and a discretion is vested in the Court to assess if in a particular case it is appropriate to confiscate the conveying vehicle. In the case in hand, what was being illegally transported was poppy husk which falls within the definition of Opium only technically. There is also no dispute that the owners of the vehicle were not present at the time of the recovery and it were their employees who were using the truck for the illegal purpose. The learned Additional Sessions Judge while considering this aspect, observed that the owner is presumed to know about the movements of the vehicle from day to day and from place to place, but this presumption is not warranted, more so when there is no evidence to that effect, pointed out on behalf of the State. A truck costs quite a substantial amount and its confiscation, in the circumstances of the present case was not justifiable. The learned counsel for the petitioner has also submitted that in consequence of the order of confiscation passed by the trial Court, the vehicle has remained off the road uptil now and this has already caused sufficient loss to the petitioner and his co-partner who were the owners of the vehicle.

(3) In view of what has been said above, the Revision Petition is accepted and the part of the order of the trial Court confiscating Truck No. DHG 228, as also the order of the lower appellate Court confirming that direction, are set aside. The truck shall be returned to the petitioner if he satisfies the trial Court about the ownership of the vehicle.

S.C.K.

FULL BENCH

Before S. S. Sandhawalia C.J., D. S. Tewatia and G. C. Mital, JJ.

COMMISSIONER OF INCOME-TAX—*Appellant.*

versus

RAM SINGH HARMOHAN SINGH—*Respondent.*

Income Tax Reference No. 64 of 1975.

September 24, 1979.

Income Tax Act (XLIII of 1961)—Sections 139, 148 and 271 (1) (c) (iii)—Voluntary return of income filed by an assessee for a particular assessment year—Another return for the same period

Commissioner of Income-tax *v.* Ram Singh Harmohan Singh
(D. S. Tewatia, J)

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showing the same income filed in pursuance of a notice under section 148—Penalty for concealment of income—Amendment in penalty provisions before the filing of the second return—Provisions as applicable on the date of filing of the original return—Whether to govern the levy of penalty—Offence of concealment of income—Whether committed again when the second return is filed—Principle of 'double jeopardy'—Whether applicable.

Held, (per majority S. S. Sandhawalia, C.J. and G. C. Mital, J., D. S. Tewatia, J. contra) that it is the concealment of income in the return filed by an assessee that attracts the provisions of section 271(1) (c) of the Income Tax Act, 1961 and not the close of the previous year during which the concealment is actually made. It is the original return on the basis of which penalty can be imposed. If the date of the original return is not taken as the firm date, then there will be complete chaos and the assessees will have to rest at the sweet will of the Income Tax Officers. The law must be applied uniformly and the only possible way to avoid misuse would be to fix the date of filing of the original return for purposes of assessing the penalty. When the original return would be filed it would not be known when the Parliament may like to amend the law with regard to penalty either favouring the assessee or the Revenue. If this view is not taken, then it will be completely in the hands of the Income Tax Officers to make a harsher law applicable to the persons with whom they are not happy and to apply the lenient provisions to their favourites merely by issuing a notice under section 148 of the Act calling upon them to file another return. It will, therefore, be reasonable and harmonious to hold that the date of filing of the original return will govern the law for imposition of penalty.
(Paras 27 and 29).

Held, (per majority S. S. Sandhawalia, C.J. and G. C. Mital, J., D. S. Tewatia, J. contra) that concealing of particulars of income or furnishing of inaccurate particulars of such income is considered as an offence under section 271(1)(c) of the Act. For a particular year, an assessee can commit offence only once when he furnishes incorrect particulars of his income and that he does by filing the return. So, even if he is asked to file a number of returns in that very year and he sticks to his original position, he will not be committing the offence again and again. The offence will be one which he committed for the first time when he filed the return concealing his income and by filing subsequent returns on being called upon to do so, what he does is that he shows persistence that he has not committed any offence of concealment of income. Therefore, it cannot be said, that the same offence is committed again and again. Of course, similar offences can be committed from time to time. Under the Income Tax Law each assessment year is a separate year and therefore, similar offence can be committed by an assessee each year

for which he would be liable to penalty under section 271(1) (c) read with sub-clause (iii) as would be prevailing at the time of the filing of the return for the respective years. Thus, offence of concealment of particulars of income with respect to one assessment year is complete when the original or first return is filed by an assessee in which concealment is detected and that offence is not repeated by the assessee if he is called upon to file a return for that particular year from time to time in pursuance of notice under section 148 of the Act. (Paras 30 and 31).

Held, (per majority S. S. Sandhawalia, C.J. and G. C. Mital, J., D. S. Tewatia, J. contra) that a reading of section 271(1) (c) of the Act would show that it is not the filing of the return, which is the basis for the imposition of penalty but the concealment of income or furnishing of inaccurate particulars of such income. In other words, the moment income is concealed or inaccurate particulars are furnished, the offence for the imposition of penalty under this clause is committed by the assessee but the offence becomes complete when the document in which concealment is made is placed in the hands of the Income Tax Officer and this is done by the filing of the return. So, the offence for purposes of penalty is complete the moment the return is placed before the Income Tax Officer. Once the offence under this provision is complete, it cannot be said that it can be repeated again and again whenever an assessee is called upon to furnish a fresh return under section 148 of the Act for the same year and to take a view to the contrary would mean that for the same offence an assessee can be punished twice over. This could neither be the intention of Parliament nor possibly the meaning of section 271(1) (c) of the Act. (Para 35).

