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(2004) 04 P&H CK 0010

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal M. NO. 48388 of 2000

Arvind Jain	APPELLANT
Vs	
Asstt. Commissioner of Income Tax (Inv.)	RESPONDENT

Date of Decision: April 15, 2004

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Income Tax Act, 1961 - Section 148, 154, 271, 276C, 277

Citation: (2006) 154 TAXMAN 348

Hon'ble Judges: Satish Kumar Mittal, J

Bench: Division Bench

Judgement

The petitioner has filed the instant petition u/s 482 of the Code of Criminal Procedure for quashing of the complaint dated 30-3-1992 (Annexure P3), filed by the Assistant Commissioner of Income Tax (respondent herein) under sections 276C and 277 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), for the concealment of some amount in his return of income for the assessment year 1981-82.

2. In response to the notice issued u/s 148 of the Act, the petitioner through his counsel filed a reply and submitted that the return already filed by the petitioner be treated as reply to the notice. The assessing authority completed the assessment of the petitioner by making certain additions for the aforesaid assessment year. In respect of the said additions, the assessing authority vide its order dated 15-3-1989, imposed a penalty upon the petitioner u/s 271(1)(c) of the Act. Aggrieved against the said order of penalty, the assessee filed an appeal before the Commissioner (Appeals), who vide his order dated 22-3-1990, confirmed the penalty but reduced the penalty amount from Rs. 70,000 to Rs. 50,000. Aggrieved against the said order, the petitioner preferred the second appeal before the Income Tax Appellate Tribunal, which, vide its order dated 26-8-1992 (Annexure P2), held that for the assessment year 1981-82, the said penalty could not be

upheld and the matter was remanded to the Income Tax Officer to take a fresh decision in accordance with law after hearing the assessee and after calling from him for proof of filing of the original return.

3. Counsel for the petitioner states that even after the remand, no fresh order of penalty has been passed, therefore, the prosecution launched by the assessing authority is liable to be quashed.

4. Learned counsel for the petitioner contends that this petition is squarely covered by the decisions of the Hon"ble Supreme Court in G.L. Didwania and Another Vs. Income Tax Officer and Another, and K.C. Builders and Another Vs. The Assistant Commissioner of Income Tax, .

In the aforesaid judgments, it has been held that if in appeal, the order of penalty is set aside by the appellate authority or the Tribunal, while setting aside the finding recorded by the assessing authority about the making of false statement in respect of the Income Tax return, then the criminal proceedings launched on the same ground can no longer be sustained. It has been also held that levy of penalties and prosecution u/s 276C of the Act are simultaneous. Hence, once the penalties are cancelled on the ground that there is no concealment, the quashing of prosecution u/s 276C is automatic. The assessee cannot be made to suffer and face the rigours of criminal trial when the same cannot be sustained in the eyes of law because the entire prosecution in view of a conclusive finding of the appellate authority/Tribunal that there is no concealment of income becomes devoid of jurisdiction. Once the finding of concealment and subsequent levy of penalties u/s 271(l)(c) has been struck down by the Tribunal, the assessing authority has no other alternative except to correct his order u/s 154 of the Act as per the directions of the Tribunal. It was further held that even if the charge has been framed and the matter is at the stage of prosecution evidence, the criminal prosecution is liable to be quashed because if the trial is allowed to proceed further after the order of the Tribunal, it will be an idle and empty formality to require the assessee to have the order of the Tribunal exhibited as a defence document.

5. Learned counsel for the respondent could not dispute the aforesaid factual and legal position and almost conceded that the case of the petitioner is covered by the aforesaid decisions of the Hon"ble Supreme Court. However, he submitted that he is not in a position to rebut the contention made by learned counsel for the petitioner that after the remand, no fresh order of penalty has been passed, therefore, a liberty be given to the respondent to initiate proceedings in case the penalty is imposed in future.

6. In view of the aforesaid, this petition is allowed and the complaint dated 30-3-1992 (Annexure P3), filed against the petitioner under sections 276C and 277 of the Act and all the consequential proceedings are hereby quashed. It is, however, made clear that in case the assessing authority imposes a penalty in the matter remanded by the Tribunal, it will be open for the department to file a fresh complaint against the petitioner in

accordance with law and this judgment will not stand in their way to that extent.