IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.Nos.6645, 6647, 6650, 6736 and 6739 of 2021
and Crl.M.P.Nos.4436, 4440, 4442, 4476 and 4478 of 2021

1. M/s S.S.Hyderabad Biriyani Pvt. Ltd.,
   represented by its Managing Director,
   S.Abdul Samad
   No.35, Amman Koil Street,
   Chicken Market, Broadway,
   Chennai-600 001.

2. S.Abdul Samad ...Petitioners **in all Crl.O.Ps**

-Vs-

The Deputy Director of Income Tax (Investigation),
Unit 3(2), Nungambakkam,
Chennai-600 034. ... Respondent **in all Crl.O.Ps**

Prayer in Crl.O.P.No.6645 of 2021 : Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the entire records in E.O.C.C.No.186 of 2016 pending on the file of Additional Chief Metropolitan Magistrate (E.O.II) Egmore, Chennai.

Prayer in Crl.O.P.No.6647 of 2021 : Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the entire records in E.O.C.C.No.185 of 2016 pending on the file of Additional Chief Metropolitan Magistrate (E.O.II) Egmore, Chennai.

Prayer in Crl.O.P.No.6650 of 2021 : Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the entire records in E.O.C.C.No.187 of 2016 pending on the file of Additional Chief Metropolitan Magistrate (E.O.II) Egmore, Chennai.

Prayer in Crl.O.P.No.6736 of 2021 : Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the entire records in E.O.C.C.No.188 of 2016 pending on the file of Additional Chief Metropolitan Magistrate (E.O.II) Egmore, Chennai.

Prayer in Crl.O.P.No.6739 of 2021 : Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the entire records in E.O.C.C.No.189 of 2016 pending on the file of Additional Chief Metropolitan Magistrate (E.O.II) Egmore, Chennai.

In all Crl.O.Ps

For Petitioners : Mr.P.Ramesh Kumar

For Respondent : Mrs.M.Sheela
Special Public Prosecutor for Income Tax

COMMON ORDER

All the Criminal Original Petitions have been filed to quash the proceedings in E.O.C.C.Nos.185 to 189 of 2016 pending on the file of Additional Chief Metropolitan Magistrate (E.O.II) Egmore, Chennai which were initiated for different period of assessments for the offence punishable under Section 277 of the Income Tax Act, 1961.

2. E.O.C.C.No.185 of 2016 has been filed for the assessment year

2010-2011, E.O.C.C.No.186 of 2016 has been filed for the assessment year 2011-2012, E.O.C.C.No.187 of 2016 has been filed for the assessment year 2012-2013, E.O.C.C.No.188 of 2016 has been filed for the assessment year 2013-2014 and E.O.C.C.No.189 of 2016 has been filed for the assessment year 2014-2015.

3. The crux of the complaint is that the first accused is a Company engaged in Restaurant business and catering of food. It was incorporated and the second accused is one of the Directors cum Shareholders of the first accused. On information, the accused was under-reporting the sales. Apart from the sales suppression, the accused had also been under-reporting the expenses, implying that it has been incurring expenditures out of the income which is unreported. They had not been preparing the financial/return of income in accordance with proper books of accounts, but offering only a manufactured sum of profit or income. Therefore, the accused had suppressed both the income and expenditure, thereby evading tax. Hence, search was conducted as contemplated under Section 132 of the Income Tax Act, on 24.08.2015. During search, it was found that the accused failed to maintain any proper books of accounts as per accounting practice and has been filling returns of income based on

notional value. The entire business was predominantly in cash and several documents were seized at the time of search. The turnover offered in the return of income filed by the accused is around Rs.1 Crore. However, on the basis of the data extracted from the seized documents, imaging of data available in the computer at Corporate Office etc., it was found that including counter sales and bucket sales from November 2014 to August 2015, the counter sales is Rs.34,82,55,718/- and bucket sales is Rs.6,87,20,245/-, in total Rs.41,69,75,963/-.

4. Therefore, the accused failed to maintain any books of accounts, sales for the period from Financial Year 2008-2009 was worked out by reverse working the sales for each of the outlets from the date of the commencement of business operation at each of the outlet. In the process of reverse working 15% allowance has been given for each of the year. Accordingly, the total sales of the Company from the financial year 2008-2009 to the financial year 2015 to 2016 is Rs.116,41,98,200/- and the net profit was arrived as Rs.22,65,09,152/-. It was confronted with the accused and the second accused had admitted a sum of Rs.4 Crores as undisclosed income and gave year wise break-up detailed as follows:-

(i) In the hands of Sh.Abdul Samad:

Assessment Year	*Income reported in the return of income (Rs.)*	*Additional Income disclosed (Rs.)*
2010-11	3,97,825	60,00,000
2011-12	2,24,583	30,00,000
2012-13	2,95,796	32,00,000
2013-14	6,02,364	16,00,000
2014-15	Not filed	50,00,000
2015-16	Not filed	---
2016-17	Not filed	28,00,000
Total		**2,16,00,000**

(ii) In the hands of SS Hyderabad Briyani P Ltd.:

Assessment Year	*Income reported in the return of income (Rs.)*	*Additional Income disclosed (Rs.)*
2010-11	3,137	2,00,000
2011-12	2,06,359	3,00,000
2012-13	2,16,053	4,00,000
2013-14	2,34,586	23,00,000
2014-15	3,12,719	16,00,000
2015-16	Not filed	73,00,000
2016-17	Not filed	63,00,000
Total		**1,84,00,000**

5. Accordingly, additional income were admitted by them for the respective financial years. Therefore, the original returns filed by the accused were false and incorrect. They filed income returns by making false statements of return of income and wilfully under-reported the income earned by them. Therefore, they had committed the offence under Section 277 of the Income Tax Act, 1961. Therefore, show cause notice

was issued to the accused as to why the prosecution should not be initiated for the offence under Section 277 of the Income Tax Act, 1961.

