IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

WEDNESDAY, THE 23RD DAY OF OCTOBER 2019 / 1ST KARTHIKA, 1941

OP(Crl.).No.401 OF 2019

CC NO.IN 96/2014 OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE (E&O),ERNAKULAM

PETITIONERS:

1 M/S BEEVER ESTATES PVT.LTD
PUTHURAN PLAZA, K.P.C.C.JUNCTION, KOCHI-682 011,
REPRESENTED BY ITS PRINCIPAL OFFICER, MR.B.R.AJIT.

2 B.R.AJIT,
AGED 64 YEARS
S/O.KESAVAN B.UNNITHAN, PRINCIPAL OFFICER, M/S. BEAVER ESTATES P.LTD., PUTHURAN PLAZA, K.P.C.C. JUNCTION, KOCHI-682 011.

BY ADV. SRI.DALE P.KURIEN

RESPONDENTS:

1 THE ASSISTANT COMMISSIONER OF INCOME TAX
CORPORATE CIRCLE 1(1), CORPORATE RANGE-1, IVTH FLOOR, CENTRAL REVENUE BUILDINGS, I.S.PRESS ROAD, KOCHI-682 018.

2 THE COMMISISONER OF INCOME TAX(APPEALS)-1,
GIRINAGAR 1ST CROSS ROAD, PANAMPILLY NAGAR, KOCHI-682 020.

3 STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, KOCHI-682 031.

R1 & R2 BY SRI JOSE JOSEPH - SC IT

R3 BY PUBLIC PROSECUTOR

THIS OP (CRIMINAL) HAVING BEEN FINALLY HEARD ON 09.10.2019, THE COURT ON 23.10.2019 DELIVERED THE FOLLOWING:

R.NARAYANA PISHARADI, J

****

O.P.(Crl) No.401 of 2019

Dated this the 23rd day of October, 2019

O R D E R

This original petition is filed under Article 227 of the Constitution of India. The prayer in this petition is to issue a direction to the Additional Chief Judicial Magistrate's Court (Economic Offences), Ernakulam to keep in abeyance all further proceedings in the case C.C.No.996/2014 of that court till the disposal of the appeal filed by the petitioners in the matter before the Commissioner of Income Tax (Appeals).

2. The petitioners are the accused in the aforesaid case. The first petitioner is a company. The second petitioner is the Managing Director of the first petitioner company. The case C.C.No.996/2014 is based on the complaint filed against them by the Deputy Commissioner of Income Tax alleging that they had wilfully not filed the return of income tax for the assessment year 2007-08 within the prescribed time and that they have committed the offence punishable under Section 276CC of the Income Tax Act, 1961 (hereinafter

referred to as 'the Act').

3. The plea of the petitioners is that they have filed appeal before the statutory authority challenging the assessment of tax and that the decision in the appeal has got bearing on the prosecution against them and therefore, the criminal proceedings pending against them may be kept in abeyance till the disposal of the aforesaid appeal.

4. Heard learned counsel for the petitioners and the learned Standing Counsel for Government of India (Taxes) and the learned Public Prosecutor.

5. Learned counsel for the petitioners contended that, if the statutory appeal filed by the petitioners under the Act is allowed, it would knock down the very basis of the prosecution against them and therefore, the criminal proceedings may be ordered to be kept in abeyance. Learned counsel for the petitioners has relied upon the decision of the Apex Court in **K.C.Builders v. Assistant Commissioner of Income Tax : (2004) 2 SCC 731** in support of his contention.

6. The decision in **K.C.Builders** (supra) has no application to the facts of the present case. It was a case of concealment of income where penalty was imposed on the assessee by the assessing authority. The prosecution against the assessee was under Sections

276C(2) and 278B of the Act and Sections 193, 196 and 420 and 120B of the Indian Penal Code. Section 276C provides the punishment for wilful attempt to evade tax, penalty or interest. Section 278B of the Act provides for offences by companies. In **K.C.Builders** (supra), the Apex Court has held that levy of penalties and prosecution under Section 276C of the Act are simultaneous and hence, once the penalties are cancelled on the ground that there is no concealment, the quashing of prosecution under Section 276C of the Act is automatic. In the instant case, the prosecution is under Section 276CC of the Act for wilful failure to file returns within due time. It does not depend on the assessment of tax.

