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and therefore even under section 9 no such suit is competent against the Governor-General or the Union of India. I am, therefore, of the opinion that no suit of the type brought by the plaintiff against the Governor-General or now against the Union of India is competent and I would therefore allow this appeal, set aside the decree of the lower appellate Court and restore that of the trial Court. In view of the circumstances of this case I would leave the parties to bear their own costs throughout.

I have read the judgment prepared by my learned brother and for reasons which I have given above I agree with him.

CIVIL REFERENCE

Before Bhandari, C. J., and Falshaw, J.

THE COMMISSIONER OF INCOME-TAX, DELHI, AJMER,
RAJASTHAN AND MADHYA BHARAT, DELHI,—
Petitioner

versus

TEJA SINGH,—*Respondent*

Civil Reference No. 15 of 1953

1954

Nov., 4th

Income-tax Act (XI of 1922)—Sections 18A(3) and 28(1)—Whether a person who fails to comply with sections 18A(3) can be punished under section 28(1)—Interpretation of statutes—Taxing statutes—Rules of interpretation stated

Held, that a person who fails to comply with the provisions of section 18A(3) cannot be punished under the provisions of section 28.

Held also, that if a statute enumerates the circumstances under which liability to punishment is to arise, it can arise only if those circumstances exist and in no other. Where a statute imposes a tax which is in effect a penalty it should be strictly construed; if it is capable of two reasonable but contradictory constructions, one in favour of the tax-payer and other in favour of the State then the construction which operates in favour of the tax-payer should be preferred. The Court should be slow in enlarging the scope of a provision by implication or analogy; and if a well-founded doubt arises whether a particular act is or is not an offence, the doubt should, if possible, be resolved in favour of the tax-payer.

In Vestey's (Lord) Executors and another v. Inland Revenue Commissioners (1), relied upon.

Case referred under Section 66(1) of the Indian Income-tax Act (Act XI of 1922), by the Income-tax Appellate Tribunal, Bombay, to the High Court on a question of law which is said to arise out of the Tribunal's order in I.T.A. No. 2288 of 1952-53.

ORDER

BHANDARI, C. J. These two references under Bhandari, C.J. subsection (1) of section 66 of the Indian Income-tax Act raise a common question of law viz., whether a person who fails to comply with the provisions of section 18 A (3) can be punished under the provisions of section 28 (1) of the said Act.

Two persons, who were not previously assessed to income-tax, submitted returns of their income *suo motu* under the provisions of section 18-A of the Income-tax Act. As these returns were submitted after the 15th day of March, the income-tax authorities imposed certain penalties under the provisions of subsection (9) of section 18A read with section 28 of the Income-tax Act. The appellate Tribunal set aside the order of the Commissioner of Income-tax and referred the following question to this Court under the provisions of subsection (1) of section 66 of the Income-tax Act:—

“Whether on a true construction of the terms of subsection (9) of section 18 A and of section 28 of the Income-tax Act, 1922, penalty can be imposed for non-compliance with the requirements of subsection (3) of section 18 A of that Act?”

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Subsection (9) of section 18-A may for convenience be split up into two parts. The first part provides that if the Income-tax Officer is satisfied that any assessee has furnished under subsection (2) or subsection (3) of section 18-A estimates of the tax payable by him which he knew or had reason to believe to be untrue, the assessee shall be deemed to have deliberately furnished inaccurate particulars of his income, and the provisions of section 28, so far as may be, shall apply accordingly. Section 29 (1) (c) declares that if a person has concealed the particulars of his income or deliberately furnished inaccurate particulars of such income he shall be liable to pay the penalty set out in the body of the section. There can be little doubt that a person who contravenes the provisions of sections 18-A (a) can be punished under the provisions of section 26(1) (c).

The second part of subsection (9), however, presents a certain amount of difficulty. It declares that if the Income-tax Officer is satisfied that any assessee has failed to comply with the provisions of subsection (3), the assessee shall be deemed to have failed to furnish the return of his total income ; and the provisions of section 28, so far as may be, shall apply accordingly. Section 28, does undoubtedly prescribe a penalty for a person who fails to furnish the return of his total income, but it is not every failure on his part to furnish the return of his total income that renders him liable to punishment under section 28. He can be punished only (a) if he fails to furnish the return of his total income which he was required to furnish by notice given under subsection (1) or subsection (2) of section 22 or section 34, or (b) if he fails to furnish the said return within the time

allowed and in the manner required by the notice. The Commissioner of Income-tax, Delhi, Ajmer, Rajasthan, and Madhya Bharat, Delhi v. Teja Singh Bhandari, C.J.

Neither of these two contingencies can arise in the case of an estimate required under section 18-A (9). In the first place, a person who fails to send an estimate under section 18-A (9) cannot be said to have failed to furnish the return of his total income which he was required to furnish in response to a notice issued under section 22 or section 34; secondly, the said person cannot be said to have failed to furnish it within the time allowed and in the manner required by such notice, for estimates under section 18-A (9) must be furnished before the 15th March, in the financial year immediately preceding the year of assessment whereas the returns required by the notices under sections 22 and 34 can be furnished at later dates.

It is a well-known rule of interpretation that the express mention of one thing implies the exclusion of another and it follows as a consequence that if a statute enumerates the circumstances under which liability to punishment is to arise, it can arise only if those circumstances exist and in no other. Again, where a statute imposes a tax which is in effect a penalty it should be strictly construed. If it is capable of two reasonable but contradictory constructions, one in favour of the tax-payer and other in favour of the State then the construction which operates in favour of the tax-payer should be preferred. It has been held repeatedly that a Court should be slow in enlarging the scope of a provision by implication or analogy; and if a well founded doubt arises whether a particular act is or is not an offence, the doubt should, if possible, be resolved in favour of the tax-payer. In *Vestey's (Lord) Executors and another v. Inland Revenue Commissioners* (1) Lord Normand observed—

“Parliament in its attempts to keep pace with the ingenuity devoted to tax avoidance

(1) (1949) I.A.E.R. 1108, 1120

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may fall short of its purpose. That is a misfortune for the tax-payers who do not try to avoid their share of the burden, and it is disappointing to the Inland Revenue. But the Court will not stretch the terms of taxing Acts in order to improve on the efforts of Parliament and to stop gaps which are left open by the statutes. Tax avoidance is an evil, but it would be the beginning of much greater evils if the Courts were to overstretch the language of the statute in order to subject to taxation people of whom they disapproved."

If the Legislature intended that a person who fails to comply with the provisions of section 18-A (3) should be punished under the provisions of section 28, the language which it has chosen to employ appears to me to be most inadequate.

For these reasons, I am of the opinion that the question propounded by the Tribunal must be answered in the negative.

Falshaw, J.

FALSHAW, J. I agree.

APPELLATE CIVIL

Before Bhandari, C.J., and Falshaw, J.

MAJOR U. R. BHAT,—Plaintiff-Appellant
versus

THE UNION OF INDIA,—Defendant-Respondent.

Regular Second Appeal No. 60-D of 1952

1954

Nov., 12th

Government of India Act, 1935—Section 266—Provisions of, whether mandatory or directory—Failure on part of Government to consult Public Service Commission before ordering the discharge of a Government servant—Effect of.

Civil Service (Classification, Control and Appeal) Rules—Rule 55—Provisions of rule 55 not followed—Whether gives a Government servant any legal cause of action.