
(1996) 07 P&H CK 0068

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 1533 of 1988 and Criminal Miscellaneous No. 95 of 1995

Procolor and Others

APPELLANT

Vs

Chief Judicial Magistrate and Others

RESPONDENT

Date of Decision : 30-07-1996

Acts Referred:

Income Tax Act, 1961 — Section 276C, 277, 278B

Citation : (1998) 230 ITR 849

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

Bench : Single Bench

Advocate : I.K. Mehta and M.S. Kohli, for the Appellant; R.P. Sawhney and Sanjay Goyal, for the Respondent

Judgement

V.S. Aggarwal, J.—The Income Tax Officer, Chandigarh, filed a complaint with respect to offences under Sections 276C and 277 read with Section 278B of the Income Tax Act. It was asserted that petitioner No. 1 is a partnership concern comprising petitioners Nos. 2 and 3 as its active partners. Petitioner No. 1 filed its return of income for the assessment year 1980-81 on July 14, 1980. It declared a loss of Rs. 30,540. It was found that petitioner No. 1 had debited a sum of Rs. 30,500 on account of provisional purchases allegedly made from Camera India Photographic Co. Ltd., New Delhi, and Camera Works Pvt. Ltd., Bombay. It was further revealed that no such goods were supplied to petitioner No. 1. It had introduced bogus purchases under the garb of provisional purchases. This was done only in order to reduce the correct income of petitioner No. 1. This amount was added towards bogus purchases. The income of petitioner No. 1 was assessed with a profit of Rs. 34,071. Subsequently, penalty proceedings were initiated against petitioner No. 1. A penalty was levied. It was asserted that the petitioners had deliberately and wilfully concealed the real income in order to avoid payment of taxes. Hence, the complaint was filed.

2. The petitioners filed the present writ petition invoking Articles 226 and 227 of

the Constitution. However, at the time of arguments, only one plea was pressed, namely, that the second appeal filed by the petitioners against the penalty imposed has been accepted by the Income Tax Appellate Tribunal. It is claimed that since the appeal has been accepted the proceedings should be quashed as are pending in the Court of the Chief Judicial Magistrate, Chandigarh, on the basis of the said complaint.

3. The sole question that arises for consideration is as to when the appeal against the penalty imposed has been accepted, whether the proceedings initiated on the basis of the complaint should be quashed or not. Learned counsel appearing on behalf of the respondents, 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 proceedings started against the petitioner in that case were not completed and, therefore, the prosecution was premature on the ground that reassessment proceedings were going on. The Supreme Court, while considering the said question as to the effect of the reassessment proceedings on 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 (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."

4. 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 (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 under Sections 276C and 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."

5. I am afraid the cited judgment will not come to the rescue of the respondents, the reason being that the proceedings as yet were still pending. Reassessment could be effected. In that backdrop it had been concluded that the criminal proceedings could continue. Similarly, for the same reasons the decision of this court in the case of Kamra Trading Co. v. ITO [1995] 214 ITR 665 (Crl. Revision No. 97 of 1995, decided on April 6, 1995), will not help the respondents. In the cited case, the proceedings had been remanded and not finally decided by the appellate court. In the present case, as would be noticed hereinafter, the second appeal had been accepted and the penalty imposed had been set aside. The above said cases are clearly distinguishable.

6. At this stage, it would be appropriate to refer to the findings of the Income Tax Appellate Tribunal dated March 14, 1990, in the appeal filed by the petitioners against the penalty imposed. In paragraphs 9 and 10, the Tribunal observed :

"After hearing the parties" representatives, the first ground which prompted the Appellate Assistant Commissioner to confirm the penalty was simply not justified in view of the assessee having surrendered the amount conditionally. Secondly, may be that at the time of assessment, the main dealers refused to give certificate but then in the penalty proceedings the assessee procured the necessary evidence and it was processed by the Income Tax Officer, there could be no ground for taking support from the circumstances which prevailed during the assessment proceedings and which culminated in the assessee surrendering the amount of Rs. 30,500. As far as the third ground mentioned by the Appellate Assistant Commissioner, it came to be wrongly inferred that the evidence adduced by the assessee did not indicate whether the supplies had been received in advance because the Delhi party in terms accepted the assessee's version and the invoices were dated January 16, 1980, which fell in the relevant accounting year.

