

(1997) 09 PAT CK 0081

In the Patna High Court

Case No : Criminal Miscellaneous No's. 4307 of 1992 and 5025 of 1992 26
September 1997 A.Y. 1988-89

ASHIRVAD ENTERPRISES and Others

APPELLANT

Vs

STATE OF BIHAR and Another

RESPONDENT

Date of Decision : 26-09-1997

Acts Referred:

Constitution of India, 1950 — Article 136
Criminal Procedure Code, 1973 (CrPC) — Section 309, 482
Income Tax Act, 1961 — Section 245A, 245B, 271, 273A, 276
Penal Code, 1860 (IPC) — Section 193, 196, 245C, 245D, 245E

Citation : (1998) 150 CTR 458

Hon'ble Judges : Naresh Kumar Sinha, J

Bench : Division Bench

Advocate : D.V. Pathy, for the Assessee and S.K. Sharan, for the Revenue, for the Appellant;

Judgement

Naresh Kumar Sinha, J.

Both the applications, Criminal Miscellaneous No. 4307 of 1992 and Criminal Miscellaneous No. 5025 of 1992, u/s 482 of the Code of Criminal Procedure seek quashing of the criminal prosecution of the petitioners including the order dated 27-2-1992, taking cognizance under sections 276C and 277 of the Income Tax Act, 1961, in Complaint Case No. 50 of 1992 pending before the Special Court (Economic Offences), Muzaffarpur. Since a common question of law has been raised, the applications have been heard together and are being disposed of by this common judgment.

2. Ashirvad Enterprises is a registered firm. The firm and its partners are the petitioners. A complaint was filed on 27-2-1992 by Assistant Commissioner of Income Tax (O.P. No.2), alleging that the petitioners had wilfully attempted to evade tax, interest or penalty chargeable or imposable under the Income Tax Act, (hereinafter referred to as "the Act"), by deliberately concealing the accurate

particulars of income for the assessment year 1988-89. The firm had filed a return on 14-10-1988, showing a total loss of Rs. 1,14,850 for the assessment year. The return had been signed and verified by Lakshmi Narain Poddar, the petitioner in Criminal Miscellaneous No. 5025 of 1992. Following a search and seizure operation conducted at the business premises of the firm on 13-9-1990, in the course of which several incriminating documents and papers were seized, the assessment was completed on a total income of Rs. 8,58,733. A proceeding u/s 271(1)(c) of the Act was also initiated by the assessing officer. The Commissioner by his order dated 14-2-1992, u/s 279(1) of the Act authorised the filing of a complaint for the offences punishable under sections 276C and 277 of the Act. The said order of sanction was attached with the complaint petition (annexure-1) filed on 27-2-1992, on the basis of which the special court for Economic Offences passed the impugned order dated 27-2-1992, taking cognizance of the offences alleged, copy of which is Annexure-2.

Learned counsel for the petitioners pressed both the applications mainly on the ground that since the firm had already filed an application before the Income Tax Settlement Commission u/s 245C of the Act, the complaint subsequently filed is incompetent in the eye of law and the criminal prosecution of the firm and its partners was an abuse of the process of the court. The quashing of the impugned order taking cognizance as also the criminal prosecution of the petitioners, it was argued, was necessary to secure the ends of justice by invoking the inherent powers of this court u/s 482 of the Code of Criminal Procedure (hereinafter referred to as the "Code"). The contention has been controverted on behalf of the revenue.

3. Only such of the facts need be stated as are necessary for appreciating the contention of the parties with regard to the question of law raised. According to the averments made on behalf of the petitioners an appeal had been filed against the order of assessment before the Commissioner (Appeals), Patna, Bihar, which was pending for adjudication. The petitioners had also filed an application for settlement of their case before the Settlement Commission under the provisions of section 245C of the Act. As per the statements contained in a supplementary affidavit filed on behalf of the petitioners in Criminal Miscellaneous No. 4307 of 1992 the aforesaid application had been filed on 27-5-1991. A copy of the order dated 15-9-1994, passed by the Settlement Commission has been enclosed as Annexure-1 to the supplementary affidavit. By the said order, the Settlement Commission directed the case to be proceeded with for the years 1988-89 to 1991-92 u/s 245D(1) of the Act. Admittedly, the application is still pending before the Settlement Commission and no final order has been passed within the meaning of sub-section (4) of section 245D of the Act.

From the order of the Settlement Commission it appears that the firm had filed the application on 27-5-1991, for the assessment years 1988-89 to 1991-92 which included the assessment year 1988-89 for which the complaint had been filed. A copy of the settlement application was forwarded to the Commissioner of

Income Tax, Patna, in terms of the provisions of section 245D(1) of the Act by the Settlement Commission by its letter dated 18-7-1991, for a report in the prescribed manner. The said report was received in the office of the Commission on 12-5-1994, and it was only thereafter that the Commission after hearing the petitioners passed its order allowing the application to be proceeded with. As already noticed earlier the Income Tax authority had sanctioned the prosecution of the firm and its partners on 14-2-1992, and pursuant to which the complaint was filed on 27-2-1992. In other words, the prosecution was sanctioned and the complaint filed after the filing of the application before the Commission on 27-5-1991, but before 15-9-1994, the day the Commission allowed the application to be proceeded with.

