

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.5964 OF 2018

ORDER:

This criminal petition is filed to quash the proceedings in C.C.No.200 of 2016 on the file of Special Judge for Economic Offences at Hyderabad, registered for the offences punishable under Sections 276-C(2), 278-B of the Income Tax Act, 1961 (for short 'Act').

The respondent filed a private complaint before the Special Judge for Economic Offences at Hyderabad, pursuant to the prior sanction of the Principal Commissioner of Income Tax-2, Hyderabad, under Section 279(1) of the Act, alleging that Accused No.1 is a private company, registered under the Companies Act, 1956, engaged in the business of manufacturing of refrigerators, coolers and freezer on wheels and Accused 2 & 3 are the Directors of the company, who are responsible for the day-to-day affairs of the company for the conduct of the business. It is the case that first petitioner/company filed its original return of income for the assessment year 2014-15 on 12.12.2014 declaring an income of Rs.1,22,49,090/-. Thereafter, the first petitioner/company filed a revised return of income for the said assessment year 2014-15 declaring a total income of Rs.68,49,092/- and has failed to pay self assessment tax of Rs.24,04,150/- on the income admitted by the first petitioner/A-1/company.

According to Section 140-A of the Act, (1) Where a return has been furnished under Section 139 and the tax payable on the basis

of that return as reduced by any tax already paid under any provision of this Act exceeds five hundred rupees, the assessee shall pay the tax so payable within thirty days of furnishing the return. Instead of complying with Section 140-A of the Act, the accused have wilfully defaulted in payment of self-assessment tax on admitted income, as required under section 140-A of the Act, attracting the provisions of Section 276-C(2) of the Act, which stipulates that any wilful attempt in any manner whatsoever to evade the payment of any tax, penalty or interest under the Act constitutes an offence under the Act. Further, a show cause notice dated 08.06.2016 was issued to the first petitioner/A-1/company and show cause notice dated 15.06.2016 was issued to the petitioners 2 & 3/A-2 & A-3, calling upon them to explain as to why action should not be taken against them. Reply was given to the show cause notices, vide letters dated 24.06.2016 and 30.06.2016 admitting the said default in payment of self assessment tax and their explanations were found unsatisfactory. Thus, the petitioners committed an offence punishable under Section 276-C(2) of the Act.

The petitioners filed the present petition alleging that the first petitioner initially filed a return on 12.12.2014 disclosing income of the company for Rs.1,22,49,090/- for the assessment year 2014-15. Thus, the first petitioner/company declared its income as Rs.1,22,49,090/- for the assessment year 2014-15. Thereafter, the first petitioner/company filed a revised return on 03.03.2015 disclosing its income as Rs.68,49,092/- and the tax liability of the company was Rs.24,04,150/- on the admitted

income, as per self assessment returns. But, the first petitioner did not pay the tax on the admitted income. When the respondent took up scrutiny proceedings, show cause notices were issued to the petitioners. In reply to the show cause notices, the petitioners allegedly claimed additional expenditure of Rs.54 lakhs. On 26.12.2016, the Deputy Commissioner of Income Tax Circle-2(1), Hyderabad, passed an assessment order, computed the income of the assessee and the total demand payable was Rs.58,83,260/-. Aggrieved by the assessment order passed by the Deputy Commissioner of Income Tax Circle-2(1), Hyderabad, the petitioners preferred an appeal. Thereafter, the Commissioner of Income Tax (Appeals)-8, Hyderabad, passed an order exempting certain items as a pre-condition to entertain the appeal, the petitioner paid certain amount i.e. Rs.4,91,000/- and after deducting such amount, the amount payable to the revenue is minimum, in view of the benefits extended by the Commissioner of Income Tax (Appeals)-8, Hyderabad. But, during pendency of the proceedings before the Commissioner of Income Tax (Appeals)-8, Hyderabad, the present complaint was filed as an abuse of process of the Court as an arm twisting method to bring these petitioners to their terms and when the appeal was allowed-in-part, cause of action for filing the complaint does not survive further and therefore, requested this Court to quash the proceedings against these petitioners.

