

Commissioner of Income Tax, Lucknow v. Onkar Saran and Sons

Civil Appeal Nos. 678 and 679 of 1977

[1992] 2 SCR 187 | 1992-03-13

Where the same concealment appears in original returns filed before 1 April 1968 and returns responding to section 148 filed after that date, does the original return or the reassessment return determine the applicable historical penalty law?

271(1)(c) | 148 | 139(2) | 271(1)(a)

Three-judge bench | S. Ranganathan, J. | V. Ramaswami, J. | A.S. Anand, J.

Assessment years: 1961-62, 1962-63

Historical penalty measure follows the original offending return, not every later procedural date

For the same concealment in original and section 148 returns, this decision applies the law at the original return, if any. It preserves the reduced penalty and does not cancel liability, adopt 1 April of the assessment year, determine the penalty officer's jurisdiction or guarantee the lowest rate. Exact original-return dates are unavailable; the note preserves the printed High Court-date uncertainty and resolves the identified amount/OCR discrepancies by the judicial page image. This is a direct 1961 Act ruling despite the early AYs. Historical penalty measures are not current-law or 2025 Act certification. Later treatment remains not_verified.

01 FACTS OF THE CASE

The assessee HUF filed returns for AYs 1961-62 and 1962-63 showing Rs 18,935 and Rs 24,943. The exact original filing dates were unavailable; the judicial account places them in 1962 and 1963. Original assessments of Rs 28,513 and Rs 28,463 were made on 30 March 1962 and 28 November 1963. After discovering omitted land-sale profits, the ITO issued section 148 notices on 9 March 1965. The assessee responded on 27 February 1969 with the same returned incomes, and reassessments were completed on 6 March 1969 (physical pages 5-6).

The reassessed totals printed in the original image are Rs 52,185 and Rs 44,017; after further appeals the final assessed totals were Rs 41,923 and Rs 34,547. The land-sale income was ultimately treated as capital gains, rather than business income. The IAC imposed penalties of Rs 24,000 and Rs 10,000 on 4 March 1971. The Tribunal upheld liability to penalty but reduced it to 20 per cent of the tax payable on the undisclosed capital gains. The High Court upheld that reduction because the original-return dates governed, rather than adopting the Tribunal's first-day-of-the-assessment-year reasoning (physical pages 5-6).

Source: See the proposition-specific paragraph and PDF-page references below.

02 DISCUSSION BY THE HON'BLE COURT

The Finance Act, 1968 had changed the historical measure of section 271(1)(c) penalty from the tax sought to be evaded to the income concealed, effective 1 April 1968. The Court accepted the original-return approach supported by the majority of High Courts, particularly Arthanariswamy Chettiar and Joginder Singh. Starting from Brij Mohan's principle that the law at the date of the offending return applies, it held that the relevant return, in this multiple-return setting involving the same concealment, was the original return, if any (physical pages 4 and 7–8).

Four considerations supported that conclusion. First, Malbary and Bros. recognised a penalty imposed in reassessment with reference to original concealment, with an earlier penalty replaced rather than duplicated. Secondly, redetermination of the correct total income for the same year did not erase the original concealment; the Court expressly declined to endorse the proposition that reopening erases the original assessment for every purpose. Thirdly, making only the reassessment return relevant would produce anomalous escape from penalty where the assessee then disclosed the omitted income or filed no response. Fourthly, the rule could not be selected simply because it yielded a smaller penalty in the 1968 regime: the Court noted that the penalty measure returned to a tax-based basis from 1 April 1976, which could reverse the parties' interests (physical pages 8–10).

Source: See the proposition-specific paragraph and PDF-page references below.

03 JUDICIAL DECISION

The Supreme Court upheld the High Court's original-return-date approach and dismissed the Revenue's two appeals without an order as to costs. The Tribunal's reduction to 20 per cent of the tax payable on the undisclosed capital gains remained effective. The Court did not cancel the penalties or adopt the Tribunal's assessment-year-start rationale (physical pages 6 and 10).

Source: See the proposition-specific paragraph and PDF-page references below.

04 OUTCOME / IN WHOSE FAVOUR

In whose favour: Assessee on the applicable historical penalty measure

Revenue's two appeals dismissed; reduction upheld on the original-return-date rationale; no order as to costs

Final merits ruling on the applicable historical penalty law in the multiple-return setting

Penalty liability was sustained below and not eliminated. The ruling concerns the applicable law/measure, not the IAC's jurisdiction, a universal right to the lowest penalty rate or the law for a case with no original return.

