



*Crl.O.P.Nos.29914, 29915, 29916, 29917, 29918 & 29919 of 2015
and M.P.Nos.1 & 2 of 2015*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 25.03.2022

PRONOUNCED ON : 26.05.2022

CORAM

THE HON'BLE Mr. JUSTICE G.CHANDRASEKHARAN

**Crl.O.P.No.29914, 29915, 29916, 29917, 29918 & 29919 of 2015
and M.P.Nos.1 & 2 of 2015**

In all Crl.O.P.'s:-

S.J.Surya

...Petitioner

Vs.

The Deputy Commissioner of Income Tax,
Central Circle II (4),
Chennai – 34.

...Respondent

Common Prayer:- Criminal Original Petitions are filed under Section 482 of Code of Criminal Procedure, to call for the entire records in E.O.C.C.Nos.101, 102, 103, 104, 105 & 106 of 2015 on the file of Additional Chief Metropolitan Magistrate (E.O.I) Chennai, Alikulam Road and quash all further proceedings against the petitioner.

In all Crl.O.P.'s:-

For Petitioner : Mr.N.R.Elango, Senior Advocate
for M/s.P.Ramesh Kumar

For Respondent : Mrs.N.Sheela
Special Public Prosecutor for Income tax.



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ORDER

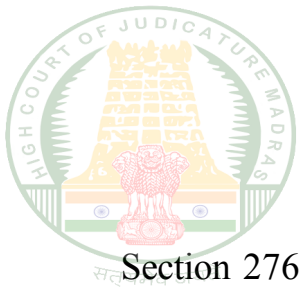
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Crl.O.P.Nos.29914, 29915, 29916, 29917, 29918 & 29919 of 2015 are filed to call for the entire records in E.O.C.C.Nos.101, 102, 103, 104, 105 & 106 of 2015 on the file of Additional Chief Metropolitan Magistrate (E.O.I) Chennai, Alikulam Road and quash the same.

2.Respondent filed these complaints against the petitioner for the violation of provisions under Income Tax Act, 1961, which are punishable under the Act. The allegations made in the complaint, in brief, are extracted here,

Complaint in E.O.C.C.No.101 of 2015:

Petitioner/accused is a cine actor and Director deriving income from remuneration for acting in movies and also directing movies. He ought to have filed his return of income for the assessment year 2002-2003 on or before 31.07.2002. However, he did not filed his return of income within the due date prescribed by the statute and thus contravened the provisions of Section 139 (1) of the Income Tax Act, 1961. It is an offence punishable under Section 276 CC of Income Tax Act, 1961. He ought to have paid the advance tax within the prescribed dates of 15.09.2001, 15.12.2002 and 15.03.2002 and filed the relevant return for the assessment year 2002-2003 on or before 31.07.2002. Petitioner did not pay advance tax and failed to file return of income within the statutory due date. Thus, committed the offence under



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Section 276 CC of the Income Tax Act, 1961 by concealing true the correct income

by not filing the return of income and committed an offence under Section 276 C (1)

Income Tax Act, 1961. The survey operations under Section 133 A were conducted

on 04.09.2003 and a search was conducted on 26.10.2005. It revealed unaccounted

receipt of money by the petitioner towards remuneration for directing movies. A

statutory notice under Section 148 of Income Tax Act, 1961 dated 30.03.2004 was

issued to the petitioner to prepare a true and correct return of total income including

the undisclosed income assessable for the assessment year 2002-2003 within 30 days

from the date of service of the notice. Notice was acknowledged on 05.04.2004.

Petitioner ought to have filed the return of income on on or before 05.05.2004, which

he failed. Through a letter dated 03.05.2005, he requested time to file return till

15.06.2004. But he did not file the return of income even after 15.06.2004.

Therefore, a show cause notice dated 22.07.2004 was issued. Petitioner filed the

return of income for assessment year 2002-2003 only on 15.09.2004. He admitted a

total income of Rs.40,00,000/- in the covering letter. It is stated that petitioner

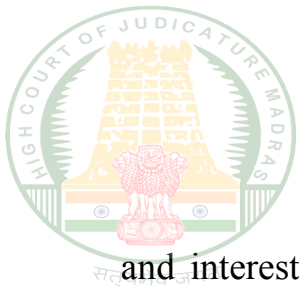
received gross remuneration of Rs.50,00,000/- for directorial service of the film

"KHUSHI" (Hindi). A sum of Rs.10,00,000/- was claimed as expenditure.