It is also alleged that, when the Commissioner of Income Tax (Appeals)-8, Hyderabad, decided the appeal in favour of these petitioners partly and paid an amount of Rs.4,91,000/-, as a pre-

condition to entertain an appeal by the Commissioner of Income Tax (Appeals)-8, Hyderabad, the respondent cannot prosecute these petitioners for the offences referred supra. It is also further brought to the notice of this Court that an appeal against the order passed by the Commissioner of Income Tax (Appeals)-8, Hyderabad is preferred before the Income Tax Appellate Tribunal and it is pending for adjudication. It is urged that, when the proceedings are pending before the concerned authorities as per statute, proceedings against these petitioners for the offence punishable under Sections 276-C(2), 278-B of the Act is a serious illegality and requested this Court to quash the proceedings against these petitioners.

During hearing, learned counsel for the petitioners reiterated the allegations made in the complaint, while placing reliance on the judgment of the Supreme Court in **K.C. Builders and another v. Assistant Commissioner of Income Tax**¹, **Vinaychandra Chandulal Shah v. State of Gujarat and another**² and **K.K. Mohta v. The Assistant Commissioner of Income Tax**³. Finally, learned counsel for the petitioners contended that, when an appeal is pending before the Income Tax Appellate Tribunal, the proceedings against these petitioners cannot be continued and the Court can grant stay till disposal of the tax appeal before the Income Tax Appellate Tribunal and placed reliance on unreported judgment of this Court in **M/s Cubex Tubings Limited and**

¹ (2004) 2 Supreme Court Cases 731

² (1995) 123 CTR (Guj) 448

³ (2010) 320 ITR 387 (Delhi)

others v. The Assistant Commissioner, Legal Customs⁴ and requested to quash the proceedings against these petitioners, and in the alternative requested to stay the proceedings in C.C.No.200 of 2016 on the file of Special Judge for Economic Offences at Hyderabad.

Whereas, Sri B. Narasimha Sarma, learned Standing Counsel for the respondent contended that, as the petitioners failed to comply with the requirement under Section 140-A of the Act, it directly amounts to wilful evasion of the tax liability, though admitted as the self-assessed tax. Even the petitioners did not comply with the requirements under Section 140-A of the Act till a show cause notice is issued and scrutiny proceedings are initiated, moreover, filed revised return on 03.03.2015 with long delay of five months, which is suffice to conclude that it is a wilful attempt of evasion of tax liability on the part of the petitioners. Therefore, based on the self-assessment and non-payment of income tax, the petitioners can be held to be guilty of wilful evasion of tax and liable for punishment for the offences punishable under Sections 276-C(2), 278-B of the Act.

It is further contended by the learned counsel for the respondent that, the Commissioner of Income Tax (Appeals)-8, Hyderabad, did not give any allowance to these petitioners directly, but directed the Assessment Officer to verify and allow the claim of these petitioners to certain extent referred in the order. Thus, the Commissioner of Income Tax (Appeals)-8, Hyderabad did not

⁴ CrI.P.No.6469 of 2017 dated 15.02.2018

accept the contention of the petitioners claiming additional expenditure to a tune of Rs.54 lakhs self assessed income. In the absence of any direct allowance given by the Commissioner of Income Tax (Appeals)-8, Hyderabad, the petitioners are not entitled to contend that the Commissioner of Income Tax (Appeals)-8, Hyderabad allowed the appeal in part.

Learned counsel for the respondent drawn the attention of this Court to certain paragraphs in the order dated 22.02.2018 passed by the Commissioner of Income Tax (Appeals)-8, Hyderabad, wherein, in paragraph 11 it was observed that, as regards the depreciation claimed in the revised return, the AO is directed to verify the same from the return of income for the AY 2013-14 and allow accordingly, regarding bank interest statement, the AO may verify the claim of the appellant with the documents & evidences filed and allow accordingly. With regard to electricity charges also the AO may verify the bills and allow accordingly. As regards (Warranty Service Charges) WSC, since the appellant could not furnish the bills/invoices for the said claim of expenditure, the claim made in the original return of Rs.9,56,120/- is disallowed and the issue of allowing additional claim of Rs.9,64,615/- does not arise. Therefore, as such the Commissioner of Income Tax (Appeals)-8, Hyderabad, did not allow the appeal in toto, but still it is subject to the verification by the Assessment Officer and consequently, it cannot be held that the cause of action arose for lodging a private complaint is not accepted and prayed to dismiss the petition.

