(2008) 03 MP CK 0036

Madhya Pradesh High Court (Indore Bench)

Case No: None

Harkawat and Co. and Others		APPELLANT
	Vs	
Union of India (UOI)		RESPONDENT

Date of Decision: March 17, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 245, 482
- Income Tax Act, 1961 - Section 194A, 201, 276C, 277, 278B

Citation: (2008) 302 ITR 7

Hon'ble Judges: S.C. Vyas, J

Bench: Single Bench

Final Decision: Allowed

Judgement

S.C. Vyas, J.

This is a petition filed u/s 482 of the Code of Criminal Procedure, 1973, for quashment of the prosecution of the present petitioners under sections 276C read with Section 278B of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), in Criminal Case No. 14 of 1996 pending in the court of Chief Judicial Magistrate, Ratlam.

2. According to the prosecution case, the present petitioner No. 1 is a partnership firm and petitioners Nos. 2 and 3 are its partners. They were engaged in business of cigarette. They made payment of interest to the manufacturer company in the assessment year 1984-85 but tax was not deducted at source in accordance with the provisions of Section 194A of the Act and was not deposited in the Central Government''s account as provided in Rule 30 of the Income Tax Rules, 1962. After getting proper sanction, a criminal complaint against the petitioners was filed for commission of the aforesaid offences before the CJM, Ratlam. 3. It has been averred by the petitioners that penalty imposed by the Revenue was set aside by the Income

Tax Appellate Tribunal, vide order dated August 20, 1993, passed in I. T. A. No. 1165/Ind/88 and in view of the judgment of the apex court reported in the matter of K.C. Builders and Another Vs. The Assistant Commissioner of Income Tax, , prosecution cannot be sustained when the penalty has already been set aside by the Income Tax Appellate Tribunal.

3. This ground was agitated before the trial court and the revisional court as well unsuccessfully and both the courts below have negatived the contention on the ground that stage of discharge u/s 245 of the Code has already been passed and, therefore, after framing of charge, the petitioners cannot be discharged. Similar question was considered by this Court in the matter of S.S.R. Pirodia and Others Vs. Union of India (UOI), vide order dated December 14, 2007, in M. Cr. C. No. 683 of 2007, holding that when the Income Tax Appellate Tribunal has already decided that it was not a case of concealment of income and penalty has been set aside, then prosecution under sections 276C, 277 and 278B of the Act cannot sustain. The same analogy applies in the facts of the present case also. In the facts of the present case, the Income Tax Appellate Tribunal in I.T.A. No. 1165/Ind/88, vide order dated August 20, 1993, has held that the facts and circumstances of the case did not justify the levy of penalty. The prevailing circumstances have been completely ignored by the Assessing Officer when admittedly the assessee had deducted the TDS of Rs. 34,552 from the amount of interest credited to the account of the party, even though late, but it has already suffered interest u/s 201(1A) of the Act. The penalty has been levied in disregard to the principles laid down by the apex court in the matter of Hindustan Steel Ltd. Vs. State of Orissa, as also in the matter of Government of India Vs. Citedal Fine Pharmaceuticals, Madras and Others, "We cancel the penalty levied and allow the assessee''s appeal".

4. The above order shows that the appeal preferred by the present petitioner was allowed by the Income Tax Appellate Tribunal and penalty imposed by the Department has already been set aside and basis of prosecution has already gone. In these circumstances; the principles laid down by the apex court in the matter of K.C. Builders and Another Vs. The Assistant Commissioner of Income Tax, are squarely applicable in the facts of present case also and, therefore, prosecution is not sustainable.

5. Consequently, the petition succeeds and is allowed. The prosecution of the present petitioners in the aforesaid case is hereby quashed.