



CrI.O.P.Nos.2616 & 2781 of 2020
& CrI.M.P.Nos.1573, 1574, 1658, 1660 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 21.04.2022

Pronounced on : 26.04.2022

Coram::

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Criminal Original Petition Nos.2616 & 2781 of 2020
& CrI.M.P.Nos.1573, 1574, 1658 & 1660 of 2020

Mrs.Noorjahan,

... Petitioner/Accused
in CrI.O.P.Nos.2616 of 2020

/versus/

The Deputy Commissioner of Income Tax,
Corporate Circule – 1 [1],
Room No.611, Wanaparthi Block,
No.121, M.G.Road, Nungambakkam,
Chennai – 600 034.

... Respondent/Complainant
in CrI.O.P.No.2616 of 2020

Prayer:- This Criminal Original Petition is filed under Section 482 of Cr.P.C.,
pleaded to call for and quash the complaint in E.O.C.C.No.132 of 2019 on the file
of the Additional Chief Metropolitan Magistrate, E.O-1, Egmore, Chennai – 8 and
pass orders.

For Petitioner : Mr.K.Chozhan

For Respondent : Mr.L.Murali Krishnan
Special Public Prosecutor for Tax.



CrI.O.P.Nos.2616 & 2781 of 2020
& CrI.M.P.Nos.1573, 1574, 1658, 1660 of 2020

1. M/s.AMK Solutions Private Ltd.,

PAN No.AAHCA2131L,

Rep. by its Managing Director Mr.Mohammed Zahirudeen,

Director-M/s.AMK Solutions Private Limited,

No.254, AMK Villa, Anna Street,

Gerungambakkam, Porur,

Chennai – 600 122.

2. Mr.Mohammed Zahirudeen,

Director-M/s.AMK Solutions Private Limited,

No.254, AMK Villa, Anna Street,

Gerungambakkam, Porur,

Chennai -600 122.

... Petitioners/1st & 3rd Accused
in CrI.O.P.No.2781 of 2020

/versus/

The Deputy Commissioner of Income Tax,

Corporate Circule – 1 [1],

Room No.611, Wanaparthy Block,

No.121, M.G.Road, Nungambakkam,

Chennai – 600 034.

... Respondent/Complainant
in CrI.O.P.No.2781 of 2020

Prayer:- This Criminal Original Petition is filed under Section 482 of Cr.P.C.,
pleaded to call for and quash the complaint in E.O.C.C.No.132 of 2019 on the file
of the Additional Chief Metropolitan Magistrate, E.O-1, Egmore, Chennai – 8 and
pass orders.

For Petitioners : Mr.K.Chozhan

For Respondent : Mr.L.Murali Krishnan

Special Public Prosecutor for Tax.



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COMMON ORDER

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The petitioner in CrI.O.P.No.2616 of 2020 is the Director of M/s.AMK Solutions Pvt Limited and the petitioners in CrI.O.P No.2781 of 2020 is the Company and its Directors.

2. Complaint for prosecution filed by the Income Tax Department alleging that, the petitioners have wilfully attempted to evade payment of Income Tax for the Assessment Year 2017-2018 and thereby, committed offence under Section 276 C (2) of the Income Tax Act, 1961. The said complaint has being taken on file by the Learned Additional Chief Metropolitan Magistrate Court in E.O.C.C.132/2019. Stating that, the tax payable by the petitioners for the Assessment Year 2017-18 was paid well before the issuance of show cause notice and same was intimated to the authorities, without applying the mind and not considering the payment of tax with interest, sanction to prosecute granted and the private complaint came to be filed suppressing the factum of payment of tax much prior to sanction to prosecute. Hence, these two petitions are filed to quash the complaint on the ground that, there is a lack of ingredient to prosecute the petitioners under section 276 C (2), besides suppression of fact and non-



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सत्यमेव application of mind.
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3. The un-controverted facts of the case is that, M/s.AMK Solutions Pvt Limited is an Income Tax Assessee having PAN No:AAHCA2131L. For the Assessment Year 2017-2018 they have filed self assessment return on 31/10/2017 declaring the income and tax payable. However, the tax admitted to be payable not remitted by the assessee along with the returns, which is the requirement of the law under Section 140 A of Income Tax Act, 1961. The assessee, after a delay of 4 ½ months, has remitted a sum of Rs.6,85,462/- towards the tax and interest payable. While so, the sanction to prosecute issued by the Principal Commissioner of Income Tax-1, Chennai and based on the sanction to prosecute, complaint filed on 28/07/2019.

