IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-1317-2015(O&M)
Date of decision:-22.5.2018

Income Tax Officer, Ward-1(1), Bathinda

...Petitioner

Versus

Geeta Devi and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Dinesh Goyal, Advocate
for the petitioner.

Mr.Amit Aggarwal, Advocate
for the respondents No.1 to 4.

Mr.Saurav Khurana, DAG, Punjab.

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H.S. MADAAN, J.

Complainant - Income Tax Officer,Ward-1(3), Bathinda had filed a complaint under Sections 276 C and 277 read with Section 278 B of Income Tax Act, 1961 (hereinafter referred to as *the Act*) against M/s Sharma Misthan Bhandar and others on the allegations that accused had been drawing considerable income by sale of sweets, meals and other eatables running their business under the name and style of M/s Sharma Misthan Bhandar situated at The Mall, Bathinda; that such concern had filed return of income tax for the assessment year 1987-88 at Rs.64,720 on 27.7.1987 duly signed and verified by accused Pardeep Kumar as partner of the firm; that statement was accompanied by the statement of computation of income for the year ending 31.3.1987 along with four challans of tax, total amounting to Rs.4,708/- as well as Form No.12 i.e. for making declaration under Section 184(7) of the Act for continuation of registration of the firm; that the income was processed under Section 143(1) of the Act and the return of income was accepted, however, subsequently on perusal of the documents attached with the return Assessing Officer found that certain new credits had been introduced, therefore, with the prior permission from the Deputy Commissioner, Income Tax, Bathinda Range, Bathinda, the Assessing Officer reopened the assessment under Section 143(2)(b); that when permission was granted, notice dated 30.3.1989 and 9.5.1989 under Sections 142(1) and 143(2) were issued to accused to produce evidence in support of the return i.e. all books of the account, purchase and sale of vouchers, pass books details of the new cash credit introduced during the year; that during the course of assessment, accused Pardeep Kumar along with his Accountant and Advocate attended the proceedings and produced the account books before the Assessing Officer, which were examined and it was found that the purchase of empty card board boxes had not been accounted for in the books of account; that as regards the card board boxes, it was admitted that those were included in weight of the sweets at the time of the sale and the sales were not vouched and no day to day stock register was maintained and bill books were also not maintained, therefore, the accused had intentionally created such circumstances to enable itself to evade the tax and penalty chargeable and imposable under the Act, therefore, proviso of Section 145(1) was made applicable and the sales were estimated at Rs.6,50,000 against the declared sales of Rs.5,07,724/- and the gross profit at 45% was applied as against 41.43% shown in the return; that according to return of the income, the assessee had introduced new cash credits as under:

1. Smt.Geeta Devi - Rs.8,500/-
2. Smnt.Savitri Devi w/o Sh.Som Dutt - Rs.5,000/-

Those cash credits were found to be bogus. The Assessing Officer vide order dated 11.7.1989 required the Assessee to produce Savitri Devi and Geeta Devi, however, they failed to put in appearance. In the reply filed, it was stated by Geeta Devi and Savitri Devi, that the creditors were not inclined to come in the Court since that was prohibited by their customs. The Assessing Officer deputed the Inspector to record the statement of the accused Nos.4 and 5 at their residence and their statements were recorded on 28.7.1989, from the perusal of which, the Assessing Officer find that they could not earn the net income of Rs.18,200/- from their respective jobs and credits were found to be bogus, in that way amount of Rs.8500/- and Rs.5,000/- belongs to accused No.1 and these credits had been shown to deflate the income and with intent to evade the tax and penalty chargeable and imposable under the Act, as such, the said amount was added to the income of accused No.1. Geeta

Devi is said to be wife of Pardeep Kumar and Savitri Devi is wife of Som Dutt, partners of the firm. Accused Nos. 4 and 5 had assisted the accused firm in evading the tax, penalty, chargeable and imposable by giving false affidavits and statements of account knowingly it to be false, thus committing offence under Sections 276 C and 278 of the Act. Penalty proceedings under Sections 271 (1)(c) and 273(2)(a) were ordered to be initiated. Accused was aggrieved by the order dated 31.7.1989 passed by the Assessing Officer and preferred an appeal, which however, upheld the addition made on account of cash credits i.e. 13,500/- and 6,000/- on account of sale of bardana. Accordingly it was so done. Departmental proceedings of assessment in the income tax office had been going on.

