
(2011) 03 MAD CK 0404

In the Madras High Court

Case No : Criminal O.P. No. 27159 of 2007 and M.P. No's. 1 and 2 of 2007

Smt. Vijayashanthi

APPELLANT

Vs

The Assistant Commissioner, Income Tax

RESPONDENT

Date of Decision : 04-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468
Economic Offences (Inapplicability of Limitation) Act, 1974 — Section 2
Income Tax Act, 1961 — Section 132, 139, 139(1), 139(4), 140A

Citation : (2011) 03 MAD CK 0404

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : I. David Singh, for the Appellant; K. Ramasamy for Income-Tax Cases, for the Respondent

Final Decision : Allowed

Judgement

C.S. Karnan, J.—The above criminal original petition has been filed by the Petitioner/accused to call for the records to dispense with her personal appearance in the E.O.C.C.119 of 2007, on the file of the I Additional Chief Metropolitan Magistrate Economic offences, Egmore, Chennai - 8.

2. The summarised facts of the prosecution case are as follows:

The prosecution case filed by the Complainant/Assistant Commissioner of Income Tax, media Circle II, Chennai - 34, which are as follows:

(ii)The complainant has filed on the sanction of the Commissioner of income tax, Chennai-IV within the meaning of Section 279(1) of the income tax Act, 1961 dated 28.02.2007. The said sanction order u/s 279(1) is submitted along with this complaint before this Hon"ble Court.

(iii)The Complaint is in respect of the Assessment year 1994-1995, the relevant accounting year being the year ended 31.03.1994.

(iv)The accused is presently assessed by income tax in Media Circle - II in the Jurisdiction of the complainant.

(v)Notices and processes may be issued to the Accused at the address noted above.

(vi)The Accused is a Cine Artiste by profession.

(vii) The accused has filed her returns of income tax up to the Assessment Year 1990-1991. For the Assessment year 1991-1992, the return was filed on 25.05.1993, which was beyond the time limit laid down even for a belated return. As such she is aware of her duties and responsibilities under the income tax Act, 1961. The ostensible sources of income of the accused are income from house property, income from business of profession and agricultural income.

(viii) For the Assessment year 1994-1995, relevant to the previous year ended on 31.03.1992, the accused had the following incomes:

(a) Income from House Property

(b) Income from business/Profession

(c) Agricultural income

(ix) The accused ought to have filed her Return of income for the Assessment year 1994-1995 on or before 31.10.1994 as required u/s 139(1) of income tax Act, 1961. However, the accused did not file her return of income within the due date prescribed by the Statute. Thus, the accused has wilfully and deliberately contravened the provisions of Section 139(1) of income tax Act, 1961 by not furnishing her return of income on or before the due date prescribed by the Statute, i.e., 31.10.1994, without any valid reason and thereby committed an offence punishable u/s 276CC of the income tax Act, 1961. Even after search, the accused did not file her return deliberately inspite of having substantial income.

(x)As there was no voluntary compliance of filing the return of income within the due date, and as the failure in filing the said return of income still persisted, a notice u/s 148 of the income tax Act, 1961 was issued to the accused on 13.08.1996, calling upon her to file the return of income within 30 days from the date of receipt of the notice which was served on 17.08.1996. The accused neither sent any reply in response to the said statutory notice issued to her nor filed her return of income. Therefore, a notice u/s 142(1) dated 31.08.1996 and 27.12.1996 were issued to the accused requiring her to file the return of income. Again, there was no response from the accused and not even a reply was sent giving reasons why she is persisting in delaying the filing of the said return of income even after the statutory due date and inspite of receiving the statutory notice u/s 148. By another notice 142(1) dated 22.08.1997, the accused was again reminded of her obligation of filing of her return of income. The accused filed her return of income for the Assessment year 1994-95 on 02.09.1997

admitting total income of Rs. 8,56,020/- besides agricultural income of Rs. 1,40,000/- after an inordinate delay of more than 12 months.

(xi)The complainant submits that the accused deliberately did not file her return of income even within the time limit prescribed u/s 139(4) of income tax Act, 1961, which expired on 31.03.1994, in this case. Thus, there was inordinate delay of more than 12 months in filing of return by the accused. In order to conduct inquiry to complete the assessment, statutory notices u/s 143(2) dated 10.02.1998 and 15.10.1998, notice u/s 142(1) dated 15.10.1998 along with a letter were issued to the accused requiring the accused to furnish the following information:

14.06.1996, notices u/s 142(1) dated 30.08.1996, 06.11.1996, 29.11.2006, 27.12.2006 and 04.02.1997 were issued to the accused requiring the accused to furnish the following information.

