

Smt. Darshan Devi Vs. State of Up

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Court : Allahabad

Decided On : Jul-16-2004

Reported in : [2006]150TAXMAN252(All)

Appeal No. : Criminal Revision No. 703 of 1989 16 July 2004

Appellant : Smt. Darshan Devi

Respondent : State of Up

Advocate for Pet/Ap. : Rajiv Gupta for the Applicant. Ashok Kumar for the Opposite Party.

Judgement :

V.K. Chaturvedi, J.

Smt. Darshan Devi and three others have preferred this revision against the judgment and order dated 24-1-1989 passed by Special Chief Judicial Magistrate, Allahabad in Union of India v. Bound Advertising Company (Case No. 603 of 1985 (All.), dated 24-1-1989) rejecting the application under section 245, Cr.P.C.

2. Heard Sri Rajiv Gupta, learned counsel for the revisionist, Sri Ashok Kumar for the Income-tax department and learned A.G.A.

3. It is contended by Sri Rajiv Gupta that before filing the complaint against the revisionist the penalty proceedings were dropped by the Income-tax department,

as such, the criminal proceedings under section 276C, read with section 277 of the Income Tax Act is against the settled principles of law. In support of his contention he relied on *Ashirvad Enterprises v. State of Bihar* 2004 U.P.T.C. 901 (SC): JT 2004 (4) SC 6.

4. The brief facts of the case are that M/s. Bound Advertising Company, New Market, Hajratganj, Lucknow was a partnership firm having four partners, namely, Sri J.N. Wahi, Sri Jagannath, Sri Trilochan Singh and Smt. Darshan Devi. Sri Jagannath was managing and acting partner of the firm, while remaining three were sleeping partners. The return of income for the period 1-4-1977 to 31-3-1978, relevant assessment year 1978-79 was filed on 2-8-1980 by Sri Jagannath on behalf of the firm showing income of Rs. 1,54,936. Along with the return, Sri Jagannath had also filed profit and loss, balance-sheet and three payment challans. All the documents referred to above and the return of income were verified and signed by Sri Jagannath. Sri Jagannath after filing of the return has expired. These facts have been admitted by Sri S.K. Srivastava, Income Tax Officer in his statement recorded under section 244 of Cr. P.C. The Income Tax Officer, while considering the return of income, signed and verified by Sri Jagannath, did not accept the income shown at Rs. 39,330 of repainting job. The Income Tax Officer computed the net profit in repainting job at Rs. 3,93,700 by applying a net profit rate @) 50 per cent on total payment of Rs. 7,87,400 and thus an addition of Rs. 3,54,370 was made to the profit. The Income Tax Officer not only made the addition of Rs. 3,54,370 in total income but also issued penalty notice under section 271(1)(c) for imposing penalty for concealment of income. The firm, aggrieved by the order of Income Tax Officer filed first appeal before the Commissioner of Income Tax (Appeals), but the appeal was dismissed. Thereafter, the firm filed second appeal before the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal disagreeing with the orders passed by the Income Tax Officer and the Commissioner (Appeals) computed the net profit in the repainting job at Rs. 98,425 by applying net profit rate @0 12.5 per cent on total payment of Rs. 7,87,400 as against the opinion of the lower authorities, who assessed the income of the firm at Rs. 3,93,700. Thus granting a relief of Rs. 2,95,275. The order of Appellate Tribunal was passed on 10-3-1983. After receipt of the order of the Appellate Tribunal, Sri S.P. Sharma, the then Income Tax

Officer by his order dated 24-10-1983 dropped the penalty proceedings under section 271(1)(c) of the Income Tax Act. After dropping the proceedings the Income Tax Officer filed a complaint in March 1984 under section 276C/277 of the Income Tax Act for the assessment year 1978-79 on the allegation that the revisionists wilfully attempted to evade tax under the Act and gave a false statement which is punishable under sections 276C and 277 of the Income Tax Act. Before the Special Chief Judicial Magistrate, Allahabad Sri S.K Srivastava, Income Tax Officer was examined under section 245, Cr. P.C. and he admitted that the return and other papers filed before Income Tax Officer were verified and signed by Sri Jagannath, who subsequently expired. Sri S.K. Srivastava also admitted in his statement that the proceedings initiated under section 271(1)(c) of the Act for imposing penalty for concealment of income have been dropped. The order for dropping the penalty proceedings was also filed before the court with the application under section 245, Cr. P.C. The Special Chief Judicial Magistrate rejected the application only on the ground that the revisionist can move the application or argue the case at the time of framing of charges.

5. The revision is pending since 1989 and the revisionists in support of the revision have filed a detailed affidavit but the Income-tax department has filed no counter-affidavit. Revisionist No. 1 Smt. Darshan Devi is 69 years old, Revisionist No. 2 is the firm, Revisionist No. 3 Sri J.N. Wahi is 73 years old while Revisionist No. 4 Sri Trilochan Singh is 53 years old. It is admitted fact that the proceedings initiated under section 271(1)(c) of the Act for imposing penalty for concealment of income have been dropped and this fact has also not been denied by the learned counsel appearing on behalf of the Income-tax department.

6. In view of the law laid down by the Apex Court referred to above, the revision is allowed. The impugned order dated 24-1-1989 passed by the Special Chief Judicial Magistrate by which he rejected the application under section 245, Cr. P.C. is hereby quashed and the revisionists are discharged.