Assessment was completed under Section 143 (3) on 30.03.2005 assessing his total

income at Rs.1,68,38,410/-. Apart from these, a sum of Rs.30,00,000/- was added as

unexplained deposit in his bank account in Dena Bank, T. Nagar Branch. Gross tax



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and interest demand worked out to Rs.85,82,780/-. After giving credit to payments made of Rs.13,00,000/-, net demand was raised at Rs.72,82,780/-. Penalty proceedings under Section 271 (1) (C) were initiated simultaneously. Petitioner filed petition before the Joint Commissioner of Income Tax, Media Range on 12.05.2005, requesting for stay of collection of demand till the disposal of appeal by the Commissioner. This petition was rejected on 08.08.2005. Petitioner filed a letter dated 23.11.2005 before the Income Tax Officer, requesting a time for payment of taxes till the search issues are resolved. It was observed by the Commissioner of Income Tax, that “As soon as PO is lifted on Bank Account, Assessee is required to pay the installments”. However, petitioner did not pay the taxes though the PO on bank account was lifted. Since, the petitioner has not paid the amount as per demand notice under Section 156 served along with the assessment order under Section 143 (3), notice under Section 226 (5) dated 12.08.2005 was issued to M/s.Prasad Film Lab and M/s.Gemini Colour Lab to realize the garnishee amounts. Agricultural lands and the flats belonging petitioner were placed under provisional attachment under Section 281 B of the Income Tax Act. Original assessment was confirmed in appeal on 31.03.2014. Even, thereafter, petitioner has not paid the arrears. A notice under Section 153 (A) of Income Tax Act, dated 07.07.2006 was issued to the petitioner to prepare a true and correct return of total income including undisclosed income for the assessment year 2002-2003, within 45 days from the date of service of the notice. It



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was acknowledged on 22.07.2006. Petitioner ought to have filed return of income on or before 05.09.2006, he failed. Again a show cause notice dated 26.10.2006 was issued to the petitioner to show cause why the prosecution under Section 276 CC of the Income Tax Act, 1961 should not be initiated. It was acknowledged on 11.01.2007. A reminder dated 11.01.2007 was issued. There was no reply from the petitioner. Assessment under Section 153 A r/w. Section 144 was completed on 24.09.2008 on a total income of Rs.2,00,56,592/-. Based on the materials seized a sum of Rs.1,70,56,592/-representing the money received for the remuneration of the film "Nani" and another sum of Rs.30,00,000/- for the remuneration towards the film "New" were added. Total gross demand was determined at Rs.1,50,02,522/-. After giving credit to self assessment tax paid at Rs.10,00,000/-, net demand payable was determined at Rs.1,50,02,522/-. Penalty proceedings for concealment of income were initiated under Section 271 (1) (c) simultaneously. Appeal was dismissed by a common order dated 31.03.2014 and the assessment was confirmed. Notice under Section 226 (3) to Dena Bank, HDFC Bank, Indian Bank, Sri Ramesh Babu, Smt.Mallika Devi, M/s.Geetha Arts and M/s.Kanakarathina Media Pvt. Ltd were issued to realize the garnishee amounts. As the amounts could not be collected by a letter dated 22.05.2014, the outstanding demands were certified to the tax recovery officer. The tax recovery officer issued notices in ITCP-1 to the petitioner on 11.06.2014. It was served on the petitioner on 13.06.2014. However, there was no



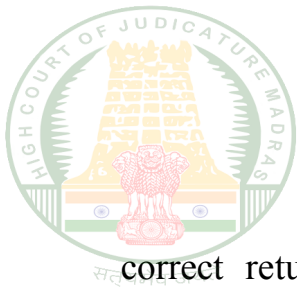
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response from the petitioner. Petitioner filed stay petition before Income Tax Appellate Tribunal, Chennai and the stay petition was dismissed. Thus, there is gross disobedience in complying with the statutory requirements under Section 139 (1), 148 and 153 A of Income Tax Act, 1961, which amounts to an offence punishable under Section 276 CC of Income Tax Act, 1961. Petitioner did not file the return of income voluntarily, did not pay the advance tax and it is offence punishable under Section 276 C (2) of Income Tax Act, 1961. Petitioner concealed his true and correct income by not filing return of income, not paying the advance tax and the demand tax. Thus, committed offence under Section 276 (C) (1), 276 C (2), 276 CC and 277 of the Income Tax Act, 1961. Petitioner made false statement and signed false verification and it is an offence punishable under Section 277 of the Income Tax Act.

