relation who had tendered him services stands on a footing entirely differentt from that of a proprietor having sons, admits of no doubt. In this connection, reference may usefully be made to *Buta Singh & Nihal Singh* v. *Uttam Singh,* (8)."

(12) As noticed earlier, Dhari Ram propsitus, whose will is being questioned in this case, was also sonless. Thus, in a way the view taken by A. D. Koshal, J., also supports the view taken by me.

(13) I would, therefore, answer the question in the affirmative and as a consequence thereof allow the appeal and set aside the judgments and decrees of both the Courts below and dismiss the suit. The parties, however, are left to bear their own costs.

S. S. Sandhawalia, C.J.—I agree.

Gokal Chand Mital, J.—I also agree.

N. K. S.

FULL BENCH

Before S. S. Sandhawalia C.J., B. S. Dhillon and J. V. Gupta JJ.

COMMISSIONER OF INCOME-TAX,—*Applicant.*

versus

M/S. PATRAM DASS RAJA RAM BERI, ROHTAK,—*Respondent.*

Income Tax Reference No. 56 *and* 57 *of* 1976.

July 28, 1981.

Income-tax Act (*XLIII of* 1961)—*Sections* 139, 271(1)(*a*) *and* 276-*CC*—*Delay in filing of return of income*—*Levy of penalty under section* 271(1)(*a*)—Mens rea—*Whether a relevant consideration in the matter of such levy*—*Penalty proceedings*—*Nature of.*

(8) 115 Punjab Records 1891.

Commissioner of Income-tax *v.* M/s. Patram Dass Raja Ram Beri, Rohtak (S. S. Sandhawalia, C.J.)

Held, that generally penalty proceedings in a taxing statute are civil proceedings of remedial or coercive nature imposing an additional tax as a sanction for the speedy collection of revenue. Therefore, imposition of penalty for a tax delinquency cannot possibly be equated with the conviction and sentence for a criminal offence. Once it is found that penalty proceedings in a taxing statute are, in essence, of a civil nature, it would follow that the doctrine of *mens rea,* which is essentially applicable in the arena of crimes alone cannot possibly attract to such proceedings and in any case should not be easily invoked in a field altogether different. Penalty proceedings of a civil nature for a tax delinquency and punishment for a crime *stricto sensu* are things poles apart. Bringing considerations which are applicable basically as the essential ingredients of an offence, or as a rule of construction of criminal statutes, into the field of penalty proceedings in a taxing statute, which in essence are a coercive civil sanction for the speedy collection of revenue would thus on larger principles be wholly unwarranted.

(Paras 17 and 18)

Held, that when viewed against the larger perspective of the scheme and the provisions of the Income Tax Act, 1961, it is manifest that the Act first prescribes the duty of filing the Income-tax return 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(a) and by conviction and sentencing the assessee by treating such failure to file returns as an offence, if it was proved that this was wilful. These are three distinct and varying degrees of non-filing of returns or doing so 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 by imposing 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 is the distinction between the word 'penalty' as contemplated by section 271 (1) (a) and the stringent punishments provided by section 276-CC. Reference to Section 271 (1) (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 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 tax and a part of the assessment proceedings. Now what is imposed under section 276-CC of the Act is altogether different in nature. The proceedings therein are neither part of the assessment proceedings nor are they

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. The difference which the statute maintains between the penalty leviable under section 271(1)(a) and the punishment imposable under section 276-CC of the Act is demonstratively patent. Whilst for levying penalty, absence of reasonable cause has to be shown, for imposing punishment, 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 guilty mind 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. Thus, from the provisions of the Act itself, it irresistably emerges that the element of *mens rea* is made an ingredient for the offence under section 276-CC of the Act and not for the mere penalty proceedings under section 271(1)(a). It must, therefore, be concluded that the doctrine of *mens rea* is not attracted to the penalty proceedings within the four corners of section 271(1)(a). The only requirement of the statute thereunder is the presence or absence of reasonable cause for the tax delinquency and no other. Inducting the requirement of a deliberate defiance of law or contumacious conduct or dishonest intention or acting in conscious disregard of the statutory obligations is unwarranted under section 271(1)(a) of the Act.

(Paras 28 and 39).

Additional Commissioner of Income Tax vs. *I. M. Patel & Co.* 107 I.T.R. 214.

Smt. Indu Barua vs. *Commissioner of Wealth Tax*, 125 I.T.R. 436.

All India Sewing Machine Co. vs. *Commissioner of Income Tax Mysore*, 96 I.T.R. 206.

S. Loonkaran and Sons vs. *Commissioner of Income-tax* Madras, 108 I.T.R. 92.

Commissioner of Income-tax vs. *Rawat Singh & Sons* 120 I.T.R. 65.

DISSENTED FROM.

Reference Under Section 256(1) of the Income-tax Act, 1961 made by the Income-tax Appellate Tribunal (Chandigarh Bench) Chandigarh for the opinion of the Hon'ble High Court on an important question of law in R.A. No. 90 of 1972-73 (Arising out of I.T.A.

No. 1655 *of* 1970-71) *and R. A. No.* 51 *of* 1974-1975 (*Arising out of I.T.A. No.* 1671 *of* 1970-71) *for the assessment year* 1961-62 :—

1. *Whether on the facts of the case, the Tribunal was right, in law, in holding that the penalty leviable under section* 27 (1) (*i*), *Income-tax Act,* 1961 *had to be worked out with reference to the tax that remained payable by the assessee after being allowed credit for the tax paid under section* 23-*B of the Indian Income-tax Act,* 1922 ?

2. *Whether on the facts and in the circumstances of the case, while holding that the assessee firm had no reasonable cause for not filing the return in time, the Appellate Tribunal was right, in law, in holding that penalty under section* 27 (1) (*a*), *Income-tax Act,* 1961, *was not exigible* ?

D. N. Awasthy with B. K. Jhingan, Advocates, *for the Appellant.*

S. S. Mahajan, Advocate, *for the Respondent.*

JUDGMENT

S. S. Sandhawalia, C.J.

(1) A sharp cleavage of judicial opinion on the spinal issue—whether the doctrine of *actus non facit reum nisi mens sit rea,* is attracted to the penalty proceedings strictly within the four corners of Section 271 (1) (a) of the Income-tax Act, 1961—has necessitated this reference to the Full Bench.

