IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 06.03.2020
CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.31907 of 2019 and
Crl.M.P.Nos.17506 & 17508 of 2019

Shri Sardarmal Kothari ... Petitioner/Accused

Vs.

The Deputy Commissioner of Income Tax,
Central Circle-1(1),
Room No.320, 3rd Floor, Investigation Wing,
No.46, M.G.Road, Chennai-34. ... Respondent/Complainant

PRAYER:
Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the entire records in E.O.C.No.578 of 2017, on the file of Additional Chief Metropolitan Magisterate (Economic Offences), Egmore, Chennai and quash the same.

For Petitioner : Mr.A.Selvendran

For Respondent : Mrs.Sheela,
Special Public Prosecutor

O R D E R

This petition has been filed challenging the criminal proceedings in E.O.C.No.578 of 2017 on the file of the Additional Chief Metropolitan Magistrate(Economic Offences), Egmore, Chennai.

2. The respondent filed private complaint for the offences under Section 276 (c) (c) of the Income Tax Act, 1961 alleging that the petitioner is an assessee on the file of the Deputy Commissioner of Income Tax, Central Circle, Chennai. A search has been conducted under Section 132 of Income Tax Act on 18.12.2012 and during the search, it was noticed that the accused did not file his return of

income for the assessment year 2013-2014 as required under Section 139 (1) of the Income Act. He ought to have filed return of income on or before 05.08.2013. But he belatedly filed his return of income for the assessment year 2013-2014 only on 31.01.2014 admitting his entire income of Rs.10,71,76,445/- The accused has filed his return of income belatedly after the expiry of the time limit prescribed under Section 139(1) of IT Act as such the respondent issued show cause notice on 17.07.2017.

3. The learned counsel for the petitioner contended that when the petitioner filed his return of income and paid the entire demand made by the respondent, he is not liable to be punished under Section 276 (c) (2) of Income Tax Act.

4. Heard, Mr.A.Selvendran, the learned counsel for the petitioner and Mrs.Sheela, Special Public Prosecutor appearing for the respondent.

5. On perusal of the documents, it is seen that the last date for filing the returns for the financial year 2012-2013 was on or before 05.08.2013. The respondent did not hand over the book of accounts seized from the petitioner on till 05.08.2013. Therefore, there is delay in payment of income tax and the petitioner filed return of income on 31.01.2014. Thereafter, it was returned on 31.03.2015 directing the petitioner to pay a sum of Rs.4,27,44,486/-. Thereafter, the petitioner paid tax as demanded by the respondent on 13.03.2018, for which the respondent also issued a letter on 14.03.2018 acknowledging the receipt of tax. It is relevant to extract the provision under Section 276 (c) (2) of the Income Tax Act, 1995 as follows:

> "If a person wilfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and shall, in the discretion of the court, also be liable to fine. Explanation - For the purpose of this section, a wilful attempt to evade any tax, penalty or interest chargeable or

imposable under this Act or the payment thereof shall include a case where any person-

(i) has in his possession or control any books of account or other documents (being books of account or other documents relevant to any proceeding under this Act) containing a false entry or statement; or

(ii) makes or causes to be made any false entry or statement in such books of accounts or other documents; or

(iii) wilfully omits or causes to be omitted any relevant entry or statement in such books of account or other documents; or

(iv) causes any other circumstance to exist which will have the effect of enabling such person to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof"

6. From the reading of the above provision to punish the accused, there must be wilful attempt to evade payment of tax, he must be in possession of the book with false entries, the person should have made false entries in the book of accounts and omitting any entry in the statement of accounts. The petitioner voluntarily disclosed the undisclosed income to the respondent on the inspection conducted under Section 132 of the Income tax Act, 1961 on 18.12.2012. Therefore, there is no intention from the petitioner for willful evading of payment of tax. Admittedly, the respondent on the inspection dated 18.12.2012, had seized the relevant book of accounts and as such the petitioner could not able to file the return of income on or before 05.08.2013. Therefore, the petitioner had no wilful intention to evade tax as alleged by the respondent.

7. That apart, the petitioner had paid the entire tax amount on 13.03.2018 and the respondent had also acknowledged the same by the acknowledgment dated 14.03.2018. Therefore, the offence under Section 276 (c) (2) of the Income Tax Act is not at all attracted as against the petitioner herein, and the entire criminal

proceedings pending against the petitioner is nothing but clear abuse of process of law. As such it cannot be sustained as against the petitioner and it is liable to be quashed.

8. In view of the above discussion, this criminal original petition is allowed. Accordingly, the entire proceedings in E.O.C.No.578 of 2017 on the file of Additional Chief Metropolitan Magistrate(Economic Offences), Egmore, Chennai is quashed. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

//True Copy//

Sub-Assistant Registrar

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To

1. The Deputy Commissioner of Income Tax,
Central Circle-1(1),
Room No.320, 3rd Floor, Investigation Wing,
No.46, M.G.Road, Chennai-34

2. The Public Prosecutor,
High Court, Madras.

CRL.O.P.No.31907 of 2019

SR(co)
SMN(27/05/2020)