
(1987) 03 AP CK 0032
In the Andhra Pradesh High Court
Case No : R.C. No. 50 of 1980

Commissioner of Wealth-tax

APPELLANT

Vs

Amatul Kareem

RESPONDENT

Date of Decision : 05-03-1987

Acts Referred:

Income Tax Act, 1961 — Section 274(1), 275

Wealth Tax Act, 1957 — Section 14, 14(2), 15, 16, 17

Citation : (1987) 63 CTR 297 : (1987) 167 ITR 703

Hon'ble Judges : M.N. Rao, J;K. Ramaswamy, J

Bench : Division Bench

Advocate : M. Suryanarayana Murthy, for the Appellant; Y. Rainakar, for the Respondent

Judgement

K. Ramaswamy, J.—The assessee has to file his wealth-tax return on or before June 30, of the relevant assessment year, but filed his return of wealth for the assessment year 1960-61 in August, 1971, beyond the stipulated time under the Wealth-tax Act, 1957 (Act No. 27 of 1957), for short, "the Act". Wealth-tax assessment order for 1960-61 was made on August 22, 1972, and later on the Wealth-tax Officer initiated penalty proceedings u/s 18(1)(a) of the Act. The explanation offered by the assessee for delay in filing the return was not accepted by the Wealth-tax Officer . He imposed a penalty of Rs. 1,00,130 by order dated March 26, 1975. On appeal, the penalty was confirmed by order dated February 24, 1976, but the Wealth-tax Officer was directed to compute penalty as per law prior to March 31, 1969. On further appeal to the Tribunal, following the ratio of this court in Commissioner of Wealth-tax Vs. R.D. Chand and V.R. Desai, , the Tribunal by order dated July 11, 1977, held that the default committed is not a continuing offence and the default arises on the last due date to file the return. Therefore, the law prevailing as on the last day for filing the return should be applied to compute the penalty. At the instance of the Revenue, the following question has been referred :

"Whether, on the facts in the circumstances of the case, the provisions as obtained after April 1, 1969, were applicable in computing the penalty for the assessment year 1960-61 ?"

2. Sri Suryanarayana Murthy, learned standing counsel for the Revenue, has stated that the failure to file the return is a continuing offence. u/s 18(1)(a), the penalty shall be payable in a sum not exceeding 1.5 times the amount of such tax in a case covered u/s 18(1)(a). Subsequently, the law was amended. Following the amended law, the Wealth-tax Officer is justified in law in computing the penalty in terms thereof. In support thereof, he placed reliance on *Maya Rani Punj Vs. Commissioner of Income Tax, Delhi*. Sri Ratnakar, learned counsel for the assessee, contended that as soon as the return is not filed on the last due date, the offence is complete. So it is not a continuing offence. Alternatively, he contended that the penalty cannot be more onerous than was prevailing on the date it occurred offending article 20(1) of the Constitution. He further contended that the penalty was only minimal at the point of time when his counterpart has relied on the decision of this court which now stands overruled by the decision of the Supreme Court. As a result, the question of going into the reasonableness of the explanation for non-filing of the return has to be gone into. Therefore, while answering the question, this court would give an opportunity to the assessee to give a satisfactory explanation to the Tribunal that he was prevented by sufficient cause from filing the return within time.

3. The respective contentions give rise to the question whether the failure to file the return is a continuing offence, and, if so, what are the criteria to determine the penalty.

4. Prior to April 1, 1965, sub-sections (1) and (3) of section 14 of the Act stood as follows :

"14. Return of wealth. - (1) Every person whose net wealth on the valuation date was of such an amount as to render him liable to wealth-tax under this Act shall, before the thirtieth day of June of the corresponding assessment year, furnish to the Wealth-tax Officer, a return in the prescribed form and verified in the prescribed manner setting forth his net wealth as on the valuation date :

(3) The Wealth-tax Officer may, if he is satisfied that it is necessary so to do, extend the date for the delivery of the return under this section."