4. The Learned Counsel for the petitioners submitted that, to attract offence under section 276 C (2) of the Income Tax Act, two ingredients are required. They are (i). culpable mental state to evade Tax and (ii) Attempt to evade tax. In the case of the petitioners, they never had the intention to evade tax. In fact, they have disclosed their income and tax payable while filing the returns.



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Due to financial constraints and other reasons they were not able to pay the tax along with the returns. Hence, after filing the returns within time disclosing the income and tax payable, the tax payable was remitted later, but much before initiating any proceedings for prosecution. Therefore, there is no evasion of tax or attempt for evasion of tax. In the absence of core necessary ingredients to prosecute, the criminal complaint is filed based on the sanction to prosecute issued by the Principal Commissioner, who has omitted to consider the fact that, the tax payable remitted much prior to issuance of show cause notice. In the complaint suppressing the payment of tax, it is falsely alleged that, the petitioners did not pay the tax in spite of sufficient opportunities given and the petitioners are wilfully evading the payment of tax due to the Income Tax Department.

5. In support of the quash petition, the Learned counsel for the petitioners relied on the following judgments:-

1. *Premdass -vs- Income Tax Officer* reported in (1999) 5 SCC 241.

2. *Sushil Kumar Saboo -vs- State of Bihar* reported in (2011) 336 ITR 202 (Patna).



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3. ***Vyalikaval House Building Co-operative Society Ltd., -vs- Income Tax Department, Central Circle, Bangalore*** reported in ***(2020) 428 ITR 89 (Karnataka)***.

4. ***Ganga Devi Somani -vs- State of Gujarat*** (R/Cr.Ma.No.22512 of 2019 dated 06.07.2021).

5. ***Inland Builders Pvt Ltd -vs- The Deputy Commissioner Income Tax*** in CrI.O.P.No.6244 of 2020 dated 25.08.2021.

6. ***S.P.Velayutham -vs- Assistant Commissioner of Income Tax*** reported in ***(2022) 135 Taxmann.com 43 (Madras)***.

6. Per contra, the Learned Special Public Prosecutor for the Income Tax Department submitted that, in case of self assessment, Section 140-A mandates the assessee to submit the returns along with the proof of payment of tax. As per Sub-Section (3) of Section 140 A, any failure on the part of the assessee to pay the tax in whole or in part along with the returns, will be deemed to be a default and without prejudice to the other consequences, the assessee shall be liable for prosecution. Further, under Section 278 E of the Act, there is a



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statutory presumption there is a culpable mental state to evade tax. To the reverse burden is on the assessee, therefore the factual aspect of non-existence of culpable mental state is matter for trial. The complaint cannot be quashed invoking Section 482 of Cr.P.C.

7. To buttress his submissions, the Learned Counsel for the Respondent-Income Tax Department relied upon the following judgments:

1. *Prakash Nath Khanna -vs- Commissioner of Income Tax* reported in (2004) 135 Taxman 327 (SC).

2. *Madhumilan Syntex Limited & Others -vs- Union of India & another* reported in (2007) 11 SCC 297.

3. *Sasi Enterprises -vs- Assistant Commissioner of Income Tax* reported in (2014) 5 SCC 139.

4. *M/s.Neeharika Infrastructure Pvt Ltd -vs- State of Maharashtra and another* reported in (2021) SCC Online SC 315.