Considering rival contentions, perusing material available on record, the point that arose for consideration is:

“whether the order passed by Commissioner of Income Tax (Appeals)-8, Hyderabad dated 22.02.2018 in ITA No.0252/CIT(A)-8/Hyd/2016-17, whereby the directions issued by the Commissioner in the appeal to the Assessment Officer is sufficient to quash the criminal proceedings against these petitioners in C.C.No.200 of 2016 on the file of Special Judge for Economic Offences at Hyderabad?”

P O I N T:

Before going into the facts of the case, it is apposite to advert to the scope of Section 482 Cr.P.C.

The power of this Court under Section 482 Cr.P.C is inherent and notwithstanding anything contained in the provisions of Cr.P.C be deemed to limit or affect the inherent powers of the High Court to make such orders as **may** be necessary to give effect to any order under Cr.P.C, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

While deciding a petition under Section 482 Cr.P.C, the Court has to look into the allegations made in the complaint and the material, if any annexed to the complaint to find out whether the complainant made out any *prima facie* case to constitute an offence under the provisions of any penal law and this Court cannot appreciate the evidence but evaluate the material on record, in view of the limited scope and jurisdiction of this Court under Section 482 Cr.P.C.

In **State of Haryana v. Bhajan Lal**⁵ this Court considered in detail the provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. The Apex Court summarized the legal position by laying down the following guidelines to be followed by High Courts in exercise of their inherent powers to quash a criminal complaint:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

⁵ 1992 Supp. (1) SCC 335

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

In view of guidelines, when the allegations made in the charge sheet *prima facie* disclosed commission of an offence punishable under the provisions of the Indian Penal Code, this Court cannot exercise its inherent power to quash the proceedings.

Turning to the facts of the present case, the undisputed facts are that, the first petitioner is a company and petitioner nos. 2 & 3 are its Directors. The first petitioner being an income tax assessee, filed a return for the assessment year 2014-15, disclosing the annual income @ Rs.1,22,49,090/-. But, obviously for different reasons, the first petitioner filed revised return on 03.03.2015, disclosing the income @ Rs.68,49,092/-, while admitting the tax liability thereon at Rs.24,04,150/-. Thus, the revised assessment is only under Section 140-A of the Act.

According to Section 140-A of the Act, where any tax is payable on the basis of any return required to be furnished under Section 115WD or Section 115WH or Section 139 or Section 142 or Section 148 or Section 153A or as the case may be, Section 158BC, after taking into account,-

- (i) the amount of tax, if any, already paid under any provision of this Act;
- (ii) any tax deducted or collected at source;
- (iii) any relief of tax or deduction of tax claimed under Section 90 or Section 91 on account of tax paid in a country outside India;
- (iv) any relief of tax claimed under Section 90A on account of tax paid in any specified territory outside India referred to in that section; and
- (v) any tax credit claimed to be set off in accordance with the provisions of Section 115JAA [or section 115JD];

the assessee shall be liable to pay such tax, together with interest [and fee] payable under any of provisions of this Act for any delay in furnishing the return or any default or delay in payment of advance tax, before furnishing the return and the return shall be accompanied by proof of payment of such tax [interest and fee].

