

HC: Holds prosecution initiated based on penalty order & mere statement recorded during survey invalid

Feb 14, 2022

H. Ameerdeen [TS-70-HC-2022(MAD)]

Conclusion

Madras HC sets aside prosecution initiated on the Assessee alleging attempt at wilful evasion of tax u/s 276C and false statement u/s 277 over incorrect claim u/s 54B; Assessee-Individual sold certain lands and claimed exemption against long term capital gains arising therefrom under Sections 54, 54B and 54F; Consequent to survey conducted at Alpha Commercials (family concerns managed by the Assessee) and statement recorded during the survey, it was confirmed that the claims of deduction against Capital Gains made by all the family members in their respective returns of income are incorrect; Although Assessee filed revised return withdrawing the claim of exemption, the Revenue initiated penalty proceedings holding that the exemption was claimed with *mala fide* intention and the Assessee had concealed taxable income and provided inaccurate particulars of income and also a show cause notice for initiating prosecution was issued; HC notes that the prosecution itself was initiated on the basis of the penalty proceedings and the statement given during survey that the land sold was urban land and there was no agricultural activity carried out on the land, which triggered the prosecution for the wilful evasion of the tax; Notes that subsequent to the survey, the Assessee filed revised return without claiming exemption u/s 54 and 54B and also paid the differential tax, also takes note of Assessee's submission that exemption was claimed because of his ignorance about the law and an incorrect advice; Refers to ITAT's observation where, while setting aside penalty proceedings, it was held that the Revenue did not doubt Assessee's claim as false or bogus, thus, states that *"When the Appellate Tribunal has factually recorded the finding that there was no suppression of facts and the assessee has originally disclosed the receipt of the sale property, merely claimed deduction it cannot be said that there was wilful evasion of Tax."*; Further holds that a mere statement that the land was situated in urban area and the agriculture was not carried out at the relevant point of time could not be concluded as suppression; Remarks that initiation of prosecution on similar allegations is nothing but a futile exercise, relies on SC ruling in [K.C Builders](#), [Radheshyam Kejriwal](#), [G.L. Didwania](#) and [Bhupen Champak Lal](#) to hold that the prosecution on the similar grounds would not serve any purpose, only lead to the unnecessary harassment; Accordingly, quashes the criminal proceedings :HC MAD

Decision Summary

The ruling was delivered by the Single Judge Bench of Madras High Court presided by Justice N. Sathish Kumar.

Senior Counsel S. Ashokkumar for Mr. M. Deivanandam appeared for the Assessee while Revenue was represented by Special Public Prosecutor (Income Tax) L. Muralikrishnan.

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THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Delivered on
12~01~2022	27~01~2022

CORAM:
THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl.O.P.Nos.4202 to 4208 and 4263 of 2017
and Crl.M.P.Nos.3107 to 3122, 3185 and 3186 of 2017

Crl.O.P.No.4202 of 2017

Shri.H. Ameerdeen
14, Avenue Road,
Nungambakkam,
Chennai 600034.

.. Petitioner/Accused

.Vs.

The Income Tax Officer
Non-Corporate Ward 3(1)
Aayahkar Bhavan,
Wanaparthi Block, IV Floor,
Room No.623D
121, Mahatma Gandhi Road,
Chennai 600034

.. Respondent/Complainant

Prayer: Petition filed under Section 482 of Cr.P.C.to call for the records and to

quash the proceedings in E.O.C.C.No.75 of 2016 pending on the file of the
Additional Chief Metropolitan Magistrate (EO-II), Allikulam, Channai.

For Petitioner : Mr. S. Ashokkumar
Senior counsel for
Mr.M.Deivanandam
in all petitions

For Respondent : Mr. L. Muralikrishnan
Spl.Public Prosecutor (Income Tax)
in all petitions

COMMON ORDER

These Criminal Original Petitions have been filed to quash the proceedings initiated by the Respondent for the offences under Section 276C and 277 of the Income Tax Act, 1961 pending on the file of the Additional Chief Metropolitan Magistrate(EO), Egmore, Chennai in E.O.C.C.No.75 of 2016.

