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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 23.02.2022	Orders pronounced on 16.06.2022
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CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

Crl.O.P.Nos.23069, 23070 and 23071 of 2014
and
Crl.O.P.Nos.29667, 29668 and 29669 of 2015
and
M.P.Nos.1,1 & 1 of 2014 M.P.Nos.1,1 & 1 of 2015
and
M.P.Nos.2, 2 & 2 of 2015

Crl.O.P.Nos.23069, 23070 and 23071 of 2014

Shri Dharampal R.Pandia
Prop. Hermes India Ltd.,
Chennai- 600079

... Petitioner in all Crl.O.Ps.

Vs.

Assistant Commissioner of Income Tax
Business Circle - X
Kannammai Building,
611, Anna Salai,
Chennai - 600 006

... Respondent in all Crl.O.Ps.

These Criminal Original Petitions in Crl.O.P.Nos.23069 to 23071 of 2014 are filed under Section 482 Cr.P.C. to call for records in proceeding in



Crl.O.P.Nos.23069, 23070 and 23071 of 2014
and
Crl.O.P.Nos.29667, 29668 and 29669 of 2015
and connected M.Ps.

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E.O.C.C. No. 36, 37 and 38 of 2014 relating to the Assessment year 1999-2000, 2000-2001 and 2001-2002 respectively in the court of Additional Chief Metropolitan Magistrate Court, Economic Offence - I, Chennai and quash the same.

Crl.O.P.Nos.29667, 29668 and 29669 of 2015

Shri Dharampal R.Pandia
Prop. Hermes India Ltd.,
Chennai- 600079.

... Petitioner in all Crl.O.Ps.

Vs.

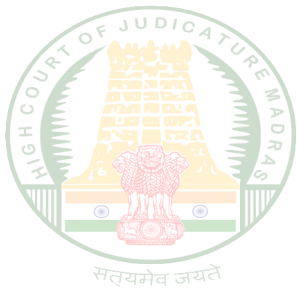
Assistant Commissioner of Income Tax,
Non-Corporate Circle - 4
Kannammai Building,
611, Anna Salai,
Chennai - 600 006

... Respondent in all Crl.O.Ps.

These Criminal Original Petitions in 29667, 29668, 29669 of 201 are filed under Section 482 CrPC to call for records in proceeding in E.O.C.C. No. 107, 108, 109 of 2015 relating to the Assessment Year 2002-2003, 2003-2004, 2004-2005 respectively in the court of Additional Chief Metropolitan Magistrate Court, Economic Offence I, Chennai and quash the same.

For Petitioner in all Crl.O.Ps. : Mr.A.R.L.Sundaresan
Senior counsel for
M/s.T.Pramodkumar Chopda

For Respondent : Mr.N.Baskaran



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Special Public Prosecutor

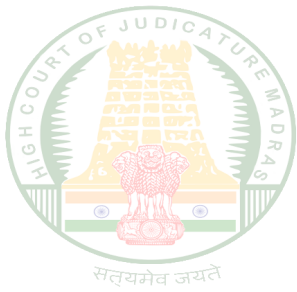
COMMON ORDER

These complaints are filed for the offences under Sections 276C(1), 276CC and 277 of Income Tax Act, 1961.

2. Crl.O.P.No.23069 of 2021:

The complaint in E.O.C.C.No.36 of 2014 is in respect of Assessment Year 1999-2000. The relevant accounting year is the finance year ended on 31.03.1999. Petitioner/accused is being assessed as individual having business income from his property concerned in the name and style of M/s.Herms India Limited. He is engaged in the business as a dealer in antibiotics, chemicals, prawn feeds and derives income thereof, besides having income from other sources. There was survey action/operation under Section 133(A) of Income Tax Act, 1961 on 20.10.2004, 14.12.2004 and 15.12.2004 in the business premises of the petitioner. It is detected during the survey that the accused despite having huge taxable income, has

