IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2023

CORAM:

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

Crl.O.P.No.31881 of 2019
and
Crl.M.P.Nos.17454 and 17457 of 2019

P.Shyam Karthik ... Petitioner

-Vs-

The Assistant Commissioner of Income Tax,
Central Circle-2,
Income Tax Office,
No:63, Race Course Road,
Coimbatore-641 018. ... Respondent

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the entire records and quash the proceedings against the accused complaint in C.C.No.355 of 2017 pending on the file of Additional Chief Metropolitan Magistrate, at 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.355 of 2017 pending on the file of Additional Chief Metropolitan Magistrate, at 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 punishable under Section 276 CC of the Income Tax Act read with Section 147 of the Income Tax Act, for the assessment year 2009-10. 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 2009-2010. Therefore, a search and seizure operations, as contemplated under Section 132 of the Act, were carried out in the case of his father and M/s Greens Property Developers India Private Limited, on 05.09.2013. During the search

proceedings, a statement was recorded under Section 132(4) of the Income Tax Act from the father of the petitioner, on 25.10.2013. He admitted about the unaccounted income of Rs.4,99,460/-, in the name of the assessee for the assessment year 2009-2010. Thereafter, the petitioner disclosed his income and paid tax of a sum of Rs.1,23,040/-. His return was invalid and was not in accordance with Section 139(4) of the Income Tax Act. Therefore, the assessment for the year 2009-2010 was reopened as contemplated under Section 147 of the Income Tax Act and notice was issued as contemplated under Section 148 of the Income Tax Act, on 29.01.2016. There was no response. Therefore, a notice was issued under Section 271F of the Income Tax Act on 04.11.2016 for levying penalty. Thereafter, the petitioner filed a reply and sought for further time to file return of income. However, it was rejected by a letter dated 15.11.2016 as barred by limitation. However, he was given final opportunity to file his return of income, on or before 21.11.2016. There was no response from the petitioner. Therefore, after completion of assessment, a show cause notice was issued and there was no reply. Hence, the Assessing Officer completed the assessment and treated a sum of Rs.4,99,460/- as total income of the assessee for the assessment year 2009-2010. Therefore, the petitioner failed to file his return of income for the year 2009-2010, despite having taxable income which is a mandatory requirement as stipulated under Section 139(1) of the Income Tax Act. Therefore, the petitioner had wilfully failed to furnish his return of income within the due time allowed under Section 139(1) or within the time allowed by the notice under Section 148 of the Income Tax Act which constitutes an offence under Section 276CC of the Income Tax Act.

4. The learned counsel for the petitioner would submit that as per Section 276 CC of the Income Tax Act, only if a person willfully fails to furnish the return of income it shall be punishable. Whereas, only on the basis of the statement recorded from the petitioner's father, the petitioner was issued with a show cause notice. In fact, the petitioner had already filed his return of income even before the issuance of notice. The petitioner had filed his return of income for the Assessment year 2009-2010 and paid a sum of Rs.1,23,040/- as tax, on 14.02.2014. The specific

stand taken by the petitioner is that even before filing the complaint, before passing the assessment order, the petitioner filed his return of income and as such, no prosecution can be launched as against the petitioner.

5. A perusal of the counter filed by the respondent revealed that on 14.02.2014, the petitioner filed his return of income and admitted the income of Rs.4,99,040/- and paid a sum of Rs.1,23,040/- as tax. It is invalid since the same was not in accordance with Section 139(1)/139(4) of the Income Tax Act. The time limit for filing of return of income for the assessment year 2009-2010 under Section 139(1) of the Income Tax Act was upto 31.07.2009 and upto 31.03.2011 as per Section 139(4) of the Act was. Inspite of several reminders and full opportunities given to the petitioner, he did not file his return of income for the assessment year 2009-2010 and also failed to comply with the directions contained in the notice issued under Section 142(1) and 148 of the Act. He failed to file his return of income, despite having taxable income, which is a mandatory requirement as stipulated under Section 139(1) of the Income Tax Act.

6. In view of the above, this Court finds no grounds to quash the entire proceedings in C.C.No.355 of 2017 pending on the file of the learned Additional Chief Metropolitan Magistrate, at Coimbatore. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous petitions are closed.

20.11.2023
(½)

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

To

1. The Additional Chief Metropolitan Magistrate, at Coimbatore.

2.The Assistant Commissioner of Income Tax,
Central Circle-2,
Income Tax Office,
No:63, Race Course Road,
Coimbatore-641 018.

3.The Public Prosecutor,
High Court, Madras.

G.K.ILANTHIRAIYAN. J,

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