
(1975) 12 MAD CK 0027

In the Madras High Court

Case No : Tax Case No. 62 of 1970 (Reference No. 13 of 1970)

V.L. Dutt

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 24-12-1975

Acts Referred:

Income Tax Act, 1961 — Section 256, 271(1), 276

Citation : (1976) ILR (Mad) 190 : (1976) 103 ITR 634

Hon'ble Judges : V. Sethuraman, J; V. Ramaswami, J

Bench : Division Bench

Advocate : M. Uttama Reddy and T.R. Raghavan, for the Appellant; J. Jayaraman, for the Respondent

Judgement

Sethuraman, J.—This reference arises out of the penalty proceedings for the belated submission of the return of income for the assessment years 1964-65 and 1965-66 by the assessee, who is a director of M/s. V. Ramakrishna & Sons Private Ltd., and whose main source of income was remuneration derived from the company. For the assessment year 1964-65 the return was due under a notice u/s 139(2) of the Income Tax Act, 1961, on 11th July, 1964. The return was filed only on 27th December, 1965, i.e., nearly 18 months after the date when it was due. The assessment itself came to be made subsequent to the said return. For the assessment year 1965-66, similarly, the return was due on 14th September, 1965, in accordance with the notice u/s 139(2) of the Act. The return was actually filed on 13th June, 1966, i.e., about 9 1/2 months after the notice was issued.

2. For both these years the Income Tax Officer required the assessee to show cause why penalty should not be levied for the above default. The explanation of the assessee in respect of the assessment year 1964-65 was that the return of income could not be filed in time because the finalisation of the statutory audit relating to M/s V. Ramakrishna & Sons Private Ltd., Madras, which was the only source for gathering the materials required for the preparation of the return, was

not completed and that there were labour troubles in the workshop of K.C.P. Ltd., a sister concern. It was also contended that the Income Tax Officer was fully satisfied with the existence of the reasonable cause, as he had not completed the assessment u/s 144 of the Act and that in any event the Income Tax Officer having levied interest under the provisions of Section 139 of the Act could not also levy penalty. For the assessment year 1965-66 the objections and the contentions were identical. The Income Tax Officer rejected all of them and held that penalty was leviable u/s 271(1)(a). He came to the conclusion that for the assessment year 1964-65 it could be taken that time had been allowed for filing the return of income up to 15th March, 1965. He, therefore, calculated the penalty only for the period of delay subsequent to 15th March, 1965, for that year. For the assessment year 1965-66 the period of delay was computed at 9 1/2 months from the time when the return was due in response to the notice u/s 139(2) of the Act to the date on which it was actually filed. The penalty levied came to Rs. 4,500 and Rs. 1,344 for the two years respectively.

3. The Appellate Assistant Commissioner confirmed the levy of penalty, but gave reduction for these two years consequent on the reduction in the assessment as a result of the appellate proceedings. The result was that for the assessment year 1964-65 the penalty stood reduced to Rs. 4,150 and that for 1965-66 to Rs. 1,114. On further appeal to the Tribunal, the contentions of the assessee were, (1) that he was pre-occupied with certain business matters, (2) that though the Income Tax Officer was authorised by Section 144 to make an assessment thereunder if a person failed to make a return required by any notice given u/s 139(2), he had not chosen to exercise that authority and make an assessment thereunder, so that he could be presumed to have considered the assessee as not being in default, and (3) that the Income Tax Officer had already charged interest of Rs. 1,783 for the assessment year 1964-65 and Rs. 279 for the assessment year 1965-66 in accordance with the proviso to Section 139(2) which permitted charging of interest where the extension of the date granted by the Income Tax Officer for the furnishing of the return fell beyond the 30th day of June of the assessment year, so that the Income Tax Officer could be taken to have extended the time for furnishing the return resulting in the absence of any default. The Appellate Tribunal rejected these contentions and confirmed the levy of penalty.

