Jain Bros. & Others vs The Union Of India & Others on 18 November, 1969

Equivalent citations: 1970 AIR 778, 1970 SCR (3) 253, AIR 1970 SUPREME COURT 778

Author: A.N. Grover

Bench: A.N. Grover, J.M. Shelat, C.A. Vaidyialingam, A.N. Ray

```
           PETITIONER:
JAIN BROS. & OTHERS

        Vs.

RESPONDENT:
THE UNION OF INDIA & OTHERS

DATE OF JUDGMENT:
18/11/1969

BENCH:
GROVER, A.N.
BENCH:
GROVER, A.N.
SHELAT, J.M.
VAIDYIALINGAM, C.A.
RAY, A.N.

CITATION:
 1970 AIR  778            1970 SCR  (3) 253
 1969 SCC  (3) 311
 CITATOR INFO :
 R          1971 SC  95  (4)
 R          1975 SC 902  (5)
 R          1975 SC1234  (25)
 R          1975 SC1549  (24)
 R          1986 SC 293  (7,8,9,10,12,16)
 RF         1988 SC 427  (9)
 E          1991 SC2278  (9)


ACT:
Income Tax Act, 1922 s. 23(5) as amended by Finance Act 1956
Double Taxation-Taxation of income in the hands of firm  and
partners Validity-Income Tax Act, 1961-Sections 297(2)  (g),
271(2)-If contravenes Constitution of India Article 14.
```

HEADNOTE:
A notice under s. 22(2) of the Income Tax Act, 1922, was served on the appellant, a registered firm, calling upon it to submit a return of the income for the assessment year 1960-61. A return was filed, but not within time. The assessment was completed in November 1964. In view of the ammendment made by the Finance Act of 1956 in s. 23(5) of the Act of 1922, the tax payable by the firm as also the amount to be included in the income of each partner was determined. The Income Tax Officer also passed an order under Cl. (a) of s. 271 (i) of the Act of 1961 imposing a penalty for non-compliance with the notice under s. 22(2) of the 1922 Act. The appellants challenged in a writ petition the validity and constitutionality of s. 23 (5) of the Act of 1922 and s. 297 (2) (g) and s. 271(2) of the Act of 1961. The High Court dismissed the petition. In the appeal to this Court it was contended (i) section 23(5) was invalid for the reason that the same income in the hands of both the firm and the partners could not be simultaneously subjected to tax; (ii) cl. (g) of s. 297(2) was violative of Article 14 inasmuch as in the matter of imposition of penalty it-discriminated between two sets of assessees with reference to a particular date, namely completion of assessment proceedings on or after the first day of April 1962, the date of commencement of the Act of 1961, the classification thus being arbitrary depending on the accident of the date of completion of the assessment and (iii) s. 271(2) contravened Article 14, because, in the case of assessees other than registered firms the maximum penalty imposable under s. 271(l)(i) could not exceed fifty per cent of the tax payable by the assessee; whereas in the case of a registered firm the maximum penalty was not made to depend upon the tax assessed on or payable by such firm.
HELD: (i) After the Act of 1956 the firm did not cease to be an assessee; on the contrary it -was recognised as a separate entity and was subjected to tax as such. There can be double taxation if the legislature has distinctly enacted it. It is only when there are general words of taxation and they have to be interpreted they cannot be so interpreted as to tax the subject twice over to the same tax. The Constitution does not contain any prohibition against double taxation even if it be assumed that such a taxation is involved in the case of a firm and its partners after the amendment of s. 23(5) by the Act of 1956; nor is there any other enactment which interdicts such taxation. Even if s. 23(5) provides for the machinery for collection and recovery of tax, once the legislature has in clear terms, indicated that the income of the firm can be taxed as also the income in the hands of the partners, the distinction between a changing and a machinery section is of no consequence. Both sections have to be read together and construed harmoniously. [258 B, E-G]

254

Commissioner of Income tax, Bombay South v. Murlidhar Jhawar & commissioner of Inland Revenue v. Frank Bernard Senderson 8 T.C. 38 and Stevens v. The Durban-Roddepoort Gold Mining Co. Ltd., 5 T.C. 402 referred to.