2. The crux of the allegation in each case is as follows:

2.a. Crl.O.P.No.4202 of 2017 : [E.O.C.C.No.75 of 2016]

The allegation in the complaint are that the petitioner has filed Return of

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Income for the Assessment Year 2010-11 on 29.03.2012 returning a total income of Rs.5,90,239/-. During the Financial Year 2009-10 relevant to assessment year 2010-11 the assessee sold lands at Neelangarai for a total consideration of Rs.2,07,21,676/- and the Long Term Capital Gains of Rs.1,53,94,194/- was not offered to tax by claim of exemption under Section 54B of Rs.1,60,00,000/-.

2.b. Crl.O.P.No.4203 of 2017 : [E.O.C.C.No.76 of 2016]

The allegation in the complaint are that the petitioner has filed Return of Income for the Assessment Year 2010-11 on 29.03.2012 returning a total income of Rs.5,14,970/-. During the Financial Year 2009-10 relevant to assessment year 2010-11 the assessee sold lands at Neelangarai for a total consideration of Rs.1,06,35,625/- and the Long Term Capital Gains of Rs.97,65,620/- was not offered to tax by claim of exemption under Section 54 of Rs.1,00,00,000/-.

2.c. Crl.O.P.No.4204 of 2017 : [E.O.C.C.No.77 of 2016]

The allegation in the complaint are that the petitioner has filed Return of Income for the Assessment Year 2010-11 on 29.03.2012 returning a total income of Rs.7,31,554/-. During the Financial Year 2009-10 relevant to assessment year

2010-11 the assessee sold lands at Neelangarai for a total consideration of Rs.2,19,691,043/- and the Long Term Capital Gains of Rs.1,89,97,630/- was not offered to tax by claim of exemption under Section 54B of Rs.1,90,00,000/-.

2.d. Crl.O.P.No.4205 of 2017 : [E.O.C.C.No.78 of 2016]

The allegation in the complaint are that the petitioner has filed Return of Income for the Assessment Year 2010-11 on 29.03.2012 returning a total income of Rs.11,64,684/-. During the Financial Year 2009-10 relevant to assessment year 2010-11 the assessee sold lands at Neelangarai for a total consideration of Rs.1,15,01,811/- and claimed exemption under Section 54 of Rs.80,00,000/-.

2.e. Crl.O.P.No.4206 of 2017 : [E.O.C.C.No.79 of 2016]

The allegation in the complaint are that the petitioner has filed Return of Income for the Assessment Year 2010-11 on 29.03.2012 returning a total income of Rs.82,870/-. During the Financial Year 2009-10 relevant to assessment year 2010-11 the assessee sold lands at Neelangarai for a total consideration of Rs.57,67,728/- and the Long Term Capital Gains of Rs.54,97,837/- was not offered to tax by claim of exemption under Section 54B of Rs.55,00,000/-.

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2.f. CrI.O.P.No.4207 of 2017 : [E.O.C.C.No.80 of 2016]

The allegation in the complaint are that the petitioner has filed Return of Income for the Assessment Year 2010-11 on 29.03.2012 returning a total income of Rs.6,93,540/-. During the Financial Year 2009-10 relevant to assessment year 2010-11 the assessee sold lands at Neelangarai for a total consideration of Rs.1,85,13,217/- and the Long Term Capital Gains of Rs.1,68,31,442/- was not offered to tax by claim of exemption under Section 54 of Rs.1,70,00,000/-.

2.g. CrI.O.P.No.4208 of 2017 : [E.O.C.C.No.81 of 2016]

The allegation in the complaint are that the petitioner has filed Return of Income for the Assessment Year 2010-11 on 29.03.2012 returning a total income of Rs.4,59,240/-. During the Financial Year 2009-10 relevant to assessment year 2010-11 the assessee sold lands at Neelangarai for a total consideration of Rs.2,00,48,875/- and the Long Term Capital Gains of Rs.1,61,39,833/- was not offered to tax by claim of exemption under Section 54B.

2.h. CrI.O.P.No.4263 of 2017 : [E.O.C.C.No.82 of 2016]

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The allegation in the complaint are that the petitioner has filed Return of Income for the Assessment Year 2010-11 on 29.03.2012 returning a total income of Rs.6,44,587/-. During the Financial Year 2009-10 relevant to assessment year 2010-11 the assessee sold lands at Neelangarai for a total consideration of Rs.1,93,45,922/- and the Long Term Capital Gains of Rs.1,60,00,000/- was not offered to tax by claim of exemption under Section 54F of the Income Tax Act, 1961.

