M.R. PRATAP

v.

V.M. MUTHUKRISHNAN, INCOME-TAX OFFICER, CENTRAL CIRCLE-III, MADRAS

APRIL 29, 1992

[KULDIP SINGH AND YOGESHWAR DAYAL, JJ.]

Income-tax Act, 1961: Sections 2(7)(20)(31)(35), 139, 140(c) (As amended by Taxation Laws (Amendment) Act, 1975 and 276, 277, 278B and 278C).

Income-tax—Return—Prosecution for false verification—Private Company—Managing Director filing Return of Company—Return found false—Prosecution of Managing Director—Validity of—'Managing Director' held covered by the word 'person' under section 277 and held liable for prosecution—Effect of amendment of Section 140(c) and introduction of Section 278B explained.

The appellant was the Managing Director of a Private Limited Company. As a Principle Officer of the Company, he filed a return of the Income of the company for the assessment year 1965-66 which was verified and signed by him. Subsequently it was discovered that the return was false. He was charged for making wilfully and knowingly false verification of the Company's return and was thus prosecuted under section 277 of the Income-tax Act, 1961.

He filed a petition challening the maintainability of the complaint against him as the Managing Director which was dismissed. The High Court also upheld his prosecution and dismissed his Revision Petition and the petition filed under section 482 of the Code of Criminal procedure for quashing the complaint.

In appeal to this Court it was contended on behalf of the appellant that: (i) the word 'person' in section 277 refers only to an assessee and does not include the person who made the verification on behalf of the assessee; (ii) the substitution of the word 'Managing Director' for the term 'Prinicpal Officer' in section 140(c) of the Act by the Taxation Laws (Amendment) Act, 1975 shows that the expression 'Principal Officer' will

A not relate to Managing Director.

Dismissing the appeals, this Court,

HELD : 1. The appellant cannot escape on the plea that the word 'person' used in Section 277 of the Income-tax Act refers only to an B assessee but not the person who has made the verification on behalf of the said assessee. In view of Section 139 read with Section 140(c) of the Act the return has to be signed by the principal officer of the company. A statutory obligation is cast on the principal officer to sign the tax returns. The appellant admittedly was the Managing Director of the Company and C he was thus the principal officer thereof. [955 B, G-H]

2. The substitution of the words 'Managing Director' for the term 'Principal Officer' in section 140(c) by the Taxation Laws (Amendment) Act, 1975 will not in any way alter the position with regard to the operation of the provisions of the Income-tax Act as against a managing director of D a company when he has signed the return of the company in such capacity. The effect of the amended section 140 (c) of the Act is that the company's return of income should be signed only by the managing director or by any director, when there is no managing director, and not by the Secretary or the treasurer, who are however included within the meaning of 'Principal E Officer' under section 2(35) of the Act. The effect of introduction of Section 278B by the Taxation Laws (Amendment) Act of 1975, with effect from 1st October, 1975 is to make every person connected with the affairs of the company, apart from the managing director who has signed the return, liable to be proceeded against and punished. [955 H, 956 A-D]

F *Kapurchand Shrimal* v. *Tax Recovery Officer, Hyderabad and Ors.*, [1969] 72 ITR 623, relied on.

Inspecting Assistant Commissioner of Income-tax v. *Chotabhai Javerbhai,* [1941] 8 ITR 604 (Mad.), approved.

G CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 383-384 of 1979.

From the Judgment and Order dated 4.2.1977 of the Madras High Court in Criminal Misc. Petition No. 4813/76 and Criminal Revision Case H No. 44 of 1974.

A.T.M. Sampath for the Appellant. A

Dr. V. Gauri Shankar, S. Rajappa for Ms. A. Subhashini and Raju Rama Chandran for the Respondent.

The Judgment of the Court was delivered by B

YOGESHWAR DAYAL, J. These appeals are directed against the judgment of the learned Single Judge of the Madras High Court dated 4th February, 1977 and arise in the following circumstances.

The first accused, Sh. M.R. Pratap, who was the Managing Director of the Company Rayala Corporation Private Ltd., is the appellant in the present appeals. The respondent/complainant is the Income-tax Officer, Central Cricle III, Madras. The appellant is the first accused along with the second accused. A complaint was filed before the Chief Presidency Magistrate purporting to be under Sections 277 and 273 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') and Sections 120-B and 193 of the Indian Penal Code, relating to an offence said to have been committed during the assessment year 1965-66. C D