- (i)Details of unrealised rent admitted in the return
- (ii)Interest claimed under the head House Property
- (iii)Details of Municipal Tax paid whon under the head House Property
- (iv)Details of loan creditors, confirmation letters etc.,
- (v)Extent of agricultural land held by the Assessee
- (vi)Evidence for claim in the Balance Sheet as "due to distributors and Lessors"
- (vii)Clarification regarding investment in National Savings Certificate
- (vii)Clarification regarding discrepancy in the deposits with R.K. Investments
- (viii)Copies of Capital Account
- (ix)Clarification regarding undisclosed income admitted in the sworn statement

The case was posted on 28.10.1998, for furnishing the aforesaid information and inquiry. In response to notice of hearing, Assessee requested for time and the case was reposed to 05.11.1998. Assessee's representative, appeared on 09.11.1998 and the case was further adjourned to 13.11.1998 at his request. As there was no response, the case was finally reposed to 06.01.1999. The Assessee furnished the information called for on 16.12.1999. Seized books of accounts were perused. Statement and other documents finished by the Assessee were also perused. The assessment was completed u/s 143(3) read with Section 147 of the income tax Act, 1961 on 31.03.1999 on a total income of Rs. 34,81,60 (and agricultural income of Rs. 1,40,000?- and demanding tax of Rs. 40,42,149 for the Assessment year 1994-94 (including the interest of Rs. 16,01,906/)

(xii)The Assessee preferred an appeal against the assessment made on 31.03.1999 and the CIT(A)-X vide his order dated 30.11.1999 gave certain relief

to Assessee and finally the net income was revised and determined at Rs. 18,56,020/- and agricultural income at Rs. 1,40,000/-and the tax payable was determined at Rs. 24,19,963/-(inclusive of interest of Rs. 16,01,906/-)

(xiii)The Complainant states that as the accused wilfully failed to furnish her return of income and deliberately delayed in filing of the return for the Assessment year 1994-95 inspite of receiving statutory notice and despite giving of opportunities, show cause notice dated 22.02.2001 were issued to the accused asking her to explain why prosecution proceedings u/s 276CC of income tax Act, 1961 should not be initiated against her. In response to the show cause notice, the accused filed a reply dated 13.03.2001. In her reply, the accused has stated that at that point of time there was no full time Accountant to look after the affairs and had to rely upon the part time employees, who had no regularity in attending to the duties and were always delaying the completion of books. As adequate taxes were already paid and subsequent tax damaged together with interest u/s 234A, B and C were completely paid, the non filing of this return had not caused any loss of revenue. Hence the Petitioner request that the prosecution proceedings be waived as this would only bring down the hard earned image of the Petitioner, which would not bring in any benefit tangible or intangible to the Department. After considering all the relevant facts and circumstances, the Sanctioning Authority accorded sanction u/s 279(1) of the income tax Act, 1961 on 28.02.2007.

(iv)The complainant submits that the return was not filed within the due date (i.e., 31.08.1994) It was also not filed in response to notice u/s 148 issued on 13.08.1996. It was also not filed within the time limit prescribed u/s 139(4) i.e., before 31.03.1996. The reason given by the accused for such an inordinate delay are not valid in the eyes of law in compliance with statutory requirement. Thus inspite of having substantial taxable income, the Assessee did not file her return of income on or before the due date, wilfully and deliberately but filed only after the issue of notice u/s 148 and other materials mentioned earlier. The presumption relating to culpable mental state u/s 278E of the I.T. Act, squarely applies to this case.

(xiv) The above facts clearly establish that the accused was bent upon deliberately not filing her return of income for the A.Y.1994-1995 within the stipulated time as required u/s 139(1) and inspite of receiving the statutory notice issued u/s 148 of the I.T. Act, 1961.

(xv) Therefore the accused had wilfully and deliberately failed to furnish in due time the return of income for the assessment year 1994-1995 as required u/s 139(1) of income tax Act, 1961 and she has filed the said return of income only after an inordinate delay of more than 12 months after receiving the statutory notices issued to her u/s 148 and 142(1) of income tax Act, 1961 and despite giving several opportunities as narrated supra and has thus committed an offence punishable u/s 276 of income tax Act, 1961.

(xvi) The above offence has been committed within the jurisdiction of this Hon"ble Court

(xvii) In the above circumstance, it is expedient and in the interest of justice that a charge be made against the accused on the above offence and the accused to be dealt with according to law.

(xviii) The complainant therefore, prays that this Hon"ble Court may graciously be pleased to take the complaint on file, issue process to the accused to be dealt with according to law.

SANCTION ORDER FOR PROSECUTION u/s 279(1) OF THE income tax ACT,1961

1. Whereas the Assessee, Ms. Vijaya Shanthi, is assessed to income tax in Media Circle II in PAN No. AAMPS 7090J, at Chennai.