3.The general allegations remain the same in other cases and details of the specific violation under Income Tax Act, 1961 are extracted in other cases as follows,

Complaint in E.O.C.C.No.102 of 2015:

Petitioner failed to file the return of income for the assessment year 2003-2004. He also did not pay advance tax and concealed true and correct income by not filing the return of income on or before the statutory due date. Petitioner filed return of income for the assessment year 2003-2004 only on 15.09.2004. A notice under Section 153 (A) of income Tax Act was issued on 07.07.2006 to prepare a true and

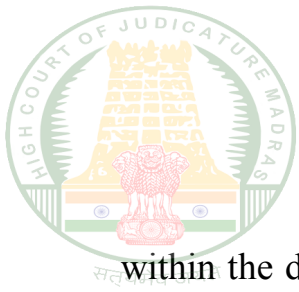


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correct return of total income including the undisclosed income and that was acknowledged by the petitioner on 22.07.2006. Petitioner did not file the return of income and therefore a show cause notice dated 26.10.2006 was issued. Assessment was completed on 24.09.2008 on a total income of Rs.1,93,82,227/-, taking into consideration, the material seized. Total gross demand was determined at Rs.1,26,05,955/-. The appeal filed by the petitioner was dismissed by a common order on 31.03.2014. Tax recovery officer issued notices in ITCP – 1 to the petitioner on 11.06.2014. Stay petition filed by the petitioner was dismissed by Income Tax Appellate. Petitioner willfully failed to file return of income for the assessment year 2003-2004 and violated the provisions of Section 139 (1), 148 and 153 A of Income Tax Act, 1961, punishable under Section 276 CC of Income Tax Act; did not pay the advance tax and the demand raised under Section 144 r/w 153A, which amounts to commission of offence under Section 276 C (2) of Income Tax Act; willfully and deliberately concealed his true and correct income by not filing return of income and not paying advance tax, demand tax. Thus, committed offence punishable under Section 276 C (1); has not made a true and complete disclosure of a real income, and made a false statement and signed false verification punishable under Section 277 of the Income Tax Act, 1961.

4.Complaint in E.O.C.C.No.103 of 2015:

Petitioner has not filed income return for the assessment year 2004-2005



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within the due date prescribed by the statute, did not pay the advance tax and failed to file the return of income and thus concealed the true and correct income. Petitioner filed return of income for assessment year 2004-2005 on 15.09.2004 showing only NIL income. Based upon the information and materials gathered during search, statutory notice under Section 153 (A) of Income Tax Act, 1961, dated 07.07.2006 was issued to the petitioner to prepare a true and correct return of total income including the undisclosed income for the assessment year 2004-2005. It was acknowledged on 22.07.2006. Petitioner did not file the return of income and therefore, a show cause notice dated 26.10.2006 was issued. Based on search, assessment was completed determining the net demand payable at Rs.2,11,32,637/-. Penalty proceedings for concealment of income were initiated simultaneously. Appeal was dismissed by a common order on 31.03.2014 and the assessment was confirmed. Tax Recovery Officer issued notices in ITCP-1 to the defaulter on 11.06.2014. Stay petition filed by the petitioner was dismissed by Income Tax Appellate Tribunal, Chennai. Petitioner willfully failed to file return of income for the assessment year 2004-2005, willfully and deliberately did not pay the advance tax and demand raised under Section 144 r/w. 153 A, willfully and deliberately concealed his true and correct income, made false statement and signed false verification. Thus, petitioner committed the offences punishable under Section 276 C (1), 276 C (2), 276 CC and 277 of the Income Tax Act, 1961.

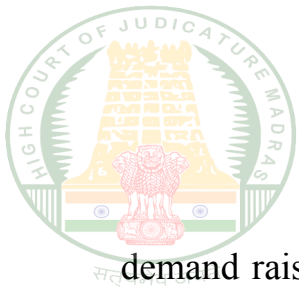


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5.Complaint in E.O.C.C.No.104 of 2015:

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Petitioner did not file return of income for the assessment year 2005-2006 within the due dates prescribed by the statute. He did not pay the advance tax and concealed true and correct income by not filing the return of income. He filed return of income for assessment year 2005-2006 on 28.10.2005, showing loss of Rs.2crores. Petitioner is entitled to claim of carry forward loss only if the return is filed on or before the statutory due date. The return of income was treated as defective and petitioner was directed to rectify the defects. However, petitioner did not rectify the defects. The defective return filed on 28.10.2005 is non-est in law. Based upon information and material gathered during search, statutory notice under Section 153 A of Income Tax Act, 1961 dated 07.07.2006 was issued calling the petitioner to prepare a true and correct return of total income including the undisclosed income, for the assessment year 2004-2005. It was acknowledged on 22.07.2006. Petitioner did not file the return of income and therefore, a show cause notice under Section 153 A dated 26.10.2006 was issued. There was no reply. Based on the materials seized, the assessment was completed determining the total gross demand at Rs.1,32,63,662/-. Penalty proceedings for concealment of income were initiated simultaneously. Tax Recovery Officer issued notices in ITCP – 1, to the petitioner on 11.06.2014. Stay petition filed by the petitioner was dismissed by Income Tax Appellate Tribunal. Petitioner willfully failed to file return, did not pay advance tax,

