

# News

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**The IT Department is fined ₹2 lakh by the Supreme Court for disregarding its own directives.**



The Court determined that such deliberate disregard for their own instructions represents a significant failure.

In the case of Vijay Krishnaswami @ Krishnaswami Vijayakumar vs. The Deputy Director of Income Tax, the Supreme Court on August 28 fined the Income Tax Department ₹2 lakhs for prosecuting an **assessee** against its own binding circulars.

A bench consisting of Justices JK Maheshwari and Vijay Bishnoi determined that such deliberate disregard for the Revenue's own instructions was a significant failure.

"The Revenue has acted in flagrant contempt of legally enforceable orders, and such a conduct cannot be interpreted correctly. Such deliberate disregard for their own instructions is a grave failure that erodes the values of accountability, consistency, and fairness—none of which can in any way be seen as legitimate or acceptable," the ruling stated.

The Revenue (has) behaved flagrantly against legally enforceable directives.

It then quashed the prosecution and ordered the Income Tax department to pay the **assessee ₹2 lakhs in costs.**

**"The Revenue's prosecution against the appellant is to be quashed, it is ordered. We are inclined to award costs against the Revenue, which are calculated at Rs. 2,00,000/- payable to the appellant, in light of the case's facts and circumstances as previously considered,"** the Court stated.

A plea contesting a decision by the Madras High Court that refused to stop the Revenue's prosecution of a man called Vijay Krishnaswami for allegedly attempting to evade taxes under Section 276C(1) of the Income Tax Act, 1961 (IT Act) was being heard by the court.

Unaccounted cash of ₹4.93 crores was found during a search of the assessee's home in April 2016 under Section 132 of the IT Act.

The Principal Director of Income Tax (Investigation), Chennai (PDIT) authorized the assessee's prosecution in 2018 after issuing a show-cause notice in October 2017.

As a result, in August 2018, the Deputy Director of Income Tax (DDIT) filed a complaint, claiming that the assessee had deliberately tried to avoid paying taxes for Assessment Year (AY) 2017–18.

In the meantime, in December 2018, the assessee filed a Section 245C, IT Act, application to the Settlement Commission, revealing extra income and requesting amnesty.

After concluding that there was no deliberate intent to dodge taxes, the Settlement Commission issued an order in November 2019 granting immunity from penalties. However, because a quash petition was still pending in the Madras High Court, the Commission decided not to award immunity from prosecution.

The assessee then filed an appeal with the Supreme Court after the High Court rejected the case.

The Supreme Court pointed out that, in accordance with Revenue authorities' circulars, prosecution for attempted tax evasion could not begin until the Income Tax Appellate Tribunal (ITAT) approved the fine to be applied for the purported income concealment.

In a circular dated April 24, 2008, the Central Board of Direct Taxes (CBDT) established this process for situations where the penalty exceeds ₹50,000. A 2019 CBDT circular and a 2009 Prosecution Manual both referenced this process.

However, before initiating the prosecution in this instance, the Court determined that the IT Department had not provided any explanation for why the PDIT or the DDIT had not followed this process.

The Supreme Court further stated that the Revenue authorities are required to abide by departmental circulars and prosecution guidelines and cannot reject them at their discretion. The Court reaffirmed that consistency and obedience to such circulars are essential to preventing arbitrary action, citing previous examples such as *M/s KC Builders Ltd. v. CIT* and *UCO Bank v. CIT*.

Since there was no ITAT finding verifying income concealment or penalty imposition on the day of sanction, as required under CBDT circulars, the Court determined that the prosecution was unsustainable.

The Settlement Commission had previously determined that there was no evidence of a deliberate attempt to dodge taxes in this case, the Court added. Therefore, the top court questioned why the Madras High Court had not taken these factors into account when making its verdict.

It was the High Court's responsibility to consider the case's facts in their proper context and determine whether, given the aforementioned facts, the prosecution's continued pursuit would be useful in proving the accused's guilt. The Supreme Court stated, **"After taking a comprehensive view of the situation, we believe that the actions of the authorities are not fair or reasonable, and the High Court's approach seems to be completely misguided, having failed to appreciate the factual and legal position in right earnest."**

It then annulled the prosecution, set aside the Madras High Court ruling, and ordered the Revenue body to pay the assessee/appellant ₹2 lakh in costs.

Advocates Ravi Raghunath, **R Sivaraman, and Namanjeet Singh Bhatia**, along with Senior Advocate **Preetesh Kapur**, represented the assessee.

The Income Tax authorities were represented by Senior Advocate Nisha Bagchi, Additional Solicitor General N Venkatraman, and Advocates Raj Bahadur Yadav, **V Chandrashekhara Bharathi, Udai Khanna, and Navanjay Mahapatra**.

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