On a complaint having been filed, accused were summoned and they put in appearance and admitted to bail.

During the pre-charge evidence, the complainant examined ITO Gopi Chand as CW1, who supported the case of complainant and Raghuvirsain Jain (ITO Retd.) as CW2. During the proceedings, accused Som Dutt had died, as such proceedings against him stood abated. Regarding remaining accused, they were charge-sheerted under Section 276-C read with Section 277 & 278(B) of the Act, to which, they pleaded not guilty and claimed trial.

The trial Court had formulated the following points for determination, which are as under:

1) Whether accused Pardeep Kumar, is the partner of accused No.1 and has willfully attempted to evade the tax, penalty and interest chargeable, imposable under

the Income tax Act?

2) Whether accused Geeta Devi and Savitri Devi have assisted accused firm in evading the tax, penalty and interest chargeable, imposable under the Income Tax Act?

3) Whether the complainant has been able to prove its case, as alleged?

The trial Court in the concluding para No.24 has observed as under:

But with the evidence on file it is duly proved on record that accused No.1 M/s Sharma Mishthan Bhandar and accused No.2 Pardeep Kumar being the partner of the firm, filed the income tax return which was processed and it was found that new credits have been introduced and upon permission of the Deputy Commissioner,Income Tax, the assessment was reopened under Section 143(2)(b). Notice was issued which was attended by the accused. During the course of assessment, accused Pardeep Kumar along with accountant and its Advocate attended the proceeding and produced the account books before the Assessing Officer. The same were not relied upon as their maintenance was such which was not subject to verification. On examination of the same, it was found that the purchase of empty Gatta Boxes (Dabbas) have not been accounted in the books of account. The sales were not vouched and no day to day stock *register was maintained. No bill books were also maintained and as such accused deliberately had created such circumstances to enable itself to evade the tax and penalty chargeable and imposable under the I.T. Act 1961. Therefore, the proviso of Section 145(1) was made applicable and the sales were estimated at Rs.6,50,000/- against the declared sales of Rs.5,07,724/- and the gross profit at 45% was applied as against 41.43% shown in the return and it was found that since the assessee No.1 enjoys the income of the sale of sweets meals, Puri, Kachori, Lassi etc. and does purchase sugar, maida, vanaspati etc., no sale on account of Bardana has been credited in its books of account and consequently, on account of said sale of Bardana, Rs.6,000/- were added to its income. The total income was assessed at Rs.2,67,540/- u/S 143(3). Penalty proceedings u/s 271(1)(c) and 273(2) (a) were initiated for furnishing inaccurate particulars of income. Accused aggrieved against that order dated 31.7.89 passed by the Assessing Officer, preferred an appeal, who however, upheld the addition made on account of cash credits i.e. Rs.13,500/- and Rs.6,000/- on account of sale of Bardana. An addition of Rs.58,855/- has been confirmed on account of sale of sweets, meals etc. The assessee filed second appeal against the order of Ld. CIT(A) before the ITAT, Amritsar which was dismissed and upheld the addition. The penalty proceedings were* *initiated and Assessing Officer imposed penalty at the rate of 200% vide order dated 26.2.1992. The accused aggrieved against the said order preferred an appeal before the Commissioner of Income Tax (Appeals), who upheld the penalty regarding unexplained credits of Rs.13,500/- and sale of Bardana amounting to Rs.6,000/-. Second appeal was preferred and ITAT, Amritsar set aside the order dated 16.6.1992 passed by the CIT(A) and remanded the case to CIT(A) for fresh decision. The CIT(A), Bathinda vide order dated 22.4.1999 again confirmed the penalty of Rs.9,500/- at the rate of 100% of the tax sought to be evaded. As such, accused No.1 firm through accused No.2 partner of the firm attempted to evade the tax,penalty chargeable and imposable under the Act.*

The trial Court acquitted accused Geeta Devi and Savitri Devi, whereas convicted accused Pardeep Kumar for the offences under Sections 276-C, 277 and 278-B of the Act and sentenced him thereunder.

