

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
**Cr.M.P. No. 2941 of 2018**

1. M/s Dev Multicom Private Ltd. having its office at 2<sup>nd</sup> Floor, Dev Villa, Behind Radha Swami Arcade, Saraidhela, District-Dhanbad, represented through Lal Bahadur Singh, son of Ram Dev Singh, R/o Shimla Bahal Colliery, P.O. + P.S.-Jharia, District-Dhanbad.

2. Lal Bahadur Singh, aged about 38 years, son of Sri Ram Dev Singh, R/o Shimla Bahal Colliery, P.O. + P.S.-Jharia, District-Dhanbad.

..... ... Petitioners

Versus

1. The State of Jharkhand.

2. Sandip Ganguly, S/o Sri Kanhai Lal Ganguly, Office of ACIT, TDS Circle, Dhanbad, Aayankar Bhawan, Luby Circular Road, P.O. + P.S.-Dhanbad, District-Dhanbad.

..... ... Opposite Parties

with

**Cr.M.P. No. 2942 of 2018**

Jaya Devi, aged about 38 years, wife of Kumbh Nath Singh, R/o 2<sup>nd</sup> Floor, Dev Villa, Behind Radha Swami Arcade, Saraidhela, P.O.-Saraidhela, P.S.-Saraidhela, District-Dhanbad.

..... ... Petitioner

Versus

1. The State of Jharkhand.

2. Sandip Ganguly, S/o Sri Kanhai Lal Ganguly, Office of ACIT, TDS Circle, Dhanbad, Aayankar Bhawan, Luby Circular Road, P.O. + P.S.-Dhanbad, District-Dhanbad.

..... ... Opposite Parties

with

**Cr.M.P. No. 2943 of 2018**

1. M/s AT-DEV PRABHA (JV), having its office at 2<sup>nd</sup> Floor, Dev Villa, Behind Radha Swami Arcade, Saraidhela, District-Dhanbad, represented through Lal Bahadur Singh, aged about 38 years, son of Ram Dev Singh, R/o Shimla Bahal Colliery, P.O. + P.S.-Jharia, District-Dhanbad.

..... ... Petitioners

Versus

1. The State of Jharkhand.

2. Sandip Ganguly, S/o Sri Kanhai Lal Ganguly, Office of ACIT, TDS Circle, Dhanbad, Aayankar Bhawan, Luby Circular Road, P.O. + P.S.-Dhanbad, District-Dhanbad.

..... ... Opposite Parties

with

**Cr.M.P. No. 2944 of 2018**

1. M/s Dev Prabha Construction Private Limited, having its office at 2<sup>nd</sup> Floor, Dev Villa, Behind Radha Swami Arcade, Saraidhela, District-Dhanbad, represented through Lal Bahadur Singh, aged about 38 years, son of Ram Dev Singh, R/o Shimla Bahal Colliery, P.O. + P.S.-Jharia, District-Dhanbad.

2. Lal Bahadur Singh, aged about 38 years, son of Sri Ram Dev Singh, R/o Shimla Bahal Colliery, P.O. + P.S.-Jharia, District-Dhanbad.

..... ... Petitioners

Versus

1. The State of Jharkhand.

2. Sandip Ganguly, S/o Sri Kanhai Lal Ganguly, Office of ACIT, TDS Circle,

Dhanbad, Aayankar Bhawan, Luby Circular Road, P.O. + P.S.-Dhanbad,  
District-Dhanbad.

..... ... Opposite Parties

with

**Cr.M.P. No. 2948 of 2018**

1. M/s AT-DEV PL (JV), having its office at 2<sup>nd</sup> Floor, Dev Villa, Behind Radha Swami Arcade, Saraidhela, District-Dhanbad, represented through Lal Bahadur Singh, aged about 38 years, son of Ram Dev Singh, R/o Shimla Bahal Colliery, P.O. + P.S.-Jharia, District-Dhanbad.

2. Lal Bahadur Singh, aged about 38 years, son of Sri Ram Dev Singh, R/o Shimla Bahal Colliery, P.O. + P.S.-Jharia, District-Dhanbad.