Therefore, it is the obligation of the assessee/first petitioner/company to pay the tax on the self assessed income for the assessment year. Instead of complying with the mandatory requirement under Section 140-A of the Act, the petitioners just filed revised return and maintained silence till show cause notices were issued on 08.06.2016 and 15.06.2016 and scrutiny proceedings were taken up. In reply to the show cause notices dated 24.06.2016 by the first petitioner and 30.06.2016 by the petitioners 2 & 3, they admitted about filing of return for the year 2014-2015 on 12.12.2014, wherein, admitted total income of Rs.1,22,49,090/- with a tax liability of Rs.46,16,190/-, so also filing of revised return for Rs.68,49,092/- with tax liability of Rs.24,04,150/-. Against the show cause notices the petitioners

contended that the company is facing acute financial crunch and steep downtrend in the manufacturing industry and also various economical ups and downs, happening in the market and that, loan account of the company was classified as non-performing asset (NPA) since 30.06.2013, thereby proceedings under SARFAESI Act were initiated and that there was no wilful attempt to evade any tax penalty to attract offences punishable under Sections 276-C(2), 278-B of the Act. The petitioners stated in the reply to show cause notice that the company always complied with the provisions of the Income Tax and filed revised return for the Assessment Year 2014-15 with a total tax liability of Rs.25,04,150/-, but did not make any claim towards additional expenditure and at the end, the first petitioner contended that the company is not a wilful defaulter and the delay in deposit of self assessment tax has occurred due to helpless situation and the practical difficulties faced by the company and it can be verified that there is no suppression of facts and requested to drop the proposed criminal proceedings against the petitioners.

Similar contentions were raised by petitioners 2 & 3 in reply to the show cause notices. Therefore, it is clear that the petitioners did not dispute the tax liability as per revised return even in the reply to the show cause notices and admitted about non-compliance of mandatory requirement under Section 140-A of the Act, besides stating that the company is facing acute financial crunch and steep downtrend in the manufacturing industry and also various economical ups and downs in the market. Thus, the petitioners are conscious about their liability to pay tax in

compliance of Section 140-A of the Act. Therefore, it is a deliberate, conscious default in compliance of Section 140-A of the Act.

It is the main contention of the of the learned counsel for the petitioners that, when the assessment order was passed and it is modified by the Commissioner of Appeals in the ITA No.0252/CIT(A)-8/Hyd/2016-17, the cause for the petitioners to file a compliant ceased to exist and the complaint cannot be prosecuted. Further, continuation of criminal contrary to the case of appeals of these petitioners may cause serious inconvenience besides stigma in the society, being industrialists.

No doubt, initiation of criminal proceedings is a matter of serious concern, but when a person committed offences, they are bound to face the criminal proceedings, if the act committed by the person constitutes offences punishable under any of the penal provisions. Whether the petitioners are industrialists or otherwise, they are bound by law for non-compliance of mandatory requirements, which constitutes offences punishable under Sections 276-C(2), 278-B of the Act.

Learned counsel for the petitioners placed reliance on the judgment of the Apex Court in **K.C. Builders and another v. Assistant Commissioner of Income Tax** (referred supra), wherein, the Apex Court by relying on the judgment of **G.L. Dodwamo v. ITO**⁶, held in paragraph 22 as follows:

“In the case of G.L. Didwania & Anr. Vs. Income Tax Officer & Anr., the prosecution was levelled against the assessee for making false statement. The Assessing Authority held that the assessee had intentionally concealed his income derived from ‘Y’ company which

⁶ 1995 Supp (2) SCC 724

belonged to him, initiating prosecution against him. The appellant filed the appeal against the assessment order and the Tribunal set aside the assessment holding that there was no material to hold that 'Y' company belonged to the assessee. The assessee thereupon filed a petition before the Magistrate to drop the criminal proceedings and the application before the High Court under Section 482 to quash the criminal proceedings which were dismissed. On appeal, this Court held that the whole question was whether the appellant made a false statement regarding the income which according to the assessing authority had escaped assessment and so far as this issue was concerned, the finding of the appellate Tribunal was conclusive and hence the prosecution cannot be sustained. Accordingly, this Court quashed the criminal proceedings and allowed the appeal filed by the assessee.