According to the complaint the first accused was the Managing Director of the Rayala Corporation Private Ltd., (hereinafter referred to as 'the Company')and the second accused was the Chief Accountant of the said Company. The Company was an assessee under the Act. The return of the income of the company for the assessment year 1965- 66 dated 17th November, 1976 was delivered to the respondent on 18th November, 1965 showing a total income of Rs. 21,36,785 for the accounting year ended 31st March, 1965. The return so submitted was verified and signed by the first accused – the appellant herein. The accompanying statements were signed by the second accused. According to the complaint, as a result of a search at the premises of the company and the residence of both the accused and others, made under Section 132 of the Act, it was discovered that the return of income and the statements accompanying the said return were deliberately false, being less than the true income by more than Rs. 6 lakhs and the expenditure shown in the statements had been obviously inflated by at least Rs. 2,69,765. The complaint charged the appellant for making willfully and knowingly false verification of the company's return of income and thereby committed an offence punishable under Section 277 of the Act. Besides this, the first and the second accused were charged with other E F G H

A offences also. However, for the purpose of the present appeals we are not concerned with the rest of the charges made in the complaint.

The appellant herein filed a miscellaneous petition before the Magistrate as to the maintainability of the complaint against him in his capacity as the Managing Director. The Magistrate dismissed the miscel-
B laneous petition by order dated 28th Noverber, 1973. Against the said order the appellant filed a revision petition. The appellant also filed another petition being Crl. Misc. Petition No. 4813 of 1976 under Section 482 of the Code of Civil Procedure praying to quash the complaint and the proceedings in pursuance thereof.

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The learned Single Judge dismissed both the revision petition as well as the petition under Section 482 of the Code of Criminal Procedure and upheld the prosecution of the appellant.

Numerous contentions were urged before the learned Single Judge
D but before this Court really one contention was urged, namely—that the word "person" occurring in Section 277 of the Act would relate only to an assessee and not to any person other than the assessee and, therefore, the appellant who signed the return of income on behalf of the company in the capacity of Managing Director, cannot be included within the definition of
E the word "person" as used in Section 277 and, consequently, if person other than the assessee is prosecuted, it would be void, because Section 277 contemplates an offence by an assessee against whom penalty is imposable and not by any person other than the assessee, viz. the Company.

Before us Mr. Sampath, learned counsel for the appellant, repeated
F the submissions which were urged before the High Court. It was *inter alia* submitted by the learned counsel that Section 2(31) of the Act defines the word "person" and the word "assessee" is defined in Section 2(7) as a person by whom any tax or any other sum of money is payable under the Act and includes a person in respect of whom proceedings under the Act have been taken for the assessment of his income, etc.

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However, according to learned counsel for the respondent under Chapter XXII, in Sections 276, 276A, 276B, 277, 278 and 279, the word "person" is used. He submitted that the word "person" in Section 277 does not and cannot mean the assessee. It was submitted on behalf of the
H respondent that the word "person" occurring in Section 277 means the

individual who makes a declaration on oath which he believes to be false and he need not necessarily be only the assessee on whom penalty is leviable under Section 271 (1)(c) for concealment and that the word "person" occurring in Section 276 means the individual who fails to do the acts prescribed by the statute and the word "person" occurring in Section 276A means the individual who acts in a manner contrary to the statute and the expression "person" used in Section 277 is not used in the sense as is defined in Section 2(31) of the Act. Support in this behalf was sought from the decision of the Supreme Court in *Kapurchand Shrimal* v. *Tax Recovery Officer, Hyderabad, and others* (1969) 72 ITR 623 SC. In this case it was held thus:–

> "We are unable to hold that the expression 'person' in sections 276, 276A and 277 is used in the sense in which it is defined in section 2(31) of the Act. For each specific act which is deemed to be an offence under those provisions, and individual who, without reasonable cause or excuse, fails to do the acts prescribed by Statute or acts in a manner contrary to the statute, or makes a declaration on oath which he believed to be false or does not believe to be true, is made liable to be punished. Section 278 penalises the abetment or inducing any person to make and deliver an account, statement or declaration relating to any income chargeable to tax which is false and which he either knows to be false or does not believe to be true. In the context in which the expression 'person' occurs in sections 276, 276A, 277 and 278, there can be no doubt that it seeks to penalise only those individuals who fail to carry out the duty cast by the specific provisions of the statute, or are otherwise responsible for the acts done."

