INCOME TAX CASE

Before D. K. Mahajan and C. G. Suri, JJ.

THE COMMISSIONER OF INCOME TAX, PATIALA,—*Petitioner*

versus

VIDYA SAGAR,—*Respondent.*

I. T. C. No. 26 of 1972.

April 3, 1974.

Income Tax Act (XLIII of 1961)—Section 271—Question whether a person is prevented from filing the return within a reasonable time—Whether a question of law or fact.

Held, that the question whether a person was prevented from filing the return within a reasonable time after an invalid return had been accepted by the Department and acted upon, does not raise any question of law on the proved facts, namely, that the invalid return was acted upon and not rejected. When the finding is one of fact, the fact that it is itself an inference from other basic facts will not alter its character as one of fact. There is no criterion found in section 271 of Income Tax Act, 1961 regarding the question of determination of reasonable cause. There is no definition of 'reasonable cause' in the Act and therefore, reasonable cause becomes more or less a question of fact and does not even remain a mixed question of law and fact. A question of law arises only if there is no evidence on the basis of which the finding as to reasonable cause can be arrived at or the finding is purely fanciful.

Petition under Section 256(2) of the Income Tax Act, 1961 praying that the income tax Appellate Tribunal, Chandigarh Bench be directed to draw up a statement of the case and to refer for opinion to this Hon'ble Court the following question of law arising out of the tribunal order, dated 1st February, 1971 in I.T.A. No. 401 of 1970-71 during the assessment year 1963-64 :—

> *"Whether on the facts and in the circumstances of the case, the Appellate Tribunal was justified in reducing the quantum of penalty having been satisfied that the offence of concealment was there without any doubt ?"*

D. N. Awasthy, Advocate with S. S. Mahajan, Advocate, *for the petitioner.*

Bhagirath Dass, Advocate with S.K. Hiraji, Advocate, *for the respondent.*

D. K. Mahajan J.

(1) This order will dispose of Income-tax Cases Nos. 26, 27 and 28 of 1972.

(2) The Commissioner of Income-tax, Patiala, has moved this Court under section 256(2) of the Income-tax Act, 1961, praying that in Income-tax Cases Nos. 26 and 27 of 1972, the following question of law should be referred for the opinion of this Court :—

> "Whether on the facts and in the circumstances of the case, the Appellate Tribunal was justified in reducing the quantum of penalty having been satisfied that the offence of concealment was there without any doubt?"

In Income-tax Case No. 28 of 1972, the Commissioner wants the following two questions of law to be referred for the opinion of this Court :—

> "1. Whether on the facts and in the circumstances of the case the Appellate Tribunal was justified to hold that the assessee had a reasonable cause for late filing of return in March, 1968 ?
>
> 2. Whether on the facts and in the circumstances of the case the Appellate Tribunal was justified to hold that there was a delay of one month only till February, 1964, when actually under section 139(1) the delay was from 1st October, 1963 to 18th February, 1964 for four months?"

(3) The facts of Income-tax Cases Nos. 26 and 27 of 1972 are identical. The only difference is that they pertain to two partners of M/s Shahzada Hosiery Mills. I.T.C. No. 26 relates to Vidya Sagar and I.T.C. No. 27 relates to Anand Sagar. The dispute relates to the assessment year 1963-64. No return of income under section 139(1) was received up to the end of November, 1963. A notice under section 139(2) was served upon the assessees on 12th December, 1963. In compliance with this notice, the assessees submitted a return declaring, besides other income, income from the registered firm at Rs. 34,849 (in I.T.C. No. 26) and at Rs. 34,779 (in I.T.C. No. 27) on 21st February, 1964. Later on, the assessees

submitted a revised return and the Income-tax Officer on 30th March, 1968, computed the income from the assessees' share in the firm Messrs Shahzada Hosiery Mills at Rs. 91,153. The Income-tax Officer was of the view that the assessees had concealed their income. He issued a notice under section 274. The Income-tax Officer completed the assessment on 30th March, 1968 on a total income of Rs. 94,727 in Case No. 26 and on Rs. 94,120 in Case No. 27, and this assessment was confirmed in appeal by the Appellate Assistant Commissioner,—*vide* his order dated 1st September, 1969. In pursuance of the notice issued under section 274, read with section 271, of the Act, the penalty proceedings were referred to the Inspecting Assistant Commissioner of Income-tax under section 274(2). The Inspecting Assistant Commissioner issued notice to the assessees on 27th December, 1969, which was served on them on 31st December, 1969. In pursuance of this notice, the assessees appeared before the Inspecting Assistant Commissioner from time to time. After hearing the assessees, the Inspecting Assistant Commissioner held in I.T.C. Case No. 26 :—

