Rajasthan High Court
The Commissioner Of Income-Tax, ... vs Indra And Co., Jodhpur on 18 September, 1969
Equivalent citations: AIR 1970 Raj 207, 1971 79 ITR 702 Raj
Author: Bhandari
Bench: D Bhandari, S N Modi
JUDGMENT Bhandari, C.J.

1. This is a reference by the Income-Tax Appellate Tribunal, Delhi Bench 'A', hereinafter called the "Tribunal", under Section 256(1) of the Indian, Income-Tax Act, 1961, hereinafter called the Act, made at the instance of the Commissioner of Income-Tax.

2. Messers. Indra and Company, Jodhpur, a registered firm under the Act and one of its partners Shri Jiwanlal Maheshwari had to submit their income-tax returns under Section 139(1) of the Act by or before 30th June, 1962. Both of them made applications to the Income-Tax Officer, A Ward, Jodhpur, for extending the time for filing their returns and the time was extended upto 31-8-62 in both the cases. Again, applications were made for extension of the time and they were granted time upto 20-9-62 and further extension was granted upto 30-9-62, but the returns were not filed even on that day. The said Income-tax Officer then served notice on the assessees under Section 139(2) of the Act calling upon them to file returns within thirty days and the returns were then filed on 25-4-63. During the course of assessment proceedings, the Income-Tax Officer issued notices against the assessees to show cause why penally should not be imposed for failure to submit the returns under Section 139(1) of the Act.

The assessees submitted applications showing cause for delay but the Income-Tax Officer did not hold their explanation to be reasonable and imposed penalties on both of them under Section 271(1)(a) of the Act. Both the assessees preferred appeals before the Appellate Assistant Commissioner raising two contentious. The first contention was that as soon as notices under Section 139(2) of the Act were issued, it must be taken that the delay in filing the returns under Section 139(1) was condoned by the Income-Tax Officer and as such no action could be taken for not filing the returns in time as laid down under Section 139(1). The other contention was that the Income-tax Officer had not mentioned in the assessment order that the penalty proceedings were being initiated for default under Section 139(1) and as such penalty proceedings could not be said to be initiated during the course of the assessment proceedings.

The Appellate Assistant Commissioner rejected both the arguments and confirmed the orders of the Income-tax Officer. The assessees then preferred appeals before the Tribunal and the Tribunal took the view that as in each case the assessment proceedings had been initiated and completed on the basis of the returns submitted under Section 139(2), it was not permissible under law that penalty should be imposed for any default committed in not submitting the returns under Section 139(1). On application by the Commissioner of Income-tax the Tribunal has submitted the following question for the opinion of this Court : "Whether the Tribunal rightly held that the orders of penalties in question under Section 271(1)(a) of the Income-tax Act, 1961, were not tenable in law, In order to appreciate the argument of the Tribunal for taking the view that penalty could not be imposed on the assessees for any default committed in furnishing the returns as required under Section 139(1),

it is necessary to set-out the following relevant portions of Section 271(1)(a) of the Act and Section 28 of the Indian Income-Tax Act, 1922 :--

"Section 271(1). If the Income-tax Officer or the Appellate Assistant Commissioner 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 total income which he was required to furnish under Sub-section (1) of Section 139 or by notice given under Sub-section (2) of Section 139 or Section 148 or has without reasonable cause failed to furnish it within the time allowed and in the manner required by Sub-section (1) of Section 139 or by such notice, as the case may be, or

(b) XXXXX

(c) XXXXX he may 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 the 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;

(ii) XXXXX

(iii) XXXXX"

"Section 28. (1) If the Income-tax Officer, the Appellate Assistant Commissioner or the

(a) has without reasonable cause failed to furnish the return of his total income which

he was required to furnish by notice given under Sub-section (1) or Sub-section (2) of S

(b) XXXXX

(c) XXXXX

he or it may direct that such person shall
pay by way of penalty, in the case referred
to in Clause (a), in addition to the amount
of the income-tax and super-tax, if any payable by him, a sum not exceeding one and
a half times, that amount....."

The Tribunal contrasted the language of Section 271(1)(a) of the Act with the language of Section 28 (1) (a) of the old Act and noticed that the words "as the case may be" were added in Clause (a) of Subsection (1) of Section 271 of the Act and these words substantially modified the corresponding provisions of Section 28 (1) (a) of the old Act. The Tribunal proceeds to say that under the Act minimum penalty is provided and that minimum penalty is to be calculated for every month during which default continued and this calculation is possible only when the limits of time during which the default continued can be determined. The Tribunal took the view that so far as the time of commencement of the default is concerned, it was known and definite in the instant case. It was, however, not possible to determine the point of time when the default ceased in either of these two cases, for the simple reason that the defaults in these cases never ceased as none of the assessees had filed any return as required under Section 139(1). We have, to examine whether this reasoning is correct.

3. The addition of the words "as the case may be" at the end of Section 271(1)(a) of the Act presents us with no problem in interpretation. Under this section, the defaults contemplated are of four kinds :--

1. any person who without reasonable cause has failed to submit return of total income which he was required to furnish under Sub-section (1) of Section 139; or

2. any person who without reasonable cause has failed to furnish the return of total income which he was required to furnish by notice given under Sub-section (2) of Section 139 or Section 148; or

3. any person who without reasonable cause has failed to furnish it within the time allowed and in the manner required by Sub-section (1) of Section 139; or

4. any person who without reasonable cause has failed to furnish it within the time allowed and in the manner required by notice given under Sub-section (2) of Section 139 or Section 148.