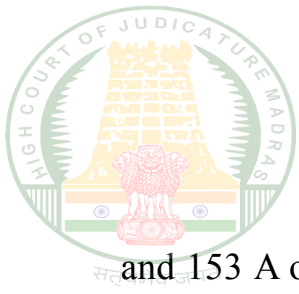


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demand raised under Section 144 r/w. 153 (A) of the Income Tax Act, concealed his true and correct income, made false statement and signed false verification, thus he is liable to be prosecuted for the offences punishable under Section 276 C (1), 276 C (2), 276 CC and 277 of the Income Tax Act, 1961.

6.Complaint in E.O.C.C.No.105 of 2015:

Petitioner did not file his return of income for the assessment year 2006-2007 within the due date prescribed by the statute. He did not pay the advance tax and concealed true and correct income by not filing the return of income. A notice under Section 153 (A) of Income Tax Act, dated 07.07.2006 was issued to the petitioner calling upon him to prepare true and correct return of total income including undisclosed income for assessment year 2006-2007. It was acknowledged on 22.07.2006. But the petitioner did not file the return and therefore show cause notice under Section 153 (A) was issued. Based on the material seized, the gross amount payable was determined at Rs.68,70,578/-. Penalty proceedings and concealment of income were initiated. Appeal filed by the petitioner was dismissed by a common order on 31.03.2014. Tax Recovery officer issued notices in ITCP – 1, to the petitioner on 11.06.2014. The stay petition filed was dismissed by Income Tax Appellate Tribunal. Petitioner violated statutory requirements under Section 139 (1)



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and 153 A of Income Tax Act, by not filing return of income, did not pay the advance tax, demand raised under Section 144 r/w. 153 A, deliberately concealed true and correct income by not filing the return of income, not paid the advance tax and demand tax. Thus, he is liable to be prosecuted for the offences under Section 276 C (1), 276 C (2), 276 CC and 277 of the Income Tax Act, 1961.

7.Complaint in E.O.C.C.No.106 of 2015:

Petitioner has not filed income tax return for the assessment year 2009-2010 and concealed true and correct income by not filing the return of income. During the course of assessment proceedings, the authorized representatives of the petitioner by a letter dated 21.10.2011, requested the petitioner to disallow the expenses in proportion. The assessment was completed on a total income Rs.21,69,157/- against the admitted income of Rs.10,61,680/-. A net demand of Rs.7,81,980/- was raised. Dis-allowance of various expenses claimed could not be substantiated by the petitioner. Petitioner did not pay the amount raised. Tax Recovery Officer issued notices in ITCP – 1 to the petitioner. Petitioner is an affluent person deriving income from acting and direction of films. He willfully and deliberately attempted to evade tax and interest. Thus, he is liable to be prosecuted for the offence under Section 276 C (1), 276 C (2), 276 CC and 277 of the Income Tax Act, 1961.



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8.Challenging these petitions, the aforesaid criminal original petitions have been filed for quashing the proceedings.

9.Learned counsel for the petitioner assailed the taking cognizance of these cases on the grounds that,

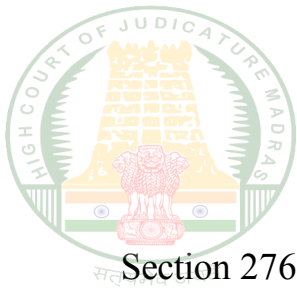
i)the complaint is pre-mature, when the proceedings before the department are yet to conclude and reach finality.

ii)The assessment order passed by the Assessing Officer, confirmed by the CIT (A) have been set aside by the Income Tax Appellate Tribunal declaring the Assessment orders as null and void.

iii)the Income Tax Appellate Tribunal makes it clear that the petitioner is not liable to pay any tax penalty or interest that could be chargeable or imposable under the Income Tax Act by the department.

iv)When that be the case, and when there is no tax, penalty or interest chargeable or imposable under the Act, prosecution under Section 276 C (1) of the Act, cannot be sustained.

v)when there is no tax, penalty or interest payable by the petitioner, the allegation of attempting to evade payment of such tax, penalty or interest under



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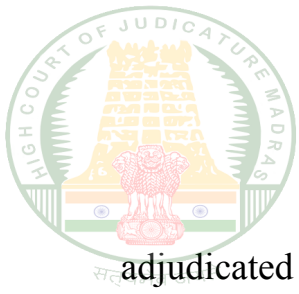
Section 276 C (2) of the Act, cannot be sustained.