2. Whereas the Assessee Ms. Vijaya Shanthi, failed to furnish her return of income for the Assessment year 1994-1995 on or before 31.08.1994, the due date as per Section 139(1) of the income tax Act, 1961.

3. Whereas the Assessee, Ms. Vijaya Shanthi, failed to furnish her return of income for the assessment year 1994-1995 even with the time limit stipulated u/s 139(4) viz., on or before 31.03.1996.

4. Whereas Ms. Vijaya Shanthi, failed to file the return of income due voluntarily as required u/s 139(1) 139(4) of the Income -Tax Act, 1961. Reminder letter dated 18.01.1996 was issued to the Assessee for filing of the return of income due, wherein the Assessee was appraised of the provisions of Section 276CC for her reference and necessary action.

5. Whereas Ms. Vijaya Shanthi filed to file the Return of Income voluntarily and despite reminder letter, notice u/2 was issued to the Assessee on 13.08.1996 requiring her to file the Return of Income for the Assessment Year 1994-95.

6. Whereas no compliance was forthcoming from Ms. Vijaya Shanthi, for filing return of income for the assessments year 1994-1995 in response to notice u/s 148 issued, reminder letters and notices dated 31.08.1996, 27.12.1996 and 22.08.1997 were issued to her reminding her about the non filing of the return of income and the penal consequences for such failure including the provision of Section 276CC.

7. Whereas the Assessee, Ms. Vijaya Shanthi filed her return of income on 02.09.1997, with a delay of more than 12 months from the date of issue of notice u/s 148 admitting taxable income of Rs. 8,56,020/- besides agricultural income of Rs. 1,40,000/-.

8. Whereas the tax and interest payable on the admitted income was Rs. 5,22,636/- Assessee has not remitted any advance tax but remitted the said tax and interest of Rs. 5,22,636/- by way of self assessment tax u/s 140A on 11.07.1997.

9. Whereas the assessee, Ms. Vijaya Shanthi's assessment was completed on 31.03.1999 for the assessment year 1994-1995 and the total income was determined at Rs. 34,81,860/- and agricultural income at Rs. 1,40,000/- u/s 143(3) of the income tax Act and tax of Rs. 45,64,785/- was determined as payable (including interest of Rs. 30,18,352/-)

10. Whereas the Assessee, Ms. Vijaya Shanthi preferred an appeal against the assessment made on 31.03.1999 and the CIT(A)-X vide his order dated 30.11.1999 gave certain relief to Assessee and finally the net income was revised and determined at Rs. 18,56,020/- and agricultural income at Rs. 1,40,000/- and the tax payable was determined at Rs. 24,19,963/- (inclusive of interest of Rs. 16,01,906/-)

11. Whereas the Assessee willfully failed to furnish her return of income voluntarily and also after issue of statutory notice calling for the return of income, and after issue of letters reminding her about failure to file the return of income and requiring her to file the return of income, return of income was ultimately filed by the Assessee on 02.09.1997, while the return was due for filing 31.08.1994.

12. Whereas, the Assessing Officer issued a show cause notice dated 22.02.2001, asking the Assessee to show cause why she should not be prosecuted for willful failure to furnish her return of income within the stipulated time which she was required to furnish u/s 139(1).

13. Whereas the Assessee Ms. Vijaya Shanthi in her reply on 13.03.2001 has stated at that point of time there was no full time Accountant to look after the affairs and had to rely upon the part time employees, who had no regularity in attending to the duties and were always delaying the completion of books. As adequate taxes were already paid and subsequent tax demanded together with interest u/s 234A, B and C were completely paid, the non filing of this Return had not caused any loss of revenue. Hence the Assessee requested that the prosecution proceedings be waived as this would only bring the hard earned image of the Petitioner in disrepute neither would it bring in any benefit tangible or intangible to the Department.

14. Whereas the reply of the Assessee dated 13.03.2001 was carefully considered along with the following records of the case indulging.

(a) Letter dated 18.01.1996, served on 18.01.1996 reminding the Assessee about non filing of return & provisions of Section 279CC.

(b) Notice issued u/s 148 of the income tax Act, 1961 dated 13.08.1996 which was served on 17.08.1996.

(c) Notice u/s 142(1) was issued on 31.08.1996, 27.12.1996, 22.08.1997.

(d) Return of income filed on 02.09.1997 admitting total income of Rs. 8,56,020/- and agricultural income Rs. 1,40,000/-

(e) Notice u/s 143(2) was issued on 10.02.1998 and 15.10.1998.

(f) Order u/s 143(3) r.w. Section 147 dated 31.03.1999.

(g) Notice of demand u/s 156 of the I.T. Act, 1961

(h) CIT(A) order dated 30.11.1999

(i) Revision Order dated 07.01.2000 giving effect to CIT(A) Order.