The words "as the case may be" have been put because all these four cases have been condensed in one paragraph and these words only mean that whichever the case may be, the person shall be deemed to have committed default for which penalty was to be imposed under Section 271(1)(i) of the new Act. These words "as the case may be" have their full meaning when we construe Section 271(1)(a) in this light. They were not necessary in Section 28 (1) (a) of the old Act, for the reason that the words at the end of Section 28 (1) (a) "by such notice" covered all the defaults mentioned therein as all the defaults could be committed only when appropriate notices as required in Section 22 (1) or Section 22 (2) or Section 34 of the old Act had been given. The words "by such notice" meant a notice as may have been given either under Section 22 (1) or Section 22 (2) or Section 34.

Because the word 'such' covered the entire ground, it was not necessary to put the words "as the case may be" in Section 28 (1) (a) at its end, but it became necessary to add these words in Clause (a) of Sub-section (1) of Section 271 of the Act, because there were two kinds of defaults contemplated under it, one committed even when no notice is given and the other committed after notice. It may be mentioned that under the Act, no notice is to be issued for filing the return under Section 139(1)

and every person, if his total income exceeded the maximum amount which is not chargeable to income-tax, has to furnish the return of his income by or before a particular date as mentioned therein.

4. This being the position, we do not find that there is any ground for shifting the words "as the case may be" out of their context and take them and read them in connection with the words "in the course of any proceedings" in the said Act as appears to have been done by the Tribunal. Such a queer construction is neither warranted by the language of the enactment nor by any other consideration. The Tribunal appears to be unduly obsessed by the fact that if a return has not been furnished as required under Sub-section (1) of Section 139(1) and has been furnished after the giving of the notice under Section 139(2), it must be deemed that the default so far as the furnishing of the return under Sub-section (1) of Section 139 is concerned, continued for all the time. The default is in not furnishing the return and as soon as the return is furnished, there is end of the default. Moreover, it has been expressly laid down under Section 139(7) that no return under Sub-section (1) need be furnished by any person for any previous year if he has already furnished the return of income for such year in accordance with the provisions of Sub-section (2). In our opinion, in all the cases mentioned in Section 271(1)(a) of the Act, the default continues only till the time when the return has been furnished or if no return has been furnished at all, it continues till the assessment is completed. But if the return has been furnished, the default ceases whether such return is furnished under Sub-section (1) of Section 139 or by notice given under Sub-section (2) of Section 139 or under Section 148. It is immaterial for the purpose of cessation of default, that the return has been filed in obedience to any particular provision of law.

5. If the view taken by the Tribunal is adopted the result will be that if a person has not filed any return under Section 139(1), he cannot be penalised if he has filed a return after a notice has been given under Sub-section (2) of Section 139. It may be pointed out that before taking any assessment proceedings, it is incumbent on the Income-tax Officer to issue notice under Sub-section (2) of Section 139. Such a view would mean that any person liable to pay income-tax may sit comfortably without any fear of the imposition of penalty and not furnish his return as required under Section 139(1) and wait till a notice is given to him under Section 139(2) and then file a return within the time mentioned in that notice. This view does not appeal to us.

6. An argument has been addressed to us that as soon as a notice is issued under Sub-section (2) of Section 139 giving time for furnishing the return, it must be taken that the Income-tax Officer had condoned whatever the default may have been in not furnishing the return under Sub-section (1) of Section 139. Unless there is any express order for condonation of such default, we cannot take it that the Income-tax Officer, merely because he has issued a notice under Section 139(2) to a person who has not filed the return under Section 139(1) must be taken to have condoned his default in not furnishing the return under Section 139(1).

7. It is further argued before us that it will be equitable to construe Section 271(1) in such a manner that if there is a longer period of default in not furnishing the return as required under Sub-section (1) of Section 139 and if there is a shorter period of default or no default at all in furnishing the return under Sub-section (2) of Section 139, then action for imposition of penalty can be taken only

for a shorter period of default. This argument has got no merit because the law makes one default as much liable for penalty as another and it is for the Income-tax Officer to take action for whatever default he thinks proper by issuing a notice under Section 274 to the assessee for showing cause why penalty should not be imposed on him and by giving reasonable opportunity to him of being heard. We thus cannot accept the argument adopted by the Tribunal that the words "in the course of any proceedings under this Act" would mean the proceedings for assessment initiated on a return furnished under any particular provision of law. The words "any proceedings under this Act" are very general and the proceedings of the assessment may be on the re-

turn filed under Section 139(1) or Section 139(2) or Section 148. Nor do we agree with the Tribunal that because of the words "in the course of any proceedings under this Act" we should take the view that no proceedings for imposition of penalty can be taken for a default in not furnishing the return under Section 139(1) simply on the ground that assessment proceedings were taken on a return furnished under Sub-section (2) of Section 139. We are, therefore, or the view that the Tribunal has unjustifiably strained the language of Section 271(1)(a) in construing it in the manner it did.

8. Before parting with the Judgment, we may mention that an argument has been addressed before us that if interest has been charged for any period during which the default continued, the penalty cannot be imposed. This aspect of the matter has not been referred to us and we do not make any pronouncement on it.

9. The answer to the question, referred to us, is, therefore, in the negative. We pass no order as to costs.