

A ASHIRWAD ENTERPRISES AND ORS.

v.

STATE OF BIHAR AND ANR.

MARCH 22, 2004

B

[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

C *Income Tax Act, 1961—Sections 245C, 245H and 276C—Prosecution proceedings initiated by Revenue for concealment of income and wilful attempt to evade tax—Petition before High Court under section 482 Cr.P.C. to quash the proceedings claiming that applications were filed before Settlement Commission before initiation of prosecution proceedings and they are pending—Refusal by High Court to quash the proceedings—Correctness of—Held, prosecution proceedings cannot be initiated if the applications before Settlement Commission were made prior to it—On facts, since immunity order was passed by the Settlement Commission after the High Court judgment, the prosecution proceedings quashed.*

D **Revenue initiated prosecution proceedings against the appellant-assesseees for concealment of income and wilful attempt to evade tax during the period relating to assessment year 1988-89 under Section 276C of the Income Tax Act, 1961 by instituting a complaint before a Special Court. The appellants filed a petition before High Court under Section 482 Cr.PC for quashing the prosecution proceedings before the Special Court since the applications made by the appellants under section 245C of the Act before the Settlement Commission were pending. High Court declined to quash the prosecution proceedings on the ground that the Settlement Commission by then had not passed any order granting any immunity in favour of the appellants.**

E **In appeal to this Court, the appellant-assesseees submitted that after the High Court order, the Settlement Commission passed an order granting immunity to them and hence the prosecution proceedings should be dropped against them.**

F **Respondent-State contended that the immunity granted by the Settlement Commission is a conditional one; and that the prosecution**

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proceedings against the appellant-assessee would be continued under the law till the fulfilment of the conditions stipulated by the Settlement Commission. A

Allowing the appeals, the Court

HELD: 1.1. Proviso to Section 245H (1) of the Income Tax Act, 1961 provides that no immunity shall be granted by the Settlement Commission in cases where the proceedings for the prosecution under the Act or under the IPC or under any other Central Act have been instituted before the date of receipt of application under Section 245C w.e.f. 1.6.1987. This provision is intended to discourage the filing of belated applications after launching the prosecution. [304-C-D] B C

CIT v. B.N. Bhattacharjee, (1979) ITR 461, referred to.

1.2. The grant of immunity in a given case is to be decided by the Settlement Commission on the facts of each case and no straight-jacket formula for any universal application can be laid down. In the instant case, the Settlement Commission has been satisfied that the grant of immunity is called for. Since the decision has not been questioned by the Income Tax Authorities, it has attained finality. The conditions required to be fulfilled before the grant of immunity are that the Commission has to be satisfied that the applicant has made full and true disclosure of his income and the manner in which such income has been derived and that he has co-operated with the Commission in the proceedings before it. In the instant case, the records reveal that application for settlement under Section 245C was filed on 27.5.1991 and the prosecution was launched on 27.2.1992. Therefore, the application for settlement was filed before prosecution was launched. [304-E-H] D E F

1.3. In case there is non-compliance of the Commission's order, then Section 245H(1A) of the Act will become operative and the appellants would be rendered liable notwithstanding the earlier immunity granted as if such immunity had not been granted at all. It shall be open to the Income Tax Authorities to ask for restoration of proceedings before the Special Court if there is non-compliance with Commission's order or withdrawal of immunity under Section 245H(2). [305-C-D] G

1.4. After the High Court's judgment, final orders have been passed by the Commission according immunity on an application presented H

A apparently before the institution of the proceedings for prosecution.

[305-F]

P. Jayappan v. S.K. Perumal, First ITO, (1984) 149 ITR 696, SC distinguished.

B CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 736-737 of 1998.

From the Judgment and Order dated 26.9.97 of the Patna High Court in Crl. M. Nos. 4307 and 5025 of 1992.

C S.K. Gupta, D.V. Pathy and Anurag Pandey for the Appellants.

H.L. Agrawal, Kumar, Rajesh Singh and B.B. Singh for the Respondents.

The Judgement of the Court was delivered by

D **ARIJIT PASAYAT, J.** Prosecution was launched against the appellants for alleged concealment of income and thereby willfully attempting to evade tax, and for making false statement on verification in terms of Sections 276C of the Income Tax Act, 1961 (in short the 'Act') relating to the assessment year 1988-89. Cognizance was taken by the Special Court, Economic Offences, Muzaffarpur, Bihar in complaint case no. 50 of 1992 instituted by

E the Income Tax Authorities. Petitions under Section 482 of the Code of Criminal Procedure, 1973 (in short 'the Code') were filed by appellant no.1 (hereinafter referred to as 'the firm') and L.N. Poddar, a partner of the assessee firm before the Patna High Court. The specific stand of the petitioners before the High Court was that the proceedings should not continue as applications for settlement were filed and pending before the Settlement Commission, Income Tax and Wealth Tax (hereinafter referred to as 'the Commission'). The High Court did not accept the stand as no order granting any immunity had been passed by the Commission. Referring to the factual position also it was held that no case for interference was made out at the relevant stage.

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G Mr. S.K. Gupta, learned counsel for the appellants submitted that in the meantime Settlement Commission has passed necessary orders in the matter and, therefore, proceedings should not be continued. Reference was made to Order No. 3/3/5/91-IT dated 20.9.1999 passed by the Commission.