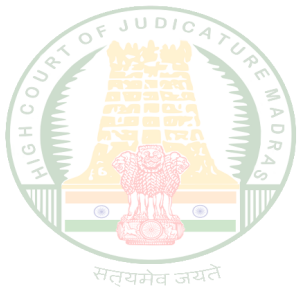
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not been in the habit of filing return on or before the due date and pay the tax. He was not discharging his statutory obligation in compulsory maintenance of accounts and auditing under Section 44 A-B of the Income Tax Act, 1961 by furnishing to the department tax report in the form C-3(d) within the stipulated time limit. In the course of survey operation under Section 133(A) of Income Tax Act, 1961, it was found that the accused had concealed income and admitted the undisclosed income of Rs.37,23,025 /- for the assessment year 1999-2000. A statutory notice under Section 143 of the Act dated 23.02.2005 was issued calling upon the petitioner to furnish his return of income within 30 days from the date of receipt of notice. The said notice was received by him on 25.02.2005. In response, petitioner furnished his return on 07.04.2005 admitting the income of Rs.33,04,420/-. The petitioner is under statutory obligation to furnish the Income Tax Return for the assessment year 1999-2000 voluntarily on or before 31.10.1999, under Section 139(1) of the Income Tax Act, 1961. He filed the return only, after the survey and in response to the notice dated 07.04.2005, after the delay of 68 months. But for the survey, petitioner

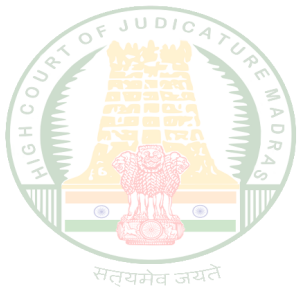


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would not have furnished his return of income. The assessment was completed on 31.03.2006 and for the total income of Rs.33,04,420/- and the tax payable was determined at Rs.20,99,279/-. Penalty under Section 279(1)(C) of the Income Tax Act to the tune of Rs.9,70,159/- was imposed and was confirmed by the Income Tax Appellate Tribunal. Petitioner is a habitual defaulter in complying with the statutory obligation in maintaining regular book of accounts, audit accounts, filing the return of income on or before statutory due date and payment of tax. For the assessment year 1999-2000, the return of income was filed after survey under Section 133(A) of Income Tax Act, 1961 with the delay of 68 months. Therefore, the petitioner is liable to be punished for the offence under Sections 276C(1), 276CC and 277 of the Income Tax Act, 1961.

3. General allegations remaining the same, facts relevant to the other cases, in brief, are as follows:-

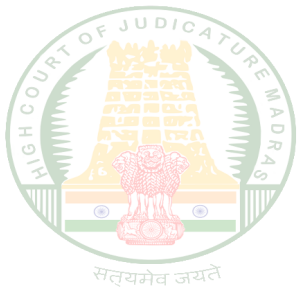


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4. **EOCC No.37 of 2014 in Crl.O.P.No.23070 of 2014**

This complaint is in respect of assessment year 2000-2001. During the survey it was detected that the accused, inspite of having huge taxable income has not been in the habit of filing of Income Tax Return on or before statutory due dates and pay taxes. It was found that he concealed income and admitted the undisclosed income of Rs.1,19,00,181/- for the assessment year 2000-2001. Statutory notice under Section 148 of Income Tax Act was issued. Accused furnished his income on 15.06.2005, admitting income of Rs.1,00,13,188/-. Return of income was filed in consequence of survey and in response to the notice under Section 148 of Income Tax Act, after the delay of 56 months. The tax payable was determined at Rs.51,95,772/-. After giving credit for payment of tax of Rs.32,49,385/- inclusive of interest, penalty imposed under Section 271(1)(C) of the Act was confirmed by Income Tax Appellate Tribunal. Accused did not pay the advance tax deliberately for the assessment year 1999-2000. He failed to file the return of income on or before the statutory date, wilfully and deliberately concealed his true and correct income, has not given the opportunity to the



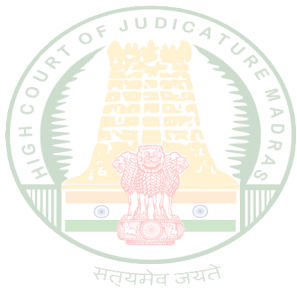
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assessing officer for determining true and correct income. Thus the accused committed offence punishable under Section 276CC, 276C(1) and 277 of Income Tax Act, 1961.

