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**Court :** Madhya Pradesh

**Decided On :** Dec-15-1993

**Reported in :** (1994)116CTR(MP)608; [1994]208ITR82(MP)

**Appeal No. :** Criminal Revision No. 112 of 1992

**Appellant :** Narayan

**Respondent :** Union of India.

**Judgement :**

M. W. DEO J. - This criminal revision is directed against the conviction of the petitioner under section 276CC) of the Income-tax Act, 1961, for wilfully failing to furnish a return of income within the prescribed time under section 139(1) of the same Act resulting in sentence of rigorous imprisonment for three months and a fine of Rs. 1,000.

The material facts are not in dispute and may be briefly be stated thus : The petitioner is an income-tax payer since 1965-66. There was no default of any kind till 1983-84. The petitioner was to have filed the return of the previous year 1981-82 (Diwali to Diwali) for the assessment year 1983-84 latest by June 20, 1983. He filed the return late, i.e. after 20 months on March 27, 1985. The return was considered and the assessment order was passed assessing the petitioners income at Rs. 25,825 and he was ordered to pay a total sum of Rs. 5,212 regarding income-tax, surcharge and penal interest. There is no dispute about all

these facts. The petitioner was prosecuted on the sole ground that he wilfully failed to furnish in due time the return of income for the previous year 1981-82 by June 20, 1983, though he filed it late by about 20 months on March 27, 1985.

The relevant penal provision of the Income-tax Act is reproduced below :

'276CC. Failure to furnish returns of income. - If a person wilfully fails to furnish in due time the return of income which he is required to furnish under sub-section (1) of section 139 or by notice given under clause (i) of sub-section (1) of section 142 or section 148, he shall be punishable, - .....

(ii) in any other case, with imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.'

The prosecution examined only one witness, i.e., V. Krishnan (PW-1) in support of the charge for the offence under section 276CC *ibid.* V. Krishnan (PW-1) deposed to all the aforesaid facts. In addition, he further deposed that when the petitioner was issued a show-cause notice for levy of penalty and prosecution, the petitioner-accused filed a medical certificate, exhibit D-A, along with an affidavit stating that the petitioner/accused was ailing with hypertension, etc. from April 10, 1983 to May 31, 1985. V. Krishnan (PW-1) further admitted that he did not enquire into the correctness or otherwise of the fact of illness of the accused nor did he enquire into the credibility of the medical certificate.

Both the courts below were of the opinion that the accused/petitioner did not establish that he was really ill for the aforesaid period and the appellate court further held that the medical certificate having been filed late did not explain the delay and, therefore, the delay by itself amounted to *mens rea*.

It was contended on behalf of the petitioner/accused that section 276CC of the Act postulates proof of 'willful failure' to furnish the return within time. It was argued that failure to file the return in time *per se* does not amount to an offence under this section. The prosecution is bound to establish by clear, cogent and affirmative evidence beyond reasonable doubt that such failure to file the return was 'willful' on the part of the accused. Accordingly, the delay though of 20 months, would not

per se discharge the onus on the prosecution of proving it to be 'willful'. Learned counsel argued that both courts below were wrong in placing the onus on the accused/petitioner to show that he had fully and completely explained the delay in filing the return. It was argued that in fact the courts below ought to have seen that the prosecution was required to prove the fact of the delay being 'willful' and, therefore, the courts below arrived at a wrong conclusion.

Learned counsel for the Department, on the other hand, contended that the delay in filing the medical certificate and the non-examination of the doctor who had given the medical certificate on the part of the accused showed that the delay was not at all explained and, therefore, the findings of the courts below should be taken to be correct.

For one thing nobody challenged the credibility or genuineness of the medical certificate, exhibit D-A filed by the accused. In fact, the sole prosecution witness, V. Krishnan (PW-1), admitted that he did not enquire into the correctness of the fact of illness of the petitioner not about the credibility of the medical certificate. In these circumstances and in view of the way the matter was dealt with by the Department, it is manifest that the medical certificate was accepted by the Department but the Department did not find the medical certificate to be sufficient material to explain the delay of 20 months in filing the return.

Now, both the courts have lost sight of the quintessence of the offence under section 276CC. It lies in the willfulness of delay in filing the return. In other words, it is not merely failure to file the return in time which constitutes the offence. The failure to file the return in time must be proved by clear, cogent and reliable evidence to be 'willful' and there should be no plausible doubt of its being 'willful'.

What is the meaning and connotation of the word 'willful' The Supreme Court in the case of S. Sundaram Pillai v. V. R. Pattabiraman, AIR 1985 SC 582, elaborately discussed the question with reference to dictionaries and held that in order to arrive at a consensus of the meaning of the words 'willful default', it must be intentional, deliberate, calculated and conscious with full knowledge of legal consequences flowing from them. In Websters Third New International Dictionary, Volume II, at page 2617, the word 'willful' had been defined to mean (at page 589

of AIR 1985 SC) :

'governed by will without yielding to reason or without regard to reason; obstinately or perversely self-willed.'

Considering the facts of the case in hand in the light of the aforesaid meaning of the word 'wilful', there is no material except the length of delay, to prove that it was governed by will without yielding to reason or that the delay was the result of perverse obstinacy. If anything, the petitioner is a regular old assessee without any allegation, much less proof of contumacious conduct on his part about the filing of returns to hold the present single default to be willful. On the other hand, the evidence is to the effect that in response to the show-cause notice, the petitioner/accused at once came out with an affidavit stating that he was prevented from April 10, 1983, to May 31, 1985, and further by supporting it with a medical certificate from a doctor. It is important to see that this material was not even enquired into by the Department about its credibility, much less it was proved to be false. Consequently, it must be held that ingredient of delay being willful has not been proved beyond reasonable doubt by the prosecution.

In the result, the revision deserves to be allowed and is accordingly allowed. The conviction and sentence imposed by both the courts below under section 276CC) of the Income-tax Act, 1961, is set aside and the accused/petitioner to the petitioner. His bail bond stands discharged.

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