Held, (per D. S. Tewatia, J. contra) that it is true that what constitutes an offence is the concealment of income of a given assessment year in a return, yet it is a misconception to think that the said offence committed repeatedly would attract only one punishment and that too the one which was provided for by the law operating on the date when the said offence was committed for the first time. The doctrine of double jeopardy is attracted only to a case where a person is sought to be punished twice over for the very offence but where that is not the case, i.e. where a certain offence for which a person is sought to be convicted and punished is an offence distinct from the first offence then doctrine of double jeopardy will have no applicability. The legislature had intended that every time an assessee who files a false return of his income either under statutory compulsion or voluntarily, he commits every time a separate and distinct offence punishable separately. Thus, an assessee not only commits an offence of concealment of income by filing the original false return under section 139(1) of the Act but also commits a separate and distinct offence when he files a similar false return in pursuance of notice under section 148 of the Act and is, therefore, liable

to be punished for each offence separately according to the law as was in force when the said offences were committed.

(Paras 16, 17, 18, 20 and 21).

Case referred by Division Bench consisting of Hon'ble Mr. Justice M. R. Sharma & Hon'ble Mr. Justice S. S. Sidhu, to a Full Bench for decision of an important question of law involved in the case on 15th February, 1977. *The Full Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia, Hon'ble Mr. Justice D. S. Tewatia & Hon'ble Mr. Justice Gokal Chand Mittal finally decided the case on 24th September,* 1979.

Reference Under Section 256(1) *of the Income-tax Act,* 1961 *made by the Income-tax Appellate Tribunal, Amritsar Bench, Amritsar, referring the following question of law to this Hon'ble High Court for its opinion arising out of I.T.A. No.* 267 *of* 1971-72 (*Assessment year* 1963-64).

> *"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the provisions of section* 271(1) *(iii) as existing before its amendment with effect from* 1st *April,* 1968 *would be applicable to the present case."*

D. N. Awasthy, Advocate with B. K. Jhingan, Advocate, *for the appellant.*

Bhagirath Dass, Advocate, S. K. Heera Ji, B. K. Gupta, Advocates with him).

JUDGMENT

D. S. Tewatia, J.

(1) In this reference under section 256(1) of the Income-tax Act, 1961 (hereinafter referred to as the Act) the question referred for the opinion of the High Court is:

> "Whether, on the facts and circumstances of the case, the Tribunal was right, in law, in holding that the provisions of section 271(1)(iii) of the Act, as existing before its amendment with effect from 1st April, 1968, would be applicable to the present case?"

The reference initially was set down for hearing before a Division Bench which in turn referred it to a larger Bench and that is how the matter is before us.

(2) Before proceeding with the consideration of the question posed, the necessary facts having a bearing upon the said question deserve to be taken notice of.

(3) During the course of assessment proceedings for the assessment year 1963-64 of Messrs Ram Singh Harmohan Singh, Amritsar (hereinafter referred to as the assessee), the Income-tax Officer computed the total income of the assessee by adding thereto the following amounts which his account books showed as cash credits:—

(1) Messrs Amir Chand Moti Ram	...	Rs 42,000.00
(2) Messrs B. Mohan Singh and Sons	...	Rs. 20,000.00
(3) Interest in the name of Messrs Amir Chand Moti Ram	...	Rs 2,075.00

(4) On appeal, the Appellate Assistant Commissioner reduced the addition in the account of Messrs Amir Chand Moti Ram to a sum of Rs 17,000 but maintained the addition of Rs 20,000 in the account of Messrs B. Mohan Singh and Sons and the addition of interest amounting to Rs 2,075 in the account of Messrs Amir Chand Moti Ram.

(5) Construing the said amounts as concealment of income, the Income-tax Officer issued penalty notice under section 271(1)(c) of the Act for concealment of income and since the penalty imposable exceeded Rs 1,000 the case was referred to the Inspecting Assistant Commissioner of Income-tax under section 274(2) of the Act. The Inspecting Assistant Commissioner,—*vide* his order dated 15th of March, 1971, after allowing the assessee an opportunity of being heard, imposed on him a penalty of Rs 38,592 in accordance with the provisions of section 271(i)(c)(iii) of the Act as operative on 1st April, 1968 assuming the commission of the offence in question on 19th February, 1969 when the Return, in response to the notice under section 148, was filed by the assessee repeating therein the income shown in the original Return.

(6) On an appeal, the Income-tax Appellate Tribunal held that no penalty was imposable in respect of the cash credit of Rs. 17,000 in the account of Messrs Amir Chand Moti Ram — the said addition having been deleted by the Appellate Tribunal on an appeal from the order of the Appellate Assistant Commissioner. The penalty in respect of the addition of Rs 20,000 pertaining to the cash credit in the account of Messrs B. Mohan Singh and Sons was held to be leviable and was, therefore, maintained. Quantum of penalty was computed by it with reference to the penalty provisions of section 271(1)(c)(iii) of the Act as it existed prior to April 1, 1968, for, according to it, the offence of concealment was committed when the original return of the income had been filed by the assessee and that was on April 21, 1967. In the light of the aforesaid view, the Tribunal fixed the penalty at 30 per cent of the tax sought to be avoided on the income finally determined in the appeal.

(7) The parties are not at variance with each other in regard to the fact that on the day on which the original return was filed by the assessee, i.e., April 21, 1967, the quantum of penalty imposable followed the tax-avoided base, i.e., it had reference to the quantum of tax sought to be avoided by concealing his income and that on the day on which the return in response to notice under section 148 of the Act was filed, i.e., 19th February, 1969, the quantum of penalty followed income-avoided base, i.e., the quantum of panalty had to be computed with reference to the quantum of concealed income. The relevant provisions authorising the taxing authorities to impose penalty in regard to the concealed income are in the following terms (prior to 1st April, 1968):

> "S. 271 (1) If the income-tax Officer or the Appellate Assistant Commissioner 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) * * * * .

(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), in addition to the amount of the tax, if any, payable by him, a sum equal to two per cent, of the tax for every month during which the default continued, but not exceeding in the aggregate fifty per cent of the tax;

(ii) * * * *.

