steps taken to notify the re-auction have been disclosed to this Court either in the return to the writ petition or at the hearing thereof. It can, therefore, be reasonably presumed that the mandatory provisions of rule 36 were not observed when the re-auction was held. The result is that the re-auction held on February 13, 1970, was not in accordance with the Rules and the petitioner-firm is not liable to make good the deficiency for which a demand has been made from it.

(17) In view of the above decision, it is not necessary to decide the other points mentioned in the writ petition, moreso because those points have already been decided by various Division Benches of this Court and against those judgments appeals are said to be pending in the Supreme Court. It is, however, recorded that the learned counsel for the petitioner has not given up any of the points raised by him in the petition but which we have not considered necessary to decide.

(18) For the reasons given above, this petition is accepted only to the extent that the demand for the sum of Rs. 33,635.00 on account of the short-fall raised against the petitioner-firm is quashed and the parties are left to bear their own costs.

R. S. NARULA, J.—I entirely agree and have nothing to add.

H. R. SODHI, J.—I too agree.

K.S.K.

FULL BENCH.

Before D. K. Mahajan, B. R. Tuli and P. C. Jain, JJ.

COMMISSIONER OF INCOME-TAX,—*Applicant.*

versus.

M/S. ROSHAN LAL KUTHIALA,—*Respondent.*

Income-Tax Reference No. 3 of 1971.

February 21, 1972.

Income-Tax Act (XLIII of 1961)—Sections 271 and 297—Income-Tax Act (XI of 1922)—Section 34—Default committed with regard to an assessment year prior to April 1, 1962—Assessment completed after such date—Imposition of penalty for the default—Whether at the rate prescribed in Income-Tax Act, 1961—Substantive portion of Section 271(1)(a) of the Act providing for penalty—Whether has a retrospective operation.

Commissioner of Income-Tax *v.* M/s. Roshan Lal Kuthiala
(B. R. Tuli, J.)

Held that the Indian Income-Tax Act, 1922, has been repealed by sub-section (1) of section 297 of the Income-Tax Act, 1961, and sub-section (2) thereof provides for various matters resulting from the repeal of the Act. The provision for the imposition of a penalty has been made in sub-clauses (f) and (g) of sub-section (2) of section 297. According to clause (f), any proceeding for the imposition of a penalty in respect of any assessment completed before April 1, 1962, has to be initiated and such penalty has to be imposed in accordance with the provisions of the 1922 Act completely ignoring the 1961 Act. Where, however, the assessment has been completed after April 1, 1962, for any assessment year ending on March 31, 1962; or any earlier year, the proceedings for penalty have to be initiated and penalty has to be imposed under the 1961 Act which means that not only the procedure prescribed therein has to be followed but the penalty has to be imposed in accordance with its substantive provisions prescribing the quantum of penalty. If only the procedural provisions of the 1961 Act for the imposition of penalty were intended to be followed and the quantum of penalty had to be fixed in accordance with the provisions of the 1922 Act, the legislature would have clearly provided therefor as has been done in clause (b) of sub-section (2) of section 297. If the language of clauses (f) and (g) of section 297 is compared, it is apparent that in clause (f) the Act applicable is only the 1922 Act and the 1961 Act has been excluded while the reverse is the case in clause (g), that is only the 1961 Act has been applied and the 1922 Act has been excluded. Thus it follows that the penalty in respect of defaults committed with regard to any assessment year prior to April 1, 1962, in respect of which assessment is completed after that date, is to be imposed under the 1961 Act, that is, the penalty has to be imposed at the rate and in accordance with the procedure prescribed in 1961 Act and not as prescribed in the 1922 Act, irrespective of the date on which return was filed or the date of the commission of the default for which the penalty is imposable. Hence the substantive portion of section 271 (1) (a) of the 1961 Act creating the charge of penalty has retrospective operation. (Para 4)..

Reference under Section 256(1) *of the Income-tax Act,* 1961 *made by the Income-Tax Appellate Tribunal (Chandigarh Bench),—vide his order dated* 23*rd October,* 1970, *in R.A. No.* 9 *of* 1970-71, *to this Court for opinion of the following question of law, arising out of I.T.A. No.* 18747 *of* 1967-68, *regarding Assessment year* 1960-61.

