CASE NO.:
Appeal (crl.) 1260-1261 of 1997

PETITIONER:
Prakash Nath Khanna & Anr.

RESPONDENT:
Commissioner of Income Tax and Anr.

DATE OF JUDGMENT: 16/02/2004

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT.

JUDGMENT:
JUDGMENT

ARIJIT PASAYAT,J.

These appeals revolve round the scope and ambit of Section 276-CC of the Income Tax Act, 1961 (in short the 'Act'), and are directed against a common judgment rendered by a Division Bench of the Himachal Pradesh High Court which rejected the three writ petitions filed by the appellants in these two appeals. The Assistant Commissioner of Income tax, Circle I, Shimla filed a complaint in terms of Section 276-CC of the Act in the Court of the CJM who had issued process of taking cognizance of the offence. In each of the writ applications, challenge was made to legality of the proceedings pending in the Court of Chief Judicial Magistrate, Shimla (in short the 'CJM').

The factual position is almost undisputed and needs to be noted in brief.

The three appellants were partners of a firm carrying on business under the name and style of M/s Kailash Nath and Associates. Apart from the three appellants, two other persons were partners and one of them Shri Kailash Nath was the Managing partner in terms of the Partnership Deed dated 1.4.1983. For the assessment year 1988-89 return of income was to be filed on or before 31.7.1988, but was in fact filed on 20.3.1991. Assessment under Section 143(3) of the Act was completed on 26.8.1991. Proceedings for late submission of return were initiated against the appellants under Section 271(1)(a) of the Act and penalty was imposed. Proceedings in terms of Section 276-CC of the Act were also initiated and complaint was filed before the concerned Court. As noted above, cognizance was taken and process was issued. The writ applications were filed challenging legality of the proceedings. By the impugned judgment the High Court dismissed the writ petitions. The points which were mooted before the High Court were re-iterated in the present appeals.

Mr. G.C. Sharma, learned senior counsel appearing for the appellants urged the following points for consideration:

1. The expression "to furnish

in due time" occurring in Section 276CC means to furnish within the time permissible under the Act. The return furnished under Section 139(4) at any time before the assessment is made has to be regarded as a return furnished under Section 139(1). This was so held by this Court in Commissioner of Income Tax Punjab v. Kullu Valley Transport Co. Pvt.Ltd. (1970 (77) ITR 518) in the context of Sections 22(1) and 22(3) of the Indian Income Tax Act, 1922 (in short the 'Old Act') which are in pari-materia of Section 139(1) and Section 139(4) of the Act. It follows that return was furnished in "the due time" and consequently Section 276CC is not attracted.

2. The provisions of Section 276CC(i) are not intended to apply to the cases of assessees who have been regularly assessed to income tax and have voluntarily submitted their returns of income without issue of any notice to do so by the Assessing Officer in that behalf, within the time permissible to furnish the return under the Act. This interpretation gets support from the marginal heading and explanatory memo laid before Parliament when the Section was introduced.

3(i) The provision only applies where the amount of tax which would have been evaded if the failure had not been discovered exceeds Rs,1,00,000/-. There has been no discovery of the failure in this case from the point of view of evasion of tax. The assessee has submitted return voluntarily, paid advance tax and self assessment tax.

3(ii) There has been no concealment of income in this case, and no penalty has been or can be imposed. The allegation made in the complaint that there has been evasion of tax to the extent of Rs.5,68,039/- is based on no evidence and is contrary to the materials on record.

4. The petitioners in reply to show cause notice issued pleaded that the delay in submission of

returns was unavoidable, because their share of profit from the firm in which they were partners had not been communicated by the Managing Partner of the firm who was responsible for the accounts. They had no guilty mind.

5. Mere delay in filing a return without contumacious conduct and mens rea being established could not make the petitioner liable for prosecution.

6. Petitioner having been subjected to levy of interest under Section 139(1) and also to penalty proceedings under Section 271(1)(a) of the Act, could not further be prosecuted for the same defaults.

Per contra, learned counsel appearing for the respondents submitted that the High Court was justified in its conclusions in dismissing the writ petitions. The decision in Kullu Valley's case (supra) has no application to the facts of the present case and in fact it was rendered in a different set up. Sub-sections (1) and (4) of Section 139 deal with different situations and it cannot be said that a return filed in terms of Section 139(4) would mean compliance with the requirements indicated in sub-section (1) of Section 139. It is further submitted that Section 278-E raises a presumption which is a rebutable one and the factual aspects raised by the appellants can be placed for consideration in the proceedings before the learned CJM.

