(1995) 01 DEL CK 0083

Delhi High Court

Case No: Criminal Miscellaneous (M.) No. 1522 of 1991

Super Rubber Enterprises		APPELLANT
	Vs	
Deputy Commissioner of Income Tax		RESPONDENT

Date of Decision: Jan. 2, 1995

Citation: (1995) 129 CTR 421 : (1995) 215 ITR 49 : (1995) 80 TAXMAN 358

Hon'ble Judges: V.K. Jain, J

Bench: Single Bench

Advocate: B.L. Chawla, for the Appellant; Rajindra, for the Respondent

Judgement

Vijender Jain, J.
This is a petition filed by the petitioner for quashing the proceedings based on the criminal complaint dated March 11, 1991, filed against the petitioner-firm and its partners, namely, Satish Chawla, B. L. Chawla and Labha Mal Chawla, under sections 276C and 277 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), for the assessment year 1985-86. In the complaint, it is alleged that the assessed is alleged to have willfully attempted to evade tax. Thereafter, on the complaint of the respondent the petitioner and its partners were summoned. The main contention of learned counsel for the petitioner, Mr. Chawla, is that in view of the provisions of section 245F(2) of the Act, this prosecution is illegal. The provisions of section 245F(2) of the Act are reproduced herein :

"Where an application made u/s 245C has been allowed to be proceeded with u/s 245D, the Settlement Commission shall, until an order is passed under sub-section (4) of section 245D 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."

2. Mr. Chawla has contended that in view of the unambiguous intention of the Legislature once the petitioner filed the application for settlement before the Settlement Commission

on February 15, 1989, and that petition of the petitioner was admitted by the Settlement Commission on May 10, 1991, and the notice thereof was received by the petitioner on June 5, 1991, the prosecution in relation to the same case is unwarranted, illegal and without jurisdiction. Mr. Chawla has further brought to my notice a decision of this court in Dr. Mrs. Geeta Gupta Vs. Inspecting Assistant Commissioner of Income Tax (Assessment), Range XIV, New Delhi, and another, in support of his submissions. Mr. Rajindra, learned counsel for the respondent however, has stated that the decision of this court in Dr. Mrs. Geeta Gupta Vs. Inspecting Assistant Commissioner of Income Tax (Assessment), Range XIV, New Delhi, and another, has been stayed by the Supreme Court in Criminal Appeal No. 326 of 1988 on May 10, 1988. He has also argued that in this case, the Magistrate has simply issued process against the petitioner and as such this court will not be having jurisdiction u/s 482 of the Code of Criminal Procedure. In his support, he has cited J.K. Synthetics Ltd. and Others Vs. N.C. Shrma, .

3. After hearing learned counsel for the parties at length and without going into the details of the submissions made by learned counsel, it is not disputed that the petitioner has filed the petition before the Settlement Commission under the provisions of the Income Tax Act. On the other hand, the respondent vide its counter which has been filed in this court as annexure R-6 itself, has stated that issues which have been settled are as follows :

"1. Determination of total income on the basis of revised profit and loss accounts and balance-sheets submitted for the assessment years 1985-86, 1986-87, 1987-88 and 1988-89 (total for four years) and the tax payable thereon.

2. Immunity/waiver of penalties and interest, if any, livable under the Income Tax Act.

3. Grant of immunity from prosecution under the Income Tax Act and other Central laws if the statement of facts submitted by the applicant and the determination of total income are to be relied upon by any authority for the purpose of launching prosecution."

4. In view of the issues aforesaid which, inter alia, include a decision from the Settlement Commission regarding immunity/waiver of penalty and interest, if any, livable under the Income Tax Act and specific issue No. 3 for the grant of immunity from prosecution under the Income Tax Act and other Central laws, it cannot be said that the Settlement Commission is not seized of the basic material on which prosecution has been launched by the respondent. The legislative intention as reflected in the wording of section 245F(2) of the Act conceives of such a situation where on a specific plea raised by the parties issues have been framed which include the issue relating to imposition of penalty and grant of immunity from prosecution. The right course for the respondent would have been to desist from launching prosecution against the petitioner. The petitioner has filed an application in the year 1989 for settlement. The application had been admitted by the Settlement Commission in the year 1991. Specific pleas have been raised for grant of immunity from prosecution which have not yet been decided by the Settlement Commission. The Settlement Commission is under a statutory obligation to deal with

these matters expeditiously and for non-performance of its own obligations the petitioner cannot be penalised. It is a fit case where the court must exercise its jurisdiction u/s 482 of the Code of Criminal Procedure. In the circumstances, I stay the proceedings before the Metropolitan Magistrate concerned till the decision is made by the Settlement Commission. The petition is disposed of accordingly.