



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.07.2019

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

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CRL A (MD)Nos.88 & 90 2014

D.Soundarapandian

... Appellant / Accused No.1  
in Crl A(MD)No.88 of 2014

P.Karuppasamy

... Appellant /Accused No.2  
in Crl A(MD)No.90 of 2014

**Vs.**

State, Rep.by  
The Inspector of Police,  
CBI/ACB, Chennai.

... Respondent /  
Complainant in both these appeals

(R.C No.2(A)/2009  
& R.C No.2 of 2009)

**Common Prayer :** This Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, to call for the records relating to judgment dated 14.02.2014 in C.C No.1 of 2010 on the file of the II Additional District Judge for CBI Cases, Madurai and to set aside the conviction and sentence.

For Appellant  
in Crl A(MD)No.88 of 2014 : Mr.A.Ramesh, Senior Counsel  
for Mr.D.Shanmugaraja Sethupathi

For Appellant  
in Crl A(MD)No.90 of 2014 : Mr.R.Shanmugasundaram,  
Senior Counsel  
for Mr.G.M.Karunanithi

For Respondent  
in both cases : Mr.N.Nagendran,  
Special Public Prosecutor

**COMMON JUDGMENT**

The appellants in these appeals were convicted and sentenced vide judgment dated 14.02.2014 in C.C No.1 of 2010 on the file of the II Additional District Judge for CBI Cases, Madurai as follows :

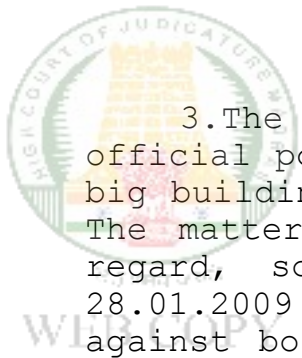


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|                |                                                                                                  |                                                                                                     |
|----------------|--------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|
| First Accused  | Under Sections 120 B r/w. 420, 201 IPC and Section 13(2) r/w. Section 13(1) (d) of P.C Act, 1988 | 2 years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo 6 months R.I. |
|                | Under Section 420 of IPC                                                                         | 2 years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo 6 months R.I. |
|                | Under Section 201 IPC                                                                            | 2 years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo 6 months R.I. |
|                | Under Section 13(2) r/w. 13(1) (d) of the P.C Act                                                | 2 years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo 6 months R.I. |
| Second Accused | Under Sections 120 B r/w. 420, 201 IPC and Section 13(2) r/w. Section 13(1) (d) of P.C Act, 1988 | 2 years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo 6 months R.I. |
|                | Under Section 420 of IPC                                                                         | 2 years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo 6 months R.I. |

2.The prosecution case, in brief, is this :

The first accused Thiru.D.Soundarapandian was working as Income Tax Officer, Dindigul during the year 2006. The second accused Thiru.P.Karuppasamy was an assessee in Dindigul Circle. It came to be known that even though A2 Karuppasamy was owning a building complex, the true value of the same was not reflected in the annual returns submitted by him. In this regard, A1 D.Soundarapandian proposed to conduct a survey. But then, without taking the survey proceedings to their logical conclusion, he entered into criminal conspiracy to cheat the Income Tax Department in the matter of assessing income tax and pursuant thereto A1 Soundarapandian accepted the returns of A2 Karuppasamy and proceeded to pass an order dated 03.07.2007 assessing the total tax payable by A2 Karuppasamy as Rs.1,08,161/-.



3.The charge against the first accused is that by abusing his official position, he suppressed the fact that A2 Karuppasamy had a big building known as PKS complex at Bypass Road, Ottanchathiram. The matter was not even referred to the valuation cell. In this regard, source information was received by the prosecution on 28.01.2009 and RC No.2 of 2009 and R.C 2(A) of 2009 was registered against both the appellants for the offences under Sections 120 B r/w.420 IPC and under Section 13(2) r/w.13(1)(d) of Prevention of Corruption Act, 1988. Investigation was undertaken and final report came to be laid against both the appellants for the offences under Sections 120 B r/w.420, 201 IPC and Section 13(2) r/w.13(1)(d) of the Prevention of Corruption Act, 1988.