Sub-clause (iii) as it existed before 1st April, 1968, i.e., on the date when the original Return was filed was in these terms:—

(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 twenty per cent, but which shall not exceed one and a half times the amount of the tax, if any, which would have been avoided if the income as returned by such person had been accepted as the correct income"."

Sub-clause (iii) of clause (c) of sub-section (1) of section 271 of the Act was substituted by the Finance Act of 1968 with effect from 1st April, 1968, by the following:—

"(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 the income in respect of which the particulars have been concealed or inaccurate particulars have been furnished."

(8) It is also not in dispute that it is the concealment of income in the Return filed by assessee that attracts the provisions of section 271(1)(c) of the Act and not when the true income is sought to be concealed by the assessee by omitting to file a return. In this regard, the following observations of Venkateramaiah, J., in *Addl. Commissioner of Income-tax, Mysore* v. *C. V. Bagalkoti and Sons* (1), expressing the Division Bench view of the Karnataka High Court with

(1) 115 I.T.R. 131.

which, with respect, I entirely concur, can be quoted with advantage:—

> "The offence of concealment of particulars of income or furnishing of inaccurate particulars of such income is committed when a return is filed. The mere non-filing of a return may not be considered either concealment of income which is liable to tax or furnishing inaccurate particulars regarding it (*vide S. Senthose Nadar* v. ***First Addl. Income-tax Officer,*** (2).

There is judicial consensus that such concealment of income as attracts the penal provisions of section 271(1)(c) of the Act, takes place when return is filed by the assessee.

(9) Since the offence of concealment of income is penal in nature in that it is visited with punishment, and since in view of the provisions of Article 20(1) of the Constitution of India, a person is liable to only such quantum of punishment as was imposable when the offence was committed, it becomes necessary to fix the date on which the offence of concealment can be said to have been committed.

(10) As already observed, the concealment of income takes place when a return concealing the particulars of income or giving inaccurate particulars of income is filed. Where only one such return concealing particulars of income or giving inaccurate particulars of income is filed, no difficulty arises in fixing the date of the commission of the offence of concealment of income as the date would be the date on which such a return is filed by the assessee but where more than one return is filed by an assessee in which correct income had not been shown and these returns happen to be filed on different dates and the punishments provided by the law, operating on those dates, differed in its severity, then the question whether the offence of concealment of income has been committed on one or the other date or on both the dates assumes importance and present certain difficulties.

(11) Before dealing with the questions raised above, let us first take notice of the relevant provisions of the Income-tax which envisage filing of returns. There are section 139(1), (2) and (5) and section 148(1) of the Act which are in the following terms:

> "139(1) Every person if his total income or the total income of any other person in respect of which he is assessable under

(2) (1962) 46 I.T.R. 411 (Mad.).

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—

* * * *

(2) in the case of any person who, in the Income-tax Officer's opinion, is assessable under this Act, whether on his own total income or on the total income of any other person during the previous year, the Income-tax Officer may, before the end of the relevant assessment year, issue a notice to him and serve the same upon him requiring him to furnish, within thirty days from the date of service of the notice, a return of his income or the income of such other person during the previous year, in the perscribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed :

* * * *

(3) * * * *

(4) * * * *

(5) If any person having furnished a return under sub-section (1) or sub-section (2), discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the assessment is made.

148(1) Before making the assessment or reassessment or recomputation under section 147, the Income-tax Officer shall serve on the assessee a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 139; and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section."

(12) Perusal of aforesaid provisions would show that an assessee is required under compulsion of law to file Return under section 139 (1) (2) and under section 148. He can also voluntarily file an

amended Return under section 139(5). This leads to a poser whether an Assessee would ever file more than one Return for a given year? Answer is in the affirmative, for he may file one Return either under section 139(1) or when required under section 139(2). He may voluntarily file an additional Return under section 139(5). He may also file another Return when required to do so under section 148 of the Act. One may ask does such an assessee commit an offence every time when he under statutory compulsion filed those two Returns, one original and the other under section 148 as also when he voluntarily filed a Revised Return under Section 139(5).

(13) The logic of the argument that the concealment of income takes place when a return is filed leads to the conclusion that every time when an assessee files a Return either voluntarily as envisaged by sub-section (5) of section 139 of the Act and which return, does not acquire the character of an amendment to the original return as would be presently shown or under statutory compulsion as envisaged by sub-sections (1) and (2) of section 139 and section 148 of the Act, he commits the offence of concealment of income and if the dates of such returns vary, then each offence of concealment of income being independent of the other such offence of concealment, the quantum of penalty for such offence would have a reference to the penalty prescribed by the law prevailing on the date of the commission of the said offences in question.

(14) Now turning to the voluntary Return envisaged by sub-section (5) of section 139 of the Act, it may be observed that to the extent it supplies an inadvertent omission in the original Return filed under sub-section (1) or sub-section (2) of section 139 or corrects any inadvertent wrong statement therein, it has the character of an amendment to the original return and, therefore, becomes part of the original return. But when it is found that the intended correction of omission occurring in the original return or correction of any alleged wrong statement therein, was in fact intended to effect a concealment of income and income is concealed thereby, which would not have been so concealed if the original return had been allowed to stand as it was and the return under sub-section (5) of section 139 of the Act, in question, had not been filed, then the concealment of income effected through the filing of even such a revised return in my view would attract the penal provisions of section 271(1)(c) of the Act and the date of the commission of the offence would be

the date on which such a revised return was filed and not the date of such original return.

(15) The question that would arise next for consideration is that if what constitutes an offence in terms of section 271(1)(c) of the Act is the concealment of income in the Return and the assessee effects concealment more than once, then can he be punished more than once for the same offence of concealment of income of a given year ? Would not, to such a case, doctrine of double jeopardy be attracted?

