IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Writ Petition No.4243 of 2024

Veena R Chaturvedi
Age 58 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.
Mr 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 prayer for.

The amendment shall be carried out forthwith.

2. By this petition, the petitioner seeks to challenge the order of issuance of process dated 11 December 2017 passed by the Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai, in CC No.93/SW/2017, under Section 276C (2) of the Income Tax Act, 1961 ('IT Act').

3. The following events led to the filing of the present complaint: While filing income tax returns for the assessment year 2014-2015, the petitioner declared a total income of 2,34,57,830/- and admitted a tax liability of Rs.87,79,980/-. The petitioner only paid Rs.8,79,980/- towards the tax obligation and failed to deposit the outstanding amount of Rs.79,00,000/-. The prosecution alleges that this failure to deposit the remaining tax liability amounts to the commission of an offence under Section 276C (2) of the IT Act.

4. I have heard Mr Girish Kulkarni, the learned Senior Counsel appearing for the petitioner, Mr Siddharth Chandrashekhar, the learned Counsel representing respondent No.1, and Mr VN Sagare, the learned Additional Public Prosecutor appearing for respondent No.2.

5. Mr Girish Kulkarni, the learned Senior Counsel appearing

on behalf of the petitioner, argues that the outstanding tax obligation and interest accrued on the delayed payment have already been settled on 28 November 2018. The delay in payment was attributed to financial difficulties. Mr Kulkarni draws the attention of this Court to the complaint and contends that the allegations are bereft of details, 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. Further, the impugned order of issuance of process is cryptic and lacks application of mind.

6. 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. The complaint was filed on 23 March 2017 after obtaining a sanction from the Principal Commissioner of Income Tax. Subsequently, 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.

7. This Court has considered the rival submissions canvassed across the Bar and the applicable law.

8. It is well-settled 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].

[1] Writ Petition No.59 of 2019 dated 22 January 2025 (Bombay)
[2] (2021) 437 ITR 323
[3] (1989) 3 SCC 52

9. A bare perusal of the records reveals that the petitioner was liable to pay Rs.87,79,980/- towards taxes for the assessment year 2014-2015. Although Rs.8,79,980/- was paid on 28 March 2015, the remaining tax amount with interest amounting to Rs.92,70,780/- was deposited on 28 November 2018 before receiving the summons in 2022. Admittedly, the petitioner paid the tax amount belatedly; however, the complaint does not demonstrate if such delayed payment was a wilful evasion of payment of taxes. The sole reason assigned to prosecute the petitioner is the mere non-payment of taxes by the stipulated date. The averments in the complaint are general and fail to demonstrate the petitioner's malicious intent to avoid the tax payment. To establish a case against an assessee under Section 276C (2) of the IT Act, it is essential to show that there was a wilful attempt to avoid paying taxes. 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 appears cryptic and does not demonstrate any application of mind.

10. In these circumstances, the petition is allowed in terms of prayer clause (c), which reads as follows:

"That this Hon'ble Court may be pleased to

quashed and/ or set aside, the order dated 11th December 2017 passed in CC No.93/SW/2017, pending before the Learned Addl. Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai."

(R.N. Laddha, J.)