

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 20th OF JULY, 2024

MISC. CRIMINAL CASE No. 41735 of 2021

AYUSH JAIN

Versus

UNION OF INDIA

Appearance:

Shri Vishal Baheti –Advocate for petitioner.

Ms. Veena Mandlik – Advocate for respondent.

ORDER

- 1] Heard finally, with the consent of the parties.
- 2] The present petition has been filed under Section 482 of Cr.P.C. for quashment of order dated 31.01.2018, passed in SC/EOW/4472/2018 by Special Judicial Magistrate, CBI and Economic Offence, Indore, and also against the complaint case under Sections 276C(1) and 277 of the Income Tax Act, 1961 initiating prosecution against the petitioner (Annexure P/4 and Annexure P/5).
- 3] In brief, the facts of the case are that the respondent Income Tax Department has filed a Criminal complaint against the present petitioner alleging that the petitioner has willfully attempted to evade tax and has not declared true and correct income for the Assessment Year 2014-15. The respondent passed the assessment order dated

14.12.2016, and assessed the income of the petitioner at a substantially higher figure of Rs. 1,55,16,771/-, and raised a tax demand of Rs.43,91,380/-. On 19.12.2017, the CIT granted sanction of prosecution against the present petitioner and, accordingly, prosecution was instituted in the Trial Court.

4] The aforesaid assessment order dated 14.12.2016 was challenged by the petitioner before the ITAT in ITA No. 616/Ind/2019, and the ITAT, vide order dated 30.04.2021 (Annexure P-10) allowed the petitioner's appeal and set aside the order of CIT and deleted the revised assessment of the petitioner. The respondent also gave effect to the ITAT's order on 29.07.2021, and the figure stated by the petitioner was accepted. Subsequently, the appeal preferred by the ITO against the order of the ITAT was also dismissed by this Court in ITA No. 58 of 2021 vide order dated 30.04.2024. It is further the case of the petitioner that the findings of the ITAT are conclusive and once the matter has been adjudicated and settled by the ITAT, the matter cannot be dragged in the criminal Courts.

5] Shri Vishal Baheti, learned counsel for the petitioner has also submitted that it is a settled position of law that once an order of assessment has been set aside, on the same facts a criminal prosecution cannot be initiated or continued. In support of his submissions, Shri Baheti has also relied upon a decision rendered by the Supreme Court in the case of **K.C. Builders & Ors. Vs. The Assistant Commissioner of Income Tax** reported as (2004) 2 SCC 731 paras 27 and 28. Thus, it is submitted that the impugned order be quashed and the criminal prosecution of the petitioner be set aside.

6] Counsel for the respondent has not disputed the factual aspects of the matter, that the assessment order made against the petitioner has already been quashed by the ITAT and the appeal preferred by the Department against the aforesaid order, has also been dismissed by this Court on 30.04.2021.

7] Heard. On due consideration and on perusal of the decision rendered by the Supreme Court in the case of **K. C. Builders & Ors.** (**supra**) it is found that so far as paras 27 and 28 are concerned, the same read as under:-

“27. In the instant case, the penalties levied under Section 271(1)(c) were cancelled by the respondent by giving effect to the order of the Income Tax Appellate Tribunal in I.T.A. Nos. 3129-3132. It is settled law that levy, of penalties and prosecution under Section 276C are simultaneous. Hence, once the penalties are cancelled on the ground that there is no concealment, the quashing of prosecution under Section 276C is automatic.

28. In our opinion, the appellants cannot be made to suffer and face the rigorous of criminal trial when the same cannot be sustained in the eyes of law because the entire prosecution in view of a conclusive finding of the Income Tax Tribunal that there is no concealment of income becomes devoid of jurisdiction and under Section 254 of the Act, a finding of the Appellate Tribunal supercedes the order of the Assessing Officer under Section 143(3) more so when the Assessing Officer cancelled the penalty levied.”

(Emphasis supplied)

8] It is apparent that the Supreme Court has clearly held that once the penalties are cancelled on the ground that there is no concealment, the quashing of the prosecution under Section 276C is automatic.

9] In such circumstances, this Court has no hesitation to hold that the criminal prosecution of the petitioner has already come to an end,

however, to give it stamp of approval to such quashment, it is directed that the order dated **31.01.2018** shall stand quashed and consequently, the criminal prosecution is also hereby quashed.

10] With the aforesaid, the petition stands *allowed* and *disposed of*.

(SUBODH ABHYANKAR)
JUDGE

Pankaj