

(1985) 01 P&H CK 0021

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No's. 6164-M, 6165 and 6166 of 1983

Murari Lal and Others

APPELLANT

Vs

Income Tax Officer "A" Ward

RESPONDENT

Date of Decision: Jan. 18, 1985

Acts Referred:

- Income Tax Act, 1961 - Section 276C, 278B

Citation: (1984) 48 CTR 127 : (1985) 154 ITR 227 : (1985) 21 TAXMAN 301

Hon'ble Judges: K.P.S. Sandhu, J

Bench: Single Bench

Advocate: B.S. Gupta, for the Appellant; Ashok Bhan and Ajay Kumar Mittal, for the Respondent

Judgement

Sandhu, J.

This is a petition u/s 482 of the Code of Criminal Procedure, 1898, filed by Murari Lal, Mangey Ram, Mahabir Parshad and Ballu Ram, partners of a firm, Messrs Mohinder Pal Ajay Kumar, Timber Merchants, Kath Mandi, Hissar, praying therein that the complaint dated March, 31, 1983, filed u/s 276C of the I.T. Act, 1961, by the ITO, Hissar (annexure P-4 to this petition), and the proceedings taken thereon be quashed.

2. The facts which gave rise to this petition are that petitioner No. 5, the firm Messrs Mohinder Pal Ajay Kumar, Timber Merchants, Kath Mandi, Hissar, is an Income Tax assessee and is being assessed to Income Tax by the ITO, A-Ward, Hissar. On August 31, 1981, the firm, Messrs Mohinder Pal Ajay Kumar, filed a return of income dated August 31, 1981, along with the copies of statement of accounts, i.e., statutory income chart, profit and loss account, statement of partners account, balance-sheet, etc., for the assessment year 1981-82, relevant to the accounting year 1980-81, declaring an income of Rs. 75,224. The return was signed and verified by Murari Lal, the petitioner. He also put his signature on the statement of accounts annexed to

the return. The petitioner firm maintained the books of account, e.g., rakar, khata, purchase and sale vouchers, bills, etc. The business premises of the petitioner were surveyed u/s 133A of the I.T. Act, 1961, on July 10, 1981, and during the survey, an inventory of stock-in-trade in respect of the stock of timber was prepared and the books of account of the petitioner firm were checked and signed by the I.T. Inspector. The books of account showed an opening balance of stock as on April 1, 1981, at Rs. 61,450 which was the closing stock of March 31, 1981. At the time of preparing the inventory of stock-in-trade on July 10, 1981, stock valued at Rs. 1,38,970.51 was found in the business premises of the petitioner firm while the stock as per books of account of the petitioner firm worked out to Rs. 1,05,019.10 as on July 10, 1981, which was the closing stock of July 9, 1981. Thus, there was an excess in stock of about Rs. 35,000 on the date of survey. The statement of Murari Lal, the petitioner, was recorded at the time of the survey. The books of account were signed by the I.T. Inspector at the time of the survey and were summoned and impounded by the ITO on July 15, 1981. In the books of account for the assessment year 1981-82 relevant to the accounting year 1980-81, the petitioner firm showed closing balance of stock of Rs. 61,450 and showed a profit of Rs. 68,526.55 in the timber trading account, but later on after the survey and the completion of the valuation of the stock found during the survey, the petitioner firm added Rs. 35,000 to the profit in the timber trading account by mentioning "To profit to Supl. to P & L a/c" and likewise the petitioner firm showed the closing stock of the value of Rs. 61,450 and later on, as aforesaid, added the stock of Rs. 35,000 by mentioning the words "Add closing stock valuation" making a total stock of Rs. 96,450. In this manner, the petitioners attempted to conceal the correct particulars of the income and drew an additional amount in their books of account for the aforementioned assessment year by mentioning the words "To profit to Supl. P & L a/c". In this way, the petitioner firm wilfully attempted to evade tax, penalty or interest chargeable or imposable on it by preparing false books of account which were in their possession and control and made false entries therein regarding the stock held by it and wilfully omitted to make entries of profit in those books and the act of omission and of making false entries in those books enabled the petitioner firm to evade tax, penalty or interest chargeable or imposable on it and thus committed an offence punishable u/s 276C of the I.T. Act, 1961.

3. Mr. Balwant Singh Gupta, learned counsel for the petitioner, has contended at the outset that it is nowhere alleged by the complainant that Mangey Ram, Mahabir Parshad and Ballu Ram, petitioners, were in charge of, and responsible to, the firm for the conduct of the business of the firm at the time of the alleged offence. Therefore, no criminal liability could be fixed on them. He has taken me through the provisions of Section 278B of the I.T. Act which reads as under :

"278B. (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well

as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :...

Explanation.--For the purposes of this section,--

(a) "company" means a body corporate, and includes-

(i) a firm, and

(ii) an association of persons or a body of individuals whether incorporated or not; and..."

4. I find considerable force in the contention of the learned counsel. In view of the provisions of Section 278B of the I.T. Act, the prosecution of these three petitioners is misconceived and is nothing short of an abuse of the process of the court. However, as far as petitioner No. 1, namely, Murari Lal is concerned, admittedly, he submitted the return. According to the allegations contained in the complaint, he was a person who was in charge of, and responsible to, the firm for the conduct of the business of the firm and he was actually the person who signed and verified the particulars of the return and submitted the same to the Department. Resultantly, the complaint and all the proceedings taken in consequence of the complaint against the three petitioners, namely, Mangey Ram, Mahabir Parshad and Ballu Ram are quashed. However, Murari Lal, the petitioner, would be at liberty to take all other points before the learned trial Magistrate raised by him in the petition. This petition thus stands disposed of.