

both the respondents Sandhuran Rani and Anju Bala irrespective of the fact that in his earlier order a sum of Rs. 200 P.M. was granted to Anju Bala. While adjusting equities between the parties, interim maintenance of Rs. 200 granted to Anju Bala can certainly be modified.

(7) With these observations and modifications these petitions stand disposed of accordingly. Parties have been directed to appear before the trial Court on 12th May, 1987, the date already fixed in that court.

S.C.K.

Before I. S. Tiwana, J.

R. I. CHADHA and others,—*Petitioners.*

versus

INCOME TAX OFFICER,—*Respondent.*

Criminal Misc. No. 6503-M of 1986.

May 12, 1987.

Income Tax Act (XLIII of 1961)—Sections 245(C), (D), (F) and 279—Application by assessee before the Settlement Commission for settlement and grant of immunity from prosecution during the pendency of such application—Prosecution launched by the Income Tax Commissioner—Validity of such prosecution—Jurisdiction of Income Tax Commissioner.

Held, that during the pendency of proceedings before the Commission, the Commission alone had the exclusive jurisdiction under Section 245(F) (ii) of the Income Tax Act, 1961 to exercise the powers or to perform the functions under the Act in relation to the matter pending before it. The Commissioner of Income Tax could not direct or authorise the filing of the complaint against the petitioners during the course of pendency of proceedings before the Settlement Commission. The Settlement Commission alone had the exclusive jurisdiction to launch or not to launch any prosecution of the petitioners. If the Income Tax Commissioner is also held entitled to initiate these criminal proceedings in exercise of its jurisdiction under Section 279 of the Act then the exclusive jurisdiction of the Settlement Commission hardly has any meaning. To permit the Income Tax Commissioner to do so would be a complete negation of Sub-Section (1) of Section 245(F). (Paras 5 and 6).

R. I. Chadha and others v. Income Tax Officer (I. S. Tiwana, J.)

Petition under section 482 Cr.P.C. praying that the Hon'ble Court be pleased to exercise its inherent powers under Section 482 of the Code of Criminal Procedure, 1973, and;

- (i) *set aside the order dated 11th April, 1986 passed by the Chief Judicial Magistrate, Ludhiana, (Annexure P-5).*
- (ii) *Quash the complaint dated 5th July, 1984 filed by the Respondent Annexure (P-3) and all Proceedings in the Court of the Chief Judicial Magistrate, Ludhiana in respect thereof.*

It is prayed further that, pending the final decision of the present petition, all further proceedings in the Court of the Chief Judicial Magistrate, Ludhiana, in respect of the complaint (Annexure P-3) may kindly be stayed.

Anupam Gupta, Advocate, for the Petitioners.

Ashok Bhan, Sr. Advocate with K. K. Garg, Advocate, for the Respondent.

JUDGMENT

I. S. Tiwana, J.—

(1) The legal question of some consequence raised in this petition under Section 482, Cr. P.C., relates to the interpretation and true scope of Section 245-F of the Income-tax Act, 1961 (for short, the Act). The following undisputed facts give rise to it.

(2) The petitioner, a private limited company, and its three directors are sought to be prosecuted in the Court of Chief Judicial Magistrate, Ludhiana, for offences under sections 276-C and 277 of the Act on a complaint (Annexure P-3) filed by the Income-tax Officer, Central Circle-II, Ludhiana, on July 5, 1984. This complaint, as per the stand of the complainant (respondent) was filed at the instance, authorisation and under orders of the Commissioner of Income-tax (Central), Ludhiana, as envisaged by section 279 of the Act. The crux of the complaint is that for the assessment year 1980-81, a return was filed by the company bearing false verification and containing false statement of accounts as the stocks worth Rs. 2,87,840 were available with the assessee in excess of what it had disclosed to the department and the source of these stocks was also not disclosed. It was so done with a view to evade the payment of tax, penalty and the interest chargeable under the Act. As

a result of this complaint, the petitioners were summoned by the trial magistrate. They then moved an application under section 245(2), Cr. P.C., for their discharge on the plea that they had already moved an application under section 245-C (1) of the Act for settlement before the Income-tax Settlement Commission (hereinafter referred to as the Commission) and the latter had allowed the application,—*vide* its order dated August, 30, 1983, to be proceeded with as envisaged by section 245-D(3) of the Act, and till the finalisation of those proceedings the complainant or the Income-tax Commissioner had no jurisdiction to launch any criminal prosecution against them by way of complaint as had been done. The Court, however, dismissed their application,—*vide* its order dated April 11, 1986 (Annexure P-5) primarily for the reason that criminal proceedings against the petitioners could not be allowed to stagnate till the conclusion of the proceedings before the Commission. This was so said on the basis of certain judgments which have no relevance, even remotely, to the provisions of Chapter 19-A, including section 245-F of the Act. The petitioners now impugn the complaint Annexure P-1 and the order of the trial magistrate Annexure P-5 on the same very ground as was urged before that Court.

