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Court : Chennai

Decided On : Aug-24-1987

Reported in : (1988)68CTR(Mad)119; [1988]173ITR206(Mad)

Judge : Padmini Jesudurai, J.

Acts : [Income Tax Act, 1961](#) - Sections 136, 276, 276C, 277 and 278; [Constitution of India](#) - Article 20(1); [Indian Penal Code \(IPC\), 1860](#) - Sections 193 and 196

Appeal No. : Crl. Revision Case Nos. 918, 922 and 923 of 1984 in Crl. Revision Petition Nos. 914, 918 and 919 of

Appellant : Union of India

Respondent : Gopal Engineering Works and ors.

Advocate for Def. : T.V. Natarajan, Adv.

Advocate for Pet/Ap. : Sam V. Chelliah, Adv.

Judgement :

Padmini Jesudurai, J.

1. The Union of India, represented by the Second Income-tax Officer, City Circle 11. Madras-34, has preferred these revisions under sections 397 and 401, Criminal Procedure Code, for setting aside the order passed by the Additional

Chief Metropolitan Magistrate (Economic Offences-II), Egmore, Madras, in C. C. Nos. 232, 231 and 233 of 1984, discharging the respondents of offences under section 120B read with sections 193 and 196, Indian Penal Code, on the ground that the above sections will not apply since the Income-tax Officer had not been declared to be a court under section 195(3), Criminal Procedure Code.

2. Facts necessary for the disposal of the revisions are briefly as follows : The first respondent is a registered firm, carrying on the business in manufacturing, purchasing and selling drums and kegs used in painting industry and other materials and had been assessed to income-tax. The other respondents are its partners. For the years 1976-77, 1977-78 and 1978-79, the first respondent was assessed to income-tax on the basis of the returns filed and the account books produced before the Income-tax Officer. Later, on February 14, 1979, during a search of the premises of the first respondent, several incriminating accounts and documents were seized and a perusal of the same showed that the returns submitted earlier were false and the account books produced in support of the returns were also false. Purchase figures had been inflated and the alleged purchasers were found to be bogus. The original purchase bills produced at the time of the assessment were found to contain interpolations when compared with the documents seized during the search. After the search, statements were obtained and the second respondent admitted that the account books originally produced at the time of assessment were all false and had been prepared for the purpose of income-tax assessment to reduce the total income and thereby evade income-tax. Complaints were filed before the trial court for the three assessment years which were numbered as follows :

(1) C. C. No. 231 of 1984 which is the subject-matter of Crl. R. C. No. 922 of 1984 was for offences under section 120B read with sections 193 and 196, Indian Penal Code. and section 276C of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as 'the Act'), for the assessment year 1976-77;

(2) C. C. No. 232 of 1981 which is the subject-matter of Crl. R C No. 918 of 1984 was for offences under section 120B read with sections 193 and 196, Indian Penal Code, and sections 276C and 277 of the Income-tax Act for the assessment year

1977-78; and

(3) C. C. No. 233 of 1984 which is the subject-matter of Crl. R. C. No. 923 of 1984 was for offences under section 120B and 193, Indian Penal Code, and sections 276C, 277 and 278 of the Income-tax Act for the assessment year 1978-79.

3. In each of the cases, four witnesses on the side of the prosecution were examined. At that stage, the respondents raised an objection that a complaint for offences under sections 193 and 196, Indian Penal Code, was not maintainable in view of the fact that those offences could be committed only in judicial proceedings and the proceedings before the Income-tax Officer for assessment of income-tax had not been declared to be judicial proceedings under section 195(3), Criminal Procedure Code, and that, therefore, the charges under sections 193 and 196, Indian Penal Code, should be dropped.

4. The trial court upheld the contention of the respondents and quashed the charges relating to sections 193 and 196, Indian Penal Code, in all the cases and ordered continuance of the trial only for charges under sections 276C, 277 and 278 of the Act. Aggrieved with the above order, the Union of India has preferred the present revisions.

5. Thiru Sam V. Chelliah, standing counsel for the petitioner, contended that the order of the court below could not be legally sustained for the following reasons :

(i) Section 136 of the Income-tax Act clearly lays down that any proceedings under the Income-tax Act before an income-tax authority should be deemed to be a judicial proceeding within the meaning of sections 193 and 228, Indian Penal Code, and that was sufficient to attract the provisions of sections 193 and 196, Indian Penal Code, and that a declaration under section 195(3), Criminal Procedure Code, that the Income-tax Officer is a court is not necessary for attracting sections 193 and 196, Indian Penal Code.

