BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 22.12.2020

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THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI**

Crl.OP(MD)No.8950 of 2017

and

Crl.MP(MD)No.6057 of 2017

Mrs.Rooshitha Bejan Singh : Petitioner/Sole Accused

Vs.

Income Tax Department,
O/o.The Principal Commissioner of Income Tax,
Madurai-2.
Represented by,
Mr.S.Santhasoruban,
Assistant Commissioner of Income Tax,
Nagercoil Circle-I,
Nagercoil, Kanyakumari District. : Respondent/Complainant

Prayer: Criminal Original Petition filed under section 482 of the Criminal Procedure Code, to call for the records pertaining to the Private Complaint in CC No.03 of 2017 pending before the learned Chief Judicial Magistrate, Nagercoil, dated 02.02.2017 for the offences under sections 140A(3) r/w 276(2) of Income Tax Act, 1961 and quash the same as illegal and pass such further or other orders.

For Petitioner : Mr.T.Lajapathi Roy

For Respondent : Mrs.S.Srimathy
Senior Standing Counsel
for Income Tax Department

O R D E R

(Thro' VC)

This Criminal Original Petition is filed to quash the Private Complaint in CC No.03 of 2017 pending on the file of the learned Chief Judicial Magistrate, Nagercoil, dated 02.02.2017 for the offence under sections 140A(3) r/w 276(2) of Income Tax Act, 1961.

2.The prosecution case is that the petitioner is an assessee and she has filed her returns as per Income Tax Act and she is liable to pay tax to the tune of Rs.34,54,150/-, but she has paid only Rs.10,00,000/- and she dishonestly evaded to pay income tax.

3.Heard the learned counsel appearing on either side and perused the materials available on record.

4.It is not in dispute that the petitioner is an assessee under Income Tax Act. The issue concerns the final year 2014-2015. It is also not in dispute that the petitioner had filed her income tax return in time admitting her liability. But then the tax was not remitted in time. There was delay. The question that arise for consideration of this court is whether this will amount a wilful evasion attracting the aforesaid penal provisions.

5.The issue is no longer *res intergra.* The learned counsel appearing for the petitioner drew the attention of this court to the decision made by the Hon'ble Karnataka High Court in Crl.P No.4891 of 2014, dated 14.06.2019. The Hon'ble Karnataka High Court in the aforesaid decision held as follows:-

> *"In the instant case, the only circumstance relied on by the respondent in support of the charge levelled against the petitioners is that, even though accused filed the returns, yet, it failed to pay the self-assessment tax along with the returns. This circumstance even if accepted as true, the same does not constitute the offence under Section 276(C) 2 of the Act. The act of filing the returns by itself cannot be constructed as an attempt to evade tax, rather the submission of the returns would suggest that petitioner No.1 had voluntarily declared his intention to pay tax. The act of submitting returns is not connected with the evasion of tax. It is only an act which is closely connected with the intended crime, that can be constructed as an act in attempt of the intended offence. In the backdrop of this legal principle, the Hon'ble Supreme Court in the case of Prem Dass - Vs Income Tax Officer cited supra, has held that a positive act on the part of the accused is required to be established to bring home the charge against the accused for the offence under Section 276 (2) of the Act."*

6.It is admitted on the side of the respondent itself that the petitioner had since cleared the dues and as on date, no tax dues are payable in respect of the aforesaid financial year. Inasmuch as the tax has been subsequently paid, this court is of the view that continuance of the impugned prosecution would not amount to an abuse of legal process.

7.Keeping in view of the facts of this case and also referring to the decision cited supra, this court is of the view that the impugned proceedings is liable to be quashed. Accordingly, this criminal original petition is allowed. The impugned proceedings in connection with a case in C.C No.3 of 2017 on the file of the Chief Judicial Magistrate, Nagercoil, is quashed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

The Principal Commissioner of Income Tax,
Income Tax Department,
Madurai -2.

Copy to:

1.The Assistant Commissioner of Income Tax,
Nagercoil-1, Kanyakumari.

2.The Chief Judicial Magistrate,
Nagercoil.

- 1cc to Mr.T.LAJAPATHI ROY, Advocate, SR No 27170
- +1cc to M/s.S.SRIMATHY, Advocate, SR No 27091

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