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CRL OP No. 19461 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.04.2026

Pronounced on: 30.04.2026

CORAM

THE HON'BLE MR JUSTICE G.K. ILANTHIRAIYAN

CRL OP No. 19461 of 2023

and

CrI MP No. 13139 of 2023

B.Mohammad Iqbal
Block 3, Flat No.3, Sriram Garden, Indira Nagar,
Manapakkam, Chennai.

..Petitioner(s)

Vs

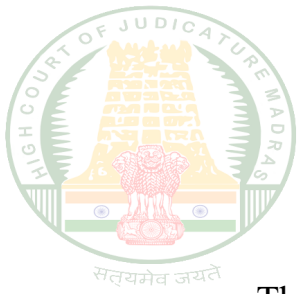
The Assistant Commissioner Of Income Tax
Non Corporate Circle 17, No. 16, Bsnl Building
Tower 1, 2nd, 5th Floor, Grems Road, Chennai.

..Respondent(s)

Prayer: This petition is filed under Section 482 of Cr.P.C to call for the records relating to EOCC.NO.42/2019 on the file of the Additional Chief Metropolitan Magistrate (Economic Offences) I Egmore, chennai and quash the same.

For Petitioner(s): M/s. N.V.Balaji
Nv Lakshmi
N.V. Narayanan

For Respondent(s): M.Sheela, Ssc
H.Siddarth, Jsc For It Dept For The Respondent
Counter Affidavit Filed By The Respondent



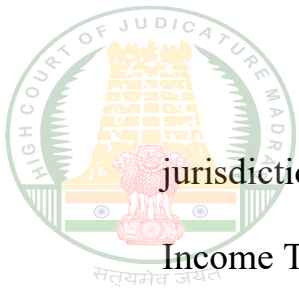
ORDER

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This petition has been filed to quash the proceedings in EOCC.NO.42/2019 on the file of the Additional Chief Metropolitan Magistrate (Economic Offences) I Egmore, chennai Offences Wing, Chennai.

2. The respondent lodged a complaint for the offence punishable under Section 276 CC of the Income Tax,1961 for the Assessment Year 2014-2015. It is alleged that the petitioner had wilfully failed to file the return of Income Tax for the Assessment Year 2014-15 and thus committed the offence under Section 276 CC of the Income Tax Act,1961 (hereinafter called as the “Act”) .On receipt of the said complaint the Trial Court had taken cognizance in EOCC No. 42 of 2019 and issued summons to the petitioner.

3. The learned counsel for the petitioner submits that the respondent has no jurisdiction to lodge any complainant by virtue of any notification under Section 119 or by virtue of any transfer of cases under Section 127 of the Act. The respondent is not an Assessing Officer holding jurisdiction over the petitioner’s case. The Income Tax Officer, Non Corporate Ward 17(2), Chennai only has jurisdiction over the case of the petitioner. Infact the Income Tax Officer had issued Show Cause Notice. However, the complaint has been lodged by the Assistant Commissioner of Income Tax who has got no



jurisdiction. Even according to the respondent, the petitioner is assessed to Income Tax by the Income Tax Officer Non Corporate Ward 17(2), Chennai, but

the sanction to prosecute the petitioner had been issued by the Principal Commissioner of Income Tax which is contrary to the fact as well as the materials placed by the respondent. The complaint was lodged without making a regular assessment and examining the application of proviso of Section 276 CC of the Act. The respondent failed to state that the petitioner had wilfully failed to file the return and the respondent also failed to appreciate any piece of evidence to that effect. Without considering the same, the Principal Commissioner of Income Tax accorded sanction to prosecute the petitioner mechanically. There was absolutely no wilful default on the part of the petitioner to file the return of Income as such no ingredients are available to attract the offence under Section 276 CC of the act. He further submits that the respondent did not initiate any penalty proceedings. When the respondent failed to initiate any penalty proceedings as against the petitioner, the respondent cannot prosecute the petitioner for the offence punishable under Section 276 CC of the Act. In fact, after receipt of the Show Cause Notice and before filing the complaint, the petitioner filed his return of Income. Therefore, as on date no tax is due on the part of the petitioner. Therefore, no offence made out under Section 276 CC of the Act. In support of his contention he relied on the Judgment of the *Hon'ble Supreme Court of India in the case of K.C.Builders Vs Assistant Commissioner of Income Tax* reported in [2004] 135 Taxman 461

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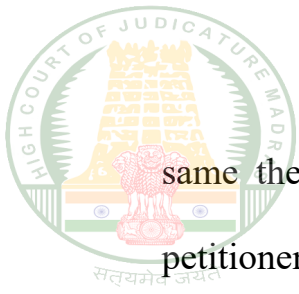