(ii) The date, first day of April 1962, which has been elected by the legislature for the purpose of cls. (f) and (g) of s. 297(2) cannot be characterised as arbitrary or fanciful. It is the date on which the Act of 1961 actually came into force, For the application and the implementation of the Act of 1961 it was necessary to fix a date and the stage of the proceedings which were pending for providing by which enactment they would be governed. Pending proceedings can be treated by the legislature as a class for the purpose of Art. 14. There was every justification for providing in cis. (f) and (g) that the date of the completion of the assessment would be determinative of the enactment under which the proceedings for penalty were to be held, 'for, the imposition of penalty can take place only after assessment has been completed. Although penalty has been regarded as an additional tax in a certain sense and for certain purposes, penalty proceedings are not a continuity of the proceedings relating to assessment, where a return has been filed. The scheme of s. 274(l) and 275 of the Act of 1961 is that the order of imposing penalty must be made after the completion of the assesment. The crucial date therefore for the purpose of penalty is the date of such completion. The mere possibility that some officer may intentionally delay the disposal of the case can hardly be a ground for striking down cl. (g) as discriminatory under Art. 14. There is no presumption that officers and authorities who are entrusted with responsible duties under th e taxation laws would not discharge them properly and in a bona fide manner. [262 B,F; 263 D-G]

M/s. Hatisingh Mfg. Co. Ltd. & Another v. Union of India & Others, [19601 3 S.C.R. 528, Jalan Trading Co. (P) Ltd. v. Mill Mazdoor Union, [19671 1 S.C.R. 15, Gopi Chand Sarjuprasad v. Union of India, 73 I.T.R. 263, Income tax Officer A-Ward, Agra & Ors. v. Firm Madan Mohan Damma Mal & Anr., 70 I.T.R. 293 and Third Income tax Officer, Mangalore v. Damodar Bhat, 71 I.T.R. 806 referred to.

(iii) After the Act of 1956 a registered firm has to pay tax at special reduced rates. If the firm got itself registered the partners would be entitled to certain benefits and advantages. it was, however, open to the legislature to say that once a registered firm committed a default attracting penalty it should be deemed or considered to be an unregistered firm for the purpose of its imposition. No question of discrimination under Art. 14 can arise in such a situation. [265 B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1593 of 1969.

Appeal from the judgment And order dated February 25, 1969 of the Delhi High Court in Civil Writ No. 1247 of 1967. N. D. Karkhanis, Champat Rai, Nand Gopal, A. T. M. Sampat and E. C. Agarwala, for the appellants.

S. T. Desai, S. K. Aiyar, R. N. Sachthey, B. D. Sharma and S.P. Nayar, for the respondents.

The Judgment of the Court was delivered by Grover, J. This is an appeal by certificate from a judgment of the Delhi High Court dismissing a petition under Arts. 226 and 227 of the Constitution.

Appellant No. 1 which carries on business in Delhi was registered as a firm under s. 26A of the Indian Income Tax Act, 1922. Appellants .2 to 5 are its partners. On May 26, 1960, a notice under s. 22(2) of that Act was served on the firm calling upon it to submit a return of its income for the assessment year 1960-61 (accounting year ending October 31, 1959). The return had to be filed within 35 days of the service of the notice. It was not filed. Further notices were served on two occasions. It filed a return on November 18, 1961, showing income of Rs. 3,55,566. The Income tax Officer completed the assessment on November 23, 1964, computing the total income of the firm at Rs. 4,75,368. In view of the amendment made by the Finance Act of 1956 in. s. 23(5) of the Act of 1922 the tax payable by the firm as also the amount to be included in the income of each partner was determined. On the same date i.e. November 23, 1964, the Income tax -Officer issued a notice under S. 271 read with s. 274 of the Income tax Act 1961 calling upon the firm to show cause why an order imposing a penalty should not be passed on account of its failure to furnish the return within time. After considering the explanation submitted by the assessee the Income tax Officer made an order on November 19, 1966 under cl. (a) of s. 271(l) of the Act of 1961 imposing a penalty of Rs. 1,03,434 for noncompliance with the notice under S. 22(2) of the 1922 Act. The appellants took the matter in appeal before the Appellate Assistant Commissioner challenging the imposition of penalty. Although those proceedings were still pending a writ petition was filed on August 26, 1966 in the High Court challenging, inter alia, the validity and the constitutionality of s. 23(5) of the Act of 1922 and ss. 297(2)(g) and S. 271(2) of the Act of 1961 respectively. The High Court did not accede to any of the contentions of the present appellants and the petition was dismissed. We may first deal with the attack against S. 23(5) of the 192-T Act. It is based on the general principle that you cannot tax the subject twice over to the same tax. The validity of this provision arises only in this way that it is the assessment made under it which can form the basis for imposing the penalty. The High Court declined to examine the matter on the ground that the assessment order dated November 23, 1964 could not be assailed in the writ petition and that the appellants had debarred themselves from getting any relief on account of laches and delay. In our opinion the point sought to be raised is directly connected with the imposition of penalty. If the question of penalty was -at large and open to examination the validity of s. 23(5) of the 1922 Act, the assessment under which would form the basis for determining the amount of penalty, could certainly be canvassed.

