Commissioner Of Wealth Tax, Amritsar vs Suresh Seth on 7 April, 1981

Equivalent citations: 1981 AIR 1106, 1981 SCR (3) 419, AIR 1981 SUPREME COURT 1106, 1981 TAX. L. R. 786, 1981 SCC (TAX) 168, 1681 (1) SCWR 363, 129 ITR 328, (1981) 129 ITR 328, (1981) 21 CURTAXREP 349, (1981) 1 SCWR 363, 1981 UPSTJ 941, 61 TAXATION 53, 1981 UJ (SC) 555, (1981) 61 TAXATION 53, (1981) 6 TAXMAN 35, 1981 (2) SCC 790

Author: E.S. Venkataramiah

Bench: E.S. Venkataramiah, R.S. Pathak

PETITIONER:
COMMISSIONER OF WEALTH TAX, AMRITSAR

Vs.

RESPONDENT:
SURESH SETH

DATE OF JUDGMENT07/04/1981

BENCH:
VENKATARAMIAH, E.S. (J)
BENCH:
VENKATARAMIAH, E.S. (J)
PATHAK, R.S.

CITATION:
1981 AIR 1106 1981 SCR (3) 419
1981 SCC (2) 790 1981 SCALE (1)729
CITATOR INFO :
D 1984 SC1194 (28)
O 1986 SC 293 (13,15,16,18)

ACT:
Wealth Tax Act, 1957 -Scope of section 18(1) (a) of the Act-Whether the offence relating to the omission to file the Wealth Tax Returns was a continuing offence-Penalty has to be computed in accordance with the law in force on the last day on which the return in question has to be filed-The 1964 and 1969 Amendments to the Wealth Tax Act has no retrospective effect.

HEADNOTE:

The assessee-respondent filed his Wealth Tax returns for the assessment years 1964-65 and 1965-66 on March 18, 1971, while he was required by section D 14(1) of the Act to file the return for the assessment year 1964-65 on or before June 30, 1964 and the return for the assessment year 1965-66 on or before June 30, 1965. The Wealth Tax officer completed the assessment for the said years on March 22, 1971 and also commenced proceedings for levying penalty under section 18(1) (a) of the Act for the late submission of returns. The Wealth Tax officer levied the penalties for different periods at different rates, as provided by the 1964 and 1969 Amendments. treating the failure to file the return in time as a "continuing offence". The orders levying penalties were upheld in appeal by the Appellate Assistant Commissioner and the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar. A consolidated reference made by the Tribunal at the instance of the assessee was answered by the High Court of Punjab in favour of the assessee after rejecting the contention of the department that the default or failure to file the return in time was a continuing default and that the penalty had to be computed for the period prior to April 1, 1965 in accordance with section 18 as it stood prior to its amendment by the Wealth-tax (Amendment) Act, 1964, for the period between April 1, 1965 to March 31, 1969 in accordance with section 18 of the Act as amended by the Wealth-tax (Amendment) Act, 1964 and for the period between April 1, 1969 to March 18, 1971 (on which date the returns were filed) in accordance with section 18 of the Act as amended by the Finance Act, 1969. Aggrieved by the decision of the High Court, the Department has filed these appeals under Article 136 of the Constitution. G

Dismissing the appeals, the Court

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HELD 1:1. Where the default complained of is one falling under section 18(1) (a) of the Wealth Tax Act, the penalty has to be computed m accordance with the law in force on the last day on which the return in question had to be filed. Neither the amendment made in 1964 nor the amendment made in 1969 has retrospective effect. [434 C-D] 420

1:2. Section 18 of the Wealth Tax Act does not require the assessee to file a return during every month after the last day to file it is over. Non-performance of any of the acts mentioned in section 18(1) (a) of the Act gives rise to a single default and to a single penalty, the measure of which, however, is geared up to the time lag between the last date on which the return has to be filed and the date on which it is filed. The default, if any committed is committed on the last date allowed to file the return. The default cannot be one committed every month thereafter. [433 G-H, 434 A]

