



WEB COPY



CrI.O.P.No.14461 of 2022

**THE HIGH COURT OF JUDICATURE AT MADRAS**

<b>Reserved on</b>	<b>Delivered on</b>
04~08~2022	16~08~2022

**CORAM:**  
**THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR**

**CrI.O.P.No.14461 of 2022**

Shri.R. Vasudevan  
Flat No.R-35, TNHB Complex,  
T.S.Krishna Nagar,  
Mugappair West, Chennai-600050. .. Petitioner /Accused

~Vs~

The Deputy Commissioner of Income Tax,  
Central Circle-1(1),  
Room No.320, 3<sup>rd</sup> Floor,  
Investigation Wing,  
No.46, M.G.Road, Chennai 600034. .. Respondent / Complainant

**Prayer:** Petition filed under Section 482 of Cr.P.C.to call for the records pertaining to E.O.C.C.No.12 of 2018 pending on the file of the Learned Additional Chief Metropolitan Magistrate, Economic Offences-II, Egmore, Chennai and quash the same.

For Petitioner : Mr. M. Deivanandam



WEB COPY



CrI.O.P.No.14461 of 2022

For Respondent : Mrs. M. Sheela,  
Spl.Public Prosecutor,  
Income Tax

## **ORDER**

This petition has been filed to quash the complaint filed by the Respondent for the offences under Section 276C(1) and 277 of the Income Tax Act, 1961, pending on the file of the Additional Chief Metropolitan Magistrate (Economic Offences-II), Egmore, Chennai-600008 in E.O.C.C.No.12 of 2108.

2. The Crux of the allegations in the complaint is as follows:

2(a) The Accused is an assessee on the file of the Deputy Commissioner of Income Tax, Central Circle-1(1), Chennai. He has filed a Return of Income for the Assessment Year 2012-13 on 31.3.2014 admitting a total income of Rs.26,73,830/-. The case was selected for scrutiny. It was found that the accused has sold property situated at MTH Road, Ambattur, Chennai to one V.S.J.Dinakaran for a sale consideration of Rs.1,61,32,000/- on 14.07.2011. The entire sale consideration was received by the accused by cash. Subsequently, the



CrI.O.P.No.14461 of 2022

accused has purchased a property at Government Industrial Estate, Ambattur, Chennai-58 on 14.06.2013. He has claimed to have spent Rs.1,39,89,530/- on Civil construction on the said property. Accordingly, the accused declared long term capital gain of Rs.16,24,088/- after claiming deduction under Section 54F of the Income Tax Act to the tune of Rs.1,12,06,199/-.

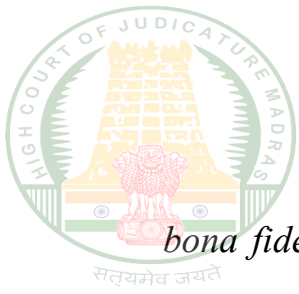
2(b) . It is the case of the prosecution that the sale of new property was to be restricted to industrial use and hence it could not be considered as a residential house. The Assessing Officer further observed that out of the cash receipt of Rs.1,39,89,530/- the accused claimed to have spent Rs.1,26,70,000/- on construction which was incurred in cash. The Assessing Officer had disallowed the deduction claimed by the accused under Section 54F of the Income Tax Act and passed an order on 30.01.2015 determining the total income of at Rs.1,38,80,029/- and total tax liability quantified at Rs.28,14,969/- which along with interest payable worked out to Rs.37,87,470/-. Penal proceedings were also initiated under Section 271[1][c] of the Income Tax Act for wrong claim of deduction under Section 54F of the Income Tax Act .



CrI.O.P.No.14461 of 2022

**WEB COP 2(c).** As against the order of Assessment, an appeal was preferred by the accused, which was dismissed. As the assessee has not invested the sale consideration to acquire residential house as provided under Section 54F of the Act, since he has invested in an industrial property, the Assessment Order passed by the Assessing Authority was upheld by the Appellate authority. Hence, it is the case of the prosecution that the accused has willfully attempted to evade the tax by making a false claim, which were not allowable under the provisions of the Income Tax Act. Hence the accused has committed an offence under Section 276C[1] of the Income Tax Act. Show cause notice was issued and the reply given by the accused is not satisfactory and hence prosecution was initiated under Section 276C[1] and 277 of the Income Tax Act. The same was taken on cognizance by the Additional Chief Metropolitan Magistrate, Egmore, Chennai-600008 in E.O.C.C.No.12 of 2018 and the same is sought to be quashed.

