(1997) 07 PAT CK 0038

In the Patna High Court

Case No : Criminal Miscellaneous No. 159 of 1990

Lal Saraf — APPELLANT

Vs

State of Bihar and Another — RESPONDENT

Date of Decision : 25-07-1997

Acts Referred:
Income Tax Act, 1961 — Section 139(2), 276CC

Citation : (1999) 235 ITR 116 : (1998) 100 TAXMAN 412

Hon'ble Judges : Naresh Kumar Sinha, J

Bench : Single Bench

Advocate : K.N. Jain, R.K. Agrawal, Navanit Pd. Singh and Rajesh Mohan, for the Appellant; S.K. Sharan, for the Respondent

Judgement

Naresh Kumar Sinha, J.—The petitioner is an Income Tax assessee. On the allegations that there was concealment of substantial income for the assessment year 1982-83 a notice was issued u/s 139 of the Income Tax Act (hereinafter referred to as the "Act"), to him on December 6, 1982. The petitioner failed to submit a return of income by the due date. The return was actually filed on December 17, 1985. Thus, on the basis of a complaint filed by the Income Tax Officer, the petitioner is being prosecuted u/s 276CC of the Act for not furnishing the return of income by the due date as required under Sub-section (2) of Section 139 and Section 148 of the Act. The petitioner seeks quashing of his criminal prosecution vide Complaint Case No. 62 of 1986 presently pending before the Special Court (Economic Offences), Muzaffarpur.

2. Sri K. N. Jain, learned counsel appearing for the petitioner, argued that on the basis of materials already on the record and not disputed by the Revenue, the petitioner had not wilfully failed to furnish in due time the return of income which he was required to file. The notice u/s 139(2) of the Act is dated December 6, 1982, and a copy of which has been filed as annexure-2. Para 5 of the complaint petition mentions the date of the notice but it is not very legible in the copy of the complaint petition which has been filed. The complaint petition does not

contain the averment that the said notice has been served before the expiry of the assessment year but on instructions the petitioner does not dispute that it has been served. Under the provisions of the Act the due date by which the petitioner was required to file his Income Tax return would be within thirty days from the date of service of such a notice. In case it is presumed that the notice was served on the last day of expiry of the assessment year, namely, March 31, 1983, the due date would be April 30, 1983. Learned counsel contended that wilful failure to furnish the Income Tax return by the due date will be limited to the period which is permissible under the law by way of due date which would be in the present case, April 30, 1983. Some observations made by the Assessing Officer in his assessment order (annexure-6) go to show that the petitioner had already made an application for extension of time for filing the return on the ground that the books of account were lying seized with the Income Tax authorities. The assessment order specifically mentions that after the issue of the notice u/s 139(2) of the Act to the assessee an application had been filed by the assessee, i.e., the petitioner in Form No. 6 asking for extension of time till June 30, 1983. The extension of time was prayed for on the ground that the assessee''s books of account were lying seized with the Department. It appears that it was on a subsequent date, i.e., March 4, 1984, that a letter was sent by the Department instructing the petitioner-assessee to take extracts or copies of the order, etc., to enable him to file the return. It is not necessary to notice what happened subsequently for the petitioner''s contention is that these observations in the assessment order which the Revenue cannot possibly dispute that the petitioner has amply proved that there was no wilful failure on his part to submit the return of income by the due date, i.e., April 30, 1983, as he was prevented from doing so on account of his books of account lying seized with the Income Tax authorities.

3. This being the undisputed position with regard to the facts of the present case, the petitioner''s failure to furnish the return of income by the due date cannot be made the basis for prosecution as the most important ingredient, i.e., wilful failure on the part of the assessee-petitioner to file the return by the due date as required u/s 276CC of the Act is missing. The criminal prosecution of the petitioner in this case is, thus, an abuse of the process of the court and its quashing is necessary to secure the ends of justice.

4. I order accordingly.

5. In the result, this application is allowed.

