



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S. B. Criminal Miscellaneous Petition No. 4839/2019

Nagendra Choudhary S/o Shri Devendra Singh Choudhary, aged about 54 years, R/o 232, Himmat Nagar, Tonk Road, Jaipur(Raj.)
[PAN-ABS5437E]

-----Accused/Petitioner

Versus

1. Union of India, through Special P.P. -----Respondent
2. Deputy Commissioner, Income Tax (Central) Circle-2, Jaipur (Raj.) -----Complainant/Respondent

For Petitioner : Mr. Pradeep Kumar Chaudhary
Advocate assisted by Mr. Waseen
Ahmed Qureshi Advocate, Mr. Parth
Singh Dhaked Advocate and Mr.
Gaurav Choudhary Advocate.

For Respondents : Mr. Siddharth Bapna Advocate with
Mr. Rahul Kumar Advocate and Ms.
Tanuska Saxena Advocate.

HON'BLE MR. JUSTICE ANAND SHARMA

Judgment

REPORTABLE

RESERVED ON :: 17.11.2025
PRONOUNCED ON :: 26.11.2025

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter to be referred as 'Cr.P.C. '), seeking quashing of criminal proceedings arising from Criminal Case No. 140/2017 pending before the Court of the Chief Metropolitan Magistrate (Economic Offences), Jaipur City, Jaipur (hereinafter to be referred as 'the trial court') for



alleged offence under Section 276C(1)(i) of the Income Tax Act, 1961 (hereinafter to be referred as 'the Act of 1961').

2. It is stated in the petition that a search under Section 132(1) of the Act of 1961 was carried out on 04.09.2013 at the petitioner's residential and business premises, leading to the seizure of documents/ diaries indicating entries of unaccounted advances of Rs. 1,47,00,000/-. The petitioner admitted this sum along with additional sum of Rs. 3,00,000/- as undisclosed income and accordingly, declared it in his return under Section 139(1) of the Act of 1961 for Assessment Year 2014-15. Considering the same, petitioner's income was assessed under Section 143(3) of the Act of 1961 at Rs. 1,74,44,610/- and a penalty of Rs. 15,00,000/- was imposed by the Assessing Officer under Section 271AAB of the Act of 1961, which was challenged by the petitioner by way of appeal filed before CIT(A)-4, Jaipur and the same was dismissed vide order dated 15.12.2017. Feeling aggrieved, the petitioner preferred an appeal before the Income Tax Appellate Tribunal (hereinafter to be referred as 'ITAT') and the ITAT vide its order dated 10.06.2019 set aside the penalty, by giving observations that the preconditions for its imposition were not satisfied, nor could the department establish any sort of concealment.

3. During the pendency of these proceedings, the Department initiated prosecution by way of filing complaint on 31.03.2017 under Section 276C(1)(i) of the Act of 1961 alleging willful attempt to evade tax by the petitioner. It is contended that although the Department has preferred an appeal under Section 260A against the order passed by the ITAT, yet there is no interim





stay against the order of the ITAT and thus, the penalty remains annulled without any operative finding of concealment or willful evasion as of today against the petitioner. Overlooking such crucial effect of annulment of the penalty, cognizance was taken on aforesaid complaint by the trial court vide order dated 06.04.2017, which has materially affected the rights of the petitioner and occasioned failure of justice.

4. By way of filing reply, Respondent No. 2-complainant (Income Tax Department) opposed the petition and submitted that its appeal against the order of the ITAT under Section 260A has already been admitted by this Court on substantial questions of law, which consequently preserves the Department's right to prosecute. It is contended in reply to the petition that penalty proceedings and criminal prosecution are independent and, therefore, the deletion of penalty does not bar prosecution. Respondent No. 2 referred the statutory presumption of culpable mental state under Section 278E of the Act of 1961 and submitted that deletion of penalty does not automatically negate criminal culpability.

5. Shri Pradeep Kumar Chaudhary, learned counsel for the petitioner, while pressing his challenge to the criminal proceedings, submitted as under :-

(i) The genesis of the prosecution was based entirely upon the alleged concealment of income arising from search proceedings under Section 132(1) of the Act of 1961 and the consequent addition of Rs. 1,50,00,000/- as alleged undisclosed income for Assessment Year 2014-15. The Assessing Officer erroneously treated this disclosure as concealment and





consequently, levied penalty under Section 271AAB of the Act, whereas undisputedly the alleged income was found recorded in the diary, which is nothing, but the other record maintained in the normal course. Hence, it could not have been presumed as undisclosed income.

(ii) Very foundation of the complaint filed under Section 276C(1)(i) of the Act of 1961 was the allegation of willful attempt to evade tax, which was invoked solely because penalty under Section 271AAB of the Act of 1961 had been imposed. However, the ITAT, vide its order dated 10.06.2019, categorically deleted the said penalty on the ground that it was not sustainable in law. Once the penalty itself stands deleted, the entire framework of prosecution ceases to exist. When the penalty levied for concealment of income is set aside by the appellate authority or tribunal, the prosecution under Section 276C automatically loses its foundation as the basis of such prosecution no longer survives. Hence, continuing the criminal proceedings against the petitioner in such circumstances amounts to abuse of process of the Court and law.