4.The said offences were taken cognizance by the learned Special Court for CBI Cases, Madurai and since prima facie materials were available, charges were framed against the accused accordingly. The accused denied the charges in toto and claimed to be tried. The prosecution examined as many as 16 witnesses and marked Exs.P1 to P44. On the side of the accused, no evidence was adduced. Incriminating circumstances were put to the accused. The accused also filed a statement under Section 313 of Cr.PC.

5.After a detailed consideration of the evidence on record, the learned Trial Judge by the impugned judgment dated 14.02.2014 convicted and sentenced both the appellants as mentioned above. Challenging the same, these two criminal appeals have been filed.

6.Heard the learned Senior Counsel appearing for the accused as well as the learned Special Public Prosecutor appearing for the prosecution.

7.The learned Senior Counsel appearing for the accused would submit that after the first accused passed an order dated 03.07.2007 assessing the net taxable income of the assessee, certain subsequent developments took place. The first accused was transferred from Dindigul Circle. One Kandasamy was appointed as ITO of Dindigul Circle. By order dated 26.07.2009, the said Kandasamy who was examined as P.W.4 re-determined the income tax payable by the Thiru.Karuppasamy, the second accused. Paragraph No.6 of the said order would read as under :

*"6.During the previous year, the assessee has constructed a residential building and admitted Rs.35,99,203/- as cost of construction. The property was referred to the Valuation Cell on 19.03.2009 and the report was received in this office on 09.09.2009 as mentioned earlier in this order. As per Valuation report the cost of construction of the property was fixed at Rs.77,46,000/-. An opportunity was given to the assessee to finalise the valuation. At the time of hearing the copy of Valuation report was handed*

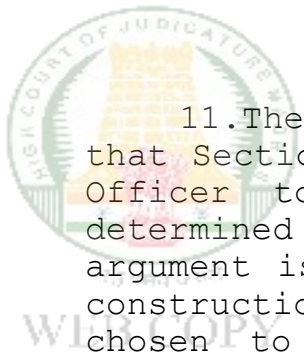


over to the assessee and calling for his objection, if any, about the Valuation. As mentioned earlier the objection received from the assessee was forwarded to Valuation Officer and his opinion was also received. The Valuation Officer has overruled the objection raised by the assessee and confirms the Valuation already fixed. The assessee during the hearing on 23.11.2009 has again objected the Valuation fixed at Rs.77,46,000/-. As per the assessee's books of account, cost of construction admitted was Rs.35,99,203/- as on 31.03.2005. The difference in cost of construction comes to Rs.41,46,787/-. The assessee was asked to explain the sources for the difference in cost of construction but there was no reply from the assessee. In the absence of any reply the difference in cost of construction of Rs.41,46,789/- is treated as unexplained investment and the same is assessed as income of the assessee during that year u/s.69 of the Income Tax Act."

8.The Income Tax Officer who assumed office after the first accused came to the conclusion that the total cost of construction of the building was not Rs.35,99,203/- but Rs.77,46,000/-. This re-determination of the taxable income of Karuppasamy was challenged by him before the Income Tax Appellate Tribunal. The appeal of the assessee Karuppasamy/A2 herein was allowed and fixing the cost of construction at Rs.77,46,000/- was set aside. The order dated 24.09.2010 passed by the Income Tax Appellate Tribunal in favour of the assessee was taken on further appeal before the Hon'ble Division Bench of the Madras High Court in T.C (A) No.92 of 2011. By order dated 08.03.2011, the tax appeal was dismissed.

9.It is the contention of both the Senior Counsel that when once the assessment proceedings concluded in favour of the assessee, the authority could not have initiated criminal prosecution on the very same set of facts.

