

IN THE HIGH COURT OF JHARKHAND, RANCHI

W.P.(Cr.) No. 577 of 2022

M/s A.M.Enterprises and Another Petitioners
 -- Versus --
 The State of Jharkhand and Another Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner :- Mr. Parth Jalan, Advocate
 Ms. Shivani Jaluka, Advocate
 For Income Tax Deptt. :- Mr. R.N. Sahay, Advocate
 For the State :- Mr. Gaurav Raj, Advocate

3/22.08.2023 Heard Mr. Parth Jalan, the learned counsel appearing on behalf of the petitioners and Mr. R.N. Sahay, the learned counsel appearing on behalf of the Income Tax Department.

2. This petition has been filed for quashing of the entire criminal proceeding including the order taking cognizance dated 02.05.2018 arising out of Economic Offence (Complaint) Case No.17 of 2018, pending in the court of learned Presiding Officer, Special Court, (Economic Offence), Ranchi.

3. The Economic Offence Complaint Case No.17 of 2018 was lodged alleging therein that complainant was posted as Deputy Commissioner (TDS) filed the complaint in his official capacity of the alleged offence committed under section 276B read with section 278B of Income Tax Act, 1961 and the petitioner's firm had deducted TDS to the tune of Rs.2,02,117/- for the financial year 2015-16, Assessment year 2016-17 but failed to deposit the same with the department as per the provision of the Income Tax Act 1961. The petitioner is partner of the firm and he has also been made accused in the complaint in accordance with section 248B of the said Act. It has been alleged that the petitioner has willfully and deliberately not deposited TDS on time to credit of Central Government account despite knowledge of the fact that there lie liabilities on its part to deposit the same in time the sanction order under

section 279(1) of the said Act for launching of prosecution under section 276B of the said read with section 278B of the Act against the petitioner has been accorded to by the Commissioner of Income Tax (TDS) Patna on 14.2.2018.

4. Mr. Jalan, the learned counsel appearing on behalf of the petitioner submits that the learned court has been pleased to take cognizance by order dated 02.05.2018 and issued summons to the petitioner. He submits that the said case is registered under section 276(B) read with section 278(B) of the Income Tax Act, 1961. He submits that business operation of the petitioner's firm started in the month of January, 2016 and the petitioner's firm was not knowing about the TDS for the last quarter of the financial year 2015-16. He submits that as soon as the provision of TDS has come in the knowledge of the petitioner, the petitioner immediately consulted his chartered accountant who had disclosed the procedure of deducting TDS and depositing with the Income Tax Department. He submits that thereafter the petitioner has taken TAN Number for deducting TDS and depositing the same with the Income Tax Department. He submits that notice was received by the petitioner and the same was replied by letter dated 22.02.2017 in which the petitioner has stated the honest mistake and the amount deducted has already been deposited along with the interest with the Income Tax Department. He submits that the petitioner was not heard when the sanction order was passed. In this background, he submits that when the TDS amount along with interest has already been deposited there is no occasion to launch prosecution case against the petitioner. He submits that the amount was deposited on 11.5.2016 whereas the sanction order was passed on 14.02.2018 and prosecution was launched on 13.04.2018. He further submits that even no penalty proceeding is started as yet against the petitioner in view of section 271(C) of the Income Tax Act.

On this ground, he submits that entire criminal proceeding may kindly be quashed as the entire amount to the tune of Rs.2,02,000/- along with the has already been deposited.

5. On the other hand, Mr.Sahay, the learned counsel for the respondent Income Tax Department submits that once the statutory provision is not fulfilled the case has been rightly lodged by the Income Tax Department. He submits that depositing of the said TDS amount along with the interest has nothing to do with the prosecution case. He submits that the said case was instituted after much deliberation at the level of learned Deputy Commissioner, TDS Circle, Ranchi. He submits that this Court as well as the Hon'ble Supreme Court in many cases has not interfered and the interpretation of the provisions made in the Income Tax Act, have been made that once the failure is there, the proceeding can go on. He submits that the petitioner has been provided full opportunity and in view of that the criminal proceeding cannot be quashed. He further submits that in the anticipatory bail application it has come that the petitioner is ready to face the trial and thereafter the present case has been lodged. On this ground he submits that the case is fit to be dismissed.

6. In view of the above submission of the learned counsels appearing on behalf of the parties, the Court finds that there is no denial that the commencement of the operation of the petitioner company is with effect from January, 2016 and when the notice was received by the petitioner, the petitioner has filed reply disclosing that the TDS amount along with interest has already been deposited on 11.5.2016 itself whereas sanction order was passed on 14.02.2018 and the prosecution was launched on 13.04.2018 i.e. after much delay of depositing the said TDS amount along with the interest. It is not a case that the prosecution was filed earlier and thereafter the T.D.S amount was deposited.

Further there is no penalty proceeding initiated against the petitioner. In view of that, the Court finds that the amount of the TDS along with the interest has already been deposited and after lapse of time the said case was registered and the Court further finds that the assessee has succeeded in proving that there is full and sufficient reasons for his failure before the authority under the Act by way of filing the said reply wherein he has intimated that this amount in question has already been deposited along with the interest and no penalty proceeding is initiated against the petitioner and in the case in hand as the amount has been deposited along with the interest and as such, there was no occasion to proceed against the petitioner under section 276(B) of the Income Tax Act. It is well settled that penalty should serve as a deterrent. In the case in hand, the petitioner has already been deposited the TDS amount along with the interest. A reference may be made to the case of ***Income Tax Officer v. Autofill and Others, [1990] 184 ITR 47 (AP)***. Paragraph no.10 of the said judgment is quoted below:

“Therefore, wilfulness contemplates some element of evil motive and want to justification. In CIT v. Patram Dass Raja Ram Beri [1981] 132 ITR 671, a Full Bench of the Punjab and Haryana High Court, considering the term “wilful failure” occurring in section 276CC of the Income-tax Act, held that “willfulness certainly brings in the element of guilt” and thus the requirement of mens rea. Our Supreme Court in Gujarat Travancore Agency v. CIT, has observed that the creation of an offence by statute proceeds on the assumption that society suffers injury by the act or omission of the defaulter and that a deterrent must be imposed to discourage the repetition of the offence. It also observed that. In most cases of criminal liability, the intention of the Legislature is that the penalty should serve as a deterrent.”

7. In the case of ***K.C. Builders and Another v. Assistant Commissioner of Income Tax, [2004] 265 ITR 562 (SC)***, the criminal case was held to be not survived in view of the fact that the penalty is struck down and in the case in hand even the penalty

proceeding has not been initiated against the petitioner. How the amount is deposited and when sanction and prosecution have been initiated which has already been discussed hereinabove. The Court finds that in such a situation to allow the present proceeding to continue further will amount to abuse of process of law.

8. Accordingly, the entire criminal proceeding including the order taking cognizance dated 02.05.2018 arising out of Economic Offence Complaint Case No.17 of 2018, pending in the court of learned Special Court, Economic Offence, Ranchi is quashed.

9. W.P.(Cr.) No.577 of 2022 is allowed and disposed of.

10. Interim order is vacated.

(Sanjay Kumar Dwivedi, J.)

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