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**(2001) 10 RAJ CK 0102**

**In the Rajasthan High Court**

**Case No :** IT Ref. Application No. 80 of 1999 29 October 2001 A.Y. 1983-84

Commissioner of Income Tax

APPELLANT

Vs

LAXMI STORES

RESPONDENT

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**Date of Decision :** 29-10-2001

**Acts Referred:**

Income Tax Act, 1961 — Section 132, 256, 271

**Citation :** (2002) 172 CTR 548

**Hon'ble Judges :** O.P. Bishnoi, J;N.N. Mathur, J

**Bench :** Full Bench

**Advocate :** L.M. Lodha, for the Revenue and Vineet Kothari, for the Assessee, for the Appellant;

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**Judgement**

By the Court

We have heard Mr. L.M. Lodha, learned counsel for the revenue.

2. This is a reference application u/s 256(2) of the Income Tax Act at the instance of the department.

3. The respondent assessee firm deals in certain brands of cigarettes manufactured by M/s. Godfray Philips India Ltd. During the search and seizure operation on, 9-1-1986, certain incriminating documents were found and they were seized. During the course of proceedings u/s 132(5) the partners of the firm, namely, Smt. Bhagwani Bai and Shri Nandlal admitted that the assessee-firm did not (sic) charge on money and a portion of the money so collected was retained by the firm. It was also admitted that the portion of the money so kept by the firm was not accounted in the books of accounts of the firm. The assessee did not disclose the said money in the return filed for the assessment year 1983-84. Accordingly, the assessing officer added a sum of Rs. 2,10,060 to the total income of the assessee as concealed income and initiated penalty proceedings for concealment while completing the assessment. The assessing authority also imposed a penalty of Rs. 1,77,187. The order of assessing

authority was confirmed by the Commissioner (Appeals). The Appellate Tribunal, Jaipur, was of the view that it was not a fit case for imposing of penalty u/s 271(1)(c) of the Income Tax Act. Accordingly, the Tribunal set aside the order of the assessing authority.

4. It is contended by Mr. L.M. Lodha, learned counsel for the department that once the concealment has been admitted by the assessee, there, was no option for the assessing authority to accept those penalties as per the mandate of section 271(1)(c) of the Income Tax Act. Learned counsel has also placed reliance on the decision of Division Bench of this court rendered in Commissioner of Income Tax Vs. Dr. R.C. Gupta and Co., From the facts it appears that the assessee was collecting on money over and above the printed price of cigarettes and was remitting the same to the principal company. It also appears that part of such collection was also utilised for advertisement purposes. The assessing officer himself observed in the assessment order that if such amount was passed over by the assessee to the parent company then the relief would be allowed to the assessee. The principal company has surrendered such amount which is evident from the order of the Settlement Commission. The Tribunal on consideration of the entire facts held that on money was collected by the assessee on behalf of the principal company which was business compulsion of the assessee. The Tribunal further found that the assessee has not concealed any part of his income for his own benefits. It is purely a finding on fact. No interference is called for by this court.

We do not find any justified reason to interfere with the order of the Tribunal. Accordingly, the reference application is rejected.