IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2025

CORAM :

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

Crl.R.C.No.913 of 2024

1.M/s.Shree Manickkam Infraastructure Pvt. Ltd.,
Represented by its Principal Officer

2.SP.S.Manickkam ... Petitioners

Vs.

Parimelalagan ... Respondent

Prayer : Criminal Revision Case filed under Section 397 r/w 401 of Cr.P.C., praying to set aside the judgment dated 03.05.2024 in Criminal Appeal No.551 of 2023 on the file of the learned V Additional City Civil Court, Chennai, thereby confirming the judgment dated 17.08.2023 in E.O.C.C.No.201 of 2018 on the file of the learned Additional Chief Metropolitan Magistrate, Economic Offences – I, Egmore, Chennai for the alleged offences under Section 276(B) r/w 278B of the Income Tax Act, 1961 and sentencing the 1st accused to pay a fine of Rs.50,000/- (Rupees Fifty Thousand only) and sentencing the 2nd accused to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.25,000/- (Rupees Twenty Five thousand only) and in default to undergo simple imprisonment for a period of 3 months.

For Petitioners : Mr.Saikrishnan
for M/s.N.U.Pressanna

For Respondent : Mr.L.Muralikrishnan
Special Public Prosecutor

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ORDER

This Criminal Revision Case has been preferred as against the judgment dated 03.05.2024 passed in Crl.A.No.551 of 2023 by the learned V Additional Sessions Judge, Chennai, thereby confirmed the order of conviction and sentence imposed vide order dated 17.08.2023 passed in E.O.C.C.No.201 of 2018 by the learned Additional Chief Metropolitan Magistrate (E.O.I), Chennai for the punishable offence u/s 276-B r/w 278-B of the Income Tax Act (in short 'the IT Act').

2. The case of the prosecution is that the 1st petitioner/1st accused is the company and the 2nd petitioner/2nd accused is one of the Directors of the 1st petitioner company. The 1st accused deducted a sum of Rs.12,68,464/- towards Tax Deducted at Source (in short 'TDS') for the Assessment Year 2013 – 2014 relavant to Financial Year 2012 – 2013, but failed to deposit the same into the Government Account within the stipulated time. Therefore, the respondent issued a show cause notice to the accused on 06.11.2015 calling for details regarding for the default in depositing the TDS with the stipulated period. Thereafter, they have also sent reminders on several dates and the last of which is on 23.05.2015.

The accused provided the details of the company and its directors along with the copies of TDS statement and audited financial statement of the company. But, the accused did not provide any reason for the belated remittance. Further, the accused were given further opportunity to explain the delay in remittance. However, they failed to do so and as such, the respondent filed a complaint for the offence u/s 276-B read with 278-B of the IT Act for the FY 2012 – 2013. The complaint has been taken cognizance in E.O.C.C.No.201 of 2018 by the learned Additional Chief Metropolitan Magistrate (E.O.I), Egmore, Chennai for the offence punishable u/s 276-B r/w 278-B of the IT Act.

3. Before the Trial Court, the prosecution examined one (1) witness as P.W.1 and marked eleven (11) documents as Ex.P.1 to Ex.P.11. On the side of the accused, no witness was examined and no document was marked.

4. On perusal of the oral and documentary evidence, the Trial Court found the 1st accused guilty, convicted for the offence u/s 276(B) r/w 278(B) of the IT Act and sentenced to pay a fine of Rs.50,000/- and found the 2nd accused guilty, convicted for the offence u/s 276(B) r/w

278(B) of the IT Act and sentenced to undergo rigorous imprisonment of one year and to pay fine of Rs.25,000/-, in default to payment of fine, to undergo simple imprisonment for a further period of 3 months. Challenging the same, the petitioners have filed an appeal in Criminal Appeal No.551 of 2023 before the learned V Additional Sessions Judge, Chennai and the learned Sessions Judge, vide judgment dated 03.05.2024, dismissed the appeal by confirming the conviction and sentence passed by the learned Additional Chief Metropolitan Magistrate (E.O.I), Chennai. Aggrieved by the same, the present revision is filed.

5. The learned counsel for the petitioners would submit that the complaint itself is not maintainable for the contravention u/s 279(B) r/w 278(B) of the IT Act. Though the respondent alleged that the petitioners have remitted the TDS belatedly, the respondent failed to mention the number of days of delay. In the complaint, they have stated that there is a considerable delay and beyond the time prescribed. That apart, the petitioners were not served with the show cause notice dated 06.07.2015 as mentioned in the complaint. Therefore, the petitioners were not given any opportunity to submit their explanation. In the year 2014 itself, whatever the TDS amount were remitted by the petitioners and sent the

copies of the TDS statement and audited financial statement of the company on 23.05.2016 itself. Further, Section 276(B) contemplates only failure to pay the tax. In the case on hand, the respondent filed a complaint for the belated remittance of TDS which were deducted at various sources to the Government Treasury. Therefore, the complaint itself if not maintainable. In support of his contentions, he also relied upon the judgment of the Hon'ble High Court of Jharkhand in the case of ***Dev Multicom Pvt. Ltd. & 6 Ors. Vs. State of Jharkhand & Anr.*** reported in ***(2023) 333 CTR 516***.

6. The present counsel on record for the respondent have been changed long back even then, the respondent failed to engage any counsel to represent the respondent before this Court.