..... ... Petitioners

Versus

1. The State of Jharkhand.

2. Sandip Ganguly, S/o Sri Kanhai Lal Ganguly, Office of ACIT, TDS Circle, Dhanbad, Aayankar Bhawan, Luby Circular Road, P.O. + P.S.-Dhanbad, District-Dhanbad.

..... ... Opposite Parties

with

**Cr.M.P. No. 2949 of 2018**

Aarti Devi @ Arti Devi, aged about 35 years, wife of Lal Bahadur Singh, R/o 2<sup>nd</sup> Floor, Dev Villa, Behind Radha Swami Arcade, Saraidhela, P.O. & P.S.-Saraidhela, District-Dhanbad.

..... ... Petitioner

Versus

1. The State of Jharkhand.

2. Sandip Ganguly, S/o Sri Kanhai Lal Ganguly, Office of ACIT, TDS Circle, Dhanbad, Aayankar Bhawan, Luby Circular Road, P.O. + P.S.-Dhanbad, District-Dhanbad.

..... ... Opposite Parties

with

**Cr.M.P. No. 2950 of 2018**

Vishwa Vijay Singh, aged about 42 years, S/o Ramdev Singh, R/o 2<sup>nd</sup> Floor, Dev Villa, Behind Radha Swami Arcade, Saraidhela, P.O. & P.S.-Saraidhela, District-Dhanbad.

..... ... Petitioner

Versus

1. The State of Jharkhand.

2. Sandip Ganguly, S/o Sri Kanhai Lal Ganguly, Office of ACIT, TDS Circle, Dhanbad, Aayankar Bhawan, Luby Circular Road, P.O. + P.S.-Dhanbad, District-Dhanbad.

..... ... Opposite Parties

with

**Cr.M.P. No. 2953 of 2018**

1. M/s AT-DEV PRABHA (JV), having its office at 2<sup>nd</sup> Floor, Dev Villa, Behind Radha Swami Arcade, P.O. & P.S.- Saraidhela, District-Dhanbad, represented through Lal Bahadur Singh, aged about 38 years, son of Ram Dev Singh, R/o Shimla Bahal Colliery, P.O. + P.S.-Jharia, District-Dhanbad.

2. Lal Bahadur Singh, aged about 38 years, son of Sri Ram Dev Singh, R/o Shimla Bahal Colliery, P.O. + P.S.-Jharia, District-Dhanbad.

..... ... Petitioners

Versus

1. The State of Jharkhand.
2. Sandip Ganguly, S/o Sri Kanhai Lal Ganguly, Office of ACIT, TDS Circle, Dhanbad, Aayankar Bhawan, Luby Circular Road, P.O. + P.S.-Dhanbad, District-Dhanbad.

..... ... Opposite Parties

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**CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI**  
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For the Petitioners	:	Mr. Sumeet Gadodia, Advocate
	:	Mr. Shrestha Gautam, Advocate.
For the State	:	Mr. Veer Vijay Pradhan, A.P.P.
	:	Mr. Vibhuti Sahay, A.P.P.
	:	Mr. Satish Prasad, A.P.P.
	:	Mrs. Ruby Pandey, A.P.P.
	:	Mrs. Priya Shrestha, Spl.P.P.
	:	Mr. Rajesh Kumar, A.P.P.
	:	Mr. Vishwanath Ray, A.P.P.
For the O.P. No. 2 (Income Tax):	:	Ms. Amrita Sinha, Advocate
	:	Mr. A.M. Khandelwal, Advocate

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**08/ 28.02.2022** Heard Mr. Sumeet Gadodia, learned counsel appearing for the petitioners, learned A.P.Ps. for the State and Ms Amrita Sinha, learned counsel appearing for the O.P. No. 2 (Income Tax Department).

2. In all these petitions, common questions of facts are involved, as such, all the matters have been heard together with the consent of the parties and are being disposed of by this common order.