4. Learned counsel for the petitioners has referred to the provisions of section 245F(1) of the Act in support of his contention that once the application had been filed before the Commission on 26-5-1991, u/s 245C, the settlement commission alone was competent to exercise the powers of the income- tax authority under the Act and hence the Income Tax Commissioner could not have sanctioned the prosecution of 14-2-1992, within the meaning of section 279(1) of the Act. Since the order of sanction was itself illegal and without jurisdiction, the complaint filed on 27-2-1992, pursuant to the order of sanction was not competent in the eye of law and no valid order of cognizance could have been passed on the basis of such a complaint. In support of his contention, learned counsel for the petitioners had relied on a judgment of the Delhi High Court in *Dr. Mrs. Geeta Gupta Vs. Inspecting Assistant Commissioner of Income Tax (Assessment), Range XIV, New Delhi, and another*, and of the Punjab and Haryana High Court in *R.I. Chadha and Others Vs. Income Tax Officer*, and in *Basal Tool Company and Others Vs. Income Tax Officer*, . In all these cases the complaints were quashed pending final disposal of the application before the Settlement Commission which had been allowed to be proceeded with u/s 245D of the Act.

Learned counsel for the revenue referred to the judgment of the Delhi High Court in *Super Rubber Enterprises Vs. Deputy Commissioner of Income Tax*, , wherein it has been mentioned that the decision of this court in *Dr. Mrs. Geeta Gupta Vs. Inspecting Assistant Commissioner of Income Tax (Assessment), Range XIV, New Delhi, and another*, , has been stayed by the Supreme Court in Criminal Appeal No. 326 of 1988 on 10-5-1988. In the said case the criminal complaint was dated 11-3-1991, and long before that the petitioner had filed an application for settlement before the Settlement Commission in 1989, which was admitted in the year 1991. There is, however, nothing to indicate in the judgment whether the application was allowed to be proceeded with by the Settlement Commission before the filing of the criminal complaint dated 11-3-1991, or thereafter. Thus though his Lordship was pleased to observe that the right course for the respondents would have been to desist from launching the prosecution against the petitioner, the complaint was not quashed and only the proceedings before the Magistrate were stayed till the decision was made by the Settlement

Commission. On behalf of the revenue reference was also made to a judgment of the Gujarat High Court in Ashvin Kumar Vadilal Patel Vs. S. Rajguru and Another, , by which the court refused to even stay the criminal prosecution on the ground that until immunity is granted against the criminal prosecution by the Settlement Commission, the criminal prosecution need not be stayed. Learned counsel for the revenue also relied upon two judgments of learned single judges of this court in K. Pachisia v. Union of India (1983) 2 PLJR 21 (Guj) and Mukesh Kumar and Others Vs. Commissioner of Income Tax and Others , in support of his contention that the criminal prosecution of the petitioners cannot be quashed. It was argued that this court in Mukesh Kumar and Others Vs. Commissioner of Income Tax and Others , had referred to a number of authorities of different High Courts as also observations made by the Apex Court in some other cases before expressing its view that mere pendency of an application before the Commission or even after an application had been allowed to be proceeded with is no good ground for quashing the complaint and in such a situation only an order of stay of the criminal proceedings can be passed. Learned counsel for the revenue also contended that the judgment of this court in K. Pachisia's case (1993) 2 PLJR 21, applies to the facts of the present case as admitted by the petitioners in their own application and hence in terms of the orders passed in the said case, the criminal proceedings against the petitioners could alone be stayed and there was no question of the complaint itself being quashed.

For proper appreciation of the rival contentions of the parties some of the provisions of Chapter XIX-A of the Act under the caption "Settlement of cases" may be referred to. The Chapter consisting of sections 245A to 245M was inserted by the Taxation Laws (Amendment) Act, 1975, with effect from 1-4-1976. Before some of the provisions of the Chapter are reproduced below all that needs to be stated is that by the said amendment a procedure was introduced whereby an assessee may be enabled to come forward with a proposal to settle his tax liability once and for all in the overall context of the position over a period of years and the investigation, examination and acceptance of such a proposal by an independent Tribunal after a proper scrutiny of his affairs and assets. A Commission to be called the Income Tax Settlement Commission thus came to be constituted by the Central Government u/s 245B of the Act for the settlement of cases under the said Chapter. Sections 245C, 245D, 245F and 245H are reproduced below :

"245C.(1) An assessee may, at any stage of a case relating to him, make an application in such form and in such manner as may be prescribed, and containing a full and true disclosure of his income which has not been disclosed before the assessing officer, the manner in which such income has been derived, the additional amount of Income Tax payable on such income and such other particulars as may be prescribed, to the Settlement Commission to have the case settled and any such application shall be disposed of in the manner hereinafter provided.

Provided that no such application shall be made unless,

(a) the assessee has furnished the return of income which he is or was required to furnish under any of the provisions of this Act; and

(b) the additional amount of Income Tax payable on the income disclosed in the application exceeds one hundred thousand rupees."

"245D. (1) On receipt of an application u/s 245C, the Settlement Commission shall call for a report from the Commissioner and on the basis of the materials contained in such report and having regard to the nature and circumstances of the case or the complexity of the investigation involved therein, the Settlement Commission may, by order allow the application to be proceeded with or reject the application :

Provided that an application shall not be rejected under this sub-section unless an opportunity has been given to the applicant of being heard :

Provided further that the Commissioner shall furnish the report within a period of forty-five days of the receipt of communication from the Settlement Commission in case of all applications made u/s 245C on or after 1-7-1995, and if the Commissioner fails to furnish the report within the said period, the Settlement Commission may make the order without such report.

