B.Mohammad Iqbal — CRL.O.P. No. 19461/2023

CRL OP No. 19461 of 2023 IN THE HIGH COURT OF JUDICATURE AT MADRAS Reserved on : 22.04.2026 Pronounced on: 30.04.2026 CORAM THE HON'BLE MR JUSTICE G.K. ILANTHIRAIYAN CRL OP No. 19461 of 2023 and Crl MP No. 13139 of 2023 B.Mohammad Iqbal Block 3, Flat No.3, Sriram Garden, Indira Nagar, Manapakkam, Chennai. ..Petitioner(s) Vs The Assistant Commissioner Of Income Tax Non Corporate Circle 17, No. 16, Bsnl Building Tower 1, 2nd, 5th Floor, Greams Road, Chennai. ..Respondent(s) Prayer: This petition is filed under of Cr.P.C to call for the records relating to EOCC.NO.42/2019 on the file of the Additional Chief Metropolitan Magistrate (Economic Offences) I Egmore, chennai and quash the same. For Petitioner(s): M/s. N.V.Balaji Nv Lakshmi N.V. Narayanan For Respondent(s): M.Sheela, Ssc H.Siddarth, Jsc For It Dept For The Respondent Counter Affidavit Filed By The Respondent __________ Page1 of 15 https://www.mhc.tn.gov.in/judis CRL OP No. 19461 of 2023 ORDER This petition has been filed to quash the proceedings in EOCC.NO.42/2019 on the file of the Additional Chief Metropolitan Magistrate (Economic Offences) I Egmore, chennai Offences Wing, Chennai.

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

3. The learned counsel for the petitioner submits that the respondent has no jurisdiction to lodge any complainant by virtue of any notification under or by virtue of any transfer of cases under of the Act. The respondent is not an Assessing Officer holding jurisdiction over the petitioner’s case. The Income Tax Officer, Non Corporate Ward 17(2), Chennai only has jurisdiction over the case of the petitioner. Infact the Income Tax Officer had issued Show Cause Notice. However, the complaint has been lodged by the Assistant Commissioner of Income Tax who has got no __________ Page2 of 15 https://www.mhc.tn.gov.in/judis CRL OP No. 19461 of 2023 jurisdiction. Even according to the respondent, the petitioner is assessed to Income Tax by the Income Tax Officer Non Corporate Ward 17(2),Chennai, but the sanction to prosecute the petitioner had been issued by the Principal Commissioner of Income Tax which is contrary to the fact as well as the materials placed by the respondent. The complaint was lodged without making a regular assessment and examining the application of proviso of CC of the Act. After being accorded sanction from the authority concerned, the respondent initiated prosecution against the petitioner for the offence under CC of the Act. She further submitted that the provisions under of the Act stipulates that no prosecution shall be in instituted except with previous sanction of the Principal Commissioner of Income Tax. Therefore, it doesn’t mandate that such complaint must be filed only by the Jurisdictional Assessing Officer.

5. The respondent is an authority under the Income Tax within the meaning of of the Act. Therefore, the respondent is fully competent to act upon the sanction accorded by the Principal Commissioner. Infact the respondent who is a Superior Officer than the Income Tax Officer and is within the same administrative Hierarchy and having accorded to relevant records, the respondent is legally competent to initiate prosecution. Once the Statutory time limit had lapsed without complying the subsequent events including belated filing of returns or pendency of assessment proceedings are wholly irrelevant for prosecuting for non filing of returns. Therefore, the subsequent filing of the return has no barring on the quantum of punishment under Section 276CC of __________ Page5 of 15 https://www.mhc.tn.gov.in/judis CRL OP No. 19461 of 2023 the Act. The petitioner’s attempt to characterise his failure as based on the bonafide belief is the matter of defence which can only be examined during the Trial. The intention of the petitioner cannot be adjudicated by this court that too under of Cr.P.C. In terms of of the Act. There is a statutory defence as to the existence of the culpable mental state in any prosecution for an offence under the act which requires such mental state. It mandates that Courts shall presume the existence of such mandate and the burden is upon the accused to prove the absence of such mental state. It can be done only before the Trial Court during the Trial. In support of his contention he relied upon the Judgment of the Supreme Court in the case of reported in [2014] 41 Taxmann 500 (SC) [2014 wherein it was held that the assessee is bound to file the return under of the Act on or before the due date. The outer limit fixed for filing of return is 31 st August of the assessment year, over and above. She further submits that non initiation of penalty proceedings as contemplated under of the Act as contemplated by itself doesn’t mean that default was not willful and the same , it would not affect the initiation of prosecution under of the Act for non filing of return of Income Tax for the Assessment Year 2014-15.

6. Heard the learned counsel for the petitioner and the respondent and perused the materials available on record. __________ Page6 of 15 https://www.mhc.tn.gov.in/judis CRL OP No. 19461 of 2023

7. On perusal of records it is revealed that the petitioner and his wife had sold a property for a consideration of Rs.75 lakhs. The purchaser had also deducted tax at source in respect of the said transaction. Apart from that his employer had also deducted tax on the salary Income of the petitioner. However, the petitioner was of the bonafide belief that there must be no tax liability in respect of the sale made since the income from the sale proceeds are re-invested.

