IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M No.8916 of 2023
Reserved on: 09.04.2026
Pronounced on: 18.04.2026
Uploaded on: 20.04.2026

Whether only operative part of the judgment is Pronounced or the full judgment is pronounced: operative part/full judgment

M/s Ambey Construction Co. and others

…Petitioners

Versus

Deputy Commissioner of Income Tax, Bathinda

…Respondent

CORAM: ***HON'BLE MS. JUSTICE MANDEEP PANNU***

Argued by:- Ms. Radhika Suri, Sr. Advocate, assisted by
Ms. Parnika Singla and Mr. Abhinav Narang, Advocates
for the petitioners.

Mr. Vaibhav Gupta, Advocate
for Income Tax Department.

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MANDEEP PANNU, J.

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 for quashing of Complaint No. COMA2223 of 2018 dated 21.05.2018 (Annexure P-5) pending in the Court of learned Judicial Magistrate First Class, Bathinda under Section 276(c)(2 of the Income Tax Act, 1961, and further for setting aside the impugned order dated 03.01.2023 (Annexure P-10) passed in Criminal Revision No.CRR-81 of 2022, whereby the petitioners were not discharged and were ordered to face trial.

2. Briefly stated, the facts of the case are that the complainant, Deputy Commissioner of Income Tax, Central Circle 1, Bathinda, filed a complaint against the partnership firm *M/s Ambey Construction Company* through its partners namely Puneet Garg, Rajni Singla and Murti Devi in their individual capacity under Section 276(c)(2) of the Income Tax Act, 1961 for the assessment year 2011-12, alleging that they had willfully attempted to evade payment of tax, penalty or interest. The accused were summoned to face trial vide summoning order dated 22.05.2018 and the case was fixed for pre-charge evidence. Thereafter, the accused moved an application under Section 245(2) Cr.P.C. on the ground that the assessment order had already been set aside vide order dated 21.09.2019 passed by the Income Tax Appellate Tribunal, Amritsar. However, the said application was dismissed by learned Chief Judicial Magistrate, Bathinda vide order dated 11.05.2022, against which the petitioners preferred a revision petition.

3. Learned Additional Sessions Judge, Bathinda, after hearing both sides and examining the record, dismissed the revision petition vide order dated 03.01.2023. The revisional Court, in brief, held that the complaint under Section 276(c)(2 of the Income Tax Act is independent of the assessment proceedings and merely because the reassessment proceedings were set aside by the Income Tax Appellate Tribunal on technical grounds, the same would not absolve the accused from criminal liability. It was further held that there is *prima-facie* material on record to show that the accused had willfully attempted to evade tax by showing receipt of Rs.15 crores from PACL as business income, whereas the same

was found to be income from other sources. The revisional Court also observed that the setting aside of reassessment proceedings did not amount to a clean chit to the accused and there was no legal bar to continue the criminal prosecution. It was further held that the contention regarding prosecution of a dissolved firm is without merit in view of the provisions of the Income Tax Act, which provide for joint and several liability of partners. The plea regarding invalid sanction was also rejected by holding that proper sanction had been accorded by the competent authority. Consequently, finding no illegality or perversity in the order passed by learned trial Court, the revision petition was dismissed.

4. It has been contended on behalf of the petitioners that the primary and foremost contention raised before this Court is that once the Income Tax Appellate Tribunal has quashed/set aside the assessment proceedings for the assessment year 2011-12, the very basis of the complaint under Section 276(c)(2 of the Income Tax Act, 1961 stands extinguished and, therefore, the continuation of criminal prosecution for alleged willful attempt to evade tax cannot be sustained and amounts to abuse of the process of law. It is argued that the assessment order giving rise to the alleged tax liability having been set aside, no offence survives against the petitioners. It is further contended that learned Courts below have failed to appreciate this legal position in its correct perspective. Learned counsel for the petitioners has also relied upon the judgment of the Hon'ble Supreme Court in ***K.C. Builders vs. Assistant Commissioner of Income-Tax, reported as (2004) 135 Taxman 461 (SC)***, to contend that once the basis of levy of penalty or

assessment is set aside, the prosecution under Section 276(c) of the Act cannot continue. It is specifically argued that the said binding precedent was not properly considered by learned revisional Court while dismissing the revision petition, thereby rendering the impugned orders unsustainable in the eyes of law.