2. The factual matrix is brief. The respondent-assessee was a partnership firm. A notice under Section 22 (2) of the Indian Income-tax Act, 1922, was served on the assessee for the assessment year 1961-62. In compliance therewith the return was furnished by the assessee on June 13, 1962, though the due date therefor was June 23, 1961. Admittedly, there was thus a delay of a little more than eleven months in filing the return. The Income-tax Officer consequently initiated penalty proceedings against the assessee for the late furnishing of the return.

3. The Assessee-firm duly furnished a written explanation and one of the contentions raised on its behalf was that the said firm,

as also the partners thereof, individually had paid not only the advance tax as due under Section 18-A of the Indian Income-tax Act, 1922 but also the tax that fell due on the completion of the provisional assessment under Section 23-B thereof. The Income-tax Officer rejected the explanation and came to the conclusion that there was no reasonable cause for the delay in filing the return and consequently a penalty of Rs. 63,602 was imposed by him under Section 271 (1) (a) of the Indian Income-tax Act, 1961, which by that time had come into force and is hereafter called 'the Act.'

4. The assessee then preferred an appeal before the Appellate Assistant Commissioner. He also took the view that delay of eleven months in filing the return was without reasonable cause and therefore, the penalty under Section 271 (1) (a) of the Act was exigible. However, he reduced the penalty by Rs. 6,358 because the assessee had paid before the date of assessment Rs. 23,590 under Section 23-B of the Income-tax Act, 1922 and Rs. 5,323 had been paid by way of tax deducted at source and these two payments had not been taken into account by the Income-tax Officer for working out the amount of tax that would have been payable by the assessee-firm treating it as an unregistered firm.

5. Apparently dissatisfied with the small reduction in the quantum of penalty, the assessee then preferred the second appeal before the Income-tax Appellate Tribunal, Chandigarh. On his behalf the issue was pointedly raised that because no finding of existence of any *mens res* had been recorded against the assessee, therefore, the order imposing penalty was bad in law. It was also urged that the assessee had a reasonable cause for not filing the return within the prescribed time and lastly, no tax was payable by the assessee-firm and therefore, no question of levying any penalty could arise.

6. The Tribunal came to the conclusion that since factually no tax was payable by the assessee and indeed on the other hand, some refund was actually due to it, no penalty would be exigible in this case. However, with regard to the reasonable cause sought to be shown on behalf of the assessee for the delayed filing of the returns, the Tribunal rejected the same and declined to entertain an altogether a fresh plea by the assessee that they were misled by their Income-tax Advisors in the matter of not filing the returns for the

two assessment years simultaneously, because this ground was new and would involve an investigation into fresh facts.

7. On the crucial issue of the existence or otherwise of a *mens res* on the part of the assessee, the Tribunal concluded as follows :—

> "The said observation to our mind suggests that the payment of tax by the partners on their share income is a relevant consideration to determine the question of levy of penalty under section 271 (1) (a). In these circumstances we are inclined to agree with the assessee that there was on its part no contumacious or deliberate disregard of its statutory obligation".

On the aforesaid findings, the Tribunal held that no penalty under Section 271 (1) (a) of the Act was exigible and allowed the assessee's appeal.

8. The Commissioner of Income-tax then applied for a reference of the questions of law arising from the appellate order. The Tribunal, in stating the case, referred the following two questions for the opinion of the High Court :—

(1) Whether on the facts of the case, the Tribunal was right, in law, in holding that the penalty leviable under Section 271 (1) (a) Income-tax Act, 1961 had to be worked out with reference to the tax that remained payable by the assessee after being allowed credit for the tax paid under Section 23-B of the Indian Income-tax Act, 1922 ?

(2) Whether on the facts and in the circumstances of the case, while holding that the assessee firm had no reasonable cause for not filing the return in time, the Appellate Tribunal, was right, in law, in holding that penalty under Section 271 (1) (a) Income-tax Act, 1961 was not exigible?

9. When the matter came up before the Division Bench, a number of judgments holding that the doctrine of *men res* was equally attracted to the tax filed even under Section 271 (1) (a) of

the Act were relied upon with regard to question No. (2) aforesaid. A firm stand to the contrary was taken on behalf of the revenue. The Division Bench noticed the head-long conflict of judicial opinion on the point and also observed that the same was one of substantial importance and was likely to arise in a large number of cases. It has, therefore, referred the larger question—whether *men res* is one of the relevant considerations for the levy of penalty under Section 271 (1) (a) of the Act or not—for decision by a larger Bench and that is how the matter is before us.

10. As has been said at the out-set and it is even more manifest from the reference order, there undoubtedly exists 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.

11. Now the maxim *actus res facit reum nisi mens sit res* is roooted 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 atleast 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 par infortunium?"

12. It would thus appear that even from the time of Coke onwards, it was well settled that the doctrine of *mens res* optioned the twin premise of English criminal jurisprudence that in order to constitute a crime, there must be an *actus res* accompanied by the requisite *mens res*. To put it in simple language, a completed offence requires both a physical overt-act as also a guilty state of mind. In crimes, requiring *mens res* as well as *actus res*, the physical act must be contemporaneous with the guilty mind, it is not enough that a mentally innocent act is subsequently followed by *mens res*. To put it in the classic words of Lord Kampon, C.J. in *Fowler* v.

Padust, (1). The intent and the act must both concur to constitute the crime."

13. Now it is well settled that the maxim and the doctrine of *mens res,* 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 *Sharras* v. *De Rutsen* (2), as under :—

> "There is a presumption that *mens res,* 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 *Hariprasada Rao (Ravula)* v. *State* (3), and *State of Maharashtra* v. *M. H. George* (4). However, the more meaningful authoritative enunciation in this context is that by Krishna Iyer, J. in *R. S. Joshi etc.* v. *Ajit Mills Ltd. and another etc.* (5), in the following terms :—

> "..... 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 res.* The

(1) 101 E.R. 1105.
(2) (1895) 1 Q.B. 918.
(3) A.I.R. 1951 SC 204.
(4) AIR 1965 SC 722.
(5) AIR 1977 S.C. 2279.

> The classical view that 'no mens res, 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 res*. Therefore, the contention that Section 37 (i) fastens a heavy liability regardless of fault has no force in 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 example 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.

14. Having seen that *mens rea* 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 *bese* or nalogous thereto? It is common place to say that when a statute provides for imposition of 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.

15. 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, Volume 85 at page 580, the legal position is authoritatively stated thus:—

> "A penalty imposed for a tax delinquency is 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 a 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,* (6) and it was held as follows:—

"The penalties imposed by Congress to enforce the tax laws embrace both civil and criminal sanctions. The former consist 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 demanding on the duration of the defaulit .... 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."

