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IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL WRIT PETITION NO. 202 OF 2026.

1) Dinar Tarcar Resources(India) Pvt. Ltd., Having office at Minescape, M. G. Road, Panaji-goa, 403001. Represented herein by Shri Ankush Pednekar Son of Suresh Pednekar, 49 years, Service, Resident of Miramar, Panaji-Goa.

2) Mr Dinar Purshottam Kamat Tarcar, Son of late Purshottam Kamat Tarcar, aged 55 years, Indian National, Managing Director of M/s Dinar Tarcar Resources(India) Pvt. Ltd., Minescape, having Office at M. G. Road, Panaji-Goa-403 001.

3) Mrs Manisha D. Tarcar, wife of Dinar Tarcar, aged 53 years, Indian National, Joint Managing Director of M/s Dinar Tarcar Resources(India) Pvt. Ltd., Minescape, having Office at M. G. Road, Panaji-Goa-403 001.

…PETITIONERS

~ VERSUS ~

The Income Tax Department, represented herein by the Deputy Commissioner of Income Tax, Panaji-Goa.

…RESPONDENT

APPEARANCES:

for the Petitioners.	***Mr Nikhil Vaze, Advocate.***
for the Respondent	***Ms Susan Linhares, Senior Standing Counsel.***

CORAM: AMIT S. JAMSANDEKAR, J.

DATED: 28th July 2026

JUDGMENT

1. The Chief Judicial Magistrate, 'A' Court at Merces (***CJM***) in Criminal Case No. AOA/184/2017/A (***said Complaint***) has issued process on 7th November 2025 (***the impugned Order***). The process has been issued by the learned CJM on the basis of a complaint filed against the Petitioners under Section 276-C (2) of the Income Tax Act, 1961 (***I.T. Act***). The allegations in the said Complaint are that the 1st Petitioner has wilfully attempted to evade the tax liability for the Assessment Year 2012-13. By the present Petition, the Petitioners have challenged the impugned Order as well as the said Complaint.

2. Heard Mr. Nikhil Vaze, the Learned Counsel for the Petitioners and Ms. Susan Linhares, the learned Senior Standing Counsel for the Respondent.

3. Rule. Rule made returnable forthwith by consent of the parties and heard finally. The service is waived on behalf of the Respondent by Ms. Linhares.

4. The impugned Order is challenged, *inter alia*, on the grounds that:

i. The impugned Order issuing process is passed mechanically and is contrary to the records, more particularly in view of the NIL DUES Certificate, which proves that the 1st Petitioner had paid the entire amount along with penalty and accrued interest and therefore there was no wilful attempt to evade the tax liability on part of the 1st Petitioner.

ii. There was no wilful attempt to evade payment of tax on part of the 1st Petitioner, which is evident from the fact that the 1st Petitioner has declared the correct income and correct tax liability in its Income Tax Returns and the same came to be accepted at the time of assessment by the Department and the Assessment Order passed under Section 154 of the I.T. Act clearly confirms this position. The 1st Petitioner's action in paying the tax due, along with penalty and interest, even before the issuance of process militates against the Department's stand that there was an intent to evade tax.

iii. The Complaint, *prima facie,* did not disclose any wilful attempt on the part of the Petitioners to evade tax liability. The 1st Petitioner had cleared almost 90% of the tax amount even before the sanction to prosecute was granted. The basic test of "wilful attempt to evade tax" laid down in Section 276-C(2) of the I.T. Act has not been satisfied and therefore the prosecution in the form of the said Complaint pending before the CJM cannot be maintained and is liable to be quashed and set aside.

iv. The entire tax amount having been paid by the 1st Petitioner, the continuation of criminal prosecution will be a judicial waste of time and resources and an abuse of the process of law.

5. In support of his submissions, Mr. Vaze has relied on the following judgments: ***Vilas Babanrao Kalokhe v. Principal Commissioner of Income Tax (Central) Pune and others,*** *Criminal Writ Petition No. 3840 of 2025 decided on 16.10.2025 by the High Court of Bombay,* ***Prem Dass v. Income Tax Officer,*** *[1999] 103 Taxman 65 (SC),* ***Unique Trading Co. v. Income***

