

(1994) 10 MAD CK 0109

In the Madras High Court

Case No : Criminal Miscellaneous Petition No. 9075 of 1989

Tip Top Plastic Industries P. Ltd. and others

APPELLANT

Vs

Income Tax Officer

RESPONDENT

Date of Decision : 05-10-1994

Acts Referred:

Income Tax Act, 1961 — Section 276C, 277, 278B
Penal Code, 1860 (IPC) — Section 120B, 193, 196, 420

Citation : (1995) 129 CTR 103 : (1995) 214 ITR 778

Hon'ble Judges : Rangasamy, J

Bench : Single Bench

Advocate : V. Ramachandran, for the Appellant; Ramaswamy K., for the Respondent

Judgement

Rangasamy, J.—This petition is filed u/s 482, Code of Criminal Procedure, to quash the proceedings in C.C. No. 128 of 1985 on the file of the Additional Chief Metropolitan Magistrate (E.O.I.), Egmore, Madras. The petitioners are the accused in the above case for the offence under sections 120B, 193, 196 and 420 of the Indian Penal Code, 1860, and also sections 276C and 277 read with section 278B of the Income Tax Act, 1961 (hereinafter to be referred to as "the Act"). The first petitioner is the company, the third petitioner is the managing director and the second petitioner is the director of the first petitioner-company. The first petitioner carries on the business of the manufacture and sale of suitcases, handbags, purses and other miscellaneous plastic goods. It has branches and sales depots outside the Madras city. For the year ended on March 31, 1981, the first petitioner submitted the return of income declaring the net income of Rs. 1,45,386. The assessment also was completed on the total income of Rs. 1,56,580. In the statement of account, the first accused had declared a closing stock of Rs. 19,55,984. On February 18, 1982, there was a search in the premises of the first petitioner and the records were seized. According to the respondent-income tax Officer, it was found out from the records that the return filed by the first petitioner did not contain the full income as stocks to the value

of about Rs. 5 lakhs had been suppressed, in the original return. Therefore, notice was issued to the petitioners u/s 148 of the Act on July 19, 1983, and the first petitioner once again filed the return on December 6, 1983, declaring the net saving income as found in the original return. As the closing stock of the first petitioner was not correctly shown in the return and there was omission of the stocks to the aggregate value of Rs. 5 lakhs in the return, a complaint was filed before the Additional Chief Metropolitan Magistrate, Egmore, against the petitioners under sections 120B, 193, 196 and 420 of the Indian Penal Code, 1860, and also under sections 276C and 277 read with section 278B of the Act.

2. The petitioners have filed this petition to quash the proceedings before the learned Additional Chief Metropolitan Magistrate contending that there is no basis for the allegation that stocks to the value of about Rs. 5 lakhs were suppressed in the stock book and as it was not possible to maintain a day-to-day stock account, a rough account was prepared on an estimated basis as the same was required for banking purposes as the company was availing of loan facilities from the bank and, therefore, from the rough account, the actual stock in hand could not be ascertained. It is further stated by them that as the bank calls for particulars of stocks periodically, such a rough stock statement was prepared and furnished whenever required by the bank and such a stock account will not show the accurate physical stock which would be ascertained only by physical verification and, therefore, the Income Tax Officer is not correct in relying upon the rough stock account to justify his assessment that there was short statement of closing stock to the extent of about Rs. 5 lakhs. It is further stated that even before the Income Tax Officer had passed the order of assessment on the basis of the stock account book, which he seized, the Commissioner of Income Tax had ordered for the prosecution and, therefore, the prosecution is illegal. It is also contended that the Income Tax Officer had passed order levying a penalty and on appeal before the Income Tax Appellate Tribunal in Income Tax Appeals Nos. 2239 and 2240/ (MDS) of 1985, the Tribunal had allowed the appeals setting aside the order of the complainant and, therefore, the complainant is not entitled to proceed with the enquiry in C.C. No. 128 of 1985 and the same is liable to be quashed.

