(1998) 12 PAT CK 0009

In the Patna High Court

Case No : Criminal Miscellaneous No. 18159 of 1993

Smt. Savitri Devi and Another — APPELLANT

Vs

Commissioner of Income Tax — RESPONDENT

Date of Decision : 11-12-1998

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

Citation : (2000) 2 PLJR 843

Hon'ble Judges : P.K. Sarkar, J

Bench : Single Bench

Advocate : K.N. Jain, for the Appellant; S.K. Sharan, for the Respondent

Judgement

P.K. Sarkar, J.—In view of the change of Advocate, fresh Vakalatnama has been filed on behalf of the Petitioners. Keep it on record.

This application has been filed for quashing the order of cognizance dated 23.1.93 and the entire criminal proceedings pending in the Court of Economic Offences, Muzaffarpur, in Complaint case No. 3/93.

2. The facts leading to this application in brief are that Sr.R. Prasad, Income Tax Officer, Begusarai filed a complaint petition before the Court of Sri S.R. Hussain, Special Court of Economic Offences, Muzaffarpur, stating that M/s. Gupta rain Stores is a registered firm and the other accused are partners of the said firm and all are equally responsible for the every act and transactions of the business of the said firm. It is said that a raid was conducted in the business and residential premises of the accused on 16.10.81 and duplicate books of account were seized. During the course of assessment proceeding, it was found that the accused had suppressed its sales and income as ascertained on the basis of duplicate books of account. It is further stated that the assessment was completed on a total income of Rs. 1,38,850/- as against return income of Rs. 26,446/- for the assessment year 1980-81. The entire additions have been made on the basis of difference of sales figures of the accused and peak fund employed

for carrying on concealed business of the accused. On the basis of the aforesaid complaint, cognizance was taken in the case under Sections 276C and 277 of the Income Tax Act, 1961 and summons were ordered to be issued against the accused persons.

3. Being aggrieved and dissatisfied with the impugned order, the present application has been filed.

4. The learned Counsel for the Petitioners submits that the main contention in this application is whether the partners of the firm can be proceeded in a criminal prosecution without showing the specific role of each of the partners or in what manner they were responsible to the Company for day to day business or who was incharge of the business when the offence was committed. In absence of such averments in the complaint petition Against the Petitioners, the learned trial Court ought not to have taken cognizance and ought not to have proceeded. Unless it is alleged that the partners had signed the verification of the statements contained in the return filed earlier, they have no criminal liabilities. It is further submitted that from the complaint petition which is Annexure-1 to the petition, it will appear that only a vague allegation has been made that the partners are equally responsible for the day to day business of the firm. Such vague allegation can not be taken into consideration and in that view cognizance taken against the partners-Petitioners deserves to be quashed.

5. In this connection, the learned Counsel for the Petitioners has placed reliance on a decision of this Court passed in Cr. Misc. No. 7421/86 with Cr. Misc No. 7422/86 with Cr. Misc. No. 7423/86 disposed of on 26.11.98 where in a similar case the matter has been fully discussed and the order of cognizance was quashed. It is further stated that while passing the aforesaid order, different decisions in this regard including that of the Apex Court was taken into consideration. It is submitted that this decision fully covers the instant case.

6. Sri.S.K. Sharan, learned Counsel for the Income Tax Department submits that this case is fully covered by the decision mentioned by the learned Counsel for the Petitioners. In view of the undisputed position as also looking to the facts of the case, it appears that the present case is fully covered by the decision cited above.

7. In that view of the matter this application is allowed and the cognizancs order dated 23.1.3 passed in Complaint Case No. 3/93 and the entire criminal proceedings against the partners who are at Serial Nos. (iii) and (v) in the original complaint petition and Petitioners before this Court, are quashed.