14. Whereas the reasons given by the Assessee are not valid in the eyes of law for complying with statutory requirement, thus inspite of having substantial taxable income she did not file the return of income on or before the due date willfully and deliberately but filed only after a search u/s 132 of I.T. Act in the residence of the Assessee on 14.07.1993 and after the issue of notice u/s 148 and other reminders mentioned earlier.

15. Now, on a careful consideration of the facts and circumstances of the case, I am satisfied that the failure of Ms. Vijaya Shanthi to furnish the return of income within the due time as required u/s 139(1) and within the time stipulated in the notice issued u/s 148 is willful. In the light of the facts that she is not only assessed to tax for several years, notice u/s 148 was also issued requiring her to file the return of income, she deliberately postponed the filing of return of income and since the explanation of the Assessee regarding the delay to furnish the return is not acceptable, being not based on sound reasoning, I am of the opinion that a prima facie case is made against the said Ms. Vijaya Shanthi, for prosecution u/s 276CC of the income tax Act, 1961.

15. Now, therefore, in exercise of the powers conferred upon me u/s 279(1) of the income tax Act, 1961, I, Ramesh Chandra Mishra, Commissioner of income tax, Chennai-IV, Chennai, having jurisdiction over the Assessee hereby accord sanction for filing of the complaint against the aforesaid Ms. Vijaya Shanthi, cine Actress, No. 16, Parthasarathypuram, T. Nagar, Chennai - 600 017 for the offence u/s 276CC of the income tax Act, 1961 for the Assessment year 1994-1995 and authorise and direct Shri.D. Albert Manohar, ACIT, Media Circle-II, Chennai -34 to file the complaint in the Court of the Additional Chief Metropolitan Magistrate (Economic Offences), Egmore, Chennai - 8 or such other Court having competent jurisdiction.

3. Aggrieved by the said complaint the accused/Petitioner has filed the above Criminal Original Petition to call for the records in EOCC. No. 119 of 2007, on the file of Additional Chief Metropolitan Magistrate Economic Offences, Egmore, Chennai. The learned Counsel for the Petitioner raised the below mentioned points in the petition which are as follows:

The Petitioner submits that she was charged for an alleged above offence u/s 276 C.C.(2) of the Income Tax Act, 1961 for non-filing of Income Tax Returns for the Assessment year 1992-1993, 1993-1994, 1994-1995 in E.O.C.C. No. 117 of 2007, E.O.C.C.118 of 2007 and E.O.C.C.119 of 2007 before the learned

E.O.M.M-1, Egmore, Chennai - 8. She further submits that the above offence u/s 279(2) of the Income Tax Act 1961. She had filed petition u/s 279(2) of the Income Tax Act for compounding the offence before the Chief Commissioner of Income Tax Chennai.

She further submits that she is a film artiste by profession and have been acting in the films from the age of 13 years and hence she had been assessed to Income Tax and Wealth Tax even though she was a minor and paying regularly the Income Tax to the Department. While so she was subjected to proceedings u/s 132 of the Act on 14.07.1993. Consequent to which all the relevant materials relating to the professional earnings and expenditure details were seized by the department and in fact they are still under the custody of the department due to the seizure and the learned Commissioner has given the approval for release of documents only in the month of August 2006, but she yet to receive the documents.

She further submits there has been delay in filing the return of Income Tax u/s 139(1) for the following years. The respective due dates and the date of filing are as under.

S. No. Assmt. Yrs Due Date Date of filing

1. 1992-1993 31.10.1992 25.03.1995
2. 1993-1994 31.10.1993 25.03.1996
3. 1994-1995 31.10.1994 02.09.1997

She further states that the proceedings u/s 132 on 14.07.1993 and subsequent seizure of relevant document and materials, she was prevented from doing her legal obligation of filing the returns as she could not furnish any details of her income and expenditure to her auditor as a result she could not comply with the required time limit under the provisions of the Income Tax Act in as much as the required information and supporting documents were under seizure.

She further submits despite all the legal hurdles efforts were made to obtain copies of the records and returns were complied with on the limited personal knowledge and information and eventually the returns were filed. She also submits that since the professional income was in excess of Rs. 10 lakhs in relevant period, her auditor was not willing to sign the accounts unless all the relevant information was produced in the required manner. Hence there was a delay in filing the returns for no fault of mine. The delay in filing the income tax returns is neither willful nor wanton of negligence on her part.

She further submits that for all the above mentioned years the assessment has been completed u/s 143(3) r/w Section 147 of the Act and the assessment was appealed against and relief granted by CIT (A) and the corresponding taxes have been completely paid by her including interest u/s 243A,B and C.

She further submits that during the relevant three assessment years it was

observed by the Department there was no concealment of income by her except the delay in filing the returns which was mainly on account of non-availability of information and supporting documents as all the records were under seizure consequent to proceedings u/s 132.