10.Per contra, the learned Special Public Prosecutor appearing for the prosecution would contend that the findings of the civil court can never be binding on the criminal court. In this regard, the learned Special Public Prosecutor would place reliance on the decision of the Hon'ble Supreme Court reported in **(2010) 8 SCC 775 (Kishan Singh vs. Gurpal Singh)**. The Hon'ble Supreme Court referring to the earlier Constitution Bench judgment reported in **(2005) 4 SCC 370 (Iqbal Singh Marwah & Anr vs. Meenakshi Marwah & Anr)** held that the standard of proof required in the two proceedings are entirely different and both the cases have to be decided on the basis of the evidence adduced therein. He would also draw my attention to the decision of the Division Bench of the Andhra Pradesh High Court reported in **1990 181 ITR 119 AP (Daulatram and ors vs. Income Tax Officer)**.

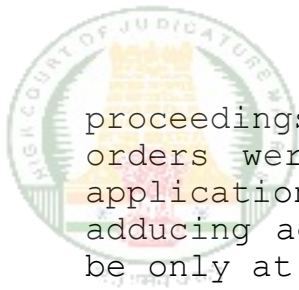


11.The learned Special Public Prosecutor would further contend that Section 55 of the Income Tax Act, 1961 empowers the Income Tax Officer to have the fair market value of the capital asset determined by referring the same to a valuation officer. His core argument is that having noted that the assessee had suppressed the construction cost of the complex in his assessment return and having chosen to initiate survey proceedings, the Income Tax Officer deliberately let him go out of the hook by not taking the survey proceedings to their logical conclusion. The assessing officer was not satisfied with the stand taken by the assessee in his returns and he issued survey notice. But in the list of questions found in the survey notice, there is no reference whatsoever to the cost of construction of the complex at all. This according to the learned Special Public Prosecutor shows the complete lack of bonafides on the part of the assessing officer. This was only due to the fact that the two, namely the assessing officer and the assessee, had colluded with each other so as to cheat the Income Tax Department.

12.I carefully considered the rival contentions and the evidence on record. Before I deal with the case on hand, I cannot help remarking that the first accused Thiru.D.Soundarapandian in his order dated 03.07.2007 chose to add only a sum of Rs.2.00 lakhs for marriage expenses as an undisclosed income. To me, this appears to be a laughable figure. Be that as it may, as rightly pointed out by the learned Senior Counsel appearing for both the appellants this is not the subject matter of the prosecution and therefore beyond expressing my surprise I cannot delve more into this issue.

13.The core charge against the accused is that the true cost of construction of the complex in question was suppressed in the annual returns. To establish this charge, the prosecution examined as many as 16 witnesses. P.W.4 Kandasamy is the main witness who was examined on the side of the prosecution. P.W.4 in his testimony had stated that he dealt with the file of Karuppasamy/A2 and that it was earlier dealt with by A1 Soundarapandian. Ex.P1 is the survey folder pertaining to the assessee. P.W.4 referred the property in question to the valuation cell of the Income Tax Department after re-opening the assessment under Section 147 of the Income Tax Act. The valuation officer had fixed the value of the property at Rs.70.00 lakhs approximately.

14.P.W.4 proceeded to re-determine the income tax based on this report. But then even in his chief examination P.W.4 had fairly admitted that challenging his order the assessee went on appeal before the Commissioner of Income Tax, Madurai and that not satisfied with the outcome of the same, he went on appeal before the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal in its order had deleted the additions made by him. The department filed a second Appeal before the High Court under Section 260(A) of the Income Tax Act. In his cross examination, P.W.4 admitted that



proceedings ended in favour of the assessee. Even though both these orders were not marked as exhibits before the Special Court, an application has been taken out under Section 391 of Cr.PC for adducing additional evidence. But, the said application appears to be only at the SR stage and has not been formally numbered.

