

(10) For the reasons recorded above, I allow this petition with costs and quash the order of respondent No. 1, dated 11th May, 1972, and the charge-sheet served on the petitioner, dated 30th June, 1972. Counsel's fee Rs. 200.

B. S. G.

CIVIL MISCELLANEOUS

*Before Harbans Singh, C.J. and Bal Raj Tuli, J.*

ROSHAN LAL KUTHIALA,—*Petitioner.*

*versus*

THE COMMISSIONER OF INCOME-TAX, NEW DELHI,—  
*Respondent*

**Income Tax Reference No. 19 of 1972.**

March 28, 1973.

*Income-tax Act (XI of 1922 as amended by Act 7 of 1939)—Sections 22 and 28—Persons having assessable income failing to file return within the time prescribed by public notice issued under section 22(1)—Whether liable to pay penalty—Assurance given by the Government on the floor of the House not to levy such penalty—Assessee—Whether can avoid the penalty—Interpretation of statutes—Language of a section of a statute unambiguous—Assurance given on the floor of the Legislature at the time of its enactment—Whether can be taken into consideration for interpretation thereof.*

*Held*, that a combined reading of sections 22(1) and 28 of the Income-tax Act, 1922 as amended, makes it clear that every person who has an assessable income has to file the return of his income within the period stated in the public notice issued under sub-section (1) of section 22 and, if he fails to do so, he incurs a penalty under section 28. It is open to the Income-tax Officer to issue individual notice to each assessee under sub-section (2) of section 22 requiring the assessee to file his return of income within a period of not less than thirty days and if the assessee to whom the notice is issued does not file the return within the time prescribed, he is liable to pay penalty under section 28. It is thus clear that it is not mandatory for the Income-tax Officer to issue notice to every assessee to file his return of income. Any assurance given on the floor of the Legislature by the Government that the practice of issuing individual notices to the assessee would be continued and no penalty would be

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levied if return was not filed by an assessee within the time prescribed in the public notice, cannot avail the assessee to avoid the penalty consequent on the default in filing the return.

*Held*, that assurance given on the floor of the Legislature at the time a statute is enacted cannot be taken into consideration by any Court for the interpretation of a section of that statute if the language used in the section is unambiguous and clear. The language used in the section has to be interpreted without aid of anything said during its passage in the Legislature. Hence the assurance alleged to have been given on the floor of the Legislature at the time of the passage of the Indian Income-tax (Amendment) Act, 1939 whereby sections 22 and 28 of the Income-tax Act, 1922 were amended that the practice of issuing individual notices to the assesseees under section 22(2) of the Act would be continued and no penalty would be levied if return was not filed by an assessee within the time prescribed in the public notice issued under sub-section (1) of section 22, cannot avail an assessee to avoid the penalty consequent on the default in filing the return within the prescribed period.

*Reference made under Section 256(1) of the Income Tax Act, 1961, by the Income Tax Appellate Tribunal, Chandigarh Bench,—vide its order dated 24th May, 1972, for opinion to this Hon'ble Court on the following questions of law arising out of Tribunal's order dated 12th August, 1970 in I.T.A. No. 19571 of 1967-68 for the assessment year 1958-59:*

- (1) *Whether, on the facts and in the circumstances of the case, the Tribunal has rightly refused to take notice of the assurances given on the floor of the House at the time of enactment of section 28 of the Act of 1922?*
- (2) *Whether, on the facts and in the circumstances of the case, it has been rightly held by the Tribunal that there was a proper initiation of proceedings under section 271 (1) (a) read with sections 274 and 275 of the Act of 1961."*

M. M. Punchhi, Advocate, for the petitioners.

D. N. Awasthy and B. S. Gupta, Advocate, for the respondents.

**JUDGMENT**

Judgment of the Court was delivered by :—

**Tuli, J.**—The Income-Tax Officer issued a notice under section 34 of the Indian Income-tax Act, 1922, dated November 14, 1961, which was served on the assessee, Shri Roshan Lal Kuthiala, on

November 30, 1961, for the assessment year 1958-59. The assessee applied for time till February 15, 1962, for filing the return of income, but he actually filed that return on May 7, 1962, showing an income of Rs. 3,38591. Provisional assessment was made on May 23, 1962, and the tax of Rs. 2,27,307.84 P. as demanded, was paid in time. Regular assessment was made on an income of Rs. 3,44,668 by order dated December 31, 1962, and the tax determined was Rs. 2,66,794. The assessee was given credit for Rs. 2,25,337, the amount paid under the provisional assessment, after some minor adjustments and the demand notice under section 156 of the Income-tax Act, 1961, was issued for Rs. 41,456. This amount was paid.

