



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3840 OF 2025

**Vilas Babanrao Kalokhe**

Residing at  
A-103, B-104 West Wing  
1<sup>st</sup> Floor, Talegaon Dabhade,  
Opp. Swaraj Nagari  
Pune – 411 050.

...Petitioner

Vs.

**1. Principal Commissioner  
of Income Tax (Central) Pune**

Aayakar Sadan, Bodhi Towers,  
Salisbury Park, Gultekdi,  
Pune – 411 037.

**2. The Asst./Dy. Commissioner  
of Income Tax, Central Circle – 2(1),  
Pune**

Room No. 630, 6<sup>th</sup> floor,  
Aayakar Sadan,  
Bodi Towers, Salisbury Park,  
Gultekdi, Pune 411 037.

**3. Additional Commissioner  
of Income Tax, Central  
Range – 2, Pune**

Aayakar Sadan, Bodhi Towers,  
Salisbury Park, Gultekdi,  
Pune – 411 037.

**4. State of Maharashtra**

Through the office of the Public

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Prosecutor, High Court of  
Judicature at Bombay, Fort,  
Mumbai 400001.

### 5. Union of India

Through the Secretary (Revenue)  
Department of Revenue,  
Ministry of Finance,  
Room No. 128-A,  
North Block,  
New Delhi.

...Respondents

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Rohan Deshpande, Vihit Shah a/w Alisha Pinto	Advocate for the Petitioner
Ms. S. E. Phad	APP for the Respondent-State
Ashok Kotangle a/w Vishnu Chaudhari, Nikitesh Kotangale, Narendra Bhagat, Ms. Neha Pende	Advocate for the Respondent- Revenue

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CORAM : S. M. MODAK, J.  
RESERVED ON : 05<sup>th</sup> AUGUST 2025  
PRONOUNCED ON : 16<sup>th</sup> OCTOBER 2025

### P. C. :-

1. The only issue arisen in this Petition is whether ingredients of Section 276 C (2) of Income Tax Act are made out and whether Writ Jurisdiction under Article 227 of the Constitution can be invoked.

2. The Complainant Income Tax Department contends that, along with the Return of Income / at the time of submitting Return of Income, the assessee / accused / petitioner has not deposited the amount of Income Tax which is due as per his calculation. They further contend that, even subsequently, he has not deposited it.
3. That is why, not only there is a default but also there is a willful default as contemplated as per the provision of 276 C (2) of the said Act.
4. As against this, it is the contention of the Assessee that there is no willful default and in fact he has paid the amount of Income Tax due as per self assessment on 16.01.2023 (though not within initial period).
5. After initial correspondence, as required as per Income Tax Act and after getting sanction, complaint is filed in the Court of JMFC, Pune against the Assessee. It is numbered as Summary Criminal Case No. 149 497/2024. The learned Magistrate was pleased to issue process for the offence punishable under Section 276 C (2) of the said Act. This order is under challenge by way of this Petition.
6. I have heard learned Advocate for the Petitioner and learned

Advocate Shri Ashok Kotangle for Respondents.

7. The case put up by both the parties from the pleadings in nutshell is as follows: -

- a) The assessee runs the business of stone crushing on partnership business in the name and style as 'Shree Ambika Stone Crusher' and also engaged in the business of manufacturing precast cement pipes in partnership firm basis in the name and style as "Kalokhe Pipes & Prodcast Industries".
- b) He submitted Income Tax Return for the assessment year 2022-2023 on 5.11.2022. The relevant details are as follows:-

Total Income	IT liability shown
Rs.2,17,10,710/-	Rs.94,22,300/-

- c) The Income tax liability was required to be paid before furnishing such return of income as contemplated under the provisions of Section 140-A of the said Act.
- d) It was not cleared on 5.11.2022 but amount of Rs. 95,89,000/- was paid on 16.01.2023.

- e) The return was processed on 15.12.2023 under Section 143(1) of the Income Tax Act and Income tax liability of Rs.1,05,04,470/- was ascertained.
- f) Amount was demanded as per notice under Section 143 (1) of the Income Tax Act (Page 53).
- g) Assessing Officer submitted a proposal dated 26.07.2024 for launching of prosecution for an offence punishable under Section 276-C (2) of the said Act and it was endorsed by Principal Commissioner of Income Tax (Central), Pune vide letter dated 29.07.2024.
- h) PCIT (Central) Pune vide letter dated 12.08.2024 called explanation of assessee for not granting sanction to prosecute for the offence punishable under section 276 (C) of said Act (Page 63).
- i) The assessee filed his submission online through e-filing portal on 16.08.2024 (Page No.65)
- j) The assessee has informed about some financial problems within the organization and expressed difficulty in paying the tax. (However, it is the department's say that,

any details are not given / credible documentary evidence is not submitted).

