(1997) 08 PAT CK 0047

In the Patna High Court

Case No : Criminal Miscellaneous No. 12502 of 1992

Dharam Chand Jain APPELLANT

Vs

State of Bihar and Another RESPONDENT

Date of Decision : 21-08-1997

Acts Referred:
Income Tax Act, 1961 — Section 139(5), 276C, 277

Citation : (1998) 232 ITR 84 : (2000) 113 TAXMAN 613

Hon'ble Judges : Dharmpal Sinha, J

Bench : Single Bench

Advocate : N.K. Agrawal, A.K. Jain and K.C.K. Sinha, for the Appellant; S.K. Sharan, for the Respondent

Judgement

Dharmpal Sinha, J.—Heard learned counsel for the petitioner as also learned counsel for the opposite party No. 2.

2. In this petition filed u/s 482 of the Code of Criminal Procedure (for short "the Code"), the petitioner has made a prayer for quashing the entire proceeding pending in the Special Court of Economic Offences, Muzaffarpur, bearing Complaint Case No. 27 of 1992 filed under Sections 276C and 277 of the Income Tax Act, 1961 ("the Act").

3. The necessary facts for disposal of this petition may briefly be stated as follows : The petitioner is an assessee to Income Tax and a return was filed before the assessing authority on August 8, 1990, showing income of Rs. 87,240 only under the signature of one Mahabir Prasad Jain. This was for the assessment year 1989-90. After the filing of this return on August 8, 1990, a questionnaire was served on behalf of the Income Tax Department on October 5, 1990. According to the petitioner, in the course of finalising the reply to the questionnaire, it was detected that an amount of Rs. 1,09,050 (rupees one lakh nine thousand and fifty), which should have been shown as income in the return was not shown. About that amount, however, the petitioner deposited the necessary tax with interest on January 28, 1991. Subsequently, he filed another

return showing the omitted amount. The complaint, however, was lodged giving rise to Complaint Case No. 27 of 1992 (a copy of which is annexure-6 to this petition). It was alleged in the complaint that there was wilful attempt to evade tax by deliberately concealing the true particulars of income. It was also alleged that total income has been shown only at Rs. 87,240 and the revised return was filed only after detection of the concealment.

4. The contention of learned counsel for the petitioner is that the entire allegation is misconceived in view of the legal provision as contained in Section 139(5) of the Act, which permitted filing of revised return under certain conditions and within a certain period and in fact the revised return was filed within the period contemplated by the provisions of Sub-section (5) of Section 139 of the Act.

5. In this connection, it may be noticed that about the amount of Rs. 1,09,050, which was omitted in the original return filed on August 8, 1990, an explanation has been given that in fact this amount had been entered into the books of account, which has been submitted ; but only because of the prohibition that transaction of more than rupees ten thousand can be done only through bank, by cheque or demand draft, and this amount was because of purchases made on payment of cash, which was not recognised as valid, this amount was originally not included under a misconception of the legal provision and lack of proper advice by the advocate of the petitioner. According to the submission everything was done bona fide and a revised return was filed soon after the omission had been detected and so there was no case of any offence made out as is alleged in the complaint.

6. Learned counsel for the opposite party does not dispute the fact that on January 28, 1991, the necessary tax on the omitted amount of Rs. 1,09,050 with interest had been paid. He also does not dispute the correctness of the legal stand taken on the basis of the provision of Section 139(5) that a revised return can be filed and in this case it had been filed within the time stipulated by that clause.

7. Considering all these undisputed facts, I am of the opinion that there is considerable force in the submission that it cannot be considered to be a case of deliberate concealment of any income to evade tax and so the complaint filed alleging deliberate concealment of tax evasion cannot be legally held to be tenable in the facts and circumstances of the case.

8. So, in this view of the matter, I allow this petition and quash the prosecution of Complaint Case No. 27 of 1992.