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15. However, it is a matter of record that the first appellant during his cross examination under Section 313 of Cr.PC had submitted copies of the orders of ITAT as well as that of the Madras High Court. The same have also been filed in the form of typed set of papers. The same are judicial orders. Therefore, to satisfy my conscience, I went through the order dated 24.09.2010 passed by the Income Tax Appellate Tribunal and also the order dated 08.03.2011 passed by the Hon'ble Division Bench of the Madras High Court in TC (A) No.92 of 2011. It is useful to refer to Paragraph Nos.7,8 and 9 of the Income Tax Appellate Tribunal's order dated 24.09.2010 which read as under :

"7. We have perused the orders, seen the valuation report and heard the rival submissions. We have also carefully gone through the paper book submitted by the assessee. Undisputed facts which come out are that assessee had filed his return for the asst. year 2003-04 onwards and the details of cost of construction admitted on cumulative basis in the balance sheet filed with the respective returns was under:

| S.No | Assessment Year | Date of filing the return | Cost of Construction (cumulative) |
|------|-----------------|---------------------------|-----------------------------------|
| 1.   | 2003-04         | 30.11.2003                | 15,94,530/-                       |
| 2.   | 2004-05         | 31.03.2006                | 34,42,798/-                       |
| 3.   | 2005-06         | 31.03.2006                | 35,99,204/-                       |
| 4.   | 2006-07         | 20.10.2006                | 35,99,204/-                       |
| 5.   | 2007-08         | 28.03.2008                | 36,56,524/-                       |
| 6.   | 2008-09         | 29.09.2008                | 26,56,524/-                       |

The above information is culled out from para-7 of the order of the 1d.CIT(A). If we look at the valuation report of the D.V.O, placed at pages 8 to 16, para 1.4 gives details submitted by the assessee. This is reproduced here under for brevity:

"1.4 Details submitted by the assessee: The assessee has submitted the following details on 17-6-2009.

1. Copy of building plan (Part)
2. Copy of purchase deed (doc.No.991 dt.30-10-1990)
3. Valuation Report dated 30-4-2009 from the Registered valuer Er.N.Ramsingh.



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4. Further the following details were produced by the assessee on 10-8-09 vide his letter dated 6-8-09:
- 1) Copy of Panchayat Tax Receipts for 03-04 & 04-05,
  - 2) Copy of water Tax Deposit receipt-2 no's,
  - 3) Copy of EB deposits for all the fifteen connections,
  - 4) Copy of plan (full),
  - 5) Copy of plan approval proceedings dated 5-3-2002 from the Oddanchatram Panchayat (Special Grade).
  - 6) Copy of Audited balance sheet for the year 2003-04 to 07-08,

And subsequently on 12-8-09 the assessee produced the following details vide his letter dated 11-8-09:

- 1) Bills & vouchers
- 2) Building accounts from 1-3-04 to 31-3-09

And subsequently on 20-8-09 the assessee produced the following details vide his letter dated 19-8-09:

- 1) Xerox copy of hand receipts for labour payment, copy of bills and vouchers for purchase of cement, marble, sand, electrical items, timber, steel, jally, bricks, etc."

8. At para-4 the method of valuation for determining the probable cost of construction as given by the DVO runs as under:

"There are three major types of valuation methods available to determine the probable cost of construction such as:-

- (i) Accounts method,
- (ii) Detailed estimate method,
- (iii) Plinth area rate and cost index method.

4.1.1: ACCOUNTS METHOD: Accounts method can be adopted by the owner duly supported with vouchers. Security of the accounts and vouchers are required to find out if the quantity accounted for the materials and laborers are commensurate with the requirements of the building. This method could not be adopted in the absence of detailed working drawings and bill of quantities for different items.

4.1.2: DETAILED ESTIMATE METHOD: Detailed estimate method can be adopted only if details of concealed items recorded at the time of execution and all the detailed drawings (with architectural and structural) including of services are made available. The drawings are required to estimate/verify the quantities of various



items while the bills/vouchers are required to estimate/verify the rates to be adopted for the items materials purchased and labor payment made. Detailed architectural drawings are not submitted. Entire structural drawings and service layout drawings not submitted. Measurement for concealed items are not recorded and submitted. No structural design calculation has been submitted. Hence this method also could not be adopted.