> "That the assessee has concealed the particulars of his income or deliberately furnished inaccurate particulars of such income amounting to Rs. 50,000 for the purposes of clause (c) of sub-section (1) of section 271 of Income-tax Act, 1961. I, therefore, direct that the assessee shall pay by way of penalty, in addition to any tax payable by him, a sum of Rs. 21,100 equal to about 50% of the tax which would have been avoided if the income as returned by the assessee had been accepted as the correct income."

In Income-tax Case No. 27, the penalty imposed by the Inspecting Assistant Commissioner was Rs. 20,600.

(4) At this stage, it will be profitable to set out the facts of Income-tax Case No. 28 of 1972. Messrs Shahzada Hosiery Mills is a registered firm. It manufactures hosiery goods. The dispute relates to the assessment year 1963-64. The partners of this firm are Shri Vidya Sagar and Shri Anand Sagar. The firm filed its return on 18th February, 1964, showing a total income of Rs. 62,102. The return was, accompanied by a profits and loss account and a declaration under section 184(7) duly signed by the partners. The return was, however, not signed. Provisional assessment under

section 141 was made. Penalty was levied under section 221 for non-payment of tax. During the assessment proceedings, the Income-tax Officer noticed that the assessee had concealed income to the extent of Rs. 1,00,000 by under-statement of the gross profit as in the account books the actual amount of the gross profit was more by one lac than actually shown. The assessee filed a revised return on 26th March, 1968, showing income of Rs. 1,73,952. The assessment was then completed taking into account the concealed income. The total income was determined by the Income-tax Officer at Rs. 1,82,376. He also issued notice under section 271(1) (a) for delay in filing the return and also a notice under section 271 (1) (c) for concealment of a sum of Rs. 1,00,000. As the minimum penalty imposable was more than Rs. 1,000, the matter was referred to the Inspecting Assistant Commissioner of Income-tax. The Income-tax Officer levied a penalty of Rs. 61,550 under section 271 (1) (a). The Income-tax Officer imposed no separate penalty for making a delayed return under section 139(2). The assessee then moved the Appellate Assistant Commissioner against the order of the Income-tax Officer imposing a penalty of Rs. 61,550. The Appellate Assistant Commissioner rejected the appeal. The assessee's stand was that at no stage did the Income-tax Officer declare the return filed on 18th February, 1964, as an invalid or incomplete return. It was the duty of the Income-tax Officer to scrutinize the document of return of income filed before him. Therefore, it was maintained that the return so filed was a legal and valid return and the second return filed on 26th March, 1968, was only a revised return under section 139 (5). It was also urged that there was reasonable cause for the assessee to file the return on 26th March, 1968, even if the return dated 18th February, 1964, was not a valid return. The Appellate Assistant Commissioner held that the return filed on 18th February, 1964, was not a valid return. He also held that there was no justifiable cause for filing the late return on 26th March, 1968.

(5) The matter was then taken to the Income-tax Appellate Tribunal by the assessees. Before the Tribunal, these facts were agreed upon:—

(i) Return of the firm filed in February, 1964, unsigned accompanied by application for registration duly signed.

(ii) Income declared Rs. 62,000 and odd.

(iii) Returns of partners Vidya Sagar and Anand Sagar filed simultaneously, duly signed.

(iv) Provisional assessment made by the Income-tax Officer in March, 1964.

(v) Provisional demand not paid.

(vi) Penalty imposed.

(vii) Cases of the firm and the partners taken up in 1967.

(viii) Mistake in totalling to the extent of Rs. 1,00,000 detected.

