practice, it is the Sole Distributor who is running the show without the involvement of the Government. It seems that the Government is getting a fixed percentage of commission of the total business, which can be termed as royalty, as has been put by the Director, Punjab State Lotteries and, consequently, there is no relationship of principal and agent between the petitioner and its Sole Distributor.

(27) For the reasons recorded above, we find no merit in this petition and the same is dismissed with no order as to costs.

R.N.R.

Before P. K. Jain, J.

INCOME TAX OFFICER,—*Petitioner,*

versus

INDERJIT CHOPRA,—*Respondent.*

Crl. M. No. 17700-M of 1994.

10th September, 1996.

Income Tax Act, 1961—Ss. 276-C & 277—Complaint against assessee for concealment of income while framing assessment—Explanation of assessee rejected,—Penalty imposed—Penalty quashed holding assessee had established source of his creditors—Maintainability of complaint in such a situation.

Held, that the grievances of the charge in the complaint filed against the respondent is the concealment of income and/or furnishing of inaccurate particulars by the respondent for the assessment year 1980-81 and on the same facts penalty orders were passed. Admittedly, penalty orders have been quashed by the Income Tax Appellate Tribunal with a finding that there is no such concealment of income by the respondent. Once the basis of the complaint had disappeared, there was no justification to proceed with the prosecution of the respondent on the same ground.

(Para 12)

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

Hemant Kumar, Advocate, *for the respondent.*

JUDGMENT

P. K. Jain, J.

(1) Income Tax Officer, ward-2, Faridabad has filed this petition under Section 482 of the Code of Criminal Procedure (hereinafter

referred to as 'the Code') against the order dated 2nd June, 1994 (Annexure P.4), passed by the Additional Sessions Judge, Faridabad, whereby the order dated 1st February, 1992 (Annexure P.2) passed by the Chief Judicial Magistrate, Faridabad, dismissing the complaint filed by the petitioner under Sections 276-C and 277 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') has been affirmed

(2) The admitted facts are that Shri Inderjit Chopra, the respondent herein, carrying on his business under the name and style of M/s Marshal Foundry and Engineering works at Faridabad, is an assessee under the Act. For the assessment year 1980-81, he filed the return of his income on 31st July, 1981 showing an income of Rs. 8092 which was revised on 19th March, 1983 showing a loss of Rs. 4,252. The original return along with its Annexures and the revised return along with the Annexures were signed and verified by the said respondent on 30th July, 1981 and 4th March, 1983, respectively. During the course of assessment proceedings, it was found that certain cash credits were introduced in the name of Shri Bishan Dass Chopra the father, and Shri B. R. Chopra, the brother of the respondent, to the extent of Rs. 18,000 and Rs. 16.000, respectively. The respondent had filed affidavits of his father and brother and they were examined by the Income Tax Officer also. However, it was concluded that these persons were not in a position to advance the alleged amount to the assessee. Accordingly, a sum of Rs. 34,000 was added to the income of the respondent from undisclosed sources. The assessment was completed on 25th March, 1983. In appeal, a relief of Rs. 4086 was allowed,—*vide* order dated 26th September, 1984, but the additions were confirmed. The second appeal did not find favour with the Income Tax Appellate Tribunal and the same was dismissed by order dated 17th October, 1985.

(3) Proceedings for imposition of penalty under Section 271(1)(c) of the Act were initiated and a penalty of Rs. 25,860 was imposed upon the respondent by order dated 30th March, 1985. This amount was reduced to Rs. 11,150 in first appeal by order dated 24th August, 1989 passed by the Commissioner of Income Tax (Appeals). The respondent, feeling aggrieved, filed an appeal before the Income-Tax Appellate Tribunal (Delhi Bench), which appeal was allowed and the penalty was quashed by order dated 10th May, 1991.

(4) In the meanwhile, the petitioner launched prosecution against the respondent by filing a complaint under sections 276C and 277 of the Act on the allegations that the respondent had attempted to evade tax, penalty and interest chargeable/imposable under the

Act on the aforesaid amount of Rs. 34,000 which was added as his income from undisclosed sources. The respondent was summoned and pre-charge evidence was recorded. On 11th September, 1991, the respondent moved an application challenging the maintainability of the complaint in view of the order dated 10th May, 1991 passed by the Income Tax Appellate Tribunal (referred to above). The Chief Judicial Magistrate, while placing reliance upon a judgment of this Court in *Kanshi Ram Wadhwa* v. *Income-Tax Officer, Kurukshetra* (1), accepted the application, dismissed the complaint and discharged the respondent by order dated 1st February, 1992 (Annexure P.2). The revision filed by the petitioner against the said order did not find favour with the Additional Sessions Judge and the same was rejected by the impugned order (Annexure P.4). Now the petitioner has approached this Court under section 482 of the Code.