Source: See the proposition-specific paragraph and PDF-page references below.

05 AKHB REVIEW POINT

Separate the date that fixes the penalty law from the date of reassessment and from the identity of the officer competent to impose it. Here the same concealment existed in original and section 148 returns, so the original offending return supplied the statutory date. Do not substitute 1 April of the assessment year for that date, and do not use this quantum decision as an authority on which officer retained jurisdiction.

The result preserved a reduced penalty; it did not exonerate concealment. The Court's express reference to the later tax-based measure prevents converting the case into a taxpayer-favourable least-penalty principle. Recover the actual original return where available, preserve the source's missing exact dates, and check the statutory version and subsequent treatment separately before reliance. The early assessment years do not make this a 1922-only case: the judicial issue is expressly under the 1961 Act.

Source: See the proposition-specific paragraph and PDF-page references below.

PROPOSITION-SPECIFIC SOURCE PARAGRAPHS AND PDF PAGES

1.

Topic: Cover, date, three judges, appeal metadata and historical statutory opening

Source url: [Open cited source](#)

Pdf pages: 1; 4

Paragraphs: SCR 187 and 190; unnumbered text

Source role: reported metadata and judicial opening

2.

Topic: Original returns, missing exact dates, notices, reassessment, penalties and lower-court distinction

Source url: [Open cited source](#)

Pdf pages: 5; 6

Paragraphs: SCR 191–192; unnumbered text

Source role: judicial text

3.

Topic: High Court division of views; adopted reasoning; original offending return principle

Source url: [Open cited source](#)

Pdf pages: 7; 8

Paragraphs: SCR 193–194; unnumbered text

Source role: judicial text

4.

Topic: Four reasons, replacement rather than duplicate penalty, reopening qualification and 1976 comparison

Source url: [Open cited source](#)

Pdf pages: 8; 9; 10

Paragraphs: SCR 194–196; unnumbered text

Source role: judicial text

5.

Topic: Dismissal of two Revenue appeals and no order as to costs

Source url: [Open cited source](#)

Pdf pages: 10

Paragraphs: SCR 196; unnumbered text

Source role: judicial text

OTHER GOVERNING STATUTES

1.

Act: Finance Act, 1968

Sections:

Role: Amendment to the historical section 271(1)(c) penalty measure effective 1 April 1968. The amending section number is not given in this judgment and is not inferred.

JUDICIAL AUTHORSHIP AND SEPARATE OPINIONS

S. Ranganathan, J.

ACT IDENTIFIED IN THE REVIEWED SOURCE

Income-tax Act, 1961

APPEAL GROUPING AND SOURCE LIMITS

Single judgment: True

Appeals included: Civil Appeal No. 678 of 1977; Civil Appeal No. 679 of 1977

Origin: Allahabad High Court, Income Tax Reference No. 492 of 1973; report prints judgment and order dated 21 March 1973. Appeals by special leave granted on 9 March 1977. Printed origin date is retained with the source caution.

ROLE AND SCOPE OF EACH IDENTIFIED PROVISION

1.

Section: 271(1)(c)

Role: The historical concealment penalty and the Finance Act, 1968 change in its measure, effective 1 April 1968, are the issue actually decided.

2.

Section: 148

Role: Reassessment notices and returns create the multiple-return setting; the original offending return supplies the applicable penalty law in the circumstances decided.

3.

Section: 139(2)

Role: Revenue argued that returns responding to section 148 were to be treated as original section 139(2) returns. That argument did not determine the penalty-law date.

4.

Section: 271(1)(a)

Role: Mentioned alongside clause (c) in the Court's statement of Brij Mohan's offending-return principle; no late-return penalty was adjudicated in these appeals.

OPERATIVE 1961 ACT PROVISIONS

271(1)(c); 148

PRECEDENTS CONSIDERED IN THIS JUDGMENT

1.

Case: Brij Mohan v. CIT

Citation: [1979] 120 ITR 1 (SC)

Treatment in this judgment: Starting principle that law at the date of the offending return governs; physical page 8

2.

Case: CIT v. S.S.K.G. Arthanariswamy Chettiar

Citation: [1982] 136 ITR 145 (Madras)

Treatment in this judgment: Reasoning expressly adopted as supporting the original-return approach; physical page 8

3.