4. At the instance of the assessee the following questions of law have been referred:

"1. Whether the Tribunal erred in law in holding that a penalty was exigible in the case of the assessee, though the assessments had been completed u/s 143(3), after there was delay in submission of the returns in response to notice u/s 139(2) ?

2. Whether the Tribunal has erred in holding that penalties could be imposed on the assessee u/s 271(1)(a) for the delay in submission of the returns when at the same time interest under the proviso to Section 139 had also been imposed

at the stage of assessments also for the delay in submission of the return ?"

5. At the hearing, the learned counsel for the assessee sought to contend that before any penalty could be levied u/s 271(1){a) there should be proof of mens rea and that the onus for this purpose lay on the Income Tax authorities. The learned counsel for the Commissioner objected to the said contention being urged on the ground that the questions that had been referred did not comprehend any such contention. It was argued that the only contention that could be urged on the basis of the questions, as they are, would be that the penalty levied was bad because, (a) the assessment itself has not been completed u/s 144, and (b) interest had been charged under the proviso to Section 139(1). The reply of the learned counsel for the assessee was that he had asked for a comprehensive question in the application for reference as to whether the levy of penalty in the present case was justified by the provisions of Section 271(1)(a) of the Act and that the questions in his application for reference would have taken in the contentions that he was proposing to urge. He further submitted that the provisions of Section 256 did not contemplate the Appellate Tribunal making any changes to the questions as framed by him and that in the present case the refraining of the question by the Tribunal related only to two of the contentions urged before it which was not proper.

6. We are unable to accept the extreme contention urged on behalf of the assessee that the duty of the Tribunal was to refer the questions as framed by the assessee when it was satisfied that one or more questions of law arose out of its order. The Tribunal has powers to find out whether the question as framed is proper and brings out the real issue between the parties. In some cases the question may not be properly framed. It may also be that the question as framed by the applicant did not bring out the controversy. The Tribunal is under no obligation to adopt the question as framed by the assessee. It has power to frame the question properly so as to bring out the real controversy.

7. In the present case the real question in issue was whether penalty could be levied under the provisions of Section 271(1)(a) of the Act. Various contentions were urged to show that penalty could not be levied. The question that should have been referred by the Tribunal should thus have been to bring out this controversy. The question framed should not ordinarily be related merely to the arguments advanced before it to reach a particular conclusion, but should be with reference to the conclusion, as such, which was attacked. We are thus satisfied that the framing of the question by the Tribunal in the case on hand is not proper and that the question has to be reframed.

8. At this stage the question that arises is as to how this has to be done, The learned counsel for the assessee submitted that the question should be reframed by us and that if it was necessary he would take out a petition for the purpose. The procedure to be adopted in a case of this kind has been considered by the Supreme Court in *Lakshmiratan Cotton Mills Co. Ltd. Vs. Commissioner of Income Tax, Uttar Pradesh*, . In that case the assessee-company claimed

deduction of Rs. 18,90,000 paid by it as compensation for termination of the managing agency of a firm, Beharilal Kailashpat. It claimed also deduction of certain expenses incurred in connection with the arbitration proceedings in which the compensation mentioned above was determined as payable. As the said items of expenditure had not been allowed as deductions, the assessee moved for a reference. The Tribunal rejected the application and the matter came before the Allahabad High Court. In pursuance of the direction of the High Court the Tribunal referred the question as to whether there were materials on which it could be held that the relevant amounts were spent by the assessee wholly and exclusively for the purpose of its business. In purported exercise of its power u/s 66(4) of the Indian Income Tax Act, 1922, the High Court called upon the Tribunal to submit another statement of case on certain other questions which had not been raised in the application for reference. In dealing with the propriety of the exercise of the powers of the High Court in the above manner, the Supreme Court pointed out that the powers u/s 66(4) of the Act could not be exercised to call for a supplementary statement to raise an additional question or to call for a statement of case on questions not referred by the Tribunal. If it happened that the Tribunal made, an inadequate statement of case and did not submit all the questions of law arising out of its order, the remedy of the aggrieved party was, it was held, to proceed in the manner suggested by Kania. J. in *N. Vs. KHANDVALA v. COMMISSIONER OF Income Tax.*, as follows :