6. On receipt of the same, the accused submitted the explanation and it was not plausible and tenable. The accused has also made false statements in the returns of income filed by under-reporting the income earned. The accused filed returns of income by concealing the correct income. They had concealed taxable income by such manner and continues to deprive the exchequer by evading the taxes in the manner understating the correct income. Therefore, the respondent initiated prosecution for the offence under Section 277 of the Income Tax Act for different assessment years.

7. The learned counsel for the petitioners would submit that mere statement cannot be a basis for evasion, unless and until they are substantiated by any incriminating material seized during the search. Therefore, the prosecution is unsustainable against the petitioners. That apart, the accused approached before the Settlement Commission and as per the proceedings of the Settlement Commission dated 22.01.2018, the income tax was paid and disclosed all the facts and materials for

computation of its additional income. They had paid income tax and thus, they had satisfied the provisions under Section 245 H of the Income Tax Act. The Settlement Commission had granted immunity from prosecution under the Income Tax Act to the petitioners for the assessment years which are settled by the said order. He further pointed out that as per Section 245 I of the Income Tax Act, the order passed by the Settlement Commission shall be conclusive. Therefore, the prosecution initiated as against the petitioners cannot be sustained.

8. The learned Special Public Prosecutor for the respondent filed counter and submitted that there are incriminating materials seized during the search and statement of accounts itself speaks by itself and as such, during the trial, all the documents can be produced in order to substantiate the charge under Section 277 of Income Tax Act. As per Section 245H (1) of the Income Tax Act, no such immunity shall be granted by the Settlement Commission in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of the application under Section 245C of the Income Tax Act.

9. Admittedly, the petitioners filed an application before the

Settlement Commission as per Section 245C of the Income Tax Act, on 22.01.2018. Whereas, the prosecution was initiated two years before viz., 17.11.2016 itself. Therefore, the provisions under Section 245 I of the Income Tax Act is not applicable.

10. It is relevant to extract the provisions under Section 245 H(1) of the Income Tax Act as follows:-

> "***245H. Power of Settlement Commission to grant immunity from prosecution and penalty.***—*(1) The Settlement Commission may, if it is satisfied that any person who made the application for settlement under section 245C has co-operated with the Settlement Commission in the proceedings before it and has made a full and true disclosure of his income and the manner in which such income has been derived, grant to such person, subject to such conditions as it may think fit to impose 1[for the reasons to be recorded in writing], immunity from prosecution for any offence under this Act or under the Indian Penal Code (45 of 1860) or under any other Central Act for the time being in force 2[and also (either wholly or in part) from the imposition of any penalty] under this Act, with respect to the case covered by the settlement:*
>
> *[Provided that no such immunity shall be granted by the Settlement Commission in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of the application under section 245C:]*
>
> *[Provided further that the Settlement Commission shall not grant immunity from prosecution for any offence under the Indian Penal Code (45 of 1860) or under any Central Act other than this Act and the Wealth-tax Act, 1957 (27 of 1957) to a person who makes an application under section 245C on or after the 1st day of June, 2007.]"*

11. Further, the prosecution proceedings under Income Tax Act

were launched two years before and the factum of pending prosecution was not brought to the notice of the Settlement Commission made by the petitioners that too in the year 2018. Further, the petitioners concealed the fact of such pending prosecution for the offence under Section 277 of the Income Tax Act and obtained immunity in respect of prosecution as the same was not brought to the knowledge of the Settlement Commission. That apart, as against the immunity granted by the Settlement Commission, the respondent filed an appeal and it is pending before the Board.

12. Therefore, the grounds raised by the petitioners cannot be considered and this Court is not inclined to quash the proceedings in E.O.C.C.Nos.185 to 189 of 2016 pending on the file of Additional Chief Metropolitan Magistrate (E.O.II) Egmore, Chennai.

13. Accordingly, these Criminal Original Petitions are dismissed. Consequently, connected Miscellaneous Petitions are closed.

02.11.2023

Internet: Yes

Index : Yes/No
Speaking/Non Speaking order
mn

G.K.ILANTHIRAIYAN. J,

mn

To

1. The Additional Chief Metropolitan Magistrate (E.O.II)
   Egmore, Chennai.

2. The Deputy Director of Income Tax (Investigation),
   Unit 3(2), Nungambakkam,
   Chennai-600 034.

3. The Public Prosecutor,

High Court, Madras.

Crl.O.P.Nos.6645, 6647, 6650, 6736 and 6739 of 2021

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