IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.12.2021

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. No.27922 of 2017 and
Crl. M.P.Nos.15886 and 15887 of 2017

Sudhir Kumar Hasija
No.31A Ambit Park Road
Ambattur Industrial Estate South
Ambattur
Chennai - 600 058 ....Petitioner

Versus

Assistant Commissioner of Income Tax
Non Corporate Circle-9
No.121, Mahatma Gandhi Road
Nungambakkam
Chennai - 600 034 ....Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C. to quash the proceedings in E.O.C.C.No.223 of 2016 on the file of Additional Chief Metropolitan Magistrate, Economic Offences-I, Egmore, Chennai.

For Petitioner ... Mr.S.Santosh
for M/s.C.Petricia

For Respondent ... Mr.N.Bhaskaran
Special Public Prosecutor
(IT Cases)

O R D E R

This petition has been filed to quash the proceedings in E.O.C.C.No.223 of 2016 pending on the file of Additional Chief Metropolitan Magistrate, Economic Offences-I, Egmore, Chennai for the offences under Sections 276CC, 276C(1) and 276C(2) of the Income Tax Act, 1961.

2. The crux of he prosecution case is that the accused has not filed Income Tax return for the Assessment year 2013-14 and despite the show-cause notice dated 03.08.2016 calling upon the

petitioner to appear in person on 11.08.2016 was issued, the petitioner neither appeared before the respondent nor sent any reply and hence, the petitioner has committed willful and deliberate default to furnish his return of income in due time as contemplated under Section 139(1) of the IT Act, which is punishable under Section 276CC of the Income Tax.

3. The main contention of the learned counsel for the petitioner is that the prosecution itself has been launched under the wrong premise that the petitioner has not filed his return, but the fact remains that the petitioner was issued with two Pan cards bearing numbers AKKPS7295P and ALIPS4185M inadvertently. Learned counsel further submits that as far as the second Pan card bearing No. ALIPS4185M, which is subject matter of prosecution is concerned, he has not transacted anything and he has already surrendered the said pan card and also obtained an acknowledgment from the Income Tax Authorities. It is further submitted that the petitioner has filed income tax return in respect of PAN No. AKKPS7295P without any default including the Income Tax returns for the Assessment year 2013-14. Hence, it is submitted that when the petitioner has already paid tax, merely because there are two pan numbers allotted to the petitioner, he cannot be prosecuted.

4. This Court heard the learned Special Public Prosecutor on the above submissions.

5. Though the learned Special Public Prosecutor has not disputed the surrender of the second PAN card, he would submit that applying for two PAN card itself is not correct and therefore, in respect of the second PAN card which is subject matter of prosecution no returns has been filed, the launching of prosecution cannot be found fault with and hence, he opposed for quashing of final report.

6. This Court perused the entire materials available in the form of typed-set of papers.

7. Admittedly, the issuances of two PAN cards bearing numbers AKKPS7295P and ALIPS4185M is not disputed. Though apply for two PAN cards many not be correct, the fact remains that it is the duty of the Department to verify and issue PAN cards, which has not been done in this case. Be that as it may, a perusal of the records available on record reveals that the petitioner has been repeatedly making request for surrender of second PAN card and finally surrendered the same and also obtained acknowledgment vide letter dated 10.02.2012. Now the prosecution has been launched on the premise that the petitioner has not even paid tax for the Assessment year 2013-14. This Court is of the view that when the petitioner has already surrendered the PAN card bearing No. bearing number ALIPS4185M,

the question of initiating prosecution for wilful and deliberate default to furnish return of income tax does not arise and the continuation of prosecution as against the petitioner is a futile exercise and the same is liable to be quashed.



8. Accordingly, this Criminal Original Petition is allowed and the proceedings in E.O.C.C.No.223 of 2016 pending on the file of Additional Chief Metropolitan Magistrate, Economic Offences-I, Egmore, Chennai is quashed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

gpa/gba

To

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

2.The Assistant Commissioner of Income Tax,
Non Corporate Circle-9,
No.121, Mahatma Gandhi Road,
Nungambakkam,
Chennai - 600 034.

3.The Public Prosecutor
Madras High Court
Chennai.

+1cc to Mr.N.Bhaskaran, Advocate SR. No.66748

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GSM (CO)
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