(2) While completing the assessment, the Income-Tax Officer gave the following direction:—

“Also issue notice under section 28(1) for default of notice under section 22(1). Charge penal interest and also issue notice under section 18-A(1)/28 for default of section 18-A and for default of section 18-A(3) as the assessee has himself filed return showing an income of Rs. 3,38,591.”

No notice under section 28(3) was, however, issued to the assessee till the Income-tax Appellate Tribunal heard the appeal. Notice under section 271(1)(a), dated May 27, 1963, was issued and served on the assessee on the same day. A penalty of Rs. 1,27,643 was imposed. The appeal filed by the assessee before the Appellate Assistant Commissioner of Income-tax was dismissed on November 15, 1967, and the order of the Income-Tax Officer imposing penalty of Rs. 1,27,643, that is, 50 per cent of the tax, as laid down in clause (i) of section 271(1) of the Income-tax Act, 1961, was upheld. The assessee filed a further appeal before the Income-tax Appellate Tribunal and pleaded that since no notice under section 22(2) of the Indian Income-tax Act, 1922, had been issued to him, although he was a previous assessee, no penalty could be imposed for late filing of the return of his income. His learned counsel addressed the Tribunal on the following points:—

- (i) there was no proper initiation of proceedings under section 271(1)(a) within the meaning of sections 274 and 275, of the Income-tax Act, 1961;
- (ii) the tax payable, if any, has been wrongly interpreted to be the gross tax as determined whereas the tax payable as per the demand notice under section 156 was Rs. 41,456.67

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Paise and, therefore, the penalty is disproportionate to the tax payable;

- (iii) in proceedings under section 34, no notice can be taken of the default, if any, committed under section 22(1);
- (iv) by virtue of the assurances given on the floor of the House at the time of bringing on the statute book the provisions of section 22(1), no penalty could be imposed for default under section 22(1);
- (v) rate of penalty, i.e., 2 per cent does not mean more mathematical calculations, but it can also mean penalty from 0 per cent to 2 per cent;
- (vi) to the extent there was a default under the old Act, substantive provisions of the old Act are applicable and to that extent, the quantum of penalty is governed by the old Act; and
- (vii) the assessee was not without reasonable cause within the meaning of section 271(1) (a).

The findings of the Tribunal on these points were:—

- (i) that the issue of the notice and the service thereof is proper, but the practice of issuing belated notice, as in the instant case, is a practice which can prove harmful to the Revenue itself and should not be encouraged—rather should be stopped forthwith;
- (ii) that the penalty should be levied on the basis of the tax payable as indicated in the demand notice, that is, Rs. 41,456;
- (iii) that the default continues to run till the date the return is filed and the issue of a notice under section 34 does not automatically condone the default committed under section 22(1);
- (iv) that the Court cannot take note of the assurances given on the floor of the House,
- (v) that the rate of penalty is specifically prescribed at 2 per cent—nothing more nothing less;

- (vi) that for the default committed under the old Act, the substantive provisions of the old Act would apply but the penalty proceedings can be processed under the new Act;
- (vii) that the assessee was not without reasonable cause for filing the return up to the period ending February 15, 1962, and the assessee was without reasonable cause for the period from February 15, 1962, to May 7, 1962; and
- (viii) that the penalty should be recomputed for the default as determined on the basis of the tax payable as asked for in the notice of demand, that is, Rs. 41,456.

Thus the Tribunal allowed substantive relief to the assessee but feeling dissatisfied, the assessee asked for reference under section 256(1) of the Income-tax Act, 1961. The Tribunal has referred the following two questions of law for this Court's opinion:—

- “1. Whether, on the facts and in the circumstances of the case, the Tribunal has rightly refused to take notice of the assurances given on the floor of the House at the time of enactment of section 28 of the Act of 1922 ?
2. Whether, on the facts and in the circumstances of the case, it has been rightly held by the Tribunal that there was a proper initiation of proceedings under section 271(1)(a) read with sections 274 and 275 of the Act of 1961.”

The assessee died on December 1, 1972, and Rajinder Lal Kuthiala (son), Ravinder Lal Kuthiala, (son) and Smt. Lila Devi (widow) have been brought on the record as his legal representatives.

(3) At the hearing of the reference, the counsel for the assessee has not pressed question No. 2 and that question is, therefore, returned unanswered. With regard to question No. 1, there can be no manner of doubt that any assurance given on the floor of the House at the time a statute is enacted cannot be taken into consideration by any Court for the interpretation of any section of that statute if the language used in the section is unambiguous and clear. The language used has to be interpreted without the aid of anything said during its passage in the Legislature. Section 22(2) of the Income-tax Act, 1922, as originally enacted, read as under:—

“In the case of any person other than a Company whose total income is, in the Income-tax Officer's opinion, of such an

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amount as to render such person liable to income-tax, the Income-tax Officer shall serve a notice upon him requiring him to furnish, within such period, not being less than thirty days as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth (along with such other particulars as may be provided for in the notice) his total income during the previous year."