5. **EOCC No.38 of 2014 in Crl.O.P.No.23071 of 2014**

This complaint relates to assessment year 2001-2002. In the course of survey operations, accused explained that certain adjustments need to be made like depreciation liability for expenses, audit fees adjustment for an account of opening and closing stock. Before these adjustments the profit for assessment year 2001-2002 was Rs.1,75,54,853/-. The statutory notice dated 23.12.2004 was issued to the accused under Section 148 of the Act. Accused furnished his income of return on 19.05.2005 admitting the income of Rs.1,37,26,963/-. The return of income was filed after the delay of 50 months. But for the survey operations, the accused would not have furnished his return of income. On a total income of Rs.1,37,26,963/-, the tax payable was determined as Rs.73,73,680/-, after giving credit for payment of tax of Rs.28,50,000/- inclusive of interest. Penalty under



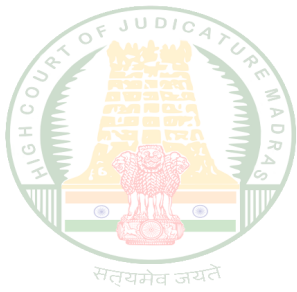
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Section 276(1)(C) of the Income Tax Act of Rs.40,92,088/- was imposed by the assessing officer and it was confirmed by the Income Tax Appellate Tribunal. By his wilful failure to furnish the return of income on or before the statutory due date, wilfully and deliberately concealing his true and correct income, has not given the opportunity to the assessing officer for determination of true and correct income for assessment year 2001-2002. Thus the accused committed offence punishable under Section 276CC, 276C(1) and 277 of Income Tax Act, 1961.

6. **EOCC No.107 of 2015 in Crl.O.P.No.29667 of 2015**

This complaint relates to assessment year 2002-2003. During the survey operations, it was found that the accused concealed income and admitted the undisclosed income of Rs.1,41,59,094/- for the assessment year 2002-2003. A statutory notice under section 148 of the Act dated 23.12.2014 was issued to the accused. Accused furnished his return of income on 01.03.2006 admitting income of Rs.1,23,72,438/-. Tax payable was determined at Rs.65,36,306/- after giving credit of payment of tax of



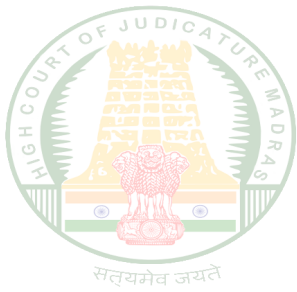
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Rs.4,75,000/- inclusive of interest. Return of income was filed after the delay of 41 months. Accused paid very less advance tax for 2002-2003, but for survey, accused could not have filed the return of income and paid the taxes. By his wilful failure to furnish the return of income on or before the statutory due date, wilfully and deliberately concealing his true and correct income, has not given the opportunity to the assessing officer for determination of true and correct income for assessment year 2002-2003. Thus, the accused committed offence punishable under Section 276C(1) and 276CC of Income Tax Act, 1961.

7. **EOCC No.108 of 2015 in Crl.O.P.No.29668 of 2015**

This complaint relates to assessment year 2003-2004. During the course of survey operations, it was found that the accused has concealed income and admitted the undisclosed income of Rs.81,26,223/- for the assessment year 2003-2004. A statutory notice under section 148 of the Act dated 23.12.2014 was issued to the accused. Accused furnished his return of income on 29.03.2006 admitting income of Rs.78,45,470/-. Tax payable



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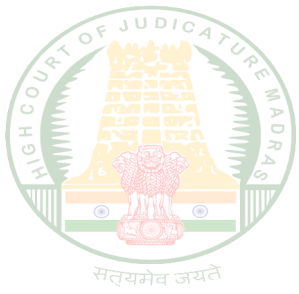
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was determined at Rs.34,61,558/- after giving credit of payment of tax of Rs.4,00,000/- inclusive of interest. There was a delay of 37 months in filing the return of income. An order under Section 154 was passed on 24.04.2006 determining the total income at Rs.78,18,170/- and the tax payable was determined at Rs.34,28,972/-. Accused paid very less advance tax for the assessment year 2003-2004. Accused wilfully and deliberately delayed filing of return by 37 months, concealed his true and correct income and has not given opportunity to the assessing officer for determining his true and correct income for assessment year 2003-2004. Therefore, accused committed the offence punishable under Section 276C(1) and 276CC of Income Tax Act, 1961.

