

**Laxmi Stores Vs. Union of India**

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**SooperKanoon Citation :** [sooperkanoon.com/772583](http://sooperkanoon.com/772583)

**Court :** Rajasthan

**Decided On :** Dec-17-2002

**Reported in :** [2003]131TAXMAN258(Raj)

**Appeal No. :** S.B. Writ Petition No. 800 of 1991 17 December 2002

**Appellant :** Laxmi Stores

**Respondent :** Union of India

**Advocate for Pet/Ap. :** Vineet Kothari, *for the Assessee Sandeep Bhandawat, for the Revenue*

**Judgement :**

Heard learned counsel for the parties.

2. Petitioner M/s. Laxmi Stores, Udaipur carries on business as dealer of cigarettes at Udaipur. A search of the petitioner-firm was conducted on 9-1-1986 by the authorities of the respondent-department, in which certain incriminating record was seized relating to charging of 'premium/on money' from the retailers. The petitioner-firm had not paid any tax on the above amount nor had shown that income in their return for the assessment years 1985-86, 1986-87, therefore, not only penalty under, section 271(1)(c) was imposed against the petitioner but prosecution under section 276C of the Income Tax Act was also sanctioned vide orders Annexures 11 and 12 dated 8-2-1990. Accordingly, complaint Annexures 13 was filed before the learned Chief Judicial Magistrate (Economic Offences),

Jaipur. Hence this petition.

This court, after hearing learned counsel for the petitioner, on 22-2-1991, stayed the prosecution proceedings referred above.

3. Learned counsel for the petitioner submits that against orders Annexures 6 and 7, the Commissioner (Appeals) dismissed its appeal vide Annexures 8 dated 7-3-1990, however, learned Tribunal has accepted the second appeal vide order dated 11-12-1997, for both the assessment years, deleting the penalty referred above. A copy of the order dated 11-12-1997 has been filed today, with the prayer that when penalty itself has been quashed criminal prosecution should also be set aside. It is further submitted that a Division Bench of this court in Union of India v. Singhvi Bros. (SAW No. 128 of 1990 dated 14-11-2002) has held that if penalty is quashed, prosecution need not continue.

4. Learned counsel for the department is not in a position to controvert the Division Bench judgment referred to hereinabove.

5. Consequently, there is merit in this petition and the same is accepted and Annexures 11, 12 and 13 to the writ petition are hereby quashed.

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