"When a statement of case, with the question of law framed by the Tribunal, is filed in court for disposal, if a party is aggrieved and wants to contend that certain further facts ought to be stated, or certain questions of law should be raised, he can make an application by way of notice of motion. That should be heard along with the case stated by the Tribunal for the court's opinion. At that time the court will consider whether the statement of case is complete for the question of law raised by the Tribunal. The court can also consider whether on the case stated by the Tribunal the proper question is raised or not."

9. As in this case, the prayer of the assessee is only to reframe the questions so as to bring out the real controversy, no petition as such is necessary. This is not a case where we have to refer the matter back to the Tribunal u/s 258 (corresponding to Section 66(4) of the 1922 Act) as the question is not on any different point and as all the facts are already on record. This is not also a case where any new question which was not raised before the Tribunal is sought to be raised. We, therefore, reframe the questions as follows :

"Whether, on the facts and in the circumstances of the case, the levy of penalty u/s 271(1)(a) was justified for the delay in submission of the returns for the assessment years 1964-65 and 1965-66 ?"

10. In the present case the question reframed by us as above is substantially the same as that was asked for by the assessee. We would, therefore, proceed to consider the reference on the question as reframed above.

11. Section 271(1)(a) in so far as it is material runs as follows:

"271. (1) If the Income Tax Officer.....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 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..... 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 assessed tax for every month during which the default continued, but not exceeding in the aggregate fifty per cent, of the assessed tax,....."

12. At the relevant time there was also another provision in Section 276, which to the extent material ran as follows:

"276. If a person fails without reasonable cause or excuse--.....

(b) to furnish in due time any of the returns or statements mentioned in Sub-section (2) of Section 139.....

he shall be punishable with fine which may extend to ten rupees for every day during which the default continues."

13. With effect from 1st of April, 1971, Section 276(b) was amended so as to exclude reference to the return u/s 139(2) and Section 276C was enacted. That provision runs as follows:

"276C. If a person wilfully fails to furnish in due time the return of income which he is required to furnish under Sub-section (1) of Section 139 or by notice given under Sub-section (2) of Section 139 or Section 148, he shall be punishable with rigorous imprisonment for a term which may extend to one year or with fine equal to a sum calculated at a rate which shall not be less than four rupees or more than ten rupees for every day during which the default continues, or with both."

14. It must be remembered that this provision was not in force during the years with which we are concerned.

15. The learned counsel for the assessee submitted that Section 271(1)(a) was not intended to penalise the case of innocent procrastination in the submission of return when there was no wrongful intention on the part of the assessee to evade his obligation under the law, that the Income Tax Officer was not inconvenienced by the delay in submission of the returns, as he had actually adopted the return in making the assessment with some minor adjustments to the income returned, and that interest had already been charged so as to

compensate for the delay. He submitted also that the onus to show that the assessee had no reasonable cause for the delay in the submission of the return was on the Income Tax authorities and that this onus had not been discharged. For the Commissioner of Income Tax the contention urged was that the section did not require proof of any mens rea and that the onus was not on the department to show that the delay in the submission of the return was without any reasonable cause. At this stage, we may make it clear that the learned counsel for the assessee did not contend that there was any bar to the levy of penalty merely because, (a) the assessment had not been made u/s 144 of the Act, or (b) interest had been levied in accordance with the provisions of Section 139(1). Reference to the interest in the contention urged before us for the assessee was only to show that the Income Tax Officer should be taken to have extended the time for filing the return when he charged interest. In other words, the point sought to be made out was that the levy of interest u/s 139(1) would arise only when the Income Tax Officer was granting extension of time and that when he levied the interest in any particular case he should be taken to have granted an extension. We shall deal with the question of relevance of the charging of interest in the matter of levy of penalty separately. We shall now go into the question as to what are the requirements of Section 271(1)(a), or, in other words, whether mens rea is required to be established.