3. It is not in dispute that on February 18, 1982, search was made in the premises of the first accused and certain records were seized by the Income Tax Officials. In the complaint filed by the first respondent, it is stated that the stock book bearing S.M. No. 84 maintained by the first accused for their business in Kasi Chetty Street, Madras, gives the total stock, which has been carried out in S.M. No. 137 maintained by the first accused and though S.M. No. 137 revealed the stock as on March 31, 1981, only at Rs. 19,55,984, many pages in S.M. No. 84 stock book were not carried over in S.M. No. 137 for the purpose of understating stock value and on a comparison of S.M. No. 84 stock book, with S.M. No. 137, which is the consolidated stock book for all the branches, there is short statement of Rs. 4,93,177. S.M. No. 137 is the consolidated stock book of the first accused company for all their business and according to the

complainant, the first respondent herein, though the stock book S.M. No. 84 relating to Kasi Chetty Street branch had been copied in S.M. No. 137, several pages have been omitted to be included in S.M. No. 137. According to the complainant, this has been deliberately done by the petitioners for the purpose of understatement of the account to escape the correct assessment and, therefore, the petitioners are liable to be punished under the Indian Penal Code and also under the Income Tax Act.

4. In the petition filed by the petitioners, the maintenance of S.M. No. 84 stock book relating to Kasi Chetty Street branch and the seizure of this book is not disputed. But the contention taken in the petition is that rough stock statements were prepared periodically for the purpose of showing to the bank which advanced loans to them and this rough stock statement does not show the actual stock, which they verify physically then and there and, therefore, the complainant cannot proceed with the prosecution on the basis of the details given in the rough stock statement. If the stock statement book S.M. No. 84 was prepared for certain purposes other than to show the actual stock, it is a matter of evidence to be proved before the trial court. The complaint discloses that there is difference in the stock between consolidated account book S.M. No. 137 filed before the Income Tax Officer at the time of the assessment and the stock statement S.M. No. 84 seized from the premises of the first petitioner. As the difference is found out to be to the extent of about Rs. 5 lakhs between these two account books, naturally the first respondent will treat the original return as a false statement to delude the exchequer. In *Coimbatore Spinning and Weaving Co. Ltd. Vs. Commissioner of Income Tax*, the Bench of this court has considered a similar contention and has held that the court cannot recognise such a sub-standard morality on the part of the assessee in maintaining a stock account to satisfy the bank, which gives them loans. That was also a case in which the Income Tax Officials seized the stock account from the premises of the accused therein and found the variance between the account books submitted at the time of the assessment and the account books seized. The accused therein took up a similar contention that it was the practice in the business to declare large stocks to the banks for the purposes of getting higher loans or overdraft facilities and, therefore, such accounts should not be relied on for the purpose of assessment. Rejecting that contention, this court has observed (at page 379) :

"We are not convinced that any such practice is shown to exist or that it has been recognised in the commercial circles or by courts. Even assuming that such a practice exists, the Tribunal is not expected to take judicial notice of such sub-standard morality on the part of the assessee so as to enable them to go back on their own sworn statements given to the banks as to the stocks held and hypothecated by them to the banks."

5. Ultimately, the court rejected the original return on account of the suppression of stocks. Therefore, the petitioner cannot contend at this stage that the stock book S.M. No. 84 is only a rough statement without reference to the correct

stock. Even if S.M. No. 84 was a rough stock statement, it is a matter of evidence to be proved at the time of trial.

