IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Crl. Misc. No. M-37034 of 2001

M/s EXPO INDUSTRIES AND OTHERS

Vs

INCOME TAX OFFICER

Sabina, J

Dated: August 8, 2011

Appellant Rep by : Mr. P K Jain, Adv
Respondent Rep by : None

JUDGEMENT

Per: Sabina:

Petitioners have filed this petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing of the complaint No. 9/1 of 20.1.1992 (Annexure P-1) and all subsequent proceedings arising therefrom including the summoning order dated 29.3.1985 (Annexure P-2) and the order dated 04.4.2001 (Annexure P-3).

The case of the complainant in brief is that the accused had filed return of income tax on 5.10.1983 declaring the income of Rs. 71,800/-. After inquiry, an addition of Rs. 3,15,000/- was made in the assessment order dated 27.3.1985. It was also found that no basis for the interest paid i.e. Rs. 35,000/- were given. Notices under Section 143 (2) and 142 (1) were issued to the accused. The accused then furnished a revised return of income showing addition of Rs. 3,15,000/- under the Amnesty Scheme. Since the revised return had been filed after the detection of concealment during original assessment proceedings, the surrender made in the Amnesty Scheme was not complete. Moreover, the interest of ` 35,000/- had not been surrendered.

Learned counsel for the petitioners has submitted that the assessment order was challenged by the petitioners and the same was set aside by the appellate authority vide order dated 3.2.1986 and the assessing authority was directed to pass a fresh order of assessment. Thereafter, the petitioners surrendered the amount of Rs. 3,15,000/- and filed a revised return of income under the Amnesty Scheme. Thereafter, the assessment order was passed. The additions made by the petitioners by way of revised return were accepted. However, the claim of the petitioners, qua the amount of Rs. 35,000/- was disallowed. The said order was confirmed in appeal. Vide order dated 05.12.1994, the appellate tribunal recalled the finding qua levy of interest of Rs. 35,000/- in question. Thereafter, the petitioners moved an application for deletion of penalties and vide order dated 12.1.2000, Commissioner of Income Tax (Appeals) XXVI ordered that the penalty imposed by the Assessment Officer be deleted. Learned counsel has submitted that in view of the above factual position,

the criminal proceedings against the petitioners were liable to be quashed as now nothing remained due against the petitioners. Learned counsel for the petitioners has placed reliance on '*K.C.Builders and another versus Assistant Commissioner of Income-tax, Income Tax Reporters (Vol. 265) 562.* The Apex Court has held as under:-

"In our view, once the finding of concealment and subsequent levy of penalties under section 27(1)(c) of the Act has been struck down by the Tribunal, the Assessing Officer has no other alternative except to correct his order under section 154 of the Act as per the directions of the Tribunal. As already notices, the subject matter of the complaint before this court is concealment of income arrived at on the basis of the finding of the Assissing Officer. If the Tribunal has set aside the order of concealment and penalties, there is no concealment in the eyes of law and, therefore, the prosecution cannot be proceeded with by the complaint and further proceedings will be illegal and without jurisdiction. The Assistant Commissioner of Income-tax cannot proceed with the prosecution even after the order of concealment has been set aside by the Tribunal. When the Tribunal has set aside the levy of penalty, the criminal proceedings against the appellants cannot survive for further consideration. In our view, the High Court has taken the view that the charges have been framed and the matter is in the stage of further cross-examination and, therefore, the prosecution may proceed with the trial. In our opinion, the view taken by the learned magistrate and the High Court is fallacious. In our view, if the trial is allowed to proceed further after the order of the Tribunal and the consequent cancellation of penalty, it will be an idle and empty formality to require the appellants to have the order of the Tribunal exhibited as a defence document inasmuch as the passing of the order as aforementioned is unsustainable and unquestionable."

Learned counsel has also placed reliance on 'Gupta Constructions Co. and others *versus Income-Tax Officer and others, 2003 (Vol. 260) Income Tax Reports 415 (P&H), wherein* it was held as under *:-*

"In view of the judgment of the Supreme Court, mentioned above, wherein, it has been held that if the penalty proceedings have been set aside in the deparmental proceedings then the very basis of launching of the prosecution against the assessee stands knocked down. In such facts, the Supreme Court had quashed the proceedings initiated under the Income-tax Act against the assessee. In view of the said judgment, I find that the prosecution against the petitioner is an abuse of the process of law. The very basis of penalty has been struck down by the authorities under the Act."

None has appeared on behalf of the respondent.

After hearing learned counsel for the petitioners, I am of the opinion that the instant petition deserves to be allowed.