(3) Where an application is allowed to be proceeded with under sub-section (1), the Settlement Commission may call for the relevant records from the Commissioner and after examination of such records, if the Settlement Commission is of the opinion that any further enquiry or investigation in the matter is necessary, it may direct the Commissioner to make or cause to be made such further enquiry or investigation and furnish a report on the matters covered by the application and any other matter relating to the case.

(4) After examination of the records and the report of the Commissioner, received under sub-section (1), and the report, if any, of the Commissioner received under sub-section (3), and after giving an opportunity to the applicant and to the Commissioner to be heard, either in person or through a representative duly authorised in this behalf, and after examining such further evidence as may be placed before it or obtained by it, the Settlement Commission may, in accordance with the provisions of this Act, pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the Commissioner under sub-section (1) or sub-section (3)."

"245F. (1) In addition to the powers conferred on the Settlement Commission under this Chapter, it shall have all the powers which are vested in an Income Tax authority under this Act.

(2) Where an application made u/s 245C has been allowed to be proceeded with u/s 245D, the Settlement Commission shall, until an order is passed under sub-

section (4) of section 245D, have, subject to the provisions of sub-section (3) of that section, exclusive jurisdiction to exercise the powers and perform the functions of an Income Tax authority under this Act in relation to the case.

(3) Notwithstanding anything contained in sub-section (2) and in the absence of any express direction to the contrary by the Settlement Commission, nothing contained in this section shall affect the operation of any other provision of this Act requiring the applicant to pay tax on the basis of self assessment in relation to the matters before the Settlement Commission.

(4) For the removal of doubt, it is hereby declared that, in the absence of any express direction by the Settlement Commission to the contrary, nothing in this Chapter shall affect the operation of the provisions of this Act in so far as they relate to any matters other than those before the Settlement Commission."

"245H. (1) The Settlement Commission may, if it is satisfied that any person who made the application for settlement u/s 245C has co-operated with the Settlement Commission in the proceedings before it and has made a full and true disclosure of his income and the manner in which such income has been derived, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act or under the Indian Penal Code (45 of 1860) or under any other Central Act for the time being in force and also (either wholly or in part) from the imposition of any penalty under this Act, with respect to the case covered by the Settlement :

Provided that no such immunity shall be granted by the Settlement Commission in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of an application u/s 245C.

(1A) An immunity granted to a person under sub-section (1) shall stand withdrawn if such person fails to pay any sum specified in the order of settlement passed under sub-section (4) of section 245D within the time specified in such order or within such further time as may be allowed by the Settlement Commission, or fails to comply with any other condition subject to which the immunity was granted and thereupon the provisions of this Act shall apply as if such immunity had not been granted.

(2) An immunity granted to a person under sub-section (1) may, at any time, be withdrawn by the Settlement Commission, if it is satisfied that such person had, in the course of the settlement proceedings, concealed any particulars material to the settlement or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the settlement and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted."

5.The provisions of sub-section (1) of section 245C make it clear that the

assessee is required to make a full and true disclosure of his income which he had not disclosed before the assessing officer. In other words, the filing of an application for settlement of a case by the assessee u/s 245C is not by way of appeal/revision/reference to the settlement commission against the decision of an Income Tax authority holding the assessee responsible for concealment of income in the return filed by him. u/s 245D(1) the Settlement Commission is competent to either allow the application to be proceeded with or reject the application. The Settlement Commission under sub-section (1) of section 245F is conferred with the powers which are vested in an Income Tax authority under the Act in addition to the powers conferred on the Commission under the Chapter. Sub-section (2) of section 245F provides that the Settlement Commission shall have exclusive jurisdiction to exercise the powers and perform the functions of an Income Tax authority under the Act in relation to the case where an application made u/s 245C has been allowed to be proceeded with u/s 245D until such time that a final order on the application is passed under sub-section (4) of section 245D. The only rider to the exercise of such power is that it shall be exercised subject to the provisions of sub-section (3) of section 245D. In other words, once an application is allowed to be proceeded with in relation to any case the Commission will have exclusive jurisdiction to deal with the case and no other Income Tax authority will have such jurisdiction. Such exclusive jurisdiction of the Commission is, however, qualified by the fact that it shall not affect the operation of any other provision requiring the applicant to pay tax on the basis of self assessment in relation to the matters before the Settlement Commission unless specifically directed to the contrary by the Commission.

Under sub-section (1) of section 245H the Settlement Commission may grant to such person immunity from prosecution for any offence under the Act or under the Indian Penal Code or under any other Central Act for the time being in force and also either wholly or in part from the imposition of any penalty under the Act with respect to the case covered by the settlement. The grant of such immunity was dependent upon the satisfaction of the Commission that the applicant had co-operated with the Commission in the proceedings before it and has made a full and true disclosure of his income and the manner in which such income had been derived and is also subject to such conditions as it may think fit to impose. In other words, the grant of immunity from prosecution for any offence is not absolute and in fit cases it can be granted subject to certain conditions. Sub-section (1) of section 245H was amended with effect from 1-6-1987, by the Finance Act, 1987, to introduce a proviso that no such immunity shall be granted by the Commission in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of the application u/s 245C. In other words, the Settlement Commission has no authority under the law to grant immunity from criminal prosecution to any assessee-applicant including immunity subject to certain conditions if the proceedings for prosecution for the offence had already been instituted before the date of receipt of the application. It was argued and in my opinion with considerable force that

the aforesaid proviso cannot be read in a manner to draw any conclusion that the power to grant immunity from prosecution on the part of the Commission was confined to the criminal prosecution which had been instituted after the date of receipt of the application u/s 245C and not against prosecution contemplated. The proviso is prohibitory in nature and bars the Commission from exercising any jurisdiction of granting immunity from criminal prosecution in cases where the criminal proceedings had already been instituted before the receipt of the application from the assessee u/s 245C.

