IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

202-A

CRM-M-7918-2015 (O&M)
Reserved On:- 05.09.2023
Pronounced on:- 14.09.2023

M/s HEALTH BIO TECH LTD. AND OTHERS

…. Petitioners

Versus

DEPUTY COMMISSIONER OF INCOME TAX CENTRAL CIRCLE 4(1) CHANDIGARH

… Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Akshay Bhan, Senior Advocate with
Mr. Shantanu Bansal, Advocate and
Mr. Yugank Goyal, Advocate, for the petitioners.

Ms. Pridhi Jaswinder Sandhu, Junior Standing Counsel
for the respondent.

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HARNARESH SINGH GILL, J.

Prayer in this petition is for quashing the complaint bearing No.8983 dated 04.12.2014 (Annexure P-1), under Section 276(C)(2) read with Section 278B of the Income Tax Act, 1961 (for short `the Act'), along with all the consequential proceedings arising therefrom, including the summoning order dated 22.12.2014 (Annexure P-2) passed by the learned Chief Judicial Magistrate, Chandigarh.

2. Petitioner No.1 is a registered firm, of which petitioners No.2 to 4 are the Directors. The dispute is with regard to non-payment of the tax, in time, which was self-assessed by petitioner No.1, while filing the Income Tax Return for the Assessment Year 2011-12.

3. On 29.09.2011, petitioner No.1 had filed Income Tax Returns for the Assessment Year 2011-12, thereby declaring a Gross Total Income of Rs.6,72,05,864/- and the amount of aggregate tax was shown as Rs.1,36,20,887/-. Thereafter, the said return was revised on 22.10.2012 and the amount of aggregate tax was shown as Rs.1,50,81,728/-. However, the said tax amount was not paid in time. Thereafter, for non-payment of the tax amount, a notice dated 21.10.2014 (Annexure P-4) was issued to the petitioners, calling upon them to show cause as to why prosecution under Section 276(C)(2) of the Income Tax Act be not initiated against them. The said notice was replied to by the petitioners on 07.11.2014 (Annexure P-5), whereby they took a specific a stand for non-payment of the tax amount in time.

4. Dissatisfied with the reply filed by the petitioners, sanction to prosecute the petitioners under Section 276(C)(2) along with other relevant Sections of the Act, was granted by the Competent Authority on 18.11.2014 (Annexure P-3). Accordingly, the complaint in question was filed on 04.12.2014 (Annexure P-1), wherein the summoning order was passed on 22.12.2014 (Annexure P-2).

5. Learned Senior counsel for the petitioners vehemently argues that the petitioners are being prosecuted for making an attempt to evade the tax, which was self-assessed by them, while filing the Income Tax Returns for the Assessment Year 2011-12, whereas there was no evasion at all on their part; that the tax amount was acknowledged/shown and admitted in the Income Tax Returns itself, though there was a delay in making the said tax payment; that against the said delayed payment of the tax amount, a penalty was levied by the respondent-Department

concerned. He further submits that the entire dues i.e. the tax amount and the interest thereof has already been cleared. He, thus, argues that once the respondent-Department has opted for levy the penalty, then the filing of the criminal complaint is nothing, but an abuse of the process of law, as for the same cause of action, two recourses cannot resorted to by the respondent-Department.

6. Learned Senior counsel for the petitioners further submits that prosecution under Section 276(C)(2) read with other Sections of the Act, can only be launched, if there is a willful evasion/attempt of either the tax, the penalty or the interest amount, apparent on the face of the record, whereas in the present case, neither of the said circumstance exists.

7. While relying upon the judgment delivered by the Karnataka High Court in Confident Projects (India) (P.) Ltd. Vs Income Tax Department, Circle 2(1)(1), Bengaluru, (2021) 124 Taxmann.com 36 (Karnataka), learned Senior counsel for the petitioners argues that the delayed payment of the tax amount would not amount to evasion of the tax and moreso, when the tax has already been acknowledged/shown and admitted at the time of filing of the Income Tax Returns.

8. Learned Senior counsel for the petitioners further submits that against the aforesaid judgment of the Karnataka High Court, the respondent therein filed Special Leave to Appeal No.8316 of 2021, which was dismissed by the Hon'ble Apex Court vide order dated 13.12.2021.

9. Still further, reliance has been placed upon the judgment dated 28.01.2022 pronounced by the Hon'ble Madras High Court in Crl. OP No.17906 of 2017 and Crl. MP No.10920 and 10921-2017 titled as SP

Velayutham Vs. The Assistant Commissioner of Income Tax, Non-Corprorate Circle, 14(1), Chennai.

10. On the other hand, learned counsel for the respondent-Department has argued that the petitioners were well within the position and capacity to pay the income tax, yet they chose not to pay the same, causing loss to the Department and thus, they have rightly been prosecuted under Section 276(C)(2) read with Section 278B of the Act and that too after obtaining the necessary sanction from the competent authority. In support of her contentions, learned counsel for the respondent-Department relies upon the judgments delivered by the Hon'ble Supreme Court in P. Jayappan vs S.K Perumal, First Income-Tax Officer, Tuticorin, 1985 (1) SCC 536 and Sri T. Ashok Pai vs Commissioner of Income Tax Bangalore, 2007 (7) SCC 162 and the Delhi Court's judgment in Commissioner of Income Tax Vs. Worldwide Township Projects Ltd. (Delhi), 2014(367) ITR 433.

11. I have heard the learned counsel for the parties.

12. Before proceeding further, it would be just and relevant to extract Section 276 of the Act, as under:-

> *"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 [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 rigorous imprisonment for a term which shall not be less than three months but which may extend to [two] 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 [two] years and shall, in the discretion of the court, also be liable to fine.