1:3. The words "for every month during which the

default continued" indicate only the multiplier to be adopted in determining the quantum of penalty and do not have the effect of making the default in question a continuing one. Nor do they make the amended provisions modifying the penalty applicable to earlier defaults in the absence of necessary provisions in the amending Acts. The principle underlying section 6 of the General Clauses Act is clearly applicable to these cases. [434 B-C]

2:1. A liability in law ordinarily arises out of an act of commission or an act of omission. When a person does an act which law prohibits him from doing it and attaches a penalty for doing it, he is stated to have committed an act of commission which amounts to a wrong in the eye of law. Similarly when a person omits to do an act which is required by law to be performed by him and attaches a penalty for such omission, he is said to have committed an act of omission which is also a wrong in the eye of law. Ordinarily a wrongful act or failure to perform an act required by law to be done becomes a completed act of commission or of omission, as the case may be, as soon as the wrongful act is committed in the former case and when the time prescribed by law to perform an act expires in the latter case and the liability arising therefore gets fastened as soon as the act of commission or of omission is completed. The extent of that liability is ordinarily measured according to the law in force at the time of such completion. In the case of acts amounting to crimes the punishment to be imposed cannot be enhanced at all under our Constitution by any subsequent legislation by reason of Article 20(I) of the Constitution which declares that no person shall be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. In other cases, however, even though the liability may be enhanced it can only be a subsequent law (of course subject to the Constitution which either by express words or by necessary implication provides for such enhancement. [429 G-H, 430 A-D]

2:2. The distinctive nature of a continuing wrong is that the law that is violated makes the wrongdoer continuously liable for penalty. A wrong or default which is complete but whose effect may continue to be felt even after its completion is, however, not a continuing wrong or default. [430 D-E]

2:3. The court should not be eager to hold that an act or omission is a continuing wrong or default unless there are words in the statute concerned which make out that such was the intention of the legislature. In the instant case when ever the question of levying penalty arises what has to be first considered is whether the assessee has failed without reasonable cause to file the return as re-
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quired by law and if it is held that he has failed to do so then penalty has to be levied in accordance with the measure

provided in the Act. When the default is the filing of a delayed return the penalty may be correlated to the time lag between the last day for filing it without penalty and the day on which it is filed and the quantum of tax or wealth involved in the case for purposes of determining the quantum of penalty but the default however is only one which takes place on the expiry of the last day for filing the return without penalty and not a continuing one. The default in question does not, however, give rise to a fresh cause of action every day. [430 E-H]

2:4. Where the wrong complained of is the omission to perform a positive duty requiring a person to do a certain act the test to determine whether such a wrong is a continuing one is whether the duty in question is one which requires him to continue to do that act. Breach or a covenant to keep the premises in good repair, breach of a continuing guarantee obstruction to a right of way, obstruction to the right of a person to the unobstructed flow of water, refusal by a man to maintain his wife and children whom he is bound to maintain under law and the carrying on of mining operations or the running of a factory without complying with the measures intended for the safety and well-being of workmen may be illustrations of continuing breaches or wrongs giving rise to civil or criminal liability, as the case may be, de die in diem. [433 A-D]

Hole v. Chard Union, [1894] 1 Ch. D. 293, quoted with approval.

State v. A. Bhiwandiwalla, A. I. R. 1955 Bom. 161; The State v. Kunja Behari Chandra and Ors. A.I.R. 1954 Patna 371, approved,

Balkrishna Savalram Pujari and Ors. v. Shree Dayaneshwar Maharaj Sansthan and Ors., [1959] Supp. 2 S.C.R. 476, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 768-769 of 1978.

Appeals by Special Leave from the Judgment and order dated 28.1.1977 of the Punjab and Haryana High Court in Income Tax Reference No. 29 of 1975.

B.B. Ahuja and Miss A. Subhashini for the Appellant. G.C. Sharma, E.D. Helms, R.S. Sharma and K.B. Rohtagi for the Respondent.

