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**(1992) 04 SC CK 0071**

**In the Supreme Court Of India**

**Case No :** Civil Appeals No's. 2626 to 2628 of 1979

Commissioner of Income Tax (Additional)

APPELLANT

Vs

I.M. Patel and Co.

RESPONDENT

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**Date of Decision :** 28-04-1992

**Acts Referred:**

Income Tax Act, 1961 — Section 139(1), 271(1), 276C

**Citation :** AIR 1992 SC 1762 : (1992) 105 CTR 195 : (1992) 196 ITR 297 :  
(1992) 3 JT 614 : (1992) 1 SCALE 1313 : (1993) 1 SCC 621 Supp

**Hon'ble Judges :** S. Mohan, J;G. N. Ray, J

**Bench :** Division Bench

**Advocate :** J. Ramamurthy, for Ranbir Chandra, P. Parameswaran and A. Subhashini, for the Appellant; P.H. Parekh and Sunil Dogra, for the Respondent

**Final Decision :** Allowed

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## Judgement

S. Mohan, J.—All the three appeals can be dealt with under a common judgment since the assessment years are different while the assessee, the respondent, is one and the same. The three assessment years in question are 1964-65, 1965-66 and 1966-67.

2. For the year 1964-65, the assessee returned an income of Rs. 48,000 while he was assessed on an income of Rs. 58,557 imposing a penalty of Rs. 9,690. For the year 1965-66, the assessee returned an income of Rs. 45,000. He was assessed on an income of Rs. 52,337 together with levy of penalty of Rs. 6,115. For the year 1966-67, he returned an Income of Rs. 51,000 while he was assessed on an income of Rs. 62,560 and a penalty of Rs. 3,915 was imposed. It requires to be stated at this stage that, for the respective assessment years, the returns, as per the statute, ought to have been filed on July 31, 1964, July 31, 1965, and July 31, 1966, respectively. However, the assessee filed the returns for all these years on March 24, 1967. It was the filing of these belated returns which obliged the assessing authority to impose penalty as warranted u/s 271(1) (a) of the income tax Act, 1961 (hereinafter referred to as "the Act"). When the

assessee questioned the correctness of the imposition of penalty by way of an appeal against the order of the income tax Officer, the Appellate Assistant Commissioner confirmed the same. Thereupon, the matter was taken up to the Tribunal. The Tribunal, deciding in favour of the assessee, referred the following question of law:

Whether, on the facts and circumstances, the Tribunal is justified in law in cancelling the penalty levied on the assessee u/s 271(1)(a) for the three assessment years 1964-65 to 1966-67 ?

3. Originally, the matter came up before a Division Bench of the Gujarat High Court. However, the matter was referred to the Full Bench because the Division Bench found itself unable to agree with the view taken by the earlier Division Bench ruling reported in (1975) 36 STC 347 (Morvi Cotton Merchants' Industrial Corporation Ltd. v. State of Gujarat) and in Special Civil Application No. 1059 of 1972, decided by the same Bench on July 18, 1974. In these cases, the Division Bench took the view that in provisions similar to Section 271(1)(a) of the Income tax Act, 1961, under the Sales Tax Act, where also the words "without reasonable cause" have been set put in the section providing for penalty, the burden is on the Revenue to prove the absence of "reasonable cause".

4. Thus, the Division Bench felt that since these decisions, though related to sales tax, had a direct bearing on the interpretation of Section 271(1)(a) of the Act, the reference comes to be made.

5. The Full Bench of the Gujarat High Court, after referring to case law, ultimately disagreed with the view expressed by the Full Bench of the Kerala High Court in Commissioner of Income Tax Vs. Gujarat Travancore Agency, and concluded as under:

In the light of the above discussion, our conclusions are as follows (at page 235 of 107 ITR):

(1) u/s 271(1)(a) of the income tax Act, 1961, failure without reasonable cause to furnish the return in question is an ingredient of the offence;

(2) Section 271(1)(a) provides for penalty in cases where the assessee has either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligations;

(3) The legal burden is on the Department to establish by leading some evidence that prima facie the assessee has without reasonable cause failed to furnish the return within the time specified in Section 271(1)(a) read with the relevant other sections referred to in that section. Once this initial burden, which may be slight, has been discharged by the Department, it is for the assessee to show as in a civil case on balance of probabilities that he had reasonable cause in failing to file the return within the time specified;

(4) Mere falsity of the explanation furnished by the assessee cannot help the

Department in establishing its case against the assessee at the time of imposition of penalty.

6. In view of the above discussion and in view of our conclusion, we answer the question as refrained by us as follows:

Reasonable cause is an ingredient of the offence for which the penalty is provided and the taxing authority has prima facie to prove absence of reasonable cause in the sense that has been explained above.

The matter will now go before the Division Bench for disposal of the case in accordance with law.

7. Thereafter, the matter came before the Division Bench which held that the view expressed by the Tribunal that the assessee had shown "reasonable cause" is not erroneous on the facts and in the circumstances of the case. Accordingly, the reference was answered in the affirmative and against the Revenue. It is under these circumstances that the civil appeals have to be preferred by the Revenue.

