IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.12.2023

CORAM:

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

Crl.O.P.Nos.25693, 25694 and 25704 of 2018

M.Kiran Kumar ... Petitioner **in all Crl.O.Ps**

Vs.

The Assistant Commissioner of Income Tax,
Central Circle-1(4),
Room No.323, 3rd Floor, Investigation Building,
46, Mahatma Gandhi Salai,
Nungambakkam,
Chennai-600 034. ... Respondent **in all Crl.O.Ps**

COMMON PRAYER:- Criminal Original Petitions filed under Section 482 of Cr.P.C. praying to call for the entire records in complaint E.O.C.C.No.39 of 2018, E.O.C.C.No.41 of 2018 and E.O.C.C.No.42 of 2018 pending on the file of Additional Chief Metropolitan Magistrate, (E.O.II), Egmore at Allikulam Road, Chennai and quash all further proceedings against the accused.

In all Crl.O.Ps

For Petitioner : Mr.P.Ramesh Kumar

For Respondent : Mrs.M.Sheela
Special Public Prosecutor for
Income Tax

COMMON ORDER

These Criminal Original Petitions have been filed to quash the complaints in E.O.C.C.No.39 of 2018, E.O.C.C.No.41 of 2018 and E.O.C.C.No.42 of 2018, pending on the file of Additional Chief Metropolitan Magistrate, (E.O.II), Egmore at Allikulam Road, Chennai.

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. In all the petitions, the petitioner and the respondent are one and the same and therefore, this Court is inclined to pass a common order.

4. The respondent filed a complaint in E.O.C.C.No.39 of 2018 for an offence punishable under Section 276 CC of the Income Tax Act (hereinafter called as "the Act"), for the assessment year 2009-2010 alleging that the petitioner is an assessee of income tax. He has filed his original return of income for the assessment year 2009-2010, on

29.09.2009, thereby declared his total income as Rs.8,24,000/-. Thereafter, a search as contemplated under Section 132 of the Income Tax Act, was ordered on 02.09.2014. Thereafter, the petitioner was issued with a notice under Section 153A of the Act, on 09.01.2015, thereby the petitioner was required to file his return of income within a period of 30 days. However, even after completion of 30 days, the petitioner failed to comply with the demand and failed to file his return of income. However, he had filed the return of income belatedly, on 30.11.2016 in response to the notice issued under Section 153A of the Act, thereby re-iterated the very same income of Rs.8,24,000/-. It was filed with a delay of 660 days. Thereafter, the Assessing Officer assessed the income and passed an order under Section 143(3) read with Section 153A of the Act, on 30.12.2016, thereby determined the total income of Rs.3,82,09,050/- for the assessment year 2009-2010. Therefore, he is liable to be punished for the offences under Section 276 CC of the Act.

5. The respondent filed a complaint in E.O.C.C.No.41 of 2018 for the offence punishable under Section 276 CC of the Act alleging that the

petitioner filed his return of income for the assessment year 2011-2012 on 30.09.2011 declaring his total income as Rs.14,00,000/-. Thereafter, a search was made as contemplated under Section 132 of the Income Tax Act, on 02.09.2014. Thereafter, the petitioner was issued with a notice under Section 153A of the Act, on 09.01.2015, thereby required the petitioner to file his return of income, within a period of 30 days. However, even after completion of 30 days, the petitioner failed to comply with the demand and failed to file his return of income. However, he had filed the return of income belatedly, on 02.12.2016 in response to the notice issued under Section 153A of the Act, thereby re-iterated the very same income of Rs.14,00,000/-. It was filed with a delay of 662 days. Thereafter, the Assessing Officer assessed the income and passed an order under Section 143(3) read with Section 153A of the Act, on 30.12.2016, thereby determined the total income of Rs.5,17,17,275/- for the assessment year 2011-2012. The Assessment Officer held that the assesse is liable to be punished for the offences under Section 276 CC of the Act.

