

## Vijay Singh Vs Union of India (UOI) and Another

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

**Date of Decision:** March 7, 2005

**Acts Referred:** Constitution of India, 1950 " Article 14  
Income Tax Act, 1961 " Section 201(1A), 276B, 278B

**Citation:** (2005) 199 CTR 653 : (2005) 278 ITR 467 : (2006) 150 TAXMAN 117

**Hon'ble Judges:** Ashok Kumar Tiwari, J

**Bench:** Single Bench

**Advocate:** H.S. Oberai and P. Prasad, for the Appellant; R.L. Jain, for the Respondent

### Judgement

Ashok Kumar Tiwari, J.

This revision has been filed against the judgment and order dated January 12, 1999, passed by the learned First

Additional Sessions Judge, Indore (Shri Shreeram Sharma), in Criminal Appeal No. 62 of 1996.

2. A prosecution was launched against the applicant along with the co-accused on the ground that they failed to deposit the amount of tax

deducted at source within the period prescribed therefor. The learned Additional Chief Judicial Magistrate (Economic Offences), Indore (Dr. Anil

Pare), vide his judgment dated March 12, 1996, passed in Criminal Case No. 12 of 1987, held the accused persons guilty u/s 276B read with

Section 278B of the Income Tax Act and each of them was sentenced to undergo three months' simple imprisonment with fine of Rs. 2,000 and in

default of fine to undergo further imprisonment for one month. The accused persons, then, filed an appeal against the order of conviction and

sentence. The learned First Additional Sessions Judge Indore vide impugned judgment allowed the appeal of the co-accused and acquitted them,

however, dismissed the appeal filed by the applicant and confirmed the sentence imposed on him. The appeal filed on behalf of appellant No. 1

firm was also dismissed. Hence, this revision has been preferred by the applicant.

3. Learned Counsel for the applicant has submitted that mens rea is a requisite ingredient of the offence u/s 276B of the Income Tax Act, which is

not proved in the present case. Hence, the applicant could not be convicted. This contention of learned Counsel for the applicant cannot be

accepted. In the light of Deputy Commissioner of Income Tax Vs. Modern Motor Works and Others, mens rea is not necessary to be present.

The offence u/s 276B of the Income Tax Act is complete when the tax deducted at source is not deposited in time.

4. The contention of learned Counsel for the applicant is that the prosecution of the applicant was not proper at the belated stage when he had

already deposited the amount of tax deducted at source. He has submitted that in view of the circular dated May 28, 1980, of the Finance

Department, no prosecution should have been launched. Per contra, learned Counsel for non-applicant has submitted that the instructions cannot

replace the relevant provisions of the statute which provide for punishment and the departmental instructions have to give way to these provisions.

5. The aforesaid controversy is squarely covered by the case of Bee Gee Motors and Tractors and Another Vs. Income Tax Officer, The relevant

instructions read thus (page 157) :

The prosecution u/s 276B should not normally be proposed when the amount involved and/or the period of default is not substantial and the

amount in default has also been deposited in the meantime to the credit of the Government. No such consideration will, of course, apply to levy of

interest u/s 201(1A).

6. In the present case, undisputedly the tax deducted at source was deposited when the authorities considered the case for launching prosecution.

The delay in depositing the amount is not substantial in the present case, as the delay is said to be of about five months and some days and the

amount involved is Rs. 28,776, which cannot be said to be very huge. In such a situation, the authorities concerned should have considered the

matter in the light of the instructions contained in the relevant circular. When the conditions for exempting the assessee from prosecution are

available, it will not be open for the authorities then also to have discretion in the matter of launching prosecution. If the contention of learned

Counsel that when the offence is committed, it was the discretion of the authorities concerned to launch the prosecution or not, is accepted, it will

lead to a situation that the authorities concerned may exempt the assessee from prosecution in one set of circumstance and prosecute another

assessee in the same or identical set of circumstances and that would violate article 14 of the Constitution of India. Therefore, the contention of

learned Counsel for the non-applicant cannot be accepted. The relevant provisions of the statute and the instructions quoted above are not

inconsistent with each other. Where there is a conflict between the instructions and the provisions of the statute, no doubt, the provisions of the

statute will prevail and not the instructions. But, in the present case, there is no inconsistency or conflict as such. Therefore, it cannot be accepted

that the instructions will not be applicable. The instructions deal with the situation in which the Department in its discretion may not launch the

prosecution. This discretion has not been exercised properly by the authorities, therefore, the complaint cannot be said to be properly filed. In the

light of Deputy Commissioner of Income Tax Vs. Modern Motor Works and Others, the complaint was liable to be quashed.

7. The trial court as well as the appellate court have not considered this important and vital aspect of the matter, therefore, they have failed in

proper exercise of their jurisdiction. Therefore, the impugned judgments deserve to be quashed. The default pertains to the assessment year 1985-

86 and the prosecution was launched in the year 1987 and the matter is pending since 1999 in this Court only. The applicant is said to be above

62 years of age at the time of filing of this revision and presently he is said to be of about 70 years of age. Looking to the surrounding

circumstances of the case, I do not find it proper to remit the case to initiate the proceedings afresh after exercising the discretion in the light of the

circular issued by the authorities as it will serve no useful purpose. Following Deputy Commissioner of Income Tax Vs. Modern Motor Works and

Others, it will be just and proper to acquit the applicant, as the complaint itself would have been liable to be quashed.

8. Hence, this revision is allowed to the extent of quashing the conviction of the applicant u/s 276B of the Income Tax Act and he is acquitted of

the charge u/s 276B of the Income Tax Act. His bail bonds are discharged.