

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :27.06.2022

Pronounced on :05.07.2022

CORAM:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Crl.O.P.Nos.16387,16390, 23229, 23330, 23252, 23327, 23332,
23320 & 23324 of 2019
in Crl.M.P.Nos.8216, 8218,12253,12201,
12246,12257,12242 & 12244 of 2019

Smt.Anjuga Selvi Alagiri

.. Petitioner in all Crl.OPs

/versus/

The Deputy Director of Income Tax (Inv),
Unit-I(1),
Income Tax Office,
Mahathma Gandhi Salai,
Nungambakkam,
Chennai 600 034.

.. Respondent in all Crl.OPs

Prayer: Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code to invoke Section 482 of Cr.P.C., and call for the entire records pertaining to the complaint in EOCC.No.149 of 2018, dated 23.04.2018 (Crl.O.P.No.16387 of 2019) EOCC.No.148 of 2018, dated 23.04.2018 (Crl.O.P.No.16390 of 2019) EOCC.No.151 of 2018, dated 05.04.2018 (Crl.O.P.No.23229 of 2019) EOCC.No.152 of 2018, dated 05.04.2018 (Crl.O.P.No.23330 of 2019) EOCC.No.153 of 2018, dated 05.04.2018 (Crl.O.P.No.23252 of 2019) EOCC.No.154 of 2018, dated 05.04.2018 (Crl.O.P.No.23327 of 2019) EOCC.No.155 of 2018, dated 05.04.2018 (Crl.O.P.No.23332 of 2019) EOCC.No.156 of 2018, dated 05.04.2018 (Crl.O.P.No.23320 of 2019) EOCC.No.157 of 2018, dated 05.04.2018 (Crl.O.P.No.23324 of 2019) on the file of the Additional Chief Metropolitan Magistrate (EO-II), Egmore at Allikulam Commercial Complex, Chennai and quash the same.

For Petitioner :Mrs.V.Bagyalakshmi

For Respondent :M/s M.Sheela,
Spl.P.P.(Income Tax)

COMMON ORDER

These batch of Criminal Original Petitions are filed to quash the complaints laid by the Income Tax Department for prosecution under Sections 276 CC and 276C (1) of the Income Tax Act, 1961.

2. The prosecution details of each case which is the subject matter of these petitions are tabulated as below:-

(i) Prosecution under Section 276 CC of the Income Tax Act, 1961

Sl. No.	Assessment Year	Complaint on the file of Additional Chief Metropolitan Magistrate	Quash petition on the file of High Court, Madras
1.	2012-2013	E.O.C.No.148 of 2018	CrI.O.P.No.16390 of 2019
2.	2013-2014	E.O.C.No.149 of 2018	CrI.O.P.No.16387 of 2019
3.	2015-2016	E.O.C.No.151 of 2018	CrI.O.P.No.23229 of 2019

(ii) Prosecution under Section 276 C (1) of the Income Tax Act, 1961

Sl. No.	Assessment Year	Complaint on the file of Additional Chief Metropolitan Magistrate	Quash petition on the file of High Court, Madras
1.	2010-2011	E.O.C.No.152 of 2018	CrI.O.P.No.23330 of 2019
2.	2011-2012	E.O.C.No.153 of 2018	CrI.O.P.No.23252 of 2019
3.	2012-2013	E.O.C.No.154 of 2018	CrI.O.P.No.23327 of 2019
4.	2013-2014	E.O.C.No.155 of 2018	CrI.O.P.No.23332 of 2019
5.	2014-2015	E.O.C.No.156 of 2018	CrI.O.P.No.23320 of 2019

Sl. No.	Assessment Year	Complaint on the file of Additional Chief Metropolitan Magistrate	Quash petition on the file of High Court, Madras
6.	2015-2016	E.O.C.No.157 of 2018	CrI.O.P.No. 23324 of 2019

3. According to the Income Tax Department, the petitioner herein, an income tax assessee having taxable income failed to file her Return of Income for the Assessment Years 2011 to 2016. She also failed to pay the tax due before the due date of filing the return of income with wilful intention to evade tax payable to the Exchequer. Under Section 139 (1) of the Income tax Act, 1961, the assessee has to file the Return of Income within the time prescribed, failing which, the assessee is liable for prosecution under Section 276 CC of the Income Tax Act, 1961. If the assessee attempts to evade tax, penalty and interest chargeable wilfully, it is punishable under Section 276C (1) of the Income Tax Act, 1961.