4.1.3: PLINTH AREA RATE METHOD: Due to the reasons explained above, the only available and appropriate method is Plinth area rate and cost indeed method. In this method, the total plinth area multiplies the unit rate of construction per Sqm of plinth area. Plinth area is calculated as per the measurements taken at site in the presence of assessee/authorized representative. The rate is worked out and detailed as under."

9. Thus, there is no dispute that the assessee had filed plan approvals, copy of full plan, copy of audited balance sheet for the years 2003-04 to 2007-08, produced bills and vouchers and building accounts for the period 1-3-2004 to 3-9-2009. Assessee had also produced copies of receipts of labour payments and bills and vouchers for purchase of various raw material used for the construction. Despite these, the DVO came to a conclusion that accounts maintained could not be adopted in the absence of detailed working drawings and details of quantity for different items as mentioned by him at para 4.1.1 of his report, which is reproduced supra. The stand of the DVO is contrary on the face of it. In the first place, he says that the assessee had produced records. On the other hand, he also states that the detailed working drawings and bill quantities for different items were not there. This takes us to paper book pages 6 & 7 which is the covering letter of the assessee to Valuation Officer on 19-08-2009 along with which copies of invoices for purchase of cement, marble, sand, electrical items, timbers and tiles, sanitarwares, plywood were annexed. Assessee had also submitted statement copies of steel, jelly and bricks. Cement, marble, sand, electrical items, sanitarywares etc. are all priced either based on units or weight. Hence, we are unable to understand the finding of the DVO that bills of quantities for different items were not available. Plans including plan approval were submitted by the assessee. In short details as called for were all submitted by the assessee. Thus there was no reason whatsoever for rejecting the books of accounts depicting



the construction expenses maintained by the assessee. Assessee was filing his returns of income from Asst. year 2003-04 and cumulative construction cost was reflected in the balance sheets appended to respective returns. Assessee had also produced the books, bills and vouchers before the AO as is clear from the letter dated 23-11-09 addressed to the AO, placed at page 49 of the paper book. AO had simply not considered such books and went by the report of the DVO. Rejection of books of account can be done only if defects are there. Without first bringing the case under sec.145(1) or sec. 145(3) of the Act, the cost of construction as per books of the assessee could not have been rejected. There is no case for the Revenue that the books of accounts were not properly maintained or not supported by required evidence. Where it is proved on record that a person was maintaining books for the expenditure incurred, books must be given due evidentiary value and should not be lightly overlooked or rejected. Before making an addition of unexplained investment, AO was under an obligation to verify books of account maintained by the assessee. In our opinion, books and cost of construction shown in the books were rejected without any rhyme or reason. No doubt, the CIT(A) had distinguished the case of K.K.Seshaiya (supra) of the Hon'ble jurisdictional High Court, relied on by the assessee by mentioning that there the construction was done by a contractor. This might be true. But just because assessee was doing the construction by himself, can we say that books maintained by the assessee were not genuine or the entries were not correct? Hon'ble jurisdictional High Court, no doubt, held that the rates set out in the agreement between the assessee and the contractor was acceptable in that case. Here also nothing stopped the Revenue from finding out the rates based on the construction cost shown by the assessee. Without coming to any conclusion that such rates were abnormally low, Revenue could not have proceeded to adopt a different method for valuation. In our opinion, the decision of the Hon'ble jurisdictional High Court in K.K.Seshaiya's case (supra) clearly supports the case of the assessee. When the books of account maintained by the assessee were found to be not credible, or not supported, there was no reason for adopting a different value as the construction cost. We have, therefore, no hesitation to delete the addition of Rs.41,46,890/- made by the AO which was scaled down to Rs.38,56,680/- by the CIT(A). Ground No.2 of the assessee is, therefore, allowed. "



