Adding Machines (India) Private Limited Vs. the State

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Court : Kolkata

Decided On : Apr-08-1987

Reported in : [1988]63CompCas588(Cal),(1987)65CTR(Cal)250,[1987]167ITR171(Cal)

Judge : Amal Kumar Chatterjee, J.

Acts : Income-tax Act, 1961 - Sections 2(31) and 276B

Appeal No. : Criminal Revision Nos. 2256 and 2257 of 1981

Appellant : Adding Machines (India) Private Limited

Respondent : The State

Advocate for Def. : None

Advocate for Pet/Ap. : Pradip Ghosh, Adv.

Judgement :

Amal Kumar Chatterjee, J.

1. The petitioner in these two rules which is a private limited company is sought to be prosecuted in two cases for an offence under Section 276B of the Income-tax Act, 1961, which is punishable wi,th imprisonment and fine. In these rules seeking to quash the proceedings, it has been contended that the prosecution of the

company for such an offence is incompetent because no sentence of imprisonment can be imposed on it. This ground was canvassed before the learned Magistrate in both the cases but as it did not find favour with him, the petitioner has come up in revision.

2. The learned advocate for the petitioner has argued that a company being a juristic or an artificial person cannot be committed to prison and,therefore, no prosecution can be started against it because even in the case of conviction, sentence in the way indicated in Section 276B of the Income-tax Act could not be passed by the court. He has referred to the decision of the Delhi High Court in D. C. Gael v. B. L. Verma : [1974]93ITR63(Delhi) . The learned judge had taken the view that the provision of Section 276B of the Act left no discretion with the court to impose any sentence but imprisonment and fine and since a juridical person could not be imprisoned, it could not also be prosecuted under the said section. On the other hand, it appears that a learned single judge of the Allahabad High Court in Laxmi Ratan Cotton Mills v. S. K. Bhatnagar , upon which the learned Magistrate has relied, and also a learned single judge of the Madras High Court in Rayala Corporation (P) Ltd. v. V. M. Muthuramalingam, ITO : [1981]129ITR675(Mad) , have taken the view that a company can be prosecuted even under Section 276B of the Act mainly on the ground that the word 'person' as occurring in this section must be held to include a company in view of the definition of ' person 'as given in Section 2(31) of the Act. The learned judge of the Allahabad High Court has also stated that in the case of conviction, the sentence of imprisonment which is imposed upon the company would have to be undergone by the principal officer. It is no doubt true, the word ' person ' as denned in the Act includes a company but with due regard to the learned judges in the aforesaid two cases, I am disposed to hold that the provisions of the Act must be construed harmoniously and not in.a way which will land upon an absurd situation. The court being under a mandate of law to pass a sentence of imprisonment in the case of conviction under Section 276B of the Act, it will have to do so which, however, will be incapable of execution as a company cannot be committed to prison. Since a court is not expected to make an order which is likely to be infructuous, it must be held that the Legislature never intended the prosecution of a company for such an offence notwithstanding the definition of the word ' person ' as given in Section

2(31) of the Act, It appears to me that it would be absolutely outrageous to call upon the principal officer to serve a sentence of imprisonment for an offence committed by the company. It is quite possible that a principal officer may also be prosecuted for an offence under Section 276B and in case he is found guilty, he has to suffer imprisonment but only for the offence committed by himself and not for any offence committed by the company. Therefore, I am firmly of the opinion that a company cannot be prosecuted under Section 276B of the Income-tax Act. This does not mean that this section will be rendered nugatory because as stated above and as pointed out by the learned judges of the Allahabad and the Madras High Courts, the principal officer may be prosecuted for an offence punishable under Section 276B of the Act.

3. It may also be noted in this connection that in Laxmi Ratan Cotton Mills' case , to which reference has been made by the learned Magistrate, his Lordship had observed that since in the case before him, the company was not impleaded through its principal officer, the complainant could not proceed against the company. In the instant case also, the company was not impleaded through its principal officer and, therefore, the Allahabad decision does not come to the aid of the prosecution.

4. For the reasons stated above, it is held that the instant prosecutions against the petitioner are incompetent and are accordingly quashed. Both the rules are thus made absolute.