(SC)[2004] 265 ITR 562 (SC)/[2004] 186 CTR 721 (SC) and the relevant portion is extracted hereunder:

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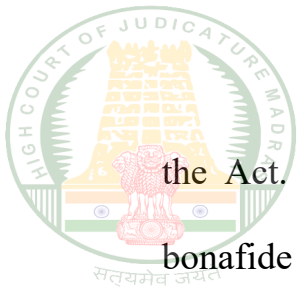
26. The Assistant commissioner of Income-tax cannot proceed with the prosecution even after the order of concealment has been set aside by the Tribunal. When the Tribunal has set aside the levy of penalty, the criminal proceedings against the appellants cannot survive for further consideration. In our view, the High Court has taken the view that the charges have been framed and the matter is in the stage of further cross-examination and therefore, the prosecution may proceed with the trial. In our opinion, the view taken by the learned Magistrate and the High Court is fallacious. In our view, if the Trial is allowed to proceed further after the order of the Tribunal and the consequent cancellation of penalty, it will be an idle and empty formality to require the appellants to have the order of Tribunal exhibited as a defence document inasmuch as the passing of the order as aforementioned is unsustainable and unquestionable.

4. Per Contra the respondent filed a counter and submits that on verification of records it has been notified that the petitioner has effected sale of immovable properties during the Financial Year 2013-14 relevant to the Assessment year 2014-15 for a substantial consideration of Rs.75 lakhs and that transaction had duly reflected in the Departmental Information System. Despite the existence of such taxable transaction and statutory obligation under Section 139(1) of the Act, the petitioner failed to file his return within the stipulated time. Therefore, the petitioner was served with Show Cause Notice dated 15.09.2017 thereby calling upon to explain as to why the prosecution under Section 276 CC should not be initiated against him . On receipt of the



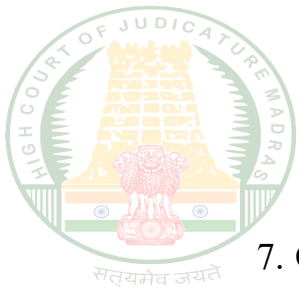
same the petitioner submitted a reply dated 21.09.2017. After his reply the petitioner remitted certain tax with interest. However, the compliance subsequent to the Show Cause Notice does not efface the offence committed by the petitioner and therefore, the petitioner committed the offence under section 276 CC of the Act. After being accorded sanction from the authority concerned, the respondent initiated prosecution against the petitioner for the offence under Section 276 CC of the Act. She further submitted that the provisions under section 279 (1) of the Act stipulates that no prosecution shall be in instituted except with previous sanction of the Principal Commissioner of Income Tax. Therefore, it doesn't mandate that such complaint must be filed only by the Jurisdictional Assessing Officer.

5. The respondent is an authority under the Income Tax within the meaning of Section 116 of the Act. Therefore, the respondent is fully competent to act upon the sanction accorded by the Principal Commissioner. Infact the respondent who is a Superior Officer than the Income Tax Officer and is within the same administrative Hierarchy and having accorded to relevant records, the respondent is legally competent to initiate prosecution. Once the Statutory time limit had lapsed without complying the subsequent events including belated filing of returns or pendency of assessment proceedings are wholly irrelevant for prosecuting for non filing of returns. Therefore, the subsequent filing of the return has no barring on the quantum of punishment under Section 276CC of



the Act. The petitioner's attempt to characterise his failure as based on the bonafide belief is the matter of defence which can only be examined during the Trial. The intention of the petitioner cannot be adjudicated by this court that too under section 482 of Cr.P.C. In terms of Section 278 (E) of the Act. There is a statutory defence as to the existence of the culpable mental state in any prosecution for an offence under the act which requires such mental state. It mandates that Courts shall presume the existence of such mandate and the burden is upon the accused to prove the absence of such mental state. It can be done only before the Trial Court during the Trial. In support of his contention he relied upon the Judgment of the Supreme Court *in the case of Sasi Enterprise Vs Assistant Commissioner of Income Tax* reported in [2014] 41 Taxmann 500 (SC) [2014 wherein it was held that the assessee is bound to file the return under Section 139(1) of the Act on or before the due date. The outer limit fixed for filing of return is 31st August of the assessment year, over and above. She further submits that non initiation of penalty proceedings as contemplated under Section 271(f) of the Act as contemplated by itself doesn't mean that default was not willful and the same , it would not affect the initiation of prosecution under Section 276(CC) of the Act for non filing of return of Income Tax for the Assessment Year 2014-15.

