

(1982) 01 CAL CK 0022
In the Calcutta High Court
Case No : Matter No. 1313 of 1979

Tarak Nath Paul

APPELLANT

Vs

Commissioner of Wealth Tax

RESPONDENT

Date of Decision : 13-01-1982

Acts Referred:

Wealth Tax Act, 1957 — Section 18

Citation : (1983) 32 CTR 61 : (1983) 142 ITR 468 : (1983) 13 TAXMAN 497

Hon'ble Judges : Suhas Chandra Sen, J; Sabyasachi Mukharji, J

Bench : Division Bench

Advocate : P.K. Pal, R.N. Dutt and S.K. Dutt, for the Appellant; A.N. Bhattacharyya, for the Respondent

Judgement

Sabyasachi Mukharji, J.—In this reference u/s 27(3) of the W.T. Act, 1957, two questions have been referred to this court which are as follows :

" 1. Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in allowing a partial relief instead of quashing the penalty order and in holding that the mens rea is not required to be established by the Department in imposing penalty for late submission of returns ?

2. Whether, on the facts and in the circumstances of the case, the imposition of penalty was at all justified without proper consideration of the press note dated 2nd June, 1969, issued by the Ministry of Finance, Department of Revenue and Insurance, Govt. of India, referred to in the Tribunal's order ?"

2. This reference relates to four assessment years, viz., assessment years 1966-67, 1967-68, 1968-69 and 1969-70, and the assessee is one of the beneficiaries of a trust called " Puma Chandra Paul Trust" with 1/5th share. 90% of the assessee's wealth-tax was from the said trust and the remaining 10% was from some movable properties. The returns for those assessment years under reference were filed after a long delay and for this default the WTO imposed penalties u/s 18(1)(a) of the W.T. Act, 1957. Being aggrieved by the of aforesaid

order of the WTO, the assessee went up in appeal before the AAC and the AAC agreed with the WTO and affirmed the imposition of penalties.

3. Thereafter the assessee filed appeals before the Income Tax Appellate Tribunal. The Tribunal noted the facts in great detail. It appears, as we have mentioned hereinbefore, four years were involved, the first valuation date was 31st of March, 1966 and the returns in respect of the first assessment year was due to be filed on 30th of June, 1966 and the other valuation dates were 31st of March for the subsequent years and the returns were to be filed on the 30th of June, of the subsequent years. It appears that the wealth-tax returns were filed for the first two years, viz., 1966-67 and 1967-68, on 9th of August, 1971, and for the next two years, viz., 1968-69 and 1969-70, on 9th of February, 1973.

4. The assessee had become liable to pay wealth-tax for the first time for the assessment year 1964-65. As we have mentioned before, the assessee was entitled to 1/5th share of the trust property and the other beneficiaries, being four brothers, one of whom, Dr. Bhola Nath Paul, was in the U.K. at the relevant time. The trust estate consisted of 20 immovable properties and land. The properties were situated at different places in and around Calcutta and one of these was at Varanasi. For the assessment year 1964-65 and 1965-66, the returns were filed on the basis of the valuation of the trust properties adopted for the purpose of a civil suit for partition filed in the High Court at Calcutta which was disposed of in 1956 but for later years the beneficiaries thought it fit to have the properties valued by an approved valuer and appointed M/s. Hope Johnstone & Co. for this purpose. The valuation report was received in September, 1970. Meanwhile, the assessee had filed an application for extension of time for the assessment years 1966-67 to 1968-69 on 29th August, 1968, for two months and again on 31st October, 1968, for another two months and on 10th January, 1969, for an indefinite period. No application for extension of time was, however, made for 1969-70. Before the WTO, the Tribunal had noted, it was pleaded that the belated filing of the returns was due to delay in the valuation of the properties by the approved valuer but the WTO rejected this plea. In the appeal before the AAC, apart from emphasising the delay in the valuation of the properties by the approved valuer, it was mentioned that the levy of the penalties was against the spirit of the press note dated 2nd June, 1969, of the Ministry of Finance, Dept. of Revenue and Insurance, inasmuch as the assessee had filed the wealth-tax returns voluntarily and had fully co-operated with the Department in the assessment proceedings and also in the payment of tax. We shall revert to the press note immediately. It was contended before the Tribunal that in view of the press note the assessee could not be held to be guilty in this case and the penalty could not be inflicted on the assessee. It was also submitted, as before the AAC, and as noted by the Tribunal, that in any event there was no mens rea on the part of the assessee and reliance was placed on the authority of the Supreme Court decision in the case of Hindustan Steel Ltd. Vs. State of Orissa, , to which we shall presently refer. It was conceded before the Tribunal on behalf of the assessee that there was inordinate delay in filing the returns of the wealth-

