Prem Dass

Vs

Income Tax Officer

Criminal Appeal No. 518 of 1992

(G. B. Pattanaik, and M.B. Shah JJ)

09.02.1999

JUDGMENT

G.P. Pattanaik J

1. The appellant was convicted under Section 276C of the Income Tax Act, on a complaint being filed that he had incorrectly made a verification on the income tax return for the Assessment Year 1980-81. For his such conviction, the learned Chief Judicial Magistrate, Faridabad, sentenced him to undergo imprisonment for six months and to pay a fine of Rs. 1000/-, in default, to further undergo imprisonment for a period of three months. He was also convicted under Section 277 of the Income Tax Act and sentenced to undergo R.I. for six months but the sentences awarded had been ordered to run concurrently. The appellant preferred an appeal to the Sessions Judge, who by Judgement dated 7th of October, 1988, came to the conclusion that the accused-appellant is entitled to benefit of doubt and accordingly he acquitted him of the charges levelled against him. The department moved the High Court against the aforesaid acquittal passed by the learned Sessions Judge and the High Court by the impugned Judgment, allowed the appeal and set aside the Judge of acquittal passed by the learned Sessions Judge and affirmed the conviction and sentence of the appellant passed by the learned Judicial Magistrate. Learned Sessions Judge, after analysing the charges and evidence led by the prosecution in support of the said charges, came to the conclusion that the gravamen of indictment against the accused lay in the fact that he had filed an incorrect returns of income from his transportation business and intentionally withheld books of account seized during search made under Section 132 of the Income Tax Act and had made wrong verification of the statements filed in support of the return. But, according to the learned Sessions Judge, the charges were not only vague but also the prosecution evidence was totally insufficient to infer the criminal intent of the accused-assessee and, there was nothing on record to pinpoint the identity, veracity or falsity of entries in the books of account on which the entire prosecution case was sought to be founded upon. The learned Sessions Judge also came to the conclusion that no evidence whatsoever had been examined by the prosecution to lend support to the opinion formed by the Income Tax Officer in the assessment proceedings. The Sessions Judge also took into account the fact that the appeal filed by the accused-assessee in respect of the relevant assessment year was partly allowed by the Commissioner of Income Tax (Appeal), Chandigarh by Order dated 12.3.1987 and the said appellate authority had recorded that the income estimated by the Income Tax Officer was not based on reasonable data and, therefore a direction was issued to the said Income Tax Officer to work out the commission at 8 per cert for all assessment years instead of 10 per cent estimated by him and on account of such order of the appellate authority, the tax liability of the assessee stood substantially reduced and this itself demonstrates that on criminal liability could be fastened on the assessee. With these findings the Sessions Judge came to the conclusion that the prosecution is held to have failed to bring the guilt home to the accused beyond reasonable manner of doubt. The High Court however, in the

impugned judgment re-appraised the evidence of Income Tax Officer PW3 and in view of presumption available under Section 132(4A) of the Income Tax Act, reversed the order of acquittal on a finding that the learned Sessions Judge was in error to hold that the prosecution case has not been established beyond reasonable doubt.