> *"Whether the substantive portion of Section* 271(1)(*a*) *of the Income-tax Act,* 1961, *that creates the charge of penalty has a retrospective operation in the absence of a clear statement or clear implication."*

D. N. Awasthy and B. S. Gupta, Advocates, for the appellant.

H. L. Chadda and M. M. Punchhi, Advocates, for the respondent.

JUDGMENT

The judgment of this Court was delivered by:—

B. R. TULI, J.—The assessee is a registered firm with its Head Office at Yamunanagar. It is engaged in the business of exploitation of forests. For the assessment year 1960-61 (account year ending on March 31, 1960), the Income-Tax Officer served a notice under section 22(2) of the Indian Income-Tax Act, 1922 (hereinafter referred to as 'the 1922 Act') to the assessee on October 7, 1960, requiring it to furnish its return of income by November 11, 1960. On the request of the assessee, this time was extended to April 20, 1961. The return was, however, filed on January 1, 1963, that is, after a delay of little more than twenty months. The assessment order was passed on March 24, 1965, and the income liable to tax was assessed at Rs. 81,346. As the assessee could not prove that the delay in filing the return of income was for a sufficient cause, the Income-Tax Officer took proceedings for imposition of penalty under the provisions of the Income-Tax Act, 1961 (hereinafter referred to as 'the 1961 Act'). The penalty was calculated in accordance with the provisions of clause (i) of section 271 (1) (a) of the said Act, that is, at the rate of 2 per cent of the income-tax for each month of delay, the total being 40 per cent of the income-tax assessed as the delay was of more than twenty completed months. This order was passed by the Income-tax Officer on March 20, 1967. The assessee filed an appeal against that order which was dismissed by the Appellate Assistant Commissioner of Income-tax on November 23, 1967. A further appeal was filed before the Income-Tax Appellate Tribunal, Chandigarh Bench, which was accepted in part. The Tribunal held that the penalty at the rate of 2 per cent as provided under section 271 (1) (a) (i) could be imposed for the period from April 1, 1962, to December 31, 1962, only, that is, for nine months because the 1961 Act had come into force with effect from April 1, 1962, and the provisions of section 271 thereof could not be made applicable to the defaults that had occurred before that date. For the period of eleven months prior to April 1, 1962, the Tribunal exercised its discretion in imposing only 7 per cent of the tax assessed as penalty under section 28 of the 1922 Act on the ground that that provision applied to that period. The Tribunal accordingly reduced the quantum of penalty from 40 per cent to 25 per cent of the tax assessed. Not being satisfied with that order, the

Commissioner of Income-tax asked for a reference of the following question of law being made to this Court:—

> "Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in reducing the penalty from 40 per cent to 25 per cent under section 271(1)(a) of the Income-tax Act, 1961?"

(2) The Tribunal, however, changed the form of the question and has referred the following question of law to this Court for opinion:—

> "Whether the substantive portion of section 271(1)(a) of the Income-Tax Act, 1961, that creates the charge of the penalty has a retrospective operation in the absence of a clear statement or clear implication?"

The reference came up for hearing before my learned brothers, Mahajan and Sodhi, JJ., and the learned Judges were pleased to direct that the reference may be placed for decision before a Full Bench as the learned counsel for the assessee had doubted the correctness of a Division Bench judgment of this Court in *The Commissioner of Income-tax, Punjab, Haryana, Jammu & Kashmir, Himachal Pradesh and Chandigarh, Patiala* v. *M/s. Kirpa Ram-Radha Kishan* (Income-Tax Reference No. 11 of 1968) which is printed as Appendix to *Commissioner of Income-Tax Punjab* v. *Munshi Ram-Tilak Raj* (1), and that is how this case has been placed before this Bench for decision.

(3) In order to decide this case, it is necessary to set out the provisions of section 297 of the 1961 Act because the interpretation of clause (g) of sub-section (2) of that section is involved :—

> "297(1) The Indian Income-tax Act, 1922 (XI of 1922), is hereby repealed.
>
> (2) Notwithstanding the repeal of the Indian Income-tax Act, 1922 (XI of 1922) (hereinafter referred to as the repealed Act),—
>
> (a) where a return of income has been filed before the commencement of this Act by any person for any assessment year, proceedings for the assessment of that person for that year may be taken and continued as if this Act had not been passed;

(1) (1971) 81 I.T.R. 620.

