IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED ON 28.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl.O.P.No.11998 of 2018
and
Crl.M.P.No.6336 of 2018

M/s World Bridge Logistics Private Ltd.,
Rep. By its Director , J.Hilda Mary ...Petitioner

Vs

The Deputy Commissioner of Income Tax
Corporate Circle – 3 (2)
Room No. 414, 4th Floor
Wanaparthy Block, Aaykar Bhavan
No.121, M.G.Road, Nungambakkam
Chennai 600 034 ...Respondent

PRAYER: Petition filed under Section 482 of Cr.P.C.to call the entire records in E.O.C.C.No.422 of 2017 pending on the file of the Additional Chief Metropolitan Magistrate, (E.O.II), Egmore, at Allikulam Road, Chennai and quash all further proceedings against the accused.

For petitioner : M/s .P .Ramesh Kumar

For Respondent : Mr. P. Murali Krishnan
Special Public Prosecutor

O R D E R

This Petition has been filed to quash the prosecution initiated for the offence under Section 276CC of the Income Tax Act.

2.The allegation in the complaint shows that the petitioner is assessee, he has not filed Return of Income for the Assessment Year 2014-15. The same ought to have been filed on or before 31.7.2014. Individual Transaction Statement with the department reveals that the accused earned substantial income of Rs.2,32,94,353/- for which TDS has been deducted under Section 194C and 194H of the Incme Tax Act during the Financial year 2013-14. But return of income as mandated under Section 139 of the Income Tax Act, 1964 was not filed by the accused. Hence a show casue dated 26.7.2017 was issued which was not replied.

Hence, prosecution has been launched for non-filing of Return under Section 276CC of the Income Tax Act.

3. The learned counsel appearing for the Petitioner though raised several grounds, he focused mainly on the ground that without any assessment order the prosecution cannot be launched under Section 276CC of IT Act. Much reliance have been placed on the proviso to 276 CC of the Act. Therefore, his contention is that unless Assessment Order is passed under Section 143 and 148 of the Act, the prosecution is not maintainable. It is his further contention that unless the amount of tax payable exceeds Rs.3,000/- at the relevant point of time, the prosecution is not maintainable.

4. Whereas the learned counsel for the Respondent submitted that a person who willfully failed to file return of income which is required to furnish under sub-section (1) of the 139 of the Act or by a notice given under clause (i) sub-section (1) of 142 or Section 148 or section 133(A), the prosecution is very much maintainable.

5. Heard both sides.

6. Section 276CC of the Income Tax Act reads as follows:

> "276CC. Failure to furnish returns of income If a person wilfully fails to furnish in due time the return of income which he is required to furnish under sub- section (1) of section 139 or by notice given under [1]clause (i) of subsection (1) of section 142 or section 148, he shall be punishable,-
>
> (i) in a case where the amount of tax, which would have been evaded if the failure had not been discovered, 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 imprisonment for a term which shall not be less than three months but which may extend to three years and with fine: Provided that a person shall not be proceeded against under this section for failure to furnish in due time the return of income under subsection (1) of section 139-
>
> (i) for any assessment year commencing prior to the 1st day of April, 1975 ; or
>
> (ii) for any assessment year commencing on, or after the 1st day of April, 1975 , if-
>
> (a) the return is furnished by him before the expiry of the assessment year; or

(b)the tax payable by him on the total income determined on regular assessment, as reduced by the advance tax, if any, paid, and any tax deducted at source, does not exceed three thousand rupees.”