Section 23(5) stood as follows after the amendment made by as. 14 of the Finance Act 1956

"Notwithstanding anything contained in the foregoing sub- sections, when the assessee is a firm and the total income of the firm has been assessed under subsection (1), sub- section (3) or sub-section (4) as the case may be,"

(a) in the case of a registered firm,

(i) the income tax payable by the firm itself shall be determined; and

(ii) the total income of each partner of the firm, including therein his share of its income, profits and gains of the previous year shall be assessed and the sum payable by him on the basis of such assessment shall be determined : "

> In clause (a), clauses (i) and (ii) were submitted for the following words "the sum payable by the firm itself shall not be determined but the total income of each partner of the firm, including therein his share of its income, profits and gains of the previous year, shall be assessed and the sum payable by him on the basis of such assessment shall be determined;"

After the amendment a registered firm was liable to pay income tax independently of the tax payable by the individual partners of the firm on their share of profits. Prior to the amendment of 1956 where the firm was unregistered the tax payable by the firm was computed as in the case of any other entity and the firm itself .had to pay the tax. If the firm was registered under S. 26A it did not pay the tax and there was no assessment of its liability. Each partner's share in the firm's profits was added to his income and after determination of the total income of each partner the levy was made on him individually. After 1956 tax at low rate become assessable on a registered firm though it was not liable to pay super tax. The partners of the registered firm remained liable for being charged on their individual assessment to both income tax and super tax in respect of their share in the profits of the firm. The partner, however, was entitled to certain rebate under s. 14(2)(aa).

The position of the appellants is that the firm and its partners do not constitute a separate entity. Either the firm or the partners can be taxed but the same income in the hands of both cannot be simultaneously subjected to tax. It is well known that under the common law of England a firm is not a jurisitic person. The firm name is only a compendious expression to designate the various partners constituting it. Section 3 of the Act of 1922 which is the charging section treats the firm a distinct entity. This Court has laid down in Commissioner of Income tax, Bombay South v. Murlidhar Jhawar & Purna Ginning & Pressing Factory(') that partners of an unregistered firm might be assessed individually or they might be assessed collectively in the status of an unregistered firm. But the same income cannot be assessed twice, once in the hands of the partners and again in the hands of the unregistered firm. It follows that even in the case of a registered firm the same income, namely, of the firm and the partners arising out of their share in the firm cannot be subjected to tax twice. The classic dictum of Rowlatt J., in The Commissioner of Inland Revenue v. Frank Bernard Sanderson(') illustrating the two stages of passage of money has been invoked. This is what the learned judge said in his inimitable words "It is often said, but not always understood, that in Income tax the same income is not taxed twice. That means that you cannot tax it more than once on one passage of money in the form of one sort of income. If a man earns Pound 100 by his profession and gives it to his son to clothe himself, or to his daughter, for the year, the son or the daughter does not pay income tax; there is only one passage of the money in the form of that income. If a man earns E 100, and pays it to somebody else for services rendered in a trade or profession by that other person, the sum of Pounnds 100 enters upon another passage in another form of income, and therefore attracts Income Tax again."

