



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 16029 of 2023
With
CRIMINAL MISC.APPLICATION (FOR STAY) NO. 1 of 2025
In R/SPECIAL CRIMINAL APPLICATION NO. 16029 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE

Sd/-

Approved for Reporting	Yes	No
		No

N.R. AGARWAL INDUSTRIES LIMITED & ORS.

Versus

STATE OF GUJARAT & ORS.

Appearance:

MR SN SOPARKAR, SR. COUNSEL, WITH MR SHEGUN B

CHOKSHI(12790) for the Applicant(s) No. 1,2,3,4,5,6,7,8

MR SP MAJMUDAR(3456) for the Applicant(s) No. 1,2,3,4,5,6,7,8

MR RUTVIJ R PATEL(10615) for the Respondent(s) No. 2,3

MR HARDIK SONI AGPP for the Respondent(s) No. 1

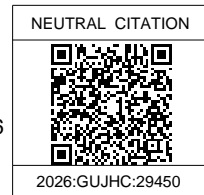
CORAM:HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE

Date : 01/05/2026

ORAL JUDGMENT

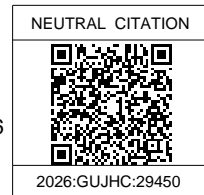
1. By the present Special Criminal Application under Article 226 of the Constitution of India and under Section 482 of the Criminal Procedure Code, 1973, the petitioners herein are seeking quashing of the Criminal Case No.2706 of 2000 pending before the learned Chief Judicial Magistrate, Surat.

2. The brief facts in the present case are that, the raid came to be carried out on the business premises of the petitioner No.1 company and at the residence of its Directors on 01.12.1995. Block Assessment order dated 30.01.1997 for the period from 01.04.1985 to 06.01.1996 came to be made in respect of income



of Rs.32,75,608/-. That thereafter in an appeal to the Income Tax Appellate Tribunal, vide order dated 18.05.1998, the learned Tribunal reduced the income to Rs.37,25,347/-. The said order of the learned Tribunal came to be given effect to and accordingly on 30.11.1998, a show cause notice came to be issued to the petitioners by the Dy. Commissioner of Income Tax (DCIT). That by order dated 08.06.2000, the Commissioner of Income Tax sanctioned the prosecution against the petitioners herein under Sections 279(1) of the Income Tax Act, 1961 [*IT Act* for short]. Aggrieved by the lodging of prosecution, the petitioners filed Criminal Misc. Application No.3436 of 2004. Pending the said Criminal Misc. Application No.3436 of 2004, by order of merger dated 02.02.2007 passed by the Bombay High Court, the N.R.Paper & Board Pvt. Ltd. came to be merged with the N.R.Agarwal Industries Ltd. That the said Criminal Misc. Application No.3436 of 2004 came to be dismissed for non-prosecution vide order dated 02.02.2012. That thereafter the petitioners have filed the present Special Criminal Application.

3. Mr. S.N.Soparkar, learned Senior Counsel appearing for the petitioners submits that the company N.R. Agarwal Industries Ltd. which was the sister concern of the erstwhile N.R.Paper & Board Pvt. Ltd. into which the present company stood merged had also preferred Special Criminal Application No.3437 of 2004 challenging quashing of the complaint lodged under Sections 276C(1), 277 and 278B of the IT Act as in the present case. It is submitted that by order dated 26.10.2018, the Coordinate Bench of this Court has allowed the Criminal Misc. Application No.3437 of 2004 and set aside the impugned

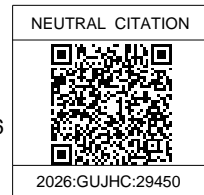


criminal proceedings initiated by the respondent No.2 herein being Criminal Case No.2705 of 2000.

3.1 The learned Senior Counsel further submits that the other group companies of the petitioner company against whom the criminal prosecution came to be lodged by the respondent No.2 also came to be quashed by the another Coordinate Bench of this Court vide order dated 17.03.2023 in Criminal Misc. Application Nos.3438 of 2004, 3441 of 2004, 3439 of 2004 and 3440 of 2004.

