(1978) 04 MP CK 0016

Madhya Pradesh High Court (Indore Bench)

Case No: Miscellaneous Civil Case No. 143 of 1976

Addl. Commissioner of Income Tax		APPELLANT
	Vs	
Rampratap Shankarlal		RESPONDENT

Date of Decision: April 10, 1978

Acts Referred:

- Income Tax Act, 1961 - Section 139, 139(1), 139(2), 139(7), 271

Citation: (1979) 117 ITR 662

Hon'ble Judges: P.D. Mulye, J; G.L. Oza, J

Bench: Division Bench

Advocate: A.M. Mathur, for the Appellant; K.R. Mandowara, for the Respondent

Judgement

Oza, J.
This is a reference made by the Income Tax Appellate Tribunal referring to us the question :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that as soon as the notice u/s 139(2) of the Income Tax Act, 1961, is served upon the assessee, the period of default u/s 139(1) comes to an end ? "

2. The assessment year is 1963-64 for which the previous accounting year was 1962-63. u/s 139(1) of the I.T. Act, 1961, return was to be filed by the assessee voluntarily on or before 30th June, 1963. On June 28, 1963, it appears that the assessee submitted an application for extension of time up to the 30th September, 1963. On 10th February, 1964, a notice u/s 139(2) was served on the assessee calling upon him to file a return within 30 days. Return was filed by the assessee ultimately on March 21, 1966. The ITO, therefore, while proceeding with the assessment, gave a notice u/s 271(1)(a) of the Act as to why penalty should not be imposed under that section for having committed default in filing the return as contemplated u/s 139(1).

The ITO then imposed penalty at the rate of 2 per cent. per month and held that there was a default of 32 months and, therefore, imposed penalty of Rs. 6,250. The AAC on appeal modified the order because in the assessment appeal the income was reduced. On further appeal before the Tribunal, the Tribunal found that the penalty imposed against the assessee was for having committed default in filing the return u/s 139(1) and no proceedings had been launched against him for any default in filing the return u/s 139(2) after service of notice. The Tribunal, therefore, found that as soon as a notice u/s 139(2) was served on the assessee the liability to file a return u/s 139(1) came to an end and the Tribunal also found that as on June 28, 1963, the assessee submitted an application for extension of time up to September 30, 1963, and, as this application was not rejected, the Tribunal assumed that the time was extended up to September 30, 1963. Thus, according to the Tribunal, the default was committed from September 30, 1963, to February 10, 1964, when notice u/s 139(2) was served on the assessee and this is only four months'' default. Therefore, the Tribunal modified the penalty to 8 per cent. of the tax on the income as finally assessed.

3. On an application made by the CIT, the Tribunal stated the case and has made a reference to this court on the question stated above.

4. Learned counsel appearing for the department contended that u/s 139(1) of the Act it was incumbent on the assessee to file a voluntary return by 30th June, 1963. And this liability to file return continued even though a notice u/s 139(2) of the Act was served on the assessee on February 10, 1964. He, therefore, contended that as the return was ultimately filed on March 21, 1966, the default u/s 139(1) continued up to March 21, 1966, and, therefore, the Tribunal was wrong in treating this as a default of only four months. He also contended that although an application was submitted by the assessee on June 28, 1963, the time was not extended. In support of his contention learned counsel placed reliance on the decisions in The Commissioner of Income Tax, Rajasthan, Jaipur Vs. Indra and Co., Jodhpur, and The Commissioner of Income Tax, Delhi Vs. Hindustan Industrial Corporation, New Delhi, . He also contended that in a decision in Additional Commissioner of Income Tax Vs. Bihar Textiles, , a contrary view has been taken.

