IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.11.2023

Pronounced on : 16.11.2023

CORAM:

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

CRL.O.P.No.16989 of 2021 and
Crl.M.P.No.11023 of 2021

Rohitkumar Nemchand Piparia ... Petitioner

Vs.

The Deputy Director of Income Tax(Inv.)
Unit-4(3),
No.46, (Old No.108),
1st floor, Room No.125,
Nungambakkam High Road,
Chennai 600 034 ... Respondent

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records in EOCC.No.401 of 2018 on the file of the Court of the Additional Chief Metropolitan Magistrate, Economic Offences-II, Egmore, Chennai and to quash the entire proceedings as against the petitioner.

For Petitioner : Mrs.P.Meghana Niar

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

ORDER

This criminal original petition has been filed to quash the proceedings in EOCC.No.401 of 2018 on the file of the Court of the Additional Chief Metropolitan Magistrate, Economic Offences-II, Egmore, Chennai, thereby taken cognizance for the offence under Section 276C(1) of Income Tax Act, 1961, as against the petitioner.

2. The respondent lodged complaint for the offence under Section 276C(1) of the Income Tax Act, 1961 alleging that during the course of the enquiry by the investigation wing, it was noticed that in the bank account maintained by the petitioner, there was unusual credit of large amount through RTGS and funds were debited for investment in the stock market. The petitioner had entered into 165 share transaction during the financial year 2007-08 and filed his return of income for the assessment year 2008-09 on 05.02.2009 declaring taxable income of Rs.3,10,226/-. However, the petitioner has not disclosed any capital gain in the return of income filed for financial year 2007-08 relevant to the assessment year 2008-09. Further, the petitioner entered into 165 share transactions to the tune of Rs.155.20 crores and short term capital gain arose from the said transactions is Rs.52.13 crores. Though

the tax has been deducted, it was not fully deducted and the petitioner did not disclose in his return of income under the head Capital Gain and paid the tax. Thus, the petitioner failed to show the same in his return of income and attempted to evade payment of tax. Only after deduction by the income tax department, the petitioner had share transactions during the relevant financial year and accepted the same. Therefore, the petitioner committed the offence punishable under Section 276C(1) of the Income Tax Act, 1961.

3. The learned counsel appearing for the petitioner submitted that though this Court already dismissed the quash petition filed by the petitioner in Crl.OP.No.3891 of 2020 by an order dated 28.10.2010, in view of the subsequent development in this case, the petitioner is constrained to file this petition to quash the proceedings. The petitioner is a Non Resident Indian for more than 40 years. Therefore, the bank had responsibility to deduct tax at source to deduct the tax. The bank had deducted tax for a sum of Rs.3,53,33,371/- instead of Rs.4,79,08,797/-. Only after issuance of notice by the respondent, the petitioner came to know about the tax deducted by the bank. Therefore, the petitioner never wantonly evaded any tax . Further, the respondent raised a claim for advance tax under Section 234 B of the Income

Tax Act which will not be applicable in the present case. Therefore, the petitioner filed appeal before the Commissioner of Income Tax, who passed order dated 29.09.2023 and concluded that Section 234B is not applicable and only Section 234C will be applicable. It means that due will be less than Rs.10,00,000/-. In fact, the difference in the tax which was noticed by the respondent was already paid by the petitioner to the tune of Rs.1,01,00,000/-. Further, the Commissioner of Income Tax(Appeals) concluded that there is no evidence of wilful evasion of tax. As such, she prayed for quashment of the impugned proceedings.

4. The learned counsel for the respondent filed counter and submitted that this Court considered all the grounds raised by the petitioner and dismissed the earlier quash petition in Crl.OP.No.3891 of 2020 by a detailed order dated 28.10.2020. Therefore, the present quash petition is nothing but abuse of process of court and it cannot be entertained. In support of her contention, she relied upon the order of the Hon'ble Supreme Court of India in the case of ***Bhisham Lal Verma Vs. State of Uttar Pradesh and another*** rendered in SLP(Crl.) No.7976 of 2023, wherein it is held as follows:

11. We are in complete agreement with these observations of the Madras High Court. Though it is clear that there can be *no blanket rule that a second petition under Section 482 Cr.P.C. would not lie in any situation and it would depend upon the facts and circumstances of the individual case, it is not open to a person aggrieved to raise one plea after the other, by invoking the jurisdiction of the High Court under Section 482 Cr.P.C., though all such pleas were very much available even at the first instance. Permitting the filing of successive petitions under Section 482 Cr.P.C. ignoring this principle would enable an ingenious accused to effectively stall the proceedings against him to suit his own interest and convenience, by filing one petition after another under Section 482 Cr.P.C., irrespective of when the cause therefor arose. Such abuse of process cannot be permitted.*