(5) I have heard the learned counsel for the parties and have gone through the record.

(6) Shri R. P. Sawhney, Sr. Advocate, while appearing on behalf of the petitioner, has argued that the order of assessment dated 25th March, 1983, whereby a sum of Rs. 34,000 was added to the income of the respondent from undisclosed sources had been confirmed and upheld even in the second appeal by the Income Tax Appellate Tribunal,—*vide* order dated 17th October, 1985. It has been further argued by the learned counsel that once the assessment as such has been upheld by the highest authority, the penalty proceedings were initiated in accordance with the provisions of the Act and thereafter prosecution was also launched against the respondent in accordance with law. It has been argued by the learned counsel that once the addition in the income of the respondent was upheld, the prosecution could not be quashed by the Chief Judicial Magistrate merely on the basis of the order dated 10th May, 1991 passed by the Income Tax Appellate Tribunal (Delhi Bench).

(7) In support of this plea, the learned counsel has placed reliance upon *P. Jayappan* v. *S. K. Perumal First Income-Tax Officer, Tuticorin* (2), *Ashok Biscuit Works and others* v. *Income-Tax Officer, E-Ward, Circle II, Hyderabad* (3), *Income-Tax Officer* v. *Emerson*

(1) (1984) 145 I.T.R. 109.
(2) (1984) 149 I.T.R. 696.
(3) (1988) 171 I.T.R. 300.

Paul Plastic Company and others (4), *Vinod Kumar* v. *Income-Tax Officer and others* (5), *Madura Chit and Investments Pvt. Ltd. and another* v. *Income-Tax Officer* (6), *Vanaja Textiles Ltd. and others* v. *Inspecting Assistant Commissioner of Income-Tax* (7) and *Deputy Commissioner of Income-Tax* v. *Modern Motor Works and others* (8).

(8) On the other hand Shri Hemant Kumar Advocate, learned counsel for the respondent, has argued that once the highest appellate authority under the Act has concluded that there was no concealment on the part of the respondent and quashed the penalty, the very foundation of the complaint stands vitiated and the Chief Judicial Magistrate and the Additional Sessions Judge were justified in dismissing the complaint as well as the revision. The learned counsel has placed reliance upon *P. Jayappan 's* case (supra), *Kanshi Ram Wadhwa's case* (supra), *Income-Tax Officer* v. *B. B. Mittal and others* (9), *V. Rajasekharan Nair* v. *Commissioner of Income-Tax and others* (10) *and G. L. Didwania and another* v. *Income-Tax Officer and another* (11).

(9) I have given my careful thought to the respective arguments advanced at the Bar and have also perused the various decisions cited in support thereof.

(10) Since the learned counsel for both the parties have sought support from the decision of the apex Court in *P. Jayappan's* case (supra), it would be just and proper to make a reference to the same. In that case the petitioner-assessee had filed his return on 20th January, 1978 disclosing his income along with the profit and loss account, trial balance, income-tax adjustment statement and a copy of the capital account, which return was accepted. However, on August 20 and 21, 1981, a search was conducted at his residence under section 132 of the Act which resulted in the seizure of several documents and account books, and it was revealed that the petitioner had filed a false return and had kept false accounts with the intention of using them as genuine in the assessment proceedings. Consequently,

(4) (1991) 191 I.T.R. 560.
(5) (1993) 200 I.T.R. 79.
(6) (1994) 208 I.T.R. 228.
(7) (1994) 208 I.T.R. 602.
(8) (1996) 220 I.T.R. 415.
(9) (1993) 199 I.T.R. 805.
(10) (1993) 204 I.T.R. 783.
(11) 1995 Supp. (2) S.C.C. 724.

re-assessment proceedings were started against him. Simultaneously, four complaints were filed for the offences punishable under sections 276-C and 277 of the Act read with Sections 193 and 196, I.P.C. The petitioner filed four petitions under section 482 of the Code before the High Court of Madras for quashing the criminal proceedings on the ground that the prosecution was premature since the re-assessment proceedings had been initiated and not completed. Having failed before the High Court, the petitioner approached the apex Court seeking leave to appeal in all those four cases. In these circumstances, their Lordships, while dismissing the petition, observed as under :—

> "That the pendency of the re-assessment proceedings could not act as a bar to the institution of criminal prosecution for the offences punishable under section 276C or section 277 of the I.T. Act, 1961. Nor could the institution of the criminal proceedings, in the circumstances, amount to an abuse of the process of the court..... A mere expectation of success in some proceeding in an appeal or a reference under the I.T. Act cannot come in the way of the institution of criminal proceedings under section 276C and section 277 of the Act."

