(1997) 07 PAT CK 0060

In the Patna High Court

Case No : Criminal Miscellaneous Case No. 10471 of 1992 24 July 1997

PRAYAG LAL AGRAWAL APPELLANT

Vs

STATE OF BIHAR RESPONDENT

Date of Decision : 24-07-1997

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 482
Income Tax Act, 1961 — Section 143, 251, 276C, 277

Citation : (1999) 107 TAXMAN 287

Hon'ble Judges : Gurusharan Sharma, J

Bench : Division Bench

Advocate : N.K. Agrawal, for the PetitionerS.K. Sharan, for the appearing parties;

Judgement

1. In this application u/s 482 of the Code of Criminal Procedure, 1898 the petitioner has come up for quashing the Complaint Case No. 308 of 1992, instituted for the offence under sections 276C and 277 of the Income Tax Act, 1961 (''the Act'') pending in the Court of the Special Court (Economic Offences), Muzaffarpur.

2. On 27-3-1991, the Assistant Commissioner Investigation Circle-1, Dhanbad, passed order (Annexure- 1) under sections 143(3) and 251 of the Act, for the assessment year 1982-83 and made addition of Rs. 40,400 as income of the petitioner from other sources on the basis of certain papers seized in the course of a search operation. The said amount of income of the petitioner was not explained.

3. On the basis of the said finding arrived at by the assessing officer, the Assistant Commissioner Investigating Circle-1, Dhanbad, the opposite party No. 2 herein, filed a complaint against the petitioner in the Court of the Special Judge (Economic Offences), Muzaffarpur, which was registered as '' Complaint Case No. 308 of 1992, for the offence punishable under sections 276C and 277 and cognizance was taken against the petitioner.

4. Against the said assessment order dated 27-3-1991, the petitioner filed Appeal No. 181 OSR of 1991-92 before the Appellate Commissioner (Appeals), Jamshedpur, which was allowed by order dated 27-3-1992 (Annexure-2) and it was held that the petitioner was not responsible for the loose sheets, which were found on the second floor, in course of search operation and, accordingly, deleted addition of Rs.40,400 and the said part of the assessment order was set aside.

5. In Prem Kumar Keshari v. Slate of Bihar [1996] (2) PIJR 766 this Court held thatwhere the entire basis of complaint filed before theSpecial Court was rendered non-existent by the appellate authority tinder the Act, setting aside the findings of the assessing authority, on the basis of which the complaint was filed before the Special Court, the prosecution under sections 276C and 277 was not sustainable and continuance of the petitioner''s prosecution was an abuse of the process of the Court. The criminal proceeding against the assessee was, therefore, quashed.

6. The present matter is fully covered by the said decision. The petitioner''s prosecution vide Complaint Case No. 308 of 1992 is, therefore, quashed.

7. In the result, this application is allowed.