5. On the other hand, learned counsel for the assessee contended that under the provisions contained in the I.T. Act, 1961, Section 139, it is clear that an assessee is only expected to file one return and, therefore, so long as a notice u/s 139(2) was not served on the assessee, his liability to submit a voluntary return continued, but as soon as a notice u/s 139(2) was served on the assessee, he was called upon to file a return within one month of the service of notice and, therefore, he was bound to comply with the notice and the question of filing a voluntary return thereafter did not arise. If after the service of notice any default is committed by the assessee, according to the learned counsel for the assessee, it would be a default in not complying with the notice u/s 139(2) and not a default in not filing a return u/s

139(1). And in the present case as the ITO has proceeded to impose penalty on the assessee only with regard to the default committed in respect of non-compliance with Section 139(1), the Tribunal was right in holding that the period of default u/s 139(1) came to an end as soon as notice u/s 139(2) was served on the assessee. According to learned counsel for the assessee, the question would have been different if the ITO had proceeded also to impose a penalty u/s 271(1)(a) for having committed a default in respect of Section 139(2). But that not having been done the view taken by the Tribunal is justified in law. He contended that the two cases of the Rajasthan High Court and the Delhi High Court referred to by learned counsel for the department have considered the question about automatic condonation of delay by issuance of notice u/s 139(2) but have not considered that the period of default u/s 139(1) comes to an end as and when a notice u/s 139(2) is served on the assessee. As regards the application made by the assessee on June 28, 1963, for extension of time it was contended that no grievance could be made in this reference and that is not a question referred to by the Tribunal. On the contrary, it was a question of fact that the Tribunal held that in the absence of an order on the application made by the assessee the inference would be that the time was extended as prayed for and that having been found as a fact by the Tribunal there is no occasion for this court to go into that question.

6. Apparently, the question about the application for extension of time cannot be considered by us in this reference. That is not even the question referred to us and the Tribunal has found it as a fact that the absence of an order on the application of the assessee for extension of time could only mean that time was extended as prayed for. That question, therefore, does not deserve to be considered by us.

7. There is no controversy about the starting point of the default as, admittedly, u/s 139(1) the assessee was expected to file his voluntary return on or before 30th June, 1963. By the application, time was extended up to 30th September, 1963. Thus, the default commenced immediately after 30th September, 1963, when no return as contemplated u/s 139(1) was filed by the assessee. It is also not in dispute that the notice u/s 339(2) was served on the assessee on 10th February, 1964. The question, therefore, is as to whether the default u/s 139(1) which commenced from 1st October, 1963, continued up to 10th February, 1964, when notice u/s 139(2) was served or continued till ultimately the return was filed on March 21, 1966. It is also not in dispute that in these proceedings penalty has been imposed only for non-compliance with the provisions contained in Section 139(1) and no proceedings for imposition of penalty for non-compliance with Section 139(2) were taken against the assessee.

8. Section 139 of the I.T. Act, 1961, reads:

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

(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 Income Tax 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).

(1A) Notwithstanding anything contained in Sub-section (1), no person need 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 Clauses (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 salary or the salary of such other person, exclusive of the value of all benefits or amenities not provided for by way of monetary payment, does not exceed eighteen thousand rupees ;

(c) the amount of income of the nature referred to in Clauses (i) to (ix) of Sub-section (1) of Section 80L, if any, does not, in the aggregate, exceed three thousand rupees ; and

(d) the tax deductible at source u/s 192 from the income chargeable under the head '' Salaries'' has been deducted from that income. Explanation.--For the purposes of this sub-section ''salary'' shall have the meaning assigned to it in Clause (1) of Section 17.

(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 services 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 Income Tax 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) of Section 74, or Sub-section (3) of Section 74A, he may furnish, within the time allowed under Sub-section (1) or within such further time which, on an application made in the prescribed manner, the Income Tax Officer may, in his discretion, allow, 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 1st 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 1st 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 to 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,

(6) The prescribed form of the returns referred to in Sub-sections (1), (2) and (3) shall, in such cases as may be prescribed, require the assessee to furnish the particulars of income exempt from tax, assets of the prescribed nature and value and belonging to him, expenditure exceeding the prescribed limits incurred by him under prescribed heads and such other outgoings as may be prescribed.