6. In other words, the power of the Commission to grant immunity from criminal prosecution in respect of the criminal proceedings instituted after the date of receipt of the application u/s 245C or against any such contemplated prosecution can be clearly read in the provisions of section 245H. The words "immunity from the prosecution for any offence" used in sub-section (1) of section 245H contemplate that no such prosecution for any offence shall be launched against any assessee if immunity from such prosecution has been granted by the Settlement Commission. Such a view is further strengthened by the fact that under sub-section (1A) immunity granted to a person under sub-section (1) shall stand withdrawn for any of the reasons mentioned therein. Sub-section (2) of section 245H makes the position all the more clear by providing that an immunity granted to a person under sub-section (1) may at any time be withdrawn by the Settlement Commission, if it is satisfied that such a person had in the course of the settlement proceedings concealed any particulars material to the settlement or had given false evidence and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the settlement and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted.

Learned counsel for the petitioners advanced the argument that the Settlement Commission having admitted the application of the petitioner u/s 245C, the Commission alone had all the powers vested in an Income Tax authority under this Act within the meaning of section 245F and the Income Tax authority u/s 279(1) of the Act, namely, the Commissioner had no authority to sanction the prosecution of the petitioner. The sanction order is a part of the complaint petition (Annexure-1) and as already noticed earlier the sanction had been accorded after the filing of the application u/s 245C but before the Commission allowed the application to be proceeded with. If the provisions of sub-section (1) of section 245F which are being relied upon on behalf of the petitioners are read along with the provisions of sub-section (2) of the said section it is difficult to avoid reaching a conclusion that under sub-section (1) the Settlement Commission enjoys concurrent powers with other Income Tax authorities under the Act whereas under sub-section (2) it exercises exclusive jurisdiction in relation to the case. A combined reading of the two sub-sections in other words leaves no room for doubt that only after an application u/s 245C has been

allowed to be proceeded with and has not been rejected by the Commission u/s 245D will the Commission exercise such exclusive jurisdiction.

The Punjab and Haryana High Court in *R.I. Chadha and Others Vs. Income Tax Officer*, , after noticing the provisions of section 245F of the Act was pleased to observe that sub-section (2) makes it manifest that till the culmination of those proceedings, with the passing of an order under sub-section (4) of section 245D of the Act, it has exclusive jurisdiction to exercise the powers and perform the functions of an Income Tax authority under the Act in relation to that case. It was further observed that to permit the Income Tax Commissioner to initiate criminal proceedings in exercise of his jurisdiction u/s 279 of the Act would be a complete negation of sub-section (2) of section 245F. This court in *Mukesh Kumar and Others Vs. Commissioner of Income Tax and Others* , had also been pleased to observe that after the application filed u/s 245C is ordered to be proceeded with u/s 245D(1) of the Act the provision of sub-section (2) of section 245F holds the field till the passing of the final order u/s 245D(4) of the Act and according to the said provision the Settlement Commission has exclusive jurisdiction to exercise all the powers and perform the functions of the Income Tax authority under the Act in relation to the case. As already observed earlier in the instant case the sanction for prosecution u/s 279(1) of the Act had already been accorded by the Commissioner and complaint filed before the Settlement Commission took the decision to proceed with the application u/s 245D(1) of the Act. In other words, the stage had not been reached which could attract the provisions of sub-section (2) of section 245F conferring exclusive jurisdiction on the Settlement Commission in the matter of exercise of powers and performance of the functions of an Income Tax authority under the Act in relation to the case.

7.The question for consideration is whether in a case where the Settlement Commission decides not to reject the application and allows the application to be proceeded with, the Income Tax authority u/s 279(1) of the Act has no jurisdiction to sanction the prosecution of the assessee for offences under sections 276C and 277 of the Act. It may be recalled that according to learned counsel for the petitioners the Commissioner (Appeals) or the appropriate authority has no such jurisdiction in view of the exclusive jurisdiction conferred on the Settlement Commission under sub-section (2) of section 245F. The provisions of sub-section (2) or for that matter sub-section (1) of section 245F cannot be read in isolation. Moreover, what section 245F(2) provides is conferring exclusive jurisdiction on the Commission to exercise the powers and perform the functions of an Income Tax authority under the Act in relation to the case. Section 245A(b) contains the definition of "case" which means any proceeding under the Act for the assessment or reassessment of any person in respect of any year or years, or by way of appeal or revision in connection with such assessment or reassessment, which may be pending before an Income Tax authority on the date on which an application under sub-section (1) of section 245F is made. Clause (b) has a proviso that where any appeal or application for revision has been preferred after the expiry of the period specified for the filing

of such appeal or application for revision under the Act and which has not been admitted, such appeal or revision shall not be deemed to be a proceeding pending within the meaning of this clause.

From the aforesaid definition of case given in the Act there can be no doubt whatsoever that the exclusive jurisdiction conferred on the Commission u/s 245F(2) is only in relation to the case as defined in clause (b) of section 245A. The provisions of section 279(1) of the Act under which the income-tax authority is required to grant a previous sanction for prosecution of the assessee for certain offences mentioned therein cannot be considered as an exercise of powers and performance of the functions of an Income Tax authority in relation to the case before the Settlement Commission. Such a view finds support from a reading of sub-section (4) of section 245F which provides that "for the removal of doubt, it is hereby declared that, in the absence of any express direction by the Settlement Commission to the contrary, nothing in this Chapter shall affect the operation of the provisions of this Act in so far as they relate to any matters other than those before the Settlement Commission." While exercising its statutory power u/s 279(1) the Income Tax authorities are not exercising any such authority in relation to the case pending before the Commission. Moreover, the matter relating to sanction for prosecution cannot be considered by any stretch of imagination to be pending before the Settlement Commission and if there was no express direction by the Settlement Commission to the contrary the provisions of section 279(1) were not affected which authorise the Income Tax authority to grant sanction for prosecution.