Tax Officer, *[2024] 159 taxmann.com 216 (Bombay),* ***S.P. Velayutham v. Assistant Commissioner of Income Tax,*** *[2022] 135 taxmann.com 43 (Madras),* ***Forzza Projects (P.) Ltd. v. Principal Commissioner of Income Tax,*** *[2021] 127 taxmann.com 259 (Kerela),* ***G Square Layout (P.) Ltd. v. Deputy Commissioner of Income Tax,*** *[2025]179 taxmann.com 588 (Madras),* ***Waterways Shipyard Pvt. Ltd. v. Income Tax Department*** *(WPCR/45/2024 decided on 25.9.2024 by this Court.),* ***Commissioner of Agricultural Income Tax v. Plantation Corporation of Kerala****, AIR 2000 SC 3714,* ***M/s Oblum Electrical Industries Pvt. Ltd. v. Collector of Customs****, AIR 1997 SC 3467,* ***Keshavji Ravji & Co. v. Commissioner of Income Tax,*** *AIR 1991 SC 1806,* ***S. Sundaram Pillai v. V. R. Pattabiraman,*** *(1985) 1 SCC 591,* ***Bihta Cooperative Development & Cane Marketing Union Ltd v. Bank of Bihar****, AIR 1967 SC 389,* ***M/s. Jyoti Traders and others v. Shri. S.M. Gore, Income Tax Officer and another,*** *1984 SCC OnLine Bom 186,* ***Jarnail Singh v. The Income Tax Officer,*** *(1989) 179* ITR *426* and ***Union of India v. Jiwan Lal Chironji Lal, through its Partners Vinod***

Kumar and Ors, *Criminal Appeal No. 350 of 2003, decided on 18.02.2010 by Madhya Pradesh High Court at Gwalior Bench.*

6. Ms. Linhares, opposed the Petition by submitting that the Petition is devoid of merit and is an attempt to prematurely stifle legitimate prosecution. It is further submitted by her that the contention of the Petitioners that they could not pay the tax on time due to the mining ban in the State of Goa is irrelevant as the payment of tax was for the period when the 1st Petitioner was conducting regular business and earned income during the period of 1st April 2011 to 31st March 2012. She submitted that the ban on mining operations in the State of Goa came into force only in October 2012. She submitted that the 1st Petitioner made a wilful attempt to evade payment of tax, penalty, and interest for A.Y. 2012-13, and that its acts were not merely a delay in payment. She further submitted that the subsequent payment of tax and interest or issuance of "Nil Dues Certificate" does not obliterate the offence already committed, as wilful attempts had already occurred. In view of the same, it is submitted that the impugned Order is a reasoned order passed in accordance with law and the sanction for prosecution

was given after complete analysis of the records. It is Ms. Linhares's submission that the said Complaint under Section 276-C(2) of the I.T. Act was filed on the basis of material facts existing at the relevant time which demonstrated persistent evasion in payment of admitted tax liability. She further submitted that there is no legal requirement under the I.T. Act or the Criminal Procedure Code (***Cr.P.C.***) to place subsequent rectification orders or post Complaint developments before the Magistrate at the stage of seeking cognizance. She submitted that a voluntary payment made after a prolonged default and the initiation of prosecution proceedings cannot be equated with compliance with the statutory timeline. It is submitted that the Respondent has followed due process in accordance with law and that adequate opportunity was afforded through statutory notices and correspondence.

7. Ms. Linhares supported her submissions by citing ***Nayan Jayantilal Balu v. Union of India and others,*** *2021 SCC OnLine Bom 5913,* ***K.K. Motwani (HUF) Nariman Point, Mumbai v. The Assistant Commissioner of Income Tax***

12(3), Mumbai, *2016 SCC OnLine Bom 15104* and ***Viswanathan v. Incometax Officer,*** *(1987) 167 ITR 103.*

8. I have considered the rival submissions and perused the record.

9. The 1st Petitioner is a duly incorporated Company primarily dealing in trading and export of iron ore; represented by its Managing Director, i.e. the 2nd Petitioner. The 3rd Petitioner is the Joint Managing Director of the 1st Petitioner.

10. The 1st Petitioner filed its Income Tax Returns for the A.Y. 2012-13 under Section 139 of the I.T. Act and declared income at Rs.4,76,61,800/- which was accepted by the Respondent *vide* the Assessment Order dated 15th March 2016. Following the filing of ITR, the Respondent issued notice and a letter demanding payment of the declared tax and the same was addressed by the 1st Petitioner stating that it was presently unable to pay the tax. The reason being, the 1st Petitioner virtually had no income from September 2011 due to the mining operations being suspended in the State of Goa. However, on 4th October 2013, the 1st Petitioner paid Rs.30,00,000/- towards the tax dues, and thereafter the Respondent issued further demands to the 1st Petitioner.

