

Nem Kumar Tholia Vs. Additional Commissioner of Income-tax

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Court : Rajasthan

Decided On : Aug-07-1991

Reported in : [1992]194ITR371(Raj)

Judge : K.C. Agrawal, C.J.,; M.B. Sharma and; M.R. Calla, JJ.

Acts : [Income Tax Act, 1961](#) - Sections 271(1) and 274(2); Taxation Laws (Amendment) Act, 1970; Taxation Laws (Amendment) Act, 1975

Appeal No. : F.B. Reference No. 19 of 1974

Appellant : Nem Kumar Tholia

Respondent : Additional Commissioner of Income-tax

Advocate for Def. : V.K. Singhal, Adv.

Advocate for Pet/Ap. : N.M. Ranka, Adv. assisted by J.K. Ranka, Adv.

Judgement :

ORDER

S.C. Agrawal, J.

1. In this reference, made under Section 256(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'), at the instance of the assessee, the Income-tax Appellate Tribunal, Jaipur Bench, Jaipur (hereinafter referred to as 'the

Tribunal'), has referred the following questions for the consideration of this court:

'1. Whether the Tribunal was justified in holding that the penalty provisions which govern the levy of a penalty in a case are those which exist on the date on which the return is filed and that the law as in force on the first day of the assessment year will not govern the levy of penalty ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in applying the law of penalty contained in Section 271(1)(c) as it stood on April 10, 1969, after the date on which the returns for the assessment years 1966-67 and 1967-68 were filed ?'

2. This reference relates to the assessment years 1966-67 and 1967-68.

3. The assessee carries on business in purchase and sale of jewellery, precious stones and antiques. In respect of the assessment year 1966-67, the assessee filed a return declaring an income of Rs. 3,295. The Income-tax Officer, by his assessment order dated December 18, 1969, assessed the assessee's income at Rs. 25,000. In the said assessment order, it was also directed that penalty notice under Sections 274/271(1)(b) and 271(1)(c) of the Act may be issued. In respect of the assessment year 1967-68, the assessee, in the return, declared an income of Rs. 4,500 and the Income-tax Officer, in his assessment order dated February 25, 1970, assessed the income of the assessee at Rs. 20,000. In the said assessment order, the Income-tax Officer, also mentioned that penalty notice under Section 274 read with Sections 271(1)(b) and 271(1)(c) had already been issued. The assessee filed appeals against these assessment orders. The said appeals were dismissed by the Appellate Assistant Commissioner by his order dated July 23, 1970. The assessee went in further appeal before the Tribunal and the Tribunal, by order dated April 6, 1972, partly allowed the appeals and the income of the assessee was assessed at Rs. 15,000 for each year. Since the income returned by the assessee was less than 80% of the income as finally assessed, penalty proceedings were initiated by the Income-tax Officer by issuing a notice under Section 271(1)(c) read with Section 274 of the Act. The said penalty proceedings were referred by the Income-tax Officer to the Inspecting Assistant Commissioner, Jaipur Range I, Jaipur, and the Inspecting Assistant Commissioner after giving an

opportunity to the assessee to make his submissions, passed orders dated February 22, 1972, whereby he levied a penalty of Rs. 22,000 on the assessee under Section 271(1)(c) in respect of the assessment year 1966-67 and a penalty of Rs. 16,000 under Section 271(1)(c) in respect of the assessment year 1967-68. Against both these orders passed by the Inspecting Assistant Commissioner, the assessee filed appeals before the Tribunal which were decided by the Tribunal by the order dated May 30, 1973. Before the Tribunal, it was submitted on behalf of the assessee that the penalty had been imposed by the Inspecting Assistant Commissioner in respect of the assessment years 1966-67 and 1967-68 on the basis of the provisions of Section 271(1)(c) as amended with effect from April 1, 1968, and that in respect of the assessment years 1966-67 and 1967-68, the law regarding the imposition of penalty which came into force with effect from April 1, 1968, could not be applied and penalty could only be imposed in accordance with the law which was applicable during the assessment years 1966-67 and 1967-68. It was also submitted on behalf of the assessee before the Tribunal that the Income-tax Officer was the competent authority to impose the minimum penalty as per the law applicable on April 1, 1966, and on April 1, 1967, because the minimum penalty at the relevant time was less than Rs. 1,000 and that the Inspecting Assistant Commissioner erred in exercising jurisdiction in the matter. The Tribunal rejected these contentions urged on behalf of the assessee and held that, for the purpose of imposing penalty, the relevant law to be applied is the law which was in force on the date on which the false return was filed and not the law which was in force on the first day of the relevant assessment year and that, in the present case, the returns for both the years had been filed on April 10, 1969, and, therefore, the law applicable would be the law which was in force on April 10, 1969, i.e., the law as it stood after the amendment of 1968. According to the Tribunal, the jurisdiction of the Inspecting Assistant Commissioner had also to be determined on the basis of the provisions with regard to penalty as they stood on the date of the filing of the return, and that the Inspecting Assistant Commissioner had jurisdiction to deal with the matter because the amount of penalty leviable exceeded Rs. 1,000. The Tribunal, however, reduced the penalty to Rs. 14,000 for the assessment year 1966-67 and Rs. 12,000 for the assessment year 1967-68 and, to this extent, the Tribunal partly allowed the appeals of the assessee.