After April 1, 1965 :-

"14. (1) Every person, if his net wealth or the net wealth of any other person in respect of which he is assessable under this Act on the valuation date was of such an amount as to render him liable to wealth-tax under this Act, shall, before the thirtieth day of June of the corresponding assessment year, furnish to the Wealth-tax Officer a return in the prescribed form and verified in the prescribed manner setting forth the net wealth as on the valuation date :

(3) The Wealth-tax Officer may, if he is satisfied that it is necessary so to do,

extend the date for the delivery of the return under this section."

Section 15 of the Act which has not undergone any change since the commencement of the Act reads :

"15. Return after due date and amendment of return. - If any person has not furnished a return within the time allowed u/s 14, or having furnished a return under that section discovers any omission or a wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the assessment is made."

The relevant parts of section 18 of the Act as they stood during the three periods referred to above reads as follows :

Prior to April 1, 1965 :

"18. (1) If the Wealth-tax Officer, Appellate Assistant Commissioner, Commissioner or Appellate Tribunal 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 his net wealth which he is required to furnish under sub-section (1) or sub-section (2) of section 14 or section 17 or has without reasonable cause failed to furnish it within the time allowed and in the manner required; or

(b) and (c) - (not relevant. Hence omitted)...

he or it may, by order in writing, direct that such person shall pay by way of penalty -

(i) in the case referred to in clause (a), in addition to the amount of wealth-tax payable by him, a sum not exceeding one and a half times the amount of such tax, and....."

Between April 1, 1965, and March 31, 1969 :

"18. (1) If the Wealth-tax Officer, Appellate Assistant Commissioner, Commissioner or Appellate Tribunal 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 his net wealth) which he is required to furnish under sub-section (1) of section 14 or by notice given under sub-section (2) of section 14 or section 17, or has without reasonable cause failed to furnish it within the time allowed and in the manner required by sub-section (1) of section 14 or by such notice, as the case may be; or (b) and (c) ... (omitted as not relevant).

he or it may, by order in writing, 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 wealth-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;..."

After April 1, 1969, and as on March 18, 1971, on which date the returns were filed :

"18. (1) If the Wealth-tax Officer, Appellate Assistant Commissioner, Commissioner or Appellate Tribunal in the course of any proceedings under this Act is satisfied that any person -

(a) has without reasonable cause failed to furnish the return which he is required to furnish under sub-section (1) of section 14 or by notice given under sub-section (2) of section 14 or section 17, or has without reasonable cause failed to furnish within the time allowed and in the manner required by sub-section (1) of section 14 or by such notice, as the case may be; or (b) and (c) (omitted as not relevant)

he or it may, by order in writing, 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 wealth-tax, if any, payable by him, a sum, for every month, during which the default continued, equal to one-half per cent. of -

(A) the net wealth assessed u/s 16 as reduced by the amount of net wealth on which, in accordance with the rates of wealth-tax specified in Paragraph A of Part I of the Schedule or Part II of the Schedule, the wealth-tax chargeable is nil, or

(B) the net wealth assessed u/s 17, where assessment has been made under that section, as reduced by -

(1) the net wealth, if any, assessed previously u/s 16 or section 17, or

(2) the amount of net wealth on which, in accordance with the rates of wealth-tax specified in Paragraph A of Part I of the Schedule or Part II of the Schedule, the wealth-tax chargeable is nil,

whichever is greater,

but not exceeding, in the aggregate, an amount equal to the net wealth assessed u/s 16, or, as the case may be, the net wealth assessed u/s 17, as reduced in either case in the manner aforesaid;....."

