

INCOME TAX OFFICER, JIND

v.

M/S. MANGAT RAM NORATA RAM NARWANA & ANR.

(Criminal Appeal No. 8 of 2005)

MAY 5, 2011

[HARJIT SINGH BEDI AND CHANDRAMAULI KR.  
PRASAD, JJ.]

*Income Tax Act, 1961: ss. 276C(i), 277, 278 – Discrepancies relating to entries of income, sale and purchase and bank accounts of respondent-firm – Revised return filed duly signed by the accused-partner – Assessment of income – Based on assessment, penalty imposed – Penalty paid – Complaint also lodged u/ss.276C(i), 277, 278 for prosecution of firm and partner – Magistrate held them guilty and imposed fine on the firm and the partner and awarded sentence of one year rigorous imprisonment on the partner – Acquittal of partner by appellate court – Upheld by High Court on the ground that prosecution was not able to prove that the return was signed/verified by the accused-partner – On appeal, held: At no point of time, the said partner made any objection that the return did not bear his signature or was not filed by him – By not raising any dispute at any point of time and paying the penalty, the prosecution proved his admission of filing and signing the return – Nothing was brought in evidence of the partner that signature on the return did not belong to him and the penalty was paid mistakenly – The appellate court misdirected itself in not considering the evidence in right perspective and acquitting the accused – High Court also failed to correct the apparent error – Order of conviction passed by Magistrate restored – Evidence – Admission.*

*Evidence: Admission – Evidentiary value of – Held: Admission is best evidence against the maker and it can be*

A *inferred from the conduct of the party – Admission implied by conduct is strong evidence against the maker but he is at liberty to prove that such admission was mistaken or untrue.*

B CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 8 of 2005.

From the Judgment & Order dated 24.7.2003 of the High Court of Punjab & Haryana at Chandigarh in Criminal Misc. No. 117-MA of 2003-Appealed Form.

C Mukul Gupta, Vikas Malhotra, B.V. Balaram Das, Mohd. Mannan for the Appellant.

S.S. Khanduja, Yash Pal Dhingra for the Respondents.

D The following Order of the Court was delivered

# ORDER

The Income Tax Officer, aggrieved by the acquittal of the respondents has preferred this appeal with leave of the Court.

E According to the prosecution, respondent no.1 M/s. Mangat Ram Norata Ram is a partnership firm carrying on the business of sale and purchase of machinery, iron pipes and spare parts. Respondent No. 2 accused Hem Raj happened to be one of its partner. M/s. Mangat Ram Norata Ram F (hereinafter referred to as "the Firm") filed its income tax return for the assessment year 1988-89 on 14th July, 1988 through its counsel, which was signed and verified by Hem Raj, its partner. The income-tax return showed the income of the firm Rs.1,02,800/-. Return was accompanied by statement of G income, trading accounts, profit & loss account, partnership account and balance sheet for the assessment year 1988-89. The assessment was completed by the then Income Tax Officer under Section 143(3) of the Income Tax Act for Rs.1,47,370/-.

H Further case of the prosecution is that the books of the

accounts of the firm were taken into possession by the Sales Tax Department, which were obtained by the Income Tax Department and on its perusal discrepancies relating to entries of income, sale and purchase, bank account etc. were noticed and accordingly a notice under Section 148 of the Income Tax Act (hereinafter referred to as 'the Act') was issued requiring the respondents to furnish a revised return within 30 days. The respondents did not comply with the notice and thereafter notice under Section 142(1) of the Act was issued and the assessee firm ultimately filed its income tax return declaring its income of Rs.1,47,870/-. The prosecution has alleged that this return was duly signed and furnished by accused Hem Raj, which was accompanied by revised statement of income, trading account and profit and loss account. All these documents, according to the prosecution were also signed by accused Hem Raj. On consideration of the same, the Assistant Commissioner of Income Tax made addition of Rs.1,28,000/- with trading account, Rs.1,10,000/- in bank account and Rs.19,710/- as additional income and assessed the total income to Rs.3,68,200/- and directed for initiating penalty proceedings.

Ultimately, the minimum penalty of Rs.1,24,950/- was imposed under Section 271(1)(c) of the Act and further a sum of Rs.7890/- and Rs.12,680/- under Section 271(1)(a) of the Act. The respondent firm filed appeal against the imposition of penalty which was dismissed by the Commissioner of Income Tax (Appeals). The respondents had paid the penalty inflicted on the firm.

A complaint was also lodged for prosecution of respondents under Section 276C (i), 277 and 278 of the Act. The trial court on appraisal of the evidence held both the respondents guilty and awarded a fine of Rs.1000/- each under Section 276C(1), 277 and 278 of the Act to respondent no.1, the firm, whereas, respondent no.2 was sentenced to undergo rigorous imprisonment for one year and to pay a fine of

- A Rs.1,000/- on each count and in default to suffer simple imprisonment for three months.

