**(2004) 07 PAT CK 0077**

**In the Patna High Court**

**Case No :** Criminal Miscellaneous No. 26803 of 2002 23 July 2004

Naresh Prasad APPELLANT

Vs

Union of India RESPONDENT

**Date of Decision :** 23-07-2004

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

**Citation :** (2005) 143 TAXMAN 291

**Hon'ble Judges :** Mridula Mishra, J

**Bench :** Division Bench

**Advocate :** Vishnu Kumar Sharma, for the Petitioner, for the Appellant;

## Judgement

Heard learned counsel for the petitioner and the counsel appearing on behalf of Union of India.

2. This application has been filed for quashing the order dated 14-9-2001, passed by the Special Judge, Economic Offences, Patna in Complaint case No. 184(C) of 2001 by which cognizance has been taken against the petitioner under sections 276C and 276CC of the Income Tax Act, 1961.

3. It has been submitted that the petitioner had preferred an appeal against the order of assessment which is pending before the statutory appellate authority. Learned counsel for the petitioner has submitted tiiat in view of direction of this court in certain matters during the pendency of the statutory appeal filing of complaint case is not justified.

4. In such matters this court has consistently taken the view that soon after passing of the assessment order the prosecution should not be launched if the matter is pending in appeal. Further action may be taken only if the appeal is dismissed in whole or in part. If the appeal is allowed and the findings of the assessing officer is set aside there can be no justification for the initiation of criminal proceeding.

 

5. Since in the instant case a complaint has already been filed this application is disposed of with a direction to the trial court not to proceed with the complaint case bearing No. 184(C)/2001 pending in the court of Special Judge, Economic Offences, Patna till the disposal of the appeal by the appellate authority. After the disposal of the appeal the opposite party will proceed in accordance with law, and keep in view of the order that may be passed in the appeal with liberty to the parties to move the trial court after the disposal of the appeal.

6. This application is accordingly allowed in the above terms.