Case: Additional CIT v. Joginder Singh

Citation: [1985] 151 ITR 93 (Delhi)

Treatment in this judgment: Reasoning expressly adopted as supporting the original-return approach; physical page 8

4.

Case: Malbary and Bros.

Citation: [1964] 51 ITR 295 (SC)

Treatment in this judgment: Relied on for penalty in reassessment by reference to original concealment and replacement of an earlier penalty; physical pages 8–9

5.

Case: Govindarajulu Iyer v. CIT

Citation: [1948] 16 ITR 391

Treatment in this judgment: Discussed as approved in Malbary and supporting a penalty relating to original concealment; physical page 9

6.

Case: Jagan Mohan Rao's case

Citation: [1970] 75 ITR 373 (SC)

Treatment in this judgment: Discussed with an express reservation about applying the reopening proposition for all purposes; physical page 9

7.

Case: CIT v. Ram Achal Ram Sewak

Citation: [1977] 106 ITR 144 (Allahabad)

Treatment in this judgment: Identified as the authority followed by the High Court in the procedural account; physical page 6

SOURCE & VERIFICATION

Hon'ble Supreme Court source PDF (reported judgment)

Identified source rendition: 10 PDF pages; SHA-256

a4866fc67b694fcb90b084a33bb171ba9fb0b87c9a4b8b428f00d753c2a4cc9c. Original bytes preserved.

Complete unnumbered judicial text from physical page 4/SCR 190 through disposition on physical page 10/SCR 196. Editorial headnote and case metadata preceding the judicial opening were separately read. No adjacent judgment included.

Open cited source rendition

The headnote first prints Rs 13,935 for AY 1961-62, while the judicial text and later headnote passage state Rs 18,935. The note follows the judicial text and original image at physical page 5.; OCR gives the second reassessed income as Rs 44,011; the original image at physical page 5/SCR 191 reads Rs 44,017. The latter is also printed in the headnote and is used here.; The exact original-return dates are expressly unavailable. The judicial text later says they were filed sometime in 1962 and 1963. No precise return dates are invented.; The printed appeal metadata gives the High Court date as 21 March 1973 in Reference No. 492 of 1973, while the body identifies the judgment under appeal at [1979] 116 ITR 317 and says the High Court followed Ram Achal Ram Sewak, [1977] 106 ITR 144. Reporting years do not themselves establish a corrected judgment date; the printed origin is retained without silently substituting one.; Physical page 4 prints "20 per cent of more than 150 per cent" and "minimum penalty was not to be 100 per cent" in describing historical scales. These apparent wording slips are not reproduced as a negation of the stated shift from tax to concealed-income measure. The source describes the historical ranges as 20–150 per cent of tax and 100–200 per cent of concealed income; no present penalty rate is certified.; The Tribunal's assessment-year-start theory and the High Court/Supreme Court original-return theory reach the same reduction here but are not the same legal test.; No paragraph numbers occur in this rendition; pinpoints use physical PDF and SCR pages. No section 297 or 1922 Act transition ruling is supplied by inference.

STATUTORY SCOPE

The judgment directly interprets the Income-tax Act, 1961 penalty/reassessment provisions although one AY is 1961-62. It is not a 1922-only judgment. The source does not analyse section 297 and none is inferred. Historical quantum rules are not a present-day or 2025 Act penalty schedule.

LATER TREATMENT

Source checked 2026-10-04. No later-treatment search or current-law certification was undertaken for this note. Authorities discussed within the reviewed judgment are reported as its own reasoning, not as an independently verified subsequent-treatment history.

IDENTIFIED SOURCE LINKS

reported judgment - PDF pages: 10

SHA-256: a4866fc67b694fcb90b084a33bb171ba9fb0b87c9a4b8b428f00d753c2a4cc9c

AI DISCLOSURE

AI-assisted research checked against the identified source. Extraction, interpretation or omission errors remain possible. Source review does not mean independent approval by a practising professional. Verify every material statement against the complete original judgment.

PROFESSIONAL DISCLAIMER

General research information only; not legal or tax advice, a certified judgment or a substitute for the full order. Applicability depends on facts, assessment year, statutory version and jurisdiction. Subsequent treatment is unverified unless identified sources are expressly stated. Downloading does not create a professional engagement. Obtain case-specific advice before reliance.