3. These criminal miscellaneous petitions have been filed for the following reliefs:-

(1) For quashing of the cognizance order dated 28.03.2018 passed by the learned Special Judge, Economic Offences, Dhanbad, whereby cognizance has been taken against the petitioners for the offences under Sections 276(B) and 278(B) of the Income Tax Act, in connection with Economic Offence Case [C.O. No. 23 of 2018], as well as the entire criminal proceedings [in Cr.M.P. No. 2941 of 2018].

(ii) For quashing of the cognizance order dated 09.02.2018 passed by the learned Special Judge, Economic Offences, Dhanbad, whereby cognizance has been taken against the petitioner for the offences under Section 276(B) of the Income Tax Act, in connection with Economic Offence Case [C.O. No. 01 of 2018] as well as the entire criminal proceedings [in Cr.M.P. No. 2942 of 2018].

(iii) For quashing of the cognizance order dated 27.03.2018 passed by the learned Special Judge, Economic Offences,

Dhanbad, whereby cognizance has been taken against the petitioners for the offences under Sections 276(B) and 278(B) of the Income Tax Act, in connection with Economic Offence Case [C.O. No. 22 of 2018] as well as the entire criminal proceedings [in Cr.M.P. No. 2943 of 2018].

(iv) For quashing of the cognizance order dated 28.03.2018 passed by the learned Special Judge, Economic Offences, Dhanbad, whereby cognizance has been taken against the petitioners for the offences under Sections 276(B) and 278(B) of the Income Tax Act, in connection with Economic Offence Case [C.O. No. 24 of 2018] as well as the entire criminal proceedings [in Cr.M.P. No. 2944 of 2018].

(v) For quashing of the cognizance order dated 27.03.2018 passed by the learned Special Judge, Economic Offences, Dhanbad, whereby cognizance has been taken against the petitioners for the offences under Sections 276(B) and 278(B) of the Income Tax Act, in connection with Economic Offence Case [C.O. No. 21 of 2018] as well as the entire criminal proceedings [in Cr.M.P. No. 2948 of 2018].

(vi) For quashing of the cognizance order dated 09.02.2018 passed by the learned Special Judge, Economic Offences, Dhanbad, whereby cognizance has been taken against the petitioners for the offences under Section 276(B) of the Income Tax Act, in connection with Economic Offence Case [C.O. No. 02 of 2018] as well as the entire criminal proceedings [in Cr.M.P. No. 2949 of 2018].

(vii) For quashing of the cognizance order dated 15.02.2018 passed by the learned Special Judge, Economic Offences, Dhanbad, whereby cognizance has been taken against the petitioners for the offences under Section 276(B) of the Income Tax Act, in connection with Economic Offence Case [C.O. No. 05 of 2018] as well as the entire criminal proceedings [in Cr.M.P. No. 2950 of 2018].

(viii) For quashing of the cognizance order dated 16.12.2017 passed by the learned Special Judge, Economic Offences, Dhanbad, whereby cognizance has been taken against the petitioners for the offences under Sections 276(B) and 278(B) of the Income Tax Act, in connection with Economic Offence

Case [C.O. No. 19 of 2017] as well as the entire criminal proceedings [in Cr.M.P. No. 2953 of 2018].

The aforesaid cases are now pending in the Court of learned Special Judge, Economic Offences, Dhanbad.

4. The complaint was lodged by one Sandeep Ganguly, Assistant Commissioner, Income Tax Department, stating therein [in Cr.M.P. No. 2941 of 2018]:-

The prosecution case as narrated in the complaint case filed by one Sri Sandip Ganguly, in discharge of his official duty on the strength of sanction order and direction as well as authorization given by the Commissioner of Income Tax (TDS) has been filed for offence allegedly committed under section 276(B) and 278(B) of the Income Tax Act wherein it has been stated that the accused no.1 is a partnership firm having TAN-RCHA0613DG and is an assessee within the meaning of Income Tax Act under T.D.S. Ward Circle, I.T. Department, Dhanbad and the accused no.2 is the principal officer of accused no.1 having PAN-AYDPS0747D and was/ is quite aware of the day to day conduct of the business and entire business affairs of the accused no.1 and actively participating in the function and management of affairs of the accused no.1 and being a principal officer as per section 2(35) of the I.T. Act of the accused no.1 he was liable and responsible to the partnership firm for the conduct of the business of the partnership firm i.e. accused no.1 for each and every act done by him or by any other person of the partnership firm for and on the behalf of accused no.1.

