award had been made by the Collector, prior to the commencement of the Act w.e.f. 24th September, 1984, the additional amount in terms of sub-section (1-A) of section 23 of the Act is to be awarded by the Collector. So far as the proceedings in Court—may be as a result of the reference under section 18 of the Act or at the appellate stage—are concerned, the mandate of sub-section (1-A) is that "the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value (i.e., the market value fixed under sub-section (1) of section 23) for the period commencing on and from the date of the publication of the notification under section 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier". I thus see no merit in the contention of the learned counsel for the respondents that the additional amount as envisaged by section 23(1-A) is not to be awarded to the appellants as the award in the instant cases had been pronounced on August 28, 1981.

(5) The net result of the above discussion is that besides the payment of market value of the acquired land at the rate of Rs. 22/- per square yard, the appellants would also be paid the additional amount under section 23(1-A) of the Act as indicated above along with solatium at 30 per cent of the market value and interest at the rate of 9 per cent per annum for the first year from the date of taking possession of the acquired land from them and at the rate of 15 per cent for the subsequent period till the date of payment of the enhanced amount of compensation. They would also have the proportionate costs of their appeals.

N.K.S.

Before S. P. Goyal and G. C. Mittal, JJ.

HARYANA IRON AND STEEL ROLLING MILLS,—*Applicant.*

versus

COMMISSIONER OF INCOME TAX, HARYANA AND CHANDIGARH,—*Respondent.*

Income Tax Reference No. 30 of 1978

November 22, 1985.

Income Tax (XLII of 1961) as amended by Taxation Law (Amendment) Act, 1970—Sections 271 (1)(a) and 275—Delay in filing return of income—Penalty proceedings initiated—Absence of reasonable cause for not furnishing the return in time—Onus to prove such absence—Whether lies on the assessee.

Haryana Iron and Steel Rolling Mills *v.* Commissioner of Income Tax, Haryana and Chandigarh
(S. P. Goyal, J.)

Held, that section 271(1) of the Income Tax Act, 1961 provided that if the Income-tax Officer or the Appellate Assistant Commissioner or the Commissioner (appeals) in the course of any proceedings under the Act, is satisfied that any person has without reasonable cause failed to furnish the return, he may direct that such person shall pay the amount to be assessed according to the provisions of that section as penalty. So before a penalty can be imposed, the concerned authority is to be satisfied that the assessee has failed to file the return without a reasonable cause. Obviously, unless a cause is shown, how its reasonableness can be judged. Reasonable cause being within the personal knowledge of the assessee it would be for him to show the same. It cannot be said that it would be for the revenue initially to show that the failure was without a reasonable cause and it will be only when the assessee has shown the cause that opinion can be formed by the concerned authority about its reasonableness or otherwise. The liability to the imposition of extra tax termed as penalty would arise immediately on the failure of the non-furnishing of the return within the prescribed time. Actual imposition is further postponed till the Assessing Authority comes to the finding that the failure was without any reasonable cause. It does not mean that it is for the revenue to show that the failure was without a reasonable cause. On the contrary, it only means that the failure on the part of the assessee to furnish the return within the prescribed period would not entail the imposition of penalty if he is able to show that there was sufficient cause for not doing so. In other words although the assessee becomes liable to the imposition of penalty for not filing the return within the prescribed time but he can ward off the same if he is able to show a good cause for not doing so. The burden of proof, therefore, to show that the assessee had reasonable cause for not filing the return within the prescribed time would be on him and on the furnishing of that it would be for the assessing authority to form an opinion whether there was a good cause or the failure was without a reasonable cause.

(Para 4)

Reference under section 256(1) *of the Income-tax Act,* 1961, *by the Income-tax Appellate Tribunal (Chandigarh Bench) for opinion of the High Court of Punjab and Haryana at Chandigarh, on the following questions of law arising out of order of the Tribunal, dated 4th August,* 1977, *in I.T.A. No.* 28 *of* 1976-76:—

(i) *Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that section* 275 *was procedural in nature and in further holding that the amended provisions of section* 275 *had been rightly invoked and thus the penalty proceedings were not time barred?*

(ii) *Whether the Tribunal rightly held that the Income-tax Act as it stands amended on the 1st day of April of any financial year would apply to the assessment of that year but not to the penalty proceedings of that year?*

(iii) *Whether the Tribunal was right in law in holding that no onus lies on the Revenue to prove that the delay was without a reasonable cause?*

R. A. No. 71 *of* 1977-78 *Arising out of I.T.A. No.* 28 *of* 1976-77) (*Assessment Year*: 1966-67).

Balwant Singh Gupta, Advocate with Inderjit Ahluwalia, Advocate, *for the Petitioner.*

