IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.10.2021

CORAM:

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

Crl.O.P.No.20998 of 2016

1.M/s.S.M.J.Housing
represented by its Partners Accused 2 to 4

2.Subhash Chand Nahar

3.R.K.Jalan .. Petitioners/Accused Nos.1 to 3

Vs.

The Assistant Commissioner of Income-Tax,
Central Circle - II (1),
Chennai - 600034. .. Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to case in E.O.C.C.No.68 of 2013 on the file of the Additional Chief Metropolitan Magistrate (Egmore), Economic Offences Court - I and quash the same.

For Petitioners : Mr.P.M.Subramaniam

For Respondent : Mrs.M.Sheela
Special Public Prosecutor

ORDER

A1 to A3 in E.O.C.C.No.68 of 2013, now pending on the file of Additional Chief Metropolitan Magistrate (Egmore), Economic Offences Court - I, have filed the present petition, taking advantage of Section 482 of Code of Criminal Procedure to quash further proceedings in the said Calendar Case.

2. E.O.C.C.No.68 of 2013 had been preferred by the respondent/complainant alleging offences under Sections 276CC, 276C(1) and 276C(2) of the Income Tax Act, 1961, for the assessment year 2005-2006/financial year 2004-2005.

3. In the complaint, it had been stated that the present petitioners, A2 and A3 are partners of A1. It had been stated that there was search and seizure operations on 26.10.2005 under

Section 132 of the Income Tax Act, 1961 in the premises of the second petitioner/A2. It is claimed that various incriminating documents had been seized. Thereafter, the returns of the income for the assessment year 2005-2006 should have been filed on or before 31.08.2005. It was actually filed only on 30.06.2006. In view of that fact and in view of the fact that it was claimed that there had been some seizure before the search, penalty had been levied.

4. Questioning this imposition of penalty, the assessee went forward through the process and finally went before the Income Tax Appellate Tribunal, where the penalty was confirmed.

5. On the basis of the order of the Appellate Tribunal, a complaint had been lodged before the competent Magistrate Court, which had been taken cognizance, as aforesaid, as E.O.C.C.No.68 of 2013 by the learned Additional Chief Metropolitan Magistrate (Egmore), Economic Offences Court - I, Chennai.

6. The assessee did not rest with that. He, then, came before this Court in T.C.(Appeal) No.213 of 2013 and by judgment, dated 01.07.2013, Division Bench of this Court had thought it necessary to interfere with the order of the Appellate Tribunal.

7. The observation of the Division Bench would be quite instructive and they are extracted below:-

> "12. Going by the facts that there was no seizure of materials relating to the assessee in the search conducted in the partner's premises and that the transactions were admittedly recorded in the books of accounts of the firm, the Income Tax Appellate Tribunal's view that there was concealment of income for invoking Section 271(1)(C) of the Act could not be sustained.
>
> 13. Thus we do not find any assistance in Explanation 5 to Section 271(1)(C) of the Act to support the case of the Revenue. In the circumstances, on the admitted fact herein that the search is one being in the residential premises of the partner, there being no recovery of either cash or any amount seized from the assessee and there being no allegation that the books of accounts showed inaccurate particulars of income or concealed the particulars of income, the order of the Income Tax Appellate Tribunal is liable to be set aside. Accordingly, the same is set aside.
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> 14. In the result, the Tax Case Appeal is allowed. No costs. Consequently, connected

M.P is closed."

8. Subsequent, to the order of the Division Bench, the Tax Recovery Officer, Central - II, Chennai, by a letter, dated 15.11.2014 had, in my opinion, very prudently, stated as follows:-

> "As per rectification order dated 10.07.2012 the demand has been worked out as Rs.31,95,144/-. In the said rectification order, your request for credit for seized cash adjusted and correct computation of interest u/s 234 A,B and 234 C have been taken care of. As such, you are liable to pay the sum of Rs.31,95,144/- along with 220(2)/Rule-5 interest.
>
> As per High Court order, the penalty demand stands revised to 'Nil' You are requested to pay the balance demand of Rs.31,95,144/- along with interest u/s 220(2)/Rule-5 immediately to avoid coercive action."

9. Mr.P.M.Subramaniam, learned Counsel for the petitioner placed much reliance on the order of the Division Bench of this Court, which had, directly, interfered with the facts as found by the Appellate Tribunal.

10. The order of the Tribunal was not interfered with on a point of law, but on facts. This has been stressed by Mr.P.M.Subramaniam, learned Counsel for the petitioner, stating that therefore, nothing further survives for the prosecution to establish in the course of trial. It has been, therefore urged by the learned Counsel that putting the petitioners through the ordeal of trial would be a futile exercise.

11. Mrs.M.Sheela, learned Special Public Prosecutor, on behalf of the Income Tax Department, very fairly affirmed that the Dvision Bench of this Court had set aside the order of the Income Tax Tribunal and stated that no further proceedings are pending against the parties and that order of the Division Bench had not been taken up further in appeal by the department/revenue.

12. It is also affirmed by the learned Counsel that the complaint had been preferred only consequent to the order of the Appellate Tribunal. But, as it turned out, that particular order of the Tribunal had been set aside by the Divison Bench of this Court.

13. In view of that one particular fact itself, I find every reason to interfere with further progress of E.O.C.C.No.68

of 2013, now pending of the file the learned Additional Chief Metropolitan Magistrate/E.O - I, Egmore, insofar as the petitioners/A1 to A3 are concerned and direct the same to be quashed.

14. With the above said observations, the present Criminal Original Petition is allowed and E.O.C.C.No.68 of 2013 on the file of the Additional Chief Metropolitan Magistrate, Economic Offences Court - I, Egmore is quashed. Consequently, the connected miscellaneous petition i.e., Crl.M.P.No.9729 of 2016 is closed.

Sd/-
Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar

grs

To

1.The Additional Chief Metropolitan Magistrate,
Economic Offences Court - I,
Egmore.

2.The Assistant Commissioner of Income-Tax,
Central Circle - II (1),
Chennai – 600034.

+1CC to M/s.M.Sheela, Advocate, SR.No. 54500
+1CC to Mr.P.M.Subramaniam, Advocate, SR.No. 53785

Crl.O.P.No.20998 of 2016

RLD(CO)
B.VC (29/10/2021)