IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 972 OF 2023

Mukesh H. Sanghvi ...Petitioner

V/s.

Income Tax Department through
Chandrapal Singh and Ors ...Respondents

Mr. Prakash Pandit a/w Adv. Prachi Pandit i/b Adv. Ratnesh M. Dube, Advocate for the Petitioner.
Mr. Siddharth Chandrashekhar, Advocate for Respondent Nos.1 & 2.
Mr. P. H. Gaikwad, APP for the Respondent No.3/State.

CORAM : N.R. BORKAR, J.
DATE : 07.05.2026.

P.C. :

1. This petition takes exception to the order dated 05.02.2019 passed by the Additional Chief Metropolitan Magistrate, Mumbai, below Exh. 1 in C.C. No. 99/SW/2014.

2. By the order impugned, the learned Magistrate has issued process against the present petitioner for the offences punishable under section 276C (2) r/w. 278E of the Income Tax Act, in the complaint case filed by the respondent No.1.

3. The petitioner is involved in the business of trading in ferrous and non-ferrous alloys. The petitioner is an assessee under the Act, bearing PAN Card No. AAGPS1251H.

4. On 07.11.2017, the petitioner filed his income tax return for the Assessment Year 2017-18, thereby declaring his total income as Rs.18,97,340/-. Accordingly, the income tax liability of the petitioner amounting to Rs.4,02,260/- was payable by way of self-assessment tax under section 140A of the Act. Consequently, a show cause notice dated 24.10.2018 was issued to the petitioner by the respondent no.2, calling upon him to explain as to why prosecution should not be initiated under section 276C (2) of the Act on the ground of failure to pay self-assessment tax of Rs. 4,02,260/-.

5. The Petitioner, vide his reply dated 15.11.2018, stated that he was facing financial difficulties, which hindered him from paying the taxes within the stipulated time. The explanation of the petitioner was found to be unsatisfactory. Resultantly, vide order dated 06.12.2018, respondent no.2- Principal Commissioner of Income Tax granted sanction under section 279(1) of the Act to file a complaint against the petitioner for an offence punishable under

section 276C (2) r/w. section 278E of the Act. Pursuant to the said sanction, the respondent No.1 filed the complaint for the said offences.

6. I have heard the learned counsel for the petitioner and learned counsel for the respondent Nos. 1 & 2.

7. The learned counsel for the petitioner submits that after issuance of the show cause notice, the petitioner on 14.11.2018 had paid an amount of Rs.2,50,000/- and remaining amount of Rs.1,52,260/- on 25.01.2019. It is submitted that the entire amount of self-assessment tax was paid before the filing of the complaint on 05.02.2019. It is submitted that thus there was no willful attempt to evade the payment of tax. It is submitted that mere failure to pay the tax does not amount to a willful attempt to evade tax. In support of the said submission, the learned counsel for the petitioner has relied upon the judgment of this Court in *Unique Trading Company & Ors. vs. Income Tax Officer & Ors.*[1].

8. On the other hand, the learned counsel for the respondent nos. 1 & 2 submits that in terms of Section 148, the petitioner was required to make payment of tax within 30 days

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from 23.04.2018, being the date of intimation under Section 143(1) of the Act. It is submitted that the petitioner had made the payment of Rs.2,50,000/- on 14.11.2018 & Rs.1.52,260/- on 25.01.2019. It is submitted that the petitioner has thus willfully attempted to evade the payment of tax. It is submitted that the petitioner has failed to prove the circumstances which prevented him from paying Self-Assessment Tax under Section 140A of the Act. It is thus submitted that no interference is called for in the impugned order.

9. This Court in *Unique Trading Company & Ors. vs. Income Tax Officer & Ors* has held thus :

> *"41. To sum up, on a plain reading the provisions contained in Section 276C (2) do not indicate that mere failure to pay the tax, interest or penalty falls within the dragnet of the said provision. Even otherwise, it is a well settled rule of construction of penal statutes that if two possible and reasonable constructions can be put upon a penal provision, the Court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty. (Tolaram Relumal and another vs. State of Bombay)*

> *42. On the aforesaid touchstone, reverting to the facts of the case, there is material to indicate that within five days of the show cause notice the applicants had deposited the tax due as declared in the return for AY-2010-2011. Since the applicants had declared the income and assessed the self-assessment tax, it cannot be urged that there was an attempt to evade the tax. It was neither a case of under reporting of income nor that of showing diminished tax liability. The action on the part of the applicants to pay the tax due under five days of the notice militates against the stand of the Income Tax Department that there was an intent to evade the tax throughout. It is not disputed on the date of the lodging of the complaint, no tax was due, and even the applicants deposited the amount of Rs.4,47,420/- towards interest on the due amount."*

10. In the present matter also it is not disputed that the entire amount of tax was paid before the filing of the complaint. It is well settled that mere failure to pay the tax is not sufficient to constitute the offence punishable under Section 276C read with Section 278E and there must be a wilful attempt on the part of the assessee to evade payment of any tax, penalty or interest. In the

explanation to show cause notice, the petitioner has pointed out the circumstances which forced him to commit such default. Considering the overall facts and circumstances of the case, the order impugned cannot be allowed to stand.

O R D E R

i) The petition is allowed.

ii) The order impugned is set aside.

iii) Complaint filed by the respondent No.1 is dismissed.

[N.R.BORKAR, J.]