

(1979) 01 BOM CK 0003

In the Bombay High Court

Case No : Income-tax Reference No. 58 of 1970

Commissioner of Income Tax, Poona

APPELLANT

Vs

D.V. Save

RESPONDENT

Date of Decision : 23-01-1979

Acts Referred:

Income Tax Act, 1961 — Section 139(1), 139(2), 271(1)(A)

Citation : (1979) 119 ITR 266 : (1979) 2 TAXMAN 68

Hon'ble Judges : S.K. Desai, J; M.N. Chandurkar, J

Bench : Division Bench

Advocate : R.J. Joshi, for the Appellant; D.Y. Pandit, for the Respondent

Judgement

S.K. Desai J.

1. This is a reference at the instance of the Commissioner under s. 256(1) of the I. T. Act, 1961, and the following question of law stands referred to us :

"Whether, on the facts and in the circumstances of the case, the Tribunal erred in holding that no penalty u/s 271(1)(a) could be levied for the alleged default u/s 139(1) of the Act when the assessee had filed return pursuant to the notice issued u/s 139(2)"

2. A few facts may be stated. The assessee before us in a partnership firm and we are concerned with the assessment years 1963-64 and 1964-65. The relevant accounting periods for these assessment years were the years ending September 30, 1962, and September 30, 1963, respectively. Accordingly, returns of income for the above years were due on June 30, 1963, and June 30, 1964, respectively. It appears that the assessee-firm had applied for extension of time for filing the returns but no orders were passed by the ITO on the application. Ultimately, notices under s. 139(2) were issued and served on the assessee. For the first year, i.e., 1963-64, the notice was served on December 3, 1963, and for the second of the year under consideration, i.e., 1964-1965, the notice was served on March 30, 1965. As per the notices necessary returns were required to

be filed by the assessee within 35 days of the service of the respective notices. However, the assessee filed returns not within this period but on May 4, 1965, and on April 19, 1966, respectively, for the two assessment years.

3. The ITO initiated penalty proceedings for belated submission of returns and penalties in the sums of Rs. 13,000 and Rs. 11,420, respectively, were levied under s. 271(1)(a) of the I. T. Act, 1961, for these two assessment years. This was done after giving necessary opportunity to the assessee. The aggrieved assessee carried the matter in appeal to the AAC who confirmed the penal action with minor modifications. A consolidated order was passed by the AAC in the two appeals. The copies of the orders of the ITO are annexed as enclosures A-1 and A-2 to the statement of the case and the consolidated order of the AAC is annex. "E" to the statement of the case.

4. The assessee thereafter moved the Income Tax Appellate Tribunal. Several different contentions were raised before the Tribunal. It was, inter alia, submitted that the main partner, Shri D. V. Save, had died on January 10, 1961, and that by reason of such death the other partners were so much mentally perturbed not only during the period of his illness but even subsequently, that accounts of the firm could not be made up in time so as to enable the partners to file the returns in question. In other words, it was pleaded that the assessee had a reasonable cause for the late filing of the returns. Further, it was submitted that inasmuch as the notice under s. 139(2) had been issued by the ITO and in pursuance thereof the assessee had filed the returns (although not within the time mentioned in the notices), it was not open to the ITO to levy penalty on the basis of an alleged default or transgression of s. 139(1). In connection with this submission a decision of the Delhi Bench of the Income Tax Appellate Tribunal was relied upon. The Tribunal considered a number of hypothetical cases and came to the conclusion that in the instant case the penalty levied by the ITO on the basis of the transgression of s. 139(1) was not justified. In the circumstances, it held that s. 271(1)(a) did not cover a case of a default of present nature and orders imposing penalties were not legally tenable. In that view, it allowed the appeal expressing clearly in para. 4 of its order that in the view it had taken there was no necessity of dealing with the other arguments advanced on behalf of the assessee.

