IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :03.03.2022

CORAM :

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.Nos.4027 & 4028 of 2022 and
Crl.M.P.Nos.1985, 1986, 1987 & 1988 of 2022

Smt.D.Sasirekha ... Petitioner in both Crl.O.Ps.

-Vs-

The Assistant Commissioner of Income Tax,
Non Corporate Circle 8(1),
No.46. M.G.Road,
Chennai - 600 034. ..Respondent in both Crl.O.Ps.

Prayer in Crl.O.P.No.4027 of 2022: Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, pleased to call for the records and quash the proceedings in E.O.C.C.No.124 of 2019 on the file of Additional Chief Metropolitan Magistrate, Economic Offences - I, Egmore, Chennai.

Prayer in Crl.O.P.No.4028 of 2022: Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, pleased to call for the records and quash the proceedings in E.O.C.C.No.123 of 2019 on the file of Additional Chief Metropolitan Magistrate, Economic Offences - I, Egmore, Chennai.

For Petitioner (in both Crl.O.Ps) : Mr.S.Santhosh

For Respondents (in both Crl.O.Ps) : Mr.N.Baskaran

COMMON ORDER

These Criminal Original Petitions have been filed to call for the records and quash the proceedings in E.O.C.C.No.124 of 2019 and E.O.C.C.No.123 of 2019 on the file of Additional Chief Metropolitan Magistrate, Economic Offences - I, Egmore, Chennai.

2.The petitioner is facing trial for the offence under Section 276C(2) of the Income Tax Act, 1961 for non payment of tax within time for the Assessment Year 2018-19/Financial Year ending 31.03.2018 and Assessment Year 2017-

18/Financial Year ending 31.03.2017.

3.The case of the petitioner is that she had filed Income Tax returns for the Assessment Years 2018-19 and 2017-18 declaring the income for a sum of Rs.16,28,918/- and Rs.5,44,27,440/- The tax and interest was payable on such income is Rs.2,90,369/- and Rs.1,96,98,803/-.

4.The learned counsel for the petitioner would submit that there was some delay on the part of the petitioner in paying the tax and she had paid the amount in installments and also paid the entire amount of interest, even prior to filing of the complaint. The learned counsel would further submit that it is not the case of concealment or case of willful default in payment of income tax. Due to the slump in trade, the petitioner was unable to pay the amount within time. However, he would reiterate the entire amount has been paid, even prior to filing of the complaint by the department. In support of his contention, the learned counsel for the petitioner relied on the order of this Court in Crl.O.P.No.6244 of 2020 dated 25.08.2021 in the case of Inland Builders Private Limited and others Vs The Deputy Commissioner of Income Tax, Corporate Circle 2(2), Room No.512, 5 Floor, Wanaparthy Block, 121, Mahatma Gandhi Road, Nungambakkam, Chennai - 600 034 and in Crl.O.P.(MD).No.13383 of 2019 in the case of M/s.Bejan Singh Eye Hospital Pvt. Ltd and others Vs. Income Tax Department, Madurai, dated 12.03.2020.

5.The learned standing counsel appearing for the respondent would submit that the petitioner though had declared the income correctly she had defaulted in paying the tax within time and thereby he would strongly oppose for quashing the proceedings.

6.Heard the learned counsel for the petitioner and the learned Standing counsel for the respondent and perused the materials available on record.

7.It in not in dispute, the petitioner is an assessee of Income Tax, the issue concerns to the delayed payment of tax for the Assessment Year 2018-19/Financial Year ending 31.03.2018 and Assessment Year 2017-18/Financial Year ending 31.03.2017. It is not the case of the respondent/department that the petitioner concealed the income and she had willfully evaded payment of tax. This Court is able to see that there had been no concealment and willful evasion attracting penal provision. Further, as on today there is no tax dues for the Assessment Year 2018-19/Financial Year ending 31.03.2018 and Assessment Year 2017-18/Financial Year ending 31.03.2017.

8.The relevant portion of the order in Crl.O.P.(MD).

No.13382 of 2019 is extracted hereunder:-

> 5.The issue is no longer res integra. The learned counsel appearing for the petitioner drew my attention to the decision made by the Hon'ble Karnataka High Court in Crl.O.P.No.4891 of 2014, dated 14.06.2019. The Hon'ble Karnataka High Court in the aforesaid decision held as follows:
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> ''In the instant case, the only circumstance relied on by the respondent in support of the charge levelled against the petitioners is that, even though accused filed the returns, yet, it failed to pay the self-assessment tax along with the returns. This circumstance even if accepted as true, the same does not constitute the offence under Section 276C(2) of the Act. The act of filing the returns by itself cannot be construed as an attempt to evade tax, rather the submission of the returns would suggest that petitioner No.1 had voluntarily declared his intention to pay tax. The act of submitting returns in not connected with the evasion of tax. It is only an act which is closely connected with the intended crime, that can be construed as an act in attempt of the intended offence. In the backdrop of this legal principle, the Hon'ble Supreme Court in the case of Prem Dass vs Income Tax Officer cited supra, has held that a positive act on the part of the accused is required to be established to bring home the charge against the accused for the offence under Section 276C(2) of the Act.''

9.In view of the above, the continuance of impugned prosecution only amounts to abuse the process of law and the proceedings pending on the file of the respondent is liable to be quashed.

10.In the result, these criminal original petitions are allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

jas/tsh

To

1. The Assistant Commissioner of Income Tax,
   Non Corporate Circle 8(1),
   No.46. M.G.Road,
   Chennai - 600 034.

+2cc to Mr.S.Santhosh, Advocate, S.R.No.14466,14465

Crl.O.P.Nos.4027 & 4028 of 2022 and
Crl.M.P.Nos.1985, 1986, 1987 & 1988 of 2022

SV(CO)
CT 16/03/2022