(16) In my opinion, although it is true that what constitutes an offence is the concealment of income of a given assessment year in a Return, yet it is a misconception to think that the said offence committed repeatedly would attract only one punishment and that too the one which was provided for by the law operating on the date when the said offence was committed for the first time.

(17) The doctrine of double jeopardy is attracted only to a case where a person is sought to be punished twice over for the vary offence but where that is not the case, i.e., where a certain offence for which a person is sought to be convicted and punished is an offence distinct from the first offence, then the doctrine of double jeopardy would have no applicability. Take for example a case of perjury. A person in a given proceeding makes a false statement in regard to a given fact. He commits the offence of perjury. If that very person in proceedings which are not the continuation of the earlier proceedings, but distinct though supplemental to the earlier proceedings, happens to make again a false statement about the very fact regarding which he had made a false statement in the earlier proceedings, than the later false statement will constitute an independent offence of perjury although the fact which is wrongly stated in both the statements is the same.

(18) The penal provision in the Income-tax Act envisaged under section 271(1)(c) were introduced by the Legislature by way of deterrent to counteract the tendency to conceal the true income by filling a false return and to induce the assessee to come out with truth either voluntarily taking advantage of the provisions of sub-section (5) of section 139 of the Act or when required to file a return

in pursuance of notice under section 148 of the Act. If the view taken is the one that an assessee commits the offence of concealment only once when the original return is filed and not when he files a return subsequently under statutory compulsion when required in pursuance of notice under section 148 of the Act, then the assessee would be exempted to file the replies of the earlier false return rather than run the risk of penalty for the default of non-filing of the return which penalty would be in addition to the penalty for the offence of concealment of income in terms of section 271(1)(c) of the Act, committed while filing the original return. The Legislature, in my opinion, had not intended to leave any such loophole and, therefore, had envisaged that every time an assessee who files a false return of his income either under statutory compulsion or voluntarily, he commits every time a separate and distinct offence punishable separately.

(19) Mr. Bhagirath Dass, learned counsel for the assessee, primarily placed reliance on a decision of the Allahabad High Court in *Commissioner of Income-tax, Lucknow* v. *Ram Achal Ram Sewak* (3), which was followed in its subsequent two decisions reported in *Addl. Commissioner of Income-tax, Lucknow* v. *Krishna Shubh Karan* (4) *and Addl. Commissioner of Income-tax* v. *Mewa Lal Sankatha Prasad*, (5) in suport of his proposition that in a case where in addition to the original return, a return in pursuance of notice under section 148 of the Act is filed in which also the true income for the relevant assessment year is not disclosed, the assessee commits only one offence of concealment of income and that too on a date when he filed the original return and, therefore, the computation of quantum of penalty shall be governed by the law prevailing on the date of filing of the original return. Pointed attention was drawn by the learned counsel to the following extract from *Ram Achal Ram Sewak's case* (supra) which contained the reasoning of the Court in support of the view which it took:—

> "The question that arises is as to whether in a case where an assessee has concealed the particulars of his income or

(3) 106 I.T.R. 144.
(4) 108 I.T.R. 271.
(5) 116 I.T.R. 356.

furnished inaccurate particulars of such income in the original return, and as such he becomes liable to penalty, a second penalty can be imposed for concealment or inaccurate furnishing of particulars of income when he files a return in pursuance of a notice under section 148. The repercussions of the acceptance of the argument raised by counsel for the department may be examined with reference to particular cases. To begin with, we shall take a case where an assessee has concealed the particulars of his income or furnished inaccurate particulars of such income in his original return as also in the return filed in pursuance of a notice under section 148. If the argument of the department is accepted, the assessee would become liable to two penalties, one in respect of the concealment or inaccurate furnishing of particulars in respect of the original return, and the other in respect of the second, when he filed a return in pursuance of a notice under section 148, and the maximum penalty that the income-tax Officer can impose could be twice the amount of the income concealed on such occasion, with the result that the total penalty for the concealment would be four times the amount of income concealed. We do not feel that such a consequence was intended by the legislature. This apart, where an assessee has concealed the particulars of his income or furnished inaccurate particulars of such income once, it cannot be said that if he repeats the same act again, there is a fresh concealment or furnishing of inaccurate particulars of the same income. There are other difficulties in accepting this contention. Suppose an assessee has in the original return which was filed before April 1, 1964, concealed or furnished inaccurate particulars in respect of income of Rs. 50,000/- while in the return filed in pursuance of a notice under section 148, there is no concealment or the concealment is only of Rs. 25,000/-. If the relevant return for the purposes of fixing the penalty is filed in pursuance of the proceedings under section 148, no penalty can be imposed in the first case while in the second case, the penalty would be reduced as the concealment in the second return is less than that in the original return. The legislature, it seems to us, did not intend to allow such an

assessee to go scot-free in the first case or subject him to a lesser penalty in the other case."

With respect, I find myself unable to concur in the view taken in the aforesaid decisions for the reason that I consider the filing of the two false returns as constituting independent offences incurring the separate and distinct penalty for each offence, as already observed by me in the earlier part of the judgment. The learned counsel for the assessee then sought to draw support from a decision of the Supreme Court reported as *N.A. Malbary and Bros.* v. *Commissioner of Income-tax, Bombay North*, (6) for his submission that in respect of the same concealment, a person cannot be punished twice over. The facts in that case were that the assessee did not include in the return filed under section 139(1) of the Act the business profits of the firm of its Bangkok branch. The assessee-firm was required to produce the account books which it did not produce. The Income-tax Officer estimated the escaped profits of the said Bangkok branch to be Rs. 37,500/- and completed the assessment and the same day initiated proceedings for the imposition of penalty for concealment of income and imposed a penalty of Rs. 20,000/-. In the meantime, in the assessment proceedings for the next year the assessee produced the account books of the Bangkok branch which disclosed that the assessee had made a profit of Rs. 1,25,520/- for the previous assessment year for which the assessment had been completed. The Income-Tax Officer issued a notice under section 34 of the Income-tax Act, 1922 (which is equivalent to section 148 of the Income-tax Act, 1961) in respect of the previous assessment year and the assessee submitted a return showing the correct profits, of the said previous year of Rs. 1,25,520/-. The Income-tax Officer then issued a notice under section 28(3) of the Income-tax Act; 1922 (which is equivalent to section 271(1)(c) of the Income-tax Act, 1961) and levied a second penalty of Rs. 68,501/- for concealment of income in the original return.