The Judgment of the Court was delivered by VENKATARAMIAH, J. The Commissioner of Wealth Tax, Amritsar has filed the above appeals by special leave against the judgment of the High Court of Punjab and Haryana in a reference made under section 27(1) of the Wealth-tax Act, 1957 (hereinafter referred to as 'the Act') answering in favour of the assessee the following two questions:

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the offence relating to the omission to file the Wealth tax returns was a continuing offence ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law upholding the penalties of Rs. 5382/- and Rs. 7759/- levied by the department on the assessee under section 18(1)(a) of the Wealth-tax Act, 1957, for the assessment years 1964-65 and 1965-66 respectively ?"

The assessee, the respondent in these appeals filed his wealth tax returns for the assessment years 1964-65 and 1965-66 on March 18, 1971 while he was required by section 14(1) of the Act to file the return for the assessment year 1964-65 on or before June 30, 1964 and the return for the assessment year 1965-66 on or before June 30, 1965. The Wealth-tax Officer completed the assessments for the aforementioned years on March 22, 1971 determining the total wealth at Rs. 1,45,800/- for the assessment year 1964-65 as against the declared wealth of Rs. 1,38,550/- and at Rs. 1,65,200/- for the assessment year 1965-66 as against the declared wealth of Rs. 1,59,127/- and also commenced proceedings for the levying penalty under section 18(1)(a) of the Act for late submission of returns. Ultimately the penalties were levied as follows:

"Assessment year 1964-65:

(i) For the period from 1.7.64 to 31.3.69:

Penalty at 2% p.m. subject to maximum of 50% of the wealth-tax payable under section 18(1)(a) before its amendments on 1.4.69 by the Finance Act, 1969: Rs. 115/-

(ii) For the period from 1.4.69 to 18.3.71:

Penalty at 1/2% of the net wealth for each month of the default under section 18(1)(a) as amended by the Finance Act, 1969: Rs. 5,267/-

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Rs. 5,382/-

Assessment year 1965-66:

(i) For the period from 1.7.65 to 30.3.69:

Penalty at 2% p.m. subject to maximum of 50% of the wealth-tax payable under section 18(1)(a) before its amendment on 1.4.69 by the Finance Act, 1969: Rs.163/-

(ii) For the period from 1.4.69 to 18.3.71:

Penalty at 1/2% of the net wealth for each month of default under section 8(1)(a) as amended on 1.4.69 by the Finance Act, 1969: Rs. 7,596/-

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Rs. 7,759/-

The above orders levying penalties were upheld in appeal by the Appellate Assistant Commissioner and the Income-tax Appellate Tribunal, Amritsar Bench, Amritsar. At the instance of the assessee a consolidated reference was made by the Income-tax Appellate 'Tribunal to the High Court referring the above two questions for its opinion. The High Court answered the said questions in favour of the assessee after rejecting the contention of the department that the default or failure to file the return in time was a continuing default and that the penalty had to be computed for the period prior to April 1, 1965 in accordance with section 18 as it stood prior to its amendment by the Wealth- tax (Amendment) Act, 1964, for the period between April 1, 1965 to March 3], 1969 in accordance with section 18 of the Act as amended by the Wealth-tax (Amendment) Act, 1964 and for the period between April 1,]969 to March 18, 1971 (on which date the returns were filed) in accordance with sec. 18 of the Act as amended by the Finance Act, 1966. Aggrieved by the decision of the High Court, the Department has filed these appeals under Article 136 of the Constitution .

Before dealing with the contentions of the parties, it is appropriate to set out the provisions of the Act which have a bearing on the question involved in the present appeals as they stood during the relevant periods:

Prior to April 1, 1965, sub-sections (1) and (3) of section 14 of the Act stood as follows:-

"14. Return of wealth-(1) Every person whose net wealth on the valuation date was of such amount as to render him liable to wealth-tax under this Act shall, before the thirtieth day of June of the corresponding assessment year, furnish to the Wealth-tax officer a return in the prescribed form and verified in the prescribed manner setting forth his net wealth as on the valuation date;

(2).....

(3) The Wealth-tax officer may, if he is satisfied that it is necessary so to do, extend the date for the delivery of return under this section."