2.i. Survey under Section 133A was conducted on 13.09.2012 at the business premises of the firms M/s. Alpha Commercials and M/s. Alpha Realty which are family concerns managed by the assessees. As per the statement recorded during the course of survey from the assessees, it was confirmed that the claims of deduction against Capital Gains made by all the family members in their respective returns of income are incorrect. Therefore, the assessment was reopened under Section 147 for Assessment Year 2010-11 by issuing of Notice under Section 148 on 25.10.2012.

2.j. The assessees have filed a revised return of income on 27.12.2012 after

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excluding the incorrect claim of deduction under Section 54B/54F. The act of withdrawal of deduction under Section 54B/54F was not voluntarily undertaken by the assessee and it was done consequent to the survey under Section 133A. The assessment was completed under Section 143(3) on 08.03.2014 by assessing the taxable income.

2.k. It is the case of the complaint that but for the Survey, the incorrect claim of deduction would have been allowed unnoticed and exemption was claimed in the return of income filed on 29.03.2012 with mala-fide intention and the assessee had concealed taxable income and provided inaccurate particulars of income. Therefore, penalty proceedings under Section 271(1)(c) was initiated and penalty was ordered on 26.09.2014 which was challenged before CIT (Appeals)-4, Chennai, which was also dismissed confirming the penalty imposed under Section 271(1)(c). Consequent to the order of Commissioner of Income Tax (appeals) confirming the order of penalty for the Assessment Year 2010-11, a show cause notice was issued on 29.01.2016 as to why prosecution proceedings should not be initiated for wilful attempt to evade tax/penalty as enumerated under Section 276C of the Act. Hence, prosecution has been launched under Sections 276C and 277 of

the Income Tax Act, by a private complaint by the Income Tax officers.

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3. The learned Senior Counsel Mr.S. Ashok Kumar appearing for the Petitioners submitted that prosecution has been initiated without application of mind. The assesseees are co-owners of the property, they sold the property which was an agricultural property and thereafter sought an exemption under Section 54B of the Income Tax Act. They have also filed revised Return on 27.12.2012 and paid differential amount. Though the Assessment was ordered on 08.03.2014 amount of tax has been paid prior to that, however, penalty proceedings also initiated. The penalty Order was passed on 26.09.2014. The Assesseees challenged the Assessment Orders as well as penalty proceedings before the Appellate Authority CIT(Appeals). As the appeals filed against the Assessment Orders, were not suited on the ground of delay, which was challenged before the Income Tax Appellate Tribunal (ITAT). The Appellate Tribunal set aside the Orders and directed the Appellate Authority to hear the appeal afresh and pass orders on merits.

4. As against the penalty proceedings, it is his contention that though

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Appellate Authority confirmed the orders of the Assessing Officer, the Tribunal has set aside penalty imposed by the authorities for claiming exemption under Section 54B and held that it is not the case of Assessing Officer that assessees claims are false or bogus, neither the Assessing Officer or Commissioner of Income Tax Appeals examined the claim of the assesseees that whether the assesseees have given money to M/s.Alpha Commercials for the purpose of investment in the property and observed that the assessing officer has not found the claim of the Assessee that the Assessee has not handed over the money to M/s. Alpha Commercials for investment in properties. The Assessing Officer has not examined the records of M/s. Alpha Commercials to find out whether the claim of the Assessee is genuine or not. Without making investigation the Assessing Officer cannot presume that the explanation given by the Assessee is false or bogus. The detailed explanation submitted before the Assessing Officer was not examined by him and set aside the entire penalty proceedings. The Appellate Tribunal has also recorded a finding that the Assessee has originally disclosed the details of receipts from sale of property at Neelankarai and also claimed deduction under sections 54F/54B of the Act. The amount is also paid by the Assesseees. Taking note of the fact that without any investigation A.O. cannot presume the

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explanation is false or bogus. Hence it is his submission that once the penalty proceedings are set aside prosecution cannot be initiated. The Appellate Tribunal in its finding held that there was no false claim or bogus such claim is binding on the revenue and his contention is that there is no appeal whatsoever filed against the Income Tax Appellate Tribunal order. Hence submitted that the prosecution in this case is nothing but abuse of process of law.