(iii) Petitioner has already discharged his tax liability by declaring the entire amount in his return under Section 139(1) of the Act of 1961, which was duly assessed under Section 143(3) of the Act of 1961. When tax on such income has been accepted and paid and penalty proceedings have been quashed, there remains no criminal intent or malice to constitute an offence under Section 276C(1) of the Act of 1961. Learned counsel for the petitioner further added that criminal prosecution under fiscal statutes must not proceed when the Department's own adjudicatory findings





negate the existence of *mens rea*, which is an essential ingredient of the offence under Section 276C(1) of the Act of 1961. The continuance of prosecution despite such deletion would be contrary to the principles of fairness, proportionality and judicial consistency.

(iv) The ITAT is the final fact-finding authority and it has deleted the penalty on the ground that statutory prerequisites were not fulfilled as well as the concealment was also not established. Thus, the legal consequence of the ITAT's judgment would be that the prosecution's very foundation stands collapsed. The criminal prosecution, being predicated on identical allegations as the penalty, cannot outlive the Tribunal's exoneration unless and until that exoneration is stayed or overturned by a superior forum.

(v) The statutory presumption of *mens rea* under the provisions of Sections 276(C)(1) and 278E of the Act of 1961 arises only when foundational facts, i.e., concealment or willful attempt to evade tax, are prima facie established. Where the tribunal has found, factually and legally, that these foundations do not exist, the presumption cannot be said to have arisen in a vacuum.

(vi) The pendency of the Department's appeal filed under Section 260A of the Act of 1961 by itself does not suspend or neutralise the ITAT's conclusions. Unless those findings are overturned or stayed, they remain binding and further restrict any other proceeding on the same facts and grounds. Hence, to subject the petitioner to a criminal trial under these circumstances





would be unjust, oppressive and contrary to settled principle of law.

(vii) Continuation of the said prosecution, despite subsequent developments, would amount to an abuse of the process of the Court and would resultantly defeat the ends of justice. This Court possesses the inherent power under Section 482 Cr.P.C. to prevent abuse of process of the Court and to secure the ends of justice. In the present case, where the very foundation of the complaint stands demolished by the order passed by the ITAT, compelling the petitioner to undergo trial would cause irreparable harm and needless harassment.

(viii) In support of his arguments, learned counsel for the petitioner has placed reliance on the judgment of the Hon'ble Supreme Court in the case of **K.C. Builders & Another v. Assistant Commissioner of Income Tax, (2004) 2 SCC 731** wherein it has been held that when the penalty for concealment is deleted, prosecution under Section 276C of the Act of 1961 cannot survive. He further cited the judgment of the Hon'ble Supreme Court in the case of **G.L. Didwania & Another v. Income Tax Officer & Another, 1995 Supp (2) SCC 724**, wherein the Hon'ble Apex Court has held that when additions or concealment findings are set aside, prosecution which rests upon such concealment automatically fails. While referring to the judgment of Madras High Court in the case of **Sayarmull Surana v Income Tax Officer, 2018 SCC OnLine Mad 3505**, it was reiterated that prosecution cannot continue if the penalty is annulled.

6. *Per contra*, Shri Siddharth Bapna, learned counsel for Respondent No. 2-complainant submitted as under:





(i) The prosecution under Section 276C(1)(i) of the Act of 1961 arises from the petitioner's admission of undisclosed income amounting to Rs. 1,50,00,000/- discovered during the search and seizure operation on 04.09.2013. It is emphasised that the admission was not voluntary, but in fact, it was the result of Departmental search, otherwise the petitioner would not have disclosed this income.

(ii) Criminal proceedings under Section 276C(1)(i) of the Act of 1961 are independent of penalty proceedings under Section 271AAB. The continuation, institution or outcome of prosecution does not depend on the fate of penalty proceedings and thus, the prosecution cannot be quashed merely because the penalty has been set aside.

(iii) Although, the ITAT has deleted the penalty, yet the Department has contested this outcome by way of filing an appeal under Section 260A of the Act of 1961, which has been admitted by this Court on substantial questions of law. Thus, the ITAT's order has not attained finality and hence, the present petition for quashing prosecution is premature and liable to be dismissed at the threshold.

(iv) Section 278E of the Act of 1961 presumes the existence of a culpable mental state in prosecutions under the Act of 1961 unless rebutted beyond reasonable doubt by the accused. Thus, the burden remains on the petitioner to disprove *mens rea*, which can be done only during trial and instant petition for quashing of the criminal proceedings under the aforesaid circumstances is not maintainable.





(v) The trial court's order taking cognizance of the offence has not been challenged by the petitioner by way of filing revision petition and has, thus, attained finality. Learned counsel ultimately submitted that the petition for quashing is without merit since the issues are subjudiced and prosecution is independently sustainable.