(ix) Revised return filed on 26th March, 1968, declaring an income of Rs. 1,73,000 (and odd) including the sum of Rs. 1,00,000 and another sum of Rs. 6,000 on account of suppressed stocks.

(x) Assessment framed on Rs. 1,81,000 and odd on 30th March, 1968 (the assessment becoming time barred on 31st March, 1968).

(xi) No appeal against the quantum.

(xii) Taxes on the firm and the partners :

		Rupees.
(1) On the firm	..	14,386
(2) On Vidya Sagar	..	54,322
(3) On Anand Sagar	..	54,000
		1,22,708

(xiii) Penalties on the firm and partners :—

(1)	On the firm u/s 271(1)(a) ..	61.550
(2)	On the firm u/s 271(1)(c) ..	50,000
(3)	On the firm — Penal intt. ..	35,170
(4)	On Vidya Sagar u/s 271(1)(c) ..	21,100
(5)	On Vidya Sagar u/s 271(1)(a) ..	4,111
(6)	On Vidya Sagar — Intt. u/s 139 and 141-A ..	620
(7)	On Shri Anand Sagar penalty u/s 271(1)(c) ..	20,600
(8)	On Anand Sagar penalty u/s 271(1)(a) ..	4,029
(9)	Intt. u/s 139 and 141-A on Shri Anand Sagar ..	620
		1,97,800

(xiv) Total of Taxes of partners ... Rs. 3,20,508

(6) The Judicial Member came to the conclusion that the assessee had reasonable cause for filing the delayed return in March, 1968. The reasons of the Judicial Member for this conclusion be best stated in his own words :—

> "The fact that the signature of Shri Amarjit Singh had been scored by the counsel before handing over the blank form and the return filed on the Peon Book of the counsel does go to show a confused state of affairs or a state of affair which could, at worst, tantamount to negligence. The element of conscious commission of the offence does

not appear to be there. Even if they were taken to be there for the sake of argument, the totality of circumstances do lead to a conclusion that at least the assessee was not aware of this defect in the return filed and he was fortified in his belief that the return filed was proper and complete by the conduct of the Income-tax Officer in processing a provisional assessment and determining the demand thereof. If it is the duty of the assessee to file the return duly signed then it is equally the duty of the Income-tax Officer to see that the return filed is proper. The Income-tax Officer did not look into the return himself (or through his office) when the same was filed or immediately thereafter, but hastened to process a provisional assessment and, therefore, the assessee was put under the reasonable belief by the conduct of the Income-tax Officer that the return so filed was valid and complete in every respect. Whether the assessee failed to file the return without a reasonable cause or had a reasonable cause is a matter depending on the mental state of the assessee. The mental state of the assessee determines the element of *mens rea and the mens rea* (is not) borne out by the totality of circumstances. Here it is not a case where the assessee did what he was expected to do but he could be taken to have not done what was expected of him. It cannot be taken as a case of intention to commit an offence, but at the most, a case of negligence and that too not wilful negligence which is culpable but a negligence which occurred even in spite of reasonable care taken by a prudent man. We had an occasion to deal with the matter of 'without a reasonable cause' within the meaning of section 271 (1) (a) in the case of R. B. Jodha Mal Kuthiala and Sons *vs.* The Income-tax Officer, Central Circle, Ambala, in I.T.A. No. 18745 of 67-68 in which we dealt with this issue in detail. We are of the view that the return which the assessee filed in February, 1964 was filed by the assessee under the *bona fide* belief that it was a complete return and this state of mind of the assessee was influenced by the conduct of the Income-tax Officer in framing the provisional assessment soon thereafter and, therefore, when the mistake was detected in the year

1968, the assessee could be taken to have been unaware as he was under the belief and *bona fide* belief that the earlier return filed was a complete return. Therefore, if at all the revised return filed by the assessee was to be taken as the return of the assessee, the assessee was not without a reasonable cause in filing the return in time or, in other words, the assessee had a reasonable cause in not filing the complete return in view of the confused circumstances prevailing in the instant case, between February, 1964 and March, 1968. However, as the original return filed in February, 1964 was also late for that period of delay of one month, the assessee had no reasonable cause."