- k) The assessee informed that subsequently he has paid the amount due towards income tax on 16.01.2023 with interest and as such, he is not in default with the respective income tax liability for the assessing year 2022-2023. Hence, he requested for dropping the process of initiating the prosecution.
- l) It is the say of the department that the assessee has given priorities to discharge his business and other commitments over and above his obligation of statutory tax payments and adherence to the law of land.
- m) It is the case of the department that when assessee has derived business income of Rs.1,83,30,612/- out of his business activities and worked out the tax liability himself, the assessee has utilised revenue receipts for payment of purposes other than income tax dues.
- n) It is the case of the department that assessee was liable to pay tax by way of advance tax in 4 installments upto

15.03.2022 and balance 31.03.2022.

- o) The department was not satisfied with the explanation and Principal Commissioner of Income Tax (Central), Pune granted sanction under Section 279(1) of Income Tax Act on 18.09.2024 to prosecute the assessee for violation of the provisions of Section 140 A punishable under Section 276 C (2) of Income Tax Act (Page 66).
- p) On this background, complaint is filed before JMFC, Pune. Ld. Magistrate passed following order on 05.12.2024 – (Ref. Memo).

### Submissions

8. Learned Advocate for the Petitioner made following submissions:-

- (i) Even if the averments in the complaint are taken as it is, though there is default in paying self assessment tax alongwith the return, it cannot be said that there is a willful attempt to evade tax.

- (ii) Though, the tax is not paid on 05.11.2022, it was paid subsequently on 16.01.2023. This itself shows that the assessee is having desire to pay the tax and not evade it.
- (iii) What is contemplated for Section 276 C (2) is not merely an evasion to pay tax but it should be willful i.e. intentional. In this case it is absent.
- (iv) As per the provisions of Income Tax Act, there is difference between “willful evasion” and “failure” to pay tax. According to him, there are certain kinds of tax which if not paid then that itself is sufficient to attract penal provisions of Income Tax Act. Eg. TDS, whereas in case of ‘willful evasion’, there must be averment that the assessee deliberately and intensionally attempted to evade the tax and it must be substantiated.
- (v) He relied upon the provisions of *Unique Trading Co. Vs. RTO*<sup>1</sup>

9. As against this learned Advocate Mr. Ashok Katangale made the following submissions:

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<sup>1</sup> [2024] 159 taxmann.com 216.



- (i) The assessee has not paid “*self assessment tax along with the return*” is itself sufficient to attract the penal provisions of Section 276 C (2) of the Income Tax Act and nothing more is required to plead and prove the commission of offence.
- (ii) Averments in the complaint are sufficient to draw inference about ‘willful evasion’.
- (iii) He tried to differentiate the facts of Unique Trading Co. and facts of this petition. In that case managing partner was aware of the tax, remaining partners were unaware. This factor was considered while accepting the quashing prayer. According to him such division of **responsibility** is not pleaded in the petition.
- (iv) He also placed reliance on the observation by the *High Court of Andhra Pradesh in the case of Kashiram Vs. IT Officer*<sup>2</sup>. What is due towards the tax is not the property of assessee but a debt towards the State even as per his own return.

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<sup>2</sup> [1977] 107 ITR 825 (AP)

- (v) He relied upon the observations in case of *M/s. Madhumilan Syntex Ltd. & Or Vs. Union of India & Anr.*<sup>3</sup>
- vi) He also relied upon the observations in the case of *ITO V. Sultan Enterprises*<sup>4</sup>.
- vii) He brought to my notice the provisions of 278 E 'relating to presumption as to culpable State'. The burden lies on assessee to establish that failure was not on account of willful intension.
- viii) He tried to differentiate the provisions of Section 276 C (1) and 276 C (2) of the said Act.
- ix) And lastly he placed reliance on the observations in the case of *Nayan Jayantilal Balu vs. Union of India & Ors.* (*Criminal Writ Petition No. 2698 of 2021 dated 7.12.2021*) under Section 401, wherein the Division Bench declined to interfere in the order granting sanction.

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3 *Appeal (ctrl.) 1377 of 1999 [2007] 160 Taxman 71 (SC).*

4 *(2003) 127 Taxmann 514*

## FINDINGS

10. There is no dispute that the assessee has failed to deposit self assessment tax before or atleast along with the return, he deposited it subsequently. The relevant dates are as follows:-

a)	Date of submission of return	5.11.2022
b)	Date on which self assessment tax was supposed to be paid	On or before 5.11.2022
c)	Date on which tax is actually deposited	16.01.2023
d)	Date of proposal to get sanction	26.07.2024
e)	Date of show cause notice	12.08.2024
f)	Date of online submission	16.08.2024
g)	Date of sanction	18.09.2024
h)	Date of impugned order	05.12.2024

11. There is no dispute that assessee was liable to pay tax under Section 140-A of Income Tax Act and liable to submit return of income under Section 139 of the Income Tax Act. About the date of submitting return and date of paying tax, after due date is also not in dispute. When the Court is dealing with prayer of quashing, Court is required to ascertain the averments of the complaint, documents

annexed and to read and consider them as it is. The Court is required to ascertain with additional materials if any, whether the order of issue of process and complaint can be maintained or whether its continuation is abuse of process of Court.