(vi) Learned counsel for Respondent No.2, in support of his arguments placed reliance upon the decision of the Hon'ble Supreme Court in the case of **P. Jayappan v. S.K. Perumal, First ITO, (1984) 19 Taxman 1 (SC)** wherein, it has been held that penalty and prosecution are independent proceedings and proceedings in appeal against penalty does not bar initiation or continuation of prosecution. In the case of **Panchu Arunachalam v. Income-tax Officer, (1995) 214 ITR 733 (Madras)**, it has been held by the Madras High Court that in the cases of willful attempt to evade tax, pendency of appeal before income tax authorities will not be a bar to prosecution under Section 276C of the Act of 1961. Same view has been taken by Madras High Court in the cases of **R.N.Bajaj v K. Govindan, Income-tax Officer, (1992) 198 ITR 447 (Mad.)** and **English Electric Co. of India Ltd. v Commissioner of Income-tax, (1999) 235 ITR 35 (Madras)**. Further, learned counsel for Respondent No. 2 submitted that in the case of **Sasi Enterprises v. Assistant Commissioner of Income-tax, (2014) 5 SCC 139**, the Hon'ble Supreme Court has clarified that requirement of *mens rea* is although essential in prosecution, but not in penalty, yet the statutory presumption under Section 278E of the Act of 1961 applies unless rebutted beyond reasonable doubt. Therefore, as



per learned counsel for Respondent No. 2-complainant deletion of penalty does not ipso facto extinguishes criminal liability.

7. I have heard rival contentions put forward by learned counsel for the parties and carefully perused the record.

8. In view of the aforementioned facts and submissions made by learned counsel for the parties, following issues arise for consideration in the present petition:

(a) Whether the quashing of penalty proceedings under Section 271AAB of the Act of 1961 by the ITAT warrants the consequent quashing of the prosecution initiated under Section 276C(1) of the Act of 1961;

(b) Whether the pendency of the Department's statutory appeal against order of deletion of penalty passed by the ITAT affects the maintainability of the petition filed under Section 482 Cr.P.C.;

(c) Whether taking of cognizance by the trial court operates as a bar to the exercise of the inherent powers of this Court under Section 482 Cr.P.C. to quash the proceedings.

9. The above threshold question no. (a) is whether quashing penalty under Section 271AAB of the Act of 1961 by the ITAT necessarily entails quashing prosecution under Section 276C(1) of the Act of 1961. For that purpose, it would be relevant to reproduce provisions of Section 271AAB, 276C(1) and 278E of the Act of 1961, which are as under:

"[**271AAB.** Penalty where search has been initiated.—

(1) The Assessing Officer or the Commissioner (Appeals) may, notwithstanding anything contained in any other provisions of this Act, direct that, in a case where search has been initiated under section 132 on or after the 1st day of July, 2012 but before the date on which the Taxation Laws (Second Amendment) Bill, 2016 receives the assent of the President, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him,—





(a) a sum computed at the rate of ten per cent of the undisclosed income of the specified previous year, if such assessee—

(i) in the course of the search, in a statement under sub-section (4) of section 132, admits the undisclosed income and specifies the manner in which such income has been derived;

(ii) substantiates the manner in which the undisclosed income was derived; and

(iii) on or before the specified date—

(A) pays the tax, together with interest, if any, in respect of the undisclosed income; and

(B) furnishes the return of income for the specified previous year declaring such undisclosed income therein;

(b) a sum computed at the rate of twenty per cent of the undisclosed income of the specified previous year, if such assessee—

(i) in the course of the search, in a statement under sub-section (4) of section 132, does not admit the undisclosed income; and

(ii) on or before the specified date—

(A) declares such income in the return of income furnished for the specified previous year; and

(B) pays the tax, together with interest, if any, in respect of the undisclosed income;

(c) a sum computed at the rate of sixty per cent. of the undisclosed income of the specified previous year, if it is not covered by the provisions of clauses (a) and (b).

(1A) The Assessing Officer or the Commissioner (Appeals) may, notwithstanding anything contained in any other provisions of this Act, direct that, in a case where search has been initiated under section 132 on or after the date on which the Taxation Laws (Second Amendment) Bill, 2016 receives the assent of the President, but before the 1st day of September, 2024 the assessee shall pay by way of penalty, in addition to tax, if any, payable by him,—

(a) a sum computed at the rate of thirty per cent of the undisclosed income of the specified previous year, if the assessee—

(i) in the course of the search, in a statement under sub-section (4) of section 132, admits the undisclosed income and specifies the manner in which such income has been derived;

(ii) substantiates the manner in which the undisclosed income was derived; and

(iii) on or before the specified date—





(A) pays the tax, together with interest, if any, in respect of the undisclosed income; and

(B) furnishes the return of income for the specified previous year declaring such undisclosed income therein;

(b) a sum computed at the rate of sixty per cent of the undisclosed income of the specified previous year, if it is not covered under the provisions of clause (a).

(2) No penalty under the provisions of section 270A or clause (c) of sub-section (1) of section 271 shall be imposed upon the assessee in respect of the undisclosed income referred to in sub-section (1) or sub-section (1A).

(3) The provisions of sections 274 and 275 shall, as far as may be, apply in relation to the penalty referred to in this section.

Explanation.—For the purposes of this section,—

(a) "specified date" means the due date of furnishing of return of income under sub-section (1) of section 139 or the date on which the period specified in the notice issued under section 148 or under section 153A, as the case may be, for furnishing of return of income expires, as the case may be;

(b) "specified previous year" means the previous year—

(i) which has ended before the date of search, but the date of furnishing the return of income under sub-section (1) of section 139 for such year has not expired before the date of search and the assessee has not furnished the return of income for the previous year before the date of search; or

(ii) in which search was conducted;

(c) "undisclosed income" means—

(i) any income of the specified previous year represented, either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of a search under section 132, which has—

(A) not been recorded on or before the date of search in the books of account or other documents maintained in the normal course relating to such previous year; or

(B) otherwise not been disclosed to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner before the date of search; or

(ii) any income of the specified previous year represented, either wholly or partly, by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course relating to the specified previous year which is





found to be false and would not have been found to be so had the search not been conducted.]