(7) So far as the Accountant Member is concerned, he agreed with the Judicial Member that (a) the penalty under section 271(1)(c) must be based on the second return, and (b) the period of default under section 271(1)(a) runs up to the first returns only. According to him, the second return would form the basis of penalty, but with regard to penalty under section 271(1)(a), it was held that "the assessee had reasonable cause for delay inasmuch as the first return was accepted and a provisional assessment raised thereon. The assessee was, if nothing, lulled to sleep."

(8) The ultimate decision at which both the Members of the Tribunal concurred is as follows:—

"(1) There was a conscious effort at concealment.

(2) The first return which was unsigned cannot be taken note for penal action under section 271(1)(c).

(3) The penalty under section 271(1)(c) should be computed on the basis of the second return filed on 26th March, 1968.

(4) There was a delay in filing of the return and penalty under section 271(1)(a) is exigible.

(5) The delay should be computed up to the date of the filing of the first return, i.e., up to February, 1964.

(6) The assessee had a reasonable cause for not furnishing the return thereafter inasmuch as the Income-tax Officer had taken cognizance of this return and based provisional assessment thereon."

(9) So far as the case of the partners is concerned, the Judicial Member came to the conclusion that the concealment of particulars of income was not established, but an attempt has been made at reduction of tax. The returns of the partners would normally be as they were on the basis of the return of the firm. Therefore, both the partners can be taken to have connived at reduction of tax. Later on, the Judicial Member proceeded to record that some element of concealment of particulars of income cannot be ruled out and penalty can be taken to be exigible. It was also held that the amount of one lac was not totally concealed but was merely transferred from one year to another. This was treated as a mitigating circumstance and on that basis reduction in the penalties imposed was allowed taking the view that the same was very excessive. The Accountant Member agreed with the conclusions of the Judicial Member. The final decision of both the Members of the Tribunal is as follows:—

"(1) There was a conscious attempt at concealment or furnishing of inaccurate particulars and, therefore, penalty under section 271(1)(c) is exigible.

(2) The second return in the case of partners which merely declared the source but not the income is invalid and cannot form the basis of the penalty.

(3) The first return of the partners filed in February, 1964 are valid and form the basis for penalty.

(4) One mitigating circumstance was not given due weight by the Inspecting Assistant Commissioner, viz., that it was an attempt at transfer of profits from one year to another (as the profit was disclosed in the returns for second year filed in August, 1964).

(5) Keeping this mitigating circumstance in view, the penalties in the case of the partners are reduced from 50 per cent to 30 per cent."

(10) The Commissioner of Income-tax being dissatisfied moved the Tribunal under section 256(1) of the Act for reference of the questions already set out in all the three cases for opinion of this Court. These applications were rejected by the Tribunal on the ground that the aforesaid questions of law did not arise out of its orders. The Commissioner of Income-tax then moved the present petitions under section 256(2) of the Act.

(11) There is no dispute before us that the question of law sought to be referred in Income-tax Cases Nos. 26 and 27 of 1972 and the second question in Income-tax Case No. 28 of 1972, do arise. The only dispute is with regard to the first question in Income-tax Case No. 28 of 1972. According to the counsel for the Commissioner of Income-tax, this is a question of law and does arise out of the order of the Tribunal; whereas, according to the counsel for the assessee, this is pure question of fact and being not a question of law cannot be referred for the opinion of this Court.

(12) The Tribunal, while coming to the conclusion that there was a reasonable cause for furnishing the second return, observed that, the first return, though invalid, was accepted as good by the Department inasmuch as the Department proceeded to make a provisional assessment thereon. If the Department had rejected the first return, the assessee would not have been lulled to sleep and could have furnished a valid return soon thereafter. The question that requires determination is whether on these facts, the finding recorded by the Tribunal is justified, and in the second place, whether the finding that there is a reasonable cause is a finding of fact or a question of law?

(13) In my opinion, the finding arrived at by the Tribunal is based on evidence and cannot be said to be unreasonable. In any event, the question whether there was reasonable cause for filing a delayed return is a pure question of fact and no question of law arises therefrom. It is a well-settled rule that an inference of fact from proved facts is a question of fact. Whether there is a reasonable cause or not is a question of fact for its determination depends on facts.

