

**(1971) 03 AHC CK 0050**  
**In the Allahabad High Court**  
**Case No : Miscellaneous Case No. 283 of 1965**

Commissioner of Income Tax

APPELLANT

Vs

M.L. Gupta and Sons

RESPONDENT

**Date of Decision :** 02-03-1971

**Acts Referred:**

Income Tax Act, 1922 — Section 22(1)  
Income Tax Act, 1961 — Section 271, 271(1), 297(2)

**Citation :** (1972) 86 ITR 513

**Hon'ble Judges :** R.S. Pathak, J; H.N. Seth, J

**Bench :** Division Bench

**Advocate :** B.L. Gupta and R.R. Misra, for the Appellant; P.N. Pachauri, for the Respondent

**Final Decision :** Disposed Off

## Judgement

Pathak, J.—The following question has been referred to this court by the Income Tax Appellate Tribunal:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in cancelling the penalty of Rs. 8,732 imposed on the assessee ?"

2. The assessee is a registered firm. The relevant assessment year is 1958-59. On April 23, 1962, the assessee filed a voluntary return of its income of the previous year. The Income Tax Officer observed that the return should have been filed by July, 1958, as provided in Section 22(1) of the Indian Income Tax Act of 1922. The Income Tax Officer made an order levying a penalty u/s 271(1)(a) of the Act of 1961. The assessee appealed to the Appellate Assistant Commissioner but without success. He then appealed to the Income Tax Appellate Tribunal. The Tribunal held that the provisions of Section 271(1)(a) could not be invoked in the case because the new Act did not specifically declare that a default in complying with Section 22(1) of the Act of 1922 would be deemed to be a default in complying with Section 139 of the Act of 1961. At the instance of the Commissioner of Income Tax, the Tribunal has referred the question set out

above.

3. In Jain Bros. and Others Vs. The Union of India (UOI) and Others, the Supreme Court has expressed the view that by virtue of Section 297(2)(g) of the Act of 1961 the provisions of Section 271(1) are attracted when a default is committed in complying with a notice u/s 22(2) of the Act of 1922. It was held that :

"Both Sections 271(1) 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 the first day of April, 1962, the proceedings have to be initiated and the penalty imposed in accordance with the provisions of Section 271 of the Act of 1961, Thus the assessee would be liable to a penalty as provided by Section 271(1) for the default mentioned in Section 28(0) of the Act of 1922 if his case falls within the terms of Section 297(2)(g)."

4. Learned counsel for the assessee points out that Section 271(1)(c) contemplates a penalty where the Income Tax Officer is satisfied in the course of proceedings under the Act of 1961 that the assessee has committed one of the defaults mentioned in that section. He urges that Section 271(1) cannot be employed in a case where the default has been committed in the course of proceedings under the Act of 1922. In our opinion this contention does not remain open to the assessee after the decision of the Supreme Court in the case of Jain Bros. and Others Vs. The Union of India (UOI) and Others, . Learned counsel for the assessee then contends that if a penalty can be levied at all it can be computed at the rate of two per cent. of the tax only from April, 1962, from which date the Act of 1961 has been brought into operation and it is not open to the Income Tax Officer u/s 271(1) to impose a penalty prior to that period. There is nothing in Section 271(1) which leads to that conclusion. Section 271(1)(i) lays down that the penalty must be computed at 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. No date has been fixed from which the computation must be effected. The rate of tax has to be applied in respect of the entire period of the default, and it is immaterial that some part of that period falls before April, 1962.

5. Upon the aforesaid considerations, we are of the opinion that the Tribunal was wrong in cancelling the penalty imposed on the assessee. The question is answered in the negative. In the circumstances of the case, there is no order as to costs.