(ii) Even the above question is purely academic in view of the amending Act 32 of 1985, amending section 136 of the Income-tax Act declaring the income-tax authority as a civil court for the purpose of section 195, Criminal Procedure Code,

with effect from April 1, 1974.

6. Per contra, Thiru A. K. Lakshminarayanan, learned counsel for the respondents, contended :

(i) Sections 193 and 196, Indian Penal Code, would not apply unless there was a declaration under section 195(3), Criminal Procedure Code, that the income-tax authority was a court and in the absence of any such declaration at the time when the offences are said to have been committed, sections 193 and 196, Indian Penal Code, would not be attracted.

(ii) Amending Act 32 of 1985 could not be given retrospective effect in respect of the specific wordings therein, since it relates to criminal proceedings and the amendment would be an ex post facto legislation.

7. The question that arises for determination is whether the order of the court below quashing the charges under sections 193 and 196 of the Indian Penal Code for the reasons given therein could be sustained

8. On behalf of the respondents, before the trial court, it had been urged that as a condition precedent to the applicability of sections 193 and 196, Indian Penal Code, to proceedings before the income-tax authority, a declaration under section 195(3), Criminal Procedure Code, declaring the income-tax authority as the court was necessary. Without such a declaration, the assessment proceedings before an income-tax authority could not be construed as judicial proceedings thereby attracting sections 193 and 196, Indian Penal Code.

9. In support of the above contention, reliance had been placed before the trial court upon a decision of this court in *Associated Industries v. First ITO* : [1982]134ITR565(Mad) , wherein the learned judge held that subsequent to the amendment of section 195, Criminal Procedure Code, in 1974, any Tribunal created by the statute under the Central Act could be construed as a court, only if it was declared to be a court by that Act and since the income-tax authority had not been so declared under the Income-tax Act, the income-tax authority could not be construed as a court under section 195(3), Criminal Procedure Code. In that

case, a complaint by the Income-tax Officer, on fact more or less similar to the facts of the present case, was laid under section 195, Criminal Procedure Code, and section 136 of the Act, for offences under sections 120B read with sections 193 and 196, Indian Penal Code, and sections 276 and 278 of the Act. The legality of the trial court taking cognizance of the complaint was challenged on the ground that sanction in writing by the Government, as required under section 196, Criminal Procedure Code, as it then stood had not been obtained. Section 196, Criminal Procedure Code, as it then stood, required sanction, inter alia, for prosecution for conspiracy to commit offences which were non-cognizable. Section 196, Criminal Procedure Code, had an Explanation that such a sanction was not necessary in respect of cases where section 195, Criminal Procedure Code, would apply. The offences in the complaint were non-cognizable, thereby requiring sanction, unless the case could be brought under section 195 Criminal Procedure Code. The legality of cognizance taken, therefore, turned on the question whether the income-tax authority was a court or not under section 195, Criminal Procedure Code. It was under those circumstances that this court held that in the absence of a declaration under section 195(3), Criminal Procedure Code, the income-tax authority was not a court and that, therefore, sanction under section 196, Criminal Procedure Code, was necessary. Learned counsel for the respondents relied on the above decision for the legal position that the income-tax authority was not a court under section 195(3), Criminal Procedure Code. The trial court accepted the above legal contention and held that offences under sections 193 and 196, Indian Penal Code, would not apply to a case of fabricating false evidence intended to be produced and actually produced before the income-tax authority and quashed the charges relating to them.

10. As rightly contended by learned counsel for the petitioner, the decision of this court in *Associated Industries v. First ITO* : [1982]134ITR565(Mad) , has no direct bearing on the present case. The question whether sections 193 and 196, Indian Penal Code, would apply to false accounts intended to be produced and actually produced in assessment proceedings before the Income-tax Officer would not depend upon the question as to whether or not the Income-tax Officer has been declared to be a court under section 195(3), Criminal Procedure Code. This is so because section 136 of the Act, even as it stood prior to the amendment by Act 32

of 1985, was as follows :

Section 136 of the Act : 'Any proceeding under this Act before an income-tax authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code, 1860 (45 of 1860).'