tax for these years but it was emphasised that the delay was for sufficient cause. It was stated that for the assessment years 1964-65 and 1965-66, the assessee had himself filed the wealth-tax returns voluntarily although there was delay in the filing of these returns also but, taking into account the assessee's circumstances, no penalty had been levied for that default. For these assessment years the assessee had thought it fit to have the property valued by an approved valuer so that the correct value could be incorporated in the various wealth-tax returns. Delay had been caused in the process of valuation of properties partly because it was a matter of common problem of the five beneficiaries of the trust, out of which one of them was all along in the U.K. at the relevant time, and also because the various properties were situated at different places. The valuation report was received by the assessee only in September, 1970. Meanwhile, the assessee did file applications for extension of time on various dates and returns were filed thereafter. It was emphasised before the Tribunal on behalf of the assessee that the imposition of penalty was a quasi-criminal proceeding and there could not be any imposition of penalty unless contumacious conduct or conscious disregard of the obligations under the law on the part of the assessee was established by the Revenue. It was further submitted that the law applicable in the present case was the law in force at the time of the commission of the default and that was Section 18(1) as it stood prior to its amendment with effect from 1st April, 1969, by Section 24(2)(c) of the Finance Act, 1969. We must mention here that by the amendment referred to therein, the WTO has power to impose penalty on the net wealth of the assessee and not on the percentage of the net wealth of the tax evaded which was the position prior to the amendment and which became subsequently the position after the relevant assessment years. Therefore, the measure of the penalty was according to Section 18(1) as it stood prior to its amendment with effect from 1st April, 1969, by the Finance Act of 1969, and thereafter, from 1st April, 1969, the measure of penalty depended on the law as in force with effect from 1st April, 1969.

5. The Tribunal, after considering the rival submissions and the inordinate delay and the explanation of the valuation report as also the press note, observed that in the present case there was no dispute that the assessee had not only filed the wealth-tax returns voluntarily and co-operated in the assessment proceedings and also in payment of tax, but he did much more. He applied for extension of time on a number of occasions. The assessee had thought it necessary to have the properties valued and actually got these valued. The wealth-tax returns were filed on the basis of the value fixed by the approved valuer. The assessee, we must also mention, had made applications before the Commissioner u/s 18(2A) but these were rejected. Taking an overall view of the facts of this case the Tribunal was of the view that till the receipt of the valuer's report in September, 1970, and a further period of 2 to 3 months, which the assessee could normally take in finalising the accounts of the trust on the basis of the valuation done by the expert, of the various properties of the trust, i. e., till the end of December, 1970, the assessee was prevented by reasonable cause from filing the wealth-tax

returns within proper time but for the period from 1st January, 1971, the Tribunal found that there was no reasonable cause for the delay in filing the return. After coming to this finding of fact the Tribunal was of the view that in view of proceedings of penalty u/s 18(1)(a) inasmuch as the assessee had proved that there was reasonable cause for non-filing of the returns up to December, 1970, but thereafter, there was no further explanation for the delay, the Revenue was justified in imposing the penalty.

6. On the aspect of the law applicable, the Tribunal was in agreement with the learned counsel for the assessee that the law applicable was the law that was in force on the date on which the default was committed. But the Tribunal was of the view that this law should not continue to govern the quantum of the penalty throughout. According to the Tribunal, non-filing of the return is a continuous default commencing from the date on which the return became due and ended with the date on which the return was actually filed. In the present case, in view of the change in the language of Section 18(1)(a) of the W.T. Act, with effect from 1st April, 1969, the Tribunal held that the measure for penalty for the period up to 31st March, 1969, was the law as it stood prior to its amendment by the Finance Act, 1969, and from 1st April, 1969, it was the amended law which applied. In taking this view the Tribunal found support from the observations of the Orissa High Court in the case of Biswanath Ghosh Vs. Income Tax Officer, Ward B and Another, .