The above judgment squarely applies to the facts and circumstances of the case on hand. In this case also, similarly, the application was moved by the assessee before the Magistrate to drop the criminal proceedings which were dismissed by the Magistrate and the High Court also on a petition filed under Sections 397 and 401 of the Code of Criminal Procedure, 1973 to revise the order of the Additional Chief Metropolitan Magistrate has also dismissed the same and refused to refer to the order passed by the competent Tribunal. As held by this Court, the High Court is not justified in dismissing the criminal revision vide its judgment ignoring the settled law as laid down by this Court that the finding of the appellate Tribunal was conclusive and the prosecution cannot be sustained since the penalty after having been cancelled by the complainant following the appellate Tribunal's order, no offence survives under the Income Tax Act and thus quashing of prosecution is automatic. In the instant case, the penalties levied under Section 271(1)(c) were cancelled by the respondent by giving effect to the order of the Income Tax Appellate Tribunal in I.T.A. Nos. 3129-3132. It is settled law that levy of penalties and prosecution under Section 276C are simultaneous. Hence, once the penalties are cancelled on the ground that there is no concealment, the quashing of prosecution under Section 276C is automatic."

But, the facts of the above judgment are totally different and even in **G.L. Dodwamoa v. ITO** (referred supra), a false statement was filed concealing certain income. But, in the appeal, the finding of the Income Tax officer was set-aside. But, criminal prosecution was continued and when the accused filed a petition under Section 482 Cr.P.C, the Court held that, when the Appellate Authority cancelled the findings recorded by the authorities under the Act,

no findings survives and the prosecution cannot proceed against these petitioners.

The Apex Court also was of the view that the appellants cannot be made to suffer and face the rigours of criminal trial when the same cannot be sustained in the eye of the law because the entire prosecution in view of a conclusive finding of the Income Tax Tribunal that there is no concealment of income becomes devoid of jurisdiction and under Section 254 of the Act, a finding of the Income Tax Tribunal that there is no concealment of income becomes devoid of jurisdiction and under Section 254 of the Act, a finding of the Appellate Tribunal supersedes the order of the assessing officer under Section 143(3) more so when the assessing officer cancelled the penalty levied. Thus, when the Tribunal has set-aside the order of concealment and penalties, there is no concealment in the eye of law and therefore, the prosecution cannot proceed with the complainant and further proceedings will be illegal and without jurisdiction.

Turning to the present facts of the case, the principle laid down in the above judgment has no application, for the reason that the Appellate Commissioner did not allow any of the claims, but directed the Assessment Officer to verify certain claims, while disallowing Warranty Service Charges (WSC), in proceedings ITA No.0252/CIT(A)-8/Hyd/2016-17.

Similarly, learned counsel for the petitioners also placed reliance on the judgment of Delhi High Court in **K.K. Mohta v.**

The Assistant Commissioner of Income Tax⁷, wherein, , the learned Single Judge of Delhi High Court discussed about the facts and concluded that, when the order passed by the Income Tax Officer is reversed, the proceedings cannot be continued, in paragraph 13 of the judgment is extracted for better appreciation of the case:

“13. In the present case the facts are not disputed. While the complaint refers to proceedings up to the stage of the CIT (A), a few months thereafter the ITAT passed a detailed order partly allowing MESL’s appeal and dismissing the Revenue’s appeal. Clearly there the issue whether payment made by MESL to HSP was excessive was a debatable one. In partly allowing MESL’s appeal, the ITAT disagreed with the view taken by the Assessing Officer, on what the reasonable rate should be for the work done by HSP, as affirmed by the CIT (A). The disallowance was reduced by the ITAT from that in excess of Rs.500 PMT to that in excess of Rs.1,250 PMT. In the circumstances, it is difficult for this Court to appreciate the view taken by the learned ACMM that there was a deliberate intention on the part of the assessee to evade the payment of income tax by suppressing its true income in the return filed by it. If the issue where the amount paid by MESL to HSP was reasonable or not admitted of more than one point of view, as is evident from the orders of the Assessing Officer and the ITAT, then certainly the essential ingredient of Section 276 C (1) of the Act of a deliberate intent on the part of the assessee to evade the payment of income tax, cannot be said to exist in the present case.”

