2025 INSC 1048

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. OF 2025
(ARISING OUT OF SLP (CRL.) NOS. 3618-3620 OF 2024)

VIJAY KRISHNASWAMI
@ KRISHNASWAMI VIJAYAKUMAR .....APPELLANT(S)

VERSUS

THE DEPUTY DIRECTOR OF
INCOME TAX (INVESTIGATION) .....
RESPONDENT(S)

J U D G M E N T

J.K. MAHESHWARI, J.

1. Leave granted.

2. The appellant invoked the jurisdiction of the High Court[1] in Crl. OP. No. 28763 of 2018 for quashing of the proceedings of EOC No. 242 of 2018 initiated by the Revenue, before the Additional Chief Metropolitan Magistrate (E.O.II), Egmore, Chennai, for the offence under Section 276C(1)[2] of the Income Tax Act, 1961, (in short **"IT Act"**) for assessment year 2017-

1 High Court of Judicature at Madras.
2 Wilful attempt to evade tax, etc.

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2018. The High Court *vide* the impugned judgement dismissed the quashing petition filed by the appellant. Challenging the same, he has knocked the doors of this Court preferring the instant appeals. The consequence of the dismissal of quashing petition has led to the appellant facing trial for an offence in which settlement was entered by the Revenue with the appellant, granting him immunity from levy of penalty.

3. Shorn of unnecessary details, the facts are that, on 24.04.2016, search under Section 132[3] of the IT Act was conducted at the residence of the appellant, and unaccounted cash of Rs. 4,93,84,300/- was seized. After taking statement of the appellant under Section 132(4) of the IT Act, a show-cause notice was issued on 31.10.2017 as to why prosecution should not be initiated against him. On assailing the same in the writ petition filed by the appellant, it was dismissed on 17.11.2017 being premature, observing that issuance of show-cause notice is an administrative act and in absence of reply, it cannot be questioned in the writ petition. The said order was put to challenge in Writ Appeal No. 1617 of 2017 which was dismissed as infructuous vide order dated 06.09.2020 taking into

3 Search and seizure.

consideration the subsequent developments and the order of the Settlement Commission passed on 26.11.2019. The Division Bench observed that the complaint filed in furtherance to show-cause notice was not challenged before the learned Single Judge in a writ petition, therefore, the said issue cannot be looked into in this appeal, leaving it open to be decided in the appropriate proceedings. During pendency, the Principal Director Income Tax (Investigation), Chennai, (in short **"PDIT"**) exercised power under Section 279(1)[4] of the IT Act, and vide order dated 21.06.2018, accorded sanction to Deputy Director of Income Tax (Investigation), Chennai, (in short **"DDIT"**) to initiate prosecution against the appellant. Thereafter, respondent-DDIT filed complaint on 11.08.2018 against the appellant for an offence under Section 276C(1) alleging wilful attempt to evade tax with respect to assessment year 2017-2018 and for not filing the correct return of income.

4. Being aggrieved, the appellant filed quashing petition under Section 482 of Code of Criminal Procedure (in short **"CrPC"**) being Crl. O.P. No. 28763 of 2018 along with Crl. M.P. Nos. 16786 and 16787 of 2018 praying for quashing of the complaint and

4 Prosecution to be at instance of Principal Chief Commissioner or Chief Commissioner] or Principal Commissioner or Commissioner.

pending proceedings. Pertinently, the appellant also filed an application under Section 245C[5] of the IT Act on 07.12.2018 before the Settlement Commissioner, Additional Bench, Chennai, (in short **"Settlement Commission"**) disclosing the entire additional income and sought immunity from levy of penalty as well as prosecution in the matter of alleged evasion of proposed tax. The Settlement Commission in exercise of powers under Section 245D(4)[6] of IT Act, partly allowed the said application *vide* order dated 26.11.2019 and granted immunity from levy of penalty, refraining itself to grant immunity from prosecution due to pendency of quashing petition before the High Court of Madras.

5. By the order impugned, the High Court dismissed the quashing petition and referring the averments of the complaint observed that for the assessment year 2017-2018, the amount seized has not been shown in earnings, which may amount to evasion of proposed tax. The defence put forth by the appellant was that the seized amount was an earning of the assessment year 2016-2017 and not of assessment year 2017-2018 for which

5 Application for settlement of cases.

6 Procedure on receipt of an application under Section 245 C.

settlement has been arrived at as per the order of the Settlement Commission. The said defence did not find favour on the pretext that it can be taken by the appellant during trial. It was also observed that the complaint was filed prior and the application before the Settlement Commission was subsequent, therefore, the stand of the appellant indicating that the seized amount was income of the assessment year 2016-2017 may also be looked into during trial. The question of competence of DDIT to initiate the prosecution against the appellant under Section 279(1) of the IT Act also did not turn in favour of the appellant in the order impugned.