(3) To appreciate the anatomy of the contention raised, the foundational facts need to be sifted without crippling them and are as follows :—

(4) On 23rd February, 1983, the company moved an application under section 245-C of the Act before the Commission for the settlement of its tax liability and all related matters in respect of assessment years 1969-70, 1970-71 and 1978-79 to 1982-83. This application included a prayer under section 245-H of the Act for the grant of immunity from prosecution under the Act or the Indian Penal Code or under any other Central Act for the time being in force. A copy of this application is Annexure P-1. The Commission forwarded a copy of it to the Commissioner of Income-tax (Central), Ludhiana (respondent) for his report as envisaged by Section 240-D (1) of the Act and on receipt of the same with no objection,—*vide* order dated 30th August, 1983 (Annexure P-2), allowed the application to be proceeded with. One of the material directions contained in this order was as follows :—

•The Income-tax Officer may issue Tax Recovery Certificate to the Tax Recovery Officer in respect of arrear demands, if any, to save limitation under Section 231 of the Income

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Tax Act. Any coercive action in respect of disputed demand pertaining to the admitted Assessment years 1969-70 and 1978-79 to 1982-83 would be kept in abeyance till order of the Commission under Section 245-D (4) or any other order relating to recovery matter whichever is earlier."

Concededly application P-1 is still pending with the Commission and it has passed no final order under Section 245-D (4) of the Act as yet.

(5) The case of the petitioner now is that since company's application P-1 for settlement had been allowed to be proceeded with by the Commission,—vide order P-2 and the said proceedings are still pending before the Commission, the Commission alone had the exclusive jurisdiction under Section 245-F (2) of the Act to exercise the powers or perform the functions of any income-tax authority under the Act in relation to the matter pending before it, and the Commissioner of Income-tax could not direct the launching of criminal proceedings against them in exercise of his powers under section 279 of the Act. It is not in dispute before me that the substance of the complaint referred to above is also subject-matter of consideration by the Commission in those proceedings. In other words, the Commission is well entitled to or is rather obliged to go into the question whether the petitioners had filed a false return with a false verification to evade tax. Equally not in dispute is the power or the jurisdiction of the Settlement Commission under Section 245-H of the Act to grant or tender immunity to the petitioners from prosecution for any offence under the Act. In the face of this accepted position and the provisions of Section 245-F reproduced below. I am of the considered view that the Commissioner of Income-tax could not direct or authorise the filing of the complaint against the petitioners during the course of the pendency of the proceedings before the Settlement Commission.

"245-F. (1) In addition to the powers conferred on the Settlement Commission under this Chapter, it shall have all the powers which are vested in an Income-tax authority.

(2). Where an application made under section 245-C has been allowed to be proceeded with under section 245-D, the settlement Commission shall, until an order is passed

under sub-section (4) of section 245-D, have, subject to the provisions of sub-section (3) of that section, *exclusive jurisdiction to exercise the powers and perform the functions of an Income-tax authority under this Act in relation to the case.*

- (3) Notwithstanding anything contained in sub-section (2) and in the absence of any express direction to the contrary by the Settlement Commission, nothing contained in this section shall affect the operation of any other provision of this Act requiring the applicant to pay tax on the basis of self-assessment or by way of advance tax in relation to the matters before the Settlement Commission.
- (4) For the removal of doubt, it is hereby declared that, in the absence of any express direction by the Settlement Commission to the contrary, nothing in this Chapter shall affect the operation of the provisions of this Act in so far as they relate to any matters other than those before the Settlement Commission.
- (5) The Settlement Commission shall, subject to the provisions of this Chapter, have power to regulate its own procedure (including the fixation of places and times of its meetings) and may act notwithstanding that all the members of the Settlement Commission are not present at any of its meeting.³ (Emphasis supplied).

In the light of this section it is patent that the Commission, during the pendency of the proceedings before it, enjoys all the powers which are vested in an income-tax authority under the Act. Sub-section (2) makes it manifest that till the culmination of those proceedings, with the passing of an order under sub-section (4) of section 240-D of the Act, it has the *exclusive jurisdiction* to exercise the powers and perform the functions of an income-tax authority under the Act in relation to that case. Sub-section (4) further makes it clear that the authorities under the Act, including the Commissioner and the Income-tax Officer may continue to exercise their jurisdiction under the Act with regard to any matters other than those which are before the Settlement Commission but that too is subject to any direction by the Commission to the contrary.

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(6) In the face of the above-noted provision of law, i.e., section 245-F of the Act, the Settlement Commission alone had the exclusive jurisdiction to launch or not to launch any prosecution of the petitioners. If the Income-tax Commissioner is also held entitled to initiate these criminal proceedings in exercise of his jurisdiction under section 279 of the Act then the 'exclusive jurisdiction' of the Settlement Commission hardly has any meaning. To permit the Income-tax Commissioner to do so would be a complete negation of sub-section (2) of section 245-F.

(7) In the light of the discussion above, I allow this petition and quash the impugned complaint P-1 and the resultant proceedings now pending against the petitioners in the court of Chief Judicial Magistrate, Ludhiana.

S.C.K.

Before Ujagar Singh, J.

BALBIR KAUR,—*Petitioner.*

versus

DALIP SINGH,—*Respondent.*

Criminal Misc. No. 2618-M of 1987.

May 12, 1987.

Code of Criminal Procedure (II of 1974)—Section 249—Complaint filed by wife against husband—Death of wife—Resultant absence of wife—Trial Court allowing father of wife to continue proceedings—Validity of such order.

Held, that it is clear that Section 249 of the Code of Criminal Procedure, 1974, applies only to a case where the complainant is absent and in that case too the discretion is given to the trial Court to discharge the accused or to continue the proceedings—In a case where the complainant dies this provision is not attracted. The trial Court has the discretion to continue the proceedings and for that purpose it can allow any other person to prosecute and in its judicial discretion it has allowed father of the deceased complainant to continue the complaint against the petitioner and others. (Paras 4 and 5).