
(1996) 09 AP CK 0066

In the Andhra Pradesh High Court

Case No : Criminal Petition No's. 1665 and 1666 of 1995

M.A. Quddus

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 24-09-1996

Acts Referred:

Income Tax Act, 1961 — Section 273A, 276, 276C, 277, 28

Citation : (1997) 227 ITR 665

Hon'ble Judges : B.S. Raikote, J

Bench : Single Bench

Advocate : Deokinandan and Mahboob Mustafa Firdos, for the Appellant; K.M.L. Majele and Suresh Tekmal, for the Respondent

Judgement

B.S. Raikote, J.—These two criminal petitions are filed for quashing the proceedings before the Special Judge for Economic Offences, Hyderabad, in C.C. No. 7 of 1994 and C.C. No. 8 of 1994. These two criminal proceedings in C.C. No. 7 of 1994 and C.C. No. 8 of 1994 are filed before the Special Judge for Economic Offences, Hyderabad, under sections 276C and 277 of the Income Tax Act. The petitioner is an assessee and C.C. No. 7 of 1994 pertains to the assessment year 1986-87 and C.C. No. 8 of 1994 pertains to the assessment year 1987-88. The grievance of the petitioner in substance is that regarding the alleged violation of the provisions of the Income Tax Act separate penalty proceedings were initiated against the petitioner alleging the same set of facts; that he suppressed certain income in the return and thereby tried to evade the tax payable by him and also submitted false accounts. The authority of the first instance, the Income Tax Officer, Ward-3(4), Ayakar Bhavan, Hyderabad, levied penalty for both the assessment years and being aggrieved by the same the petitioner approached the Deputy Commissioner of Income Tax (Appeals), A-Range, Hyderabad. It is the case of the petitioner that, vide order dated September 7, 1994, the Deputy Commissioner of Income Tax (Appeals), A-Range, Hyderabad, accepted the contention of the assessee and set aside the penalty proceedings. It is the further contention of the petitioner that when the order imposing penalty was set

aside, the present prosecution on the same set of facts cannot be continued. Learned counsel for the petitioner strenuously contended that continuing the present prosecution would be tantamount to abuse of the process of the court. Therefore, these are fit cases for exercising the jurisdiction of this court u/s 482 of the Criminal Procedure Code. On the other hand, learned counsel for the Income Tax Department submitted that the penalty proceedings have not reached finality and in fact against the order of the Deputy Commissioner of Income Tax (Appeals), dated September 7, 1994, the Department has already preferred appeals before the Income Tax Appellate Tribunal and those two appeals preferred by the Department are pending before the said Tribunal. In these circumstances, he submitted that the impugned prosecutions cannot be quashed at this stage. He further submitted that the departmental proceedings and the criminal prosecution are two entirely different aspects of the case. An assessee can be prosecuted as well as there could be a levy of penalty. Even if the penalty proceedings are set aside by an appellate authority, the prosecution lies regarding the alleged violation. In support of his contention, he relied upon certain judgments of different High Courts including the judgments of this court. He relied upon the following judgments in R.G. Agarwal and Co. and Others Vs. Union of India (UOI), 2 Crimes 592 of the Madhya Pradesh High Court, in Masilamani v. G. Ranganathan [1988] 1 Cri 602 of the Madras High Court, in Shrimati Tilaka Das v. Shrimati Rina Das [1988] 1 Cri 466 of the Guahati High Court, in Income Tax Officer Vs. Rayala Corporation P. Ltd., of the Madras High Court, in Ashok Biscuit Works and Others Vs. Income Tax Officer, Hyderabad, of the High Court of Andhra Pradesh. As against these rulings, learned counsel appearing for the petitioner invited my attention to the rulings of the Supreme Court in a decision in Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar, , in Premier Breweries Ltd. and Others Vs. Deputy Commissioner of Income Tax and Another, of the Kerala High Court, in Mohamed I. Unjawala and etc. etc. Vs. Assistant Commissioner of Income Tax, City Circle VI (1), Madras, of the High Court of Madras. He further submitted that the Deputy Commissioner of Income Tax (Appeals) has already set aside the penalty proceedings, therefore, the prosecution cannot be continued and as such they are liable to be quashed in view of the law declared by the Supreme Court and the other High Courts. He further submitted that when the prosecution was launched, penalty proceedings were pending but as on the date of taking cognizance of the offence by the Special Judge for Economic Offences, Hyderabad, the penalty proceedings were cancelled by the Deputy Commissioner of Income Tax (Appeals). Therefore, he submitted that the criminal court should not have taken cognizance of the offence at all and at any rate the proceedings are liable to be quashed.

