IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2021

CORAM

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

Crl.O.P.No.32804 of 2019

N.Venkatachalam ... Petitioner

Vs.

1.The Income Tax Officer,
Ward-I, Rep. By V.Kamalakannan,
No.138/3, LMR Shopping Arcade,
Salem Main Road,
Namakkal-637 001.

2.Principal Commissioner of Income Tax,
No.3, Gandhi Road,
Salem-636 007. ... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to quash the proceedings in C.C.No.34 of 2018 pending on the file of the learned Chief Judicial Magistrate, Namakkal, initiated pursuant to the complaint given by the 1st respondent under Section 276 C of the Income Tax Act, 1961.

For Petitioner : Mr.Niranjan Rajagopalan

For Respondents: Mr.T.Aravind
Special Public Prosecutor (I.T.)

O R D E R

The petitioner has filed this petition to quash the proceedings in C.C.No.34 of 2018 pending on the file of the learned Judicial Magistrate,Namakkal.

2. The petitioner herein is the Managing partner of M/s.Andavar & Co., a partnership firm dealing in the business of automobile tyres bearing PAN No.AEAPV1594E. The petitioner had become a partner of the said firm pursuant to agreement dated 01.11.2003 wherein the existing partners had exited the business and the petitioner along with his wife was inducted in their place. M/s.Andavar and Co. has a number of sister concerns, all started by the petitioner's father, uncle and other relatives from the same community and locality. The reconstruction of the partnership firm was therefore mostly an arrangement between the relatives where the elders exited, and next generation took over.

3. He further submitted that a survey was conducted in the business premises of M/s.Aandavar & Co. on 04.08.2005 and books of account and various documents were impounded and sworn statements were recorded. Pursuant to the same proceedings were initiated against the petitioner herein in his personal capacity (PAN:AEAPV1594E) in respect of the entries in the firm's accounts. Subsequently, an order of assessment was passed on 16.12.2008 determining the net tax payable at Rs.17,69,830/- on the grounds of unexplained cash credits and balance in partner's Current Account. The primary issue was with regard to an entry shown in the balance sheet as partner's Current Account, for Rs.26,82,627/-. During the assessment proceedings, the petitioner being unable to explain the accounting of the said amount, which are essentially amounts due to the partners retired from the firm, admitted that the above may be added to the income and consequently was assessed for the above said amount as the tax that is payable.

4. In the circumstance proceedings for penalty were also initiated separately under Section 271(1)(c) of the Income Tax Act, 1961. Unsatisfied with the explanation offered by the petitioner herein, the 1st respondent imposed a penalty of Rs.9,56,067/- alleging concealment of income.

5. The petitioner submits that in the mean while a show cause notice dated 17.01.2018 was issued by the 1st respondent calling upon the petitioner to show cause as to why prosecution cannot be initiated against the petitioner under Section 276C(2) of the Income Tax Act, 1961 for default assessment year 2004-05. the petitioner submits that, he attended hearing on 29.01.2018 with his auditor and the officer concerned absent. Therefore given a copy of the reply to the office staff herein and also paid the remaining penalty by amount, the same day. Copy of receipts are enclosed. A copy of reply was taken on record on 19.03.2018. The petitioner was shocked to learn that without taking into account that the penalty has already been paid, the 2nd respondent wrong commenced proceedings for prosecution granting u/s. 279(1) of the Income Tax Act, 1961. Though by order dated 08.03.2018, the sanction order passed by the 2nd respondent is only with respect to Section 276C(2) of the Income Tax Act, 1961, the 1st respondent however proceeded to give a general complaint under Section 276C, beyond the sanction given by the 2nd respondent, before the Chief Judicial Magistrate, Namakkal on 13.06.2018, which is pending as C.C.NO.34 of 2018.

6. Heard Mr.Niranjan Rajagopalan, learned counsel for the petitioner and Mr.T.Aravind, learned Special Public Prosecutor appearing for the respondents.

7. As per the re-assessment order, the penalty proceedings were issued under Section 271(1)(c) of the Income Tax Act, 1961. In the said notice, the Assessor placed much realise upon by the assessee. But, he did not convence and came to the conclusion that there is a prima facie and fit case for levying penalty. Accordingly, the penalty order was passed on 25.06.2009, levying the minimum penalty of Rs.9,56,067/-. Thereafter, the petitioner / assessee has preferred an appeal before the Commissioner of Income Tax (Appeals) as well as Income Tax Appellant Tribunal, which was dismissed on 30.12.2014. Against which, he has preferred TCA.No.630 of 2018 before the Hon'ble Division Bench of this Court. On hearing both sides the said appeal was allowed. Accordingly, the penalty imposed as per the assessment proceedings is also set aside. To that effect he has also furnished order copy of TCA on the side of the respondent.

" *8. Based upon the complaint, the respondent police registered a case for offence under Section 276(c) of the Income Tax Act, 1961, and the case was taken on file as C.C.No.34 of 2018, who has pointed out that issue notice to the accused herein for the above said offence committed by them. Now the said penalty imposed by the respondent was already set aside by the Hon'ble Division Bench of this Court. Consequently, the complaint in C.C.No.34 of 2018 is quashed.

9. Accordingly, this Criminal Original petition is allowed."

SD/-
ASSISTANT REGISTRAR(CS)

***to be substituted as per order of**
this Court dated 10.03.2022
and made in crl.O.P.No.32804/2019
-s/d-
Assistant Registrar(CCC)
dt:10.03.2022

//True Copy//

Sub Assistant Registrar

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To

1.The Income Tax Officer,
Ward-I, Rep. By V.Kamalakannan,
No.138/3, LMR Shopping Arcade,
Salem Main Road,
Namakkal-637 001.

to be substituted
the order
already despatched on
10.01.2022

2.The Principal Commissioner
of Income Tax,
No.3, Gandhi Road,
Salem-636 007.

+4ccs to Mr.G.R.Associates for Niranjan Rajagopalan, Advocate

Sr.16129

Crl.O.P.No.32804 of 2019

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srg 16/12/2021
A.SK(10/03/2022)