7.On a careful reading of the above section makes it very clear that if the assessee failed to file Return as required under Section 139 of the Income Tax Act, he can be prosecuted or in response to the notice issued to the assessee under Section 142 or 148 of the Act is also can be prosecuted. The first part deals with wilful failure to furnish the Return in due time as required under Section 139 of the Act. The second part of the Section 276CC deals with the failure to file a Return in response to the notice issued under section 142 or Section 148 of the Act. In both scenarios the prosecution is certainly maintainable. The proviso however, makes it very clear that if the tax payable does not exceed Rs.25000/- at present, or Rs.3,000/- at the relevant point of time of statute give a protection to the assessee from prosecution. Whereas proviso (1) protects the genuine assessee if the amount of tax does not exceed Rs.25000/- or Rs.3000/- in this case. But proviso (2) provide for punishment for any other case which shall not be less than three months but extend to three years. Therefore, the only criteria to initiation of prosecution is that there must be a wilful failure to furnish Return as required under Section 139(1) or failure to file Return after notices issued under Section 142 or 148 of the Act. The first part deals wilful failure to furnish a Return in due time as required under Section 139(1) of the Act. Section 139 of the Act shall make it very clear that the Return shall be filed before the due date. Section 138 mandates filing of Return on or before the due date. Part 2 of Section 276CC of the Act deals with the filing of Return after issuance of notice under section 142 or 148 of the Act. Therefore, when the prosecution alleged that there is a wilful failure to file a return as required under Section 139 of the Act, the proviso will not helpful to the petitioner to contend that without assessment order being made he cannot be prosecuted.

8.In Sasi Enterprises vs. Assistant Commissioner of Income Tax [(2014) 5 SCC 139] the Honourable Apex Court has held as follows:

“25. Section 276CC applies to situations where an assessee has failed to file a return of income as required under Section 139 of the Act or in response to notices issued to the assessee under Section 142 or Section 148 of the Act. The proviso to Section 276CC gives some relief to genuine assesses. The proviso to Section 276CC gives further time till the end of the assessment year to furnish return to avoid prosecution. In other words, even though the due date would be 31st August of the assessment year as per Section 139(1) of the Act, an assessee gets further seven months' time to complete and file the return and such a return though belated, may not attract prosecution of the assessee. Similarly, the proviso in clause ii(b) to Section 276CC also provides that if the tax payable determined by regular assessment has reduced by advance tax paid and tax deducted at source does not exceed Rs.3,000/-, such an assessee shall not be prosecuted for not furnishing the return under Section 139(1) of the Act. Resultantly, the proviso under Section 276CC takes care of genuine assesses who either file the returns belatedly but within the end of the assessment year or those who have paid substantial amounts of their tax dues by pre-paid taxes, from the rigor of the prosecution under Section 276CC of the Act.

26. Section 276CC, it may be noted, takes in sub-section (1) of Section 139, Section 142(1)(i) and Section 148. But, the proviso to Section 276CC takes in only sub-section (1) of Section 139 of the Act and the provisions of Section 142(1)(i) or 148 are conspicuously absent. Consequently, the benefit of proviso is available only to voluntary filing of return as required under Section 139(1) of the Act. In other words, the proviso would not apply after detection of the failure to file the return and after a notice under Section 142(1)(i) or 148 of the Act is issued calling for filing of the return of income. Proviso, therefore, envisages the filing of even belated return before the detection or discovery of the failure and issuance of notices under Section 142 or 148 of the Act."

9.Similarly, in para 28, the Apex court further held that Proviso cannot control the main section, it only confers some benefit to certain categories of assesses. In short, the offence under Section 276CC is attracted on failure to comply with the provisions of Section 139(1) or failure to respond to the notice issued under Section 142 or Section 148 of the Act within the time limit specified therein.

10.Considering the above provision of law, the very allegation in the complaint itself indicate that the assessee has not filed their Return of Income for the Assessment Year 2014-15.The statement also indicates that the assessee has earned substantial income of Rs.2,36,94,353/- for which TDS has been deducted under Section 194C and 194H of the Income Tax Act during the financial year 2013-14. Show cause notice also issued on 26.07.2017. Despite the above Return has not been filed. Therefore, it is alleged that there is a wilful failure to file a Return.

11.Considering the penal provision which makes it punishable under Sections 276-CC for non filing of Return and wilfully concealed its true and correct income. This Court is of the view that the contention of the leanred counsel for the petitioner cannot be countenanced. Accordingly, the Petition is liable to be dismissed.

12.In the result, the Criminal Original Petition is dismissed. The trial can proceed with the trial and decide the matter without being influenced by any observation made by this Court while disposing the case. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ggs

To

The Additional Chief Metropolitan Magistrate(E.O.II)
Egmore, Allikulam Road,
Chennai.

Copy To

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.L.Muralikrishnan, Advocate, S.R.No.5569

Crl.O.P.No.11998 of 2018
and Crl.M.P.No.6336 of 2018

MT(CO)
RGA(07/03/2022)