6. Learned counsel for the petitioner contended that as the return was submitted for the year ended March 31, 1981, whereas the premises were searched on February 18, 1982, there is nothing to show that the details of the stock given in S.M. No. 84 seized in February, 1982, relate to the period ended March 31, 1981, and, therefore, the first respondent is not entitled to file a complaint relying upon S.M. No. 84 statement of account. He also refers to a decision in Commissioner of Income Tax, Mysore Vs. Jewels Paradise, , in which case, cash was seized in the raid conducted on the assessee's shop and residences of the partners and on the basis of this cash, the authorities imposed a penalty u/s 271(1)(c) of the Act. The Income Tax. Appellate Tribunal set aside the order holding that the amount seized could not represent the income of the assessment year and, therefore, there was no concealment of income. That view was upheld by the Karnataka High Court. So, learned senior counsel for the petitioners argues that in this case also, in the complaint it is not stated that the details of the stocks shown in S.M. No. 84 did not disclose that this stock related to the period prior to March 31, 1981, and, therefore, there is no basis for the allegation of concealment of the stock. The consolidated stock book S.M. No. 137 revealed the stock to the value of Rs. 19,55,984 as per the return, for the year ended with March 31, 1981. In the complaint, it is stated that a number of items found in S.M. No. 84 had been omitted to be included in the consolidated account S.M. No. 137. As S.M. No. 137 stock account related to the period ended March 31, 1981, and as the allegations is that the items shown in S.M. No. 84 were omitted to be shown in the consolidated account S.M. No. 137, it indicates that the stock relating to the period ended March 31, 1981, was omitted to be disclosed in S.M. No. 137 stock account. Therefore, we cannot presume that S.M. No. 84 related to the period subsequent to March 31, 1981. Even if it was so, it is a matter of evidence to be considered at the time of trial. Therefore, this contention also has no weight.

7. Learned senior counsel, Mr. V. Ramachandran, made an extensive argument with regard to the assessment on the basis of the income. According to learned senior counsel, the petitioners have not suppressed their income and there is no material for imposing penalty. First, he cited the decision in Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali, , wherein it is held that even if the assessee's explanation is not acceptable for concealed income, unless the burden is discharged by the Department, penalty could not be imposed u/s 28(1)(c) of the Act. Another decision relied upon by him is Commissioner of Income Tax, Gujarat Vs. Vadilal Lallubhai, etc. etc., , wherein the Supreme Court has considered the question whether assets deemed to be dividend distributed by the company that went into liquidation, will be the income of the assessee. Learned senior counsel, Mr. Ramachandran, refers to the decision in Commissioner of Income Tax, Kanpur Vs. Mother India Refrigeration Industries P Ltd., , wherein the Supreme Court has held that in computing the profits and gains of a business for the current year, depreciation for the current year must

be deducted first before deducting the unabsorbed carried forward business losses of earlier years. Another decision relied upon by him is Arvind Bhogilal Vs. Commissioner of Income Tax, Bombay City II, , wherein, when minors were admitted to the benefits of the partnership and the minor died before the closing of the accounts, the question arose whether his share of profits up to the date of attaining majority of the minor will be his income. Another decision relied upon by the learned senior counsel is Commissioner of Income Tax Vs. Nathimal Gaya Lal, , in which case penalty was levied on the undivided family. In the assessment proceedings filed on behalf of the Hindu undivided family, penalty was levied for the undisclosed income. The Allahabad High Court set aside the assessment on the ground that as the undivided family ceased to exist on the date of the assessment, the imposition of penalty was not valid. One more decision relied upon by him is Sir Shadi Lal Sugar and General Mills Ltd. and Another Vs. Commissioner of Income Tax, Delhi, . In that case, the return of income was filed and certain debits were found to be false claims and the assessee admitted a certain amount as taxable income. Therefore, penalty was levied. The Supreme Court has held that mere admission of the assessee as taxable income will not amount to concealment of income and, therefore, the penalty was not livable and the same was set aside. All these decisions relate to the assessment by the assessing authorities and the proceedings before the Magistrate is not for the assessment or for the penalty on the petitioners. As the stock book seized from the premises of the first petitioner revealed the concealment of the stock, the proceedings have been initiated against the petitioners as contemplated under sections 276C and 277 of the Act. As stocks to the value of Rs. 4,93,177 are alleged to have been concealed, the first respondent would allege that the income to the abovesaid value has been suppressed and this will attract punishment under sections 276C and 277 of the Act. But learned senior counsel for the petitioners, Mr. V. Ramachandran, would argue that only if the Income Tax authorities find that the real income was concealed and the return of income is false, the criminal court can find the petitioners guilty of the offence and, therefore, the assessing authority has to find out whether the original assessment submitted in October, 1981, for the period ended with March 31, 1981, is not correct. The Supreme Court in P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, has held that the criminal court no doubt has to give due regard to the result of any proceedings under the Income Tax 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 but it does not, however, mean that the result of a proceeding under the Act would be binding on the criminal court, as the criminal court has to judge the case independently on the evidence placed before it. Therefore, even though the criminal court will give due regard to the result of the proceedings of the assessing authorities, the criminal court has to consider the complaint before it independently on the evidence placed before it. In Commissioner of Income Tax, Uttar Pradesh Vs. Devi Prasad Vishwanath Prasad, , the Supreme Court has held that there is no need in law to prevent the Income Tax Officer in an