7. Heard the learned counsel for the petitioner and perused the materials available on record.

8. Admittedly, the respondent filed a complaint for the contravention of provisions of Section 276(B) r/w 278(B) of IT Act for belated remittance of Rs.12,68,464/- towards TDS for the AY 2013 –

2014 relevant to the FY 2012 – 2013. It is relevant to extract the provisions of Section 276(B) of the IT Act :-

> *"**276B. Failure to pay tax to the credit of Central Government under Chapter XIID or XVIIB.** -- If a person fails to pay to the credit of the Central Government,---*
>
> *(a) the tax deducted at source by him as required by or under the provisions of Chapter XVIIB; or*
>
> *(b) the tax payable by him, as required by or under,--*
>
> *(i) sub-section (2) of section 115-O; or*
>
> *(ii) the second proviso to section 194B,*
>
> *he shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine."*

9. Thus, it is clear that it attracts if a person fails to pay to the credit of the Central Government, such as, TDS and tax payable by him. In the case on hand, even according to the respondent, the petitioners have remitted the TDS to the tune of Rs.12,68,464/-, however there was a delay in remittance of TDS. On perusal of the complaint, it is seen that the respondent nowhere alleged what was the delay in remittance of TDS. The respondent conveniently said that there was considerable delay and beyond the time limit prescribed. In support of the said contention, the details of TDS and deposited details of the petitioners herein for the FY

2012 – 2013. The respondent failed to furnish the statements, which was submitted by the petitioners by showing that already the petitioners had remitted TDS along with audited financial statements of the petitioners. However, though it was mentioned in the complaint, the respondent failed to file the same. Therefore, the very complaint itself is not maintainable for the offence u/s 276(B) of the IT Act for belated payment of TDS by the petitioners. The Hon'ble High Court of Jharkhand in the *Dev Multicom Pvt Ltd.'s* case (stated supra) in paragraph No.17 has held as follows :-

> *"17. It is an admitted fact that the tax deducted at source amount in all these cases were deposited with interest and the chart with respect to the same is also annexed with the counter affidavit of the Income-Tax Department, wherein the date of deduction and date of depositing the said amount has been mentioned. However, some delay occurred in depositing the tax deducted at source. Apart from one or two cases, the deducted amounts are not more than Rs.50,000/-. While passing the sanction under section 279(1) of the Act, the sanctioning authority has not considered the Central Board of Direct Taxes. Instruction bearing F.No.255/339/79-IT(Inv.) dated May 28, 1980, issued in this regard by the Central Board of Direct Taxes. The Central Board of Direct Taxes guidelines was considered by the Patna High Court in the case of Sonali Autos Pvt. Ltd. (supra) and after considering these guidelines, the court has*

interfered with the matter and quashed the entire criminal proceedings. In Central Board of Direct Taxes instructions, it is mentioned that prosecution under section 276B of the Act shall not normally be proposed when the amount involved and/or the period of default is not substantial and the amount in default has also been deposited in the meantime to the credit of the Government. No such consideration will, of course, apply to levy of interest under section 201(1A) of the Act. This is quoted in the case of Sonali Autos Pvt. Ltd. (supra). Moreover after receiving the deducted amount with interest, the prosecution has been launched against the petitioners, which is not in accordance with law. If the petitioners failed to deposit the amount in question within the stipulated time, i. e., by the 7th day of the subsequent month, it was required to launch the prosecution immediately, which has not been done in the cases in hand. Moreover, section 278AA of the Act clearly states that no person for any failure referred to under section 276B of the Act shall be punished under the said provisions, if he proves that there was reasonable cause for such failure. The judgment relied on by Ms. Amrita Sinha, the Central Board of Direct Taxes guidelines were not considered. On this ground these cases are distinguishable in view of the facts and circumstances of the cases relied upon by Ms. Amrita Sinha."

10. Thus, it is clear that the prosecution u/s 276(B) of the IT Act

shall not normally be proposed when the amount involved and/or the period of default is not substantial and the amount in default has also been deposited in the meantime to the Government. In the case on hand also, admittedly, the petitioners have deposited the TDS amount. The respondent also failed to state the period of delay for remittance of TDS. Therefore, no offence is made out against the petitioners u/s 276(B) of the IT Act. That apart, the respondent was examined as P.W.1. He did not whisper about the delay in remittance of the TDS by the petitioners in his chief examination. He categorically admitted in his cross-examination that the respondent did not tabulate the particulars of Ex.P.1/Details of TDS deposited in the case M/s.Shree Manickam Infrastructure Pvt. Ltd. and he simply downloaded the statements uploaded by the petitioners and marked before the Trial Court. He also admitted that he did not mention the details of delay in remittance of TDS in the complaint. Further, he admitted that the respondent did not file any document to show that the show cause notice was served to the petitioners before initiation of prosecution. Therefore, the petitioners were not given opportunity to submit their explanation for the show cause notice as contemplated under the IT Act. Therefore, the respondent failed to comply the provisions u/s 2 sub-section (35) r/w 204 and Section 276(B) of IT Act. Therefore, the

Sanctioning Authority, namely the Commissioner of IT (TDS) ought not to have granted sanction for prosecution as against the petitioners. In view of the above, the order of conviction and sentence imposed on the petitioners cannot be sustained and the same is liable to be set aside.

11. Accordingly, the Criminal Revision Case is allowed. The conviction and sentence imposed on the revision petitioners/accused 1 and 2 by the Trial Court in E.O.C.C.No.201 of 2018 and confirmed by the Appellate Court in Crl.A.No.551 of 2023 are set aside and the revision petitioners/accused 1 and 2 are acquitted from all the charges levelled against the petitioners.

30.06.2025

Index : Yes / No
Speaking order / Non-speaking order
NCC : Yes / No
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To

1.The V Additional City Civil Court, Chennai.
2.The Additional Chief Metropolitan Magistrate, Economic Offences – I, Egmore, Chennai.

G.K.ILANTHIRAIYAN, J.

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