(b) where a return of income is filed after the commencement of this Act otherwise than in pursuance of a notice under section 34 of the repealed Act by any person for the assessment year ending on the 31st day of March, 1962, or any earlier year, the assessment of that person for that year shall be made in accordance with the procedure specified in this Act;

(c) any proceeding pending on the commencement of this Act before any Income-Tax authority, the Appellate Tribunal or any court, by way of appeal, reference or revision, shall be continued and disposed of as if this Act had not been passed;

(d) where in respect of any assessment year after the year ending on the 31st day of March, 1940,—

(i) a notice under section 34 of the repealed Act had been issued before the commencement of this Act, the proceedings in pursuance of such notice may be continued and disposed of as if this Act had not been passed;

(ii) any income chargeable to tax had escaped assessment within the meaning of that expression in section 147 and no proceedings under section 34 of the repealed Act in respect of any such income are pending at the commencement of this Act, a notice under section 148 may, subject to the provisions contained in section 149 or section 150, be issued with respect to that assessment year and all the provisions of this Act shall apply accordingly;

(e) subject to the provisions of clause (g) and clause (j) of this sub-section, section 23A of the repealed Act shall continue to have effect in relation to the assessment of any company or its shareholders for the assessment year ending on the 31st day of March, 1962, or any earlier year, and the provisions of the repealed Act shall apply to all matters arising out of such assessment as fully and effectually as if this Act had not been passed;

(f) any proceeding for the imposition of a penalty in respect of any assessment completed before the 1st day of April, 1962, may be initiated and any such penalty may be imposed as if this Act had not been passed;

(g) any proceeding for the imposition of a penalty in respect of any assessment for the year ending on the 31st day of March, 1962, or any earlier year, which is completed on or after the 1st day of April, 1962, may be initiated and any such penalty may be imposed under this Act;

(h) any election or declaration made or option exercised by an assessee under any provision of the repealed Act and in force immediately before the commencement of this Act shall be deemed to have been an election or declaration made or option exercised under the corresponding provision of this Act;

(i) where, in respect of any assessment completed before the commencement of this Act, a refund falls due after such commencement or default is made after such commencement in the payment of any sum due under such completed assessment, the provisions of this Act relating to interest payable by the Central Government on refunds and interest payable by the assessee for default shall apply;

(j) any sum payable by way of income-tax, super-tax, interest, penalty or otherwise under the repealed Act may be recovered under this Act, but without prejudice to any action already taken for the recovery of such sum under the repealed Act;

(k) any agreement entered into, appointment made, approval given, recognition granted, direction, instruction, notification, order or rule issued under any provision of the repealed Act shall, so far as it is not inconsistent with the corresponding provision of this Act, be deemed to have been entered into, made, granted,

given or issued under the corresponding provision aforesaid and shall continue in force accordingly.

(l) any notification issued under sub-section (1) of section 60 or section 60A of the repealed Act and in force immediately before the commencement of this Act shall, to the extent to which provision has not been made under this Act, continue in force until rescinded by the Central Government;

(m) where the period prescribed for any application, appeal, reference or revision under the repealed Act had expired on or before the commencement of this Act, nothing in this Act shall be construed as enabling any such application, appeal, reference or revision to be made under this Act by reason only of the fact that a longer period therefor, is prescribed or provision is made for extension of time in suitable cases by the appropriate authority."

(4) This section provides for repeals and savings. The Indian Income-Tax Act of 1922 has been repealed by sub-section (1) of section 297 of the 1961 Act and in sub-section (2), a provision has been made to provide for various matters resulting from the repeal of that Act. According to clause (a) of sub-section (2), where a return of income has been filed before April 1, 1962, by any person for any assessment year, proceedings for the assessment of that person for that year are to be taken under the 1922 Act and no reference has to be made to 1961 Act. Under clause (b), where a return of income is filed after April 1, 1962, for the assessment year ending on the 31st day of March, 1962, or any earlier year, the assessment of that person for that year has to be made in accordance with the procedure specified in the 1961 Act. If a notice under section 34 of the 1922 Act had been issued before April 1, 1962, the proceedings in pursuance of that notice are to be continued in accordance with the 1922 Act without any reference to 1961 Act as provided in clause (b) of section 297(2) of the 1961 Act. It is thus clear that in all cases, referred to above, the substantive provisions of the 1922 Act have to be applied when the assessment is made, although the procedure specified in the 1961 Act has to be followed in one of the three cases, mentioned above. The intention of the Legislature is thus clear as

to which provision of law is to apply to the assessment made in those cases. The provision for the imposition of a penalty has been made in sub-clauses (f) and (g) of sub-section (2) of section 297. According to clause (f), any proceeding for the imposition of a penalty in respect of any assessment completed before April 1, 1962, has to be initiated and such penalty has to be imposed in accordance with the provisions of the 1922 Act completely ignoring the 1961 Act. Where, however, the assessment has been completed for any assessment year ending on March 31, 1962, or any earlier year, after April 1, 1962, the proceedings for penalty have to be initiated and penalty has to be imposed under the 1961 Act which means that not only the procedure prescribed therein has to be followed but the penalty has to be imposed in accordance with its substantive provisions prescribing the quantum of penalty. If only the procedural provisions of the 1961 Act for the imposition of penalty were intended to be followed and the quantum of penalty had to be fixed in accordance with the provisions of the 1922 Act, the Legislature would have clearly provided therefor as has been done in clause (b) of sub-section (2) of section 297. When we compare the language of clauses (f) and (g), we find that in clause (f), the Act applicable is only the 1922 Act and the 1961 Act has been excluded while the reverse is the case in clause (g), that is, only the 1961 Act has been applied and the 1922 Act has been excluded. Thus it follows that the penalty in respect of defaults committed with regard to any assessment year prior to April 1, 1962, in respect of which assessment is completed after that date, is to be imposed under the 1961 Act, that is, the penalty has to be imposed at the rate and in accordance with the procedure prescribed in the 1961 Act and not as prescribed in the 1922 Act.