Since the fate of the appeals revolves round the scope and ambit of Section 276-CC in the background of sub-sections (1) and (4) of Section 139, it would be appropriate to quote the aforesaid provisions, as they stood at the relevant point of time:

"Section 276-CC: Failure to furnish returns of income: If a person wilfully fails to furnish in due time the return of income which he is required to furnish under sub-section (1) of Section 139 or by notice given under sub-section (2) of Section 139 or Section 148, he shall be punishable,-

(i) in a case where the amount of tax, which would have been evaded if the failure had not been discovered, exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven

years and with fine;

(ii) in any other case, with imprisonment for a term which shall not be less than three months but which may extend to three years and with fine:

Provided that a person shall not be proceeded against under this section for failure to furnish in due time the return of income under sub-section (1) of Section 139-

(i)for any assessment year commencing prior to the Ist day of April, 1975; or
(ii)for any assessment year commencing on or after the Ist day of April, 1975, if-

(a)the return is furnished by him before the expiry of the assessment year; or

(b)the tax payable by him on the total income determined on regular assessment, as reduced by the advance tax, if any, paid, and any tax deducted at source, does not exceed three thousand rupees".

Section 139: Return of income-
(1) Every person, if his total income or the total income of any other person 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.

(a) in the case of every person whose total income, or the total income of any other person in respect of which he is assessable under this Act, includes any income from business or profession, before the expiry of four months from the end of the previous year or where there is more than one previous year, from the end of the previous year which expired last before the commencement of the assessment year, or before the 30th day of June of the assessment year, whichever is later;

(b) in the case of every other

person, before the 30th day of June of the assessment year:

Provided that, on an application made in the prescribed manner, the Assessing Officer may, in his discretion, extend the date for furnishing the return, and, notwithstanding that the date is so extended, interest shall be chargeable in accordance with he provisions of sub-section (8).

(IA) Notwithstanding anything contained in sub-section (1), no person need to furnish under that sub-section a return of his income or the income of any other person in respect of whose total income he is assessable under this Act, if his income or, as the case may be, the income of such other person during the previous year consisted only of income chargeable under the head "Salaries" or of income chargeable under that head and also income of the nature referred to in any one or more of clause (i) to (ix) of sub-section (1) of Section 80L and the following conditions are fulfilled, namely:-

(a) where he or such other person was employed during the previous year by a company, he or such other person was at no time during the previous year a director of the company or a beneficial owner of shares in the company (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) carrying not less than twenty per cent of the voting power;

(b) his income or the income of such other person under the head "Salaries", exclusive of the value of all benefits or amenities not provided for by way of monetary payment, does not exceed twenty four thousand rupees;

(c) the amount of income of the nature referred to in clause (i) to (ix) of sub-section (1) of Section 80L, if any does not, in the aggregate, exceed the maximum amount allowable as deduction in his case under that section; and

(d) the tax deductible at source under section 192 from the income chargeable

under the head "Salaries" has been deducted from that income.

(2) In the case of any person who, in the Assessing 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 Assessing 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 30 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 prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed:

Provided that, on an application made in the prescribed manner, the Assessing Officer may, in his discretion, extend the date for furnishing the return, and, notwithstanding that the date is so extended, interest shall be chargeable in accordance with the provisions of sub-section (8).

(3) If any person who has not been served with a notice under sub-section (2), has sustained a loss in any previous year under the head "Profits and gains of business or profession" or under the head "Capital gains" and claims that the loss or any part thereof should be carried forward under sub-section (1) of Section 72, or sub-section (2) of Section 73, or sub-section (1) or sub-section (3) of Section 74, or sub-section (3) of Section 74A, he may furnish within the time allowed under sub-section (1) or by the thirty first day of July of the assessment year relevant to the previous year during which the loss was sustained, a return of loss in the prescribed form and verified in the prescribed manner and containing such other particulars as may be prescribed, and all the provisions of this Act shall apply as if it were a return under sub-section (1).

(4)(a) Any person who has not

furnished a return within the time allowed to him under sub-section (1) or sub-section (2) may, before the assessment is made, furnish the return for any previous year at any time before the end of the period specified in clause (b), and the provisions of sub-section (8) shall apply in every such case.

(b)The period referred to in clause (a) shall be-

(i)where the return relates to a previous year relevant to any assessment year commencing on or before the Ist day of April, 1967 four years from the end of such assessment year;

(ii)where the return relates to a previous year relevant to the assessment year commencing on the Ist day of April, 1968 three years from the end of the assessment year;

(iii)where the return relates to a previous year relevant to any other assessment year, two years from the end of such assessment year.

(4A) Every person in receipt of income derived from property held under trust or other legal obligation wholly for charitable or religious purposes or in part only for such purposes, or of income being voluntary contributions referred to in sub-clause (iia) of clause (24) of section 2 shall, if the total income in respect of which he is assessable as a representative assessee(the total income for this purpose being computed under this Act without giving effect to the provisions of sections 11 and 12) exceeds the maximum amount which is not chargeable of income tax furnish a return of such income of the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under sub-section (1).

