delinquent official in enabling him to show-cause against the proposed punishment. Such a show-cause notice cannot also avoid the charge of vagueness too. Such being the situation here, the impugned order of the District Judge, Ropar of November 18, 1976, dismissing the plaintiff from service cannot indeed be sustained. The plaintiff must acordingly be held entitled to and is hereby granted a decree for declaration and injunction as prayed for. It is, however, clarified that it would be open to the punishing authority to consider the report of the enquiry officer and the gravity of the charges proved against the plaintiff, afresh and to take such further action in accordance with law as it may deem appropriate.

(7) The judgments and decrees of the courts below are accordingly hereby set aside. This appeal is accepted with costs.

N.K.S.

Before S P. Goyal and Gokal Chand Mital, JJ.

COMMISSIONER OF INCOME-TAX,—*Appellant.*

versus

SURINDER SINGH,—*Respondent.*

Income Tax Reference No. 36 of 1978.

January 22, 1986.

Income Tax Act (XLIII of 1961) as amended by Finance Act V of 1964—Sections 271(1)(c) and 279-A—Currency notes seized in a search—Assessment proceedings initiated by the income-tax officer —Part of the money seized treated as income of the assesseee from undisclosed sources and his explanation for the rest of the money accepted—Penalty proceedings also initiated—Onus to prove that *receipt of disputed amount constituted income of the assessee— Change in law after the amendment of* 1964—*Stated.*

Held, that before the income Tax Act, 1961 was amended by the Finance Act 5 of 1964, it was for the revenue to establish that the receipt of the amount in dispute constituted income of the assessee since penalty proceedings were penal in character. According to the law before amendment, apart from the falsity of the explanation given by the assessee, the department was required to have before it, before levying penalty, cogent material or evidence from

which it could be inferred that the assessee had conciously concealed the particulars of its income or had deliberately furnished inaccurate particulars in respect of the same and that the disputed amount was a revenue receipt. The law has changed with the amendment made oy the Finance Act, 1964 and now it has to be presumed (i) that the assessed income is the income of the assessee; (ii) his failure to return the correct income is due to fraud and (iii) his failure to return the correct income was due to gross or wilful neglect on his part. However, these presumptions are rebuttable.

(Para 7)

Petition under section 256(2) of the Income-tax Act, 1961 made by the Income-tax Appellate Tribunal (Amritsar Bench) Amritsar for the opinion of the Hon'ble High Court to refer on the following question of law, arising out of I.T.A. No. 237 (ASR/75-76) & R.A. No. 6 (ASR)/1976-77, for the Assessment year, 1971-72:

Whether, on the facts and in the circumstances of the case, the Tribunal is correct in cancelling the penalty of Rs. 1,76,000 levied under section 271(1) (c) of the Income-tax Act, 1961 ?"

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

G. C. Sharma, Senior Advocate with S. S. Mahajan, Advocate, *for the Respondent.*

JUDGMENT

Gokal Chand Mital, J.—

(1) On a mandamus issued by this Court in I.T.C. No. 109 of 1976 by judgment dated 22nd August, 1977 the Income Tax Appellate Tribunal, Amritsar, has referred the following question for opinion of this Court:

> "Whether, on the facts and in the circumstances of the case, the Tribunal is correct in cancelling the penalty of Rs. 1,76,000 levied under section 271(1) (c) of the Income Tax Act, 1961 ?"

(2) Surinder Singh (hereinafter called 'the assessee'), held a British Passport. On 17th March, 1971 the Enforcement Directorate searched his residential house at 14-B, Model Town, Jullundur under the provisions of Foreign Exchange Regulation Act, 1947 and recovered a suitcase containing Indian Currency Notes of Rs. 6,00,000 from his bed-room. When the Income Tax Officer came to know of

the search and recovery of the amount he initiated the assessment proceedings for the assessment year 1971-72 and served a notice under section 139(2) of the Income Tax Act, 1961 (for short 'the Act'), on the assessee on 2nd April, 1971. On 21st June, 1971, the assessee filed the return declaring the income of Rs. 3,850 with certain remarks in Part IV of the return. In the remarks he stated as follows:

"1. Since the status of the assessee is resident but not ordinary resident, no outside income has been shown as not derived from business controlled in India.

2. A sum of Rs. 6,04,500 seized by the Enforcement Officer on 17th March, 1971 does not belong to assessee and, at any rate, it is not income of the assessee.

3. Income from agricultural land is exempt from tax."

Thereafter, he filed a revised return on 5th July, 1971 declaring income of Rs. 8,350 as in the meantime he had capital gain of Rs. 4,500 from sale of a shop.

