IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.08.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.6244 of 2020
and Crl.M.P.Nos. 3481 & 3482 of 2020

1.Inland Builders Private Limited,
Represented by its Managing Director
Damodaran,
No.6 V block & 64, 4th Main Road,
Anna Nagar, Chennai 600 040.

2.Damodaran
Managing Director,
Inland Builders Private Limited
S/o Govindasamy
16/90 AC Block, 2ia street,
Anna Nagar, Chennai 600 040.

3.Shanthi
Managing Director,
Inland Builders Private Limited
W/o Govindasamy Damodaran
16/90 AC Block, 2od street,
Anna Nagar, Chennai 600 040. ... Petitioners

Vs.

The Deputy Commissioner of Income Tax Corporate
Circle 2(2) Room No.512, 5 Floor.
Wanaparthy Block,
121. Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034. ... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for all the records and quash all the proceedings in E.O.C.C.No.497 of 2017 on the file of the learned Additional Chief Metropolitan Magistrate, Egmore, E.O- II.

For Petitioners: Mr.P.Kumaresan

For Respondent : Mr.N.Baaskaran
Special Public Prosecutor(Income Tax)

ORDER

The petitioners, who are accused in E.O.C.C.No.497 of 2017, facing prosecution for the offences under sections 276CC and 276C (2) of the Income Tax Act, has filed this petition.

2. Heard Mr.P.Kumaresan, learned counsel for the petitioners and Mr.Baskaran, learned Special Public Prosecutor (Income Tax).

3. The complaint is that the petitioner company had filed self assessment tax on 29.11.2014 for the financial year 2013-14 relevant to the assessment year 2014-15 which is defective for non payment of self assessment tax under Section 140A of the Income Tax Act, 1961 for Rs.11,81,117/- before furnishing the return of income which constitutes an offence under Section 276 CC and 276 C(2) of Income Tax Act, 1961.

4. The contention of the learned counsel for the petitioners is that the petitioners have paid the entire dues to the Income Tax department along with interest. The payment details are as follows:

Date of Deposit of Challan	Amount (Rs.)	Head
23.12.2016	2,50,000/-	Self Assessment Tax
18.04.2017	4,00,000/-	Self Assessment Tax
19.03.2018	10,87,740/-	Self Assessment Tax

The abovesaid payment details has been admitted and acknowledged by the Deputy Commissioner of the Income Tax, Corporate Circle2(2), Chennai-34, vide his communication dated 11.03.2020 to the Income Tax Officer (Prosecution). Despite receipt of the due amount with interest, though the offence is compoundable and can be withdrawn, the respondent had failed to withdraw the same. Hence, the petitioners are unnecessarily facing prosecution. Further he submitted that in the case of Prem Dass Vs. Income Tax Officer, the Apex Court 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 276C(2) of the Act. In this case, there is nothing to show that the petitioners have evaded the tax and indulged in evasion of tax.

5. The learned Special Public Prosecutor (Income Tax) vehemently objected for entertaining the petition for the reason

that the admitted case of the petitioners is that they had paid the dues to the income tax department with interest after lodging of the case. In this case, the complaint was filed on 05.10.2017 and the final payment has been made only on 19.03.2018.

6. Considering the submissions made and on a perusal of the materials placed, it is not in dispute that the petitioners had paid the entire amount with interest to the Income Tax department, which is confirmed by the Deputy Commissioner of the Income Tax, Corporate Circle2(2), Chennai-34. The offences alleged are only technical offences and there is no material to show that there was any deliberate and conscious evasion of tax on the part of the petitioners. In view of the same, this Court is of the view that the proceedings are liable to be quashed and accordingly, quashed. Resultantly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1.The Deputy Commissioner of Income Tax Corporate
Circle 2(2) Room No.512, 5 Floor,
Wanaparthy Block,
121. Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.

2.The Additional Chief Metropolitan Magistrate,
Egmore, E.O- II.

3.The Public Prosecutor (Income Tax)
High Court, Madras.

+2ccs to Mr.P.Kumaresan, Advocate Sr No.43164

CRL.O.P.No.6244 of 2020
and Crl.M.P.Nos. 3481 & 3482 of 2020

SSI (CO)
PR (22/09/2021)