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HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 2075 of 2018**

1. M/s System India Castings Through Smt. Promila Jhamb, Partner, 09-C, Light Industrial Area, Police Station Jamul, Bhilai, District - Durg, Chhattisgarh. Pin 490026
2. Smt. Promila Jhamb W/o Late Shri Sushil Kumar Jhamb Aged About 75 Years Partner Of M/s. Systems India Castings, 09-C, Light Industrial Area, Police Station Jamul, Bhilai, District - Durg, Chhattisgarh. Pin 490026
3. Shri Satish Kumar Jhamb S/o Late Shri Kulwantra Jhamb Aged About 69 Years E-128, Surya Vihar, Junwani, Police Station Smritinagar Chowki Bhilai, District - Durg, Chhattisgarh. Pin - 490020

---- Petitioner

Versus

1. The Principal Commissioner Of Income Tax-2 Aaykar Bhawan, Civil Lines, Raipur, Chhattisgarh. Pin 492001
2. The Income-Tax Officer Ward, Aaykar Bhawan, FCI Road, Police Station Rajnandgaon, District Rajnandgaon, Chhattisgarh. Pin - 491441

---- Respondent

For Petitioners : Shri S. Rajeshwara Rao with Shri MK Sinha, Adv.
For Respondents : Ms. Naushina Ali on behalf of Shri A. Choudhary,
standing counsel.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****26/06/2019 :**

1. The petition is posted for hearing on admission, however, since learned standing counsel for the Income Tax Department has entered appearance on advance notice, therefore, this Court proceeded to hear the matter finally with the consent of learned counsel for the parties.
2. Prayer in this petition is for quashment of proceeding of criminal case No.29362/1996 (Income Tax Officer, Rajnandgaon Vs. M/s System India Castings, Bhilai & Others) pending before CJM, Durg.
3. At the outset, learned Standing Counsel for the Department would submit that the petitioners having already moved before the trial Magistrate for dropping the proceeding, the instant petition is not maintainable. However, considering that law in respect of continuation of prosecution for commission of offence under Sections 276-C and 277 read with Section 278 of the Income Tax Act, 1961 (for short 'the Act') on a previous complaint though subsequently the fact of concealment of income having already been extinguished pursuant to the appellate order passed by the Income Tax Appellate Tribunal (for short 'the Tribunal') is no longer *res integra* in view of the judgment rendered by the Supreme Court in the matter of **K.C. Builders and Another Vs. Assistant Commissioner of Income Tax** {(2004) 2 SCC 731},

therefore, this Court proceeded to hear the matter on merits.

4. The subject complaint was filed by the Revenue before the CJM, Durg sometimes in the year 1995 pursuant to sanction accorded by the Commissioner of Income Tax, Jabalpur under Section 279 of the Act on 30th March, 1995. The gravamen of the offence for which sanction was accorded is stated as under in the sanction order:-

“The assessee firm is engaged in the business of manufacture of cast iron products from the Cast Iron Scrap. For the asstt. Year, 1990-91, assessee furnished the return showing total income of Rs.49,484/- and the assessment was made u/s 143(3) of the Income Tax Act, 1961, on 31/03/92 at Rs.09,23,760/-. The assessee claimed purchases of Cast Iron Scraps from one M/s Sagar Enterprises, 53, Malviya Chowk, Jabalpur, on different dates. The payment were shown to have been made in cash @ Rs.10,000/- per day for 74 continuous days. After making necessary enquiries, it was found that no such concern ever existed at the above mentioned address. Further, the Sales-Tax number on the bills was also found to be bogus after making enquiries from the Sales-Tax Department. Assessee was not able to furnish receipts in respect of the payments claimed to have been made in cash. Further, no payment slips were available in respect of the above purchases. In one of the bills, the vehicle used for transportation was found to be a Tractor Trolley instead of the Truck as claimed by the assessee. Further, the same Tractor Trolley was shown to be carrying some other goods on 29/01/90 from Bhilai to Tedesara. It is not possible for the Tractor Trolley to transport Cast Iron Scraps from Jabalpur to Tedesara on 31/01/90 as claimed by the assessee. Based on all these discrepancies, the

A.O. arrived at a conclusion that there was no party named M/s Sagar Enterprises at Jabalpur dealing in scrap and the purchases shown to have been made from the above said party was only a colourful device to introduce scrap acquired by the assessee from undisclosed sources. He accordingly, added back the investment in the purchase of the scrap at Rs.7,51,739/- to the income of the assessee. The claim of Transportation expenses related to the transaction with M/s Sagar Enterprises amounted to Rs.42,650/- was also disallowed. Additions made by the A.O. have been sustained by the Hon'ble ITAT, Nagpur Bench, Nagpur, vide its order dated 19/03/93 in ITA No.534/Nag/92.