Feeling aggrieved by the said order of the Tribunal, the assessee filed an application under Section 256(1) of the Act and on the said application, the Tribunal has referred the two questions mentioned above for the consideration of this court.

4. We have heard Shri N. M. Ranka, learned counsel for the assessee, and Shri V. K. Singhal, learned counsel for the Revenue.

5. Shri Ranka has urged that imposition of penalty under the Act involves two aspects, viz., (i) the quantum of penalty that can be imposed, and (ii) the jurisdiction of the authority who is entitled to impose the penalty. Shri Ranka has pointed out that, in the present case, the Tribunal has expressed the view that, in respect of both these matters, the law to be applied is the law which was in force on the date of filing the return. Shri Ranka has submitted that, in view of the decision of the Supreme Court in *Brij Mohan v. CIT* : [1979]120ITR1(SC) , the relevant date for applying the law in the matter of the quantum of penalty that can be imposed under Section 271 of the Act is the date on which the wrongful act for which penalty is leviable was committed, and if the wrongful act is concealment of income, the said date is the date on which the return was filed. As regards the date with reference to which the jurisdiction of the authority imposing the penalty is to be considered, the submission of Shri Ranka is that the authority passing the order imposing the penalty should possess the jurisdiction to do so at the time of initiation of the penalty proceedings as well as on the date of passing of the final order imposing the penalty. Shri Ranka has contended that in the present case on the date of the passing of the orders dated February 22, 1972, imposing the penalty under Section 271(1)(c) read with Section 274 of the Act, the Inspecting Assistant Commissioner had ceased to have jurisdiction to impose the penalty in this matter in view of the amendment introduced in Section 274(2) of the Act by the Taxation Laws (Amendment), Act, 1970, with effect from April 1, 1971. As a result of the said amendment, the jurisdiction of the Income-tax Officer to impose penalty under Section 271(1)(c) was enlarged and he was empowered to impose penalty in cases where the amount of income in respect of which particulars had been concealed or inaccurate particulars had been furnished did not exceed Rs. 25,000 and to that extent the jurisdiction of the Inspecting Assistant Commissioner

was curtailed and that since the amount of the income in respect of which particulars had been concealed or inaccurate particulars had been furnished was less than Rs. 25,000, the Income-tax Officer was entitled to impose the penalty and the Inspecting Assistant Commissioner had no jurisdiction to pass the orders imposing the penalty on February 22, 1972, i.e., after April 1, 1971.

6. Shri Singhal has, however, submitted that the contention urged by Shri Ranka with regard to the Inspecting Assistant Commissioner having lost the jurisdiction to pass the orders dated February 22, 1972, is not covered by the questions which have been referred and since this question does not arise out of the order dated May 30, 1973, passed by the Tribunal, this contention should not be permitted to be raised. Shri Singhal has also supported the orders passed by the Inspecting Assistant Commissioner and has submitted that the jurisdiction of the Inspecting Assistant Commissioner has to be determined on the basis of the law as it stood on the date of initiation of the penalty proceedings and that, in the present case, the penalty proceedings had been initiated by the Income-tax Officer by issuing notices under Section 271(1)(c) of the Act by his orders dated December 18, 1969, and February 25, 1970, much before April 1, 1971, and that the penalty proceedings initiated on the basis of these notices which were pending before the Inspecting Assistant Commissioner on April 1, 1971, could be disposed of by the Inspecting Assistant Commissioner in spite of the change in the provisions of Section 274(2) of the Act by the Taxation Laws (Amendment) Act, 1970, with effect from April 1, 1971.

7. In view of the aforesaid submissions, we find that in so far as question No. 2 is concerned, there does not appear to be any controversy between the parties in view of the decision of the Supreme Court in *Brij Mohan v. CIT* : [1979]120ITR1(SC) , that the law in relation to the quantum of penalty which can be imposed under Section 271(1)(c) is the law existing on the date of concealment of income, namely, the date of filing the return. The Tribunal has also proceeded on that basis.

8. As regards the jurisdiction of the Inspecting Assistant Commissioner to pass the orders dated February 22, 1972, we find that question No. 1 is not happily worded