276C. (1) If a person wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable, or under reports his income, under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable,—

(i) xxxxxx

278E. (1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.—In this sub-section, "culpable mental state" includes intention, motive or knowledge of a fact or belief in, or reason to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability."

10. At this stage, it would be relevant to refer the discussions and findings recorded by the ITAT in order dated 10.06.2019, which are reproduced as under:

"From the contents of these show cause notices, it is clear that though the AO has mentioned that he propose to levy the penalty under section 271AAB of the IT Act, however, the AO has not specified on which amount of undisclosed income the penalty was proposed to be levied and whether the assessee was guilty of levy of penalty @ 10%, 20% or 30% as provided under clause (a) to (c) of section 271AAB(1) of the IT Act. It is pertinent to note that in the case in hand the assessee has disclosed a sum of Rs. 1,47,00,000/- based on seizure material AS-6 containing the entries of advances for land. Apart from the said disclosure, the assessee has also surrendered a sum of Rs. 3,00,000/- on account of any other illegality in the books of account of the assessee. We find that the said Rs. 3,00,000/- surrendered by the assessee does not represent any undisclosed income on account of any entry or money, bullion, jewellery or other valuable articles. Therefore, in the absence of any incriminating material found or detected during the search, post search or even during the assessment proceedings, the said surrender of Rs. 3,00,000/- would not constitute undisclosed income as defined in explanation to section 271AAB of the IT Act. Therefore, in the absence of specifying the details of undisclosed income against which the AO proposed to levy the penalty as well as the quantum of penalty whether equivalent to 10%, 20% or 30% of the undisclosed Income, the show cause notices issued by the AO are very vague. At the outset, we note that an identical Issue has been considered by the Coordinate Bench of this Tribunal in the





case of *Dinesh Kumar Agarwal vs. ACIT (supra)* in para 8 and 9 as under

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Thus, the Tribunal in the said decision has arrived to the conclusion that the levy of penalty U/s 271AAB of the Act is not mandatory but the AO has discretion to take a decision and the same shall be based on judicious decision of the AO.

9. As regards the validity of notice U/s 274 for want of specifying the ground and default of the assessee the Tribunal has held that the AO is required to specifically state in the show cause notice the ground and the default committed by the assessee as to attract the penalty U/s 271AAB of the Act @ 10% 20% or 30% of the undisclosed income. In the absence of specifying the default and charge against the assessee for which the penalty was proposed to be levied the show cause notice issued by the AO and initiation of proceeding for levy of penalty U/s 271AAB are not valid. Hence, following the earlier order of this Tribunal we hold that the show cause issued by the AO in the case assessee is not sustainable and liable to be quashed."

The show cause notices issued by the AO in the case of the assessee are also silent about the details of undisclosed income as well as specifying the clauses for levy of penalty whether it is 10%, 20% or 30% of the undisclosed income. Further, it is also pertinent to note that a part of the surrendered amount to the extent of Rs. 3,00,000/- is not based on any incriminating material or any illegality in the books of account, then the same cannot be held as undisclosed income for the purpose of section 271AAB of the Act. Though the issue of undisclosed income regarding the balance amount surrendered by the assessee based on the entries in the seized material is a debatable issue, however, the amount of Rs. 3,00,000/- not based on any incriminating material is in any case not an undisclosed income as defined in explanation to section 271AAB of the Act. Hence following the earlier decision of this Tribunal as well as the decision of Hon'ble Jurisdictional High Court in case of *Sheveta Construction Co. Pvt. Ltd. in DB IT Appeal No. 534/2008 dated 06.12.2016*, the initiation of penalty proceeding is not valid and consequently the order passed under section 271AAB of the IT Act is not sustainable in law.

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We have considered the rival submissions as well as the relevant material on record. The assessee is an Individual and is a director in 5 companies doing the business. The assessee in his Individual capacity is not doing any business but earning the income from salary, rent and other sources. The main source of income of the assessee is remuneration received from the various companies in which the assessee is a director. A search and seizure action under section 132 of the IT Act was conducted on 4th September, 2013. The statement of the assessee was recorded under section 132(4) of the IT Act in the capacity of Director of various companies. During the said statement, the assessee has surrendered a sum of Rs. 1,47,00,000/- on account of the entries in Annexure A-6 showing the various amounts for purchase of land. Though the said surrender was made by





