

**(1980) 10 MP CK 0004**

**Madhya Pradesh High Court**

**Case No:** Miscellaneous Civil Case No. 537 of 1974

Commissioner of Income Tax

APPELLANT

Vs

Raipur Provincial Engineering  
Co.

RESPONDENT

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**Date of Decision:** Oct. 10, 1980

**Acts Referred:**

- Income Tax Act, 1961 - Section 256(2)

**Citation:** (1983) 14 TAXMAN 327

**Hon'ble Judges:** G.P. Singh, C.J; Faizanuddin, J

**Bench:** Division Bench

**Final Decision:** Dismissed

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**Judgement**

1. This is an application u/s 256(2) of the income tax Act, 1961 ("the Act"), by the department. The Tribunal by its order dated 27-11-1973, set aside the penalty of rupees one lakh which was imposed on the assessee in respect of the assessment year 1963-64, on the ground that the assessment itself had been set aside by the AAC. The learned counsel for the applicant submits that the Tribunal instead of deciding the appeal against penalty should have adjourned it and heard it along with the appeal of the department against the order of the AAC setting aside the assessment. This question was not raised before the Tribunal at the time when the appeal against the penalty was heard. The question cannot, therefore, be said to arise out of the Tribunal's order.

2. The application is dismissed, but without any order as to costs.