

**(1986) 10 MP CK 0016**

**In the Madhya Pradesh High Court**

**Case No : Miscellaneous Civil Case No. 298 of 1982**

NARENDRA KUMAR RAJENDRA KUMAR JAIN

APPELLANT

Vs

COMMISSIONER OF Income Tax.

RESPONDENT

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**Date of Decision : 08-10-1986**

**Acts Referred:**

Income Tax Act, 1961 — Section 271

**Citation : (1987) 61 CTR 48 : (1987) 167 ITR 488**

**Hon'ble Judges : G. G. Sohani, Acting C.J.**

**Bench : Division Bench**

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## **Judgement**

G. G. SOHANI, ACTG. C.J. - This is an application u/s 256(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

The material facts giving rise to this application briefly are as follows : For the assessment year 1971-72, the applicant had filed a return disclosing its income at Rs. 53,414. While framing the assessment, the Income Tax Officer rejected the claim of the applicant for certain deductions and assessed the total income at Rs. 99,499. The Income Tax Officer also initiated penalty proceedings against the assessee and imposed a penalty of Rs. 38,526. The appeal preferred by the assessee before the Appellate Assistant Commissioner was allowed. However, on further appeal by the Revenue before the Tribunal, the Tribunal upheld the order passed by the Income Tax Officer imposing penalty to the extent of Rs. 10,070. On an application made by the assessee u/s 256(1) of the Act, the Tribunal held that no question of law arose out of the order passed by the Tribunal and the Tribunal, therefore, declined to make a reference. Hence the assessee has filed this application.

Having heard learned counsel for the parties, we have come to the conclusion that the application deserves to be allowed. The question as to whether the failure on the part of an assessee to substantiate the claim for deductions would, on the facts and in the circumstances of a case, amount to concealment of the particulars of its income as contemplated by the provisions of section 271(1)(c)

of the Act, arises in this case. Therefore, in our opinion, the following question of law arises out of the order passed by the Tribunal :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that the assessee was guilty of concealing the particulars of his income and was liable to pay penalty under the provisions of section 271(1) (c) of the Act."

For all these reasons, this application is allowed. The Tribunal is directed to state the case and to refer the aforesaid question of law to this court for its opinion. In the circumstances of the case, parties shall bear their own costs of this case.