There is a good deal of fallacy in the argument raised on behalf of the appellants. In the first place, according to the scheme of the Income tax Acts a firm and its partners are distinct entities, So far as the Act of 1922 is concerned S. 2(2) which defines the assessee would obviously include a firm under S. 3(42) of the General Clauses Act which provides that a person includes "any company or association or body of individuals whether incorporated or not". 'For the purpose of assessment at all crucial stages (1) 60 I.T.R. 95. (2)) 8 T.C. 38.

under ss. 22 and 23 it is the firm which is treated as an assessee, Thus even before the amendment of S. 23(5) in 1956 the character ,of the firm as a separate entity was well established. The firm, however, did not pay any tax itself and the assessment was made on the individual partners in accordance with the provisions of that section. After 1956 the firm did not cause to be an assessee; on the contrary it was recognised as a separate entity and was subjected to tax as such. Murlidhar Jhawar's(l) case can hardly be of much assistance as it related to an unregistered firm and to an assessment of accounting year ending November 6, 1953. The provisions which came up for consideration had no parallel to those made in respect of registered firm by an express amendment of S. 23(5) by the Finance Act of 1956. The facile analogy ,of passage of money given by Rowlatt J., will not carry the matter further where the statute has made an express provision for the income of the firm and the income in the hands of the partners being both liable to tax.

It is not disputed that there can be double taxation if the legislature has distinctly enacted: it. It is only when there are general words of taxation and they have to be interpreted they cannot be so interpreted as to tax the subject twice over to the same tax (vide Channell J. in Stevens v. The Durban-Roddepoort Gold Mining Co. Ltd.('). The Constitution does not contain any prohibition against double taxation even if it be assumed that such a taxation is involved in the case of a firm and its partners after the amendment of s. 23 (5) by the Act of 1956. Nor is there any other enactment which interdicts such taxation. It is true that S. 3 is the general charging section. Even if S. 23(5) provides for the machinery for collection and recovery of the tax, Once the legislature has, in clear terms, indicated that the incomes of the firm can be taxed in accordance with the Finance Act of 1956 as also the income in the hands of the partners, the distinction between a charging and a machinery section is of no consequence. Both the sections have to be read together and construed harmoniously. It is significant that similar provisions have also been enacted in the Act of 1961. Sections 182 and 1 8 3 correspond substantially to S. 23 5) except that the old section did not have a provision similar to sub-section (4) of s. 182. After 1956, therefore, so far as registered firms are concerned the fax payable by the firm itself as to be assessed and the share of each partner in the income of the firm has to be included in his total income and assessed to tax accordingly. If any double taxation is involved the legislature itself has, in express words, sanctioned it. It is not open to any one thereafter to invoke the general principles that the subject cannot be taxed twice over. (1) 60

I.T.R. 95. (2) 5 T.C. 402.

We may now deal with the challenge to the constitutionality and validity of s. 297(2)(g) of the Act of 1961. That provision appears in Chapter XXIII and is a part of s. 297 which deals with repeals and savings. Sub-section (1) provides that the Act of 1922 is repeated. Clause (a) of sub-s. (2) says that notwithstanding the repeal where a return of income has been filed before the commencement of the Act of 1961 by any person for any assessment year proceedings for the assessment of that person for that year may be taken and continued as if the Act of 1961 had not been passed. According to clause (b) where a return of income is filed after the commencement of the Act of 1961 the assessment has to be made in accordance with the procedure specified in the Act of 1961. Clauses (f) and (g) are in these words :

> (f) "any proceeding for the imposition of a penalty in respect of any assessment completed before the 1st day of April 1962, may be initiated and any such penalty may be imposed as if this Act had not been passed;
>
> (g) any proceeding for the imposition of a penalty in respect of any assessment for the year ending on the 31st day of March 1962, or any earlier year, which is completed on or after the 1st day of April, 1962, may be initiated and any such penalty may be imposed under this Act". The submission on behalf of the appellants has been that cl.
>
> (g)of s. 297(2) is violative of Art. 14 inasmuch as it creates a discrimination between two sets of assessees with reference to a particular date, namely, completion of assessment proceedings on or after the first day of April 1962. In other words the assessees have been classified into two groups for imposition of penalty; the first group is of those assessees whose assessments have been completed before first April 1962. In their case, the proceedings for imposition of penalty have to be initiated and the penalty imposed under the Act of 1922 [vide clause (f)]. The second group of assessees whose assessment is completed on or after the first day of April 1962 have to be proceeded with for the imposition of penalty in respect of any assessment for the year ending on 31st day of March 1962 or any earlier year under the Act of 1961. The penalty has also to be imposed in their case under the latter Act. It all depends, therefore, on the sweet will of the Income tax Officer to complete the assessment before the first day of April 1962 or to complete it thereafter in order to make the provisions of the Act of 1922 or the Act of 1961 applicable in the matter of initiation of proceedings for and imposition of a penalty. A fortuitous event of the assessment being made on or after first April 1961 has no reasonable relation with the object of legislation. It is further pointed that under cl. (a) of s. 297(2) where a return has been filed before the commencement of Act of 1961 i.e. first April 1962 the proceedings for assessment have to be taken under the Act of 1922. If the assessment has to be made under the Act of 1922 there seems to be no rationale behind the provisions contained in clauses (f) and (g) which introduce an apparent inconsistency and contradiction with what is provided by clause (a). Logically, it is claimed, the proceedings for imposition of penalty should have followed the same course as the assessment where

