(1997) 04 PAT CK 0017

In the Patna High Court

Case No : Criminal W.J.C. No. 434 of 1992

Prabhakar Choudhary APPELLANT

Vs

Commissioner of Income Tax RESPONDENT

Date of Decision : 08-04-1997

Acts Referred:
Income Tax Act, 1961 — Section 276C, 277

Citation : (1997) 95 TAXMAN 393

Hon'ble Judges : D.S. Dhaliwal, J

Bench : Single Bench

Advocate : Sandeep Kumar, for the Appellant; S.K. Sharan, for the Respondent

Judgement

D.S. Dhaliwal, J.—Prabhakar Choudhary, the petitioner herein has invoked criminal jurisdiction of this Court under articles 226 and 227 of the Constitution of India for quashing of the criminal proceedings against him in the Court of Special Judge (Economic Offences), Muzaffarpur for the offence under sections 276C and 277 of the income tax Act, 1961 (''the Act'') in Complaint Case No. 271 of 1992. It appears that for the assessment year 1987-88, the petitioner filed income tax return showing an income of Rs. 26,270 from business and Rs. 8,050 from agriculture. The department, however, ultimately assessed the total income of the petitioner for the said financial year as Rs. 7,50,750 and penalty proceedings were also initiated against him for concealment of the income. After obtaining sanction a complaint for the offence under sections 276C and 277 was filed on behalf of the Assistant Commissioner, Circle I, Muzaffarpur against the petitioner. Acting on the said complaint, the learned Special Judge (Economic Offences) vide the impugned order took cognizance of the aforesaid offence.

2. The counsel for the petitioner filed a supplementary affidavit along with Annexure indicating that the assessment of the income for the relevant period has been set aside by the Commissioner exercising his revisional powers. On the strength of Annexure-7, the learned counsel submitted that as the assessment on the basis of which the complaint has been filed against the petitioner, has

been set aside, the prosecution of the petitioner in the said complaint be quashed.

3. The learned counsel appearing for the Commissioner has admitted the aforesaid position, but further submitted that after setting aside the assessment the revisional Court has given a direction to the Assessing Officer for fresh assessment of the income of the petitioner and as such the department be given an opportunity to launch fresh prosecution. I find that the petitioner is being prosecuted for having concealed his income on the strength of the assessment order which has now been set aside by the statutory authority under the Act and as such, the ground for prosecution of the petitioner does not subsist for the time being. The prosecution of the petitioner in Complaint Case No. 271 of 1992 is, therefore, quashed. However, it will be open to the income tax Department to file a fresh criminal complaint against the petitioner if he is found to have concealed income after his income is reassessed as per the directions of the revisional Court.