(5) The above conclusion, in my opinion, is fully supported by the decision of their Lordships of the Supreme Court in *Jain Brothers and others* v. *Union of India and others* (2). In that case the assessee, M/s. Jain Brothers, was a registered firm with four partners. For the assessment year 1960-61 (account year ending on October 31, 1959), a notice dated May 14, 1960, under sub-section (2) of section 22 of the 1922 Act was served by the Income-tax Officer on May 26, 1960, calling upon the firm to submit a return of income within 35 days of the service of the notice. The return was thus due by June 30, 1960, but it was filed on November 18, 1961. The assessment for

(2) (1970) 77 I.T.R. 107.

that year was completed on November 23, 1964. On that very date, the Income-tax Officer issued notice under section 271 read with section 274 of the 1961 Act calling upon the assessee firm to show-cause why an order imposing a penalty should not be made under section 271 of the said Act for having without reasonable cause failed to furnish the return of income within the time as required by law. The assessee submitted an explanation after considering which the Income-tax Officer passed an order on November 19, 1966, under clause (a) of sub-section (1) of section 271 of the 1961 Act, imposing a penalty of Rs. 1,03,434.00 for non-compliance with the notice under sub-section (2) of section 22 of the 1922 Act. An application for rectification of the said order was thereafter filed by the assessee-firm but it was dismissed by the Income-tax Officer on December 2, 1966. The assessee preferred an appeal before the Appellate Assistant Commissioner but before it was decided, the firm as well as its partners filed a petition under Articles 226 and 227 of the Constitution of India in the Delhi High Court challenging the *vires* of sections 297(2)(g) and 271(2) of the 1961 Act, on the plea that the only forum which could give them relief was the High Court and not the Tribunal created by the Income-tax Act. The prayer made in that petition was for the issuance of a writ, or an order, or a direction in the nature of *certiorari, mandamus* or *prohibition,* quashing the assessment made on the assessee-firm on November 23, 1964, and the order imposing penalty made on November 19, 1966. One of the main contentions raised by the assessee-firm and its partners in their writ petition was :—

> "As the petitioners submitted their return on November 18, 1961, before the coming into force on April 1, 1962, of the Act of 1961, penalty could be imposed upon the petitioners only under the provisions of section 28 of the Act of 1922 and not under section 271 of the Act of 1961. The assessment having been completed under the Act of 1922, the proceedings for imposition of penalty could also be under that Act and not under the Act of 1961. The provisions of clause (g) of sub-section (2) of section 297 of the Act of 1961, upon which the revenue relied in order to invoke the provisions of the Act of 1961, are violative of Article 14 of the Constitution."

(6) The above contention was not accepted by the learned Judges of the High Court with the following observations:—

> "Although there can be no dispute so far as the proposition is concerned that penalty is the liability to pay additional

tax for dishonest contumacious conduct of the assessee, we are unable to accept the contention advanced on behalf of the petitioners that, as the petitioners had filed their return before the coming into force of the Act of 1961, the proceedings for imposition of penalty can only be under the Act of 1922. Clause (a) of sub-section (2) of section 297, on which reliance has been placed on behalf of the petitioners, deals with proceedings for assessment of a person, while clauses (f) and (g) specifically deal with proceedings for imposition of penalty. Clause (g) makes it clear that, if the assessment is completed on or after the 1st day of April, 1962, the proceedings would have to be initiated and the penalty imposed under the Act of 1961 even though the penalty relates to an assessment for a year preceding the 1st day of April, 1962. It is a well established rule of the interpretation of statutes that a general provision must yield to a special provision providing for particular cases. As clause (g) makes a specific provision for proceedings for imposition of penalty in respect of assessment completed on or after the 1st day of April, 1962, no resort, in our opinion can be made to the provisions of clause (a). For the same reason the provisions of clause (c), to which also reference has been made on behalf of the petitioners, would not be applicable".