inasmuch as it confines the matter to be considered on the basis of only two dates, namely, the date on which the return was filed or the first day of the assessment year in relation to which the penalty is being imposed. We find that the question with regard to the jurisdiction of the Inspecting Assistant Commissioner to pass the orders dated February 22, 1972, has to be considered in a wider perspective inasmuch as, apart from the two dates covered by that question, there are decisions of various High Courts in which it has been held that the jurisdiction of the officer imposing the penalty has to be determined on the basis of law as it stood on (i) the date on which the penalty proceedings were initiated ; (ii) the date on which the matter was referred by the Income-tax Officer to the Inspecting Assistant Commissioner ; (iii) the date on which the order imposing the penalty was passed. We find that, before the Tribunal, the broad question was with regard to the jurisdiction of the Inspecting Assistant Commissioner to pass the orders dated February 22, 1972, imposing the penalty and it was urged that, on the date of passing of those orders, the Inspecting Assistant Commissioner did not have the jurisdiction to pass the said orders. The said contention was based on the ground that the law with regard to the jurisdiction of the officer to impose the penalty has to be the law in force on the first day of the assessment year in respect of which the penalty was imposed and the said contention was rejected by the Tribunal. Shri Ranka is now questioning the jurisdiction of the Inspecting Assistant Commissioner on a different basis, namely, that, on the date of the passing of the orders dated February 22, 1972, the Inspecting Assistant Commissioner had ceased to have the jurisdiction to pass the said orders in view of the amendment introduced in Section 274(2) by the Taxation Laws (Amendment) Act, 1970. We are of the view that this contention of Shri Ranka is only one facet of the contention urged before the Tribunal that the Inspecting Assistant Commissioner had no jurisdiction to pass the orders dated February 22, 1972, and, in our opinion, the assessee cannot be precluded from raising this contention.

9. Question No. 1 as framed by the Tribunal confines its scope to two alternatives only, namely, the law existing on the date on which the return was filed and the law in force on the first day of the assessment year in respect of which the penalty has been imposed. The question as framed does not enable the court to examine

any other alternative with regard to the applicability of the law relating to conferment of jurisdiction and since divergent views have been expressed by the various High Courts on this aspect, we consider it appropriate in the interest of justice to reframe question No. 1 as under :

'Whether, on the date of the passing of the orders dated February 22, 1972, the Inspecting Assistant Commissioner had the jurisdiction under Section 274(2) of the Act to pass the said orders imposing penalty under Section 271(1)(c) of the Act?'

10. Having reframed question No. 1 in these lines, we may point out that prior to the coming into force of the Taxation Laws (Amendment) Act, 1970, with effect from April 1, 1971, Section 274(2) of the Act read as follows :

'(2) Notwithstanding anything contained in Clause (iii) of Subsection (1) of Section 271, if in a case falling under Clause (c) of that Subsection, the minimum penalty imposable exceeds a sum of rupees one thousand, the Income-tax Officer shall refer the case to the Inspecting Assistant Commissioner who shall, for the purpose, have all the powers conferred under this Chapter for the imposition of penalty.'

11. As a result of amendment introduced by the Taxation Laws (Amendment) Act, 1970, with effect from April 1, 1971, Section 274(2) provided as follows :

'(2) Notwithstanding anything contained in Clause (iii) of Subsection (1) of Section 271, if in a case falling under Clause (c) of that Sub-section, the amount of income (as determined by the Income-tax Officer on assessment) in respect of which the particulars have been concealed or inaccurate particulars have been furnished exceeds a sum of twenty-five thousand rupees, the Income-tax Officer shall refer the case to the Inspecting Assistant Commissioner who shall, for the purpose, have all the powers conferred under this Chapter for the imposition of penalty.' ,

12. By the Taxation Laws (Amendment) Act, 1975, Section 274(2) has been deleted with effect from April 1, 1976.

13. The question as to the competence of the authority imposing the penalty under Section 271(1)(c) in the light of the above-mentioned amendments in Section

274(2) has come up for consideration before the various High Courts and there is a great divergence of judicial opinion on this subject.

14. The Madras High Court in *Continental Commercial Corporation v. ITO* : [1975]100ITR170(Mad) , has expressed the view that the relevant date for the purpose of assumption of jurisdiction to pass an order under Section 274(2) of the Act is the date of the filing of the return. The other High Courts have, however, not agreed with this view.

15. In *Uma Maheswari and Co. v. CIT* : [1987]167ITR628(AP) , the Andhra Pradesh High Court has expressed the view that the date on which the Income-tax Officer arrived at the satisfaction in terms of Section 271 of the Act should be the date with reference to which a jurisdiction to impose penalty under Section 274 must be determined and since the satisfaction is recorded by the Income-tax Officer in the order of assessment, then the date of the order of assessment should be the date with reference to which the jurisdiction under Section 274(2) must be determined. The same view was taken by the Bombay High Court in *CIT v. Deorao Shrawan Maundekar* : [1988]169ITR19(Bom) . Special leave petition filed against the said decision of the Bombay High Court was dismissed by the Supreme Court (See [1988] 169 ITR 11).

16. The High Court of Punjab and Haryana, in *CIT v. Raman Industries* and *CIT v. Sadhu Ram* , has held that the date on which the penalty proceedings have been initiated by the Income-tax Officer would govern the jurisdiction under Section 274(2) of the Act. The same view has been reiterated by the said High Court in its recent decision in *CIT v. Gopi Ram Mulakh Raj* .