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vi) No prosecution under Section 276 CC of the Act, could be initiated for non filing income tax return when the tax that could have become payable is less than Rs.3000/-. In this case, petitioner would not be liable to be pay even a rupee and therefore, prosecution under Section 276 CC cannot be maintained.

vii) Filing of false statement of verification cannot be sustained in this case as the petitioner had not filed any return of income or has made a statement which could be called as false. Thus, continuation of the proceedings against the petitioner would only be an abuse process of law and therefore, learned counsel for the petitioner prayed for quashing the proceedings in E.O.C.C.Nos.101, 102, 103, 104, 105 & 106 of 2015.

10. In response, learned Special Public Prosecutor appearing for the respondent submitted that all these petitions are not maintainable and these petitions are filed abusing process of Court. These complaints have been filed as an offshoot of survey and search proceedings. But for the survey and search proceedings, the violations committed by the petitioner would not have come to light and it would have resulted in suppression of income and loss of revenue to the Government. These petitions have been filed mainly on the reason that Income Tax Appellate Tribunal have held assessments are null and void. However, it is submitted by the learned Special Public Prosecutor for respondent that the Income Tax Appellate Tribunal has not



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adjudicated or given a finding on any of the grounds raised in the complaint. The

order was passed solely on technical ground that the assessments were time barred.

When the order was not passed on merits or grounds raised in the criminal complaint,

the quashment of the proceedings cannot be prayed. It has been consistently held by

the Courts that order of assessment by the Appellate authority, will not be a bar for

criminal prosecution, especially when no finding was given by the Appellate

Authority on the merits of the case. When the ingredients of offence are clearly made

out in the complaint to establish that the accused has committed the offence, the

complaint cannot be quashed.

11.Learned counsel for respondent relied on the following judgments reported

in **1984 AIR SC 1693 P.Jayappan Vs. S.K.Perumal, I.T.O, 1995 214 ITR 778**

Mad, Tip Top Plastic Industries Pvt. Ltd. Vs. ITO, (2011) 3 SCC 581

Radheshyam Kejriwal Vs. State of West Bengal and another in support of her

submissions.

12.Considered the rival submissions and perused the records.

13.It is seen from the submission made by the learned counsel appearing for

the parties, especially, learned counsel for petitioner that petitions for quashing the

proceedings in E.O.C.C.Nos.101, 102, 103, 104, 105 & 106 of 2015 have been filed



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mainly on the grounds that the proceedings before the department have not come to conclusion and therefore, the filing of the complaint is pre-mature and that the Income Tax Appellate Tribunal declared the assessment orders as null and void and therefore, the prosecution of criminal cases would be an abuse process of law. Learned counsel for respondent pressed into service the judgment reported in (2011) **3 SCC 581 Radheshyam Kejriwal Vs. State of West Bengal and another**, when a similar issue arose under Foreign Exchange Regulation Act, 1973 for the consideration of Hon'ble Supreme Court, as to the continuance of criminal proceedings after completion of adjudication proceedings. It was observed as follows,

26. We may observe that standard of proof in a criminal case is much higher than that of the adjudication proceeding. The Enforcement Directorate has not been able to prove its case in the adjudication proceeding and the appellant has been exonerated on the same allegation. The appellant is facing trial in the criminal case. Therefore, in our opinion, the determination of facts in the adjudication proceeding cannot be said to be irrelevant in the criminal case. In the case of B.N. Kashyap (Supra), the full Bench had not considered as to the effect of a finding of fact in a civil case over the criminal cases and that will be evident from the following passage from the said judgment :

"I must, however, say that in answering the question, I have only referred to civil cases where the actions are in personam and not those where the proceedings or actions are in rem. Whether a



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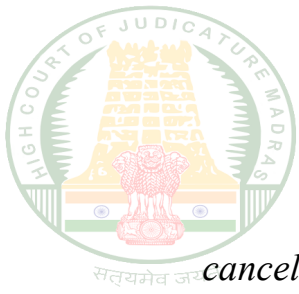
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finding of fact arrived at in such proceedings or actions would be relevant in criminal cases, it is unnecessary for me to decide in this case. When that question arises for determination, the provisions of [Section 41, Evidence Act](#), will have to be carefully examined."

