**(2010) 09 AHC CK 0097**

**In the Allahabad High Court**

**Case No :** Application U/S 482 No. 5058 of 1994

Mahesh Kumar Bhatia APPELLANT

Vs

Special Chief Judicial Magistrate and Another RESPONDENT

**Date of Decision :** 27-09-2010

**Acts Referred:**
Income Tax Act, 1961 — Section 256, 271, 277, 278

**Citation :** (2010) 09 AHC CK 0097

**Hon'ble Judges :** Rajesh Dayal Khare, J

**Bench :** Single Bench

**Final Decision :** Disposed Of

## Judgement

Rajesh Dayal Khare, J.—Heard learned Counsel for the applicant, Sri Ashok Kumar, learned Counsel, who has put in appearance on behalf of the Income Tax Department. The present 482 Petition has been filed for quashing of the proceedings of Union of India v. Mahesh Kumar Bhatia criminal case No. 114 of 1993 pending before the Special Chief Judicial Magistrate (Economic Offences) Kanpur.

2. This Court vide order dated 7.12.1994 had stayed the further proceedings of Union of India v. Mahesh Kumar Bhatia criminal case No. 114 of 1993 pending before the Special Chief Judicial Magistrate (Economic Offences) Kanpur and counsel for the Income Tax Department was directed to file counter affidavit.

3. Learned Counsel for the applicant has contended that for the assessment year 1988-89, the respondent No. 2 passed an order u/s 271(1)(c) of the Income Tax Act levying penalty of Rs. 2,93,213/-, copy of which has been filed as Annexure 1 to the accompanying affidavit. Aggrieved from the penalty order, the applicant filed an Appeal before the Commissioner of Income Tax (Appeals) II, Kanpur, who upheld the said order passed by the respondent No. 2 vide order dated 23.06.1992, copy of which has been filed as Annexure-2 to the accompanying affidavit. Against the order of Commissioner of Income Tax (Appeals) II, Kanpur,

 

the applicant preferred an Appeal before the Income Tax (Appellate) Tribunal and during pendency of the Appeal before the Tribunal, the respondent No. 2 had filed complaint on 21.04.1993 before the Special Chief Judicial Magistrate, Kanpur u/s 277 read with Section 278(c) of the Income Tax Act for prosecution of the applicant, which was registered as criminal case No. 114 of 1993.

4. Rejoinder affidavit on behalf of the applicant has been filed today in Court, which is being taken on record in which it has been stated that in ITA Appeal No. 1917(ALLD) of 1992, the Income Tax Appellate Tribunal has been pleased to direct that no penalty can be levied against the applicant vide Judgment and order dated 23.02.1997, copy of which has been filed as Annexure-RA1 to the rejoinder affidavit. It is further contended in the rejoinder affidavit that against the aforesaid order dated 23.02.1997, the Commissioner, Income Tax, Kanpur called for a reference being R.A. No. : 166 (ALLD) of 1997 (ITA No. 1917 (ALLD) of 1992), which reference has also been rejected by the Income Tax Appellate Tribunal vide its order dated 20.08.1997. It is thus argued that to the best of the knowledge of the applicant, no Income Tax Application u/s 256 of the Income Tax Act was filed before this Court. It is argued on behalf of the applicant that since penalty levied has been knocked off by the Income Tax Appellate Tribunal, no criminal prosecution for the same can be drawn against the applicant and therefore, criminal proceedings against the applicant is bad in law. Learned Counsel for the applicant has relied upon the judgment of the Patna High Court reported in 1997 (Vol. 224) Income Tax Reports 119 in the matter of Mahadeo Lal Agarwala v. State of Bihar and Anr. as well as the Judgment of this Court dated 06.11.1997 passed in Crl. Misc. Application No. 16050 of 1993 in the matter of M/s. Agarwal Refrigeration and Ors. v. Union of India and Anr.

5. Sri Ashok Kumar, learned Counsel for the Income Tax Department has stated that the controversy is a factual controversy, which may be better adjudicated by the Trial Judge concerned.

6. No useful purpose would be served in keeping the present petition pending, which is being finally disposed of with a direction that in case the applicant files an application for discharge through counsel under the provisions of the Criminal Procedure Code before the Special Chief Judicial Magistrate (Economic Offences) Kanpur in Union of India v. Mahesh Kumar Bhatia criminal case No. 114 of 1993 within a period of one month from today, the same shall be considered and decided by the concerned Magistrate as expeditiously as possible in accordance with law after hearing the parties preferably within a period of five months from the date of filing of such application.

7. For a period of six months or till the disposal of the discharge application of the applicant, whichever is earlier, no coercive action shall be taken against the applicant pursuant to Union of India v. Mahesh Kumar Bhatia criminal case No. 114 of 1993 pending before the Special Chief Judicial Magistrate (Economic Offences) Kanpur.

8. With the aforesaid direction, the present 482 Application is finally disposed of.

 