(20) The Tribunal quashed the penalty of Rs. 20,000/- pertaining to the escaped income of Rs. 37,500/- but confirmed the penalty of Rs. 68,501/-. The contention, *inter alia*, raised before their

(6) 51 I.T.R. 295.

Lordships was that the second order imposing penalty was illegal because in respect of the same concealment the Income-tax Officer had no jurisdiction to make the second order while the first stood. Their Lordships while refuting the said contention observed as follows:—

> "We are unable to accept this argument. *It may be that in respect of the same concealment two orders of penalty would not stand* but it is not a question of jurisdiction. The penalty under the section has to be correlated to the amount of the tax which would have been evaded if the assessee had got away with the concealment. In this case having assessed the income by an estimate, the Income-tax Officer levied a penalty on the basis of that estimate. Later when he ascertained the true facts and realised that a much higher penalty could have been imposed, he was entitled to recall the earlier order and pass another order imposing the higher penalty."

The learned counsel for the assessee had drawn our pointed attention to the underlined portion of their Lordships' observations extracted above. In that case, as would be clear from the statement of facts mentioned above, there was only one offence of concealment by the assessee; that was when he filed the first return. In the second return that he filed in pursuance of notice under section 148 of the Act he had made a clean breast of the true income. So, the assessee committed only one offence of concealment of his income amounting to Rs. 1,25,520/- while he came to be punished not only in regard to the said amount of concealment but in addition to a concealment of Rs. 37,500/- which was the subject-matter of the earlier penalty order regarding which a sum of Rs. 20,000/- was imposed as penalty. In view of the above, the underlined observations of their Lordships relate to the context of the facts of that case where in fact the offence committed was only one and that was the concealment of true income in the original return filed by the assessee as in the second return under section 34 of the Income-tax Act, 1922 (equivalent to section 148 of the Income-tax Act, 1962) true income had been disclosed and had committed no offence. For the aforesaid reasons I am of the view that the assessee in the present case not only committed an offence of concealment of income in filing the

original false return under section 139(1) of the Act but also committed a separate and distinct offence when he filed a similar false return in pursuance of notice under section 148 of the Act and was, therefore, liable to be punished for each offence separately.

(21) Although the assessee committed two separate and distinct offences liable to be punished separately for both, but the Revenue authorities under the mistaken view of law proceeded to punish him only for the last offence committed as a result of filing a false return in pursuance of notice under section 148 of the Act. Since this later offence was committed at a time when the amended provisions of section 271(1)(c)(iii) of the Act attracting the 'income-avoided base' penalty were in operation, the Tribunal, in my view, erred in holding that the assessee had committed only one offence of concealment when it filed the original return (which event occurred prior to the amendment of section 271(1)(c)(iii) of the Act) and in imposing penalty the quantum whereof was computable in accordance with the unamended provisions of section 271(1)(c)(iii) of the Act operative on the date on which the original return was filed.

(22) In the result, I answer the reference against the assessee and in favour of the Revenue holding that the quantum of penalty in the case of the assessee was rightly held to be computable by the Revenue authorities in accordance with law that was operative on the date on which the second return in pursuance of the notice under section 148 of the Act was filed by the assessee and the Tribunal erred in reversing the said decision of the Revenue authorities. Reference allowed with costs.

Gokal Chand Mital, J.

(23) I had the benefit of perusing the judgment prepared by D. S. Tewatia, J. I regret I am unable to agree with it.

24. In reference under section 256(1) of the Income Tax Act, 1961 (hereinafter called the Act), the following question has been referred for the opinion of this Court:—

> "Whether, on the facts and circumstances of the case, the Tribunal was right, in law, in holding that the provisions

of section 271(1) (iii) of the Act, as existing before its amendment with effect from 1st April, 1968, would be applicable to the present case?"

The point which arises for our determination is as to whether the law which prevailed at the time of filing of the first return, whether filed voluntarily under section 139(1) or at the instance of the Income Tax Officer under section 139(2) of the Act, alone could apply or whether the subsequently amended provision, which was in force at the time of filing of the return in pursuance of notice under section 148 of the Act, would apply for purposes of levying penalty under section 271 of the Act.

(25) For consideration of the aforesaid point, it would be necessary to trace the history of section 271(1) (iii) of the Act which governs the quantum of penalty for a default committed under section 271(1)(c) of the Act. Sub-clause (iii), as it existed before 1st April, 1968 was as follows:—

"(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 twenty per cent, but which shall not exceed one and a half times the amount of the tax, if any, which would have been avoided if the income as returned by such person had been accepted as the correct income."

Sub-clause (iii) as was in operation with effect from 1st April, 1968 up to 31st March, 1976, was as follows:—

"(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 the income in respect of which the particulars have been concealed or inaccurate particulars have been furnished."

The sub-clause which came into being with effect from 1st April, 1976 reads as under :—

"(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;"

A comparative reading of sub-clause (iii) which prevailed at three different times would show that the first and the third are tax based whereas the second one was income based. The difference between the first and the third is that in the first provision the minimum penalty was twenty per cent of the tax avoided and the maximum was 1½ times of the tax avoided whereas in the third the minimum is equal to the tax avoided and the maximum is twice the amount of tax avoided. So, the history of sub-clause (iii) shows that at one stage Parliament thought of prescribing penalty on the basis of tax avoided and it was amended to make the base of penalty the income to be avoided and again the present provision is on the basis of tax avoided although the minimum and maximum percentage of penalty which can be levied has been increased. So, what should be the minimum or maximum penalty and whether it should be tax-avoided based or income-avoided based, it is for Parliament to decide. What the courts have to do is to interpret the provisions of the Act as they are and to apply them in an harmonious way.