### Provisions of Income Tax Act

**12.** It is true, there are various provisions in Income Tax Act laying down various obligations on the assessee and also laying down the consequences for its non-fulfillment. It is true, Income Tax Act is a piece of legislation which lays down, the provision for penalty as well as provision for prosecution. It is true, even if the background facts are similar, the consideration for imposing penalty and consideration for launching prosecution is different.

**13.** It is a settled law that law laying down punishment has to interpreted strictly, mean to say, if particular act / obligation states that there is a punishment for its non fulfillment is provided then these provisions need to be interpreted strictly and its adherence should be insisted when there is a complaint of non-adherence. So, **Section 276-C** is titled as '*willful attempt to evade tax etc...*' It is true there are two sub-sections but they operate in different field. Both the sub-sections

lays down different punishment. What is common is 'willful attempt by a person'. But still there is a difference. The difference is in some of the wordings of those sub-sections and this difference also contemplates different contingencies and lead to different consequences. So to say as **sub-section (1)** which is a punishable contingency '*evasion of tax etc.*'. The word '*payment of tax*' is not incorporated. Whereas in **sub-Section (2)** the word '*payment of tax etc*' is added. So it can be said that **sub Section (1)** contemplates evasion of tax including submission of return, whereas as per **sub Section (2)** only '*non-payment of tax*' punishable.

**14.** In the case before this Court, the return is submitted but what is the failure is, failure to pay tax on due date i.e. why there is a prosecution under sub-Section (2) of Section 276-C of the Income Tax Act, learned Advocate Mr. Ashok Kotangale is right while making that submission.

### Facts

**15.** On the basis of above discussion, it needs to be seen whether there is willful evasion to pay the tax. When there are different provisions in Income Tax Act about filing of prosecution, the

observations in one judgment may be applicable to another case only when both these cases deal with similar contingencies. So to say observations made “in a case of willful attempt to evade payment of tax” will be relevant while dealing with present controversy. So to say if there is ‘*willful evasion of tax*’ (not simply payment of tax) the observations may not be fully applicable while dealing with present case. Similarly, the provisions of 276-B of the said Act stands on different footing. The title of Section is ‘*Failure to pay tax to the credit of Central Government under Chapter XII – D or XVII-B*’.

16. As the title of Section 276(C) indicates, the word ‘*failure*’ is absent. There is a difference in between ‘*failure*’ and ‘*evasion*’. **Furthermore, the evasion should not only be simple evasion but it should be willful evasion.** Section 276-B will be applicable when the tax deducted at source is not credited to Government. This is one of the contingency. ‘*Failure to credit*’ itself is sufficient. It need not be willful. Because once you have deducted a tax from the income of other person (who is liable), such person is bound to credit it. That omission itself is an offence without addition of willfulness / intension; but the legislatures have cautiously used the word ‘*willful evasion*’ in

Section 276-C of the Income Tax Act. It indicates there maybe cases wherein there is a genuine case for not paying tax on or before the due date even though return is submitted. In a given case, such failure cannot be considered as a willful evasion. Such cases will be outside the clutches of Section 276-C of the Income Tax Act.

17. Learned Single Judge of this Court in **Unique Trading** was dealing with a petition challenging the prosecution for an offence punishable under Section 276-C (2) read with Section 276-B of the Income Tax Act.

18. **Learned Single Judge observed** “*under these two sections, it is the act of mere failure to credit the tax, which has already been collected or deducted that entails punishment. The text of section 276, on the other hand, professes to punish willful attempt to evade payment of tax interest or penalty*”. For want of satisfying the ingredients of 276-C (2) of Income Tax Act, the prosecution was quashed.

19. The judgments relied upon by learned Advocate Mr. Kotangale are not applicable to this case because they do not deal with the controversy involving the case before me. The judgments cited are not

applicable to the present case because the underlying facts of the case and legal scenario are different. The core of the case laws cited revolve around TDS covered under Section 276-B of the Income Tax Act, whereas, the case in hand deals with self assessment under Section 276-C. The key difference in the nature of the offence and the statutory provisions render the precedents non-binding.

### Conclusion

**20.** From the above discussion, it cannot be inferred that assessee has committed willful default in paying the tax alongwith the return.

**21.** The averments in complaint fall short to draw an inference of the willfulness of the assessee. The assessee has pleaded about financial difficulties. This can be considered as evasion. The department ought to have pleaded that these financial difficulties are not real financial difficulty but just an excuse. The burden of proof can be shifted at a later stage. The presumption of culpableness comes at a later stage only when the ingredients are satisfied at the beginning. I am constrained to take this view by also considering the fact that tax was paid on 16.01.2023. So case is not fit for prosecution. It will be abused of process of Court if prosecution is continued. So case for quashing is



made out.

**ORDER**

(i) Writ Petition is allowed.

(ii) The order of issuance of process dated 05.12.2024 passed by learned JMFC, Court No. 9, Pune in Summary Criminal Case No. 149497 of 2024 is quashed and set aside and complaint is also quashed and dismissed.

**22.** Accordingly, Writ Petition is disposed of.

[S. M. MODAK, J.]