IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-1619-2015(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 was the registered partnership firm having accused Nos.2 and 3 as its partners and filed its return of income on 31.8.1989 declaring total income at Rs.78,100/- for the assessment year 1989-90, which was duly signed and verified by Pardeep Kumar partner of the firm, accused No.2; that it was accompanied by a declaration under Section 184(7) of the Act for continuation of registration of the firm in form No.12 duly signed and verified by accused Nos.2 and 3 and it was also accompanied with profit and loss account, trading account and balance sheet etc.; that the income declared in the return was processed under Section 143(1)(a) on 6.10.1989; that thereafter, the case of the assessee was taken up for scrutiny and during the course of assessment proceedings, it was noticed that business premises of the assessee had been surveyed on 8.11.1988 and certain discrepancies were noticed for which accused No.2 offered to disclose additional income of Rs.50,000/- on behalf of accused No.1 in its return, but the said offer was not considered reasonable for the reason that it did not commensurate with its real income, accordingly the offer given by accused No.1 was declined; then the Assessing Officer issued a notice dated 9.10.1989; that in response to notice dated 9.10.1989, accused filed reply dated 11.12.1989 stating therein that no closing stock as on 31.3.1989 was available and also disclosed that the details of purchase of the packing material and raw material was not available; that during the year under consideration, accused constructed three storied building (shop) and cost of the construction was declared as Rs.1,25,000/-, however, it was referred to the valuation officer, who assessed the same as Rs.1,59,600/-, thus, there was a different of Rs.34,600/-; that no satisfactory reply was given; that Pardeep Kumar was shown to withdraw

Rs.2,372/- and Som Dutt Rs.2,624/- for their household expenses; that keeping in view the size of the families and standard of living, the withdrawal for the household expenses were found to be exceptionally low and taking into consideration the above facts, the Assessing Officer assessed the income for the assessment year 1989-90 at Rs.1,50,000/- and penalty proceedings u/S 271(1)(c) were ordered to be initiated vide vide order dated 29.3.1990 and aggrieved against the same, an appeal was filed by the accused before the Commissioner of Income Tax (Appeals), which was dismissed.

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-sheeted 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