Now it appears that the identical view has been taken by their Lordships of the Supreme Court themselves in *C.A. Abrahem* v. *Income-tax Officer, Kottayam and another,* (7). Shah, J. speaking for the Court observed as follows:—

" ..... *By Section* 28, *the liability to pay additional tax which is designated penalty* is imposed in view of the dishonest

(6) 317 U.S. 492 at 495.

(7) (41) I.T.R. 524.

contumacious conduct of the assessee. It is true that, this liability arises only if the Income-tax Officer is satisfied about the existence of the conditions which give him jurisdiction and the quantum thereof depends upon the circumstances of the case. The penalty is not uniform and its imposition depends upon the exercise of discretion by the taxing authorities; *but it is imposed as a part of the machinery for assessment of tax liability.* .....'.

It appears plain from the above that their Lordships have viewed penalty only as a liability to pay an additional tax and penalty proceedings have been construed equally as part of the machinery for the assessment of tax liability.

16. Having a more direct bearing on the point are the following observations of Mathew, J. in *P. Umnali Verma* v. *Inspecting Assistant Commissioner of Income-tax*, (8):—

"No conviction for any offence is involved in the Imposition of a penalty. Article 20(1) of the Constitution will have application only when a person is subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. This would indicate that commission of an offence and a conviction thereof, are necessary in order that the provisions of the article may be attracted . . . A penalty, therefore, would come within the purview of article 20(1) only if the earlier part of the clause is attracted, i.e. there must have been a conviction for an offence. Unless there is a conviction, no question of the latter part of the article applying will arise . . . The imposition of penalty on the basis of an act or omission by an assessee is not because the act or omission constitutes an offence, but because that act or omission would constitute an attempt at evasion. Therefore, penalty is exacted not because an act or omission is an offence, but because it is an attempt at evasion of tax on the part of the assessee. .....".

Similar view has again been expressed by the Division Bench in *Commissioner of Income-tax, A.P.* v. *Maduri Rajashwar*, (9).

(8) (64) I.T.R. 669.

(9) (107) I.T.R. 832.

17. In view of the aforesaid authoritative enunciations, it is unnecessary to elaborate the matter further and it would be evident that generally penalty proceedings in a taxing statute are civil proceedings of remedial or coercive nature imposing an additional tax as a sanction for the speedy collection of revenue. Therefore, the imposition of penalty for a tax delinquency cannot possibly be equated with the conviction and sentence for a criminal offence.

18. Once it is found that penalty proceedings in a taxing statute are, in essence, of a civil nature, it would follow that the doctrine of *mens rea* which is essentially applicable in the arena crimes alone cannot be possibly attracted to such proceedings and in any case should not be easily invoked in a field all-together different. Penalty proceedings of a civil nature for a tax delinquency and punishment for a crime *stricto sensu* are things poles apart. Bringing considerations which are applicable basically as the essential ingredients of an offence, or as a rule of construction of criminal statutes, into the field of penalty proceedings in a taxing statute, which in essence are a coercive civil sanction for the speedy collection of revenue would thus on larger principles be wholly unwarranted. If authority was needed for this plain proposition, it is directly available in the following observations of the Supreme Court of United States in *Guy T. Helvating* v. *Charies Mitchell* (10).

> "Where civil procedure is prescribed for the enforcement of remedial sanction, the accepted rules and constitutional guarantees governing the trial of criminal prosecutions do not apply."

19. We have so far viewed the matter against a larger canvass to conclude that the doctrine of *mens rea,* which in essence pertains to the realm of criminal law would normally be not attracted to the imposition of penalties in taxing statutes which in essence are coercive civil sanction and remedies for the speedy collection of revenue. With this background one may now turn to the relevant provisions of the Indian Income-tax Act, 1961 with regard to the non-filing or the delayed furnishing of Income-tax returns. However, at the very outset a note of caution may be sounded to highlight the fact that we propose to confine ourselves only to the issue of such

(10) 303 U.S. 391.

penalty as is provided under section 271(1)(a). We would wish to make it crystal clear that it is not our intent here to dilate on the imposition of penalties generally in abstract or even specifically in the other sub-sections of section 271 itself. Indeed it is evident that even under clause (c) of sub-section (1) of section 271, different considerations might well apply because it deals with concealment of income or furnishing inaccurate particulars thereof. It appears to us that any abstract generalisation of penalty proceedings is a wasteful attempt at over-simplification of a complicated issue which in view of the varying language of the statutes cannot but be an exercise in futility. To reiterate, we confine ourselves strictly to the four corners of section 271(1)(a)(i) of the Act.

20. Now the question posed before this Full Bench has been rightly formulated in erudite language but when focused specifically on section 271(1)(a) in practical terms, the core of the matter is whether contumacious conduct, dishonest intention, deliberate defiance of law or acting in conscious disregard offends statutory obligation with regard to the furnishing of Income-tax returns, are jointly or severally the necessary mutual pre-requisites before penalty under this section can be levelled for a tax delinquency. It is to this pointed issue that we now propose to address ourselves.

21. The larger argument on behalf of the Revenue ably projected by Mr. D. N. Awasthy and which appears to us as having patent merit is that the scheme of the Act visualised three distinct kinds of sanctions against any infraction of its provisions with regard to the non-filing or the delayed filing of Income-tax Returns. The first amongst these is spelt out by the relevant provisions of section 139 which may be read at the very out-set :—

"139. *Return of Income.*

(1) Every person, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to Income-tax, shall furnish a return of his income or the income of such other person during the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed—

(a) in the case of every person whose total income, or the total income of any other person in respect of which

he is assessable under this Act, includes any income from business or profession, before the expiry of four months from the end of the previous year or where there is more than one previous year, from the end of the previous year which expired last before the commencement of the assessment year, or before the 30th day of June of the assessment year whichever is later ;

(b) in the case of every other person, before the 30th day of June of the assessment year;

"Provided that, on an application made in the prescribed manner the Income-tax Officer may, in his discretion, extend the date for furnishing the return and notwithstanding that the date is so extended, interest shall be chargeable in accordance with the provisions of sub-section (8)."

* * * * * *

(8) (a). Where the return under sub-section (1) or sub-section (2) or, sub-section (4) for an assessment year is furnished after the specified date, or is not furnished, then whether or not the Income-tax Officer has extended the date for furnishing the return under sub-section (1) or sub-section (2), the assessee shall be liable to pay simple interest at twelve per cent, per annum, reckoned from the day immediately following the specified date to the date of the furnishing of the return or, where no return has been furnished, the date of completion of the assessment under section 144, on the amount of the tax payable on the total income as determined on regular assessment, as reduced by the advance tax, if any, paid, and any tax deducted at source :

Provided that the Income-tax Officer may, in such cases and under such circumstances as may be prescribed, reduce or waive the interest payable by any assessee under this sub-section.