(14) Now, I proceed to examine the authorities relied upon by the parties. It is no doubt true that at times an attempt is made the parties. It is no doubt true that at times an attempt is made in view what one has to decide. The question whether a person

was prevented from filing the return within a reasonable time after an invalid return had been accepted by the Department and acted upon, does not, in my opinion, raise any question of law on the proved facts, namely, that the invalid return was acted upon and not rejected. The assessee could surely come and say that he was prevented by sufficient cause from not filing a valid return because if the invalid return had been rejected he would have been in a position to file a valid return soon thereafter. In *Sree Meenakshi Mills Ltd. Madurai* v. *Commissioner of Income-tax* (1), it was held:—

> "It has consistently been held that inferences from facts may themselves be inferences of fact and not of law, and that such inferences are not open to review by the Court."

In this case, the following four propositions were laid vis-a-vis section 66 of the Income-tax Act, 1922:—

> "(1) When the point for determination is a pure question of law such as construction of a statute or document of title, the decision of the Tribunal is open to reference to the court under section 66(1).
>
> (2) When the point for determination is a mixed question of law and fact, while the finding of the Tribunal on the facts found is final its decision as to the legal effect of those findings is a question of law which can be reviewed by the court.
>
> (3) A finding on a question of fact is open to attack under section 66(1) as erroneous in law when there is no evidence to support it or if it is perverse.
>
> (4) When the finding is one of fact, the fact that it is itself an inference from other basic facts will not alter its character as one of fact."

(15) In my opinion, the instant case is covered by the fourth proposition and, therefore, I see no escape from the conclusion that the first question in Income-tax Case No. 28 of 1972 is a pure

(1) A.I.R. 1957 S.C. 49.

question of fact. The Department cannot, therefore, ask for a reference of this question. In *Manindra Land and Building Corporation Ltd.* v. *Bhutnath Banerjee and others* (2), it was observed:

> "The High Court fell in error in interfering with the finding of fact arrived at by the Subordinate Judge with respect to the appellants having sufficient cause for not making an application for bringing the respondents on record within time."

It is no doubt true that these observations were made in a petition for revision under section 115 of the Code of Civil Procedure. But these observations clearly show that the question whether there is a sufficient cause or not is none the less a question of fact.

(16) The only grounds on which a conclusion of fact can be challenged are (a) that it is not supported by any legal evidence or material, and (b) that the conclusion of fact drawn by the Appellate Tribunal is perverse and is not rationally possible. See in this connection : *Oriental Investment Co. (P) Ltd.* v. *Commissioner of Income-tax, Bombay* (3). To the same effect are the decision of the Supreme Court in *G. Venkataswami Naidu & Co.* v. *Commissioner of Income Tax* (4) *and Commissioner of Income-tax, West Bengal-II* v. *Rajasthan Mines Ltd., Calcutta* (5).

(17) The distinction between what is a mixed question of law and fact and what is a pure question of fact has been drawn in *Raja Bahadur Kamakhya Narain Singh* v. *The Commissioner of Income-Tax, Bihar and Orissa* (6) and the following observations of their Lordships may be read with advantage :—

> "The question, whether an assessee carried on business or whether certain transactions are in the course of business or whether they amount to adventures in the nature of trade or business, is a mixed question of fact and law. But to distinguish a question of fact and a question of law is not always easy, for, sometimes there is a common area

(2) A.I.R. 1964 S.C. 1336.
(3) A.I.R. 1969 S.C. 460.
(4) A.I.R. 1959 S.C. 359.
(5) A.I.R. 1970 S.C. 1560.
(6) A.I.R. 1971 S.C. 794.

between the two and though a mere question of fact can be turned into one of law, care should be taken against a finding of a mixed question of fact and law being given the unassailability which the Act confers on a pure finding of fact. Since the expression 'adventure in the nature of trade' implies the existence of certain elements in the transactions which in law would invest them with the character of trade or business and the question on that account becomes a mixed question of law and fact, the Court can review the Tribunal's finding if it has misdirected itself in law."