5. In this case, admittedly the assessee did not file the return on or before June 30 of the relevant assessment year till 1971. A reading of the above provisions would indicate that they have undergone, in regard to levy of penalty, a sea change. The liability to pay penalty arises when the default is committed in filing the return of net wealth as on the valuation date in the prescribed manner before the Wealth-tax Officer on or before June 30 of the relevant assessment year. In a case where notice is given by the Wealth-tax Officer or he has extended the time

to file the return u/s 14, then the assessee gets a right to file his return at any time before the extended time. If it is a case of voluntary return, section 14 gets attracted and in the case of a notice by the Wealth-tax Officer, the operation is governed by section 14. Section 18 deals with three types of penalties for specified acts or omissions on the part of the assessee. They are all governed by clauses (a) to (c) of sub-section (1) thereof. In this case, clause (a) is attracted for the imposition of penalty for the omission to file the return, which the assessee is required to do under sub-section (1) of section 14. Thereby, the assessee is exposed to the levy of penalty unless the assessee gives a reasonable explanation, which is accepted, for the omission to file the return within time. The method of assessment of penalty is provided in section 18(1). But due to legislative intervention, the measure of penalty imposable for the failure to submit the return by an assessee varied from time to time. Prior to April 1, 1965, the penalty imposable was a sum not exceeding 1.5 times the amount of tax payable by the assessee during the relevant assessment year. Within the limits prescribed by the statute, the authority concerned is given discretion to levy penalty taking into account the relevant facts and circumstances. Between April 1, 1965, and March 31, 1969, the measure of penalty was regulated as per the Amendment Act of 1964. The amount of penalty imposable was equivalent to 2 per cent. of the tax for every month during which the default continued, but not exceeding in the aggregate 50 per cent. of the tax. Thereafter, by the Finance Act, 1969, the penalty imposable was a sum for every month equivalent to half per cent of the net wealth calculated in accordance with the amended provisions of section 18. The penalty imposable thereunder is more drastic than what was prevailing earlier.

6. The question, therefore, is whether the omission or default in submitting the return within the statutory period is a continuing offence. In *Balkrishna Savalram Pujari and Others Vs. Shree Dnyaneshwar Maharaj Sansthan and Others*, , the question for consideration was whether the bar of limitation under article 120 is saved by section 23 of the Limitation Act, 1908. The question raised therein was whether the wrong execution and taking possession thereunder is a continuing wrong and whether a fresh period of limitation began to run at every moment of time during which the said wrong continued. Gajendragadkar J. (as he then was), "continuing wrong", held thus (p. 807) :

"It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. In this connection, it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury. It is only in regard to acts which can be properly characterised as continuing wrongs that section 23 can be invoked."

7. In *State of Bihar Vs. Deokaran Nenshi and Another*, , the question was whether the failure to furnish a return is a continuing offence under the Mines Act, 1952. Shelat J., speaking for the court, held that u/s 66 read with regulation 3, the owner, etc., of a mine would be liable to the penalty if he were to commit an infringement of the regulation which consists in the failure to furnish returns on or before January 21 of the succeeding year. In that context, it was held in para 5, thus (page 909) :

"Continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues and, therefore, constitutes a fresh offence every time or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all."

8. On the facts in that case, while holding that failure to furnish a return constitutes no continuing offence, it was held (p. 910) :

"The infringement, therefore, occurs on January 21 of the relevant year and is complete on the owner failing to furnish the annual returns by that day. The regulation does not lay down that the owner, manager, etc., of the mine concerned would be guilty of an offence if he continues to carry on the mine without furnishing the returns or that the offence continues until the requirement of Regulation 3 is complied with. In other words, Regulation 3 does not render a continued disobedience or non-compliance of it an offence."

9. In *Commissioner of Wealth Tax, Amritsar Vs. Suresh Seth*, , a case which arose under the Wealth-tax Act, Venkataramaiah J., speaking for the court, held that failure to furnish the return is not a continuing offence. Therefore, the law applicable as on the date when the omission is committed is the law applicable in computing and levying the penalty under the Act. It was also held (p. 335) :

