IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2830 OF 2015

M/s. IMP Powers Ltd. & ors. ... Petitioners

vs.

Dy. Commissioner of Income Tax & anr. ... Respondents

Mr. Amit Desai, Senior Advocate a/w Vrishali Raje, Advocate for the petitioners.
Mr. S. R. Agarkar, A.P.P. for the State/respondent no.1.
Mr. Suresh Kumar, Advocate for respondent no.2.

WITH
WRIT PETITION NO. 2831 OF 2015

M/s. IMP Powers Ltd. & ors. ... Petitioners

vs.

Dy. Commissioner of Income Tax & anr. ... Respondents

Mr. Amit Desai, Senior Advocate a/w Mr. Pawan Mali, Advocate for the petitioners.
Mr. S. R. Agarkar, A.P.P. for the State/respondent no.1.
Mr. Suresh Kumar, Advocate for respondent no.2.

WITH
WRIT PETITION NO. 2832 OF 2015

M/s. IMP Powers Ltd. & ors. ... Petitioners

vs.

Dy. Commissioner of Income Tax & anr. ... Respondents

Mr. Amit Desai, Senior Advocate a/w Mr. Pawan Mali, Advocate for the petitioners.
Mr. S. R. Agarkar, A.P.P. for the State/respondent no.1.
Mr. Suresh Kumar, Advocate for respondent no.2.

Coram : Smt. R. P. SondurBaldota, J.
Date : 22nd February, 2017

P.C. :

1. The above three petitions filed by the same petitioner challenge the common order dated 14th May, 2015 passed by the trial Court i.e. Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai rejecting the petitioner’s application at Ex.4 for dropping of the proceedings in view of the decision of the Apex Court in ***M/s. General Finance Co. vs. Assistant Commissioner of Income Tax reported in AIR 2002 SC 3126.***

2. The petitioners are accused in CC No. 583/SW of 2013 (old number 883/S/1991) for prosecution under Section 276DD and 278B of the Income Tax Act filed in the year 1991. Section 276DD of the Income Tax Act has been omitted by Direct Taxes Law Amendment Act, 1987, with effect from 1st April, 1989 without any savings clause. The Apex Court by the decision cited has held that “In the Income Tax Act Section 276Dd stood omitted from the Act but not repealed and hence a prosecution could not have been launched or continued by invoking Section 6 of the General Clauses Act after it’s omission.”

3. The difficulty expressed by the trial court in the impugned order even in the face of the decision of the Apex Court is of it's power and authority to drop the proceedings in view of issuance of summons. At para 6 of the impugned order, while agreeing with the submissions on behalf of the petitioners that in view of omission of Section 276DD from the Income Tax Act, the prosecution of the petitioner regarding offence punishable under Section 276DD cannot be launched or continued, the learned Judge has expressed his difficulty by stating that process has already been issued. The proceedings have been tried as summons case, plea of the petitioners is recorded and the evidence started. In these circumstances now the order of quashing of the proceedings is required to be passed by this Court. Hence, the petitions are allowed in terms of prayer clause (b).

[Smt. R. P. SondurBaldota, J.]