IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2023

CORAM:

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

Crl.O.P.No.31895 of 2019
and
Crl.M.P.Nos.17464 and 17465 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.428 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.428 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 years 2007-2008 to 2013-2014. 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 has been evading payment of taxes to the tune of Rs.1,38,52,595/-. A demand notice was issued and the petitioner had paid a sum of Rs.33,58,690/- on 18.03.2015 for the assessment year 2013-2014 and a sum of Rs.9,84,710/- on 19.03.2015 for the Assessment Year 2012-13.

Therefore, the balance due is Rs.95,09,203/-. A search and seizure operations was carried out as contemplated under Section 132 of the Act. During search, the petitioner disclosed his undisclosed income of Rs.2,80,51,620/- for the assessment year 2010-2011 to 2013-2014. In the course of such search, he also admitted the total unaccounted investments to the tune of Rs.2,17,50,000/- for the assessment years 2004-2005, 2007-2008 to 2009-2010. He had filed his return of income for the assessment year 2007 to 2008 on 31.03.2009 and thereby disclosed his income at Rs.32,27,640/-. The assessment was completed under Section 143(3) of the Act and the total income assessed was at Rs.55,77,720/-. The assessment order and notice of demand were served on the petitioner and the demand became due on 01.02.2010. Penalty proceedings under Section 271(1)(c) of the Act was initiated and an order levying penalty was passed on 14.03.2012 levying a penalty of Rs.18,21,360/-, as per Section 271(1)(c) of the Act and the order of penalty was served on the petitioner. He had filed the return of income for the assessment year 2008-2009 on 31.03.2009, disclosing the income at Rs.74,04,540/- and his income was assessed at Rs.1,37,33,810/- and a sum of Rs.65,43,620/-

was demanded. In the appeal, total income assessed was reduced to Rs.66,56,700/- and the tax payable was reduced to Rs.6,56,880/-. Penalty proceedings was initiated under Section 271CC of the Act, thereby the penalty of Rs.10,47,626/- was levied. Accordingly, the petitioner was served with penalty order and notice of demand on 02.04.2014. The petitioner had filed his return of income for the assessment year 2009-2010 on 05.11.2012 disclosing income at Rs.36,25,470/-. The assessment was completed and assessed the total income to the tune of Rs.77,06,070/- and raised demand payable at Rs.41,83,357/-. Accordingly, the assessment order and notice of demand were served to the petitioner. Subsequently, a search was conducted under Section 132 of the Act and the petitioner was issued notice under Section 153A, thereby, he was required to file return of income for the assessment year 2008-2009 to 2013-2014. He filed his return of income for the assessment year 2012-2013 and 2013-2014 on 15.02.2014 disclosing income at Rs.67,84,890/- and Rs.1,50,82,460/- respectively. However, the petitioner had paid a sum of Rs.18,00,000/- and Rs.3,00,000/- as income tax for the assessment years 2012-2013 and 2013-2014 instead of

Rs.27,84,701/- and Rs.54,58,691/- respectively. Hence, the petitioner was issued show cause notice and there was no response. In fact, after adjusting the amount to the tune of Rs.8,30,000/-, which was assessed another notice was served on him. Therefore, it indicates wilful and deliberate default committed by the petitioner and as such he had committed the offence under Section 276CC of the Act.

4. The learned counsel for the petitioner would submit that the Assessing Officer had issued notice under Section 153A of the Act, thereby calling upon the petitioner to file return of income for the assessment year 2008-2009 to 2013-2014. All demand made by the respondent got abated and nothing prior to that date survives. By an order dated 14.02.2018, the Principal Commissioner of Income Tax had set aside the original assessment order dated 31.03.2016 on the ground that the allegations for non payment of tax based on those earlier assessment orders does not survive. Therefore, the initiation of prosecution cannot be sustained as against the petitioner. Therefore, no fresh demand of tax was raised by the Assessing Officer.

5. He further submitted that he had shown the income and not paid the tax. Therefore, he had no intention or wilfull attempt to evade payment of tax. Mere failure to pay a portion of the tax cannot be construed to mean that he has wilfully attempted to evade the payment of tax.

6. As narrated above, the entire case of the prosecution, the petitioner had shown his income and paid his tax. Admittedly, the respondent raised additional demand for the assessment year 2008-2009 of Rs.4,17,232/-. For the assessment years 2010-2011, 2012-2013 and 2013-2014, the original assessment order dated 31.03.2016 were set aside by the Principal Commissioner of Income Tax by an order dated 20.03.2018. Further, as long as there is no deliberate or wilful act on the part of the petitioner to evade the payment of tax, mere failure to pay the tax will not be construed for the offence under Section 276 CC of the Act.

7. In view of the above, the proceedings in C.C.No.428 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.428 of 2015 pending on the file of the learned Chief Judicial Magistrate, Coimbatore, is hereby quashed.

8. Accordingly, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous petitions are closed.

20.11.2023
(2/2)

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

G.K.ILANTHIRAIYAN. J,

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.

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