(1997) 07 PAT CK 0064

In the Patna High Court

Case No : Criminal W.J.C. No. 279 of 1992

Din Dayal Maheshwari APPELLANT

Vs

State of Bihar RESPONDENT

Date of Decision : 24-07-1997

Acts Referred:
Income Tax Act, 1961 — Section 271(1)(c), 276C, 277

Citation : (1998) 99 TAXMAN 20

Hon'ble Judges : N.K. Sinha, J

Bench : Single Bench

Advocate : P.K. Rajgarhia and Tej Bahadur Roy, for the Appellant; S.K. Saran, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Sinha, J.—Heard counsels for the parties. The petitioner seeks quashing of his criminal prosecution including the order taking cognizance under sections 276C and 277 of the income tax Act, 1961 (''the Act'') for the assessment year 1985-86. The criminal case is pending before the Court of the Presiding Officer, Special Court (Economic Offences), Muzaffarpur vide Complaint Case No. 159 of 1992.

2. It appears that the petitioner had filed return on 31-3-1986 showing the total income of Rs. 19,960 for the assessment year 1985-86. The petitioner was a partner in the firm Madan Rice & Oil Mills and cash and other papers including fixed deposit were seized in course of a raid conducted at his residential premises on 16-2-1985. It is alleged that the assessment was completed on a total income of Rs. 1,32,300. It is also alleged that against the said assessment order, the petitioner had filed an appeal before the Commissioner (Appeals) who had confirmed the addition except Rs. 10,000 from the addition on account of unexplained cash. A penalty proceeding u/s 271(1)(c) of the Act was initiated and a penalty of Rs. 51,568 was imposed which was confirmed by the Commissioner (Appeals). The petitioner was thereafter prosecuted for having

committed an offence under sections 276C and 277.

3. It has been averred by the petitioner that he had filed an appeal before the Tribunal on 14-8-1989 which is still pending and that the filing of the prosecution against the petitioner was wholly illegal and arbitrary. It has been specifically mentioned in para 11 of the writ application that unless the matter regarding imposition of tax is confirmed by the Tribunal, there is no justification whatsoever in law to proceed with the prosecution.

4. A counter-affidavit has been filed on behalf of Respondent No. 2 stating that the Tribunal has dismissed the appeal by order dated 21-7-1995, a copy of which has been filed as Annexure A to the counter-affidavit. It appears that the Tribunal has confirmed the penalty levied by the Assessing Officer. Thus, the ground taken in the writ application against continuance of the prosecution does not hold good now. It is somewhat surprising that although the Tribunal had rejected the appeal in the year 1995, this fact was not brought to the notice of the Court on behalf of the petitioner and the Counsel for Respondent No. 2 was directed to ascertain whether the appeal had been disposed of by the Tribunal.

5. Thus, the only ground taken by the petitioner in support of his application, namely, that his appeal was pending before the Tribunal is no more available to him. The learned counsel for the petitioner was very fair to concede this position. In the result, the writ application is found without merit and is dismissed.