I, therefore, find no merit in the contention put forward on behalf of the petitioners that the Income Tax Commissioner had no jurisdiction to sanction the prosecution of the petitioners u/s 279(1) and hence the complaint filed on the basis of such order of sanction was a nullity in the eye of law. The above ground urged for quashing the criminal proceedings is thus not available to the petitioners.

The next question for consideration is whether in such cases as the present one where the complaint has been filed against the assessee for prosecution under sections 276C and 277 of the Act after the filing of the application by the assessee before the Settlement Commission u/s 245C but before the Commission passed an order allowing the application to be proceeded with, such prosecution ought to be stayed until such time that a final order is passed by the Settlement Commission under sub-section (4) of section 245D. The question assumes importance for the reason that in such cases the Settlement Commission have necessary jurisdiction u/s 245H to grant immunity to the assessee from prosecution for any offence under the Act or under the Indian Penal Code or under any other Central Act for the time being in force. The Settlement Commission while hearing a case has no jurisdiction to grant such immunity where the complaint had already been filed before the application had been filed u/s 245C of the Act. This court in *Mukesh Kumar and Others Vs. Commissioner of*

Income Tax and Others , had also observed that if the same issue or a relevant or related issue before the Settlement Commission is also the subject-matter of the criminal prosecution, then allowing the prosecution to continue will create an anomalous situation. The Commission, it was observed, in exercise of power during this period may stay or withdraw the prosecution by virtue of exclusive jurisdiction vested in it and hence in the interest of justice and to obviate an anomalous situation being created it is just and proper to stay the criminal prosecution if the matter in issue before the criminal court and the Settlement Commission is the same or related till the passing of the final order by the Settlement Commission.

8. The court in Mukesh Kumar and Others Vs. Commissioner of Income Tax and Others , was dealing with two applications in which the Settlement Commission had yet to pass an order allowing the application to be proceeded with and had, therefore, even refused to stay the criminal proceedings. However, the petitioners' application was dismissed with the observation that if the Settlement Commission does not reject the applications and allows the application to be proceeded with u/s 245D(1) of the Act, it will be open for the petitioner to move the learned magistrate for stay of the prosecution till the final disposal of the matter by the Settlement Commission, who on being satisfied that the Settlement Commission had allowed the application to be proceeded with may stay the prosecution till the final disposal of the matter by the Settlement Commission. This court in doing so had relied on an earlier decision of this court in Sobin Harijan Vs. The State of Bihar . In that case also the application u/s 245C was filed before the Commission before the filing of the complaint petition but when no order had been passed that the application shall be proceeded with. This court was pleased to observe that the Settlement Commission can exercise the power to grant immunity from prosecution u/s 245H and the aforesaid provision would become redundant if the prosecution was allowed to continue and the accused is convicted and the conviction is upheld up to the Apex Court. This court, therefore, visualised the situation that in such a case the exercise of power of granting immunity would be an exercise in futility and, therefore, gave a direction that the criminal prosecution of the petitioner pending in the court below shall remain stayed so long the matter relating to the petitioner is not finally disposed of by the Settlement Commission. This court in Mukesh Kumar and Others Vs. Commissioner of Income Tax and Others referred to K. Pachisia's (1993) 2 PLJR 21, with approval as also the judgment of a learned single judge of the Madras High Court in Kothari and Sons and others Vs. N. Subramanian, Income Tax Officer, Central Circle XIII, , in which a similar view was taken in favour of staying the criminal prosecution until such time that the Commission passes a final order u/s 245D of the Act.

Learned counsel for the revenue had advanced an argument in the alternative that the court may consider the desirability of even refusing to stay the proceedings in view of certain decisions of the Apex Court. It was contended that some of the observations of the Apex Court having a bearing on the subject had

not been brought to the notice of the learned single judges of this court in K. Pachisia's case (1993) 2 PLJR 21 and Mukesh Kumar and Others Vs. Commissioner of Income Tax and Others . The argument advanced is that a blanket order of stay of criminal proceedings only because the Settlement Commission has allowed the application to be proceeded with u/s 245D is not in the interest of justice and this court u/s 482 of the Code ought not to exercise its inherent powers for staying the criminal proceedings indefinitely. The Apex Court in P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, and affirmed the judgment of the Madras High Court in P. Jayappan v. S.K. Perumal, First ITO (1984) 149 ITO 692. While doing so the Supreme Court had approved the judgment of the Punjab and Haryana High Court in Telu Ram Raunqi Ram and Another Vs. Income Tax Officer, "A" Ward and Another, and had expressed their disagreement with the views expressed by the Calcutta High Court in Jyoti Prakash Mitter Vs. Haramohan Chowdhury, . In Telu Ram Raunqi Ram and Another Vs. Income Tax Officer, "A" Ward and Another, , the petitioner assessee was being prosecuted for an offence u/s 277 of the Act before a criminal court and had moved the court invoking inherent jurisdiction after the charge had been framed against the petitioner-firm. At that time after the petitioner's appeal to the Income Tax Appellate Tribunal was dismissed, he had successfully sought a reference to the High Court in the matter which was pending. In anticipation of an expectancy that a finding in favour of the petitioner-assessee may emerge as a result of the decision of the High Court in the reference case it was contended that since the order of the Tribunal is not final and is subject to correction in the light of the opinion given by the High Court, the jurisdictional foundation will be knocked out. The court observed that these expectancies should not stand in the way of the criminal court to proceed in the matter and that the court had not stopped any proceeding against the assessee in a criminal court on mere expectancies.