5. It is the correctness of the view of the Tribunal that has been impugned in this reference at the instance of the Commissioner. At the outset it may be pointed out that the decision of the Delhi Bench of the Tribunal on which reliance was placed by the Tribunal, whose decision has occasioned the present reference, was the subject-matter of a reference to the Rajasthan High Court and the decision of the Division Bench of the said High Court in *The Commissioner of Income Tax, Rajasthan, Jaipur Vs. Indra and Co., Jodhpur*, The Division Bench was considering an almost identical situation as the one before us. A firm and its partner had not filed the returns within the period contemplated in s. 139(1). They had made applications to the ITO, Jodhpur, for extending the time which had been extended

up to August, 31, 1962. As a result of similar applications, further extension was granted up to September 30, 1962, but the returns were not filed even by that day. The ITO then served notices on the assessees under s. 139(2) of the Act calling upon them to file returns within 30 days and the returns were then filed on April 25, 1963. During the course of the assessment proceedings notices were issued against the assessees asking them to show cause why a penalty should not be imposed for failure to submit the returns under s. 139(1) of the Act. The explanation for delay which was offered by the assessee was not found adequate and penalties were imposed on both of them as prescribed under s. 271(1)(a) of the I. T. Act, 1961. An appeal was preferred to the AAC before whom it was, inter alia, submitted that as soon as notices under s. 139(1) was condoned by the ITO and as such no action could be taken for not filing the returns in time as laid down by s. 139(1). We are not concerned with the other contention in the appeal. Both the contentions were rejected by the AAC but, in further appeal to the Tribunal, the first of the arguments noted above found favour with the Tribunal. It may be mentioned in passing that it is this decision of the Delhi Bench of the Income Tax Tribunal which was pressed into service by the Tribunal in the present case.

6. Before setting down the ratio of the decision of the Rajasthan High Court in *The Commissioner of Income Tax, Rajasthan, Jaipur Vs. Indra and Co., Jodhpur*, the relevant statutory provisions may be extracted. We are concerned with the sections as originally enacted. Section 139(1) (relevant portion), ss. 139(2), 139(4) and 139(7) provided as follows :

"139. (1) Every person, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to Income Tax, shall furnish a return of his income or the income of such other person during the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed -

(a) in the case of every person whose total income, or the total income of any other person in respect of which he is assessable under this Act, includes any income from business or profession, before the expiry of six months from the end of the previous year or where there is more than one previous year, from the end of the previous year which expired last before the commencement of the assessment year, or before the 30th day of June of the assessment year, whichever is later;

(b) in the case of every other person, before the 30th day of June of the assessment year :

Provided that, on an application made in the prescribed manner, the Income Tax Officer may, in his discretion, extend the date for furnishing the return -

(i) in the case of any person whose total income includes any income from business or profession the previous year in respect of which expired on or before

the 31st day of December of the year immediately preceding the assessment year, and in the case of any person referred to in clause (b), up to a period not extending beyond the 30th day of September of the assessment year without charging any interest;

(ii) in the case of any person whose total income includes any income from business or profession the previous year in respect of which expired after the 31st day of December of the year immediately preceding the assessment year, up to the 31st day of December of the assessment year without charging any interest; and

(iii) up to any period falling beyond the dates mentioned in clauses (i) and (ii), in which case, interest at nine per cent. per annum shall be payable from the 1st day of October or the 1st day of January as the case may be, of the assessment year to the date of the furnishing of the return -

(a) in the case of a registered firm or an unregistered firm which has been assessed under clause (b) of section 183, on the amount of tax which would have been payable if the firm had been assessed as an unregistered firm, and

(b) in any other case, on the amount of tax payable on the total income, reduced by the advance tax, if any, paid or by any tax deducted at source, as the case may be.....

(2) In the case of any person who, in the Income Tax Officer's opinion is assessable under this Act, whether on his own total income or on the total income of any other person during the previous year, the Income Tax Officer may, before the end of the relevant assessment year, serve a notice upon him requiring him to furnish, within thirty days from the date of service of the notice, a return of his income or the income of such other person during the previous year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed :

Provided that on an application made in the prescribed manner the Income Tax Officer may, in his discretion, extend the date for the furnishing of the return, and when the date for furnishing the return, whether fixed originally or on extension, falls beyond the 30th day of September or, as the case may be, the 31st day of December of the assessment year, the provisions of sub-clause (iii) of the proviso to sub-section (1) shall apply.....

(4) (a) Any person who has not furnished a return within the time allowed to him under sub-section (1) or sub-section (2) may, before the assessment is made, furnish the return for any previous year at any time before the end of the period specified in clause (b), and the provisions of clause (iii) of the proviso to sub-section (1) shall apply in every such case :

(b) the period referred to in clause (a) shall be -

(i) where the return relates to a previous year relevant to any assessment year

commencing on or before the 1st day of April, 1967, four years from the end of such assessment year;

(ii) where the return relates to a previous year relevant to the assessment year commencing on the 1st day of April, 1968 three years from the end of the assessment year;

(iii) where the return relates to a previous year relevant to any other assessment year, two years from the end of such assessment year.....