the assessee in his individual capacity, however, as it is apparent from the record that neither in the past nor in the future the assessee has shown any business income or any business activity of purchase and sale of land. We further note that the various companies in which the assessee is a director, are in the business of real estate and purchase and sale of land. Therefore, it appears that even if the transactions recorded in the seized material AS-6 are regarding the advance for purchase of land, such transactions are in ordinary and regular manner are carried out by the companies in which the assessee is director and not by the assessee in his personal capacity. In any case, there are total 6 (six) transactions of advance total amounting to Rs. 1,47,00,000/- on account of land. These transactions themselves do not represent any undisclosed income as per the definition in explanation to section 271AAB of the Act. These transactions are out go and expenditure on the part of the assessee and, therefore, the source of these transactions can be income of the assessee which can be held as undisclosed income but neither there is any material or any entry found during the course of search and seizure action to show any income of the assessee which is not recorded in the books. Further, these are only the entries of advances but no details of person or any detail of any land is recorded in the seized material. Such vague entries itself do not represent any asset, money, bullion or even the income of any manner/nature but these are simple out go of money. Even the corresponding asset is not reflected in these entries recorded in the seized material. Therefore, until and unless a right is created and vested with the assessee to have an asset equivalent to amount or other right to recover the said amount from the persons to whom the amounts were paid, these entries cannot be held as income of the assessee much less the undisclosed income of the assessee. On careful perusal of the entries, we note that very vague description is there, only amount is mentioned against land but there is no detail of any person or particular details of the land is given in these entries. Further, apart from these entries, there was no document or other material found to show that any transaction of purchase of land has taken place between the assessee and other party. Even the receipts in respect of these payments were not found or detected by the Investigation Wing. Thus the mere entry of out go in the seized material would not constitute undisclosed income as defined in explanation to section 271AAB of the Act.

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We find that the said decision of this Tribunal is applicable in the facts of the present case and accordingly, in view of the decision in case of *Shri Ravi Mathur vs. DCIT (supra)* we delete the penalty levy U/s 271AAB of the Act."

In view of the facts and circumstances as discussed above and following the earlier decisions of this Tribunal, we hold that the mere disclosure and surrender of the amount by the assessee on account of some payments for land would not constitute undisclosed income in the absence of corresponding asset and other material to create any right in favour of the assessee. As we have already discussed in the preceding paras that the surrender of Rs. 3,00,000/- by the assessee on account of any other irregularity is not even the





income of the assessee much less the undisclosed income of the assessee when there was no deficiency found either during the search and seizure proceedings or post search investigation or during the assessment proceedings in the books of account of the assessee, therefore, the penalty against the said surrender is highly, arbitrary and illegal. Accordingly, the penalty levied by the AO under section 271AAB is deleted."

11. The legislative scheme of the Act of 1961 envisages that penalty and prosecution, though related, yet are distinct remedies. The prosecution against the petitioner hinges entirely on allegations of concealment and willful attempt to evade tax under Section 276C(1)(i) of the Act of 1961. The key factual sequence begins with a search under Section 132(1) of the Act of 1961 that led to the discovery of alleged unaccounted income, for which penalty proceedings under Section 271AAB of the Act of 1961 and criminal prosecution were launched simultaneously.

12. However, judicial pronouncements, including the recent Supreme Court decision in **Vijay Krishnaswami alias Krishnaswami Vijaykumar v. Deputy Director of Income-tax (Investigation), 2025 SCC OnLine SC 1843**, clarify that prosecution for an offence under Section 276C(1) of the Act of 1961 mandates proof of a willful attempt to evade tax or penalty. The Hon'ble Supreme Court has categorically explained that Section 276C(1) of the Act of 1961 pertains to a willful attempt to evade tax, penalty, or interest that is "chargeable", "imposable", or related to "under-reporting of income". It is primarily intended to deter and penalise willful and deliberate attempts by an assessee for evasion of taxes, penalties and interest prior to their imposition or charging. The provision applies where there is a



conscious and intentional effort to evade tax liability, distinguishing such conduct from bona fide errors or differences in interpretation. The gist of the offence under sub-section (1) of Section 276C of the Act of 1961 lies in the willful attempt to evade the very imposition of liability and what is made punishable under this sub-section is not the "actual evasion" but the "willful attempt" to evade as described in the proviso to Section 276C of the Act of 1961.

13. It is also settled law that if penalty proceedings fail or are quashed due to lack of justification or procedural infirmities, it invariably undermines the foundation for prosecution. Accordingly, if ITAT quashes the penalty on substantive or procedural grounds, absent any finding of willfulness or culpable intent, the prosecution would lack sustainment and warrant quashing of the proceedings.

14. From the factual chronology of this case, the sole base of the criminal prosecution is the alleged concealment of income detected during a search and seizure, resulting in both penalty and criminal prosecution proceedings. The ITAT, in its fact-finding role, has conclusively found no concealment or satisfaction of statutory conditions for penalty, and this finding currently holds the field.

15. The basic factual foundation for both penalty and prosecution under the Act of 1961 being identical, the survival of the criminal proceeding hinges on the Tribunal's determination. The pendency of an appeal, in the absence of a stay, does not revive the factual findings which have already been set aside.