Similar view is expressed in **Vinaychandra Chandulal Shah**

v. State of Gujarat and another⁸, in paragraph 11 of the judgment, it was held as follows:

“11. Mr. Bhatt, the learned advocate appearing for respondent No. 2, submitted that it is not necessary to mention clearly in the complaint but only at the trial it can be decided whether there is evasion or not and, therefore, according to his submission, only after giving an opportunity to the prosecution to lead evidence one can come to the conclusion whether there is evasion or not. Merely a complaint is filed and the process is issued, and at this stage, the court should not interfere.

⁷ [2010] 320 ITR 387 (Delhi)

⁸ (1995) 123 CTR (Guj) 448

According to Mr. Bhatt, section 276c(2) is attracted and, therefore, there is no question of interference. Taking the second contention first, the Legislature has used different connotations on sub-sections (1) and (2). Sub-section (1) refers to wilful attempt in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable under the Act while sub-section (2) refers to wilful attempt in any manner whatsoever to evade the payment of any tax, penalty or interest under the Act. Therefore, it clearly appears that, as the words "chargeable" or "imposable" being absent in sub-section (2), the clear meaning could be payment of any tax, penalty or interest and that too, which is determined. Therefore, sub-section (1) contemplates evasion before charging or imposing tax, penalty or interest. Reading sub-section (2) it becomes very clear that it refers to the cases of tax evasion after charging or imposition, that is evasion after completion of assessment comes within the purview of the sub-section. As observed by the Kerala High Court in G. Viswanathan's case [1987] 167 ITR 103, sub-section (2) is so clear that at any rate it takes in the cases of tax evasion of tax, penalty or interest after assessments were made. Therefore, in view of the clear position, the submission made by the learned advocate, Mr. Bhatt, cannot be accepted that the case is covered by Section 276C(2) as the petitioner has failed to pay the advance tax. Sub-section (2) of Section 276C could be attracted only when a person wilfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest under this Act and not otherwise. The complaint is for offences punishable under Section 276C(2) of the Act. In view of what is discussed above, it is very clear that there is not even a whisper that there is wilful attempt in any manner whatsoever to evade the payment of tax and hence the process issued is required to be quashed and is hereby quashed.

As stated above, the principles laid down in all the three judgments referred supra, have no application to the present facts of the case, for the reason that, the appeal was not allowed by the Commissioner of Appeals, but issued certain directions in paragraph 11 and it is extracted hereunder:

“11. I have carefully considered the issues and submission made by the AR. As regards the depreciation claimed in the revised return the AO is directed to verify the same from the return of income for the AY 2013-14 and allow accordingly. Regarding bank interest statement, the AO may verify the claim of the appellant with the documents & evidences filed and allow accordingly. With regard to electricity charges also the AO may verify the bills and allow accordingly. As regards WSC, since the appellant could not furnish the bills/invoices for the said claim of expenditure, the claim made in the original return of Rs.9,56,120/- is

disallowed and the issue of allowing additional claim of Rs.9,64,615/- does not arise.”

The Commissioner only directed the Assessment Officer to verify the depreciation claimed in the revised return and the return of income for the AY 2013-14. Regarding bank interest statement, the Assessment Officer is directed to verify the claim of the appellant with the documents & evidences filed and with regard to electricity charges also the Assessment Officer is directed to verify the bills. As regards Warranty Service Charges (WSC), since the appellant could not furnish the bills/invoices for the said claim of expenditure, the claim made in the original return of Rs.9,56,120/- is disallowed and the issue of allowing additional claim of Rs.9,64,615/- does not arise.

Undisputedly, the petitioners filed return disclosing total income of Rs.1,22,49,090/- initially by filing a return and later filed revised return on 03.03.2015 disclosing the total income @ Rs.68,49,092/-, admitted tax liability of Rs.24,04,150/-. It is the obligation of the petitioners to pay the admitted tax liability and annex the challans to the return in terms of Section 140-A of the Act. But, the petitioners did not pay the tax due, as admitted by them till a show cause notice was issued to them, taking up scrutiny proceedings, finding that these petitioners evaded payment of wilful. Therefore, failure to pay tax in compliance of Section 140-A of the Act till date, in view of admitted tax liability would amount to wilful evasion of tax or not is a question.

