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N.T.A. Kareem Vs. Assistant Commissioner of Income-tax

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Court : Kerala

Decided On : Feb-13-1998

Reported in : [1998]233ITR40(Ker)

Judge : K.V. Sankaranarayanan, J.

Acts : Income Tax Act, 1961 - Sections 132, 276C(1) and 277

Appeal No. : Crl. M.C. No. 1630 of 1995

Appellant : N.T.A. Kareem

Respondent : Assistant Commissioner of Income-tax

Advocate for Def. : N.R.K. Nair and; P.K.R. Menon, Advs.

Advocate for Pet/Ap. : Thomas Antony, Adv.

Judgement :

K.V. Sankaranarayanan, J.

1. The petitioner is a contractor by profession and an income-tax assessee. He had filed an income-tax return for the assessment year 1985-86 on December 24, 1985, declaring a total of income of Rs. 54,730. Later there was a search under Section 132 of the Income-tax Act (for short 'the Act') in his residence and business premises on June 29, 1987. According to the Department, the

documents and materials seized showed that he had suppressed an income of Rs. 3,50,768 in the books of account and had also not accounted for some deposits in banks. The Income-tax Officer by order dated March 15, 1988, assessed him on a total income of Rs. 3,95,300 which included concealed income of Rs. 87,692, Rs. 1,20,000 as under valuation of work-in-progress and Rs. 1,05,000 as unaccounted remittances in bank accounts and imposed a penalty of Rs. 2 lakhs. The petitioner took the matter in appeal to the Commissioner of Income-tax (Appeals) who upheld the assessment, but reduced the penalty to Rs. 1,35,805. The petitioner further took the matter in appeal to the Income-tax Appellate Tribunal. The Income-tax Appellate Tribunal, by annexure A order dated July 13, 1994, has set aside the orders of the Commissioner of Income-tax (Appeals) and restored the issues to the file of the Assessing Officer to enable the assessee to approach the Settlement Commission for settlement of the outstanding disputes, without prejudice to the right of either party to revive the appeal in case the petition for settlement is rejected by the Settlement Commission. The order imposing the penalty has also been set aside.

2. In the meantime, the Assistant Commissioner of Income-tax has filed a criminal complaint against the petitioner on January 17, 1992, before the Additional Chief Judicial Magistrate (Economic Offences), Ernakulam, alleging that the petitioner has filed a false income-tax return suppressing relevant documents and materials and wilfully attempted to evade income-tax to the extent of Rs. 1,35,805 and thus committed offences under Sections 276C(1)(i) and 277 of the Act. The complaint has been taken on the file by the learned magistrate as C. C. No. 12 of 1992 on his file. The prayer in this petition is to quash the proceedings.

3. It is submitted by learned counsel for the petitioner that the foundation for the complaint is the order of the Commissioner of Income-tax (Appeals) which has now been set aside by the Income-tax Appellate Tribunal. So there is no justification for continuing the prosecution proceedings. It is submitted that in case the settlement of disputes goes against the petitioner, the Department can file a fresh complaint on the basis of reassessment proceedings and the present criminal prosecution will not lie. The prayer is opposed by learned counsel appearing for theDepartment who submits that if at all it is a matter for keeping the

prosecution proceedings in abeyance and the prayer for quashing the proceedings cannot be granted.

4. Learned counsel for the petitioner has brought to my notice the decision in Dr. B. Seerapani v. ITO : [1993]203ITR288(Ker) which is an order in Crl. M.C. Nos. 201 to 203 of 1993 of this court relying on an earlier order in Crl. M.C. Nos, 1047 of 1991 and 1091 of 1992 (Madras Spinners Ltd, v. Dy. CIT : [1993]203ITR282(Ker)). In that case in similar circumstances this court has found that in the light of the Tribunal's order, the criminal proceedings are liable to be quashed without prejudice to the right of the Department to file a fresh-complaint, if so advised, in the light of the reassessment proceedings.

5. It is to be noticed that prosecution under Sections 276C(1)(i) and 277 of the Act is based on the quantum of evasion also. It is to be noted that the return in this case had been filed as early as on December 24, 1985, and the petitioner's premises were searched on June 29, 1987. The first assessment order finding evasion of tax and suppression of income in the return had been passed on March 15, 1988, but no complaint was filed at that stage. The complaint had been filed only in January, 1992, after the order of the Commissioner of Income-tax (Appeals) which now stands set aside by the orders of the Income-tax Appellate Tribunal. So, in the light of the earlier rulings, it is only appropriate that the prayer for quashing the proceedings in this case also is granted.

6. For the reasons stated above, this petition is allowed. The proceedings in C. C. No. 12 of 1992 on the file of the Additional Chief Judicial Magistrate (Economic Offences), Ernakulam, are quashed without prejudice to the right of the Department to file a fresh complaint in case the pending proceedings are decided against the petitioner.

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