IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Writ Petition No.2503 of 2024

Rajendra R Chaturvedi
(Member of AOP)
M/s Shreepati Jewels,
Age: 63 years, adult, Indian
Inhabitant, Having address at
4th floor, Shreepati Arcade,
August Kranti Nana Chowk,
Mumbai - 400036. … Petitioner

Versus

1. Joint Commissioner of Income Tax (OSD),
Central Circle-2(3), Mumbai 8th Floor,
R.No.803, 8th floor, Prastishtha
Bhavan, Old CGO Bldg, Annex,
MK Road, Mumbai – 400020.

2. State of Maharashtra … Respondents

Mr Girish Kulkarni, Senior Advocate, along with Ms Mrunmai Kulkarni and Mr Sujay Shingage i/by Mrunmai Kulkarni, for the petitioner.
Mr Siddharth Chandrashekhar, for respondent No.1.
VN Sagare, APP, for respondent No.2/ State.

Coram: R.N. Laddha, J.
Date: 1 April 2025.

P.C.:

The learned Senior Counsel for the petitioner seeks leave to amend the cause title of the petition to delete the name of the officer of respondent No.1. Leave granted as prayed for. The amendment shall be carried out forthwith.

2. It is the case of the prosecution that for the assessment year 2013-2014, the petitioner, a member of the Association of Persons ('AOP'), Shreepati Jewels, belatedly filed the income tax return on 31 March 2015. In this return, a total income of Rs.5,04,49,600/- was reported, with an admitted tax liability of Rs.2,23,72,410/-. Out of this amount, the assessee made payments of Rs.12,23,580/- and Rs.78,51,726/- in two instalments. However, despite being given opportunities to settle the remaining dues, an outstanding sum of Rs.1,47,03,454/- was left unpaid. As a result of this non-payment, respondent No.1 filed a Criminal Case bearing No.492/SW/2018 before the Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai, for the offence punishable under Sections 276C (2) read with 278B of the Income Tax Act, 1961 ('IT Act'). On 13 August 2018, the learned Magistrate issued a process against the petitioner. The petitioner, feeling aggrieved by this development, filed the present writ petition before this Court.

3. Mr Girish Kulkarni, the learned Senior Counsel appearing on behalf of the petitioner, contends that the petitioner has

already settled all due taxes, including any accrued interest. He points out that the complaint is vague, lacks explicit assertions and fails to specify any particular role played by the petitioner. Additionally, the learned Senior Counsel argues that the learned Magistrate did not consider that the petitioner did not intentionally try to avoid or evade tax payments. He claims that the impugned order of issuance of process is unclear and shows a lack of thoughtful consideration.

4. On the other hand, Mr Siddharth Chandrasekhar, the learned Counsel appearing for respondent No.1, opposes the petitioner's request and argues that for the assessment year 2013-2014, the APO of which the petitioner is a member filed its return on 31 March 2015, well past the specified due date. The members of the AOP, including the petitioner, were required to pay a total of Rs.2,23,72,410/- in taxes based on the reported income. However, they deliberately left Rs.1,47,03,454/- unpaid. The learned Counsel points out the three show cause notices issued by respondent No.1 on 7 March 2017, 17 November 2017 and 12 January 2018, along with the petitioner's responses to these notices on 15 March 2017, 30 November 2017 and 2 February 2018. He contends that despite being aware of the outstanding dues, the petitioner intentionally avoided making the tax payments until after filing

the complaint. It wasn't until August 2023, following the complaint filed on 6 March 2018, that the dues were remitted, indicating a deliberate decision by the petitioner to defer tax payments for the assessment year 2013-2014.

5. This Court has given anxious consideration to the rival submissions canvassed across the Bar and perused the records.

6. It is well-established in law that the wording of Sub-Section (1) of Section 276C of the IT Act, along with terms like 'wilful attempt' and 'to evade', clearly indicates that this provision targets actions or omissions by the taxpayer specifically aimed at evading tax liability, rather than simply failing to pay the tax. The IT Act provides mechanisms to protect the interest of revenue by allowing the recovery of unpaid taxes along with any applicable interest or penalties when taxes are not paid in a timely manner. The core of the offence under Sub-Section (2) of Section 276C revolves around the intentional failure to pay taxes rather than a straightforward inability to make a payment. An interpretation of Section 276C (2) does not imply that a mere failure to pay tax, interest, or penalties falls within its purview. Additionally, in cases where Section 276C is violated due to a taxpayer's wilful neglect, it is essential to demonstrate *mens rea* to validate any sentence imposed. A profitable reference in this regard can

be made to the decisions in *Prescon Realtors and Infrastructures Pvt Ltd v. Deputy Commissioner of Income Tax, Writ Petition No.59 of 2019 dated 22 January 2025 (Bombay), Ganga Devi Somani v. State of Gujarat, (2021) 437 ITR 323, and Gujarat Travancore Agency v. CIT, (1989) 3 SCC 52.*

7. In the present case, it is undisputed that for the assessment year 2013-2014, the petitioner's AOP submitted its return on 31 March 2015, declaring an income of Rs.5,04,49,600/- and acknowledging a tax liability of Rs.2,23,72,410/-. Prior to the filing of the complaint, the petitioner made partial payments towards this tax liability in two instalments: Rs.12,23,580/- and Rs.78,51,726/-, leaving an amount of Rs.1,47,03,454/- still due.

8. A cursory reading of the record reveals that respondent No.1 issued three show cause notices on 7 March 2017, 17 November 2017 and 12 January 2018, providing the petitioner ample opportunities to settle the outstanding tax liability. The petitioner responded to these notices, submitting the most recent reply on 2 February 2018. In this response, the petitioner attributed the delay in tax payments to illness in the family and the stagnant growth of the real estate market. Following this, the petitioner made payments of Rs.2,00,000/-, Rs.5,00,000/-, and Rs.10,00,000/- to respondent No.1 on 22

February 2018, 27 February 2018 and 1 March 2018, respectively. However, no further payments were made until August 2023. The records do not indicate that the petitioner, who has been aware of his tax obligations since February 2018, did not wilfully neglect to pay the due taxes. The petitioner's conduct indicates otherwise. From a perusal of the trial Court's roznama, it appears that a fresh summons was issued to the petitioner on 19 December 2022, and the case was adjourned to 8 May 2023. On that date, the Court reissued summons to the accused and again adjourned the case. It wasn't until 22 April 2024 that the petitioner appeared before the trial Court and was granted bail. Notably, as per this Court's website, the present petition was filed on 14 September 2023, well before the petitioner appeared before the trial Court, and specific amounts were strategically remitted to respondent No.1 on multiple dates in August 2023 towards settling the tax dues, suggesting that the petitioner intentionally avoided paying taxes. *Prima facie,* there appears to be sufficient material on record suggesting the commission of an offence under Sections 276C (2) read with 278B of the IT Act.

9. In light of the above, the petition is devoid of merit and stands dismissed accordingly.

(R.N. Laddha, J.)