

(1999) 04 MP CK 0006

Madhya Pradesh High Court (Indore Bench)

Case No: Criminal Revision No. 275 of 1995

Modern Agrico Industries and
Another

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision: April 3, 1999

Acts Referred:

- Income Tax Act, 1961 - Section 269T, 276E, 278B

Citation: (2000) 241 ITR 414 : (2003) 128 TAXMAN 837

Hon'ble Judges: Deepak Verma, J

Bench: Single Bench

Advocate: D.M. Shah, for the Appellant; S.K. Pawanekar, for the Respondent

Judgement

Deepak Verma, J.

This revision has been preferred by the petitioners against the judgment and order of conviction dated April 17, 1995, passed by the XIIIth Additional Sessions Judge, Indore, in Criminal Appeal No. 78 of 1993, whereby the conviction of the petitioners u/s 276E read with Section 278B of the Income Tax Act, 1961 (for brevity, hereinafter the "Act"), has been maintained and they have been imposed a fine of Rs. 5,000 each with imprisonment till rising of the court.

2. The respondent herein filed a complaint u/s 276E read with Section 278B of the Act against the petitioners along with one Rajeev Puri and partners on the ground that they had made the payment of loan to the tune of Rs. 1,35,000 to one Marvellous Fabricators, during the assessment year 1985-86 in cash, whereas, the same should have been made either by account payee cheque or by a demand draft. According to them this was in contravention of Section 269T of the Act.

3. It is not in dispute that the prosecution of the present petitioners was launched after April 1, 1989, when Section 276E of the Act stood deleted and the sanction was even granted later, i.e., on March 5, 1991. Learned counsel for the petitioners, Shri

D. M. Shah, has strenuously submitted, that the whole proceedings stand vitiated. He has also placed reliance on a judgment of the learned single judge of this court, reported in [Harikishan Vs. Union of India \(UOI\)](#), , in which, it has been clearly held that prosecution launched for commission of an offence u/s 276E of the Act after April 1, 1989, would not be maintainable.

4. Learned counsel for the respondent, was not able to show any contrary view to this court. Even otherwise, as the facts stand, it cannot be disputed in this case, that the petitioners were prosecuted for commission of an offence, which had stood deleted from the statute book on the date when their prosecution was launched. Thus, in the considered opinion of this court, the whole proceedings themselves were vitiated.

5. In this view of the matter, the judgments of the two courts below are hereby set aside and quashed. The amount of fine is directed to be refunded back to the petitioners on its due verification. The revision is allowed to the extent mentioned above.