It has further been alleged that accused no.2 for and on behalf of the accused no.1 is being a principal officer of accused no.1 deducted TDS amount, amounting to Rs.396310/- for the F.Y.2016-2017 but failed to credit the same to the account of Central Government of India, TDS Ward Dhanbad. To avoid repetition of the contents of the detail a list of details of PAN, payment date, due date, date of deposit, late payment, interest, date of deduction, period is attached.

It has been further being alleged that accused no.2 being principal officer of accused no.1 and quite aware of the day to day business and conduct of the business of the assessee i.e., accused no.1 and being responsible officer of accused no.1 deliberately, intentionally, knowingly, willingly and having mens rea in his mind

failed, neglected, and avoided to deposit the same in time to the credit of Central Government account i.e. I.T. Department, TDS Ward, Dhanbad without reasonable cause rather converted the aforesaid amount into their own use for their wrongful loss to the Central Government, i.e., TDS Ward, Dhanbad.

It has further being alleged that as per provision laid down under Income Tax Act that any person detecting any sum in accordance with the provision of Chapter XVII-B of the Income Tax Act shall be the sum so deducted to credit of Central Government account within prescribed period but the accused persons failed to deposit the aforesaid deducted T.D.S. amount to credit of TDS Ward Dhanbad on due time without reasonable cause by accused no.2 for and on behalf of assessee accused no.1 and thereby the accused no.2 and on behalf of the accused no.1 committed offence punishable under section 276B of the I.T.Act. Since the accused no.2 committed offence for accused number 1 it can be safely said that both the accused persons have for the committed offence under section 278B of the Income Tax Act also.

It has been further alleged that taking into account the aforesaid facts and circumstances show Cause Notice was issued dated 20.02.2018 and served upon the accused as to why a prosecution should not be launched under the appropriate section that is Section 276B r/w section 278B of the Income Tax Act against them and in response to the show Cause Notice Shri Lal Bahadur Singh principal officer of M/s Dev Multicom Private Limited filed letter which has no legs to stand.

It has further been alleged that after considering the aforesaid facts and circumstances as discussed above a proposal for launching a prosecution for commission of offence under section 276B r/w 278B of the Income Tax Act against the accused persons was sent to the Honorable Commissioner of Income Tax, T.D.S. Ward, Patna for granting sanction to launch of prosecution under section 276B r/w section 278B of the I.T. Act against the accused persons.

It has further been alleged that taking into account the aforesaid facts and circumstances that the accused no.2, who was quite aware of the conduct of the business and day to day affairs of the business of accused no.1 and accused no.2 was liable and responsible for making payment of T.D.S amount deducted at source

for and on behalf of the accused no.1. As per the list attached herewith in due time in the light of the provisions laid down under section 194C of the Income Tax Act but the accused persons intentionally, knowingly, deliberately and having mens rea in mind without reasonable cause excuse and explanation failed to make payment of TDS amount as discussed above and admitted the delay in making payment of TDS amount of financial year 2016-2017 to the credit of TDS Ward Dhanbad/Central Government of India and converted the same into their own use for their wrongful gain and wrongful loss to I.T. Department TDS Ward Dhanbad and as such the accused persons are liable to be prosecuted under section 276B r/w section 278B of the Income Tax Act since the offence under section 276B of the Income Tax Act has been committed by the partnership firm (accused no.1).

