BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated:03/08/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.OP(MD)No.14849 of 2018
and
Crl.MP(MD)No.6592 of 2018

1.M/s.Trichy Steel Rolling Mils Limited,
represented by Director,
D.A.Srinivas,
P.O Box No.603,
Senthannirpuram,
Tiruchirappalli-620 004.
(PAN:AAACT3372K)

2.Sri.K.Shivashanmurugan
Director,
M/s.Trichy Steel Rolling Mills Ltd.,
Senthannirpuram,
Trichy.

3.Sri.K.Padmarajan
Director,
M/s.Trichy Steel Rolling Mills Ltd.,
Senthannirpuram,
Trichy.

4.Sri.D.A.Srinivas,
Director,
M/s.Trichy Steel Rolling Mills Ltd.,
Senthannirpuram,
Trichy.

5.Sri.C.D.K.Reddy,
Director,
M/s.Trichy Steel Rolling Mills Ltd.,
Senthannirpuram,
Trichy. : Petitioners/Accused

Vs.

Income Tax Department,
O/o.The Principal Commissioner of Income Tax,
Trichy-1, represented by
Assistant Commissioner of Income Tax,
Circle-1(1),
44, Williams Road, Cantonment,
Trichy-620 001. : Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records relating to CC No.261 of 2018 pending on the file of the Judicial Magistrate No.1, Tiruchirappalli and quash the same.

For Petitioners : Mr.S.Ashok Kumar
Senior counsel
for Mr.M.Deivanandam

For Respondent : Mr.N.Dilip Kumar
Standing Counsel
for Income Tax Department

O R D E R

This criminal original petition is filed seeking quashment of the case in CC No.261 of 2018 pending on the file of the Judicial Magistrate No.1, Tiruchirappalli.

2.**The case of the prosecution** is that M/s.Trichy Steel Rolling Mills Limited is engaged in the business of manufacturing iron rods and bars. It filed income tax return for the Assessment year 2007-2008, on 27/03/2008 stated that there was no income. The above said case was selected for scrutiny and assessment was completed under section 143(3) of the Income Tax Act, on 30/12/2009. The company claimed Rs.1,80,00,000/- as bad and doubtful debts. It was shown in the profit and loss account. The above said debt was related to Aqua Farm, Nellore. But it was affirmed that the above said farm or business was a bogus one, on that ground, the assessing officer found that the claim is bogus one.

3.Similarly, the company also had overdraft facilities from Andra Bank and lent money to its sister concern namely M/s.Karnataka Breweries and Distilleries Limited, Bangalore. The activities of both companies are different. There was no business connection between two group. The assessing officer treated the loan, that was given by the accused company was disallowed and the interest was also treated as income. So the assessment order was passed, on 28/12/2012. For concealment of the income, notice under section 271(1)(c) of the Income Tax Act was issued, on 30/12/2009.

4.The assessing officer passed penalty order, imposing penalty of Rs.75,66,580/-. Against the above said penalty order, the accused preferred appeal before the Commissioner of Income Tax (Appeals), Trichy and that was allowed and the penalty was removed. Against the above said order, the assessing officer filed appeal before the Income Tax Appellate Tribunal 'C' Bench, Chenai. The Bench set aside the order of the Commissioner and restored the order of the assessing officer. Later, notices were issued to show cause why the prosecution should not be launched.

5.In the meantime, the accused filed tax appeal before the High Court of Madras. They sought an order to keep the prosecution in abeyance till the disposal of the appeal. But that was not complied and the prosecution has been laid, which was also taken cognizance by the trial court in CC No.26 of 2018.

6.Challenging the prosecution, this petition has been filed mainly on the ground that since the Division Bench of this court has taken cognizance of the appeal, which is statutory one available to the petitioner, launching of the prosecution itself is very bad in law.

7.Heard both sides.

8.As mentioned above, now the tax appeal case is stated to be pending before the Division Bench of this court in Tax Appeal No.501 of 2017. All the proceedings that were initiated earlier to the above said tax appeal is not denied and disputed by both sides. Even at the time of hearing the petition, the learned Senior counsel appearing for the petitioners would submit that this petition can be kept in abeyance till the disposal of the T.C (Appeal No. 501 of 2017. The reason for his request is that if the proceedings that has been initiated by the assessing officer is set aside, then naturally the prosecution will become bad in law.

