



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.06.2022

WEB COPY

CORAM:

THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

CRL.O.P.NO.12095 OF 2019

AND

CRL.M.P.NO.6263 OF 2019

A.Latha

.. Petitioner/
Accused

Vs.

The Deputy Commissioner of Income Tax,
Central Circle-2,
Income Tax Office,
63, Race Course Road,
Coimbatore 641 018.

.. Respondent/
Complainant

PRAYER:

Criminal Original Petition filed under Section 482 Cr.P.C,
to call for the records in C.C.No.433 of 2018 before the learned
Judicial Magistrate No.III of Coimbatore and quash the same.

For Petitioner : Mr.S.Prabakaran,
Senior Counsel
for Mr.S.Saravanan

For Respondent : Mr.V.Vijayakumar,
Special Public Prosecutor (Income Tax)

O R D E R

This criminal original petition is filed to quash the
private complaint lodged by the Deputy Commissioner of Income
Tax under Section 276C(2) read with 278E of the Income Tax Act,
1961.

2. The complaint was filed on the premises that for the
Assessment Year 2014-2015, the accused had failed to disclose
the income and the same came to the notice of the Department
through search and seizure conducted on M/s.Green Home Landscape



Private Limited on 17.03.2015. Notice was caused under Section 153C to the accused Latha and requested her to file returns for her income for the Assessment year 2014-2015 within 15 days. The accused filed her returns on 15.12.2016, declaring her income of Rs.2,43,610/-. On completion of assessment by making addition on account of unexplained money to the tune of Rs.1,00,00,000/-, a demand of Rs.50,21,160/- was raised as penalty and penalty proceedings were initiated causing notice under section 274 read with 271(1)(c) of the Income Tax Act.

3. Citing appeal pending before the Commissioner of Income Tax (Appeals), the accused sought for time and stay on collection of demand. Since the accused failed to satisfy to deposit 15% of the demand as pre-condition, the request to stay the collection of demand was declined. Even after the lapse of two months from the date of receipt of the notice, the demand raised in the penalty notice dated 31.12.2016 was not paid. Meanwhile, the appeal preferred by the accused was considered by the Appellate Authority and by order dated 20.11.2017 in I.T.A.No.479/16-17, the penalty and demand was enhanced to Rs.1,83,50,000/- and the assessee was directed to be assessed under Section 69A for the unexplained money.

4. In view of the order passed by the Appellate Authority, demand of Rs.1,01,13,225/- was demanded to be payable and in addition, penalty was imposed. The total amount payable by the accused was determined as Rs.1,85,99,232/- and the demand notice under Section 156 of the Income Tax Act was caused on the accused. In response to the demand notice, the accused paid only Rs.6,993/- against the demand of Rs.2,87,12,457/- which including penalty for the Assessment Year 2014-2015. In spite of affording several opportunity to pay the balance amount, the accused has willfully evaded the payment of tax for the Assessment Year 2014-2015, which leads to the legal presumption of her culpable mental state. Hence, after obtaining sanction to prosecute, the impugned private complaint has been lodged.

5. A short point raised in the quash petition is that, pending prosecution initiated based on the order passed by the Appellate Authority, the accused/ petitioner herein preferred an appeal before the Tribunal and in ITA No.1223/Chny/2018, 3 and 39 Chny/2018 for the Assessment Year 2014-15 and 2015-2016, the Tribunal has set aside the order of the Appellate Authority. Therefore, contending that by virtue of the common order dated 31.03.2022 passed by the Tribunal, the very foundation of the prosecution against the petitioner herein for the alleged willful default to the demand and the penalty made falls to ground and therefore, the prosecution has to be quashed.



6.To ascertain whether the order of the Tribunal dated 31.03.2022 will tantamount to set aside the order of the Assessing Authority demand of Rs,50,21,160/- will also get set aside, the learned counsel for the Department answered in negative. So, it is very clear that in the order of the Tribunal, the petitioner herein could not be liable to pay the demand and the penalty made based on the order passed by the Appellate authority dated 20.11.2017 but status quo ante will be restored. In any event, in view of the subsequent development, the criminal prosecution laid based on the alleged failure to comply the demand notice issued on 22.03.2018 will not survive. Hence, for that reason, the criminal original petition is allowed with liberty to the Department to proceed against the assessee, if there is any violation of failure on her part to comply the demand which she is liable to pay for the Assessment Year 2014-2015 and thereafter. This observation is subject to the right reserved by the Department to prefer further appeal against the order of the Tribunal dated 31.03.2022. The connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vri

To

1. The Deputy Commissioner of Income Tax,
Central Circle-2,
Income Tax Office,
63, Race Course Road,
Coimbatore 641 018.

2. The Public Prosecutor,
High Court of Madras.

+1cc to Mr.A.Saravanan, Advocate, S.R.No.35995

+1cc to Mr.V.Vijayakumar, Advocate, S.R.No.36781

CrI.O.P.No.12095 of 2019
and

CrI.M.P.No.6263 of 2019

SR II (CO)

PM/29/06/2022