Explanation 1.—For the purposes of this sub-section, "specified date", in relation to a return for an assessment year, means;—

"(a) in the case of every assessee whose total income, or the total income of any person in respect of which he is assessable under this Act, includes any income from business or profession, the date of the expiry of four months from the end of the previous year or where there in more than one previous year, from the end of the previous year which expired last before the commencement of the assessment year, or the 30th day of June of the assessment year, whichever is later ;

(b) in the case of every other assessee, the 30th day of June of the assessment year."

Now the bare reading of the afore-quoted provisions (without entering into the intricacies of the other sub-sections) makes it plain that the law obliges the furnishing of the requisite income-tax returns on the assessees who come within its ambit and prescribes the date and time within which they are to be filed. Any infraction of this obligation is just provided for by sub-section (6). This sanction appears to be at the lowest pedestal and involves a liability to pay interest in the case of either non-filing or the delayed furnishing of Income-tax returns. In a way it is merely a commercial equivalent for the delayed payment of revenue which may well ensue as a necessary consequence of the delayed or non-filing of returns by a delinquent assssee. Reference in this connection may also be made to the statutory rules framed in this context and in particular to rule 117-A. These statutory rules again refer to and provide for the liability to pay interest in the contingency spelt out therein.

22. Proceeding further it would appear that at a higher level than the liability to pay the commercial equivalent for the possibility of the loss to public revenues, for the delayed or non-furnishing of Income-tax return (under section 139 and the relevant rules), are the provisions of penalties imposable under section 271(1)(a) of hte Act which is contained in Chapter 21. The heading of the Chapter is itself meaningful and is "Penalties Imposable". This is

in sharp contrast with the succeeding Chapter 22 which is titled as 'Offences and Prosecutions'. Before adverting to the relevant provision in this latter Chapter, it is necessary to quote in *extenso* the relevant provisions of section 271 around which basically the whole controversy revolves :—

"271. *Failure to furnish returns, comply with notices, concealment of income, etc.*—(1) If the Income-tax Officer or the Appellate Assistant Commissioner or the Commission (Appeals) 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 section 148 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

(b) has without reasonable cause failed to comply with a notice under sub-section (1) of section 142 or sub-section (2) or direction issued under sub-section (2A) of section 142 ; or

(c) has concealed the particulars of his income or furnished inaccurate particulars of such income,

he may direct that such person shall pay by way of penalty,—

(i) in the cases referred to in clause (a),—

(a) in the case of a person referred to in sub-section (4A) of section 139, where the total income in respect of which he is assessable as a representative assessee does not exceed the maximum amount which is not chargeable to income-tax, a sum not exceeding one per cent of the total income computed under this Act without giving effect to the provisions of sections 11 and 12, for each year or part thereof during which the default continued ;

(b) in any other case, 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.

Explanation.—In this clause, "assessed tax" means tax as reduced by the sum, if any, deducted at source under Chapter XVIIB or paid in advance under Chapter XVIIC;

(ii) in the cases referred to in clause (b), in addition to any tax payable by him, a sum which shall not be less than ten per cent but which shall not exceed fifty per cent of the amount of the tax, if any, which would have been avoided if the income returned by such person had been accepted as the correct income ;

(iii) in the cases referred to in clause (c), in addition to any tax payable by him, a sum which shall not be less than, but which shall not exceed twice, the amount of tax sought to be evaded by reason of the concealment of particulars of his income or the furnishing of inaccurate particulars of such income :

Provided that, if in a case falling under clause (c) the amount of income (as determined by the Income-tax Officer on assessment) in respect of which the particulars have been concealed or inaccurate particulars have been furnished exceeds a sum of twenty-five thousand rupees, the Income-tax Officer shall not issue any direction for payment by way of penalty without the previous approval of the Inspecting Assistant Commissioner.

Explanation 1 : * * *".

23. Without attempting any close analysis of the aforesaid provision, at this stage, the heading of section 271 itself calls for significant notice. This itself classifies the subjects with which it deals into (i) failure to furnish returns ; (ii) failure to comply with notice, and (iii) concealment of income etc. Therefrom, it is manifest that section 271 seeks to deal with three distinct situations and because some incidental matters are also included in the section, the word "etc." has been added at the end of its heading as

well. Proceeding further 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 clause is diverse and whilst the words 'without reasonable cause' occur in clauses (a) and (b), they are conspicuous by their absence in clause (c). Further more, the three categories of delinquency in these clauses are separately dealt with. Consequently, sub-clause (i), which refers to the tax delinquency mentioned in clause (a) provides for the least burdensome penalties. Sub-clause (ii) which refers to those in clause (b) imposes 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, identical considerations cannot and do not apply to clauses (a), (b) and (c) of section 271 (1) of the Act.

24. The aforesaid view receives further strength from the fact that sub-clause (i) has its own explanation giving a distinct meaning to the words "assessed tax" used therein. It cannot be possibly postulated that the application of this Explanation can be extended to the other clauses as well. On parity of reasoning and also for other considerations which are too manifest to call for elaboration, it appears to be plain that the Explanation to sub-clause (iii) would be limited in its scope only to the cases which come under clause (c) alone, which finds specific mention therein. This Explanation, in our view, has no relevance whatsoever to clause (a) of section 271 (1).

25. Lastly, it may be mentioned that some attempt to invoke the provisions of the earlier sub-section (4A) also in this context was made on behalf of the respondent-assessee. However, in view of the fact that sub-section (4A) and sub-section (4B) have been omitted by the Taxation Law (Amendment) Act, 1975 with effect from October 1, 1975, it is now wholly unnecessary to advert thereto.

25-A. Even from the aforesaid bird's eye law of the statutory provision, it is manifest that section 271(1)(a) read with

sub-clause (i) is separate and distinct from its other clauses and as said earlier, we intend to focus ourselves entirely thereon. A reading of this provision would show that what is provided herein is a civil sanction far above the mere liability to pay interest as a commercial equivalent of delayed and non-filing of returns as stands earlier provided under section 139(8) of the Act. The differences between the mere imposition of interest under section 139 and the imposition of penalty under section 271 (1) (a), are patent. The later provision goes a step further and deals with a somewhat graver situation. A penalty as provided in clause (i) may be imposed only when the Income-tax Officer or the Appellate Assistant Commissioner is satisfied that the delay has occurred without reasonable cause. The quantum of the penalty is heavier than the interest that is collectable under section 139(8). Under section 271(1) (a), both a power and discretion is vested in the authority to impose a heavy penalty by way of additional tax though the broad and the basic guidelines for its imposition are themselves spelt out by the statute.