7. In the aforesaid view of the matter, the Tribunal was of the opinion that the AAC was not justified in confirming the penalties as, according to the Tribunal, the assessee was prevented by reasonable cause from filing the wealth-tax returns within proper time for the period up to 31st December, 1970. The Tribunal, therefore, modified the order of the AAC and directed the WTO to recompute the penalties for the period after 31st December, 1970, for the delay, applying the law in the manner stated before. The relevant press note upon which the assessee placed reliance was issued by the Ministry of Finance, Department of Revenue & Insurance, dated June 2, 1969, after the coming into operation of the new Act. The said press note stated, inter alia, as follows:

"The Finance Act, 1969, has increased the penalty for failure, without reasonable cause, to furnish return of net wealth within the time allowed,

Under the new provision, the penalty will be calculated on the assessed wealth as reduced by the amount of the initial exemption from wealth-tax, namely, Rs. 1 lakh in the case of an individual and Rs. 2 lakhs in the case of a Hindu undivided family. The scale of the penalty will be one-half per cent. of this amount for every month during which there was failure, without reasonable cause, to furnish the return, subject to a maximum, in the aggregate, of an amount equal to the assessed net wealth.

The increased scale of penalty takes effect from April 1, 1969. Thus, it will be applicable in a case where the default in furnishing the return of net wealth

occurs on or after April 1, 1969, or having occurred earlier, has continued after that date. In the latter case, the scale of penalty for any period of default before April 1, 1969 will be that laid down under the law in force before April 1, 1969, namely, two per cent. of the wealth-tax payable for every month during which there was failure, subject to a maximum in the aggregate, of 50 per cent. of such tax.

Under the Wealth-tax Act, every individual and Hindu undivided family having a net wealth liable to wealth-tax is required to furnish a return of net wealth voluntarily, before June 30 of the assessment year. Where a notice calling for the return is issued, the return is to be furnished within the time specified in the notice.

However, if a person is not in a position to furnish the return voluntarily by the due date or by the date specified in the notice calling for the return, it is open to him to obtain an extension of time by applying to the Wealth-tax Officer.

If the return is furnished within the extended time, no penalty is imposable for not furnishing the return by the original date. Further, in a case where extension of time for furnishing the return has not been obtained but a return making full disclosure of the net wealth is furnished voluntarily before the issue of notice and the taxpayer extends his co-operation to the Department in the assessment proceedings and in paying the wealth-tax, the penalty imposable can be reduced or waived depending on the circumstances of the case. "

8. On this finding of fact the Revenue made an application for reference which was rejected by the Tribunal and as directed by this court u/s 27(3) of the W.T. Act, 1957, the Tribunal has referred the two questions indicated hereinbefore. It appears from the two questions that the first part of question No. 1. namely, whether on the facts and in the circumstances of the case the Appellate Tribunal was justified in allowing a partial relief instead of quashing the penalty order is an independent question and the second part of the first question, namely, whether the Tribunal was justified in holding that the mens rea was not required to be established by the Department in imposing penalty for late submissions of returns and the section which we have indicated before are two limbs of the same argument and might be disposed of together. So far as the question as to what should be the proper law applicable and whether the assessee was entitled to any partial relief, we may refer to the relevant portion of Section 18(1)(a), as it stood at the relevant time, which is as follows :

"18. Penalty for failure to furnish returns, to comply with notices and concealment of assets etc.--(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 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) has without reasonable cause failed to comply with a notice under Sub-section (2) or Sub-section (4) of Section 16 ; or

(c) has concealed the particulars of any assets or furnished inaccurate particulars of any assets or debts;

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. "

9. As we have mentioned before, the section has undergone changes subsequently and before the amendment the penalty imposed was on 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 the tax payable by the assessee. The question in this case is when the assessee committed this default and whether there was any continuing default. Section 14 imposes the liability to file the return before the 30th day of June of the corresponding assessment year. In the present case with which we are concerned for the first year 1966-67 the return was due to be filed on the 30th of June, 1966, which was actually filed on 9th August, 1971. For the second year 1967-68, the return was due to be filed on the 30th June, 1967, and was actually filed on 9th August, 1971. For the third year 1968-69, the return was due to be filed on the 30th June, 1968, and was in fact filed on 9th February, 1973 and for the fourth year 1969-70, the return was due to be filed on 30th June, 1969, and was actually filed on 9th February, 1973.

