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NUMBER
YEAR

APPELLATE TRIBUNAL INLAND REVENUE

No. OF CASE	YEAR	DATE	DTL AT
926	1953-54	13/05/1954	0011

TAXATION	PTD	PTCL
2TAX289		

Income-tax Act, 1922 -- Sections 18A(9)(b), 22(1), 28(1)(a) --

Failure to file return within time and also to file it in the manner prescribed -- Whether each type of failings can independently attract penalty -- Held yes --

 Corresponding Sections:

Income-tax Ordinance, 1979 -- Sections 87(a)(1), 51(1), 108(a), 108(b) --

 [IN THE INCOME TAX APPELLATE TRIBUNAL, PAKISTAN]

Present: SYED ALI KHAN, PRESIDENT.

I.T.A. No.926 of 1953-54 (Assessment year 1949-50), decided on 13-5-1954.

Department versus Assessee

S. M. Ameen, D.R., for the Appellant.

R. A. Mohsin, Pleader, for the Respondent.

JUDGMENT

{The judgment was delivered by SYED ALI KHAN, PRESIDENT}.---
 This is an appeal by the Income-tax Officer, Sheikhpura, against the decision of the Appellate Assistant Commissioner reducing the penalty of Rs. 2,203/- imposed under sections 28(1)(a) and 18A(9)(b) in connection with the assessment year 1949-50.

2. The Income-tax Officer, having come to the conclusion that the assessee was not prevented by reasonable cause from furnishing a voluntary return under section 22(1) and from making advance payment of tax under section 18A(9) (b), imposed a penalty of Rs. 2,203/- without ear-marking the quantum attributable to the two defaults. On appeal the Appellate Assistant Commissioner knocked off the penalty of Rs. 1,621/- which, he thought, was referable to the default allegedly made under section 22(1) and maintained the levy of the balance which he considered to be referable to the default allegedly made under section 18A(9)(b). It is common ground that a return under section 22(1) was due sometime in July, 1949, but the assessee filed a return suo motu on the 27th January, 1951, declaring an income of Rs. 16,344/-0. He did not deposit any amount of tax and

both the officers are agreed that there was a clear default under section 18A(9)(b). As regards the alleged default under section 22(1) the Appellate Assistant Commissioner seems to hold that although the return was filed beyond the time allowed by the general notice published under section 22(1) there was no default within the meaning of section 28(1)(a) inasmuch as the assessee did file a return 'in the manner required by such notice.' In his opinion 'to levy a penalty under the last clause the Income-tax Officer must establish that the appellant failed to fulfil both the requirements i.e. he failed to file the return within time and also failed to file it in the manner prescribed.' He seems to think that each of the two types of failings envisaged in the latter part of section 28(1)(a) cannot independently attract penalty. In order to bring out the Appellate Assistant Commissioner's reasoning it would be of some advantage to quote his very words at this stage:

'It would be clear beyond doubt that penalty under the last clause of section 28(1)(a) can be imposed only when there are two types of failings on the part of the assessee, both committed simultaneously. He should have failed to file it within the time allowed in the notice under section 22(1) and he should have also failed to file it in the manner required by the notice under section 22(1). The word connecting the first limb with the second limb of the last clause of section 28(1)(a) is 'AND' not 'OR'. So unless there are both types of failure at a time on the part of the assessee, this clause be invoked for imposition of penalty.'

I regret to have to dissent from the view expressed to lucidly by the Appellate Assistant Commissioner. To me it seems that the language of the section 28(1)(a) is plain and simple and should admit of no doubt. As Sundaram rightly points out, section 22(1) can be applied to all cases of failure to submit return whether (i) under section 22(1) which the tax-payer has to submit suo motu or (ii) under section 22(2) in response to a notice from the Income-tax Officer, or (iii) under section 34 in response to a similar notice, and also a failure in all the three case, (iv) to submit the return in time, or (v) to submit them in the manner required. Section 28(1)(a) contemplates two types of cases: first, where no return has been filed at all, and, secondly, where a return has been filed but is not in order. Apart from the question of the existence or otherwise of reasonable causes, the assessee must show in order to escape a penalty that a return was filed within the time allowed by the notice issued under section 22(1) and that it was filed in the manner required by such notice. If he can show one and not the other, he would be liable to a penalty, unless of course he satisfies the appellate authority and his failure was due to some reasonable cause. Instead of saying 'or has without reasonable cause failed to furnish it within the time allowed by such notice, or has without reasonable causes failed to furnish it in the manner prescribed by such notice' the section has put the word 'AND' between the two parentheses. In my view the conjunctions refers back to the phrase 'has without reasonable causes failed to furnish it' and not to the phrase 'within the time allowed.' If the Appellate Assistant Commissioner's reasoning be taken to be correct, then the insertion of the qualifying words 'within the time allowed' would become superfluous and meaningless. I need not, however, pursue the matter because the question on the facts of the present case has become more or less academic. The materials on the record prove beyond any manner of doubt that there was no wilful default on the part of the assessee. Indeed, he has been throughout anxious to get himself assessed but he did not know how to have it done. He went to the length of consulting the

Income-tax Officer though at a late stage, and the Income-tax Officer advised him to wait until he gets a notice under section 22(2). I have no reason to distrust the statement of the assessee in this behalf and to discredit the evidence which he has brought up in support of his version. There may have been a technical default under section 22(1) which might call for the imposition of a nominal penalty only. In the present case a collective penalty of Rs. 2,203/- was imposed under both the sections and as I have indicated earlier, the Income-tax Officer's order does not make any allocation. The Appellate Assistant Commissioner, in view of the findings arrived at by him, has chosen to maintain a penalty of Rs. 582/- though he has specifically mentioned section 18A(9)(b) under which he purported to act. But in my opinion this penalty should be a sufficient deterrent in respect of both the defaults. Taking the facts and circumstances of the case into consideration I am not inclined to modify the Appellate Assistant Commissioner's order in any way.

3. The result is that the appeal fails and is hereby dismissed.

Appeal dismissed