Another argument of learned counsel for the appellant was that the term "principal officer" is defined in Section 2(35) as the secretary, treasurer, manager or agent of the company, but would not include Managing Director as the said term "managing director" is conspicuously omitted there and that, therefore, whenever an assessee or any other person is to be prosecuted or is intended to be subjected to certain obligation, the statute intends the "company and the principal officer" as mentioned in Sections 204, 206 and 236 of the Act. It was thus urged that the omission

A of the words "principal officer" or "managing director" in Section 277 is very significant and the Managing Director cannot at all be prosecuted in a case where the company itself is an assessee. Therefore, according to the learned counsel for the appellant the word "person" occurring in Section 277 will include neither the managing director nor the principal officer B nor the representative assessee, and as the definition of "person" includes only the company, the verification has to be under Section 139 only by the company and the person who signs that verification is only a signatory whereas the company is the assessee, the person who is obliged to file the verified return. He also submitted that according to the newly introduced Sections 278B and 278C (Introduced on 1st october, 1975) a director in C the case of the company and a karta in the case of a Hindu Undivided Family can be prosecuted, and, therefore, by virtue of the said new amendments, the legislature in its wisdom has thought it fit to bring the managing director also along with the company as accused person only by this amendment which takes effect from 1st October 1975, and this introduction D of the amendment will go in support of the appellant's contention that the legislature itself had not, during the relevant period in this case, intended the managing director to be included and so the managing director cannot be prosecuted at all in this case. It was urged that if the contention of the prosecution that the managing director can be prosecuted before 1st E October, 1975 is correct, then there was no necessity for this amendment to fill up the lacuna, and, therefore, before 1st October, 1975, in view of Section 279 (1A), the assessee alone can be prosecuted.

Learned counsel for the respondent in reply to this argument submitted that the main decision of the Supreme Court in *Kapurchand's* case F (supra) that the karta cannot be detained in a civil jail, rests on Section 222 which specifically uses the word "assessee" and, therefore, the conclusion arrived at in that case, while dealing with Section 222, cannot be availed of by the appellant in this case. Before the learned Single Judge reliance was also placed on the decision of the Madras High Court in G *Inspecting Assistant Commissioner of Income-tax* v. *Chotabhai Javerbhai,* (1941) 9 ITR 604 (Madras) wherein Horwill, J., while dealing with Section 52 of the Indian Income-tax Act, 1922 (corresponding to Section 277 of the 1961 Act), has held that the word "person" in that section does not necessarily mean the assessee and that it must be given its ordinary

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dictionary meaning and that it includes a person duly authorised. A

It appears that in view of the dictum of this Court in *Kapurchand's* case (supra) we are unable to accept the arguments advanced by the learned counsel for the appellant. On the other hand we are of the view that the appellant cannot escape on the plea that the word "person" used in Section 277 refers only to an assessee but not the person who has made the verification on behalf of the said assessee. B

It has been found by the learned Single Judge that the verification of the return which was signed by the appellant was signed by him in his capacity as principal officer. Learned counsel for the appellant submitted C that the Parliament has now, by the Taxation Laws (Amendment) Act of 1975, which took effect from 1st April, 1976, removed the expression "the principal officer" occurring in Section 140 (c), in so far as it related to a company, and instead has substituted the words "the managing director.....or, where there is no managing director, any director thereof". It D was thus contended that the substitution of the word "managing director" for the term "principal officer" is an indication to show that the expression "principal officer" will not relate to the managing director and that is why the above sustitution has now taken place.

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We are afraid we cannot also agree with this submission of the learned counsel for the appellant. Section 2(35) of the Act defines the term "principal officer" and Section 2(20) of the Act defines the term "director". Section 2 sub-section (24) of the Companies Act defines the word "manager". At the relevant time Section 197A of the Companies Act F provided that no company shall appoint or employ at the same time more than one of the following categories of managerial personnel, viz., the managing director and the manager. In the present case the appellant admittedly was the Managing Director of the Company and he was thus the principal officer thereof. Rule 12(1) of the Income-tax Rules states that the return of income shall, in the case of a company, be in Form No. 1 and G be verified in the manner indicated therein. In view of Section 139 read with Section 140(c) of the Act the return has to be signed by the principal officer of the company. A statutory obligation is cast on the principal officer to sign the tax returns. The substitution of the words made under the new Amendment Act will not in any way alter the position with regard H

A to the operation of the provisions of the Income-tax Act as against a managing director of a company when he has signed the return of the company in such capacity. The effect of the amended Section 140(c) of the Act is that the company's return of income should be signed only by the managing director or by any director, when there is no managing director, B and not by the secretary or the treasurer, who are however included within the meaning of "principal officer" under Section 2 (35) of the Act. By the Introduction of Section 278B by the Taxation Laws (Amendment) Act of 1975, with effect from 1st October, 1975, it is enacted that where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible C to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. The effect of the new section is to make every person connected with the affairs of the company, apart from the managing director who has signed the return, liable to be D proceeded against and punished

We are in complete agreement with the reasonings and conclusion of the High Court. No other point was urged. The result is that the appeals fail and are dismissed.

T.N.A. Appeals dismissed.