10. It was urged before us that in view of the decision of the Supreme Court in the case of Commissioner of Wealth Tax, Amritsar Vs. Suresh Seth, , the Tribunal was in error in holding about the law which was to be applicable. It was held that as the default was committed on the 30th June of the different years, which we have indicated, that was the date of commission of offence and there was no question of continuing of default and penalty was liable to be enforced from that date. There, the Supreme Court held that where the default complained of was one falling u/s 18(1)(a) of the W.T. Act, 1957, viz., the failure to file the return of wealth before the due date without reasonable cause, the penalty had to be computed in accordance with the law in force on the last date on which the return in question had to be filed. Neither the amendment made in 1964 nor the one made in 1969 to Clause (i) of Section 18(1) has retrospective effect. Non-performance of any of the acts mentioned in Section 18(1)(a) could give rise to a

single default, according to the Supreme Court, and to a single penalty, the measure of which, however, was geared up to the time lag between the last date on which the return had to be filed and the date on which it was filed. The default, if any, committed was decided on the last date allowed to file the return. The default could not be one committed every month thereafter. The words " for every month during which the default continued ", according to the Supreme Court, indicated only the multiplier to be adopted in determining the quantum of penalty and did not have the effect of making the default in question a continuing one. Nor did this make the amended provision modifying the penalty applicable to earlier defaults in the absence of necessary provisions in the amending Acts. The distinctive nature of a continuing wrong was that the law that was violated made the wrongdoer continuously liable for penalty. A wrong or default which was complete but whose effect might continue even after its completion was, however, not a continuing wrong or default. There, the Supreme Court in analysing the facts mentioned why the assessee was required u/s 14 of the Act to file the return for the assessment year 1964-65 on 30th June, 1964, and the return for the assessment year 1965-66 on 30th June, 1965. The WTO completed the assessment on the 22nd March, 1966, and determined certain amount of wealth-tax. The Supreme Court set out the relevant provisions of Section 18 prior to 1965, which enjoined the imposition of penalty not exceeding, in addition to the amount of wealth-tax payable by him, one and a half times the amount of tax and also the position between 1st April, 1965, and 31st March, 1969, was that the penalty imposable was not exceeding certain sum in addition to the amount of wealth-tax payable by him equal to two per cent. for every month for which the default continued and the position after 1st April, 1969, to 31st March, 1971 was different with which we are not concerned. After analysing Section 14, the Supreme Court, thereafter, was of the view that the default, in that case the offence, was committed on the failure to file the return by the time enjoined by Section 14 by 30th June of each year and the expression used " for the period for which the default continued " was only an indicator or a multiplier of the quantum of penalty that could be imposed in this regard. In view of that categorical expression on the law, we are bound to hold that the Tribunal was not right in holding in the manner as it did. It might, however, be pointed out respectfully, that it might require consideration as to which is the default or offence which is punishable u/s 18(1)(a) and is it the failure to file the return by 30th June of the respective year, or the act of committing an offence or violation as enjoined by Section 14 of the Act, was the failure to file the return " without sufficient cause " ? Because if it was a failure to file the return simpliciter then default is committed automatically when 30th June for the relevant year is crossed. If the offence consists of the failure to file the return without sufficient cause then up to the time sufficient cause was continuing, sufficient cause was there and no default as contemplated u/s 18(1)(a) which is punishable is committed. This aspect does not seem to have been adverted to by the Supreme Court in the decision referred to hereinbefore. It may also be noted that the expression for " every month" for which the default continued indicated not only

the quantum for which penalty could be imposed but also might be indicative of the continuance of the default, that is to say, continuing the offence. However, in view of the categorical conclusion of the Supreme Court in the aforesaid decision, we are bound to hold that the Tribunal was in error in holding as to the law applicable in the manner as it did.

