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Crl.O.P.Nos. 26151, 26153 to 26170 & 26173 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2023

CORAM:

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

Crl.O.P.Nos. 26151, 26153 to 26170 & 26173 of 2018
and Crl.M.P.Nos.15008 to 15047 of 2018

S.Arputharaj

... Petitioner in all Crl O.Ps
Vs.

The Deputy Commissioner of Income Tax,
Central Circle-1, Income Tax Office,
67-A. Race Course Road,
Coimbatore – 641 018.

... Respondent in all Crl.O.Ps

PRAYER in Crl.O.P.No. 26151, 26153 to 26170 & 26173 of 2018 : Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the entire records in pertaining to the private complaint proceedings in C.C.No.124, 128, 132, 281, 125, 136, 282, 129, 133, 126, 283, 127, 284, 130, 134, 278, 131, 135, 279 & 280 of 2018 respectively pending on the file of the learned Judicial Magistrate No.III, Coimbatore and quash the same.

For Petitioner : Mr.T.P.Prabakaran

for Mr. N.Sankarasabari

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



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ORDER

Since, the issue involved in all these criminal original petitions are similar in nature, they are disposed of by way of this Common order.

2. These petitions have been filed seeking quashment of the private complaint proceedings made in C.C.Nos.124 to 136 of 2018 and 278 to 284 of 2018 pending on the file of the Judicial Magistrate No.III, Coimbatore.

3. The respondent filed a complaint under Section 200 of Cr.P.C., before the trial Court alleging that petitioner is an assessee and he is in the business of Real Estate, Motor Car Agency (Skoda), Construction and Finance. He is a Proprietor /Director of M/s. Arputharaj Associates, M/s. Millenium Motors, M/s. SGA Cars Pvt.Ltd., The search was conducted in the residence of the petitioner on 26.02.2015 as contemplated **under Section 132 of IT Act**. As a result of the search, various undisclosed income and investments made by the petitioner were found. Thereafter, petitioner was issued notice under **Section 142(1) of Income Tax Act** on 18.03.2016 to file the return of income for the Assessment Year 2015- 2016 within 15 days from the date of service of the notice. Accordingly, petitioner had filed return of his income for the Assessment Year 2015 to 2016 on 29.02.2016 disclosing an income of



Rs.92,45,237/- and assessment was completed under Section 143(3) of Income Tax Act on 30.12.2016. However, petitioner did not make any payment as per the demand and filed an appeal before the Commissioner of Income Tax. Therefore, it is the contravention of the provision under **Section 276 C (2) of the Income Tax Act** for the willful attempt to evade the payment of tax and the penalty under Income Tax Act. Therefore, respondent initiated prosecution **under Section 200 and 190(1)(1) of Cr.P.C.**, for the offence under **Section 276 C (2) of Income Tax Act, 1961 read with Section 153(A) of the Income Tax Act, 1961**. Respondent also initiated prosecution for the offences **under Section 276 C C of the Income Tax Act, 1961 read with Section 153(A) of the Income Tax Act, 1961** for the Assessment Year 2013 to 2014. Petitioner was served with notice under Section 153(A) to file the return of Income Tax. However, petitioner submitted a letter dated 04.08.2015 stating that, he was not able to file the return due to the death of his Accountant and requested for extension of time to file the return of Income. Thereafter, the Office of the Assistant Commissioner of Income Tax issued letter dated 11.08.2015 to the petitioner, thereby directed the petitioner to appear on 17.08.2015. However, petitioner did not file return of income, even after receipt of copies of the seized impounded materials. Thereafter, he was issued notice **under Section 142(1) of Income Tax**, thereby, petitioner was called upon to submit the return



of income. However, there was no response and as such, on 01.04.2016, a **notice under Section 274 read with Section 271 (F) of Income Tax Act** was issued to the petitioner to show cause why penalty **under Section 271(F) of Income Tax Act** should not be levied. Further, petitioner was also directed to appear before the Assessing Officer. Accordingly, penalty was imposed for non-filing of income tax, as per the show cause notice issued show cause notices **under Section 153 A (1)(a) of Income Tax Act**. Thereafter, petitioner was issued **under Section 276 C C of Income Tax Act**. Finally, petitioner filed return of his income after a period of eleven months from the date of issuance of notice under **Section 153 A (1) (a) of Income Tax Act**. Thus, it is a contravention to the offence under Section 276 C C and therefore, respondent initiated prosecution for the offence **under Section 276 C C of Income Tax Act**. Respondent also initiated prosecution as against the petition for non filing return of income tax for certain period. The respondent made search and found various incriminating documents with regard to investments made in movable/immovable properties and other real estate transactions. On the basis of the documents, petitioner was directed to file the return of income. Accordingly, demand was raised and it was not complied with by the petitioner. Therefore, there was huge arrears of income tax and it is a contravention under **Section 276 C (1) of the Income Tax, Act**.



