IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.O.P.NOS.8930 & 8931 OF 2018
AND
CRL.M.P.NOS.4607,4608,4609 & 4610 OF 2018

Mr.Sivakumar Ragavan
Director - M/s Solar Paper Mills Limited,
No.43/1, Besant Avenue Road,
Adayar,
Chennai - 600 020. .. Petitioner in both Crl.O.Ps./ Accused No.4

Vs.

The State Rep. by
The Deputy Commissioner of Income Tax,
Circle 6(2)
No.121, Mahatma Gandhi Road,
Chennai - 600 034. .. Respondent in both Crl.O.Ps./ Complainant

PRAYER in Crl.O.P.No.8930 of 2018:

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in E.O.C.C.No.613 of 2017 pending on the file of the Additional Chief Metropolitan Magistrate Court - E.O.II, Egmore, Chennai and quash the same.

PRAYER in Crl.O.P.No.8931 of 2018:

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in E.O.C.C.No.614 of 2017 pending on the file of the Additional Chief Metropolitan Magistrate Court - E.O.II, Egmore, Chennai and quash the same.

For Petitioner in both petitions : Mr.Abudukumar Rajaratham for R.Bhagawat Krishna

For Respondent in both petitions : Mr.N.Baskaran Special Public Prosecutor

C O M M O N O R D E R

These petitions have been filed to call for the records in E.O.C.C.No.614 of 2017, pending on the file of the Additional Chief Metropolitan Magistrate Court - E.O.II, Egmore, Chennai and quash the same.

2. Facts leading to the present round of litigation is that the petitioner is a limited company and in the business of manufacturer of paper and was incorporated on 26.11.1982. The Company filed the return of income on 07.12.2006, declaring total income of Rs.47,543/- and the said return was processed under Section 143(1) of the Act and after scrutiny, it appears that the petitioner suppressed the total income of sum of Rs.1,30,92,111/- as profit of sale of agricultural land and for the said non disclosure of the profit, the Assessing Officer had initiated assessment proceedings under Section 143(3) of the Income Tax Act and the assessment order was passed on 31.12.2008 and demand for payment of tax was made to the tune of Rs.39,05,711/-. Since the petitioner has not paid the said demanded amount, the penalty proceedings were initiated under Section 271(1)(c) of the said Act. After conclusion of the penalty proceedings, the demand notice was issued under Section 156 of the Income Tax Act, 1961 on 29.06.2009 and directed the petitioner to pay the amount of Rs.29,36,625/- within a period of 30 days from the date of service of the notice. Challenging the said Demand Notice dated 29.06.2009, the petitioner Company had preferred an appeal before the Commissioner of Income Tax (Appeals) and the said appeal was dismissed by an order dated 16.03.2015. Challenging the said dismissal order, the petitioner Company had also preferred an appeal before the Income Tax Appellate Tribunal 'B' Bench, Chennai in I.T.A.No.1163/2015 and the said appeal was also dismissed by an order dated 24.03.2016. Further challenging the said dismissal order passed by the Income Tax Appellate Tribunal, the petitioner Company has approached this Court by filing T.C.A.No.876 of 2016 and the same is still pending. During the pendency of the said Tax Case Appeal, the Principal Commissioner of Income Tax, issued a Show Cause Notice dated 27.06.2017 under Section 276(C)(1) and 276 C (2) of the Income Tax Act, demanding a sum of Rs.29,36,625/-, without prescribing any time limit. Thereafter, the petitioner has sent a reply dated 27.06.2017 to the Principal Commissioner of Income Tax, whereby agreed to pay the penalty amount and thereby, he deposited an amount of Rs.29,36,625/- through NEFT on 27.07.2017. Even then, the respondent has launched the criminal prosecution for non payment of demanded amount in E.O.C.C.Nos.613 and 614 of 2017. Challenging the same, the present petitions are filed.