(3) During the assessment proceedings, the assessee gave explanation in regard to the amount of Rs. 6,00,000 recovered in search by saying that he wanted to purchase shares of M/s Kartar Bus Service, Limited, Jullundur, and for that purpose collected money from persons of his group and this formed part of Rs. 6,00,000 recovered from his residence. The matter was thoroughly considered by the Income Tax Officer and he concluded that the agreement for the purchase of shares of M/s Kartar Bus Service was not genuine and the explanation about the collection of money from persons of his group was also not genuine. Accordingly, he treated the sum of Rs. 6,00,000 as the assessee's income from undisclosed sources under section 279-A of the Act. Simultaneously he initiated penalty proceedings under section 271(1) (c) of the Act. Against the assessment of the Income Tax Officer in assessment proceedings, the assessee took the matter in appeal and the Appellate Assistant Commissioner on examination of the evidence held that 12 items were found to be genuine advances/loans obtained by the assessee

from certain parties but found that the following three items were not proved to be genuine :

(i) Shri Lembar Singh	Rs. 25,000
(ii) Shri Rachpal Singh	Rs. 50,000
(iii) Shri Harcharan Singh	Rs. 13,000

(4) The total of the aaforesaid items is Rs. 88,000 and by amending the order of the Income Tax Officer, addition of Rs. 88,000 towards the total income of the assessee was made.

(5) Both sides went up in separate appeals before the Tribunal and both the appeals were dismissed and the addition of Rs. 88,000 in the income of the assessee was sustained. This chapter stood closed.

(6) In the penalty proceedings, the Inspecting Assistant Commissioner of Income-Tax imposed maximum penalty of Rs. 1,76,000 under section 271(1) (c) of the Act. The Inspecting Assistant Commissioner had made further enquiries in the penalty proceedings and came to the conclusion that the evidence in respect of these loans was cooked up. Against the aforesaid order, the assessee took the matter in appeal before the Tribunal and the Tribunal cancelled the penalty for the reasons which are contained in paras 11 to 13 of its order. The department sought reference to this Court, which was initially declined by the Tribunal *on the ground that no question of law was involved and the matter was decided on facts but on application filed in this Court under section 256(2) *mandamus* was issued and that is how, the question of law has been referred to this Court.

(7) The Tribunal had relied on *CIT Madras* vs. *Khoday Eswarsa & Sons* (1) and *CIT Bihar and Orissa* vs. *Maghraj Ramchander* (2) and came to the conclusion that the penalty proceedings were penal in character and it was for the revenue to establish that the receipt of the amount in dispute constituted income of the assessee. It also proceeded to hold in view of the aforesaid decisions that apart from the falsity of the explanation given by the assessee the department must have before it, before levying of penalty, cogent material or

(1) 83 I.T.R. 369
(2) 97 I.T.R. 559

evidence from which it could be inferred that the assessee had consciousy concealed the particulars of its income or had deliberately furnished inaccurate particulars in respect of the same and that the disputed amount is a revenue receipt. Both the aforesaid decided cases relate to the law as it prevailed before the amendment made by the Finance Act 5 of 1964, which was materially different after the aforesaid amendment. The aforesaid decisions were based on the Supreme Court judgment in **CIT** vs. **Anwar Ali** (3) which also related to the provisions of law, as it stood before the aforesaid amendment. This Court in **Addl. CIT** vs. **Karnail Singh** (4) had taken the view that inspite of the aforesaid amendment, no change was brought out and the onus was still on the department and in penalty proceedings the department had to prove from independent evidence the guilty intention of the assessee as also that the disputed amount represented the income of the assessee. The same view was followed by the Income Tax Tribunal. The view taken in *Karnail Singh's case* (supra) was doubted and the matter was referred to the Full Bench. The Full Bench of this Court in *Vishwakarma Industries* vs. *CIT Amritsar* (5) overruled *Karnail Singh's decision* and held that *Anwar Ali's case* (supra) and other cases decided in view of the law, as it stood before the amendment of 1964 were not applicable to the case and the following rule was laid keeping in view the amendment provisions :

> "It would necessarily follow from the above that in order to determine the applicability of the Explanation, the first exercise is to see as to in which of the two categories the assessee would fall. As noticed earlier, the criterion here is purely arithmetical. If the difference between the returned income and the assessed income varies between 20 per cent, or more, then the assesee straightaway falls within the net of the newly added Explanation. Once this is so, the Explanation is aattracted at once and what remains thereafter is to determine the consequences of its application.
>
> A close reading of the later part of the Explanation, would indicate that once it is held to be applicable to the case of an assessee it straightaway raises three legal presump-

(3) (1970) 76 I.T.R. 696

(4) 95 I.T.R. 505.

(5) 135 I.T.R. 652

against him. For clarity's sake, these may be formulated as under:—

(i) that the amount of the assessed income is the correct income and it is in fact the income of the assessee himself;

(ii) that the failure of the assessee to return the aforesaid correct assessed income was due to fraud; or

(iii) that the failure of the assessee to return the aforesaid correct assessed income was due to gross or wilful neglect on his part.

