(2006) 09 DEL CK 0197

In the Delhi High Court

Case No : Criminal Rev. Petition No. 757 of 2006

Income Tax Officer APPELLANT

Vs

Giggles (P) Ltd. and Others RESPONDENT

Date of Decision : 20-09-2006

Acts Referred:
Income Tax Act, 1961 — Section 143(3), 254, 271(1), 276C(1), 278B

Citation : (2007) 207 CTR 570 : (2008) 301 ITR 32 : (2006) 157 TAXMAN 362

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : Rajiv Awasthi and Prem Lata Bansal, for the Appellant; D.K. Malhotra and Harish Gulati, for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.—This revision petition is preferred by the IT Department being aggrieved by the order dt. 5th July, 2005, passed by the learned Addl. Sessions Judge. The impugned order arose in a revision petition which was filed on behalf of the assesseds [M/s Giggles (P) Ltd. and Ors.], who are the respondents herein, against the order dt. 21st March, 2005 passed by the learned ACMM, Delhi. The order dt. 21st March, 2005 came to be passed on an application for discharge moved by the accused persons. In the application the accused had taken the plea that the Tribunal had deleted the penalty sought to be imposed on the accused u/s 271(1)(c)(iii) of the IT Act, 1961 (hereinafter referred to as the said Act) and Therefore, the present criminal proceedings u/s 276C(1) r/w Section 278B of the said Act against the accused also did not survive and the complaint ought to be quashed. The learned ACMM, after considering the application moved on behalf of the accused persons and the argument advanced by the parties, rejected the application for discharge on the ground that the IT authorities have preferred an appeal before the High Court and Therefore, the penalty proceedings under the provisions of Section 271(1)(c) of the said Act have not attained finality.

2. Being aggrieved by this order dt. 21st March, 2005 the accused, who are the respondents before this Court, preferred a revision petition before the Addl. Sessions Judge. It is the order passed by the learned Addl. Sessions Judge dt. 5th July, 2005 in that revision petition which is impugned before this Court by the IT Department. The learned Addl. Sessions Judge, in the impugned order, observing that the fate of the application for discharge was dependent upon the orders to be passed by the High Court in the IT Appeal, set aside the order dt. 21st March, 2005 and remanded the matter to the trial Court for a decision afresh after the appeal filed by the Department was decided by the High Court. It was observed in the impugned order that in case the High Court dismisses the appeal of the Department then the very purpose of proceeding with the case by the trial Court would be an exercise in futility and as such, the learned Addl. Sessions Judge directed that the trial Court should not proceed with the matter till the decision of the High Court in the appeal preferred by the Department.

3. Mr. Awasthi, who appears on behalf of the IT Department submitted that this order passed by the learned Addl. Sessions Judge was not tenable in law inasmuch as penalty proceedings u/s 271(1)(c) and the criminal liability u/s 276C r/w Section 278B of the said Act were independent and the pendency of the proceedings u/s 271(1)(c) could riot be taken as a ground to stay the proceedings u/s 276C r/w Section 278B of the said Act. He placed reliance on two decisions, namely, RINKOO STEELS AND OTHERS Vs. K. P. GANGULI, Income Tax OFFICER AND ANOTHER., and R.G. Agarwal and Co. and Others Vs. Union of India (UOI), .

4. The learned Counsel for the respondents submitted that the present issue is no longer open to debate in view of the pronouncements of the Supreme Court in the cases of Commissioner of Income Tax Vs. Bhupen Champak Lal Dalal and Another Etc., and K.C. Builders and Another Vs. The Assistant Commissioner of Income Tax, : K.C. Builders and Another Vs. The Assistant Commissioner of Income Tax, .

5. The counsel for the parties have been heard. The two decisions relied upon by the learned Counsel for the respondents clearly cover the points at issue in this revision petition. In CIT v. Bhupen Champak Lai Dalai (supra), the Supreme Court was mindful of the fact that the prosecution in criminal law and proceedings under the said Act were undoubtedly independent proceedings and, Therefore, there was no impediment in law for the criminal proceedings to proceed even during the pendency of the proceedings under the said Act. However, the Supreme Court observed that a wholesome rule will have to be adopted in matters of this nature where Courts have taken the view that when the conclusions arrived at by the appellate authorities have a relevance and bearing upon the conclusions to be reached in the criminal case necessarily one authority will have to await the outcome of the other authority. The facts in CIT v. Bhupen Champak Lai Dalai and Anr. (supra) were that the trial Court, considering the criminal proceedings, had passed an order permitting the trial to

go on but staying the passing of the order with regard to framing of charge, discharge of accused or acquittal of the accused during the pendency of the appeals preferred by the accused in that case before the Income Tax Appellate Authorities. Against that order, revision petitions were filed before the Sessions Court, which did not interfere with the orders of the trial Court. Thereafter, the matter was carried further to the High Court and the High Court, while entertaining a writ petition, granted an interim order staying the proceedings in the criminal cases filed before the trial Court. The interim order passed by the High Court was challenged before the Supreme Court. While considering the same, the Supreme Court observed as under:

3. The prosecution in criminal law and proceedings arising under the Act are undoubtedly independent proceedings and, Therefore, there is no impediment in law for the criminal proceedings to proceed even during the pendency of the proceedings under the Act. However, a wholesome rule will have to be adopted in matters of this nature where Courts have taken the view that when the conclusions arrived at by the appellate authorities have a relevance and bearing upon the conclusions to be reached in the case necessarily one authority will have to await the outcome of the other authority.

