

A COMMISSIONER OF INCOME TAX, MUMBAI
v.
BHUPEN CHAMPAK LAL DALAL AND ANR. ETC.

FEBRUARY 27, 2001

B [S. RAJENDRA BABU AND S.N. PHUKAN, J.J.]

Code of Criminal Procedure, 1973—Section 151—Stay of proceedings—Appeals regarding assessment of income pending before the Income-Tax Tribunal—Proceedings in criminal cases also pending—Held, when the findings of the appellate authorities are relevant to the criminal proceedings pending, the proceedings of the criminal court be stayed—Income Tax Act, 1961.

D Criminal cases were filed against the respondents for the offences punishable under the Income-Tax Act, 1961. Appeal regarding assessment were also filed before the Income-tax Appellate Tribunal. Respondent filed application for stay of proceedings before the criminal court. Metropolitan Magistrate allowed the application. Sessions Court dismissed the revision petitions filed by the petitioner. High court also dismissed the writ petition and granted interim order staying the proceedings in the criminal cases before the Metropolitan Magistrate. Hence these Special Leave Petitions.

Dismissing the petitions, the Court

HELD : 1.1. The prosecution in criminal law and proceedings arising under the Income-tax Act are independent proceedings and there is no impediment in law for the criminal proceedings to proceed during the pendency of the proceedings under the Act. However, a wholesome rule will have to be adopted when the conclusions arrived at by the appellate authoritises have a relevance and bearing upon the conclusions to be reached in the criminal case, one authority will have to await the outcome of the other authority. [180-C]

G *G.L. Didwania and Anr. v. Income Tax Officer and Anr.*, [1995] Supp 2 SCC 723; *Uttam Chand and Ors. v. Income-Tax Officer, Central Circle Amritsar*, [1982] 2 SCC 543; *P. Jayappan v. S.K. Perumal, First Income-Tax Officer, Tuticorin*, [1984] Supp. SCC 437, referred to.

CRIMINAL APPELLATE JURISDICTION : Special Leave Petition

(Crl) No. 2430 of 2000. A

From the Judgment and Order dated 29.4.99 of the Bombay High Court in Crl. A. No. 613/99 Converted in Crl. W.P. No. 587 of 1999.

WITH

SLP. (Crl.) Nos. 2995 and 3141 of 2000. B

Altaf Ahmad, Additional Solicitor General, Laxmi Aiyangari, Rajiv Nanda, R.N. Verma, Amit Mahajan, B.V. Balram Das and Ms. Sushma Suri for the Petitioner.

Dr. Rajiv Dhavan, Vimal Chandra, S. Dave, Manoj Shukla, S.S. Shinde and S. V. Deshpande for the Respondents. C

The Judgment of the Court was delivered by

RAJENDRA BABU, J. Twelve cases were lodged against the respondents under the Income Tax Act, 1961 [hereinafter referred to as 'the Act'] before the Metropolitan Magistrate for offences punishable under the Act. In relation to the assessments arising under the Act, appeals had been preferred either before the Commissioner of Income Tax [Appeals] or the Income Tax Appellate Tribunal [hereinafter referred to as 'the Tribunal']. On the basis that the appeals were pending the respondents filed applications for stay of the proceedings arising before the criminal court. Several decisions were cited before the court to support the contention that the decision of the appellate authorities in the income tax proceedings would be relevant to the criminal prosecution instituted against the respondents. The learned Magistrate, after examining the position in law as to whether the findings of the appellate authorities are relevant for the purpose of the criminal proceedings and to avoid conflicting decisions of the criminal court and the appellate authorities, felt that it would be appropriate to grant an interim order of the following nature:

"ORDER

The work of recording evidence shall proceed. However, passing of order about framing of charge, discharge of the accused or acquittal of the accused shall be stayed during pendency of the appeals by the accused before the Income Tax Appellate Authorities. These orders will be passed after the appeals filed by the accused before the Income Tax Authorities are finally decided." G

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A Against that order, revision petitions were filed before the Sessions Court. The Sessions Court did not interfere with the order made by the learned Magistrate and dismissed the same. Thereupon, the matter was carried further to the High Court and the High Court, while entertaining a writ petition noticing several decisions of that High Court and of this Court, issued rule in the matter and granted an interim order staying the proceedings in the criminal cases filed before the learned Magistrate. It is against this order that these special leave petitions have been filed.

B The prosecution in criminal law and proceedings arising under the Act are undoubtedly independent proceedings and, therefore, there is no impediment in law for the criminal proceedings to proceed even during the pendency of the proceedings under the Act. However, a wholesome rule will have to be adopted in matters of this nature where courts have taken the view that when the conclusions arrived at by the appellate authorities have a relevance and bearing upon the conclusions to be reached in the case necessarily one authority will have to await the outcome of the other authority.

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D This Court in *G.L. Didwania & Anr. v. Income Tax Officer & Anr.*, [1995] Supp. 2 SCC 724, dealt with the similar situation where there is a prosecution under the Act for making a false statement that the assessee had intentionally concealed his income and the Tribunal ultimately set aside the assessment holding that there is no material to hold that such income belong to the assessee and the petition was filed before the Magistrate to drop the criminal proceedings and thereafter an application was filed before the High Court under Section 482 Cr.P.C. to quash those criminal proceedings. This Court held that the whole question is whether the appellant made a false statement regarding the income which according to the assessing authority has escaped assessment and this issue was dependent on the conclusion reached by the Appellate Tribunal and hence the prosecution could not be sustained. In *Uttam Chand & Ors. v. Income Tax Officer, Central Circle, Amritsar*, [1982] 2 SCC 543, this Court held that in view of the finding recorded by the Tribunal on appraisal of the entire material on the record that the firm was a genuine firm and the assessee could not be prosecuted for filing false returns and, therefore, quashed the prosecution. In *P. Jayappan v. S.K. Perumal, First Income-Tax Officer, Tuticorin*, [1984] Supp. SCC 437, this Court observed that the pendency of the reassessment proceedings under the Act cannot act as a bar to the institution of the criminal proceedings and postponement or adjournment of proceedings for unduly long period on the ground that another proceedings having a bearing on the decision was not proper.

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In the present case, there is no claim of quashing of the proceedings. When ultimately the result to come out of the proceedings before the appellate authorities have a definite bearing on the cases alleged against the respondents, we find that the High Court is justified in granting the interim order it did and we do not think that such an interim order calls for interference at our hands. The learned counsel on either side relied on several decisions, but in the view we have taken, it is unnecessary to refer to those decisions.

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The petitions are, therefore, dismissed. No costs.

N.J.

Petitions dismissed.

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