(7) The learned Judges then dealt with the other two contentions raised before them and disagreeing with the same dismissed the writ petition on February 25, 1969. This judgment is reported as *Jain Brothers and others* v. *Union of India and others* (3). Against that judgment, an appeal was taken to the Supreme Court and their Lordships dismissed that appeal which clearly shows that their Lordships approved of the decision of the High Court that penalty had to be imposed under the provisions of section 271 of the 1961 Act and not under section 28 of the 1922 Act. Before their Lordships it was contended that if that interpretation of section 297(2)(g) is accepted, the provision is violative of Article 14 of the Constitution. This contention was rejected with the following observations:—

"The submission on behalf of the appellants has been that clause (g) of section 297(2) is violative of article 14 in as

(3) (1969) 74 I.T.R. 808.

much as it creates a discrimination beween two sets of assessees with reference to a particular date, namely, completion of assessment proceedings on or after the first day of April, 1962. In other words, the assessees have been classified into two groups for imposition of penalty; the first group is of those assessees whose assessments have been completed before 1st April, 1962. In their case, the proceedings for imposition of penalty have to be initiated and the penalty imposed under the Act of 1922 (*vide* clause (f)). The second group of assessees, whose assessment is completed on or after the first day of April, 1962, have to be proceeded with for the imposition of penalty in respect of any assessment for the year ending on 31st day of March, 1962, or any earlier year under the Act of 1961. The penalty has also to be imposed in their case under the latter Act. It all depends, therefore, on the sweet will of the Income-tax Officer to complete the assessment before the first day of April, 1962, or to complete it thereafter in order to make the provisions of the Act of 1922 or the Act of 1961 applicable in the matter of initiation of proceedings for and imposition of a penalty. A fortuitous event of the assessment being made on or before 1st April, 1961, has no reasonable relation with the object of legislation. It is further pointed out that under clause (a) of section 297(2) where a return has been filed before the commencement of the Act, i.e., 1st April, 1962, the proceedings for assessment have to be taken under the Act of 1922. If the assessment had to be made under the Act of 1922, there seems to be no rationale behind the provisions contained in clauses (f) and (g) which introduce an apparent inconsistency and contradiction with what is provided by clause (a). Logically, it is claimed, the proceedings for imposition of penalty should have followed the same course as the assessment where the return of income has been filed. Penalty partakes of the character of an additional tax and therefore its imposition should not have been made dependent on the date when the assessment has been completed, particularly, when under clauses (a) and (b) it is the date of filing of the return which governs the procedure relating to assessment under one Act or the other."

Under section 22(2) of the Act of 1922, the Income-tax Officer could serve a notice requiring any person whose total income was of such amount as to render him liable to income-tax to furnish within a specified period a return in the prescribed form setting forth his total income during the previous year. Under section 28 if the Income-tax Officer, the Appellate Assistant Commissioner or the Appellate Tribunal, in the course of any proceedings, was satisfied that any person had, without reasonable cause failed to furnish the return of his total income which he was required to furnish by notice given under section 22, it could be directed that such person shall pay by way of penalty, in addition to the amount of income-tax and super-tax payable by him, a sum not exceeding 1½ times that amount. Sub-section (4) provided that no prosecution for an offence could be instituted in respect of the same facts on which penalty had been imposed under the section. Sub-section (6) made it obligatory for the Income-tax Officer to obtain the previous approval of the Inspecting Assistant Commissioner before imposing any penalty. In the Act of 1961, the provisions relating to penalties are contained in Chapter XXI. Section 271(1)(a) deals with the failure to furnish a return. If the Income-tax Officer or the Appellate Assistant Commissioner in the course of any proceedings under the Act is satisfied that such a default has been committed without reasonable cause, he may direct that such person shall pay by way of penalty, in addition to the amount of tax payable by him, a sum equal to 2 per cent of the tax for every month during which the default continues, but not exceeding in the aggregate 50 per cent of the tax. Section 274(1) provides that no order imposing a penalty shall be made unless the assessee has been heard or has been given a reasonable opportunity of being heard. Section 275 lays down the period of limitation for imposing penalty. Such an order cannot be passed after the expiration of two years from the date of the completion of proceedings in the course of which the proceedings for imposition of a penalty have been commenced. It may be mentioned that in Chapter XXII dealing with offences and prosecutions a provision has been made in section 276 for punishment with fine in case of failure without reasonable cause or excuse to furnish in due time a return under section 139(2) which was equivalent to section 22(2) of the Act of 1922. As the present case relates only to a penalty having been imposed on account of the failure to furnish a return, we may notice

