

**(1983) 10 P&H CK 0010**

## High Court Of Punjab And Haryana At Chandigarh

**Case No:** Criminal Revision No. 507 of 1982

Commissioner of Income Tax

APPELLANT

$$V_S$$

Onkar Nath and Another

RESPONDENT

**Date of Decision:** Oct. 28, 1983

### Acts Referred:

- Income Tax Act, 1961 - Section 292A

**Citation:** (1984) 39 CTR 315 : (1985) 151 ITR 744 : (1984) 17 TAXMAN 59

**Hon'ble Judges:** Ajit Singh Bains, J

### Bench: Single Bench

**Advocate:** Ashok Bhan and A.K. Mittal, for the Appellant; J.S. Bawa, for the Respondent

## Judgement

Ajit Singh Bains, J.

The respondents were convicted and sentenced by the learned Sub-Divisional Judicial Magistrate, Pathankot, vide his judgment and order dated November 21, 1980, as under:

Onkar  
Nath -  
respondent

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U/s. 277,  
I.T. Act,  
1961.

U/s. 193,  
IPC.

R.I. for six months and to  
pay a fine of Rs. 1,000 or  
in default of payment of  
fine, to undergo further  
R.I. for two months.

U/s. 465, R.I. for nine months.  
IPC.

U/s. 471, R.I. for nine months.  
IPC.

Kali

Dass-respondent

:

U/s. 278, R. I. for six months.  
1.T. Act,  
1961.

U/s. 193, R.I. for six months and a  
IPC. fine of Rs. 1,000 or in  
default of payment of  
fine, further R.I. for two  
months.

U/s. 465, R.I. for nine months.  
IPC.

U/s. 471, R.I. for nine months.  
IPC.

On appeal, the learned Ist Additional Sessions Judge, Gurdaspur, maintained the conviction of the respondents and set aside their sentence of imprisonment and fine but gave them the benefit of probation under the Probation of Offenders Act, 1958, and ordered that they be released on probation on their furnishing bonds in the sum of Rs. 3,000 with one surety each in the like amount, undertaking to appear and receive the sentence as and when called upon to do so by the court and to keep peace and be of good behaviour in the meantime. Each of the respondents was also directed to pay Rs. 1,000 to the State as litigation cost. The Commissioner of Income Tax has challenged the aforesaid order of the appellate court by way of this revision petition.

2. The ground taken by the Commissioner is that the impugned order is contrary to the express provisions of the statute, i.e., Section 292A of the I.T. Act, according to which nothing contained in Section 360 of the Code of Criminal Procedure, 1973, or in the Probation of Offenders Act, 1958, shall apply to a person convicted of an offence under the I.T. Act, unless that person is under 18 years of age.

3. It is true that u/s 292A of the I.T. Act, 1961, the benefit of probation cannot be allowed to a person who is convicted of an offence under the I.T. Act and who is above 18 years of age at the time of the commission of the offence. But Section 292A was inserted in the I.T. Act, 1961, by the Taxation Laws (Amendment) Act, 1975, with effect from October 1, 1975, while the offence in question was committed by

the respondents prior to that in September, 1967 or July, 1968. It is also true that when the prosecution against the respondents was launched in the year 1980, the aforesaid Section 292A was in force and the conviction was recorded after the coming into force of that provision regardless of the assessment year involved. However, the assessment year involved was earlier to the coming into force of Section 292A of the I.T Act. Although, in my view, the benefit of probation should not have been given to the respondents by the appellate court in view of the aforesaid provision, since the matter pertained to the assessment year 1968-69 and the respondents have been given the benefit of probation, it would not advance the interests of justice, if at this stage, after lapse of so many years, the respondents are sentenced to imprisonment. The respondents are first offenders and the appellate court while giving them the benefit of probation has observed that "keeping in view the fact that the appellants have made a clean breast of their guilt before the trial court and had thrown themselves at its mercy, the ends of justice would be met if they are given the benefit of probation". For the reasons recorded, this petition is dismissed.