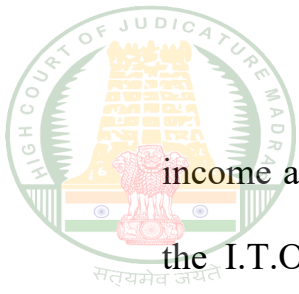
6. Heard the learned counsel for the petitioner and the respondent and perused the materials available on record.



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7. On perusal of records it is revealed that the petitioner and his wife had sold a property for a consideration of Rs.75 lakhs. The purchaser had also deducted tax at source in respect of the said transaction. Apart from that his employer had also deducted tax on the salary Income of the petitioner. However, the petitioner was of the bonafide belief that there must be no tax liability in respect of the sale made since the income from the sale proceeds are re-invested. Further, since the employer had deducted tax at source in respect of the entire salary the petitioner, the petitioner was of a bonafide belief that he need not file tax returns for the income accrued by him for the assessment year 2014-15. The provisions under Section 139 of the Act provides for filing of return of Income. Section 139 (1) of the Act provides for voluntary filing of return, where the total income of a person during the previous year exceeded the maximum amount not chargeable to income tax.

8. The petitioner is assessed to tax under the jurisdiction of Income Tax Officer, Non Corporate Ward 17(1), Chennai. The due date of filing of his returns under section 139(1)(b) was 31.07.2014 and because the petitioner failed to file his return before the Income Tax Officer, Non Corporate Ward 17(1) Chennai before the said timeline was issued Show Cause Notice dated 15.09.2017. Thereafter, the petitioner was advised to submit his return of



income and paid the tax with interest and submitted his reply thereby informed the I.T.O that the tax with interest are fully paid. However, the respondent initiated prosecution for the offence under Section 276 CC of the Act for non filing of the return of his income for the Assessment Year 2014- 15.

9. Though, the petitioner has raised so many grounds this Court will deal with the following two grounds to quash the entire proceedings.

a. Whether the respondent has jurisdiction to initiate prosecution against the petitioner.

b. Whether the respondent failed to proceed with the penalty for failure to furnish the return of income.

10. To vitiate the entire case of the prosecution, admittedly the petitioner is assessed to tax in Permanent Account Number under the Jurisdiction of I.T.O, Non Corporate Ward 17(1), Chennai and was issued a Show Cause Notice dated 15.09.2017. On receipt of the same the petitioner had paid the Income Tax with interest and submitted his reply to the I.T.O. However, the respondent who is the Assistant Commissioner of Income Tax, Non Corporate Ward 17(1), Chennai had initiated prosecution against the petitioner after according sanction from the Principal Commissioner of Income Tax. In sofar as jurisdiction vested with the Income Tax Authority is concerned Section 7(A) of the Act defines the same and the same is extracted hereunder:



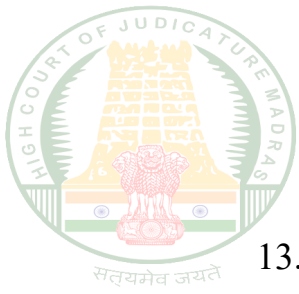
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“ Assessing Officer” means the Assistant Commissioner of Deputy Commissioner of Assistant Director of Deputy Director or the Income-Tax Officer who is vested with the relevant jurisdiction by virtue of directions or orders issued under sub-section (1) or sub-section(2) of section 120 or any other provisions of this Act and the Additional Commissioner or Additional Director or Joint commissioner or Joint Director who is directed under clause (b) of sub-section (4) of that section to exercise or perform all or any of the powers and functions conferred or assigned to, an Assessing Officer under this Act:

11. Thus only the officer who is vested with the jurisdiction by virtue of directions or orders is the Assessing Officer and not any one else. The I.T.O does not report to the respondent either through his representative or in discharge of quasi judicial proceedings.

12. After filing of the reply to the Show Cause Notice issued by the I.T.O, the respondent herein placed some records before the Principal Commissioner of Income Tax seeking to accord sanction to initiate prosecution against the petitioner. Based on the records, the sanction was accorded to initiate prosecution against the petitioner. Therefore, when the respondent has no jurisdiction over the case of the petitioner, the Principal Commissioner of Income Tax had accorded sanction without application of mind on the very question of jurisdiction itself.



