BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.03.2020

CORAM:

THE HONOURABLE **DR.JUSTICE G.JAYACHANDRAN**

Crl.O.P.(MD).Nos.13196, 13197 and 13198 of 2016

and

Crl.M.P.(MD).Nos.6169, 6170, 6171, 6172, 6173, 6174, 7329, 7330 and 7331 of 2016

M/S.Vasan Healthcare Private Limited,
Represented by its,
Chairman & Managing Director,
Dr.A.M.Arun,
Son of Murugaiah,
15-A, Main Road Thillai Nagar,
Trichy-620 018. ... Petitioner in Crl.O.P.(MD).No.13196 of 2016

A.M.Arun ... Petitioner in Crl.O.P.(MD).No.13197 of 2016

Meera Arun ... Petitioner in Crl.O.P.(MD).No.13198 of 2016

Vs.

Income Tax Department,
O/o.Deputy Commissioner of Income Tax,
TDS Circle, Madurai 625 002,
Rep. by authorized person,
A.Padmameenakshi, aged 53 years,
Deputy Commissioner of Income Tax ... Respondent in all Crl.O.Ps.

**COMMON PRAYER:** Criminal Original Petitions filed under Section 482 of the Criminal Procedure Code, to call for the records in proceedings in C.C.No.23 of 2016 dated 27.11.2015 relating to Assessment Year 2013-14 on the file of the first respondent in the Court of the Judicial Magistrate No.1, Tiruchirappalli and quash the same.

For Petitioners : Mr.AN.Ramanathan

For Respondent : No appearance
(in all Crl.O.Ps.)

**COMMON O R D E R**

Aggrieved by the penal action initiated by the Income Tax Department against the petitioners for non remittence of TDS in time, the present criminal original petitions are filed under Section 482 of Cr.P.C., to quash the criminal proceedings in C.C.No.23 of 2016 dated 27.11.2015 relating to Assessment Year 2013-14 on the file of the first respondent in the Court of the Judicial Magistrate No.1, Tiruchirappalli.



2.According to the petitioners, earlier when the Income Tax Department took coercive action of freezing of their bank account for non-payment of TDS due, W.P.No.39484 of 2015 was filed and interim order was granted on 11.01.2015. While so, pending disposal of the said writ petition, the Chief Commissioner of Income Tax has accorded sanction to prosecute the petitioners invoking his power under Section 279 of Income Tax Act. The said sanction order dated 04.11.2015 is challenged in this writ petition on the ground that when the representation of the petitioner dated 19.10.2015 was under active consideration of the chief commissioner, he ought to have not granted sanction to prosecute. Pursuant to the said sanction, in haste and without authority, complaint has been filed and pending in C.C.No.23 of 2016 for the assessment year 2013-2014. It has to be quashed, since the sanction to prosecute is violative of principles of natural justice.

3.Admittedly, in this case, the petitioners Company M/s.Vasan Health Care Private Limited has not remitted the TDS in time. It has partially remitted with interest but still remittence of TDS is due. Mere representation to defer action will not and cannot stop the authorities proceeding in accordance to law. The interim relief granted to the petitioners is to operate the bank account with minimum balance of Rs.1.62 Crores by itself an indication that the petitioners have not cleared the entire due. Even otherwise, the interim order of the Court dated 08.01.2016, goes to show that only after the coercive measure of freezing the petitioners account, the Income Tax Department were able to recover about Rs.8 Crores. While so, the petitioners, who have failed to pay TDS in time and what little paid was paid with delay and interest cannot stale the prosecution on frivolous and flimsy ground.

4.In this case, the petitioners though deducted tax at source, not paid the same within the time prescribed. This action of initiating criminal prosecution after obtaining sanction from the appropriate authority cannot be termed as violative of principles of natural justice.

5.It is relevant at this juncture to refer the case of **Madhumilan Syntex Ltd., and another Vs. Union of India and another** reported in **2007 (11) SCC 297**, wherein the Directors of the Company approached the Court seeking quash of the criminal prosecution on the ground that the tax deducted at source was paid with interest and there was reasonable cause of the belated payment, the Honourable Supreme Court after extracting the relevant provisions of the Income Tax Act, has held as follows:

> ''47.The next contention that since TDS had already been deposited to the account of the Central Government, there was no default and no prosecution can be ordered cannot be accepted. Mr.Ranjit Kumar invited our attention to a decision of the High Court of Calcutta in Vinar & Co v. ITO [(1992) 193 ITR 300 (Cal)]. Interpreting the provisions of Section 276-B, a Single Judge of the High Court observed that : (ITR p.315)
>
> > ''[T]here is no provision in the Income Tax Act imposing criminal liability for delay in deduction or for non-payment in time. Under Section 276-B, delay in payment of the income tax is not an offence.''
>
> According to the learned Judge, such a provision is subject to penalty under Section 201(1) of the Act.
>
> 48.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.''

6.Following the dictum laid down by the Hon'ble Supreme Court in **Madhumilan Syntex case** [supra], these Criminal Original Petitions are dismissed. Consequently, connected Miscellaneous Petitions are closed.

7.At this juncture, the learned counsel appearing for the petitioners would submit that the personal appearance of the petitioners 2 and 3 before the trial Court may be dispensed with unless their appearance before the Court is essential and warranted.

8.Taking into consideration of the said request, the petitioners 2 and 3 are given liberty to file a petition under Section 205 Cr.P.C., and if any such application is filed, the learned Magistrate may consider such application and pass appropriate orders.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

vsg

To

The Judicial Magistrate No.1,
Tiruchirappalli.



+3 CC to M/s.AN.RAMANATHAN, Advocate ( SR-11960[F],11961,11962 dated 17/03/2020 )

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