3.2 The learned Senior Counsel further submits that the orders dated 26.10.2018 in Criminal Misc. Application No.3437 of 2004 came to be challenged before the Hon'ble Supreme Court which also came to be dismissed. He further submits that even the common judgment and order of another Coordinate Bench in Criminal Misc. Application No.3438 of 2004 and other connected matters also came to be challenged in the Hon'ble Supreme Court by way of Special Leave Petition (Criminal) No. 9355 of 2024 which also came to be dismissed by order dated 15.07.2024. The learned Senior Counsel, therefore, submits that the present petitioner being a group company, the prosecution of the same has been simultaneously initiated in view of the raid carried out in the business premises of the petitioner company on 01.12.1995 and hence, the present Special Criminal Application be allowed.

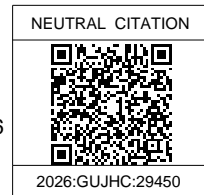
4. Mr. Rutvij R. Patel, learned standing counsel appearing for the respondent No.2 submits that the present petitioner is a part of the group company of N.R.Agarwal Industries Ltd. He submits



that the raid had taken place simultaneously. He further submits that the prosecution in case of other group companies has been quashed by this Court. He submits that even the Special Leave Petitions preferred by the department before the Hon'ble Supreme Court have also been dismissed and the order of the Coordinate Bench has been confirmed. He, therefore, submits that appropriate orders may be passed.

5. Heard learned counsels for the parties, perused the documents and considered the submissions.

6. It is not in dispute that the petitioner company herein is a part of the group companies which came to be raided on 01.12.1995 by the respondent No.2. In the said raid undisclosed income came to be discovered by the department. Undisputedly, the criminal prosecution has been initiated against the group companies under Sections 276C(1), 277 r.w. 278 of the ID Act. Pursuant thereto, a Criminal Case No.2706 of 2000 came to be filed against the N.R. Paper & Board Pvt. Ltd. and its Directors which has subsequently amalgamated with the petitioner company by order dated 02.02.2007 passed by the Bombay High Court. Prior to the merger, the present petitioner was named as N.R. Paper & Board Pvt. Ltd. The prosecution was initiated against it being Criminal Case No.2706 of 2000. The present petitioner N.R. Agarwal Industries Ltd. was a separate entity at the relevant point of time and against it also separate Criminal Case No.2705 of 2000 came to be filed which came to be quashed vide order dated 27.10.2018 in Criminal Misc. Application No.3437 of 2004. The erstwhile company N.R. Paper



& Board Pvt. Ltd. has now merged with the N.R. Agarwal Industries Ltd.

7. The Coordinate Bench of this Court in Criminal Misc. Application No.3437 of 2004 vide order dated 26.10.2018 – N.R.Agarwal Industries Ltd. v. Joint Commissioner of Income Tax Special Range-2 has held as under:-

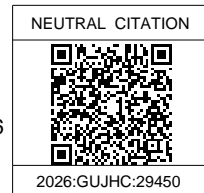
“23. Having regard to the facts and circumstances and submissions made by learned counsel for the applicants and by learned counsel for the respondent authorities, and a careful perusal of a compliant for which order under Section 279 (1) of the IT Act, 1961 passed by the competent authority and accorded sanction for which now Criminal Case No.2705 of 2000 is pending before the Court of learned Chief Judicial Magistrate, Surat, along with assessment orders for block assessment for the assessment years 1986-87 to 1996-97, for which accounting period is shown separately, the above order of assessment dated 30.1.1997 referred to difference in stock so found during the course of search, the assessing officer records explanation rendered by the counsel appearing on behalf of assessee that the stock which was continuously packed and placed in the bonded store and entered in RG-1 Register would keep on increasing but ultimately an addition of Rs.3,30,000/- was made for the assessment year 1996-97 in the block period and finally undisclosed income on account of excess stock, for the said period was valued at Rs.3,33,000/- with tax payable on undisclosed income at the rate of 60% with permissible surcharge under Section 158 BC (c) read with Chapter XIV-B of the Act.

24. In appeals preferred being ITAT No.74 of 1997 and allied appeals by the companies in the case of N.R.Agrawal Industries Limited, action of AO in making addition of Rs.3,33,000/- was upheld. With regard to levy of surcharge, AO was directed to give an opportunity of hearing to assessee and then re-adjudicate the question as to whether levy of charge or not in accordance with law relating to block period under consideration by passing speaking order and the above issue was set aside and restored to file of AO.