11. Thereafter, pursuant to several communications between the 1st Petitioner and the Respondent, the Principal Commissioner of Income Tax (Central), Bengaluru, issued a notice dated 23rd November 2016 inviting objections to the proposed prosecution under Section 276-C(2) of the I.T. Act. The 1st Petitioner filed its objections to the said proposal on 9th January 2017, setting out in detail the genuine difficulty in delay in payment of the tax. In the interregnum, the 1st Petitioner continued to make payments towards the outstanding tax liability, along with penalty and interest. The details of such payments made by the 1st Petitioner are set out in a table on page 17 of the petition and are not denied by the Respondent.

12. The Principal Commissioner of Income Tax (Central), Bengaluru, *vide* Order dated 30th January 2017, granted permission to initiate prosecution under Section 279(1) of the I.T. Act. The Petitioners have not challenged this permission.

13. In the meanwhile, the Petitioners, after paying the part outstanding, replied to the demand notices dated 25th and 30th August 2016 on 1st September 2016 in which it is categorically stated by the Petitioners that the 1st Petitioner does not wish to

default on tax payment and also informed that due to the ban on mining in the State of Goa, which resulted in stoppage of business and zero earning of revenue, the 1st Petitioner was unable to pay the tax liability. Further, the 1st Petitioner informed the Department that it was seeking to sell some of its assets and to pay the tax liability from the proceeds thereof. When the further demand notice was issued by the Respondent on 20th October 2016, the Petitioners replied on 26th October 2016, stating that the 1st Petitioner had voluntarily written to the Department on 19th April 2016, *inter alia*, seeking an appointment with the Department to discuss the matter of payment of the demand. It was further communicated that the Department, *vide* letter dated 11th May 2016, gave the Petitioners an appointment on 16th May 2016 at 3.00 p.m. It was also communicated that the Department did not meet the representatives of the 1st Petitioner and thereafter, the Petitioners sought another appointment vide letter dated 20th May 2016, which was not replied to by the Department.

14. After the Respondent's demand and the sanction dated 30th January 2017 for launching prosecution, the 1st Petitioner has

admittedly paid the outstanding tax liability along with interest under Section 220(2) of the I.T. Act.

15. Admitted payments of total tax liability by the 1st Petitioner, prior to and subsequent to the sanction dated 30th January 2017, along with interest are as follows:

Date of Payment	Amount paid in Rupees
26.10.2016	Rs.10,00,000/-
03.01.2017	Rs.15,00,000/-
30.01.2017	Rs.25,00,000/-
06.02.2017	Rs.2,00,00,000/-
22.02.2017	Rs.2,19,82,242/-
03.03.2017	Rs.25,00,000/-
20.03.2017	Rs.26,08,047/-

16. Pursuant to the permission to launch prosecution, the Respondent filed the said Complaint before the CJM on 10th March 2017 under Section 200 of the Cr.P.C., alleging an offence punishable under Section 276-C(2) of the I.T. Act.

17. The total liability was cleared by the 1st Petitioner before 20th March 2017. Therefore, on 29th March 2017, the Deputy Commissioner of Income Tax, Central Circle, Panaji issued an

Order under Section 154 of the I.T. Act holding that the net payable amount by the 1st Petitioner was NIL.

18. Despite the net payable being NIL, the JMFC issued process against the Petitioners *vide* Order dated 29th January 2018. The Order dated 29th January 2018 was challenged by the Petitioners before this Court in Writ Petition No. 135/2018. The said Writ Petition was heard by this Court and on 1st March 2019, the said Order dated 29th January 2018 of the JMFC was quashed and set aside. The matter was remanded back to the JMFC.

19. After the remand on 1st March 2019, and almost 6 years later, the CJM passed the impugned Order, followed by the issuance of summons to the Petitioners dated 12th November 2025.

20. In this factual background, I have considered the provisions of Section 276-C (2) of the I.T. Act. The Section reads as follows:-

> *276C – (1) ……………………………………...*
>
> *(2) If a* ***person wilfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest under this Act****, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and shall, in the*

discretion of the court, also be liable to fine.