9. Though, the petitioner has raised so many grounds this Court will deal with the following two grounds to quash the entire proceedings. a. Whether the respondent has jurisdiction to initiate prosecution against the petitioner. b. Whether the respondent failed to proceed with the penalty for failure to furnish the return of income.

10. To vitiate the entire case of the prosecution, admittedly the petitioner is assessed to tax in Permanent Account Number under the Jurisdiction of I.T.O, Non Corporate Ward 17(1), Chennai and was issued a Show Cause Notice dated 15.09.2017. On receipt of the same the petitioner had paid the Income Tax with interest and submitted his reply to the I.T.O. However, the respondent who is the Assistant Commissioner of Income Tax, Non Corporate Ward 17(1), Chennai had initiated prosecution against the petitioner after according sanction from the Principal Commissioner of Income Tax. In sofar as jurisdiction vested with the Income Tax Authority is concerned of the Act defines the same and the same is extracted hereunder: > __________ Page8 of 15 https://www.mhc.tn.gov.in/judis CRL OP No. 19461 of 2023 “ Assessing Officer” means the Assistant Commissioner of Deputy Commissioner of Assistant Director of Deputy Director or the Income-Tax Officer who is vested with the relevant jurisdiction by virtue of directions or orders issued under sub- section (1) or sub-section(2) of section 120 or any other provisions of this Act and the Additional Commissioner or Additional Director or Joint

commissioner or Joint Director who is directed under clause (b) of sub-section (4) of that section to exercise or perform all or any of the powers and functions conferred or assigned to, an Assessing Officer under this Act: > 11. Thus only the officer who is vested with the jurisdiction by virtue of directions or orders is the Assessing Officer and not any one else. The I.T.O does not report to the respondent either through his representative or in discharge of quasi judicial proceedings. > > 12. After filing of the reply to the Show Cause Notice issued by the I.T.O, the respondent herein placed some records before the Principal Commissioner of Income Tax seeking to accord sanction to initiate prosecution against the petitioner. Based on the records, the sanction was accorded to initiate prosecution against the petitioner. Therefore, when the respondent has no jurisdiction over the case of the petitioner, the Principal Commissioner of Income Tax had accorded sanction without application of mind on the very question of jurisdiction itself. __________ Page9 of 15 https://www.mhc.tn.gov.in/judis CRL OP No. 19461 of 2023

13. The jurisdiction vested with the Income Tax authority can be transferred to another officer as per of the Act. Section 127(1) of the act empowers the Principal Commissioner of Income Tax Officer to transfer any case from one authority who is subordinate to him after recording reasons for doing so and giving a reasonable opportunity of being heard, wherever possible. In the case on hand there is no order of transferring the case of the petitioner from the I.T.O to the respondent herein. Once, the Show Cause Notice was issued by the I.T.O and a reply was received from the petitioner, the respondent did not even intimate that he is continuing the proceedings to enable the petitioner to avail the re-hearing as provided in provision in of the Act. Therefore, the respondent has no jurisdiction to initiate the prosecution as against the petitioner. > 26. ...... The Assistant Commissioner of Income-Tax cannot proceed with the prosecution even after the order of concealment has been set aside by the Tribnal. When the Tribunal has set aside the levy of penalty, the criminal proceedings against the appellants cannot survive for further consideration. In our view, the High Court has taken the view that the charges have been framed and the matter is in the stage of further cross- examination and , therefore the High Court is fallacious. In out view, if the trial is allowed to proceed further after the order of the Tribunal and the consequent cancellation of penalty, it will be an idle and empty formality to require the appellants to have the order of Tribunal exhibited as a defence document inasmuch as the passing of the order as aforementioned is unsustainable unquestionable.

16. Thus it is clear that without initiation of penalty proceedings, if the trial is allowed it will be a idle and empty formality. Therefore, when the penalty proceedings is not initiated as contemplated under Section 271(f) of the act against the petitioner, allowing the present impugned proceedings would amount to abuse of process of law. Accordingly EOCC.NO.42/2019 on the file of the Additional Chief Metropolitan Magistrate (Economic Offences) I Egmore, Chennai is hereby Quashed and this Criminal Original Petition is allowed. Consequently connected miscellaneous petition is closed. 30.04.2026 Index: Yes/No Speaking/Non-speaking order Neutral Citation: Yes/No smn __________ Page12 of 15 https://www.mhc.tn.gov.in/judis CRL OP No. 19461 of 2023 __________ Page13 of 15 https://www.mhc.tn.gov.in/judis CRL OP No. 19461 of 2023 To The Assistant Commissioner Of Income Tax Non Corporate Circle 17, No. 16, Bsnl Building Tower 1, 2nd, 5th Floor, Greams Road, Chennai. __________ Page14 of 15 https://www.mhc.tn.gov.in/judis CRL OP No. 19461 of 2023 G.K.ILANTHIRAIYAN, J. SMN CRL OP No. 19461 of 2023 and Crl MP No. 13139 of 2023 30.04.2026 __________ Page15 of 15 https://www.mhc.tn.gov.in/judis