5. *Arun Arya -vs- Income Tax Officer* in CRMC.No.205 of 2015.

6. *Mrs.Sujatha Venkateshwara -vs- The*



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Assistant Commissioner of Income Tax in
CrI.R.C.No.615 of 2011.

7. ***Shri.Raman Krishna Kumar -vs- Deputy
Commissioner of Income Tax*** in CrI.O.P.No.25561 of
2016.

8. ***Oriental Enterprises & others -vs- The
Assistant Commissioner of Income Tax*** in
CrI.O.P.No.26330 of 2017.

8. Section 140-A, which speaks about payment of tax under Self
Assessment Scheme reads as below:-

*140A. (1) Where any tax is payable on the basis of any
return required to be furnished under section 115WD or
section 115WH or section 139 or section 142 or section 148
or section 153A or, as the case may be, section 158BC, after
taking into account,—*

*(i) the amount of tax, if any, already paid under any
provision of this Act;*

(ii) any tax deducted or collected at source;

[(iia) any relief of tax claimed under section 89;]

*(iii) any relief of tax or deduction of tax claimed under
section 90 or section 91 on account of tax paid in a country*



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outside India;

*(iv) any relief of tax claimed under section 90A on account of tax paid in any specified territory outside India referred to in that section; [***]*

(v) any tax credit claimed to be set off in accordance with the provisions of section 115JAA or [section 115JD; and]

[(vi) any tax or interest payable according to the provisions of sub-section (2) of section 191,]

the assessee shall be liable to pay such tax together with interest and fee payable under any provision of this Act for any delay in furnishing the return or any default or delay in payment of advance tax, before furnishing the return and the return shall be accompanied by proof of payment of such tax, interest and fee⁷³.

Explanation.—Where the amount paid by the assessee under this sub-section falls short of the aggregate of the tax, interest and fee as aforesaid, the amount so paid shall first be adjusted towards the fee payable and thereafter towards the interest payable as aforesaid and the balance, if any, shall be adjusted towards the tax payable.

(1A) For the purposes of sub-section (1), interest payable,—



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(i) *under section 234A shall be computed on the amount of the tax on the total income as declared in the return as reduced by the amount of,—*

(a) *advance tax, if any, paid;*

(b) *any tax deducted or collected at source;*

[(ba) any relief of tax claimed under section 89;]

(c) *any relief of tax or deduction of tax claimed under section 90 or section 91 on account of tax paid in a country outside India;*

(d) *any relief of tax claimed under section 90A on account of tax paid in any specified territory outside India referred to in that section; and*

(e) *any tax credit claimed to be set off in accordance with the provisions of section 115JAA or section 115JD;*

(ii) *under section 115WK shall be computed on the amount of tax on the value of the fringe benefits as declared in the return as reduced by the advance tax, paid, if any.*

(1B) *For the purposes of sub-section (1), interest payable under section 234B shall be computed on an amount equal to the assessed tax or, as the case may be, on the amount by which the advance tax paid falls short of the assessed tax.*



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Explanation.—For the purposes of this sub-section, "assessed tax" means the tax on the total income as declared in the return as reduced by the amount of,—

(i) tax deducted or collected at source, in accordance with the provisions of Chapter XVII, on any income which is subject to such deduction or collection and which is taken into account in computing such total income;

[(ia) any relief of tax claimed under section 89;]

(ii) any relief of tax or deduction of tax claimed under section 90 or section 91 on account of tax paid in a country outside India;

(iii) any relief of tax claimed under section 90A on account of tax paid in any specified territory outside India referred to in that section; and

(iv) any tax credit claimed to be set off in accordance with the provisions of section 115JAA or section 115JD.

(2) After a regular assessment under section 115WE or section 115WF or section 143 or section 144 or an assessment under section 153A or section 158BC has been made, any amount paid under sub-section (1) shall be deemed to have been paid towards such regular assessment or assessment, as the case may be.