(18) The learned counsel for the Department placed strong reliance on two decisions of the Lahore High Court in *Kanshi Ram* v. *Rama Mal* (7) and *Kale Khan* v. *Piare Lal* (8). The decision of Tek Chand J., in *Kanshi Ram's case* on the first flush would appear to support the case of Mr. Awasthy that in the instant case the question whether there was a reasonable cause or not, is a mixed question of law and fact. It is for this reason that I have taken the liberty of quoting *in extenso* from this judgment to demonstrate that it must be confined to the facts of that case or to facts similar to the facts of that case. The relevant part of the judgment of the learned Judge is an under:—

"It is common ground between the parties that the presentation of the appeal was complete only on 20th March, 1930, when the copy of the decree appealed against was filed by the appellant, and it is conceded on behalf of the respondent that if this presentation had been in the proper Court the appeal would have been within time, as excluding the time spent in obtaining copies of the judgment and decree the period taken by the plaintiff did not exceed thirty days. But it is urged that the Court of the District Judge to which the memorandum of appeal had been transferred and in which the copy of the decree was filed, was not competent to hear the appeal under Section 39(3), Punjab Courts Act, read with Notification No. 81-G, dated 14th February, 1924, and that the transfer of the appeal by the District Judge from the Court of the Senior Subordinate Judge was *ultra vires* as the latter

(7) A.I.R. 1932 Lah. 183.
(8) A.I.R. 1935 Lah. 765.

Court was not subordinate to the former within the meaning of Section 24, Civil Procedure Code, for the purpose of appeals of this kind. Now assuming that these contentions are correct — a matter on which I do not think it necessary to express any opinion in this case — I am of opinion that the appellant should have been given the benefit of Section 5, Limitation Act. The learned Senior Subordinate Judge has held that the appellant cannot be said to have exercised due care and caution in the matter of the presentation of the appeal. But it seems to me that far from this being the case the appellant has acted throughout with abundant caution, and the complications that have arisen are due to the acts of the Courts or their officials. A decree-sheet should have been prepared by the Court of the Subordinate Judge, Fourth Class, as soon as the suit was dismissed on 7th February, 1930, but by oversight of the official concerned or for some other unexplained reasons it was not done, and it was the plaintiff who drew the attention of the Court to this defect by means of a formal application presented by him on 1st March, 1930. Again, he could have deferred the filing of the appeal till the decree-sheet had been prepared and a copy given to him, but he acted *ex majori cautela* and actually preferred the memorandum of appeal accompanied by a copy of the judgment in the Court of the Senior Subordinate Judge on 11th March, 1930 and appended a note that the decree-sheet had not been prepared and that a copy of it would be filed as soon as it was ready. This copy was actually supplied to him on 20th March, 1930 and he presented it the same day before the District Judge to whom the memorandum of appeal had been transferred in the meantime by the Senior Subordinate Judge in the circumstances stated above.

Now, even if it be assumed that the Court of the District Judge had no jurisdiction to hear the appeal, there is ample authority for holding that the time during which it remained pending in that Court should be excluded, unless it be held that the mistake of the appellant was not *bona fide*. Mr. Badri Dass concedes that this is so but urges that the transfer of the memorandum of appeal from the Court of the Senior Subordinate Judge to that of the District Judge was ordered on an application filed by

the appellant himself and therefore he must suffer the consequences if the transfer was not in accordance with law. There is however nothing to show that this application was made in bad faith. The mistake if there was one related to the interpretation of a difficult point of law and could have been made by a trained lawyer. Moreover the order transferring the case was one made by the District Judge and even if it be assumed that the order was wrong, the responsibility for the mistake was that of the Court and not of the appellant. The appeal was pending in the District Court until 8th July, 1930, and it was re-presented before the Senior Subordinate Judge as soon as it was returned to him. I hold therefore, that the time during which the memorandum of appeal remained in the District Court should have been excluded and the appeal held to be within time, even if it be assumed that the order of Mr. Munshi Ram, District Judge, transferring the case was *ultra vires* or otherwise illegal.