16. This order passed by the Income Tax Appellate Tribunal in favour of the assessee was upheld by the Hon'ble Madras High Court in its order dated 08.03.2011 in TC (A) No.92 of 2011 in the following terms :

"2. It is seen from the records that the Assessee went on appeal before the Tribunal challenging the additions in respect of cost of construction, which has arisen on account of method of valuation adopted by the Valuation Officer. For the year 2005-06, the Assessee filed his return, which came up for survey under Section 133 A of the Income Tax Act. It was found that the Assessee has constructed a residential cum shopping complex at Dharapuram Road, Oddanchatram, wherein he admitted the cost of construction at Rs.35,99,203/- as on 31.03.2005. The Assessing Officer was of the view that the cost of construction would be more than what was admitted by the assessee and therefore the same was referred to the valuation cell to find out the cost of investment. In the meantime, notice under Section 148 of the Act was issued and assessment was taken up for scrutiny by issuing notice under Section 143(2) of the Act. The Valuation Officer arrived at a sum of Rs.77,46,000/- towards cost of construction as against the admitted value of Rs.35,99,203/-. The difference between the above said sum was taken up for assessment. Consequently, a sum of Rs.41,46,797/- was sought to be assessed as unexplained investment Under Section 69 of the Income Tax Act. Aggrieved by the same, the Assessee preferred an appeal before the Commissioner of Income Tax (Appeals). The said appeal was partly allowed and the Commissioner of Income Tax (Appeals) directed the Assessing Officer to assess Rs.19,53,785/- only as different in cost of construction for the assessment year 2005-06 as against the sum of Rs.41,46,797/-. Aggrieved still by the said order, the Assessee preferred an appeal before the Income Tax Appellate Tribunal. On going through the materials, the Tribunal pointed out that admittedly the Assessee had filed plan approvals, copy of full plan, copy of audited balance sheet for the years 2003-04 to 2007-08 and produced necessary bills and vouchers and building accounts for the period 01.03.2004 to 03.09.2009. Despite the production of accounts, the Valuation Officer came to the conclusion that the accounts maintained could not be adopted in the absence of detailed working drawings and details of quantity for different items. The Tribunal pointed out that the valuation officer himself had stated that the Assessee had produced the records and as

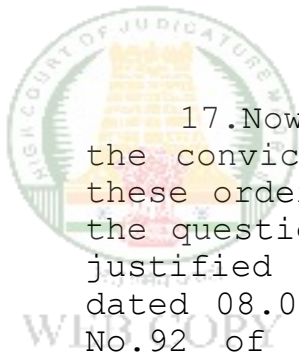


per the covering letter of the Assessee, he had enclosed xerox copies of the invoices and other details. It was evident that the material evidence as regards the purchase of various building materials were produced. In the circumstances, the Tribunal held that the findings of the Valuation Officer that bills of quantities for different items were not available could not be sustained. In short, the Tribunal pointed out that details as called for were all submitted by the assessee. Thus, there was no reason for rejecting the books of accounts. The Tribunal further pointed out that the rejection of books of account can be done only if defects are there. Without bringing the case under Section 145(1) or section 145(3) of the Act, the cost of construction as per books of the assessee could not have been rejected by the officer concerned. Incidentally, the Tribunal further pointed out that there is no case for the Revenue that the books of accounts were not properly maintained or not supported by required evidence. That being the case, the Tribunal rightly came to the conclusion that adoption of the value as had been given by the Valuation Officer could not be explained herein to discredit the valuation given by the assessee as regards the cost of construction.

3.A perusal of the assessment order herein shows that though the assessee had produced necessary books of accounts supported by all materials indicating the cost of construction, without even rejecting the books of accounts straight away, the Valuation Officer arrived at the different amount. In the background of the said fact, the Tribunal deleted the entire addition made by the Assessing Authority based on the Valuation Officer's report to the tune of Rs.41,46,890/-, thereby setting aside the order of the Commissioner of Income Tax (Appeals) and allowed the assessee's appeal.