(26) In order to decide the point at issue, it will be necessary to state briefly some of the admitted facts of this case. The relevant assessment year with which we are concerned is 1963-64. The assessee filed his original return for the aforesaid year under section 139(1) of the Act on 21st of April, 1967. Thereafter, a notice under section 148 of the Act was issued by the Income Tax Officer and in pursuance thereto, he filed a verbetim copy of the original return on 19th of February, 1969. So, the concealment which had been made by the assessee in the original return of 21st of April, 1967, remained in the aforesaid subsequent return as well.

(27) It is not disputed by either of the sides that it is the concealment of the income in the return filed by the assessee that attracts the provisions of section 271(1)(c) of the Act and not the close of the previous year during which the concealment is actually made. In this regard, reference may be made to *Addl. Commissioner of Income-tax, Mysore* v. *C. V. Bagalkoti and Sons,* (Supra) and *Commissioner of Income-tax Patiala* v. *Bhan Singh, Boota Singh* (7). *In Bhan Singh Boota Singh's case* (supra) the point which came up for consideration before a Division

(7) 95 I.T.R. 562.

Bench of this Court was whether section 271(1)(c), which stood before 1st of April, 1964, would be applicable to the case of the assessee or whether the amended provision which became operative with effect from 1st of April, 1964 would be applicable. In that case, the assessment year was 1963-64 and the assessee had filed a voluntary return on 9th April, 1964. The stand of the assessee was that since the concealment was in the year 1963-64, therefore, section 271(1)(c), as it stood during that period, would be applicable to his case and not the one which came into being on 1st April, 1964. It was held that according to the provisions of the Act, what is to be looked at is the return and it is on the basis of that return that certain consequences follow. On this view of the matter, the law which was applicable on the 9th of April, 1964, was applied in imposing the penalty.

(28) Now the question which arises for consideration is that on the one hand Parliament may keep on amending the provisions of penalty in the Act from time to time and on the other hand, the Income Tax Officers may keep on issuing notices under section 148 of the Act from time to time against the same assessee or against different assessees. The will of Parliament to frame a law and to make it applicable from a particular date is understandable but what the Courts have to see is that it is uniformly applied in a reasonable manner in such a way that it does not become capable of abuse by arbitrary or discriminatory exercise by the officers concerned. This point for consideration arises apart from the point of violation of the doctrine of double jeopardy which shall be discussed in the later part of the judgment.

(29) In the case of the assessee in hand, the year of assessment is 1963-64 during which period the law of penalty contained in section 271(1)(c) of the Act was different from what it came into being with effect from 1st April, 1964. The amendment which came into being with effect from 1st April, 1964, came up for consideration before this Court in *Bhan Singh, Boota Singh's case* (supra). The arugument which was raised on behalf of the assessee in the aforesaid case has not been raised before us and accepting the decision given therein, the stand of the assessee is that it is the original return on the basis of which penalty can be imposed. According to the assessee, if the date of original return is not taken as the firm date for purposes of levying penalty according to the law applicable on that date, then there will be complete chaos and the assessees will have to rest at

the sweet-will of the Income Tax Officers. In a given case, if the provision of penalty is amended in such a way that it would be higher from the date of amendment, the Income Tax Officer may like to harass an honest assessee by issuing notices under section 148 of the Act after the date of the amendment. In that event, there will be two courses open for the assessees (1) the assessee may not like to file the return in pursuance to the notice under section 148 and in that event he would become liable to penalty under section 271(1)(a) of the Act. This course he may have to choose if he finds that on filing the return in pursuance to the aforesaid notice the penalty would be much higher. So, in that event, he will be liable to additional penalty under section 271(1)(a) of the Act over and above the one which he has already incurred in filing the original return for which penalty would be imposed at a lesser rate according to the law which was in existence at the time of the filing of the original return. In another case, in which the assessee has filed his original return after 1st April, 1968, when the penalty was much higher, and if the Income Tax Officer wishes to help him, he may issue a notice under section 148 of the Act after 1st April, 1976, and in that event, he would get the benefit of the law of lesser penalty merely because of an act of a favourite Income Tax Officer. This clearly demonstrates the misuse of the various amendments of the Act by the Income Tax Officer to harass the assessee or to help him. The law must be applied uniformly and the only possible way to avoid the misuse would be to fix the date of filing of the original return for purposes of assessing the penalty. When the original return would be filed, it would not be known when Parliament may like to amend the law with regard to penalty either favouring the assessee or the Revenue. If this view is not taken, then it will be completely in the hands of the Income Tax Officers as demonstrated above to make a harsher law applicable to the persons with whom they are not happy and to apply the lenient provisions to their favourites merely by issuing a notice under section 148 of the Act calling upon them to file another return. So, in the aforesaid view, it will be reasonable and harmonious to hold that the date of filing of the original return will govern the law for imposition of penalty.