ARGUMENTS OF THE APPELLANT

6. Mr. Preetesh Kapur, learned senior counsel for the appellant has strenuously urged that the order passed by the Settlement Commission in exercise of power under Sub-Section (4) of Section 245D shall be conclusive unless reopened as per Section 245D(6) within the time specified in sub-section (6B) of IT Act. In the present case, on receiving an application under Section 245C, the Settlement Commission passed an order granting immunity against levy of penalty in favour of the appellant, though rejected

the plea for immunity from prosecution due to pendency of quash petition before the High Court. It is urged that the order of the Settlement Commission is conclusive in terms of Section 245-I[7], with respect to the matters specified therein.

7. It is further urged that the guidelines dated 24.04.2008 issued by Ministry of Finance, Government of India, for 'streamlining the procedure and to identify the cases for processing to lodge prosecution under Direct Tax law – matter reg.', (in short **"2008 circular"**), has not been complied with by DDIT. Referring to clause (iii), it is said that in all cases where the penalty under Section 271(1)(C) exceeding Rs. 50,000/- is imposed and confirmed by Income Tax Appellate Tribunal (in short **"ITAT"**), the complaints may be filed within a period of 60 days of the receipt of the order of ITAT and not prior. Further, as per the 'Prosecution Manual, 2009', Clause 1.4 of Chapter III clearly stipulates when can prosecution be initiated. As per the Manual, it was advised that the initiation of prosecution under Section 276C(1) shall be only after confirmation of concealment and penalty by the ITAT. Recently on 09.09.2019, the Ministry of Finance, Government of India, issued another notification laying

7 Order of settlement to be conclusive.

down 'procedure for identification and processing of cases for prosecution under Direct Tax Laws-reg.' (in short **"2019 circular'**), whereby if the tax liability is below Rs. 25 lakhs, such cases shall not be processed for prosecution except with the previous administrative approval of the Collegium consisting of CCIT/DGIT rank officers and only after confirmation of the order imposing penalty by the ITAT.

8. In the instant case, the prosecution is with respect to the assessment year 2017-2018. As per the order of the Settlement Commission, the total undisclosed income has been shown as Rs. 61,50,000/-, to which the tax liability would come to less than Rs. 25 lakhs, therefore, without the permission of the Collegium, lodging of prosecution for the allegation below the said threshold lacked competence. Lastly, it is urged that after grant of immunity from the penalty by the Settlement Commission, continuation of the prosecution in violation of the guidelines would amount to gross abuse of the process of law, therefore, order impugned passed by the High Court may be set-aside quashing the complaint lodged by Revenue.

ARGUMENTS OF THE RESPONDENTS

9. Per contra, Ms. Nisha Baghchi, learned senior counsel for the revenue has vociferously contended that the complaint was filed by the respondent-DDIT prior to filing of application under Section 245C of the IT Act, therefore, in terms of the first proviso to Section 245H(1)[8], appellant cannot be given any immunity from the prosecution. It is urged that the prosecution under Section 276C(1) against a person is for wilful attempt to evade any tax imposable or penalty or interest chargeable under the IT Act, and is penal in nature. In the facts of the present case, unaccounted cash was found at the residence of the appellant which was not disclosed in the return of the assessment year 2017-2018. Therefore, even after passing an order by the Settlement Commission, prosecution initiated prior to filing an application under Section 245C of IT Act are saved from granting immunity and can be proceeded with, however, the High Court was justified in dismissing the quash petition filed by the appellant.

ISSUES FOR CONSIDERATION

8 Power of Settlement Commission to grant immunity from prosecution and penalty.

10. On the basis of the submissions as advanced by the learned senior counsel for the parties, in our view on the facts, the following questions fall for consideration:

i) *Whether continuation of the prosecution initiated by the revenue under Section 276C(1) against the appellant after passing an order by the Settlement Commission, would amount to abuse of process of Court?*

ii) *Whether in the facts of the present case, the High Court was justified to dismiss the quashing petition filed by the appellant, and if not, what relief can be granted?*

ANALYSIS AND APPRECIATION

11. Since both the said questions are inter-connected, therefore, the facts and legal points are appreciated simultaneously. In this relation, some of the relevant provisions of the IT Act are required to be referred, which are reproduced as under –

> ***"276C. Wilful attempt to evade tax, etc.***—*(1) If a person wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable [or imposable, or under reports his income,] under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable,—*
>
> > *(i) in a case where the amount sought to be evaded [or tax on under-reported income] exceeds [twenty-five hundred thousand rupees], with rigorous imprisonment for*

a term which shall not be less than six months but which may extend to seven years and with fine;

(ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to [two years] and with fine.

(2) If a person wilfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to [two years] and shall, in the discretion of the court, also be liable to fine.

Explanation.—For the purposes of this section, a wilful attempt to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof shall include a case where any person—

(i) has in his possession or control any books of account or other documents (being books of account or other documents relevant to any proceeding under this Act) containing a false entry or statement; or

(ii) makes or causes to be made any false entry or statement in such books of account or other documents; or

(iii) wilfully omits or causes to be omitted any relevant entry or statement in such books of account or other documents; or

(iv) causes any other circumstance to exist which will have the effect of enabling such person to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof."