After April 1, 1965:

"14. (1) Every person, if his net wealth or the net wealth of any other person in respect of which he is assessable under this Act on the valuation date was of such an amount

> as to render him liable to wealth-tax under this Act, shall, before the thirtieth day of June of the corresponding assessment year, furnish to the Wealth-tax officer a return in the prescribed form and verified in the prescribed manner setting forth the net wealth as on the valuation date.
>
> (2).....
>
> (3) The Wealth-tax officer may, if he is satisfied that it is necessary so to do, extend the date for the delivery of the return under this section."

Section 15 of the Act which has not undergone any change since the commencement of the Act reads:

> "15. Return after due date and amendment of return-If any person has not furnished a return within the time allowed under section 14 or having furnished a return under that section discovers any omission or a wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the assessment is made."

The relevant parts of section 18 of the Act as they stood during the three periods referred to above read as follows:-

> Prior to April 1, 1965 "18. (1) If the Wealth-tax officer, Appellate Assistant Commissioner, Commissioner or Appellate Tribunal in the course of any proceedings under this Act is satisfied that any person-

(a) has without reasonable cause failed to furnish the return of his net wealth which he is required to furnish under sub-section (1) or sub-section (2) of section 14 or section 17 or has without reasonable cause failed to furnish it within the time allowed and in the manner required; or

(b) .....

(c) .....

he or it may, by order in writing, direct that such person shall pay by way of penalty-

(i) in the case referred to in clause (a), in addition to the amount of wealth-tax payable by him, a sum not exceeding one and a half times the amount of such tax, and .. "

> Between April 1, 1965 and March 31, 1969 "18. (1) If the Wealth-tax officer, Appellate Assistant Commissioner, Commissioner or Appellate Tribunal in the course of any proceedings under this Act is satisfied that any person-

(a) has without reasonable cause failed to furnish the return of his net wealth which he is required to furnish under sub-section (a) of section 14 or by notice given under sub-section (2) of section 14 or section 17 or has without reasonable cause failed to furnish it within the time allowed and in the manner required by sub-section (1) of section 14 or by such notice, as the case may be; or

(b) .....

(c) .....

he or it may, by order in writing, direct that such person shall pay by way of penalty-

(i) in the cases referred to in clause (a), in addition to the amount of wealth-tax, if any, payable by him, a sum equal to two per cent of the tax for every month during which the default continued, but not exceeding in the aggregate fifty per cent of the tax;

After April 1, 1969 and as on March 18, 1971 on which date the returns were filed "18. (1) If the Wealth-tax officer, Appellate Assistant Commissioner, Commissioner or Appellate Tribunal in the course of any proceedings under this Act is satisfied that any person-

(a) has without reasonable cause failed to furnish the return which he is required to furnish under sub- section (1) of section 14 or by notice given under sub-section (2) of section 14 or section 17, or has without reason able cause failed to furnish within the time allowed and in the manner required by sub-section (1) of section 14 or by such notice, as the case may be; or

(b) .....

(c) .....

he or it may, by order in writing, direct that such person shall pay by way of penalty-

(i) in the cases referred to in clause (a), in addition to the amount of wealth-tax, if any, payable by him, a sum, for every month during which the default continued, equal to one-half per cent of-

(A) the net wealth assessed under section 16, as reduced by the amount of net wealth on which in accordance with the rates of wealth tax specified in Paragraph A of Part I of the Schedule or Part II of the Schedule, the wealth-tax chargeable is nil; or (B) the net wealth assessed under section 17, where assessment has been made under that section, as reduced by-

(1) the net wealth, if any, assessed previously under section 16 or section 17 or (2) the amount of net wealth on which in accordance with the rates of wealth-tax specified in Paragraph A of Part I of the Schedule or Part II of the Schedule, the wealth tax chargeable is nil, whichever is greater, but not exceeding, in the aggregate, an amount equal to the net wealth assessed under section 16, or, as the case may be, the net wealth assessed under section 17, as reduced in either case in the manner

aforesaid;....."

