IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2023

CORAM:

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

W.P.Nos. 25269 & 25270 of 2017
and
W.M.P.Nos. 26721 to 26724 of 2017

Raj Hari Eswaran
Director,
M/s.Easun Products of India Pvt Ltd.,
No.672, Temple Towers, Anna Salai,
Chennai – 600 035. ... Petition in W.P.No.25269/2017

Hariharan Eswaran,
Director,
M/s.Easun Products of India Pvt Ltd.,
No.672, Temple Towers, Anna Salai,
Chennai – 600 035. ... Petitioner in W.P.No.25270/2017

Vs

The Deputy Commissioner of Income Tax,
Corporate Circle – 2(1),
121, Mahatma Gandhi Road,
Chennai – 600 034. ... Respondent in both W.Ps

COMMON PRAYER: Writ Petitions filed under Article 226 of Constitution of India for the issuance of Writ of Certiorari, calling for the records relating to the complaint in E.O.C.No.94 of 2017 on the file of the learned Additional Chief Metropolitan Magistrate's Court – E.O.II, Egmore at Allikulam Moore Market, Chennai, dated 20.07.2017 for the alleged offence under Section 276, CC of the Income Tax Act and quash the same.

In both W.Ps

For Petitioners : M/s.S.Elambharathi
For Respondent : Mr.V.J.Arul Raj
Special Public Prosecutor for Income Tax

ORDER

These Writ Petitions have been filed to quash the complaint in E.O.C.No.94 of 2017 on the file of the learned Additional Chief Metropolitan Magistrate's Court – E.O.II, Egmore at Allikulam Moore Market, Chennai, dated 20.07.2017, for the alleged offence under Section 276CC of the Income Tax Act.

2. Heard the learned counsel appearing for the petitioners and the learned Special Public Prosecutor for Income Tax appearing for the respondent and perused the materials available on record.

3. The respondent filed a complaint as against the accused alleging that the accused is an assessee on the file of the Corporate Circle 2(1) and has earned income during years as follows :

(a) Remittance to a non-resident to a foreign company (Form 15CA) : Rs.24,11,19,872/-

(b) TDS Return – Rent : Rs.6,00,000/-

(c) Turn over from services reported in service tax return : Rs.4,68,89,242/-

(d) TDS Return – other Interest (Section 194A) : Rs.20,50,511/-

(e) TDS Return – Payment of Contractor (Section 194C) : Rs.10,21,27,661/-.

4. However, the accused failed to file the Income Tax Returns for the Assessment Year 2013-2014. Therefore, the accused were served with a show cause notice dated 20.06.2016. On receipt of the same, they replied that the company is engaged in trading electrical items and the company's business was falling and facing severe liquidity crunch and as a result, the company faced several financial hardships and that therefore, they could not file Income Tax Returns well before the due date. The reasons attributed to the delay in filing the Income Tax Return is not legally acceptable as per the Income Tax Act. Therefore, the respondent, after giving an opportunity to the accused and after obtaining sanction to prosecute the accused, filed a private complaint. Challenging the same, the petitioners are before this Court.

5. The learned counsel appearing for the petitioners would submit that already the Company is under liquidation. In fact the National Company

Law Tribunal, by an order dated 19.09.2022, stayed all further proceedings of the suits or continuation of pending suits or proceedings against the respondent including execution of any judgment, decree or order in any Court of Law, Tribunal, Arbitration Panel or other authority. As per terms of Section 7 of the Insolvency and Bankruptcy Code, 2016, moratorium as envisaged under provisions of Section 14(1). Further already the Company is under liquidation and it is not functioning. She further submitted that admittedly, there was delay and subsequently, the Income Tax Returns have been filed for the Assessment Year 2013-2014 as required under Section 139(1) of Income Tax Act, 1961, for the income earned by the accused during the year, which is as follows :

S.No	***Description***	***Amount***
1.	FRM-15CA Remittance to a non resident (or) to a foreign company	Rs.24,11,19,872/-
2.	TDS – 1941 – Rent	Rs.6,00,000/-
3.	Exc-002-Turnover from services reported	Rs.4,68,89,242/-
4.	TDS-194A-other Interest	Rs.20,50,511/-
5.	TDS-194C-Payments to Contractor	Rs.10,21,27,661/-

6. The petitioners are arrayed as A3 and A4. Admittedly, they are directors and the first accused, viz., the Company, failed to file Income Tax Returns for the Assessment Year 2013-2014 for the total income of

Rs.10,21,27,661/-. It is also categorically admitted by the accused that they filed Income Tax Returns for the said sum belatedly. Therefore, they wilfully and deliberately committed default in filing the returns of income within the due time, which is an offence punishable under Section 276CC of the Income Tax Act, 1961. Further, once a statute requires to pay tax and stipulates a period within which such payment is to be made, the payment must be made within that period. If the payment is not made within that period, there is default and appropriate action can be taken under the Act. The learned counsel for the petitioners contended that no offence has been made out since they have shown reasonable cause for belated payment as covered under Section 278AA of the Income Tax Act, and the question can be decided on the basis of evidence which would be adduced by the parties before a competent Court.

7. The said contention cannot be considered, since it is a matter for trial. Therefore, the petitioners failed to make out any ground to quash the order impugned. Thus these writ petitions are devoid of merits and is liable to be dismissed. Accordingly, these Writ Petitions stand dismissed. The personal appearance of the petitioners is dispensed with and they shall be represented by a counsel after filing appropriate application. However, the petitioners shall be present before the Court at the time of furnishing of copies, framing charges,

for questioning under Section 313 Cr.P.C. and at the time of passing the judgment. The trial Court is directed to complete the trial within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed. No costs.

19.10.2023

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

To

1. The Additional Chief Metropolitan Magistrate's Court – E.O.II,
Egmore at Allikulam Moore Market, Chennai.

2.The Deputy Commissioner of Income Tax,
Corporate Circle – 2(1),
121, Mahatma Gandhi Road,
Chennai – 600 034.

3. The Public Prosecutor
Madras High Court,
Chennai.

G.K.ILANTHIRAIYAN, J.

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