12. From the above, it is clear that Section 276C deals with two situations. Sub-section (1) pertains to a wilful attempt to evade tax, penalty, or interest that is 'chargeable', 'imposable', or related

to 'under-reporting of income'. In contrast, sub-section (2) addresses the wilful attempt to evade the 'payment' of any tax, penalty, or interest under the Act. Therefore, both sub-sections operate in separate spheres and different stages. The fundamental distinction between the applicability of sub-section (1) and sub-section (2) lies to the stage at which the offence allegedly occurs. Section 276C(1) is primarily intended to deter and penalize wilful and deliberate attempts by an assessee for evasion of taxes, penalties and interest prior to their imposition or charging. The provision applies where there is a conscious and intentional effort to evade tax liability, distinguishing such conduct from *bona-fide* errors or differences in interpretation. The gist of the offence under sub-section (1) of Section 276C lies in the wilful attempt to evade the very imposition of liability, and what is made punishable under this sub-section is not the *'actual evasion'* but the *'wilful attempt'* to evade as described in the proviso to Section 276C.

13. For the allegations as alleged against appellant, prosecution under Section 279(1) was initiated by respondent-DDIT in accordance with sanction given by PDIT. The appellant also challenged the jurisdiction of the DDIT before the High Court,

contending that she was not competent to initiate prosecution under Section 279(1) of the IT Act. In the said context, it is relevant to refer Section 279 of IT Act, which is reproduced below for ready reference as thus:

> ***"279. Prosecution to be at instance of Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.*** *—*
>
> *(1) A person shall not be proceeded against for an offence under section 275A, [section 275B,] section 276, section 276A, section 276B, section 276BB, section 276C, section 276CC,section 276D, 7[section 277 , section 277A or section 278] except with the previous sanction of the [Principal Commissioner or Commissioner] or Commissioner (Appeals) or the appropriate authority:*
>
> *Provided that the [Principal Chief Commissioner or Chief Commissioner] or, as the case may be, [Principal Director General or Director] General may issue such instructions or directions to the aforesaid income-tax authorities as he may deem fit for institution of proceedings under this sub-section.*
>
> *Explanation.—For the purposes of this section, "appropriate authority" shall have the same meaning as in clause (c) of section 269UA.]*
>
> *(1A) A person shall not be proceeded against for an offence under section 276C or section 277 in relation to the assessment for an assessment year in respect of which the penalty imposed or imposable on him under [section 270A or] clause (iii) of sub-section (1) of section 271 has been reduced or waived by an order under section 273A.]*
>
> *(2) Any offence under this Chapter may, either before or after the institution of proceedings, be compounded by the [Principal Chief Commissioner or Chief Commissioner] or a [Principal Director General or Director General].*

> *(3) Where any proceeding has been taken against any person under sub-section (1), any statement made or account or other document produced by such person before any of the income-tax authorities specified in [clauses (a) to (g)] of section 116 shall not be inadmissible as evidence for the purpose of*
>
> *such proceedings merely on the ground that such statement was made or such account or other document was produced in the belief that the penalty imposable would be reduced or waived, [under section 273A] or that the offence in respect of which such proceeding was taken would be compounded.*
>
> *[Explanation.—For the removal of doubts, it is hereby declared that the power of the Board to issue orders, instructions or directions under this Act shall include and shall be deemed always to have included the power to issue instructions or directions (including instructions or directions to obtain the previous approval of the Board) to other income-tax authorities for the proper composition of offences under this section.]"*

14. From the above, in addition to the other offences, looking to the allegations of the present case, the prosecution under Section 276C may be lodged with permission of the PDIT. Sub-section (1) (a) creates a bar that the person shall not be proceeded under Section 276C in relation to the assessment for the assessment year of which penalty imposed or imposable on him, has been reduced or waived.

15. It is also pertinent to refer that the IT Act envisages a robust settlement mechanism under Chapter XIXA, which is titled – 'Settlement of Cases'. It was inserted by means of the Taxation Laws (Amendment) Act, 1975 (41 of 1975) w.e.f. 01.04.1976. The

said amendment was brought pursuant to the recommendations of the 'Direct Taxes Enquiry Committee', popularly known as the **'Wanchoo Committee'**, report of December, 1971. 'Chapter 2' of the said report, titled 'Black Money and Tax Evasion', in particular paragraphs 2.32 to 2.34 can be gainfully referred to in order to understand the intent and purpose behind setting up a settlement mechanism under the IT Act:

> ***"****Settlement Machinery*
>
> ***2.32*** *This, however, does not mean that the door for compromise with an errant taxpayer should forever remain closed. In the administration of fiscal laws, whose primary objective is to raise revenue, there has to be room for compromise and settlement. A rigid attitude would not only inhibit a one-time tax-evader or an unintending defaulter from making a clean breast of his affairs, but would also unnecessarily strain the investigational resources of the Department in cases of doubtful benefit to revenue, while needlessly proliferating litigation and holding up collections. We would, therefore, suggest that there should be a provision in the law for a settlement with the taxpayer at any stage of the proceedings. In the United Kingdom, the 'confession' method has been in vogue since 1923. In the U.S. law also, there is a provision for compromise with the taxpayer as to his tax liabilities. A provision of this type facilitating settlement in individual cases will have this advantage over general disclosure schemes that misuse thereof will be difficult and the disclosure will not normally breed further tax evasion. Each individual case can be considered on its merits and full disclosures not only of the income but of the modus operandi of its buildup can be insisted on, thus sealing off chances of continued evasion through similar practices.*