Consequently, penalty of Rs.4,26,630/- u/s 271(1)(c) of the Income Tax Act, 1961 has also been levied by the A.O. vide order dated 20/09/93. Assessee has preferred an appeal against the penalty order before CIT (Appeals), Raipur which is pending for decision.

NOW THEREFORE, in exercise of the powers conferred on me by virtue of section 279 of the Income Tax Act, 1961 I, B.P. Misra, Commissioner of Income Tax, Jabalpur (M.P.), hereby accord sanction to prosecute and to proceed against the above mentioned persons by filing a complaint for the offence stated hereinabove in the Court of Competent Jurisdiction.”

5. It is thus manifest that in the sanction order itself, it was mentioned that the assessee has preferred an Appeal against the penalty order before the CIT (Appeals), Raipur, which is pending for decision. When the CIT (Appeals) heard the appeal preferred by the assessee on merits, it reached to the conclusion that the petitioner has not concealed his income, therefore, penalty of

Rs.4,26,630/- deserves to be cancelled. Since the act of concealment of income is the main constituent for charge under Section 276-C and 277 of the Act, once the CIT (Appeals) concluded that there was no concealment of income on the part of the assessee, the very foundation of the charge would not survive. It is also to be noted that against the order passed by the CIT (Appeals) deleting the penalty, the Revenue preferred second appeal before the Tribunal, Nagpur. However, the appeal filed by the Revenue was dismissed by order dated 12.6.1997 (Annexure-P/10). The Revenue did not take up the matter further and thus the order passed by the Tribunal affirming the order passed by the CIT (Appeals) has attained finality.

6. In the matter of **K.C. Builders** (Supra), the Supreme Court was faced with similar situation. Considering the petition filed by the assessee, the Supreme Court held in para-26 that once the finding of concealment and subsequent levy of penalties under Section 271 (1)(c) of the Act has been struck down by the Tribunal, the assessing officer has no other alternative except to correct his order under Section 154 of the Act as per the directions of the Tribunal. The subject matter of the complaint before the Supreme Court being concealment of income arrived at on the basis of the finding of the assessing officer, if 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 be proceeded with by the complainant and further proceedings will be illegal and without jurisdiction. The Supreme Court further observed that 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 the Tribunal exhibited as a defence document inasmuch as the passing of the order as aforementioned is unsustainable and unquestionable.

7. Before the above observations in para-26, the Supreme Court would observe in para-23 that the High Court is not justified in dismissing the criminal revision ignoring the settled law as laid down by the Supreme Court that the finding of the Appellate Tribunal was conclusive and the prosecution cannot be sustained since the penalty after having been deleted by the complainant following the Appellate Tribunal's order, no offence survives under the Income Tax Act and thus **“quashing of prosecution is automatic.”** Same expression has again been used by the Supreme Court in para-24 also.
8. In view of the settled legal position as enunciated by the Supreme Court in the matter of **K.C. Builders** (Supra), it will be an empty

formality to direct the petitioners to approach the trial Magistrate, who has otherwise kept the application preferred by the petitioners pending since 15.1.2014.

9. In the circumstances, this Court deems it appropriate to exercise its inherent power for quashing the proceeding of criminal case No.29362/1996 (Income Tax Officer, Rajnandgaon Vs. M/s System India Castings, Bhilai & Others) pending before CJM, Durg and it is accordingly quashed.
10. The instant Petition is accordingly allowed.

Sd/-
Judge
(Prashant Kumar Mishra)

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HEADLINES

Prosecution for commission of offence under Sections 276-C and 277 of the Income Tax Act, 1961 would not survive after the penalty imposed on the assessee is deleted by the Appellate Authority. Prosecution quashed.

CRMP No. 2075 of 2018

M/s System India Castings & Others

Versus

The Principal Commissioner Of Income Tax-2 & Another

Order dated 26.6.2019