(1997) 09 PAT CK 0072

In the Patna High Court

Case No : Criminal Miscellaneous No''s. 12444 and 12785 of 1992

Janta Sheet Grih — APPELLANT

Vs

State of Bihar — RESPONDENT

Date of Decision : 26-09-1997

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

Citation : (1998) 99 TAXMAN 109

Hon'ble Judges : Nagendra Rai, J

Bench : Single Bench

Advocate : A.K. Jain, for the Appellant; S.K. Sharan, for the Respondent

Final Decision : Allowed

Judgement

Nagendra Rai, J.—Files of both the cases are available but, by mistake, only one case (Criminal Miscellaneous No. 12785 of 1992) has been listed. The learned counsels for both the parties agree that the connected case, i.e., Criminal Miscellaneous No. 12444 of 1992, file of which is also available, may also be disposed of along with this case. Both the applications arise out of the same matter and as such, they have been heard together and are being disposed of by a common order.

2. The petitioners are aggrieved by the order dated 27-3-1992, by which cognizance has been taken under sections 276C and 277 of the income tax Act, 1961 (''the Act'') in Complaint Case No. 279 of 1992 by the Presiding Officer, Special Court (Economic Offences), Muzaffarpur.

3. According to the allegation, the accused filed return on 30-3-1990 showing the total income of Rs. 31,720 for the assessment year 1990-91. The assessment was completed on a total income of Rs. 1,14,480 and the penalty proceeding u/s 271(1)(c) was initiated for the concealment of income. Rs. 47,950 was added towards the income. It was asserted that the accused knowingly concealed the true particulars of income or has deliberately furnished inaccurate particulars and

thereby attempted to evade tax, etc., chargeable or imposable under the Act. It is also asserted that they have also signed and verified the return of income containing false statements and have, thus, committed an offence under the aforesaid sections of the Act.

4. The learned counsels for both the parties asserted that the aforesaid addition has been set aside by the Tribunal. In other words, the very basis of concealment of income has not been accepted by the said Tribunal.

5. In these cases, the prosecution has been launched on the ground that the petitioners made a false statement in respect of the income. The said finding has been set aside by the Tribunal. The Apex Court in a similar circumstance in the case of G.L. Didwania and Another Vs. Income Tax Officer and Another, has held that when the finding is set aside by a superior authority, the prosecution is not maintainable. Accordingly, the prosecution of the petitioners of both the cases is quashed and these applications are, thus, allowed.