language of section 21(1), which relates to revision of decrees that a decree passed after the commencement of the Act would not fall within the definition of the word 'debt' although it otherwise satisfied the conditions laid down therein.

For all these reasons, I am of the opinion that the Tribunal was in error in deciding issue No. 4 against the appellant. The appeal is, therefore, allowed and the matter is remitted to the Tribunal for making a proper order in accordance with law. There will be no order as to costs.

K. S. K..

SUPREME COURT.

Before T. L. Venkatarama Aiyar, P.B: Gajendragadkar and A. K. Sarkar, JJ.

COMMISSIONER OF INCOME-TAX, DELHI,—*Appellant*

versus

S. TEJA SINGH,—*Respondent*

DALMIA JAIN AVIATION LTD., (NOW ASIA UDYOG LTD.)—*Intervener*

Civil Appeal No. 122 of 1957.

Income-tax Act (XI of 1922)—Sections 18A(9) and 28(1)—Failure to comply with Section 18A(3)—Income-tax authorities, whether competent to impose penalty under section 28—Interpretation of Statutes—Legal fiction—Construction of.

Held, that it is competent to the Income-tax authorities to impose a penalty under Section 28 of the Income-tax Act read with Section 18A(9)(b) where there has been a failure to comply with Section 18A(3). The fiction under Section 18A(9)(b) that failure to send an estimate under Section 18A(3) is to be deemed to be a failure to send a

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return must mean that all those facts on which alone there could be a failure to send the return must be deemed to exist, and it must accordingly be taken that by reason of this fiction, the notices required to be given under section 22 must be deemed to have been given, and in that view, section 28 would apply on its own terms.

Held, that in construing the scope of a legal fiction it is proper and even necessary to assume all those facts on which alone the fiction can operate

Appeal from the Order dated the 4th November, 1954 of the Punjab High Court (Circuit Bench) at Delhi in Civil Reference No. 15 of 1953.

For the Appellant.—M/s. R. Ganapathy Iyer, R. H. Dhebar and D. Gupta, advocates.

For the Respondent.—Mr. P. M: Mukhi, Advocate and Mr. Gopal Singh, Advocate, for Mr. Udhai Bhan Choudhry, Advocate.

For the Intervener.—M/s. P. M. Mukhi and Ganpat Rai, Advocates.

JUDGMENT

The following Judgment of the Court was delivered by

Venkatarama Aiyar, J.

VENKATARAMA AIYAR, J.—This is an appeal against the judgment of the High Court of Punjab in a reference under section 66(1) of the Indian Income-tax Act, 1922, hereinafter referred to as the Act.

The facts are that the respondent had not been assessed to income-tax prior to the assessment year 1948-49. On July 4, 1949, he made *suo motu* returns showing an income of Rs. 4,494 for the accounting year 1947-48 being the previous year for the assessment year 1948-49 and an income of Rs. 31,646 for the accounting year 1948-49 being

the previous year for the assessment year 1949-50. By orders, dated August 25, 1949, the Income-tax Officer assessed the income for the assessment year 1948-49 at Rs. 6,277 and for the assessment year 1949-50 at Rs. 36,281. The correctness of these orders is not in question before us. We are concerned in these proceedings with the vires of an order, which the Income-tax Officer made on October 9, 1950, under section 28 read with sections 18A(3) and 18A(9) of the Act. It will be convenient to set out these provisions, so far as they are material for the purpose of this appeal. Section 18A(3) provides that,—

> "Any person who has not hitherto been assessed shall, before the 15th day of March in each financial year, if his total income of the period which would be the previous year for an assessment for the financial year next following is likely to exceed six thousand rupees, send to the Income-tax Officer an estimate of the tax payable by him on that part of his income to which the provisions of section 18 do not apply of the said previous year calculated in the manner laid down in sub-section (1), and shall pay the amount, on such of the dates specified in that sub-section as have not expired, by instalments which may be revised according to the proviso to sub-section (2)."