Explanation – ***For the purpose of this section, a wilful attempt to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof shall include a case where any person –***

(i) has in his possession or control any books of account or other documents (being books of account or other documents relevant to any proceedings under this Act) containing a false entry or statement; or

(ii) makes or cause to be made any false entry or statement in such books of account or other documents; or

(iii) wilfully omits or cause to be omitted any relevant entry or statement in such books of account or other documents; or

*(iv) cause any other circumstances to exist which will have the effect of enabling such person to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof. (**emphasis supplied**)*

21. Although the Section provides an explanation as to what would include 'wilful attempts', neither the words 'wilful', 'attempt' nor the term 'wilful attempt' has been specifically defined in the I.T. Act. The explanation to Section 276-C(2), which is inclusive, provides meaning to the words 'wilful attempt' used in the Section. There are four categories of acts which ought to

be construed as 'attempts' which are listed in the explanation to the Section.

22. The first is when a person has in his possession or control any books of account or other documents (being books of account or other documents relevant to any proceedings under this Act) containing a false entry or statement. The second is, when a person makes or causes to be made any false entry or statement in such books of account or other documents. The third is, when a person wilfully omits or causes to be omitted any relevant entry or statement in such books of account or other documents. These are the three specific attempts listed in the explanation to the Section. The fourth category of attempts includes causing any other circumstances to exist that will have the effect of enabling such person to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof. Thus, the fourth one is a wide inclusive category and therefore the word 'attempt' used in the Section can cover any circumstances and therefore can be interpreted widely.

23. However, a plain reading of the Section requires that there ought to be 'wilful' 'attempts' to evade the payment of tax, penalty or interest under the I.T. Act. The word 'wilful' precedes the word

'attempts' in the Section. Without fulfilling the requirement of 'wilfulness', the provisions of the Section cannot be made applicable and cannot be invoked to prosecute a person. Therefore, there has to be an intention to evade the liability of tax, penalty or interest.

24. The Section uses the words 'wilful attempt' and not 'wilful default'. In ***S. Sundaram Pillai and others v. V.R. Pattabiraman***, *(supra)*, the Hon'ble Supreme Court, while dealing with the Rent Control Acts of different States, has defined the word 'wilful' as well as the term 'wilful default'. The paragraphs read thus:

> *"21. Before, however, going into this question further, let us find out the real meaning and content of the word 'wilful' or the words 'wilful default'. In the book A Dictionary of Law by L.B. Curzon, at page 361 the words 'wilful' and 'wilful default' have been defined thus:*
>
> ***'Wilful' – deliberate conduct of a person who is a free agent, knows what he is doing and intends to do what he is doing.***
>
> ***'Wilful default' – Either a consciousness of negligence or breach of duty, or a recklessness in the performance of a duty.***

22. In other words, 'wilful default' would mean a deliberate and intentional default knowing full well the legal consequences thereof. In Words and Phrases, Volume 11-A (Permanent Edition) at page 268 the word 'default' has been defined as the non-performance of a duty, a failure to perform a legal duty or an omission to do something required. In volume 45 of Words and Phrases, the word 'wilful' has been very clearly defined thus:

'Wilful' – intentional; not incidental or involuntary;

– done intentionally, knowingly, and purposely, without justifiable excuse as distinguished from an act done carelessly; thoughtlessly, heedlessly or inadvertently;

– in common parlance word 'wilful' is used in sense of intentional, as distinguished from accidental or involuntary.

P. 296 – 'Wilful' refers to act consciously and deliberately done and signifies course of conduct marked by exercise of volition rather than which is accidental, negligent or involuntary.

23. In Volume III of Webster's Third New International Dictionary at page 2617, the word 'wilful' has been defined thus:

governed by will without yielding to

reason or without regard to reason: obstinately or perversely self-willed.

24. The word 'default' has been defined in Vol. I of Webster's Third New International Dictionary at page 590 thus:

to fail to fulfil a contract or agreement, to accept a responsibility; to fail to meet a financial obligation.

25. In Black's Law Dictionary (Fourth Edn.), at page 1773 the word 'wilful' has been defined thus:

'Wilfulness' implies an act done intentionally and designedly; a conscious failure to observe care; conscious; knowing; done with stubborn purpose, but not with malice.

The word 'reckless' as applied to negligence, is the legal equivalent of 'wilful' or 'wanton'.

