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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:08.04.2025

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl OP Nos.15988 & 16013 of 2023

Sri. Pradeep Dayanand Kothari ..Petitioner in Crl.OP.No.15988 of
2023

... ..Petitioner in Crl.OP.No.16013 of 2023

vs.

The Deputy Commissioner of Income Tax,
Corporate Circle 4(2),
Chennai -600 034

... Respondent in Crl.OP.No.15988 of
2023/R2 in Crl.OP.No.16013 of 2023

PRAYER : Criminal Original Petitions have been filed under Section 482 of Cr.PC, to call for the records relating to the impugned complaint in E.O.C.C Nos.113 of 2015 &, pending on the file of the learned Additional Chief Metropolitan Magistrate(EO-I) Court, Egmore, Chennai and quash the same.

For Petitioners(in both): Mr.Nithesh Nataraj for

Mr.S.Ravi

For Respondent(in both): Mr.L.Muralikrishnan, Spl.PP

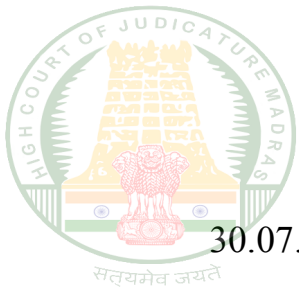


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COMMON ORDER

These Criminal Original Petitions have been filed, seeking to call for the records relating to the impugned complaint in E.O.C.C Nos.113 of 2015 and 112 of 2015, pending on the file of the learned Additional Chief Metropolitan Magistrate(EO-I) Court, Egmore, Chennai and quash the same.

2.The petitioner is common in these Criminal Original Petitions. The second respondent lodged a complaint against the petitioner for the offences alleged under Sections 276C (1) & 277 of the Income Tax Act, 1961 alleging that for the income tax assessment years 2006-07 & 2007-08, the petitioner had carried out certain transactions through an undeclared account with HSBC Private Bnk (Suisse) SA, Guisan 2, P.O.Box 3580, CH-1211, Geneva-3, Switzerland, but these transactions were not recorded in the regular books of accounts and the petitioner failed to disclose the same to the respondent Department for taxation. According to the petitioner, he is a salaried person and assessed his income tax for the assessment years 2006-07 & 2007-08 and filed income tax returns on 27.06.2006 &



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30.07.2007 with admitted income of Rs.16,98,710/- and 29,56,470/-

respectively. The said accounts stand in the name of two trusts wherein, the petitioner was one of the beneficiaries. It was observed that certain transactions were carried out during period 01.04.2005 to 31.03.2007, which are pertaining to the assessment years 2006-07 & 2007-08. Therefore, the petitioner was issued with summons dated 29.08.2011 and the petitioner submitted his reply dated 13.09.2011, whereby, he admitted that he had an account in HSBC Private Bank and claiming ignorance, he stated that the said amounts lying to his credit, was prior to the assessment years 2006-07 & 2007-08 and hence, the same was not liable to tax. Further, he explained that these amounts were deposited from his father's account in the year 2002 and no further amounts were deposited by them in the said account after 01.04.2006. Thereafter, the petitioner was issued with notice under Section 148 of the Income Tax Act (herein after referred to as “the Act”).

After conclusion of the scrutiny of assessment, the petitioner was issued with summons under Section 131 (1A) of the Act. On receipt of the same, sworn statement of the petitioner was recorded and he admitted the



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existence of the Bank account in Switzerland. The petitioner being the beneficiary of the said account in Switzerland, had an obligation under the Act, to show the sources of the income. However, the petitioner failed to show the same for the assessment years 2006-07 & 2007-08. Therefore, the said act is liable to be punishable under Section 276C(1) of the Act. Thereafter, the petitioner was served with show a cause notice dated 14.01.2015 as to why the prosecution proceedings should not be initiated against him. On receipt of the same, the petitioner submitted a reply stating that the assessment order dated 30.03.2013 is under Appeal before the Appellate Authority. Once again, the petitioner was served with notices in order to give him an opportunity of hearing to him. On receipt of the same, once again the petitioner reiterated the same vide reply dated 25.03.2025.

3.The learned counsel for the petitioner submits that on receipt of notice under Section 131 of the Act, the petitioner verified with the details of the accounts in Switzerland. His father died on 05.06.1992, who had maintained the bank accounts and the petitioner being only the legal heir, he is entitled for the benefits derived from the accounts of his father. However, the petitioner came to the knowledge about those accounts only



