

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No. 18649 of 2017
and Crl.MP.Nos. 11357 & 11358 of 2017

1. Good News Channel Pvt Ltd.,
Represented by its Managing Director
Ashwin Dev
 2. Nehru Dhyriam
 3. Ashwin Dev
 4. John Nesan
 5. Christina
 6. Tennyson Paul
- all are having office at
No.43, Ponniamman Koil Street,
Adyar, Chennai - 600 020. Petitioners

Vs.

A.K.Subramanian
Income Tax Officer,
TDS Ward 1(2),
Chennai - 600 034 Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in E.O.C.C.No.134 of 2017 on the file of the learned Additional Chief Metropolitan Magistrate, Economic Offences-I, Egmore, Chennai and quash the same.

For Petitioners : Mr. K.Ravi

For Respondent : Ms.M.Sheela
Special Public Prosecutor
(Income Tax)

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O R D E R

This petition is directed as against the proceedings in E.O.C.C.No.134 of 2017 on the file of the learned Additional Chief Metropolitan Magistrate, Economic offences-I, Egmore, Chennai.

2. The learned counsel appearing for the petitioners submitted that the petitioners are arraigned as A1 to A5. The

complaint has been lodged as against them under Section 276B(a) r/w 278B of the Income Tax Act 1961. He further submitted that the complaint itself not maintainable, untenable, since no prima facie case has been made out as against the petitioners to prosecute them. No offence had been committed as alleged by the prosecution. Further submitted that none of the provision of Income Tax Act is not attracted as against the petitioners. The petitioners have remitted the TDS amount on rents and salaries paid. The details of TDS remittance with the department were also filed with this petition. Therefore, the petitioners are not default in remittance of TDS amount paid, as such need not to launch prosecution after accepting the TDS amount and none of the provisions attracted as against the petitioners to proceed further under the Income Tax Act.

2.1. He further submitted that once assessment completed to the satisfaction of the authority, there was no withholding of the information or suppressing of the income or evasion of tax, and it is not within the jurisdiction of the revenue to initiate criminal action. He further submitted that time limit for concluding the assessment proceedings is two years from the end of the assessment year. Therefore, the respondent could not have been initiated action under Section 276 B(a) r/w 278 B of the Income Tax Act, as there was no willful attempt to evade payment of TDS amount. Further the amount was already paid and the assessment was also completed, as such the evasion of tax does not arise. Therefore, he prayed for quashment of the entire proceedings.

3. Per contra, the learned Special Public Prosecutor (Income Tax) appearing for the respondent filed counter and submitted that the complaint has been filed to prosecute the petitioners in E.O.C.C.No.134 of 2017 for the offence punishable under Section 276 B(a) r/w 278 B of the Income Tax Act, 1961 for the financial year 2009-2010 and the assessment year 2010-2011. The petitioners are assessed to TDS with Income Tax officer, TDS Ward1(2) and maintained an individual TAN No. CHEG0792D, within the jurisdiction of the respondent/complainant. The first petitioner/company represented by its Directors during the financial year 2009-2010 during the assessment year 2010-11, had deducted TDS to the tune of Rs.16,46,579/- under Sections of Chapter XVII B of Income Tax Act 1961, from payments made to various parties. After deducting the said tax, the petitioners ought to have been deposited the same to the credit of the Central Government within the period of stipulated time. But the petitioners failed to remit the tax deducted at source to the credit of the Central Government within the prescribed period of time. Therefore, the respondent/complainant issued show cause notice call upon the petitioners regarding the default in

depositing TDS. On receipt of the same the petitioners issued reply, wherein they stated that they did not have proper accounting challans for the TDS deducted by them. They also admitted the mistake of belated payment of TDS and sought pardon for the same. They also pleaded ignorance of the provisions of law under Section 276B of Income Tax Act. Further they also admitted that the directors fell under the highest bracket of 30% of tax which implies that they had sufficient source of income and hence there was no need to withhold the TDS so deducted.