Mr. Badri Dass finally contends that this was a question for decision by the lower appellate Court and that in second appeal this Court cannot interfere with its conclusion. But in this case the facts are not in dispute, and the only question is whether the admitted facts and circumstances constitute sufficient and reasonable cause. It has been recently held by Lord Sankey, L.C. in *Shotts Iron Co., Ltd.* v. *Fordyce* (9) that such a question "is one of law and not of fact." In giving his decision, the Lord Chancellor referred with approval to the dictim of Lord Parmoor in *King* v. *Port of London Authority* (10).

"No doubt the relevant facts should be found by the learned Judge and then it becomes a question of law whether these facts are such as to constitute a reasonable cause within the provision of the statute."

I am not unmindful of the fact that there are cases in India, in which a contrary opinion has been expressed. But judicial opinion in this Court as well as in other High Courts has not been uniform, and I think that the question

(9) (1930) A.C. 503 at page 508.
(10) (1920) A.C. 1 at page 31.

should now be taken to have been set at rest by the pronouncement of the House of Lords. I am, therefore, of opinion that the appeal to the lower appellate Court was not barred by time."

(19) If a reference is made to section 2(7) and section 5 of the Indian Limitation Act, 1908, the observations of the learned Judge would necessarily be correct, because it was on the interpretation of these provisions that the question of reasonable cause had to be determined. No such criterion is to be found in section 271 of the Income-tax Act, 1961. There is no definition of 'reasonable cause' in the Income-tax Act. In this situation, 'reasonable cause' becomes more or less a question of fact and does not remain a mixed question of law and fact. Therefore, a question of law would only arise if there was no evidence on the basis of which the finding as to a reasonable cause could be arrived at, or the finding was purely fanciful. On the facts found in the instant case, it cannot be said that the conclusion as to reasonable cause is based on no evidence or is otherwise fanciful. Therefore, the decision of Tek Chand J., in Kanshi Ram's case cannot lead to the conclusion that the question of reasonable cause is a mixed question of law and fact in the instant case.

(20) In *Kale Khan's case* (8) (supra), the question that fell for determination was, whether the inference drawn from proved facts is legitimate, i.e., whether the facts found did, or did not amount to absence of reasonable and probable cause ? This question arose in a suit for malicious prosecution and in view of the overwhelming case law on the subject, wherein the view had been taken that the inference as to whether there was absence of reasonable or probable cause was a question of law, the decision must be restricted to the cases of that type and cannot be held to be a decision of general application.

(21) It would be worthwhile to refer to *Pestonji M. Mody* v. *Queen Insurance Company* (11), a decision of the Privy Council, where their Lordships observed as follows :—

"There is only one further observation which their Lordships desire to make. The case comes before them with a certificate that the appeal involves a substantial question

(11) (1901) 25 Bom. 332.

of law. It appears to their Lordships that the only question involved is a question of fact on which there are concurrent findings. It is quite true that according to English Law it is for the Judge and not for the Jury to determine what is reasonable and probable cause in an action for malicious prosecution. The jury finds the facts. The Judge draws the proper inference from the findings of the jury. In that sense the question is a question of law. But where the case is tried without a jury there is really nothing but a question of fact and a question of fact to be determined by one and the same person. It appears to their Lordships that the certificate allowing the appeal to Her Majesty must have been granted under a misapprehension."

(22) It will appear that the decision in *Kale Khan's case* (8) runs counter to the decision of the Privy Council quoted above. It, therefore, cannot be accepted as laying down the correct rule of law. Besides this, the decision in *Kale Khan's case* proceeded on its peculiar facts and cannot be taken as an authority for laying down a general rule that in every case the decision as to reasonable or probable cause is on a question of law. In both the decisions of the Lahore High Court, reliance was placed on the decision of the House of Lords in *Shotts Iron Company Limited* v. *Fordyce* (9). It will be useful to cite the following passages from speeches of Lord Buckmaster, with whom Lord Thankerton concurred. The learned Lord observed :—

"The case of *King* v. *Port of London Authority* (10) nowhere conflicts with this opinion. Cases under the statute arise in infinite diversity of circumstance, and general rules cannot be laid down for their decision, but I agree with the statement of Lord Dunedin in *Ellis* v. *Fairfield Shipbuilding and Engineering Co.* (12) already quoted, and I am not prepared to refine upon it with any dialectical subtleties.