11. Next two aspects which require consideration in this case is whether in view of the press note and in view of the facts and circumstances of the case there was any mens rea established on the part of the assessee which was necessary, according to the assessee, for the imposition of penalty. So far as the press note is concerned, we are in agreement that the press note dated 2nd July, 1959, has no relevance in the facts and circumstances of this case. We have set out the actual terms of the press note. It cannot be contended that there was any question of promissory estoppel in the facts and circumstances of this case. The press note, however, in our opinion, was not issued under any authority of the W.T. Act and it could not be taken into account by the authorities of the wealth-tax either for imposing or deciding the question of imposition of penalty. In this connection reference may be made to the observations of the Allahabad High Court in the case of Ved Prakash and Another Vs. Commissioner of Income Tax and Others, , where the Division Bench of the Allahabad High Court observed that the press note issued by the Ministry of Finance, Govt. of India, on 19th May, 1951, and 17th July, 1951, dealing with the concessional scheme for payment of arrears and voluntary disclosure of income had no legal force. The circulars issued by the Board u/s 13 of the W.T. Act, which the W.T. authorities are bound to follow, in our opinion, stand on a different footing. In that view of the matter, the decision in the case of Navnitlal C. Javeri Vs. K.K. Sen, Appellate Assistant Commissioner of Income Tax, "D" Range, Bombay, , will have no relevance to the facts and circumstances of this case. Our attention was also drawn to certain observations in the case of William Jacks & Co. Ltd. v. State of Orissa [1970] 25 STC 19, where the Supreme Court only mentioned a certain press note but the Supreme Court did not have any occasion to consider as there was no question before the Supreme Court whether the press note would either be binding or not relevant before the judicial authorities acting either under the Sales Tax Act or under the I.T. Act or the W.T. Act. The Supreme Court, in our opinion, only in the narration of facts referred to the press note.

12. Next question that requires consideration is whether mens rea, as such, is necessary, and whether, in the facts and circumstances of this case, the onus of proving the mens rea has been discharged by the Revenue. On this issue a large number of authorities were cited before us which have taken divergent views on the particular facts and circumstances of these particular cases. Though we shall note some of these judgments, in our opinion, it is not necessary to deal with all of them because those depend on the facts and circumstances of the respective cases. It appears to us that the requirements of the section would be clear from the wording of the section itself. Section 18 authorises the WTO or the AAC or the Commissioner or the Tribunal if in the course of the proceedings he is

satisfied that any person, "has without reasonable cause failed to furnish the returns within a certain time" stipulated, to impose certain penalties. Therefore, it appears that requirements of the section are that the authority concerned must be satisfied that the assessee has failed without reasonable cause to furnish the returns. Whether in a particular case reasonable cause to file the returns within the time stipulated in Section 14 is there or not would depend on the facts and circumstances of each case. What are the causes is within the knowledge of the person who failed to perform the duties enjoined by law. It further appears to us that, on a plain reading of the section it cannot be said that merely because there is a failure to file the returns within the time stipulated u/s 14 the penal provisions are attracted. There must be absence of sufficient cause. Sufficient causes are within the knowledge of the assessee or would appear from the records of the case. In our opinion, therefore, if either on the records or materials available to the authorities or on any explanation given by the assessee, on being called to give such an explanation and, on examination, sufficient cause is found, no penalty is imposable. If on the other hand, sufficient cause is not found then the penalty can be imposed. If that is the position, to that extent, the section does not create any absolute liability and there has to be an examination of the mental element involved in the sense that there is absence of sufficient cause. This reading of the section is corroborated by the view of the Orissa High Court in the case of Commissioner of Income Tax Vs. Gangaram Chapolia, , where the Full Bench of the Orissa High Court at p. 618 of the report observed as follows :

" Language of the section is plain that mere failure to file the return in time would not entail imposition of penalty. The concerned taxing authorities must be satisfied that failure to furnish the return in time is without reasonable cause. The cause why the assessee did not furnish the return in time lies within his special knowledge. The burden of proof of that fact is on him. He should, therefore, indicate the cause with full particulars in his explanation for the satisfaction of the Revenue. He would also be in a position to substantiate the cause by independent evidence or from the materials available in the records of the Department. The duty of the assessee does not end by merely showing any cause. The cause shown must be such that it would be acceptable as reasonable. Though penalty proceedings are quasi-criminal in nature, the language of the clause gives a clear indication that the assessee is to prove the existence of reasonable cause by preponderance of probabilities as in a civil case and not beyond reasonable doubt. If the cause shown may reasonably be true, the explanation of the assessee is to be accepted even though he may not be able to prove the truth thereof beyond reasonable doubt. After the cause is shown by the assessee, the concerned taxing authorities would apply their mind judicially and not arbitrarily to the facts and circumstances of the case and, on a consideration of all relevant materials, record a finding whether the cause for not furnishing the return in time is reasonable. Diverse factors would be taken into consideration in the judicial verdict. For instance, if the assessee entertained an

honest and genuine belief that the return could be filed later than the time allowed, the cause may be taken as reasonable even though the belief may be unsustainable in law. Similarly, penalty may not be imposed if there is a technical or pardonable breach of the provisions of the Act or when the breach flows from a bona fide belief that the assessee is not liable under the statute. These are merely illustrative but not exhaustive.

