IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRL.O.P.NOS.8616 & 8617 OF 2018 &
CRL.M.P.NOS.4455 TO 4458 OF 2018

1.M/s. Solar Paper Mills Limited,
rep. by its Managing Director -
Mr.Kumaran Kandasamy,
S/o. Mr.Kandasamy,
Managing Director - M/s.Solar Paper Mills Limited,
No.43/1, Besant Avenue Road,
Adayar, Chennai - 600 020.

2.Kumaran Kandasamy

3.Anitha Kumaran ...Petitioners in both the Crl.O.P.'s

Vs

The State rep. by
The Deputy Commissioner of Income Tax,
Circle 6 (2),
No.121, Mahatma Gandhi Road,
Chennai - 600 034. ...Respondent in both the Crl.O.P.'s

COMMON PRAYER : Criminal Original Petitions filed under Section 482 of Cr.P.C. to call for the records in E.O.C.C.Nos.613 & 614 of 2017 pending on the file of the Additional Chief Metropolitan Magistrate Court - E.O.- II, Egmore, Chennai and quash the same.

(For both the Crl.O.P.'s)

For Petitioners : Mr.Abudukumar Rajarathinam
for Mr.V.S.Senthil Kumar

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

O R D E R

These petitions have been filed to quash the charge sheets in E.O.C.C.Nos.613 & 614 of 2017 pending on the file of the

Additional Chief Metropolitan Magistrate Court – E.O. - II, Egmore, Chennai filed against the petitioners for the offence punishable under Section 276C(1) of the Income Tax Act, 1961.

2. The brief facts of the case leading to filing of the Crl.O.P.No.8616 of 2018 is that the accused company has filed a return of income on 07.12.2006. Thereafter, an assessment Order was passed under Section 143(3) dated 16.03.2015 wherein additional income under long term capital gain and income from other sources of Rs.1,13,78,028/- was computed as income and thereafter, penalty proceedings were concluded on 29.06.2009 levying the penalty of Rs.59,36,635/- and the appeal filed before the Commissioner and the I.T.A.T., Chennai is also dismissed. Hence, it is the contention of the complainant that accused have willfully attempted to conceal the income to avoid tax. Hence, the prosecution has been initiated under Section 271C(1) of the Income Tax Act.

3. The subject matter of the Crl.O.P.No.8617 of 2018 is that the complainant has filed similarly complaint for non payment of the penalty. It is the contention of the respondent that the accused has failed to pay the penalty amount within the time limit under Section 156 of the Income Tax Act. Thereby, he is liable to be prosecuted under Section 276C(ii).

4. The learned Counsel appearing for the petitioner would submit that the Income Tax Returns for the Assessment Year 2006-07 has been filed declaring the Income and also sale of the agricultural property. Taking note of the circular in circular No.310[F No.164/15/18-IT[A1] dated 29.07.1981, which states that all the lands falling in the municipality of Chengalpet up to a distance of 5 kms from all sides are agricultural lands, the Income Tax Returns have been filed setting out correct income. Therefore, exemption has been claimed on the basis of the circular. It is to be seen that whether there is any willful attempt to evade tax. It is further submitted that the assessing officer mainly has come to the conclusion based on the report obtained from the Town Planning Authority. The Assessment proceedings has been passed under Section 143(3) of the Income Tax Act and a sum of Rs.39,05,711/- has been demanded as tax payable.

5. It is the further contention of the learned counsel for the the petitioner that above tax has been paid on 20.01.2009. Thereafter, a Show Cause Notice was issued for the penalty proceedings and penalty of Rs.29,36,623/- has also been paid much prior to the private complaint. It is also submitted that there was no willful attempt in any manner whatsoever to evade the tax or payment of tax. He has filed the Income Tax Returns bonafidely claiming exemption taking note of the circular issued

in this regard. Therefore, submitted that as the entire penalty has been paid whereas the complaint shows as if the amount remains unpaid. The same itself indicate non application of mind. At any event, there is no willful attempt in any manner to evade tax or penalty. Hence, the prosecution against the petitioners is nothing but abuse of process of law. He has also submitted that as against the co-accused, this Court in Crl.O.P.Nos.8930 & 8931 of 2018 by an order dated 11.08.2021 has quashed the prosecution.

