

**(1988) 03 MP CK 0008**

**Madhya Pradesh High Court**

**Case No:** Miscellaneous Civil Cases No"s. 325 and 327 of 1982

COMMISSIONER OF Income Tax

APPELLANT

Vs

ANWARKHAN MEHBOOB CO.

RESPONDENT

**Date of Decision:** March 1, 1988

**Acts Referred:**

- Income Tax Act, 1961 - Section 271

**Citation:** (1988) 74 CTR 135 : (1988) 174 ITR 568

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

**Bench:** Division Bench

**Judgement**

G. G. SOHANI, ACTG. C.J. - The order in this case will also govern the disposal of Miscellaneous Civil Case No. 327 of 1982.

These are applications u/s 256 (2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

The material facts giving rise to these applications briefly are as follows : As there was a delay by the assessee in filing the returns for the assessment years 1972-73 and 1974-75, the Income Tax Officer initiated penalty proceedings u/s 271(1)(a) of the Act. After taking into consideration the explanation of the assessee, the Income Tax Officer held that the assessee was liable to pay penalty for the entire period of delay. The Income Tax Officer accordingly imposed penalty u/s 271(1)(a) of the Act. Aggrieved by these orders, the assessee preferred appeals before the Commissioner of Income Tax (Appeals). These appeals were dismissed. On further appeals before the Tribunal, the Tribunal held that though there was reasonable cause for the delay of a period of one year, the assessee was unable to satisfy that the delay thereafter was on account of any reasonable cause. In this view of the matter, the Tribunal partly allowed the appeals and remanded the cases to the Income Tax Officer for working out the relief admissible to the assessee in the light of the order passed by the Tribunal. Aggrieved by that order, the Revenue sought

reference but as the applications made in that behalf were rejected by the Tribunal, the Revenue has filed these applications.

Having heard the learned counsel for the Revenue, we have come to the conclusion that these applications deserve to be rejected. The Tribunal has found that the assessee was able to make out that the delay in filing returns for a period of one year was on account of reasonable cause. It was urged by learned counsel for the Revenue that the Tribunal erred in condoning delay for one year. But the question as to whether there was or was not reasonable cause for delay is a question of fact. Learned counsel for the Revenue contended that in Miscellaneous Civil Case No. 303 of 1982 in COMMISSIONER OF Income Tax Vs. ANWARKHAN MEHBOOB CO., decided by this court on July 24, 1985, this court had directed the Tribunal in similar circumstances to make a reference. We sent for the record of Miscellaneous Civil Case No. 303 of 1982 and we found that the facts of that case were entirely different. In that case, this court directed the Tribunal to refer the following question of law :

"Whether the Tribunal has made any operative order in accordance with law relating to the imposition of penalty for the assessment year 1970-71 ?"

The question as to whether the Tribunal has made any operative order does not at all arise in the instant case. As already observed, the question sought to be referred in these cases is whether there was any reasonable cause for the delay in filing the return for a period of one year. The Tribunal has found that there was reasonable cause. This is a finding of fact. As no question of law is shown to arise out of the order of the Tribunal, the applications deserve to be rejected.

The applications are accordingly rejected. There shall be no order as to costs.