the return of income has been filed.

Penalty partakes of the character of an additional tax and therefore its imposition should not have been completed, particularly, when under clauses (a) and (b) it is the date of filing of the return which governs the procedure relating to assessment under one Act or the other.

Under S. 22(2) of the Act of 1922 the Income tax officer could serve a notice requiring any person whose total income was of such amount as to render him liable to income tax to furnish within a specified period a return in the prescribe form setting forth his total income during the previous year. Under S. 28 if the Income tax Officer, the Appellate Assistant Commissioner or the Appellate Tribunal in the course of any proceedings, was satisfied that any person had, without reasonable cause, failed to furnish the return of his total income which he was required to furnish by notice given under s. 22 it could be directed that such person shall pay by way of penalty, in addition to the amount of income tax and super tax payable by him, a sum not exceeding 1/ 2 times that amount. Sub-section (4) provided that no prosecution for an offence could be instituted in respect of the same facts on which penalty had been imposed under the section, Sub-F section (6) made it obligatory for the Income tax Officer to obtain the previous approval of the Inspecting Assistant Commissioner before imposing any penalty. In the Act of 1961 the provisions relating to penalties are contained in Chapter XXI. Section 27 1 (1) (a) deals with the failure to furnish a return. If the Income tax officer or the Appellate Assistant Commissioner in the course of any proceedings under the Act is satisfied that such a default has been committed without reasonable cause he may direct that such person shall pay by way of penalty, in addition to the amount of tax payable by him, a sum equal to 2% of the tax for every month during which the default continues, but not exceeding in the aggregate 50% of the tax. Section 275(l) provides that no order imposing a penalty shall be made unless the assessee has been heard or has been given a reasonable opportunity of being heard. Section 275 lays down the period of limitation for imposing a penalty. Such an order cannot be passed after the expiration of two years from the date of the completion of proceedings in the course of which the proceedings for imposition of a penalty have been commenced. It may be mentioned that in Chapter XXII dealing with offences and prosecutions a provision has been made in s. 276 for punishment with fine in case of failure without reasonable cause or excuse to furnish in due time a return under s. 139(2) which Was equivalent to s. 22(2) of the Act of 1922. As the present case relates only to a penalty having been imposed on account of the failure to furnish a return we may notice the main changes made in the Act of 1961 in the matter of imposition of penalty for such a default. The first departure from the Act of 1922 is that no prosecution could be instituted under the Act of 1922 in respect of the same facts on which a penalty had been imposed. Under the Act of 1961 a penalty can be imposed and a prosecution launched on the same facts. The second change is that under the Act of 1922 the Income tax Officer could not impose any penalty without the previous approval of the Inspecting Assistant Commissioner. Under the 1961 Act no such previous approval is necessary. Thirdly the Act of 1922 did not prescribe any minimum amount of penalty. According to the Act of 1961 the penalty cannot be less than the minimum prescribed. This is of course subject to the Commissioner's power of reduction. Fourthly the maximum penalty imposable in a case where there has been a failure to file a return in compliance with a notice issued by the Income tax Officer has been reduced under the Act of 1961. Lastly there was no time limit in the Act of 1922 for passing of a penalty order but under the Act of 1961 a period of two years has been prescribed by s. 275 as stated above. Thus whereas under

the Act of 1922 a defaulting assessee had certain protection in the matter of prosecution no such protection has been afforded under the Act of 1961; but the maximum amount of penalty which can be imposed has been reduced and a period of limitation has been prescribed for passing a penalty order which is of distinct advantage to a defaulting assessee. It is not possible to accept the suggestion on behalf of the appellants that the substantive and the procedural provisions relating to penalty contained in the Act of 1961 are altogether onerous.