(4B) The Chief Executive Officer (whether such Chief Executive Officer) is known as Secretary or by any other designation) of every political party shall, if the total income in respect of which the political party is assessable (the total income for this purpose being computed without giving

effect to the provisions of section 13A) exceeds the maximum amount which is not chargeable of income tax furnish a return of such income of the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under sub-section (1).

(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.

Kullu Valley's case (supra ) was rendered in the background of Section 22 of the Old Act. Great emphasis is laid on the observation by this Court that sub-section (3) of Section 22 of the Old Act was in the nature of a proviso to sub-section (1) thereof. It is to be noted that the decision was rendered in a totally different context. The question related to the treatment of a return of loss filed beyond the time provided under sub-section (1) of Section 22. The observation on which reliance is placed cannot be read out of context.

In Kullu valley's case (supra) the majority view was that Section 22(3) of the Old Act (corresponding to Section 139(4) of the Act) is merely a proviso to Section 22(1) (Section 139(1)) respectively, and if Section 22(3) is complied with, Section 22(1) must be held to have been complied with and that if compliance has been made with Section 22(3), the requirement of Section 22(2A) (corresponding to Section 139(3) of the Act) would stand satisfied. It was thus, held that the ascertained losses could be carried forward to the subsequent years and set off, even though suo motu return is not filed within time prescribed under Section 22(1) of the Old Act.

The decision was rendered in a conceptually different situation, and has no relevance so far as the present dispute is concerned.

The basic issue in Kullu Valley's case (supra) was determination of loss on the basis of return filed under Section 22(1) or 22(3) of the Old Act. In the Act, Section 80 deals specifically with the situation.

The original Section 80 in the Act reads as under:

"Notwithstanding anything contained in this Chapter, no loss which has not been determined in pursuance of a

return filed under Section 139, shall be carried forward and set off under sub-section (1) of Section 72 or sub-section (2) of Section 73 or sub-section (1) of Section 74".

By the Taxation Laws (Amendment) Act, 1984 with effect from Ist April, 1985, the words "under Section 139" (underlined for emphasis) were substituted by the words "within the time allowed under sub-section (1) of Section 139 or within such further time as may be allowed by the Income Tax Officer". (underlined for emphasis)

As a result of the amendment of Section 139(3) by the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1986 the power of the Income tax Officer to extend time for furnishing return was taken away w.e.f. Ist April, 1987.

Yet again, by the Direct Tax Laws (Amendment Act), 1987 w.e.f. Ist April, 1989 the words "within the time allowed under sub-section (1) of Section 139 or within such further time as may be allowed by the Income tax Officer" were substituted by the words "in accordance with the provisions of sub-section (3) of Section 139".

It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed, not as theorems of Euclid", Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (See Lenigh Valley Coal Co. v. Yensavage (218 FR 547). The view was re-iterated in Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama (AIR 1990 SC 981), and Padma Sundara Rao (dead) and Ors. V. State of Tamil Nadu and Ors. (2002 (3) SCC 533).

In D.R. Venkatchalam v Dy. Transport Commissioner (1977 (2) SCC 273) it was observed that courts must avoid the danger of a priori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation.

While interpreting a provision the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the

legislature to amend, modify or repeal it, if deemed necessary. (See Rishabh Agro Industries Ltd. V. P.N.B. Capital Services Ltd. (2000 (5) SCC 515). The legislative casus omissus cannot be supplied by judicial interpretative process.

Two principles of construction- one relating to casus omissus and the other in regard to reading the statute as a whole -appear to be well settled. Under the first principle a casus omissus cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the legislature. "An intention to produce an unreasonable result", said Danckwerts, L.J., in Artemiou v. Procopiou (1966 (1) QB 878), "is not to be imputed to a statute if there is some other construction available". Where to apply words literally would "defeat the obvious intention of the legislation and produce a wholly unreasonable result", we must "do some violence to the words" and so achieve that obvious intention and produce a rational construction. (Per Lord Reid in Luke v. IRC {1963 AC 557} where at AC p.577 he also observed: "This is not a new problem, though our standard of drafting is such that it rarely emerges".}

The heading of the Section or the marginal note may be relied upon to clear any doubt or ambiguity in the interpretation of the provision and to discern the legislative intent. In C.I.T. v. Ahmedbhai Umarbhai and Co. (AIR 1950 SC 134) after referring to the view expressed by Lord Machnaghten in Balraj Kunwar v. Jagatpal Singh (ILR 26 All. 393 (PC), it was held that marginal notes in an Indian Statute, as in an Act of Parliament cannot be referred to for the purpose of construing the statute. Similar view was expressed in Board of Muslim Wakfs, Rajasthan v. Radha Kishan and Ors. (1979(2) SCC 468), and Kalawatibai v. Soiryabai and Ors. (AIR 1991 SC 1581). Marginal note certainly cannot control the meaning of the body of the Section if the language employed there is clear. (See Smt. Nandini Satpathy v. P.L. Dani and Anr. (AIR 1978 SC 1025) In the present case as noted above, the provisions of Section 276-CC are in clear terms. There is no scope for trying to clear any doubt or ambiguity as urged by learned counsel for the appellants. Interpretation sought to be put on Section 276-CC to the effect that if a return is filed under sub-section (4) of section 139 it

means that the requirements of sub-section (1) of Section 139 cannot be accepted for more reasons than one.