It has further been alleged that all the relevant documents workplace and produced before Hon'ble Commissioner of Income Tax (TDS), Patna and Hon'ble Commissioner of Income Tax (TDS), Patna gone to the same with due care and caution and appreciated the facts available on the record which shows that accused persons failed to deposit the TDS amount in due time for relevant financial year which clearly contravenes provision of Income Tax Act, 1961 making the accused persons liable for commission of offence punishable under section 276B r/w section 278B of the Income Tax Act for relevant financial year and after considering all the facts and circumstances with due care and caution he applied his judicial mind and opined that a prima facie case is made out under section 276B r/w section 278B of the Income Tax Act as amended upto date (since the offence under section 276B of the Income Tax Act has been committed by the partnership firm) for relevant financial year 2016-2017 against the accused persons and as such accorded sanction to launch a prosecution against the accused persons under section 276B r/w section 278B of the Income Tax Act and authorized directed the complainant to file a case under section 276B r/w section 278B of the Income Tax Act before the competent Court of Dhanbad against the accused persons for relevant financial year 2016/2017. Original sanction order is attached with which may be treated as part and partial of the complaint petition.

It is pertinent to mention here that the TDS amount in

question are different in the respective cases.

5. Mr. Sumeet Gadodia, learned counsel appearing for the petitioners in all these cases submits that Section 276(B) of the Income Tax Act [*hereinafter referred to as the Act*] prescribed for punishment in case of failure to pay tax to the credit of Central Government, under Chapter-XII-D or XVII-B. He submits that the TDS amount has been deducted by the petitioners, which were deposited with certain delay, however, in terms of Section 201(A) of the Income Tax Act, the amount was deposited along with interest. He further submits that the petitioners received the show causes for initiation of the criminal proceedings against them, however, the same were replied. According to him once the TDS amount has been deposited along with the interest there was no occasion to initiate the prosecution, under Sections 276(B) and 278(B) of the Act. He draws the attention of this Court to that Sections and submits that these Sections itself is very clear, which say that in case of failure to pay tax to the credit of Central Government, the prosecution can be launched. He further submits that the prosecution against the petitioners under Sections 276(B) and 278(B) of the Act is mechanical and contrary to the instructions, bearing F. No. 255/339/79-IT (Inv.) dated 28.05.1980, issued in this regard by the CBDT, wherein, it has been mentioned that prosecution under Section 276-B of the Act should not normally be proposed when the amount involved and / or the period of default is not substantial and the amount in default has also been deposited in the meantime to the credit of the Government. No such consideration will, of course, apply to levy of interest under Section 201(1A) of the Act.

6. Learned counsel appearing for the petitioners submits that the aforesaid circular has been considered by the Hon'ble High Court of Patna in the case of the *Sonali Autos (P) Ltd. Versus State of Bihar*. Relying on this circular the Hon'ble Court held that there was no occasion to file the prosecution against the petitioners, as the amount in question has already been deposited and there was no consideration at the time of sanction under Section 279(1) of the Act.

7. To buttress his arguments, he relied upon a judgment of the Hon'ble Patna High Court in the case of *Sonali Autos (P) Ltd. Versus State of Bihar*, decided on 02.08.2017 in **Criminal Miscellaneous No. 16498 of 2014** and also in the case of *Vinar & Co. & Anr. Versus Income Tax Officer & Ors.*, reported in (1990) SCC Online Cal 367. He further relied in the case of *Bee Gee Motors & Tractors Versus ITO*, reported in



**(1995) 82 Taxman 493 (Punb & Har).**

8. On these grounds, learned counsel appearing for the petitioners submits that the entire prosecutions are bad in law and required to be interfered by this Court under Section 482 Cr.P.C.

9. Per contra, Ms. Amrita Sinha, learned counsel appearing for the Income Tax Department, by way of referring to Section 276(B) of the Act submits that this is the separate provision, wherein it has been clearly stipulated that in case of failure to credit, as required of the amount of tax to the credit of Central Government, the person is liable for punishment. She refers to Section 200 of the Act and submits that the duty of the person, deducting the tax is stipulated in that Section. She further refers to Section 201(1A) of the Act and submits that this Section relates to payment of interest, if any person is required to pay the interest for the TDS amount in question, as not deposited on time, i.e. without prejudice to Section 201(1) of the said Act. She submits that in the light of Chapter-XXII of the Act, the criminal prosecution is required to be followed, according to the scheme made therein. She further submits that there are two questions involved in this case. First part is criminal and second part is civil. She distinguishes the judgments relied by Mr. Gadodia on the ground that in those cases, the amount in question was meager and delay in lodging the prosecution is about 3 to 4 years. She submits that in the cases in hand the prosecution case was immediately lodged and the judgment relied by the learned counsel appearing for the petitioner are not applicable in this case. She submits that in view of Rule-30(2) of the Act, the deducted amount is required to be paid by the 7<sup>th</sup> day of the next subsequent month, which has not been done in the present cases.

