Before V.S. Aggarwal, J.

M/S PROCOLOR & OTHERS,—*Petitioners.*

versus

THE C.J.M. CHANDIGARH & OTHERS,—*Respondents.*

C.W.P. 1533 *of* 1988

30th July, 1996

Constitution of India, 1950—*Arts.* 226/227—*Income Tax Act,* 1961—*Ss.* 276-*C,* 277 & 278-*B—Appeal against imposition of penalty for concealment of tax allowed—Complaint filed—Challenge to filing of complaint—Such complaint is not maintainable in view of fact that orders of passing penalty have been set aside.*

Held, that the same question cropped up before the Bombay High Court in the case M/s Shahtri Sales Corporation & others *v.* Income Tax Officer, 1996 C.L.J. 449. Complaint was filed for offence of concealment of income but during pendency of the same, the appeal had been accepted. The imposition of penalty was quashed. The said Court held that criminal complaint necessarily should be quashed.

(Para 7)

Further held that once the findings on the basis of which the complaint has been set aside, it would be an exercise in futility for allowing the criminal complaint to continue. The very basis on which the complaint was filed no more exists. Once the said basis has ceased to be existent the complaint necessarily should come to its natural death. For these reasons, the petition is accepted and the proceedings pending in the Court of Chief Judicial Magistrate, Chandigarh, on the basis of the complaint of the Income tax Officer, are quashed.

(Para 7)

I.K. Mehta, Sr. Advocate with Mr. M.S. Kohli, Advocate, *for the Petitioners.*

R.P. Sawhney, Sr. Advocate with Mr. Sanjay Goyal, Advocate, *for the Respondents.*

JUDGMENT

(1) Income Tax Officer, Chandigarh, filed a complaint with respect to offences under section 276-C and 277 read with section 278-B of the Income Tax Act. It was asserted that the petitioner No. 1 is a partnership concern comprising petitioners Nos. 2 and 3

as its active partners. The petitioner No. 1 filed its return on income for the assessment year 1980-81 on 14th July, 1980. It declared a loss of Rs. 30,540. It was found that the petitioner No. 1 had debited a sum of Rs. 30,500 on account of provisional purchases allegedly made from M/s Camera India Photographic Co. Ltd., New Delhi and M/s Camera Works Pvt. Ltd., Bombay. It was further revealed that no such goods were supplied to the petitioner No. 1. It had introduced bogus purchases under the garb of provisional purchases. This was done only in order to reduce the correct income of the petitioner No. 1. This amount was added towards bogus purchases. The income of petitioner No. 1 was assessed with profit of Rs. 34,071. Subsequently, penalty proceedings were initiated against the petitioner No. 1. A penalty was levelled. It was asserted that the petitioners had deliberately and wilfully concealed the real income in order to avoid payment of taxes. Hence the complaint was filed.

(2) The petitioners filed the present writ petition invoking articles 226/227 of the Constitution. However, at the time of arguments, only once plea was pressed namely that the second appeal filed by the petitioners against the penalty imposed has been accepted by the Income Tax Appellate Tribunal. It is claimed that since the appeal has been accepted the proceedings should be quashed as are pending in the Court of the Chief Judicial Magistrate, Chandigarh on basis of the said complaint.

(3) The sole question that arises for consideration is as to when the appeal against the penalty imposed has been accepted, whether the proceedings initiated on basis of the complaint should be quashed or not. Learned counsel appearing on behalf of the respondents, however, strongly relied upon the judgement of the Supreme Court in the case of *P. Jayapan* v. *S.K. Perumal, First Income Tax Officer, Tuticorin,* (1). One of the arguments advanced before the Supreme Court was that the assessment proceedings started against the petitioner in that case were not completed and, therefore, prosecution was premature on the ground that reassessment proceedings were going on. The Supreme Court while considering the said question as to the effect of reassessment proceedings of the prosecution held that there is no provision in law which provides that a prosecution for the offences in question cannot be launched until reassessment proceedings initiated against the assessee are completed. It was held as under:—

1. 1984 (Vol. 149) I.T.L. 696

"At the outset it has to be stated that there is no provision in law which provides that a prosecution for the offences in question cannot be launched until reassessment proceedings initiated against the assessee are completed. Section 279 of the Act provides that a person shall not be proceeded against for an offence punishable under S. 276-C or S. 277 of the Act except at the instance of the Commissioner."

(4) Subsequently while discussing different other provisions, it was concluded that mere expectation of success in some proceedings cannot come in the way of the institution of the criminal proceedings. A specific finding so arrived at reads as under:—

"A mere expectation of success in some proceeding in appeal or reference under the Act cannot come in the way of the institution of the criminal proceedings under S. 276-C and S. 277 of the Act and in the criminal case all the ingredients of the offence in question have to be established in order to secure the conviction of the accused. The criminal court no doubt has to give due regard to the result of any proceeding under the 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. It does not, however, mean that the result of a proceeding under the Act would be binding on the criminal Court. The criminal Court has to judge the case independently on the evidence placed before it. Otherwise, there is a danger of a contention being advanced that whenever an assessee or any other person liable under the Act had failed to convince the authorities in the proceedings under the Act that he has not deliberately made any false statement or that he has not fabricated any material evidence, the conviction of such person should invariably follow in the criminal Court."

