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Crl.O.P.No.18477 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.11.2023

PRONOUNCED ON : 08.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.18477 of 2021
and Crl.M.P.No.10136 of 2021

R.Revathy

...Petitioner

-Vs-

The Assistant Commissioner of
Income Tax,
Central Circle -1(2),
Investigation Wing,
Room No.311,
No.46, M.G.Road,
Chennai – 600 034.

... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the entire records in E.O.C.C.No.505 of 2017 on the file of the learned Additional Chief Metropolitan Magistrate (Economic offences-II), Egmore, Chennai and quash the same as against the petitioner/accused.

For Petitioner	: Mr.Aravid Pandian, Senior Counsel For Mr.B.Amrith Bhargav
For Respondent	: Mr.M.Sheela Special Public Prosecutor for Income Tax



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ORDER

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This petition has been filed to quash the compliant lodged by the respondent in E.O.C.C.No.505 of 2017 on the file of the learned Additional Chief Metropolitan Magistrate (Economic offences-II), Egmore, Chennai, as against the petitioner.

2. The respondent lodged complaint as against the petitioner for the offences punishable under Sections 276C(1) & 277 of the Income Tax Act for the assessment year 2012-2013. The petitioner is an income tax assessee. As per Section 132 of the Income Tax Act, a search and seizure operations were conducted in Saravana Store group of cases on 18.08.2011. The residence of the petitioner was also covered in the said operation and during the search operation, gold ornaments and jewellery were found valued at Rs.47,37,496/-. Thereafter, she was issued notice under Section 153C of the Income Tax Act, for the assessment years 2006-07 to 2011-12.

3. In response, the petitioner had filed her return of income for the assessment year 2012-13 on 11.03.2013, admitting a total income of Rs.24,09,170/-. During the assessment proceedings, the petitioner filed a



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revised memo of taxable income admitting Rs.48,39,044/- as investment made in gold and offered the same for tax. Accordingly, under Section 143(3) of the Act, order was passed on 25.03.2014 thereby determining the total income at Rs.72,75,218/- towards undisclosed investment. The Assessing Officer simultaneously initiated penalty proceedings and passed assessment order, thereby levying penalty of Rs.14,51,713/- under Section 271(1)(c) of the Income Tax Act. It was challenged by the accused in ITA No.268/14-15 and the same was allowed. Aggrieved by the same, the Assessment Officer filed appeal before the Tribunal and same was allowed sustaining the order of penalty. Accordingly, the assessment order was passed levying penalty with interest. Therefore, the respondent lodged complaint.

4. Mr.Aravind Pandian, learned Senior Counsel appearing for the petitioner submitted that the petitioner approached this Court in T.C.A.Nos. 954 of 2018 and 82 of 2019 on the quantum of jewellery. This Court remanded the matter back to the Assessing Officer to carryout the reconciling of the quantum of jewellery of the petitioner to determine that the jewellery found during search in the year 2011, was part of the jewellery declared by the petitioner. Thereafter, by an order dated



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15.11.2019, the entire penalty was deleted by allowing the reconciliation of the quantum of jewellery. The prosecution has been initiated as per the original order of penalty. The order passed by this Court in TCA.No.954 of 2018 & 82 of 2019 set aside the entire penalty. Therefore, the entire case of the prosecution cannot be sustained.

5. Heard the learned counsel appearing on either side and perused the material placed before this Court.

6. It is seen that the Principal Commissioner of Income Tax on *suomuto* re-opened the proceedings by an order dated 23.02.2021, on the basis that no reconciliation was carried out. Though the said proceeding was challenged by the petitioner before this Court in W.P.No.15854 of 2021, it was rejected by this Court. That apart, the petitioner already filed petition to discharge and the same was also dismissed by the trial Court. Now the re-assessment proceedings are pending with the Assessment Officer. Therefore, the proceedings cannot be said that it attained finality. Hence, there is no exoneration of the petitioner from all the charges. Further the quantum of jewellery found during the search was not brought in the the earlier returns filed by the petitioner. Therefore,



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the reconciliation of jewellery has not attained finality, in view of the pendency of the proceeding under Section 263 of the Income Tax Act.

7. The adjudication proceedings and the criminal prosecution are independent to each other and the pendency of any adjudication proceeding is not bar to proceed with the prosecution. The dictum lay down by the Hon'ble Supreme Court of India in the judgment reported in **(2011) 3 SCC 437** in the case of **Radheshyam Kejriwal Vs. State of West Bengal & anr** is read as follows :-

(i) Adjudication proceeding and criminal prosecution can be launched simultaneously;

(ii) Decision in adjudication proceeding is not necessary before initiating criminal prosecution;

(iii) Adjudication proceeding and criminal proceeding are independent in nature to each other;

(iv) The finding against the person facing prosecution in the adjudication proceeding is not binding on the proceeding for criminal prosecution;

(v) Adjudication proceeding by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of



Article 20 (2) of the Constitution or Section 300 of the Code of Criminal Procedure;

(vi) The finding in the adjudication proceeding in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceeding is on technical ground and not on merit, prosecution may continue; and

(vii) In case of exoneration, however, on merits where allegation is found to be not sustainable at all and person held innocent, criminal prosecution on the same set of facts and circumstances can not be allowed to continue underlying principle being the higher standard of proof in criminal cases.

(viii) In our opinion, therefore, the yardstick would be to judge as to whether allegation in the adjudication proceeding as well as proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceeding is on merits.”

Therefore, this Court finds no ground to quash the proceeding and the present petition cannot be sustained and liable to be dismissed.



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8. Accordingly, this Criminal Original Petition stands

dismissed. Consequently, connected miscellaneous petition is closed.

08.11.2023

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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To

1. The Additional Chief Metropolitan Magistrate
(Economic offences-II),
Egmore, Chennai.

2. The Assistant Commissioner of
Income Tax,
Central Circle -1(2),
Investigation Wing,
Room No.311,
No.46, M.G.Road,
Chennai – 600 034.

3. The Public Prosecutor,
Madras High Court,
Chennai.



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