IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2023

CORAM:

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

Crl.O.P.No.31887 of 2019
and
Crl.M.P.Nos.17461 and 17462 of 2019

P.Padmanabhan ...Petitioner

-Vs-

The Deputy Commissioner of Income Tax,
Central Circle-2, Income Tax Office,
63, Race Course Road,
Coimbatore-641 018. ...Respondent

Prayer : Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, 1973, to call for the entire records and quash the proceedings against the accused complaint in C.C.No.427 of 2015 pending on the file of Chief Judicial Magistrate, Coimbatore.

For Petitioner : Mr.P.Ramesh Kumar

For Respondent : Mr.V.Vijayakumar
Special Public Prosecutor
for Income Tax

ORDER

This Criminal Original Petition has been filed challenging the proceedings in C.C.No.427 of 2015 pending on the file of Chief Judicial Magistrate, Coimbatore.

2. Heard the learned counsel for the petitioner and the learned Special Public Prosecutor for the respondent and perused the materials available on record.

3. The respondent filed a complaint for the offence under Section 276 CC of the Income Tax Act (herein after called as "the Act"), for the assessment year 2014-2015. The petitioner is engaged in real estate business in the name and style of "Greens Property Developers". He had already developed so many projects. He failed to file his return of income for the assessment year 2014-2015. Therefore, a search and seizure operations as contemplated under Section 132 of the Act were carried out on 05.09.2013. He had disclosed the undisclosed income of Rs.2,80,51,620/-. For the assessment year 2010-11, for a sum of

Rs.27,08,820/-; for the assessment year 2011-12 for a sum of Rs.34,75,450/-; for the assessment year 2012-13 for a sum of Rs.67,84,890/-; and for the assessment year 2013-14 for a sum of Rs1,50,82,460/-. He had earned unaccounted income of Rs.1,20,00,000/- during the year relevant to the assessment year 2014-2015. The said income estimated for the period 01.04.2013 to 05.09.2013 to the tune of Rs.24.45 lakhs. He had failed to file his return of income for the assessment year 2014-2015 before the due date stipulated under Section 139(1) of the Act. He was served with a notice under Section 142(1) of Act on 30.06.2014. Therefore, the petitioner had wilfully failed to furnish his return of income within the due time allowed under Section 139(1) of the Act or within the time stipulated by the notice under Section 142(1) of the Act, thereby, committed an offence under Section 276 CC of the Act.

4. The learned counsel for the petitioner would submit that the proviso to Section 276 CC of the Act, the assessee is allowed to file his return before the expiry of the assessment year i.e, 31st March of that year. Accordingly, the petitioner filed his return of income on 31.03.2015.

After taking into consideration of the return of income filed by the petitioner, the assessment order was passed on 31.03.2016. Without even considering the same, the respondent initiated prosecution as against the petitioner. The complaint itself is pre-mature, since it has been filed without even waiting for the expiry of the assessment year. That apart the assessment order dated 31.03.2016 was challenged before Principal Commissioner of Income Tax and the Principal Commissioner of Income Tax by an order dated 27.02.2018 set aside the order dated 31.03.2016 and remanded for passing fresh assessment order. Accordingly, fresh assessment order was passed on 31.12.2018 raising Nil demand.

5. In view of the above, the proceedings in C.C.No.427 of 2015 pending on the file of Chief Judicial Magistrate, Coimbatore, cannot be sustained as against the petitioner and it is liable to be quashed. Accordingly, the proceedings in C.C.No.427 of 2015 pending on the file of the learned Chief Judicial Magistrate, Coimbatore, is hereby quashed.

6. Accordingly, this Criminal Original Petition is allowed.

Consequently, connected Miscellaneous petitions are closed.

20.11.2023

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
mn

To

1. The Chief Judicial Magistrate, Coimbatore.

2. The Deputy Commissioner of Income Tax,
   Central Circle-2, Income Tax Office,
   63, Race Course Road,
   Coimbatore-641 018.

3. The Public Prosecutor,
   High Court, Madras.

G.K.ILANTHIRAIYAN. J,

mn

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