5. He has also placed much reliance of the judgment of this court *in Karti P. Chidambaram and another vs. Deputy Director of Income Tax [(2021) 1 MLJ (Crl.) 193]* and the judgment of the Apex Court in *K.C. Builders and Another vs. Assistant Commissioner of Income Tax [(2004) 2 Supreme Court Cases 731]*

6. Whereas the learned Special Public Prosecutor (Income Tax) Mr.L. Muralikrishnan appearing for the Respondent submitted that Section 54 of the Income Tax Act required two conditions to be satisfied by the Assesseees to claim exemption. The land sold must be agricultural property and the same has to be invested for the purchase of the property. Whereas the statement of the one of the assesseees recorded by the Income Tax officer under Section 133A makes it very

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clear that there is no agricultural activities in the land and no property has also been purchased. Therefore, it is his contention that but for the survey under Section 133A the assessee would have evaded the tax. Therefore, merely the payment of tax and revised return subsequent to the survey will not absolve the petitioner from criminal prosecution. Hence, submitted that the statement of the Assessee recorded by the Income Tax officer itself shows that he claimed the exemption due to ignorance and land is not an agricultural land. Therefore, submitted that the prosecution cannot be quashed and the assessment order is still in the appeal. Merely because the penalty proceedings is set aside the prosecution cannot be quashed.

7. Learned counsel placed much reliance on the judgment of the Apex Court in *Radheshyam Kejriwal vs. State of West Bengal and Another [(2011) 3 Supreme Court Cases 581]* and *Standard Chartered Bank and Others vs. Directorate of Enforcement and others [(2006) 4 Supreme Court Cases 278]* to contend that adjudication proceedings and prosecution are distinct and separate and the Adjudication proceedings would not bind on the criminal case. He has also submitted that the judgment in *K.C. Builders and Another vs. Assistant*

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Commissioner of Income Tax [(2004) 2 Supreme Court Cases 731] not approved by the Three Judges Bench. He has also relied upon the Judgment of this court in **N. Athimoolam v. Income Tax Officer [[2010] 327 ITR 603 (Madras)]**.

8. I perused the entire materials.

9. Paragraph 8 of the complaint makes it very clear that the prosecution itself is initiated on the basis of the penalty proceedings. The show cause notice was issued after the penalty proceedings were confirmed by the Commissioner of Income Tax in appeals. Show Cause Notice dated 29.01.2016 was issued to the assessee to show as to why prosecution proceedings should not be initiated against them for wilful attempt to evade tax/penalty as enumerated u/s 276C of the Act. In nutshell only the penalty proceedings triggered the initiation of the prosecution as per the complaint. It is not in dispute that the Survey under Section 133 was conducted on 13.09.2012 wherein one of the assessee said to have given a statement that he has filed return claiming exemption because of his ignorance about the law and the incorrect advice given by the auditor. The land is roughly 3.9 Acres owned by 13 members. Land is urban land and there was no agricultural

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activities carried out on that land. Such statement recorded by the Income Tax Officer triggered the prosecution for the wilful evasion of the tax. It is not disputed by the Respondent that sale consideration has been properly set out in their original returns. However, they claimed exemption under Section 54B of the Income Tax Act towards capital gain. It is also not disputed that the Survey was conducted under Section 133A of the Act on 13.09.2012 and the notice was issued on 25.10.2012. Thereafter revised return was filed by the assessee on 27.12.2012. Revised return of income filed after excluding the incorrect claim of deduction under Section 54B. It is also not disputed that the differential amount of tax has been paid by the assessee. Assessment order was subsequently passed and the same was challenged before the Commissioner of Income Tax (Appeals) with delay. However, the same was dismissed. Thereafter Appellate Tribunal set aside the above order and remitted the matter for consideration by CIT (Appeals).

10. In the meanwhile the penalty proceedings under Section 271(1)(c) of the Act has also initiated and the penalty was imposed. Both proceedings were challenged before the Commissioner of Income Tax Appeals. Both appeals were dismissed. Consequent upon the dismissal of the appeal challenging the penalty

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proceedings, a show cause notice was issued as per the complaint as to why the prosecution should not be initiated against the assessee for wilful attempt to evade tax/penalty as enumerated under Section 27C of the Act. As against the order dismissing the appeal and also assessment appeal, an appeal was filed before the Income Tax Tribunal 'C' Bench Chennai. The appeal challenging Assessment Order was set aside and the matter was remanded to the Commissioner of Income Tax for deciding the appeal on merits. However, the appeals filed against the penalty proceedings in ITA Nos.237, 238, 239, 240, 241, 242, 243, 244 and 251 the Appellate Tribunal allowed the appeal and set aside the penalty proceedings. These facts are not disputed. The review filed against the order is also dismissed. No further appeal is till now filed by the Revenue.

