Sl. No.27
05.10.2026
Suman
Ct. 237

CRR 2216 of 2026

M/s. MSA Construction Private Limited and Others
Vs.
The State of West Bengal and Anr.

Mr. Pratim Priya Dasgupta
Mr. Abhishek Kabir
Mr. Amit Dey
..for the petitioners

Mr. Soumen Bhattacharjee
Mr. Anurag Roy
Mr. Ankan Das
Mr. Raunak Seal
..for the Respondents

The petitioners seek quashing of C.S. Case No. 257063 of 2025, instituted under Sections 276B and 276BB read with Section 278B of the Income-tax Act, 1961 (hereinafter referred to as "the said Act"), and pending before the learned Judicial Magistrate, 13th Court, Calcutta, pursuant to the order dated March 12, 2026.

It appears that, on February 5, 2025, a show-cause notice under Section 279(1) read with Section 276B(a) of the said Act was issued to the petitioners in respect of the financial year 2022–2023. The allegation was that petitioner no. 1, a civil contractor engaged in executing irrigation and earthwork contracts for various State Governments, had deducted tax at

source (TDS) aggregating to Rs. 1,17,26,930 during the financial year 2022–2023 but had deposited the same to the credit of the Central Government beyond the prescribed due dates, with the period of delay ranging from one to six months.

The petitioners submitted their reply to the said notice on February 24, 2025, contending, inter alia, that the delay in depositing the TDS with the Revenue was only between one and six months. It was further contended that the petitioners had already deposited a sum of Rs. 1,38,71,614 towards the principal amount and interest on various dates. The petitioners also explained that the delay was attributable to negative working capital and constraints in the flow of funds until February 2023, as payments for works executed for the State Government were ordinarily released only in March of each year. It was further asserted that the entire TDS amount, together with interest under Section 201(1A) and the late filing fee under Section 234E of the said Act, had been deposited.

By an order dated June 10, 2025, the Commissioner of Income Tax (TDS), Kolkata, considered and rejected the petitioners' explanation on merits, observing, inter alia, that the default was attributable to negligence rather than any genuine inability to make the payment. Accordingly, sanction under Section 279(1) of the said Act was accorded for prosecution under Section 276B read with Section 278B against the company and its two directors.

It is pertinent to note that the proposal seeking sanction for prosecution had been submitted by the Assessing Officer to the

Commissioner of Income Tax on September 20, 2024, prior to the issuance of the show-cause notice.

Following the grant of sanction, the petition of complaint was filed before the learned Chief Judicial Magistrate, Calcutta, on August 26, 2025.

In the present case, I find that the complaint was lodged in disregard of the various circulars issued by the Central Board of Direct Taxes (hereinafter referred to as "CBDT") from time to time. For the reasons discussed hereinafter, the continuation of the impugned criminal proceedings cannot be sustained.

On April 24, 2008, the CBDT issued Circular No. F. No. 285/90/2008-IT(Inv-I)/05, directing that cases in which the amount of tax deducted at source was Rs. 25,000 or more and the amount remained unpaid even after the expiry of 12 months from the date of deduction should be processed for prosecution, in addition to such recovery measures as might be necessary. The said direction applied to offences under Sections 276B and 276BB of the Income-tax Act, 1961. The circular further provided that prosecution should preferably be launched within 60 days of the deduction of tax.

In the present case, the said circular is relevant, as the amount of tax deducted at source by the petitioners exceeded Rs. 25,000. However, the amount was deposited with the Central Government within 12 months from the respective dates of deduction. The petition of complaint itself acknowledges that the delay in depositing the TDS ranged from one to six months. Furthermore, the prosecution was not initiated within the

stipulated period of 60 days but was launched substantially later than the prescribed due dates. The said circular militates against the institution of prosecution for the alleged offences under Sections 276B and 276BB of the said Act.

Subsequently, on February 7, 2013, the CBDT issued Circular No. F. No. 285/90/2013-IT(Inv), modifying the earlier circular of 2008. The subsequent circular provided that cases in which the amount of tax deducted at source was Rs. 1 lakh or more and the amount was not deposited by the due date prescribed under the Income-tax Act, 1961, read with the Income-tax Rules, 1962, should mandatorily be processed for prosecution under Sections 276B and 276BB of the said Act. However, the preference for launching prosecution within 60 days remained unchanged.

Thereafter, on October 18, 2016, the CBDT issued Circular No. F. No. 285/90/2013-IT(Inv-V)/384, further modifying the earlier circular of 2013. Clause 2(i) clarified that the direction that cases be mandatorily processed for prosecution did not imply that prosecution must invariably be instituted in every such case. Rather, the Commissioner of Income Tax concerned was required to apply his mind to all relevant facts and arrive at a judicious decision regarding the initiation of proceedings under Section 276B of the said Act.