17. A number of High Courts have taken the view that the relevant date for the purpose of determination of jurisdiction is the date on which the matter was referred by the Income-tax Officer to the Inspecting Assistant Commissioner and that the jurisdiction of the Inspecting Assistant Commissioner has to be determined with reference to the said date. The said view has been adopted by the High Courts of Madhya Pradesh (*CIT v. A.N. Tiwari* : [1980]124ITR680(MP) , *CIT v. Shri Ram Prakash Saraf* : [1986]160ITR860(MP) and *Arya Confectionary Works v. CIT* : [1987]163ITR840(MP) (*CIT v. Ganga Dayal Sarju Prasad* :

[1985]155ITR618(Patna) and CIT v. Badshah Prasad : [1987]163ITR760(Patna)) ; Calcutta (CIT v. Eastern Development Corporation : [1982]135ITR516(Cal)) and Gujarat (CIT v. Royal Motor Car Co. : [1977]107ITR753(Guj) , CIT v. Balabhai and Co. : [1980]122ITR301(Guj) and CIT v. Manu Engineering Works : [1980]122ITR306(Guj) .

18. In some cases, the Bombay High Court has also taken this view (CIT v. Abdullabhai Hassanali : [1988]169ITR22(Bom) CIT v. Gangadas Topan-das : [1984]150ITR437(Bom) and CIT v. Bkutani Enterprises : [1984]147ITR389(Bom)). The same view has been taken by this court (CIT v. Sri Niwas Rice and Oil Industries , CIT v. Smt. Amar Kumari , CIT v. New Beawar Traders [1988] 171 ITR 167, CIT v. Kishan Lal Kanhya Lal [1988] 171 ITR 165 and CIT v. Khan Chand Madan Lal .

19. In CIT v. Mohinder Lal , a Full Bench of the High Court of Punjab and Haryana has held that a reference to the Inspecting Assistant Commissioner would be deemed to have been made the moment a finding is recorded that the income concealed exceeds Rs. 25,000 and a reference is ordered to be made and not when the ministerial act of sending the reference by the office is actually done.

20. In some of the decisions referred to above, viz., Addl. CIT v. Dr. Khaja Khutabuddinkhan : [1978]114ITR905(AP) CIT v. A. N. Tiwari : [1980]124ITR680(MP) , CIT v. Eastern Development Corporation : [1982]135ITR516(Cal) , Addl. CIT v. Watan Mechanical and Turning Works : [1977]107ITR743(AP) CIT v. Balabhai and Co. : [1980]122ITR301(Guj) CIT v. Manu Engineering Works : [1980]122ITR306(Guj) , CIT v. Ganga Dayal Sarju Prasad : [1985]155ITR618(Patna) , CIT v. Raman Industries , CIT v. Sadhu Ram , CIT v. Mohinder Lal it has also been held that penalty proceedings which were pending on the date of amendment of Section 274(2) of the Act have to be governed by the old law and not by the amended provisions.

21. The High Courts of Allahabad (Mohd. Oais and Co. v. CIT : [1983]142ITR104(All) ; CIT v. Om Sons : [1979]116ITR215(All) ; CIT v. J.K. Jute Mill Co. : [1987]163ITR816(All) ; Ratan Deo v. CIT : [1987]163ITR837(All)), Orissa (CIT v. Dhadi Sahu : [1976]105ITR56(Orissa) ; Bhikari Charan Panda v.

IAC : [1978]112ITR526(Orissa) and Radheshyam Agarwalla v. CIT : [1978]113ITR196(Orissa)), Karnataka (Addl. CIT v. M.Y. Chandragi : [1981]128ITR256(KAR) ; CIT v. Sujatha Industries : [1987]163ITR263(KAR)), Gauhati (Banwari-lal Chowkhani v. CWT) and Kerala (CIT v. P. I. Issac : [1987]168ITR793(Ker)) have taken the view that the jurisdiction of the officer to pass the order imposing the penalty conferred by Section 274(2) of the Act must have existed not only on the date of initiation of the proceedings but must have also existed on the date of the passing of the final order and if, on the said date, the said officer has ceased to have jurisdiction, he cannot pass the order imposing the penalty. This view proceeds on the basis that Section 274(2) is in the nature of procedural provision and penalty proceedings pending on the date of amendment of Section 274(2) would be governed by the provisions as amended.

22. Shri Ranka has placed reliance on the decisions of the High Courts of Allahabad, Orissa, Karnataka, Gauhati and Kerala referred to above and has urged that the Inspecting Assistant Commissioner had ceased to have jurisdiction in view of the amendment introduced in Section 274(2) by the Taxation Laws (Amendment) Act, 1970, with effect from April 1, 1971, and the said orders imposing penalty dated February 22, 1972, are null and void being without jurisdiction. Shri Singhal has, on the other hand, placed reliance on the decisions of the High Courts of Andhra Pradesh and Punjab and Haryana as well as on the decisions of the Bombay High Court in CIT v. Deorao Shrawan Maundekar : [1988]169ITR19(Bom) , and has urged that the jurisdiction of the Inspecting Assistant Commissioner to pass the order dated February 22, 1972, has to be determined on the basis of the date of passing of the assessment order by the Income-tax Officer when, after being satisfied, he directed issuance of notice under Section 271(1)(c) of the Act. As regards the decisions of this court wherein it has been held that the jurisdiction has to be determined on the basis of the date of the order of reference passed by the Income-tax Officer in the penalty proceedings, the submission of Shri Singhal is that the decisions of the other High Courts were not brought to the notice of this court when these cases were decided and the view taken by this court needs reconsideration. In support of his aforesaid submission, Shri Singhal has also placed reliance on the decisions of the Supreme Court in Jain Bros. v. Union of India : [1970]77ITR107(SC) , D.M. Manasvi v. CIT :

[1972]86ITR557(SC) and Maya Rani Punj v. CIT : [1986]157ITR330(SC) , wherein the Supreme Court has laid down that it is satisfaction of the income-tax authority that a default has been committed by the assessee which would attract the provisions relating to penalty. Shri Singhal has also referred to the decisions of this court in Rasoolji Buxji v. CIT , wherein it has been laid down that the date of satisfaction by the income-tax authorities about the default is the date of completion of the assessment when satisfaction of these income-tax authorities is reached that a case for imposition of penalty arises.

