IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2021

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

Crl.O.P.No.30544 of 2019
and
Crl.M.P.Nos.16223 and 16558 of 2019

Audi Munusamy ...Petitioner

Vs.

Income Tax Officer,
Non Corporate Ward-15(1),
121, Mahatma Gandhi Road,
Chennai - 600 034.
...Respondent

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C., praying to call for the records in E.O.C.C.No.394 of 2018, on the file of the Additional Chief Metropolitan Magistrate, EO-II, Egmore, Chennai and quash the same.

For Petitioner : Mr.D.Manimaran

For Respondent : Mr.N.Baskaran
Special Public Prosecutor (for IT)

ORDER

This Criminal Original Petition has been filed seeking to call for the records in E.O.C.C.No.394 of 2018, on the file of the Additional Chief Metropolitan Magistrate, EO-II, Egmore, Chennai and quash the same.

2. The case of the petitioner is that the petitioner herein is only the power agent and he was nothing to do with the sale of the property and entire sale consideration was received. The petitioner contending that the petitioner had filed return of income belatedly on 24.12.2015 for the assessment year 2012-13 admitting a total income of Rs.2,12,250/-. Since the petitioner did not offer to tax any profit/gain from the sale of an immovable property, the assessment was reopened and completed under Section 143(3) r/w Section 147 dated 27.12.2016 by treating the entire sale consideration of Rs.8,00,000/- received

by him as business receipts assessable under the head of business income and thus quantifying a demand of Rs.5,08,20,440/-. The petitioner submits that the assessment order along with notice of demand was served on the accused on 31.12.2016. Further, penalty order Under Section 271 A of the IT Act, 1961, was issued to the petitioner on 30.06.2017 raising a demand of Rs.25,000/-. The petitioner submits that he had preferred an appeal against the assessment order under Section 143(3) r/w Section 147, dated 27.12.2016 and the same was dismissed on the notion that the entire income was classified under the head "Capital gains". Thus after giving effect to the order of CIT(A), the demand was quantified as Rs.5,08,45,000/- and such failure to pay tax constitutes an offence under Section 276C(2) of the Income Tax Act, 1961.

3.Now, the petitioner submits that the present E.O.C.C.No.394 of 2018 was filed against it is unnecessarily frivolous litigation and it is not liable to be prosecuted. Hence, he prayed to quash the proceedings since the respondent has not initiated proceedings against the correct persons including Banumathi (Principal) and Rajesh kumar (power agent) .

4.But the respondent raised his objection stating that already based upon the entire investigation came to understand that there is a sum of Rs.5,08,45,000/- which was classified under the head "capital gains". After giving effect to the order of CIT (A), the demand was quantified as Rs.5,08,45,000/- and such failure to pay tax constitutes an offence under Section 276C(2) of the Income Tax Act, 1961.

5.On seeing the nature of allegation levelled against the petitioner and others which cannot be quashed in the instant case, for the reason that there is a sum of Rs.5,08,45,000/- tax is included in this matter. A detailed enquiry is required in support of the oral evidence and if the petitioner is having any such defence, he has to raise the same before the trial Court.

6.Accordingly, this Criminal Original petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional Chief Metropolitan Magistrate,
   EO-II, Egmore, Chennai.

2. Income Tax Officer,
   Non Corporate Ward-15(1),
   121, Mahatma Gandhi Road,
   Chennai - 600 034.

3. The Public Prosecutor,
   High Court,Madras.

+1cc to M/s.D.Manimaran, Advocate, S.R.No.65882

+1cc to M/s.N.Baskaran, Public Prosecutor for Income Tax,
S.R.No.65962

Crl.O.P.No.30544 of 2019

KSM(CO)
RGA(10/01/2022)