25. In view of above order dated 18.5.1998 passed by ITAT, Ahmedabad Bench, in Appeal No.71/1997 deduction was given under Section 80IA of the Act to the extent of Rs.99,900/- and refused undisclosed income so assessed to Rs.2,33,100/- and no surcharge was to be levied at present and revised demand notice was to be issued. The assessee has also replied to notice dated 30.11.1998 issued by Deputy Director of Income Tax (Prosecution) Surat, by reply dated 7.1.1999, wherein it was contended that “undisclosed income in Section 158 B (b) include any money, bullion, jewellery or other valuable article or thing or any income based on any entry in the books of accounts or other documents or transactions where such asset, entry or other document or



transaction repaying wholly or partly income or property which has not been or would not have been disclosed for the purposes of the Act. Therefore, what the assessee had already disclosed or would have disclosed is not to be treated as undisclosed income. Besides, reference was made to Chapter XIV-B of the Act, whereby the undisclosed income incorporated into the scheme with effect from 1.7.1995 to 30.12.1996 was deleted and, accordingly, search was required to be assessed separately, for which budget note for the year 1995-96 were also relied on. The assessee tried to justify that the block assessment period was, therefore, a single unit of assessment year comprising a period of ten years and, hence, the income tax in the block assessment would not be said to be relating to the particular year of regular year of assessment. It was with this objective only the concept of block assessment was introduced. The assessee also relied on various other provisions. By relying on comparison of provisions for block assessment for the period 1.7.1995 to 31.12.1996 and similar provisions which were made effective from 1.1.1997, the prosecution was never intended by the Legislature, it was clear according to assessee that the period covering the search of the assessee for which no time limit was prescribed for filing the returns of income tax in Form No.2B under Section 158BC of the Act, which was amended by introducing Section 158BC (a) (ii) of the Act from 1.1.1997. At the same time, there was no provision for payment of tax which was amended by introducing Section 158BFA from 1.1.1997 and, therefore, during the period from 1.7.1995 to 31.12.1996, the tax was to be paid at the time of determination of income irrespective of the date of filing the return of undisclosed income and irrespective of the amount of undisclosed income. It was also clear that had there been any intention of levying any penalty or prosecution, the legislature would have been specific or would have introduced the provisions of Section 158 BC (a) (ii), and Section 276 CCC, since the provisions of Section 276 CCC was introduced from 1.1.1997 for prosecution for willful failure to furnish the return of income in such cases and by specific proviso contained in the Section provided that no person shall be punished for any failure to this Section in respect of search initiated under Section 132 or books of accounts or other documents etc. requisitioned under Section 132A after 30.6.1996 but before 1.1.1997. Therefore, specific exemption for the block period covering the case of the assessee-company indicated that if there was any intention of the legislature the specific provision for prosecution would have been introduced for such cases but in absence of such provision, it could be easily inferred that the legislature intended to grant immunity for the block period covering the case of the assessee company. Reliance was also placed under Section 158B (i) of the Act read with Section 158 BC whereby what is assessed is the undisclosed income of the block period and not total income of any previous year and the determination of the undisclosed income is the income, which was not disclosed or determined in the regular assessments. Therefore, what was concealed for regular assessment is taxed as undisclosed income in the block assessment. Even it was pleaded that there was no willful attempt to evade any tax so as to bring provisions under Section 276 (c) (i) of the Act and immunity granted by Section 158 BF from levy of interest and penalty under Section 271 (1) (c), 271 (A), 271-B of the Act. That there is no mention of Section 276-C in Section 158BF of the Act and, as a matter of fact, a careful reading of Section 276-C transpires that if a person willfully admits to evade any tax, penalty or interest



chargeable or imposable under the Act, 1961 then only prosecution can be launched.