6. The learned Counsel for the respondent submits that the accused has failed to pay the penalty amount within the time under section 156 of the Income Tax Act. Thereby, he is liable to be prosecuted. In the Income Tax Returns, the property has been shown as an agricultural property. Whereas in the proceedings under Section 143, it is found that the land which was sold is not an agricultural property. Therefore, it is a clear case of concealment. Therefore, merely because tax has been paid subsequently, the same will not absolve the petitioner from prosecution. It is his further contention that whether the petitioner is entitled to claim the benefit under the circular or not is to be decided only before the appeal proceedings and not in this petition. Hence, submitted that as the accused paid the tax that itself amounts as concealment of the income. Hence, opposed to quash the proceedings.

7. I have perused the materials particularly complaint.

8. In the entire complaint, except contending that the accused willfully attempted to conceal the income so as to evade the tax following the demand and the amount remained unpaid, no other particulars, whatsoever have been stated in the complaint indicating the manner in which petitioner made willful attempt to evade the tax or payment of tax or penalty. From the complaint and the submissions of both sides, it is seen that the main grievance of the Department is that while filing the returns, the petitioners have shown the property as an agricultural property. However, the same is not an agricultural property. Therefore, there is a concealment and an attempt to evade the tax.

9. The main contention of the learned Counsel for the petitioner is that Income Tax Returns for the Assessment Year 2006-07 has been filed showing the correct particulars of the income derived from the sale of the property and it is also stated that such return was filed taking note of the circular in circular No.310[F No.164/15/18-IT[A1], in Chengalpet District areas up to the distance of five kilometres from all the directions in Chengalpet has to be treated as agricultural land. Therefore, merely because exemption has been claimed only based

on the circular and returns have been filed setting out the correct income. It has to be seen whether there is a willful attempt in any manner whatsoever to evade any tax. In the proceedings under Section 143, the assessing officer mainly came to the conclusion based on the report obtained from the Town Planning Authority, and the relevant portion of the report reads as follows:

> "The Engineer verified the survey numbers in the town planning master Book, and said that the lands come under urbanisation lands and all activities can be made in these lands except pollution related activities. There is no need of conversion certificate from agricultural land to non-agricultural land, for these zones."

The above report itself makes it clear that to conclude that the property is not an agricultural property, the reason assigned was that the Assessee has not produced the lease deed. Except that there is no other material to conclude that the property is not an agricultural property. Even the report from the Town Planning Authority itself shows that there is no need of conversion certificate from the agricultural land to non-agricultural land. Above report itself clearly shows that the property has been originally classified as an agricultural land. Though this finding is not a germane for consideration and this Court cannot sit as an appellate authority over the assessing authorities order. Such findings are also relevant to decide whether the petitioners have made any willful attempt whatsoever to evade the tax or to payment of any tax or penalty. Section 276C reads as follows:

"Wilful attempt to evade tax, etc.

> 276C – (1) If a person wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable -
>
> (i) in a case where the amount sought to be evaded exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;
>
> (ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.

(2) If a person wilfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and shall, in the discretion of the court, also be liable to fine. Explanation – For the purposes of this section, a willful attempt to evade any tax, penalty or interest chargeable or imposable under this Act or the payment threof shall include a case where any person -

(i) has in his possession or control any books of account or other documents (being books of account or other documents relevant to any proceeding under this Act) containing a false entry or statement; or

(ii) makes or causes to be made any false entry or statement in such books of account or other documents; or

(iii) wilfully omits or causes to be omitted any relevant entry or statement in such books of account or other documents; or

(iv) causes any other circumstance to exist which will have the effect of enabling such person to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof."

