IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Writ Petition No.2505 of 2024

Rajendra R Chaturvedi
Age 63 years, adult,
Indian Inhabitant,
Having address at 4401,
Shreepati Arcade, 44th Floor,
AK Marg, Nana Chowk,
Grant Road (W), Mumbai 400036 … Petitioner

Versus

1. Deputy Commissioner of Income Tax
Central Circle-2(3), Mumbai 8th Floor,
MK Road, Marine Lines, Mumbai – 400020.

2. State of Maharashtra … Respondents

Mr Girish Kulkarni, Senior Advocate, along with Ms Mrunmai Kulkarni and Mr Sujay Shingade 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 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 prayer for. The amendment shall be carried out forthwith.

2. The challenge in this petition is to the order dated 11 December 2017 passed by the Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai, in CC No.92/SW/2017, whereby a process was issued against the petitioner under Section 276C (2) of the Income Tax Act, 1961 ('IT Act').

3. The gravamen of the indictment is that for the assessment year 2014-2015, the petitioner reported a total income of Rs.1,19,40,900/- and acknowledged a tax liability of Rs.24,02,990/-. Out of this, the petitioner only paid Rs.3,15,102/- and wilfully defaulted in paying the outstanding tax dues of Rs.20,87,888/-, thereby committing an offence under Section 276C of the IT Act.

4. Mr Girish Kulkarni, the learned Senior Counsel appearing on behalf of the petitioner, contends that the petitioner has already paid the outstanding taxes inclusive of interest on 3 July 2017. He submits that the delay in payment was attributed to financial difficulties. The learned Senior Counsel drawing the attention of this Court to the complaint asserts that the allegations against the petitioner are vague, and no specific role

is attributed to him. According to Mr Kulkarni, the learned Magistrate failed to consider that there was no wilful attempt by the petitioner to evade payment of taxes. The learned Counsel further submits that the order of issuance of process is mechanical and fails to demonstrate any application of mind.

5. Conversely, Mr Siddharth Chandrasekhar, the learned Counsel appearing for respondent No.1, submits that a show cause notice dated 15 February 2017 was issued to the petitioner to explain the non-payment of taxes. However, the petitioner did not respond to it. After obtaining the sanction from the Principal Commissioner of Income Tax, a prosecution was launched against the petitioner on 23 March 2017, and the process was issued on 11 December 2017. The petitioner wilfully failed to pay the taxes on the due date and deposited the outstanding taxes and the interest only after filing the complaint under Section 276C (2) of the IT Act.

6. This Court has considered the rival submissions canvassed across the Bar.

7. It is a settled position in law that the language of Sub-Section (1) of Section 276C and the use of terms such as ‘wilful attempt’ and ‘to evade’ make it evident that the provision seeks to penalise acts or omissions by the assessee specifically

intended to evade tax liability rather than a mere failure to pay tax. The IT Act includes provisions to safeguard the revenue's interests by enabling recovery of unpaid tax along with the applicable interest and/or penalties when tax is not paid on time. The essence of the offence under Sub-Section (2) of Section 276C lies in the deliberate non-payment of tax, not in a simple failure to make payment. A plain reading of the provision in Section 276C (2) does not suggest that a mere failure to pay the tax, interest, or penalty falls within its scope. Further, in cases of violation under Section 276C due to a taxpayer's wilful failure, it is necessary to establish *mens rea* to justify the imposition of a sentence. All these aspects are highlighted 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.*

8. Upon perusing the records, it appears that the petitioner was liable to pay Rs.24,02,990/- towards taxes for the assessment year 2014-2015. The petitioner deposited the amount of Rs.3,15,102/- on 28 March 2015, and the outstanding tax liability, along with interest, amounting to Rs.24,63,040/- was settled on 3 July 2017. Notably, the

petitioner settled the dues before the process was issued on 11 December 2017. A review of the complaint reveals that the only argument for asserting the petitioner's deliberate and malicious intent to evade or neglect his tax responsibilities stems from the simple fact of non-payment of taxes by the due date and his lack of response to the show cause notice. The complaint does not sufficiently demonstrate whether the petitioner intentionally chose to ignore his tax responsibilities. In order to establish a case against an assessee under Section 276C (2) of the IT Act, it is imperative to demonstrate that there was a wilful attempt to avoid making the payment. A mere assertion that the assessee has intentionally evaded the payment of self-assessment tax and interest is insufficient to put the wheels of criminal law in motion. Additionally, the impugned order is cryptic and does not demonstrate any application of mind.

9. In these circumstances, the impugned order of issuance of process dated 11 December 2017 passed by the Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai, in CC No.92/SW/2017, is quashed and set aside. The petition stands disposed of accordingly.

(R.N. Laddha, J.)