4.We have gone through the records and satisfied of the findings of the Tribunal that the assessee's accounts had not been rejected in any manner before making a reference to the Valuation Officer and even otherwise the difference is only on account of different methods of valuation arrived at by the Valuation Officer, we do not think any question of law, much less, substantial question of law arises to admit the appeal.

5.In the result, the Tax Case Appeal is dismissed. No costs."



17.Now, the question that arises for consideration is whether the conviction imposed on the appellants can survive. Of course, these orders were passed much prior to the impugned judgment. Now, the question is whether the learned Special Judge for CBI Cases was justified in convicting the appellants notwithstanding the order dated 08.03.2011 passed by the Hon'ble Madras High Court in T.C(A) No.92 of 2011. As contended by the learned Special Public Prosecutor, the findings of the civil court are not necessarily binding on the criminal court as the standard of proof required in the two proceedings are entirely different and both cases will have to be decided independently on the basis of the evidence adduced therein.

18.This issue of law has been authoritatively settled by the Hon'ble Apex Court in the decision reported in **(2016) 4 SCC 153 (AIR Customs Officer IGI, New Delhi vs. Pramod Kumar Dhamija)**. In fact, the Hon'ble Apex Court only followed an earlier 3 Judges Bench decision reported in **(2011) 3 SCC 581 (Radheshyam Kejriwal vs. State of W.B)**. The principles laid down in the said decision would read as under :

"38.The ratio which can be culled out from these decisions can broadly be stated as follows :

(i)Adjudication proceedings and criminal prosecution can be launched simultaneously;

(ii)Decision in adjudication proceedings is not necessary before initiating criminal prosecution;

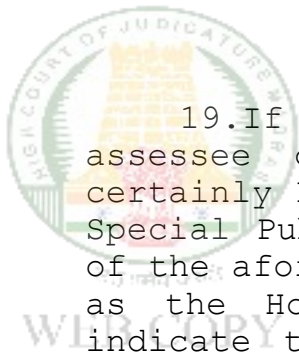
(iii)Adjudication proceedings and criminal proceedings are independent in nature to each other;

(iv)The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;

(v)Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;

(vi)the finding in the adjudication proceeding in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and

(vii)In case of exoneration, however, on merits where allegation is found to be not sustainable at all and person held innocent, criminal prosecution on the same set of facts and circumstances can not be allowed to continue underlying principle being the higher standard of proof in criminal cases."



19.If the assessment proceedings had concluded in favour of the assessee only on technical grounds and not on merits, then, certainly I would have concurred with the submissions of the learned Special Public Prosecutor appearing for CBI. But, a mere reading of the aforesaid orders of the Income Tax Appellate Tribunal as well as the Hon'ble Division Bench of the Madras High Court would indicate that the order passed by the Kandasamy, the Income Tax Officer dated 26.11.2009 was set aside and the order passed by the Thiru.Karuppasamy, the first appellant herein dated 03.07.2007 was sustained not on any technical grounds but only on merits. Therefore, I am of the view that the Special Court for CBI Cases / II Additional District Judge, Madurai could not have convicted the appellants herein. In this view of the matter, the impugned judgment is set aside and the appeals stand allowed. The fine amount if any remitted by the appellants shall be refunded to them and the bail bonds if any executed by them shall stand cancelled.

Sd/-  
Assistant Registrar(Writs)

/TRUE COPY/

Sub Assistant Registrar

To

1.The The Inspector of Police,  
CBI/ACB, Chennai.

2.The Special Court for CBI Cases /  
II Additional District Judge, Madurai

3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.D.SHANMUGARAJA SETHUPATHI, Advocate ( SR-77147[F] dated 24/07/2019 )

+1. C.C. to M/S.S.SADESKUMAR, Advocate SR.No. 77618

CRL A (MD) Nos.88 & 90 2014

23.07.2019

SKM

JM/04.10.2019/13P/6C