23. Having noticed the divergence of opinion amongst various High Courts on this question and keeping in view the decisions of this court holding that the date of reference by the Income-tax Officer is the relevant date as well as the subsequent decision in Rasoolji Buxji v. CIT , that the date of satisfaction by the income-tax authorities about the default is the date of completion of the assessment, we are of the view that question No. 1 (as reframed by us) needs consideration by a larger Bench. Since the said question is the main question which needs to be considered in this reference, we are of the view that the entire reference may be considered by the larger Bench and we, therefore, refer it to the larger Bench.

24. The papers may be placed before the Hon'ble Chief Justice for necessary directions.

OF FULL BENCH

K.C. Agrawal, C.J.

25. By the judgment dated January 29, 1974, the Income-tax Appellate Tribunal, Jaipur Bench, made a reference under Section 256(1) of the Income-tax Act, 1961, (hereinafter referred to as the 'Act') at the instance of the assessee for deciding the following two questions :

'1. Whether the Tribunal was justified in holding that the penalty provisions which govern the levy of penalty in a case are those which exist on the date on which the return is filed and that the law as in force on the first day of the assessment year will not govern the levy of penalty ?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in applying the law of penalty contained in Section 271(1)(c) as it stood on April 10, 1969, after the date on which the returns for the assessment years 1966-67 and 1967-68 were filed ?'

26. Question No. 1, aforesaid, framed by the Tribunal, confined its scope to two alternatives only, namely, the law existing on the date on which the return was filed and the law in force on the first day of the assessment year in respect of which the penalty had been imposed. In order to consider its scope, a Division Bench of this court, while referring the matter to the larger Bench, reframed the same, which runs as under :

'Whether, on the date of the passing of the orders dated February 22, 1972, the Inspecting Assistant Commissioner had the jurisdiction under Section 274(2) of the Act to pass the said orders imposing penalty under Section 271(1)(c) of the Act ?'

27. Prior to the coming into force of the Taxation Laws (Amendment) Act, 1970, with effect from April 1, 1971, Section 271(1)(c) of the Act conferred jurisdiction on the Income-tax Officer to impose penalty. The first step towards the imposition of penalty was the recording of the satisfaction by the Income-tax Officer in the course of any proceeding that the assessee had concealed particulars of his income or furnished inaccurate particulars. The moment satisfaction was recorded, penalty was imposable subject to the provisions of Sub-sections (1) and (2) of Section 274 of the Act. Sub-section (1) of Section 274 provided that no order imposing a penalty could be made unless the assessee had been heard or given a reasonable opportunity of being heard. Sub-section (2) of Section 274, as it stood prior (after ?) to April 1, 1971, was as under :

'Notwithstanding anything contained in Clause (iii) of Sub-section (1) of Section 271, if in a case falling under Clause (c) of that Sub-section, the amount of income (as determined by the Income-tax Officer on assessment), in respect of which the particulars have been concealed or inaccurate particulars have been furnished exceeds a sum of twenty-five thousand rupees, the Income-tax Officer shall refer the case to the Inspecting Assistant Commissioner who shall, for the purpose, have all the powers conferred under this Chapter for the imposition of penalty,'

28. The original scheme of this section was different. Sub-section (2) of the section, prior to its revision with effect from April 1, 1976, provided that if a case fell under Section 271(1)(c) (concealment of income) and the minimum penalty imposable exceeded Rs. 1,000 (or the concealed income exceeded Rs. 25,000 under the amended law from April 1, 1971), the Income-tax Officer (though entitled to initiate penalty proceedings by issuing or directing the issue of a show-cause notice) had no power to impose a penalty under Section 271, but he was bound to refer the case to the Inspecting Assistant Commissioner who was empowered to impose a penalty in such a case. (See *Gupta Rice Mills v. CIT* : [1980]123ITR825(All)). If the Income-tax Officer initiated penalty proceedings only on the basis of the substantive part of Section 271, it was open to the Inspecting Assistant Commissioner to impose penalty by invoking the Explanation (inserted in 1964). This scheme of sections 271 and 274 was amended by the Taxation Laws (Amendment) Act, 1970, as a result of which, the Inspecting Assistant Commissioner ceased to have power to pass any order and the Income-tax Officer could impose penalty, as he thought fit. Section 274 was further amended by the Taxation Laws (Amendment) Act, 1975, which came into force with effect from April 1, 1976. But, as we are not concerned in the present case with the same, we are not making any mention thereof.