"A liability in law ordinarily arises out of an act of commission or an act of omission. When a person does an act which law prohibits him from doing it and attaches a penalty for doing it, he is stated to have committed an act of commission which amounts to a wrong in the eye of law. Similarly, when a person omits to do an act which is required by law to be performed by him and attaches a penalty for such omission, he is said to have committed an act or omission which is also a wrong in the eye of law. Ordinarily, a wrongful act or failure to perform an act required by law to be done becomes a completed act of commission or of omission, as the case may be, as soon as the wrongful act is

committed in the former case and when the time prescribed by law to perform an act expires in the latter case and the liability arising therefrom gets fastened as soon as the act of commission or of omission is completed. The extent of that liability is ordinarily measured according to the law in force at the time of such completion. In the case of acts amounting to crimes, the punishment to be imposed cannot be enhanced at all under our Constitution by any subsequent legislation by reason of article 20(1) of the Constitution which declares that no person shall be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. In order cases, however, even though the liability may be enhanced, it can only be done by a subsequent law (of course subject to the Constitution) which either by express words or by necessary implication provides for such enhancement."

10. This statement of law was approved in *Maya Rani Punj Vs. Commissioner of Income Tax, Delhi*, . In *Bhagirath Kanoria and Others Vs. State of M. P.*, , the question was whether, under the Employee's Provident Funds and Family Pension Fund Act, 1952 (19 of 1952), the failure to deposit the employer's contribution to the account under the Act is a continuing offence ? Chandrachud C.J., speaking for the court, while approving the statement in paragraph 5 of *State of Bihar Vs. Deokaran Nenshi and Another*, , held that the ratio therein would be confined to failure to furnish returns before the due date and it cannot be extended to cases where the contravention is not of procedural or formal nature and goes against the very grain of the statute under consideration. In paragraph 19, it was held that (at p. 1692) :

"The question whether a particular offence is a continuing offence must necessarily depend upon the language of the statute which creates that offence, the nature of the offence and, above all, the purpose which is intended to be achieved by constituting the particular act as an offence."

11. In that case, it was held that the failure to comply with obligation to pay the employer's contribution to the fund continues on each day and every day a fresh offence is committed. It was further held (page 1692) :

"It is putting an incredible premium on lack of concern for the welfare of workers to hold that the employer who has not paid his contribution or the contribution of the employees to the Provident Fund can successfully evade the penal consequences of his act by pleading the law of limitation. Such offences must be regarded as continuing offences, to which the law of limitation cannot apply."

12. The same question again has arisen in *Maya Rani Punj Vs. Commissioner of Income Tax, Delhi*, . The question therein was whether the failure to submit the returns on or before the due date under the Income Tax Act, 1961, is a continuing offence (or not). In that case, the returns were admittedly not filed within the due date but after a delay of seven months odd. Reliance was placed by the assessee on *Commissioner of Wealth Tax, Amritsar Vs. Suresh Seth*, . Sabyasachi Mukharji J., speaking for the court, held that failure to submit the

return is a continuing offence. It was held (p. 335) thus :

"It was obvious that for the imposition of penalty, it was not the assessment year or the date of the filing of the return that was important but it was the satisfaction of the Income Tax authorities that a default had been committed by the assessee which attracted the provisions relating to penalty. Whatever be the stage at which the satisfaction was reached. the scheme of sections 274(1) and 275 of the Act of 1961 was that the order imposing penalty must be made after the completion of the assessment. The crucial date, therefore, for the purpose of penalty is the date of such completion and the satisfaction of the authority that proceedings for levy of penalty be initiated."

It was further held (at p. 341)

"The imposition of penalty not confined to the first default but with reference to the continued default is obviously on the footing that non-compliance with the obligation of making a return is an infraction as long as default continued. Without sanction of law, no penalty is imposable with reference to the defaulting conduct. The position that penalty is imposable not only for the first default but as long as the default continues and such penalty is to be calculated at a prescribed rate on monthly basis is indicative of the legislative intention in unmistakable terms that as long as the assessee does not comply with the requirements of law, he continues to be guilty of the ingraction and exposes himself to the panalty provided by law."

13. The decision in Commissioner of Wealth Tax, Amritsar Vs. Suresh Seth, was over rules and it was held that the levy of penalty must be considered as per the law prevailing on the date on which the assessment order was made and the satisfaction of the authority that default has been committed, was arrived at.