28. Mr. Malhotra submits that finding recorded in the adjudication proceeding is not binding on the criminal proceeding as both the cases have to be decided on the basis of the evidence therein. Reliance has been placed on a decision of this Court in the case of *Iqbal Singh Marwah v.Meenakshi Marwah (2005) 4 SCC 370*, relevant portion whereof reads as follows :-

"32. Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein...."

32. There are authorities of this Court in relation to the [Income-tax Act](#) in this regard. The first in the series is the judgment of this Court in the case of *Uttam Chand and others vs. Income Tax Officer, Central Circle, Amritsar (1982) 2 SCC 543* in which registration of firm was



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cancelled on the ground that it was not genuine and prosecution initiated for filing false return. However, in appeal, the Income Tax Appellate Tribunal reversed the finding and held the firm to be genuine. Relying on that, this court quashed the prosecution *inter alia* observing as follows :

"1. Heard counsel, special leave granted In view of the finding recorded by the Income Tax Appellate Tribunal that it was clear on the appraisal of the entire material on the record and Shrimati Janak Rani was a partner of the assessee firm and that the firm was a genuine firm, we do not see how the assessee can be prosecuted for filing false returns. We, accordingly, allow this appeal and quash the prosecution.

2. There will be no order as to costs."

33. In the case of *G.L. Didwania and Another vs. Income Tax Officer and Another* 1995 Supp (2) SCC 724, on setting aside the order of the assessing authority which led to the prosecution of the assessee by the Income-Tax Appellate Tribunal, this Court held the prosecution not permissible and while doing so observed as follows :

"4. In the instant case, the crux of the matter is attracted and whether the prosecution can be sustained in view of the order passed by the tribunal. As noted above, the assessing authority held that the appellant-assessee made a false statement in respect of income of M/s. Young India and Transport Company and that finding has been set aside by the Income Tax Appellate Tribunal. If that is the position



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then we are unable to see as to how criminal proceedings can be sustained."

38.The ratio which can be culled out from these decisions can broadly be stated as follows :-

(i) Adjudication proceeding and criminal prosecution can be launched simultaneously;

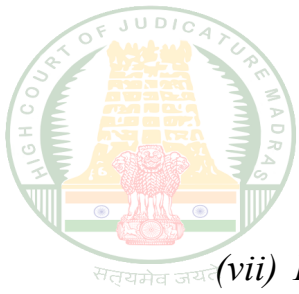
(ii) Decision in adjudication proceeding is not necessary before initiating criminal prosecution;

(iii) Adjudication proceeding and criminal proceeding are independent in nature to each other;

(iv) The finding against the person facing prosecution in the adjudication proceeding is not binding on the proceeding for criminal prosecution;

(v) Adjudication proceeding by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of [Article 20 \(2\)](#) of the Constitution or [Section 300](#) of the Code of Criminal Procedure;

(vi) The finding in the adjudication proceeding in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceeding is on technical ground and not on merit, prosecution may continue; and



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(vii) In case of exoneration, however, on merits where allegation is found to be not sustainable at all and person held innocent, criminal prosecution on the same set of facts and circumstances can not be allowed to continue underlying principle being the higher standard of proof in criminal cases.

39. In our opinion, therefore, the yardstick would be to judge as to whether allegation in the adjudication proceeding as well as proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceeding is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceeding, the trial of the person concerned shall be in abuse of the process of the court.

14. The reading of this judgment makes it clear that adjudication proceedings and criminal proceedings can be launched simultaneously and they are independent in nature to each other. The adjudication proceedings is not binding on the proceedings for criminal prosecution. It may be relevant, if the adjudication proceedings in favour of person facing the trial decided on merits and in favour of him. However, if the exoneration in adjudication proceedings is on technical ground and not on merit, the prosecution may continue.

15. In the judgment reported in **1984 AIR 1693 P.Jayappan Vs. S.K.Perumal**, it is observed that, pendency of re-assessment proceedings cannot act



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as bar to the institution of criminal proceeding and it cannot in such circumstances amount to abuse of process of Court.