11. In the case referred to in the preceding paragraph, the question as to whether sanction under section 196(2), Criminal Procedure Code, was necessary or not, depended directly on the question as to whether the Income-tax Officer was declared to be a court, thereby, coming within the purview of section 195, Criminal Procedure Code. Hence, even the finding of the learned judge in the above case that under the law, as it then stood, the Income-tax Officer is not a court for the purpose of section 195, Criminal Procedure Code, since the Income-tax Act has not declared him to be a court, will not have any direct bearing by virtue of the express provision of section 136 of the Act, on the present question as to whether sections 193 and 196, Indian Penal Code, would be attracted, to fabricating and producing false evidence before the income-tax authority.

12. It is equally true that the above question is more or less academic, since the above judgment was pronounced prior to the Amending Act 32 of 1985, amending section 136 of the Act. Section 28 of the Amending Act 32 of 1985 amending section 136 of the Act is as follows :

"In section 136 of the Income-tax Act, the words and figures ' and every income-tax authority shall be deemed to be a Civil Court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974)' shall be inserted and shall be deemed to have been inserted at the end, with effect from the 1st day of April, 1974.'

13. Hence, offences under sections 193 and 196, Indian Penal Code, when committed before any income-tax authority would come within the purview of section 195, Criminal Procedure Code.

14. As against the above amendment, learned counsel for the respondent contended that the amendment giving retrospective effect to the above provision from April 1, 1974, onwards is illegal, since this is a penal provision and giving retrospective effect to it would make it an ex post facto legislation. Learned counsel for the petitioner countered this contention in that the amendment declaring the income-tax authority as a court for the purpose of section 195, Criminal Procedure Code, relates only to a procedural matter and since the amendment neither creates an offence nor enhances any punishment, the amendment is not an ex post facto legislation.

15. Learned counsel for the petitioner placed reliance upon two decisions of the Supreme Court in support of his contention. In *State of Mysore v. Fakkrusab* [1977] Cri LJ 1005, a charge-sheet filed by the police on October 1, 1970, for an offence under the Mysore Excise Act, 1965, was returned by the Magistrate who refused to take cognizance of the offence on the ground that by the Mysore Ordinance No. 4 of 1970 which came into force on August 7, 1970, section 60, clause (b), of the Mysore Excise Act, 1965, had been amended taking away the power of the police to file a charge-sheet and that, therefore, the court could take cognizance of the offence only on a complaint by an excise official. The order of the Magistrate was unsuccessfully challenged by the State before the Sessions Court and then before the High Court. By the time the matter came up for disposal before the Supreme Court, there had been a further amendment to section 60(b) of the Mysore Excise Act, 1965, by the Amendment Act No. 1 of 1971 by which Ordinance No. 4 Of 1970 was repealed with effect from August 7, 1970. The Mysore Excise Amendment Act No. 1 of 1971, inter alia, provided that the amendment to section 69 made by the Mysore Ordinance No. 4 of 1970 shall be deemed never to have been made and the provisions of section 60 as they stood prior to the said amendment shall be deemed to continue to be in force. The Supreme Court, holding that by virtue of the Mysore Amendment Act No. 1 of 1971 the Magistrate could take cognizance of the offence on the basis of a police report, observed with reference to the retrospective effect of the second amendment :

'It is now settled law that when a legal fiction is enacted by the Legislature, the court should not allow its imagination to boggle but must carry the legal fiction to

its logical extent and give full effect to it. We must, therefore, proceed on the basis that the words 'or police' were always there in clause (b) of section 60, even at the time when the learned Judicial Magistrate made his order dated October 3, 1970, refusing to take cognizance of the offence and returning the charge-sheet to the police.'

16. Again, in *Nayyar (G. P.) v. State* [1979] CrL LJ 587, the Supreme Court was dealing with amendments made to the Prevention of Corruption Act No. 2 of 1947. On December 26, 1963, a charge-sheet was filed for offences under sections 120B and 161, I.P.C., read with sections 5(2) and 5(1) (d) of the Prevention of Corruption Act. On December 18, 1964, by an amendment to the above Act, section 5(3) had been deleted. The trial court found that conspiracy and specific instances of receipt of illegal gratification had not been proved. However, the court held that though there was evidence that the assets of the accused were disproportionate to his income, in view of the fact that the presumption raised under section 5(3) of the Prevention of Corruption Act, was no longer available since the same had been repealed, there was no evidence to convict the accused who was, therefore, acquitted. The State preferred an appeal to the High Court. While the appeal was pending, by Act No. 16 of 1967, which came into force on June 20, 1967, section 5(3) of the Prevention of Corruption Act was reintroduced in the Act and was made retrospective in operation. Before the High Court, the above amendment was challenged as being void and in violation of articles 14 and 20(1) of the Constitution. The High Court upheld the validity of the Act No. 16 of 1967 and remanded the case for fresh trial. The accused went to the Supreme Court. Repelling the argument that making the amendment retrospective was ex post facto legislation in violation of article 20(1) of the Constitution, the Supreme Court observed (page AIR 1979 SC 606 :

'All that article 20(1) prohibits is ex post facto laws and is designed to prevent a person being punished for an act or omission, which was considered innocent when done. It only prohibits the conviction of a person or his being subjected to a penalty under ex post facto laws.'