One of the significant terms used in Section 276-CC is 'in due time'. The time within which the return is to be furnished is indicated only in sub-section (1) of Section 139 and not in sub-section (4) of Section 139. That being so, even if a return is filed in terms of sub-section (4) of Section 139 that would not dilute the infraction in not furnishing the return in due time as prescribed under sub-section (1) of Section 139. Otherwise, the use of the expression "in due time" would loose its relevance and it cannot be said that the said expression was used without any purpose. Before substitution of the expression "clause (i) of sub-section (1) of section 142" by Direct Tax Laws (Amendment) Act, 1987 w.e.f. 1.4.1989 the expression used was "sub-section (2) of section 139". At the relevant point of time the assessing officer was empowered to issue a notice requiring furnishing of a return within the time indicated therein. That means the infractions which are covered by Section 276-CC relate to non-furnishing of return within the time in terms of sub-section (1) or indicated in the notice given under sub-section (2) of Section 139. There is no condonation of the said infraction, even if a return is filed in terms of sub-section (4). Accepting such a plea would mean that a person who has not filed a return within the due time as prescribed under sub-sections (1) or (2) of Section 139 would get benefit by filing the return under Section 139(4) much later. This cannot certainly be the legislative intent.

Another plea which was urged with some amount of vehemence was that the provisions of Section 276-CC are applicable only when there is discovery of the failure regarding evasion of tax. It was submitted that since the return under sub-section (4) of Section 139 was filed before the discovery of any evasion, the provision has no application. The case at hand cannot be covered by the expression "in any other case". This argument though attractive has no substance.

The provision consists of two parts. First relates to the infractions warranting penal consequences and the second, measure of punishment. The second part in turn envisages two situations. The first situation is where there is discovery of the failure involving the evasion of tax of a particular amount. For the said infraction stringent penal consequences have been provided. Second situation covers all cases except the first situation elaborated above.

The term of imprisonment is higher when the amount of tax which would have been evaded but for the discovery of the failure to furnish the return exceeds one hundred thousand rupees. If the plea of the appellants is accepted it would

mean that in a given case where there is infraction and where a return has not been furnished in terms of sub-section (1) of Section 139 or even in response to a notice issued in terms of sub-section (2), the consequences flowing from non-furnishing of return would get obliterated. At the relevant point of time Section 139(4)(a) permitted filing of return where return has not been filed within sub-section (1) and sub-section (2). The time limit was provided in clause (b). Section 276-CC refers to "due time" in relation to sub-sections (1) and (2) of Section 139 and not to sub-section (4). Had the Legislature intended to cover sub-section (4) also, use of expression "Section 139" alone would have sufficed. It cannot be said that Legislature without any purpose or intent specified only the sub-sections (1) and (2) and the conspicuous omission of sub-section (4) has no meaning or purpose behind it. Sub-section (4) of Section 139 cannot by any stretch of imagination control operation of sub-section (1) wherein a fixed period for furnishing the return is stipulated. The mere fact that for purposes of assessment and carrying forward and to set off losses it is treated as one filed within sub-sections (1) or (2) cannot be pressed into service to claim it to be actually one such, though it is factually and really not by extending it beyond its legitimate purpose.

Whether there was wilful failure to furnish the return is a matter which is to be adjudicated factually by the Court which deals with the prosecution case. Section 278-E is relevant for this purpose and the same reads as follows:

"278-E: Presumption as to culpable mental state-

(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation: In this sub-section, "culpable mental state" includes intention, motive or knowledge of a fact or belief in, or reason to believe, a fact

(2) For the purposes of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability".

There is a statutory presumption prescribed in Section 278-E. The Court has to presume the existence of culpable mental state, and absence of such mental state can be pleaded by an accused as a defence in respect to the act charged as an offence in the prosecution. Therefore, the factual aspects highlighted by the appellants were rightly not dealt with by the High Court. This is a matter for trial. It is certainly open to the appellants to plead absence of culpable mental state when the matter is taken up for trial.

Looked at from any angle the appeals are without merit and are dismissed.

JUDIS