14. In Agrl. Market Committee, K. Valasa v. S.V.G. Oil Mills [1983] 2 APLJ 385 , one of us (K. Ramaswamy J.) was concerned with a case of failure to obtain licence u/s 7(1) of the Andra Pradesh (Agricultural Produce and Livestocks) Markets Act, 1966, and doing business in contravention thereof is a continuing offence. Considering the case law on that subject, it was held in paragraph 18 thus :

"The concept of "continuing offence" is a vexed question confronting the courts time and again. If the contravention complained of is complete in itself though the consequence resulting therefrom may continue, the offence is complete and is not a continuing offence. The expression "continuing offence" means that if an act or omission constituting an offence continues from day to day, then, a fresh offence is committed every day on which the act or omission is repeated, recurs or is continued. A continuing wrong or a continuing offence is nothing but a breach of a duty enjoined by a stratute or an act of parties which itself is a continuing one. The non-performance of the duty from day to day is a continuing wrong. It is the very essence of a continuing wrong, a source of injury frequented every day which makes the person doing it liable for the act or

omission complained of. The offence may be committed by a positive act prohibited by law or by the omission to do that which the law makes it obligatory on the part of the person to do on pain of punishment. So far as the first is concerned, there can be doubt that an offence is committed every time when the positive act is repeated. In the latter case, it makes no difference so long as the expects the doer of the act to fulfil an obligation cast under the Act. Consequently, every day, if that omission is not rectified or is perpetrated by the performance of the negative duty, an offence is committed. No doubt, technically every moment's omission is punishable as a separate offence. To continue means to remain in existence, not to cease. Therefore if the omission continues *de die in diem*, then a fresh offence is committed on every day on which the omission to obtain licence and continuing to purchase or sale of the notified agricultural produce, etc., within the notified market area is continued. Thus, the continued contravention of transacting the sale or purchase without a valid licence issued under rule 50 is a continuing offence *de die in diem*."

15. The same question arose before a Division Bench of this court in *K. Ch. Panduranga Rao v. Secretary, Agrl. Market Committee* [1984] 2 ALJ 27, to which one of us (K. Ramaswamy J.) is a member. Therein, the question was whether the failure to pay market fee on demand, u/s 12(1) of the A.P. (Agricultural Produce and Livestock) Markets Act, 1966, was a continuing offence. Considering that section 23 of the Act made a distinction between failure to pay market fee and continuing not to pay after conviction treating it to be a continuing offence, while approving the ratio laid down in *Agrl. Market Committee, K. Valasa's case* [1983] 2 ALJ 385, it was held that the failure to pay market fee is not a continuing offence.

16. Thus, it is now settled law that in construing whether commission or omission of a statutory compliance is a continuing offence or not, the purpose of the Act, the language employed, the nature of the contravention and the objects sought to be achieved thereby are the guiding factors to be taken into account and construing the language thereunder, it is to be considered whether the failure or omission to comply with the statutory provision continues *de die in diem* or whether it is complete by the date on which the failure or omission has occurred. The law as considered above needs no reiteration. We respectfully agree. The crucial date to apply the penal provision is the date on which the assessing authority has reached the satisfaction that the assessee has committed default in submitting the return of net wealth, namely, passing of the assessment order and initiation of the penalty proceedings. The language in section 18(1)(a) also affords an indication that the penalty is to be computed with reference to each succeeding month during which the default continues. Considered from this perspective, it must be held that the failure to submit the return is a continuing offence and the law applicable is the law prevailing on the relevant date on which the assessment is made and penalty proceedings are initiated.

