SMT. JUSTICE T. RAJANI

CRIMINAL APPEAL No.275 OF 2003

JUDGMENT:

This Criminal Appeal is preferred, under Section 378 (4) of the Code of Criminal Procedure, 1973, against the judgment, dated 13.03.2002, passed in Criminal Appeal No.316 of 2000 by the learned Metropolitan Sessions Judge, Hyderabad, by virtue of which, the first appellate Court acquitted accused No.1 for the offences punishable under Section 276C (1) and 277 read with 278B of the Income Tax Act, 1961 (for short 'Act, 1961') and accused No.2 for the offences punishable under Sections 276C (1) and Section 277 of the Act, 1961 by setting aside the judgment of conviction and sentence, dated 01.07.2000, passed in Calendar Case No.23 of 1998 by the learned Special Judge for Economic Offences, Hyderabad.

2. The present appeal is preferred by the Income Tax Department on the grounds that the learned Sessions Judge erred in allowing the first appeal and failed to see the facts of the case that penalty proceedings under Section 271 (1) (c) of the Act, 1961, never came to be dropped, and on the other hand, final penalty order had been passed by the Assessing Officer and the same had been confirmed by the Commissioner of Income Tax (Appeals), and that the lower appellate Court ought to have seen that the Department has filed appeal under Section 260A of the Act, 1961 against the order of the Income Tax Appellate Tribunal, and the same is pending before this Court.

3. Heard the learned Senior Standing Counsel for the appellant and the learned counsel for the respondents, and also the learned Public Prosecutor appearing for the State of Telangana.

4. The first appellate Court by considering the fact that the order of penalty is set aside, which is not disputed by the appellant herein, and by considering the decisions of our High Court in **Assistant Commissioner of Income Tax v. Poorna Cine Threatre (P.) Ltd.**[1]; **Income Tax Officer v. S.M. Traders**[2] and t**he Commissioner of Income Tax v. Tirumala Agencies**[3], wherein it was held that once penalty proceedings are dropped, prosecution for concealment of Income does not survive, acquitted the accused by setting aside the order of the learned trial Court.

5. The learned Standing Counsel appearing for the appellant fairly submits that against the order setting aside the penalty, the Income Tax Department preferred an appeal, wherein the order under challenge was confirmed by a learned Division Bench this Court. A copy of the Judgment, dated 16.09.2014, in Income Tax Tribunal Appeal No.177 of 2003 is also filed by the learned standing counsel. Apart from that, the decision of the Hon'ble Supreme Court in **K.C. Builders and another v. Asst. Commissioner of Income Tax**[4], is also to the effect that it is a settled law that levy of penalties and prosecution under Section 276C are simultaneous. Hence, once the penalties are cancelled on the ground

[1]. 1996 (220) Income Tax Reports 361
[2]. Judgment, dated 01.10.1996 in Crl.Appeal No.556 of 1994
[3]. Judgment, dated 11.12.1996, in Crl.Appeal No.815 of 1994
[4]. 2004 (265) Income Tax Reports 562

that there is no concealment quashing of prosecution under Section 276C is automatic.

6. In view of the above legal position, this Criminal Appeal fails, and consequently, the same is dismissed.

As a sequel, Miscellaneous Applications, if any, pending in the appeal stand closed.

SMT. T. RAJANI, J

November 16, 2018
Mgr