BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.06.2021

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.O.P(MD)No.22216 of 2016
and
Crl.M.P(MD)No.11500 of 2016

1.M/s.Kajah Enterprises Private Limited,
A Company with Office at
No.48, South Mount Road,
Tirunelvlei Town,
Tirunelveli - 627 006,
represented by
Haji Abdul Azees

2.Haji A.Abdul Rahiman Sahib,

3.Haji Abdul Salam

4.Haji A. Abdul Rasheed

5.Haji A.Abdu Azees

6.Haji A.Abdul Rawuf

7.Haji A. Abdul Rafeeq

8.Haji A. Abdul Hzeeb

9.Haji A.Abdul Shafeeq

10.Haji A.Abdul Zuhin

11.A.Anwar Hussain

12.K.Abdul Gafoor

13.A.Abdul Azim : Petitioners

Vs.

Income Tax Department,
Office of the Commissioner of Income Tax,
Coimbatore,
represented by Deputy Commissioner of Income Tax,
TDS Circle,
Madurai. : Respondents

Prayer: Petition filed under Section 482 of the Criminal Procedure Code, to call for the records and documents in connection with C.C.No.15 of 2016 on the file of the I Additional Chief Judicial Magistrate, Madurai and quash the same.

For Petitioners : Ms.Lakhmi Gopinathan
For Respondent : Ms.S.Srimathy,

ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings pending against the petitioners in C.C.No.15 of 2016 on the file of the I Additional Chief Judicial Magistrate, Madurai.

2.The petitioners have been charged for the offences under Section 276 B read with 278 B of the Income Tax Act, 1961 on the ground that the petitioners paid TDS amount collected from the employees, belatedly after a period of eight months. Aggrieved over the same, the present quash petition has been filed.

3.Mrs.Lakshmi Gopinath, learned Counsel for the petitioners submits during the year 2012-2013 the company was facing financial constraints and therefore, salary was paid to the employees only in the month of September 2012 and only at the time of paying the salary to their employees, they have deducted the TDS amount and remitted the same to the Income Tax Department with interest for the delay and therefore, the delay in remitting the TDS amount with the department is not intentional, but only due to financial constraints faced by the company. But the authorities without considering the same has filed the complaint as against the petitioners. The learned Counsel for the petitioners relied on the provisions of Section 278 AA of the Income Tax Act, 1961, which reads as follows:

> *"Punishment not to be imposed in certain cases: - Notwithstanding anything contained in the provisions of Section 276-A, Section 276-AB [or Section 276-B], no personal shall be punishable for any failure referred to in the said provisions if he proves that there was reasonable cause for such failure."*

4.The learned Counsel also relied on the provisions under Section 279(2) of the Income Tax Act, which enables the authority to compound the offence, even before or after the institution of the proceedings. Since the petitioners are having reasonable cause for failure on their part in remitting the TDS amount in time, prayed for quashing the charge.

5.Mrs.Srimathy, learned Counsel appearing for the respondent Income Tax Department would submit that if the petitioners intend to invoke the provisions under Section 278AA of the Income Tax Act, they shall have to satisfy the authority concerned with relevant materials that there was a reasonable cause for such failure for the belated payment of TDS amount and if any such reasonable cause is established before the authority concerned, who shall consider the same even after the institution of the proceedings under Section 279 (2) of the Act.

6.Heard the learned Counsel on either side and perused the materials placed on record.

7.In this case, the petitioners have taken out a reasonable cause for the failure on their part in paying the TDS amount that due to financial constraints faced by the company, it was only recorded in the registers, as if salary to the employees was paid, but in fact, the salary was paid to the employees only in the month of September 2012 and immediately they have also remitted the TDS amount with interest for the delayed payment to the department. However, it is for the competent authority to take a call on the documents to be produced by the petitioners for substantiating their case that they are having reasonable cause for such failure for payment of the TDS amount and therefore, the matter is remitted to the first respondent to consider the issue afresh, as per the provisions under Sections 278AA and 279 (2) of the Income Tax Act and pass appropriate orders on merits and the petitioners are permitted to produce the documents in their support to the first respondent.

8.In the result, the criminal original petition is disposed of with the above direction. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dsk

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.I Additional Chief Judicial Magistrate,
Madurai.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P(MD)No.22216 of 2016
18.06.2021

DKS(CO)
TR(30.06.2021) 4P 3C