

CRL OP No.15721 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09-07-2026

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CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

CRL OP No.15721 of 2023

and

CRL MP Nos.9799 and 9802 of 2023

1.Madha Constructions and
Properties Private Limited,
Rep. by its Director S.Peter,
No.15, Vergheese Avenue,
Ashok Nagar, Chennai - 600 083.

Presently at
1A, Chari Street, North Usman Road,
T.Nagar,
Chennai - 600 017.

2.S.Peter
Managing Director,
Madha Constructions and Properties
Private Limited,
No.15, Vergheese Avenue,
Ashok Nagar,
Chennai - 600 083.

3.P.Elizabeth Rani,
Director of Madha Constructions and Properties,
Private Limited,
No.15, Vergheese Avenue,
Ashok Nagar,
Chennai - 600 083.

4.P.Roselin
Director of Madha Constructions and Properties



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Private Limited,
No.15, Verghese Avenue,
Ashok Nagar,
Chennai - 600 083.

...Petitioners/A1 to A4

Vs

The Assistant Commissioner of Income Tax
Central Circle 3(4),
Investigation Wing, Room No.315,
3rd Floor, New No.46, Old No.108,
M.G.Road, Nungambakkam,
Chennai - 600 034.

...Respondent/Complainant

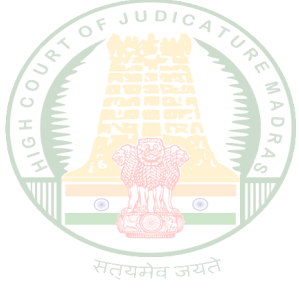
Prayer : Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records relating to EOCC.No.389 of 2018 on the file of the Additional Chief Metropolitan Magistrate (Economic Offences), Egmore, Chennai and quash the same with respect to the petitioners.

For Petitioners: Mr.N.V.Balaji

For Respondent: Ms.M.Sheela,
Standing Counsel

ORDER

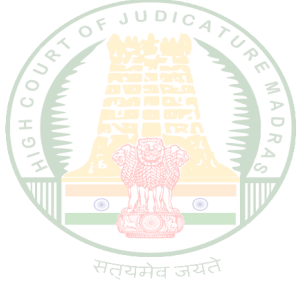
The petitioner seeks the quashing of the complaint filed by the respondent herein for the offence under Section 276(C)(2) of the Income Tax Act, 1961.



2. The allegation in the complaint is that a demand for payment of tax of Rs.4,38,576/- (Rupees Four Lakhs Thirty Eight Thousand Five Hundred and Seventy Six only) was raised on the petitioners on 09.02.2017, to be paid within thirty days; that it was not paid within the stipulated time; that the said amount was paid only on 11.07.2018; and that, there was a wilful default in payment of tax attracting the offence under Section 276(C)(2) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”).

3. The undisputed facts leading to the filing of the complaint are as follows:

(a) The petitioner, in his original return of income, declared a total income of Rs.10,74,300/- and paid tax accordingly. Notice under Section 143(2) of the Act was issued on 23.06.2016, and an assessment under Section 143(3) r/w Section 153B(1)(b) of the Act was made on 30.12.2016, by which, the net taxable income was assessed at Rs.21,83,087/-. The tax payable was assessed at Rs.29,67,245/-.



(b) On 09.02.2017, the assessment officer passed an order under

Section 154 of the Act, conceding that an excess liability was raised as there was a mistake in the computation and had reassessed the demand at Rs.4,38,576/-.

(c) The petitioner had not made payment of the said tax till 11.07.2018.

4. Mr. N.V. Balaji, the learned counsel for the petitioners, would submit that all delayed payments cannot be construed as wilful defaults; that the petitioner had explained the reason for the delay and had made the payment on receipt of the show cause notice; and that the reason for the delay cannot be disputed by the respondent.

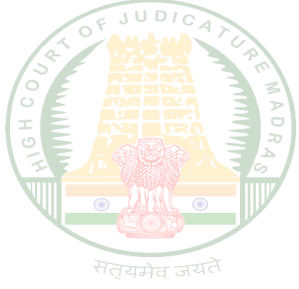
5. Ms Sheela, the learned standing counsel for the respondent, however, would submit that non-payment of the demanded tax for a period of over 1 year and 5 months has to be construed as wilful, and in any case, the question as to whether the non-payment within the stipulated period was wilful or not is the matter for the Trial Court to



consider in view of the presumption under Section 278E, as regards the culpable mental state; and that the petitioners have only made the payment after issuance of the show cause notice.

6. The petitioners had paid tax on the original return of income on 22.06.2016. It is seen that the respondent themselves have conceded that the original assessment order dated 30.12.2016 was erroneous. A modified order under Section 154 of the Act was passed on 09.02.2017. Though culpable mental state can be presumed under Section 278E of the Act, this Court and the other High Courts have consistently taken a view that where wilfulness cannot be inferred from the conduct of the assessee, prosecution under Section 276(C)(2) of the Act would be an abuse of process of law.