16. The Hon'ble Supreme Court in **K.C. Builders & Another (supra)**, clarified that if the Tribunal sets aside a finding of concealment, the prosecution based on that finding must also fall. It was held as under:

"14. The word "concealment" inherently carries with it the element of mens rea. Therefore, the mere fact that some figure or some particulars have been disclosed by itself, even if takes out the case from the purview of non-disclosure, it cannot by itself take out the case from the purview of furnishing inaccurate particulars. Mere omission from the return of an item of receipt does neither amount to concealment nor deliberate furnishing of inaccurate particulars of income unless and until there is some evidence to show or some circumstances found from which it can be gathered that the omission was attributable to an intention or desire on the part of the assessee to hide or conceal the income so as to avoid the imposition of tax thereon. In order that a penalty under Section 271(1)(iii) may be imposed, it has to be proved that the assessee has consciously made the concealment or furnished inaccurate particulars of his income. Where the additions made in the assessment order, on the basis of which penalty for concealment was levied, are deleted, there remains no basis at all for levying the penalty for concealment and, therefore, in such a case no such penalty can survive and the same is liable to be cancelled as in the instant case. Ordinarily, penalty cannot stand if the assessment itself is set aside. Where an order of assessment or reassessment on the basis of which penalty has been levied on the assessee has itself been finally set aside or cancelled by the Tribunal or otherwise, the penalty cannot stand by itself and the same is liable to be cancelled as in the instant case ordered by the Tribunal and later cancellation of penalty by the authorities.

26. In our view, once the finding of concealment and subsequent levy of penalties under Section 271(1)(c) of the Act has been struck down by the Tribunal, the assessing officer has no other alternative except to correct his order under Section 154 of the Act as per the directions of the Tribunal. As already noticed, the subject-matter of the complaint before this Court is concealment of income arrived at on the basis of the finding of the assessing officer. If the Tribunal has set aside the order of concealment and penalties, there is no concealment in the eye of the law and, therefore, the prosecution cannot be proceeded with by the complainant and further proceedings will be illegal and without jurisdiction. The Assistant Commissioner of Income Tax cannot proceed with the prosecution even after the order of concealment has been set aside by the Tribunal. When the Tribunal has set aside the levy of penalty, the criminal proceedings against the appellants cannot survive for further consideration. In our view, the High Court has taken the view that the charges have been framed and the matter is in the stage of further cross-examination and, therefore, the prosecution may proceed with the trial. In our opinion, the view taken by the learned Magistrate and the High Court is fallacious. In our view, if the trial is allowed to proceed further after the order of the Tribunal and the





consequent cancellation of penalty, it will be an idle and empty formality to require the appellants to have the order of the Tribunal exhibited as a defence document inasmuch as the passing of the order as aforementioned is unsustainable and unquestionable.

32. *For the aforesaid discussions and reasons adduced, the questions of law formulated above are answered accordingly and the appeals stand allowed."*

17. In the case of **G.L. Didwania & Another (supra)**, the Hon'ble Supreme Court held that criminal prosecution cannot proceed contrary to conclusive findings of the Tribunal. Hon'ble Supreme court held as under:-

"4. In the instant case, the crux of the matter is attracted and whether the prosecution can be sustained in view of the order passed by the tribunal. As noted above, the assessing authority held that the appellant-assessee made a false statement in respect of income of M/s Young India and Transport Company and that finding has been set aside by the Income Tax Appellate Tribunal. If that is the position then we are unable to see as to how criminal proceedings can be sustained.

5. Mr A. Raghuvir, learned Senior Counsel appearing for the department submitted that the fact whether the firm is a genuine firm, still remains as a question to be resolved and therefore the proceedings cannot be quashed at this stage. We do not agree. The whole question is whether the appellant-assessee made a false statement regarding the income which according to the assessing authority has escaped assessment. So far as this issue is concerned, the finding of the Appellate Tribunal is conclusive. Therefore, as held in Uttam Chand case (1982) 2 SCC 543, the prosecution cannot be sustained. Accordingly, the proceedings are quashed and the appeal is allowed."

18. In the case of **Radheshyam Kejriwal v State of West Bengal & Another, (2011) 3 SCC 581**, the Hon'ble Apex Court emphasised that criminal proceedings are precluded by adjudicatory exoneration on identical facts, particularly when such proceedings require the higher evidentiary threshold for conviction. In the aforesaid case, it was held as under:

"26. *We may observe that the standard of proof in a criminal case is much higher than that of the adjudication proceedings. The Enforcement Directorate has not been able to prove its case in the adjudication proceedings and the appellant has been exonerated on the same allegation. The appellant is facing trial in the criminal case. Therefore, in our*





opinion, the determination of facts in the adjudication proceedings cannot be said to be irrelevant in the criminal case. In B.N. Kashyap AIR 1945 Lah 23 the Full Bench had not considered the effect of a finding of fact in a civil case over the criminal cases and that will be evident from the following passage of the said judgment: (AIR p. 27)

"... I must, however, say that in answering the question, I have only referred to civil cases where the actions are in personam and not those where the proceedings or actions are in rem. Whether a finding of fact arrived at in such proceedings or actions would be relevant in criminal cases, it is unnecessary for me to decide in this case. When that question arises for determination, the provisions of Section 41 of the Evidence Act, will have to be carefully examined."

38. *The ratio which can be culled out from these decisions can broadly be stated as follows:*

(i) Adjudication proceedings and criminal prosecution can be launched simultaneously;

(ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;

(iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;

(iv) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;

(v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;

(vi) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and

(vii) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases.

39. *In our opinion, therefore, the yardstick would be to judge as to whether the allegation in the adjudication proceedings as well as the proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceedings is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of the process of the court.*





47. Bearing in mind the principles aforesaid we proceed to consider the case of the appellant. In the adjudication proceedings on merit the adjudicating authority has categorically held that "the charges against Shri Radheshyam Kejriwal for contravening the provisions of Section 9(1)(f)(i) and Section 8(2) read with Section 64(2) of the Foreign Exchange Regulation Act, 1973 cannot be sustained". In the face of the aforesaid finding by the Enforcement Directorate in the adjudication proceedings that there is no contravention of any of the provisions of the Act, it would be unjust and an abuse of the process of the court to permit the Enforcement Directorate to continue with the criminal prosecution."