2.33 *To ensure that the settlement is fair, prompt and independent, we would suggest that there should be a high-level machinery for administering the provisions, which would also incidentally relieve the field officer of an onerous responsibility and the risk of having to face adverse criticism which, we are told, has been responsible for the slow rate of disposal of disclosure petitions. We would, therefore, recommend that settlements may be entrusted to a separate body within the Department, to be called the Direct Taxes Settlement Tribunal. It will be a permanent body with three members. The strength of the Tribunal can be increased later, depending on the work-load. To ensure impartial and quick decisions, and to encourage officers with integrity and wide knowledge and experience to accept assignments on the Tribunal, we recommend that its members should be given the same status and emoluments as the members of the Central Board of Direct Taxes.*

Any taxpayer will be entitled to move a petition before the Tribunal for settlement of his liability under the direct tax laws. We do not think that it is necessary to provide for cases being referred to the Tribunal by the Department. However, we wish to emphasize that the Tribunal will proceed with the petition filed by a taxpayer only if the Department raises no objection to its being so entertained. We consider that this will be a salutary safeguard, because otherwise the Tribunal might become an escape route for tax evaders who have been caught and who are likely to be heavily penalised or prosecuted. Once a case is admitted for adjudication, the Tribunal will have exclusive jurisdiction over it and it will no longer be open to the taxpayer to withdraw the petition. The Tribunal will take a decision after hearing both the assessee and the Department. The Tribunal should be vested with full powers as regards discovery and inspection, enforcing the attendance of any person, compelling production of books of account or any other documents and issuing commissions. It should also have the power to investigate cases by itself or, in the alternative, to have investigation carried out on any specific point or generally, in any case through the Income-tax Department. The terms of the award will be set down in writing and it will be open to the Tribunal to determine not only the amount of tax, penalty or interest but also to fix a date or dates of payment. The quantum

of penalty and interest will be in the discretion of the Tribunal. Similarly, the Tribunal may also in its discretion grant immunity from criminal prosecution in suitable cases. The award will be binding both on the petitioner and on the Department. The application of its decisions on questions of law, will, however, be confined to the case under settlement and will not in any way interfere with the interpretation of law in general. No appeal will lie against the decision of the Tribunal by the petitioner or the Department, whether on questions of fact or of law.

2.34 *The success of this measure will, to a very large extent, depend on the confidence which this Tribunal can inspire in the minds of the taxpayers as to its fairness and impartiality. For this reason, we consider it to be of paramount importance that only persons who are known for their integrity and high sense of justice and fairness are selected for appointment on the Tribunal."*

16. In furtherance to recommendations of the Wanchoo Committee, an amendment was brought adding Section 245H, specifying the power of the Settlement Commission to grant immunity from prosecution and penalty. The said provision is relevant, therefore, reproduced as thus:

"245H. Power of Settlement Commission to grant immunity from prosecution and penalty.— *(1) The Settlement Commission may, if it is satisfied that any person who made the application for settlement under section 245C has co-operated with the Settlement Commission in the proceedings before it and has made a full and true disclosure of his income and the manner in which such income has been derived, grant to such person, subject to such conditions as it may think fit to impose [for the reasons to be recorded in writing], immunity from prosecution for any offence under this Act or under the Indian Penal Code (45 of 1860) or under any other Central Act for the time being in force [and also (either*

wholly or in part) from the imposition of any penalty] under this Act, with respect to the case covered by the settlement:

[Provided that no such immunity shall be granted by the Settlement Commission in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of the application under section 245C:]

[Provided further that the Settlement Commission shall not grant immunity from prosecution for any offence under the Indian Penal Code (45 of 1860) or under any Central Act other than this Act and the Wealth-tax Act, 1957 (27 of 1957) to a person who makes an application under section 245C on or after the 1st day of June, 2007.]

17. Bare reading of the above and the recommendations of the Wanchoo Committee, it is clear that the assessee from whom the recovery of the unaccounted money has been allegedly reported, may apply before the Settlement Commission disclosing full and true income and the manner in which such income was derived. On such application, the Commission as it thinks fit, may grant immunity from penalty and prosecution of any offence under the IT Act or under the Indian Penal Code or under any other Central Act on such terms and conditions with respect to the subject matter covered under the settlement. Indeed, the proviso to Section 245H(1) is an exception from granting immunity in case where the complaint has been lodged before the date of receipt of application for settlement. At the same time, we cannot lose sight that the prosecution in either situation of Section 276C(1) ought

to be for wilful attempt to evade or pay tax. On literal construction of the first proviso, the prosecution initiated before the date of receipt of the application under Section 245C is saved, and the second proviso restrict the Settlement Commission to grant immunity from the prosecution as specified therein.

