

(1986) 05 GUJ CK 0002
In the Gujarat High Court

Case No : Criminal Revision Application No's. 258 and 259 of 1986

Ashvin Kumar Vadilal Patel

APPELLANT

Vs

S. Rajguru and Another

RESPONDENT

Date of Decision : 08-05-1986

Acts Referred:

Income Tax Act, 1961 — Section 245H, 245H(1), 245K
Penal Code, 1860 (IPC) — Section 193

Citation : (1987) 64 CTR 135 : (1987) 1 GLR 102 : (1987) 165 ITR 583 : (1987) 33 TAXMAN 426

Hon'ble Judges : R.A. Mehta, J

Bench : Single Bench

Advocate : R.D. Pathak, for the Appellant; K.J. Vaidya, for the Respondent

Judgement

R.A. Mehta, J.—In these two revision applications, the applicant - original accused - has challenged the order of the learned Metropolitan Magistrate, refusing to stay the criminal prosecution and has relied upon the circumstance that he has already made an application to the settlement Commission u/s 245H of the Income Tax Act for granting immunity from prosecution. That section reads as follows :

Section 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, 1860 (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."

2. In Criminal Case No. 580 of 1985, the learned Chief Metropolitan Magistrate has passed the following order :

"This is a prosecution u/s 193, Indian Penal Code. The Settlement Commission has nothing to do with this aspect. Hence rejected."

3. Section 245H includes immunity not only for offences punishable under the Income Tax Act, but also for offences under the Indian Penal Code. But the basic question still remains as to whether the prosecution is required to be stayed merely because an application u/s 245H is made and is pending. Till such application is granted, there is no immunity and merely because an application is made about the merits of which there is nothing before the court and regarding the merits of which the criminal court has no jurisdiction, the prosecution cannot be stayed. Moreover, the power to grant immunity is of the Settlement Commission which has to be exercised sparingly. The criminal court cannot grant even temporary immunity by granting stay of prosecution.

4. Learned counsel for the petitioner has also referred to section 245K and submitted that where, after the passing of an order of settlement under the said sub-section (4) in relation to a case, such person is convicted of any offence under Chapter XXII in relation to that case, then, he shall not be entitled to apply for settlement u/s 245C in relation to any other matter. This provision cannot have any application to the present case. There is no order of settlement, no conviction and no offence under Chapter XXII.

5. In Criminal Case No. 562 of 1985 also, a similar application was made and the learned Chief Metropolitan Magistrate has passed the following order.

"Heard

The significant fact in this case is that the application for settlement has been made after the complaint was filed. Again, in section 245A, "case" does not include a complaint already filed. The stages contemplated in Chapter XIXA of the Income Tax Act precede the filing of complaint. Therefore, after a complaint is filed, the provisions have no application. It is only when a "case" as defined in section 245A of the Income Tax Act is pending before a tax authority, that an application for settlement can be given. It appears that the application for settlement in this case has been filed after that stage is over. Hence rejected."

6. It is not necessary to go into the question decided by the learned Chief Metropolitan Magistrate because his order rejecting the stay application can be justified also in view of the ground on which such stay application is required to be rejected, namely, mere making of an application to the Settlement Commission u/s 245H does not require that the prosecution be stayed.

7. Learned counsel for the petitioner has submitted that whether to grant stay of the prosecution or not is in the discretion of the learned Magistrate and if the learned Magistrate has not exercised his discretion in accordance with the principles of law, the matter should be remanded. In view of the clear position of

law and in view of the fact that until immunity is granted the criminal prosecution need not be stayed, no useful purpose will be served by remanding the matter and multiplying the hearings on the same question. Hence both these criminal revision applications are rejected.