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Now, it would follow from the above and the factum of the presumptions spelled out therein that in essence the Explanation is a rule of evidence. This indeed appears to be well established both on the language and the Principle of the Explanation as also by a plethora of precedent holding to the same effect. Further, it must at once be pointed out that the presumptions raised by the Explanation are not conclusive presumptions. These are only rebuttable presumptions. As is the rule under the civil law, the initial burden of discharging the onus of rebuttal is on the assessee. However, once he does so, he would be out of the mischief of the Explanation until and unless the department is able to establish afresh that the assessee in fact had concealed the particulars of the income or furnished inaccurate particulars thereof. The nature of the initial onus placed on the assessee herein under the Explanation is not unlike the ordinary burden of proof placed on either party in judicial proceedings. The basic "rule of evidence is that if the person on whom the onus to prove lies is unable to discharge the same, his cause would fail. It must, however, be reiterated that the presumption raised herein is only an initial of discharging an onus to prove thereunder would again be like the one in ordinary civil proceedings, i.e. it can be so discharged by preponderance of evidence. Again it must not be insisted upon that there is any necessary or mandatory requirement of leading evidence by any one of the parties. Such a burden can be discharged by existing material on the record in a specific case. As was pointed out earlier, the assessment proceedings and the penalty proceedings are

distinct and separate. It would be permissible for an assessee under the penalty proceedings to show and prove that on the existing material itself the presumption raised by the Explanation would stand rebutted."

A reading of the aforesaid quotation clearly shows that it has to be presumed (i) that the assessed income is the income of the assessee; (ii) his failure to return the correct income is due to fraud and (iii) his failure to return the correct income was due to gross or wilful neglect on his part. However, these presumptions are rebuttable. Therefore, the law after the amendment of 1964 is totally different from the law which prevailed before that amendment and the Tribunal decided on the basis of law, which was applicable before the aforesaid amendment. In any case, it decided on the basis of the law laid down in *Karnail Singh's case* (supra), which stands over ruled by the Full Bench, and, therefore, it is a fit case in which the matter deserves to be re-decided by the Tribunal keeping in view the Full Bench decision of this Court in *Vishwakarma Industries* (case supra).

(8) When the proceedings were being taken before the Inspecting Assistant Commissioner and the Tribunal, the decision of this Court in **Karnail Singh's case** (supra) prevailed, on the basis of which the initial onus was on the department which could be rebutted by the assessee. Now after the Full Bench decision in **Vishwakarma** *Industries case* (supra), presumptions have to be raised against the assessee, which he can rebut. Even the department can lead more evidence if it likes to prove the falsity of the material which the assessee may like to produce now. Therefore, it is not possible for us to answar the question and the matter deserves to be remitted to the Income Tax Tribunal to re-decide the matter afresh after affordng opportunity to the parties in the wake of Full Bench judgment in *Vishwakarma Industries case* (supra).

(9) On behalf of the assessee it was argued by Shri G. C. Sharma, Sr. Advocate, that the Tribunal and the Inspecting Assistant Commissioner had proceeded to decide on the basis of section 271(1) (c) of the Act and the question referred to this Court is also on the basis of section 271(1) (c) of the Act, and, therefore, neither the amended provision can be seen nor the explanation added to it can be seen. We find no merit whatsoever in this argument. It cannot be denied that the matter has to be decided on the basis of law, which *would

be applicable to the given facts. Even remotely, we do not find that the Inspecting Assistant Commissioner or the Tribunal was not aware that section 271(1) (c) stood amended in the year 1964. Moreover, even in the question which came up for consideration before the Full Bench of this Court, only section 271(1) (c) was mentioned and there was no mention of either the amended Act or of the explanation added. When for the year 1971-72 with which we are concerned in this case, section 271(1) (c) of the Act has to be seen, it will be seen in the light of the law, as would be applicable to that year. It is not disputed before us that for the assessment year 1971-72, the amendment made by Finance Act No. 15 of 1964 would be applicable.

(10) It was then urged on behalf of the assessee that the Tribunal has rendered decision on facts as well and has accepted the explanation of the assessee. The entire reasoning of the Tribunal was by putting onus on the department and once that view of law is found to be incorrect the entire complexion for decision would change and fair decision will have to be rendered keeping in view the dictum of the Full Bench. That is why, in fairness the assessee will have full opportunity to rebut the presumptions, which arise against him in view of the explanation with liberty to the department to disprove the evidence led by the assessee.

(11) For the reasons recorded above, we decline to answar the referred question. However, the order of the Tribunal dated 27th February, 1976 is hereby set aside and the matter is remitted to it to re-decide the appeal afresh keeping in view the judgement of the Full Bench of this Court in *Vishwakarma Industries case* (supra) and the directions given above. The parties are left to bear their own costs.

N. K. S.

FULL BENCH

Before: *P. C. Jain, C.J., D. S. Tewatia, S. P. Goyal, I. S. Tiwana and D. V. Sehgal, JJ .*

SUBH RAM AND OTHERS,—*Petitioners.*

versus

GRAM PANCHAYAT AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 4401 of 1984

May 27, 1986

Punjab Gram Panchayat Act (IV of 1953) as amended by Haryana Act 3 of 1976—Sections 21, 23, 23-A, 38, 43, 48 and 51—Order passed