After reviewing the relevant provisions of the Act and the Code, their Lordships were also pleased to hold as under :—

> "The criminal court has to judge the case independently on the evidence placed before it..... In appropriate cases the criminal court may adjourn or postpone the hearing of a criminal case in exercise of its discretionary power under section 309 of the Cr.P.C. if the disposal of any proceeding under the I.T. Act which has a bearing on the proceedings before it is imminent so that it may take into consideration also the order to be passed therein. Even here the discretion should be exercised judicially and in such a way as not to frustrate the object of the criminal proceedings."

From a perusal of the law laid down in this decision, it is evident that the pendency of the re-assessment proceedings is no bar for launching the prosecution against an assessee for the offence under section 276C or 277 of the Act, as the case may be. At the same time,

it has been specifically clarified by their Lordships that the criminal Court is bound to give due regard to the result of any proceedings under the Act having a bearing on the question in issue and may drop the proceedings in an appropriate case in the light of an order passed under the Act.

(11) In another decision rendered in *Uttam Chand* v. *I.T.O.* (12), the apex Court has pronounced that if there is no case for sustenance of penalty, it equally is not a case for criminal prosecution. In a recent judgment delivered in *G. L. Didwania's* case (supra), the apex Court knocked down the criminal proceedings launched against the assessee when the finding of the assessing authority that the assessee had intentionally concealed his income had been set aside. The views expressed earlier in *Uttam Chand's* case (supra), and *P. Jayappan's* case (supra) were re-affirmed. While concluding, in para 4 of the judgment, their Lordships observed as under :—

> "In the instant case, the crux of the matter is attracted and whether the prosecution can be sustained in view of the order passed by the tribunal. As noted above, the assessing authority held that the appellant-assessee made a false statement in respect of income of M/s Young India and Transport Company and that finding has been set aside by the Income Tax Appellate Tribunal. If that is the position then we are unable to see as to how criminal proceedings can be sustained."

In view of these decisions of the apex Court, I need not refer to the other judgments of certain High Courts referred to at the Bar.

(12) Turning to the case in hand, it may be repeated that the penalty proceedings were initiated and finalised on 30th March, 1985 and a penalty of Rs. 25,860 was imposed, which was reduced in the first appeal to Rs. 11,150,—*vide* order dated 24th August, 1989. However, the Income Tax Appellate Tribunal, by order dated 10th May, 1991, allowed the appeal and quashed the penalty. Para 4 of the order passed by the Income Tax Appellate Tribunal reads as under :—

> "After considering the rival submissions and also the fact that in the instant case i.e. the assessee having established that

(12) (1982) 133 I.T.R. 909 (S.C.)

the money had come from the persons and their sources have also been established and whether the sources were sufficient enough or not could have been considered only in their hands and not in the hands of the assessee. Rejection of an explanation does not automatically conclude that there was concealment on the part of the assessee. The penalty is accordingly quashed.

In the result. the appeal is allowed."

It may also be stated that the petitioner had filed an application under section 256 (1) of the Act which was also rejected and the petitioner did not care to take any steps to approach the High Court under section 256(2) of the Act. The gravamen of the charge in the complaint filed against the respondent is the concealment of income and/or furnishing of inaccurate particulars by the respondent for the assessment year 1980-81 and on the same facts penalty orders were passed. Admittedly, penalty orders have been quashed by the Income Tax Appellate Tribunal with a finding that there is no such concealment of income by the respondent. Once the basis of the complaint had disappeared, there was no justification to proceed with the prosecution of the respondent on the same ground. I do not find any irregularity or illegality in the two orders (Annexures P.2 and P.4) passed by the Courts below.

(13) For the reasons mentioned above, I do not find any merit in this petition and the same is hereby dismissed.

S.C.K.

Before M. L. Koul, J.

JASBIR SINGH & OTHERS,—*Petitioners.*

versus

STATE OF HARYANA & OTHERS,—*Respondents.*

Crl. M. No. 13267-M of 1995.

January 3, 1997.

Code of Criminal Procedure, 1973—Ss. 145 & 146—Preliminary order—Passing of—Essential requirements.

Held, that a preliminary order shall necessarily contain (1) statement that the Magistrate is satisfied as to the existence of