11. While allowing the appeal in para 17 of the order of the Appellate Tribunal has recorded its finding as follows:

“17. We find that the Assessing Officer failed to understand that the assessee has originally disclosed the details of receipts from sale of property at Neelankarai and also claimed deduction u/s.54F/54B of the Act, and it is also not disputed that the



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assessee has paid the money to M/S. Alpha Commercials, where one of the co-owners of the property was a partner therein. The assessee had a bona fide belief that M/S Alpha commercials, according to mutual agreement, invested the money in residential property so as to facilitate the assessee to have benefit u/s.54F/54B of the Act. However, the Assessing Officer has not considered the explanation offered by the assessee as bona fide and he simply rejected the explanation by saying that the assessee has made a wrong claim in the original return of income and failed to disclose all material facts truly and wholly. According to the AO, had it been there is no survey, the assessee's claim would have been gone unnoticed. However, it is not the case of the AO that the assessee's claim was false or bogus. Neither the AO nor the Commissioner of Income-tax (Appeals) examined the claim of the assessee that whether the assessee has given money to M/S Alpha Commercials for the purpose of investment in residential property. The AO observed that just because the assessee has remitted the demand raised by the Department, it cannot be a reason for levying the penalty. However, he has not found the claim of the assessee that the assessee has handed over the money to M/S Alpha Commercial for investment in residential property. Further, when the assessee

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has given explanation that he has given money to Alpha Commercials for the purpose of investment in residential house, it is the duty of the AO to examine the records of M/S Alpha Commercials to find out whether, the claim of the assessee is genuine or not. The AO without making investigation, cannot presume that the explanation given by the assessee is false or bogus. In the present case, the assessee submitted a detailed explanation before the AO. Thereafter, it is the duty of the AO to establish that the assessee has concealed income or furnished inaccurate particulars of income. In the present case, the AO has accepted the amount offered by the assessee as his income and levied penalty without making any enquires and investigation to disprove that the explanation given by assessee is either false or bona fide. Therefore, in our opinion, the penalty cannot be levied in the present case.”

12. Above finding makes it very clear that it is not the case of the A.O.that the Assessee's claim were false or bogus. Excess amount was also paid by the Assessee. Thereafter penalty also levied. It is not in dispute that the above order has reached finality and the same has not been challenged. Therefore, any finding

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recorded by the ITAT in the similar allegations certainly binding on the Revenue.

It is relevant to note that in ***K.C.Builders' case*** (supra) the Apex Court has held that penalty proceeding under Section 271(1)(c) and prosecution under Section 276C are simultaneous. When the penalties were cancelled by ITAT on the ground that there was no concealment, quashing of the prosecution was automatic. However, the above judgment was not approved by the subsequent three judges bench judgment in ***Standard Chartered Bank's case*** (supra) wherein matter arising out of Foreign Exchange Regulation Act, the Apex Court has held that adjudication and prosecution are distinct and separate and held that ratio of the above decision is not applicable. Further it is also held that the view taken in ***K.C.Builders' case*** (supra) may require for reconsideration as the reasoning appears to run counter to the one adopted by the Constitution Bench. It is relevant to note that the above three Judges Bench [***Standard Chartered Bank's case*** (supra)] the matter arising out of the FERA, only in considering the scheme of the FERA Act, the Apex Court has held that Adjudication and Prosecution are distinct and separate.

13. In ***Radheshyam Kejriwal vs. State of West Bengal and Another***

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[(2011) 3 Supreme Court Cases 581] though it is a three judges bench majority judges have held that even under Foreign Exchange Regulation Act finding of fact in adjudication proceedings is relevant in criminal proceedings and the prosecution would be unjust and an abuse of process of the court.

14. In ***G.L. Didwania & Another vs. Income Tax Officer and Another*** **[1995 Supp (2) SCC 724]** the Honourable Supreme Court has held 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 Young India and Transport Company and that finding has been set aside by the Income-tax Appellate Tribunal. If that is the position then we are unable to see as to how criminal proceedings can be sustained."

15. In ***Commissioner of Income Tax, Mumbai vs. Bhupen Champal Lal Dalal & Another*** **[(2001) 3 SCC 459]** the Apex Court has held as follows:

"3. The prosecution in criminal law and proceedings arising under the Act are undoubtedly independent

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proceedings and, therefore, there is no impediment in law for the criminal proceedings to proceed even during the pendency of the proceedings under the Act. However, a wholesome rule will have to be adopted in matters of this nature where courts have taken the view that when the conclusions arrived at by the appellate authorities have a relevance and bearing upon the conclusions to be reached in the case necessarily one authority will have to await the outcome of the other authority.