19. In the case of **Sayarmull Surana (supra)**, Madras High Court has held as under:

11. It may be necessary to state here that the authorities created under the Income Tax Act are fact-finding bodies and the accused has been knocking the doors of these bodies challenging the determination of the income by the Income Tax Officer. There was no supine indifference on the part of the accused in not paying the demanded tax, but, on the contrary, he had agitated before various fora and at the end of the day, the fact-finding body itself has come to the conclusion that the income of the accused for the relevant period was only Rs. 2,82,650/- and the tax payable by him thereon was only Rs. 1,10,402/-.

12. Thus, the very edifice on which the prosecution was launched against the accused, has crumbled like a pack of cards. There was no necessity for the Income Tax Department to have launched the prosecution hurriedly since the law of limitation under Section 468 Cr.P.C. for criminal prosecution has been excluded by the Economic Offences (Inapplicability of Limitation) Act, 1974. In fact, even in the complaint, the Income Tax Officer has stated that the accused has approached the Income Tax Appellate Tribunal. This shows that the Income Tax Officer was aware of the fact that the accused is agitating his case before the Income Tax Appellate Tribunal, which is the final fact-finding body.

13. Thus, in the peculiar facts and circumstances of the case, it cannot be stated that the accused was wilfully evading the payment of tax. But, unfortunately, the Trial Court had failed to appreciate the contention of the accused in the right perspective."

20. The Complainant's reliance on the decision of the Hon'ble Supreme Court in the case of **P. Jayappan (supra)** is contextually misplaced, as that case did not involve question of final exoneration on merits by the ITAT and it was a case where the Hon'ble Supreme Court was considering the question with





regard to launching of proceedings during pendency of reassessment proceedings. Thus, the aforesaid judgment dealing with applicability of the provisions of Section 279 (1A) of the Act of 1961 during pendency of reassessment proceedings, is not applicable in the facts and circumstances of the present case.

21. Complainant has also relied upon the judgments delivered by the Madras High Court in the cases of **Panchu Arunachalam (supra)**, **R.N.Bajaj (supra)** and **English Electric Co. of India Ltd. (supra)**, where also the penalty proceedings were not quashed by the appellate authority and the appeals were pending. Hence, on facts, the judgments cited by learned Counsel for Respondent No. 2-Complainant are distinguishable.

22. Similarly, the judgment in the case of **Sasi Enterprises (supra)**, as relied upon by learned Counsel for the complainant, merely delineated the distinction in *mens rea* requirement between penalty and prosecution, but did not dilute the principle that prosecution cannot outlast a final judicial negation of factual foundation.

23. Consistent principle emanate from the above judgments is that the criminal proceedings founded on concealment must fail, if the Tribunal(ITAT) has set aside the penalty on merits. The crux of the petitioner's case is the categorical exoneration by the Income Tax Appellate Tribunal (ITAT), which has decided the question of undisclosed income and concealment, after analysing the facts and examining statutory requirements as also the actual conduct of the petitioner and held that there was no concealment or satisfaction of conditions for





penalty. The ITAT's factual findings are vital because both penalty and prosecution share the same factual foundation, i.e., the existence of undisclosed income and factual concealment. The legal principle here is that where a statutory fact-finding authority empowered to decide the merits of the case conclusively finds no concealment or breach, any subsequent criminal prosecution on identical facts lacks foundation. Thus, it can be held that if the Tribunal(ITAT) sets aside a penalty under Section 271AAB of the Act of 1961 for concealment, prosecution under Section 276C of the Act of 1961 must also be quashed as there remains no concealment in the eyes of law. The criminal courts cannot ignore and overlook the findings of the Tribunal on factual issues and cannot independently revive the question of willful concealment, which had already been adjudicated upon and rejected by a competent Tribunal. Exoneration in adjudication proceedings on merits bars prosecution on identical facts, especially when the criminal prosecution requires higher degree of burden of proof.

24. The Complainant's argument that penalty and prosecution are independently sustainable and that the pendency of appeal preserves the Department's right to prosecute is unsupported in the factual context of categorical exoneration. The presumption of culpable mental state under Section 278E of the Act of 1961 is a rebuttable one and crucially, it operates only when the foundational facts of concealment are proved. Once the Tribunal has negated those facts, the presumption cannot operate in a legal vacuum. Thus, the prosecution is required to establish





concealment as the first step for proving *mens rea*, which it cannot do in view of the Tribunal's binding findings.

25. Needless to observe that the prosecution cannot rest on factual allegations judicially proven to be unfounded and must collapse when its foundation, i.e., the penalty for concealment has already been set aside. Both penalty and prosecution depend on the same facts (concealment and willful evasion). The ITAT, as the final fact-finding authority, has settled these facts in favour of the petitioner. Under such circumstances, the ITAT's findings are binding on all subsequent proceedings, unless stayed or set aside by a competent appellate court.