29. In the present case, question No. 2 referred by the Tribunal has been quoted by us in the beginning. The Division Bench held that there was no controversy between the parties in view of the decision of the Supreme Court in *Brij Mohan v. CIT* : [1979]120ITR1(SC) , that the law in relation to the quantum of penalty which can be imposed under Section 271(1)(c) is the law existing on the date of concealment of income, i.e., the date of filing the return. We are in agreement with the view taken by the Division Bench regarding this question.

30. The question regarding competence of the authority imposing the penalty under Section 271(1)(c) in the light of the above-mentioned enactments in Section 274(2) came up for consideration before various High Courts and there was divergence of judicial opinion on the same.

31. Before dealing with the points of law referred, we wish to refer to the findings of the Inspecting Assistant Commissioner. By an order dated February 22, 1972, the Inspecting Assistant Commissioner levied a penalty of Rs. 22,000 on the assessee under Section 271(1)(c) in respect of the assessment year 1966-67 and a penalty of Rs. 16,000 under Section 271(1)(c) in respect of the assessment year 1967-68. Two appeals preferred by the assessee were disposed of by the Tribunal on May 30, 1973. The Tribunal rejected the contentions of the assessee on the point of jurisdiction of the Inspecting Assistant Commissioner with regard to imposition of penalty in respect of the assessment years 1966-67 and 1967-68. The Tribunal, however, reduced the penalty to Rs. 14,000 for the assessment year 1966-67 and Rs. 12,000 for the assessment year 1967-68. Feeling aggrieved, the assessee filed an application under Section 256(1) of the Act. It is on this application that the two questions, as aforesaid, were referred.

32. Learned counsel for the assessee urged that the Inspecting Assistant Commissioner of Income-tax had no jurisdiction to impose penalty on February 22, 1972, as by that time Section 274(2) had been amended by the Taxation Laws (Amendment) Act, 1970, which came into force with effect from April 1, 1971. The contention of learned counsel for the assessee was that, as a result of the amendment, the jurisdiction of the Income-tax Officer to impose penalty under Section 271(1)(c) was restored and, therefore, the Income-tax Officer could impose penalty if the concealment of income or the inaccurate particulars furnished did not exceed Rs. 25,000. He urged his arguments at length dealing with amendments with which we are concerned in the present case, as to whether they should be retrospective or prospective.

33. Sri V. K. Singhal, learned counsel for the Revenue, urged that the jurisdiction of the Inspecting Assistant Commissioner to deal with the matter of penalty was to be looked at as on the date of initiation of the proceeding and not with reference to subsequent events. The Inspecting Assistant Commissioner could not be divested of the power to decide the same and the order passed in the reference made by the Income-tax Officer competently was not liable to be declared invalid. A change, while the case is pending, could not affect the rights of the parties to continue the proceeding before the Tribunal in the absence of provisions to the

contrary.

34. Having heard learned counsel for the parties at length, we now proceed to deal with the point regarding prospective or retrospective effect of the amendment, as pointed out by Sri Ranka. In this connection, one of the best known judicial statements is that of R. S. Wright J. in *In re Athlumney* [1898] 2 Q.B. 547, which is quoted below :

'Perhaps no rule of construction is more firmly established than this--that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matters of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only.'

35. Now, the problem that is to be considered is about the jurisdiction of the Inspecting Assistant Commissioner to pass the order dated February 22, 1972. The word 'jurisdiction' is defined in Webster's Third New International Dictionary as under :

'... the legal power, right or authority to hear and determine a cause considered either in general or with reference to a particular matter ;.. ..'

36. Since, on February 22, 1972, the Inspecting Assistant Commissioner ceased to have jurisdiction to decide the case of penalty payable by an assessee under Section 274(2), learned counsel for the assessee submitted that the orders passed on that date imposing penalty of Rs. 22,000 on the assessee in respect of the assessment year 1966-67 and Rs. 16,000 in respect of the assessment year 1967-68 are invalid and question No. 1 referred by the Income-tax Appellate Tribunal had to be answered in his favour. For the submission made, he relied on the decision in *CIT v. Mohinder Lal* . In this case, the question referred to the Full Bench of the Punjab and Haryana High Court was whether the Tribunal was right in holding that penalty amounting to Rs. 58,000 imposed by the Inspecting Assistant Commissioner, vide order dated February 25, 1978, under Section 271(1)(c) in pursuance of the reference made under Section 274(2) on December

23, 1976, was without jurisdiction in view of the fact that Sub-section (2) of Section 274 had been omitted by Section 65 of the Taxation Laws (Amendment) Act, 1975, with effect from April 1, 1976.

37. In the proceeding before the Inspecting Assistant Commissioner, the assessee raised a preliminary objection that with effect from April 1, 1976, the Inspecting Assistant Commissioner had been divested of his jurisdiction under Section 274(2) and, thus, the reference, made, to him on December 23, 1976, was illegal. Notwithstanding the objection, the Inspecting Assistant Commissioner imposed the penalty of Rs. 58,000, vide his order dated February 25, 1978. On the assessee's appeal, the Tribunal quashed the penalty on preliminary objection.