3. On perusal of records revealed that, respondent issued show cause notices for the prosecution under Sections **276 C (2), 276 C C and 276 C (1) of Income Tax Act** for the Assessment Year 2009 -2010 to 2015 -2016. Thereafter, petitioner had filed returns of Income for the assessment years as follows:

<i>Assessment Year</i>	<i>Date of Filing Original R/I</i>	<i>Income Originally Returned</i>	<i>Date of filing R/I u/s 153A/142(1)</i>	<i>Income returned u/s 153 A</i>	<i>Date of Notice u/s. 143(2)</i>
2009-10	28/08/2010 (Revised Return)	3424530	29/06/2016	1400740	15/07/2016
2010-11	14/10/2010	19933740	10/08/2016	1026110	11/08/2016
2011-12	30/09/2011	141230	13/08/2016	-9778276	08/09/2016
2012-13	30/09/2021	0	18/08/2016	106050	08/09/2016
2013-14	25/10/2013	-56,11,600	19/08/2016	-1,05,62,962	08/09/2016
2014-15	29/11/2014	1159470	14/09/2016	-1,76,16,113	19/09/2016
2015-16	-	-	18/09/2016	-92,45,237	19/09/2016

4. Aggrieved by the assessment order issued by the Assessment Officer, petitioner filed appeal before the Commissioner of Income Tax (Appeals), Chennai. The Commissioner of Income Tax (Appeals), Chennai dismissed the appeal on 19.02.2018 and confirmed the assessment order dated 30.12.2016. Aggrieved by the same, petitioner filed appeal before the Income Tax Appellant Tribunal, Chennai. The Income Tax Appellant Tribunal by a common order dated 13.06.2018 allowed the appeal partly. Aggrieved by the order of the



Income Tax Appellant Tribunal, Chennai, appeals have been filed by Assessee/
petitioner as well as the Principal Commissioner of Income Tax, Central -2,
Chennai -34 before this Court as follows:

2. The assessee filed three appeals namely TCA.Nos.718 to 720 of 2018 raising the following substantial questions of law :

“i. Whether the Income Tax Appellate Tribunal is correct in law to ignore the facts and documents submitted in defence by the appellant before the Commissioner of Income Tax (Appeals) as well as before the Assessing Officer for assessing the income respectively for the assessment years 2011-12, 2009-10 and 2010-11 without proper application of mind to confirm the assessment of income for certain issues ? And

ii. Whether the Income Tax Appellate Tribunal is correct in law to confirm the order of the Commissioner of Income Tax (Appeals) in certain issues respectively for the assessment years 2011-12, 2009-10 and 2010-11 for statistical purposes without appreciating the materials and evidence made available before the Appellate Tribunal in proper perspective ?”

3. TCA.Nos.718 to 720 of 2018 relate to the assessment years 2009-10 to 2011-12. The substantial questions of law are identical and the only difference being the assessment year.

4. The Revenue has filed five appeals namely TCA.Nos.805 to 809 of 2018 raising the following three substantial questions of law, which are common in all the appeals except for the appeal against the order passed by the Tribunal in ITA.No.1498/Chny/2018 relating to the assessment year 2014-15 (TCA.No.809 of 2018) :



. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that embezzlement made by an employee of M/s.Miracle Cars India P. Ltd., in which, the assessee is a director to the tune of Rs.8.30 Crores, cannot be assessed in the hands of the assessee even protectively? And

ii. Whether, on the facts and in the circumstances of the case, the Tribunal was correct in not drawing an inference that the source for the assessee's various investments are from the embezzled sum of Rs.8.30 Crores by using the employee Ms.Dhanalakshmi as a conduit in the light of its own finding that the assessee has not been able to establish the source for its various investments ?”

5. The three additional questions raised in TCA.No.809 of 2018 are as follows :

“i. Whether, on the facts and circumstances of the case, the Tribunal was correct in law in deciding that addition, if any, can be made in the hands of M/s.Arputharaj Associates and not in the hands of the assessee without appreciating the fact that M/s.Arputharaj Associates is only a proprietary concern of the assessee and the income of such concern is assessable only in the hands of the assessee ?

ii. Whether, on the facts and in the circumstances of the case, the Tribunal was legally justified in accepting the assessee's contention that the sales abstract was prepared only for obtaining bank loan at face value, without any supporting documentary evidence ? And

iii. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that no addition could be made only on the basis of sales abstract found in the course of search without appreciating the decision of this Court in the case of CIT Vs. Rangroopchand Chordia [reported in 241 Taxman 221]??