4. In this case, the petitioner failed to file her Return in time. In the course of enquiry made under Section 131(1A) of the Income Tax Act, 1961, M/s Ganesan Associates, Chartered Accountant represented the assessee and admitted the failure to file Returns. The enquiry revealed non-filing of Return in time and there was also an attempt to evade tax wilfully. Show cause notices were issued for each Assessment Years calling for explanation, why prosecution proceedings should not be initiated for violation of Sections 276 CC and 276C (1), which are two distinct offences.

5. The assessee in response to the show cause notices, contended that she had paid the tax for the relevant Assessment Years with interest. The delay in filing the Return of Income was not wilful or deliberate, but beyond her control, since she left India and settled in USA and was not abreast of Indian Tax Law. Not satisfied with the explanation, prosecution was launched as tabulated above and the said prosecution is under challenge in these batch of petitions.

6. The quash petitions are pegged on the ground that during the enquiry proceedings, the representative of the assessee sought time to furnish detailed written statement to show that the delay in payment of tax is neither wilful nor with any intention to evade tax payable. As soon as the notice, the tax payable was remitted with interest, to show the bonafide that no intention or attempt to evade payment of tax. Non-communication of her with the auditor and misplacement of records were the reasons for the delayed payment of tax. The entire tax payable

remitted on 20/02/2018. This reason accepted by the Department and compounded the offences for the assessment year 2010-2011 and 2011-2012 and the prosecutions under Section 276 CC of the Income Tax Act closed. The same logic and reasoning applies to the remaining cases also.

7. Alleging malafide in prosecuting her, it is contended that the show cause notice was not properly served on her. The copy of the show cause notice was not furnished to her representative. No communication received after payment of tax due. No summons was issued based on the complaint. Only on hearing from the News through visual media that the trial Court has issued NBW on 06/03/2019, she came to know about the prosecution, which was launched with malafide after receiving the entire tax due.

8. The details of payment of tax for the respective Assessment Years, with challan numbers and date mentioned in the petitions as under:-

A.Y	Balance Tax Paid	BSR Code	Date	Challan No.
2016-17	51,810	0013283	20.02.2018	03013
2015-16	1,20,860	0004329	20.02.2018	05618
2013-14	2,49,940	0004329	14.02.2018	00452
	7,240	0004329	14.02.2018	00452
2012-13	5,01,670	0013283	14.02.2018	00458
2011-12	1,48,800	0004329	14.02.2018	00425
2010-11	93,590	0013283	14.02.2018	00438

9. The Leaned counsel for the petitioner further submitted that, the assessment made by the Department is under challenge and in so far as prosecution launched for non-filing of returns in time for the Assessment Years, 2010-2011 and 2011-2012 cases were compounded. The same yardstick ought to have been followed in the remaining cases also, but for no reason, the Department is not inclined to compound the rest of the complaints.

10. The Learned counsel for the petitioner also submitted that, when the assessment by the Department demanding exorbitant tax, penalty and interest it challenged before the appellate Authority and still pending. Therefore, the pre-conceived sanction to prosecute without the issue regarding tax payable finally determined is bad in law. Hence, the complaints are to be quashed.

11. In support of the above submissions, the learned counsel for the petitioner rely upon the following judgments:

(i) S.P.Velayutham v. The Assistant Commissioner of Income Tax, Non Corporate Circle -14(1), Annex Building, Room No.606, No.121, M.G.Road, Chennai-34 made in Crl.O.P.No.17906 of 2017 dated 20.01.2022.

(ii) M/s S.M.J.Housing represented by its Partners Accused 2 to 4 and others v. The Assistant Commissioner of Income Tax, Central Circle-II(1), Chennai made in Crl.O.P.No.20998 of 2016 dated 21.10.2021.

(iii) Ganga Devi Somani v. State of Gujarat in Crl.M.P.No.22512 of 2019 dated 06.07.2019.