She further submits that no penalty is exigible for mere delay in filing returns after 01.04.1989. It is substituted by interest u/s 234-A. The question of prosecution cannot ordinarily lie, where there is no scope even for penalty. However explanation 3 to Section 271 (1) (iii) would provide for concealment penalty for those who do not file return in time. But then, alleged offence relates to Assessment year 1992-1993 to Assessment year 1994-1995 when penalty was exigible only against person who has not previously been assessed under this Act. These words were omitted by the finance Act 2002, only with effect from 01.04.2003. This amendment therefore is extending the scope of penalty for all assesses is only with effect from 01.04.2003, i.e. For assessment year 2003-2004. Circular No. 204 dated 24.07.1976 explaining the insertion of explanation 3 does not state, why assesses who were not previously assessed alone were made available for penalty. As mentioned in the commentary on the provision in Tax Compendium Vol.50 at page 60 reads as under.

Probably the proviso was considered necessary because a person who is already in the records of the Income Tax Department cannot avoid filing return sooner or later, while a new Assessee can avoid filing return so that assessments get time barred if the I.T. Department is unable to locate him within time permissible for invitation of action u/s 148.

She further submits that whatever the circumstances of the case, she had given a petition u/s 279(2) of the Income Tax Act 1961, for compounding the offence and the same is pending before the Chief Commissioner of Income Tax, Chennai.

She further submits that there is no arrears of income tax to the Respondents and also she is ready to pay the compounding fee.

She further submits that there cannot be two parallel proceedings one before the Income Tax Department for compounding the offence and another before the E.O. Court - 1, Egmore, Chennai in E.O.C.C.119 of 2007, for prosecution u/s 276 C.C. Of the Income Tax Act.

She further submits that she will be greatly prejudiced if the Court, proceedings are continued and her valuable right to compound offence will be defeated and she will be put to untold hardship and which will affect her reputation.

She further submits that her right u/s 279(2) will be prejudiced if the proceedings are continued in the Court.

4. The learned Counsel for the Petitioner cited the judgments supporting his case namely;

1. Commissioner of Income Tax, Mumbai v. Bhupen Chempak Lal Dalal and Anr.

AIR 2001 SC 1896.

2. Income Tax Officer Vs. Rajan and Co. and Others, , and

3. Uttam Chand v. Income Tax Officer (1982) 133 TRR 909 (SC)

Twelve cases were lodged against the Respondents under the income tax Act, 1961 (hereinafter referred to as "the Act") before the Metropolitan Magistrate for offences punishable under the Act. In relation to the assessments arising under the Act, appeals had been preferred either before the Commissioner of Incometax (Appeals) or the income tax-Appellate Tribunal (hereinafter referred to as "the Tribunal"). On the basis that the appeals were pending the Respondents filed applications for stay of the proceedings arising before the Criminal Court. Several decisions were cited before the Court to support the contention that the decision of the appellate authorities in the income tax proceedings would be relevant to the criminal prosecution instituted against the Respondents. The learned Magistrate, after examining the position in laws as to whether the findings of the appellate authorities are relevant for the purpose of the criminal proceedings and to avoid conflicting decisions of the criminal Court and the appellate authorities, felt that it would be appropriate to grant an interim order of the following nature.

However, passing of order about framing of charge, discharge of the accused or acquittal of the accused shall be stayed during pendency of the appeals by the accused before the income tax appellate authorities. These orders will be passed after the appeals filed by the accused before the income tax authorities are finally decided."

2. Against that order, revision petitions were filed before the Sessions Court. The Sessions Court did not interfere with the order made by the learned Magistrate and dismissed the same. Thereupon, the matter was carried further to the High Court, while entertaining a writ petition noticing several decisions of that High Court and of this Court, issued rule in the matter and granted an interim order staying the proceedings in the criminal cases filed before the learned Magistrate. It is against this order that these special leave petitions have been filed.

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 have a relevance and bearing upon 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 and Another Vs. Income Tax Officer and Another, , dealt with the similar situation where there is a prosecution under the Act for making 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 belonging to the Assessee and the petition was filed before the High Court u/s 482, Cr.P.C to quash those criminal proceedings. This Court held that the 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 appellat Tribunal and hence the prosecution could not be sustained. In Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar, , 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, 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 an unduly long period on the ground that proceedings having a bearing on the decision was not proper.

5. In the present case, there is no claim of quashing of the proceedings. When ultimately the result to come out of the proceedings before the appellate authorities have a definite bearing on the cases alleged against the Respondents, we find that the High Court is justified in granting the interim order it did not think that such an interim order calls for interference at our hands. The learned Counsel on either side relied on several decisions, but in the view we have taken it is unnecessary to refer to those decisions.