Section 18A(9) is as follows :—

> "If the Income-tax Officer, in the course of any proceedings in connection with the

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regular assessment, is satisfied that any assessee—

(a) has furnished under sub-section (2) or sub-section (3) estimates of the tax payable by him which he knew or had reason to believe to be untrue, or

(b) has without reasonable cause failed to comply with the provisions of sub-section (3),

the assessee shall be deemed, in the case referred to in clause (a), to have deliberately furnished inaccurate particulars of his income, and in the case referred to in clause (b), to have failed to furnish the return of his total income; and the provisions of section 28, so far as may be, shall apply accordingly:"

Then, there is a proviso which imposes a limit on the amount of penalty, which can be levied. Section 28 of the Act runs as follows :—

"If the Income-tax Officer, ...in the course of any proceedings under this Act, is satisfied that any person—

(a) has without reasonable cause failed to furnish the return of his total income which he was required to furnish by notice given under sub-section (1) or sub-section (2) of section 22 or section 34 or has without reasonable cause failed to furnish it within the time allowed and in the manner required by such notice, or

(b) has without reasonable cause failed to comply with a notice under sub-section (4) of section 22 or sub-section (2) of section 23. or

(c) has concealed the particulars of his income or deliberately furnished inaccurate particulars of such income, he may direct that such person shall pay by way of penalty, in the case referred to in clause (a), in addition to the amount of the income-tax and super-tax, if any, payable by him a sum not exceeding one-and-a-half times that amount, and in the cases referred to in clauses (b) and (c), in addition to any tax payable by him, a sum not exceeding one-and-a-half times the amount of the income-tax and super-tax, if any, which would have been avoided if the income as returned by such person had been accepted as the correct income."

The Income-tax Officer held that as the respondent had failed to send an estimate of the tax on his income as provided in section 18A(3) he became liable to be proceeded against under section 28, and accordingly imposed a penalty of Rs. 40 for the year 1948-49 and Rs. 1,000 for the year 1949-50. On appeal, the Appellate Assistant Commissioner confirmed the order in so far as it imposed a penalty for the year 1948-49 but set it aside as regards the year 1949-50 on the ground that by reason of the assessment for the year 1948-49 the respondent ceased to be new assessee for 1949-50, and that, in consequence, section 18A(3) had no application. Against the order cancelling the penalty for 1949-50, the Income-tax

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Officer preferred an appeal to the Appellate Tribunal, which disagreed with the view of the Appellate Assistant Commissioner that respondent was no longer a new assessee within section 18A(3) of the Act, but held that the order of the Income-tax Officer imposing a penalty under section 28 was *ultra vires*, because that section would, in terms, apply only when a person failed to furnish the return when he was required so to do by notice under section 22 or section 34 of the Act, and that there could be no such notices with reference to estimates of tax on income to be sent under section 18A(3). In the result, the appeal was dismissed. On the application of the appellant, the Tribunal, referred the following question for the opinion of the High Court:

> "Whether on a true construction of Section 18A(9)(b) read with section 28 of the Indian Inome-tax Act, 1922, a penalty may be imposed for a total failure to comply with the provisions of Section 18A(3) of the said Act?"

The reference was heard by Bhandari, C.J., and Falshaw, J. who agreed with the Tribunal that the conditions as to notice laid down in section 22(1) or section 22(2) must be satisfied even when action was sought to be taken under section 28 in respect of a failure to comply with section 18A(3), and that as those conditions had not been satisfied, the order imposing penalty was bad. The appellant applied for a certificate under section 66A(2) of the Act, and the same was granted, and that is how the appeal comes before us.

The sole question that arises for our determination in this appeal is whether under section 28(1) read with section 18A(9) of the Act, it is competent to the Income-tax authorities to impose a

penalty on a person who has failed to comply with section 18A(3) of the Act. In answering it in the negative, the learned Judges in the court below were influenced almost exclusively by the terms of section 28 which they held did not cover failure to comply with section 18A(3.) Now, section 28(1) provides for penalty being imposed in three classes of cases which are mentioned respectively in clauses (a), (b) and (c). Clause (b) deals with cases where there has been failure to produce documents or accounts or other evidence which the assessee had been required to produce under section 22(4) or section 23(2) of the Act, and that is not relevant for the purpose of the present discussion. Then, there are clauses (a) and (c), and they have reference, stating it in plain language, clause (a) to failure to make a return and clause (c) to making false return. Now, the learned Judges observe that if an estimate of the tax is furnished under section 18A(3) and that is deliberately inaccurate, that will fall under section 28(1)(c) read with section 18A(9)(a) and penalty could be imposed under that section, but that that could not be done when there is failure to furnish an estimate as required by section 18A(3), because sub-section (1) of section 28 would apply only when a person failed to furnish the return when he had been required to do so by notice under section 22(1) or section 22(2) or section 34, or had failed to furnish it within the time allowed and in the manner required by the notice, and that there could be no such notice with reference to section 18A(3). Say the learned Judges:—

> "In the first place, a person who fails to send an estimate under section 18A(3) cannot be said to have failed to furnish the return of his total income

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which he was required to furnish in response to a notice issued under section 22 or section 34; secondly, the said person cannot be said to have failed to furnish it within the time allowed and in the manner required by such notice, for estimates under section 18A(3) must be furnished before the 15th March in the financial year immediately preceding the year of assessment whereas the returns required by the notices under sections 22 and 34 can be furnished at later dates."