26. ***Thus, a consensus of the meaning of the words 'wilful default' appears to indicate that default in order to be wilful must be intentional, deliberate, calculated and conscious, with full knowledge of legal consequences flowing therefrom.*** *Taking for instance a case where a tenant commits default after default despite oral demands or reminders and fails to pay the rent without any just or lawful cause, it cannot be said that he is not guilty of wilful default because such a course of conduct manifestly amounts to wilful default as contemplated either by the Act or by other Acts referred to above."* (emphasis supplied)

25. Thus, the word 'wilful' denotes an act consciously and deliberately done and signifies a course of conduct marked by the exercise of volition rather than one that is accidental, negligent or involuntary. The word 'wilful' has a peculiar characteristic indicating the guilty mental state of the party.

26. Considering the definitions of 'wilful' provided in various dictionaries and in the interpretation of the words 'wilful default' provided by the Hon'ble Supreme Court in the above judgement, a similar meaning ought to be adopted to interpret the term 'wilful attempt' used in the Section. The word 'wilful' introduces a mental element and requires looking into the mind of a person by gauging the person's actions indicative of one's state of mind. Thus, in order to prosecute a person under Section 276-C(2), the conduct of a person acquires importance. A person, in such a case, ought to have deliberately, intentionally and consciously made attempts to evade payment of tax, penalty or interest under the I.T. Act. It does not include an unintentional act, an accidental act or a casual act or genuine inability. The word 'wilful' used in the Section imports the concept of *mens rea* in the requirement of the Section. Therefore, on mere delay or mere failure without there being

mens rea, the provisions of the Section cannot be invoked. No casual approach can be adopted while invoking the provisions of the Section. The provisions of the Section being penal, all the ingredients of the offence must be established in the complaint. The complaint should specifically mention wilful attempts made by a person to evade tax, penalty or interest. Merely by making allegations that there is a wilful attempt to evade the tax in the complaint, the complaint cannot be maintained.

27. In the present case, the 1st Petitioner admittedly continued to pay the demands raised by the Respondent. Admittedly, there was delay in view of the closure of the business and therefore the 1st Petitioner has paid the interest. The acts of the 1st Petitioner are *bona fide* because the 1st Petitioner made requests and sought time to pay the tax liability and periodically kept paying the tax along with interest. Importantly, prior to filing of the said Complaint, out of Rs.5,20,90,289/- only an amount of Rs.26,08,047/- was not paid by the 1st Petitioner, which was paid immediately on 20th March 2017. Consequently, on 29th March 2017, the Deputy Commissioner of Income Tax, Central Circle, Panaji issued an Order holding that the net payable by

the 1st Petitioner is NIL. Therefore, the acts of the 1st Petitioner cannot fall within the definition of 'attempts', which means an act or an instance of making an effort to accomplish something. In this case, the 1st Petitioner has paid the tax with interest, and therefore certainly the acts of the 1st Petitioner were not 'wilful', and there were no attempts to evade the tax liability. The Complaint does not specify the alleged wilful attempts made by the Petitioners to evade tax. The penal provisions are invoked in the present case solely on the basis of vague allegations, without establishing the ingredients of an offence.

28. The Hon'ble Supreme Court in the case of ***Pepsi Foods Ltd. and Another v. Special Judicial Magistrate and Others,*** *(1998) 5 SCC 749,* has laid down the process to be followed when summoning an accused in a criminal case. It reads thus:

> *"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and*

> *would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."*

29. In view thereof, I am satisfied that the said Complaint filed by the Respondent is without any basis and does not fulfil the requirement of the Section. The important facts are not considered by the learned CJM. The learned CJM has mechanically passed the impugned Order when, on the face of the said Complaint, the ingredients of the offence were not made out. The learned CJM has not followed the due process of law. Therefore, I reject all the submissions made by Ms. Linhares on behalf of the Respondent. The judgments cited by Ms. Linhares are not applicable to the facts and circumstances of the present case, particularly in view of the fact that no ingredients of the offence are made out in the Complaint.

Therefore, I find that no fruitful purpose will be achieved by setting the criminal law in motion.

30. In light of the above, and in the peculiar facts and circumstances of this case, the impugned Order dated 7th November 2025 and Criminal Case No.AOA/184/2017/A pending before the Chief Judicial Magistrate, 'A' Court at Merces, are hereby quashed and set aside.

31. **The Rule is made absolute in the above terms, and the Criminal Writ Petition is disposed of.**

32. No order as to costs.

[AMIT S. JAMSANDEKAR, J.]