Ashok Bhan, Senior Advocate with Ajay Mittal, Advocate, *for the Respondent.*

JUDGMENT

S. P. Goyal, J.

(1) The assessee is a registered partnership concern. The last date for filing its return was June 30, 1966 but it was filed on October 13, 1970. The assessment was completed on August 31, 1971 on a total income of Rs. 1,46,170/-. For the delay in filing the return, penalty proceedings under section 271 (1) (a) of the Income Tax Act (hereinafter called the Act) were initiated simultaneously when the assessment was completed. The assessee in its reply submitted various explanations which did not find favour with the Assessing Authority. The assessee also pleaded that the default was complete on October 13, 1970 when the return was filed and under the provisions of section 275, as it stood then, the penalty proceedings should have been completed within a period of two years from the date of the completion of the assessment proceedings. The Assessing Authority over-ruled this contention as well being of the view that the provisions of section 275, as amended by Taxation Laws (Amendment) Act 1970, with effect from April 1, 1971 were applicable and only six months having elapsed since the order was passed by the Tribunal in the appeal filed by the revenue, the penalty order was being passed within the prescribed period. Having failed before the Assistant Appellate Commissioner as well as the Tribunal, the assessee got the following three questions referred to

this Court under section 256(1) of the Act:

(1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that section 275 was procedural in nature and in further holding that the amended provisions of section 275 had been rightly invoked and thus the penalty proceedings were not time barred?

(2) Whether the Tribunal rightly held that the Income-tax Act as it stands amended on the 1st day of April of any financial year would apply to the assessment of that year but not to the penalty proceedings of that year?

(3) Whether the Tribunal was right in law in holding that no onus lies on the Revenue to prove that the delay was without a reasonable cause?

(2) The first two questions which cover the same field have been concluded by a judgment of this Court in *Commissioner of Income-tax, Patiala-II* v. *Sadhu Ram* (1), wherein it was ruled that the law of limitation being a procedural law always has retrospective effect unless the amending statute provides otherwise. It was further held:

> "Section 275 of the Income Tax Act 1961 which provides the time-limit within which proceedings for the imposition of penalty have to be completed, was amended by the Taxation Laws (Amendment) Act, 1970, with effect from April 1, 1971, and after its amendment the penalty proceedings could be completed within two years of the completion of the financial year in which the penalty proceedings were initiated, because the section embodies a rule of limitation which is procedural in character and, therefore, would govern the penalty proceedings at the time of the imposition."

Both the said questions are accordingly answered in the affirmative, that is, against the assessee and in favour of the revenue.

(3) On question No. 3, the learned counsel contended that the onus to prove that there was no reasonable cause for not furnishing

(1) (1981) 127 I.T.R. 517.

the return within the prescribed period was on the revenue and the view of the Tribunal was not sustainable in law. Reliance for this proposition was placed on a Full Bench decision of the Gujarat High Court in *Additional Commissioner of Income-tax, Gujarat* v. *I. M. Patel and Co.* (2). As would be evident from the following passage, the ratio of the Full Bench decision for holding that the burden of proving the absence of reasonable cause lay on the revenue was that the proceedings for the imposition of penalty were quasi criminal and it was, therefore, for the prosecution to prove all the ingredients of the offence:—

> "The penalty which can be imposed under section 271 (1) of the Income-tax Act, 1961 is to be imposed on contumacious or fraudulent assessees. It is a quasi-criminal proceeding and the section is penal in the sense that its consequences are intended to be an effective deterrent which will put a stop to practices which the legislature considers to be against the public interest. Whenever a statute defines an offence and provides a punishment for it, it is for the prosecution to prove all the ingredients of the offence. In penalty proceedings under section 271(1)(a) of the Act, the assessee upon whom the penalty is sought to be imposed is in the position of an accused in a criminal trial and, therefore, all the ingredients of the offence for which the penalty can be imposed must be established by the revenue. It is from this aspect that one has to consider the question whether the words, 'failure without reasonable cause' in section 271 (1) (a) constitutes an ingredient of the offence or not. Looking to the wording of the section and on a plain reading of section 271 (1) (a), it is obvious first that the failure to file the return may be with reasonable cause or without reasonable cause, but the offence for which the penalty is imposable is failure without reasonable cause to file the return within the time specified in the section and, therefore, it is for the revenue to establish as an ingredient that the failure in the particular case was without reasonable cause. Once the department has discharged that initial burden, it will be for the assessee to show that there was reasonable cause on his part in failing to

(2) (1977) 107 I.T.R. 214.

