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~~IN THE HIGH COURT OF DELHI~~

~~Date of decision: December 8, 1999~~

~~Crl. R. No. 33/98~~

~~ASST. COMMISSIONER OF INCOME TAX.....PETITIONER  
.....THROUGH: MR. SANJEEV KHANNA WITH  
.....MS. PREM LATA BANSAL,  
.....ADVOCATES~~

~~VERSUS~~

~~MR. S. P. BANSAL & ORS.....RESPONDENTS  
.....THROUGH: NONE FOR RESPONDENT NO.1.  
.....MS. RITU JAIN,  
.....ADVOCATE FOR RESPONDENT NO.2.  
.....MR. H. J. S. AHLUWALIA,  
.....ADVOCATE FOR RESPONDENT NO.3.~~

~~Coram:~~

~~The Hon'ble Mr. Justice M. S. A. Siddiqui~~

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? No.

~~M. S. A. SIDDIQUI, J.~~

The respondent No.1 is an assessee under the Income Tax Act (hereinafter referred to as the Act). He was required to file his income tax return relating to the assessment year 1987-88 on or before 31.7.1987 as envisaged under Section 139(1) of the Act. Since the return was not filed within the specified time, a notice under Section 139(2) of the Act was served upon the respondent No.1 on 4.8.1987. The respondent No.1 filed the return only on 20.1.1989 and thereby committed an offence punishable under Section 276 C.C. of the Act. In the return filed on

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20.1.1989, the respondent No.1 declared a loss of Rs.1,07,070/- and by the assessment order dated 31.3.1989, his total income was assessed at Rs.22,12,927/-. In the aforesaid return, the respondent NO.1 in collusion with the respondent No.2 had deliberately made a false statement regarding sale transactions worth Rs.20,50,000/- and kept false accounts with the intention of using them in the assessment proceedings. On these allegations, a complaint under Sections 276-CC, 276-C, 277 and 278 of the Act was filed against the respondents. On the complaint being filed, the learned Magistrate issued process against the respondents. During pendency of the complaint, the respondent No.1 filed an appeal against the assessment order. By the orders dated 26.9.1994, passed in I.T.A. No.1329(Del)/1990, the Income Tax Appellate Tribunal, New Delhi set aside the order of assessment and remanded the matter to the Assessing Officer for re-assessment. On the basis of the said remand order, the respondents filed an application before the trial court for dropping the proceedings, which was dismissed vide order dated 3.7.1995. Aggrieved thereby, the respondent No.1 moved the Additional Sessions Judge by filing a revision petition, which was allowed and the proceedings against the respondents were dropped. Hence this revision.

It is undisputed that the re-assessment proceedings are pending against the respondents. Thus, the question is whether the prosecution for offences punishable under Sections 276-C/276-CC/277/278 of the Act instituted by the

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Income Tax Department while the re-assessment proceedings under the Act are pending are liable to be quashed on the ground that they were not maintainable. The Apex Court had an occasion to consider similar question in P. Jayappan v. S.K. Perumal, 1984 (149) ITR 696 and it was held that the pendency of the re-assessment proceedings cannot act as a bar to the institution of the criminal prosecution for offences punishable under Section 276-C or Section 277 of the Act. The learned Magistrate was, therefore, right in refusing to drop the proceedings. But the learned Additional Sessions Judge misconstrued the dictum laid down by the Apex Court in the case of P. Jayappan (supra) and took a wholly erroneous view that the prosecution, once instituted under the provisions of the Act, cannot be allowed to continue during the re-assessment proceedings. In this context, I may usefully excerpt the following observations of their Lordships of the Supreme Court in the case of P. Jayappan (supra):-

It is true that, as observed by this court in Uttam Chand v. ITO (1982) 133 ITR 909, the prosecution once initiated may be quashed in the light of a finding favourable to the assessee recorded by an authority under the Act subsequently in respect of the relevant assessment proceedings but that decision is no authority for the proposition that no proceedings can be initiated at all under s. 276C and s. 277 as long as some proceeding under the Act in which there is a chance of success of the assessee is pending. 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. 276C and s. 277.



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In my opinion, the case in hand is squarely covered by the decision of the Supreme Court in the case of P. Jayappan (supra) inasmuch as there is no order made by the Income Tax Appellate Tribunal in disbelieving the allegations which are the subject matter of the complaint.

A mere expectation of success in the re-assessment proceedings under the Act cannot come in the way of continuance of the criminal proceedings under Sections 276-C, 276-CC and Section 277 of the Act. Thus, the learned Additional Sessions Judge has committed a manifest illegality in passing the impugned order for dropping the criminal proceedings against the respondents which has resulted in flagrant miscarriage of justice.

In the result, the revision is allowed and the impugned order dated 15.10.1997 passed by the Additional Sessions Judge is set aside and the order dated 3.7.1995 passed by the Additional Chief Metropolitan Magistrate is re-stored. Parties are directed to appear before the trial court on 20.12.1999.

December 8, 1999  
dsr

(M.S.A. SIDDIQUI)  
JUDGE