26. Now the last and the highest sanction provided by the Act for the non-filing or the delayed furnishing of the return has been spelt out under section 276-CC of the Act. Only to highlight, it bears repetition that this section falls in Chapter 22, the very heading whereof indicates that it relates to offences and prosecutions. As a matter of legislative history, it may be noticed that section 276-CC was substituted for the earlier section 276-C by the Taxation Laws (Amendment) Act, 1975 with effect from October 1, 1975. Its stringent provisions deserve notice in *extenso* :—

"*Failure to furnish returns of income.*

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,—

(i) in a case where the amount of tax, which would have been evaded if the failure had not been discovered, exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(ii) in any other case, with imprisonment for a term which shall not be less than three months but which may extend to three years and with fine:

Provided that a person shall not be proceeded against under this section for failure to furnish in due time the return of income under sub-section (1) of section 139—."

It seems plain from the aforesaid provisions that herein the wilful failure to furnish returns of Income-tax is made a serious crime which, in its aggravated form is punishable with the minimum sentence of six months rigorous imprisonment which may extend to seven years and in any other case again with a minimum sentence of three months extending upto three years with fine. In this context, it deserves recalling that originally the word "wilfully" did not find place in the predecessor section 276-C of the Act. It was only after the Joint Select Committee had forcefully opined that "in accordance with the accepted canons of criminal jurisprudence, failure to furnish return or produce documents etc. should be made punishable only when such failure is wilful", that the word 'wilful' was introduced in section 270-C with effect from April 1, 1971 by Act No. 42 of 1970. It would thus be plain that the insertion of the word 'wilful' had been deliberately made to incorporate into this statutory offence a clear requirement of a guilty mind or *mens rea*. When section 276-C came to be substituted by the present section 276-CC, the same *mens rea* was incorporated in the successor provision as well.

27. Now it is against the aforesaid larger perspective of the basic scheme of the Indian Income-tax Act, 1961 for providing three distinct sanctions for the non-filing or delayed filing of returns that Mr D. N. Awasthy's contention on behalf of the revenue is to be tested. He had plausibly and forcefully contended that the doctrine of *mens rea*, which essentially is one from the realm of criminal law can be strictly and directly attracted only in the last and the highest sanction provided by section 276-CC of the Act, which creates a statutory offence for this tax delinquency. Herein, both because the legislature has chosen to make it a crime and also because in its wisdom, it has introduced the mental element of wilfulness in the section itself, a guilty state of mind or to put it technically *mens rea* is an essential ingredient of the offence under

the aforesaid section. However, as regards the earlier two sanctions under section 139 and section 271 (1) (a), these are neither crimes *stricto sensu* nor has the legislature chosen to prescribe any mental element either identical or analogous to wilfulness in those provisions. The word 'wilfulness' or anything equivalent thereto is conspicuous by its absence in section 271 (1) (a) of the Act. Therefore, firstly to invoke a doctrine derived entirely from the realm of criminal law into a provision for imposing penalties by way of civil and coercive sanctions would be unwarranted and secondly, to thrust and element of wilfulness or contumacious conduct in the same provision when the legislature has not employed any such word (in sharp contrast to section 276-CC) would be patently doing violence to the plain language of the statute. It was submitted that to introduce the requirement of wilfulness, contumacious conduct, or dishonest intention, in section 271 (1) (a), merely by a process of interpretation, when the legislature itself has advisedly avoided the use of any such terminology therein, would be an obvious infraction of the sound canons of interpretation. We find these submissions on behalf of the Revenue, to be patently meritorious.

28. We take the view that the basic issue before us can be truly answered only when viewed against the larger perspective of the scheme and the provisions of the Indian Income-tax Act, 1961. It is manifest that the Act first prescribes the duty of filing the Income-tax return 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 by treating such failure to file the returns as an offence, if it was proved that this was wilful. These are three distinct and varying degrees of non-filing of returns or doing so beyond the prescribed time and the statute clearly keeps up the distinction at all stages, between the three modes. While the legislature has been content by imposing 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 is the distinction between the word 'penalty' as contemplated by section 271 (1) (a) and the stringent punishments provided by

Section 276-CC. 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 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 tax and as was authoritatively said in *C. A. Abraham's* case (supra) is part of assessment proceedings. Now what is imposed under Section 276-CC of the Act is altogether different in nature. The proceedings therein are neither part of the assessment proceedings nor are they 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. It seems unnecessary to elaborate the point because the difference which the statute maintains between the penalty leviable under Section 271 (1) (a) and the punishment imposable under Section 276-CC of the Act, is demonstratively patent. Whilst for levying penalty, absence of reasonable cause has to be shown, for imposing punishment, 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 guilty mind 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. Thus from the provisions of the Act itself, it irresistably emerges that the element of *mens rea* is made an ingredient for the offence under Section 276-CC of the Act and not for the mere penalty proceedings under Section 271 (1) (a).

29. Concluding the aforesaid discussion in the light of the larger principle, its legislative history, the broad scheme of the Act, and its specific provisions, the Stage is now set for the consideration of the mass of precedent on the point. As has been repeatedly noticed, there undoubtedly exists a headlong conflict of judicial opinion in the various High Courts, but before adverting thereto it becomes necessary to notice a trilogy of Supreme Court cases which by way of analogy appear to be the sheet-anchor for the contrary view. It would appear that the fountain-head for inducting the requirement of *mens rea*, even in the field of the levy of pecuniary penalties for a tax delinquency under the Indian Income-tax Act, 1961, are certain broad and general observations

first made in *Hindustan Steel Ltd.* v. *State of Orissa* (11). These observations seem to have snow-balled in later High Court judgments to inject the requirement of *mens rea* even in the limited arena covered by Section 271 (1) (a).

30. In *Hindustan Steel Ltd. case* (supra), their Lordships were specifically construing the provisions of Sections 9(1) and 25(1) (e) of Orissa Sales Tax Act (14 of 1947). Thereunder penalty had been levied on the delinquent company for its failure to register itself as a dealer. It would appear that in the context of the specific provisions of the Orissa Sales Tax Act, the following general observations were made by Shah, Acting C.J., speaking for the Bench :—

> "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 proceedings, 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 taking to register a 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."