furnish the return in time. On the principles underlying section 106 of the Evidence Act, since the facts which constitute a reasonable cause are specially within the knowledge of the assessee, it will be for him to establish those facts, but the department must first lead evidence which would go to show prima facie, that the assessee had no reasonable cause in failing to file the returns within the time specified. Mere failure to file the return within the time without anything more will not expose the assessee to penalty. Mere falsity of the explanation on the part of the assessee is not enough to constitute an offence under the section. In view of the decisions of the Bombay High Court in Commissioner of Income-tax *v.* Gokuldas Harivallabhdas (3) and of the Supreme Court in Commissioner of Income-tax *v.* Anwar Ali (4) it is clear that the burden of proving all the ingredients of the offence is upon the department and if the department fails to lead any evidence on the point, besides merely pointing out that there was failure to furnish the returns within time, the department would fail so far as the penalty proceedings under section 271(1)(a) are concerned. Therefore, (1) under section 271(1)(a) of the Act, failure 'without reasonable cause' to furnish the return is an ingredient of the offence, (2) Section 271(1) (a) provides for penalty in cases where the assessee has either acted deliberately in defiance of law or was guilty of conduct, contumacious or dishonest, or acted in conscious disregard of his obligation, (3). The legal burden is on the department to establish by leading some evidence that prima facie the assessee has without reasonable cause failed to furnish the return within the time specified in section 271 (1) (a) read with the other relevant sections referred to in that section. Once this initial burden, which may be slight, has been discharged by the department, it is for the assessee to show as in a civil case, on balance of probabilities, that he had reasonable cause for failing to file the return within the time specified. (4) Mere falsity of the

(3) (1958) 34 I.T.R. 98.
(4) (1970)76 I.T.R. 696.

explanation furnished by the assessee cannot help the department in establishing its case against the assessee at the time of imposition of penalty."

Approach and the ratio of this Full Bench, however, did not find favour with the Full Bench of this Court in *Commissioner of Income-tax, Patiala-II* v. *Patram Dass Raja Ram Beri* (5), and the same were dissented in the following terms:—

"The doctrine of mens rea which in essence pertains to the realm of criminal law would normally not be attracted to the imposition of penalties under taxing statutes which in essence are coercive civil sanctions and remedies for the speedy collection of revenue. In C.A. Abraham *v.* ITO (6) their Lordships of the Supreme Court viewed penalty as a liability to pay additional tax and construed penalty proceedings as part of the machinery for the assessment of tax liability. Any universal or blanket theory that *mens rea* or a guilty mind is a necessary pre-requisite before any penalty can be levied in a taxing statute has now been authoritatively and conclusively negatived by the seven-judges Bench of the Supreme Court in R. S. Joshi *v.* Ajit Mills Ltd., (7). A perusal of the provisions of the I. T. Act, 1961 shows that the Act first prescribed the duty of filing returns within the prescribed time and then postulates three distinct sanctions for the enforcement of that statutory obligation. These are, by levying interest under section 139, by imposing penalty, if the delay has been occasioned without reasonable cause under section 271(1)(a), and by convicting and sentencing the assessee under section 276 CC by treating such failure to file the returns as an offence if it was proved that it was wilful. There are three distinct and varying degrees of non-filing of returns or filing returns beyond the prescribed time and the statute clearly keeps up the distinctions at all stages between the three modes. While the Legislature has been content to impose only a financial penalty on reaching satisfaction as to the absence of reasonable cause, it has prescribed the presence of wilful failure to furnish returns in due time to make it an offence punishable with a minimum imprisonment added with fine. Equally significant

(6) (1960)41 I.T.R. 425(SC).

(7) (1977)40 S.T.C. 497.

is the distinction between the word 'penalty' as contemplated by section 271 (1) (a) and the stringent punishment provided by section 276 CC. A reference to section 271 (1)(a)(i) of the Act would indicate that the Legislature itself viewed this 'penalty' as an addition to the amount of tax, if any, payable by the assessee and the same is calculated in relation to the amount of the assessed tax. It would be thus obvious that the penalty imposed here is in a way related to the tax and is part of the assessment proceedings. What is imposed under section 276CC of the Act is altogether different in nature. The proceedings therein are neither part of the assessment proceedings nor are the penalties directly proportionate to the amount of tax leviable. The offender under clauses (i) and (ii) thereof can be visited with rigorous imprisonment which may extend to seven years or three years, respectively, with an addition of fine as well. Whilst for levying penalty, the absence of reasonable cause has to be shown, for imposing punishment a wilful failure has to be established and, as a settled canon of criminal law, the burden to do so rests on the prosecution. Wilfulness certainly brings in the element of guilt and thus the requirement of a mens rea, but the presence or absence of reasonable cause can be something wholly objective and far removed therefrom. The heading of section 271 itself classified the subjects, with which it deals, into: (i) failure to furnish the returns; (ii) failure to comply with the notice; and (iii) concealment of income, etc. Therefrom, it is manifest that section 271 seeks to deal with three distinct situations. It is equally manifest that the aforesaid three situations are then separately and distinctly provided for in clauses (a), (b) and (c) of sub-section (1) of section 271 of the Act. Thus, even though the three varieties of the cases mentioned above are grouped together the section treats each one of them separately and distinctly. The language used for the relevant clauses is diverse and whilst the words 'without reasonable cause' occur in clauses (a) and (b), they are conspicuous by their absence in clause (c). Furthermore, the three categories of delinquency in these clauses are separately dealt with. Sub-clause (i) which refers to the tax deliquenty mentioned in clause (a) provides for the least burdensome penalties,