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after receipt of the summons. Further, he got benefits only on transfer of the balance amount during the financial year 2011-12. Accordingly, the petitioner had paid income tax for the assessment year 2012-13. In the meanwhile, the assessment for the year 2007-08 was re-opened by issuance of notice under Section 148 of the Act. In the meanwhile, the petitioner was also served with notice under Section 143(2) of the Act. Thereafter, the Assessing Officer proceeded with the reassessment and passed assessment order under Section 143(3) r/w 147 of the Act on 30.03.2013. Aggrieved by the assessment order, dated 30.03.2013, the petitioner preferred Appeals before the Appellate Authority/Commissioner of Income Tax. However, the Appellate Authority vide order dated 31.03.2015, dismissed the appeals. Aggrieved by the same, the petitioner preferred appeals vide ITA Nos.1302 & 1303 of 2015 before the Income Tax Appellate Tribunal. The Tribunal also, vide order dated 27.04.2016, confirmed the order of re-opening and the assessment order. Subsequent to the reassessment, the department initiated penalty proceedings for the assessment years 2006-07 and 2007-08 by issuing show cause notices to the petitioner. While that being so, the petitioner served with notice for prosecution under Section 276C(1) of the Act. The learned counsel further submits that subsequently, the assessment



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orders for the assessment years 2006-07 & 2007-08 were dropped by the Income tax authority vide order dated 05.06.2024. Therefore, the entire prosecution for the offence punishable under Section 276C(1) cannot be sustained as against the petitioner and liable to be quashed.

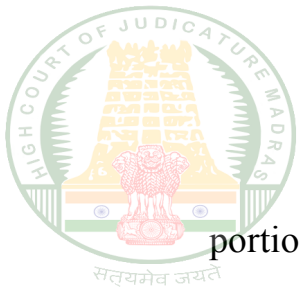
4. On the other hand, the learned counsel for the respondent would submit that the petitioner had carried out the transactions through an undeclared account maintained by him in Switzerland during the assessment years 2006-07 & 2007-08 and he concealed the huge amount while filing the income tax returns and evaded the income tax payment. He further submits that setting aside the order of assessment has nothing to do with the present prosecution and though the penalty proceedings are set aside, the prosecution for the offence punishable under Section 276C(1) is very much maintainable and hence, he sought for dismissal of the present petitions.

5. Heard the learned counsel for the petitioner and the learned Special Public Prosecutor (Income Tax) for the respondent and perused the entire materials available on record.



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6. The submissions made by either side would reveal that the petitioner is facing prosecution for the alleged concealment of his income for the financial assessment years 2006-07 & 2007-08. According to the respondent, there was an undeclared account with HSBC Private Bank (Suissa) SA, Guisan 2, P.O.Box 3580, CH-1211, Geneva-3, Switzerland and the petitioner carried out certain transactions through the said account and those transactions were not recorded in the regular books of accounts and those accounts were not disclosed for taxation. Those accounts are in the name of the two trusts wherein the petitioner was a beneficiary, which were created on 24.10.2002. It was observed by the respondent that certain transactions were carried out during the period 01.04.2005 to 31.03.2007 which are relevant to the assessment years 2006-07 & 2007-08. After issuance of show cause notice, the Assessment Officer assessed the income tax payable by the petitioner. Simultaneously, on receipt of the reply from the petitioner, the respondent initiated penalty proceedings and also initiated prosecution as against the petitioner. It is pertinent to note that insofar as the penalty proceedings are concerned for the assessment years 2006-07 & 2007-08, the same are dropped by the Income tax Appellate Tribunal in ITA Nos.26 & 27 of 2024 vide order dated 05.06.2024. The relevant



portion as found in paragraphs 5 to 9 of the said order, is extracted

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5. As noted earlier, we find that the penalty notice for both AY's dated 31.03.2013 didn't explicitly convey to the assessee the specific fault/charge the assessee is being proceeded for levy of penalty. Resultantly, the show cause notice is found to be defective/invalid, and therefore it is held to be bad in law. For doing that we also rely on the decision of the Hon'ble Karnataka High Court in the case of CIT v. Manjunatha Cotton and Ginning Factory reported in (2013) 359 ITR 565 (Kar) and the Department's SLP against it has been dismissed by the Hon'ble Supreme Court. We also find that Hon'ble Karnataka High Court in the case of CIT Vs. SSA's Emerald Meadows, reported in (2016) 73 taxmann.com 241 (Kar) endorsed the same view in Manjunatha Cotton and Ginning Factory (supra) and held as under:-

3. The Tribunal has allowed the appeal filed by the assessee holding the notice Income Tax Act, 1961 (for short 'the Act'), to be bad in law as it did not specify which limb of Section 271(1)(c) of the Act, the penalty proceedings had been initiated i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income. The Tribunal, while allowing the appeal of the assessee, has relied on



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the decision of the Division Bench of this Court rendered In the case of CIT Vs. Manjunatha Cotton & Ginning Factory (2013) 359 ITR 565/218 Taxman 423/35 taxmann.com 250(Kar).

4. In our view, since the matter is covered by judgment of the Division Bench of this Court, we are of the opinion, no substantial question of law arises in this appeal for determination by this Court. The appeal is accordingly dismissed."

6. Respectfully following the judicial precedents as well as the binding decision of the Hon'ble jurisdictional High Court in the case of Babuji Jacob (supra), the Full bench of the Hon'ble Bombay High Court's in the case of Mohd. Farhan A. Shaikh (supra), we hold the impugned notices issued for both AYS 2006-07 & 2007-08 to be bad in law and consequently, we direct the deletion of the penalty levied in this case.

