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Crl.O.P.No.9848 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.04.2026

PRONOUNCED ON : 29.04.2026

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.9848 of 2026 and
Crl.M.P.Nos.7042 & 7043 of 2026

Abdul Khader Mohammed Farook (M/56),
S/o.Abdul Khader,
No.59, M.K.N.Road,
Guindy, Chennai-600032.
PAN: AAHPF4076K.

... Petitioner

Vs.

Deputy Commissioner of Income Tax,
Corporate Circle-1[1],
Nungambakkam,
Chennai-600034.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 528 of Bharatiya
Nagarik Suraksha Sanhita, 2023, to call for the records relating to
E.O.C.C.No.133 of 2019 pending on the file of the Additional Chief
Metropolitan Magistrate (Economic Offences), Egmore, Chennai and quash
the same.

For Petitioner : Ms.N.Lavanya
For Respondent : Ms.M.Sheela,
Senior Standing Counsel (Income Tax) and
Mr.H.Siddarth,
Junior Standing Counsel (Income Tax)



Crl.O.P.No.9848 of 2026

ORDER

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The petitioner/accused facing trial for offence under Section 276C(2) of Income Tax Act, 1961 before the learned Additional Chief Metropolitan Magistrate (Economic Offences), Egmore, Chennai in E.O.C.C.No.133 of 2019, has filed this Quash Petition.

2.Learned counsel for the petitioner submitted that the allegation against the petitioner is that the petitioner filed his return of income for the Assessment Year 2017-18 on 30.03.2018 declaring the tax and interest liability of Rs.5,95,616/- but not paid any tax liability at the time of filing the return. Such non payment of admitted tax constitutes a wilful default to evade payment of tax attracting prosecution under Section 276C(2) of Income Tax Act, 1961. Learned counsel further submitted that the entire complaint proceeds on erroneous understanding of the scope of Section 276C(2) of Income Tax Act, 1961. As per Section 276C(2) of Income Tax Act, 1961, criminalisation arises only if wilful attempt to evade payment of tax is found, hence, the offence necessarily requires a deliberate and conscious act showing intention to evade payment of tax. In this case, the petitioner voluntarily disclosed the entire income and tax liability in the return filed before the Income Tax Department. Once the liability is declared in the return of income,



the allegation of evasion of tax becomes inherently untenable. The Hon'ble Apex Court and this Court in plethora of cases held that the word employed in the Section viz., "wilful attempt" cannot be imported to mere failure to pay the tax.

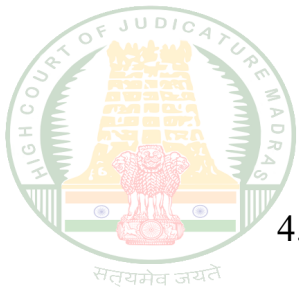
3.Learned counsel further submitted that the complainant does not disclose any act of concealment of income, falsification of accounts, suppression of transactions or any other act suggesting evasion. The allegation in the complaint is only that the admitted tax liability not immediately paid. Mere non-payment or delay in payment of admitted tax does not constitute evasion. Learned counsel further submitted that during the relevant period when the return was filed, the petitioner was suffering from ill health and undergoing medical treatment and his business also incurred severe loss consequent to which SARFAESI proceedings initiated and multiple properties brought to distress sale and sold by way of public auction. Due to such circumstances beyond the control of the petitioner, the petitioner unable to discharge the tax liability. The omission, if any, is purely inadvertent, neither wilful nor wanton. In this case, the sanction for prosecution was granted by the Principal Commissioner of Income Tax under Section 279(1) of Income Tax Act, 1961 and the sanction granted mechanically without proper



Crl.O.P.No.9848 of 2026

application of mind to the essential ingredients of the offence. The respondent

relies upon the presumption under Section 278E of Income Tax Act, 1961 relating to culpable mental state. Such presumption can arise only when the foundational facts constituting the offence are established. In the absence of any act indicating evasion, the presumption under Section 278E of Income Tax Act, 1961 cannot be invoked. Further, resorting to criminal prosecution solely on the ground of non-payment admitted tax amounts to misuse of criminal process. In support of her submissions, learned counsel for the petitioner relied on the decisions of this Court in ***S.P.Velayutham v. The Assistant Commissioner of Income Tax*** reported in ***2022 SCC OnLine Mad 8887*** and ***M/s.G Square Layout Private Limited represented by its Directors and others v. The Deputy Commissioner of Income Tax, Central Circle-1(2), Investigating Building, Nungambakkam, Chennai-600034 in Crl.O.P.No.22880 of 2025 dated 07.10.2025*** wherein this Court held that though the prosecution is maintainable for non-payment of tax within the stipulated period, mere delay in payment cannot be termed a wilful default and will not attract penal provisions. Hence, the continuation of the prosecution against the petitioner amounts to abuse of process of law and prayed for quashing the complaint.