8. Mr. J. Ramamurthy, learned Counsel appearing for the Revenue, would submit that the decision of the Kerala High Court reported in Commissioner of Income Tax Vs. Gujarat Travancore Agency, which has differed from in the impugned judgment, which is now reported in Addl. Commissioner of Income Tax, Gujarat Vs. I.M. Patel and Co., , has come to be affirmed by this Court in Gujarat Travancore Agency, Cochin Vs. Commissioner of Income Tax, Kerala, Ernakulam, Further, the same principle as laid down in the above ruling of the Supreme Court came to be reiterated in Commissioner of Income Tax Vs. Kalyan Das Rastogi,

9. Based on this decision, the argument of learned Counsel proceeds that there is a fundamental distinction between the levy of penalty u/s 271(1)(a) as opposed to Section 271(1)(c) of the Act. The former relates to the obligation of the assessee to file a return within the due date, while the latter deals with concealment. Where a statutory obligation has been imposed requiring the assessee to file the return within the due date, it is for him to show, should he file a belated return, a "reasonable cause". The burden is ultimately on the assessee to plead and prove the "reasonable cause." Consequently, no "mens rea" could arise at all. In contradistinction to this, where it is a case of concealment of income u/s 271(1)(c), then the question of mens rea may come in. Unfortunately, in the judgment under appeal, this distinction has not been borne in mind which led to the non-application of the ratio of the Full Bench of the Kerala High Court reported in Commissioner of Income Tax Vs. Gujarat Travancore Agency, ). It was this aspect of the matter which came to be clarified in Gujarat Travancore Agency, Cochin Vs. Commissioner of Income Tax, Kerala, Ernakulam, which has subsequently been applied in Commissioner of Income Tax Vs. Kalyan Das Rastogi, . Thus, it is submitted that the Revenue is entitled to succeed.

10. In opposition to this, learned Counsel for the assessee drew our attention to the passages occurring in the impugned judgment wherein the requirement of proving mens rea had come to be insisted upon. According to him, there is not much of a difference between a case falling u/s 271(1)(a) or Sub-section (1)(c).

11. We have given our careful consideration to the above submissions. We are of the view that the Revenue is entitled to succeed. As a matter of fact, the very question with which we are concerned is no longer res integra as has rightly been pointed out by Mr. Ramamurthy. In Gujarat Travancore Agency, Cochin Vs. Commissioner of Income Tax, Kerala, Ernakulam, this Court answered the question in the following words:

Learned Counsel for the assessee has addressed exhaustive arguments before us on the question whether penalty imposed u/s 271(1)(a) of the Act involves the element of mens rea and in support of his submission that it does, he has placed before us several cases decided by this Court and the High Courts in order to demonstrate that the proceedings by way of penalty u/s 271(1)(a) of the Act are quasi-criminal in nature and that, therefore, the element of mens rea is a mandatory requirement before a penalty can be imposed u/s 271(1)(a). We are relieved of the necessity of referring to all those decisions. Indeed, many of them were considered by the High Court and are referred to in the judgment under appeal. It is sufficient for us to refer to Section 271(1)(a), which provides that penalty may be imposed if the income tax Officer is satisfied that any person has, without reasonable cause, failed to furnish the return of total income, and to Section 276C which provides that if a person wilfully fails to furnish in due time the return of income required u/s 139(1), he shall be punishable with rigorous imprisonment for a term which may extend to one year or with fine. It is clear that in the former case what is intended is a civil obligation while in the latter what is imposed is a criminal sentence. There can be no dispute that having regard to the provisions of Section 276C which speaks of wilful failure on the part of the defaulter and taking into consideration the nature of the penalty, which is punitive, no sentence can be imposed under that provision unless the element of mens rea is established. In most cases of criminal liability, the intention of the Legislature is that the penalty should serve as a deterrent. The creation of an offence by statute proceeds on the assumption that society suffers injury by the act or omission of the defaulter and that a deterrent sentence must be imposed to discourage the repetition of the offence. In the case of a proceeding u/s 271(1)(a), however, it seems that the intention of the Legislature is to emphasise the fact of loss of revenue and to provide a remedy for such loss, although no doubt an element of coercion is present in the penalty. In this connection, the terms in which the penalty falls to be measured are significant. Unless there is something in the language of the statute indicating the need to establish the element of mens rea, it is generally sufficient to prove that a default in complying with the statute has occurred. In our opinion, there is nothing in Section 271(1)(a) which requires that mens rea must be proved before penalty can be levied under that provision.

12. In view of this, it is no longer open to argument whether any mens rea is required to be established u/s 271(1)(a). As a matter of fact, in the subsequent decision of this Court in Commissioner of Income Tax Vs. Kalyan Das Rastogi, , this Court squarely applied this ratio. In the result, the reference is answered in favour of the Revenue. The appeals will stand allowed setting aside the judgments of the High Court and the Tribunal. The order of assessment as passed by the assessing authority and as confirmed by the Appellate Assistant Commissioner in relation to penalty is hereby confirmed. There shall be no order as to costs.

13. Appeals allowed.