Now let us analyse the above provisions of law. Section 14 of the Act which has not undergone any material change from the commencement of the Act in so far as the question involved in these appeals is concerned requires a person the value of whose wealth is such as would attract the liability to pay tax to file a return of his wealth as on the valuation date in the prescribed manner before the Wealth- tax Officer on or before the thirtieth of June of the assessment year or on or before any date upto which the Wealth-tax officer has extended the time to file the return. Section 15 of the Act, however, enables such a person to file a return at any time before the assessment is made. The distinction between section 14 and section 15 of the Act lies in the fact that whereas under section 14 a duty is imposed on the assessee to file a return within the prescribed date, section 15 enables him to file a return before the assessment is made even though the last date prescribed by section 14(1) is over. Section 18 of the Act deals with three types of penalties for certain specified acts or omissions on the part of the assessee referred to in clauses (a), (b) and (c) of sub-section (1) thereof. We are concerned in this case with the question of levy of penalty in respect of omissions referred to in clause (a) of section 18(1) of the Act. There are four kinds of omissions referred to in that clause-(i) failure to furnish the return which the assessee is required to furnish under sub-section (i) of section 14; (ii) failure to furnish the return as required by a notice issued under section 14(2) or section 17, (iii) failure to furnish the return as required by section 14(1) within the time allowed and in the prescribed manner and

(iv) failure to furnish the return as required by a notice issued under section 14(2) or section 17 within the time allowed and in the prescribed manner. Each one of these omissions expose the assessee to the levy of penalty unless reasonable cause is shown for not performing the duty. In clause (i) of section 18(1) of the Act, the penalty leviable for any of the omissions referred to in section 18(1)(a) is set out but the measure of penalty imposable has varied from time to time. Prior to April 1, 1965 the penalty imposable was a sum not exceeding one and a half times the amount of wealth tax payable by the assessee during the assessment year in question. Within the outer limit referred to above, The officer concerned or the Tribunal as the case may be could impose any amount as penalty having regard to all the relevant circumstances of the case including perhaps the time that had elapsed from the last day allowed to file the return. Between April 1, 1965 and March 31, 1969 the measure of penalty was regulated by section 18 of the Act as amended in 1964. During that period the penalty imposable was a sum equivalent to two per cent of the tax for every month during which the default continued but not exceeding in the aggregate fifty per cent of the tax. The penalty leviable during this period was less onerous than it was before April 1, 1965. Then came the amendment made by the Finance Act of 1969. After April 1, 1969 by reason of the amendment introduced by the Finance Act of 1969 the penalty imposable was altered to a sum for every month during which the default continued equal to one- half per cent of the net wealth calculated in accordance with the amended provisions in section 18. The penalty leviable during this period was more drastic than what it was before. One significant difference between the law as it existed prior to April 1, 1965 and the law as it existed during the subsequent two periods is that whereas during the period prior to April I, 1965 there was no specific reference in clause (i) of section 18 (a) to the time lag between the last date on which the return had to be filed and the date on which it was actually filed, the said factor was expressly required to be taken into consideration after April 1, 1965

while determining the penalty payable by the assessee. Another significant factor which requires to be borne in mind is that neither the Wealth-tax (Amendment) Act, 1964 nor the Finance Act, 1969 by which section 18 of the Act was amended expressly stated that the amended provisions of section 18 would be applicable to an assessee who had failed to file the return in respect of any preceding assessment year and the said default had continued after the amendment came into force except using the phrase "for every month during which the default continued", in that part of section 18 which prescribed the measure of penalty.

The contention of the Department is that whatever may have been the position of law before April 1, 1965, on and after that date the default committed by an assessee in not filing a return as required by section 14(1) of the Act amounted to a continuing wrong which attracted the penalty as provided by the law in force at the time when such default continued. In other words it is contended that in this case since the assessee who had to file a return after April 1, 1965 for assessment year 1965-66 had not f led the same till March 13, 1971 penalty had to be computed for the period upto April 1, 1969 under the provisions of section 18 of the Act as it stood during that period and for the subsequent period additional penalty should be levied in accordance with section 18 as amended by the Finance Act, 1969. Relying upon the decision of the Kerala High Court in Commissioner of Wealth-tax, Kerala v. Smt. V. Pathummabi it is argued that amendments made in 1964 and 1969 brought about a qualitative change in the nature of the default contemplated under section 18 and that what could have been a completed default before April 1, 1965 became a continuing default. Even assuming that this argument is correct it has to be held that the decision of the High Court in so far as the default committed by the assessee in not filing the return in respect of the assessment year 1964-65 is concerned is not erroneous. What remains to be considered is whether the decision in respect of the default committed by the assessee in not filing the return due on June 31), 1955 for the assessment year 1965-66 is liable to be interfered with.

