THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2021

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.O.P.NOS.25698 & 25700 OF 2018
AND
CRL.M.P.NOS.14648, 14656 OF 2018

M.Kiran Kumar ...Petitioner in both the petitions

Vs.

The Assistant Commissioner of Income Tax,
Central Circle-1(4)
Room No.323, 3rd Floor,
Investigation Building,
46, Mahatma Gandhi Salai,
Nungambakkam,
Chennai-34. ...Respondent in both the petitions

Common Prayer : These Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records in complaint in EOCC. Nos.40 & 43 of 2018 pending on the file of the learned Additional Chief Metropolitan Magistrate, (E.O.II) Egmore at Allikulam Road, Chennai and quash all further proceedings against the accused.

For Petitioner : Mr.P.Ramesh Kumar
(in both the petitions)

For Respondent : M/s.M.Sheela
(in both the petitions)
Special Public Prosecutor (IT Cases)

COMMON ORDER

These two Criminal original petitions are disposed of by way of this common order since the issue involved is one and the same.

2. These two Criminal Original Petitions have filed to quash the complaints in EOCC. Nos.40 & 43 of 2018 pending on the file of the learned Additional Chief Metropolitan Magistrate, (E.O.II) Egmore at Allikulam Road, Chennai.

3. The respondent income tax department conducted search operation in the premises of the petitioner and consequent to the same, a notice under Section 153A of the Income Tax Act dated 09.01.2015 calling upon the petitioner to file his return of income within the period of 30 days. However, the petitioner filed the return of income on 03.12.2016 with a delay of 663 days admitting a total income of Rs.89 lakhs. The search operation involved five assessment years namely 2009-10, 2010-11, 2011-12, 2012-13 & 2013-14. According to the petitioner, he has filed appeals against the assessment orders before the Commissioner of Income Tax appeals and out of four appeals, two appeals, for assessment years 2009-10 and 2011-12 have been allowed. Presently, only two appeals are pending. The petitioner apprehends that many adverse findings in the assessment proceedings may have an impact on the case pending before the learned Additional chief Metropolitan Magistrate. As the petitioner has succeeded in two of the appeals, the petitioner prays that the department could await the outcome of the other two appeals.

4. Heard the learned counsel for both sides and perused the materials available on record.

5. The petitioner is primarily challenging the show cause notice issued by the income tax department for failure of the petitioner to file his return within time specified by the department. The petitioner has filed the petition with a delay of 663 days. It is the case of the department that the delay was willful and wanton whereas the petitioner asserts that the delay was caused only on account of seizure of books of accounts and records from his possession and that the delay was not willful. According to the petitioner, he has filed appeal before the first appellate authority and the same is pending. The petitioner has stated in his affidavit that out of the four appeals preferred by him before the Commissioner of Income Tax, he has succeed in two of the appeals and the rest of the appeals are pending consideration. The petitioner submits that since the issue is same, he has fair chance of succeeding in the remaining two appeals when they are taken up for disposal. Section 153 A of the Income Tax Act, 1961 provides for the scheme of assessment of income in case of a searched persons. It is not in dispute that pursuant to a search of the books of accounts notice under Section 153 was issued calling upon the petitioner to file his return of income within a specified date, the petitioner has filed the said return with a delay of 663 days admitting a total income of Rs.89 Lakhs. Pursuant to the assessment orders passed by the assessing officer, the petitioner, in respect of four assessment orders. filed four appeals out of which two have ended in his favour and two are still pending consideration.

6. Section 153 A of the Income Tax Act relates to the assessment of income pursuant to a search. In the case on hand, search resulted in the notice having been issued for four assessment years against which the petitioner has filed four individual appeals of which two appeals ended in favour of the petitioner. The said fact is not in dispute. In this backdrop, the petitioner claims that the other two appeals, the issue being similar in nature, there is likelihood of the same being allowed and, therefore, and findings recorded in the present case would gravely prejudice him subject to the outcome of the appeal, the respondents could very well take steps in accordance with law.

7. The said stand of the petitioner deserves acceptance. When two of the appeals, which are also similar in nature has ended in favour of the petitioner, any adverse finding that may be recorded by the Court below would have a cascading effect in the appeal before the Commissioner of Income Tax (Appeals) and, therefore, in the above backdrop, this Court is of the view that it would not be in the interest of the petitioner to continue the prosecution at this point of time. The respondent, subject to the outcome of the orders in the appeal could very well proceed against the petitioner in the manner known to law, at a later point of time, as the issue in the present case pertains to a show cause notice issued pursuant for delay in filing the returns.

8. This Court is of the considered view that no prejudice would be caused to the respondents if the present original petitions are allowed and any contra view by this Court would have a detrimental effect on the petitioner for the reasons aforesaid.

9. For the reasons stated above, these Criminal Original Petitions are allowed and the complaint in EOCC Nos.40 and 43 of 2018 on the file of the Additional Chief Metropolitan Magistrate (E.O.II) Egmore at Allikulam Road, Chennai are quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

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To

1.The Assistant Commissioner of Income Tax,
Central Circle-1(4)
Room No.323, 3rd Floor,
Investigation Building,
46, Mahatma Gandhi Salai,
Nungambakkam, Chennai-34.

2.The Additional Chief Metropolitan Magistrate,
(E.O.II) Egmore at Allikulam Road,
Chennai.

3.The Public Prosecutor
(Special P.P. For I.T.Cases)
High Court, Madras.

Crl.O.P.Nos.25698 & 25700 of 2018
and
Crl.M.P.Nos.14648, 14656 of 2018

SSI(CO)
RVM(10/01/2022)