The word 'Tax Evasion' is not defined anywhere. But, Tax evasion is one of the most common economic crimes and has been present since the introduction of tax. People don't like paying taxes, and they pursue many avenues to reduce their payment, some styles are legal and others are illegal. There are numerous definitions of tax evasion but all of them don't go out of some common points. Some of definitions of tax evasion are as follows:

According to dictionary.com, "Tax evasion this term is generally used to designate criminal tax fraud, in which the taxpayer intentionally and deliberately understates his income or overstates his deduction and/ or credit for the purpose of underpayment of tax liability"

According to wikipedia.org, "Tax evasion is an illegal practice where a person, organization or corporation intentionally avoids paying his/her/it's true tax liability. Those caught evading taxes are generally subject to criminal charges and substantial penalties Tax evasion is the general term for efforts to not pay taxes by illegal means"

According to Dictionary of finance and investment, "Tax evasion illegal practice of intentionally evading taxes, Taxpayer who evades their true tax liability may underreport income, overstate deduction and exemptions, or participate in fraudulent tax shelters"

According to biztaxlaw.about, "Tax evasion is the illegal act or practice of failing to pay taxes which are owed in businesses, tax evasion can occur in connection with income taxes, employment

taxes sales and excise taxes, and other federal state, and local taxes. Tax Evasion is all about illegal practice of paying less money in taxes than is due.

From the definitions of Tax Evasion, any act done to avoid payment of tax by illegal means either intentionally understating the income or overstating the deductions and exemptions to avoid the maximum tax liability legally due to the revenue. If, the definitions of 'Tax Evasion' referred supra are applied to the present facts of the case, the petitioners though admitted the tax liability by filing a revised return on 03.03.2015, they are under obligation to comply with the mandatory requirement under Section 140-A of the Act. Obviously, for different reasons, the petitioners did not choose to comply with the mandatory requirement under Section 140-A of the Act, even till date, but raised several contentions claiming additional expenditure of Rs.54 lakhs, out of Rs.66 lakhs disclosed in the revised return which is filed on 03.03.2015. But, the Income Tax Officer did not accept it. However, the Commissioner of Appeals passed an order which is extracted in the earlier paragraphs and aggrieved by the Warranty Service Charges (WSC) of Rs.9,56,120/-, appeal is pending before the Tribunal. Till date, the petitioners did not pay the tax due to the revenue and having filed revised return admitting the tax liability of Rs.24 lakhs, it can be certainly held to be wilful evasion of tax, as it is a conscious, deliberate and calculated act of the petitioners in failing to pay the tax directly, adhering to Section 140-A of the Income Tax Act, *prima facie*.

When the petitioners *prima facie* committed an offence under Section 276(C)(2) of the Act, the proceedings at this stage, more particularly, when major part of trial is completed in C.C.No.200 of 2016 on the file of Special Judge for Economic Offences at Hyderabad, the same cannot be quashed. Since, powers of this Court are limited and power under Section 482 Cr.P.C has to be exercised only in exceptional circumstances only to give effect to the orders passed by the Court and to prevent abuse of process of the Court or to meet the ends of justice.

In view of the guidelines laid down by the Apex Court in **Bhajan Lal's** case (referred supra), if the facts on its face value are accepted, it constitutes an offence, *prima facie* if proved. The Court cannot interfere, except when the Court comes to a conclusion that it is an out come of abuse of process of law.

In **State of Karnataka v. L. Muniswamy and Ors.**⁹, the Supreme Court while considering scope and jurisdiction of the High Courts under Section 482 Cr.P.C, has held as under:

“In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose

⁹ AIR 1977 SC 1489

of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects it would be impossible to appreciate the width and contours of that salient jurisdiction.”