8. **EOCC No.109 of 2015 in Crl.O.P.No.29669 of 2015**

This complaint relates to assessment year 2004-2005. In the course of survey operations, it was found that the accused concealed income and admitted the undisclosed income of Rs.1,31,75,361/- for the assessment year 2004-2005. A statutory notice under section 148 of the Act dated

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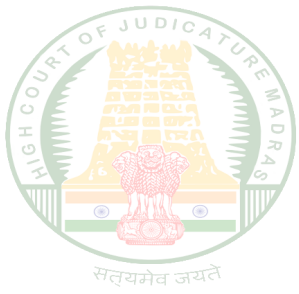


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26.10.2006 was issued to the accused. Accused furnished his return of income on 05.09.2006 admitting the income of Rs.1,03,26,809/-. This return was filed after the delay of 23 months. Tax payable was determined at Rs.42,14,667/- after giving credit to the payment of tax of Rs.9,25,000/-, inclusive of interest. An order under Section 154 was passed on 24.04.2006 determining the total income at Rs.1,03,26,809/- and the tax payable was determined at Rs.42,14,667/- raising an additional demand of Rs.42,411/-. Penalty under Section 271(1)(C) of the Income Tax Act of Rs.33,95,150/- was imposed by the assessing officer. Accused has wilfully and deliberately delayed the filing of return, wilfully and deliberately concealed his true and correct income and has not given opportunity to the assessing officer for determining his true and correct income for assessment year 2004-2005. Thus, accused has committed the offence punishable under Section 276C(1) and 276CC of Income Tax Act, 1961.

9. Learned counsel for the petitioner submitted that there is no specific allegation in the complaint about the suppression of income by the

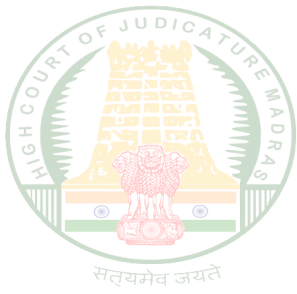


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petitioner. Return of income filed by the petitioner was accepted and assessment order was passed. Therefore, there is no cause of action for initiation of criminal proceedings, especially 8 years after passing of assessment order. Once a show cause notice issued and reply given, another show cause notice cannot be given. It would amount to abuse of process of court. Only if there is a wilful omission to file return or income, prosecution can be launched. The moment notice under section 148 of Income Tax Act was issued, the return of income was filed, There is no allegation of making false statement. Interest and penalty would be charged for the delay in filing the return of income. Whatever the amount due was paid. Therefore, the prosecution of the cases against the petitioner would be a futile exercise and also it is a harassment to the petitioner by abusing the process of court.

10. Learned counsel for the petitioner relied on the following judgments in support of his submissions:-

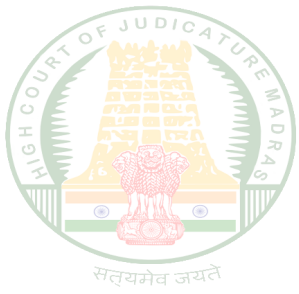


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- (i) (2021) 124 Taxmaan.com 119 (Madras) (Rajkumar Thiagarajan ..vs.. Income Tax Department);
- (ii) (2020) 120 Taxmaan.com 91 (Madras) (Kewalchand M.Kothari ..vs.. Deputy Commissioner of Income Tax);
- (iii) (2021) 126 Taxmaan.com 131 (Karnataka) (Income Tax Department ..vs.. D.K.Shivakumar);
- (iv) (2019) 110 Taxmaan.com 536 (Patna) (Prabir Kumar Shaw ..vs.. Union of India);
- (v) (2017) 84 Taxmaan.com 286 (Patna) (Sonali Auto Pvt. Ltd. ..vs.. State of Bihar);
- (vi) (1995) 82 Taxxman 493 (Punj. & Har.) (Bee Gee Motors and Tractors ..vs.. Income Tax Officer); and
- (vii) Criminal Petition No.1998 of 2016 of Karnataka High Court in (CP Yogeshwar ..vs.. Income Tax Officer)

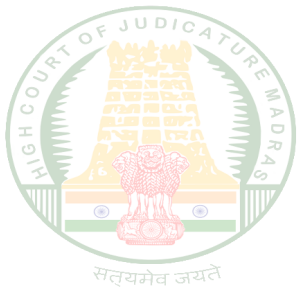
11. In response, learned Special Public Prosecutor appearing for the respondent submitted that there are six complaints for six assessment



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years. Petitioner, despite having sufficient resources, had deliberately omitted to file return of income, concealed the true and correct income, denied the opportunity of assessing his true and correct income. Only because of the survey operations, the wilful omission on the part of the petitioner to file return of income came to light. But for the survey operations, this wilful, deliberate omission to file return of income would not have come to light and the State would have been deprived of its rightful due. The petitioner had initiated the proceedings challenging the penalty imposed. The matter went upto Income Tax Appellate Tribunal. There is no limitation for economic offences. This being an economic offence, there is no question of limitation. The judgment relied by the learned counsel for the petitioner can be distinguished on facts. The facts in these cases are totally different. Therefore, the judgments are not applicable to the facts of this case. The legal proposition with regard to quashing of the criminal complaint is very well settled. Uncontroverted averments in the complaint, without any addition or subtraction, should be looked into, to examine whether any offence can be made out. If this