the main changes made in the Act of 1961 in the matter of imposition of penalty for such a default. The first departure from the Act of 1922 is that no prosecution could be instituted under the Act of 1922 in respect of the same facts on which a penalty had been imposed. Under the Act of 1961, a penalty can be imposed and a prosecution launched on the same facts. The second change is that under the Act of 1922, the Income-tax Officer could not impose any penalty without the previous approval of the Inspecting Assistant Commissioner. Under the 1961 Act no such previous approval is necessary. Thirdly, the Act of 1922 did not prescribe any minimum amount of penalty. According to the Act of 1961, the penalty cannot be less than the minimum prescribed. This is, of course, subject to the Commissioner's power of reduction. Fourthly, the maximum penalty imposable in a case where there has been a failure to file a return in compliance with a notice issued by the Income-Tax Officer, has been reduced under the Act of 1961. Lastly, there was no time limit in the Act of 1922 for passing of a penalty order, but under the Act of 1961 a period of two years has been prescribed by section 275 as stated above. Thus, whereas under the Act of 1922 a defaulting assessee had certain protection in the matter of prosecution, no such protection has been afforded under the Act of 1961; but the maximum amount of penalty which can be imposed has been reduced and a period of limitation has been prescribed for passing a penalty order which is of distinct advantage to a defaulting assessee. It is not possible to accept the suggestion on behalf of the appellants that the substantive and the procedural provisions relating to penalty contained in the Act of 1961 are altogether onerous.

Now the Act of 1961 came into force on 1st April, 1962. It repealed the prior Act of 1922. Whenever a prior enactment is repealed and new provisions are enacted, the legislature invariably lays down under which enactment pending proceedings shall be continued and concluded. Section 6 of the General Clauses Act, 1897, deals with the effect of repeal of an enactment and its provisions apply unless a different intention appears in the statute. It is for the legislature to decide from which date a particular law should come into operation. It is not disputed and no reason has been suggested why pending proceedings cannot be treated by the legislature as a class for the purpose of article 14. The date, 1st April, 1962, which has been selected by the legislature for the purpose of clauses (f) and (g) of section 297(2) cannot be characterised

as arbitrary or fanciful. It is the date on which the Act of 1961 actually came into force. For the application and the implementation of the Act of 1961, it was necessary to fix a date and the stage of the proceedings which were pending for providing by which enactment they would be governed. According to *Hatisingh Mfg. Co. Ltd.* v. *Union of India* (4), the State is undoubtedly prohibited from denying to any person equality before the law or the equal protection of the laws but by enacting a law which applies generally to all persons who come within its ambit as from the date on which it becomes operatives, no discrimination is practised. In that although a distinction had been made with reference to section 25FFF(1) of the Industrial Disputes Act, 1947, as inserted by Act 18 of 1957, between employers who had closed their undertakings on or before November 27, 1956, and those who had done so after that date, it was held that article 14 had not been violated.

According to the arguments on behalf of the appellants article 14 is attracted because the classification which has been made is purely arbitrary depending on the accident of the date of the completion of the assessment. There can be no manner of doubt that penalty has to be calculated and imposed according to the tax assessed. It follows that imposition of penalty can take place only after assessment has been completed. For this reason there was every justification for providing in clauses (f) and (g) that the date of the completion of the assessment would be determinative of the enactment under which the proceedings for penalty were to be held. It may be that the legislature considered that a separate treatment should be given in the matter of assessment itself and under clauses (a) and (b) of section 297(2) the point of time when a return of income had been filed was made decisive for the purpose of application of the Act of 1922 or the Act of 1961. But merely because the legislature in its wisdom decided to give a different treatment to proceedings relating to penalty, it is difficult to find discrimination with regard to the classification which has been made in clauses (f) and (g) which are independent of clauses (a) and (b). Although penalty has been regarded as an additional tax in a certain sense and for certain purposes, it is not possible to hold that penalty proceedings are essentially a continuation of the proceedings relating to assessment where a return has been filed.

(4) (1960) 3 S.C.R. 528.

The majority decison in *Jalan Trading Co. (P) Ltd.* v. *Mill Mazdoor Union* (5), hardly affords any parallel. There the retrospective operation of the Payment of Bonus Act, 1965, which came into force on May 29, 1965, was made by section 33, the provisions of which were held to be violative of article 14 to depend on the pendency on that date of any dispute regarding payment of bonus relating to any accounting year from 1962 onwards. The year 1962 had apparently no connection with the date on which the Act came into operation which was May 29, 1965.