2. In order to appreciate the rival contentions I have to note a few admitted facts. It is an admitted fact that the penalty proceedings were initiated against the petitioner on the ground that regarding the assessment years 1986-87 and 1987-88, the petitioner concealed the income pertaining to the receipt of the

admission fees recovered from the students of the school. It is also admitted that the Income Tax Officer levied penalty and on appeal the Deputy Commissioner of Income Tax (Appeals) cancelled the order of the Income Tax Officer regarding both the assessment years, and against those orders of the Deputy Commissioner of Income Tax (Appeals), the Department has already preferred two appeals before the Income Tax Appellate Tribunal and those appeals are pending even as on today. It is only on the basis of this fact, learned counsel for the Revenue submits, that the proceedings have not reached finality. Therefore, the quashing of the criminal proceedings does not arise at this stage. He further submitted that there is also a charge against the petitioner u/s 277 of the Income Tax Act in addition to the charge framed u/s 276C of the Income Tax Act.

3. Having regard to the admitted facts narrated above, now the short point for my consideration would be whether the proceedings are liable to be quashed at this stage.

4. The judgments relied upon by the Special Public Prosecutor for the Income Tax Department, referred to above, in substance, pertain to a situation where the courts have held that the departmental proceedings and the penalty proceedings could be simultaneously initiated and even in the absence of the penalty proceedings the prosecution lies and even if the penalty proceedings are challenged by the assessee before the Tribunal on that basis the criminal proceedings cannot be quashed. For instance, the High Court of Madhya Pradesh in *R.G. Agarwal and Co. and Others Vs. Union of India (UOI)*, and the High Court of Madras in *Masilamani v. G. Ranganathan* [1988] 1 Cri 602, have held that even if the assessee has preferred an appeal against the penalty proceedings before the Appellate Tribunal, that fact itself does not bar prosecution under sections 276 and 277 of the Income Tax Act. The High Court of Madras further held that during the pendency of the appeal if any reference is made, the prosecution shall go on. In my opinion, this proposition of law cannot be disputed at all. The judgment of the learned single judge of this court in *Ashok Biscuit Works and Others Vs. Income Tax Officer, Hyderabad*, is a case in which the assessee had filed an earlier return and subsequently he filed another return. On the basis of the earlier return filed by the assessee, penalty proceedings were initiated and they were set aside on the basis of the later return filed by him. In those circumstances, the learned single judge of this court has held that the complaint already filed on the basis of the earlier return before the criminal court was not liable to be quashed, even though the penalty proceedings were set aside on the basis of another return filed later. But, the facts of that case do not apply to the facts of this case. In the instant case, the penalty proceedings are cancelled. In such circumstances, the question would be whether the prosecution could continue on the same allegations on which the penalty proceedings were initiated. Therefore, the facts of *Ashok Biscuit Works and Others Vs. Income Tax Officer, Hyderabad*, are distinguishable from this case. The judgment of the Madhya Pradesh High Court in *R.G. Agarwal and Co. and Others Vs. Union of India (UOI)*, is to the effect that penalty proceedings and prosecution are two

different proceedings and simultaneously they could go on under the Income Tax Act. This proposition of law laid down in this case also cannot be disputed.