7. Before parting, as far as the Ld.DR's contention that there is no requirement of notice before imposing penalty, we note that such a contention has been dealt with by this Tribunal in the case of S.J.Suryah in ITA No.806/Chny/2023 dated 29.05.2024 as under:

17. And the Ld.DR's contention that no notice was required to be issued against the assessee while initiating penalty cannot be countenanced. Because, the principles of natural justice concerns procedural fairness and ensures a



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fair decision is reached by an objective decision maker. It should be remembered that by maintaining procedural fairness protects the right of individuals and enhances public confidence in the process.

18. The legal maxims (i) audi alteram partem (the right to be heard) & (ii) nemo judex in parte suo (no person shall be a judge in his own cause) are two legal principles which is the core of principles of natural justice.

19. The Hon'ble Supreme Court in the case of *M.S.Gill v. The Chief Election Commission* reported in [1978] AIR 851 held as under:

The dichotomy between administrative and quasi-judicial functions vis-à-vis the doctrine of Natural justice is presumably obsolescent after *A.K.*

Kraipak v. UOI reported in 1970 SC 1302 which marks the water-shed in the application of natural justice to administrative proceedings. The rules of natural justice are rooted in all legal systems, and are not any 'new theology'. They are manifested in the twin principles of nemo and audi. It has been pointed out that the aim of natural justice is to secure justice, or, to put it negatively to prevent miscarriage of justice.

20. And it is no longer res integra that penalty proceedings and assessment proceedings are distinct; and merely, because addition has been made in the assessment order does not mean that AO has to levy penalty; and since Imposing



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penalty Involves civil consequences (the expression civil consequences encompasses infraction of property/personal rights/civil liberties/material deprivation/pecuniary and non pecuniary damages), therefore, notice need to be given because sec.271(1)(c) of the Act specifically says about two distinct faults (i) concealment of the particulars of income (ii) furnishing of inaccurate particulars of such income; and therefore, concept of reasonable opportunity guaranteed u/s.274 of the Act would be illusory if specific charge on which penalty is proposed is not given by AO by way of issuing notice; and as noted above, the principles of natural justice is implied and notice need to be given to assessee before levy of penalty; and therefore, notice issued to assessee has to spell out the specific charge/fault which AO proposes to levy, and should not be vague and should not put the assessee guessing as to what is in the mind of the AO viz whether he proposes concealment of particulars of income or furnishing inaccurate particulars of Income. Therefore, the contentions of the Ld.DR cannot be accepted and is held to be devoid of merits and therefore rejected. And since the notices issued by AO itself is invalid & legally untenable, consequent penalty Itself is null in eyes of law. Therefore, Revenue appeal falls and assessee succeeds and the penalty levied is directed to be deleted.

8. As far as Ground No.2 is concerned, we note that the AO in the course of assessment proceedings did not made any endorsement of his satisfaction that the assessee has concealed particulars of his income or furnished



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Inaccurate particulars of such income, failure to do so le, satisfaction of the AO in the assessment order that assessee had concealed the particulars of income or furnished Inaccurate particulars of Income was sine qua non for Initiation of penalty u/s.271(1)(c)/274 of the Act, which is absent in this case, therefore the consequent levy of penalty law as confirmed by the Hon'ble Supreme Court in the case of PCIT v. Golden Peace Hotel & Resorts reported in [2021] 124 taxmann.com 249 (SC). Assessee succeeds in Ground No.2 also.

9. In the result, appeals filed by the assessee are allowed for statistical purposes.”

6. The Hon'ble Supreme Court held in the case of “**Radheshyam Kejriwal versus Vs State of West Bengal**” reported in (2011) 3 SCC 581 that '*in the case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases*'.

7. In view of the facts and circumstances of the present case, the



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above ratio laid down by the Hon'ble Supreme Court is squarely applicable to the case on hand. Therefore, the entire proceedings initiated to prosecute the petitioner, cannot be sustained and liable to be quashed. Both the penalty proceedings as well as the prosecution proceedings are initiated by virtue of the same show cause notice. Therefore, the prosecution initiated for the offence punishable under Section 276C(1) of the Act cannot be continued, in the light of the penalty proceedings initiated under Section 276C(1) of the Act have been already terminated by the Appellate Tribunal. Hence, continuation of the trial of the petitioner is nothing but clear abuse of process of Court.

8. In the light of the above discussion, the impugned complaint in E.O.C.C Nos. 112 and 113 of 2015 pending on the file of the learned Additional Chief Metropolitan Magistrate, (EO-I) Court, Egmore, Chennai cannot be sustained and liable to be quashed.



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G.K.ILANTHIRAIYAN, J.
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9. Accordingly, these Criminal Original Petitions are allowed and the impugned complaint in E.O.C.C Nos.112 and 113 of 2015 pending on the file of the learned Additional Chief Metropolitan Magistrate, (EO-I) Court, Egmore, Chennai are hereby quashed.

08.04.2025

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

The Deputy Commissioner of Income Tax,
Corporate Circle 4(2),
Chennai -600 034

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