3. The learned counsel appearing for the petitioner submitted that the petitioner has challenged the proceedings of levy of penalty and the same is pending before this Court in T.C.A.No.876 of 2016. When the levy of penalty is a subject matter for consideration before this Court, the respondent without any application of mind to the factual aspects, has issued the show cause notice dated 27.06.2017. Further in order to comply with the statutory requirement, the petitioner has sent a reply dated 27.06.2017, mentioning about the pendency of the above said case and also agreed to pay the demanded amount and paid the penalty amount of Rs.29,36,625/-. Such being the case, even though the petitioner Company has paid the penalty amount as early as 27.07.2017, the complaint has been preferred by the respondent herein before the Trial Court in E.O.C.C.Nos.613 and 614 of 2017, at a later point of time during October 2017, without taking into consideration the fact of payment of penalty, for the reasons best known to them and hence the complaint preferred after payment of the penalty amount, by the respondent, is not sustainable and prays for quashment of the same.

4. The learned Special Public Prosecutor appearing for the respondent submitted that though the assessment order was passed on 31.12.2008 and penalty proceedings were initiated on 31.12.2008, the petitioner has not paid the amount and hence as contemplated under the provisions of the Income Tax Act, the show cause notice was issued and for evading tax payments, necessary action has been taken against the petitioner by launching prosecution in E.O.C.C.Nos.613 and 614 of 2017. Further the grounds raised by the petitioner are all factual in nature and it cannot be decided by this Court under Section 482 of Cr.P.C. If at all any grievance, the petitioner may adjudicate the same before the Trial Court where criminal prosecution is pending and thereby, the petitioner without cooperating with the investigation, straight away approaching this Court by filing the present petition is not justifiable and hence prays for dismissal of the same.

5. This Court has carefully considered the rival submissions and also perused the materials available on record.

6. The facts in the present case is not in dispute that based on the income tax return filed by the petitioner's Company, an assessment order dated 07.12.2006, was passed, stating an additional income under long term capital gain and income from other sources to the tune of Rs.1,30,78,287/-, thereby the petitioner has been demanded for a sum of Rs.39,05,711/-. For the alleged wilful attempt for evasion of tax, the respondent has also initiated penalty proceedings under Section 271(1)(C) of the Income Tax Act. Aggrieved by the same,

the petitioner has also preferred series of litigations before the Commissioner of Income Tax (Appeals) and before the Income Tax Appellate Tribunal, whereby the petitions filed by the petitioner were dismissed. Challenging the dismissal order of the Income Tax Appellate Tribunal, the appeal in T.C.A.No.876 of 2016, is also pending before this Court. During the pendency of the appeal, the respondent has issued show cause Notice dated 27.06.2017. For which, the petitioner has also sent his reply on the same day and agreed to pay the penalty amount and also paid the amount of Rs.29,36,625/- and the receipt for payment of the said amount has been annexed in the typed set filed along with this petition. However, the respondent, without taking note of the payment of the above said amount and pendency of the appeal proceedings before this High Court, has erroneously launched criminal prosecution against the petitioner for wilful commission of concealment of income to avoid payment of tax, under Section 276(c)(1) of the Income Tax Act. It is to be pointed out that the petitioner has paid the penalty amount, immediately after receipt of the show cause notice, as early as on 27.07.2017, however, the complaint has been preferred at a much later point of time during October 2017 and further there is no allegation whatsoever to prove that the petitioner has wilfully evaded from payment of tax and penalty and hence the complaint lodged by the respondent is liable to be set aside.

7. For the reasons aforesaid, these Criminal Original Petitions are allowed and quashed the proceedings in E.O.C.C.Nos.613 and 614 of 2017, pending on the file of the Additional Chief Metropolitan Magistrate Court-E.O.-II, Egmore, Chennai. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Commissioner of Income Tax,
Circle 6(2)
No.121, Mahatma Gandhi Road,
Chennai - 600 034.

2. The Additional Chief Metropolitan
   Magistrate Court - E.O.II, Egmore, Chennai.

3. The Public Prosecutor,
   High Court, Madras.

+1cc to Mr.R.Bhagawat Krishna, Advocate, S.R.No.40492
+2ccs to Mr.N.Baskaran, SPP (Income Tax) S.R.No.39950,39951

Crl.O.P.Nos.8930 & 8931 of 2018
and
Crl.M.P.Nos.4607, 4608, 4609 & 4610 of 2018

SRA(CO)
PM/28/09/2021