3. Learned Counsel appearing for the Petitioner would submit that he has not willfully evaded tax or suppressed any materials. It is his contention that the assessee has in fact claimed exemption under Section 54F of the Income Tax Act,



CrI.O.P.No.14461 of 2022

WEB GOV

*bona fidely*. Though the Assessment Order went against the accused and in the penalty proceedings, the Appellate Authority has clearly held that the Assessee has originally showed the receipt of the said property and claimed deduction under Section 54F of the Income Tax Act. It is also held that the assessee has made a *bona fide* claim , claiming exemption under Section 54F of the Income Tax Act. Therefore, it is his contention that mere claiming deduction *bona fidely*, it cannot be said that there is a willful evasion of Tax. When the assessee has made a *bona fide* claim which was not accepted by the Assessment Officer and subsequently, tax is also paid, prosecution cannot be initiated for willful evasion of Tax. Hence it is his contention that in the penalty proceedings it is clearly held that the assessee has made a *bona fide* claim and the penalty proceedings has been set aside. Therefore, prosecution under Section 276C(1) and 277 of the Income Tax Act, cannot be maintained in the eye of law.

4. In support of his contention he relied upon the following judgments:

1. *Noorjahan vs. Deputy Commissioner of Income-Tax* [[2022] 138 taxmann.com 76 (Madras)]

2. *K.E.Gnanavel Raja vs. Assistant Commissioner of*



WEB COPY



CrI.O.P.No.14461 of 2022

*Income Tax [[2022]137 taxmann.com 372]*

3. *S.P.Velayutham vs. Assistant Commissioner of  
Income Tax [[2022]135 taxmann.com 43  
(Madras)]*

5. Whereas the learned counsel appearing for the Respondent filed her counter and submitted that but for the scrutiny process the income would have been escaped and it is the contention that having sold house property, the Petitioner has made investment in the industrial area and he has wrongly claimed capital gain. Therefore, the penalty proceedings also initiated. The Assessment Order was upheld by the Appellate Tribunal. Hence, submitted that it is only the accused has to rebut the presumption under Section 278E of Income Tax Act, which provides culpable mental state of mind of the accused. Hence submitted that the conduct of the Petitioner clearly made out the offence under section 277 I.T.Act and the same cannot be quashed at this stage. Hence, opposed the petition.

6. In support of her submissions, she relied upon the following judgments:

1. *J. Dinakaran vs. the Deputy Director of Income Tax  
[CrI.O.P.Nos.28469, 28482 to 28484, 28487 &*



WEB COPY



CrI.O.P.No.14461 of 2022

**28492 of 2018 dated 05.03.2019 Madras High Court]**

**2. Arun Arya vs. Income Tax Officer [CRMC.No.205 of 2015 dated 28.09.2018 Jammu & Kashmir High Court]**

7. Heard both sides. The complaint is mainly filed for the offences under Section 276C(1) and 277 of the Income Tax Act. It is relevant to refer Section 276 of the Income tax Act, 1961:

***“276. Removal, concealment, transfer or delivery of property to thwart tax recovery:***

*Whoever fraudulently removes, conceals, transfers or delivers to any person, any property or any interest therein, intending thereby to prevent that property or interest therein from being taken in execution of a certificate under the provisions of the Second Schedule shall be punishable with rigorous imprisonment for a term which may extend to two years and shall also be liable to fine.”*



CrI.O.P.No.14461 of 2022

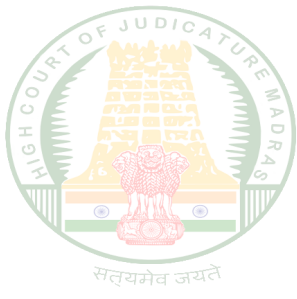
8. On a careful perusal of the above Section makes it clear that whoever fraudulently removes, conceals, transfers or delivers to any person, any property or any interest therein, intending thereby to prevent that property or interest therein from being taken in execution of a certificate under the provisions of the Second Schedule shall be punishable with rigorous imprisonment for a term which may extend to two years and shall also be liable to fine. To attract the offence, the prosecution must establish the fraudulent removal and concealment, transfer or deliver of any property or any interest thereon with intend to prevent the property and interest thereon in order to evade the tax.