H Mr. H.L. Agrawal, learned senior counsel for the respondents submitted that the immunity if granted by the Commission is a conditional one, and

unless there is fulfillment of the conditions stipulated, the proceedings have to be continued. According to him, it is open to the appellants to appear before the Trial Court and bring to its notice any order which has relevance in the matter.

In order to appreciate the rival stands, it would be necessary to take note of Section 245 (H) of the Act. It reads as under:

“SECTION 245H: POWER OF SETTLEMENT COMMISSION TO GRANT IMMUNITY FROM PROSECUTION AND PENALTY.

(1) The Settlement Commission may, if it is satisfied that any person who made the application for settlement under section 245C has co-operated with the Settlement Commission in the proceedings before it and has made a full and true disclosure of his income and the manner in which such income has been derived, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act or under the Indian Penal Code (45 of 1860) or under any other Central Act for the time being in force [and also (either wholly or in part) from the imposition of any penalty] under this Act, with respect to the case covered by the settlement :

[Provided that no such immunity shall be granted by the Settlement Commission in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of the application under section 245C.]

[(1A) An immunity granted to a person under sub-section (1) shall stand withdrawn if such person fails to pay any sum specified in the order of settlement passed under sub-section (4) of section 245D within the time specified in such order or within such further time as may be allowed by the Settlement Commission, or fails to comply with any other condition subject to which the immunity was granted and thereupon the provisions of this Act shall apply as if such immunity had not been granted.]

(2) An immunity granted to a person under sub-section (1) may, at any time, be withdrawn by the Settlement Commission, if it is satisfied that such person had, in the course of the settlement proceedings, concealed any particulars material to the settlement or had given false evidence, and thereupon such person may be tried for the offence

A with respect to which immunity was granted or for any other offence of which he appears to have been guilty in connection with the settlement and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted.”

B The proviso to sub-section (1) was introduced by Finance Act, 1987 (11 of 1987) with effect from 1.6.1987, excluding grant of immunity in cases where proceedings for the prosecution have been instituted before the date of receipt of the application under Section 245C of the Act.

C Section 245C of the Act deals with application of settlement of cases. As noted above no immunity can be granted by the Commission in cases where the proceedings for prosecution under the Act or under the Indian Penal Code, 1860 (in short ‘the IPC’) or under any Central Act for the time being in force have been instituted before the date of receipt of application under Section 245C after 1.6.1987. There is logic in the prohibition. It is

D intended to discourage filing of belated applications after prosecution is launched and also reasons envisaged in *CIT v. B.N. Bhattachargee*, (1979) ITR 461, wherein it was observed that Section 245H is a magnet which attracts large tax-dodgers, and it was emphasised that power of immunisation against criminal prosecution should be used in deserving cases. Whether grant of immunity is called for in a given case is to be decided by the

E Commission on the facts of each case and no straight-jacket formula for any universal application can be laid down. In the instant case, the Commission has been satisfied that grant of immunity is called for. Since that decision has not been questioned by the Income Tax Authorities it has attained finality. Conditions required to be fulfilled before immunity can be granted are that

F the Commission has to be satisfied that the applicant (a) has made full and true disclosure of his income and the manner in which such income has been derived and (b) has co-operated with the Commission in the proceedings before it. In the instant case as the records reveal the application for settlement in terms of Section 245C was filed on 27.5.1991. The prosecution was launched on 27.2.1992. Obviously, therefore, application for settlement was filed before

G prosecution was launched. The order of the Commission refers to the immunity granted in the following terms:

“IMMUNITY:

H In view of the full and true disclosure of his income made and the cooperation extended by the applicant in the settlement of his income

tax liabilities, his prayer for immunity from penalty and prosecution under the I.T. Act and the corresponding provisions of the IPC in respect of the assessment years covered by the settlement period is granted.” A

Above being the position, the proceedings before the Special Court are quashed. However, at this stage, the apprehension of Mr. Agrawal, learned senior counsel for the respondent no.1 about consequences flowing from non-compliance with Commission's order needs to be taken note of. Sub-section (1A) of Section 245H deals with the consequences of non-compliance with the orders and sufficiently takes care of such apprehensions. In case, there is non-compliance of the Commission's order, provision of sub-section (1A) of Section 245H shall be operative and the appellants are rendered liable, notwithstanding the earlier immunity granted as if such immunity was not granted at all. It shall be open to the Income Tax Authorities to ask for restoration of proceedings before the Special Court if there is non-compliance with Commission's order or withdrawal of immunity in terms of Section 245H(2). B C D

It may be noted here that High Court had declined to quash the proceedings on ground that proceedings were pending before the Commission. The view of the High Court is on terra firma. This Court in *P. Jayappan v. S.K. Perumal, First I.T.O.*, (1984) 149 ITR 696, SC observed that merely because the application for settlement is pending before the Commission that cannot be a ground to quash the pending prosecution. But the position has changed in this case as after High Court's judgment final orders have been passed by the Commission according immunity on an application presented, apparently before the institution of the proceedings for prosecution. E

Appeals are allowed and disposed of accordingly on the above terms. F

B.S

Appeals allowed