26. *None of the authorities gave clear finding about evading tax willfully and on the contrary deduction was given under Section 80IA by ITAT Bench to the extent of Rs.99,900/-. Therefore, a company having past turnover and shown in third annual report 1995-96, C.I.F. value of imports of raw-material and capital goods to be considered in quantity, it was 6138.894 for the value of Rs.7,24,23,783/-. Minor lapse on the part of the assessee of not mentioning such a stock, undisclosed income in the facts of this case do not attract launch of prosecution under Section 276-C (i) and 277 read with Section 278-B of the IT Act, 1961.*

27. *So far as decisions relied on by learned counsel for the applicants as well as for the respondents, proposition of law laid down therein cannot be disputed but at the same time, in a given case, question about validity of sanction of prosecution can be gone into by the trial Court for which powers to quash the complaint may not be exercised and, in a given case, de hors the order setting aside penalty proceedings by the Tribunal, the criminal proceedings can go on, but here in the facts of this case, it cannot be said that with mala fide intention and to evade the tax, stock in the stock book was not shown by the assessee and keeping the above factor in mind, vis-a-vis Sections 143, 158 BC, 158 BF, 271 (1)(c), 271-A, 271 B read with Sections 276-C(i), 277 and 278-B of IT Act, 1961 and parameters of Section 482 of Criminal Procedure Code, allowing criminal case to proceed would subject assessee to rigmarole of trial resulting into unavoidable hardships and to secure end of justice, I am inclined to allow present application. Accordingly, present application is allowed by quashing and setting aside the impugned criminal proceedings launched by respondent no.1 by way of Criminal Case No.2705 of 2000 in the Court of Chief Judicial Magistrate, Surat, so far as present applicant is concerned. Rule is made absolute accordingly.”*

8. Another Coordinate Bench of this Court vide order dated 17.03.2023 in Criminal Misc. Application No.3438 of 2004 and connected matters has held thus:-

“11. *From the above discussion, it clearly appears to this Court that the issue involved in the present group of applications and Criminal Misc. Application No.3437 of 2004 decided by the learned Coordinate Bench of this Court appears to be substantially similar and whereas under such circumstances, the law laid down by the learned Coordinate Bench would also cover the issue in question in the present group of applications.*

12. *It would be pertinent to mention here that the learned Advocate appearing on behalf of the respondent Department had attempted to argue that attention of learned Coordinate Bench had not been drawn to Section 278E and, therefore, the law laid down by the learned Coordinate Bench may not be binding on this Court, in the considered opinion of this Court,*



such a submission cannot be countenanced. As far as the contention of Mr.Raval that a particular section or provision was not brought to the notice of the Court, though the same was not reflected in the order, normally it is deemed and presumed that the Court had considered it. It would be relevant to mention here that the learned Coordinate Bench had inter alia held that upon introduction of Section 158BFA and Section 158BC(a)(ii) and Section 276CCC from 1.1.1997, the legislature had envisaged prosecution for willful failure to furnish return of income in search cases, and whereas in absence of a specific provision between the period from 1.7.1995 to 1.1.1997, it could be inferred that the legislature had intended to grant immunity in such type of cases. Essentially what has been emphasized is the lack of any provisions to prosecute an assessee during the period between 1.7.1995 to 1.1.1997, which period covers the present cases also.

12.1. Furthermore, by relying upon Section 278E of the IT Act 1961, learned Advocate for the respondent Income Tax Department intends to submit that the said Section envisages existence of culpable mental state in a prosecution for any offence and whereas, the defence has been imposed with a burden of rebutting such prosecution. It was intended to be submitted that such rebuttal could only be at the trial stage of the complaint and, therefore, an application for quashing complaint under Section 482 may not be the remedy. In the considered opinion of this Court, as noted herein above, since the learned Coordinate Bench has taken a view as regards there being no provision existing at the relevant point of time whereby the Income Tax Department could launch a prosecution as regards income disclosed in block assessment for the period between 1.7.1995 to 1.1.1997, automatically and as a direct consequence, quashing of prosecution is the only necessary corollary. Having come to such a conclusion, there was no requirement for the learned Coordinate Bench to have discussed with regard to applicability of Section 278E of the Act and whereas in the considered opinion of this Court, therefore, the submission of the learned Advocate for the Income Tax Department cannot be accepted.

13. Furthermore, insofar as the submission of the learned Advocate for the Income Tax Department that the decision in Criminal Misc. Application No.3437 of 2004 would not be applicable on the ground that the heads on which incomes were not disclosed were different than the heads of undisclosed incomes in the present case, therefore, the same may not be applicable. In the considered opinion of this Court, the Criminal Complaint has been filed by the Department inter alia alleging commission of offences punishable under Section 276C, Section 277 read with Section 278B of the Act. A bare perusal of Section 276(1) would reveal that punishment is to be imposed for willful attempt to evade tax, penalty or interest and whereas the heads of income under which there has been any alleged willful attempt as per the Scheme of the Section does not hold any special relevance.