9. Section 276C(1) of the Income Tax Act, 1961 reads as follows:

***Section 276C(1) in The Income- Tax Act, 1961***

*(1) If a person wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable 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,-*

*(i) in a case where the amount sought to be evaded exceeds one hundred thousand rupees,*



WEB COPY



CrI.O.P.No.14461 of 2022

*with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;*

*(ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.”*

10. On a perusal of both sections make it very clear that to maintain the prosecution there must be a willful attempt to evade any tax, penalty or interest on the part of the assessee. The very crux of the allegation in the complaint indicate that the accused has sold house property to construct a building in the industrial site. The prosecution case is that the amount ought to have been invested in the house property. It is also admitted by the prosecution that the assessee has claimed exemption under Section 54F of the Income Tax Act. The very averment in the complaint itself indicates that there is no concealment or willful suppression of any materials, what was sought for is exemption under Section 54F of the Income Tax Act. Of course, an Assessment Officer has not accepted the claim for exemption under Section 54F of the Act. Accordingly, the Assessment Order



passed by the authorities were upheld by the Tribunal which is not disputed.

WEB COPY

11. In the Income Tax Appellate Tribunal order it is not found that the accused fraudulently removed or claimed bogus exemption. The assessment order upheld mainly on the ground that since the property was purchased in the industrial area not residential house, the claim has not accepted. It is nowhere found that there is a false claim has been made. It is also relevant to note that penalty proceedings also initiated which was challenged before the Income Tax Appellate Tribunal 'A' Bench, Chennai, in ITA No.1730/Chhy/2019. In the above order in paragraph 5 the Appellate Tribunal has held as follows:

*“5. We have heard both the sides, perused the materials available on record and gone through the orders of the authorities below. The assessee has sold a property and purchased another property and claimed deduction u/s. 54F of the Act. The A.O has called the details of the purchased property. After examining the sale deed, the A.O noticed that the house purchased by the assessee is not a residential house and it is only for the purpose of for running the industry and other connected*



WEB COPY



CrI.O.P.No.14461 of 2022

*activities and therefore, the very nature of the property purchased by the assessee is only industrial property not a residential house and levied penalty u/s. 271(1)(c) of the Act I is a fact that the assessee has not purchased a residential house. It is a bonafide claim of the assessee that on sale of the property he can purchase another property, but, the fact remains that another property which is supposed to be purchased only residential house and not an industrial property. Therefore, the assessee is not entitled for the deduction u/s. 54 of the Act. Therefore, the A.O denied the claim u/s. 54 of the Act and the Ld CIT(A) confirmed and ITAT also finally upheld the order of the Ld. CIT(A). So far as penalty is concerned, the assessee simply made a claim, which is not acceptable to the A.O. penalty cannot be levied u/s. 271(1)(c) of the Act automatically as has been held in the case of CIT vs. Reliance Petroproducts (P) Ltd. (supra), wherein, the Hon'ble Supreme Court explained that whether a claim simply not accepted by the A.O., it does not mean that it is a concealment of income or furnishing of inaccurate particulars of income so that penalty can be levied. Therefore, following the judgment of the Hon'ble Supreme Court, we are of the opinion that the assessee has neither concealed the income nor furnished inaccurate*



WEB COPY



CrI.O.P.No.14461 of 2022

*particulars in this case and therefore the penalty levied by the A.O and confirmed by the Ld.CIT(A) is not correct. In view of the above, we cancel the penalty levied under section 271(1)(c) of the Act by the Assessing Officer.*

12. It is the fact that the accused has not purchased residential house. It is the bona fide claim of assessee that on the sale of property he has purchased the another property. The fact remains that the another property, which is supported his case, only a residential house not an industrial property. On relying upon the judgment of the **CIT vs. Reliance Petroproducts (P) Ltd., reported in [2020] 322 ITR 158 (SC)** wherein the Apex court explained that whether a claim simply not accepted by the A.O., it does not mean that it is a concealment of income or furnishing of inaccurate particulars of income so that penalty can be levied. Following that, the Income Tax Appellate Tribunal has observed as follows:

*“We are of the opinion that the assessee has neither concealed the income nor furnished inaccurate particulars in this case. Therefore, the penalty levied by the A.O. And confirmed by the Ld.CIT(A) is not correct.”*

Accordingly, the penalty imposed is set aside by the Appellate Tribunal. The



penalty proceedings also reached finality, no further appeal is filed. As it is not

observed anywhere that the assessee claimed false or bogus it cannot be said that there is concealment or wilful evasion of the Tax.