5. Heard, the learned counsel appearing on either side.

6. It is true that this Court already dismissed the earlier quash petition in Crl.OP.No.3891 of 2020 filed by the petitioner challenging the initiation of prosecution in EOCC.No.401 of 2018 against the petitioner, by an order dated 28.10.2020. Now, this criminal original petition has been filed on the ground of subsequent developments.

7. The petitioner is now aged about 77 years. Admittedly, he is a Non Resident Indian. He is maintaining an account with his banker in India. The banker had deducted tax to the tune of Rs.3,53,33,371/- instead of Rs.4,79,08,797/-. The petitioner filed his return of income for the assessment year 2008-2009 on 05.02.2009 admitting the total income of Rs.3,10,226/-. On perusal of the details available with the Department, it was found that the assessee had made share transaction amounting to Rs.155,20,22,411/- during the financial year 2007-2008 relating to assessment year 2008-2009. However, the petitioner did not disclose any capital gains on sale of shares in the return of income filed for the assessment year 2008-2009. Therefore, the case was re-opened under Section 147 of Income Tax Act as the income chargeable to tax has escaped assessment. The assessment was completed under Section 143 of Income Tax Act and determined tax at Rs.52,10,61,977/- and made demand to the tune of Rs.4,79,08,790/-. By an order dated 31.03.2016 under Section 154, STCG has been re-worked and made revised demand at Rs.2,83,75,590/-. Aggrieved by the same, the petitioner had filed appeal before the Commissioner of Income Tax which was dismissed. Aggrieved by the same, once again the petitioner preferred appeal before the Income Tax Appellate Tribunal and the order impugned was set aside and remanded back to

assessment officer for fresh adjudication. Accordingly, the assessment officer recomputed the amount to the tune of Rs.40,33,04,015/-.

8. Once again, it was challenged before the Commissioner of Income Tax on the ground that levy of interest under Section 234A, 234B and 234C and not against the levy of tax which amounts to Rs.4,56,94,344/-. The petitioner raised specific ground that the assessment officer erred by excluding the amount of Rs.3,53,59,195/-. It was already deducted as tax by the bank and consequently failed to appreciate that even in the unlikely event of penalty being applicable in this case. The purported tax sought to be evaded by the assessee by way of concealment of particulars of income as per the assessment officer's own admission on which penalty is levied by the assessment officer cannot be a sum of Rs.4,56,94,344/-. The Commissioner of Income Tax, Appeal held in the appeal No.16/10060/2019-20, the petitioner was under bonafide belief that there was no tax liability to be discharged by him on account of his residential status as NRE accounts and the TDS made by the bank. Thus, intention to conceal income by furnishing inaccurate particulars is not established. Therefore, the assessment officer was directed to delete the penalty imposed on the petitioner. Therefore, once the penalty on the petitioner

was deleted, the prosecution initiated by the respondent cannot be sustained.

9. Further, it is true that already the petitioner filed a petition to quash the impugned proceedings and the same was dismissed by this Court in Crl.OP.No.3891 of 2020 by an order dated 28.10.2020. However in the case on hand, in view of the subsequent development by the appellate order passed by the Commissioner of Income Tax, this Court is inclined to entertain this petition. Considering the subsequent development, in order to meet the ends of justice, the continuation of prosecution cannot be possible and it is liable to be quashed.

10. Accordingly, the entire proceedings in EOCC.No.401 of 2018 on the file of the Court of the Additional Chief Metropolitan Magistrate, Economic Offences-II, Egmore, Chennai is quashed and this criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

16.11.2023

Index :Yes/No
Internet : Yes/No
Speaking order/non-speaking order
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To

1.Court of the Additional Chief Metropolitan Magistrate,
Economic Offences-II,
Egmore, Chennai

2.The Deputy Director of Income Tax(Inv.)
Unit-4(3),
No.46, (Old No.108),
1st floor, Room No.125,
Nungambakkam High Road,
Chennai 600 034

3.The Government Advocate,
High Court of Madras

G.K.ILANTHIRAIYAN, J.

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CRL.O.P.No.16989 of 2021

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