(1992) 04 P&H CK 0009

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 2299-M of 1991

Shakti Metal Box — APPELLANT

Vs

Union of India — RESPONDENT

Date of Decision : 02-04-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 309
Income Tax Act, 1961 — Section 245C, 245D, 245D(1), 245F, 245H

Citation : (1993) 66 TAXMAN 170

Hon'ble Judges : G.S. Chahal, J

Bench : Single Bench

Advocate : K.G. Chaudhary, for the Appellant; R.P. Sahney, for the Respondent

Final Decision : Dismissed

Judgement

Chahal, J.—Shakti Metal Box, Sherpur Kalan, Ludhiana petitioner-1 and its partner, Krishan Kumar Tandon, petitioner-2 have moved this criminal miscellaneous petition u/s 482 of the Code of Criminal Procedure, 1908 for quashing the Criminal Complaint No. 344/3 of 1985, titled as ITO v. Krishan Kumar Tandon, pending in the Court of the Chief Judicial Magistrate, Ludhiana and the orders dated 7-3-1990 and 21-11-1990, passed by the said Court. The impugned complaint was instituted under the provisions of sections 276C and 277 of the income tax Act, 1961 (''the Act'') with respect to the assessment year 1982-83, financial year 1981-82, on the allegations that the petitioner-firm had concealed an income of Rs. 3 lakhs while filing the return. The complaint is dated 9-10-1985 and it has been filed under the orders of the Commissioner (Central), Ludhiana. The petitioners claim that they have filed a petition before the income tax Settlement Commission, New Delhi which had conveyed its order dated 19-2-1988 and according to its directions, the proceedings regarding the assessment years 1982-83, 1983-84 and 1984-85 were allowed to be proceeded with.

2. The petitioners plead that after the admission of the application by the income

tax Settlement Commission, vide its order dated 19-2-1988, they had filed an application for dismissal of the complaint which was dismissed by the Chief Judicial Magistrate on 7-3-1990, copy Annexure P3. Another application was filed u/s 309 of the Code of Criminal Procedure for stay of the proceedings, but the same was dismissed by the learned Chief Judicial Magistrate on 21-11-1990, vide order copy Annexure P4. The petitioners seek the quashing of the complaint, as well as the orders passed by the learned CJM.

3. Annexure P2 is a copy of the order passed by the income tax Settlement Commission, Principal Bench, New Delhi. This order has been passed u/s 245D(1) of the Act, vide this order, it was directed that the application was allowed to be proceeded with for the assessment years 1982-83, 1983-84 and 1984-85. The learned counsel urges that once this application was allowed to be proceeded with, all the proceedings, including prosecution, should be stayed. Chapter XIX-A, Settlement of Cases, is a complete code and according to section 245F, the Settlement Commission has all the powers which are vested in an income tax authority under the Act. Under sub-section (2) of section 245F, the Settlement Commission has the exclusive jurisdiction to exercise the powers and perform the functions of an income tax authority under the Act in relation to a case. Section 245H empowers the Settlement Commission to grant immunity from prosecution and penalty for any offence under the Act; the IPC or under any Central Act. It was only the Commission which could order prosecution and if any prosecution had been launched after the application was moved before the Commission by the petitioner, these proceedings are liable to be quashed and, at any rate, liable to be stayed.

4. The impugned complaint, in the present case, was instituted at a time when the Settlement Commission had yet not decided, whether the application was to be proceeded with or not. u/s 245D, the Settlement Commission, on receipt of an application u/s 245C, has to call for a report from the Commissioner and it is after examination of that report and the material contained therein and having regard to the nature and circumstances of the case, or the complexity of investigation involved therein, that the Commission may by order allow the application to be proceeded with or reject the application. When the complaint, in the present case, was instituted, the Commission had yet not allowed the proceedings on the application to proceed further. In this situation, it cannot be said that the Settlement Commission was seized of the matter when the prosecution was launched under the orders of the Commissioner. There was no bar on the powers of the Commissioner to order the launching of the prosecution on the day the complaint was filed. While allowing the prayer of the petitioners to proceed with the application, the Settlement Commission did not give a direction for stay of the criminal proceedings.

A similar position was examined by Sukhdev Singh Kang, J. (as his Lordship then was) in HARBANS SINGH Vs. UNION OF INDIA AND OTHERS,) and the following observations were made:

"... So, the mere filing of the application for settlement u/s 245C will not have the effect of staying the operation of the other provisions of the Act, like those providing for the prosecution of the assessee in concealing and making incorrect and false statement in the return. Admittedly, in the present case, the Settlement Commission has not passed any orders staying the proceedings in the criminal complaint. In the absence of such an order, the Magistrate was duty bound to try and decide the case in accordance with law." (p. 27)

5. In Ashvin Kumar Vadilal Patel Vs. S. Rajguru and Another, 2,R.A. Mehta, J. of the Gujarat High Court observed that until immunity is granted by the Settlement Commission, criminal proceedings need not be stayed. In R.I. Chadha v. JTO [Criminal Miscellaneous No. 6503-M/1986, dated 12-5-1987], on which reliance has been placed, I.S. Tiwana, J. was dealing with a different situation. Therein a complaint had been filed, but subsequent to the passing of the order by the Commission allowing the application to proceed. The learned Judge held that since the Commission was to exercise all powers vested in the income tax authority u/s 245F, it was only the Commission who could order the launching of prosecution. The ratio of this decision is not attracted to the facts of the present case. I, thus, conclude that mere allowing of the proceeding of the application by the Settlement Commission does not operate as a bar to the prosecution already instituted under the orders of the Commissioner. No case is made herein for quashing of the impugned complaint or the orders passed by the learned Chief Judicial Magistrate, Ludhiana. The criminal miscellaneous petition is hereby dismissed.