38. The difference between the present case before us and the one reported above is that the present case is concerned with the amendment made in Section 274(2) by the Taxation Laws (Amendment) Act, 1970, which came into effect from April 1, 1971, whereas the case before the Full Bench, aforesaid, was dealing with the later amendment made by the Taxation Laws (Amendment) Act, 1975, which came into force from April 1, 1976.

39. Summing up, the legal position regarding the Taxation Laws (Amendment) Acts, 1970 and 1975, is as under :

(a) The basic jurisdiction of imposing penalty vests in the Income-tax Officer under Section 271(1), where under, if a case is made under Clause (a), (b) or (c), he can launch proceedings for imposing the penalty.

(b) Before April 1, 1976, if the quantum of concealed income exceeded Rs. 25,000, on a reference made by the Income-tax Officer, the Inspecting Assistant Commissioner had the jurisdiction.

(c) The Inspecting Assistant Commissioner could act only on a reference made by the Income-tax Officer.

(d) When the Inspecting Assistant Commissioner exercised jurisdiction for imposing penalty, he was in fact exercising the jurisdiction conferred on the Income-tax Officer.

(e) The Amending Act of 1975, by deleting Section 274(2), has taken away the referral jurisdiction of the Inspecting Assistant Commissioner, with the result that the entire jurisdiction is now vested in the Income-tax Officer.

40. In the Punjab case, when the matter was before the Inspecting Assistant Commissioner, the Amending Act had come into force. There are two well-established propositions of law, namely : (a) provisions of a statute dealing with procedural matters have retrospective effect unless otherwise provided in the statute, and (b) provisions which touch a right, in existence at the passing of the statute are not to be applied retrospectively in the absence of an express enactment or a necessary intendment. (See *Jose Da Costa v. Bascora Sadashiva Sinai Narcornin* : AIR 1975 SC1843 ; *Delhi Cloth and General Mills Co. v. ITC* .

41. The Punjab High Court further relied on a decision of the Supreme Court in *Garikapati Veeraya v. N. Subbiah Choudhry* : [1957]1SCR488 . In the said case, the Supreme Court held that the right to appeal being a substantive right, the institution of a suit carries with it the implication that successive appeals available under the law then in force would be preserved to the parties to the suit throughout the rest of the career of the suit unless the right of appeal has been expressly taken away or when the court to which appeal lay at the commencement of the suit stands abolished. To establish the legal position, the Punjab High Court quoted decisions in *Venugopala Reddiar v. Chidambara Reddiar* ; *Colonial Sugar Refining Co, Ltd, v. Irving* [1905] AC 369 (PC) and *New India Insurance Co. Ltd. v. Shanti Misra* : [1976]2SCR266 . When the court was further faced with the question as to what would happen if the forum of appeal was changed from the old one to a new one, the court referred to the decision of the Supreme Court in *Maria Christine's case* : AIR 1979 SC1352 . The learned judge, who delivered the judgment, observed as under (at p. 114 of 168 ITR) :

'This case, therefore, cannot be relied upon to contend that in the case of a change of forum by the Amending Act, pending cases would also stand transferred even if the earlier forum where the proceedings were instituted is still available.'

42. We are, respectfully, unable to subscribe to the view taken in the aforesaid case, The right of appeal could not be mixed up with the power of the Income-tax

Officer to make a reference to the Inspecting Assistant Commissioner. In fact, these are two separate matters. Secondly, the existence of a forum (as distinguished from its abolition) is different from taking away of the jurisdiction. The mere fact that the Inspecting Assistant Commissioner still existed does not mean that it is still the forum to hear the case, despite the fact that the Amending Act has changed the forum.

43. Another case to which reference was made on behalf of the Revenue is reported in CIT v. Varkey Chacko : [1982]136ITR733(Ker) . In this case, the assessee submitted his return of income for the assessment year 1968-69 on April 16, 1970. The Income-tax Officer completed the assessment on March 27, 1972, and, on the same day, initiated penalty proceedings against the assessee on the finding made by him that the concealed income did not exceed Rs. 25,000. The Income-tax Officer, by his order dated March 26, 1974, imposed a penalty of Rs.10,000. This order was set aside by the Appellate Assistant Commissioner holding that the Income-tax Officer had no jurisdiction to levy penalty since the minimum penalty imposable exceeded a sum of Rs. 1,000. He proceeded on the basis that the jurisdiction of the Income-tax Officer in relation to proceedings for the imposition of penalty was governed by the provisions of Section 274(2) as they stood prior to the amendment introduced by the Taxation Laws (Amendment) Act, 1970. On this view, the Appellate Assistant Commissioner came to the conclusion that the only competent authority which could levy a penalty was the Inspecting Assistant Commissioner. When the reference came up before a Division Bench of the Kerala High Court, the Division Bench observed as follows (p. 739) :

'We are clearly of opinion that the competence or jurisdiction of the authority to initiate the penalty proceedings can be governed only by the law which is in force on the date of such initiation of proceedings. A combined reading of Section 271(1)(c) of the Act (along with the Explanation thereto) and Sub-section (2) of Section 274 provides a clear indication that under the provisions of Sub-section (2) of Section 274, as they stood prior to the amendment of 1970, the competence of the Income-tax Officer to exercise the power of imposition of penalty against an assessee under Clause (c) of Section 271(1) was to depend upon the findings arrived at by him in the assessment proceedings as to the factum of concealment

and the amount of the income in respect of which such concealment had taken place. It is only on arriving at such a finding that concealment has taken place that the question of initiation of penalty proceedings against an assessee can arise.'