12. The Respondent-Department has filed a common counter wherein it is stated that, complaints under Section 200 Cr.P.C., for the offences under Section 276CC and 276(1) of the Income Act 1961 for the Assessment Year 2010-11, 2012-13, 2013-14, 2014-15 and 2015-16 were taken on file in EOCC 146 to 157 of 2018. The complaints in respect of two assessment years (AY 2010-2011 & 2011-12) in EOCC.Nos.146, 147, 152 & 153, it was compounded and the respondent has withdrawn these complaints and the complaints in EOCC Nos.148, 149, 150, 151, 154, 155, 156, 157 of 2018 are pending before the ACMM EO-II Court. The petitioner was statutorily bound to file the return of income for the each assessment years from A.Y 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16 as mandated under Section 139(1) of the Income Tax Act, 1961. The factum of non filing of returns and evasion was brought to light by the Investigation Wing of the Income Tax Department. The respondent issued show cause notices under Section 276CC and Section 276C(1) of the I.T. Act to the petitioner on 08.02.2018 for which replies were filed and the reasons given by the petitioner for violation of the Income Tax Act were not found to be plausible and hence sanction for prosecution was accorded to proceed under Section 276CC & 276C(1) of the Income tax Act. Accordingly the complaints were filed before the Economic Office Court (II) at Egmore. There was no voluntary compliance of the statutory requirement by the petitioner which amounts to violation of the Income Tax Act thereby attract protection for the offences under Section 276CC, Section 276C(1) of Income Tax Act 1961. If not for the investigation proceedings, the assessee would have not come forward to file her returns and the exchequer would have been deprived of its legitimate dues. Thus, the wilful element which is sine qua non is very much present in the case of the petitioner.

13. The Act of the petitioner by filing the returns upon detection and with concealed income which is violation of the statute thereby constitutes an offence. Thus, the accused cannot

be given a clean chit, and her default is wilful. If the timelines and schedules as per the laws are not followed, then it would adversely impact the Government's revenue interest.

14. The Learned Counsel for the Respondent-Department rely upon the following judgments to buttress her submissions:

(i) P. Jayappan v. S.K. Perumal, First Income Tax Officer, Tuticorin reported in AIR 1984 SC 1693;

(ii) Prakash Nath Khanna & Anr. v. Commissioner of Income Tax and Anr made in Appeal (Crl.) 1260-1261 of 1997 dated 16.02.2004;

(iii) Sasi Enterprises v. Assistant Commissioner of Income Tax made in Crl.A.No.61 of 2007 dated 30.01.2014;

(iv) J. Dinakaran v. The Deputy Director of Income Tax (investigation) Unit -3(1), Nungambakkam, Chennai 600 034 in Crl.O.P.nos.28469, 28482 to 28484, 28487 and 28492 of 2018 dated 05.03.2019;

(v) Shri Raman Krishna Kumar v. Deputy Commissioner of Income Tax, Non Corporate Circle-3, VI Floor, Wanaparthy Block, Room No.623 A, No.121, Nungambakkam High Road, Chennai 600 034 in Crl.O.P.No.25561 of 2016 dated 26.10.2021;

(vi) M/s World Bridge Logistics Private Ltd., Rep. By its Director, J. Hilda Mary v. The Deputy Commissioner of Income Tax, Corporate Circle-3(2), Room No.414, 4th Floor, Wanaparthy Block, Aaykar Bhavan, No.121, M.G.Road, Nungambakkam, Chennai-34 in Crl.O.P.No.11998 of 2018 dated 28.01.2022; and

(vii) S.J. Surya v. The Deputy Commissioner of Income Tax, Central Circle II(4), Chennai-34 in the impact of Crl.O.P.No.29914 to 29919 of 2015 dated 26.05.2022.

15. Regarding the impact of pendency of the Departmental appeal of the criminal prosecution on alleged evasion of Tax, the Bedrock case, P. Jayappan v. S.K. Perumal, First Income Tax Officer, Tuticorin reported in [AIR 1984 SC 1693], wherein on considering the provisions of Sections 276C and 277 of Income Tax Act, 1961, the Hon'ble Supreme Court has held as below:-

"On a careful consideration of the relevant provisions of the Act, we are of the view that the pendency of the reassessment proceedings cannot act as a bar to the institution of the criminal prosecution for offences punishable

under Section 276 C or Section 277 of the Act. The institution of the criminal proceedings cannot in the circumstances also amount to an abuse of the process of the Court. The High Court was therefore, right in refusing to quash the prosecution proceedings in the four cases instituted against the petitioner under Section 482 of the Cr.P.C".
(Emphasis added)

16. Followed by Jayappan case, there are a catena of judgments of this Court as well as the Hon'ble Supreme Court wherein it is held that the pendency of appeal before the Tax Appellate Authority cannot be a bar for prosecuting the assessee for not filing the Return in time or for the attempt to evade tax.