appropriate case in taxing both the cash credit, the nature and source of which was not satisfactorily explained, and the books of account also were unreliable. When the Income Tax Officer was not satisfied with the books of account of the assessee as they were unreliable and unexplained credit is shown in the statement, he has powers to tax the income and the burden lies upon the assessee to prove that the income from a source had already been taxed. Therefore, when the records seized discloses short statement of stock, certainly the Income Tax Officer is entitled to proceed against the petitioners-assesseees according to law, for the fresh assessment and also for prosecution. Hence, the above decisions cited by learned senior counsel do not help the petitioners to avoid the criminal prosecution.

8. The next line of argument of learned senior counsel for the petitioners is that as the assessment order of the Income Tax Officer has been set aside by the Income Tax Appellate Tribunal and the Commissioner of Income Tax (Appeals) also has cancelled the penalty order of the Income Tax Officer, the prosecution against the petitioners is not sustainable and the same has to be quashed. In support of this argument, learned senior counsel refers to a series of decisions which I cite below. The first decision is Parkash Chand Vs. Income Tax Officer, A-Ward, . In that case, the Income Tax Appellate Tribunal gave a finding that there was no proof of concealment of income. On the basis of this finding, the Punjab and Haryana High Court has held that the criminal proceedings for the false return of accounts initiated before the criminal court could not be allowed to continue and were quashed. In RAJINDER NATH Vs. M. L. KHOSLA, Income Tax OFFICER, AND ANOTHER., , the Delhi High Court has held that when the Income Tax Appellate Tribunal has found that the statement of return was correct, the criminal prosecution u/s 277 of the Income Tax Act is not proper and the criminal proceedings had to be quashed. In Balaji Oil Traders and Others Vs. Income Tax Officer, Central Circle-V, Bangalore, , the criminal prosecution was launched on the basis of the assessment, which was cancelled by the appellate authority. Therefore, the criminal prosecution was not allowed to continue and was quashed. The same view was taken in Harcharan Singh Bhatia Vs. Income Tax Officer, A-Ward and Another, . This court also in S. VAIDYANATHAN, Income Tax OFFICER Vs. DR. B. MATHURAM AND SONS AND OTHERS., , has held that as the Income Tax Appellate Tribunal has quashed the order of assessment passed by the Income Tax Officer, the Income Tax Department could withdraw the complaint against the assessee, pending before the criminal court, with permission to file it again if circumstances warrant it. In Dr. B. Seerapani Vs. Income Tax Officer and Another, , the High Court of Kerala has quashed the criminal proceedings in view of the fact that the Appellate Tribunal has set aside the order of the Income Tax Officer and given liberty to the complainant to file a fresh complaint in the light of the result of the reassessment. So, relying upon these decisions, learned senior counsel submits that as the Income Tax Appellate Tribunal has set aside the order of the Income Tax Officer in Income Tax Appeals Nos. 2239 and 2240/(MDS) of 1985, the criminal court proceedings have to be