6. The petitions are, therefore, dismissed. No costs. Offences-Criminal Prosecution -Filing of False Returns-Firm Being Assessed as Registered Firmone Partner Denying That She Was Partner -Registration Cancelled and Partners Prosecuted For Filing False Return Finding By Tribunal, In Appeal, That Firm Was Genuine-Prosecution Must Be Quashed-income tax Act, 1961, s.277.

2. Heard counsel, special leave granted. In view of the finding recorded by the income tax Appellate Tribunal that it was clear on the appraisal of the entire material on the record that Shrimathi Janak Rani was a partner of the Assessee-firm and that the firm was a genuine firm, we do not see how the Assessee can be prosecuted for filing false returns. We accordingly, allow this appeal and quash the prosecution.

Offences and Prosecution -Wilful Attempt to Evade Tax-Penalty Based on Same Facts Deleted Deletion Upheld by High Court-Prosecution Now Valid -income tax Act, 1961, ss271, 276C, 277.

2. Held, dismissing the petition, that while the Additional Sessions Judge had terminated the criminal proceedings on the basis of the order passed by the income tax Appellate Tribunal, the Department had continued the proceedings further by filing an appeal before the Court. A Division Bench of the Court upheld the deletion of the penalty by the income tax Appellate Tribunal after considering

all the relevant circumstances. A finding had been recorded by the Division Bench that in the present case the Assessing Officer had not recorded any satisfaction with regard to the penalty associated with the disallowance of commission. The prosecution under Sections 276C and 277 was not valid.

3. The question raised in this case for consideration is when penalty levied u/s 271(1)(c) of the income tax Act, for concealment of income has been cancelled by the appellate authority whether a prosecution can be continued u/s 276C of the Act.

In somewhat similar circumstance this Court in *Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar*, took the view that having not proceeded to levy penalty, it would be incongruous to continue with the prosecution. Therefore, we are of the view that the proceedings should not have been proceeded with and the prosecution should have been quashed. Therefore, we set aside the order of the High Court and quash the proceedings.

The appeal is allowed accordingly.

5. The learned Counsel for the Petitioner argued that the Petitioner was subjected to proceedings u/s 132 of the income tax Act, on 14.07.1996, consequent to which all the relevant materials relating to the professional earnings and expenditure details were seized by the department and infact they are all still under the custody of the department due to the seizure under the learned income tax Commissioner who has given the approval for the release of documents only, in the month of August 2006. Hence there has been delay in filing the return of income tax u/s 139(1) for the assessment year 1994-1995, for filing the return of income tax, the due date was 31.10.1994 but the date of filing was 02.09.1997. The learned Counsel further argued that she was prevented from doing a legal obligation or filing the returns as she could not and furnish any details of her income and expenditure to her auditor, as a result she could not comply within the required time limit under the provision of the income tax Act, inasmuch as the required information and supporting documents were under seizure by the income tax authorities. Despite all the legal hurdles she went through to give clarity to the officials, her auditor opined that the particulars were inadequate, as such the delay in submission is accounted for, which is neither willful nor negligent on her part.

6. The learned Counsel further argued that the Petitioner has given a petition u/s 279(2) of the income tax Act for compounding the offence and the same is pending before the Chief Commissioner of income tax, Chennai. In the mean while the Criminal Proceedings initiated by the department in E.O.C.C.119 of 2007, for prosecution u/s 276 CC of the income tax Act. This is a parallel proceeding on the same cause of action. added further the learned Counsel, the sanction order for prosecution u/s 279(1) of the income tax Act, 1961, dated 28.02.2007. After a lapse of around 15 years the prosecution case was initiated against the Petitioner. There is no valid reason for the inordinate delay for filing

the Criminal case, even though there is no limitation. Hence the learned Counsel for the Petitioner prays to quash the Criminal Proceedings on the file of Additional Chief Metropolitan Magistrate, in E.O.C.C.119 of 2007.

7. The learned Counsel for the Respondent has submitted written instructions on behalf of the Respondent/complainant, which are as follows:

1. The petition filed by the Petitioner to call for the records and to stay the criminal proceedings before the Trial Court is neither maintainable on law nor sustainable on facts.

2. The Respondent filed three complaints against the Petitioner for offence u/s 276CC of Income Tax Act, 1961 for wilful failure to furnish the return of income for the A. Ys.1992-93, 1993-94 and 1994-95 on or before the statutory due date as required u/s 139(1) and in response to the statutory notices issued u/s 142(1) and 148 of Income Tax Act, 1961. The due date, the date of filing of the return and the period of delay are stated as hereunder:

