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Crl.O.P.No.26013 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.11.2023

Pronounced on : 17.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CRL.O.P.No.26013 of 2021 and
Crl.M.P.Nos.14387 & 14390 of 2021

Manav Menon

... Petitioner

Vs.

The Deputy Commissioner of Income Tax,
Non-Corporate Circle – 20(1),
121, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034

... Respondent

PRAYER:

Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the entire records in EOCC.No.168 of 2016 on the file of the learned Additional Chief Metropolitan Magistrate, (E.O-II) Egmore, Chennai and to quash all further proceeding against the accused.

For Petitioner

: Mr.P.Ramesh Kumar

For Respondent

: Mr.L.Murali Krishnan,
Special Public Prosecutor
for Income Tax



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ORDER

This criminal original petition has been filed to quash the proceedings in EOCC.No.168 of 2016 on the file of the learned Additional Chief Metropolitan Magistrate, (E.O-II) Egmore, Chennai taken cognizance for the offence punishable under Section 276CC of the Income Tax Act, 1961.

2. The respondent filed complaint for the offence punishable under Section 276CC of the Income Tax Act for non filing of income tax return for the assessment year 2013-2014. The crux of the complaint is that the accused is an assessee within the jurisdiction of the respondent. During the course of proceedings for assessment, the respondent detected that the petitioner failed to file his return of income for the assessment year 2013-2014. As per Section 139(1) of Income Tax Act, the petitioner ought to have filed return of income on or before 30.09.2013. It was also noticed that during the said period, the petitioner had earned income as detailed under:

- (i) TDS Return payment to Contractor (Sec- 194C) value of Rs.1,19,10,160/-
- (ii) Paid Credit Card bills Rs- 3,94,665/-
- (iii) Remittance to a non-resident or to a foreign company



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(Form 15CA) Rs.11,00,631/-

(iv) TDS Return-salary to Employees Rs.55,65,445/-(192 A)

(v) TDS Return-professional or Tech Fees (Sec- 194J) value Rs.52,809/-

(vi) TDS Return - Rent Sec-1941 value: Rs.3,12,360/- and

(vii) TDS Return - Salary to employees (Sec- 192B) value: Rs.22,00,000/- during the financial year 2012-2013, but had not filed the Return of Income for the Asst Year 2013-2014

2.1 Therefore, the petitioner was issued show cause notice dated 27.04.2016 to show cause why the proceedings under Section 276CC of Income Tax Act should not be initiated for his wilful failure to file the return of income. On receipt of the same, the petitioner did not send any reply. Therefore, the petitioner is liable to be prosecuted for the offence under Section 276CC of the Income Tax Act. Hence, the complaint.

3. The learned counsel for the petitioner would submit that as per proviso of Section 276 sub-clause (CC) of the Income Tax Act, no person shall be proceeded against, if the tax payable on the total income determined less the tax deducted at source does not exceed Rs.3,000/-.The petitioner though has filed return of income belatedly, after receipt of show cause notice, the tax



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payable by him does not exceed a sum of Rs.3,000/-, but on the other hand, there is a refund of Rs.460/- claimed by the petitioner. The respondent initiated prosecution even before completion of assessment and it is premature. The income of the petitioner has not exceeded the amount as required under the Act which could be assessed to tax and as such, the prosecution initiated by the respondent is not maintainable.

4. The learned Special Public Prosecutor for Income Tax, appearing for the respondent, submitted that admittedly the petitioner failed to file his income of returns for the assessment year 2013-2014. Even after issuance of notice under Section 276 CC of Income Tax Act, the petitioner did not come forward to file his return of income. Therefore, the respondent rightly initiated prosecution as against the petitioner under Section 276CC of the Income Tax Act. Therefore, the petitioner cannot claim any benefit under proviso to sub-clause ii(b) of Section 276CC of the Income Tax Act. In support of his contention, he relied upon the judgment of the Hon'ble Supreme Court of India in the case of *Sasi Enterprises Vs. Assistant Commissioner of Income Tax* reported in **(2014) 5 SCC 139**, wherein it is held as follows:

22. *The constitutional validity of Section 276CC, was upheld by the Karnataka High Court in Sonarome Chemicals*



Pvt. Ltd. and others v. Union of India and others (2000) 242

ITR 39 (Kar) holding that it does not violate Article 14 of 21 of the Constitution. Section punishes the person who “willfully fails to furnish the return of income in time”. The explanation willful default, as observed by Wilber Force J. in Wellington v. Reynold (1962) 40 TC 209 is “some deliberate or intentional failure to do what the tax payer ought to have done, knowing that to omit to do so was wrong”. The assessee is bound to file the return under Section 139(1) of the Act on or before the due date. The outer limit is fixed for filing of return as 31st August of the assessment year, over and above, in the present case, not only return was not filed within the due date prescribed under Section 139(1) of the Act, but also the time prescribed under Section 142 and 148 of the Act and the further opportunity given to file the return in the prescribed time was also not availed of.

23. *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*



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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.

24. [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.



