

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-43841-2018

Date of Decision: 22.01.2024

M/S HANSA METALLICS LIMITED & OTHERS

... Petitioners

Versus

DEPUTY COMMISSIONER OF INCOME TAX

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Akshay Bhan, Sr. Advocate with
Mr. Shantanu Bansal, Advocate
for the petitioner.

Mr. Varun Issar, Advocate
for the respondent.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the Complaint No.1368 of 2014 dated 01.04.2014 (Annexure P-6) under Sections 276C read with Section 278B of the Income Tax Act, 1961, the impugned order dated 20.08.2018 (Annexure P-7) vide which a *prima facie* case is stated to be made out, the order dated 06.09.2018 (Annexure P-8) vide which the charges have been framed and all subsequent proceedings arising therefrom.

2. The brief facts of the case as emanating from the pleadings are that the petitioner No.1 is a Limited Company and is assessed to tax by the respondent. The petitioner Nos.2 to 4 are the Directors of petitioner No.1.

3. The petitioner No.1 filed its return for income for Assessment Year 2012-13 on 29.09.2012 declaring a total income of Rs.8,20,53,544/-. As per the aforesaid return of income, the self-assessment of tax of

Rs.2,10,91,150/- was pending on 29.09.2012. From the perusal of the assessment record, it was found that the self-assessment tax under Section 140A(3) of the Income Tax Act, 1961 of Rs.2,10,91,150/- has actually been paid as follows:-

Dated	Amount	Head
10.07.2013	Rs.2,10,91,150/-	Self-assessment tax

This self-assessment tax was alleged to be payable before the filing of the aforesaid Return of Income for the Assessment Year 2012-13 on 29.09.2012.

4. After the payment of this tax liability alongwith interest on 10.07.2013, the respondent issued a show cause notice to the petitioner on 11.02.2014 wherein it was stated that the petitioners had failed to pay self-assessment tax and therefore, prosecution under Section 276C (2) of the Income Tax Act was to be initiated. The petitioner was asked to show cause before 19.02.2014 as to why the prosecution proceedings should not be initiated. A copy of the show cause notice dated 11.02.2014 is attached as Annexure P-1 to the petition. The petitioner responded to the aforementioned show cause notice on 19.02.2014 stating that since the notice had only been received a day earlier more time was required to respond to the same. The letter dated 19.02.2014 is attached as Annexure P-2 to the petition.

5. The respondent issued yet another show cause notice dated 24.04.2014 reiterating the contents of the earlier show cause notice. The copy of the show cause notice dated 24.02.2014 is attached as Annexure P-3. The petitioner again responded seeking some time to furnish an explanation. The response dated 27.02.2014 is attached as Annexure P-4 to the petition.

6. Without waiting for a response from the petitioners, legal opinion had also been sought from the Standing counsel of the Income Tax Department vide memo dated 07.02.2014. The copy of the said memo dated 07.02.2014 is attached as Annexure P-5 to the petition.

7. The Standing Counsel for the Income Tax Department vide written communication dated 25.02.2014 gave an opinion in the affirmative for launching of prosecution under Section 276C(2) of the Income Tax Act against the petitioners.

8. Based on the aforementioned opinion, the impugned complaint dated 29.03.2014 came to be filed which is attached as Annexure P-6 to the petition.

The petitioners appeared before the Courts below and the said Court vide order dated 20.08.2018 came to be conclusion that a case was made out. The copy of the said order dated 20.08.2018 is attached as Annexure P-7. The charges came to be framed vide order dated 06.09.2018. The copy of the said order is attached as Annexure P-8 to the petition.

9. The complaint dated 29.03.2014 (Annexure P-6), the impugned order dated 20.08.2018 (Annexure P-7), the order framing charges dated 06.09.2018 (Annexure P-8) and all subsequent proceedings arising therefrom are impugned in the present petition.