44. In CIT v. Raman Industries , the Punjab and Haryana High Court went to the extent of saying that the jurisdiction of the Tribunal to try a case was a vested right and, therefore, it had to be determined according to the law in force at the time of institution of proceedings.

45. We are unable to accept the view taken by the Punjab and Haryana High Court, inasmuch as getting a case decided on a reference made by the Income-tax Officer to the Inspecting Assistant Commissioner did not confer any vested right. The Punjab and Haryana High Court omitted to take into consideration the well-established principle that forum is a matter of procedure and laws of procedure have retrospective effect, unless the statute otherwise provides. At this stage, we wish to refer to the decision in CIT v. Dhadi Sahu : [1976]105ITR56(Orissa) , wherein, the Hon'ble Ranganath Misra J., as he then was, observed as under (p, 59) :

'The question referred to us can appropriately be answered by examining the effect of the amending provision, namely, whether it took away the jurisdiction of the Inspecting Assistant Commissioner in a pending reference if under the new provision the reference was not open to be made to him. Otherwise stated, the proposition is whether, as a result of the amendment, a reference pending with the Inspecting Assistant Commissioner on the basis of the old provision would no more be maintainable if under the new amended provision that reference was not competent. The answer to the point would depend upon whether the amendment is retrospective in its operation. Sub-section (2) of Section 274 is admittedly a provision relating to procedure.'

46. It was held in the aforesaid case that, if the Inspecting Assistant Commissioner had passed final orders prior to the Amending Act of 1970, there would have been no question of loss of jurisdiction, but as the matter was still pending and due to change in procedure, the reference became incompetent, the Inspecting Assistant Commissioner had no jurisdiction to complete the proceedings because he had no

longer jurisdiction to deal with a matter of this type. The Kerala High Court followed this decision and a Full Bench (CIT v. Issac (P. I.) : [1987]168ITR793(Ker)) observed ;

'The change of forum is a matter of procedure and the Amendment Act is retrospective in regard also to matters pending before the Inspecting Assistant Commissioner.'

47. To the same effect is the view taken by the Madhya Pradesh High Court in CIT v. Shri Ram Prakash Saraf : [1986]160ITR860(MP) . In this case, though the penalty proceedings were initiated by the Income-tax Officer before March 31, 1976, the reference was made by the Income-tax Officer on July 15, 1977, and, therefore, the Bench held that the Inspecting Assistant Commissioner had no jurisdiction to impose penalty under Section 271(1)(c) read with Section 274(2).

48. Decision of a Division Bench of this court taking the same view is reported in CIT v. Khan Chand Madan Lal .

49. There are decisions of the Rajasthan High Court apart from those that have been referred to by us in this judgment. As it will not be of any use to add to the bulk of the judgment by referring to those decisions, we do not consider it necessary to do so.

50. Apart from Rajasthan, there are similar cases of other High Courts also. The Bombay High Court's decisions are in CIT v. Abdullabhai Hassanali : [1988]169ITR22(Bom) and CIT v. Rizumal Pherumal : [1988]169ITR25(Bom) . The third decision of the Bombay High Court is in CIT v. Deorao Shrawan Maundekar : [1988]169ITR19(Bom) , wherein it took a contrary view from the two referred to above. In this case, i.e., Deorao's case : [1988]169ITR19(Bom) , the Bombay High Court did not (sic) refer to the aforesaid two decisions of its own court.

51. Our attention was also drawn to the orders granting special leave by the Supreme Court against the decisions of the Full Bench of the Punjab and Haryana as well as of the Kerala High Court. These appeals are pending in the Supreme Court. At this stage, mere admission does not lead us to any conclusion.

52. Sri Singhal, learned counsel for the Revenue, on the other hand, urged that, as the proceeding had been initiated before the Taxation Laws (Amendment) Act, 1970, came into force, the jurisdiction of the Inspecting Assistant Commissioner would be decided on the basis of initiation of proceedings. For this submission, he urged that, for the imposition of penalty, it is not the assessment year or the date of filing the return that is important but what is important is the satisfaction of the Income-tax Officer that default has been committed by the assessee which would attract the provisions relating to penalty. The crucial date, therefore, for the purpose of penalty is the date of initiation of proceedings by making a reference to the Inspecting Assistant Commissioner.

53. This submission of learned counsel for the Revenue is not borne out from the language used in the Taxation Laws (Amendment) Act, 1970, or in the amendment itself. We are, therefore, unable to accept the same. Lastly, learned counsel for the Revenue urged that acceptance of the assessee's interpretation will result in avoidance of penalty. That may be so, but the operation of the Act has to be judged not by the object which Parliament had in mind but by the words which it had employed to effectuate the legislative intent.

54. For the reasons given above, we answer the reference (reframed by the Division Bench of this Court) in favour of the assessee and against the Revenue.