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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.6832 of 2025
and Crl.M.P.No.4338 of 2025

1. M/s.G Square Realtors Private Limited,
   Rep. By Its Directors,
   Shri Ramajayam - Director,
   Smt Sreekala – Director

2. Shri Ramajayam
3. Smt Sreekala ... Petitioners

Vs

The Deputy Commissioner of Income Tax,
Central Circle-1(2), Investigation Building,
Nungambakkam,
Chennai - 600 034. ... Respondent

PRAYER: Criminal Original Petition is filed under 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023/Section 482 of Cr.P.C, to call for records and Quash the complaint dated 28.03.2024 in E.O.C.C.No.39 of 2024 on the file of the Hon'ble Additional Chief Metropolitan Magistrate (Economic Offences)-I, Egmore, Chennai.

For Petitioners : Mr.K.Suresh Babu
For Respondent : Mrs.M.Sheela
Special Public Prosecutor (Income Tax)

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ORDER

This Criminal Original Petition has been filed to quash the complaint dated 28.03.2024 in E.O.C.C.No.39 of 2024 on the file of the Additional Chief Metropolitan Magistrate (Economic Offences)-I, Egmore, Chennai.

2. Heard the learned counsel on either side and perused the materials available on record.

3. The respondent lodged a complaint alleging that the petitioners had paid their return income tax for the assessment year 2022-2023 belatedly under Section 139(4) of the Income Tax Act on 31.12.2022 declaring a total income of Rs.17,44,78,050/-. As per the return of income, the total tax liability was Rs.5,67,66,083/-. Out of total tax liability, the petitioners had TDS credit to the tune of Rs.1,37,17,119/- and self-assessment tax to be paid was Rs.4,30,48,960/-. They had paid the said amount as mandated under Section 140A of the Income Tax Act. On the allegation of the belated payment of income tax, the respondent obtained sanction from the Commissioner of Income Tax, Chennai to prosecute the petitioners under Section 279(1) of the Income Tax Act for the offence punishable under Section 276(c)(2) of the Income Tax Act for the wilful attempt to pay the admitted liability of self-assessment tax of

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Rs.4,30,48,960/- by an order dated 08.02.2024.

4. The learned counsel for the petitioners would submit that all the petitioners are arrayed as A1 to A3 in the complaint lodged by the respondent for the offence punishable under Section 276(c)(2) of the Income Tax Act.

5. Admittedly, the petitioners had declared that the total income is Rs.17,44,78,050/- for which, the tax liability inclusive of interest and fee is Rs.5,67,66,083/-. The petitioners had paid their income tax returns for the assessment year 2022-023 on 31.12.2022 by way of self-assessment after deducting TDS. The competent authority had also acknowledged the petitioner Company discharging their tax liability in the sanction order dated 08.02.2024. Even then, the sanction was accorded to prosecute the petitioner for the offence punishable under Section 276(c)(2) of the Income Tax Act. Further, on the date of initiation of prosecution, the petitioner had already paid the tax and even before according sanction for prosecution. Therefore, there was no evasion of tax and no man of ordinary prudence can presume that there was an attempt to evade tax and as such was a wilful one.

6. It is relevant to extract the provision under Section 276 (c) (2) of

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the Income Tax Act, 1995 as follows:

> *"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 three years and shall, in the discretion of the court, also be liable to fine. Explanation – For the purpose 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 accounts 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*

Thus, it is clear that in order to punish the petitioners for the offence under Sections 276(c)(2) of the Income Tax, there must be a wilful attempt to evade payment of tax and there must be a possession or control of any books with false entry. They should have made false entries in the book of accounts and omitted any entry or statement in such books of account.

7. In the case on hand, admittedly, the petitioners, themselves disclosed their income and also paid the tax after deducting TDS.

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8. The learned Special Public Prosecutor for the respondent would submit that the offence under Section 276(c)(2) of the Income Tax Act is clearly attracted as against the petitioners, since they had wilful attempt to evade the payment of tax and interest. The petitioners had declared their current assets in the form of bank account balances in the return of income filed for the relevant assessment year which is amounting Rs.5,82,66,599/-. But they had not paid any advance tax during the relevant previous year 2021-2022. Inspite of having enough liquidity in the form of bank balances and active business throughout the year, the Company did not pay its taxes as required under law.

9. However, on perusal of records revealed that though they had enough funds in their account, they were unable to pay the advance tax due to financial crunch. However, even before the search and sanction, the petitioners had paid their income tax and the same has been duly acknowledged by the concerned authority. Therefore, the offence under Section 276(c) (2) of the Income Tax is not all attracted as against the petitioners and the complaint lodged by the respondent cannot be sustained and is liable to be quashed.

10. Accordingly, the complaint dated 28.03.2024 in E.O.C.C.No.39 of 2024 on the file of the Additional Chief Metropolitan Magistrate (Economic

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Offences)-I, Egmore, Chennai, is hereby quashed as against the petitioners. Accordingly, this Criminal Original Petition stands allowed. Consequently, connected Miscellaneous petition is closed.

11.03.2025

Internet:Yes
Index:Yes/No
Speaking/Non speaking order
mn

To

1. The Additional Chief Metropolitan Magistrate (Economic Offences)-I, Egmore, Chennai.

2. The Deputy Commissioner of Income Tax,

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Central Circle-1(2), Investigation Building,
Nungambakkam,
Chennai - 600 034.

3. The Public Prosecutor,
High Court, Madras.

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G.K.ILANTHIRAIYAN. J,

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