(2000) 03 PAT CK 0045

In the Patna High Court

Case No : Criminal Miscellaneous No. 7189 of 1993

Satyanarain Prasad and Others — APPELLANT

Vs

State of Bihar and Another — RESPONDENT

Date of Decision : 18-03-2000

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

Citation : (2002) 255 ITR 584

Hon'ble Judges : N. Rai, J;D.P.S. Choudhary, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The petitioners have filed the present application for quashing the order dated March 18, 1993, passed by the Special Subordinate Judge, Economic Offences, Patna, taking cognizance of the offence under Sections 276C and 277 of the Income Tax Act, in Complaint Case No. 31(C) of 1993.

2. Opposite party No. 2, Assistant Commissioner of Income Tax, Arrah, filed a complaint petition before the Special Court, Economic Offences, Patna, stating, inter alia, that the firm of M/s. Satya Narain Pd. Bhola Prasad is a registered firm and derives income from the sale of mustard oil, vegetable oil, sugar and maida, etc. The petitioners are the partners of the said firm and having share in the profit and loss of the business, they are equally responsible for every act and business of the firm. On October 30, 1990, they filed return showing a total income of Rs. 1,04,807 for the assessment year 1990-91. However, the assessing authority, computed the assessment on a total income of Rs. 6,74,722, u/s 143(3)/182(1) of the Act. It transpired during the assessment proceeding that the investments made over the purchase of drafts were concealed by the petitioners and as such a proceeding u/s 271(1)(c) of the Act was initiated against them for concealment of income. Accordingly, the complaint was filed for their prosecution for the aforesaid two offences.

3. It is the admitted position now that the order of the assessing authority has been set aside by the Income Tax Appellate Tribunal, Patna Bench, Patna, vide its order dated August 12, 1997, in I. T. A. No. 524/Patna of 1994. The result is that the finding given by the assessing authority about the concealment of income by the petitioners has been set aside by the Tribunal.

4. The law is well settled now that when the grounds for addition of income are not accepted by the Tribunal and the order of the assessing authority, on the basis of which the complaint was filed, is not accepted, then the prosecution will be an abuse of the process of the court and it should not be allowed to continue. Reference in this connection may be made to the cases of Uttam Chand and Others Vs. Income Tax Officer, Central Circle, Amritsar, ; P. Jayappan Vs. S.K. Perumal, First Income Tax Officer, Tuticorin, and G.L. Didwania and Another Vs. Income Tax Officer and Another, . Thus, in view of the order of the Tribunal, setting aside the order of the assessing authority in this case, the prosecution of the petitioners under the aforesaid two sections is not sustainable in law. Accordingly, the order taking cognizance against the petitioners is hereby quashed. This application is accordingly allowed.