It is well settled that in fiscal enactments the legislature has a large discretion in the matter of classification so long as there is no departure from the rule that persons included in a class are not singled out for special treatment. It is not possible to say that while applying the penalty provisions contained in the Act of 1961 to cases of persons whose assessments are completed after 1st April, 1962, any class has been singled out for special treatment. It is obvious that for the imposition of penalty it is not the assessment year or the date of the filing of the return which is important, but it is the satisfaction of the income-tax authorities that a default has been committed by the assessee which would attract the provisions relating to penalty. Whatever the stage at which the satisfaction is reached, the scheme of section 274(1) and 275 of the Act of 1961 is that the order imposing penalty must be made after the completion of the assessment. The crucial date, therefore, for purposes of penalty, is the date of such completion.

It is equally difficult to understand the argument that because it rests with the Income-tax Officer to complete the assessment by a particular date, it will depend on his fiat whether the penalty should be imposed under the Act of 1922 or under the Act of 1961. There is no presumption that officers or authorities, who are entrusted with responsible duties under the taxation laws, would not discharge them properly and in a *bona fide* manner. If in a particular case any *mala fide* action is taken, that can always be challenged by an assessee in appropriate proceedings, but the mere possibility that some officer may intentionally delay the disposal of a case can hardly be a ground for striking down clause (g) as discriminatory under article 14. We are clearly of the view, in concurrence with the decisions in *Gopichand Sarjuprasad* v. *Union of India* (6)

(5) (1967) 1 S.C.R. 15.

(6) (1969) 73 I.T.R. 263.

and Income-tax Officer, A Ward, Agra v. *Firm Madan Mohan Damma Mal* (7), that no discrimination was practised in enacting that clause which would attract the application of article 14. The classification made is based on intelligible differentia having reasonable relation to the object intended to be achieved. The object essentially was to prevent the evasion of tax.

We are further unable to agree that the language of section 271 does not warrant the taking of proceedings under that section when a default has been committed by failure to comply with a notice issued under section 22(2) of the Act of 1922. It is true that clause (a) of sub-section (1) of section 271 mentions the corresponding provisions of the Act of 1961, but that will not make the part relating to payment of penalty inapplicable once it is held that section 297(2)(g) governs the case. Both sections 271(1) and 297(2)(g) have to be read together and in harmony and so read, the only conclusion possible is that for the imposition of a penalty in respect of any assessment for the year ending on March 31, 1962, or any earlier year which is completed after first day of April, 1962, the proceedings have to be initiated and the penalty imposed in accordance with the provisions of section 271 of the Act of 1961. Thus the assessee would be liable to a penalty as provided by section 271(1) for the default mentioned in section 28(1) of the Act of 1922 if his case falls within the terms of section 297(2)(g). We may usefully refer to this Court's decision in *Third Income-tax Officer, Mangolore* v. *Damodar Bhat* (8), with reference to section 297(2)(j) of the Act of 1961. According to it in a case falling within that section in a proceeding for recovery of tax and penalty imposed under the Act of 1922, it is not required that all the sections of the new Act relating to recovery or collection should be literally applied, but only such of the sections will apply as are appropriate in the particular case and subject, if necessary, to suitable modifications. In other words, the procedure of the new Act will apply to cases contemplated by section 297(2)(j) of the new Act *mutatis mutandis*. Similarly, the provision of section 271 of the Act of 1961 will apply *mutatis mutandis* to proceedings relating to penalty initiated in accordance with section 297(2)(g) of that Act".

(7) (1968) 70 I.T.R. 293.

(8) (1969) 71 I.T.R. 806 (S.C.).

(8) I have taken the liberty of quoting extensively from the judgment of their Lordships of the Supreme Court in order to emphasise that this matter has already been settled by that Court. If on the interpretation of section 297(2)(g), as contended for by the attorney for the assessee in this case, the penalty could not be imposed under section 271 of the 1961 Act, and it had to be imposed under section 28 of the 1922 Act, the entire discussion with regard to discrimination was unnecessary. The attorney for the assessee has contended that only an assumption was made by the learned counsel for the appellant before their Lordships that the penalty had to be imposed under section 271 of the 1961 Act, which created discrimination. But it was not contended by either side that it was not so and their Lordships accepted that contention and examined it to find out whether on that interpretation section 297(2)(g) violated the provisions of Article 14 of the Constitution. If only the provisions of section 28 of the 1922 Act were applicable to both the groups of assessees, then there was no question of any discrimination and the entire discussion was unnecessary. Their Lordships also held that the order imposing penalty had to be made after the completion of the assessment and, therefore, the selection of the date of the completion of an assessment was not arbitrary, but was in fact quite justified. Their Lordships also held that the substantive and the procedural provisions relating to penalty contained in the Act of 1961 were not onerous. This discussion, in a way, decided that section 297(2)(g) which applied section 271 and other sections of the 1961 Act relating to the imposition of penalty to cases in which the assessments were completed after April 1, 1962, although in respect of the assessment years prior to that date, were not hit by the provisions of Article 20(1) of the Constitution, the plea which has been strenuously urged before us by the attorney for the assessee. Moreover we must presume that, while deciding the *vires* of section 297(2)(g), their Lordships considered the matter from all aspects including the violation or otherwise of Article 20(1) of the Constitution. It was held by their Lordships in *Ballabhdas Mathura Das Labhani and others* v. *Municipal Committee, Malkapur* (9), that a decision of the Supreme Court is binding on the High Court and the High Court cannot ignore it on the ground that the relevant provisions were not brought to the notice of the Supreme Court.