(6A) Without prejudice to the provisions of Sub-section (6), the prescribed form of the returns referred to in Sub-sections (1), (2) and (3) shall, in the case of an assessee engaged in any business"; or profession, also require him to furnish particulars of the location and style of the principal place where he carries on the business or profession and all the branches thereof, the names and addresses of his partners, if any, in such business or profession and, if he is a member of an association or body of individuals, the names of the other members of the association or the body of individuals and the extent of the share of the assessee and the shares of all such partners or the members, as the case may be, in the profits of the business or profession and any branches thereof.

(7) No return under Sub-section (1) need be furnished by any person for any previous year, if he has already furnished a return of income for, such year in accordance with the provisions of Sub-section (2).

(8) (a) Where the return under Sub-section (1) or Sub-section (2) or Sub-section (4) for an assessment year is furnished after the specified date, or is not furnished, then [whether or not the Income Tax Officer has extended the date for furnishing the return under Sub-section (1) or Sub-section (2)], the assessee shall be liable to pay simple interest at twelve per cent. per annum, reckoned from the day immediately following the specified date to the date of the furnishing of the return, or, where no return has been furnished, the date of completion of the assessment u/s 144, on the amount of the tax payable on the total income as determined on regular assessment, as reduced by the advance tax, if any, paid,, and any tax deducted at source :

Provided that the Income Tax Officer may, in such cases and under such circumstances as may be prescribed, reduce or waive the interest payable by any assessee under this sub-section.

Explanation 1.---For the purposes of this sub-section, ''specified date'', in relation to a return for an assessment year, means,--

(a) in the case of every assessee, whose total income, or the total Income of any person in respect of which he is assessable under this Act, includes any income from business or profession, the date of 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 the 30th day of June of the assessment year, whichever is later;

(b) in the case of every other assessee, the 30th day of June of the assessment year.

Explanation 2.--For the purposes of this sub-section, where the asses-see is a registered firm or an unregistered firm which has been assessed under Clause (b) of Section 183, the tax payable on the total income shall be the amount of tax which would have been payable if the firm had been assessed as an unregistered firm.

(b) where as a result of an order u/s 154 or Section 155 or Section 250 or Section 254 or Section 260 or Section 262 or Section 264, the amount of tax on which interest was payable under this sub-section has been reduced, the interest shall be reduced accordingly, and the excess interest paid, if any, shall be refunded."

9. A perusal of this section indicates that u/s 139(1) an assessee is expected to file his return before the specified date, i.e., in the present case, 30th June, 1963. It also appears that when in an appropriate case notice is served on the assessee u/s 139(2) he is expected to file a return within 30 days from the date of service of this notice. Sub-section (7) of this section indicates that if an assessee files a return under Sub-section (2), then it is not necessary for him to file a separate return under Sub-section (1) and it is clear from the scheme of this section that an assessee is not expected to file two returns for one assessment year. He is expected to file a voluntary return as contemplated u/s 139(1) if no notice u/s 139(2) is served on him. If a notice u/s 139(2) is Served on him, then he is expected to file the return within 30 days from the service of notice and in no case it is expected of an assessee to file two separate returns.

10. The proceedings for penalty are provided for in Section 271 :

"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) has without reasonable cause failed to comply with, a notice under Sub-section (1) of Section 142 or Sub-section (2) of Section 143 or fails to comply with a direction issued under Sub-section (2A) of Section 142, or

(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,--... "

11. Clause (a) of Sub-section (!) of this section provides that penalty could be imposed for non-compliance with the requirements of Sub-section (1) of Section 139 or for non-compliance with Sub-section (2) of Section 139, and this, therefore, indicates that penalty could be imposed for non-compliance with Sub-section (1) of Section 139 or non-compliance with Sub-section (2) of Section 139. Sub-section (3) of Section 271 reads :

"271. (3) Notwithstanding anything contained in this section,--

(a) no penalty for failure to furnish the return of his total income under Sub-section (1) of Section 139 shall be imposed under Sub-section (1) on an assessee whose total income does not exceed the maximum amount not chargeable to tax in his case by one thousand five hundred rupees ;