Explanation.—For the purposes of this section, a wilful attempt to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof 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.

13. Filing of the Income Tax Returns for the Assessment Year 2011-12 is not denied. The other undisputed facts are computation made therein i.e. the Gross Income, Net Income, Income Tax etc.; levy of penalty on the delayed payment of income tax and payment of amount along with the interest and its receipt by the respondent-Department. The moot question before this Court is whether the delayed payment can be

termed as evasion of tax, for which the complaint in question has been filed.

14. While answering the similar question, the Karnataka High Court in Confident Projects (India) (P.) Ltd.'s case (supra), has held as under:-

> *"8. In the light of the above submissions made, the points that would arise for determination are:-*
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> *(1) Whether for an offence to be said to be committed under Section 277 of the Income Tax Act, the misstatement is required to be willful to prosecute the assessee?*
>
> *(2) Whether there is a misstatement or willful misstatement by the petitioners in the present proceedings?*
>
> *(3) Whether the delayed payment of income tax would amount to evasion of tax or not?*
>
> *(4) Whether all the Directors of the Company can be prosecuted for any violation of the Income Tax Act by relying on the inclusive definition under Section 2(35) of the Income Tax Act?*
>
> *(5) Whether the order of cognizance by the Economic Offences Court is proper and correct?*
>
> *(6) Whether the Magistrate is required to follow the proceedings under Section 202 even for the offences under the Income Tax Act?*
>
> *(7) What Order?*
>
> *9. Answer to Point No.1: Whether for an offence to be said to be committed under Section 277 of the Income Tax Act, the misstatement is required to be willful to prosecute the assessee?*
>
> *Answer to Point No.2: Whether there is a misstatement or willful misstatement by the petitioners in the present proceedings?*
>
> *9.1. Both the above points being related to each other are taken up for consideration together.*
>
> *9.2. Sri.K.V.Aravind, learned Senior Standing Counsel for Income-tax Department would contend that there is reverse burden of proof under Section 277 of the Income Tax Act*

inasmuch as requiring the assessee to support the statements made in the returns.

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10. Answer to Point No.3: Whether the delayed payment of Income Tax would amount to evasion of tax or not?

10.1. This question is no longer res integra inasmuch as this Court in Crl.P No.4891/2014 (Vyalikaval's case) has held that delayed payment of income tax would not amount to evasion of tax. Applying the same principle to the present fact situation, the delay caused by the petitioner-Company in making payment of the income tax cannot be said to be evasion.

10.2. The fact remains that income tax has been paid and the authorities have received the necessary taxes. If at all, for the said delay, there could be an interest component which could have been levied.

10.3. Hence, I answer Point No.3 by holding that delayed payment of Income Tax would not amount to evasion of tax, so long as there is payment of tax, more so for the reason that in the returns filed there is an acknowledgement of tax due to be paid.

11. Answer to Point No.4: Whether all the Directors of the Company can be prosecuted for any violation of the Income Tax Act in terms by relying on the inclusive definition under Section 2(35) of the Income Tax Act? ………….”

As noticed above, the Special Leave to Appeal filed against the aforesaid judgment was dismissed by the Hon'ble Supreme Court. Further, similar was taken by the Madras High Court in <u>S.P. Velayutham's case</u> (supra), when it was held as under:-

"8. To prosecute a person there must be a wilful attempt on the part of the assessee to evade payment of any tax, penalty or interest. The explanation to the above section makes it very clear that the evasion by way of any false entry or statement in the books of account or other document or omission to make any entry in the books of accounts or other

> *documents or any other circumstances which will have the effect of enabling the assessee to evade tax or penalty or interest chargeable or imposable under this Act or the payment thereof. Though explanation is inclusive one it is not the case of the Department that assessee has made any false entry in the statements or documents or omitted to make any such entry in the books of account or other document or acted in any other manner to avoid payment of tax. It is not the case of the Department that the assessee has made an attempt to alienate the property in order to defeat the payment etc., Therefore, when the Return has been properly accepted and the assessment is also confirmed, mere default in payment of taxes in view of this Court, unless such default arising out of any of the circumstances, which will have a effect of the assessee to defeat the payment, the word employed in the section viz., "wilful attempt" cannot be imported to mere failure to pay the tax. From the inception there is no suppression and even the reply notice he has clearly stated the circumstances which forced him to such default"*

15. From the facts on record, it apparently clear that there was no attempted evasion on the part of the petitioners. There was undoubtedly delayed payment, but for that penalty had already been levied.

16. There is no debate on the issue of maintenance of the criminal proceedings simultaneously with the civil proceedings (in the present case levying of penalty etc.). However, while maintaining both these proceedings simultaneously, the one fact that must be present there that there was or has been a criminal intent in the mind of the accused right from the beginning. In the instant case, it is not in dispute that the income tax was self assessed and payment of the same stands also made, though belatedly. Thus, the question of evasion of tax does not arise in the present facts and circumstances. The facts and circumstances of the case further does not reveal that there was a deliberate and willful default of

evasion of tax on the part of the petitioners. Learned counsel for the respondent-Department is unable to show anything on record as to how and in what manner, the petitioners have ever tried to evade the tax particularly, when the same was duly shown and admitted/acknowledged while filing the Income Tax Returns for the Assessment Year 2011-12.

17. No other point has been urged.

18. In view of the settled law and fact and circumstances of the present case, the present petition is allowed. Complaint bearing No.8983 dated 04.12.2014 (Annexure P-1), along with all the consequential proceedings arising therefrom, including the summoning order dated 22.12.2014 (Annexure P-2), are hereby quashed, qua the petitioners.

14.09.2023 **HARNARESH SINGH GILL**
Aman Jain **JUDGE**