IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.5692 OF 2025

Rajesh Somandas Sachdev …Petitioner
Versus
Income Tax Officer & Ors. …Respondents

Ms. Rutuja N. Pawar (through Video Conferencing) a/w. Ms. Sneha More and Ms.Tejal Mhatre, for the Petitioner.
Mr. Subir Kumar a/w. Ms. Ashita Aggarwal, for the Respondent Nos.1 and 2.
Mr. S. V. Walve, APP, for Respondent No.3.

CORAM: MADHAV J. JAMDAR, J.
DATED : 22nd JULY 2026

JUDGMENT:

1. Heard Ms. Pawar, learned Counsel appearing for the Petitioner and Mr. Kumar, learned Counsel appearing for the Respondent Nos.1 and 2 and Mr. Walve, learned APP appearing for Respondent No.3-State.

2. By this Writ Petition, filed under Articles 226 and 227 of the Constitution of India, the Petitioner seeks the quashing and setting aside of the Criminal Complaint No.SW/535/2018 pending on the file of the learned Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai.

3. It is the submission of the learned Counsel appearing for the Petitioner that the Petitioner has filed the Income Tax Returns on 10th September 2018 for the Assessment Year 2014-2015. It is submitted that although there is substance in the contention of the learned Counsel appearing for Respondent Nos.1 and 2 that the the Income Tax Returns were filed pursuant to a Notice under Section 148 of the Income Tax Act 1961 (for short "**the said Act**"), however, she submits that in fact, the Petitioner is seeking a refund in the said Income Tax Returns of Rs.1,64,340/-. Therefore, learned Counsel appearing for the Petitioner submits that the Petitioner's case will be covered by the proviso to Section 276CC, specifically sub-clause ii(b) of the said Act. To substantiate her contention, she relies on the decisions of the Supreme Court in the case of ***Guru Nanak Enterprises vs. Income-tax Officer***[1] and also relies on the two decisions of the Madras High Court in the case of

1 (2005) 10 SCC 451

Rajkumar Thiyagarajan vs. Income Tax Department, Madurai[2] *and Manav Menon vs. Deputy Commissioner of Income-tax*[3]

4. On the other hand, Mr. Subir Kumar, learned Counsel appearing for Respondent Nos.1 and 2 submits that in the facts and circumstances, the proviso to Section 276CC, sub-clause ii(b) does not apply as it is only applicable to regular assessments. It is submitted that in this case, the Income Tax Returns were filed after a Notice was issued under Section 148 of the said Act on 18th September 2017 and after the initiation of the criminal prosecution on 7th March 2018. The learned Counsel relies on Sections 2(40), 143(3), 147, 148 and 276CC of the said Act. He submits that as the Petitioner has not filed the Income Tax Returns within the prescribed time, the offence under Section 276CC of the said Act is made out and therefore, no interference is required. However, he fairly admits that as per the Income Tax Returns filed by the Petitioner and the subsequent Assessment Order dated 26th December 2018, the Petitioner is entitled for a refund of Rs.1,64,340/-.

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2 (2021) 124 taxmann.com 119 (Madras)

3 2023 SCC OnLine Mad 8091

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5. A perusal of the record shows that as the Petitioner failed to file the Income Tax Returns for the Assessment Year 2014-2015, a Notice under Section 148 of the said Act was issued to the Petitioner on 18th September 2017. Despite the issuance of the said Notice, the Income Tax Returns were not filed. Consequently, Criminal Complaint being C.C. No.SW/535/2018 was filed against the Petitioner on 7th March 2018 for the offence under Section 276CC of the Income Tax Act.

6. It is an admitted position that thereafter on 10th September 2018, the Petitioner filed the Income Tax Returns for the Assessment Year 2014-2015. The said Income Tax Returns show that the Tax Deducted at Source (TDS) for the Petitioner was Rs.2,54,788/- and that the Petitioner is entitled for a refund of Rs.1,64,340/-. The said Income Tax Return was subsequently accepted and confirmed by the Assessment Order.

7. Learned Counsel appearing for the Department fairly admits that as per the Income Tax Returns filed by the Petitioner and subsequent Assessment Order, the Petitioner is entitled for a refund

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of Rs.1,64,340/-. In these circumstances, Section 276CC and more particularly, proviso ii(b) is relevant and the same reads as under:

> "***Failure to furnish returns of income.***
>
> ***276CC.*** *If a person* ***wilfully fails to furnish in due time the return*** *of fringe benefits which he is required to furnish under sub-section (1) of section 115WD or by notice given under sub-section (2) of the said section or section 115WH of or* ***the return of income which he is required to furnish under sub-section (1) of Section 139*** *or by notice given under clause (i) of sub-section (1) of section 142 or section 148 or section 153A,* ***he shall be punishable****, —*
>
> *(i) in a case where the amount of tax, which would have been evaded if the failure had not been discovered, exceeds twenty-five hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months which may extend to seven years and with fine;*
>
> *(ii) in any other case, with imprisonment for a term which shall not be less than three months but which may extend to two years and with fine:*
>
> ***Provided that a person shall not be proceeded against under this section for failure to furnish in due time the return of fringe benefits under sub-section (1) of section 115WD or return of income under sub-section (1) of section 139****—*
>
> *(i) for any assessment year commencing prior to the first day of April, 1975; or*

