IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2022

CORAM:

THE HON'BLE **MR.JUSTICE N.SATHISH KUMAR**

CRL.O.P.No.15030 of 2022
and Crl.M.P.No.8379 of 2022

1.M/s.Rarefield Engineers Pvt. Ltd.
No.104, East Madha Church Street
Royapuram, Chennai 600 013

2.Represented by the director
Mr.Russel Raj
No.10, 8th Street, Dr. Subbarayan Nagar
Kodambhakkam
Chennai 600 024 ... Petitioners

Vs.

T.Vetriselvi
The Income Tax Officer
Corporate Ward – 5(4)
Chennai 600 034 ... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records relating to Crl.M.P.No.2194 of 2022 in E.O.C.C.No.204 of 2016, pending on the file of the learned Additional

Chief Metropolitan Magistrate, Economic Offences – I, Egmore, Chennai and set aside the same.

For Petitioners : Mr.M.Deivanandam

For Respondent : Mr.L.Muralikrishnan
Special Public Prosecutor
for Income Tax

ORDER

This Criminal Original Petition is filed under Section 482 Cr.P.C., challenging the order of learned Additional Chief Metropolitan Magistrate, Economic Offences-I, Egmore, Chennai in Crl.M.P.No.2194 of 2022 in E.O.C.C.No.204 of 2016, allowing the petition filed under Section 311 Cr.P.C by the petitioner for the assessment year relating to 2013 – 2014.

2.Learned counsel for the petitioner would submit that the assessment itself was passed after the filing of the complaint in order to fill up the lacuna. The main contention of the petitioner is that without notice under Section 148 of the Income Tax Act, no assessment order could be passed in respect of the alleged offence under Section 276 CC of the Income Tax Act, 1961. There must be voluminous transactions in the Assessee's account and willful failure to furnish the return of income before the due date under Section 139(1) of the Income Tax Act. Without the assessment order, punishment cannot be passed. It is the contention of the petitioner that at the time of cross examination, P.W.1 has admitted that there was no assessment proceedings. Therefore only in order to fill up the lacuna the assessment order has been passed. It is also brought to the notice of this Court that assessment order was passed after the registration of the complaint. Hence, the impugned order has to be set aside.

3.Learned counsel for the respondent appearing on behalf of the Income Tax submitted that for carrying out assessment proceedings, six years of limitation is there. Despite notice served on the petitioner, the petitioner was not cooperating properly. Therefore, assessment order came to be passed on 28.03.2022. Learned counsel submitted that no prejudice would be caused to the petitioner by filing the assessment order dated 28.03.2022. Accordingly prays for dismissal of the petition filed by the petitioner.

4.Heard Mr.M.Deivanandam, the learned counsel for the petitioners and Mr.L.Muralikrishnan, the learned Special Public Prosecutor appearing for the Income Tax. Perused the impugned order sought to be set aside.

5.It is relevant to note that it is well settled that initiating of the proceedings for non filing of return, assessment is not required only for the purpose of sentence, previous year's assessment can also be taken into consideration while deciding the matter.

6.Admittedly, in this case, assessment order has been passed. Though there is some delay, it cannot be said that the document cannot be brought to the Court. Merely because some documents are filed at a later part of the trial, it cannot be presumed that such documents are filed only to fill up the lacuna on the side of prosecution. It is to be noted that whatever legal objections the petitioner may have with regard to the document that could be raised by the petitioner. The petitioner will be given a proper opportunity to cross examine the witness. Therefore, mere filing of the assessment order based on assessment being done as per the provision of law cannot be said that it is so done to fill up the lacuna. However, the trial Court is directed to consider the objections of the petitioner and decide the matter on merits.

7.This Court accordingly finds no merit in the present petition and this petition stands dismissed. It is well open to the petitioner to raise all the legal objections during cross examination.

8.In the result, the Criminal Original Petition fails and the same is dismissed. Consequently, the connected miscellaneous petition is closed.

08.07.2022

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Index: Yes / No
Internet : Yes / No
Speaking / Non Speaking order

N.SATHISH KUMAR, J.

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To.

The Income Tax Officer
Corporate Ward – 5(4)
Chennai 600 034

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