Under this provision, no person was required to file his return of income till he received a notice from the Income-tax Officer. This section was amended by section 24 of the Indian Income-tax (Amendment) Act, 1939 (7 of 1939), as a result of which sub-sections (1) and (2) of section 22 read as under:—

"(1) The Income-tax Officer shall, on or before the 1st day of May in each year, give notice, by publication in the press and by publication in the prescribed manner, requiring every person whose total income during the previous year exceeded the maximum amount which is not chargeable to income-tax to furnish, within such period not being less than sixty days as may be specified in the notice, a return, in the prescribed form and verified in the prescribed manner, setting forth (along with such other particulars as may be required by the notice) his total income and total world income during that year:

Provided that the Income-tax Officer may in his discretion extend the date for the delivery of the return in the case of any person or class of persons.

2. In the case of any person whose total income is, in the Income-tax Officer's opinion, of such an amount as to render such person liable to income-tax, the Income-tax Officer may serve a notice upon him requiring him to furnish; within such period not being less than thirty days; as be specified in the notice, a return in the prescribed form and verified in the prescribed manner setting forth (along with such other particulars as may be provided for in the notice) his total income and total world income during the previous year:

Provided that the Income-tax Officer may in his discretion extend the date for the delivery of the return."

By the same Amendment Act, section 28 of the Indian Income-tax Act, 1922, was amended so as to read as under:—

"28(1) If the Income-tax Officer, the Appellate Assistant Commissioner or the Appellate Tribunal, in the course of any proceedings under this Act, is satisfied that any person:—

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

(b) \* \* \* \* "

(c) \* \* \* \* "

he or it may direct that such person shall pay by way of penalty in the case referred to in clause (a), in addition to the amount of the income-tax and super-tax, if any, payable by him, a sum not exceeding one and a half times that amount, and in the cases referred to \* \* \* \*".

(4) A combined reading of sections 22(1) and 28, as amended, makes it clear that every person, who had an assessable income had to file the return of his income within the period stated in the public notice issued under sub-section (1) of section 22 and, if he failed to do so, he incurred a penalty under section 28. It was open to the Income-tax Officer to issue individual notice to each assessee under sub-section (2) of section 22 requiring the assessee to file his return of income within a period of not less than thirty days and if the assessee to whom the notice was issued did not file the return within the time prescribed, he was liable to pay penalty under section 28. It is thus clear that it was not mandatory for the Income-tax Officer to issue notice to every assessee to file his return of income. Sub-section (1) of section 22 imposed a duty on an assessee to file a return of his income, if assessable, within the period stated in the public notice which was to be of not less than sixty days. Since the assessee in the instant case did not file his return of income within the period

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specified in the public notice for the assessment year 1958-59, he committed a default in filing the return of his income and incurred penalty under section 28 of the Indian Income-tax Act, 1922. Notice was issued to him under section 34 of that Act, which was served on him on November 30, 1961, and he applied for extension of time to file the return of his income up to March 15, 1962, but was allowed extension up to February 15, 1962. It cannot be said that two and a half months' time allowed to him was insufficient. In any case, he never applied for any further extension of time and on his own filed the return of his income on May 7, 1962. The Tribunal has held that the failure of the assessee to file the return of his income up to February 15, 1962, was not without reasonable cause and, therefore, no penalty could be imposed for late filing of the return till that date. The Tribunal has, however, found that the default in filing the return from February 15, 1962, to May 7, 1962, was without reasonable cause. For that period, the alleged assurance given on the floor of the House that the practice of issuing individual notices to the assesseees would be continued and no penalty would be levied if return was not filed by an assessee within the time prescribed in the public notice, cannot avail the assessee to avoid the penalty consequent on the default in filing the return between February 15, 1962 and May 7, 1962 in this case. The notice under section 34 to file the return was issued to the assessee and was served on him on November 30, 1961, in pursuance of which he asked for time up to March 15, 1962, to file his return. He was allowed time up to February 15, 1962, and he never asked for any further extension of time. By the said notice, it was brought to his pertinent notice that he had committed the default under section 22(1) of not filing the return of his income within the time stated in the public notice and on receipt of that notice he applied for extension of time which was allowed but he did not file the return of his income within the extended time. In these circumstances, the Income-tax Appellate Tribunal was fully justified in refusing to take notice of the assurance given on the floor of the House at the time of the amendment of sections 22 and 28 by the Indian Income-tax (Amendment) Act, 1939, *qua* the period from February 15 and May 7, 1962. Our answer to question No. 1 is, therefore, in the affirmative. The assessee will pay the costs of this reference to the respondent which are assessed at Rs. 250.

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B. S. G.