> *(ii) for any assessment year commencing on or after the 1st day of April, 1975, if—*
>
> *(a) the return is furnished by him before the expiry of the assessment year; or*
>
> *(b)* ***the tax payable by him on the total income determined on regular assessment, as reduced by the advance tax, if any, paid, and any tax deducted at source, does not exceed three thousand rupees.***"

(Emphasis added)

Thus, what is provided by Section 276 of the said Act is that if a person wilfully fails to furnish in due time and the return of income which he is required to furnish under sub-section (1) of Section 139 of the said Act then the said offence is punishable. However, proviso to Section 276CC of the said Act provides that if the tax payable by him on the total income determined on regular assessment, as reduced by the advance tax, if any, paid, and any tax deducted at source, does not exceed three thousand rupees then such a person shall not be proceeded with.

8. In view of the above provision of Section 276CC, the decision of the Supreme Court in the case of ***Guru Nanak***

Enterprises (supra) and more particularly, the paragraph Nos.5 to 8 of the same are relevant, which read as under:

> *"**5. It appears to us that the case of the appellant is clearly covered by proviso (ii)(b) of Section 276-CC. In the instant case as noticed, the total tax liability of the appellant was finally assessed at Rs 1360. Under Section 276-CC proviso (ii)(b), shorn of unnecessary details, a person shall not be proceeded against under this section for failure to furnish in due time the return of income if the tax payable by him on the total income determined, as reduced by advanced tax, if any, paid, and any tax deducted at source, does not exceed Rs 3000**. As noticed earlier, the appellant had disclosed a tax liability of Rs 644 which on final assessment was determined as Rs 1360.*
>
> ***6. Counsel for the Revenue could not advance any argument to support the prosecution launched against the appellant, because it is clear that the total income tax liability determined by the department is only Rs 1360 which is much less than Rs 3000 envisaged under the proviso**.*
>
> *7. **We, therefore, find in the facts and circumstances of the case, that the prosecution is wholly unwarranted.** Accordingly, we set aside the judgment and order of the High Court and quash the proceeding pending against the appellant in the Court of the Special Judicial Magistrate (Economic Offences), Jaipur on the basis of the complaint lodged by the Income Tax Officer, District Circle II, Jaipur on 31-3-1986.*
>
> ***8.** This appeal is accordingly, allowed."*
>
> (Emphasis added)

9. In the said case, before the Supreme Court tax liability was Rs.1,316 which was well within the statutory limit of Rs.3,000/-. This threshold has since been increased to Rs.10,000/-. In the present case, however, the Petitioner is actually entitled for a refund of Rs.1,64,340/-. Thus, the above observations of the Supreme Court are squarely applicable to the present case. The two decisions of the Madras High Court also confirm this legal position.

10. It is also pertinent to note that while sanctioning prosecution, the Commissioner of Income Tax failed to consider that a TDS amount of Rs.2,54,788/- had already been deducted.

11. Although Mr. Subir Kumar, learned Counsel appearing for the Department submits that the said proviso is not applicable to this case, however, it is an admitted position that there is no loss to the revenue and that the Petitioner is entitled for the aforementioned refund. Consequently, in these facts and circumstances, the Petitioner is entitled to the relief sought.

12. It is settled legal position that inherent jurisdiction under Section 482 should be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specially laid down in the section. The Court is duty-bound to exercise its jurisdiction under Section 482CrPC when the exercise of such power is justified by the tests laid down in the said section. Jurisdiction under Section 482CrPC must be exercised if the interest of justice so requires. The same principle will apply to Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

13. The factual position on record clearly shows that as the Petitioner failed to file the Income Tax Returns for the Assessment Year 2014-2015, a Notice under Section 148 of the said Act was issued to the Petitioner on 18th September 2017. Despite the issuance of the said Notice, the Income Tax Returns were not filed. Consequently, Criminal Complaint being C.C. No.SW/535/2018 was filed against the Petitioner on 7th March 2018 for the offence under Section 276CC of the Income Tax Act. It is an admitted position that thereafter on 10th September 2018, the Petitioner filed the Income Tax Returns for the Assessment Year 2014-2015. The said Income Tax Returns show that the Tax Deducted at Source

(TDS) for the Petitioner was Rs.2,54,788/- and that the Petitioner is entitled for a refund of Rs.1,64,340/-. The said Income Tax Return was subsequently accepted and confirmed by the Assessment Order. Thus, the case is covered by the Supreme Court in the case of ***Guru Nanak Enterprises*** (supra). Thus, in the facts and circumstances, it is necessary to grant the relief sought in the Writ Petition to secure the ends of justice.

14. Thus, in the facts and circumstances of the case, the criminal prosecution is wholly unwarranted and the same would amount to an abuse of the process of law.

15. For the above reasons, the Petitioner is entitled for the relief in terms of the prayer clause (a).

16. Accordingly, the Writ Petition is disposed of in above terms.

[MADHAV J. JAMDAR, J.]