If, the principles referred in the above judgments are applied to the present facts of the case, the allegations made in the charge-sheet and other material filed along with the petition, including the attempts made by these petitioners would constitute offences punishable under Sections 276-C(2), 278-B of the Act. But, the contention of the learned counsel for the petitioners is that, the cause of action is ceased to subsist for continuation of proceedings, in view of the order passed by the Commissioner of Appeals is without any substance. Therefore, the grounds urged in this petition are not sufficient to quash the proceedings at this stage in C.C.No.200 of 2016 on the file of Special Judge for Economic Offences at Hyderabad. Moreover, the allegations made in the charge-sheet coupled with the material produced *prima facie* disclosed commission of offences by these petitioners punishable under Sections 276-C(2), 278-B of the Act.

At the end, learned counsel for the petitioners contended that, when the appeal is pending before the Income Tax Appellate Tribunal, the proceedings in criminal case cannot be continued and the Court shall grant stay of all further proceedings in C.C.No.200 of 2016 on the file of Special Judge for Economic Offences at Hyderabad, till disposal of the appeal and placed reliance on **M/s Cubex Tubings Limited and others v. The Assistant Commissioner, Legal Customs** (referred supra).

In the facts of the above judgment, there was a dispute with regard to payment of service tax and criminal prosecution was launched against the petitioners therein and this Court by placing reliance judgment of Apex Court rendered in “**Commissioner of Income Tax, Mumbai v. Bhupen Champak Lal Dalal**¹⁰”, judgment of this Court rendered in “**Prabhava Organics P.Ltd. v. Deputy Commissioner of Income Tax**¹¹” and judgment of the High Court of Patna rendered in “**Choubey Sugandith Tambaku Company through Chhedi Lal Sharma v. The Union of India**¹²”, judgment of Apex Court rendered in “**P.Jayappan v. S.K.Perumal, First Income-tax Officer, Tuticorin**¹³”, judgment of this Court rendered in “**Rockwool (India) Limited Company, Medak District v. Deputy Commissioner (Legal) Central Excise Hyderabad – 1 and another**¹⁴” and Judgment of High Court of Punjab and Haryana rendered in “**Rajendera Pal Mangal v. Asstt. Collr. Cus & C EX DIV, Ludhiana**¹⁵”, concluded that, when the appeal is pending before a competent Appellate Tribunal against the tax liability, the main ground was to stay the criminal proceedings pending before the criminal court till disposal of the appeal. But, this Court directed the criminal court to complete the trial and not to pronounce the judgment. Even if the principle laid down in the above judgment is applied to the present facts of the case, at best, the Special Judge for Economic Offences at Hyderabad, shall complete trial, shall not pronounce the judgment

¹⁰ AIR 2001 SC 1096

¹¹ 2007 (2) ALD (Crl.) 254

¹² 2013 (288) ELT 342 (Pat.)

¹³ AIR 1984 Supreme Court 1693

¹⁴ 2002 (1) ALD (Crl.) 637 (AP)

¹⁵ 2012 (276) ELT 479

till disposal of the appeal before the Income Tax Appellate Tribunal.

In view of the law declared by the Apex Court and this Court in the judgments referred supra, I find that it is appropriate to request the Special Judge for Economic Offences at Hyderabad to hear arguments of both sides and complete the trial, but shall not pronounce judgment till disposal of the appeal pending before Income Tax Appellate Tribunal.

In view of my foregoing discussion, I find no ground to quash the proceedings in C.C.No.200 of 2016 on the file of Special Judge for Economic Offences at Hyderabad, registered for the offences punishable under Sections 276-C(2), 278-B of the Act.

I am sure that, in view of the peculiar circumstances of the case, the Income Tax Tribunal will take up the appeal pending before it, filed by the petitioners and dispose of the appeal, as expeditiously as possible, enabling the Special Judge for Economic Offences at Hyderabad to dispose of C.C.No.200 of 2016 pending before it.

Registry is directed to mark a copy of this judgment to the Income Tax Appellate Tribunal, Hyderabad, with a request to dispose of the appeal, as expeditiously as possible.

With the above direction, criminal petition is dismissed.

Consequently, miscellaneous petitions pending, if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date: 13.08.2018
SP