Sub-clause (ii) which refers to those in clause (b) imposes a little heavier penalties whilst sub-clause (iii) which refers to cases in clause (c) provides the highest penalties. Had the intention been to treat all these delinquencies equally, there was obviously no need for Parliament to prescribe these three varying degrees of penalties. It, therefore, follows that identical considerations cannot and do not apply to clauses (a), (b) and (c) of section 271 (1) of the Act. Hence, in the light of the broad scheme of the Income Tax Act, the specific language of section 271 (1) (a) and the weight of precedents it is clear that the doctrine of mens rea is not attracted to penalty proceedings under section 271 (1) (a). The only requirement thereunder is the presence or absence of reasonable cause for the tax delinquency. The requirement of deliberate defiance of law or contumacious conduct or dishonest intention or acting in conscious disregard of statutory obligations is unwarranted under section 271 (1) (a)."

The Tribunal for its view also relied on Full Benches of three other High Courts, that is, Kerala, Orissa and Andhra Pradesh: (1) *Commissioner of Income-tax, Kerala* v. *Gujarat Travancore Agency* (8), *Commissioner of Income-tax, Orissa* v. *Gangaram Ohopalia* (9), and (3) *Addl. Commissioner of Income-tax A. P. and another* v. *Dargapandarinath Tuljayya & Co.* (10), respectively.

(4) The ratio of the decision in *I. M. Patel's case* (supra) has been expressly dissented by the Full Bench of this Court but the question of burden of proof was not directly discussed. So, it is necessary to examine the matter from this angle also. Section 271(1) provides that if the Income-tax Officer or the Appellate Assistant Commissioner or the Commissioner (appeals) in the course of any proceedings under this Act, is satisfied that any person has without reasonable cause failed to furnish the return, he may direct that such person shall pay the amount to be assessed according to the provisions of that section as penalty. So before a penalty can be imposed, the concerned authority has to be satisfied that the assessee has failed to file the return without a reasonable cause. Obviously unless a cause is shown, how its reasonableness can be judged. Divan, C.J., in *I. M. Patel's case* (supra), has observed that the reasonable cause being within the personal knowledge of the assessee if would be for

(8) (1976) 103 I.T.R. 149.

(9) (1976) I.T.R. 613.

(10) (1977) 107 I.T.R. 850.

him to show the same. In these circumstances how can it be said that it would be for the revenue initially to show that the failure was without a reasonable cause and it will be only when the assessee has shown the cause that opinion can be formed by the concerned authority about its reasonableness or otherwise. The liability to the imposition of the extra tax termed as penalty would arise immediately on the failure of the non-furnishing of the return within the prescribed time. Actual imposition is further postponed till the Assessing Authority comes to the finding that the failure was without any reasonable cause. It does not mean that it is for the revenue to show that the failure was without a reasonable cause. On the contrary it only means that the failure on the part of the assessee to furnish the return within the prescribed period would not entail the imposition of penalty if he is able to show that there was sufficient cause for not doing so. In other words, although the assessee becomes liable to the imposition of the penalty for not filing the return within the prescribed time but he can ward off the same if he is able to show a good cause for not doing so. The burden of proof, therefore, to show that the assessee had a reasonable cause for not filing the return within the prescribed time would be on him and on the furnishing of that case it would be for the Assessing Authority to form an opinion whether there was a good cause or the failure was without a reasonable cause. Accordingly, question No. 3 is also answered in the affirmative, that is in favour of the revenue and against the assessee. No costs. ...

(G. C. Mital),—I agree.

N.K.S.

Before: *J. V. Gupta, J.*

DAS MAL,—*Petitioner.*

versus

SANJAY SANJEEV AND ANOTHER,—*Respondents.*

Civil Revision No. 1813 of 1985

November 29, 1985.

Code of Civil Procedure (V of 1908) *as amended in Punjab and Haryana—Section* 60(1) *proviso* (c) *of the principal Act and proviso* (ccc) *as added in Punjab and Haryana—Code of Civil Procedure*