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*5. At the outset it has to be stated that there is no provision in law which provides that a prosecution for the offences in question cannot be launched until reassessment proceedings initiated against the assessee are completed. Section 279 of the Act provides that a person shall not be proceeded against for an offence punishable under section 276C or section 277 of the Act except at the instance of the Commissioner. It further provides that a person shall not be proceeded against for an offence punishable under those provisions in relation to the assessment for an assessment year in respect of which penalty is imposed or imposable on him under clause (iii) of sub-section (1) of section 271 has been reduced or waived by an order under section 273A. The Commissioner has the power either before or after the institution of proceedings to compound any such offence. In this case it is not claimed that the Commissioner has not initiated the proceedings for instituting the complaints. No other legal bar for the institution of the proceedings is urged except stating that in the event of the petitioner being exonerated in the reassessment proceedings, the prosecutions may have to be dropped. It is true that as observed by this Court in *Uttam Chand & Ors. v. Income-tax officer, Central Circle, Amritsar(1)* the prosecution once initiated may be quashed in the light of a finding favourable to the assessee recorded by an authority under the Act subsequently in respect of the relevant assessment proceedings but that decision is no*



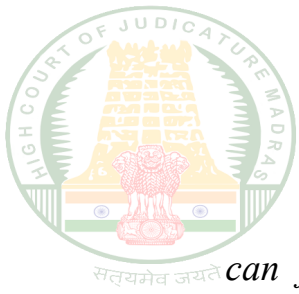
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authority for the proposition that no proceedings can be initiated at all under [section 276C](#) and [section 277](#) as long as some proceeding under the Act in which there is a chance of success of the assessee is pending. A mere expectation of success in some proceeding in appeal or reference under the Act cannot come in the way of the institution of the criminal proceedings under [section 276C](#) and [section 277](#) of the Act.

16.It is observed in **1995 214 ITR 778 Mad, Tip Top Plastic Industries Pvt. Ltd. Vs. ITO**, that assessment order in assessment proceedings is not a bar to launch prosecution. When the records seized disclosed short statement of stocks, ITO is entitled to proceed against the petitioners according to law, for assessment afresh and also for prosecution. Setting aside the order of the ITO by the Tribunal and remanding the matter for adequate opportunity to the company, in the absence of definite finding by the Tribunal as to the correctness of the returns submitted by the company, is not a bar for criminal prosecution.

7.....As stocks to the value of Rs. 4,93,177 are alleged to have been concealed, the first respondent would allege that the income to the abovesaid value has been suppressed and this will attract punishment under [sections 276C](#) and [277](#) of the Act. But learned senior counsel for the petitioners, Mr. V. Ramachandran, would argue that only if the income-tax authorities find that the real income was concealed and the return of income is false, the criminal court



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can find the petitioners guilty of the offence and, therefore, the assessing authority has to find out whether the original assessment submitted in October, 1981, for the period ended with March 31, 1981, is not correct.Therefore, when the records seized discloses short statement of stock, certainly the Income-tax Officer is entitled to proceed against the petitioners-assesseees according to law, for the fresh assessment and also for prosecution. Hence, the above decisions cited by learned senior counsel do not help the petitioners to avoid the criminal prosecution.

8. The next line of argument of learned senior counsel for the petitioners is that as the assessment order of the Income-tax Officer has been set aside by the Income-tax Appellate Tribunal and the Commissioner of Income-tax (Appeals) also has cancelled the penalty order of the Income-tax Officer, the prosecution against the petitioners is not sustainable and the same has to be quashed.

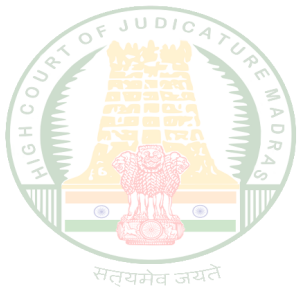
17. From the reading and understanding of the judgments aforesaid, it is made clear that pendency of re-assessment proceedings are remanding matter for adequate opportunity and that adjudication by Tribunal through adjudication proceedings are not a bar for launching a criminal prosecution. Even if the adjudication proceedings ended in favour of assessee, it can be taken in favour of assessee only if the adjudication proceedings discussed all the issues raised in the complaint on merits and gave its findings. If the adjudication proceedings were disposed on technical



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ground and not on merits, prosecution can continue and assessee/accused cannot take advantage of the order passed in adjudication proceedings.