It was at one time suggested in the argument that the question of reasonable cause was one of fact, but this is contrary to authority and to the ordinary rules of construction.

(12) 1913 S.C. 217, 223.

> Nor can I accept the view that the question lies in the twilight of debatable ground between law and fact. It is a question for the opinion of the tribunal in each case whether the facts proved constitute a reasonable cause within the meaning of the statute, and the present case proves that such a dispute can proceed to the highest tribunal encountering diverse opinions upon its way."

These observations clearly show that for the purposes of a statutory requirement the existence or non-existence of a reasonable cause can be a mixed question of law and fact. But can it be said that in every case it will be so ? For instance, a man could not attend the proceedings as he was suddenly taken ill and an *ex parte* decision was made against him. He later moved to set it aside on the plea that he was suddenly taken ill and was thus prevented by sufficient cause to attend the proceedings. The tribunal accepts his stand that he was ill but refuses to draw the conclusion that he was prevented by sufficient cause to attend on that day. This decision will not be unassailable because it is based on no evidence or is otherwise fanciful. But a case where the tribunal holds that he was prevented by sufficient cause and sets aside the *ex parte* decision, can it be said that the decision is assailable ? Certainly not. If this distinction is kept in view, the various decisions which seem to lay down that in every case the decision as to reasonable or probable cause is on a question of law or mixed question of law and fact, in fact do not do so. This will be apparent from the observations of Lord Macmillan in the case of *Shotts Iron Company Ltd.* :—

> "It is impossible to frame a definition of a reasonable cause for omitting to make a claim. Indeed it would be unreasonable to attempt the task. The decided cases on the subject, from the mass of which Mr. MacRobert considerately drew only a few samples, furnish an unhappy instance of history teaching by examples, for the only lesson which they impart is that no one case can govern any other and that each case depends upon its own circumstances."

These observations clearly denote that though in the case before the House of Lords the question whether there was reasonable cause or not was considered on the facts of that case as raising a question of law; but the rule is not of general application. On the facts

and in the circumstances of each case, a different result may follow. So far as the instant case is concerned, I have no doubt in my mind that the question whether there is or is not a reasonable cause is a pure question of fact and, therefore, I am not prepared to ask the Tribunal to refer the first question in income-tax case 28 of 1972 for the opinion of this Court. Even Mr. Justice Tek Chand in *Kanshi Ram's case* (supra), from which I have quoted extensively, observed that there were cases in India in which a contrary view had been expressed and that the judicial opinion in the Lahore High Court as well as in other High Courts was not uniform. It is only on the basis of the decision of the House of Lords in *Shotts Iron Company's case* that the learned Judge took the view that a question of law did arise when the facts were admitted and the inference to be drawn was whether there is a reasonable or probable cause within the meaning of the statute. These observations, as I have already said, should be confined to the facts of that case as observed by the House of Lords, for they were not laying down a rule of universal application as is apparent from their respective speeches.

(23) For the reasons recorded above, the question required to be referred in each of Income-tax Cases Nos. 26 and 27 of 1972 does arise for the opinion of this Court and so also question No. 2 in Income-tax Case No. 28 of 1972. However, question No. 1 in Income-tax Case No. 28 of 1972 is not a question of law arising out of the Tribunal's order and, therefore, it cannot be required to be referred for the opinion of this Court.

(24) The Tribunal is directed to refer the only question in Income-tax Cases Nos. 26 and 27 of 1972 and question No. 2 in Income-tax Case No. 28 of 1972 for the opinion of this Court along with the agreed statement of the case. There will be no order as to costs.

SURI, J.—I agree.

K.S.K.

Before D. K. Mahajan, C.J. & P. S. Pattar, J.

THE COMMISSIONER OF INCOME-TAX, PUNJAB, J. &K. AND CHANDIGARH, PATIALA,—*Applicant.*

versus

M/S. HINDUSTAN MILK FOOD MFG. LTD., NABHA,—*Respondent.*

Income Tax Reference No. 27 of 1972.

April 8, 1974.

Super Profits Tax Act (XIV of 1963)—Sections 2(5), (9), 4, 7(2) *and Second Schedule, Rule* 1—*Assessee keeping apart an amount*