(7) No return under sub-section (1) need be furnished by any person for any previous year if he has already furnished a return of income for such year in accordance with the provisions of sub-section (2)....."

7. The other statutory provision arising for consideration is s. 271 and we are concerned with s. 271(1)(a) and the penalty provided for the default contemplated in s. 271(1)(i). The said section runs as follows :

"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) has without reasonable cause failed to comply with a notice under sub-section (1) of section 142 or sub-section (2) of section 143, (3) has concealed the particulars of his income or furnished inaccurate particulars of such income, 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;....."

8. According to the Rajasthan High Court, the defaults contemplated u/s 271(1) (a) were 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-s. (1) of s. 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-s. (2) of s. 139 or s. 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-s. (1) of s. 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-s. (2) of s. 139 or s. 148.

9. The Rajasthan High Court noted that a circumstance which had weighed with the Tribunal in *The Commissioner of Income Tax, Rajasthan, Jaipur Vs. Indra and Co., Jodhpur*, was that in the opinion of the Tribunal default under s. 139(1) would continue even when the assessee subsequently filed a return pursuant to the notice under s. 139(2). In the opinion of the High Court, there was no warrant for such a proposition and in the words of the High Court "The default is in not furnishing the return and as soon as the return is furnished, there is end of the default".

10. The High Court also pressed into service the provision of s. 139(7) in support of this conclusion. At page 706 of the decision if the Rajasthan High Court is to be found the pertinent paragraph which would seem to clinch the matter under issue. The full paragraph or rather two paragraphs may be extracted :

"If the view taken by the Tribunal is adopted, the result will be that if a person has not filed any return u/s 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 u/s 139(1) and wait till a notice is given to him u/s 139(2) and then file a return within the time mentioned in that notice. This view does not appeal to us.

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 had issued a notice u/s 139(2) to a person who had not filed the return u/s 139(1), must be taken to have condoned his default in not furnishing the return u/s 139(1)."

11. One further argument was urged before the Rajasthan High Court which may be noted and that was that if the return pursuant to a notice under s. 139(2) is filed beyond time provided in the notice, there would be two defaults, one under s. 139(1) and another under s. 139(2), it being obvious that the period of the latter default will be much shorter than the other one. The argument which was urged before the Rajasthan High Court and brushed aside was that where there were two periods of default, then action for imposition of penalty could be taken only for the shorter period of default. The Rajasthan High Court found no merit in any such argument. The decision of the Rajasthan High Court has been referred

to, applied and followed by the DELhi High Court in The Commissioner of Income Tax, Delhi Vs. Hindustan Industrial Corporation, New Delhi, It was held by the Division Bench of the Delhi High Court that the plain language of s. 139(2) could not be strained to hold either that the assessee is absolved of his statutory obligation to file a return of his income voluntarily under s. 139(1) and the default committed in not filing a return voluntarily under s. 139(1) cannot be taken note of for initiating proceedings for imposition of penalty if a notice under s. 139(2) is issued, or that the period of default shall cease from the date when the notice under s. 139(2) is served on the assessee. After extracting the paragraph which we have quoted above from the decision of the Rajasthan High Court, the Delhi High Court went on to observe that two separate and independent returns of income were not contemplated or envisaged by sub ss. (1) and (2). It also noted that the ITO had discretion to issue a notice in pursuance of sub-s. (2) of s. 139 either in the beginning of the assessment year or before the end of the assessment year. It then went on to hold (at page 663) :

"An assessee who has not filed a return voluntarily as required u/s 139(1) cannot be absolved of the default committed by him on the ground that he has filed the return of his income within 30 days of the service of notice u/s 139(2) of the Act by the Income Tax Officer calling upon him to submit the return of his income and thereby say that as soon as he complied with the orders of the Income Tax Officer and filed the return within 30 days of the service of the notice, he has also complied with the provision of section 139(1) of the Act."