(11) (88) I.T.R. 26.

Even a plain reading of the judgment in *Hindustan Steel Ltd. case* (supra), makes it manifest that what fell for consideration there was the Orissa Sales Tax Act and particularly the language of section 9(1) and 25(1) (i) thereof and the penalty provided thereby. There is not the least reference to the Indian Income-tax Act, 1961 in the whole of the judgment far from there being any consideration of the specific provisions of section 271(1) (a) or the larger scheme of the Act with regard to the non-filing or the late-filing of the income-tax returns. With the greatest respect, we are unable to see how the general observations made in the said case, in the context of an altogether different statute, whose language is admittedly not even remotely in *pari materia* with section 271(i) (a) of the Act can completely cover the issue in the present case. Equally it is manifest from the afore-quoted observation that these are wholly general in nature. It may well be that certain penalties can be imposed only if the party acted deliberately in defiance of law or is guilty of contumacious conduct in view of the specific language of the particular statute. Simply because word 'penalty' is used, all the wide ranging requirements of contumacious conduct, deliberate defiance of law, dishonest intention, or conscious disregard of statutory obligations cannot be automatically imported into every statute. As we have already noticed *mens rea* is certainly an essential requirement of the offence under section 276-CC of the Act, but is obviously not so in the entirely different context and language of section 271(1) (a). The observations in *Hindustan Steel Ltd. case* (supra) have, therefore, to be understood in the light of the specific provisions of the law therein and the facts with which the Court was dealing but to give it a universal application in all penalty cases, irrespective of the statutes or their language. would appear to be wholly untenable.

31. It calls for notice that judgment in *Hindustan Steel Ltd. case,* (supra), was rendered on August 4, 1969, but it came to be reported much later in the Income-Tax Reports in the year, 1972. Grover, J. who was a member of the Bench in *Hindustan Steel Ltd. case,* (supra), had the occasion to refer to the same case in the later case of *Commissioner of Income-Tax, West Bengal and another* v. *Anwar Ali,* (12), with the following observations :—

> "——— It appears to have been taken as settled by now in the sales tax law that an order imposing penalty is the

(12) (76) I.T.R. 696.

result of quasi-criminal proceedings (*Hindustan Steel Ltd.* v. *State of Orissa*). In England also it has never been doubted that such proceedings are penal in character: *Fattorini (Thomes) (Lancashire) Ltd.* v. *Inland Revenue Commissioner.*"

Now a close reading of the judgment in *Anwar Ali's case,* (supra), would show that their Lordships were therein construing the provisions of section 28(1)(c) of the Indian Income Tax Act, 1922, which is broadly equivalent to the present Section 271(1)(c) though not being in *pari materia* therewith. To put it squarely under the said provision. It has to be a case of concealment of income. As has been already noticed in considerable detail, the provisions of section 271(1)(c) stand on an altogether different footing from those under section 271(1)(a) of the Act. The language of clause (c) does mention concealment of the particulars of income or furnishing of wrong particulars has a clear mental element which is laid down in the statute itself. One cannot conceal something unconsciously and therefore, concealment is inevitably a conscious mental act. It necessarily follows that in this context, the necessary mental requirement is provided by the statute itself and has not to be inducted therein by the invocation of any general doctrine. Therefore, to extend the ratio of *Anwar Ali's* case (supra) to an area where there is no question of any concealment and in a provision which does not specify any guilty mental pre-requisite, would again be doing violence both to the language of the statute and the sound canons of interpretation. As has already been pointed out the mere fact that penalty proceedings are penal in nature, would not necessarily bring in the doctrine of *mens rea* from the realm of crimes as an essential ingredient thereof. This has to be and must be decided on the basis of the specific language of the section and the larger scheme of the Act. *Anwar Ali's case,* therefore, must be held as plainly distinguishable.

31-A. Lastly, in this context, are the observations of Chief Justice Ray, speaking for the majority in *Khamka & Co. (Agencies) Pvt. Ltd.* v. *State of Maharashtra,* (13) to the following effect:—

"The Income-tax Act, 1961, imposes penalty under sections 270 and 271. These sections in the Income-tax Act, provide

(13) (35) B.T.C. 571 (at page 581).

for inposition of penalty on contumacious or fraudulent assessees. Penalty is in addition to income-tax, if any, determined as payable by the assessee. Tax and penalty like tax and interest are distinct and different concepts under the Indian Income-tax Act. The word "assessment" could cover penalty proceedings if it is used to denote the whole procedure for imposing liability on the taxpayer as happened in *Abraham's case.* Penalty is within assessment proceedings just as tax is within assessment proceedings when the relevant Act by substantive charging provision levies tax as well as penalty.

Penalty is not merely sanction. It is not merely adjunct to assessment. It is not merely consequential to assessment. It is not merely machinery. Penalty is in addition to tax and is a liability under the Act. Reference may be made to section 28 of the Indian Income-tax Act, 1922, where penalty is provided for concealment of income. Penalty is in addition to the amount of income-tax. This court in *Jain Brothers* v. *Union of India* said that penalty is not a continuation of assessment proceedings and that penalty partakes of the character of additional tax."

What calls for pointed notice in *Khemka's case* (supra) is the fact that their Lordships were construing the specific provisions of section 9 of the Central Sales Tax Act and the corresponding provisions of the Bombay Sales Tax Act and the Mysore Sales Tax Act, and, in the context of invoking those provisions for the imposition of penalty. The specific issue of penalties under section 271(1)(a) did not remotely fall for consideration. Even as regards penalties under clause (c), such cases of concealment of income may well stand on an entirely different footing. We are clearly of the view that the general observations made by way of analogy in *Khemka's case* (supra), are not even remotely attracted to the basic issue which falls for determination here.

32. Having individually distinguished the trilogy of the three Supreme Court cases, it deserves highlighting with regard to them collectively that the limited point before us specifically under section 271(1)(a) of the Act was never even remotely before their Lordships in any one of those cases. The strict ratio of all the

three judgments admittedly does not cover the issue which falls for consideration here. The provisions, which their Lordships were considering in the aforesaid cases were undoubtedly different and their language is not even remotely in *pari materia* with that of section 271 (1) (a). Therefore, to invoke these three judgments as either binding or conclusive on the specific point before us appear to me as rather unwarranted. The danger of construing precedent as if they were statutes, and assuming every passing observation therein as if it were the ratio thereof was first highlighted in the classic words of Earl of Halsbury, Lord Chancellor, in *Quinn* v. *Leathem*, (14).