5. It is contended on behalf of the respondent-Income Tax that the present petition is devoid of merit and has been filed with an attempt to take undue advantage of the order passed by the Income Tax Appellate Tribunal, which had merely set aside the assessment proceedings on technical grounds and not on merits. It is submitted that the prosecution against the petitioners has been validly instituted under Section 276(c)(2 of the Income Tax Act, 1961 on the basis of material collected during survey proceedings, which *prima-facie* discloses a willful attempt to evade payment of tax by showing fictitious transactions and misrepresenting receipts. It is further argued that the criminal proceedings are independent of assessment proceedings and merely because the assessment order has been set aside would not *ipso facto* result in the termination of prosecution. Reliance has been placed upon ***P. Jayappan vs. S.K. Perumal (1984) 149 ITR 696 (SC)*** to contend that criminal liability under the Income Tax Act is distinct and can proceed on the basis of independent evidence, irrespective of the fate of assessment proceedings. It is also contended that sanction for prosecution was duly granted by the competent authority and the complaint has been properly instituted, and therefore, no ground for quashing is made out.

6. I have heard the learned counsel for the petitioners as well as

the respondent and have gone through the record of the case along with the judgments relied upon by the parties.

7. The principal contention raised on behalf of the petitioners is that since the Income Tax Appellate Tribunal has set aside the reassessment proceedings for the assessment year 2011-12, the very basis of the complaint under Section 276(c)(2 of the Income Tax Act, 1961 stands obliterated and, therefore, continuation of the criminal proceedings would amount to abuse of the process of law. In support of the said contention, reliance has been placed upon the judgment of the Hon'ble Supreme Court in ***K.C. Builders (supra)***.

8. This Court has carefully considered the aforesaid submission. However, the reliance placed upon ***K.C. Builders (supra)*** is misconceived and the said judgment is clearly distinguishable from the facts of the present case. In ***K.C. Builders (supra)***, the Hon'ble Supreme Court was dealing with a situation where the penalty proceedings under Section 271(1)(c) of the Act had been set aside on merits with a categorical finding that there was no concealment of income. It was in those circumstances that the Hon'ble Supreme Court held that once the very foundation, i.e, concealment of income, stood negated, the prosecution under Section 276(c) could not be sustained.

9. In the present case, however, the reassessment proceedings have been set aside by the Income Tax Appellate Tribunal only on technical grounds and not on merits. There is no finding recorded by the Tribunal that the petitioners did not indulge in any act amounting to willful attempt to

evade tax. Rather, as is evident from the material placed on record, including the survey proceedings, there is *prima-facie* material suggesting that the petitioners had shown receipts of Rs.15 crores from PACL as business income through fictitious or non-genuine transactions with an intent to evade tax liability. Thus, unlike ***K.C. Builders (supra)***, there is no clean exoneration of the petitioners on merits so as to demolish the very substratum of the prosecution.

10. It is well settled that criminal proceedings under Section 276(c) of the Income Tax Act are independent of the assessment proceedings and can proceed on the basis of material collected during investigation. In this regard, reliance can be placed upon the judgment in ***P. Jayappan (supra)***, wherein it has been held by the Hon'ble Supreme Court that there is no legal bar to the institution or continuation of criminal proceedings merely because assessment proceedings are pending or have not attained finality. Similarly, in ***Kalyan Rice and General Mills vs. ITO (1989) 180 ITR 41 (P&H)***, it has been held by this Court that criminal prosecution cannot be dropped merely because the assessment order has been set aside, particularly when there is independent material indicating attempted evasion of tax.

11. Furthermore, as noticed by learned revisional Court, the order passed by the Income Tax Appellate Tribunal does not grant any clean chit to the petitioners but merely sets aside the reassessment proceedings on technical grounds, and therefore, the same cannot be construed as a finding of absence of culpability. The revisional Court has rightly observed that there exists *prima-facie* material to proceed against the petitioners and that

the criminal Court is competent to independently assess the evidence led before it.

12. In view of the aforesaid discussion, this Court is of the considered opinion that the petitioners have failed to make out any case for interference in exercise of inherent jurisdiction under Section 482 Cr.P.C. The impugned order passed by learned Additional Sessions Judge, Bathinda, dated 03.01.2023, does not suffer from any illegality or perversity warranting interference by this Court.

13. Accordingly, finding no merit in the present petition, the same is hereby dismissed.

14. All pending applications, if any, also stand disposed of.

(MANDEEP PANNU)
JUDGE

18.04.2026
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Whether speaking/reasoned: *Yes/No*
Whether Reportable: *Yes/No*