It was also observed in the course of the judgment that (page 114) "it is needless to emphasis that, in case the expectancies of the petitioner fructify, and it gets an order in its favour by the time the trial is pending, or even at the appellate or revisional stages, all those courts, in dealing with that matter, would be required to give due regard to those findings in case they are favourable to the assessee in view of Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar, ". The court while dismissing the application took the view that the proceedings against the petitioner at the instant stage are not an abuse of the process of the court and staying them obviously would not be in the interest of justice and that proceedings cannot be allowed to stagnate in the criminal court to make the law relating thereto a mockery. The Madras High Court in P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, , was dealing with a case in which the petitioner-assessee had been prosecuted for offences under sections 276(1) and 277 of the Income Tax Act as also under sections 193 and 196 of the Indian Penal Code. It was urged on behalf of the petitioner that u/s 279(1A) of the Act a person shall not be proceeded against for an offence u/s

276C or section 277 of the Act in relation to the assessment year in respect of which penalty imposed or imposable on him under clause (iii) of sub-section (1) of section 271 has been reduced or waived by an order u/s 273A of the Act and that the petitioner is also entitled to compound the offence with the Commissioner and, hence, the launching of the prosecution before the completion of the assessment takes away the valuable benefits that may accrue to the petitioner in the assessment proceedings. The petitioner had, therefore, contended that the Income Tax authorities ought to have waited till the completion of the assessment proceedings before filing the criminal prosecution. The court dismissed the application and observed that the mere fact that the petitioner expects the penalty that may be imposed against him to be reduced or waived u/s 273A or to compound the offences is no ground to stop the criminal prosecution. The judgment of the Punjab and Haryana High Court in *Telu Ram Raunqi Ram and Another Vs. Income Tax Officer, "A" Ward and Another*, , was also referred to which had pointed out that mere expectancies should not stand in the way of the criminal court from proceeding in the matter and the High Court could not stop any proceedings against an assessee in a criminal court on mere expectancies. The Madras High Court in *P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin*, , expressed itself in agreement with the views expressed in *Telu Ram Raunqi Ram and Another Vs. Income Tax Officer, "A" Ward and Another*, , by the Punjab & Haryana High Court that the grant of stay of the proceedings would not be in the interest of justice.

9. As already observed earlier the aforesaid judgment of the Madras High Court was affirmed by the Supreme Court in *P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin*, , by which the application filed by the petitioner-assessee under article 136 of the Constitution for leave to appeal against the order of the Madras High Court was dismissed. The Supreme Court while doing so had been pleased to observe as follows, to quote :

"It may be that in an appropriate case a criminal court may adjourn or postpone the hearing of a criminal case in exercise of its discretionary power u/s 309 of the Code of Criminal Procedure if the disposal of any proceeding under the Act which has a bearing on the proceedings before it is imminent so that it may take also into consideration the order to be passed therein. Even here the discretion should be exercised judicially and in such a way as not to frustrate the object of the criminal proceedings. There is no rigid rule which makes it necessary for a criminal court to adjourn or postpone the hearing of a case before it indefinitely or for an unduly long period only because some proceeding which may have some bearing on it is pending elsewhere".

The aforesaid observation of the Supreme Court that there is no rigid rule which makes it necessary for a criminal court to adjourn or postpone the hearing of a case before it indefinitely or for an unduly long period only because some proceeding which may have some bearing on it is pending elsewhere was, however, made in a different context and not in the context of an application

pending before the Settlement Commission.

10. The Supreme Court had occasion to refer to the policy of law as disclosed in Chapter XIX-A of the Act captioned "Settlement of cases" in Commissioner of Income Tax (Central) Vs. B.N. Bhattacharjee and Another, . It was observed therein to quote :

"The incarnation of Chapter XIX-A was in the wake of the Wanchoo Committee Report. The vampirish vices of black money and colossal tax evasion, both together using money power to prevent action against white-collar offenders, had been a terrible menace to the health and wealth of the nation. In particular, black money, whose constant companion was tax evasion, posed a challenge to the country's economy and the Wanchoo Committee was appointed to make recommendations with a view to arrest this evil. That committee made a wealth of recommendations but we are concerned only with Chapter 2 of the report which, under the title, 'Black Money and Tax Evasion', proposed a compromise measure of a statutory settlement machinery where the big evader could make a disclosure, disgorge what the Commission fixes and thus buy quittance for himself and accelerate recovery of taxes in arrears by the State, although less than what may be fixed after long protracted litigation and recovery proceedings...

"`The Tribunal" in the Wanchoo Committee Report was re-christened `the Settlement Commission" in the Act when it was passed by Parliament). The Commission was vested with full powers to investigate cases on its jurisdiction being invoked and to quantify the amount of tax, penalty and interest that it may eventually fix as payable. A strategic provision which held out fascination for the criminal tax evaders was contained in the report. The Wanchoo Committee recommended conferment on the Settlement Commission of a discretion to grant `grant immunity from criminal prosecution in suitable cases". The detailed mechanism of application, investigation, consideration, hearing and disposal are contained in the report and have eventually been translated into statutory provisions in Chapter XIX-A."

