(1997) 09 PAT CK 0019

In the Patna High Court

Case No : Criminal Miscellaneous No. 1908 of 1992

Smt. Shailbala Poddar APPELLANT

Vs

State of Bihar RESPONDENT

Date of Decision : 10-09-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Income Tax Act, 1961 — Section 276 C, 276C, 277

Citation : (1998) 100 TAXMAN 57

Hon'ble Judges : Dharmpal Sinha, J

Bench : Single Bench

Advocate : D.V. Patny, for the Appellant; Anusuya Jaiswal and S.L. Sharan, for the Respondent

Final Decision : Allowed

Judgement

Dharmpal Sinha, J.—In this application filed u/s 482 of the Code of Criminal Procedure, 1908, prayer has been made for quashing the entire criminal proceeding including the order dated 30-9-1991 taking cognizance of the offence punishable under sections 276C and 277 of the income tax Act, 1961 (''the Act''). The criminal prosecution bearing complaint case No. 421 of 1991 (Trial No. 2429 of 1991) pending in the Special Court (Economic Offences), Muzaffarpur, was initiated on the basis of a complaint lodged by the Assistant Commissioner, a copy of which is Annexure-1. It was lodged in the following backgrounds.

2. The petitioner (accused in the case) had filed an income tax return for the assessment year of 1992-83 showing a total income of Rs. 53,840, but the assessment has been computed on a total income of Rs. 1,49,975 after making thereafter addition, namely, of disallowances in respect of interest paid on certain deposits amounting to Rs. 18,000, undervaluation of closing stocks of Rs. 29,000 and unexplained cash credit amounting to Rs. 40,000. The Assessing Officer initiated a penalty proceeding and also lodged a complaint for prosecution of the petitioner. The petitioner, however, preferred an appeal against the order of the

Assessing Officer.

3. It appears from the supplementary affidavit that eventually two appeals had been preferred before the Tribunal and the said Tribunal set aside the additions made by the Assessing Officer. The Tribunal also held that no penalty was leviable with regard to the addition and so on both scores, the Tribunal took a decision in favour of the petitioner as appears from the copy of the orders (Annexures-1 and 2) to the supplementary affidavit.

4. The contention of the counsel for the petitioner is that since the addition done by the Assessing Officer to the income, as given in the return filed by the petitioner, had been set aside by the Tribunal and so also the penalty proceeding had been initiated on the basis of the fact of concealment of income to which addition was made by the Assessing Officer, the very basis of the prosecution in now gone after the decisions of the Tribunal and so the prosecution of the petitioner must be quashed. In this connection, the counsel for the petitioner has relied on the decision of the Supreme Court in the case of G.L. Didwania v. ITO [1995] (Suppl.)(2) SCC 724 and the two decisions of this Court : one in the case of Banwarilal Satyanarain v. State of Bihar [1989] 179 ITR 387/ 46 Taxman 289 and another in the case of Bhubaneshwar Prasad Bhaskar Vs. State of Bihar and Another, .

5. The learned counsel for the opposite party No. 1 does not dispute the proposition of law, on which the counsel for the petitioner appears to have relied, that if any addition is made by any Assessing Officer and that when allegation is made on the basis that some income was concealed from the return and if ultimately a final decision is arrived at on facts by the Tribunal nullifying the addition, the penalty proceeding and the criminal prosecution based on the same facts cannot be allowed to continue. In my view, the facts and circumstances of this case would definitely be governed by the aforesaid proposition. In the result, I allow this application, quash the criminal prosecution initiated on the basis of complaint case No. 421 of 1991 as also the order dated 30-9-1991 taking cognizance of the offence punishable under sections 276 C and 277and directing for issuance of summons to the petitioner.

