IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.10.2021

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

Crl.OP.No.27485/2016 & Crl.MP.No.14001/2016

[Video Conferencing]

Subhash Ann ...Petitioner/Accused

Versus

The Income Tax Officer
Non Corporate Ward-15[1]
Room No.204, 2nd Floor
Wanaparthy Block
No.121, Mahatma Gandhi Road
Chennai 600 034. ...Respondent/Complainant

Prayer : - Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records relating to the complaint of the respondent in EOCC.No.125/2016 on the file of the Additional Chief Metropolitan Magistrate, Economic Offence-1, Egmore, Chennai-8 and quash the same.

For Petitioner : Mr.M.V.Swaroop

For Respondent : Mr.N.Baskaran
Special Public Prosecutor

ORDER

(1) The petition has been filed questioning the further pendency of EOCC.No.125/2016 on the file of the learned Additional Chief Metropolitan Magistrate/EO-II, Egmore, Chennai.

(2) The petitioner who is an individual, had, according to the respondent, failed to file the Income Tax Return within the stipulated period for the Assessment Year 2013-2014. Subsequently, with a delay, the petitioner had filed the assessment. It had also been examined by the respondent and it is an admitted position by both the learned counsel for the petitioner and the learned Special Public Prosecutor appearing for the respondent that on such assessment, it had been determined that the petitioner does not fall within the tax structure and there is no liability to pay tax. In effect, it is what is known as a ''NIL

Return of Net Tax Payable''. Owing to the delay in filing the Income Tax Return, the petitioner, however had been mulcted with a complaint lodged by the respondent which had been taken cognizance by the learned Additional Chief Metropolitan Magistrate/EO-II, Egmore. Questioning the said summons and also the complaint which had been preferred against the petitioner / accused under Section 276CC of the Income Tax Act, 1961, the present petition has been filed.

(3) Section 276CC of the Income Tax Act, 1961, is as follows:-

276CC:-Failure to furnish returns of income:-

> If a person wilfully fails to furnish in due time the return of fringe benefits which he is required to furnish under sub-section (1) of section 115WD or by notice given under sub-section (2) of the said section or section 115WH or the return of income which he is required to furnish under sub-section (1) of section 139 by notice given under clause (i) of sub-section (1) of section 142 or section 148 or section 153A, he shall be punishable,—
>
> (i) in a case where the amount of tax, which would have been evaded if the failure had not been discovered, exceeds twenty-five hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;
>
> (ii) in any other case, with imprisonment for a term which shall not be less than three months but which may extend to two years and with fine:
>
> Provided that a person shall not be proceeded against under this section for failure to furnish in due time the return of fringe benefits under sub-section (1) of section 115WD return of income under sub-section (1) of section 139—
>
> (i) for any assessment year commencing prior to the 1st day of April, 1975; or
>
> (ii) for any assessment year commencing on or after the 1st day of April, 1975, if—

(a) the return is furnished by him before the expiry of the assessment year; or

(b) the tax payable by such person, not being a company, on the total income determined on regular assessment, as reduced by the advance tax or self-assessment tax, if any, paid before the expiry of the assessment year, and any tax deducted or collected at source, does not exceed ten thousand rupees.

(4) The law gives a small leverage to an assessee, to file a Return with a delay and thereafter, the respondent is under an obligation to examine the said Return.

(5) In the instant case, on such examination, it had been determined that no tax is payable by the petitioner herein for the said Assessment Year 2013-2014.

(6) I hold that keeping the said EOCC.No.125/2016 on the file of the Additional Chief Metropolitan Magistrate/EO-II, Egmore, Chennai, and the present petition on the file of this Court, would be an exercise in futility as certainly, the present petitioner would be taking advantage of the assessment order of the respondent.

(7) It is a fact that the Income Tax should have been filed within the stipulated period. But still, in view of the proviso to Section 276CC of the Income Tax Act, 1961, I hold that some leverage can be granted to the petitioner herein. This is not a case where income earned, had been hidden or screened away from the authorities. It is not a case where tax payable, had not been paid. It is actually a case where Return discloses that there was no tax payable at all.

(8) In view of that fact, I would interfere with the proceedings pending in EOCC.No.125/2016.

(9) In the result, the Criminal Original Petition stands allowed and the proceedings in EOCC.No.125/2016 now pending on the file of the Additional Chief Metropolitan Magistrate/EO-II, Egmore, Chennai is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar

AP

To

1. The Additional Chief Metropolitan Magistrate
   Economic Offence-2,
   Egmore, Chennai.

2. The Income Tax Officer
   Non Corporate Ward-15[1]
   Room No.204, 2nd Floor
   Wanaparthy Block
   No.121, Mahatma Gandhi Road
   Chennai 600 034.

3. The Special Public Prosecutor
   Income Tax Department
   High Court, Madras.

+1cc to Mr.M.V.Swaroop, Advocate, S.R.No.52860

Crl.OP.No.27485/2016

SJ[co]
NSK 28/10/2021