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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL.M.C. 2810/2018 & CRL.M.A. 9982/2018

SWADESH KUMAR MISHRA ..... Petitioner

Through: Mr. Vikram Chaudhary, Sr. Adv with Mr. Raktim Gogoi, Mr. Rishi Sehgal, Advocates.

versus

ASSTT COMMISSIONER OF INCOME TAX ..... Respondent

Through: Mr. Ruchir Bhatia, Sr. Standing Counsel with Mr. Digvijay Singh, Advocate.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

O R D E R

% **23.05.2018**

CRL.M.A.9981/18(Ex.)

Exemption allowed subject to all just exceptions.

The application is disposed of.

CRL.M.C. 2810/2018

Submissions have been made on behalf of either side.

During the course of the submissions that have been made on behalf of the petitioner, it has been submitted that the application filed by the petitioner submitting to the effect that the provisions of Section 155 of the Cr.P.C., 1973 have not been complied with in relation to a non-cognizable offence punishable under Section 279-A of the Income Tax Act. Vide order dated 21.09.2017, the learned Trial Court had observed to the effect that the said application would be considered at the time of final disposal.

Reliance has also been placed on behalf of the petitioner on the statement of DW-2, i.e., Arun Kumar Sharma, Tax Assistant. CIT-18, Circle-54(1), Civic Center, New Delhi which is recorded on 13.07.2017 to the effect that in reply to queries that had been put as to whether the complainant department had obtained any order from the concerned Magistrate under Section 155 of the Cr.P.C., 1973 prior to commencing of the investigation and the inquiry in the case, it had been responded to by DW-2 to the effect that they have not conducted any proceedings under Section 155 of the Cr.P.C., 1973 and it has thus been submitted on behalf of the petitioner that the disposal of the said application seeking proceedings under Section 155 of the Cr.P.C., 1973 filed by the petitioner was imperative for proper adjudication in the matter.

Learned counsel for the respondent at this stage does not oppose the prayer made by the petitioner seeking directions to the learned Trial Court to dispose of the application seeking proceedings under Section 155 Cr.P.C., 1973.

It has further been submitted on behalf of the respondent to the effect that contentions may however be allowed to be raised by the respondent in relation to the applicability or otherwise of Section 155 of the Cr.P.C., 1973 to the provisions under the Income Tax Act.

Vide the present petition, apart from the prayer clause (e) which has been made in the petition seeking setting aside of the order dated 21.09.2017 vide which the learned Trial Court had observed that the application filed by the petitioner seeking closure of the case and termination of proceedings due to the alleged non-compliance of mandatory provisions of Section 155 Cr.P.C., 1973 would be heard at the stage of the final arguments, there are other prayers made by the petitioner vide clauses (b)(c)(d) & (f) of the petition.

On a consideration of the submissions that have been made on behalf of the petitioner and the respondent in relation to the proceedings dated 21.09.2017, presently the order dated 21.09.2017 of the learned Trial Court in CC No.514514/16 is set aside with directions to the learned Trial Court to dispose of the application filed by the petitioner under Section 155 of the Cr.P.C., 1973 before proceeding to hear the final arguments in the matter. The petitioner and the respondent both would be entitled to make submissions in relation to the applicability or otherwise of Section 155 of Cr.P.C., 1973 to the proceedings under the Income Tax Act.

As regards the prayer clauses (b)(c)(d) & (f) in the petition, which read to the effect:-

(b) Quash the criminal prosecution launched against the Petitioner vide Criminal Complaint No. 76/4 (re-numbered as CC 514514/2016) dated 19.11.2013 titled as "Pooja Hali, ACIT versus Swadesh Mishra' before Court of Additional Chief Metropolitan Magistrate (Special Acts), Central, Tis Hazari Courts, Delhi for commission of offences under Section 276(2), Section 276D, Section 277 read with Section 278E of the Income Tax Act, 1961 (Annexure P-2), filed by the Respondent and all consequential proceedings emanating therefrom;

(c) Quash/set aside the Order dated 29.11.2013 (Annexure P-3) passed by Learned ACMM (Special Acts), Central, Delhi vide which the Petitioner was summoned to face prosecution for commission of offences under Section 276C(2), 276D, 277 read with Section 278E of Income Tax Act;

(d) Quash/set aside the Orders dated 16.10.2015 (Annexure P4 & P5) passed by the Learned Trial Court, whereby, the Petitioner was charge-sheeted for the commission of offences under Section 276C(2), 276D and 277 of Income Tax Act;

(f) Quash/Set aside the Order dated 08.02.2018 (Annexure P-16) vide which the Learned Trial Court dismissed the applications dated 21.09.2017 and 10.11.2017 filed by the Petitioner under Section 294 Cr.P.C. read with Section 311 Cr.P.C. for leading additional evidence;

the learned counsel for the petitioner seeks to withdraw the present petition qua the said prayers at prayer clauses (b)(c)(d) & (f) seeking liberty to seek redressal in accordance with law after disposal of the application under Section 155 of the Cr.P.C., 1973.

Copy of the order be given Dasti, as prayed.

ANU MALHOTRA, J

MAY 23, 2018/NC