To repeat, the relevant part of section 18 of the Act can be divided into two parts-the first part contained in clause (a) of section 18(1) setting out the gist of the default and the second part prescribing the measure of penalty. The former part has more or less remained the same from the commencement of the Act and it is only the latter part which has undergone changes. The question is whether by reason of the changes in the latter pari, there has been a change in the nature of the wrong referred to in section 18 (1) (a) of the Act.

A liability in law ordinarily arises out of an act of commission or an act of omission. When a person does an act which law prohibits him from doing it and attaches a penalty for doing it, he is stated to have committed an act of commission which amounts to a wrong in the eye of law. Similarly when a person omits to do an act which is required by law to be performed by him and attaches a penalty for such omission, he is said to have committed an act of omission which is also a wrong in the eye of law. Ordinarily a wrongful act or failure to perform an act required by law to be done becomes a completed act of commission or omission, as the case may be, as soon as the wrongful act is committed in the former case and when the time prescribed by law to perform an act expires in the latter case and the liability arising therefrom gets fastened as soon as the act of commission or of omission is completed. The extent of that liability is ordinarily measured according to the law in force at the time of such completion. In the case of acts amounting to crimes the punishment to be

imposed cannot be enhanced at all under our Constitution by any subsequent legislation by reason of Article 20 (I) of the Constitution which declares that no person shall be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. In other cases, however, even though the liability may be enhanced it can only be done by a subsequent law (of course subject to the Constitution) which either by express words or by necessary implication provides for such enhancement. In the instant case the contention is that the wrong or the default in question has been altered into a continuing wrong or default giving rise to a liability de die in diem, that is, from day to day. The distinctive nature of a continuing wrong is that the law that is violated makes the wrong doer continuously liable for penalty. A wrong or default which is complete but whose effect may continue to be felt even after its completion is, however, not a continuing wrong or default. It is reasonable to take the view that the court should not be eager to hold that an act or omission is a continuing wrong or default unless there are words in the statute concerned which make out that such was the intention of the legislature. In the instant case whenever the question of levying penalty arises what has to be first considered is whether the assessee has failed without reasonable cause to file the return as required by law and if it is held that he has failed to do so then penalty has to be levied in accordance with the measure provided in the Act. When the default is the filing of a delayed return the penalty may be correlated to the time lag between the last day for filing it without penalty and the day on which it is filed and the quantum of tax or wealth involved in the case for purposes of determining the quantum of penalty but the default however is only one which takes place on the expiry of the last day for filing the return without penalty and not a continuing one. The default in question does not, however, give rise to a fresh cause of action every day. Explaining the expression 'a continuing cause of action' Lord Lindley in Hole v. Chard Union observed:

> "What is a continuing cause of action ? Speaking accurately, there is no such thing; but what is called a continuing cause of action is a cause of action which arises from the repetition of acts or omissions of the same kind as that for which the action was brought."

In the same decision, Lord Justice A. L. Smith who concurred with the above view said:

> "If once a cause of action arises, and the acts com plained of are continuously repeated, the cause of action continues and goes on de die in diem. It seems to me that there was a connection in the present case between the series of acts before and after the action was brought; they were repeated in succession, and became a continuing cause of action. They were an assertion of the same claim-namely, a claim to continue to pour sewage into the stream-and a continuance of the same alleged right. In my opinion, there was here a continuing cause of action within the meaning of the rule."