6. Therefore, the respondent initiated prosecution as against the petitioner for the offence punishable under Section 276CC of the Act. As against the order passed by the Assessing Officer on 30.12.2016, for the assessment years 2009-2010 and 2011-2012, the petitioner filed an appeal before the Commissioner of Income Tax (Appeals) and the same was allowed by an order dated 28.12.2017, thereby the entire additions made was deleted and upheld the original return of income filed by the petitioner. Even before the order came to be passed by the Appellate Authority, the respondent initiated the present prosecution.

7. Though the respondent filed an appeal as against the order of the appellate authority viz., the Commissioner of Income Tax (Appeals), now no offence is committed by the petitioner. Therefore, the initiation of prosecution as against the petitioner for the assessment years 2009-2010 and 2011-2012 cannot be sustained as against the petitioner and it is liable to be quashed. Therefore, the proceedings in E.O.C.C.No.39 of 2018 and E.O.C.C.No.41 of 2018 are hereby quashed. However, if the

respondent succeeds in the appeal, the respondent is at liberty to initiate the prosecution as against the petitioner afresh.

8. Accordingly, the Crl.O.P.Nos.25693 and 25694 of 2018 are allowed.

9. Insofar as the Crl.O.P.No.25704 of 2018 is concerned, the respondent filed a complaint in E.O.C.C.No.42 of 2018 for the offence punishable under Section 276 CC of the Act alleging that the petitioner filed his return of income for the assessment year 2012-2013 on 29.09.2012 declaring his total income as Rs.66,50,000/-. Thereafter, a search was made as contemplated under Section 132 of the Income Tax Act, on 02.09.2014. Thereafter, the petitioner was issued with a notice under Section 153A of the Act, on 09.01.2015, thereby required the petitioner to file his return of income, within a period of 30 days. However, even after completion of 30 days, the petitioner failed to comply with the demand and failed to file his return of income. However, he had filed the return of income belatedly, on 03.12.2016 in response to

the notice issued under Section 153A of the Act, thereby re-iterated the very same income of Rs.66,50,000/-. It was filed with a delay of 663 days. Thereafter, the Assessing Officer assessed the income and passed an order under Section 143(3) read with Section 153A of the Act, on 30.12.2016, thereby determined the total income of Rs.6,50,99,757/- for the assessment year 2012-2013. Therefore, he is liable to be punished for the offences under Section 276 CC of the Act.

10. It is seen that as against the order passed by the Assessing Officer dated 30.12.2016 for the assessment year 2012-2013, the petitioner filed an appeal before the Commissioner of Income Tax (Appeals). However, it was dismissed by an order dated 21.01.2019. Aggrieved by the same, the petitioner filed an appeal before the Income Tax Appellate Tribunal in ITA No.354/Chny/2019. The Income Tax Appellate Tribunal by an order dated 01.04.2019, allowed the appeal and remitted the matter back to the file of the Assessing Officer, to reassess the return of income for the assessment year 2012-2013. Even before the Assessing Officer would assess the income, the petitioner approached the

Settlement Commission under the Samadhaan scheme and paid the tax. However, as per the original order of the Assessing Officer, the respondent filed a Tax Appeal before this Court as against the order passed by the Income Tax Appellate Tribunal and it is pending. Therefore, the Trial Court is directed to keep the complaint pending, till the disposal of the appeal which is pending before this Court.

11. It is made clear that if the petitioner succeeds in the appeal filed by the respondent before this Court, the Trial Court shall dismiss the complaint as no offence is committed by the petitioner. If the respondent succeeds in the appeal filed before this Court, the Trial Court shall proceed with the trial in accordance with law.

12. With the above direction, the Crl.O.P.No.25704 of 2018 is disposed of.

01.12.2023

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

1. The Additional Chief Metropolitan Magistrate, (E.O.II), Egmore
   at Allikulam Road, Chennai.

2. The Assistant Commissioner of Income Tax,
   Central Circle-1(4),
   Room No.323, 3rd Floor, Investigation Building,
   46, Mahatma Gandhi Salai,
   Nungambakkam,
   Chennai-600 034.

3. The Public Prosecutor
   Madras High Court.

G.K.ILANTHIRAIYAN, J.

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