3.1. Further she submitted that the directors received remuneration in the form of salaries, rent and other benefits but the TDS so deducted was not remitted to the coffers of the government as mandated under the law. In fact, the petitioners filed a compounding application seeking to compound the offences committed by them and thereafter withdrew the same citing financial constraint. Though the petitioners were given sufficient opportunities to explain the delay for non-deposit of TDS amount and since their reply are unsatisfactory and unreasonable. Therefore, the Commissioner of Income Tax accorded sanction after going through the relevant materials and reply of the petitioners to prosecute the petitioners. Therefore, there is absolutely no ground to quash the entire proceedings as submitted by the petitioners. She also relied upon the various judgment of as follows :-

- i. Hon'ble Supreme Court of India - Appeal (Crl.) 1377 of 1999 dated 23.03.2007 - Madumilan Syntex Ltd & ors Vs. Union of India
- ii. 1993 (3) WLC 416 - Universal Supply Corporation and Ors. vs. State of Rajasthan and Anr.
- iii. 2002(2) MhLj 368 - Income Tax Officer (T.D.S.), Nagpur vs. Sultan Enterprises, Chandrapur and Ors.

3.2. The learned Special Public Prosecutor (Income Tax) appearing for the respondent also submitted that there is circular issued by the department vide F.No.285/90/2013-IT (Inv.) dated 07.02.2013, wherein the monetary limit specified for cases to be considered for the prosecution as under :-

"(i) Cases, where amount of tax deducted is Rs.1,00,000 or more and the same is not deposited by the due date prescribed under the Income Tax Act, 1961 read with the Income Tax Rules, 1962, shall mandatorily be processed for prosecution in addition to the the recovery.

(ii) Cases, where the tax deducted is between Rs.25,000 and Rs.1,00,000 and the same is not deposited by the due date prescribed under the Income Tax Act, 1961

read with the Income Tax Rules, 1962 may be processed for prosecution depending upon the facts and circumstances of the case, like where there are instances of repeated defaults and/or tax has not been deposited till detection."

Therefore, she prayed for dismissal of the quash petition.

4. Heard Mr.K.Ravi, learned counsel appearing for the petitioners, Ms.M.Sheela, learned Special Public Prosecutor (Income Tax) appearing for the respondent.

5. The complaint has been initiated by the respondent in E.O.C.C.No.134 of 2017 pending on the file of the learned Chief Metropolitan Magistrate, Economic Offences-I, Egmore, Chennai, for the offence under Section 276 B(a) r/w 278 B of the Income Tax Act, 1961. The crux of the complaint is that the first petitioner company represented by its directors. During the final year 2009-10 relevant to the assessment year 2010-11 had deducted TDS to the tune of Rs.16,46,579/- under various sections of Chapter XVII B of the Income Tax Act 1961, from payment made to various parties. After deducting of the said tax, the petitioners failed to deposit the same to the credit of Central Government within the stipulated period. Therefore, the respondent issued show cause notice to the petitioners. Since the reply of the petitioners is not satisfactory, the respondent after obtaining sanction from the Commissioner of Income Tax initiated proceedings as against the petitioners.

6. It is also seen that the first petitioner company filed compounding application thereafter, it was withdrawn at later stage, due to financial constraints. In fact, the petitioners admitted the belated payment made by them to the respondent as such the respondent initiated proceedings under the Income Tax Act, as the petitioners have breached the provisions of Sections 200 and 204 r/w Rule 30 of the Income Tax Rules. Though the petitioners have paid the taxes in the assessment proceedings, the same does not hold good in law as the assessment proceedings involved the determination of taxes payable and have nothing to do with the remission of TDS deducted. The taxes so deducted are the legitimate dues payable by them to the exchequer irrespective of their profits or losses and have nothing to do with the suppression of income or withholding of information of evasion of tax.

7. In this regard, the Special Public Prosecutor (Income Tax) appearing for the respondent relied upon the judgement of the Hon'ble Supreme Court of India in Appeal (Crl.) 1377 of 1999 dated 23.03.2007 in the case of Madumilan Syntex Ltd & ors Vs. Union of India & Anr, as follows :-

"We are unable to agree with the above

view of the High Court. Once a statute requires to pay tax and stipulates period within which such payment is to be made, the payment must be made within that period. If the payment is not made within that period, there is default and an appropriate action can be taken under the Act. Interpretation canvassed by the learned counsel would make the provision relating to prosecution nugatory.

The learned counsel is right in stating that one of the appellants is a female-member. The counsel is also right in contending that in some of the cases referred to by him, this Court held that normally a lady member may not be aware of day to day business of the Firm or the Company. Without laying down general rule, it would be sufficient if we observe that in the case on hand, she was also treated as 'principal officer' under the Act and hence proceedings cannot be dropped at this stage against her.

As to contention that the case is squarely covered by Section 278AA of the Act and that no offence has been committed in view of 'reasonable cause' shown by the appellants, we may state that the question can be decided on the basis of evidence which would be adduced by the parties before a competent Court. Hence, even that contention, does not detain us.