16. There was a provision similar to Section 271(1)(a) in Section 28 of the Indian Income Tax Act, 1922. The scope of that provision came up for consideration before this court in *V. RAMANATHAN Vs. COMMISSIONER OF Income Tax, MADRAS.*, . In that case a best judgment assessment had been made for failure to file a return in compliance with the notice u/s 22(2) of the Act. An application for cancellation of the assessment u/s 27 of that Act was also dismissed on the ground that there was not sufficient cause for not complying with the notice. In the penalty proceedings, the finding in the proceedings u/s 21, for cancellation of the assessment, was relied on as a ground for imposing the penalty u/s 28. The learned judges pointed out the distinction between sections 27 and 28 and in doing so observed at page 296 as follows;

"Again, in an application u/s 27 of the Act, it seems to us that the onus is upon the assessee to establish sufficient cause, while u/s 28, before a penalty could be imposed, it is for the department to show that the assessee who failed to submit the return did so without reasonable cause."

17. Where the onus lies has been clearly specified in the above extract.

18. In interpreting the provision of Section 271(1)(a) several High Courts have considered the decision of the Supreme Court in a sales tax case in *Hindustan Steel Ltd. Vs. State of Orissa.*, . In that case the assessee was a Government of India undertaking in the public sector. It erected factory buildings for locating a steel plant and also residential buildings for its employees along with ancillary works such as roads, water supply, drainage, etc. Part of the construction was done through the contractors to whom materials like bricks, coal, cement, steel,

etc., were supplied for consideration and adjusted against the amount due to the contractors under the contracts. The assessee had not registered itself as a dealer under the Orissa Sales Tax Act. Under that Act penalty could be imposed for failure to register as a dealer. Purporting to act under the relevant provision, the Orissa sales tax authorities levied penalty, in addition to the tax, with reference to the value of materials supplied to the contractors. u/s 9 of that Act, no dealer liable to pay tax, could carry on business as a dealer, unless he was registered under the Act, and possessed a certificate of registration. u/s 25 of that Act, whoever carried on business in contravention of Sub-section (1) of Section 9, was punishable with imprisonment which might extend up to six months, or with fine not exceeding Rs. 1,000 or with both. u/s 12(5) of the Act, if the Collector was satisfied that any dealer liable to pay tax, had without sufficient cause failed to apply for registration, he had authority to levy a penalty not exceeding one and a half times the amount of tax. It is the penalty so levied that came up for consideration by the Supreme Court. At page 29 the Supreme Court observed as follows :

"Under the Act penalty may be imposed for failure to register as a dealer: Section 9(1), read with Section 25(1)(a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged, either acted deliberately in defiance of law or was guilty of conduct, contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. Those in charge of the affairs of the company in failing to register the company as a dealer acted in the honest and genuine belief that the company was not a dealer. Granting that they erred, no case for imposing penalty was made out."

19. The Supreme Court itself referred to this decision in considering the levy of penalty u/s 28(l)(c) of the Act of 1922 in Commissioner of Income Tax, West Bengal I, and Another Vs. Anwar Ali, as follows:

"It appears to have been taken as settled by now in the sales tax law that an order imposing penalty is the result of quasi-criminal proceedings (Hindustan Steel Ltd. v. State of Orissa)."

20. It was pointed out in the same case that when proceedings u/s 28 were penal in character and the gist of the offence u/s 28(1)(c) was that the assessee had concealed the particulars of his income, the department had to establish that

the receipt of the amount in dispute constituted income of the assessee. The onus was, thus, put on the department.

