

Tax deposited after coercive steps taken by department - No prosecution required: HC

Summary – The High Court of Karnataka in a recent case of Vyalikaval House Building Co operative Society Ltd., (the Assessee) held that no prosecution proceedings were required if tax was deposited after coercive steps taken by department

Facts

- The assessee premises was subjected to search and seizure and the Assessing Officer issued a notice under section 153A calling upon the assessee to file its return of income for the assessment years 2006-07 to 2011-12. Since there was no compliance, the Assessing Officer issued a *show-cause notice* calling upon the assessee as to why prosecution for the offence punishable under section 276CC could not be initiated.
- Thereafter, the assessee filed returns of income for the assessment years 2010-11 and 2011-12 and declared the total income and total tax payable at certain amount and sent a cheque of certain amount towards self-assessment tax due. On the back of the said cheque, it was instructed that 'cheque to be presented at the time of registration of the property'. Since the department could not encash the said cheque, it contended that the assessee had willfully and deliberately made an attempt to create circumstances to enable them to evade payment of tax and initiated proceedings seeking prosecution of the assessee for the offence punishable under section 276C(2).
- On the assessee's appeal:

Held

- The HC stated that in the instant case, even though accused filed the returns, yet, it failed to pay the self-assessment tax along with the returns. The act of submitting returns is not connected with the evasion of tax.
- Delayed payments, under the provisions of the Act, may call for imposition of penalty or interest, but by no stretch of imagination, the delay in payment could be construed as an attempt to evade tax so as to entail prosecution of the petitioners for the alleged offence under section 276C(2).
- Hence, the prosecution initiated against the petitioners is illegal and is liable to be quashed.