

Commissioner Of Income-Tax, Kerala vs Associated Engineering Corporation ... on 27 January, 1969

Equivalent citations: [1970]75ITR357(SC)

Author: J.C. Shah

Bench: A.N. Grover, J.C. Shah

JUDGMENT

J.C. Shah, J.

1. The question referred to the Tribunal is covered by the judgment of this Court in M. M. Parikh, Income-tax Officer v. Navanagar Transport and Industries Ltd. [1967] 63 I.T. Rule 663 (S.C.). This Court held that an order passed under Section 23 A of the Indian Income-tax Act, 1922, after it was amended by the Finance Acts of 1955 and 1957 directing payment of additional supertax by a company to which the section applies and which has not distributed dividend as prescribed therein is not an order of assessment within the meaning of Section 34(3) of the Act and to such an order the period of limitation prescribed under Section 34(3) does not apply.

2. The same point falls to be determined in this case in respect of the assessment year 1956-57. An order was passed under Section 23A of the Act on April 15, 1963. The order was passed indisputably more than four years after the end of the year of assessment in which the income could be assessed. In view of the judgment of this Court in the Navanagar Transport case [1967] 63 I.T. Rule 663 (S.C.) the order is not an order of assessment. Not being an order of assessment the period of limitation prescribed by Section 34(3) has no application.

3. The appeal is therefore allowed and the order passed by the High Court is set aside. The answer to the question referred will be that the order is not barred by limitation under Section 34(3) of the Income-tax Act, 1922.

4. The appellant will be entitled to his costs from the respondent in this Court.