21. The Mysore High Court in *All India Sewing Machine Co. Vs. Commissioner of Income Tax*, applied the decision in *Hindustan Steel* in a case arising u/s 271(1) (a) of the Act. In that case the return of income was due on 7th October, 1966, and it was filed on 22nd February, 1967. The High Court, after considering the decision of the Supreme Court cited above, pointed out that there was no finding by any of the authorities to the effect that the assessee in that case acted deliberately in defiance of law or was guilty of conduct, contumacious or dishonest, or acted in conscious disregard of its obligation.

22. The Andhra Pradesh High Court in *Additional Commissioner of Income Tax Vs. Narayanadas Ramkishan*, in dealing with the levy of penalty for the submission of a belated return held that the establishment of mens rea was an essential ingredient of a criminal offence and that the penalty proceedings being criminal or quasi-criminal, the statutory obligation was on the revenue to prove that the assessee had acted deliberately in defiance of law or was guilty of conduct, contumacious or dishonest, or acted in conscious disregard of his obligation. In coming to this conclusion the decision in *Hindustan Steel* was applied. The same view had been taken in *Mullapudi Venkatarayudu Vs. Union of India (UOI)*, by another Division Bench of that court.

23. The Orissa High Court applied the Supreme Court's decision to a case where the assessee had failed not only to comply with the notice u/s 139(2), but also to show cause when called upon as to why he cannot be visited with the penalty under that section. The court held that it could not be assumed that the assessee had no explanation to offer and that the burden lay on the revenue to establish absence of reasonable cause on the part of the assessee as a condition precedent to visiting him with penalty.

24. The Kerala High Court took the same view in two decisions in *P. Vs. Devassy V. Commissioner of Income Tax*, and *Dawn and Co. Vs. Commissioner of Income Tax*, . These decisions came to be considered later on by a Full Bench of that court in *Commissioner of Income Tax Vs. Gujarat Travancore Agency*, . That was a case where the assessee had not filed returns for the assessment years 1965-66 and 1966-67. For one year there was an application for extension of time, which was granted and for the other year there was no such application. But, for both the years the return was filed some time after the dates on which they were due. The explanation of the assessee was that he was under the bona fide belief that he had no assessable income. The explanation was found to be unsatisfactory and the Income Tax Officer, therefore, levied penalty. The Appellate Assistant Commissioner confirmed the penalty so levied and the Tribunal came to the conclusion that the Income Tax Officer had not brought on record any material to show that the assessee could not have had any such bona fide impression and that mens rea which was required to be proved had not been proved. It, therefore, cancelled the penalty. When the matter came on reference

to the High Court, it was referred to a Full Bench with reference to this particular point. Relying mainly on the distinction between the language of Section 28(1)(c) of the 1922 Act and of Section 271(1)(c) and also Section 276C of the Act of 1961 the High Court came to the conclusion that mens rea need not be established before the imposition of the penalty u/s 271(1)(a) of the Act. The learned judges did not understand the observations of the Supreme Court in Hindustan Steel as laying down that penalty proceedings attracted the entire body of the principles generally associated with criminal proceedings. They did not accept the correctness of the observations of the Division Bench in Dawn and Company's case that the expression "without reasonable cause" would import the requirements of mens rea. In their view this was an over-statement of the principle.

25. Relying mainly on this decision of the Full Bench of the Kerala High Court, the learned counsel for the Commissioner contended that the decision of the Supreme Court in the case of Hindustan Steel had no application. With respect, we are unable to share the same view as that taken by the Full Bench of the Kerala High Court. The Supreme Court itself had referred to the case of Hindustan Steel as applying to the construction of Section 28(1)(c) of the Act of 1922. It is true that there had been an amendment of the corresponding provision of the 1961 Act, viz., in Section 271(1)(c). Section 271(1)(c) before it was amended contained the following expression :

"(c) has concealed the particulars of his income or deliberately furnished inaccurate particulars of such income."

