IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-1617-2015(O&M)
Date of decision:-22.5.2018

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

Versus

Pardeep Kumar and another
...Respondents

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

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

Mr.Amit Aggarwal, Advocate
for the respondent No.1.

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 No.1 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 1988-89 at Rs.66,250/-

on 5.8.1988 duly signed and verified by accused Pardeep Kumar as partner of the firm; that statement was accompanied by profit and loss account and other relevant papers; that accused No.1 submitted a declaration under Section 184(7) of the Act for continuation of registration of the firm in form No.12 on 28.6.1988, duly signed and verified by accused Nos.2 and 3; that the Assessing Officer after receipt of said return issued notice under Sections 142(1) and 143(2) of the act on 28.10.1988 along with an questionnaire requiring the accused to furnish, inter alia, information regarding the purchase of raw material, details of opening and closing stock and method of valuation, copies of bank account in support of the income returned; that in response to notice dated 28.10.1988 accused No.1 through accused No.2 Pardeep Kuamr attended proceedings and filed reply on 11.11.1988; that on the same day, statement of accused No.2 was also recorded before Assessing Officer; that books of account were partly examined and then Assessing Officer directed for the supply of further details relating to business, adjourning the case for 25.11.1988; that on dated 10.3.1989, accused produced Ram Partap, Milkman and his statement was recorded; that from the documents and return and from the evidence adduced by accused, Assessing Officer found that the accounts were drawn not in accordance with principle of Accountancy and cursory look over the accounts show lucrative gross profit rate; that it was further found that the sales were unvouched and accused have not maintained even day to day stock register for the raw materials and for the finished goods and such circumstances were in existence to enable the accused to evade the tax, penalty chargeable and imposable under the Act; that from the circumstances, true profits could not be deducted from the account books of the accused; that the perusal of profit and loss account attached with the return of income revealed that accused No.1 had debited the expenses of Rs.1,25,120/- on account of diesel, coal, wood etc. in the profit and loss account, which primarily relate to the manufacturing-cum-trading account, accused No.1 maliciously, deliberately did so in order to deflate the real income; that the gross profit shown at 46.47%; that this exercise was undertaken by the accused to hoodwink the department to apparently show enhanced gross profit rate; that had the aforesaid expenses are considered in the manufacturing cum trading account, the gross profit rate was in fact work out at 21.5%; that during the assessment year, it was also found that the accused No.1 maintained Cash book and ledger only and no expenditure vouchers and purchase bills were produced; that expenses debited to profit and loss account were not vouched and were not subject to verification; that the books of account were written at whims and fancies of accused No.1; that further the accused No.1 debited interest of Rs.5,980/- on the borrowing to the profit and loss account to reduce its profits and it was found that the accused No.1 was not in need of funds but accused No.2 namely Pardeep Kumar utilized the funds so raised in construction of his house; that the accused deliberately did so to evade the tax liability; that from the perusal of the documents annexed with return filed by accused No.1, it was also found that accused No.2 withdrawn Rs.4,999/- and accused No.3 withdrawn Rs.3,583/- for household expenses from the books of account maintained by accused No.1, which were considered to be grossly inadequate keeping in view the size of the family of accused accused Nos.2 and 3; that on inquiries,reasons assigned by accused No.2 were found untenable. That in fact, accused No.2 and 3 were withdrawing money out side the books of account for meeting household expenses,thus accused No.1 has intentionally drawn false and incorrect accounts to conceal its real income, accordingly proviso of Section 145(1) of the Act invoked; that keeping in view all the discrepancies in the accounts and facts emerged out during the proceedings, total income of accused No.1 was determined at Rs.2,15,430/- and ordered the initiation of penalty proceedings under Section 273(2)(a) of the Act; that aggrieved against the order dated 23.3.1989 passed by Assessing Officer the accused preferred appeal before Commissioner of Income Tax (Appeal), Bathinda, who set aside the order of Assessing Officer vide order dated 15.6.1989, with the directions to the Assessing Officer to pass fresh order after affording appropriate opportunity of being heard and confront to the accused with the material available with the assessing officer; that after receipt of order of the appellate authority, assessing officer issued notice dated 2.7.1990 tot he accused requiring the accused to appear on 11.7.1990; that in response to the notice dated 2.7.1990, the accused filed its reply; that Assessing Officer vide its letter dated 13.7.1990 apprised the accused about sales estimated by him and also supplied Xerox copy of statement of accused No.2, recorded in connection with assessment earlier framed on 23.3.1989; that the accused was also informed about the proposed estimation of sales in this letter and also called for information about claim of depreciation by the accused; that accused submitted a reply to said letter on 19.7.1990; that after hearing the accused, the Assessing Officer passed an assessment order dated 31.7.1990 and determined income at Rs.2,65,790/- after making followings in the net profit shown as per profit and loss account by the accused No.1 and also initiated penalty proceedings u/S 271(1) (c) of the Act for concealing particulars of his income:

Trading addition	Rs.1,84,561/-
Advance tax debited to P&L a/c	Rs.1,575/-
Interest disallowed	Rs.5,980/-
Out of shop expenses	Rs.1,000/-
Depreciation for separate consideration	Rs.2,000/-
Sale of Bardana	Rs.6,000/-

That accused again preferred appeal before the CIT(A) against the order dated 31.7.1990 of the Assessing Officer , who partly allowed the appeal and confirmed th following additions vide his order dated 25.4.1991:

Trading addition	Rs.76,561/-
Bardana a/c	Rs.6,000/-
Interest a/c	Rs.5,980/-
Out of shop expenses	Rs.1,000/-
Depreciation	Rs.1,000/-

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, Raghuvirsain Jain (ITO Retd.) as CW2 and CW3 Rajinder Singh, ITO(Judicial), Bathinda. 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 the complainant has been able to prove its case, as alleged?

After hearing arguments, the trial Court 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, accused Pardeep Kumar had preferred an appeal to the Court of Sessions, which was marked to learned Additional Sessions Judge (Fast Track Court), Bathinda, who allowed the appeal and set aside the judgment/order dated 23.9.2011 passed by the trial Magistrate.

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 parties 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