4. This Court in *G.L.Didwania & Anr. vs. Income Tax Officer & Anr.*, 1995 Supp.(2) SCC 724, dealt with the similar situation where there is a prosecution under the Act for making a false statement that the assessee had intentionally concealed his income and the Tribunal ultimately set aside the assessment holding that there is no material to hold that such income belong to the assessee and the petition was filed before the Magistrate to drop the criminal proceedings and thereafter an application was filed before the High Court under *Section 482 Cr.P.C.* to quash those criminal proceedings. This Court held that the whole question is whether the appellant made a false statement regarding the income which according to the assessing authority has escaped assessment and this issue was dependent on the conclusion reached by the appellate Tribunal and hence the prosecution could not be sustained. In *Uttam*

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Chand & Ors. vs. Income Tax Officer, Central Circle, Amritsar, 1982 (2) SCC 543, this Court held that in view of the finding recorded by the Tribunal on appraisal of the entire material on the record that the firm was a genuine firm and the assessee could not be prosecuted for filing false returns and, therefore, quashed the prosecution. In P.Jayappan vs. S.K.Perumal, First Income-Tax Officer, Tuticorin, 1984 Supp. SCC 437, this Court observed that the pendency of the reassessment proceedings under the Act cannot act as a bar to the institution of the criminal proceedings and postponement or adjournment of a proceedings for unduly long period on the ground that another proceedings having a bearing on the decision was not proper.

16. In ***Radheshyam Kejriwal vs. State of West Bengal and Another [(2001) 3 SCC 581]*** the Honourble Apex Court has held as follows:

"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*

*(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."*

17. Considering the above position, when the Tribunal has held that "the Assessing Officer has presumed that the claim is bogus or false without making any enquiry. It is not the case of the Assessing Officer that the Claim is false or bogus. The Assessing Officer has not examined the claim of assessee and found whether they have given money to M/s. Alpha Commercials for the purpose of investment in the property. In the absence of any materials the Assessing Officer has presumed that the assessee claiming exemption is false or bogus." When the Appellate Tribunal has factually recorded the finding that there was no suppression of facts and the assessee has originally disclosed the receipt of the sale property, merely claimed deduction it cannot be said that there was wilful evasion of Tax.

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18. As recorded by the Appellate Tribunal the disclosure has been made.

There is no suppression of facts. Therefore, it cannot be said that merely exemption is claimed to the property and the investment has not been made, the wilful evasion cannot be presumed as the Appellate Tribunal has found that there was no suppression. Therefore, initiation of prosecution on the similar allegations is nothing but futile exercise. Accordingly, considering the judgments of Apex Court this Court is of the view that the prosecution on the similar grounds would not serve any purpose, only lead to the unnecessary harassment. The tax has already been paid which has not been disputed. In *N. Athimoolam vs. Income Tax Officer* [[2010] 327 ITR 603 (Madras) this Court has refused to quash the proceedings mainly on the ground that substantial portion of witnesses have been examined. Therefore the same is not applicable.

19. It is also to be noted that the land in question measuring around 3.9 acres. Merely on the statement it is situated in urban area and the agriculture was not carried out at the relevant point of time, it cannot be said that there was suppression. At any event considering the factual aspects which was dealt by the

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Income Tax Appellate Tribunal, this Court is of the view that the continuation of the prosecution is waste of time and futile exercise. Accordingly, the proceedings initiated in E.O.C.C.75 of 2016 to E.O.C.C.82 of 2016 pending on the file of the of the Additional Chief Metropolitan Magistrate (E.O.II), Allikulam, Chennai, are quashed.

20. In view of the same Criminal Original Petition Nos.4202 to 4208 and 4263 of 2017 are ordered. Consequently, connected Miscellaneous Petitions are closed.

27.01.2022

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Crl.O.P.Nos.4202 to 4208 and 4263 of 2017 and
Crl.M.P.Nos.3107 to 3122, 3185 and 3186 of 2017

N. SATHISH KUMAR, J.
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Pre-delivery Common Order in:
Crl.O.P.Nos.4202 to 4208 and 4263 of 2017
and Crl.M.P.Nos.3107 to 3122, 3185 and 3186 of 2017

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27.01.2022