Crl.O.P.No.9848 of 2026

4.Learned Senior Standing Counsel (Income Tax) appearing for the respondent viz., Deputy Commissioner of Income Tax filed counter and submitted that the petitioner is being prosecuted for offence under Section 276C(2) of Income Tax Act, 1961 for wilful attempt to evade payment of tax for the Assessment Year 2017-18. The petitioner filed his return of income on 30.03.2018 declaring tax and interest liability of Rs.5,95,616/- but failed to pay as mandated under Section 140A of Income Tax Act, 1961. Even at this stage, the default continues and no amount paid by the petitioner. On completion of assessment, Assessment Order dated 22.12.2019 passed and a notice for demand under Section 156 of Income Tax Act, 1961 issued. The total demand determined is Rs.1,91,43,523/- inclusive of tax and applicable interest. Admittedly, the petitioner not paid any portion of the said demand till date. The failure to discharge both admitted tax and subsequently crystallised demand demonstrates a continuous and deliberate default, attracting the ingredients of Section 276C(2) of Income Tax Act, 1961. She further submitted that the petitioner failed to file any appeal for more than six years against the assessment order, thus, the assessment order reached finality in 2019 and penalty proceedings also concluded. In this case, the trial is about to come end. At this stage, the petitioner filed appeal before the Commissioner of Income Tax (Appeals) with extraordinary delay of 2,211 days along with



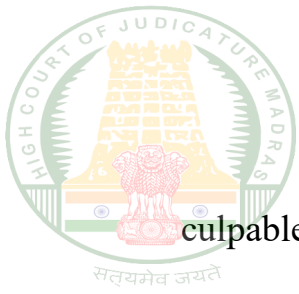
Crl.O.P.No.9848 of 2026

condone delay petition. Either the delay is condoned nor there is any stay of demand.

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5.She further submitted that the petitioner entered appearance before the trial Court through counsel on 19.09.2019 but remained absent on the very next hearing resulting in issuance of non-bailable warrant and thereafter, surrendered only on 25.01.2022 after two years. Again the petitioner remained absent on the subsequent hearing dates leading to issuance of another non-bailable warrant on 05.04.2022, thereafter appeared before the trial Court. Subsequently, the petitioner absented himself on 07.08.2023 without any representation resulting in issuance of yet another non-bailable warrant, thereafter, the petitioner surrendered only on 04.12.2025 after two years. That to when the Court indicated initiation of proclamation proceedings, the petitioner appeared and recalled the non-bailable warrant.

6.It is further submitted that Section 276C(2) of Income Tax Act, 1961 encompasses wilful attempt to evade payment of tax which includes deliberate non-payment despite knowledge of liability. In the present case, the petitioner had full knowledge of liability first by way of self-assessment and thereafter on assessment order yet failed to pay any amount. The presumption for



CrI.O.P.No.9848 of 2026

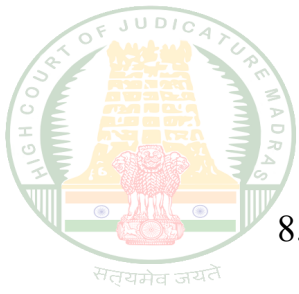
culpable mental state of mind is applicable under Section 278E of Income Tax

Act, 1961 wherein the Court shall presume the existence of culpable mental state once foundational facts are established and the burden lies on the accused to rebut the same. In the present case, the foundational facts of tax liability and continued non-payment stand clearly established. Once non-payment and liability are shown, *mens rea* is presumed, and the burden shifts to the accused to disprove it beyond reasonable doubt. Failing to do so before the trial Court, thereafter filing this petition to quash the proceedings under Section 482 Cr.P.C./528 BNSS is not permissible. The points raised by the petitioner are factual and it is for the trial Court to appreciate during evidence. The sanction under Section 279 of Income Tax Act, 1961 accorded after careful consideration of relevant facts and materials and on application of mind independently. The petitioner having availed full opportunity to defend and having allowed the trial to reach its final stage, cannot now seek to abort the proceedings without any new material or change in circumstances. In view of the above, the prosecution is validly instituted supported by statutory presumption under Section 278E and the case progressed to the stage of final adjudication. The citations referred by the learned counsel for the petitioner are not applicable to the facts and circumstances of the present case. In that cases, after issuance of show cause notice, the assessee made payments and



there was some default but not wilful default. In the present case, on the facts, it is seen that the petitioner is a wilful defaulter and not even paid the amount due on the declared tax. Hence, she prayed for dismissal.

7.Considering the submissions and on perusal of the materials, it is seen that though the petitioner filed the return for the Assessment Year 2017-18 on 30.03.2018 declaring the tax and interest liability of Rs.5,95,616/-, but not paid the amount within the stipulated period or extended period. From the Assessment Order dated 22.12.2019, it is seen that a demand notice was issued under Section 156 of Income Tax Act, 1961 and the total demand determined is Rs.1,91,43,523/-. The petitioner not preferred any appeal against the Assessment Order for more than six years and finally in the year 2019, with a delay of 2,211 days, filed appeal with condone delay petition. Neither the delay is condoned nor the appeal is admitted. This appears to be an afterthought raised only after the prosecution in this case launched and progressed. The petitioner had been repeatedly absent on more than four occasions and only began participating in the trial after initiation of proclamation proceedings. The trial has now reached its final stage.



Crl.O.P.No.9848 of 2026

8.The points raised herein already raised by the petitioner during the trial. Re-agitating the same points in the present quash petition at this belated stage cannot be entertained.

9.In view of the above, this Court does not find merit consideration in the submissions of the learned counsel for the petitioner. Accordingly, this Criminal Original Petition stands dismissed.

10.It is made clear that the observations and findings recorded in this order, is only for the purpose of disposal of this quash petition. The trial Court to decide the case, on its own merits, uninfluenced by this order. Consequently, connected Miscellaneous Petitions are closed.

29.04.2026

Speaking order/Non-speaking order

Index: Yes/No

Neutral Citation: Yes/No

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To

1.The Additional Chief Metropolitan Magistrate (Economic Offences),
Egmore, Chennai.

2.The Deputy Commissioner of Income Tax,
Corporate Circle-1[1],
Numgambakkam, Chennai-600034.



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Crl.O.P.No.9848 of 2026

M.NIRMAL KUMAR, J.

vv2

PRE-DELIVERY ORDER IN
Crl.O.P.No.9848 of 2026

29.04.2026