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(3) If any assessee fails to pay the whole or any part of such tax, interest or fee in accordance with the provisions of subsection (1), he shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of the tax, interest or fee remaining unpaid, and all the provisions of this Act shall apply accordingly.

(4) The provisions of this section as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1987 (4 of 1988), shall apply to and in relation to any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year and references in this section to the other provisions of this Act shall be construed as references to those provisions as for the time being in force and applicable to the relevant assessment year.

9. The penal provision Section 276 C (2) of the Income Tax Act as it stood during the Assessment Year 2017-2018 reads as below:-



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“276C. Wilful attempt to evade tax, etc.

(1).....

(2) *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 [two years] and shall, in the discretion of the court, also be liable to fine.*

Explanation.—For the purposes of this section, a wilful attempt to evade any tax, payable 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 account or other documents; or

(iii) wilfully omits or causes to be omitted any relevant entry or statement in such books of account or other



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documents; or

(iv) causes any other circumstance to exist which will have the effect of enabling such person to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof.”

10. The contention of the Standing Counsel for the Income Tax Department is that, the failure to remit the tax and annexing the proof of payment of tax along with the returns filed on 31/07/2017 is sufficient to deem the assessee, a defaulter. Being a defaulter, the presumption of culpable mental state is against them. Therefore they has to prove their innocence during the trial and cannot short circuit the judicial process by invoking Section 482 of Cr.P.C.

11. Whereas, the Learned Counsel for the petitioner submits that, on payment of tax, there is no scope to invoke the deeming provision and proceed with prosecution. Neither on the date of according sanction nor on the date of filing the compliant, factually there was no arrears of tax or default in payment of tax or any evasion of tax to deem the assessee, a defaulter. When on facts there is no tax payable on the date of according sanction, this case squarely falls under the



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category of malafide prosecution and non application of mind.
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12. In *Prem Dass -vs- Income Tax Officer* cited supra the Hon'ble Supreme Court while considering the expression 'Wilful attempt to evade any tax' as found in Section 276 C of the Income Tax Act, has held that, there must be concealment of income by the assessee or the assessee must have furnished inaccurate particulars of income in order to attract Section 276 C. The relevant passages in the said Judgment reads as below:-

“8. Wilful attempt to evade any tax, penalty or interest chargeable or imposable under the Act under Section 276-C is a positive act on the part of the accused which is required to be proved to bring home the charge against the accused. Similarly a statement made by a person in any verification under the Act can be an offence under Section 277 if the person making the same either knew or believed the same to be false or did not believe to be true. Necessary mens rea, therefore, is required to be established by the prosecution to attract the provisions of Section 277. We see nothing in Section 132(4-A) which would establish the ingredients of the aforesaid two criminal offences contemplated under Sections 276-C and 277 of the Indian Income Tax Act. It may be



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noticed at this point of time that the Tribunal, while interfering with the penalty imposed under Section 271(1-C) of the Act came to a positive finding that there is no act of concealment on the part of the assessee and he had returned the income on estimate basis. The Tribunal further found that it is a case purely on difference of opinion as to the estimates and not a case of concealment of income or even furnishing of inaccurate particulars of income.

9. In the aforesaid premises, the High Court was totally in error in interfering with the order of acquittal passed by the learned Sessions Judge by an elaborate and well-reasoned judgment. We have no hesitation to come to the conclusion that the ingredients of offence under Sections 276-C and 277 of the Income Tax Act have not been established by the prosecution beyond reasonable doubt, and therefore, the appellant cannot be convicted of the offence under the said sections.”

13. In the instant case, admittedly there is no concealment of any source of income or taxable item, inclusion of a circumstance aimed to evade tax or furnishing of inaccurate particulars regarding any assessment or payment of tax. What is involved is only a failure on the part of the petitioner to pay the tax in

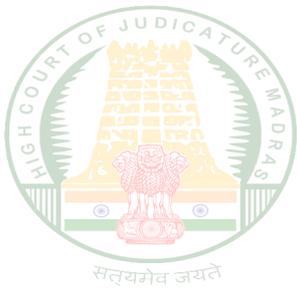


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time, which was later on paid after 4 ½ months along with interest payable. So, it would not fall under the mischief of Section 276 C of the Income Tax Act, which requires an attempt to evade tax and such attempt must be a wilful.