9.Per contra, the learned counsel appearing for the respondent would submit that it is not a case of ordinary non-disclosure of the income tax, but it was a scrutiny assessment issue. The petitioners have created the bogus documents to claim benefit. So according to him, the company, in which the petitioners claim to have business transaction itself is a bogus one. Debt, which was incurred was found to be a bogus claim. He would further submit that the very conduct of the petitioners in creating the documents shows their criminal intention. According to him, penalty proceedings are entirely different from the criminal proceedings. In the facts and circumstances of the case, the criminal prosecution should be allowed to go on.

10.Per contra, it is the contention on the part of the petitioners to the effect that whether the debt, which was claimed by the petitioners is bad in law or not will be decided only by the Division Bench of this court. So that exercise cannot be taken, either by this court or by the trial court. It is further contented that there was no willful default on the part of the petitioners and only the officer, who is in-charge of the company is liable and there is no extent of vicarious liability. It is further submitted that section 35(2) of the Income Tax Act does not satisfy.

11.The learned Senior counsel appearing for the petitioners would rely upon the various observations that have been made by the assessing officer. But however, those need not be taken into account at this stage, since the statutory tax appeal is pending before the Division Bench of this Court in T.C(Appeal) No.501 of 2017.

12.It is seen that only after hearing the appeal in 2016, show cause notice was issued to the petitioners, on 03/11/2017 under section 276(3) of the Income Tax Act. The complaint was filed, on 03/05/2018 and taken cognizance in CC No.261 of 2018.

13.The learned Senior counsel appearing for the petitioners would rely upon the judgment of the Hon'ble Supreme Court in the case of ***Commissioner of Income Tax, Mumbai Vs. Bhupen Champak Lal Dalal and another [(2001)3 SCC 459],*** wherein the Hon'ble Supreme Court has stated that since the tax appeal is pending before the concerned authorities, then the criminal prosecution can be kept in abeyance. As stay was ordered by the trial court, on the basis of the petition filed by the accused person to stay the prosecution, that was allowed. Against which, the revision was preferred by the Department to the High Court and that was allowed, over which, the above said criminal appeal has been preferred. At that time, the Hon'ble Supreme Court has stated that it is better the criminal prosecution can be kept in abeyance till the disposal of the penalty proceedings. So on that account, the above said request was made by the petitioners. But since the matter is of the year 2018 and tax cases have been filed in

2017, this court was of the considered view that the matter cannot be kept pending till the disposal of the tax cases appeal. So the matter was heard on merits also.

14.Even though, this court wanted to give an opportunity to the petitioners to approach the concerned court to stay of the proceedings, the petitioners are not willing to go before the trial court for such relief. But he wanted this matter to be disposed of. No doubt that the penalty proceedings and criminal proceedings are entirely different in nature. The Hon'ble Supreme Court in the case of ***Commissioner of Income Tax, Mumbai Vs. Bhupen Champaklan, Dalal and another [(2001)3 SCC 459]*** has observed that when the adjudication proceeding is decided on merits, then the criminal proceeding is bad in law. Only on that ground, the learned Senior counsel appearing for the petitioners wanted the matter to be stayed till the disposal of the tax cases appeals.

15.This petition has been filed under section 482 Cr.P.C. So this matter cannot be kept pending till the disposal of the tax cases. If at all, the criminal prosecution can be kept in abeyance till the disposal of the tax cases. Because only on merits, the penalty proceedings have been initiated by the assessing officer and that was set aside by the Commissioner of Income Tax (Appeals), over which, the Income Tax Appellate Tribunal jurisdiction was invoked. So finding that there was a bogus claim only, the Income Tax Appellate Tribunal allowed the appeal. Actually, this is the point, which has been pressed by the respondent stating that it was decided on merits. So there is no question of staying the criminal prosecution. With regard to violation of disclosure of the Principal office in the complaint, it is left open, since in view of the disposal with limited direction to be agitated at the time of trial.

16.So in the light of the above said decision of the Hon'ble Supreme Court, I am of the considered view that this matter can be **disposed of** with a direction to the trial court to keep the criminal proceedings in abeyance till the disposal of the tax case appeal in T.C (Appeal) No.501 of 2017 pending on the file of the Principal Seat. After disposal of the above said TC (Appeal)No.501 of 2017, the parties must inform the court about the out come of the same. Depending upon the out come, the trial court has to decide the matter on merits.

17.With the above said direction, this criminal original petition is **disposed of.** Consequently, connected Miscellaneous Petition is closed.

03**.08.2022**

Internet:Yes/No
Index:Yes/No
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G.ILANGOVAN,J.,

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