IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Writ Petition No.2507 of 2024

Rajendra R Chaturvedi
Age 60 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 petitioner seeks to challenge the order dated 11 December 2017 passed by the Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai, in CC No.91/SW/2017. By this order, the Magistrate issued a process against the petitioner under Section 276C (2) of the Income Tax Act, 1961 ('IT Act').

3. Mr Girish Kulkarni, the learned Senior Counsel appearing on behalf of the petitioner, contends that the petitioner has already paid the taxes inclusive of interest, and the delay in payment was attributed to financial difficulties. The complaint lacks specific averments, and no role is attributed to the petitioner. According to him, the learned Magistrate failed to consider that there was no wilful attempt by the petitioner to evade payment of taxes. The petitioner paid Rs.2,86,39,727/- towards the outstanding taxes and interest on the delayed payment. The learned Counsel further submits that the order of issuance of process is cryptic and lacks application of mind.

4. 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. Later, on 15 March 2017, the Principal Commissioner of Income Tax granted sanction to prosecute the petitioner. Accordingly, on 23 March 2017, a prosecution was launched against the petitioner, and on 11 December 2017, the process was issued. 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.

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

6. 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*[1], *Ganga Devi Somani v. State of Gujarat*[2], *and Gujarat Travancore Agency v. CIT*[3].

7. It is an undisputed fact that for the assessment year 2013-2014, the petitioner declared a total income of Rs.6,97,66,920/- and recognised a tax liability amounting to Rs.2,86,39,272/-. Initially, the petitioner remitted Rs.2,82,000/- towards tax obligations and cleared the remaining tax dues, along with interest on the delayed payment, of Rs.2,86,39,727/- subsequently. That apart, a cursory reading 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

[1] Writ Petition No.59 of 2019 dated 22 January 2025 (Bombay)

[2] (2021) 437 ITR 323

[3] (1989) 3 SCC 52

ignore his tax responsibilities. To establish a case against an assessee under Section 276C (2) of the IT Act, it is crucial to show 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 not enough to put the wheels of criminal law in motion. Additionally, the impugned order is cryptic and fails to demonstrate any application of mind.

8. Given the above, 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.91/SW/2017, is quashed and set aside. The petition stands disposed of accordingly.

(R.N. Laddha, J.)