(b) where a person has failed to comply with a notice under Sub-section (2) of Section 139 or Section 145 and proves that he has no income liable to tax, the penalty imposable under Sub-section (1) shall not exceed twenty-five rupees;

(c) no penalty shall be imposed under Sub-section (1) upon any person assessable under Clause (i) of Sub-section (1) of Section 160, read with Section 161, as the agent of a non-resident for failure to furnish the return under Sub-section (1) of Section 139 ;

(d) the penalty imposed under Clause (i) of Sub-section (1) and the penalty imposed under Clause (iii) of that sub-section, read, with Explanation 3 thereto, shall not exceed in the aggregate twice the amount of the tax sought to be evaded :

Provided that nothing contained in Clause (a) or Clause (b) shall apply to a case referred to in Sub-clause (a) of Clause (i) of Sub-section (1). "

12. The provisions contained in Clauses (a) and (b) indicate that limits for penalty have been provided on the basis of the total income and different limits have been prescribed for non-compliance with Sub-section (1) of Section 139 and for non-compliance with Sub-section (2) of Section 139. It is, therefore, clear that when an assessee has not submitted a voluntary return as contemplated under Sub-section (1) of Section 139 proceedings for penalty against him could be started

for non-compliance with this provision. If a notice is served u/s 139(2) and the assessee does not furnish the return within the time required under the notice, then proceedings for penalty for non-compliance with Section 139(2) could also be taken against the assessee. The contention of learned counsel for the department appears to be that once a default has commenced for non-compliance with Section 139(1) that default continues till the return is filed and even if a notice u/s 139(2) is served and the return is not filed within the prescribed time after notice then too the default u/s 139(1) will continue. That would mean that after the notice u/s 139(2) is served and the requisite period is over the assessee would be responsible for two defaults, one, which according to learned counsel is continuing u/s 139(1), and another u/s 139(2). This argument would contemplate that the assessee is required to comply with both the provisions separately, put it is not disputed that the assessee is expected to file only one return even when he is served with a notice u/s 139(2).

13. The decision in The Commissioner of Income Tax, Rajasthan, Jaipur Vs. Indra and Co., Jodhpur, , to which reference was made by learned counsel for the department, has considered the question that as soon as a notice is issued under Sub-section (2) of Section 139, the ITO shall be presumed to have condoned the default made in not furnishing the return under Sub-section (1) of Section 139. And it is in this context that it was observed (p. 706):

"If the view taken by the Tribunal is adopted, the result will be that if a person has not filed any return u/s 139(1) he cannot be penalised if he has filed a return after a notice has been given under Sub-section (2) of Section 139. It may be pointed out that before taking any assessment proceedings, it is incumbent on the Income Tax Officer to issue notice under Sub-section (2) of Section 139. Such a view would mean that any person liable to pay Income Tax may sit comfortably without any fear of the imposition of penalty and not furnish his return as required u/s 139(1) and wait till a notice is given to him u/s 139(2) and then file a return within the time mentioned in that notice. This view does not appeal to us.

An argument has been addressed to us that as soon as a notice is issued under Sub-section (2) of Section 139 giving time for furnishing the return, it must be taken that the Income Tax Officer had condoned whatever the default may have been in not furnishing the return under Sub-section (1) of Section 139. Unless there is any express order for condonation of such default, we cannot take it that the Income Tax Officer, merely because he has issued a notice u/s 139(2) to a person who has not filed the return u/s 139(1), must be taken to have condoned his default in not furnishing the return u/s 139(1)."