13. In ***Radheshyam Kejriwal vs. State of West Bengal and Another [(2011) 3 Supreme Court Cases 581]*** though it is a three judges bench majority judges have held that even under Foreign Exchange Regulation Act finding of fact in adjudication proceedings is relevant in criminal proceedings and the prosecution would be unjust and an abuse of process of the court.

14. In ***G.L. Didwania & Another vs. Income Tax Officer and Another [1995 Supp (2) SCC 724]*** the Honourable Supreme Court has held as follows:

*"4. In the instant case, the crux of the matter is attracted and whether the prosecution can be sustained in view of the order passed by the Tribunal. As noted above, the assessing authority held that the appellant-assessee made a false statement in respect of income of Young India and Transport Company and that finding has been set aside by the Income-tax Appellate Tribunal. If that is the position then we are unable to see as to how criminal proceedings can be sustained."*

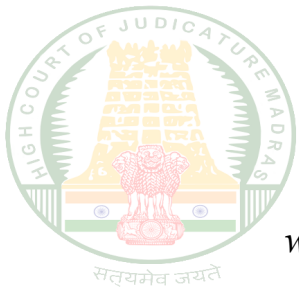


WEB COPY 15. In *Commissioner of Income Tax, Mumbai vs. Bhupen Champal Lal*

*Dalal & Another [(2001) 3 SCC 459]* the Apex Court has held as follows:

"3. *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.*

4. *This Court in G.L.Didwania & Anr. vs. Income Tax Officer & Anr., 1995 Supp.(2) SCC 724, dealt with the similar situation where there is a prosecution under the Act for making a false statement that the assessee had intentionally concealed his income and the Tribunal ultimately set aside the assessment holding that there is no material to hold that such income belong to the assessee and the petition was filed before the Magistrate to drop the criminal proceedings and thereafter an application was filed before the High Court under Section 482 Cr.P.C. to quash those criminal proceedings. This Court held that the*



WEB COPY



CrI.O.P.No.14461 of 2022

whole question is whether the appellant made a false statement regarding the income which according to the assessing authority has escaped assessment and this issue was dependent on the conclusion reached by the appellate Tribunal and hence the prosecution could not be sustained. *In Uttam Chand & Ors. vs. Income Tax Officer, Central Circle, Amritsar, 1982 (2) SCC 543*, this Court held that in view of the finding recorded by the Tribunal on appraisal of the entire material on the record that the firm was a genuine firm and the assessee could not be prosecuted for filing false returns and, therefore, quashed the prosecution. *In P.Jayappan vs. S.K.Perumal, First Income-Tax Officer, Tuticorin, 1984 Supp. SCC 437*, this Court observed that the pendency of the reassessment proceedings under the Act cannot act as a bar to the institution of the criminal proceedings and postponement or adjournment of a proceedings for unduly long period on the ground that another proceedings having a bearing on the decision was not proper.

16. In ***Radheshyam Kejriwal's case*** (*supra*) the Honourble Apex Court has held as follows:

"38. The ratio which can be culled out from these decisions can broadly be stated as follows :-



WEB COPY



CrI.O.P.No.14461 of 2022

*(i) Adjudication proceeding and criminal prosecution can be launched simultaneously;*

*(ii) Decision in adjudication proceeding is not necessary before initiating criminal prosecution;*

*(iii) Adjudication proceeding and criminal proceeding are independent in nature to each other;*

*(iv) The finding against the person facing prosecution in the adjudication proceeding is not binding on the proceeding for criminal prosecution;*

*(v) Adjudication proceeding by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of [Article 20 \(2\)](#) of the Constitution or [Section 300](#) of the Code of Criminal Procedure;*



WEB COPY



CrI.O.P.No.14461 of 2022

*(vi) The finding in the adjudication proceeding in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceeding is on technical ground and not on merit, prosecution may continue; and*

*(vii) In case of exoneration, however, on merits where allegation is found to be not sustainable at all and person held innocent, criminal prosecution on the same set of facts and circumstances can not be allowed to continue underlying principle being the higher standard of proof in criminal cases."*

17. Considering the above position of law, when the Tribunal has held that the Assessee has made *bona fide* claim it cannot be held that there was willful evasion of tax. It is not the case of the Assessing Officer that the Claim is false or bogus. When the Appellate Tribunal has factually recorded the finding that there was no suppression of facts and the assessee has originally disclosed the receipt of the sale property, merely claimed deduction it cannot be said that there was willful evasion of Tax.



