(1988) 10 GUJ CK 0012

In the Gujarat High Court

Case No : Miscellaneous Criminal Application No''s. 1645 and 1646 of 1986

Ashwini Kumar Vadilal Patel (Dalal) APPELLANT

Vs

P.T. Mehta, Income Tax Officer and Another RESPONDENT

Date of Decision : 14-10-1988

Acts Referred:
Income Tax Act, 1961 — Section 276C

Citation : (1989) 77 CTR 216 : (1989) 1 GLR 347 : (1989) 178 ITR 385

Hon'ble Judges : D.C. Gheewala, J

Bench : Single Bench

Advocate : G.N. Desai, M.D. Pandya, for the Appellant; R.P. Bhatt, for the Respondent

Judgement

D.C. Gheewala, J.—The petitioner, whose premises were raided and from whose premises valuable were found by the raiding party, and who could not render satisfactory explanation regarding some of the items so seized, has been prosecuted for an offence punishable u/s 276C of the Income Tax Act, 1961, as well as section 195 of the Indian Penal Code. He has prayed that the said proceedings be quashed inasmuch as he has approached the Settlements Commission and the Settlement Commission has not only registered his petition but has recorded a finding that no. concealment has been established and none is likely to be established.

2. Mr. Desai, learned counsel appearing for the petitioner, urged that once the Settlement Commission has recorded its finding, to allow criminal proceedings to continue would be a travesty of justice and Mr. desai drew my attention to a case decided by the Delhi High Court and which has been reported in Dr. Mrs. Geeta Gupta Vs. Inspecting Assistant Commissioner of Income Tax (Assessment), Range XIV, New Delhi, and another, . Therein, the Delhi High court has held that once a petition has registered by the Settlement Commission, no criminal proceedings can be allowed to continue against the assessee. As against this, Mr. Bhatt, learned counsel for the Revenue, urged that merely because the

Settlement Commission has entertained the petition, it would not necessarily men that the assessee has been exonerated completely or has been ranted immunity and as much as such the criminal proceedings cannot be quashed.

3. My attention was drawn to a decision rendered by the learned single judge of this court (coram : R. A. Mehta. J.) in Criminal Revision Applications Nos. 258 and 259 of 1986 Ashvin Kumar Vadilal Patel Vs. S. Rajguru and Another, , where the learned single judge expressed the view that merely because the Settlement Commission has entertained the petition or a petition is pending before the Settlement Commission, the criminal proceedings need not be quashed and need not be stayed. Mr. Bhatt heavily relied upon this judgment, but there is one point of distinction between the judgment rendered by the Delhi High Court in Dr. Mrs. Geeta Gupta Vs. Inspecting Assistant Commissioner of Income Tax (Assessment), Range XIV, New Delhi, and another, and the judgment rendered by the learned single judge of this court in Ashvin Kumar Vadilal Patel Vs. S. Rajguru and Another, , and it is this that in the instant case, the Settlement Commission has recorded a finding that no income has been concealed and none is likely to be established to have been concealed. If the proceedings were to be allowed to continue and a decision allowed to be rendered in the proceedings and if ultimately the Commission were to grant immunity, then an anomalous situation would arise. What the learned single judge was concerned with was only up to a stage when the petition was filed before the commission and was pending, but, in the instant case, the commission has gone a step further and recorded a finding that no concealment has been established and none is likely to be established. If such a finding is not reached by the Settlement Commission, then the mere filing and registering of the petition of the assessee by the Settlement Commission would not be sufficient to quash or even stay the criminal proceedings. It may be that the Commission may not, in the ultimate analysis, grant immunity, and in that case the criminal proceedings will have to be carried to their logical conclusion. But, before the Settlement Commission finally arrives at its decision, to allow the proceedings before the criminal court to continue might lead to an anomalous situation, as observed above. Under the circumstances, while the complaint need not be quashed at this stage, it does require to be stayed and the petitions are, therefore, allowed to the extent that Criminal Complaints Nos. 562 and 580 of 1985, pending before the learned Metropolitan Magistrate, Second Court, Ahmedabad, are stayed till the Settlement Commission renders its final decision on the question of immunity. Petitions are partly allowed accordingly. Rule in each of these petitions is made absolute to the above extent.

4. Prosecution stayed.