26. The word "deliberately" was omitted by the Finance Act of 1964 with effect from 1st of April, 1964. The omission of the word "deliberately" may perhaps signify that the mental element is not necessarily to be established in a case where a person furnished inaccurate particulars of his income. It is, however, unnecessary for us to express any concluded opinion on this aspect, as this point is not before us. The deletion of the word "deliberately" cannot rule out mens rea in all cases, as still the expression "concealed the particulars of his income" would require the mental element to be established. The word "concealed" would itself import this requirement. Therefore, it is not possible to proceed on the view that Parliament had done away with the requirement of the mental element even with respect to Section 271(1)(c) of the Act. The learned judges have referred to Section 276C. As we have pointed out earlier, this provision came to be introduced in the statute only with effect from 1st of April 1971, by the Taxation Laws (Amendment) Act, 1970. As we are concerned with the assessment years 1964-65 and 1965-66, the subsequent insertion of Section 276C cannot throw light on the interpretation of Section 271. The fact that the word "wilfully" finds a place in Section 276C cannot be taken as indicating that Parliament required different conditions to be established for the purpose of applying Section 271(1)(a). If Section 276C is excluded from consideration, then we are concerned only with the provisions of sections 271(1)(a) and 276(b). In Section 276(b), the

offence committed by a person in failing without reasonable cause or excuse to furnish in due time the return u/s 139(2) is made punishable. The expression "without reasonable cause" must bear the same meaning in both the provisions. Section 279 contemplates prosecution to be taken at the instance of the Commissioner in respect of an offence, inter alia, u/s 276. It would, therefore, follow that the legal principles applicable to proceedings in respect of a prosecution for an offence would have to be applied in considering the offence u/s 276. There can be no dispute that if prosecution was to be launched for the offence u/s 276(b) in this particular case, the mental element would be relevant. When identical language was employed in Section 271(1)(a), it would be unreasonable to apply a different requirement or to rule out the mental element. An expression must bear the same meaning in the same statute unless the context otherwise requires. In the present case there is nothing in the context of Section 271(1)(a) which would require us to construe the said expression differently as compared to Section 276(b). Further, the penalty proceeding, it has been held, is a quasi-criminal proceeding. The mental element cannot, therefore, be ruled out.

27. The learned counsel for the Commissioner drew our attention to a decision in *Guy T. Helvering, Commissioner of Internal Revenue v. Charles E. Mitchell*, 82 L Ed 917. In that case the Commissioner of Internal Revenue found that the assessee had in his Income Tax return for the year 1929 fraudulently deducted a certain alleged loss in sale of certain shares and had similarly fraudulently failed to return certain receipts. These fraudulent acts were done with intent to evade the tax. Under the provision enabling prosecution of a person who wilfully attempted to evade or defeat any tax imposed on him, he was prosecuted. He was tried on the indictment and acquitted. He was later on proceeded against for levy of penalty. The contention taken by the assessee was that the acquittal in the criminal proceedings operated as *res judicata*. This submission was negatived. It was pointed out that an acquittal on a criminal charge was a bar to a sub-sequent action, the objective of which likewise was punishment, since to entertain the subsequent action would subject the assessee to double jeopardy. It was, however, pointed out that the doctrine of double jeopardy did not exonerate one, acquitted of the charge of wilfully attempt ing to evade his Federal Income Tax, of liability for penalty. It was also held that where civil procedure was prescribed for the enforcement of remedial sanctions, the accepted rules and constitutional guarantees governing the trial of criminal prosecutions did not apply. This decision is based on certain legal conceptions peculiar to American Jurisprudence. The Supreme Court, as noticed already, has taken the view that the proceedings u/s 271 of the Act of 1961 or its counterpart in the Act of 1922 or in the corresponding sales tax law are of a quasi-criminal nature and that the onus for proving the offence is on the department and that *mens rea* is required to be established. Consistently with this decision it would not be possible to apply the decision of the Supreme Court of the United States in the case cited above and to treat the penalty proceedings as civil proceedings.