The distinction between a continuing offence and an offence which is not a continuing one is well brought out in the decision of the High Court of Bombay in State v. A. H. Bhiwandiwalla. In that case, the accused-respondent had been charged with two offences namely, (a) failure to apply for registration of his factory and to give notice of occupation and (b) running the factory without a

licence issued under the Factories Act, 1948. The accused had a plea of limitation against the prosecution. In that context the High Court observed:

> "In civil law, we often refer to a continuing or recurring cause of action. Similarly, even in criminal law the expression "continuing offence" is frequently used. As observed by Beaumount C. J. in-'Emperor v. Chhotalal Amarchand', AIR 1937 Bom 1 (FB) the expression "continuing offence" is not a very happy expression. It assumes, says the learned Chief Justice-
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> ".. that you can have a continuing offence in the sense in which you can have a continuing tort, or a continuing breach of contract, and I doubt, myself whether the assumption is well founded, having regard to the provisions of the Criminal Procedure Code as to the framing of charges and as to the charges which can be tried at one and the same trial. It is quite clear that you could not charge a man with committing an offence 'de die in diem' over a substantial period."

Even so, this expression has acquired a well- recognised meaning in criminal law. If an act committed by an accused person constitutes an offence and if that act continues from day to day, then from day to day a fresh offence is committed by the accused so long as the act continues. Normally and in the ordinary course an offence is committed only once. But we may have offences which can be committed from day to day and it is offences falling in this latter category that are described as continuing offences."

Accordingly the High Court of Bombay held in Bhiwandiwalla's case (supra) that the failure to apply for registration of the factory under the Factories Act and to give notice of occupation thereof was not a continuing offence but the running of the factory without a licence issued thereunder was a continuing offence.

Section 39 of the Indian Mines Act, 1923 which came up for consideration before the Patna High Court in The State v. Kunja Behari Chandra & Ors. on which reliance was placed by the Revenue is a case of continuing offence. Section 39 provided:

> "39. Whoever contravenes any provision of this Act or of any regulation, rule or bye-law or of any order made thereunder for the contravention of which no penalty is hereinafter provided shall be punishable with fine which may extend to one thousand rupees, and in the case of a continuing contravention, with a further fine which may extend to one hundred rupees for every day on which the offender is proved to have persisted in the contravention after the date of the first conviction."

In this case the language of the section itself made it obvious that its violation resulted in a continuing offence.

The true principle appears to be that where the wrong complained of is the omission to perform a positive duty requiring a person to do a certain act the test to determine whether such a wrong is a

continuing one is whether the duty in question is one which requires him to continue to do that act. Breach of a covenant to keep the premises in good repair, breach of a continuing guarantee, obstruction to a right of the way, obstruction to the right of a person to the unobstructed flow of water, refusal by a man to maintain his wife and children whom he ii bound to maintain under law and the carrying on of mining operations or the running of a factory without complying with the measures intended for the safety and well-being of workmen may be illustrations of continuing breaches or wrongs giving rise to civil or criminal liability. as the case my be, de die in diem.

In Balkrishna Savalram Pujari & Ors. v. Shree Dayaneshwar Maharaj Sansthan & Ors. Gajendragadkar, J. (as he then was) observed:

> "It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continue, then the act constitutes a continuing wrong. In this connection it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described at the effect of the said injury."

Section 18 of the Act with which we are concerned in this case, however, does not require the assessee to file a return during every month after the last day to file it is over. Non-performance of any of the acts mentioned in section 18(1)(a) of Act gives rise to a single default and to a single penalty, the measure of which, however, is geared up to the time lag between the last date on which the return has to be fled and the date on which it is filed. The default, if any committed is committed on the last date allowed to file the return. The default cannot be one committed every month thereafter. The words for every month during which the default continued' indicate only the multiplier to be adopted in determining the quantum of penalty and do not have the effect of making the default in question a continuing one. Nor do they make the amended provisions modifying the penalty applicable to earlier defaults in the absence of necessary provisions in the amending Acts. The principle underlying section 6 of the General Clauses Act is clearly applicable to these cases. It may be stated here that the majority of the High Courts in India have also taken the same view.

In the result we hold that where the default complained of is one falling under section(l)(a) of the Act, the penalty has to be computed in accordance with the law in force on the last day on which the return in question had to be filed. Neither the amendment made in 1964 nor the amendment made in 1969 has retrospective effect.

The appeals therefore fail and are dismissed with costs. Hearing fee one set.

S.R. Appeals dismissed.