(1992) 01 PAT CK 0006

In the Patna High Court

Case No : Criminal Miscellaneous No. 1335 of 1991

B.K. Pachisia APPELLANT

Vs

Union of India and another RESPONDENT

Date of Decision : 08-01-1992

Acts Referred:
Income Tax Act, 1961 — Section 245C, 245D, 245H, 276C, 276CC

Citation : (1993) 2 PLJR 21

Hon'ble Judges : B.N. Agrawal, J

Bench : Single Bench

Advocate : S.D. Sanjay, for the Appellant; K.K. Vidyarthi and S.K. Saran, for the Respondent

Judgement

B.N. Agrawal, J.—This application has been filed for quashing prosecution of the petitioner u/s 276C and 276CC of the Income Tax Act, 1961 (hereinafter referred to as the ''Act''). It appears that a raid was conducted in the business premises and residence of the petitioner, in which certain irregularities have been detected, whereupon the present complaint was filed on 30.3.1988 for prosecution of the petitioner under the aforesaid, Sections and the court below by its order dated 30.3.1988 has taken cognizance and summoned the accused.

2. Prior to the filing of the petition of complaint on 21.4.1987 the petitioner filed an application u/s 245C of the Act before the Settlement Commission for settlement of the case. The Settlement Commission on receipt of the said application called for a report from the Commissioner of Income Tax (hereinafter referred to as the ''C.I.T''). The C.I.T. objected to the application u/s 245C of the Act. On 21.3.1989 the Settlement Commissioner after due consideration passed an order u/s 245D of the Act and did not reject the application but directed that the application shall be proceeded with. The matter is still pending before the Settlement Commission. u/s 245H of the Act power has been conferred upon the Settlement Commission to grant immunity to the assessee from prosecution. This power of immunity can be exercised by the Settlement Commission only in

those cases where the prosecution has been in stituted after the date of filing of the application u/s 245C of the Act. In the present case, the application u/s 245C of the Act was filed before institution of prosecution, therefore, the Settlement Commission can exercise the power to grant immunity from prosecution. In case, the prosecution of the petitioner is allowed to continue the provisions of Section 245H would become redundant. If the prosecution is allowed to continue, accused is convicted and the conviction is upheld up to the apex court in that event the exercise of power of granting immunity from prosecution would be in futility. Therefore, in my view, so long the matter remains pending before the Settlement Commission, prosecution of the petitioner should not be allowed to continue and the same should remain pending.

3. Accordingly, I direct that criminal prosecution of the petitioner in the present case 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 application is accordingly, disposed of.