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25. We may in this respect also refer to sub-section (4) to [Section 139](#) wherein the legislature has used an expression “whichever is earlier”. Both [Section 139\(1\)](#) and Sub-Section (1) of [Section 142](#) are referred to in sub-section (4) to [Section 139](#), which specify time limit. Therefore, the expression “whichever is earlier” has to be read with the time if allowed under sub-section (1) to [Section 139](#) or within the time allowed under notice issued under sub-section (1) of [Section 142](#), whichever is earlier. So far as the present case is concerned, it is already noticed that the assessee had not filed the return either within the time allowed under sub-section (1) to [Section 139](#) or within the time allowed under notices issued under sub-section (1) to [Section 142](#).

26. We have indicated that on failure to file the returns by the appellants, income tax department made a best judgment assessment under [Section 144](#) of the Act and later show cause notices were issued for initiating prosecution under [Section 276CC](#) of the Act. Proviso to [Section 276CC](#) nowhere states that the offence under [Section 276CC](#) has not been committed by the categories of assesses who fall within the scope of that proviso, but it is stated that such a person shall not be proceeded against. In other words, it only provides that under specific circumstances subject to the proviso, prosecution may not be initiated. An assessee who comes within clause 2(b) to the proviso, no doubt has also committed the offence under [Section 276CC](#), but is exempted



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from prosecution since the tax falls below Rs.3,000/-. Such an assessee may file belated return before the detection and avail the benefit of the proviso. 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.

Therefore, filing of income tax is mandatory in nature under Section 139(1) of the Income Tax Act and non filing of income tax is punishable under Section 276CC of the Income Tax Act. As such, as per Section 278E, presumption as to culpable mental state in any prosecution for any offence under the Act which requires a culpable mental state on the part of the accused, the court shall presume existence of such mental state and it shall be a defence for the accused to prove the fact that he had no mental state with respect to the act charged as an offence in that prosecution. Therefore, if at all any defence available to the petitioner, he can be disprove the case of the prosecution only before the trial court during the trial.

5. Heard, Mr.P.Ramesh Kumar, the learned counsel appearing for the



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petitioner and Mr.L.Murali Krishnan, the learned Special Public Prosecutor for

Income Tax appearing for the respondent.

6. On perusal of the records, revealed that admittedly the petitioner failed to file his return of income for the assessment year 2013-2014. Therefore, the respondent issued show cause notice under Section 276CC of the Income Tax Act to show cause why the proceedings under Section 276CC of the Income Tax should not be initiated against the petitioner for his wilful failure to furnish the return of income within the stipulated time as mandated under Section 139(1) of the Income Tax Act. On receipt of the same, the petitioner filed his income of return on 14.01.2019. Accordingly, the petitioner had paid Advance Tax, TDS, TCS, Self Assessment Tax, in total a sum of Rs.23,75,066/- He also claimed refund of Rs.460/-. Therefore, the petitioner paid tax to the tune of Rs.23,75,066/- for the assessment year 2013-2014. It is relevant to extract provision under Section 276CC of Income Tax Act hereunder:

"276 CC - Failure to furnish returns of income - If a person willfully fails to furnish in due time (the return of fringe benefits which she is required to furnish under Sub-Section (1) of section 115WD or by notice given under sub-Section (2) of the said section or Section 115 WH or] the return of income which he is required to furnish under sub-section (1) of section



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139 or by notice given under [clause (i) of sub-section (1) of section 142] or section 148 [or section 153A], 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 [twenty-five] 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 [two] 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. The above applies to situations where an assessee has failed to file



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a return of income as required under Section 139(1) of the Income Tax Act.

The proviso to Section 276CC gives some relief to genuine assesseees. The proviso in clause (ii) of b to Section 276CC 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 Income Tax Act. Therefore, this proviso takes care of genuine assesseees 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 prepaid taxes from the rigor of the prosecution under Section 276CC of the Income Tax Act. Admittedly, the petitioner had paid taxes under the Heads of Advance Tax, TDS, TCS, Self Assessment Tax to the tune of Rs.23,75,066/-. According to his returns, the total tax and interest payable by him is Rs.23,74,610/-. Therefore, he claimed refund of Rs.460/- and the proviso (ii) b of Section 276CC comes for rescue of the petitioner from the rigor of the prosecution under Section 276CC of the Income Tax Act.

8. Therefore, the initiation of prosecution for the offence punishable under Section 276CC of the Income Tax Act cannot be sustained as against the



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petitioner and it is liable to be quashed. Accordingly, the entire proceedings in

EOCC.No.168 of 2016 on the file of the learned Additional Chief Metropolitan

Magistrate, (E.O-II) Egmore, Chennai is quashed and this criminal original

petition is allowed. Consequently, connected miscellaneous petitions are

closed.

17.11.2023

Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order

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To

- 1.The learned Additional Chief Metropolitan Magistrate,
(E.O-II) Egmore,
Chennai
- 2.The Deputy Commissioner of Income Tax,
Non-Corporate Circle – 20(1),
121, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034
- 3.The Public Prosecutor,
High Court of Madras



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G.K.ILANTHIRAIYAN, J.

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