It is true that the Act Provides for imposition of penalty for nonpayment of tax. That however, does not take away the power to prosecute accused persons if an offence has been committed by them....."

8. The another judgement reported in 1993 (3) WLC 416 in the case of Universal Supply Corporation and Ors. vs. State of Rajasthan and Anr., as follows :-

"32. After the above discussions, the legal position can be summarised as under :

(i) The scope and purport of interest/penalty proceedings and prosecution under the Income-tax Act are separate and independent. The existence or

the absence of the one or the other is no bar to any one of them ;

(ii) simply charging of interest by the Department under Section 201(1A) of the Act, for the delay in the payment of the amount to the Central Government, does not obliterate the prosecution ;

(iii) the non-initiation of penalty proceedings does not lead to a presumption that the default in payment was for good and sufficient reasons or that the assessee was deprived to establish that there were good and sufficient reasons for the default in payment ;

(iv) non-initiation of penalty proceedings in a case cannot be equated with a case where the penalty proceedings were initiated and a finding is recorded by the competent authority that there were good and sufficient reasons for the delay in payment ;

(v) there is no statutory requirement either under Section 279 or under any other provision of the Act to give a show-cause notice to the assessee before criminal proceedings are initiated against him. In other words, a notice or a right of being heard before launching criminal proceedings under the Income-tax Act for the offences mentioned under Chapter XXII is not mandatory and proceedings cannot be quashed on this ground. Though, if such notice is given by the Department, it may check frivolous and unnecessary criminal cases or such cases where the default in payment is technical or committed in good faith. The question of compounding the offence may also be considered by the concerned authority prior to the initiation of criminal proceedings if such notice is given by the assessee desirous to compound the offence."

9. She also relied upon the judgement reported in 2002(2) MhLj 368 in the case of Income Tax Officer (T.D.S.), Nagpur vs. Sultan Enterprises, Chandrapur and Ors., as follows :-

"3. The facts of the case are not much in dispute. The offence in question

related to non-deposit of T.D.S. amount within the prescribed time and, therefore, action was taken against them and dues were recovered by imposing penalty and interest. This also amounts to offence punishable under Section 276B and 278B of the Income Tax Act, 1960. The learned C.J.M. erred in applying the principle of double jeopardy as provided under Section 300 of Criminal Procedure Code for the simple reason that the recovery of the amount due and payable by the respondent-Firm to the Income Tax Department has nothing to do with the criminal prosecution, because it is distinct provision inviting penal action for the default committed by the Firm. They are liable both, for recovery of amount with interest and penalty so also for prosecution for having committed offence punishable under Section 276B of the Income Tax Act, for their failure to pay the amount within the prescribed period and as the respondent - Firm is a Partnership concern all the partners of the firm as contemplated under Section 278-B would be liable to be prosecuted."

10. In the case on hand, the offence in question related to non deposit of TDS amount within the prescribed time. It amounts to the offence punishable under Section 276B(a) r/w 278B of the Income Tax Act 1961. Though the Act provides for imposition of penalty for non payment of tax, it does not take away the power to prosecute accused persons if the offence has been committed by them. Therefore, the above judgments cited by the learned Special Public Prosecutor (Income Tax) are squarely applicable to the case on hand, as such this Court is not inclined to quash the proceedings.

11. Further the circular dated 07.02.2013, vide F.No.285/90/2013-IT(Inv.) issued for the procedure for prosecution in case of TDS default, in which where the tax deducted in between Rs.25,000/- and Rs.1,00,000/- and the same is not deposited by the due date prescribed under the Income Tax may be processed for prosecution depend upon the facts and circumstances of cases like repeated defaults and/or tax has not been deposited till detection. Thus, the petitioners have committed the offence punishable under Section 276B(a) r/w 278B of the Income Tax Act 1961. Therefore the grounds raised by the petitioners cannot be considered and the petition is liable to

be dismissed. Considering the facts and circumstances of the case, the trial Court is directed to complete the trial proceeding within a period of six months from the date of the receipt of a copy of this Order.

12. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

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To

1. The Additional Chief Metropolitan Magistrate,
Economic Offences-I, Egmore, Chennai.
2. Income Tax Officer,
TDS Ward 1(2),
Chennai - 600 034.
3. The Special Public Prosecutor, (Income Tax)
High Court of Madras,
Chennai.

+1cc to Mr.K.Ravi, Advocate SR.No.33248

CRL.O.P.No. 18649 of 2017
and CrI.MP.Nos. 11357
& 11358 of 2017

SSI (CO)
GMY (30/05/2019)

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