5. In the present case, there is no claim of quashing of the proceedings. When ultimately the result to come out of the proceedings before the appellate authorities have a definite bearing on the cases alleged against the respondents, we find that the High Court is justified in granting the interim order it did and we do not think that such an interim order calls for interference at our hands. The learned Counsel on either side relied on several decisions, but in the view we have taken it is unnecessary to refer to those decisions.

It would be clear from the aforesaid that the Supreme Court found the interim order staying the criminal proceedings to be in order particularly as the quashing of the proceedings had not been claimed by the accused.

6. The other case cited by the counsel for the respondents, namely that of K.C. Builders (supra) is clearly on the point that the proceedings u/s 271(1)(c) of the said Act would have a bearing on those u/s 276C of the said Act. The Supreme Court, after considering the provisions of the said sections observed:

24. In the instant case, the penalties levied u/s 271(1)(c) were cancelled by the respondent by giving effect to the order of the Tribunal in IT Appeal Nos. 3129-3132. It is settled law that levy of penalties and prosecution u/s 276C are simultaneous. Hence, once the penalties are cancelled on the ground that there is no concealment, the quashing of prosecution u/s 276C is automatic.

25. In our opinion, the appellants cannot be made to suffer and face the rigours of criminal trial when the same cannot be sustained in the eyes of law because the entire prosecution in view of a conclusive finding of the Tribunal that there is no concealment of income becomes devoid of jurisdiction and u/s 254 of the Act, a finding of the Tribunal supersedes the order of the AO u/s 143(3) more so

when the AO cancelled the penalty levied.

26. In our view, once the finding of concealment and subsequent levy of penalties u/s 271(1)(c) of the Act has been struck down by the Tribunal, the AO has no other alternative except to correct his order u/s 154 of the Act as per the directions of the Tribunal. As already noticed, the subject-matter of the complaint before this Court is concealment of income arrived at on the basis of the finding of the AO. If the Tribunal has set aside the order of concealment and penalties, there is no concealment in the eyes of law and, Therefore, the prosecution cannot be proceeded with by the complainant and further proceedings will be illegal and without jurisdiction. The Asstt. CIT cannot proceed with the prosecution even after the order of concealment has been set aside by the Tribunal. When the Tribunal has set aside the levy of penalty, the criminal proceedings against the appellants cannot survive for further consideration. In our view, the High Court has taken the view that the charges have been framed and the matter is in the stage of further cross-examination and, Therefore, the prosecution may proceed with the trial. In our opinion, the view taken, by the learned Magistrate and the High Court is fallacious. In our view, if the trial is allowed to proceed further after the order of the Tribunal and the consequent cancellation of penalty, it will be an idle and empty formality to require the appellants to have the order of Tribunal exhibited as a defense document inasmuch as the passing of the order as aforementioned is unsustainable and unquestionable.

This decision of the Supreme Court makes it more than clear that the proceedings u/s 271(1)(c) would have a clear and definite bearing on those u/s 276C. Insofar as the proceedings u/s 271(1)(c) are concerned, as of now, the penalty against the accused stands deleted. However, the Department has preferred an appeal which is pending before this Court. Therefore, clearly, the respondents/accused cannot claim for quashing of the proceedings. The learned Counsel appearing on behalf of the respondents submitted that although the initial application was filed by them for discharge, in the light of the decision of the Supreme Court, they are not, at this stage, claiming quashing of the proceedings and according to them the order keeping the criminal proceedings before the trial Court in abeyance, need not be interfered with and the same should await the decision in the appeal before this Court.

7. In view of the decision of the Supreme Court referred to by the learned Counsel for the respondents and in view of the submissions made by them that they are not pressing for quashing, I see no reason as to why the impugned order passed by the learned Addl. Sessions Judge keeping the proceedings before the trial Court in abeyance, ought to be interfered with. This is so particularly because the result of the proceedings u/s 271(1)(c) have a clear bearing on proceedings u/s 276C as observed by the Supreme Court in K.C. Builders (supra). In such a case, Therefore, the order passed by the learned Addl. Sessions Judge is in consonance with law and Therefore, calls for no

interference.

This revision petition is dismissed.