18. The aforesaid provisions do not, in any manner, affect the basic principles of criminal law that the prosecution has to prove the case on its own. In the facts, for an offence under Section 276C(1), for which a prosecution was lodged, wilful attempt to evade tax or penalty, which may be imposable or chargeable, *mens rea* of the assessee is required to be proved. In absence, lodging such prosecution would result into futility. Therefore, the ancillary question which arises is about the efficacy of the continuation of the complaint lodged, even though saved under the first proviso to Section 245H, hampering the power of the Settlement Commission to grant immunity from prosecution.

19. Mr. Preetesh Kapur, learned senior counsel, submits that as per the order of the Settlement Commission, it is clear that the assessee has disclosed all the facts, material for computation of his additional income without any suppression of account,

therefore, in exercise of order passed under Section 245D(4), immunity from levy of penalty was granted. It is not a case wherein due to the fraud or misrepresentation, the case of the appellant was reopened as per Section 245D(6) within the time as specified. In such circumstances, there cannot be any *mens rea* or wilful attempt to evade tax, which may be brought against the appellant to prove the allegation as alleged by prosecution. Learned senior counsel referring to Section 245-I of the IT Act submits, the order of the Settlement Commission shall be conclusive as to the matters stated therein. Section 245-I is relevant, which reads thus:

> ***"245-I. Order of settlement to be conclusive.***—*Every order of settlement passed under sub-section (4) of section 245D shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in this Chapter, be reopened in any proceeding under this Act or under any other law for the time being in force."*

20. Perusing the backdrop, from the recommendations of Wanchoo Committee till the date amendment was brought introducing Section 245H in the IT Act granting power of immunity to Settlement Commission, the Revenue was facing the challenge of minimal prosecution and also for effectively proving

the prosecution, what recourse ought to be taken was an issue before them. Simultaneously, the assessee who in bona-fide manner had disclosed the excess earning specifying the source without any suppression, were facing unnecessary prosecution. Therefore, to streamline the said situation the revenue has issued guidelines time and again. In the guidelines, it was specified that when an assessee is making an attempt to evade tax or its payment or penalty, if established, it is incumbent on the officers of the revenue to lodge the prosecution. In this regard, circular dated 24.04.2008 was published. Clause 3.3.1(iii) of the said circular deals with the offences under Section 276C(1) of IT Act. The relevant clause of the said circular is reproduced as under: -

> ***"(iii) Offences u/s 276C(1): Wilful attempt to evade taxes***
>
> *All cases where penalty u/s 271(1)(C) exceeding Rs.50,000/- is imposed and confirmed by the ITAT (if any second appeal has been filed) shall be processed for filing prosecution complaint.*
>
> *The case for prosecution under this section shall be processed by the A.O. preferably within 60 days of receipt of the ITAT's order, if any."*

The intent of the above scheme is indicative of the fact that the Department shall proceed to file prosecution/complaint only in those cases wherein penalty exceeding Rs. 50,000/- has been imposed by ITAT, within 60 days from the date of order of ITAT.

21. The Directorate of Income Tax, (PR PP & OL) has also published the Prosecution Manual, 2009, prescribing the 'procedure for launching prosecution'. In Clause 1.4 of Chapter III, specifying when the prosecution can be initiated. The said clause is relevant hence reproduced as under:

> ***"1.4 When can prosecution be initiated?***
>
> *A case should be processed for launching prosecution immediately after the commission of offence comes to the notice of the authority concerned. However, if some more evidences can be gathered during any proceedings, it would be advisable to complete such proceedings to gather all relevant evidences before initiating the prosecution. The Apex Court has laid down that if penalty for concealment fails then the prosecution initiated on same material/basis must also fail (M/s K.C. Builders Ltd Vs CIT [265 ITR 344]). Therefore, it is advisable to initiate prosecution under section 276C(1) only after confirmation of concealment penalty by the ITAT.*
>
> *xx xx xx xx"*

22. The said guideline was based on a judgment of ***'M/s K.C. Builders Ltd. Vs. CIT'***[9], wherein this Court laid down that if penalty for concealment fails, the initiation of the prosecution on the basis of the same material also fails, therefore, it was advised that after confirmation of concealment of penalty by ITAT, the prosecution may be lodged in terms as specified in the above circular dated 24.04.2008.

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9 (2004) 2 SCC 731

23. Similarly, on 09.09.2019, the Central Board of Direct Taxes (in short **"CBDT"**) in exercise of power under Section 119 of IT Act issued clarification qua the criteria to be followed for launching prosecution in respect of certain categories of offence under the IT Act, including Section 276C(1). The relevant portion is referred as under –

> ***"iii. Offences u/s 276C(1): Wilful attempt to evade tax, etc.***
>
> *Cases where the amount sought to be evaded or tax on under-reported income is Rs. 25 Lakhs or below, shall not be processed for prosecution except with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers as mentioned in Para 3.*
>
> *Further, prosecution under this Section shall be launched only after the confirmation of the order imposing penalty by the Income Tax Appellate Tribunal."*

24. As such, the departmental circular dated 24.04.2008, Prosecution Manual, 2009, and CBDT's circular dated 09.09.2019, provide when the prosecution ought to be lodged by Revenue. The said Circulars have been issued to regulate the lodging of prosecution in genuine cases and to weed out the problems of the tax payers, and also to understand when can the prosecution for Section 276 ought to be lodged and continued. The said circular and clarification have been brought after the statutory scheme of Section 245H(1) and the appended proviso.