10. The above explanation further makes it clear that if any of the circumstances narrated in the explanation is unearthed or made by the accused then such conduct certainly will fall within the ambit of willful attempt to evade any tax or penalty. The fact remains that in the returns filed by the accused, there was no suppression of facts. He has set out the value of the property sold and claimed only exemption based on the circular which also indicate that the land areas up to the distance of five kilometres in all directions from the municipality of Chengalpet are agricultural properties. Based on the above circular, the return has been filed. Therefore, in any event, claiming exemption based on the circular orders issued from time to time by the Central Government by way of notification, such act cannot be construed to mean an willful attempt in any manner whatsoever to evade income tax or payment of tax or penalty.

11. It is not disputed that the petitioners also challenged the initiation of the penalty before the commissioner and the appellate tribunal which went against them. It is also relevant

to note that the tax determined by the assessing authorities for a sum of Rs.39,05,711/- has been paid by the petitioners on 20.01.2009 itself. In the mean while, the penalty proceedings has been initiated by the Department and a sum of Rs.29,36,675/- has been imposed on the petitioner. After the dismissal of the appeal, the Show Cause Notice was issued by the Department on 22.06.2017 for demanding the penalty imposed on them. Pursuant to the Show Cause Notice, the penalty imposed is also paid by the assessee. It is to be noted that such payments are made before filing of prosecution before the Courts. As far as the tax is concerned, the same was paid on 20.01.2009 itself and penalty also paid subsequent to the Show Cause Notice issued. Whereas, the complaint proceed as if the tax and penalty remains unpaid. Same indicate that there was no willful attempt whatsoever in any manner to evade the tax or payment of tax. The respondent has mechanically filed the complaint, without even ascertaining whether the amount of tax has been paid or not. But as per the admitted facts as narrated above, tax as well as penalty has been paid much prior to the initiation of the prosecution. Be that as it may.

12. As indicated above to prosecute a person for the offence under Section 276C(1), there must be willful attempt in any manner by the accused for the evasion of the tax or payment of tax. Therefore merely because of the exemption claimed based on the Board circular, sale of property shown as agricultural property pursuant to such circular, this Court is of the view that mere claiming of such exemption based on the notification of the Central Government merely because the assessment order was passed later not agreeing that, it cannot be said that there is a willful attempt. If the entire amount or income has not been shown or anything has been unearthed later either by inspection or search or enquiry, then it can be said that there was an attempt to conceal or evade the tax. But here, in the present case, correct particulars have been set out what was sought is only exemption as per the notification.

13. Therefore, this Court is of the view that the prosecution has not applied their mind and offence under Section 276C and also Section 276C(2) is made out. Hence, prosecution against the petitioners is nothing but futile exercise. It is also relevant to note that as against the other co-accused, this Court has quashed the proceedings as early as on 11.08.2021. Till date, the said order has not been challenged. Therefore, the same is also binding on the revenue. At any event, the prosecution is not maintainable as against the petitioners.

14. Accordingly, these Criminal Original Petitions are allowed and the charge sheets in E.O.C.C.Nos.613 & 614 of 2017 pending on the file of the Additional Chief Metropolitan

Magistrate Court - E.O. - II, Egmore, Chennai filed against the petitioners for the offence punishable under Section 276C(1) of the Income Tax Act, 1961 are quashed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VIII)

// True Copy //

Sub Assistant Registrar

vrc / kbs

To

1.The Additional Chief Metropolitan
Magistrate Court - E.O.- II,
Egmore, Chennai.

2.The Deputy Commissioner of Income Tax,
Circle 6 (2),
No.121, Mahatma Gandhi Road,
Chennai - 600 034.

+1cc to the Special Public Prosecutor for Income Tax, Sr.No.7753

Crl.O.P.Nos.8616 & 8617 of 2018 &
Crl.M.P.Nos.4455 to 4458 of 2018

NR(CO)
RVM(18/03/2022)