In the case of *State of Haryana vs. Bhajan Lal, 1992 Supp (1) Supreme Court Cases 335,* the Apex Court has held as under:-

"The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers under Section 482, Cr.P.C. Can be exercised by the High Court either to prevent abuse of the process of

any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently chennelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:-

(1) Where the allegations made in the first information report or the complainant/respondent No.2, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1)of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do no disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a Police Officer without an order of Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted)to the institution and continuance of the proceedings and/or where there is specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceedings is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

Complainant-respondent filed complaint under Section 276-C, 277 read with Section 278-B of the Income Tax Act, 1961 ('Act' for short) against the petitioners that concealment had been detected during original assessment proceedings and the surrender made in the Amnesty Scheme was not true because the interest of Rs. 35,000/- had not been surrendered. Vide order dated 17.1.1992, the petitioners

were ordered to be summoned to face the trial. Thereafter, the petitioners moved the applications seeking their discharge. Vide order dated 04.4.2001, the applications were dismissed. Learned trial court held that the petitioners had surrendered certain amount well after the detection by the assessment authority and were, hence, not entitled to immunity from prosecution under the Amnesty Scheme notwithstanding the order passed by Commissioner of Income Tax (Appeals). Reliance was made on questions No. 19 and 26 in Circular No. 451 dated 17.2.1986. Questions No. 19 and 26 of the circular read as under:

*"**Question No. 19** - Kindly clarify the expression "before detection by the department?*

***Answer** - If the Income-tax Officer has already found material to show that there has been concealment, that would mean the Department has detected the concealment. If the Income-tax Officer only had prima facie belief, that would not mean concealment has been detected.*

***Question No. 26-** Where an order has been set aside on appeal or assessment proceedings are pending under section 147(a) (b), whether the assessee can surrender the amount which is the subject-matter of dispute. Whether such a surrender would be taken as a suo motu declaration before the detection by this Department?*

***Answer** - Such a surrender cannot be taken as a suo motu declaration but naturally a lenient view will be taken if an assessee decides to turn honest even at this stage."*

Question No.4 of the Circular No. 423 dated 26.6.1985 reads as under:-

***Question No. 4** .- Whether higher income can be shown in cases where assessments have been set aside on appeal or pending reassessment being reopened under Section 147?*

***Answer** - Yes. The assessees could avail of the benefit under these cirulcars"*

Thus, as per the above question No. 4 the assessee can avail of the benefit under the circulars. The circulars pertained to amnesty scheme issued by the government. Vide order dated 12.1.2000, the Commissioner of Income Tax (Appeals) held as under:-

"I have carefully considered the rival contentions and gone through the relevant documents and the cases relied upon by the assessee. I am of the view that keeping in view the clarifications to the Board's Circulars No. 423 dated 26.6.85 and 432, 439, 440 and 441 dated 15.11.1985 and further Board's Circular No. 451 dated 17.2.1986, the surrendered amount of Rs. 3,15,000/- could not be considered for the purpose of levy of penalty u/s 27(1)(c) of the Act. My view also finds support from the decisions relied upon by the assessee. So far as the other addition of Rs. 35,000/- made in the asstt. Order which has also been made the basis for levy of penalty, even that addition does not survive in view of the ld. ITAT having deleted the same. The two additions therefore which are made the basis of imposition of penalty do no longer hold good for the imposition of penalty. If the impugned order dated 29.3.1988 imposing penalty is sustained in the light of the aforesaid factual

position which is unassessable, it would amount to gross injustice to the assessee which is contrary to the settled law."

Thus, as per the above order, the penalty imposed by the assessing officer was deleted. Once the penalty is deleted, the basis for criminal proceedings goes and the continuation of the criminal proceedings on the basis of the said penalty would be nothing but an abuse of process of law. Amnesty scheme was introduced and the petitioners availed benefit of the same and had surrendered the amount of Rs. 3,15,000/- by furnishing revised return on 27.3.1986 and had paid the tax accordingly on the said amount. The addition of Rs. 35,000/- made in the assessment order was made on the basis of levy of penalty and since the penalty had been deleted, the said addition was also liable to be ignored. Keeping in view the facts and circumstances of the present case, the criminal proceedings against the petitioners are liable to be quashed as the penalty imposed by the Assessment Officer has since been deleted. Accordingly, this petition is allowed. The complaint No. 9/1 of 20.1.1992 (Annexure P-1) and all subsequent proceedings arising therefrom including the summoning order dated 29.3.1985 (Annexure P-2) and the order dated 04.4.2001 (Annexure P-3), are quashed.