5. On the other hand, learned counsel for the petitioner submitted the judgment of the Supreme Court in *Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar*, . In this case, an assessee filed a return as a partner of the firm. The Income Tax Officer found that such a firm was not genuine, therefore, to that extent the assessee has made a false statement to evade tax and accordingly penalty was levied and simultaneously criminal prosecution was also launched against the assessee. In an appeal before the Appellate Tribunal, the Appellate Tribunal held that the firm was genuine and the assessee cannot be proceeded against for filing false returns. On the basis of these facts, the High Court of Punjab and Haryana in *Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar*, , 911 held that the proceedings before the criminal court and proceedings before the Department under other provisions are entirely two different proceedings and even if the proceedings before the Department are cancelled, the proceedings before the criminal court could go on. But, the Supreme Court, reversing the judgment of the Punjab and Haryana High Court, held that where the proceedings of the Department are set aside by holding that the firm was a genuine firm on the same set of facts the prosecution initiated is liable to be quashed. The Supreme Court held as under (page 910) :

"Heard counsel, special leave granted. In view of the finding recorded by the Income Tax Appellate Tribunal that it was clear on the appraisal of the entire material on the record that Shrimati Janak Rani was a partner of the assessee-firm and that the firm was a genuine firm, we do not see how the assessee can be prosecuted for filing false returns. We, accordingly, allow this appeal and quash the prosecution.

There will be no order as to costs."

6. Learned counsel for the petitioner also brought to my notice a decision in [1994] 207 ITR 33. The short note reporting found in the said journal reads as under :

"Offence :

Cancellation of penalty by Tribunal during pendency of criminal case : Effect :

18-4-1994 : Their Lordships J.S. VERMA and S.P. BHARUCHA JJ. dismissed a SLP by the Department to appeal against the order dated March 29, 1993, of the Kerala High Court in O.P. No. 5773 of 1989-K allowing the assessee's writ petition against a criminal complaint filed by the Income Tax Officer. In this case criminal proceedings were initiated and penalty was also imposed. An application u/s 273A of the Income Tax Act, 1961, for waiver of penalty was dismissed by the Commissioner. But in the meantime the Tribunal allowed the assessee's appeal in the penalty matter and cancelled the penalty. On the assessee's writ petition against the criminal complaint, the High Court quashed the criminal

proceedings with a proviso that fresh criminal proceedings may be taken if the reference application u/s 256(1) of the Act succeeded : COMMISSIONER OF Income Tax v. RAJASEKHARAN NAIR : SLP (Civil) No. 9155 of 1994."

7. In view of the above law declared by the Supreme Court it is clear that when the penalty proceedings are set aside or cancelled by the competent authority, on the same allegations the prosecution cannot be continued. But, in the instant case, as rightly urged by counsel for the Revenue, the proceedings have not reached finality since the Department has already preferred an appeal before the Income Tax Appellate Tribunal against the order of the Deputy Commissioner of Income Tax (Appeals) who cancelled the penalty proceedings. But counsel for the petitioner submits that whether the Department succeeds before the said Tribunal or not would be a matter of guess and on the basis of such a guess that the Department would succeed the prosecution cannot be allowed to go on. Having regard to these circumstances, I am of the considered view that the prosecution as on today cannot be quashed. However, it has to await the result of the Income Tax Tribunal. In case the Department succeeds before the Tribunal the prosecution may continue from the stage it stood and if the Department ultimately fails in its appeal before the Tribunal, the prosecution cannot be allowed to go on. What exactly would be the result cannot be anticipated as on today. In this view of the matter, I stay the proceedings before the criminal court till the disposal of both the appeals filed by the Department before the Income Tax Appellate Tribunal. After the disposal of the said appeals, the criminal court is hereby directed to dispose of the cases keeping in view the findings recorded by the Income Tax Appellate Tribunal.

8. These two criminal petitions are accordingly disposed of.