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**(2009) 05 MP CK 0017**

**Madhya Pradesh High Court (Indore Bench)**

**Case No:** None

Union of India (UOI)

APPELLANT

Vs

Bhupendra Singh

RESPONDENT

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**Date of Decision:** May 5, 2009

**Acts Referred:**

- Income Tax Act, 1961 - Section 276, 278

**Citation:** (2009) 318 ITR 270

**Hon'ble Judges:** N.K. Mody, J

**Bench:** Single Bench

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### **Judgement**

N.K. Mody, J.

This appeal has been filed challenging the judgment dated March 2, 1995, rendered by ACJM, Indore in Criminal Case No. 04/1990, whereby the respondent was prosecuted for an offence punishable under Sections 276 and 278 of Income Tax Act 1961, was acquitted.

2. In short the case of the prosecution before the learned court below was that respondent/accused was working in a private limited company at Dewas. The respondent has filed the return after the delay of 22 months for the year 1982-83. Further case of the prosecution was that by not filing the return in time, the respondent has committed an offence which is punishable under the provisions of Income Tax Act. After framing of charges and recording of evidence the learned court below acquitted the respondent/s for the offence mentioned hereinabove against which present appeal has been filed.

3. Learned Counsel for the appellant submits that the impugned judgment passed by the learned trial court is illegal and deserves to be set aside. It is submitted that to prove the offence sufficient evidence was on record. It is submitted that the findings of the learned court below in presence of the evidence available on record is perverse and deserves to be set aside. It is submitted that the appeal filed by the

appellant be allowed and the impugned judgment passed by the learned trial court be set aside and the respondent be convicted.

4. The prosecution has filed the documents and has also examined the witnesses P. W. 1 Banwarilal and P. W. 2 S. S. Kulkarni.

5. In the matter of Bihari Nath Goswami v. Shiv Kumar Singh reported in [2004] 9 SCC (Cri) 1435 the hon"ble apex court has held that there is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal case is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. The hon"ble apex court has further held that in a case where the admissible evidence is ignored, a duty is cast upon the appellate court to reappraise the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. It is further held that the principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for interference. In the matter of State of M.P. v. Bacchudas alias Balram [2007] 3 SCC (Cri) 87 the hon"ble apex court has held that there is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappraise the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly reasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for

interference.

6. Having considered all the aspects of the matter and after reappreciating the evidence adduced by the prosecution appellant, this Court is satisfied that this is not a case in which this Court may be justified in interfering with an order of acquittal passed by learned trial court. The reasons given by the trial court for acquitting the respondent appears to be reasonable and are based on evidence. It is well-settled that even if on the basis of the same evidence, if other view is possible, the appellate court will not be justified in reversing the order of acquittal if the same is based on evidence on record and the view taken is a possible and reasonable view.

7. In view of this, this Court finds no merit in this appeal and the same is, accordingly, dismissed.

8. Certified copy as per rules.