2. Mr. Salve, learned Senior Counsel, appearing for the appellant contended that though the powers of the High Court while hearing an appeal against the acquittal are as wide and comprehensive as in an appeal against a conviction, but the High Court is required under the law to examine the reasons on which the order of acquittal was based and would be justified in interfering with an order of acquittal, after being satisfied that the view taken by the acquitting Judge was clearly unreasonable. According to Mr. Salve, if on the evidence two views are possible, one, supporting an order of acquittal and the other indicating conviction, the High Court would not be justified in interfering with an order of acquittal merely because it feels that it would, sitting as a Trial Court, have taken the other view. In the case in hand, not only the High Court has not considered the reasons given by the Sessions Judge in acquitting the accused-appellant but also the order of acquittal has been reversed merely by reference to the presumption arising out of Section 132(4A) of the Income Tax Act and in this view of the matter the conclusion is inescapable that the High Court committed serious error in interfering with an order of acquittal passed by the Sessions Judge. Mr. Salve further contended that the penalty proceeding in question having ended in favour of the assesse-accused on a conclusion that the additions made in the assessment was purely on the basis of a difference of opinion as to the estimate made by the assessee and the estimate made by the department and, therefore, there has not been a case of concealment of income or furnishing of inaccurate particulars of income, the High Court committed serious error in interfering with an order of acquittal. It is in this connection, Mr. Salve brought to be notice of the Court the legislative mandate engrafted in Section 279(1A) of the Income Tax Act. He also pointed out to us the earlier order of this court dated 28th of August, 1997, where-under this Court had called upon the Income Tax Officer to tell whether the prosecution launched against the appellant and which has led to his conviction can independently be sustained when penalty proceedings have culminated in favour of the appellant but there has been no response from the said Income Tax Officer.

3. Mr. Shukla, the learned Senior Counsel, appearing for the respondent on the other hand submitted that the criminal proceeding is wholly independent of the penalty proceedings under the Income Tax Act and, therefore, a conviction in a criminal proceedings cannot be interfered with on the basis of findings of the appellate authority or the tribunal in a penalty proceeding. With reference to Section 279(1) of the Income Tax Act and its effect on the pending prosecution, Mr. Shukla submitted that the said provision has no application as the Commissioner or the Chief Commissioner has not reduced or waived penalty and it is only the Income Tax Appellate Tribunal which has cancelled the penalty in question and by way of written information, Mr. Shukla has intimated the court that against the order of the appellate tribunal cancelling the penalty, an application under Section 256(1) of the I.T. Act for making a reference has been filed and is still pending before the tribunal.

4. In view of the rival submissions at the bar, the first question that requires consideration is whether the impugned order of the High Court can be held to be in accordance with the parameters fixed for interference with an order of acquittal. There cannot be any dispute with the proposition that the plentitude of power available to the court hearing an appeal against the acquittal is the same as that available to a court hearing an appeal against an order of conviction. But at the same time it is well settled by a catena of decisions of this Court that the court will not interfere with an order of acquittal solely because different plausible view may arise on the evidence and the court thinks that the view taken by the trial Court of the evidence is not correct. In other words, the court must come

to the conclusion that the view taken by the trial Judge while acquitting cannot be the view of a reasonable man on the materials on record. It is also well settled that the Court of appeal must examine the reasons on which an order of acquittal is based and must reach the conclusion that the view taken by the acquitting Judge was clearly unreasonable. It has also been held by this Court that if the evaluation of the evidence made by the courts below while recording an order of acquittal does not suffer from any illegality or manifest error and the grounds on which the said order of acquittal is based unreasonable, then the High Court should not disturb the said order of acquittal. Bearing in mind the aforesaid principles and on examining the Judgment of the learned Sessions Judge and the grounds on which the said learned Sessions Judge recorded an order of acquittal, as reflected in paragraphs 9, 10 and 11 of the appellate judgment, and the impugned Judgement of the High Court interfering with the said judgment of the Sessions Judge, we have no hesitation to come to the conclusion that the High Court has not considered the reasons and grounds advanced by the learned Sessions Judge while recording an order of acquittal and by merely relying upon the presumption arising out of Section 132(4A) of Income Tax Act, reversed the order of acquittal without reversing the findings arrived at by the Sessions Judge on the evidence on record. The conclusion of the learned Sessions Judge after appreciating the evidence led by the prosecution and after perusing the appellate order of the Commissioner of Income Tax (Appeals) dated 12.3.87, have not been given due consideration by the High Court and the High Court has merely gone by the statutory presumption arising out of Section 132(4A) of the Act. To attract the provisions of Section 276C of the Income Tax Act the prosecution has to establish that the accused willfully attempted in any manner to evade any tax, penalty or interest chargeable or imposable under the Act.

