(2006) 05 P&H CK 0032

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 14333-M of 2005

Ambika Agro Engineers and Others — APPELLANT

Vs

Income Tax Officer — RESPONDENT

Date of Decision : 17-05-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Income Tax Act, 1961 — Section 143(2), 27(1), 276, 277, 278B

Citation : (2006) 144 PLR 735

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Advocate : D.V. Sharma, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Satish Kumar Mittal, J.—The petitioners have filed this petition u/s 482 Cr.P.C. for quashing of the criminal complaint titled as "Income Tax Officer, Ward II(I), Ludhiana v. Ambika Agro Engineers and Ors. filed u/s 276/277 read with Section 278B of the Income Tax Act, 1961 (hereinafter referred to as ''the Act'') for the assessment year 1993-94 and the subsequent proceedings arising therefrom and pending in the Court of C.J.M., Ludhiana.

2. The aforesaid complaint was filed on 22.2.2001 by the Income Tax Officer, Ward II(I), Ludhiana against the petitioners on the ground that the accused firm had filed its return of income for the assessment year 1993-94 on 31.10.1993. In the regular assessment proceedings the Assessing Officer found that the assessee had concealed income. He framed assessment u/s 143(2) of the Act and assessed income at Rs. 66,098/- as against the declared income of Rs. 6,150/-. The Assessing Officer also imposed penalty of Rs. 21,520/- on the assessee u/s 27(1)(c) of the Act vide order dated 9.7.1999 for filing false return with inaccurate particulars of income.

3. Against the order of penalty, the assessee firm filed an appeal before the

Commissioner of Income Tax (Appeals), Ludhiana. The said appeal was allowed and the order of penalty was set aside vide order dated 28.3.2000 while observing as under:

It is seen from the penalty order itself that the appellant during the course of penalty proceedings had argued that there may have been difference in the stock statements submitted to the Bank but all the purchases made and sales effected have duly been accounted for in the books of account. The A.O. could not give any finding against this argument of the appellant and he simply relied on the stock statements submitted to the Bank. The appellant has placed before me entire material regarding the purchase of steel pins that is purchase bill, copies of ledger account where these purchases have been entered in the books of account. Copies of various parties to whom sales were made against this purchase and from this material it can be seen that the purchase had been properly vouched and accounted for in its book of account. Under these circumstances it is held that the A.O. had erred in the levying penalty u/s 27(1)(c) amount to Rs. 21,520/- and the same is deleted.

4. Against the aforesaid order, the Income Tax Officer, Ward II(I), Ludhiana preferred the second appeal before the Income Tax Appellate Tribunal, Chandigarh Bench ''A'' (hereinafter referred to as ''the Tribunal''). During the pendency of the said appeal, the aforesaid complaint was filed by the Income Tax Officer. Subsequently, the second appeal filed by the department was also dismissed by the Tribunal vide order dated August 9, 2001. According to the petitioners, the said order has become final.

5. Counsel for the petitioners while referring to the judgments of the Hon''ble Apex Court in G.L. Didwania and Another Vs. Income Tax Officer and Another, and Subarmaniam Sethuaman v. State of Maharashtra and Anr. 2004 (4) R.C.R. 349 and of this Court in Ajay Tent House and Ors. v. Income Tax Officer, Gurgaon 2003 (2) R.C.R. 49 submits that once the penalty imposed by the Income Tax Officer u/s 27(1)(c) of the Act on account of concealment of income has been set aside by the Appellate Authority and the said order became final, then the criminal proceedings for concealment of income against the assessee cannot continue and the same are liable to be quashed. Counsel further contends that once the decision of the Appellate Authority has become final, then the continuation of the proceedings was nothing but an abuse of the process of the Court.

6. No one is present on behalf of the respondent-department to controvert the aforesaid factual position.

7. Keeping in view of the aforesaid factual position and the law laid down by the Supreme Court and this Court in G.L. Didwania''s case (supra). Subsramaniam Sethuraman''s case (supra) and M/s Ajay Tent House''s case (supra), the impugned complaint and the subsequent proceedings are liable to be quashed.

8. Accordingly, this petition is allowed and the criminal complaint titled as

Income Tax Officer, Ward II(I), Ludhiana v. Ambika Agro Engineers and Ors. filed under Sections 276/277 read with Section 278B of the Act for the assessment year 1993-94 and the subsequent proceedings arising therefrom and pending in the Court in the Court of C.J.M., Ludhiana are hereby quashed.