26. It is also significant factor that while penalty and prosecution are theoretically independent, this independence exists only in terms of procedure, not in terms of factual foundation. One cannot survive without the other, if both are based on identical facts and those facts are judicially negated.

27. It is also settled preposition of law that the criminal prosecution requires proof beyond reasonable doubt. When the ITAT, while applying even the principle of preponderance of evidence, found no concealment, then the higher criminal standard cannot possibly be achieved. This Court finds that the prosecution against the petitioner under Section 276C(1)(i) of the Act of 1961 is premised wholly on allegations of concealment. Since the Tribunal has adjudicated, based on merits, that there was neither concealment, nor satisfaction of requirements for penalty, there remains no factual or legal basis for the prosecution to survive.





28. As regards question (b), it would be significant to observe that while considering the maintainability of a petition under Section 482 Cr.P.C. despite pendency of the statutory appeal by the Department, it has to be kept in mind that mere filing of the Department's appeal does not wash off the findings arrived at by the Tribunal (ITAT) and ordinarily, the pendency of appeal does not oust the jurisdiction of this Court, where continuation of prosecution would cause abuse of process or is contrary to the statutory mandate, the intrinsic jurisdiction under Section 482 can be invoked irrespective of pending appeals.

29. Mere pendency of the Department's appeal under Section 260A of the Act of 1961, without a stay on the ITAT's order, does not resurrect the factual findings set aside by the ITAT. Thus, pendency of appeal against order of ITAT alone does not render the petition for quashing of criminal proceedings as non-maintainable.

30. Question (c) is in relation to the objection raised by learned counsel for Respondent No. 2-complainant that after cognizance, this petition for quashing is not maintainable. Indeed, the cognizance taken by the trial court is a significant procedural step, but does not infringe the inherent power of the High Court under Section 482 Cr.P.C. to quash criminal proceedings. It is a settled principle that cognizance per se cannot be a fetter upon inherent jurisdiction, especially where continuation of the proceedings would amount to misuse or abuse of the process of law. The Court must balance the need to uphold the rule of law and prevent oppressive or frivolous prosecution against the





interest of justice. Therefore, taking cognizance does not oust this Court's power to quash, if grounds for such interference exist.

31. Even after the trial court has taken cognizance in a criminal matter, the High Court retains the inherent power under Section 482 Cr.P.C. to quash criminal proceedings that reveal an abuse of the process of law or have been instituted maliciously to achieve an ulterior purpose. This power, as reaffirmed by the Supreme Court in the case of **Mukesh & Others Vs. The State of Uttar Pradesh & Others (Criminal Appeal arising out of Special Leave Petition (Crl.) No. 12354/2024 decided on 29.11.2024)**, is not curtailed merely because a charge sheet has been filed and cognizance has been taken and the same can be exercised to secure the ends of justice when continuation of the proceedings would result in gross injustice or serve no legitimate purpose. The Hon'ble Supreme Court, time and again, has disapproved the cursory dismissal of quashing petitions on the ground that cognizance had been taken, clarifying that such technical grounds cannot defeat the exercise of the High Court's jurisdiction to prevent abuse of process and to ensure fairness in criminal trials.

32. The Supreme Court in the case of **Pradeep Kumar Kesarwani v State of Uttar Pradesh & Another 2025 SCC OnLine SC 1947** has laid down a four-step process that High Courts must follow to determine the veracity of a petition for quashing criminal proceedings under Section 482 Cr.P.C. These steps are:





"20.

(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the materials is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal-proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused. [(See: Rajiv Thapar v. Madan Lal Kapoor (Criminal Appeal No. 174 of 2013))]"

33. So far as the present case is concerned, on the basis of foregoing discussion, this court finds that the challenge made by the petitioner qualifies all the tests laid down by the Hon'ble Supreme court in the case of **Pradeep Kumar Kesarwani (supra)**.

34. Hence, on the above issues, this Court is inclined to hold that quashing of penalty under Section 271AAB of the Act of 1961 by the ITAT, without an adverse finding of willfulness, stands against sustaining prosecution of the petitioner under Section 276C(1) of the Act of 1961. The inherent jurisdiction under Section 482 Cr.P.C. is exercisable notwithstanding pendency of Department's appeal or taking cognizance by trial court, where





continuation would be unjust or contrary to statutory scheme. To allow continued prosecution in such circumstances would sanction an unjust, oppressive and abusive process, contrary to the constitutional guarantee of fairness and the very purpose of inherent jurisdiction under Section 482 Cr.P.C. The only logical conclusion is to quash the prosecution, while preserving the Department's liberty to seek revival, if the Tribunal's exoneration is reversed in the pending appeal.

35. In view of the above findings, this Court holds that the continuation of criminal proceedings under Section 276(C)(1) of the Income Tax Act, 1961 against the petitioner would amount to an abuse of the process of law. The prosecution is untenable in the absence of the foundational finding of concealment, which stands judicially negated and not yet reversed/ stayed in appeal.

36. In the light of above, this criminal misc. petition is, accordingly, allowed. The criminal proceedings in Criminal Case No. 140/2017 pending before the Court of Chief Metropolitan Magistrate (Economic Offences), Jaipur City, are hereby quashed and set aside.

37. Pending applications, if any, stand disposed off.

(ANAND SHARMA),J

MANOJ NARWANI /