(2007) 08 PAT CK 0141

In the Patna High Court

Ashok Kumar Jhunjhunwala APPELLANT

Vs

State of Bihar RESPONDENT

Date of Decision : 20-08-2007

Acts Referred:

Citation : (2007) 08 PAT CK 0141

Judgement

J.N. Singh, J.—Heard Mr. N.K. Agrawal, learned senior counsel for the petitioner and Mr. S.K. Sharan, learned Counsel for the Income Tax Department.

2. It appears that search and seizure was made on the premises of the petitioner where a diary was recovered in which it was found that there was some additional income of the petitioner, which was not explained in the Income Tax return. For this concealment of income a prosecution was launched against the petitioner under Sections 276C and 277 of the Income Tax Act, 1961, bearing Complaint Case No. 49 of 1992. Simultaneously the assessee had filed an appeal against the assessment order. While the criminal case was pending the petitioner moved this Court through Cr. Misc. No. 10552 of 1992 which was disposed of by order dated August 20, 1992 (annexure 3). By the said order criminal prosecution was stayed during the pendency of the appeal pending before the authorities of the Income Tax Department. By order dated March 8, 2002, the appeal of the petitioner has been allowed and from the assessment order including extra income as per the said diary has been deleted, which was the sole ground for prosecution.

3. Learned senior counsel for the petitioner submits that since the appeal of the petitioner has been allowed and the extra income of the assessee has been deleted from the income by the authorities of the Income Tax Department, the entire prosecution should go away and continuance of the proceeding shall be an abuse of the process of the court. In this context learned senior counsel for the petitioner placed reliance in the case of G.L. Didwania and Another Vs. Income Tax Officer and Another, and in the case of Prem Kumar Keshri Vs. State of Bihar and Others, . The judgments cited by the learned senior counsel for the

petitioner clarify the position in law.

4. Learned Counsel appearing for the Income Tax Department does not dispute this proposition of law that when the vary basis of the case has been wiped out, further proceeding of the complaint case against the petitioner shall be an abuse of the process of the court.

5. In that view of the matter and in view of the settled legal proposition as evident from the judgments cited by the learned senior counsel for the petitioner, in exercise of power u/s 482 of the Code of Criminal Procedure and in the interest of justice, I hereby quash the entire criminal prosecution arising out of Complaint Case No. 49 of 1992 pending in the Court of Special Judge, Economic Offences, Patna.

In the result, this application is allowed.

