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(1997) 07 PAT CK 0068

In the Patna High Court

Case No : Criminal Writ Judicial Case NO. 382 of 1992 24 July 1997

SATYA NARAIN DAHNIA APPELLANT

Vs

STATE OF BIHAR RESPONDENT

Date of Decision : 24-07-1997

Acts Referred:
Income Tax Act, 1961 — Section 271, 276C, 277

Citation : (2000) 110 TAXMAN 28

Hon'ble Judges : Sinha, J;Naresh Kumar Sinha, J

Bench : Division Bench

Advocate : N.K. Agarwal, A.K. Jain and K.C.K. Sinha, for the Petitioner and S.K. Sharan, for the Appellant;

Judgement

Sinha, J.

The petitioner seeks quashing of his prosecution under sections 276C and 277 of the Income Tax Act, 1961 (''the Act'') as also the order taking cognizance. The said proceeding is pending before the Special Court (Economic Offences), Muzaffarpur vide complaint Case No. 443 of 1991.

2. The Income Tax Officer filed a complaint against seven persons including the petitioner alleging commission of the aforesaid offences for the assessment year 1980-81. Kashi Ram Dalmia is a URF firm and accused Nos. 2 to 7 including the petitioner are said to be the partners of the said firm. The firm had filed a return of income on 20-10-1983 showing an income of Rs. 1 lakh for the assessment year in question. Subsequently on the basis of search operation a fresh assessment was done and the assessment was made on total income of Rs. 1,42,600 after adding undisclosed income of Rs. 62,000. On appeal, the Commissioner (Appeals) vide his order dated 14-7-1987 reduced the income after affirming the addition of Rs. 50,000 only. Thus, a relief to the extent of Rs. 12,000 was granted. A penalty proceeding u/s 271(1)(c) of the Act had also been initiated.

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3. The learned counsel for the petitioner contended that against the order of the appellate court the firm preferred an appeal before the Tribunal vide Appeal No. 130 (Pat.) of 1987 which was disposed of by the Tribunal on 10-1-1992. A copy of the said order has been filed as Annexure-4(1). The Tribunal was pleased to hold that the addition towards the undisclosed income needed to be further reduced by Rs. 19,000. The learned counsel of the petitioner argued that the assessee-firm had filed an Income Tax return on an income of Rs. 1 lakh and after the order of the Tribunal that amounts stood at Rs. 1,11,600. In other words, only difference between the income disclosed by the assessee-firm and as found by the Tribunal was in respect of a sum of Rs. 11,600. The learned counsel for the petitioner referred to a directive issued by the Board, Government of India in the Ministry of Finance on 7-2-1.991, copy of which is Annexure-5. The directive among other things provides that prosecution for offence u/s 276C(1) for wilful attempt to evade tax shall not be initiated if the income sought to be evaded is less than Rs. 25,000. It was argued that since the income sought to be evaded after reduction was less than Rs. 25,000, (lie prosecution of the petitioner or for that matter, the other partners of the firm were unwarranted, in view of the directives referred to above. The learned counsel for the revenue has very fairly conceded the above contention.

4. Thus, for the foregoing reasons, the prosecution of the petitioner or for that matter of the firm and other partners of the firm is an abuse of the process of the Court and the quashing of the criminal prosecution of the petitioner and other similarly situated persons as also the impugned order taking cognizance against them is necessary to secure the ends of justice and I order accordingly.

5. In the result, this writ application is allowed.

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