17. The Supreme Court quoted with approval the following passage from an earlier decision in *Rao Shiv Bahadur Singh v. State of Vindhya Pradesh*, : 1954 CriLJ1480 .

'... what is prohibited under article 20 is only conviction or sentence under an ex post facto law and not the trial thereof. Such trial under a procedure different from what obtained at the time of the commission of the offence or by a court different from that which had competence at the time cannot ipso facto be held to be unconstitutional. A person accused of the commission of an offence has no fundamental right to trial by a particular court or by a particular procedure, except in so far as any constitutional objection by way of discrimination or the violation of any other fundamental right may be involved.'

18. It follows, therefore, that procedural amendments could be made retrospective, without violating the rights guaranteed under article 20(1) of the Constitution.

19. In the instant case, what has been given retrospective effect is the application of section 195(1)(b), Criminal Procedure Code. Section 195, Criminal Procedure Code lays down a condition precedent to the court taking cognizance of certain offences directed primarily against certain authorities, viz., a complaint by the court or authority concerned. Section 195, Criminal Procedure Code, is an exception to section 190, Criminal Procedure Code. Section 195(1)(b) has been enacted in the interest of parties, witnesses and others appearing in court to protect them from frivolous and vexatious proceedings instituted by private parties. The court, therefore, is required to lay a complaint. The Amending Act No. 32 of 1985 merely extends the protection under section 195(1)(b), Criminal Procedure Code, to income-tax assesseees who file returns, account books, ledgers and other documents in support of their returns and extends the protection to others, who could be connected either in the preparation of those documents or in the preparation of returns. By declaring the Income-tax Officer as a court for the purpose of section 195(3), Criminal Procedure Code, and thereby requiring the officer himself to lay a complaint for offences mentioned in section 195(1)(b), Criminal Procedure Code, it prevents any private individual from setting the law in motion actuated by ulterior motives. The Supreme Court, in *G. P. Nayyar v. State*

[1979] Cri LJ 587, held that the presumption raised under section 5(3) of the Prevention of Corruption Act against the accused and which enabled the court to base a conviction solely on the presumption was held to be not in violation of article 20(1) of the Constitution. It could never be contended, therefore, that the retrospective amendment of a benevolent provision, extending protection to certain persons connected with income-tax assessment, would be in violation of either article 20(1) of the Constitution or the principles of natural justice. Amending Act No. 32 of 1985, therefore, has to be given retrospective effect, as the amendment itself makes it clear.

20. It, therefore, follows that by virtue of section 136 of the Act even as it originally stood prior to the Amending Act No. 32 of 1985, assessment proceedings before the income-tax authority are judicial proceedings. In the instant case, the respondents are said to have fabricated account books for the purpose of producing them before the Income-tax Officer, and had produced the same before the Income-tax Officer. Sections 193 and 196, Indian Penal Code, therefore, are attracted. In view of the fact that the Income-tax Officer has now been declared to be a court under section 195(3), Criminal Procedure Code, with effect from April 1, 1974, the first part of section 193, Indian Penal Code, would apply. The trial court had found that the complaint had been laid by a competent officer as required under section 195, Criminal Procedure Code. I fail to see any legal bar to the complaint launched for offences under sections 193 and 196, Indian Penal Code. The order of the trial court quashing the charge under sections 193 and 196, Indian Penal Code, cannot be sustained and has to be set aside. The complaint filed against the respondents by the officer concerned for offences under sections 193 and 196, Indian Penal Code, as well as the other sections under the Act is in order.

21. In the result, the revisions are allowed, the orders of the learned Additional Chief Metropolitan Magistrate (Economic Offences-II), Egmore, Madras, in C. C. Nos. 231, 232 and 233 of 1984, are set aside and the cases will go back to the trial court, for fresh disposal according to law.