With respect, the error in this reasoning lies in this that it fails to give due effect to the fiction contained in section 18A(9)(b) of the Act. Under that provision, when an assessee has failed to comply with section 18A(3) he "shall be deemed to have failed to furnish the return of his total income and the provisions of section 28, so far as may be, shall apply accordingly." In other words, by a legal fiction the failure to send an estimate of the tax under section 18A(3) is treated as a failure to furnish return of income under section 22. It is a necessary implication of this fiction that the estimate of tax on the income to be submitted under section 18A(3) is, in fact, different from the return to be furnished under section 22, and to appreciate the full significance of this fiction, it is necessary to examine what the distinction is. Under section 3 of the Act, the tax is payable on the income of the previous year. A statement of that income can be furnished only after that year ends, and section 22 enacts provisions as to when it is to be furnished in the assessment year. Sub-sections (1) and (2) provide for notices being given and the assessee is required to file his statement of income within the

period provided therein, and it is this statement that is termed "return". Section 18A(3), however, relates to the sending of a statement of tax on the income of the accounting year before the 15th day of March of that year itself, and that statement is termed not a return but an estimate, and quite rightly, because in the very nature of it, it can only be that. A person who sends an estimate under secion 18A(3) has also to send a return of his income for the accounting year under section 22, and sub-sections (4) and (5) of section 18A provide for adjustment of advance tax paid under section 18A (3) towards the tax as finally computed under section 23. Thus, there is a clear distinction between a return of income under section 22, which can only be during the year of assessment and an estimate of tax on income under section 18A(3), which can only be in the year of account.

It is in the light of this distinction that the effect of the legal fiction enacted in section 18A(9) (b) that when a person fails to send an estimate of tax on his income under section 18A(3) he shall be deemed to have failed to furnish return of his income. will have to be judged. The respondent contends that its effect is only to place the estimate to be sent under section 18A(3) on the same footing as the return under section 22 for purposes of section 28, and that that does not abrogate the other conditions laid down in that section on which alone action could be taken thereunder and penalty imposed, and one of those conditions is the issue of notice under section 22(1) or section 22(2). But it must be noted that section 18A(9) (b) does not merely say that an estimate under section 18A(3) shall be deemed to be a return. It enacts that the failure to send an estimate in

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accordance with section 18A(3) is to be deemed to be a failure to make a return . Now, there can be no failure to make a return, unless notice had been issued under section 22(1) or section 22(2) and there has been a default in complying with that notice. Therefore, the fiction that the failure to send an estimate is to be deemed to be a failure to send a return necessarily involves the fiction that notice had been issued under section 22, and that had not been complied with. It is a rule of interpretation well settled that in construing the scope of a legal fiction it would be proper and even necessary to assume all those facts on which alone the fiction can operate. The following oft-quoted observations of Lord Asquith in East End *Dwellings Co. Ld.* v. *Finsbury Borough Council* (1), may appropriately be referred to:—

> "If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of these in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."

The fiction under section 18A(9)(b), therefore. that failure to send an estimate under section 18A(3) is to be deemed to be a failure to send a return must mean that all those facts on which

(1) [1952] A.C. 109, 132

alone there could be a failure to send the return must be deemed to exist, and it must accordingly be taken that by reason of this fiction, the notices required to be given under section 22 must be deemed to have been given, and in that view, section 28 would apply on its own terms.

Some arguments was addressed to us based on the use of the definite article "the" qualifying the word "return" in section 18A(9)(b). It was said that that expression meant *the return* which is to be furnished under section 22, and that that requires that there must have been a notice issued section 22(1) or section 22(2), before action could be taken under section 28. In the view expressed above that the fiction enacted in section 18A(9)(b) involves the fiction that notices had been issued under section 22(1) or section 22(2), this contention does not call for further consideration.

