

SUPREME COURT OF INDIA

Additional Commr. of I.T., Gujarat, Ahmedabad

Vs.

Swastik Mineral Corpn., Gandidham

C.A.No.439 of 1973

(Y. V. Chandrachud and P. S. Kailasam, JJ.)

29.07.1977

JUDGEMENT

CHANDRACHUD, J.:-

1. This is an appeal by special leave from a judgment of the Gujarat High Court dated March 2, 1972 rejecting an application filed by the appellant, the Additional Commissioner of Income-tax, Ahmedabad, under S. 256 (2) of the Income-tax Act, 1961, asking that the Income-tax Appellate Tribunal be directed to refer a certain question of law to the High Court.

2. The Tribunal has set aside the penalty of Rs. 7.500/- levied on the assessee by the Income-tax officer and confirmed by the Inspecting Assistant Commissioner following a judgment of this Court in C. I. T. v. Anwar Ali, 76 ITR 696. (AIR 1970 SC 1782). We see the plausibility of Mr. Ahuja's submission on behalf of the appellant, that the Tribunal appears to have overlooked the amendment made by Act 5 of 1964 to S. 271 of the Income-tax Act, 1961. The word "deliberately", which occurred in the unamended section, was omitted by the amendment and an explanation was added to that section which was previously not there. These amendments, undoubtedly, ought to have been

considered by the Tribunal, but taking an overall view of the matter we are unable to agree that this is a fit case for asking the Tribunal to make a reference to the High Court. We would only like to add that the circumstance that we are dismissing this appeal, shall not be construed as our approval of the Tribunal's judgment.

3. The appeal is accordingly dismissed.

Appeal dismissed.