(2010) 08 AHC CK 0302

In the Allahabad High Court

Case No : Application under Section 482 No. 3579 of 1991

S.Housing APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 28-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Income Tax Act, 1961 — Section 269T, 276DD

Citation : (2010) 08 AHC CK 0302

Hon'ble Judges : Rajesh Dayal Khare, J

Final Decision : Allowed

Judgement

Rajesh Dayal Khare, J.—Heard Sri P.K. Jain, learned counsel for the applicants and Sri Shambhu Chopra, learned Senior Standing Counsel appearing for the Department of Income Tax.

2. The present application under Section 482 Cr. P.C., has been filed for quashing the proceedings of Criminal Complaint Case No. 326 of 1989 Union of India through Assistant Commissioner of Income Tax CircleI Meerut Vs. M/s Saral Housing and General Finance (P) Ltd. and another, pending before learned Special Chief Judicial Magistrate, District Kanpur.

3. Learned counsel for the applicants states that the applicant no.1 is the Private Limited Company duly registered under the Companies Act and is engaged in the business of Hire Purchase Finance of which the applicant no.2 is the Managing Director. It is further contended that a complaint was filed by the Assistant Commissioner of Income Tax CircleI, District Meerut on 26.07.1986 on the ground that in the assessment proceedings for the Assessment Year 198687 it was noticed that during the financial year, the applicant no.1 in the knowledge of the applicant no.2 repaid the deposits/loan in cash, in contravention to the provisions of Section 269T of the Income Tax Act, 1961 and made the payment of Rs. 17,000/ in cash. It is further contended that the provisions of Section 269SS of Income Tax Act which was incorporated in the statue to prevent

evasion of tax and it was provided that no cash payment in excess of Rs. 10,000/ can be made by any registered company which provision was violated by the applicants. It is argued on behalf of the applicants that in the present case, there was no intention to evade any tax inasmuch the deposits was received from a genuine party whose identity was established and financial position was well known and the deposits was fully proved, therefore, there is no question of any tax evasion. It is thus, contended that there is no violation of Section 269SS of the Income Tax Act and no proceedings under Section 276DD could have been drawn against the applicant under the said Act. It is further argued that the provisions of Section 276DD has been omitted/deleted with effect from 01.04.1989 and in view of the said omission/deletion no prosecution under Section 276DD of the Act would be continued, therefore the present proceedings against the applicants are liable to be quashed.

4. Learned counsel for the applicants has relied upon a Judgment of Hon''ble Apex Court reported in JT 2002 (6) SC 426 M/s General Finance Co. and another Vs. Assistant Commissioner of Income Tax, Punjab as well as Judgment of this Court rendered in Criminal Misc. Application No. 7508 of 1990 in the matter of M/s Satish Chand Sushil Kumar and others Vs. State of U.P. and another in support of his contention.

5. In view of the submissions made by learned counsel for the parties as well as considering the fact that the provisions of Section 276DD of the Income Tax Act has been deleted/omitted with effect from 01.04.1989, therefore no prosecution can be permitted to continue against the applicants as per the settled law as laid down by the Hon''ble Apex Court as well as this Hon''ble Court and the present application under Section 482 Cr. P.C., deserves to be allowed.

6. For the reasons discussed above, the present application is allowed.

7. The proceedings of Criminal Complaint Case No. 326 of 1989 Union of India through Assistant Commissioner of Income Tax CircleI Meerut Vs. M/s Saral Housing and General Finance (P) Ltd. and another, pending before learned Special Chief Judicial Magistrate, District Kanpur is hereby quashed.

8. No order as to costs.