18. In the case before hand, common order passed in I.T.A.Nos.1858 to 1862/Mds/2014 for the assessment years 2002-2003 to 2006-2007 relatable to E.O.C.C.Nos.101, 102, 103, 104, 105 of 2015, respectively is filed for the consideration of this Court. The main ground taken before the Income Tax Appellate Tribunal was that the assessment order was barred by limitation. The Income Tax Appellate Tribunal after considering the submission of the counsel appearing for the parties concluded that “We are of the opinion that assessments made by the Assessing Officer for all these five assessment years, uniformly on 24.09.2008 are bad in law for the reason that direction of the Assessing Officer for special audit was served on the assessee on 25.01.2008 which must be considered for the purpose of computing the limitation of time making assessment. In that case, direction of the Assessing Officer was subsequent to the expiry of the due date for making assessment. Further without prejudice, even with the date 25.01.2008, considered by the Assessing Officer as the date of service of direction and not on 28.01.2008 as considered by the CIT (A) is taken into account, still the assessments were not made in the period specified under Section 153 B of the Act. Therefore, it was held that the assessments for the five assessment years on 24.09.2008 are bad in law.



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19. Essentially, the Income Tax Appellate Tribunal disposed the appeals only on the ground of limitation and not on merits. It is further observed that other grounds relating to merits become an academic exercise, meaning that other issues raised in the complaint, especially the allegations raised in the complaints with regard to non filing of return of income, non payment of advance tax, non payment of the tax demanded, suppression of true and correct income by not filing return of income had not been considered by the Income Tax Appellate Tribunal. When the matter was not decided on merits, but only on technical ground of limitation, this Court is of the considered view, on the basis of the principles settled in **(2011) 3 SCC 581 Radheshyam Kejriwal Vs. State of West Bengal and another**, that petitioner cannot seek to quash the proceedings in E.O.C.C.Nos.101, 102, 103, 104, 105 of 2015 on the ground that Income Tax Appellate Tribunal had set aside the assessment orders.

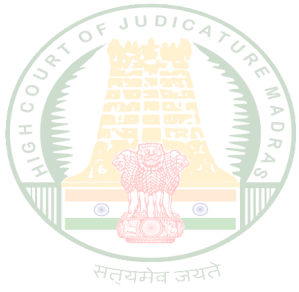
20. It is seen from the complaint allegation that despite, giving notice, statutory notice as detailed in the complaint, petitioner has not filed return, paid advance tax and tax demanded, suppressed the real and true income by not filing the return in time. These issues have to be necessarily tried before the Court. The assessment order



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relating to the assessment year 2009-2010 was not challenged before the Income Tax Appellate Tribunal. Therefore, petitioner cannot seek aid of order passed by the Income Tax Appellate Tribunal in I.T.A.Nos.1858 to 1862/Mds/2014. In this case also there is allegation of non filing of return of income for the assessment year 2009-2010, concealment of true and correct income by not filing return of income, non payment of income despite issuance of notice. These violations are liable to be prosecuted for the offences under Section 276 C (1), 276 C (2), 276 CC and 277 of the Income Tax Act, 1961.

21. When it comes to quashing a criminal proceedings, it is very well settled that uncontroverted averments in the complaint without any addition or subtraction should be looked into to examine whether an offence can be made out or not. If that yardstick is applied in this case, this Court is of the considered view that respondent/complainant made out *prima-facie* case to proceed against the petitioner for the offences alleged in the complaint. Section 278 (e) of the Income Tax Act, 1961, empowers the Court to presume culpable mental state of the accused, unless, the accused shows that he had no such mental state with respect to the act charged as an offence in the prosecution. In this view of the matter, this Court finds that petitioner shall necessarily face the trial.



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22.In fine, Criminal Original Petitions in Crl.O.P.Nos.29914, 29915, 29916, 29917, 29918 & 29919 of 2015 are dismissed. Consequently, connected miscellaneous petitions stand closed.

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Index:Yes/No

Internet:Yes/No

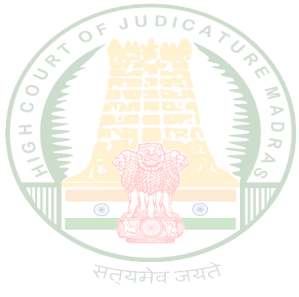
Speaking Order: Yes/No

To

1.The Additional Chief Metropolitan Magistrate (E.O.I)Chennai,
Alikulam Road.

2.The Deputy Commissioner of Income Tax,
Central Circle II (4),
Chennai – 34.

3.The Public Prosecutor
High Court of Madras.



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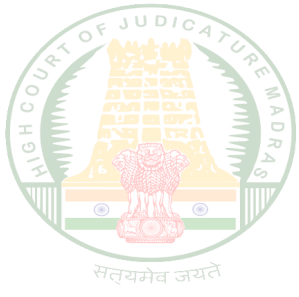


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G.CHANDRASEKHARAN,J.,

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(Pre-Delivery Judgment in)
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