

G.L. Didwania And Anr. vs Income Tax Officer And Anr. on 24 November, 1993

Equivalent citations: 1999(108)ELT16(SC), [1997]224ITR687(SC), 1995SUPP(2)SCC724, AIRONLINE 1993 SC 421

Author: G.N. Ray

Bench: G.N. Ray

ORDER

K. Jayachandra Reddy and G.N. Ray, JJ.

1. The matter arises under the Income-tax Act. The appellant was an assessee and for the assessment year 1960-61, he filed his return of income showing his income as Rs. 26,224 in the prescribed form and the verification was signed by him on August 25, 1961, and the return was filed on September 8, 1961. The appellant showed his business income from firms in Delhi and Bombay. The assessment was made on October 31, 1961, by the officer concerned taking the income to be of Rs. 35,699. There is another firm, Young India and Transport Company in which the minor children of the appellant and his two employees were partners. During the course of the assessment proceeding, the assessing authority reached the conclusion that it was not a genuine firm and the instrument of partnership was invalid and inoperative. Thereafter, proceedings under Sections 147 and 148 of the Act were initiated against the appellant and his assessment was reopened. In pursuance of the notice under Section 148 of the Act, the appellant filed his return showing his income as Rs. 29,500. The return was in the prescribed form and the verification thereto was signed by him. By an order dated March 17, 1969, the Income-tax Officer assessed the income of the appellant at Rs. 52,634 and this figure was arrived at by adding the income of Young India and Transport Company and for the same assessment year as though it was the income of the appellant. The appellant made a statement in the verification to the return filed on December 2, 1971, and delivered an account/statement which according to the assessing authority was false or which the assessee knew or believed to be false. On this basis, it was also observed that the appellant intentionally concealed the income of Young India and Transport Company which income really belonged to him. On the basis of this assessment, the prosecution was launched and the complaint by the authorised authority was filed on September 9, 1977. Meanwhile, the appellant-assessee filed an appeal before the Income-tax Appellate Tribunal and the Tribunal by its order dated February 24, 1977, allowed the appeal and also held that there was no substantial material to hold that the appellant was the owner of the entire business. The Appellate Tribunal also observed that the assessing authority drew a wrong conclusion from the facts on record and held that the business run in the name of Young India and Transport Company belonged to the assessee and accordingly the appellate authority deleted the addition of Rs. 23,134 from the total income of the assessee.

2. After the Appellate Tribunal passed the order, allowing the appeal in favour of the appellant, he filed a petition before the magistrate to drop the criminal proceedings. The magistrate by his order dated September 2, 1979, dismissed the said application and held that the prosecution has got a right to lead evidence in support of his complaint and the court can come to the conclusion whether or not any criminal offence is made out. The learned magistrate also observed that the order of the Tribunal can be taken only as evidence. Aggrieved by the same, the appellant-assessee filed an application under Section 482, Criminal Procedure Code, before the High Court and the High Court dismissed it in limine. Hence, the present appeal.

3. Mr. R.K. Jain, learned Senior Counsel, submits that the averments in the complaint would clearly show that the prosecution was sought to be launched on the basis that the appellant wrongly and falsely declared that the income of Young India and Transport Company does not belong to him and that he made a false verification to that effect and the income of Young India and Transport Company does belong to him and failing to include the said income of Young India and Transport Company in his income amounted to suppression and thus he was liable under Section 277 of the Income-tax Act and that in view of the fact that in the order of the Appellate Tribunal those conclusions reached by the assessing authority have been set aside; consequently, the very basis of the complaint is knocked out and, therefore, in the interest of justice the proceedings ought to have been quashed by the High Court. In support of his submission, he also relied on a judgment of this Court in *Uttam Chand v. I.T.O.*, wherein this Court quashed the prosecution. It was observed in that decision that it would be clear from the order of the Tribunal that the assessee was a partner of the firm and the firm was a genuine firm. There is a reference to this judgment in another decision of this Court in *P. Jayappan v. S.K. Perumal*, First Income-tax Officer .

4. In the instant case, the crux of the matter is attracted and whether the prosecution can be sustained in view of the order passed by the Tribunal. As noted above, the assessing authority held that the appellant-assessee made a false statement in respect of income of Young India and Transport Company and that finding has been set aside by the Income-tax Appellate Tribunal. If that is the position then we are unable to see as to how criminal proceedings can be sustained.

5. Mr. A. Raghuvir, learned Senior Counsel appearing for the department, submitted that the fact whether the firm is a genuine firm, still remains as a question to be resolved and, therefore, the proceedings cannot be quashed at this stage. We do not agree. The whole question is whether the appellant-assessee made a false statement regarding the income which according to the assessing authority has escaped assessment. So far as this issue is concerned, the finding of the Appellate Tribunal is conclusive. Therefore, as held in *Uttam Chand's case* [1982] 133 ITR 909 (S.C.), the prosecution cannot be sustained. Accordingly, the proceedings are quashed and the appeal is allowed.