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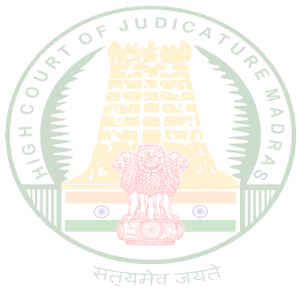
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proposition is applied to the facts of these cases, respondent/complainant had made out clear case for prosecuting the petitioner for the offences alleged in the complaint. Therefore, learned counsel for the respondent prayed for dismissal of these petitions.

12. Considered the rival submissions and perused the records.

13. From the complaint allegations and the submissions of learned counsel appearing for the parties, it is clear that in all these cases, the concealment of income by the petitioner came to light only after a survey operation under Section 133(A) of Income Tax Act on 20.10.2004, 14.12.2004 and 15.12.2004. After finding concealment of income, a statutory notice under Section 148 of Income Tax Act was given. Then the petitioner filed his return of income. Thereafter the tax payable was determined. It is not in dispute that in all the cases, the return of income was filed in consequence of survey operation under section 133(A) of the Act and in response to notice under section 148 of the Income Tax Act, with

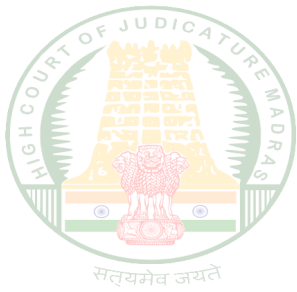
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the delay of several months, as indicated earlier. It is the claim of the learned counsel for the petitioner that there is no specific allegation of suppression of income in the complaint. However, the reading of the complaint shows that there is a specific allegation that the petitioner concealed the income, but for the survey operation, would not have filed the return of income and paid the taxes. By concealing the income, petitioner deprived the exchequer, payment of tax for several months. Thus, this Court is of the view that there are enough and specific allegations made with regard to concealment of income by the petitioner. It is also repeatedly alleged in the complaint that the petitioner wilfully and deliberately not filed the return of income, filed the return of income with the delay of several months, by not filing the return of income concealed his true and correct income, denied the opportunity to the assessing officer for determining his true and correct income, signed false verification in the return of income. It is the duty of the petitioner to file return of income for every assessment year within the statutory due date. Patently and obviously petitioner has not filed the return of income within the statutory date specified. It is also seen



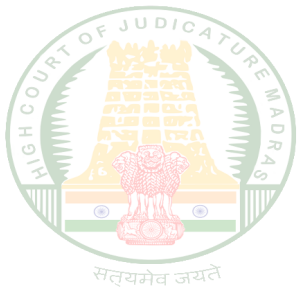
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that whatever the income tax paid, advance tax paid were given credit by the respondent at the time of passing assessment order.

14. Coming to the judgment relied by the learned counsel for the petitioner. It is seen from the judgment reported in **(2021) 124 Taxmaan.com 119 (Madras) (Rajkumar Thiyagarajan ..vs.. Income Tax Department)** that it is a case where there was just a delay in filing the return of income; It is not the case where the return of income was filed after the survey under section 133(A) of the Income Tax Act. In **(2020) 120 Taxmaan.com 91 (Madras) (Kewalchand M.Kothari ..vs.. Deputy Commissioner of Income Tax)**, the income return for the assessment year 2013-2014 was filed on 31.08.2015 instead of 05.08.2014. Therefore, a show cause notice was issued on 14.07.2017. Finding that there is no wilful attempt to evade payment of tax, for the reason that respondent seized relevant books of accounts and that resulted in the accused not paying the tax before the stipulated time, the proceedings was quashed. The judgment reported in **(2021) 126 Taxmaan.com 131 (Karnataka) (Income Tax**