Aggrieved by this judgment, the complainant had preferred an appeal to the Court of Sessions, which was marked to learned Additional Sessions Judge (Fast Track Court), Bathinda, who disposed of the appeal vide order dated 22.9.2014 finding that there was no illegality in the impugned judgment of acquittal passed by the trial Court, therefore, the acquittal of respondents No.1 and 2 was upheld. Learned Additional Sessions Judge (Fast Track Court), Bathinda has given the following reasoning while arrived at this conclusion:

After hearing the rival submissions and going through the evidence on record, it is made out that the appellant filed a complaint against the respondents with the allegations that respondents have willfully made an attempt to evade tax, penalty, chargeable and imposable under the Act and accused No.4 & 5(now respondents No.1 & 2) abetted accused no.1 to 3 (now respondents no.3,4, 5) to deflate the income and to enable them to evade tax and penalty and further for furnishing wrong information in the income tax return, respondent no.3, the assessee firm submitted its return of income for the assessment year 1987-1988 showing its income as Rs.64,720 which was duly signed by respondent Pardeep Kumar. Upon scrutiny of documents the Assessment Officer found that some new credits have been shown in the return in the name of Mrs.Sawitri Devi and Mrs.GeetaDevi, who were also partners of the assessee firm. It was also found that purchase of empty gatta boxes(dabbas) have not been accounted for in the account books however admittedly the boxes were included in the weight of sweets at the time of sale of sweets and it was not vouched and no bill book was maintained with respect to sale purchase of these gatta boxes. Therefore, by invoking provisions of Section 145(1) the sales income of the firm was assessed as Rs.6,50,000 which also included the deposits shown in the name of Geeta Devi and Savitri Devi to the tune of Rs.13,500/-. This amount *was shown in the income of assessee firm by the assessment officer on the ground that they have failed to show that they were earning this much amount. The assessment officer admitted in his cross-examination that both these respondents were summoned, who before him in connection with the deposits shown by them in the income tax returns but they did not appear before the assessment officer, then he deputed one Rajinder Singh Inspector to record their statements and on the basis of that statements he came to the conclusion that they could not earn this amount so it cannot be taken their income. Then he included this amount in the income of assessee firm i.e. respondent No.3. It has been rightly contended for the learned counsel for the respondent that Rajinder Singh has not been examined as a witness in the Court who recorded their statements so those statements cannot be taken into evidence as per rules of law of evidence. A criminal Court has to decide the case on the basis of independent evidence. It cannot base the conviction on the report submitted by the Assessment Valuation Officer, on the basis of which the department has made the assessment of the income of the assessee.*

As far as allegations of abetment are concerned, this fact is also be required to be proved by way of cogent and convincing evidence that respondent No1 and 2 abetted the offence by conspiring with the principal accused. In order *to prove the ingredients of the offence of abetment, the Court requires an independent and cogent evidence, which is not there in the instant case, so the learned trial Court has rightly came to the conclusion that the offence of abetment has not been proved to be committed by respondent No.1 and 2.*

From the aforesaid discussion, it is made out that there is no illegality in the impugned judgment of acquittal, passed by learned lower Court. Consequently, the impugned judgment of acquittal of respondents /accused no.1 and 2, dated 23.9.2011, passed by the learned trial Magistrate are upheld and the appeal being devoid of any merit, is dismissed.

Being dissatisfied by the said judgment passed by learned Additional Sessions Judge (Fast Track Court), Bathinda, the petitioner has filed the present revision petition, notice of which was issued to the respondents, who put in appearance through counsel.

I have heard learned counsel for the revisionist – accused and learned counsel for the complainant besides going through the record.

The law is well settled that the revisional jurisdiction of this Court is quite limited. This Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment/order passed by a Court below or the same is perverse and not otherwise.

I do not find any illegality or infirmity with the impugned orders, which might have called for interference by this Court while exercising revisional jurisdiction.

Finding no merit in the petition, the same stands dismissed.

Necessary information be sent to the quarter concerned.

22.5.2018 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No