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After considering the facts and circumstances, Hon'ble Division Bench of this Court allowed the Income Tax Appeals and set aside the order passed by the Income Tax Appellant Tribunal and remanded the matters to the Income Tax Appellant Tribunal for fresh disposal. Further, the Division Bench had also directed that the demand notices dated 09.07.2018 to be kept in abeyance for a period of two weeks from the date of the order.

5. Thereafter, the Income Tax Appellant Tribunal, Chennai by an order dated 27.09.2023 has allowed the Income Tax Appeals in ITA.Nos.1493 to 14499 of 2018 and set aside the order passed by the learned Commissioner of Income Tax (Appeals) -18, Chennai dated 19.02.2018 and also directed the Assessing Officer to examine the issue in light of relevant material and ascertain the real beneficiary of said transactions. It was further observed that the said transaction pertains to M/s. Arputharaj Associates, a partnership firm, then addition made in the hands of the assessee should be deleted. For better appreciation, the relevant portion is extracted hereunder:

Assessment Year 2014-15 is addition towards unaccounted sales During the course of search, a sales abstract which was maintained in Computed was seized vide Page No.63 of annexure ANN/SA/HVR/LS/S dated 26.02.2015, in which the sales of material, land, land with building and labour charges



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etc., were maintained by M/S.Arputharaj Associates. As per said sales abstract, sales for the period from 01.04.2013 to 31.03.2014 hows net sales of Rs.12.12.92,100/- whereas sales as per profit and loss filed for the above period shows net sales of Rs.1,00,30,100/-. The assessee was called upon to explain the difference, for which the assessee submitted that said documents is only estimated sales abstract provided for the purpose of bank loan only. However, the regular return filed with VAT authorities clearly shows sales as per profit and loss account. The Assessing Officer, however was not satisfied with the explanation of the assessee and according to the Assessing Officer, the assessee could not substantiate difference in sales as per seized documents and sales admitted in his books of accounts. Therefore, made additions of Rs.11,12,62,000/- as unaccounted sales of the assessee for assessment year 2014-15.

27..... The Assessing Officer has made additions towards unaccounted sales on the basis of one seized documents, which shows sales abstract for the financial year 2013-14. Except sales abstract, there is no evidence with the Assessing Officer to make addition of Rs.11,12,62,000/- towards unaccounted sales. On the other hand, documents like VAT return and books of accounts maintained by the assessee clearly shows sales for the year at Rs.1,00,30,100/-. Further, it was the claim of the assessee that said documents belongs to M/s.Arputharaj Associates, a partnership firm. If at all said



document pertains to a partnership firm, the addition cannot be made in the hands of the assessee. Since, there is no clear finding from the Assessing Officer with regard to the said addition, except so called sales abstract found in the computed of the assessee and also it was the claim of the assessee that said transaction pertains to M/s. Arputharaj Associates, a partnership firm, we are of the considered view, that the issue needs to go back to the file of the Assessing Officer for further verification.

6. It is seen that, the entire prosecution initiated as against the petitioner is in pursuant to the order of assessment and penalty under Section 143(3) read with Section 153A of The Income Tax Act, 1961. Now, the order of assessment itself is set aside and as such, this Court is of the view that, initiation of the prosecution as against the prosecution cannot be sustained till the fresh assessment order is passed and therefore the C.C.Nos.124 to 136 of 2018 and 278 to 284 of 2018 pending on the file of the Judicial Magistrate No.III, Coimbatore are liable to quashed.



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7. Accordingly, these Criminal Original Petitions are allowed. The C.C.Nos.124 to 136 of 2018 and 278 to 284 of 2018 pending on the file of the Judicial Magistrate No.III, Coimbatore is hereby quashed against the petitioner. Consequently, connected miscellaneous petitions are closed.

05.10.2023

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

To

1. The Judicial Magistrate No.III,
Coimbatore.
2. Income Tax Appellant Tribunal, Chennai
- 3.The Deputy Commissioner of Income Tax,
Central Circle-1, Income Tax Office,
67-A. Race Course Road,
Coimbatore – 641 018.
4. The Public Prosecutor,
Madras High Court.



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