—
>
> (a) being a company or a firm]; or
>
> (b) being a person other than a company or a firm, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax,
>
> shall, on or before the due date, furnish a return of his income or the income of such other person during the previous year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed.

276CC. Failure to furnish returns of income. If a person wilfully fails to furnish in due time the return of fringe benefits which he is required to furnish under sub-section (1) of section 115-WD or by notice given under sub-section (2) of the said section or section 115-WH or the return of income which he is required to furnish under sub-section (1) of section 139 or by notice given under clause (i) of sub-section (1) of section 142 or section 148 or section 153-A he shall be punishable,

> (i) in a case where the amount of tax, which would have been evaded if the failure had not been discovered, 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 imprisonment for a term which shall not be less than three months but which may extend to two years and with fine:

Provided that a person shall not be proceeded against under this section for failure to furnish in due time the return of fringe benefits under sub-section (1) of section 115-WD or return of income under sub-section (1) of section 139]

> (i) for any assessment year commencing prior to the 1st day of April, 1975; or
>
> (ii) for any assessment year commencing on or after the 1st day of April, 1975, if-
>
> > (a) the return is furnished by him before the expiry of the assessment year [or a return is furnished by him under sub-section (8A) of section 139 within the time provided in that sub-section]; or
> >
> > (b) the tax payable by such person, not being a company, on the total income determined on regular assessment, as reduced by the advance tax or self-assessment tax, if any, paid before the expiry of the assessment year, and any tax deducted or collected at source, does not exceed ten thousand rupees."

8. The above provision applies to the situations where an assessee has failed to file the return of income as regulated under

Section 139(1) of the Act of 1961. The proviso to Section 276CC of the Act of 1961 gives same relief to the genuine assessee. The clause (ii)(b) of the proviso to Section 276CC of the Act of 1961 provides that if the tax determined by the regular assessment has reduced to advance tax paid and tax deducted at source does not exceed Rs3,000/-, such an assessee shall not be prosecuted for not furnishing the return under Section 139(1) of the Act of 1961. Therefore, this proviso takes care of genuine assessee who either file the returns belatedly but within the end of the assessment year or those who have paid substantial amounts of their tax due by pre-paid taxes from the rigour of the prosecution under Section 276CC of the Act of 1961. As per the defence set up by the respondent, as per his return the payable tax was Rs.1,279/- but the same was in excess to the agreed assessment, hence, his disassessment was against the agreed assessment, therefore, treating the same as the matter finally decided, the returns were submitted with slight delay bonafidely and there was no ill motive or bad intention behind it. There was no 'mens rea' on the part of the respondent in submitting the delayed returns.

9. Legislature in its wisdom by the Tax Law Amendment and Miscellaneous Provisions Act, 1986 added Section 278E to the Act w.e.f. 10th September, 1986. It provides that in any prosecution for the offence under this Act which requires "culpable mental state" on the part of the accused, the Court shall presume the existence of such mental State. The burden is shifted to the accused to prove that he had no such mental state. As per the explanation, the culpable state would include "intention", "motive"

and "knowledge". It further provide that the absence of such culpable mental state shall have to be proved by the accused in defence beyond reasonable doubt.

10. For bringing home the charge against the accused for his conviction under Section 276CC of the Act of 1961, it is essential on the part of the Income Tax Department to prove that there was willful attempt to evade any tax, penalty or interest chargeable. The High Court of Karnataka has dealt with this issue in Crl.R.P.No.329/2019 and has held as under:-

> "The gist of the offence under Section 276C(1) is the willful attempt to evade any tax, penalty or interest chargeable or impossible or under reports of the income. What is made punishable is "attempt to evade tax, penalty or interest" and not the "actual evasion of the tax". The expression "attempt" is nowhere defined under the Act or IPC. In legal parlance, an "attempt" is understood to mean "an act or movement towards commission of an intended crime". It is doing "something in the direction of commission of offence". Viewed in that sense "in order to render the accused/respondent guilty of attempt to evade tax, penalty or interest, it must be shown that he has done some positive act with an intention to evade any tax, penalty or interest" as held by the Hon'ble Supreme Court in PREM DAS V/s. INCOME TAX OFFICER (1999) 5 SCC 241 that a positive act on the part of the accused is required to be established to bring home the charge against the accused for the offence under section 276C(2) of the Act"

11. Hon'ble Supreme Court of India in the case of **Suresh Kumar Agarwal Vs. Union of India** reported in **(2023) 146 taxmann.com 27(Jharkhand)**, has held that when the income tax officer has levied interest on filing of the return, it must be presumed that the income tax officer has extended the time for filing the return after satisfying himself that there was ground for delay in filing the return. Therefore, no sentence can be imposed

under that provision unless the element of mens rea is established and the intention of the legislature is that the penalty should serve as a deterrant.

12. While dealing with Section 276C(2) of the Act of 1961, the Hon'ble Apex Court in the case of **Prem Das Vs. Income Tax Officer** reported in **(1999) 5 SCC 241** has held as under:-

> "Willful attempt to evade any tax, penalty or interest chargeable or imposable under the Act under Section 276-C is a positive act on the part of the accused which is required to be proved to bring home the charge against the accused"

It has been held by the Apex Court that for holding an accused guilty under Section 276CC of the Act of 1961, 'mens rea' is a necessary ingredient. Hence, in absence of proof of 'mens rea' and on the basis of mere presumption under Section 132(4-A), the conviction cannot be sustained.

13. In the above case, the Hon'ble Apex Court has clearly held that the complainant in order to bring home the guilt of the accused for the offence punishable under Section 276C of the Act of 1961 has to prove the mens rea of the accused for non-payment of tax or attempt to evade the tax. But in the present case, the accused respondent has explained the reasons, in detail, about the delay in filing the income tax returns and depositing the entire tax amount with penalty subsequently. Therefore, the complainant/ appellant has failed to prove that the respondent had mens rea to evade the payment of tax. Accordingly, the Income Tax Department has failed to prove the guilt of the accused respondent beyond all the reasonable doubts.

14. Considering all the above factual aspects of the matter, the trial Judge came to the conclusion that even no notice was given to the respondent prior to filing of the complaint against him. Hence, it was found that the offence under Section 276CC of the Act of 1961 was not found to be proved against the respondent.

15. It is the settled principle of law that while appreciating the evidence, in an appeal against acquittal, if the appellate Court finds that two views are plausible, then the view favouring the innocence of an accused must be taken into consideration.

16. In view of the above, this Court does not find any perversity in the findings arrived at by the trial Court in acquitting the accused under the aforesaid offences.

17. Accordingly, the instant Criminal Appeal is dismissed. The judgment of acquittal of the accused respondent, passed by the Court below, is upheld.

18. The record of the Court below be sent back forthwith.

(ANOOP KUMAR DHAND),J

Diksha/5