Assessment year	Due Date u/s 139(1)	Statutory Notice issued	Return filed on	Period of delay
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1992-93	Crl.O.P. No. 27158/2007 in EOCC No.117/2007	31.08.1992	148 notice issued on 2.2.1994, 142 (1) on 20.07.1994, Show cause Notice dated 04.03.1996	25.03.1996 3 years 6 months
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1993-94	Crl. O.P. No. 27160/2007 in EOCC No. 118/2007	31.10.1993	148 notice issued on 22.7.1994, reminder dated 18.01.1996, show cause notice dated 22.02.2001	25.03.1996 2 years 5 months
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1994-95	Crl. O.P. No. 27159/2007 in EOCC No. 119/2007	31.10.1994	148 notice issued on 13.08.1996, 142(1) dated 31.08.1996 and 27.12.1996, Show Cause Notice dated 22.02.2001	02.9.1997 2 Years 11 months
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From the above table, it is made clear that the Petitioner did not file her return of income either voluntarily on or before the statutory due dates as required u/s 139(1) of Income Tax Act, 1961 or in response to the statutory notices and the reminders issued to her. The Petitioner did not even file her returns at the outer limited prescribed u/s 139(4) of Income Tax Act, 1961, in spite of having taxable income of Rs. 7,13,820/- for A.Y.1992-93, Rs. 35,88,024 for A.Y 1993-1994 and Rs. 18,56,020/ for A.Y.1994-95. Therefore, the Petitioner in spite of having taxable income has willfully and deliberately failed to file her return of income for the A. Ys. 1992-93 to 1994-95 and thereby committed an offence u/s 276CC of Income Tax, 1961.

The complaints in EOCC No. 117 of 2007 to 119 of 2007 was filed in March, 2007 upon the sanction of the Commissioner of Income Tax.

3. The Respondent further submits that the Petitioner after receiving the process from the Trial Court did not personally appear before the Trial Court she invoked the inherent jurisdiction of this Hon'ble Court by filing the above Crl.O.P. No.

27158 to 27160 of 2007. This Hon''ble Court has stayed all further proceedings before the Trial Court pending disposal of the above Crl.O. Ps.

4. The Petitioner has interalia stated in her affidavit that, she has filed a petition for compounding u/s 279(2) of Income Tax Act, 1961 and there cannot be parallel proceedings before the Department and before the Trial Court. Further the Petitioner has stated that, there was a search on 14.07.1993 and the department has seized vital documents which prevented her from filing the return. The contention of the Petitioner cannot be accepted since the search was after the statutory due date viz., 31.08.1992 for A.Y.1992-93. Further it is in the exclusive knowledge of the Petitioner as to how much she has derived as income from her profession as film artist. From the receipt of her income the Petitioner could have easily filed the return of income on or before the statutory due dates. The Petitioner did not take any steps to obtain copies of her seized records from the department. Therefore, the points raised for failure to file the return cannot be valid reasons in eye of law. However, the Petitioner has to establish her defence by evidence in the course of trial of the above cases.

5. The Respondent most humbly submits that the petitions filed by the Petitioner are not maintainable in law in view of the following decisions of the Hon''ble Supreme Court and High Courts.

(i) 2006 ITR 1 Prakash Nath Khanna and Anr. v. C.I.T. and Anr., the Hon''ble Supreme Court has ruled as follows:

One of the significant terms used in Section 276CC (offence of failure to furnish return of income) of the Income Tax Act, 1961, is "in due time". The time within which the return of income is to be furnished is indicated only in Sub-section (1) of Section 139 and not in Sub-section(4). Even if a returns is filed u/s 139(4) that would not dilute the interaction in not furnishing the return within the time as prescribed under Sub-section (1) of Section 139.

Section 276CC refers to "due time" in relation to Sub-sections(1) and (2) of Section 139 and not Sub-section (4). It cannot be said that the Legislature without any purpose or intent specified only the subsections (1) and (2) and the conspicuous omission of Sub-section(4) has no meaning or purpose behind it. Sub-section (4) of Section 139 cannot control the operation of Sub-section(1) wherein a fixed period for furnishing the return is stipulated. The mere fact that for the purposes of assessment and carry forward and set off of losses the return filed under Sub-section(4) is treated as on filed within Sub-section (1) or (2) would not amount to the return having being filed within due time.

Whether there was failure to furnish the return is a matter which is to be adjudicated factually by the Court which deals with the prosecution case.

There is a statutory presumption prescribed in Section 278E: the court has to presume the existence of culpable mental state and absence of such mental state can be pleaded by an accused as a defence in respect of the act charged as an

offence in the prosecution.

(ii) P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, .

A mere expectation of success in some proceeding in an appeal or a reference under the I.T. Act cannot come in the way of the institution of criminal proceedings u/s 276C and Section 277 of the Act.

It does not, however, mean that the result of a proceeding under the Act would be binding on the criminal court. The criminal court has to judge the case independently on the evidence placed before it."

(iii) Maya Rani Punj Vs. Commissioner of Income Tax, Delhi, at page 340 & 341.