(30) Deriving support from the above view, now I proceed on to consider the next point as to what concealment Parliament was considering while framing section 271(1)(c) of the Act. On a literal reading of section 271(1)(c),) I find that concealing of particulars of

income or furnishing of inaccurate particulars of such income is considered as an offence under this provision. For a particular year, an assessee can commit offence only once when he furnishes incorrect particulars of his income and that he does by filing the return. So, even if he is asked to file a number of returns in that very year and he sticks to his original position, to my mind, he will not be committing the offence again and again. The offence will be done which he committed for the first time when he filed the return concealing his income and by filing subsequent returns, on being called upon to do so, what he does is that he shows persistence that he has not committed any offence of concealment of income. Therefore, neither in law nor on authority nor on first principles can it be said that the same offence is committed again and again. Of course, similar offences can be committed from time to time. Under the Income Tax law each assessment year is a separate year and, therefore, similar offences can be committed by an assessee for each year for which he would be liable to penalty under section 271(1)(c), read with sub-clause (iii), as would be prevailing at the time of the filing of the return for the respective years. Similarly, for an offence committed in violation of the Indian Penal Code, an accused would be liable to only one punishment but for similar offences committed at various times under the same provision he would be liable for as many number of times as he would commit the offence.

(31) Therefore, I am of the firm view, that the offence of concealment of particulars of income with respect to one assessment year is complete when the original or first return is filed by an assessee in which concealment is detected and that offence is not repeated by the assessee if he is called upon to file a return for that particular year from time to time in pursuance of notice under section 148 of the Act. The above view of mine finds further strength from one more point which arose for consideration at the time of arguments. The question is that if another return is filed in pursuance to a notice under section 148 of the Act, would that take the place of the original return or not. The stand of the learned counsel for the Revenue was in the affirmative, meaning thereby that the subsequent return will be looked into for all practical purposes under the Act. On the aforesaid answer, one more question came up for consideration and that was that if in the return filed in pursuance to notice under section 148 of Act, instead of concealment of Rs. 1,00,000/-, which was made in the original return, the assessee makes a concealment of Rs. 50,000/- or makes no concealment, then what would be the

position in law. On this question, the learned counsel for the Revenue shifted his earlier stand and stated that even if the assessee discloses full particulars and makes no concealment, yet he would be liable for penalty on the basis of the original return and it would be open to the Income Tax Officer or the concerned assessing authority to ignore the subsequent return. To my mind, this again leaves the entire matter in dilemma and it will be open for the various assessing authorities to abuse the penalty provisions from time to time and from case to case on their whims, either to favour the assessee or to harm him. This was never the intention of the legislation.

(32) I am not unmindful of the fact that under section 139(5) of the Act, an assessee has been provided with an opportunity of making clean breast of his previous default and furnish a fresh revised return at any time before the assessment is made. Only in that eventuality, his original filing of the false return is excusable and no penalty can be imposed thereon under section 271 of the Act but it does not mean that the Income Tax Officer will keep on issuing notices from time to time to the same or different assessees under section 148 of the Act and every time it will be for the Income Tax Officer to choose any one of the returns in order to fix the liability on an assessee for purposes of penalty which either help an assessee or may go against him. Therefore, the counsel for the Department was also not sure as to which return should be treated as the return for purposes of fixing of penalty. In nutshell, the answer of the learned counsel for the Revenue comes to this that it is for the Income Tax Officer to pick up any return in the case of a given assessee and impose penalty on the basis of law as it was applicable on the date of filing of that return, whether it was an original, second, third or fourth return.

33. Neither Parliament thought that law would be interpreted in such a way nor the Courts will leave the matter in lurch and a firm guideline for universal application has to be laid down and, on considration of the aforesaid points, I am of the firm view that the date of filing of the first return should be taken into consideration for imposition of penalty according to the law applicable on that date. In this view of the matter, even if an assessee, in pursuance of a notice under section 148 of the Act, makes a clean breast of his original default and furnishes a return making no concealment whatsoever, even then he would be liable to penalty on the basis of his

original return. In this way, even the Revenue would not suffer. According to this interpretation, the intention of Parliament to impose lesser penalty, then increasing it and again reducing it will have to be harmoniously stuck to by the Income Tax Officers as the law applicable in each case would not be according to their whims but according to the law as it stood on the date of filing of the original return, whether at that time the penalty was less or higher or again less.

34. The matter is not *res integra* and for my above view, I find support from the various Division Bench judgments of the Allahabad, Madhya Pradesh, Madras and Andhra Pradesh High Courts, in *Commissioner of Income-tax, Lucknow* v. *Ram Achal Ram Sewak*, (supra) *Addl. Commissioner of Income-tax, Lucknow* v. *Krishna Subh Karan* (supra), *Addl. Commissioner of Income-tax* v. *Mewa Lal Sankatha Prasad* (supra), *Commissioner of Income-tax* v. *Ramchand Kundanlal Saraf* (8), *M/s. Sulemanji Ganibhai* v. *Commissioner of Income-tax, M.P. Bhopal* (9), *Commissioner of Gift-tax* v. *C. Muthukumaraswamy Mudaliar* (10). *The Commisioner of Income-tax, Madras (Central) Madras* v. *J.K.A. Subramania Chettiar* (11) *and The Addl. Commissioner of Income-tax, Anantapur, Hyderabad* v. *Dr. Khaja Khutabuddinkhan* (12). No case has been brought to my notice by the learned counsel for the Revenue taking a contrary view.

(35) Now coming to the point of double jeopardy, it would again be worthwhile to take notice of section 271(1)(c) of the Act which is to the effect — 'has concealed the particulars of his income or furnished inaccurate particulars of such income'. A reading of this provision would show that it is not the filing of the return which is the basis for the imposition of penalty but the concealment of income or furnishing of inaccurate particulars of such income. In other words, the moment income is concealed or inaccurate particulars are furnished, the offence for the imposition of penalty under this clause is committed by the assessee but the offence becomes complete when the document in which concealment is made is placed in the hands of the Tax Officer and this is done by the filing of the

(8) 98 I.T.R. 474 (M.P.).
(9) 1979 T.L.R. 274 (M.P.).
(10) 98 I.T.R. 540 (Madras).
(11) 1978 T.L.R. 380 (Madras).
(12) 1977 T.L.R. 1266 (A.P.).

