IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE **SUNDER MOHAN**

Crl.O.P.Nos.32092, 32099, 32102, 32106, 32109 & 32112 of 2019
and
Crl.M.P.Nos.17619, 17620, 17627, 17632, 17634, 17635, 17641, 17642, 17643, 17501, 17646 & 17647 of 2019

J. Dinakaran ...Petitioner / Accused (in all Crl.O.Ps)

-Vs-

The Assistant Commissioner of Income Tax
Central Circle – 3(2),
Room No.325, 3rd Floor,
New No.46, Old No.108,
M.G.Road, Chennai – 600 034.
... Respondent / Complainant (in all Crl.O.Ps)

Common Prayer: Criminal Original petitions filed under Section 482 of Code of Criminal Procedure, to call for the entire records relating to the complaint in E.O.C.C.Nos.185, 186, 187, 188, 189 and 190 of 2018 on the file of the Additional Chief Metropolitan Magistrate, Economic Offences – II, Egmore, Chennai and to quash the same.

For Petitioner : Mr. P. Ramesh Kumar (in all Crl.O.Ps)
For Respondent : Ms. M. Sheela, Special Public Prosecutor for Income Tax (in all Crl.O.Ps)

COMMON ORDER

These Criminal Original Petitions have been filed seeking to quash the proceedings in S.T.C.Nos.185, 186, 187, 188, 189 and 190 of 2018 on the file of the Additional Chief Metropolitan Magistrate, Economic Offences – II, Egmore, Chennai, filed for the alleged offences under Sections 276 C(1) and 227 of the Income Tax Act, 1961 for the false version in the Return of Income filed for the various Assessment Years.

2.The learned counsel for the petitioner in all these petitions submitted that the impugned prosecution is not sustainable since the assessment orders were set aside by the Income Tax Appellate Tribunal by order dated 01.08.2019 and the matters were sent for re-assessment and hence the impugned prosecution is premature. The learned counsel further submitted that the Department has now come up with another circular, which states that before the assessment proceedings reaches the finality, the prosecution would be premature. The learned counsel further submitted that the petitioners have approached the Settlement Commissioner and any orders passed therein would have a bearing in the trial of the impugned complaints. Therefore, the learned counsel submitted that the impugned complaints are liable to be quashed.

3.The learned counsel for the respondent, per contra, submitted that the adjudication proceedings and the criminal prosecution can proceed simultaneously. The adjudication proceedings need not be completed before initiating criminal prosecution. In the instant case, the Tribunal had set aside the assessment orders and directed re-assessment, in which case the assessment is pending. Therefore, relying upon the judgments of this Court in ***S.J.Surya Vs. Deputy Commissioner of Income Tax*** reported in ***(2022) 139 Taxmann.com 3 (Madras)*** and ***Geethanjali Mills Ltd. Vs. V. Thiruvengadathan*** reported in ***(1989) 179 ITR 558 (Mad)***, the learned counsel submitted that merely because the Tribunal had passed an order of remand in the assessment proceedings, it would not bar the Department to prosecute the assessee for the offences alleged. The learned counsel further submitted that merely because, the petitioner have approached the Settlement Commissioner, it would not bar the criminal prosecution and any settlement arrived at would not obliterate the offences committed by the petitioner.

4.This Court is of the view, the question as to whether the prosecution is maintainable has to be adjudicated only before the Trial Court. The points raised by the learned counsel for petitioner cannot be adjudicated in this quash petition particularly, in the light of the law laid down by this Court consistently. It is open to the petitioner to raise all contentions before the Trial Court. Accordingly, these Criminal Original Petitions are dismissed. Consequently, connected Criminal Miscellaneous Petitions are closed.

20.06.2023

smv

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

To,

1.The Assistant Commissioner of Income Tax
Central Circle – 3(2),
Room No.325, 3rd Floor,
New No.46, Old No.108,
M.G.Road, Chennai – 600 034.

2.The Additional Chief Metropolitan Magistrate, Economic
Offences –II, Egmore, Chennai

3.The Public Prosecutor,
High Court of Madras.

SUNDER MOHAN,J.

smv

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