... non-compliance with the obligation of making a return was an infraction as long as the default continued" Therefore, failure to furnish the return it is a continuing offence.

(iv) K. Jagadeesan Vs. Income Tax Officer, .

Merely charging interest for delay in filing returns - Does not extend time for filing return - Does not exclude prosecution for wilful default - Failure to file return in due time whether wilful - Question of fact - Income Tax Act, 1961, Sections 139, 276 CC.

(v) Hakam Singh and Others Vs. Commissioner of Income Tax,

The action of an assessing in filing a return after the books of account had been seized at a raid would be impelled by the compelling circumstance that the Assessee was likely to be dealt with under the penal provisions of the I.T. Act. The action of an Assessee in filing a return under such a constraint cannot be said to be voluntary.

(vi) Universal Supply Corporation and Others Vs. State of Rajasthan and Another, ,

Interest/Penalty proceedings and prosecution - Are separate and independent - Existence or absence of one no bar to others.

(vii) Friends Union Oil Mills and Others Vs. Income Tax Officer and Others, .

In view of the provisions contained in Section 2 of the Economic Offences (Inapplicability of Limitation) Act, 1974, the bar of limitation specified in Section 468 of the Criminal Procedure Code, 1973, would not apply to a prosecution under the Income Tax Act.

(viii) Kamala Ganesan and Another Vs. Income Tax Officer, .

"Merely because a petition for compounding the offences is pending before the income tax authorities, the criminal trial could not be stayed.

The complaint could not be quashed.

(ix)296 ITR 550 at 553 and 567 - Asst. Commnr Vs. Velliappa Textiles,

(iii) Compounding of an offence is not a right of the accused nor is it his unilateral act. It can only be done with the consent of the authorities enumerated in the provision. No additional right can be created in favour of an accused to enable him to save himself from the "disgrace and ignominy of the prosecution. (Head Notes at 553 Last Para)

6. The Petitioner though filed the petition for compounding has not been pursuing the same seriously thereafter. However, the department would consider her petition if she fulfils the norms set under the new guidelines for compounding of offences and pay all the arrears of tax and compounding fee.

8. In view of the facts and circumstances of the case, arguments advanced by the learned Counsel for the Petitioner, arguments and return submission made by the learned Counsel for the Respondent and on-going through the prosecution case, this Court is of the considered opinion that;

(i)the above complainant in E.O.C.C.119 of 2007, against the accused that the return was not filed within the due date i.e., 31.10.1994 for the assessment for 1994-1995, for which the department issued the first notice on 02.02.1994, 2nd notice on 20.07.1994, 3rd notice on 18.01.1996, 4th notice on 04.03.1996, 5th notice on 14.06.1996, 6th notice on 30.08.1996, 7th notice on 06.11.1996, 8th notice on 29.11.1996, 9th notice on 27.12.1996, 10th notice on 04.02.1997, and on 22.02.2001, respectively. Thereafter, the Assistant Commissioner/complainant obtained sanctioned order on 22.02.2007 u/s 279 (1) of the Income Tax Act, 1961.

(a)As per the prosecution case, the time limit had expired on 31.03.1994 as prescribed u/s 139(4) of the Income Tax Act, 1961. During the period, 13.03.1994 to 28.02.2007, approximately 13 years there is wide inordinate delay in initiating a prosecution case against the accused. Further this Court is not able to find a continuation of process for recovering the tax from the accused.

(b)The sanctioning authority i.e, the Commissioner of Income Tax without determining the inordinate delay with his subordinate, i.e., Assistant Commissioner, Income Tax had released the sanction order for prosecution, which is inappropriate of mind, so this order is vitiated. In pursuant of this order, the Criminal case in E.O.C.C. No. 119 of 2007 had been filed which is not sustainable under law.

(c)The same Officer, i.e., Assistant Commissioner, Income Tax had initiated further two cases against the same accused for the assessment year 1992-1993 in E.O.C.C. No. 117 of 2007, E.O.C.C. No. 118 of 2007 respectively. This Court is not able to find any valuable reason, as to why for three consecutive assessment years, the complainant/Assistant Commissioner, Income Tax had obtained a sanction order en-block for three consecutive years at one instant instead of processing year by year.

(d)The learned Counsel for the accused would submit that the income assessed has now come forward to pay all dues covering all arrears of tax as per the Respondent's guidelines.

9. Considering the above mentioned points, this Court is unable to presume that the said case was made out ultra prima facie. Therefore, it becomes warranted for this Court to interfere in seeking impartial justice. Hence, the Criminal Proceedings arising out from Complainant case No. E.O.C.C.119 of 2007, on the file of the First Additional Chief Metropolitan Magistrate Economic offences, Egmore, Chennai, are quashed. This Criminal Original Petition No. 27159 of 2007 is accordingly allowed. Consequently, connected miscellaneous petitions are closed.