If, however, the assessee does not furnish any explanation or furnishes a cause which is not accepted as reasonable, the penalty is exigible for not furnishing the return within the time allowed."

13. We are in respectful agreement with this view of the Orissa High Court. Indeed, in the case of *Sunderdas Thackersay and Bros. Vs. Commissioner of Income Tax*, we also expressed a similar view in the language expressed by the Orissa High Court. Reference was made to the decision of the Full Bench of the Punjab and Haryana High Court in the case of *Commissioner of Income Tax Vs. M. Kannappan*, , which decision has considered the fact of the observations of the Supreme Court in the case of *Hindustan Steel Ltd. Vs. State of Orissa*, , upon which a great deal of reliance was placed on behalf of the assessee before us, as well as several decisions of the other High Courts as well as the view of the Supreme Court in the case of *R.S. Joshi, Sales Tax Officer, Gujarat and Others Vs. Ajit Mills Limited and Another*, . In this connection, we refer to the observations of Chief Justice Sandhawalia at pp. 678 to 681 of the report (132 ITR) as follows :

"As has been said at the outset, it is even more manifest from the reference order, that there undoubtedly exist a sharp divergence of judicial opinion on the basic issue before us. Therefore, before one inevitably enters the thicket of the case law--and it is indeed a deep one--it becomes apt and indeed necessary to examine the issue on larger principle and with regard to both the scheme and the particular language of the statutory provisions.

Now the maxim *actus non facit reum nisi mens sit rea* is rooted in the antiquity of English legal history. However, for our purposes, it is unnecessary to delve into its remote origins and it suffices to mention that the requirement of a guilty state of mind at least for the more serious crimes had come to be developed even by the time of Coke which indeed is as far back as the modern lawyer need go. In his institutes, Coke categorically states the law as follows :

"...if one shoot at any wild fowl upon a tree, and the arrow killeth any reasonable creature afar off, without any evil intent in him, this is per infortunium."

It would thus appear that even from the time of Coke onwards, it was well settled that the doctrine of *mens rea* epitomised the twin premise of English criminal jurisprudence that in order to constitute a crime, there must be an *actus rea* accompanied by the requisite *mens rea*. To put it in simple language, a completed offence requires both physical overt act as also a guilty state of mind. In crimes, requiring *mens rea* as well as *actus rea*, the physical act must be

contemporaneous with the guilty mind, it is not enough that a mentally innocent act is subsequently followed by mens rea. To put it in the classic words of Lord Kenyon C.J, in *Fowler v. Padget* [1798] 101 ER 1103 at 1106, "The intent and the act must both concur to constitute the crime.

Now, it is well settled that the maxim and the doctrine of mens rea, in its pristine-essence, was one of criminal law applicable to the common law offences originally. However, later, it came to have its application as a rule of construction in interpreting statutory crimes as well. Herein it signifies the rule that a guilty mind was an essential ingredient of a crime and if there was a conflict between the common law and the statute law, it was held to be a sound rule to construe the criminal statute in conformity with the common law. However, this presumption of a guilty mind to constitute a crime in statutory offences was neither inflexible nor irrebuttable. Even in the strict realm of crimes this presumption of a guilty mind could be displaced by the language of the statute expressly or by its necessary intendment. This principle is well highlighted in the oft-quoted words of Lord Wright in the celebrated case of *Sherras v. De Rutzen* [1895] 1 QB 918, 921 (QB) as under :

" There is a presumption that mens rea, an evil intention, or a knowledge of the wrongfulness of the act, is an essential ingredient in every offence; but that presumption is liable to be displaced either by the words of the statute creating the offence or by the subject-matter with which it deals, and both must be considered."

The aforesaid view has the stamp of approval by their Lordships of the Supreme Court in *Ravula Hariprasada Rao Vs. The State*, , and *State of Maharashtra Vs. Hans George*, . However, the more meaningful authoritative enunciation in this context is that by Krishna Iyer J. in *R.S. Joshi, Sales Tax Officer, Gujarat and Others Vs. Ajit Mills Limited and Another*, , in the following terms (pp. 507, 508 of STC):

" Even here we may reject the notion that a penalty or a punishment cannot be cast in the form of an absolute or no-fault liability but must be preceded by mens rea. The classical view that " no mens rea, no crime " has long ago been eroded and several laws in India and abroad, especially regarding economic crimes and departmental penalties, have created severe punishments even where the offences have been defined to exclude mens rea. Therefore, the contention that Section 37(1) fastens a heavy liability regardless of fault has no force depriving the forfeiture of the character of penalty."