It may be recalled that Chapter XIX-A was inserted by the Taxation Laws (Amendment) Act, 1975, with effect from 1-4-1976. The Apex Court in the course of the judgment had earlier observed that "the Wanchoo Committee which recommended this step titled its chapter meaningfully as "Black Money and Tax Evasion" and the Act itself was passed and brought into force during the era of emergency which was marked by speed and silence and hushed politico official operations". The Apex Court proceeded to observe to quote :

"We may skip sections 245E, 245F and 245G but dwell for a moment on section 245H which is of great moment from the angle of public interest and public morals as it immunises white-collar offenders against criminal prosecutions and, in unscrupulous circumstances, becomes a suspect instrument of negotiable corruption. More than the prospect of monetary liability and mounting penalty is

the dread of traumatic prison tenancy that a tax dodging tycoon is worried about. And if he can purchase freedom from criminal prosecution and incarceratory sentence he may settle with the commission; and, towards this end, try to buy those who remotely control the departmental echelons whose veto or green signal closes or opens the jurisdiction of the Settlement Commission and hushes or pushes the prosecutions. Thus, section 245H, which clothes the Commission with the power to grant immunity from prosecution for "any offence under this Act or under the Indian Penal Code or under any other Central Act..." is a magnet which attracts large tax dodgers and offers, indirectly, an opportunity to the highest departmental and political authorities a suspect power to bargain,"

Towards the end of the judgment, the Apex Court had this to say to quote :

"It is not inappropriate to state that the policy of the law as disclosed in Chapter XIX-A is not to provide a rescue shelter for big tax dodgers who indulge in criminal activities by approaching the Settlement Commission. The Settlement Commission will certainly take due note of the gravity of economic offences on the wealth of the nation which the Wanchoo Committee had emphasised and will exercise its power of immunisation against criminal prosecutions by using its power only sparingly and in deserving cases ; otherwise such orders may become vulnerable if properly challenged."

Thus in the light of the judgment of the Supreme Court in Commissioner of Income Tax (Central) Vs. B.N. Bhattacharjee and Another, , the Settlement Commission is required to exercise its power of immunising against criminal prosecution by using its power only sparingly and in deserving cases. There is, therefore, no ground to believe that if the Settlement Commission has allowed an application to be proceeded with it shall grant as a matter of course immunity from criminal prosecution to the applicant u/s 245H. The power to grant such immunity is dependent upon the satisfaction of the Settlement Commission that the applicant has co-operated with the Settlement Commission in the proceeding before it and has made a full and true disclosure of his income and the manner in which such income had been derived.

In the light of the observations made by the Supreme Court in P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, , which approved the judgment of the Punjab and Haryana High Court in Telu Ram Raunqi Ram and Another Vs. Income Tax Officer, "A" Ward and Another, and the Madras High Court in P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, , against which the Apex Court was hearing a special leave to appeal under article 136 of the Constitution, a mere expectation of success in some proceeding in an appeal or reference under the Act cannot come in the way of institution of criminal proceedings under sections 276C and 277 of the Act. The Apex Court had not interfered with the judgment of the Madras High Court which had relied on in Telu Ram Raunqi Ram and Another Vs. Income Tax Officer, "A" Ward and Another, and had even refused to stay the criminal proceedings.

11. If a criminal prosecution has been validly instituted it is in the interest of justice that the trial of the case should be concluded as early as possible. Thus the Apex Court in *P. Jayappan Vs. S.K. Perumal*, First Income Tax Officer, Tuticorin, , after observing that (page 702) "It may be that in an appropriate case a criminal court may adjourn or postpone the hearing of criminal case in exercise of its discretionary power u/s 309 of the Code of Criminal Procedure if the disposal of any proceeding under the Act which has a bearing on the proceedings before it is imminent so that it may take also into consideration the order to be passed therein," had also taken care to make a further observation that "Even here the discretion should be exercised judicially and in such a way as not to frustrate the object of the criminal proceedings." The Apex Court then went on to emphasise that (page 702) "There is no rigid rule which makes it necessary for a criminal court to adjourn or postpone the hearing of a case before it indefinitely or for an unduly long period only because some proceedings which may have some hearing on it is pending elsewhere." In my opinion, the principle laid down by the Apex Court in another context is also applicable in the matter of staying criminal proceedings pending before the criminal court which had been validly instituted and where on the application of the assessee the Settlement Commission had allowed an application to be proceeded with but had not yet passed any final orders including an order granting or refusing immunity from the criminal prosecution. A blanket order staying criminal proceedings only because the Settlement Commission had allowed an application before it to be proceeded with and the Commission had the necessary authority under the Act to grant immunity from criminal prosecution is also not necessary in the interest of justice. If any such proceeding is decided in favour of the applicant and immunity from criminal prosecution is granted, he can take advantage of any such decision even after his conviction before the appellate or the revisional court or before the Supreme Court in an application under article 136 for special leave to appeal. The process of criminal law including the trial, appeal and revision is a protracted one and it is difficult to visualise a situation where the Settlement Commission in a particular case shall take such a long time for disposing of the application and in granting immunity from criminal prosecution that the accused shall have lost all opportunities to take benefit of such an order granting immunity even before the appellate or the revisional court.