Further, in addition to the above, when before the assessment was framed, the assessee had entered in its stock register for the assessment "year 1981-82 stocks after adjusting the advance stocks received in the earlier year, it gave veracity and authenticity to the assessee's version of events. It is one of the few cases of processing laboratories where the stock register was admitted to have been maintained properly. Such maintenance should have sheltered the assessee from the penal consequences instead of burdening it with rigours of penalty."

7. A perusal of the aforesaid shows that it had been concluded that the assessee had entered in its stock register for the year 1981-82, the stocks after adjusting the advance stocks. They were maintained properly. When the penalty proceedings in appeal stand quashed and the findings of the Income Tax Officer set aside, it appears that no useful purpose would be served in allowing the

criminal proceedings to continue. Reference with advantage may be made to the decision of the Madras High Court in the case of Mohamed I. Unjawala and etc. etc. Vs. Assistant Commissioner of Income Tax, City Circle VI (1), Madras, . The questions involved before the State High Court were the same. In paragraph 8, it was held (page 203) ;

" Therefore, it cannot be treated that every finding of the authorities under the Income Tax Act had to be disregarded and ignored for the criminal prosecution. On the other hand, due regard must be given and in appropriate cases, the criminal prosecution has to be dropped. Therefore, in deserving cases, the criminal court has to give weight to the findings of the authorities under the Income Tax Act and it is not in all cases to ignore the conclusions of the Tribunal."

8. The same question again cropped up before the Bombay High Court in the case of Shastri Sales Corporation and others Vs. Income Tax Officer, . Complaint was filed for offence of concealment of income but during pendency of the same, the appeal had been accepted. The imposition of penalty was quashed. The said court held that the criminal complaint necessarily should be quashed. The findings arrived at in paragraph 14 are as follows (page 640) :

"The gravamen of the charge in the complaint filed by the complainant-respondent is the concealment of income and/or furnishing of inaccurate particulars by the assessee for the assessment years 1983-84 and 1984-85 and on the self-same facts penalty orders were passed by the Income Tax Officer on March 29, 1988, and March 28, 1988, respectively. The said orders of penalty passed by the concerned Income Tax Officer u/s 271(1)(c) of the Income Tax Act have been quashed by the Deputy Commissioner of Income Tax (Appeals) by its common order dated May 31, 1989, and the said order has been confirmed by the Income Tax Appellate Tribunal by its common order dated September 23, 1992. In my view, therefore, there is absolutely no justification for continuing with the prosecution of the accused-petitioners pursuant to the complaint filed by the respondent-complainant on December 30, 1988. The Income Tax Appellate Tribunal has already held in its order dated September 23, 1992, that the Department has failed to prove that the assessee has concealed the particulars of any income or furnished inaccurate particulars for the assessment years 1983-84 and 1984-85 and the penalty orders were not justified. Though, at the time of the filing of the complaint, it cannot be said that the said complaint was misconceived because the orders u/s 271(1)(c) had not attained finality, but now since the matter has attained finality at the stage of the Income Tax Appellate Tribunal and it has been held that the accused-petitioners were not guilty of concealment of income and/or furnishing of inaccurate particulars of income and there was no justification in imposing penalty on them, further proceedings on the complaint cannot be permitted and the applicants have become eligible for discharge."

9. One finds oneself in complete agreement with the said view. Once the findings on the basis of which the complaint was filed have been set aside, it would be an

exercise in futility for allowing the criminal complaint to continue. The very basis on which the complaint was filed no more exists. Once the said basis has ceased to be existent the complaint necessarily should come to its natural death. For these reasons, the petition is accepted and the proceedings pending in the Court of the Chief Judicial Magistrate, Chandigarh, on the basis of the complaint of the Income Tax Officer, are quashed.