IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2026

CORAM:

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

Crl.O.P.No.8921 of 2023 and
Crl.MP.Nos.5713 & 5715 of 2023

1.M/s.Dream Castle Services Pvt Ltd. (TAN No.CHED06961D)
No.5, Alsa Regency, Door No.165, Eldams Road,
Alwarpet, Chennai 600 018
2.S.Venkataraman ... Petitioners

Vs.

Income Tax Officer,
C.S.Saravanan,
TDS Ward-1(3),
Income Tax Department,
Chennai 600 034 ... Respondent

Prayer: Criminal Original petition filed under Section 482 of Cr.P.C. praying to call for the entire records relating to EOCC.No.98 of 2017 pending on the file of the Additional Chief Metropolitan Magistrate, Economic Offences-I, Egmore, Chennai 600 008 and quash the same against the petitioners.

For Petitioners : Mr.P.C.Harikumar

For Respondent : Mrs.M.Sheela,
Senior Standing Counsel
for Income Tax Department

ORDER

This criminal original petition has been filed praying to quash the proceedings in EOCC.No.98 of 2017 pending on the file of the Additional Chief Metropolitan Magistrate, Economic Offences-I, Egmore, Chennai.

2. The petitioners are the accused in the complaint lodged by the respondent for the offence punishable under Section276B(a) r/w 278B of Income Tax Act, 1961 on the allegation that the first accused is assessed to income tax, TDS ward 1(3) and having tan number. During the financial year 2010-11 and assessment year 2011-12, the accused deducted TDS to the tune of Rs.5,09,465/- under various sections of Chapter XVII B of Income Tax Act from payments made to various parties. After deducting the said tax deducted at source (TDS) amount, the accused instead of depositing the said amount into the Government treasury within the due date, failed to pay tax deducted at source to the credit of the Central Government within the prescribed time, the accused committed default under Sections 200 and 204 r/w Rule 30 of Income Tax Act. Hence, the accused were circulated with show cause notices dated 21.12.2012 and 15.04.2014. Thereafter, notice under Section 2(35)

(b) of Income Tax Act, treating the second accused was issued on 04.03.2016. The accused by the reply dated 19.05.2014 requested to drop the prosecution since they are willing to accept and pay the compounding fees levied by the respondent and the delay in payment of TDS was due to cash flow problem and slow down of real estate business due to general market recession. It was not accepted by the respondent. Thereafter, the accused applied for compounding of offence by the communication dated 19.05.2014 as per the revised guidelines and undertook to pay the amount as determined by the Chief Commissioner of Income Tax along with 10% of compounding fee. It was considered and the accused were directed to pay a sum of Rs.5,12,736/- as compounding fee within a period of 60 days on 09.01.2015. However, the accused failed to pay the compounding fee within a period of 60 days as determined by the authority. Therefore, the respondent lodged complaint. Therefore, Chief Commissioner of Income Tax (TDS), Chennai rejected the compounding application by order dated 04.03.2016 under Section 279(2) of Income Tax Act. Therefore, the act of the accused prima facie constituted offence under Section 276 B r/w 278B of Income Tax Act for deducting TDS for the relevant financial years and not depositing the same into Government account within the prescribed period and the complaint was filed.

3. Heard, the learned counsel appearing on either side and perused all the materials placed before this Court.

4. Though the learned counsel for the petitioners raised several grounds, on perusal of the counter filed by the respondent and also the submissions of the learned counsel for the respondent, it is revealed that the petitioners were not served with any show cause notice before launching prosecution as contemplated under Section 2(35) of Income Tax Act. It is mandatory in nature under Section 2(35) of Income Tax Act with regards to the offence under Section 276B for non remitting the TDS amount. Further, subsequently the petitioners paid the compounding fees to the Department. In the absence of the mandatory notice under Section 2(35) of Income Tax Act, the entire prosecution is bad in law and the impugned proceedings is liable to be quashed.

5. Accordingly, the entire impugned proceedings is quashed and this criminal original petition stands allowed. Consequently, connected miscellaneous petitions are closed.

26.03.2026

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
lok

To

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

2.The Public Prosecutor,
High Court of Madras

G.K.ILANTHIRAIYAN, J.

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Crl.O.P.No.8921 of 2023

26.03.2026