28. To sum up: We consider that the decision in Hindustan Steel is applicable to the penalty proceedings under the Income Tax Act of 1961. The penalty u/s 271(1)(a) will not ordinarily be imposed unless the party obliged, either acted deliberately in defiance of law or was guilty of conduct, contumacious or dishonest, or acted in conscious disregard of his obligation. The language of this provision is not consistent with the view that there is any presumption that the assessee who submits a belated return has committed an offence, so that it would be necessary for him to establish that he had reasonable cause. As the same expression "without reasonable cause" occurs both in Section 271(1)(a) or 276(b) the same meaning would have to be given in both the provisions so that the presence of a mental element which is relevant for the provision u/s 276(b) would also have to be established in applying to Section 271(1)(a). The mental element can be established by circumstantial evidence in the shape of contumacious conduct or dishonest or persistent disregard of the statutory obligation. The levy of penalty u/s 271(1)(a) is not a mere concomitant of a delay in filing the return. If Parliament intended that this was the position, then it would have omitted the expression "without reasonable cause" in the substantive part of Section 271(1)(a) and would have provided for the assessee to get out of the operation of this provision by establishing reasonable cause, as has been provided in Section 146. The rigour of the principle applicable to the criminal prosecution will not apply to the proceedings u/s 271(1)(a), so that even in a case where the assessee fails to extend co-operation and withholds any explanation for the delay in filing the return he is not liable to be penalised unless the department established that he had acted in deliberate disregard of his statutory obligations. We do not share the view that commended itself to the Orissa High Court in Hindustan Steel Ltd. Vs. State of Orissa, , Where a person had no explanation to offer, it may be treated as circumstantial evidence to show that he had acted without reasonable cause. Also, in a case where the explanation is so prima facie unreasonable, it would be open to the Income Tax Officer to levy penalty on the ground that the assessee had no reasonable cause for the delay in submission of the return. It would be difficult to lay down how or in what manner the onus to establish the absence of a reasonable cause can be discharged. It would depend upon the facts and circumstances of the particular case. The provision is not intended to penalise a technical or venial breach of the provisions of the Act or where the breaches suffer from a bona fide belief that the offender is not liable to act in the manner prescribed in the statute.

29. Applying the aforesaid principles, we consider that there is no conscious or deliberate disregard of the statutory obligation on the part of the assessee herein. Even taking that the non-completion of the audit could not stand in the way of his submission of the return for the relevant years, still he had put forward the plea that there was labour trouble. The learned counsel for the Commissioner contended that this was a very vague excuse. If the Income Tax Officer was not satisfied with the existence of the labour trouble or with the facts put forward by the assessee, then he could have given an opportunity to the

assessee to establish the same by requiring him to produce any evidence. The assessee is not ordinarily bound to presume that the plea that he is putting forward is going to be disbelieved by the Income Tax Officer. It would be open to an Income Tax Officer to accept a plea even on a prima facie reading of the explanation. If the explanation was not found prima facie acceptable, then natural justice demands that the assessee should be appraised of the same so as to enable him to put forward any further materials or details. If the details or materials are not put forward or they did not establish the assessee's case, then it would be open to the Income Tax Officer to reject the plea and find the absence of the reasonable cause, but such rejection cannot be done in an arbitrary or unreasonable manner. Rejection of any such plea is open to review in the proceedings authorised by the statute. In the present case, apart from merely disbelieving the explanation given by the assessee, the Income Tax Officer had not applied his mind to the requirements of the statute. We consider that there are no materials to come to the conclusion that the assessee had no reasonable cause on the facts herein.

30. In the above view it is unnecessary for us to go into the question as to whether the Income Tax Officer could be taken to have extended the time for submission of the return when he levied interest in accordance with Clause (iii) of the proviso to Section 139(1) of the Act. We consider that the penalty here in not properly levied under the provisions of Section 271(1)(a) of the Act. The question as reframed by in is answered in the negative and in favour of the assessee. The assessee will be entitled to his costs. Counsel's fee Rs. 250.