17. In this case, the facts reveals that from the financial years starting from 2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015 till the show cause notice issued to the assessee, she has not filed Returns for her individual income and her belated return, on investigation found omission of certain income. Particularly, source for payment through credit cards, interest accumulated in fixed deposits etc. were deducted and therefore, the prosecution has been launched.

18. The undisclosed income for each of the Assessment Years, deducted by the Department in the course of investigation are:-

Financial Year	Assessment Year	Undisclosed Income (In Rs.)
2009-10	2010-11	4,48,116
2010-11	2011-12	5,76,079
2011-12	2012-13	11,42,342
2012-13	2013-14	10,34,354
2013-14	2014-15	20,17,717
2014-15	2015-16	10,82,465

19. The sum and substance of the complaints is that while the due date for filing the Return for each Accounting Years lapsed long back, Returns were filed only during the month of February 2018 as below:-

PERIOD	DUE DATE	FILING AND PAYMENTS
AY 2010-11	15.10.2010	Feb 2018
AY 2011-12	31.07.2011	Feb 2018
AY 2012-13	31.08.2012	Feb 2018
AY 2013-14	05.08.2013	Feb 2018
AY 2014-15	21.07.2014	Feb 2018
AY 2015-16	31.08.2015	Feb 2018

and what self assessment made by the assessee and tax paid on the declared income were found to be incorrect and such Returns has been filed wilfully to evade tax.

20. The difference between the income declared by the assessee and the assessment made by the Department for each Financial Years is as below:-

Sl. No.	Assessment Year	Total Income estimated/ quantified (in Rs.)	Taxes paid (in Rs.)	Undisclosed Income (in Rs.)
1.	2010-11			4,48,116
2.	2011-12	6,40,940	1,48,800	5,76,079
3.	2012-13	12,23,913	5,01,670	11,42,342
4.	2013-14	11,49,256	2,57,180	10,34,354
5.	2014-15	20,17,717	7,25,060	20,17,717
6.	2015-16	12,28,808	1,20,860	10,82,465

The self assessment tax on declared income was paid only after initiation of enquiry proceedings that too concealing substantial part of the income. In such circumstances, several lakh of rupees had been evaded with wilful intention.

21. This Court is of the view that there is enough materials to proceed against the petitioner for non-filing of Return in time which is punishable under Section 276 CC of the Income Tax Act, 1961 and for filing the Return belatedly with suppressed income, which is punishable under Section 276C(1) of the Income Tax Act, 1961.

22. Since Section 278E of the Income Tax Act, 1961 gives a presumption to lay prosecution in case of non-filing of Return within the time limit and suppression of income in the Return

filed is with malafide intention to evade Tax, the Court cannot by exercising its power under Section 482 of Cr.P.C., quash the proceedings presuming the contrary. The malafide projected in these petitions does not carry any merit, since the Department has caused notice to the assessee and the representative of the petitioner and participated and given an explanation which is found not satisfactory leading to launching the prosecution. The absence of assessee in India or the communication gap between herself and her representative cannot be a ground to quash the prosecution. Further compounding offence under IT Act is not an absolute right vested in the assessee. The compounding of cases based on facts and merits of each case where the assessee disclose the true and actual income but file it belatedly cannot be equated to the case where the assessee undisclosed the true and actual income also files the returns belatedly. Hence this court holds no merit in these petitions. in view of the presumption clause. Therefore, these Criminal Original Petitions are dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

/True Copy//

Sub Assistant Registrar

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To:

1. The Additional Chief Metropolitan Magistrate (EO-II),
Egmore at Allikulam Commercial Complex,
Chennai.
2. The Deputy Director of Income Tax (Inv),Unit-I(1),
Income Tax Office,Mahathma Gandhi Salai,
Nungambakkam,Chennai 600 034.
3. The Special Public Prosecutor(Income Tax),
High Court, Madras - 104.

+1cc to M/s M.Sheela, Advocate, S.R.No.43084

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