12. At page 665, the Delhi High Court also considered what would be the period of default in a situation similar to the one before us. It observed :

"A careful reading of the two sub-sections amply justifies a conclusion that the return of income required to be filed under either of the two sub sections is a return of the total income of a person which he otherwise is under obligation to file voluntarily under s. 139(1) of the Act. That being so, if an assessee does not file a return voluntarily as is required of him under s. 139(1) the default would start from the date when the return ought to have been filed and not from the day when he files the return in pursuance of the directions issued by the Income Tax officer in the exercise of his discretion u/s 139(2). In this view of the matter, the default in the instant case was committed by the assessee with effect from 1st December, 1962, as an automatic extension of time to submit the return stood granted up to 30th November, 1962, on the basis of a circular letter issued by the Central Board of Direct Taxes and the default continued till 15th April, 1963, when the assessee submitted its return of income in compliance with the notice served upon it by the Income Tax Officer in pursuance of the provisions of section 139(2). The plain language of sub-section (2) of section 139 cannot be strained to hold that the assessee was absolved of its statutory obligation from filing a return of its income voluntarily u/s 139(1) and the default committed in not filing the return cannot be taken note of for initiating proceedings for imposition of penalty and that the period of default shall cease from the date

when the notice u/s 139(2) issued by the Income Tax Officer to the assessee requiring it to furnish a return of its income within 30 days from the date of service of the notice. We are, therefore, of the opinion that, on the facts and in the circumstances of the case, the Tribunal was not justified in holding that the default u/s 139(1) of the Act existed only till the date when the notice u/s 139(2) of the Act was served upon the assessee. There is no warrant in law for holding that the default in not filing a return voluntarily ceased from 14th March, 1963, when the notice u/s 139(2) was served upon the assessee. If any other interpretation of sub-sections (1) and (2) of section 139 is given, it would create discrimination between the assesseees, i.e., those who had filed the return voluntarily in pursuance of sub-section (1) of section 139 and those who infringed the said provisions and chose to wait for a direction from the Income Tax Officer."

13. The Delhi High Court thus agreed with the Rajasthan High Court and rejected the contention which had been advanced before it by the learned advocate for the assessee.

14. In Mullapudi Venkatarayudu Vs. Union of India (UOI), a Division Bench of the Andhra Pradesh High Court had occasion to consider a similar situation. The court was considering the writ petition of an assessee who had not filed his return under s. 139(1), but who filed it after receipt of a notice under s. 139(2) as he had done in the previous year. During the course of assessment the ITO issued a notice to the petitioner under s. 271 to show cause why penalty should not be levied for not having filed a return under s. 139(1) and after hearing the petitioner levied penalty. The order of penalty was ultimately confirmed by the Tribunal. The High Court was moved in its writ jurisdiction, inter alia, because it was contended that s. 271(1) of the I. T. Act, 1961, infringed art. 14 of the Constitution. We are not concerned with this aspect in the present reference save to note that the challenge was rejected. However, one other argument which was advanced on behalf of the petitioner was that under s. 271(1)(i) penalty could be levied for the period during which the default continued, and that as no return was filed by the assessee under s. 139(1), the default must be taken to have continued indefinitely. It was submitted that in these circumstances it was impossible for the ITO to determine the quantum of penalty and hence the order levying the penalty was liable to be quashed. This argument was found to be without any merit. According to the Andhra Pradesh High Court the default would continue up to the date on which the return was filed either under s. 139(2) or s. 139(4). It was also submitted for acceptance of the High Court that because the ITO had issued a notice under s. 139(2) after expiry of the period prescribed by s. 139(1), the ITO was deemed to have condoned the non-compliance with the requirements prescribed by s. 139(1). This was also not accepted by the Andhra Pradesh High Court. In this connection, it considered the provision to be found contained in s. 139(7) and followed the decision of the Rajasthan High Court in The Commissioner of Income Tax, Rajasthan, Jaipur Vs. Indra and Co., Jodhpur, It may be noted that the arguments advanced on behalf of the petitioner were

considered independently of the decision and after expressing its own view on the various points canvassed before it the Andhra Pradesh High Court observed that the view found support in the Division Bench decision of the Rajasthan High Court in *The Commissioner of Income Tax, Rajasthan, Jaipur Vs. Indra and Co., Jodhpur*, The relevant observations are to be found at pages 463 to 465 of the above report. The precise paragraphs need not be extracted as the arguments advanced before the Andhra Pradesh High Court have been fully covered by the Rajasthan High Court and the Delhi High Court in the two decisions earlier noted.

