(1993) 02 KL CK 0054

In the High Court Of Kerala

Case No : Criminal M.C. No''s. 201, 202 and 203 of 1993

Dr. B. Seerapani APPELLANT

Vs

Income Tax Officer and Another RESPONDENT

Date of Decision : 05-02-1993

Acts Referred:
Income Tax Act, 1961 — Section 276, 277

Citation : (1993) 112 CTR 16 : (1993) 203 ITR 288

Hon'ble Judges : L. Manoharan, J

Bench : Single Bench

Advocate : S. Gopakumaran Nair, for the Appellant; N.R.K. Nair and C.C. Thomas, for the Respondent

Judgement

L. Manoharan, J.—These Criminal M. Cs. are disposed of by this common order. The same person is the petitioner in all these three Criminal M. Cs. These Criminal M. Cs. are for quashing annexure-I complaint in the respective Criminal M. Cs.

2. The petitioner was an assessee to income tax. He submitted a return. The Department accepted the return, later. A search was conducted in the premises of the petitioner. On the basis of the records and documents seized by the Authorised Officer, notice u/s 148 of the Income Tax Act, 1961, was issued by the Income Tax Officer to the petitioner. Thereupon, a revised return was submitted by the petitioner. But the reassessment by the Income Tax Officer determined a higher amount than what was shown in the return. The petitioner preferred an appeal against the same before the Commissioner of Income Tax (Appeals), Thiruvananthapuram. The Commissioner of Income Tax reduced only a portion of the income.

3. On the allegation that the petitioner had wilfully attempted to evade Income Tax under the Income Tax Act and that the petitioner had made and delivered false statements, complaints were filed against the petitioner under Sections 276C(1)(i) and 277(i) of the Income Tax Act, 1961.

4. Criminal M. C. No. 201 of 1993 relates to the assessment for the year 1980-81, Criminal M. C. No. 202 of 1993 relates to the assessment year 1979-80 and Criminal M. C. No. 203 of 1993 relates to the 1977-78. Annexure 1 in the respective Criminal M. Cs. is the complaint filed by the respondent against the petitioners.

5. Aggrieved by the order of the Commissioner of Income Tax (Appeals), the petitioner filed second appeal before the Income Tax Appellate Tribunal, Cochin Bench. The Tribunal, by annexure-II order, set aside the order of the Deputy Commissioner of Income Tax (Appeals) and remitted the matter to the Income Tax Officer to decide the question in respect of the cost of hospital and residential building afresh. Annexure II in the three Criminal M. Cs. is the said order of the Tribunal.

6. The petitioner contends that, in view of the setting aside of the assessment by the Tribunal, the very basis of the prosecution having been taken away annexure I complaint in the respective Criminal M. Cs. are liable to be quashed. Learned counsel for the petitioner relied on the decision of this court in Criminal M. C. No. 1047 of 1991 and Criminal M. C. No. 1091 of 1992 (Madras Spinners Ltd. and Others Vs. Deputy Commissioner of Income Tax (Assessment),), in support of the said argument. In both the cases, in similar circumstances, upon the setting aside of the order of the appellate authority by the Tribunal, the complaints filed against the assessee on the basis of the assessment were quashed without prejudice to the right of the Revenue to file fresh complaints. But learned counsel for the respondent contended, in view of the Tribunal''s order that it may not be necessary to quash the complaints, instead a direction need be issued to keep the complaint in abeyance till the reassessment is over and to revive the same if the result of the reassessment is in favour of the Revenue. The two orders of this court favoured the quashing of the complaint without prejudice to the Revenue to file a fresh complaint, if so advised, in the light of the reassessment proceedings against the petitioners.

7. In the aforesaid circumstances, annexure I in the Criminal M. Cs. are liable to be quashed without prejudice to the right of the respondent to file a fresh complaint, if so advised, in the light of the result of the reassessment proceedings.

8. In the result the Criminal M. Cs. are allowed and annexure 1 in the respective Criminal M. Cs. are quashed without prejudice to the right of the respondent to file a fresh complaint, if so advised, on the basis of the result of the reassessment proceedings which are pending against the petitioner.