17. It is next contended that article 20(1) of the Constitution enjoins that no

person shall be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of commission of the offence. In *K. Satwant Singh Vs. The State of Punjab*, , the majority of the Constitution Bench, speaking through Imam J., held that the prohibition under the article was not confined to the passing or the validity of the law but extended to the conviction or the sentence and was based on its character as *ex post facto* law and, therefore, fullest effect must be given to the actual words used in the article. It was also held that a law which provides for a minimum sentence of fine on conviction cannot be read as one which imposes greater penalty than that which might have been inflicted under the law at the time of the commission of the offence where for such an offence there was no limit as to the extent of fine which might be imposed. This principle was followed by another Constitution Bench in *Jain Bros. and Others Vs. The Union of India (UOI) and Others*, . It was held in p. 116 that :

"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."

18. It was further held 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 was further held thus (p. 116) :

"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..... The crucial date, therefore, for the purpose of penalty, is the date of such completion."

19. In *Raghunandan Prasad Mohan Lal, Bareilly Vs. The Income Tax Appellate Tribunal and Others*, , the Allahabad High Court was called upon to consider whether the imposition of penalty under the Income Tax Act, 1961, is violative of article 20(1) of the Constitution. The Full Bench has held that article 20(1) of the Constitution contemplates proceedings in the nature of criminal proceedings and it does not apply to penalty proceedings under the Income Tax Act, 1961, which have a civil sanction and are revenue in nature. In *Central India Motors Vs. C.L. Sharma, Assistant Commissioner of Sales Tax, Indore Region and Another*, , the Madhya Pradesh High Court also held that article 20(1) is not attracted to a case of levy of penalty made with retrospective effect under the Madhya Pradesh Central Sales Tax Act, 1958. The same question was raised when retrospective legislation of imposition of penalty was assailed in *Shiv Dutt Rai Fateh Chand and Others Vs. Union of India (UOI) and Another*, . Venkataramaiah J., speaking for the court, at page 1209 of AIR and p. 310 of STC, while approving the ratio in the two decisions referred to above, held that :

"...the word "penalty" used in article 20(1) cannot be construed as including a

"penalty" levied under the sales tax laws by the departmental authorities for violation of statutory provision. A penalty imposed by the sales tax authorities is only a civil liability, though penal in character."

20. On that basis, it was held that the retrospective legislation of subsection (2A) of section 9 of the Central Sales Tax Act imposing penalty is not violative of article 20(1) of the Constitution. The above ratio would equally apply to the facts on hand and, therefore, the levy of penalty u/s 18(1) of the Act, is in the nature of civil liability though penal in character on pain of collection of the revenue for failure to comply with the statutory requirement. Therefore, it is not violative of the article 20(1) of the constitution.

21. It is true that the Tribunal has followed a decision of this court in Commissioner of Wealth-tax Vs. R.D. Chand and V.R. Desai, and held that the penalty is to be imposed as per the law prevailing on the date on which the default or omission as per the submit the return is committed. But in view of the march of law, the above ratio no longer holds the field. It stands overruled by the decision in Maya Rani Punj Vs. Commissioner of Income Tax, Delhi, and, therefore the provision obtaining on or after April 1, 1969, were not applicable in computing penalty for the assessment year 1960-61. The penalty is to be computed with reference to each succeeding month during which the default continues as per the law prevailing on the date of assessment and intiation of penalty proceeding. No doubt, as rightly contended by Sri Ratnakar, learned counsel for the assessee, in view of the decision of this court , the assessee was precluded from agitating before the Appellate Tribunal regarding the reasonableness of the explanation offered by the assessee for his failure to submit the return within the prescribed time and the Tribunal do not have occasion to go into that question. Sri Murthy, learned standing counset for the Revenue, states that is not the reference and, therefore, this court cannot give any such direction. As held by the court merely exercises advisory jurisdiction while the appeals are kept pending before the Tribunal. The Tribunal has, however, to take action pursuant to the opinion expressed by this court on the reference. Therefore, the matter may be urged before the Tribunal. It is open to the assessee to raise to contention that there was reasonable cause for the assessee for not filing the return within the prescribed time and it is for the Tribunal to consider the same.

22. The reference is accordingly answered in favour of the Revenue and against the assessee, subject to the above observations. In the circumstances, there shall be no order as to casts.