In this situation, it is imperative for us to understand the binding nature of the departmental circular, Prosecution Manual, 2009, and CBDT's clarification.

25. Reflecting on the said issue, in '***Ranadey Micronutrients Vs. CCE'***[10], while dealing with a case concerning interpretation of circulars providing for classification of micronutrients for the purpose of imposition of excise duty, this Court held –

> ***"15.*** *There can be no doubt whatsoever, in the circumstances, that the earlier and later circulars were issued by the Board under the provisions of Section 37-B, and the fact that they do not so recite does not mean that they do not bind Central Excise officers or become advisory in character. There can be no doubt whatsoever that after 21-11-1994, excise duty could be levied upon micronutrients only under the provisions of Heading 31.05 as "other fertilisers". If the later circular is contrary to the terms of the statute, it must be withdrawn. While the later circular remains in operation the Revenue is bound by it and cannot be allowed to plead that it is not valid.*
>
> ***16.*** *We reject the submission to the contrary made by the learned counsel for the Revenue and in the affidavit by M.K. Gupta, working as Director in the Department of Revenue, Ministry of Finance. One should have thought that an officer of the Ministry of Finance would have greater respect for circulars such as these issued by the Board, which also operates under the aegis of the Ministry of Finance, for it is the Board which is, by statute, entrusted with the task of classifying excisable goods uniformly. The whole objective of such circulars is to adopt a uniform practice and to inform the trade as to how a particular product will be treated for the purposes of excise duty. It does not lie in the mouth of the Revenue to repudiate a circular issued by the Board on the basis that it is inconsistent with a statutory provision. Consistency and discipline are of far*

10 (1996) 10 SCC 387

greater importance than the winning or losing of court proceedings."

26. Further, in ***'Paper Products Ltd. Vs. CCE'***[11], where the dispute related to classification of products for the purpose of tax, in the context of circulars issued and in that regard, this Court observed as thus –

> ***"4.*** *The question for our consideration in these appeals is : what is the true nature and effect of the circulars issued by the Board in exercise of its power under Section 37-B of the Central Excise Act, 1944? This question is no more res integra in view of the various judgments of this Court. This Court in a catena of decisions has held that the circulars issued under Section 37-B of the said Act are binding on the Department and the Department cannot be permitted to take a stand contrary to the instructions issued by the Board. These judgments have also held that the position may be different with regard to an assessee who can contest the validity or legality of such instructions but so far as the Department is concerned, such right is not available."*

27. Likewise, in ***'UCO Bank Vs. CIT'***[12], this Court while dealing with the question as to whether there can be interest on the loan whose recovery is doubtful, and whether such can be included in the income of the assessee, observed as under –

> ***"12.*** *A similar view of CBDT circulars has been taken in the case of K.P. Varghese v. ITO [(1981) 4 SCC 173 (at p. 188)] by a Bench of two Judges consisting of P.N. Bhagwati and E.S. Venkataramiah, JJ. The Bench has held that circulars of the Central Board of Direct Taxes are legally binding on the Revenue and this binding character attaches to the circulars*

11 (1999) 7 SCC 84
12 (1999) 4 SCC 599

even if they be found not in accordance with the correct interpretation of the section and they depart or deviate from such construction. Citing the decision of Navnit Lal C. Javeri v. K.K. Sen [AIR 1965 SC 1375] this Court observed that circulars issued by the Central Board of Direct Taxes under Section 119 of the Act are binding on all officers and persons employed in the execution of the Act even if they deviate from the provisions of the Act. In Keshavji Ravji and Co. v. CIT [(1990) 2 SCC 231] a Bench of three Judges of this Court has also taken the view that circulars beneficial to the assessee which tone down the rigour of the law and are issued in exercise of the statutory powers under Section 119 are binding on the authorities in the administration of the Act. The benefit of such circulars is admissible to the assessee even though the circulars might have departed from the strict tenor of the statutory provision and mitigated the rigour of the law. This Court, however, clarified that the Board cannot pre-empt a judicial interpretation of the scope and ambit of a provision of the Act. Also a circular cannot impose on the taxpayer a burden higher than what the Act itself, on a true interpretation, envisages. The task of interpretation of the laws is the exclusive domain of the courts. However, the Board has the statutory power under Section 119 to tone down the rigour of the law for the benefit of the assessee by issuing circulars to ensure a proper administration of the fiscal statute and such circulars would be binding on the authorities administering the Act."