return. So, the offence for purposes of penalty is complete the moment the return is placed before the Income Tax Officer and that is why all Courts have held that under section 271(1)(c) of the Act, the offence of concealment of income or furnishing of inaccurate particulars of income takes place by the filing of the return by the assessee. In this regard, reference may again be made to *C. V. Bagalkoti's case* and *Bhan Singh Boota Singh's case* (supra), *Commissioner of Income-tax* v. *Gopal Krishna Singhania* (13), *Smt. Kamla Vati* v. *Commissioner of Income-tax (Central), Patiala* (14) *and Amiad Ali Nazir Ali* v. *Commissioner of Income-tax Kanpur* (15). Therefore, once the offence under this provision is complete, to my mind, on a reading of section 271(1)(c) of the Act, it cannot be said that it can be repeated again and again whenever an assessee is called upon to furnish a fresh return under section 148 of the Act, for the same year, and to take a view to the contrary would mean that for the same offence an assessee can be punished twice over. This could be neither the intention of Parliament nor possibly the meaning of section 271(1)(c) of the Act. When the aforesaid point was posed to the counsel for the Revenue, he took a completely new stand very much different from what he had taken earlier and argued that it will not be a case of double jeopardy or imposition of penalty twice over for the same offence because what the Department can do is to impose penalties on all the returns filed from time to time for the same year but subject to the maximum penalty permissible under the law. I must confess I am wholly unable to understand or appreciate this argument. Such an inference as suggested by the learned counsel cannot be deduced from the decision of their Lordships of the Supreme Court in *N. A. Malbary and Bros.* v. *Commissioner of Income-tax, Bombay North.* (supra). On the contrary, according to the aforesaid decision of the Supreme Court, in respect of the same concealment two orders of penalty cannot stand and one order has to be recalled. As such, the question of imposition of penalties on all the returns for the same year but realisation of maximum penalty permissible under the law only does not arise even on the basis of the aforesaid decision. The facts in the aforesaid Supreme Court case were that the Income Tax Officer found that there was concealment of Rs. 37,500 and imposed

(13) 89 I.T.R. 271.
(14) 111 I.T.R. 248.
(15) 110 I.T.R. 419.

penalty of Rs. 20,000 thereon. But, when the case of the assessee for the following year came up before the Income Tax Officer and the assessee produced his account-books, the Income Tax Officer found that there was a profit of Rs. 1,25,520 for the last assessment year regarding which assessment had been completed. As such, he issued a notice under section 34 of the Income Tax Act, 1922, which is equivalent to section 148 of the Act, and imposed a penalty of Rs. 68,501 on the concealed income of Rs. 1,25,520. However, the Income Tax Officer failed to recall his order of imposition of penalty of Rs. 20,000. When the cases of penalty of Rs. 20,000 and Rs. 68,501 came before the Tribunal, the Tribunal quashed the penalty of Rs. 20,000/- but maintained the penalty of Rs. 68,501. This decision was maintained by the Supreme Court. Therefore, acocrding to the Supreme Court view only one penalty for one assessment year can be imposed and more than one penalty for the same year on the basis of different returns cannot be imposed. The question which is before us on the facts of this case was not involved in that case. Accordingly, I am of the opinion that the imposition of penalty on various returns filed for the same year but relisable subject to the maximum provided under the law is not justified.

(35-A) For the reasons recorded above, I conclude that the provisions of section 271(1)(iii) of the Act would be applicable in this case as it existed (that is, before its amendment which came into force with effect from 1st of April, 1968) and which prevailed at the time of the filing of the first return dated 21st April, 1967. Consequently, my answer to the question, which has been referred for the opinion of this Court, would be in the affirmative, that is, in favour of the assessee and against the Revenue. The assessee would be entitled to his costs from the Revenue.

S. S. Sandhawalia, C.J.

(36) I have the privilege of perusing the lucid judgments recorded by my learned brothers D. S. Tewatia and G. C. Mittal, JJ. I agree entirely with G. C. Mittal, J. and have nothing to add.

ORDER OF THE COURT

(37) In accordance with the majority view, it is held that the provisions of section 27(1)(iii) of the Act would be applicable in this

case as it existed (before its amendment which came into force with effect from 1st April, 1968) at the time of the filing of the first return dated the 21st April, 1967. Consequently, the answer to the question referred for the opinion of this Court is rendered in the affirmative, that is, in favour of the assessee and against the Revenue. The asessee would also be entitled to his costs.

S. S. Sandhawalia, C.J.
D. S. Tewatia, J.
Gokal Chand Mital, J.

N. K. S.

FULL BENCH

Before S. S. Sandhawalia, C.J., B. S. Dhillon and S. P. Goyal, JJ.

SAWAN RAM,—*Petitioner.*

versus

GOBINDA RAM and another,—*Respondents.*

Civil Revision No. 1324 *of* 1978.

October 15, 1979.

Haryana Urban (Control of Rent and Eviction) Act (11 of 1973)—*Sections* 2(*b*), (*c*) *and* (*h*), 13(1) *and* 15—*Suit for ejectment of a tenant filed in a Civil Court—Rent Act applicable to the premises in dispute—No specific provision in the Act barring jurisdiction of a Civil Court—Section* 13(1)—*Whether impliedly bars such jurisdiction.*

Held, that the Haryana Urban (Control of Rent and Eviction) Act 1973 is a complete Code about the tenant-landlord relationship as regards the matters for which it specifically provides. Section 2 is the defining provision and sub-sections (c) and (h) thereof specify with some precision the meanings which are to be attached to the words 'landlord' and 'tenant'. Significantly, section 2(b) also defines the Controller who is to be appointed by the State Government to perform the functions under the Act. For all practical purposes, jurisdiction with regard to the matters covered by the Act is taken away from the ordinary run of the Civil Courts and vested in the Controller. Particular reference, in this context is