(1998) 02 PAT CK 0008

In the Patna High Court

Case No : Criminal Miscellaneous No. 14832 of 1992 4 February 1998

AMARENDRA PRASAD SINGH APPELLANT

Vs

STATE OF BIHAR RESPONDENT

Date of Decision : 04-02-1998

Acts Referred:
Income Tax Act, 1961 — Section 276, 276C, 277

Citation : (2000) 113 TAXMAN 609

Hon'ble Judges : N. Roy, J

Bench : Division Bench

Advocate : L. K. Tiwari, for the Assessee S. K. Sharan, for the Revenue, for the Appellant;

Judgement

I have heard the counsels for the parties.

2. By this application, the petitioners have prayed for quashing the entire criminal prosecution launched against them in Complaint Case No. 385 of 1992 for the offences under sections 276C and 277 of the Income Tax Act, 1961 (hereinafter referred to as ''the Act'').

3. It appears that a complaint was filed by the Assistant Commissioner, Patna, alleging therein that the petitioner No. 1 is a registered firm under the Act and other petitioners are partners of the said firm and they are equally responsible for every act and transaction of the said firm. It is further alleged that on 26-5-1989, the accused filed original return showing total income of Rs. 1,99,390, for the assessment year 1988-89 which was subsequently revised showing total income of Rs. 2,20,470. At the time of scrutiny the learned assessing officer found that the petitioners have evaded a huge amount and have filed a false return showing less income.

4. The learned counsel appearing on behalf of the petitioners submitted that the order passed by the assessing authority was challenged before the appellate court and ultimately up to the learned Appellate Tribunal and the learned Tribunal

remitted back the matter to the first appellate court and the appellate court reduced the amount to Rs. 19,000 and odd. The learned counsel submitting that in view of the Circular of the revenue as contained in Annexure 10 to the supplementary affidavit, the income of the petitioners was under the permissible limit which was less than Rs. 25,000 and, therefore, in view of clause (iii) of the circular, the prosecution u/s 276C could not have been launched against them.

5. I have perused the Circular as contained in Annexure 10 to the supplementary affidavit. Clause (iii) of the Circular read as follows :

"(iii) section 276. Willful attempt to evade tax, etc.-Prosecution u/s 276C(1) of the Income Tax Act, 1961 or the corresponding provision of the Wealth Tax Act, 1957 need not be initiated.

(a) The income sought to be evaded is less than Rs. 25,000.

(b) The net wealth sought to be evaded is less than Rs. 5,000.

The same will apply to an offence u/s 277 for false statement in verification, etc."

6. The learned counsel appearing on behalf of the opposite party very fairly submitted that in view of the said Circular, the prosecution could not have been launched against the petitioners for the offence under sections 276C and 277. Since the first appellate court had reduced the amount Rs. 19000 and odd and the ceiling prescribed by the Circular is Rs. 25,000, the income of the petitioners was under the permissible limit and, therefore, the prosecution launched against them will be an abuse of the process of the court.

7. Having heard the counsels for the parties and considering the facts and circumstances of the case, I allow this application and quash the entire criminal prosecution launched against the petitioners.

