(1995) 04 P&H CK 0054

In the Punjab And Haryana At Chandigarh

Case No : Criminal Revision No. 97 of 1995

Kamra Trading Co. and Others — APPELLANT

Vs

Income Tax Officer — RESPONDENT

Date of Decision : 06-04-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 401
Income Tax Act, 1961 — Section 276C, 277, 278B

Citation : (1995) 126 CTR 435 : (1995) 214 ITR 665 : (1995) 3 RCR(Criminal) 154

Hon'ble Judges : V.S. Aggarwal, J

Bench : Single Bench

Advocate : C.M. Munjal, for the Appellant; R.P. Sawhney, Senior Advocate and Aradhana Sawhney, for the Respondent

Judgement

V.S. Aggarwal, J.—This is a revision petition filed by Kamra Trading Company (hereinatfer described as "the petitioner") directed against the order dated November 22, 1994, passed by the Chief Judicial Magistrate, Ferozepur. By virtue of the impugned order, the learned trial court framed charges against the petitioner with respect to offences punishable under Sections 276C and 277 read with Section 278B of the Income Tax Act, 1961.

2. Petitioner No. 1 is a registered firm and petitioners Nos. 2 and 3 are its partners. The petitioner-firm filed its return of income declaring an income of Rs. 1,28,05,0 in August, 1986. During the course of assessment proceedings, the Income Tax Officer made an addition of Rs. 1,75,000, vide order dated December 30, 1987. Penalty proceedings were also started u/s 271(1)(c) of the Income Tax Act. As against the said order, the petitioner preferred an appeal to the Commissioner of Income Tax (Appeals), Chandigarh, which was dismissed on March 7, 1988. After dismissal of the appeal, a criminal complaint was filed against the petitioners under Sections 276C 277 read with Section 278B of the Income Tax Act, before the Chief Judicial Magistrate, Ferozepur. The petitioners challenged the assessment made by the Income Tax Officer by filing ah appeal

before the Income Tax Appellate Tribunal. The second appeal of the petitioners was accepted and the matter was remanded to the Income Tax Officer.

3. It is alleged that since the appeal filed by the petitioner has been accepted by the Appellate Tribunal, therefore, the criminal proceedings, namely, which are pending in the Court of the Chief Judicial Magistrate, Ferozepur, should be quashed.

4. Reliance strongly is being placed by the petitioners on a decision from the Kerala High Court in the case of Dr. B. Seerapani Vs. Income Tax Officer and Another, . In the cited case, the question under consideration was identical and the case was remitted by the Income Tax Appellate Tribunal. The Kerala High Court felt that the very basis of prosecution having been taken away, the complaints are liable to be quashed. The relevant extract of the order passed by the Kerala High Court reads as under (at page 289):

" The petitioner contends that, in view of the setting aside of the assessment by the Tribunal, the very basis of the prosecution having been taken away annexure I complaint in the respective criminal miscellaneous cases are liable to be quashed. Learned counsel for the petitioner relied on the decision of this court in Criminal Miscellaneous No. 1047 of 1991 and Criminal Miscellaneous No. 1091 of 1992 (Madras Spinners Ltd. and Others Vs. Deputy Commissioner of Income Tax (Assessment),), in support of the said argument. In both the cases, in similar circumstances, upon the setting aside of the order of the appellate authority by the Tribunal, the complaints filed against the assessee on the basis of the assessment were quashed without prejudice to the right of the Revenue to file fresh complaints. But learned counsel for the respondent contended, in view of the Tribunal''s order that it may not be necessary to quash the complaints, instead a direction need be issued to keep the complaint in abeyance till the reassessment is over and to revive the same if the result of the reassessment is in favour of the Revenue. The two orders of this court favoured the quashing of the complaint without prejudice to the Revenue to file a fresh complaint, if so advised, in the light of the reassessment proceedings against the petitioners."

5. Learned counsel appearing on behalf of the respondent, however, strongly relied upon the judgment of the Supreme Court in the case of P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, . One of the arguments advanced before the Supreme Court was that the assessment prpceedings started against the petitioner in that case were not completed and, therefore, prosecution was premature on the ground that the reassessment proceedings were going on. The Supreme Court while considering the said question as to the effect of reassessment proceedings of the prosecution held that there is no provision in law which provides that a prosecution for the offences in question cannot be launched until reassessment proceedings initiated against the assessee are completed. It was held as under (at page 700) :

" At the outset, it has to be stated that there is no provision in law which provides that a prosecution for the offences in question cannot be launched until reassessment proceedings initiated against the assessee are completed. Section 279 of the Act provides that a person shall not be proceeded against for an offence punishable u/s 276C or Section 277 of the Act except at the instance of the Commissioner."

6. Subsequently, while discussing different other provisions, it was concluded that mere expectation of success in some proceedings cannot come in the way of the institution of the criminal proceedings. A specific finding so arrived at reads as under (at page 700) :

"A mere expectation of success in some proceeding in appeal or reference under the Act cannot come in the way of the institution of the criminal proceedings u/s 276C and Section 277 of the Act. In the criminal case all the ingredients of the offence in question have to be established in order to secure the conviction of the accused. The criminal court no doubt has to give due regard to the result of any proceeding under the Act having a bearing on the question in issue and in an appropriate case, it may drop the proceedings in the light of an order passed under the Act. It does not, however, mean that the result of a proceeding under the Act would be binding on the criminal court. The criminal court has to judge the case independently on the evidence placed before it. Otherwise, there is a danger of a contention being advanced that whenever an assessee or any other person liable under the Act had failed to convince the authorities in the proceedings under the Act that he has not deliberately made any false statement or that he has not fabricated any material evidence, the conviction of such person should invariably follow in the criminal court."

7. This being the position enunciated by the Supreme Court, I find myself in respectful disagreement with the view of the Kerala High Court. Otherwise also no useful purpose would be served in quashing the proceedings as such and then inviting the Department to file a fresh complaint, if necessary. Keeping in view the decision in the case of P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, , the revision must be held to be without merit.

8. For these reasons, the revision petition fails and is dismissed.