> "Now, before discussing the case of *Allen* v. *Flood* (1) and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all".

The aforesaid observations have found express approval in *State of Orissa* v. *Sudhansu Sekhar Misra and others* (15), with the following added observations :—

> 'A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it.
>
> * * * * * *
>
> It is not a profitable task to extract a sentence here and there from a judgment and to build upon it.'

(14) 1901 Appeal Cases 495.
(15) A.I.R. 1968 S.C. 647.

The identical view has then been reiterated by the whole Court in *H. H. Maharajudhiraja Madhav Rao Jivaji Rao Shindia Bahadur and others* v. *Union of India,* (16).—

> "* * * * * *
>
> It is difficult to regard a word, a clause or a sentence occurring in a judgment of this Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment."

In the light of the above it would appear that any overly reliance on the passing and general observations in *Hindustan Steel Ltd.'s case* (supra), *Anwar Ali* and *Khemka & Co.'s cases* (supra), as being conclusive on the point before us is totally unwarranted.

33. Lastly, in this context it is now plain that even in the realm of the precedents of the final Court the death-knell to the theory that *mens rea* is a necessary ingredient of all penalty proceedings in taxing statutes, has now been sounded in the seven-Judge Bench judgment of their Lordships in *R. S. Joshi etc.* v. *Ajit Mills Ltd and other etc.,* (17). Therein what fell for pointed consideration were the provisions of Section 37 of the Bombay Sales Tax Act 1959 as applicable in the state of Gujarat. This provision provided that if any person or dealer collected tax under the Act or in contravention of the provisions of the Section or in excess of the amounts provided therein, he would be liable to pay in addition to any tax, a penalty of an amount prescribed in sub-clauses (i) and (ii) of clause (b) of sub-section (1) of the aforesaid Section. It was sought to be argued before the Bench that the penalty so imposed was by way of forfeiture and that penalty and forfeiture were distinct things and in any case no *mens rea* having been prescribed for a privision so gravely penal, the same was not sustainable. Reversing the judgment of the Gujarat High Court, Krishna Iyer, J., speaking for himself and five other members of the Bench concluded in this specific context of a penalty in a taxing statute in the following words which bear repetition :—

> "* * *. The Criminal Procedure Code, Customs and Excise Laws and several other penal statutes in India have used

(16) A.I.R. 1971 S.C. 530.
(17) A.I.R. 1977 S.C. 2279.

diction which accepts forfeiture as a kind of penalty. When discussing the rulings of this Court we will explore whether this true nature of 'forfeiture' is contradicted by anything we can find in S. 37(i), 46 or 63. 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 in depriving the forfeiture of the character of penalty."

Again on this specific point Kailesem, J., in his concurring judgment observed as follows :—

"Mr. Kaji next submitted that forfeiture if it is to be penalty would be confined to acts where there is a guilty mind. In other words, he submitted that the penalty would be confined only to wilful acts of omission and commission in contravention of the provisions of the enactment. This plea cannot be accepted as penal consequence can be visited on acts which are committed with or without a guilty mind. For proper enforcement of various provisions of law it is common knowledge that absolute liability is imposed and acts without *mens rea* are made punishable."

It would be manifest from the aforesaid observations that 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 their Lordships of the Supreme Court themselves. Even if the trilogy of the earlier three cases in *Hindustan Steel Ltd. Anwar Ali*, and *Khemka's* (supra), had made any passing observation to the contrary, those must now give way to the categoric statement of the law by the Larger Bench of seven-Judges in *B. S. Joshi's case*, (supra).

34. It remains now to advert to the divergent streams of judicial opinion in various High Courts. As of today, the *locus classious*

for the view that the doctrine of *mens rea* is not attracted to the limited field under Section 271 (1) (a) of the Indian Income-Tax Act, 1961, is the exhaustive and illuminating judgment of the Full Bench of the Andhra High Court in *Additional Commissioner of Income Tax, A. P. and another* v. *Darpanendrinath Tuliayya & Co.* (18). In view of the already elaborate discussion of the issue, it would suffice to say that we are in respectful and total agreement with the lucid judgment recorded by Sambassiva Rao, J. therein. The Andhra Full Bench in turn has followed or is in agreement with the broad line of reasoning of the Kerala Full Bench in *Commissioner of Income-tax, Kerala* v. *Gujarat Travancore Agency,* (19), which again is an authority directly on the point. The Full Bench of the Orissa High Court in *Commissioner of Income Tax, Orissa* v. *Gangaram Chapolis,* (20), has again taken the similar view. In *Namichand Ganeshmal* v. *Commissioner of Income-tax, M.P.,* (21), a Division Bench of the Madhya Pradesh High Court has arrived at an identical conclusion. Lastly, in this context are the tense but categoric observations of Chinnappa Reddy, Actg. C.J. *Smt. Kamla Vati* v. *Commissioner of Income-tax (Central) Patiala,* (22), as under :—

> "On the first question, Shri Bhagirath Dass, learned counsel for the assessee submitted that the revenue had failed to establish any *mens rea* on the part of the assessee and, therefore, no penalty could be levied on her. There is no substance in the submission. On her own showing, the assessee had failed to furnish a return of her income for the assessment year 1961-62 without reasonable excuse. That was sufficient to attract section 271 (1) (a). The doctrine of *mens rea* has no application to such situations under taxing statutes. The decision of the Andhra Pradesh High Court in *Additional Commissioner of Income-tax* v. *Narayanadas Ram Kishan* (23) has since been overruled by a Full Bench, (See *Additional*

(18) (107) I.T.R. 850.
(19) (103) I.T.R. 149.
(20) (103) I.T.R. 613.
(21) (124) I.T.R. 438.
(22) (111) I.T.R. 248.
(23) (1975) 100 I.T.R. 18.

Commissioner of Income-tax v. *Dargapandarinath Tullayya & Co.* (24)."

In consonance with the detailed consideration of the issue earlier, we would unhesitatingly re-affirm the aforesaid view.

35. It would be manifest from the above that there is an overwhelming weight of precedent for the view which we are inclined to take, but equally there is no gain saying that authority is not lacking for the contrary view as well. This stream of thought is epitomised by the detailed judgment of a Full Bench of the Gujarat High Court in *Additional Commissioner of Income Tax* v. *I. M. Patel & Co.* (25). Therein it has been held in effect that *mens rea* is a necessary ingredient under Section 271 (1) (a) and therefore, it provides for penalty only in cases where the assessee has either acted deliberately in defiance of law or was guilty of conduct contamacious or dishonest, or acted in conscious disregard of the statutory obligation.