Furthermore, Clause 6(i) emphasised that, for the purposes of Section 276B, no person could be punished for the failure contemplated therein if such person established that there was a reasonable cause for the failure. The circular further stipulated

that, while considering whether prosecution should be initiated, due regard could be had, among other relevant factors, to whether the deductor had remitted the tax before filing the TDS statement and had paid the interest before receiving a notice from the Assessing Officer (TDS) proposing prosecution. It also required that a fair and judicious view be taken, having regard to Section 278AA of the said Act, before the filing of a complaint.

In the present case, the petitioners had deposited the entire TDS amount, together with interest and the applicable late filing fee, well before the issuance of the show-cause notice and even before the prescribed deadline for filing the TDS statement under Section 200(3) of the said Act. These circumstances were, therefore, relevant to the consideration of whether prosecution was warranted in the facts of the case.

On December 9, 2016, the CBDT issued Circular No. F. No. (285)/51/2013-IT(Inv-V)/471, prescribing a revised Standard Operating Procedure (SOP) for the initiation of prosecution in cases involving defaults in the deposit of tax deducted at source.

Under the said circular, the filing of a complaint for prosecution under Sections 276B and 276BB of the said Act required prior sanction under Section 279(1), to be obtained in Form No. T enclosed as Annexure I to the circular.

Clauses 5 and 5.1 of the said circular introduced guidelines prescribing timelines for the submission of proposals seeking sanction, the grant of sanction, and the filing of complaints in prosecution cases.

In the present case, as would appear from paragraph 3 of the complaint, the proposal seeking sanction was submitted on September 20, 2024, whereas the show-cause notice was issued on February 5, 2025. Thus, the proposal for sanction preceded the issuance of the show-cause notice. This chronology violates the guideline that requires the proposal seeking sanction under Section 279(1) should preferably be submitted within 90 days from the issuance of the show-cause notice.

It further appears from paragraph 2 of the complaint that sanction was accorded on June 10, 2025, whereas the proposal had been submitted on September 20, 2024. Accordingly, the sanction was granted approximately eight months after the submission of the proposal, beyond the prescribed period of 90 days.

Moreover, although sanction was granted on June 10, 2025, the complaint was filed only on August 26, 2025, beyond the prescribed period of 30 days.

The High Court of Jharkhand at Ranchi, in ***Criminal Miscellaneous Petition No. 2943 of 2018 (M/s. AT-Dev Prabha (JV) v. The State of Jharkhand)***, considered a similar situation in which the TDS amount, together with interest, had been deposited after the prescribed due date, but prosecution was nevertheless initiated under Section 276B of the said Act.

By its judgment dated February 28, 2022, the High Court quashed a batch of proceedings, including the aforesaid criminal miscellaneous petition, observing in paragraph 18 as follows:

> *"18. The amount has already been deposited with interest and there is no reason why the criminal proceeding shall proceed and the criminal proceeding was launched after receiving the said amount with interest, had it been a case that the case was immediately instituted and thereafter the TDS amount has been deposited with interest, the matter would have been different. As such the continuation of the proceedings will amount to an abuse of the process of the Court."*

The aforesaid judgment was challenged by the Income Tax authorities before the Hon'ble Supreme Court of India by way of Special Leave Petition (Criminal) Diary No. 3073 of 2023. By an order dated March 20, 2023, the Hon'ble Supreme Court dismissed the said special leave petition.

The Revenue has strongly relied upon the judgment of the Supreme Court reported at ***(2007) 160 Taxman 71 (SC) (Madhumilan Syntex Ltd. v. Union of India)***. However, the CBDT circulars relied upon by the petitioners were issued subsequent to the said judgment and, therefore, were not considered therein.

In view of the aforesaid facts and circumstances, the subsequent CBDT circulars, the delay in initiating the prosecution, the deposit of the TDS amount together with interest and the applicable late filing fee, and the judicial precedent referred to above, I am of the view that the continuation of the impugned criminal proceedings would amount to an abuse of the process of the Court.

Accordingly, the proceedings in C.S. Case No. 257063 of 2025, instituted under Sections 276B and 276BB read with Section 278B of the Income-tax Act, 1961, and pending before

the learned Judicial Magistrate, 13th Court, Calcutta, pursuant to the order dated March 12, 2026, are hereby quashed.

Accordingly, **CRR 2216 of 2026** is disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the learned advocates for the parties on usual undertakings.

(Kausik Chanda, J.)