10. The learned Senior counsel for the petitioners contends 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 Return for the Assessment Year 2012-13. In fact, there was no evasion at all on their part. The tax amount was acknowledged/shown and admitted in the Income Tax

Return itself though there was a delay in making the said tax payment. However, the tax alongwith interest stood paid much prior to the issuance of the show cause notice. He, therefore, contends that once the tax stood paid on 10.07.2013 and the show cause notice came to be issued only on 11.02.2014, the filing of the instant complaint was nothing but an abuse of the process of the Court. In fact, prosecution under Section 276C (2) of the Income Tax Act read with the other provisions of the Act could only be launched if there was a willful evasion/attempt of either the tax, the penalty of the interest amount, apparent on the face of the record, whereas in the present case neither of the said circumstances existed. Reliance is placed on the judgments in the case of *Confident Projects (India) (P.) Ltd. Versus Income Tax Department, Circle 2(1)(1), Bengaluru [2021] 279 Taxman 46 Karnataka, S.P. Velayutham Versus The Assistant Commissioner of Income Tax, Non-Corporate Circle 14(1), Chennai, Crl. O.P. No.17906 of 2017* and *M/s Health Bio Tech Ltd. & others Versus Deputy Commissioner of Income Tax Central Circle 4(1) Chandigarh, CRM-M-7918-2015, decided on 14.09.2023.*

11. On the other hand, the learned counsel for the respondent-Department has very vehemently argued that the petitioners were well within the position and financial capacity to pay the income tax at the right time in September, 2012 itself. Yet they chose not to pay the same, thereby causing loss to the department and thus, they had rightly been prosecuted under Section 276C (2) of the Income Tax Act along with the other provisions and that too after obtaining necessary sanction from the competent authority.

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

13. Before proceeding further, it would be just and expedient to extract Section 276C 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.

14. The relevant judgments are as under:-

The Karnataka High Court in **Confident Projects (India) (P.)**

Ltd.'s case (supra), held as under:-

“8. In the light of the above submissions made, the points that would arise for determination are:-

(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? ”

(emphasis supplied)

The Special Leave to Appeal filed against the aforesaid judgment was dismissed by the Hon’ble Supreme Court.

The Madras High Court in **S.P. Velayutham’s** case (supra), 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”

(emphasis supplied)

This Court in the case of **M/s Health Bio Tech Ltd. & others’s** case (supra), held as under:-

“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.”

(emphasis supplied)

15. Coming back to the facts of the instant case, the filing of the Income Tax Returns for the Assessment year 2012-13 is not denied. The other undisputed facts are computation made therein i.e. the gross income, net income and income tax etc. The only question that remains is as to whether delayed payment alongwith the interest could be termed as evasion of tax for which the complaint in question has been filed. The judgments in

Confident Projects (India) (P.) Ltd. (supra), **S.P. Velayutham** (supra) and **M/s Health Bio Tech Ltd. & others** (supra) have categorically held that delayed payment of income tax would not amount to evasion of tax. In the instant case, as has already been noticed hereinabove, the Return for the total income for the year 2012-13 was filed on 29.09.2012 for amount of Rs.8,20,53,544/-. The tax was self-assessed for an amount of Rs.2,10,91,150/-. On account of the financial state of the company which remains debatable, the tax alongwith interest was paid on 10.07.2013. However, the show cause notice for delayed payment was sent only on 11.02.2014 and 24.02.2014 pursuant to which the complaint came to be instituted. Therefore, by no stretch of imagination can it be held that there was any evasion of tax on the part of the petitioners, though there was a delay in the payment of the tax for which interest stands levied and paid.

16. In view of the settled law and the fact and circumstances of the present case, the present petition is allowed. Complaint No.1368 of 2014 dated 01.04.2014 (Annexure P-6), the order dated 20.08.2018 (Annexure P-7), the order dated 06.09.2018 (Annexure P-8) along with all the consequential proceedings arising therefrom are hereby quashed qua the petitioners.

(JASJIT SINGH BEDI)
JUDGE

22.01.2024

JITESH

Whether speaking/reasoned:- Yes/No
Whether reportable:- Yes/No