CrI.O.P.No.14461 of 2022

**WEB COPY 18.** As recorded by the Appellate Tribunal in penalty proceedings the disclosure has been made. There is no suppression of facts. Therefore, it cannot be said that merely exemption is claimed to the property and the investment has not been made, the willful evasion cannot be presumed as the Appellate Tribunal has found that there was no suppression. Therefore, initiation of prosecution on the similar allegations is nothing but futile exercise. Accordingly, considering the judgments of Apex Court this Court is of the view that the prosecution on the similar grounds would not serve any purpose, only lead to the unnecessary harassment. The tax has already been paid which has not been disputed. In *N. Athimoolam vs. Income Tax Officer* [[2010] 327 ITR 603 (Madras) this Court has refused to quash the proceedings mainly on the ground that substantial portion of witnesses have been examined. Therefore the same is not applicable.

19. Considering the above position when the Tribunal has held that there is no suppression or willful evasion of tax and it is also admitted that tax is also paid and penalty proceedings recorded that there is no suppression of fact and the



CrI.O.P.No.14461 of 2022

assessee has originally disclosed the receipt of the sale property, merely claiming a

deduction cannot be said that there is willful evasion of tax.

20. This court in ***K.E. Gnanvel Raja vs. Assistant Commissioner of Income-Tax [2022] 137 taxmann.com 372 (Madras)*** has held that penalty was levied for wrong calculation of loss and not concealment of income, continuation of prosecution against the assessee would amount to abuse of process of law.

21. In ***Mrs. Noorjahan vs. Deputy Commissioner of Income Tax [2022] 138 taxmann.com 76*** this court in paragraphs 12 15 and 16 held as follows:

*“12. In Prem Dass cited supra the Hon'ble Supreme Court while considering the expression 'Wilful attempt to evade any tax' as found in section 276C 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 276C. 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*



WEB COPY



CrI.O.P.No.14461 of 2022

*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 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 here 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.”*



WEB COPY



CrI.O.P.No.14461 of 2022

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

"Section 278E 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



WEB COPY

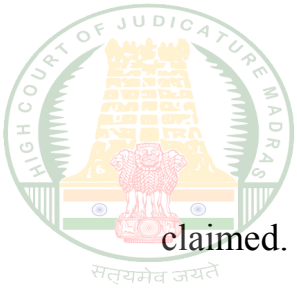


CrI.O.P.No.14461 of 2022

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 278E 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 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 278E of the Act regarding rebuttable presumption as to existence of culpable mental state on the part of accused would come into play."*

22. In the above judgment this Court quashed the proceedings mainly on the ground that the petitioner had failed to pay the tax liability. That is not the case on hand. Whereas in this case income has not suppressed only exemption has been



CrI.O.P.No.14461 of 2022

claimed. It is also observed in the penalty proceedings that no suppression of

WEB COP materials it is only *bona fide*. In such a view of the matter this Court is of the view that continuation of the prosecution is nothing but futile exercise and abuse of process of law.

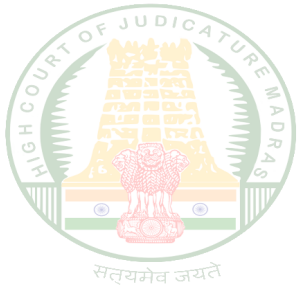
23. Accordingly, the complaint in E.O.C.C.No.12 of 2018 pending on the file of the learned Additional Chief Matropolitan Magistrate, Economic Offences-II, Egmore, Chennai for the the offenced under Section 276C(1) and 277 of the Income Tax Act, 1961 is quashed and the Criminal Original Petition is ordered. Consequently connected Miscellaneous Petition is closed.

**16.08.2022**

ggs

Index : yes

Internet: yes



WEB COPY



Crl.O.P.No.14461 of 2022

**N. SATHISH KUMAR, J.**  
ggs

Order in:  
**Crl.O.P.No.14461 of 2022**

**16.08.2022**