quashed with a direction to file a fresh complaint in case of necessity after the finality of the assessment proceedings. On a reading of the order of the Income Tax Appellate Tribunal, there is no finding by the Tribunal that there was no concealment of the stock and that the return of income submitted by the petitioner was correct. On the other hand, as it was represented before the Tribunal that no opportunity was given to the assessee and the books were seized, for which the assessee should have been given opportunity to explain the accounts, the Tribunal, accepting that plea, set aside the order of the Income Tax Officer and remanded the matter for being given adequate opportunity to the assessee before the order of assessment was made. Therefore, the Appellate Tribunal has not given any finding with regard to the merits of the contention taken by the assessee. As it was contended that adequate opportunity was not given to the assessee to explain the accounts, the assessment order of the Income Tax Officer was set aside and was remanded back to the Income Tax Officer for fresh consideration. Therefore, in the absence of a definite finding by the Income Tax Appellate Tribunal as to the correctness of the returns submitted by the assessee, it cannot be contended that the criminal prosecution under sections 276C and 277 of the Act is not maintainable.

9. Learned counsel appearing for the respondent, Mr. K. Ramaswamy, would argue that u/s 276C of the Act, prosecution could be launched against a person if he attempted to evade any tax or penalty chargeable or imposable under this Act indicating that even if the assessment proceedings was not complete, if tax is chargeable or imposable upon that person, that itself is sufficient to prosecute him for his attempt to evade the tax. In view of the words "chargeable or imposable" employed in section 276C of the Act, certainly the Income Tax Officer need not wait till the assessment proceedings were over. If it is disclosed from the facts that an attempt was made to evade any tax that was payable by a person, that is sufficient for action u/s 276C of the Act.

10. Learned counsel, Mr. Ramaswamy, has quoted a series of decisions of this court and also of other courts to support his contention that the cancellation of the assessment order of the Income Tax Officer by the Appellate Tribunal will not stand in the way of the criminal prosecution of the assessee. In *P. Jayappan Vs. S.K. Perumal*, First Income Tax Officer, Tuticorin, , which I have referred to above and which is an identical case of the Income Tax officials seizing the accounts which revealed suppression of the real income in the return of income, the Supreme Court has observed that the pendency of the reassessment proceedings before the Income Tax Officer could not act as a bar to the institution of criminal prosecution for the offences punishable u/s 276C or section 277 of the Act nor the institution of criminal proceedings, in the circumstances, amount to an abuse of the process of the court. It further adds that there is no provision in law which provides that a prosecution for an offence u/s 276C or section 277 of the Act cannot be launched until reassessment proceedings initiated against the assessee are completed. In *Madras Vanaspathi Ltd. and Others Vs. S. Subramanian*, Income Tax Officer, , this court has held that when the Income Tax

Appellate Tribunal did not give a finding that the assessee's statements were true but had remanded the case to the Income Tax Officer to verify the items, such an order would not affect the criminal prosecution against the assessee. In *Y. Jayalakshmi Vs. Income Tax Officer*, also, this court has held that though the petition for compounding the offence is pending before the Commissioner of Income Tax, it will not affect the proceedings against the assessee before the criminal court. In *K. Venkatiah Naidu Vs. K.P. Karunakaran, Income Tax Officer*, , this court has held that when once the Assessing Officer has found commission of an offence, he has every right to prefer a complaint and the fact of the pendency of the appeal against the assessment order cannot be a ground for quashing the complaint in the hope that there is a likelihood of penalty being waived by the Department. In *G.S.R. Krishnamurthi Vs. M. Govindaswamy, Income Tax Officer*, , this court has observed that though the assessment proceedings were not completed, it will not be a bar to the initiation of the criminal prosecution. In *Raja Corporation and others Vs. Income Tax Officer*, ; *S.P. Murugappan Vs. Income Tax Officer*, and *P.N. Subramaniam and others Vs. P.C. Chadaga, Assistant Commissioner of Income Tax*, , Justice Arunachalam has taken a consistent view that when a prima facie case is disclosed in the complaint, setting aside the order of assessment by the appellate authority will not be a bar for criminal process and when especially no finding by the appellate authority that the statement made by the assessee was true. In *Geethanjali Mills Ltd. v. V. Thiruvengadathan* [1989] 179 ITR 558, Justice Janarthanam has held that the fact that the Tribunal had passed an order of remand in assessment proceedings would not be a bar to prosecution for offences under the Act and the mere expectancies should not stand in the way of the criminal proceedings in the matter. In *S.R. Arulprakasam Vs. Prema Malini Vasan, Income Tax Officer, Central Circle-XV, Madras*, , this court has observed that even if a revised return is filed, penalty proceedings and criminal prosecution can be initiated on the original return filed concealing the income. The catena of decisions referred to above have taken the consistent view that for the reason that appeal proceedings are pending before the appellate authority or that the appellate authority had remanded the matter, they are not grounds to quash the proceedings. In this case, the Income Tax Appellate Tribunal remanded the matter to the Income Tax Officer on the representation of the assessee that opportunity was not given to explain the accounts. Therefore, without considering the merits of the contentions of the assessee taken before the Appellate Tribunal, the matter was remanded back to the Income Tax Officer. It is brought to my notice that after remand also, the Income Tax Officer has passed an assessment order dated March 19, 1990, that the first petitioner is liable to pay tax of Rs. 3,54,864 on the basis of the concealed stock to the value of Rs. 4,93,177. So, the Income Tax Officer has passed orders upholding the concealment of income. Anyhow, applying the above decisions, the stand taken by the petitioners to quash the proceedings carry no weight.