Now the Act of 1961 came into force on first April 1962. It repealed the prior Act of l 922. Whenever a prior enactment is repealed and new provisions are enacted the legislature invariably lays down under which enactment pending proceedings shall be continued and concluded. Section 6 of the General Clauses Act 1897 deals with the effect of repeal of an enactment and its provisions apply unless a different intention appears in the statute. It is for the legislature to decide from which date a particular CI(NP)70-2 law should come into operation. It is not disputed and no reason has been suggested why pending proceedings cannot be treated by the legislature as a class for the purpose of Art. 14. The date, first April 1962 which has been selected by the legislature for the purpose of cis. (f) & (g) of S. 297(2) cannot be characterised as arbitrary or fanciful. It is the. date on which the Act of 1961 actually came into force. For the application and the implementation of the Act of 1961 it was necessary to fix a date and the stage of the proceedings which were pending for providing by which enactment they would be governed. According to M/S'. Hatisingh Mfg. Co. Ltd. & Another v. Union of India & Others('), the State is undoubtedly prohibited from denying to any person equality before the law or the equal protection of the laws but by enacting a law which applies generally to all persons who come within its ambit as from the date on which it becomes operative no discrimination is practiced. In that case although a distinction had been made with reference to s. 25FFF(l) of the Industrial Disputes Act 1947 as inserted by Act 18 of 1957 between em- ployers who had closed their undertakings on or before November 27, 1956 and those who had done so after that date, it was held that Art. 14 had not been violated. According to the arguments on behalf of the appellants Art. 14 is attracted because the classification which has been made is purely arbitrary depending on the accident of the date of the completion of the assessment. There can be no manner of doubt that penalty has to be calculated and imposed according to the tax assessed. It follows that imposition of penalty can take place only after assessment has been completed. For this reason there was every justification for providing in cis. (f) and (g) that the date of the completion of the assessment would be determined of, the enactment under which the proceedings for penalty were to be held. It may be that the legislature considered that a separate treatment should be given in the matter of assessment itself and under cis. (a) and (b) of s. 297(2) the point of time when a return of income had been filed was made decisive for the purpose of application of the Act of 1922 or the Act of 1961. But merely because the legislature in its wisdom decided to give a different treatment to proceedings relating to penalty it is difficult to find discrimination with regard to the classification which has been made in cis. (f) and (g) which are independent in cis.

(a) and (b). Although penalty has been regarded as an additional tax in a certain sense and for certain purposes it is not possible to hold that penalty proceedings are essentially a continuation of the proceedings relating to assessment where a return has been filed.

[1] [1960] 3 S.C.R. 528.

The majority decision in Jalan Trading Co. (P) Ltd. v. Mill Mazdoor Union(') hardly affords any parallel. There are retrospective operation of the Payment of Bonus Act 1965 which came into force in May 29, 1965 was made by s. 33, the provisions of which were held to be violative of Art. 14, to depend on the pendency on that date of any dispute regarding payment of bonus relating to any accounting year from 1962 onwards. The year 1962 had apparently no connection with the date on which the Act came into operation which was May 29, 1965.

It is well settled that in fiscal enactments the legislature has a larger discretion in the matter of classification so long as there is no departure from the rule that persons included in a class are not singled out for special treatment. It is not possible to say that while applying the penalty provisions contained in the Act of 1961 to cases of persons whose assessments are completed after first April 1962 any class has been singled out for special treatment. It is obvious that for the imposition of penalty it is not the assessment year or the date of the filing of the return which is important but it is the satisfaction of the income tax authorities that a default has been committed by the assessee which would attract the provisions relating to penalty.,, Whatever the stage at which the satisfaction is reached, the scheme of ss. 274(l) and 275 of the Art of 1961 is that the order imposing penalty must be made after the completion of the assessment. The crucial date, therefore, for purposes of penalty is the date of such completion. It is equally difficult to understand the argument that because it rests with the Income tax Officer to, complete the assessment by a particular date it will depend on his fiat whether the penalty should be imposed under the Act of 1922 or under the Act of 1961. There is no presumption that officer or authorities who are entrusted with responsible duties under the taxation laws would not discharge them properly and in a bona fide manner. If in a particular case any mala fide action is taken that ran always be challenged by an assessee in appropriate proceedings but the mere possibility that some officer may intentionally delay the disposal of a case can hardly be a ground for striking down clause (,a,) as discriminatory under Art. 14. We are clearly of the view, i n concurrence with the decisions in Gopi Chand Sarjuprasad v. Union of India(2) and Income tax Officer A-Ward, Agra & Ors. v. Firm Madan Mohan Damma Mal & Anr.(3), that no discrimination was practised in enacting that clause which would attract the application of Art. 14. The classification made is (1) [1967] 1. S.C.R. 15.

