(2002) 04 SC CK 0138

In the Supreme Court Of India

Case No : Criminal Appeal No.439 and 440 of 2002

Nirmal and Navin P. Ltd. and Others APPELLANT

Vs

D. Ravindran RESPONDENT

Date of Decision : 04-04-2002

Acts Referred:

Income Tax Act, 1961 — Section 245D(4), 245H, 245I

Citation : AIR 2002 SC 3576 : (2002) 3 Crimes 136 : (2002) 175 CTR 514 : (2002) 255 ITR 514 : (2002) 1 JT 479 Supp : (2002) 10 SCC 317

Hon'ble Judges : M. B. Shah, J;B. P. Singh, J

Bench : Division Bench

Advocate : Joseph Vellapally, Narain, Sandeep Narain and Anjali, for S. Narain and Co, for the Appellant; R.P. Bhatt T.V. Ratnam and B.V. Balram Das, for the Respondent

Final Decision : Dismissed

Judgement

1. Leave granted.

2. Being aggrieved and dissatisfied by the judgment and order dated June 22, 2001 Nirmal and Navin P. Ltd. and Others Vs. D. Ravindran, Deputy Commissioner, , passed by the High Court of Madras in Criminal Revision O. P. Nos. 14209 of 1998 and 11832 of 2000, the appellants have preferred these appeals by special leave.

3. It has been contended by learned counsel for the appellants that in view of the specific common order passed by the Settlement Commission (I. T. and W.T.), Madras, dated March 30, 1995, the criminal complaint filed against the appellants requires to be quashed and set aside. For this purpose, in our view, he has rightly relied upon following paragraph of the said order :

"9. Considering the co-operation extended by the applicant in the proceedings before us, immunity is granted from penalties and prosecution in respect of matters arising out of this settlement. The immunity from prosecution is subject to the applicant co-operating with the Department in any proceedings for assessment, penalty or prosecution in case of ENP. The delay of six months in filing the return will be condoned and no interest u/s 139(8) will be charged. Interest u/s 215/217 will however be charged for a period of twelve months."

4. This order is passed in view of the power conferred on the Settlement Commission to grant immunity from prosecution and penalty u/s 245H of the income tax Act which empowers the Settlement Commission to grant such immunity if any person has made a full and true disclosure of his income and the manner in which such income has been derived on such condition as it may think fit to impose, from prosecution for any offence under the Act or under the Indian Penal Code or under any other Central Act for the time being in force with respect to the case covered by the settlement. Further, Section 245I specifically provides finality and conclusiveness to such order and it cannot be reopened in any proceeding under the Act or under any other law for the time being in force. The said section reads thus :

"245-1. Every order of settlement passed under Sub-section (4) of Section 245D shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in this Chapter, be reopened in any proceeding under this Act or under any other law for the time being in force."

5. In the present case before the Settlement Commission, the appellants stated that the company has earned additional income in its dealings in potato with Express Newspapers Ltd. (ENP) and claimed that ENP had appointed the applicant as its agent to buy and sell potatoes. Instead of purchasing potatoes in the open market as an agent of ENP, it contended that it traded in potatoes belonging to itself which resulted in substantial profits and corresponding losses to ENP. It was also stated that the applicant had introduced certain fictitious purchases and sales to ensure that losses incurred by ENP were brought to a reasonable level. Thereafter when the appellant was asked to furnish necessary evidence, he withdrew the said contention and filed two statements dated January 18, 1995, stating that the said transactions were not genuine and were made only to help ENP to justify its claim for loss in potato dealings. The Settlement Commission considered the aforesaid disclosure made by the appellants. But as the reassessment for the assessment year 1985-86 was over, it had not reopened the said re-assessment for that assessment year. However, for subsequent assessment year 1986-87, the appellant's case was considered and thereafter necessary order for reassessment was passed. Finally, with regard to the penalties and prosecution, the Settlement Commission granted immunity as stated above. Reading the aforesaid order as a whole, it is apparent that the immunity was granted from paying penalties and prosecuting in respect of the fictitious transactions with ENP on conditions as mentioned therein. Therefore, in our view, the immunity is not confined only for reassessment for the assessment year 1986-87, but it is with regard to fictitious transactions with ENP.

6. In view of the total immunity granted by the Settlement Commission, it was

totally unjustified on the part of the Commissioner of income tax to proceed with the complaint against the appellants. It is also not open to the criminal court to go behind the order passed by the Settlement Commission. It was not open to the High Court to say that the impugned order passed by the Settlement Commission was in any way illegal or void.

7. Hence, in view of the order passed by the Settlement Commission, the prosecution which is pending against the appellants would not survive. In the result, the appeals are allowed to the aforesaid extent and the impugned orders passed by the High Court are set aside. The respondent is permitted to deposit Rs. 5,000 as ordered by this court vide order dated March 7, 2002 within two days. However, it is made clear that this order would not give any immunity to the appellants not to abide by the terms and conditions laid down by the Settlement Commission in its order dated March 30, 1995.