28. The Constitution Bench in the case of ***'Commissioner of Central Excise, Bolpur Vs. Ratan Melting & Wite Industries***,[13] on a reference made by three Judge Bench, addressing the conflict of difference of interpretation of a circular by the Central Board of Excise and Customs, and by this Court coupled with binding nature of the same, observed as follows –

13 (2008) 13 SCC 1

> ***"7.*** *Circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the court to declare what the particular provision of statute says and it is not for the executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law."*

29. Similarly, in ***'J.K. Lakshmi Cement Limited Vs. Commercial Tax Officer, Pali'***[14], this Court while dealing with a case where the assessee was a cement company seeking advantage of a 1986 notification granting partial tax exemption and a 2000 notification offering a lower tax rate of 6% but also explicitly stating that any dealer using its benefit would be ineligible for the 1986 exemption, harmoniously construed both and observed that circulars are binding on tax authorities. The Court observed as follows –

> ***"31.*** *Circulars issued under tax enactments can tone down the rigour of law, for an authority which wields power for its own advantage is given right to forego advantage when required and considered necessary. This power to issue circulars is for just, proper and efficient management of the work and in public interest. It is a beneficial power for proper*

14 (2016) 16 SCC 213

administration of fiscal law, so that undue hardship may not be caused. Circulars are binding on the authorities administering the enactment but cannot alter the provision of the enactment, etc. to the detriment of the assessee. Needless to emphasize that a circular should not be adverse and cause prejudice to the assessee. (See UCO Bank v. CIT [UCO Bank v. CIT, (1999) 4 SCC 599])"

30. In the recent pronouncement of this Court in ***'Commissioner of Central Excise and Service Tax, Rohtak Vs. Merino Panel Product Limited'***[15], in an appeal against order passed by CESTAT which had set-aside the show-cause notice issued by the Revenue, placing reliance on the judgements in ***Ranadey*** (supra) and ***Paper Products Ltd.*** (supra) and considering the binding nature of circulars, in paragraph 22 observed as follows:

"22. *Thus, the starting point of our analysis on this question is that the CBEC Circular of 1-7-2002 is binding on the Revenue. If the show-cause notice issued by the Revenue is found to be contrary to the Circular, it would prima facie result in abrogation of the uniformity and consistency which is strongly emphasised upon in Ranadey Micronutrients [Ranadey Micronutrients v. CCE, (1996) 10 SCC 387] . It goes without saying that the Revenue's stance against its own circular can potentially lead to a chaotic situation where, with one hand, the Revenue would lay down instructions on how to interpret the relevant statutes and rules, and with the other hand, it would promptly disobey those very directions. Maintaining predictability in taxation law is of utmost importance and, for this reason, the Court should not accept an argument by the*

15 (2023) 2 SCC 597

Revenue that waters down its own Circular as this would fall squarely within the contours of the prohibition outlined in Paper Products [Paper Products Ltd. v. CCE, (1999) 7 SCC 84]."

31. From the above precedents, this Court unambiguously held that that the circulars issued by the Revenue are binding on the authorities, and can tone down the rigour of the statutory provision. Therefore, it can be concluded that the circulars as discussed above are binding on the authorities who are administering the provisions of the IT Act.

32. After perusal of the provisions of the IT Act, various circulars issued by the department and also the judgments referred hereinabove, it can be safely culled out that if an assessee has made suppression of income without disclosing the manner in which the excess amount was earned and concealed the account making wilful attempt to evade the tax which may be imposable and chargeable or payable, he/she is required to be prosecuted. Therefore, the recourse to lodge prosecution was made permissible subject to the department's circular dated 24.04.2008 which provided for confirmation by ITAT in case the penalty imposed under Section 276C(1) is exceeding Rs. 50,000/-. It is relevant here to note that the said circular was in

vogue on the date of the grant of sanction by PDIT to DDIT for lodging the prosecution against the appellant. The said circular has been reaffirmed by the Prosecution Manual, 2009 and the clarification issued by the CBDT in 2019. As such, the circulars discussed above, were binding on the authorities and required to be adhered to while lodging the prosecution by the Revenue.

33. Admittedly, in the present case, the complaint was filed by DDIT after sanction of PDIT before the Additional Chief Metropolitan Magistrate (E.O.II), Egmore, Chennai, on 11.08.2018. Application under Section 245(C) was filed by the appellant before the Settlement Commission later. On the date of lodging the prosecution, the finding of concealment of income or imposition of the penalty of more than Rs. 50,000/- has not been recorded by the ITAT. Nothing has been brought on record to show that any wilful attempt to evade the payment of tax by assessee was made. No explanation has been put forth by Revenue to demonstrate as to why PDIT or DDIT did not comply the procedure while lodging prosecution in this case. Therefore, in our view, the act of the authority in continuing prosecution is in blatant disregard to their own binding circular dated 24.04.2008 and in defiance to the guidelines of the Department.