10. For ready reference Rule-30(2) of the said Act is quoted hereinbelow:-

“30. ....

(2) *All the sums deducted in accordance with the provisions of Chapter XVII-B by deductors other than an office of the Government shall be paid to the credit of the Central Government.*

*(a) on or before 30<sup>th</sup> day of April where the income or amount is credited or paid in the month of March; and*

*(b) in any other case, on or before seven days from the end of the month in which-*

*(i) the deduction is made; or*

*(ii) income tax is due under sub-section (1A) of section 192.”*

11. To buttress her arguments so far as the criminal prosecution and civil liability are concerned, she relied upon in the case of ***Income Tax Officer Versus Sultan Enterprises & Ors.***, reported in (2001) SCC Online Bom 1219. Paras-3 and 4 thereof are quoted hereunder:-

*“3. The facts of the case are not much in dispute. The offence in question related to non-deposit of T.D.S. amount within the prescribed time and, therefore, action was taken against them and dues were recovered by imposing penalty and interest. This also amounts to offence punishable under Section 276B and 278B of the Income Tax Act, 1960. The learned C.J.M. erred in applying the principle of double jeopardy as provided under Section 300 of Criminal Procedure Code for the simple reason that the recovery of the amount due and payable by the respondent-Firm to the Income Tax Department has nothing to do with the criminal prosecution, because it is distinct provision inviting penal action for the default committed by the Firm.*

*4. They are liable both, for recovery of amount with interest and penalty so also for prosecution for having committed offence punishable under Section 276B of the Income Tax Act, for their failure to pay the amount within the prescribed period and as the respondent - Firm is a Partnership concern all the partners of the firm as contemplated under Section 278-B would be liable to be prosecuted.”*

12. Relying on this judgment, she submits that these are the question of fact, which can only be considered in the trial. She submits that in the case in hand, the learned Chief Judicial Magistrate has not taken cognizance and dismissed the complaint, which was challenged by the I.T. Department and the Bombay High Court held that the disputed questions of fact can only be decided in the trial. It has also been held by the Bombay High Court that there are rule for both, recovery of amount and penalty and this can only be decided in the trial and the order was quashed and the matter was remitted back to take a decision in accordance with law.

13. She submits that so far the fine with regard to depositing the tax deducted is also a disputed question of fact that can be decided only in the trial. To buttress her arguments, she relied in the case of ***Shaw Wallace & Co. Ltd. Versus Commissioner of Income Tax (TDS) & Ors.***, reported in (2003) SCC Online Cal 787. Para-8 thereof is quoted hereunder:-

*“8. After hearing learned counsel for the parties and*

*after going through the materials on record, I am, however; not inclined to entertain this application at this stage. In a given case whether there is just and sufficient reason for not depositing the tax deducted at source is always a question of fact depending upon appreciation of the evidence produced before the court. The pleas taken by the petitioner in this writ application will all be available to them in the criminal trial and if they can establish that those are sufficient, the criminal prosecution will fail. But at this stage, there is no scope for pre-empting the said criminal proceeding by entertaining this writ application. The position, however, would have been different if the petitioner would convince this court that even if the allegations made by the respondents were all true those facts did not constitute any offence under Section 276B of the Income Tax Act. I, thus, find no reason to entertain this application at this stage in view of the fact that the questions involved are all disputed questions of facts to be gone into on consideration of the evidence.”*

14. On these grounds she submits that this Court may not exercise its power under Section 482 Cr.P.C. at this stage.

15. In view of the above facts and arguments of both the parties, the Court has gone through the materials available on record. For ready reference, 276(B) of the said Act is quoted hereinbelow:-