(5) I am afraid the cited judgment will not come to the rescue of the respondents. The reason being that the proceedings as yet were still pending. Reassessment could be effected. In that backdrop it had been concluded that criminal proceedings could continue. Similarly, for the same reasons the decision of this Court in the case of *M/s Camra Trading* Co. Vs. *Income Tax Officer, Abohar, Crl. Revision No. 97 of 1995* decided on 6th April, 1995, will not

help the respondents. In the cited case, the proceedings had been remanded and not finally decided by the Appellate Court. In the present case, as would be noticed hereinafter, the second appeal had been accepted and the penalty imposed had been set aside, The abovesaid cases are clearly distinguishable.

(6) At this stage, it would be appropriate to refer to the findings of the Income Tax Appellate Tribunal dated 14th March, 1990 in the appeal filed by the petitioners against the penalty imposed. In paragraphs 9 and 10, the Tribunal observed:—

> "After hearing the parties" representatives, the first ground which promoted the ACC to confirm the penalty was simply not justified in view of the assessee having surrendered the amount conditionally. Secondly, may be that at that time of assessment, the main dealers refused to give certificate but then in the penalty proceedings the assessee procured the necessary evidence and it was processed by the ITO, there could be no ground for taking support from the circumstances which prevailed during the assessment proceedings and which culminated in the assessee surrendering the amount of Rs. 30,500. As far as the third ground mentioned by the AAC, it came to be wrongly inferred that the evidence adduced by the assessee did not indicate whether the supplies had been received in advance because the Delhi party in terms accepted the assessee's version and invoices were dated 16 and 16th January, 1980 which fell in the relevant accounting year.

Further, in addition to above, when before the assessment was framed, the assessee had entered in its stock register for the assessment year 1981-82 stocks after adjusting the advance stocks received in the earlier year, it gave veracity and authenticity to the assessee's version of events. It is one of the few cases of processing laboratories where stock register was admitted to have been maintained properly. Such maintenance should have sheltered the assessee from the penal consequences instead of burdening it with rigours of penalty."

(7) Perusal of the aforesaid show that it had been concluded that the assessee had entered in its stock register for the year 1981-82, the stocks after adjusting the advance stocks. They were maintained properly. When the penalty proceedings in appeal stand quashed and the findings of the Income Tax Officer set aside, it

appears that no useful purpose would be served in allowing the criminal proceedings to continue. Reference with advantage may be made to the decision of the Madras High Court in the case of *Md. Unjawal* v. *Assistant Commissioner Income Tax* (2). The questions involved before the State High Court was the same. In paragraph 8 it was held:—

> "Therefore, it cannot be treated that every finding of the authorities under the Income Tax Act had to be disregarded and ignored for the criminal prosecution. On the other hand, due regard must be given and in the appropriate cases, the criminal prosecution has to be dropped. Therefore, in the deserving cases, the criminal court has to give weight to the findings of the authorities under the Income Tax Act and it is not in all cases to ignore the conclusion of the Tribunal."

The same question again cropped up before the Bombay High Court in the Case of *M/s Shahtri Sales Corporation & others* v. *Income Tax Officer, 1996, Criminal Law Journal,* page 449. Complaint was filed for offence of concealment of income but during pendency of the same, the appeal had been accepted. The imposition of penalty was quashed. The said Court held that criminal complaint necessarily should be quashed. The findings arrived at in paragraph 14 are as follow:—

> "The gravamen of the charge in the complaint filed by the complainant-respondent is the concealment of income and/or furnishing of inaccurate particulars by the assessee for the assessment years 1983-84 and 1984-85 and on the self-same facts penalty orders were passed by the Income-Tax Officer on 29th March, 1988 and 28th March, 1988 respectively. The said orders of penalty passed by the concerned Income Tax Officer under Section 271 (1) (c) of I.T. Act have been quashed by the Deputy Commissioner of Income Tax (Appeals) by its common order dated 31st May, 1989 and the said order has been confirmed by the Income-tax Appellate Tribunal by its common order dated 23rd September, 1992. In my view therefore, there is absolutely no justification for continuing with the prosecution of the accused-petitioners pursuant to the complaint filed by the respondent-complainant on 30th December, 1988.

2. 1995 Crl. L.J. 1949

The Income-tax Appellate Tribunal has already held in its order dated 23rd September, 1992 that the department has failed to prove that the assessee has concealed the particulars of any income or furnished inaccurate particulars for the assessment years 1983-84 and 1984-85 and the penalty orders were not justified. Though at the time of the filing of the complaint it cannot be said that the said complaint was misconceived because the orders under Section 271 (1) (c) had not attained finality at the stage of Income-tax Appellate Tribunal and it has been held that accused-petitioners were not guilty of concealment of income and/or furnishing of inaccurate particulars of income and there was no justification in imposing penalty on them, further proceedings in the complaint cannot be permitted and the applicants have become eligible for discharge."

One finds in complete agreement with the said view, once the findings on the basis of which the complaint has been set aside, it would be an exercise in futility for allowing the criminal complaint to continue. The very basis on which the complaint was filed no more exists. Once the said basis has ceased to be existent the complaint necessarily should come to its natural death. For these reasons, the petition is accepted and the proceedings pending in the Court of Chief Judicial Magistrate, Chandigarh, on the basis of the complaint of the Income-tax Officer, are quashed.

J.S.T.

Before Jawahar Lal Gupta & B. Rai, JJ.

AVINASH CHANDER PASSI,—*Petitioner*

versus

THE ZONAL MANAGER AND ANOTHER,—*Respondents*

C.W.P. 5842 *of* 1996

25th July, 1997

Constitution of India, 1950—*Art.* 226—*Punjab National Bank Officers Service Regulations,* 1979—*Reg.* 20—*Request for voluntary retirement declined—Such retirement sought prior to serving of charge-sheet—No disciplinary proceedings initiated on date when request made for premature retirement—Request declined—*