THE HONOURABLE SRI JUSTICE RAJA ELANGO

Criminal Petition No.6043 of 2012

ORDER:

This petition under Section 482 of Cr.P.C. is filed by A.1 to A.7 to quash the proceedings against them in C.C.No.84 of 2012 pending on the file of Special Judge for Economic Offences at Hyderabad under Sections 276C(1), 277, 278 and 278B of the Income Tax Act, 1961.

Today, when the matter is taken up for hearing, learned counsel for the petitioners submitted in the appeal filed by the first petitioner herein in ITTA No.8 of 2005 against the order of the Income Tax Appellate Tribunal, Hyderabad dated 21.12.2004 in ITA No.433 of 2000, a Division Bench of this Court in its order dated 05.07.2012 observed as under:

> "As can be seen from the facts and circumstances of the present appeal, considered in the light of the decisions cited supra, there was neither concealment of income nor furnishing of inaccurate particulars. The mere fact that the assessing authority refused to accept depreciation on the actual value for which the Pollution Control Equipment was purchased by the assessee from Novopan and issued notice to bring to tax the amount constituting the difference in the depreciation value between the WDV in the books of Novopan and the value for which it was purchased by the assessee; and on such notice being issued, the assessee volunteered liability to tax, *per se* would not amount to concealment. No question of furnishing of inaccurate particulars was involved either. Neither in the assessment proceedings nor in the penalty proceedings nor even in the notice preceding the assessment was the entire transaction assumed to be a sham and nominal transaction and there was no proposal for or disallowance of depreciation altogether."

As seen from the above order, it is clearly observed by the Division Bench that there was no concealment of income or furnishing of inaccurate particulars by the petitioner-A.1 herein. The learned counsel for the petitioners further relied on a decision of the Apex Court reported in **K.C. Builders and another vs. The Assistant Commissioner of Income Tax** ([2004] 2 SCC 731). In the said decision, the Apex Court observed as under:

> "Where an order of assessment or reassessment on the basis of which penalty has been levied on the assessee has itself been finally set aside or cancelled by the Tribunal or otherwise, the penalty cannot stand by itself and the same is liable to be cancelled as in the instant case ordered by the Tribunal and later cancellation of penalty by the authorities."

In view of the above ratio laid down by the Apex Court, the impugned proceedings against the petitioners herein would amount to abuse of process of law and are liable to be set aside.

In the result, the Criminal Petition is allowed and the proceedings in C.C.No.84 of 2012 pending on the file of Special Judge for Economic Offences at Hyderabad are hereby quashed as against the petitioners herein.

Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE RAJA ELANGO

08th August, 2016
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