It would thus be plain that the doctrine of mens rea, in essence, has application to the law of crimes and in its later day development is a rule of construction of criminal statutes. Even in the realm of criminal offences mens rea may be excluded either expressly or impliedly by legislative mandate. Classic examples of such exclusions are sometimes in crimes of strict or absolute liability and as has been noticed above by Krishna Iyer J, in offences of economic or anti-social

nature.

Having seen that mens rea is, in essence, a doctrine pertaining to the criminal law, it becomes vital to determine the precise nature of the penalty proceedings in a taxing statute. Can they be termed as necessarily criminal proceedings or are they civil obligations of a coercive and remedial nature ? Is it possible to infer simply from the word " penalty " used in the statute that these proceedings are either offences per se or analogous thereto ? It is commonplace to say that when a statute provides for the imposition of a penalty, it will have to be found out from the scheme of the Act and the particular provision under which a penalty has been imposed whether it is necessarily a punishment for an offence or a civil liability imposed as a sanction for the collection of revenue. The obvious purpose of a taxation statute is to collect revenue and invariably they take great care in making provisions for the collection of taxes as speedily as possible. Indeed, tax arrears are the bane of public revenue which it is the concern of the Legislature to remedy.

It appears to me that it will be rather wasteful to elaborate on the issue of the nature of penalty proceedings in a taxing statute, on principle because it seems to be well settled by authority. In *Corpus Juris Secundum*, Vol. 85, at p. 580, the legal position is authoritatively stated thus:

" A penalty imposed for a tax delinquency is a civil obligation, remedial and coercive in its nature, and is far different from the penalty for a crime or a fine or forfeiture provided as punishment for the violation of criminal or penal laws; and...that the penalty becomes, by operation of the statute imposing it, a part and parcel of the taxes due and in other jurisdictions penalties are a type of tax. In still other jurisdictions, however, it is held that the penalty is not a part of the tax, and that will not be regarded as a legal incident to tax. It is merely a method of enforcing payment of the tax."

This issue came up for pointed consideration before the Supreme Court of the United States in *Murray R. Spies v. United States* (317 US 492 at 495) and it was held as follows :

"The penalties imposed by Congress to enforce the tax laws embrace both civil and criminal sanctions. The former consists of additions to the tax upon determination of fact made by an administrative agency and with no burden on the Government to prove its case beyond a reasonable doubt. The latter consist of penal offences enforced by the criminal process in the familiar manner. Invocation of one does not exclude resort to the other... The failure in a duty to make a timely return, unless it is shown that such failure is due to reasonable cause and not due to wilful neglect, is punishable by an addition to the tax of 5 to 25 per cent. thereof depending on the duration of the default... The offence may be more grievous than a case for civil penalty. Hence, the wilful failure to make a return, keep records, or supply information when required, is made a misdemeanour, with regard to existence of a tax liability ". "

14. Reference was also made by the Punjab and Haryana High Court to the observations of the Supreme Court and other cases. In view of the requirements of the language used in the section, in our opinion, what is required to be enquired is the absence of sufficient cause in order to escape the liability of imposition of penalty and whether there has been any delay fixed by the statute, that must be found out from all the available records or from an examination of the explanation offered by the assessee. If no explanation is offered and if from the records it does not appear there is any explanation for the failure to file the returns beyond the time then the penalty is imposable. To that extent an examination of the mental element, if it may be so called, is not beyond the section. Normally, presumption of onus is on the party which has the knowledge of the facts. But where all the facts have been examined by the authorities the question of onus loses its importance. In that view of the matter we are of the opinion in the facts and circumstances of this case whether the Tribunal has examined extensively the facts and reasons advanced for the failure or the delay in filing the returns, it cannot be said that the Tribunal has proceeded on an erroneous basis. The Tribunal found that up to 31st December, 1970. there was sufficient cause but beyond that there is no explanation for the delay in filing the returns. We cannot say in this respect that the Tribunal did not consider all the aspects or applied any wrong principle of law.