- B Respondents aggrieved by their conviction and sentence preferred appeal and the Appellate Court set aside the conviction and sentence on the ground that sanction for prosecution was not valid. The Appellate Court further held that the prosecution has not been able to prove the signature of respondent no.2 in the return filed, and hence, the conviction is bad on that ground also. The Income Tax Officer aggrieved by the acquittal of the respondents preferred appeal and the High Court by its impugned judgment upheld the order of the acquittal and while doing so observed that the sanction is valid but maintained the order of acquittal on the ground that the prosecution has not been able to prove that the return was signed/verified by respondent no.2. The observation of the High Court in that regard reads as follows:

- E “Irrespective of the above decision as regards grant of sanction and the requirement for hearing the accused, fact remains that there was insufficient proof that the return had been signed/verified by Hem Raj. Statement of Desh Bandhu Goyal (PW 2), the officer who made the final assessment, was to the effect that the return had not been signed/verified in his presence. Furthermore, other witnesses namely Satish Kumar, UDC (PW1), J.K.Sahni (PW 3) and Satish Luthra (PW 4) had not proved Hem Raj’s signatures. The prosecution case was that the return had been revised and submitted through a counsel and returns were never signed by the partners in the presence of the Income tax Officer. Therefore, the learned Additional Sessions Judge held that it had not been proved that the return had been signed/verified by Hem Raj as the counsel who had filed the return had not been examined and there was no evidence that it was Hem Raj who had signed the return even though the name Hem Raj appeared on the return. The prosecution could have examined a hand
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writing expert but failed to do so. For all these reasons the learned appellate court accepted the appeal and acquitted the respondents. The appellate court had taken a plausible view. It was neither perverse nor illegal. No ground exists to interfere with the decision of the appellate court".

Mr. Mukul Gupta, learned Senior Counsel appearing on behalf of the appellant submits that the accused invited the order of the Income Tax Authority on the return so filed and aggrieved by the order of Income Tax Officer preferred appeal. According to him after the dismissal of the appeal by the Appellate Authority, the accused paid the penalty and these facts having been proved by the evidence laid by the prosecution it was for the accused to disprove that the signature on the income tax return was not his.

Mr.S.S.Khanduja, learned counsel appearing on behalf of respondent submits that in the case of prosecution of an accused the onus is always on the prosecution to prove all the ingredients to bring home the act within the mischief of penal provision and the prosecution having not proved that the signatures are of accused Hem Raj, the order of acquittal does not call for interference by this Court in the present appeal.

We have bestowed our thoughtful consideration to the submission advanced.

True it is that PW 2 Desh Bandhu Goyal, who made the final assessment did not state in his evidence that the return was signed or verified by the accused Hem Raj in his presence. Further the witnesses; namely Satish Kumar (PW1), J.K.Sahni (PW 3) and Satish Luthra (PW 4) have not proved the signatures of Hem Raj. But this, in our opinion would not be sufficient to throw out the case of the prosecution. The prosecution undoubtedly is to prove its case beyond all reasonable doubt to bring home the charge. The evidence for that purpose could be admission of the accused also. Here in the present case, prosecution had led evidence to prove that

- A revised return was filed by the firm under the name of accused Hem Raj and on that basis assessment was made by the assessing authority. There is further evidence to show that aggrieved by the order of assessing authority, appeal was preferred before the appellate authority under the signature of the accused Hem Raj, which was dismissed and the penalty was paid. At no point of time accused Hem Raj made any objection that the return did not bear his signature and was not filed by him. It is trite that admission is best evidence against the maker and it can be inferred from the conduct of the party.
- C Admission implied by conduct is strong evidence against the maker but he is at liberty to prove that such admission was mistaken or untrue. By proving conduct of the accused Hem Raj in not raising any dispute at any point of time and paying the penalty, the prosecution has proved his admission of filing and signing the return. Once the prosecution has proved that, it was for the accused Hem Raj to demonstrate that he did not sign the return. There is no statutory requirement that signature on the return has to be made in presence of the Income-tax authority. Nothing has been brought in evidence by the accused Hem Raj that signature did not belong to him on the return and the penalty was paid mistakenly. We are of the opinion that the appellate court misdirected itself in not considering the evidence in right perspective and acquitting the accused, so also the High Court which failed to correct the apparent error. This render their judgments unsustainable. Any other view may induce the appellant to compel the assessee to file return in the presence of the authority so that the signature is proved by direct evidence by such authority in trial. This will lead to a difficult situation not contemplated under the Act.
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- G Accordingly, this appeal is allowed, impugned orders are set aside and the judgment of conviction passed by the Chief Judicial Magistrate is restored. However, we reduce the substantive sentence from one year to six months on each count and they are directed to run concurrently.
- H D.G. Appeal allowed.