34. In contradistinction, the Settlement Commission passed an order under Section 245D(4) on 26.11.2019. The said order is relevant, therefore, reproduced as thus:

"GOVERNMENT OF INDIA
INCOME TAX SETTLEMENT COMMISSION
ADDITIONAL BENCH
640, ANNA SALAI, NANDANAM, CHENNAI-600 035.
* * * * * *

PROCEEDINGS BEFORE THE ADDITIONAL BENCH OF THE INCOME TAX SETTLEMENT COMMISSION, CHENNAI

Settlement Application No. : TN/CN54/2018-19/53-IT

Date of filing of the application : 07.12.2018

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xx xx xx xx

PRAYER:

Immunity from penalty and prosecution

6.1 The applicant has prayed for grant of immunity from levy of penalty and prosecution. It could be seen that proceedings u/s 276C(1) of the Income Tax Act, 1961 are pending before the Hon'ble High Court of Madras. In the circumstances, the applicant cannot be granted immunity waiver from prosecution, for the assessment years which are settled in this order.

6.2 However, the applicant has co-operated during the settlement proceedings. The applicant has disclosed all the facts, material to the computation of his additional income. Thus, the applicant has fully satisfied the provisions of section 245H. The overall additional income is not on account of any suppression of any material facts in the application. The additional income offered does not disclose any variance from the manner in which the additional income had been earned. Hence, the applicant is entitled to immunity from penalties under the Income-tax Act for the assessment years which are settled in this order.

6.3 Immunity granted to the applicant by this order may be withdrawn, if he fails to pay including interest within the time and the manner as specified in this order or fails to comply with other conditions, if any, subject to which the immunity is granted and, thereupon, the provisions of the Income-tax Act shall apply as if such immunity had not been granted.

6.4 Immunity granted to the applicant, may at any time be withdrawn, if the Commission is satisfied that the applicant had, in the course of settlement proceedings, concealed any particulars, material to the settlement or had given false evidence and, thereupon, the applicant may be tried for the offence with respect to which the immunity was granted or for any other offence of which the applicant appear to have been guilty in connection with the settlement, and the applicant shall become liable to the imposition of any penalty and/or prosecution under the Act, to which the applicant would have been liable had not such immunity been granted.

7. The order shall be void u/s 245D(6) if it is subsequently found that it has been obtained by fraud or misrepresentation of facts.

Sd-	*Sd-*
(ASHOK KUMAR SINHA)	***(T.P. KRISHNAKUMAR)***
MEMBER	***VICE CHAIRMAN***

Date: 26.11.2019

xx xx xx xx"

35. Perusal of the said order makes it clear that in the settlement proceedings, assessee has disclosed all the facts material to the computation of his additional income and fully satisfied the provisions of Section 245H. The Commission recorded a finding that overall additional income is not on account of any suppression of any material facts and it does not

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disclose any variance from the manner in which the said income had been earned. As such the immunity from penalty under IT Act was granted in exercise of powers under Section 245H. From perusal of Section 245-I, it is clear that every order of settlement shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided, be reopened in any proceeding under the Act or under any other law for the time being in force.

36. In view of the foregoing discussions in conclusion we can safely hold that the prosecution lodged with the help of proviso to sub-section (1) to Section 245H was in defiance to the circular dated 24.04.2008, which was in vogue. It was the duty of the PDIT and DDIT to look into the facts that in absence of any findings of imposition of penalty due to concealment of fact, the said prosecution cannot be proved against the assessee. It seems, even after passing the order by the Settlement Commission on 26.11.2019, it was brought to the notice of the High Court, but the authorities were persistent to pursue the prosecution without looking into the procedural lapses on their part. Such an act cannot be construed in right perspective and the Revenue have acted in blatant disregard to binding statutory instructions. Such

willful non-compliance of their own directives reflects a serious lapse, and undermines the principles of fairness, consistency, and accountability, which in any manner cannot be treated to be justified or lawful.

37. It must also be noted that, in terms of Section 245-I, the findings of the Settlement Commission are conclusive with respect to the matters stated therein. Once such an order was passed, it was incumbent upon the authorities to inform the High Court that continuation of the prosecution would amount to an abuse of the process of law, in particular when the Settlement Commission did not record any finding of wilful evasion of tax by the appellant. Even otherwise, it was the duty of the High Court to examine the facts of the case in their right context and assess whether, in light of the above circumstances, the continuation of the prosecution would serve any meaningful purpose in establishing the alleged guilt. Upon a holistic consideration of the matter, we are of the view that the conduct of the authorities lacks fairness and reasonableness, and the High Court's approach appears to be entirely misdirected, having failed to appreciate the factual and legal position in right earnest.

38. In view of the foregoing discussions, we are constrained to allow these appeals setting aside the order impugned passed by the High Court. It is directed that prosecution lodged by the Revenue against the appellant shall stand quashed. In the facts and circumstances of the case as discussed hereinabove, we are inclined to impose costs against the Revenue which is quantified at Rs. 2,00,000/- payable to the appellant. Pending application(s), if any, shall stand disposed of.

.....J.

(J.K. MAHESHWARI)

.....J.
(VIJAY BISHNOI)

NEW DELHI;
AUGUST 28th, 2025.

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