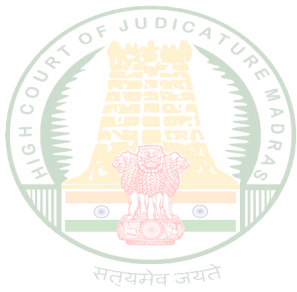
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Department ..vs.. D.K.Shivakumar) deals with the ingredients for prosecution under section 276 C(1) of Income Tax Act. There must be an intention to evade any tax, penalty or interest to bring home the charge under section 276 C(2) and there must be a wilful attempt to evade any tax or penalty or interest chargeable or imposable or under report of income for making out a case under section 276 C1 of Income Tax Act. The judgment reported in *(2019) 110 Taxmaan.com 536 (Patna) (Prabir Kumar Shaw ..vs.. Union of India)* was relied for the proposition with regard to the scope and ambit and powers under Section 482 Cr.P.C, where the entire liability was paid to the Government and there has not been any loss to the public exchequer. When there is no loss, allowing the case to be continued after the lapse of 11 years would only be the abuse of process of court. The judgment reported in *(2017) 84 Taxmaan.com 286 (Patna) (Sonali Auto Pvt. Ltd. ..vs.. State of Bihar)* was relied for the proposition that when the accused paid the entire amount with interest, the prosecution launched after the lapse of three years is liable to be quashed. For the same proposition, the judgment reported in *(1995) 82 Taxxman 493 (Punj. & Har.) (Bee Gee*

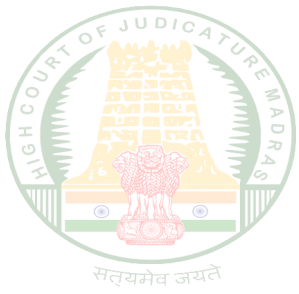


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Motors and Tractors ..vs.. Income Tax Officer) is relied. The order in *Criminal Petition No.1998 of 2016 of Karnataka High Court in (CP Yogeshwar ..vs.. Income Tax Officer)* is relied for the proposition that if the returns are filed subsequent to the statutory notice and they are accepted and assessment were carried out, then the rigour of not filing the return in due time would not be attracted.

15. In the judgment referred above, the amounts involved are insignificant amounts. In the case before hand, the amount of income suppressed is substantial. The concealment/suppression of income came to light only after the survey. If the survey was not conducted, the concealment of income would not have come to light at all. Only after the statutory notice under section 148 was issued, petitioner filed return of income and then, it was assessed. The wilful and deliberate concealment of true and correct income by not filing the return of income within the time stipulated is clearly and plainly evident from the facts of this case. From the case laws pressed into service, it was found that there was no wilful



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intention to conceal the income and there was no wilful delay in filing the return. However, facts of this case are totally different and therefore, this Court is of the view that the judgments relied by the learned counsel for the petitioner are not applicable to the facts and circumstances of this case.

16. The complaint allegations, if taken as it is, clearly make out a case for prosecuting the petitioner for the offences mentioned in the complaint. This Court is of the considered view that this case must go to trial and the trial Court has to take informed decision by recording the evidence of the parties. In this view of the matter, this Court finds no merit in all these petitions and all these six Criminal Original Petitions are dismissed. Consequently, connected Miscellaneous Petitions are closed.

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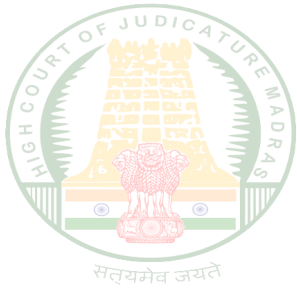
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Index :Yes

Internet:Yes

Speaking Order/Non-speaking Order

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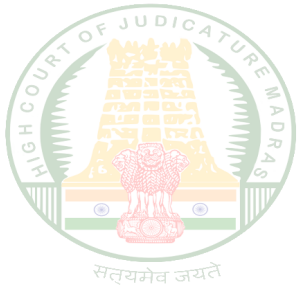
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To

1. The Additional Chief Metropolitan Magistrate Court,
Economic Offence - I,
Chennai.
2. Assistant Commissioner of Income Tax
Business Circle - X
Kannammai Building,
611, Anna Salai,
Chennai - 600 006.
3. Assistant Commissioner of Income Tax,
Non-Corporate Circle - 4
Kannammai Building,
611, Anna Salai,
Chennai - 600 006.
4. The Public Prosecutor,
Madras High Court,
Chennai.



WEB COPY



Crl.O.P.Nos.23069, 23070 and 23071 of 2014
and
Crl.O.P.Nos.29667, 29668 and 29669 of 2015
and connected M.Ps.

G.CHANDRASEKHARAN,J.

mra

common order in
Crl.O.P.Nos.23069, 23070 and 23071 of 2014
and
Crl.O.P.Nos.29667, 29668 and 29669 of 2015
and connected M.Ps.

16.06.2022

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