
(2007) 10 PAT CK 0041
In the Patna High Court

Yogendra Prasad and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 08-10-2007

Acts Referred:

Income Tax Act, 1961 — Section 276, 277

Citation : (2009) 309 ITR 28

Hon'ble Judges : S.C. Jha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.C. Jha, J.—This application has been filed for quashing the entire proceeding against the petitioners under sections 276 and 277 of the Income Tax Act, 1961, arising out of Complaint Case No. 9(C) of 1993, T. R. No. 1240 of 1993 as well as order dated February 22, 2006, passed by the Special Judge, Economic Offences, Patna, by which the petition filed by the petitioners in respect of their discharge has been rejected.

2. Heard Shri Ajay Prasad, learned Counsel for the petitioners, Shri S.K. Sharan, learned Counsel for opposite parties Nos. 2 and 3 and Shri Mehta, learned A. P. P. for the State.

3. The complaint was filed by the Income Tax Officer, Biharsharif, against the petitioner's firm, i.e., petitioner M/s. Yogendra Prasad and others, who happened to be the partners of the petitioner's firm for offences punishable under sections 276 and 277 of the Income Tax Act in respect of filing of return in the assessment year 1991-92. It has been alleged that petitioner's firm was liable, due to business transaction and turnover in respect of the assessment year in question, to pay Income Tax to the tune of Rs. 22 lakhs and odd but they deliberately and wilfully did not pay the amount, rather drastically reduced such amount to the figure of Rs. 26,000 and odd.

4. Thereafter, as submitted by the learned Counsel for the petitioners, the

aforesaid assessment of the Income Tax Officer was challenged before the appropriate appellate authorities and ultimately, the Income Tax Appellate Tribunal, finally decided the matter setting aside the aforesaid amount of assessment levelled by the Income Tax Officer, rather directed the Income Tax Officer to reassess the Income Tax payable by the petitioner's firm and pass orders in accordance with law. Thereafter, the Income Tax Officer in terms of the direction of the order of the Income Tax Appellate Tribunal, passed order on August 24, 1999, whereby and whereunder Rs. 2,46,790 inclusive of penalty so imposed on the petitioners' firm for which the petitioners were also individually liable and accordingly, in compliance thereof, these petitioners deposited the amount rather, they paid excess and paid the entire Income Tax including penalty and, thereafter, the excess amount so paid was also refunded to them on January 5, 2002.

5. Now, the contention of the petitioners is that since criminal proceeding was launched just after enhanced assessment was made by the Income Tax Officer and during the period of pendency of appeal, wherein different legal forums were approached by the petitioners in respect of challenging the aforesaid order of assessment by the Income Tax Officer passed on March 31, 1991, and, therefore, such criminal prosecution remained pending all through.

6. The learned Counsel for the petitioners has also submitted that there was also direction of the hon'ble court to proceed in accordance with the verdict of the Income Tax Appellate Tribunal.

7. Now, in the changed circumstance, it can only be said that there was neither wilful negligence nor any mala fide intention on the part of these petitioners for not paying the due Income Tax, which they were required to pay. Rather as further submitted, the petitioners challenged aforesaid exaggerated and heavily assessed Income Tax demand of the Department in appropriate forum by virtue of which the initial assessment order of the Income Tax Officer was set aside and thereafter the petitioners abided and promptly responded to the verdict of the reassessment of the same Income Tax Officer in terms of the orders passed by Income Tax Appellate Tribunal.

8. In the facts and circumstances the learned Counsel has further submitted that in the given situation, wherein there is complete absence of any mala fide intention or wilful negligence on the part of the petitioners in paying the Income Tax, the very continuance of the criminal proceeding will only amount to an abuse of the process of law and wastage of valuable time of the court.

9. The learned Counsel for the Income Tax Department, Mr. Sharan, has in all fairness, submitted that in the facts and circumstances of the case, no Income Tax is due to be paid by these petitioners and whatever was liable to be paid by them, has been paid by them, in accordance with law and the period for which they moved appropriate forum of the appropriate authorities under the Income Tax Act cannot be said to be the period for wasting the valuable time of the

Income Tax Department rather, it was their right and privilege which they have exercised in accordance with law.

10. The learned A.P.P. for the State has also been heard, who more or less endorsed the aforesaid views expressed by learned Counsel of both sides.

11. In the facts and circumstances of the case, I find full force and substance in the argument of the learned Counsel advanced on behalf of the petitioners. I also hold that very continuance of the proceeding for which the petitioners are facing trial in the court below will only amount to an abuse of the process of law, if, such proceedings are permitted to continue. In the result, entire proceeding stands quashed including the order aforesaid and the petition in turn stands allowed.