14. In this decision, construing the provisions contained in Section 139 and Section 271(1)(a) their Lordships felt that the default continues till the return is filed and their Lordships also observed that no two separate returns are expected to be filed under Sub-section (1) of Section 139 and also under Sub-section (2) of 139, as is clear

from Section 139(7) itself. But their Lordships have not considered the question as to whether after notice u/s 139(2) if the default continues that will be a default of non-compliance with the provisions of Section 139(1) or it will be a default of non-compliance with the provisions contained in Section 139(2) or it will be a default of non-compliance with both the provisions of Section 139(1) as well as Section 139(2) as is clear from the observations made by their Lordships (p. 705) :

"The Tribunal appears to be unduly obsessed by the fact that if a return has not been furnished as required under Sub-section (1) of Section 139 and has been furnished after the giving of the notice u/s 139(2) it must be deemed that the default so far as the furnishing of the return under Sub-section (1) of Section 139 in concerned, continued for all the time. The default is in not furnishing the return and as soon as the return is furnished, there is end of the default. Moreover, it has been expressly "laid down u/s 139(7) that no return under Sub-section (1) need be furnished by any person for any previous year if he has already furnished the return of income for such year in accordance with the provisions of Sub-section (2). In our opinion, in all the cases mentioned in Section 271(1)(a) of the Act, the default continues only till the time when the return has been furnished or if no return has been furnished at all, it continues till the assessment is completed. But, if the return has been furnished, the "default ceases whether such return is furnished under Sub-section (1) of Section 139 or by notice, given under Sub-section (2) of Section 139 or u/s 148. It is immaterial for the purpose of cessation of default that the return has been filed in obedience to any particular provision of law."

15. Thus, it is clear that the question that has been referred to us has not been considered in this decision. In the decision in The Commissioner of Income Tax, Delhi Vs. Hindustan Industrial Corporation, New Delhi, , the question which was referred was in these terms :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in holding that default u/s 139(1) of the Act existed only till the date when the notice u/s 139(2) of the Act was served upon the assessee ?"

16. The question referred to in this decision is exactly similar to the question referred to us in the present case. In this decision their Lordships quoted from the decision of the Rajasthan High Court referred to above. The passage quoted from the Rajasthan decision indicates that an argument was advanced that the time that has elapsed when the default started u/s 139(1) up to the date of notice u/s 139(2) stands automatically condoned, and this contention, it appears, was repelled. But, in fact, the question is not as to whether that default is automatically condoned, but as to whether after a notice u/s 139(3) is served, it could be contended that the assessee is responsible for two defaults simultaneously, one u/s 139(1) and another u/s 139(2). But it appears that that aspect of the matter has not been considered. In this decision, it was observed (p. 663):

"An assessee who has not filed a return voluntarily as required u/s 139(1) cannot be absolved of the default committed by him on the ground that he had filed the return of his income within 30 days of the service of notice u/s 139(2) of the Act by the Income Tax Officer calling upon him to submit the return of his income and thereby say that as soon as he complied with the orders of the Income Tax Officer and filed the return within 30 days of the service of the notice, he has also complied with the provision of Section 139(1) of the Act."

and ultimately their Lordships held (p. 665):

"We are, therefore, of the opinion that, on the facts and in the circumstances of the case, the Tribunal was not justified in holding that the default u/s 139(1) of the Act existed only till the date when the notice u/s 139(2) of the Act was served upon the assessee."

17. But in this decision it has not been examined as to whether the assessee could be penalised for having committed default of non-compliance with Section 139(1) for all this period even after service of notice u/s 139(2) up to the date he files the return and he could also be penalised for non-compliance with the provisions contained in Section 139(2) for the period from the service of the notice till the date he files his return. And this will mean that for the period after service of notice up to the date of filing of the return an assessee could be saddled with penalty for non-compliance with both, Section 139(1) as well as Section 139(2). This is the direct consequence of the view taken in this decision and the contention advanced by learned counsel for the department, although this has not been specifically examined either by the Rajasthan High Court or the Delhi High Court in the two decisions referred to above. B,ut it is apparent that for the same period of default an assessee could not be saddled with two penalties for non-compliance with the two sub-sections of Section 139, i.e., (1) and (2), as apparently it is not expected of an assessee to file two separate returns as it is clearly provided in Section 139 itself that he is only expected to file one return.