15. A comparable provision under the G. T. Act, 1958, came to be considered by the Delhi High Court in *SHIV SHANKAR LAL Vs. COMMISSIONER OF GIFT-TAX.*, , where a contention similar to the one advanced on behalf of the assessee before us was summarily rejected by the Division Bench of the Delhi High Court as being one devoid of any merit (see page 275).

16. Our attention was also called to *Additional Commissioner of Income Tax, Gujarat Vs. Santosh Industries*, where a Division Bench of the Gujarat High Court came to consider the provisions contained in s. 271(1) (a). Bhagwati C.J. (as he then was) has delivered a learned and detailed judgment on those provisions. However, since the Gujarat High Court was principally concerned with a return under s. 139(4) it appears to us that the judgment need not be considered in detail. It may be pointed out that the observations in this judgment do not at all support the case of the assessee, nor help him in any manner whatsoever.

17. However, in the face of all the above catena of decisions a discordant note was struck by the Patna High Court in *Additional Commissioner of Income Tax Vs. Bihar Textiles*, where somewhat curiously none of the decisions which we have noted above appears to have been brought to the notice of the court. According to the Division Bench of the Patna High Court once a notice under sub-s. (2) of s. 139 of the I. T. Act, 1961, has been issued to an assessee during the relevant assessment year, there cannot be any penalty under s. 271(1) for failure to furnish the return as required by sub-s. (1) of s. 139. Thus, according to the Patna High Court (p. 256) :

"Once, therefore, a notice is issued u/s 139(2), the penalty under clause (a) of sub-section (1) of section 271, if any, can be imposed for any default on the part of the assessee to comply with the directions in the notice. That obviously will preclude a penalty being imposed for failure to furnish the return under sub-section (1) of section 139. As a necessary corollary, it would follow that once a notice under sub-section (2) of section 139 is duly issued and time is granted therein by the Income Tax Officer, the law does not contemplate any penalty being to be imposed in respect of any default for failure to comply with the provisions of sub-section (1) of section 139. To take a concrete case, for example, where an assessee does not file a return u/s 139(1), but does file the return within the time granted in the notice u/s 139(2), can it be said that the assessee would still be held to be liable for penalty ? On a true construction of section 271(1)(a), I am of the view that once a notice under sub-section (2) of

section 139 is issued, that precludes the penal provision being attracted in so far as the failure to furnish the return under sub-section (1) of section 139 is concerned. If a contrary view is taken, it would lead not only to an anomalous result, but it would be doing violence to the express language of the statute. In so deciding the point, I am aware of the decision of the Supreme Court in the case of C.A. Abraham, Uppoottil, Kottayam Vs. The Income Tax Officer, Kottayam and Another, wherein it has been held that, in interpreting a fiscal statute, the court cannot proceed to make good deficiencies, if there be any; the court must interpret the statute as it stands and in case of doubt in a manner favourable to the taxpayer. But where by the use of words capable of comprehensive import, provision is made for imposing liability for penalty upon the taxpayer guilty of fraud, gross negligence or contumacious conduct, an assumption that the words were used in a restricted sense so as to defeat the avowed object of the legislature in respect of a certain class will not be lightly made. The instant case is one of such cases where the language of section 271(1)(a), in my view, is clear enough; and even if it be held to be of ambiguous import, or if there be any doubt as to the true interpretation of the penal provisions contained in section 271(1)(a), the interpretation of the statute has, on the authority of the Supreme Court's decision in C.A. Abraham, Uppoottil, Kottayam Vs. The Income Tax Officer, Kottayam and Another, , to be made in a manner favourable to the taxpayer."

18. In the succeeding paragraph, the Division Bench of the Patna High Court also observed that, in its view, by the issuance of notice under s. 139(2) within the relevant assessment year, the period prescribed in sub-s. (1) of s. 139 was duly extended and accordingly no penalty could be levied for any default committed in respect of the provisions of s. 139(1). The learned advocate for the assessee submitted that the view of the Patna High Court was the correct view of the statutory provisions under consideration. In the alternative it was submitted that since this was a view clearly and decisively indicated by the Patna High Court in its judgment, this was a case where two interpretations were possible and if the language of the statutory provisions was regarded as one having an ambiguous import or if there be any doubt as to the true interpretation of the statutory provisions, then the interpretation in favour of the subject was required to be adopted and preferring over the other.

