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Cr1.A.No. 1151 OF 1999
IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1151 OF 1999

M/S. GURU NANAK ENTERPRISES & ORS.....APPELLANT(S)

VERSUS

I.T.O., DISTT.CIRCLE-II, JAIPUR.....RESPONDENT(S)

O R D E R

In this appeal by special leave the order impugned is the order of the High Court of Judicature for Rajasthan, Jaipur Bench, Jaipur in S.B. Criminal Miscellaneous Petition No.1213 of 1998 whereby the High Court dismissed the petition filed by the appellant herein under Section 482 Cr.P.C. for quashing the proceeding pending in the Court of Special Judicial Magistrate (Economic Offences), Jaipur initiated under Section 276 CC read with Section 278 B of the Income Tax Act, 1961. The High Court rejected the petition by a summary order.

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The facts are not disputed before us. They may be briefly stated thus :-

In respect of assessment year 1982-1983, the appellant-firm did not file its return in time, but in its delayed income tax return disclosed an income on which the tax liability was shown as Rs.644/-. The Assessing Officer did not accept the return and made certain additions and imposed a tax liability of Rs.10,476/-. The appellant-firm, aggrieved by the order, preferred an appeal. The Appellate authority remanded the matter to the assessing authority for fresh assessment making certain observations. The Assessing Officer thereafter assessed the appellant-firm and on the basis of its assessment the tax liability came to Rs.4,450/-. The appellant-firm was still not satisfied and preferred an appeal. The appeal was partly allowed and ultimately a tax liability of Rs.1,360/- only was imposed.

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The Income Tax Officer in the meanwhile lodged a complaint against the appellant-firm under Section 276 CC read with Section 278 B of the Income Tax Act, 1961. The prosecution lodged by the Income Tax Officer was sought to be quashed by filing a petition under Section 482 of the Code of Criminal Procedure, but as we have noticed earlier the same was summarily dismissed.

We have heard counsel for the parties.

It appears to us that the case of the appellant is clearly covered by proviso (ii)(b) of Section 276 CC. In the instant case as noticed, the total tax liability of the appellant was finally assessed at Rs.1,360/-. Under Section 276 CC proviso (ii)(b), shorn of unnecessary details, a person shall not be proceeded against under this Section for failure to furnish in due time the return of income if the tax payable by him on the total income determined, as reduced by a advanced tax, if any, paid, and any tax deducted at source, does

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not exceed Rs.3,000/-. As noticed earlier, the appellant had disclosed a tax liability of Rs.644/- which on final assessment was determined as Rs.1360/-.

Counsel for the Revenue could not advance any argument to support the prosecution launched against the appellant, because it is clear that the total income tax liability determined by the

department is only Rs.1360/- which is much less than Rs.3,000/- envisaged under the proviso.

We, therefore, find in the facts and circumstances of the case, that the prosecution is wholly unwarranted. Accordingly, we set aside the judgement and order of the High Court and quash the proceeding pending against the appellant in the Court of the Special Judicial Magistrate (Economic Offences), Jaipur on the basis of the complaint lodged by the Income Tax Officer, District Circle-II, Jaipur on 31.3.1986.

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This Appeal is accordingly, allowed.

.....J.
(B.P.SINGH)

.....J.
(ARUN KUMAR)

NEW DELHI;
NOVEMBER 3, 2004
ITEM NO.102

COURT NO.11

SECTION II

S U P R E M E C O U R T O F I N D I A
Record of Proceedings

Criminal Appeal No.1151 of 1999

M/s Guru Nanak Enterprises & Ors.Appellant (s)

VERSUS

I.T.O., Distt.Circle-II, JaipurRespondent(s)

(With Office Report)

Date :3/11/2004 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.P.SINGH
HON'BLE MR. JUSTICE ARUN KUMAR

For Appellant (s)Mr.K.L.Janjani, Adv.
Mr. Pankaj Kumar Singh, Adv.
Dr.Vinod Tewari, Adv.
Mr.J.P.N. Gupta, Adv.

For Respondent (s)Mr. Harish Chandra, Sr.Adv.
Mr. Anuvrat Sharma, Adv.
Mr. B.V.Balram Dass, Adv.

UPON hearing counsel, the Court made the following
O R D E R

The appeal is allowed in terms of the signed order.

(SUKHBIR PAUL KAUR)(ASHA JOSHI)
COURT MASTER COURT MASTER

(Signed Order is placed on the file)