(2) 73 I.T.R. 263.

(3) 70 I.T.R. 293.

based on intelligible differentia having reasonable relation to the object intended to be achieved. The object essentially was to prevent the evasion of tax. We are further unable to agree that the language of s. 271 does not warrant the taking of proceedings under that section when a default has been committed by failure to comply with a notice issued under S. 22(2) of the Act of 1922. It is true that cl. (a) of sub.-s. (1) of S. 271 mentions the corresponding provisions of the Act of 1961 but that will' not make the part relating to Davment of penalty inapplicable once it is held that s. 297(2)(g) governs the case. Both ss. 271(l) and 297(2)(g) have to be read together and in harmony and so read the only conclusion possible is that for the imposition of a penalty in respect of any assessment for the year ending on March 31, 1962 or any earlier year which is completed after first day of April 1962 the proceedings have to be initiated and the penalty imposed in accordance with the provisions of s. 271 of the Act of 1961. Thus the assessee would be liable to a penalty as provided by s., 271(l) for the default mentioned in s. 28(l) of the Act of 1922 if his case falls within the terms of S. 297(2)(g). We may usefully refer to this Court's decision in Third Income tax Officer, Mangalore v. Damodar Bhat(l) with reference to S. 297(2) (j) of the Act of 1961. According to it in a case falling within that section in a proceeding for recovery of tax and penalty imposed under the Act of 1922 it is not required that all the sections of the new Act relating to recovery or collection should be literally applied but only such of the sections will apply as are appropriate in the particular case and subject, if necessary, to suitable modifications. In other words, the procedure of the new Act will apply to cases contemplated by s. 297 (2) (j) of the new Act mutatis mutandis. Similarly to the provision of s. 271 of the Act of 1961 will apply mutatis mutandis to proceedings relating to penalty initiated in accordance with s. 297 (2) (g) of that Act. Lastly the challenge to S. 271(2) of the Act of 1961 on the ground of contravention of Art. 14 may be considered. According to that provision when the person liable to penalty is a registered firm then notwithstanding anything contained in the other provisions of the Act of 1961 the penalty imposable under subs. (1) shall be the same amount as would be, imposable on that firm if that firm were an unregistered firm. It is pointed out that in the case of assessees other than registered firms the maximum penalty impossible under S. 271(l)(i) cannot exceed in aggregate 50% of the tax payable by the assessee; whereas in the case of a registered firm the maximum penalty is not made to depend (1) 71 I.T.R. 806.

upon the tax assessed on or payable by such firm. On the contrary the registered firm will have to pay the same penalty as an unregistered firm which may far exceed the maximum limit of 50% prescribed by the above provision. This, according to the appellants, constitutes discrimination under Art. 14 of the Constitution. Now a firm when registered is treated as a separate entity liable to tax. After 1956 it has to pay tax at a special reduced rate. If a firm got itself registered the partners were entitled to certain benefits and advantages. It was, however, open to the legislature to say that once a registered firm committed a default attracting penalty it should be deemed or considered to be an unregistered firm for the purpose of its imposition. No question of discrimi- nation under Art. 14 can arise in such a situation. We fully share the view of the High Court that there was nothing to prevent the legislature from giving the benefit of a reduced rate to a registered firm for the purpose of tax but withhold the same when it committed a default and became liable to imposition of penalty.

The appeal fails and it is dismissed with costs.

```
R.K.P.S.                                                         Appeal.
```

dismissed.