5. To attract the provisions of Section 277 the prosecution is required to establish that the accused made a statement in any verification under the Act which he either knows or believes to be false, or does not believe to be true. The relevant part of Sections 276C and 277 are extracted hereunder for better appreciation of the point in issue :

> "276C. (1) If a person willfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or impossible under this Act, he shall, without prejudice to any penalty that may be impossible on him under any other provision of this Act, be punishable,-....."

> "277. If a person makes a statement in any verification under this Act or under any rule made thereunder, or delivers an account or statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable.-....."

6. Section 132 of the Income Tax Act deals with Search and Seizure and Sub-section (4)(A) thereof stipulates that where any books of account, other documents, money, bullion, jewellery on other valuable article or thing are or is found to be in the possession or control of any person in the course of a search, then it may be presumed that such books of account or other documents belongs to such person and that the contents of such books of account are true and that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person are in that person's handwriting. The aforesaid provision is extracted hereunder in extenso:-

> "132(4)(A) Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search, it may be presummed -

(i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such persons;

(ii) that the contends of such books of account and other documents are true; and

(iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested."

7. We fail to appreciate how applying the presumption under Section 132(2)(A) the ingredients of the offence under Sections 276C and 277 can be to have been established as has been held by the High Court.

8. Willful attempt to evade any tax, penalty or interest chargeable or impossible under the Act under Section 276C is a positive act on the part of the accused which is required to be proved to bring home the charge against the accused. Similarly a statement made by a person in any verification under the Act can be an offence under Section 277 if the person making the same either knew or believe the same to be false or does not believe to be true. Necessary mensrea, therefore, is required to be established by the prosecution to attract the provisions of Section 277. We see nothing in Section 132(4)(A) which would establish the ingredients of aforesaid two criminal offence contemplated under Sections 276C and 277 of the Indian Income Tax Act. It may be noticed at this point of time that the Tribunal while interfering with the penalty imposed under Section 271(1)(C) of the Act came to a positive finding that there is no act of concealment on the part of the assessee and he had returned the income on estimate basis. The Tribunal, further found that it is a case purely on difference of opinion as to the estimates and not a case of concealment of income or even furnishing of inaccurate particulars of income.

9. In the aforesaid premises, the High Court was totally in error in interfering with the order of acquittal passed by the learned Sessions Judge by an elaborate and well reasoned judgment. We have no hesitation to come to the conclusion that the ingredients of offence under Sections 276C and 277 of the Income Tax Act have not been established by the prosecution beyond reasonable doubt, and therefore, the appellant cannot be convicted of the offence under the said Sections.

10. We also find sufficient force in the contention of Mr. Salve that the legislative mandate in Section 279(1) of the Income Tax Act has not been borne in mind by the High Court while interfering with an order of acquittal. Mr. Shukla, no doubt has indicated that the said provision will have no application as the penalty imposed has not been reduced or waived by an order under Section 273A. We do not agree with the aforesaid literal interpretation of the provisions of Section 279(1A) of the Act, when we find that the Commissioner of Income Tax (Appeal) has reduced the penalty. Further the tribunal has totally set aside the order, imposing penalty could not have been lost sight of by the High Court while considering the question whether the order of acquittal passed by the Sessions Judge has to be interfered with or not particularly, when the gravamen of indictment relates to filing of incorrect return and making wrong verification of the statements filed in support of the return, resulting in initiation of penalty proceedings. Bearing in mind the legislative intent engrafted under Section 279(1A) of the Income Tax Act and the conclusion of the learned Sessions Judge, on appreciation of evidence not having been reversed by the High Court and the grounds of

acquittal passed by the Sessions Judge not having been examined by the High Court, we have no hesitation to come to the conclusion that the High Court was not justified in interfering with an order of acquittal.

11. In the aforesaid circumstances, we set aside the impugned order of the High Court and acquit the appellant of the charges levelled against him. The order of acquittal passed by the Sessions Judge is affirmed and this criminal appeal is allowed. The bail bond furnished by the appellant stands cancelled.