(9) The learned counsel for the Commissioner of Income-tax has also referred to the following cases in which it has been held that

(9) A.I.R. 1971 S.C. 1002.

section 297(2)(g) of the 1961 Act is not violative of the provisions of Article 20(1) of the Constitution, as has been contended for the assessee by its attorney:—

(1) *Shakti Offset Works.* v. *Inspecting Assistant Commissioner of Income-tax, Nagpur and another* (10), (Bombay High Court).

(ii) *Indra and Co. v. Union of India and another* (*Rajastan High* Court) printed as Appendix No. 1 to Shakti Offset Works case (10), (supra).

(iii) *P. Ummali Umma* v. *Inspecting Assistant Commissioner of Income-tax and otheers* (Kerala High Court) printed as Appendix No. 2 to Shakti Offset Works case (10), (supra).

(10) We, therefore, do not accept the contention of the assessee as put forward by its attorney and hold that the penalty has to be imposed on the assessees, whose assessments for the assessment years prior to April 1, 1962, are completed after that date, irrespective of the date on which the return was filed or the date of the commission of the default for which penalty is imposable, in accordance with the provisions of sections 271 to 275 of the 1961 Act and not in accordance with the provisions of section 28 of the 1922 Act.

(11) We may also briefly deal with the contention of the attorney for the assessee that in case our answer to the question referred results in enhancing the penalty already imposed by the Income-tax Appellate Tribunal, it would violate the provisions of Article 20(1) of the Constitution. That Article deals with the provision of penalty for an offence by a subsequent act which is higher than the one existing at the time the offence was committed. Under the 1922 Act the Income-tax Officer had the jurisdiction to impose penalty up to 1½ times the tax levied. The penalty to the extent of 40 per cent of the tax levied in the present case was within that limit and that penalty was reduced by the Tribunal on a wrong interpretation of the provisions of the 1961 Act. The violation of Article 20 of the Constitution does not take place when a wrong order is rectified.

(10) (1967) 64 I.T.R. 637.

(12) In view of the above discussion, our answer to the question referred to us for decision is in the affirmative, that is, in favour of the Commissioner of Income-tax and against the assessee. The Income-tax Appellate Tribunal will now pass an order in the light of the observations made above. In the circumstances of the case, we leave the parties to bear their own costs.

K. S. K.

FULL BENCH

REVISIONAL CIVIL.

Before D. K. Mahajan, B. R. Tuli and P. C. Jain, JJ.

AMAR SINGH LAMBA.—*Petitioner.*

versus.

SEWA SINGH AND ANOTHER,—*Respondents.*

Civil Revision No. 909 of 1969.

March 6, 1972.

Income Tax Act (XLIII of 1961)—Sections 137 and 138—Income Tax Act (XI of 1922)—Sections 54 and 59-B—Income Tax Rules (1922)—Rule 50—Assessment records of an assessee—Disclosure of, to any person, authority or Court—When to be made.

Held, that the following are the propositions of law with regard to the disclosure of assessment records of an assessee to any person, authority or Court :—

(1) In the case of assessments completed under the 1922 Act at any time, the matter relating to disclosure of information from the assessment records or the production of those records in a Court of Law will be governed by the provisions of section 54 of the 1922 Act, and no Court shall, except as provided in that section, be entitled to require the production of any return, accounts, documents, affidavits and other records mentioned therein or any part of such record or require or allow any public servant to give any evidence in respect thereof or to disclose any information derived therefrom. This privilege as to secrecy, which the assessee had acquired under section 54 of the 1922 Act, has remained unimpaired by the repeal of that Act with effect from April 1, 1962, or the deletion of section 137 of the 1961 Act with effect from April 1, 1964 ;

(2) In the case of assessments completed after the 1st day of April, 1960, under the 1922 Act, the information regarding the tax determined as payable by an assessee can only be disclosed as provided in section 59-B of the 1922 Act, read with rule 50 of