13.1. In this regard it would also be relevant to note that while it is undoubtedly true that the learned Coordinate Bench of this Court had made observations with regard to the heads of income in the judgement dated 26.10.2018, but at the same time what would be necessary to note is the fact that having decided the preliminary issue as regards there being



no power vested with the Income Tax Department to launch a prosecution with regard to undisclosed income for block assessment for the period between 1.7.1995 to 1.1.1997, the necessary consequence would be quashment of the Complaints. The latter observations would not have made any difference to the final finding on the issue. Under such circumstances, in the considered opinion of this Court, the fact of heads on which income had not been disclosed being different and distinct in the present group of cases and the decision by the learned Coordinate Bench in Criminal Misc. Application No.3437 of 2004 would not be of any material consequence and hence, the said submissions is also not countenanced.

14. *In view of the above discussion, more particularly since this Court has come to a conclusion that the decision of the learned Coordinate Bench dated 26.10.2018 in Criminal Misc. Application No.3437 of 2004, substantially and essentially covers the issue raised in the present group of applications and whereas since the law laid down by the learned Coordinate Bench being binding upon this Court, therefore, the present group of applications also require consideration.*

15. *Consequently, the impugned Criminal Complaints No.2707 of 2000, 2708 of 2000, 2709 of 2000 and 2710 of 2000 pending in the Court of learned Chief Judicial Magistrate, Surat are hereby quashed and set aside. The present applications are allowed accordingly. Rule is made absolute to the aforesaid extent.”*

9. It is not in dispute that the raid has been carried out on the business premises of the group companies of N.R.Agarwal Industries Ltd. of which group the petitioner is also a part. At the relevant point of time when the prosecution was lodged, the petitioner company was N.R.Paper & Board Pvt. Ltd. which has subsequently merged with the N.R.Agarwal Industries Ltd. It is further not in dispute that the prosecution lodged against N.R.Agarwal Industries Ltd. separately has been quashed by this Court vide order dated 26.10.2018 in Criminal Misc. Application No.3437 of 2004 by the Coordinate Bench of this Court and criminal prosecution against other sister concern companies has been quashed by another Coordinate Bench of this Court vide order dated 17.03.2023 in Criminal Misc. Application No.3438 of 2004 and connected matters. Further, the respondent No.2 department had also preferred Special Leave Petitions (Criminal)



in the Hon'ble Supreme Court against the aforesaid two orders which came to be dismissed. Therefore, the aforesaid orders have become final. The case of the petitioners herein is similar and therefore, in the facts and circumstances of the present case, the orders passed by the Coordinate Bench of this Court referred to hereinabove would also govern the issue in question in the present Special Criminal Application. The learned counsel for the respondents does not dispute the said legal position of the applicability of the orders of the Coordinate Benches as mentioned hereinabove.

10. In the present case also, the prosecution has been lodged with regard to undisclosed income for the block assessment for the period between 01.07.1995 to 01.01.1997. This Court having held that no power vested with the Income Tax Department to lodge such a prosecution with regard to undisclosed income becoming final, the necessary consequence in the present case would also be to allow the present Special Criminal Application.

11. In view of the above discussion and the submissions made by learned counsels for the parties, this Court is satisfied that the decisions of the Coordinate Benches dated 26.10.2018 in Criminal Misc. Application No.3437 of 2004 as well as order dated 17.03.2023 in Criminal Misc. Application Nos.3438 of 2004 and other connected matters substantially cover the issue raised in the present Special Criminal Application and the law as laid down by the Coordinate Benches is binding in the present case.



12. As a result, the Criminal Case No.2706 of 2000 pending in the Court of learned Chief Judicial Magistrate, Surat is hereby quashed and set aside. The present Special Criminal Application is accordingly allowed. Rule is made absolute to aforesaid extent. No order as to costs.

In view of disposal of main Special Criminal Application, the Criminal Misc. Application No.1 of 2025 for stay does not survive.

KAUSHIK D. CHAUHAN

Sd/-
(ANIRUDDHA P. MAYEE, J.)