7. Learned counsel for the petitioners has also relied upon the decision of the Supreme Court in **Commissioner of Income Tax v. Bhupen Champak Lal Dalal : AIR 2001 SC 1096**, wherein it has been held as follows:

> *"The prosecution in criminal law and proceedings arising under the Act are undoubtedly independent proceedings and, therefore, there is no impediment in law for the criminal proceedings to proceed even during the pendency of the proceedings under the Act. However, a wholesome rule will have to be adopted in matters of this nature where courts have taken the view that when the conclusions arrived at by the appellate authorities have a*

relevance and bearing upon the conclusions to be reached in the case necessarily one authority will have to await the outcome of the other authority".

8. The decision in **Bhupen Champak Lal Dalal** (supra) has application only in cases where the conclusions arrived at by the appellate authorities have a relevance and bearing upon the conclusions to be reached in the criminal proceedings. This is not a case of that nature.

9. Learned standing counsel for the first and the second respondents has invited the attention of this Court to the decision of the Apex Court in **Sasi Enterprises v. Assistant Commissioner of Income Tax : (2014) 5 SCC 139**, wherein it has been held as follows:

> *"We also find no basis in the contention of the learned senior counsel for the appellant that pendency of the appellate proceedings is a relevant factor for not initiating prosecution proceedings under Section 276CC of the Act. Section 276CC contemplates that an offence is committed on the non-filing of the return and it is totally unrelated to the pendency of assessment proceedings except for second part of the offence for determination of the sentence of the offence, the department may resort to best judgment assessment or otherwise to past years to determine the extent of the breach. ..... If it was the intention of the legislature to hold up the prosecution proceedings*

> *till the assessment proceedings are completed by way of appeal or otherwise the same would have been provided in Section 276CC itself. Therefore, the contention of the learned senior counsel for the appellant that no prosecution could be initiated till the culmination of assessment proceedings, especially in a case where the appellant had not filed the return as per Section 139(1) of the Act or following the notices issued under Section 142 or Section 148 does not arise".*

10. The decision in **Sasi Enterprises** (supra) squarely applies to the facts of the present case. Therefore, I find that this is not fit case in which the supervisory jurisdiction of this Court under Article 227 of the Constitution should be invoked to stay the criminal proceedings against the petitioners in the competent court.

11. Learned counsel for the petitioners has argued at length on the merits of the complaint filed against them. This is not a petition for quashing the proceedings against the petitioners. Therefore, it is not necessary to advert to those contentions.

12. In the aforesaid circumstances, this original petition fails and it is dismissed.

Sd/- **R.NARAYANA PISHARADI, JUDGE**

jsr

APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	TRUE COPY OF THE ASSESSMENT ORDER DATED 29.03.2014.
EXHIBIT P2	TRUE COPY OF THE COMPLAINT PENDING BEFORE THE ADDITIONAL CHIEF JUDICIAL MAGISTRATE COURT(E.O.) AT ERNAKULAM DATED 01.09.2014.
EXHIBIT P3	TRUE COPY OF THE MEMORANDUM OF APPEAL ITA NO.26/R-1/CIT(A)-II/14-15 DATED 26.04.2014 FILED BEFORE CIT(APPEALS).
EXHIBIT P4	TRUE COPY OF THE HEARING NOTES BEFORE CIT (APPEALS) DATED 01.11.2016.
EXHIBIT P5	TRUE COPY OF THE DECISION REPORTED IN 265 ITR 562(SC) CITED K.C.BUILDERS AND ANOTHER VS.ACIT.
EXHIBIT P6	TRUE COPY OF THE DECISION REPORTED IN 288 ITR 134(KER) EDAYANAL CONSTRUCTIONS VS.ITO.
EXHIBIT P7	TRUE COPY OF THE DECISION REPORTED IN 248 ITR 830 (SC) CITED CIT VS.BHUPAN CHAMPAK LAL DALAL AND ANOTHER VS.CIT.
EXHIBIT P8	TRUE COPY OF THE DECISION REPORTED IN 2009 (2) KLT 948(KER) CITED K.S.NANDAKUMAR VS.ITO.
EXHIBIT P9	TRUE COPY OF DISCHARGE SUMMARY FROM AMRITHA HOSPITAL, ERNKAULAM DATED 02.09.2019.

RESPONDENTS EXHIBITS: NIL

TRUE COPY

P.A TO JUDGE

LSN