11. One other contention taken by learned senior counsel for the petitioners, Mr.

V. Ramachandran, is that no notice was given to the petitioners before the filing of the complaint and, therefore, on that ground also, the criminal proceedings have to be quashed. Learned senior counsel draws support for his argument from the decisions, *S. Harnam Singh Suri Vs. Central Board of Direct Taxes*, ; *Shree Singhvi Brothers and Others Vs. Union of India (UOI) and Others*, and *P.V. Pai, B.R. Shetty, Biyar Rubbers Pvt. Ltd. and Smt. Lasha B. Shetty Vs. R.L. Rinawma, Deputy Commissioner of Income Tax*, . In the first case, the return was filed by the assessee with a statement that his residential premises were sold and the capital gain was utilised for the purchase of a residential flat. The Income Tax Officer examined the house alleged to have been sold and found that no amenities were found for living. Hence, he viewed that the assessee could not have resided there. The flat acquired from the capital gain was used for the residence of the assessee's son. Hence, notice was issued for reassessment and a complaint also was made for prosecution under sections 193 and 196, Indian Penal Code. In the petition to quash the criminal court proceedings, the Delhi High Court found that the lack of amenities in a house would not constitute proof of non-residence of the assessee in that building. Further, as the assessee also was allowed to file a declaration and return under the Voluntary Disclosure Scheme, the High Court of Delhi held that the assessee was not given opportunity to be heard and the action was violative of the principles of natural justice. Under those circumstances, the proceedings before the criminal court were quashed. In the next decision, a false statement was found in the return of income and penalty was imposed upon the assessee. Thereafter, the firm applied for waiver of penalty and the Commissioner of Income Tax gave an assurance that the waiver application would be considered favourably if taxes were paid. On that assurance, the assessee paid the tax but the waiver application was rejected by the Commissioner. Taking into consideration these circumstances, the High Court of Rajasthan has held that the principles of natural justice must be read into the unoccupied interstices of the statute unless there is a clear mandate to the contrary and every process of the quasi-judicial Tribunals must inform itself of the principles of natural justice. Taking the view that launching prosecution was optional to the Department, the assessee should have been afforded an opportunity of being heard before the criminal prosecution and as that opportunity was not given to him, the High Court of Rajasthan held that the prosecution was not valid and liable to be quashed. In the third decision, the Karnataka High Court has taken the view that though there is an opportunity to compound the offence after the prosecution is launched, it does not necessarily follow that an opportunity to be heard should be denied before the prosecution is launched and the accused should be afforded such an opportunity before sanction is accorded u/s 279 of the Act.