36. Since the aforesaid view of the Full Bench of the Gujarat High Court in *I. M. Patel's case* (supra) symbolises the case for the other side, some detailed reference to the said judgment becomes inevitable. With the greatest respect it appears to us that the basic approach which seems to have been assumed as axiomatic is not necessarily warranted in the penalty proceeding under Section 271 (1) (a) of the Act. The conclusions, of the Bench stem from the following assumption :—

> "..... In the penalty proceedings under Section 271 (1) (a), 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 department. It is from this aspect that one has to consider the question whether these words "failure without reasonable cause." constitute an ingredient of the offence or not. Since the gravamen of the offence is failure without reasonable cause to file one or the other of the returns mentioned in Section 271(1) (a), the prosecutor, that is,

(24) (1977) 107 I.T.R. 850 (A.P.) (F.B.).
(25) (107) I.T.R. 214.

the department, must establish the absence of the reasonable cause. It is not for the assessee to show in the first instance that there was reasonable cause on his part. It is for the department to show the absence of reasonable cause."

With respect, the assumption, in the above line of reasoning stems from the premise that every sanction against the violation of a provisions of a taxing statute is a criminal offence and then to proceed to import therefrom all the ingredients and pre-requisites which are applicable directly in the field of criminal law alone. The judgment seems to view the public revenue as the public prosecutor and all assessees as persons accused of offences. That indeed is not so except in the limited field when prosecutions for offences are launched under the provisions of Chapter-22. It is then alone that the Revenue is the prosecutor and the delinquent assessee an accused. In all other fields, including those of penalties or levying of penal interest, the correct perspective would be that of the revenue on the one side and the assessee on the other. It is too extreme and untenable to equate the revenue collecting agency as always in the role of a prosecutor or the honest assessee necessarily in the position of an accused person. It has been said on high authority that taxes are the price which the citizen pays for organising society and civilization and it is not necessary to create this endemic hostile confrontation between the tax payer and the tax collector.

37. Again the other rationale of the *I. M. Patel's case* (supra), is that the proceedings being in the nature of a penalty, they are at least *quasi*-criminal. We have shown on high authority that penalty proceedings for a tax delinquency are, in essence, civil in nature being a coercive and remedial process to ensure speedy collection of taxes. However, even assuming entirely for the sake of argument that they partake of a penal nature even then the doctrine of *mens rea* would not be automatically attracted irrespective of the specific language of the provision and the larger scheme of the statute. As has been forcefully pointed out in *R. S. Joshi's case,* (supra), even in the strict field of crime, it is possible to exclude the element of *mens rea* altogether and much water seems to have flown under the bridges since the Sixteenth century, whenever, classic concept of "no *mens rea,* no offence" was developed in the common law. That view no longer holds the field If *mens rea*

may be excluded either expressly or by necessary intendment from the strict field of criminal law itself, then it cannot be necessarily attracted in ordinary departmental proceedings for the imposition of penalties for a tax delinquency. The issue must turn on the broad language of the provisions and not on abstract generalisation. Even if it be said that proceedings are penal in nature, it does not follow logically therefrom that the doctrine of *mens rea* with regard to criminal offences must be inducted therein even when the language of the statute is specific and objective and rules out any subjective or mental element therein.

37-A. Lastly, with the greatest deference it appears that *I. M. Patel's case* (supra) seems to proceed on abstract generalization of all penalty proceedings. To us, it appears to be not possible to apply a common yard-stick in the wide variety of tax delinquency which may attract a penalty provisions. For example, there may be an innocuous and wholly excusable delay of a day or two in furnishing an income-tax return after the prescribed date. As against this there may be a designed and fraudulent concealment of millions of rupees of income. Both such tax delinquencies may attract a penalty by separate provisions but to say that identical considerations would apply to both is with respect an over-simplification. The matter obviously has to be construed in the context of the language of the particular provision applicable and the larger purpose and intent of the statute in effect and enforcing the sanctions. In any case there is a sharp line of distinction betwixt merely departmental proceedings for the collection of a pecuniary penalty and the creation of a statutory tax offence and prosecution and conviction therefor. Whilst in the later case, the doctrine of *mens rea* may well have and would normally be given full play, it is not necessarily so in the former one.

38. In view of the above and also in the light of the larger discussion in the earlier part of this judgment, we must respectfully record our dissent with the view of the Full Bench in *I. M. Patel's case* (supra). Once it is so, it is unnecessary and wasteful to individually notice and dissent from other authorities which either follow this view or proceed on an identical line of reasoning. It suffices to mention that the line of reasoning in *I. M. Patel's case* (supra), view has found acceptance with the Division Bench of the Gohati High Court reported in *Smt. Indu Barua* v. *Commissioner of Wealth Tax North Eastern Region*, (26), in the context of the

(26) (125) I.T.R. 436.

analogous provisions of the Wealth Tax Act and the Division Bench of the Mysore High Court in *All India Sewing Machine Co. v. Commissioner of Income Tax, Mysore,* (27), and a Division Bench of the Madras High Court in *S. Loonkaran and Sons* v. *Commissioner of Income-tax, Madras,* (28), and a Division Bench of the Rajasthan High Court in *Commissioner of Income-tax, Rajasthan* v. *Rawat Singh and Sons,* (29). For the identical reasons recorded earlier, we would respectfully dissent from all these judgments as well.

39. We must, therefore, conclude on larger principle, in the light of the broader scheme of the Indian Income-Tax Act, 1961, the specific language of Section 271 (1) (a); and the weight of precedent; that the doctrine of *mens rea* is not attracted to the penalty proceedings within the four-corners of the aforesaid Section. The only requirement of the statute thereunder is the presence or absence of reasonable cause for the tax delinquency and no other. Therefore, inducting the requirement of a deliberate defiance of law, or contumacious conduct, or dishonest intention, or acting in conscious disregard of the statutory obligations, is unwarranted under section 271 (1) (a) of the Act.

40. Having answered the meaningful question referred to us in the above terms we direct that the case be now placed before the Division Bench for answering the relevant questions in accordance therewith.

Bhopinder Singh Dhillon, J.—I agree.

J. V. Gupta, J.—I agree.

N. K. S.

(27) (96) I.T.R. 206.
(28) (108) I.T.R. 92.
(29) (120) I.T.R. 65.

3180 HC—Govt. Press, U.T., Chd.