

**Commissioner of Income-tax, Bombay City-v Vs. Kantilal B. Shah**

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**Court :** Mumbai

**Decided On :** Sep-05-1984

**Reported in :** (1985)44CTR(Bom)96; [1985]156ITR33(Bom);  
[1984]19TAXMAN473(Bom)

**Judge :** Bharucha and ;Desai, JJ.

**Acts :** [Income Tax Act, 1961](#) - Sections 271(1)

**Appeal No. :** Income-tax Reference No. 110 of 1975

**Appellant :** Commissioner of Income-tax, Bombay City-v

**Respondent :** Kantilal B. Shah

**Judgement :**

Bharucha, J.

1. The question to be answered in this reference under s. 256(1) of the I.T. Act, 1961, made at the instance of the Revenue reads thus :

'Whether, on the facts and in the circumstances of the case, the quantum of penalty leviable against the assessee in the present case should be computed under the provision of section 271(1)(c) of the Income-tax Act, 1961, as it came to be amended with effect from 1st April, 1968, and not under the said provision as it stood prior to 1st April, 1968 ?'

2. The assessee is the sole proprietor of Pears Watch Co. The year of assessment is 1964-65. The assessment was completed on October 25 1967. In the course of the assessment proceedings for the next assessment year, the ITO received information that officers of the Customs and Central Excise had confiscated 270 foreign watches on the basis that they belonged to the assessee and were smuggled. The ITO, therefore, respondent the assessment for the assessment year 1964-65. During the assessment proceedings, he came to know from the Collector of Customs' order that that on January 24, 1964, the officers had seized 90 watches from the assessee himself and another 180 watches from a cupboard in an adjoining premises which bore his name-plate. The Collector of Customs had come to the conclusion that the watches belonged to the assessee and had been illegally acquired by him after having been smuggled into India. The ITO noticed that this conclusion of the Collector of Customs had been accepted by the assessee. The ITO called upon the assessee to show how the 90 watches had been accounted for by him and to produce evidence that the other 180 watches had not belonged to him. The assessee produced no evidence. The ITO concluded that the assessee had acquired the 270 watches from

out of undisclosed funds, that the investment for such acquisition represented his income from undisclosed the sources and that it was liable to be taxed. The ITO estimate the assessee's investment at Rs. 10,000 and treated that amount as his income from undisclosed sources. His decision was upheld by the AAC.

3. The ITO, while completing the reassessment proceedings, initiated penalty proceedings under s. 271(1)(c) of the Act. As the penalty leviable exceeded Rs. 1,000, these proceedings were completed by the IAC. He levied a penalty upon the assessee in the sum of Rs. 10,000.

4. The assessee appealed to the Income-tax Appellate Tribunal against the levy of penalty. The Tribunal held that the assessee was liable to pay the penalty. It held that the assessee had failed to disclosed the fact of the income in the return which had been filed by him on June 30, 1964. It noticed the provisions of s. 271(1)(c), as they stood prior to April 1, 1968, when the minimum penalty leviable was 20 per cent of the tax which would have been avoided, and as they stood with effect from April 1, 1968, when the minimum was increased to 100 per cent of the income concealed. Keeping in view of the fact that the offence was in respect of the return failed by the assessee on June 30, 1964, the Tribunal held that the quantum of penalty was governed by the Act as it stood on June 30, 1964, and not as it came to be amended on April 1, 1968. It directed, keeping in view the facts and circumstances of the case, that the penalty against the assessee should be computed at 20 per cent of the tax which would have been avoided.

5. It was in the return filed on June 30, 1964, that the assessee had concealed the income from which he had acquired the 270 watches. The Supreme Court has, in its judgment in *Brij Mohan v. CIT* : [1979]120ITR1(SC) , held that when penalty is imposed for concealment of particulars of income, it is the law ruling at the date on which the act of concealment takes place which is relevant. In view of this, there can be no dispute that the Tribunal was right in holding that it was the law as it stood on June 30, 1964, when the act of concealment took place, which determined the quantum of penalty leviable upon the assessee.

6. We answer the question in favour of the assessee.

7. The revenue shall pay to the assessee the costs of the reference.