



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2020

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.A.No.1617 of 2017 against W.P.No.29464 of 2017
and
C.M.P.No.21150 of 2017

Krishnaswami Vijayakumar

Appellant/Petitioner

Versus

The Principal Director of
Income Tax (INV),
New No.46, Old No.108,
Nungambakkam High Road,
Chennai 600 034.

Respondent/Respondent

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 17.11.2017 in W.P.No.29464 of 2017 passed by this court.

W.P.No.29467 of 2017: Writ filing under Article 226 of The Constitution of India praying for the issuance of a writ of Certiorari to call for the records of the respondent in F.No.Pr.DIT(Inv)/Prosecution.2017-18 in issuing show cause notice dated 31.10.2017 and quash the same.

For Appellant : Mr.R.Sivaraman

For Respondent : Mr.A.P.Srinivas,
Senior Standing Counsel

JUDGMENT

(Judgment of the court was made by Dr.VINEET KOTHARI, J.)

The present Writ Appeal has been filed by the Assessee Mr.Krishnaswami Vijayakumar against the order dated 17.11.2017 by which W.P.No.29464 of 2017 alongwith the connected Miscellaneous Petitions were dismissed in limine by the learned Single Judge.

2. The said Writ Petition was directed against the Show Cause Notice of Prosecution of the Assessee/Petitioner under



Section 276C of the Income Tax Act, 1961 in pursuance of a Search under Section 132 of the Act conducted at his residence on 24.4.2016 in which, inter alia unaccounted cash of Rs.4.93,84,300/- was seized by the Income Tax Authorities.

3. With the sole ground which was pressed before the learned Single Judge as well as sought to be raised by the learned counsel for the Appellant/Assessee Mr.Sivaraman before us that the Respondent-Principal Director of Income Tax (Investigation) had no jurisdiction to issue the impugned Show Cause Notice of Prosecution Proceedings to the Assessee as the competent Authorities are defined in Section 279 of the Act which do not include the said Authority.

4. However, the learned Senior Standing Counsel for the Respondent/Revenue Mr.A.P.Srinivas disputed this position. He further submitted that this Writ Appeal has become infructuous since in pursuance of the impugned Show Cause Notice dated 31.10.2017, which was challenged before the learned Single Judge, the said Authority has passed the sanction order on 21.6.2018 sanctioning the prosecution against the Petitioner/Assessee and consequently, a Complaint Case in E.O.242 of 2018 has been filed in the Competent Court for Trial and the same is pending Trial in the court of Additional Chief Metropolitan Magistrate (E.O.2), Egmore, Chennai.

5. The learned counsel for the Appellant/Assessee Mr.Sivaraman also brought to our notice that Crl.O.P.No.28763 of 2018 filed by the Assessee under Section 482 of the Criminal Procedure Code is pending before a learned Single Judge of this court.

6. In view of the aforesaid submissions, we are of the clear opinion that the present Writ Appeal has been rendered infructuous and we need not decide on the merits of the contentions sought to be raised before us for the simple reason that the assailed Show Cause Notice dated 31.10.2017 since ended in final prosecution order dated 21.6.2018, which was neither under challenge before the learned Single Judge nor before us.

7. The Appellant is free to challenge the said order in accordance with law by taking appropriate remedies and lest our observations prejudice the case of the Assessee in any manner since Crl.O.P.No.28963 of 2018 filed by the Assessee under Section 482 of the Code of Criminal Procedure is also pending, we are not inclined to pronounce upon the merits of the contentions raised by the learned counsel for the Appellant/Assessee.

8. Therefore, the Writ Appeal is dismissed as having been rendered infructuous in view of the subsequent developments and leaving the Appellant free to assail the impugned sanction order in accordance with law or to raise his defence before the



learned Competent Court which is seized of the Trial in the matter. No order as to costs. Consequently, the connected Miscellaneous Petition is also dismissed.

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Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:

The Principal Director of
Income Tax (INV),
New No.46, Old No.108,
Nungambakkam High Road,
Chennai 600 034.

+1cc to Mr.A.P.Srinivas, Advocate in SR.NO..33022

W.A.No.1617 of 2017

PVS (CO)
RV(04/11/2020)