It was finally argued that a fiscal statute and especially one imposing a penalty, should be strictly construed and that if the words of the enactment be not sufficiently explicit to reach the subject, the Revenue must fail, and the following observations in *Vestey's (Lord) Executors* v. *Inland Revenue Commissioners* (1), were relied on in support of this position:—

> "Parliament in its attempts to keep pace with the ingenuity devoted to tax avoidance may fall short of its purpose. That is a misfortune for the taxpayers who do not try to avoid their share of the burden, and it is disappointing to the Inland Revenue. But the Court will

(1) (1949) 1 All. E.R. 1108, 1120

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not stretch the terms of taxing Acts in order to improve on the efforts of Parliament and to stop gaps which are left open by the statutes. Tax avoidance is an evil, but it would be the beginning of much greater evils if the courts were to over-stretch the language of the statute in order to subject to taxation people of whom they disapproved."

These observations would be in point if the language of the enactment left us in any doubt as to what the legislature meant. But can that be said of section 18A(9)(b)? Its object avowedly is to assimilate the position of a person who has failed to send the estimate under section 18A(3) to that of a person who failed to furnish the return under section 22, and that object is sought to be achieved by enacting the fiction which is contained in section 18A(9)(b). And if, on the principles laid down in *East End Dwellings Co. Ltd.* v, *Finsbury Borough Council* (1), the true effect of that fiction is that it imports that notice had been issued under section 22, then the conditions prescribed in section 28 of the Act are satisfied and penalty could be imposed under that section for failure to comply with section 18A(3), on the clear language of that enactment itself without straining or overstretching it.

We must refer to an aspect of the question, which strongly reinforces the conclusion stated above. On the construction contended for by the respondent, section 18A (9) (b) would become wholly nugatory, as sections 22 (1) and 22 (2) can have no application to advance estimates to be furnished under section 18A(3), and if we accede to this contention, we must

(1) [1952] A.C. 109, 132

hold that though the legislature enacted section 18A(9)(b) with the very object of bringing the failure to send estimates under section 18A(3) within the operation of section 28, it signally failed to achieve its object. A construction which leads to such a result must, if that is possible, be avoided, on the principle expressed in the maxim, "*ut res magis valeat quam pereat*". *Vide Ccrtis* v. *Stovin* (1), and in particular, the following observations of Fry L. J. at page 519:—

> "The only alternative construction offered to us would lead to this result, that the plain intention of the Legislature has entirely failed by reason of a slight inexactitude in the language of the section. If we were to adopt this contruction, we should be construing the Act in order to defeat its object rather than with a view to carry its object into effect."

Vide also Craies on Statute Law, page 90 and Maxwell on The Interpretation of Statutes, Tenth Edition, pages 236-237. "A statute is designed", observed Lord Dunedin in *Whitney* v. *Commissioner of Inland Revenue* (2), "to be workable, and the interpretation thereof by a Court should be to secure that object, unless crucial omission or clear direction makes that end unattainable".

We are accordingly of opinion that it was competent to the Income-tax authorities to impose a penalty under section 28 read with section 18A(9)(b) where there has been a failure to comply with section 18A(3).

(1) (1889) 22 Q.B.D. 513
(2) (1925) 10 T.C. 88, 110

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In the result, we set aside the order of the Court below and answer the reference in the affirmative. The appellant will have his costs here and in the Court below.

B. R. T.

CRIMINAL ORIGINAL

Before A. N. Bhandari, C.J. and S. S. Dulat, J.

GURBAKHSH SINGH,—*Petitioner*

versus

S. PARTAP SINGH, I.F.S., CHIEF CONSERVATOR OF FORESTS, PUNJAB, SIMLA, AND ANOTHER,—*Respondents.*

Criminal Original No. 20 of 1957.

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Contempt of Courts Act (XXXII of 1952)—Section 3—Right of a citizen to resort to law Courts—Nature of—Interference with such right—Whether constitutes Contempt of Court—Communication of the Chief Secretary to Government preventing Government servants from seeking redress at the hands of Courts of law—Whether amounts to contempt of Court.

Held, that ever since the declaration in the Magna Carta, people of free countries all over the world have regarded it as a fundamental principle that justice shall be administered to all without delay or denial, without sale or prejudice, and the Courts shall always be open to all alike. Not only are the Courts to be open to all who may wish to resort to them but they are to be open to all on the same terms so that every person should have a remedy when he chooses to ask for it for injury done to him in person or property. It is the duty of the Courts which have been established and erected for the administration of justice, for the enforcement of legal rights and for the redress of injuries to legal rights, to secure that the doors of litigation which are already wide open should constantly remain so.