14. If the intention (culpable mental state) of the assessee was to evade tax or attempt to evade tax, they would not have filed the returns in time disclosing the income and the tax liable to be paid. They would not have remitted the tax payable along with interest without waiting for the authorities to make demand or notice for prosecution. Thus, except a delay of 4 ½ months in payment of tax, it is clear that there was no tax evasion or attempt to evade the payment of tax. To invoke the deeming provision, there should be a default in payment of tax in true sense. Nothing can be deemed contrary to the fact borne by record. If such deeming fiction is applied by the authority, it has to be termed as non application of mind over the material records.

15. Yet another argument advanced by the Special Public Prosecutor for the respondent-Income Tax Department is based on Section 278 E of the Act, which speaks about the presumption of culpable mental state.



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“Section 278 E is extracted below for reference :-

278E - Presumption as to culpable mental state.

(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation - In this sub-section, “culpable mental state” includes intention, motive or knowledge of a fact, or belief in, or reason to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.”

16. A 'culpable mental state' which can be presumed under section 278E of the Act would come into play only in a prosecution for any offence under the Act, when the said offence requires a 'culpable mental state' on the part of the accused. Section 278 E of the Act is really a rule of Evidence regarding existence of *mens rea* by drawing a presumption though rebuttable. That does not mean that, the presumption would stand applied even in a case wherein the basic



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requirements constituting the offence are not disclosed. More particularly, when the tax is paid much before the process for prosecution is set into motion. The presumption can be applied only when the basic ingredient which would constitute any offence under the Act is disclosed. Then only, the rule of evidence under section 278 E of the Act regarding rebuttable presumption as to existence of culpable mental state on the part of accused would come into play.

17. When the facts on record discloses that the tax already paid and no evasion of tax, no man of ordinary prudence can presume that there is an attempt to evade tax and such attempt is a wilful one.

18. In the instant case, the Principal Commissioner of Income Tax, who has accorded sanction on 14/03/2019 has not considered the payment of tax with interest by the assessee on 15/02/2018. The proceedings granting sanction to prosecute was contrary to the facts, says, “it is seen from the AIMS that Self-Assessment amount of Rs.6,85,462/- is unpaid”. Further, the Principal Commissioner has conspicuously omitted to record the fact of payment of the tax with interest except to record that, the tax was not paid within the time.



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19. On perusing the complaint, this Court finds that, the complaint was filed in the month of July-2019. At paragraph 9 of the complaint, it states that, “The complainant states that the accused has failed to pay the tax liability of Rs.6,85,641/- along with its return of income filed on 31/07/2017. Till date the accused has not paid the above said tax amount due to the Department.” (emphasis added).

20. Thus, the suppression of material facts, intentional suggestion of falsehood and non-application of mind goes to show that, this is a malicious prosecution initiated by the Income Tax authorities by abusing the power. When the malafide is patently manifested, the petitioners need not be forced to undergo the ordeal of trial, which has no legs to stand.

21. For the said reasons, the petitions to quash the E.O.C.C.No.132 of 2019 on the file of Additional Chief Metropolitan Magistrate, Egmore, is allowed. Accordingly, these Criminal Original Petitions are allowed. Consequently, connected Miscellaneous Petitions are closed.



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Index :Yes/No.
Speaking order/Non Speaking order
bsm

Copy to:-

1. The Deputy Commissioner of Income Tax, Corporate Circule – 1 [1],
Room No.611, Wanaparthi Block, No.121, M.G.Road, Nungambakkam,
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Dr.G.JAYACHANDRAN,J.

bsm

Pre-delivery common order made in
Criminal Original Petition Nos.2616 & 2781 of 2020
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