18. In Additional Commissioner of Income Tax Vs. Bihar Textiles, , the question referred to the Patna High Court was just the other extreme which the Rajasthan High Court repelled ; the question referred was:

"Whether, on the facts and in the circumstances of the case, the delay u/s 139(1) is condoned if the notice u/s 139(2) is issued to the assessee ?"

and in this decision, after considering the respective arguments of both the parties, the question was reframed in these words :

"Whether, on a true construction of Section 271(1)(a) of the Act, there can be any penalty imposed for failure to furnish the return, without reasonable cause, which the assessee was required to furnish under Sub-section (1) of Section 139, when once a notice is duly issued under Sub-section (2) of Section 139 ?"

and to this question the answer is given in the affirmative. However, while discussing, their Lordships observed (p. 257):

"On a true construction of Section 271(1)(a), I am of the view that once a notice under Sub-section (2) of Section 139 is issued, that precludes the penal provision being attracted in so far as the failure to furnish the return under Sub-section (1) of Section 139 is concerned. If a contrary view is taken, it would lead not only to an anomalous result, but it would be doing violence to the express language of the statute. In so deciding the point, I am aware of the decision of the Supreme Court in the case of C.A. Abraham, Uppoottil, Kottayam Vs. The Income Tax Officer, Kottayam and Another, , wherein it has been held that, in interpreting a fiscal statute, the court cannot proceed to make good deficiencies, if there be any; the court must interpret the statute as it stands and in case of doubt in a manner favourable to the taxpayer. But where by the use of words capable of comprehensive import, provision is made for imposing liability for penalty upon the taxpayer guilty of fraud, gross negligence or contumacious conduct, an assumption that the words were used in a restricted sense so as to defeat the avowed object of legislature in respect of a certain class will not be lightly made. The instant case is one of such cases where the language of Section 271(1)(a), in my view, is clear enough; and, even if it be held to be of ambiguous import, or if there be any doubt as to the true interpretation of the penal provisions contained in Section 271(1)(a), the interpretation of the statute has, on the authority of the Supreme Court''s decision in C.A. Abraham, Uppoottil, Kottayam Vs. The Income Tax Officer, Kottayam and Another, , to be made in a manner favourable to the taxpayer,"

19. In this case, it appears that their Lordships were considering the impact of the notice issued u/s 139(2) and they took the view that once a notice u/s 139(2) is served no penalty could be imposed for non-compliance with the provisions contained in Section 139(1). This is what their Lordships say in clear terms (p. 257):

"When once it is held that, under Sub-section (2) of Section 139, the Income Tax Officer has power to curtail the period prescribed u/s 139(1), it does not stand to reason as to why the power for extending such a time within any point of time in the relevant assessment year be not held to be inherent in him. Consequently, it must also be held that by issuance of a notice u/s 139(2) within the relevant assessment year, the period prescribed in Sub-section (1) of Section 139 was duly extended and no penalty could be levied for any default committed in respect of the provisions of Section 139(1)."

20. But that is not the question before us. It is not contended that as notice u/s 139(2) was served on the assessee penalty could not be imposed for non-compliance with Section 139(1). In fact, in the present case, penalty has been imposed for non-compliance with Section 139(1). And, in this view of the matter, therefore, this decision also is not of much assistance.

21. As discussed above, the real question before us is that after the expiry of the statutory period u/s 139(1) an assessee is in default so far as he has failed in his obligation to file a return as required u/s 139(1). During the period when he is running in default a notice u/s 139(2) is served on him and after the expiry of the statutory period of notice the assessee has not filed a return, as in the present case. Then, Could it be said that from the date after the statutory period in the notice expires, the assessee is guilty of two defaults simultaneously ? If he could not be held guilty for two defaults for the same period simultaneously, as he is not expected to file two returns, one u/s 139(1) and another u/s 139(2), then after the expiry of the period of notice he could only be held responsible for one default; and that default could only be for non-compliance with the provisions contained in Section 139(2). The necessary corollary, therefore, that follows is that the period of default u/s 139(1) comes to an end as soon as notice u/s 139(2) is served on the assessee.

22. In this view of the matter, our answer to the question referred to us is in the affirmative. In the circumstances of the case, parties are directed to bear their own costs.