12. It is not possible to take the view that the Settlement Commission while exercising its exclusive jurisdiction u/s 245F(2) may exercise the power of an Income Tax authority and stay the prosecution and hence in the interest of justice and to obviate anomalous situation being created it is just and proper to stay the criminal prosecution. The Settlement Commission has no such jurisdiction. This is so for the reason that once a criminal proceeding has been validly instituted for committing any offence under Chapter XXII, no Income Tax authority under the Act has been vested with the jurisdiction to stay the proceedings before the criminal court. All that section 279(1A) provides is that a person shall not be proceeded against for an offence u/s 276 or section 277 in

relation to the assessment for an assessment year in respect of which the penalty imposed or imposable on him under clause (iii) of sub-section (1) of section 271 has been reduced or waived by an order u/s 273A. Section 279(2) provides that any offence under this Chapter may, either before or after the institution of the proceedings, be compounded by the Commissioner or a Director General. Once the offence is compounded the proceeding before the criminal court comes to an end and the question of stay of criminal proceedings does not arise. Criminal proceedings are proceedings independent of assessment proceedings. u/s 245F(2) the Settlement Commission has exclusive jurisdiction to exercise the powers and perform the functions of an Income Tax authority under the Act in relation to the case which u/s 245A(b) means any proceeding under the Act for the assessment or reassessment of any person in respect of any year or years, or by way of appeal or revision in connection with such assessment or reassessment, which may be pending before an Income Tax authority on the date on which an application under sub-section (1) of section 245C is made. u/s 279(1) the Income Tax authority is not dealing with any proceeding for assessment or reassessment. Any other interpretation of section 245F(2) would divest the jurisdiction of the Chief Commissioner or a Director General u/s 279(2) to compound any offence either before or after the institution of the proceeding once the Settlement Commission allows an application to be proceeded with. Such an interpretation does not seem to be correct considering the scheme of Chapter XIX-A. The question of either grant of sanction for prosecution or compounding the offence u/s 279 (1) and (2) is not before the Settlement Commission and hence the provision of section 245F(4) that for the removal of doubt, it is hereby declared that, in the absence of any express direction by the Settlement Commission to the contrary, nothing in this Chapter (XIX-A) shall affect the operation of the provisions of this Act in so far as they relate to any matters other than those before the Settlement Commission. Thus in the absence of any express direction of the Settlement Commission to the contrary, the Income Tax authority can exercise its powers under sections 279 (1) and (2) even after the Settlement Commission has allowed the application to be proceeded with and section 245F(2) comes into play. Be that as it may the fact remains that since no Income Tax authority under the Act has the authority to stay the criminal proceeding, the Settlement Commission has no such jurisdiction either exclusive or concurrent.

13. The stay of criminal proceedings in all cases in which the Settlement Commission has allowed the application to be proceeded with also does not appear necessary for saving the provisions of section 245H from being rendered redundant. If the criminal proceeding is allowed to continue and the accused is held not guilty and is acquitted, the matter comes to an end. If the accused is convicted and immunity from criminal prosecution is subsequently granted by the Settlement Commission after recording necessary satisfaction u/s 245H or the Commission simply passes favourable orders without granting immunity from such criminal prosecution, it shall be open to the accused to challenge his

conviction on such grounds either in appeal or revision or special leave to appeal under article 136 of the Constitution of India. It may also be mentioned that a favourable finding recorded by the criminal court when brought to its knowledge provided such a finding has a bearing on the merits of the case before the court. For that matter even in cases where the criminal prosecution has been launched before the date of filing of the application before the Settlement Commission and the Commission has no jurisdiction to grant immunity from criminal prosecution, favourable orders can be passed by the Commission in favour of the assessee and such favourable orders need be given due regard by the criminal court.

14. Thus a broad proposition can safely be laid down that just as pendency of an application before the Settlement Commission at any stage, i.e., even after the application has not been rejected and has been allowed to be proceeded with is no ground for quashing criminal prosecution, its pendency is also not a good ground for staying the criminal proceeding. However, if the decision in a proceeding before any Income Tax authority or the Income Tax Appellate Tribunal or the Settlement Commission having a bearing on the fate of the criminal prosecution is imminent, the criminal court can in an appropriate case stay the proceeding u/s 309 of the Code of Criminal Procedure. I, therefore, find myself in respectful disagreement with the views expressed by the learned Single Judge in *Mukesh Kumar and Others Vs. Commissioner of Income Tax and Others*, that if the application filed by the assessee has been allowed to be proceeded with, then the prosecution has to be stayed till the final decision by the Settlement Commission. I am, however, in complete agreement with the views expressed therein that pendency of an application before the Settlement Commission at any stage is no ground for quashing the criminal prosecution. As already observed earlier, it would be an altogether a different matter if the criminal court adjourns or postpones the hearing of the criminal case in exercise of its discretionary power u/s 309 of the Code of Criminal Procedure, if the disposal of any proceeding under the Settlement Commission which has a bearing on the proceeding before it is imminent so that it may also take into consideration the order to be passed therein. However, such exercise of discretion on the part of the criminal court in an appropriate case will depend on the facts of each case and it is not possible to lay down any proposition that if the Settlement Commission had allowed an application to be proceeded with an order refusing to stay the criminal proceeding by the trial court u/s 309 of the Code of Criminal Procedure, on that ground will amount to an abuse of the process of the court to make it a fit case for interference by this court in the exercise of its inherent powers u/s 482 of the Code of Criminal Procedure.

Thus, for the foregoing reasons I am of the opinion that the petitioners have failed to make out any case either for the quashing of the criminal prosecution or for stay of the criminal proceeding. Both the criminal miscellaneous cases are, therefore, found without merit and are dismissed.