7. On similar facts, this Court in *S.P.Velayutham vs. Asstt. CIT* reported in *[2022] 135 taxmann. Com 43 (Madras)* had held that in order to prosecute a person under 276(C)(2) of the Act, which has to be strictly construed, the circumstances and the conduct of the accused must be such as to infer wilful default. This Court had discussed the Judgments rendered by the Hon'ble Supreme Court and other High Courts in this regard and held so.



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8. It would be useful to refer to the relevant observations made in S.P.Velayutham's case (cited supra), which are as follows:

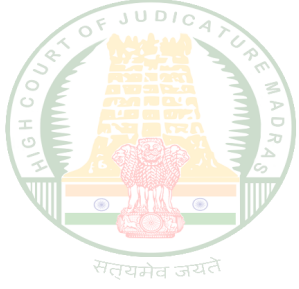
“7. Now, it is admitted by the Department that only a sum of Rs.7,62,945/- to be paid. It is admitted by the Department that Rs.1,95,76,736/- has paid on various dates. These facts are not in dispute. Now the question remains to be answered is whether the accused has wilfully attempted in any manner to evade the payment of any tax, penalty or interest. Section 276(C) of the Income Tax is as follows:

“ 276C. Wilful attempt to evade tax, etc.

(1) If a person wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable,-

(i) in a case where the amount sought to be evaded exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine;



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(2) If a person wilfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and shall, in the discretion of the court, also be liable to fine.

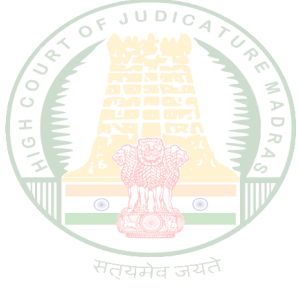
Explanation.- For the purposes of this section, a wilful attempt to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof shall include a case where any person-

(i) has in his possession or control any books of account or other documents (being books of account or other documents relevant to any proceeding under this Act) containing a false entry or statement; or

(ii) makes or causes to be made any false entry or statement in such books of account or other documents; or

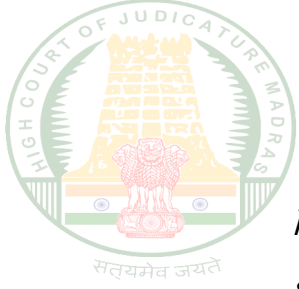
(iii) wilfully omits or causes to be omitted any relevant entry or statement in such books of account or other documents; or

(iv) causes any other circumstance to exist which will have the effect of enabling such person to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof.]”



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8. *To prosecute a person there must be a wilful attempt on the part of the assessee to evade payment of any tax, penalty or interest. The explanation to the above section makes it very clear that the evasion by way of any false entry or statement in the books of account or other document or omission to make any entry in the books of accounts or other documents or any other circumstances which will have the effect of enabling the assessee to evade tax or penalty or interest chargeable or imposable under this Act or the payment thereof. Though explanation is inclusive one it is not the case of the Department that assessee has made any false entry in the statements or documents or omitted to make any such entry in the books of account or other document or acted in any other manner to avoid payment of tax. It is not the case of the Department that the assessee has made an attempt to alienate the property in order to defeat the payment etc., Therefore, when the Return has been properly accepted and the assessment is also confirmed, mere default in payment of taxes in view of this Court, unless such default arising out of any of the circumstances, which will have a effect of the assessee to defeat the payment, the word employed in the section viz., “wilful attempt” cannot be imported to mere failure to pay the tax. From the inception there is no suppression and even the reply notice*



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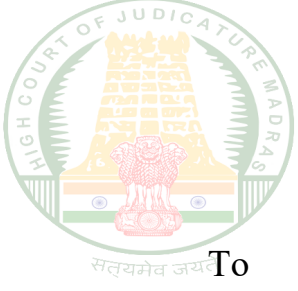
he has clearly stated the circumstances which forced him to such default.

9. The admitted facts in this case reveal that there was no wilful attempt on the part of the petitioners to evade payment of any tax, penalty or interest. In fact, the petitioners had explained that the reason for non-payment was due to the financial crunch faced by the company. The payment was also made immediately on receipt of the show cause notice. Therefore, at best, the respondent had only established a delayed payment of tax and not a wilful attempt to evade tax so as to attract the offence under Section 276(C)(2) of the Act.

10. Therefore, this Court is of the view that it would be a futile exercise to direct the petitioners to face trial. The impugned complaint is liable to be quashed to secure the ends of justice. This criminal original petition is allowed. Consequently, the connected miscellaneous petitions are closed.

09-07-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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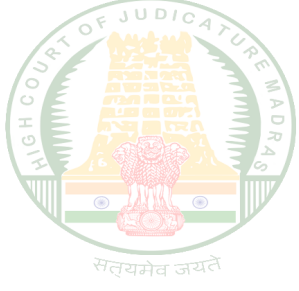


To

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Central Circle 3(4),
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- 2.The Public Prosecutor
High Court of Madras.



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