19. Now, the latter proposition has been enunciated in a number of authorities of the Supreme Court and indicates the proper course which is required to be followed where the statutory provision can genuinely be considered to have an ambiguous import. In connection with this branch of the argument our attention was drawn to the observations in The Commissioner of Income Tax, West Bengal 1, Calcutta Vs. Vegetables Products Ltd., where Hedged J., speaking for the Supreme Court, observed that if two reasonable constructions of a taxing provision were possible then that construction which favoured the assessee must be adopted. It may be noted that in this very judgment a caution has been sounded that if the language is plain then it has to be given effect to and it is for

the legislature to step in, if necessary, to prevent any absurd results or to fill up any lacuna or deficiency.

20. We are required to lavish closer attention to the decision of the Patna High Court, on which strong reliance has been placed on behalf of the assessee, to find out whether the construction placed on the statutory provisions which appealed to the Division Bench of the Patna High Court can be considered to be a reasonable construction or interpretation. If that construction be regarded as a possible or reasonable construction, then the principle laid down by the Supreme Court in *The Commissioner of Income Tax, West Bengal 1, Calcutta Vs. Vegetables Products Ltd.*, would come into play and that construction may be required to be given or preferred over the other construction which appealed to the Rajasthan, Delhi and Andhra Pradesh High Courts. With respect to the learned judges of the Patna High Court, we are afraid that the construction they have placed on the statutory provisions cannot be fairly regarded as a possible or reasonable construction of the same. In the said decision in *Additional Commissioner of Income Tax Vs. Bihar Textiles*, it has been observed at the foot of page 256 that once a notice is issued under s. 139(2), penalty under clause (a) of sub-s. (1) of s. 271 could be imposed for default on the part of the assessee to comply with the directions in the said notice only, i.e., the one under s. 139(2) and according to the High Court this would obviously preclude a penalty being imposed for failure to furnish the return under sub-s. (1) of s. 139. No convincing reason is given by the High Court for this conclusion. As explained in the decisions of the Delhi and Andhra Pradesh High Courts, there are two separate defaults, i.e., one occurring where the assessee does not file a return within the period provided by s. 139(1) and the second when he similarly fails to file his return within the time allowed by the notice under s. 139(2). For each of such defaults penalty could be contemplated, though obviously it will be in the interests of the revenue to take action for the period of longer default which would be the default arising from transgression of s. 139(1). The Patna High Court then observes, continuing upon this erroneous premise, that as a necessary corollary, it would follow that once a notice under sub-s. (2) of s. 139 is duly issued and time is specified therein by the ITO by which the return is required to be filed the law does not then contemplate any penalty to be imposed in respect of any default for failure to comply with the provisions of sub-s. (1) of s. 139. As we are unable to accept the premise, the corollary also must stand rejected. The Patna High Court has posed one question to which, in the opinion of the High Court, the answer is obvious. The question which is posed at page 257 of the report was whether an assessee could be said to be in default and liable to penalty if he had filed his return within the time granted in the notice under s. 139(2). In the view that appealed to the Patna High Court, the assessee was not in default. To us, however, it is clear that if the assessee files a return in accordance with the notice under s. 139(2), he complies with s. 139(2) and there is, therefore, no transgression of the said sub-section; but the default or transgression of s. 139(1) has continued up to the date on which the return has

been filed and this default is not condoned in any manner.

21. The arguments which appealed to the Patna High Court which have been extracted in the paragraph quoted above have been fully dealt with in the judgments of the Rajasthan, Delhi and Andhra Pradesh High Courts. All the other refinements of the various arguments and their several facets which could have been urged on behalf of the assessee, have been studiously considered by these High Courts and properly dealt with. None of these arguments, nor any of the facets thereof, have been accepted by these High Courts and in our view these three High Courts have taken the correct view of the statutory provisions and the interpretation put on the provision and the view taken by the Patna High Court applying the same does not qualify as a reasonable and possible interpretation which would bring into play the principle in *The Commissioner of Income Tax, West Bengal 1, Calcutta Vs. Vegetables Products Ltd.,* .

22. This is the only point on which the appeal was disposed of by the Tribunal and in our view the Tribunal was in error in upholding the appeal on the limited footing which was canvassed before it by the assessee. Accordingly, the question referred to us is answered in the negative (affirmative ?) and in favour of the revenue. The Tribunal would now be required to consider and decide the other points involved in the appeal. The assessee will pay to the Commissioner the costs of the reference.