12. In the first decision cited above, the assessee had also filed a declaration under the Voluntary Disclosure Scheme and in the second case, the petition was filed for waiver of penalty and on the assurance of the Commissioner of Income Tax to consider the waiver proceedings favourably, penalty also was paid.

Therefore, taking into consideration those circumstances, the courts took the view that under the principles of natural justice, the assessee must have been given the opportunity of being heard before launching the prosecution against them.

13. Mr. Ramaswamy, learned counsel, appearing for the respondent, would contend that neither section 276C nor section 277 of the Income Tax Act anywhere contemplates any notice to the assessee before filing any criminal complaint and, therefore, the Income Tax Officer is not expected to give any notice, which is not required under law, for the purpose of launching the criminal prosecution. In the above cases only on the principles of natural justice to give opportunity to the assessee to explain his stand, the courts have insisted on notice before the criminal prosecution. In this case, the petitioners themselves have admitted in their complaint about the notice u/s 148 and thereafter their explanation to the Income Tax Officer. In paragraph 5 of the petition, the petitioners have stated : "that the fact explained to the Income Tax Officer that the seized records relied upon by him, for initiating reassessment proceedings did not relate to the previous year ended on March 31, 1981, and that there was no basis or material for the Income Tax Officer's presumption that the income relevant to the assessment year had escaped the assessment". Therefore, it is specifically mentioned that the first petitioner-company explained their stand to two Income Tax Officer. Again in paragraph 6 also, it is alleged that the Income Tax Officer ignored the various statements and detailed evidence let in in support of the accounts maintained by it and made an arbitrary assessment determining the total income at Rs. 6,53,160. Therefore, it is repeatedly admitted in this petition itself that they tried to convince the Income Tax Officer with all materials placed before him to the effect that there was no concealment of income, however, the Income Tax Officer ignored the submissions and evidence of the assessee. Therefore, it cannot be contended that no opportunity was given to the petitioners to explain their stand. It is not necessary for the Income Tax Officer to inform that he was launching the criminal complaint against the petitioners, because the petitioners themselves were aware of the fact that the Income Tax Officer was not convinced of their explanation, and they were liable to be prosecuted for the suppression of income. This court has considered more than once about the necessity to give notice to the assessee before the complaint was launched. In *Dr. (Mrs.) M.S. Dhowani Vs. J. Ranganathan* Second Income Tax Officer, City Circle-V, , Arunachalam J., has held that sections 276C and 277 of the Act do not contemplate any show-cause notice being issued before initiation of prosecution. In *N.K. Mohnot Vs. Chief Commissioner of Income Tax (Admn.) and Another*, , Padmini Jesudurai J., also has taken the same view that as no notice is contemplated for prosecution for the offence u/s 277 of the Act, the petitioner therein was not entitled to contend that notice ought to have been given to him and that the prosecution was not valid. In a recent decision of this court in *V. Gopal Vs. Assistant Commissioner of Income Tax*, , Pratap Singh J., also has considered this aspect and has held that no notice is

required to be given to the accused before passing an order of sanction u/s 279 of the Act. When law does not contemplate notice to the accused person, either under the Income Tax Act or under the Indian Penal Code, the prosecuting agency cannot be blamed for not giving any such notice. In the cases cited above, they stood on different footings and under the circumstances explained in those cases. Therefore, on this ground also, the petitioners cannot succeed.

14. These petitioners originally filed a petition before this court to quash the proceedings in Criminal Miscellaneous Petition No. 5705 of 1985 and also obtained the order of stay of the proceedings in C.C. No. 128 of 1985. However, as they did not pursue the petition and did not appear on the hearing date, that petition was dismissed in 1988. Thereafter, once again they have filed this petition for the same relief of quashing of the proceedings on the ground that the previous petition filed by them was not disposed of on the merits. Anyhow, on a thorough consideration of all the grounds raised by the petitioners, I find there is no merit in this petition to quash the proceedings pending before the Additional Chief Metropolitan Magistrate (E.O.I.), Egmore, Madras, in C.C. No. 128 of 1985. Therefore, the petition is liable to be dismissed.

15. In the result, the petition is dismissed.