15. We must, however, note before we conclude that our attention was drawn to the cases of All India Sewing Machine Co. Vs. Commissioner of Income Tax, , Michael Fernandes Vs. Commissioner of Wealth Tax, Mysore and Another, , Addl. Commissioner of Income Tax, Gujarat Vs. I.M. Patel and Co., , 5. S. Loonkaran and Sons Vs. Commissioner of Income Tax, , Commissioner of Income Tax Vs. Rawat Singh and Sons, , Smt. Indu Barua Vs. Commissioner of Wealth-tax, North Eastern Region, , Commissioner of Income Tax Vs. Gujarat Travancore Agency, , ADDL. COMMISSIONER OF Income Tax, A.P., AND ANOTHER Vs. DARGAPANDARINATH TULJAYYA and CO., , Nemichand Ganeshmal Vs. Commissioner of Income Tax, and Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, .

16. As mentioned hereinbefore these decisions have taken different views on the facts and circumstances of the cases and in view of the principles deduced from the language of the section, it is not necessary for us to examine those decisions in great detail. We must also, however, point out that reliance was placed on the decision of the Supreme Court in the case of Hindustan Steel Ltd. Vs. State of Orissa, . This view was considered in a Full Bench decision of the Punjab & Haryana High Court, where the facts were entirely different. An order imposing penalty for failure to carry out statutory obligation in the context of the language of "sale" u/s 2(g) of the Orissa Sales Tax Act, was held to be quasi-criminal proceeding and unless it was shown that the party had acted deliberately in defiance of law or was guilty of conduct, contumacious or dishonest or acted in conscious disregard of its obligation, penalty was not imposable. There the Supreme Court was concerned with Section 2(g) of the Orissa Sales Tax Act

which imposed a penalty for failure to register as a dealer and held that a person who contended that he was not a dealer because his sales did not come within a particular amount when it is required to be registered, would not automatically attract penalty but a criminal intention has to be proved. The Supreme Court clarified that a penalty could not be imposed merely because it was required to do so; there was no statutory obligation to do so. It was a matter of discretion and it should be exercised properly in this case ; penalty could not be imposed because there is a failure to file the returns but can only be imposed on failure to file the returns without sufficient cause within the stipulated period. In the facts and circumstances of the case we do not find anything to interfere with the conclusion arrived at by the Tribunal. Before we conclude we must further note that our attention was drawn to a decision given by this court in the case of Smt. Ichhabai Panchal Vs. Commissioner of Wealth Tax, , where it was held that if a party had filed an application u/s 18(2A) he could not contend thereafter that there was no default under the law. The Tribunal has actually found as a fact that there was sufficient cause on the materials before them and that finding was arrived by the Tribunal after taking all the facts and circumstances of the case. Though the Tribunal noted the explanation of the petitioner u/s 18(2A) there is no question of changing the factual finding of the Tribunal by the Revenue on this aspect of the matter. In our opinion, this question cannot be gone into at this stage.

17. Question No. 1 is really in two parts. In the first part a question has been raised whether on the facts and in the circumstances of this case the Tribunal was justified in allowing a partial relief instead of quashing the penalty order and in the second part a question has been raised whether on the facts and in the circumstances of this case the Tribunal was justified in holding that mense rea was not required to be established by the Department in imposing penalty for late submissions of returns.

18. We answer the first part of question No. 1 by saying that in the facts and circumstances of the case the Appellate Tribunal was justified in allowing partial relief instead of quashing the penalty order.

19. So far as the second part of question No. 1 is concerned, we hold that the Tribunal has properly considered all the elements required by Section 271(1)(a) of the I.T. Act, 1961, to be considered. In view of the finding of fact made by the Tribunal that up to 31st December, 1970, there was sufficient cause for late filing of the return, but beyond 31st December, 1970, there was no explanation for the delay in filing the return by the assessee, the second part of the question No. 1 is answered also in the affirmative and in favour of the Revenue.

20. We answer the second question by saying that in the facts and circumstances of the case the Tribunal has taken note of the press note and has come to the correct conclusion as to the effect of the press note and the Tribunal was justified in so doing and further hold that the Tribunal" was right in holding that the law applicable was of the date when the default occurred and the default occurred in

this case on the last date allowed for filing of the return under the W.T. Act on which the assessee was obliged to file the return but did not do so. But the Tribunal was wrong in view of the decision of the Supreme Court in the case of Commissioner of Wealth Tax, Amritsar Vs. Suresh Seth, , in so far as it held that the default was a continuing wrong.

21. We answer the questions accordingly. Both the questions are answered in favour of the Revenue. Parties will pay and bear their own costs.

Suhas Chandra Sen, J.

22. I agree.