13. The jurisdiction vested with the Income Tax authority can be transferred to another officer as per Section 127 of the Act. Section 127(1) of the act empowers the Principal Commissioner of Income Tax Officer to transfer any case from one authority who is subordinate to him after recording reasons for doing so and giving a reasonable opportunity of being heard, wherever possible. In the case on hand there is no order of transferring the case of the petitioner from the I.T.O to the respondent herein. Once, the Show Cause Notice was issued by the I.T.O and a reply was received from the petitioner, the respondent did not even intimate that he is continuing the proceedings to enable the petitioner to avail the re-hearing as provided in provision in Section 129 of the Act. Therefore, the respondent has no jurisdiction to initiate the prosecution as against the petitioner. The complaint alleged that the petitioner has derived substantial Income from the sale of Joint family property and therefore he shall file his return of Income for the admitted capital gains. However, the respondent did not conduct any enquiry as to whether the petitioner is liable to file the return of Income as contemplated under Section 129 of the Act. Nearly on the sale of Joint Family property for a sale consideration of Rs.75 lakhs, there would be Capital gains warranting filing of return. The respondent initiated prosecution but failed to issue notice under Section 142 of the Act which provides for making an enquiry before the assessment including directing the assessee to file the return or issue notice under section 148 of the Act for making

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an assessment under Section 147 r/w 143/144 of the Act. Hence for making a regular assessment and to determine the tax liability of the petitioner, it is essential to arrive at his liability based on such regular assessment to determine the tax liability that has to be paid after deduction of TDS and advance tax.

14. It is relevant to rely upon the proviso of Section 276(CC) (ii)(b) and the same is extracted hereunder:

“ b. The tax payable by such person, not being a company on the total income determined on regular assessment, as reduced by the advance tax or self-assessment tax, if any paid before the expiry of the assessment year, the expiry of the assessment year and any tax deducted or collected at source does not exceed ten thousand Rupees.

15. In view of the above proviso it is only in those cases where the liability is more than Rs. 3,000/- a person shall be liable to be prosecuted. In the absence of any proceeding to make the regular assessment to the petitioner the initiation of prosecution is void. Further the Section 271(f) of the Act provides for penalty for failure to furnish return of income and the same has to be initiated against the petitioner for non filing of returns within the due date. In the case of **K.C.Builders Vs Assistant Commissioner of Income Tax** reported in [2004] 135 Taxman 461 (SC) it is held as follows:



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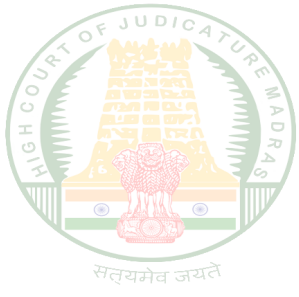


26. *The Assistant Commissioner of Income-Tax cannot proceed with the prosecution even after the order of concealment has been set aside by the Tribunal. When the Tribunal has set aside the levy of penalty, the criminal proceedings against the appellants cannot survive for further consideration. In our view, the High Court has taken the view that the charges have been framed and the matter is in the stage of further cross- examination and , therefore the High Court is fallacious. In our view, if the trial is allowed to proceed further after the order of the Tribunal and the consequent cancellation of penalty, it will be an idle and empty formality to require the appellants to have the order of Tribunal exhibited as a defence document inasmuch as the passing of the order as aforementioned is unsustainable unquestionable.*

16. Thus it is clear that without initiation of penalty proceedings, if the trial is allowed it will be a idle and empty formality. Therefore, when the penalty proceedings is not initiated as contemplated under Section 271(f) of the act against the petitioner, allowing the present impugned proceedings would amount to abuse of process of law. Accordingly EOCC.NO.42/2019 on the file of the Additional Chief Metropolitan Magistrate (Economic Offences) I Egmore, Chennai is hereby Quashed and this Criminal Original Petition is allowed. Consequently connected miscellaneous petition is closed.

30.04.2026

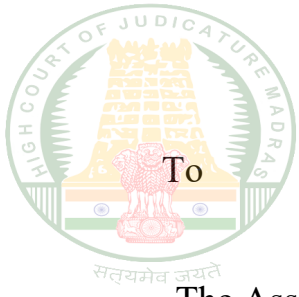
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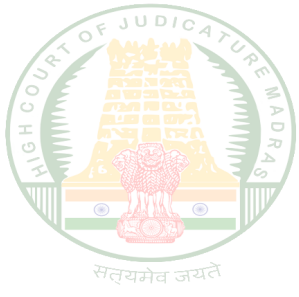




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To
The Assistant Commissioner Of Income Tax
Non Corporate Circle 17, No. 16, Bsnl Building
Tower 1, 2nd, 5th Floor, Greams Road, Chennai.



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G.K.ILANTHIRAIYAN, J.

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