*“276(B) Failure to pay tax to the credit of the Central Government under Chapter XII-D or Chapter XVII-B  
Section 276B of The Income Tax Act, 1961 lays down that if a person fails to pay to the credit of the Central Government:*

*(I) The tax deducted at source by him as required by or under the provisions of Chapter XVII-B; or*

*(II) The tax payable by him, as required by or under*

*(a) Sub-section (2) of section 115-O; or*

*(b) The second proviso to section 194B, within the prescribed time, as above, the tax deducted at source by him, he shall be punishable with rigorous imprisonment for a term which shall be between 3 months and 7 years, along with fine.”*

16. Section 201(1A) of the Act is also quoted hereinbelow, which speaks as follows:-

*“(1A) Without prejudice to the provisions of sub-section (1), if any such person, principal officer or company as is referred to in that sub-section does not*

*deduct the whole or any part of the tax or after deducting fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest,—*

*(i) at one per cent. for every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is deducted; and*

*(ii) at one and one-half per cent. for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid,*

*and such interest shall be paid before furnishing the statement in accordance with the provisions of sub-section (3) of section 200.”*

*provided that in case any person, including the principal officer of a company fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident but is not deemed to be an assessee in default under the first provision to sub-section (1), the interest under clause (i) shall be payable from the date on which such tax was deductible to the date of furnishing of return of income by such resident.”*

17. It is an admitted fact that the TDS amount in all these cases were deposited with interest and the chart with respect to the same is also annexed with the counter affidavit of the Income Tax Department, wherein the date of deduction and date of depositing the said amount has been mentioned. However, some delay occurred in depositing the TDS. Apart from one or two cases, the deducted amount are not more than 50,000/-. While passing the sanction under Section 279(1) of the Act, the sanctioning authority has not considered the CBDT instructions, bearing F. No. 255/339/79-IT (Inv.) dated 28.05.1980, issued in this regard by the CBDT. The CBDT guidelines was considered by the Patna High Court in the case of **Sonali Autos (P) Ltd. (Supra)** and after considering this guidelines, the Court has interfered with the matter and quashed the entire criminal proceedings. In CBDT instructions, it is mentioned that prosecution under Section 276(B) of the Act shall not normally be proposed when the amount involved and / or the period of default is not substantial and the amount in default has also been deposited in the meantime to the credit of Government. No such consideration will, of course, apply to levy of interest under Section 201(1A) of the Act. This is

quoted in the case of *Sonali Autos (P) Ltd. (Supra)*. Moreover after receiving the deducted amount with interest, the prosecution has been launched against the petitioners, which is not in accordance with law. If the petitioners failed to deposit the amount in question within the stipulated time, i.e. by the 7<sup>th</sup> day of the subsequent month, it was required to launch the prosecution immediately, which has not been done in the cases in hand. Moreover Section 278(AA) of the Act clearly states that no person for any failure referred to under Section 276(B) of the Act shall be punished under the said provisions, if he proves that there was reasonable cause for such failure. The judgment relied by Ms Amrita Sinha, the CBDT guidelines were not considered. On this ground these cases are distinguishable in view of the facts and circumstances of the cases relied upon by Ms. Amrita Sinha.

18. The amount has already been deposited with interest and there is no reason why the criminal proceeding shall proceed and the criminal proceeding was launched after receiving the said amount with interest, had it been a case that the case was immediately instituted and thereafter the TDS amount has been deposited with interest, the matter would have been different. As such the continuation of the proceedings will amount to an abuse of the process of the Court.

19. Accordingly, the entire criminal proceedings and the cognizance orders in their respective cases, passed by the learned Special Economic Offices, Dhanbad, in the respective C.O. Cases, whereby cognizance has been taken against the petitioners for the offences under Sections 276(B) and 278(B) of the Income Tax Act, pending in the Court of learned Special Judge, Economic Offences, Dhanbad, are hereby, quashed.

20. This criminal miscellaneous petition is allowed and disposed of.

**(Sanjay Kumar Dwivedi, J.)**