Jamnaprasad Kanhaiyalal vs Commissioner Of Income-Tax, M.P., ... on 8 May, 1981

Equivalent citations: 1981 AIR 1759, 1981 SCR (3) 849, AIR 1981 SUPREME COURT 1759, 1981 TAX. L. R. 1357, (1981) 23 CURTAXREP 146, 1981 SCC (TAX) 236, 1981 UPTC 932, 1981 BBCJ 221, (1981) 6 TAXMAN 61, (1981) 130 ITR 244, 1981 (3) SCC 441

Author: A.P. Sen

Bench: A.P. Sen, R.S. Pathak, E.S. Venkataramiah

PETITIONER:
JAMNAPRASAD KANHAIYALAL

Vs.

RESPONDENT:
COMMISSIONER OF INCOME-TAX, M.P., BHOPAL

DATE OF JUDGMENT08/05/1981

BENCH:
SEN, A.P. (J)
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SEN, A.P. (J)
PATHAK, R.S.
VENKATARAMIAH, E.S. (J)

CITATION:
1981 AIR 1759 1981 SCR (3) 849
1981 SCC (3) 441
CITATOR INFO :
R 1984 SC 989 (1,2)
F 1984 SC1990 (2)

ACT:
Voluntary Disclosure Scheme under section 24 of the Finance (No. 2) Act, 1965, Scope and effect of-Whether the acceptance of a disclosure statement made by a declarant under section 24 of the Finance Act, 1965 confers immunity on another person from tax liability in respect of the same sum of money-Whether section 24 has an overriding effect over section 68 of the Income Tax Act, 1961-Bar of double taxation-Section 18 of the Voluntary Disclosures of Income and Wealth Act, 1976 (Act 8 of 1976).

HEADNOTE:

During the course of the assessment proceedings of the assessee-firm for the assessment year 1967-68, the Income Tax officer noticed cash credits of Rs. 9,250 each in the names of five sons of the Managing Partner, in the books of the assessee. The Income Tax officer found that these creditors, who were minors, had no independent source of income. The assessee contended before the ITO that the five creditors had voluntarily disclosed the credits under section 24 of the Finance (No. 2) Act, 1965 and that the disclosures were accepted by the Commissioner. The ITO rejected the contention of the assessee and held that the cash credits in question were unexplained cash credits, that they represented the income of the assessee from undisclosed source, and accordingly made an addition of Rs. 46,250. The appellate Assistant Commissioner held that the acceptance of the voluntary disclosures under section 24(3) of the Act and the payment of tax thereon precluded the Department from disputing the fact that the income belonged to the creditors, and, as the same income could not be taxed twice once in the hands of the creditors and again in the hands of the assessee, set aside the order of the ITO. The Tribunal disagreed with the Appellate Assistant Commissioner and upheld the order of the ITO. Hence the reference at the instance of the assessee under section 257 of the Income Tax Act, 1961 .

Answering the reference against the assessee, the Court

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HELD: Per Sen, J.

1. Section 24 of the Finance (No. 2) Act, 1965 cannot be construed as conferring any benefit, concession or immunity on any person other than the person making the declaration under the provisions of the Act. The scheme of the Act makes it abundantly clear that it was to protect only those who preferred to disclose the income they themselves had earned in The past and which they had failed to disclose at the proper time. The scheme only permitted the bringing

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forward of income to tax; it did not require investigation of the claim of the declarant. The Act granted immunity only to the declarant and not to other persons to whom the income really belonged. [859 G-H, 860 A]

2. The legal fiction created by sub-s. (3) of s. 24 of the Finance (No. 2) Act, 1965 by virtue of which the amount declared by the declarant had to be charged to income-tax "as if such amount were the total income of the declarant", was limited in scope and it cannot be invoked in assessment proceedings relating to any person other than the person making the declaration, and did not take away the power vested in the ITO under section 68 of the Income Tax Act, 1961 to reject the' explanation of an assessee for a cash

credit on the ground that the explanation was not satisfactory in the case of such other person. [861 F-G]

3. The finality under sub-s. (8) of section 24 of the Act was to the order of the Central Board of Revenue under sub-s. (6) thereof and not to the assessment of tax made on the basis of a declaration made by the creditors under the scheme. There was, therefore, nothing to prevent an investigation into the true nature and source of the cash credits. [861 B, D]

4. The acceptance of voluntary disclosures under s 24 of the Act and the payment of tax thereon by the creditors could not, in law, justify the deletion of the amount of Rs. 46,250 as it represented the assessee's income from undisclosed sources. In a case of this description, there was no question of double taxation which was a situation of assessee's own making in getting false declarations made in the names of the creditors with a view to avoid higher slab of taxation. once it was found that the income declared by the creditors did not belong to them, there was nothing to prevent the same being taxed in the hands of the assessee to which it actually belonged. [861 H, 862 A-B, 863 C]

Manilal Gafoorbhai Shah v. Commissioner of Income Tax, (1974) 95 I.T.R. 624 Gujarat; Badri Prasad & Sons v. Commissioner of Income Tax, (1975) 98 I.T.R. 657 Allahabad; Pioneer Trading Syndicate v. Commissioner of Income Tax, Lucknow, (1979) 120 I.T.R. 5 (Full Bench Allahabad) and Additional Commissioner of Income Tax v. Samarathmal Santoshchand, (1980) 124 I.T.R. 297 Madhya Pradesh, approved.

Rattan Lal & Ors v. Income Tax officer, 98 I.T.R. 681 Delhi; Shakuntala Devi & Ors v. C.I.T, (1980) 125 I.T.R. 18 Delhi and Mohd. Ahsan Wani v. C.I.T., (1977) 106 I.T.R. 84 Jammu & Kashmir, overruled.

5. The declaration made under sub-s. (2) of s.24 of the Income Tax Act, 1961 had to relate to income actually earned by the assessee. It did not require any investigation into the correctness of the declarations or any determination of the amounts belonging to the declarant. The mere charge to tax on the amounts under the Voluntary Disclosure Scheme could not have the effect of converting the money from the deductions from the books of the assessee into the income of The declarants if it did not belong to it. It was, therefore, open to the Income Tax officer to investigate into the source of the cash credit amounting to Rs. 46,250 standing in the books of the assessee in the names of the sons of the Managing Partner. [859 C-D, 860 F-G]

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1. The making of an assessment against a declarant on his disclosure of statement under section 24 of the Finance (No. 2) Act, 1965 cannot deprive Income Tax officer of jurisdiction to assess the same receipt in the hands of another person if, in a properly constituted assessment proceeding under the Income Tax Act, the receipt can be

regarded as the taxable income of such other person. [852 G-H, 853 A]

2. The liability imposed under section 24 of the Finance (No. 2) Act, 1965 is identifiable with the income tax liability under the Income Tax Act. The scheme for voluntary disclosure of income and its taxation is only another mode provided by law for imposing income tax and recovering it. Consequently the general principles which apply to assessments made under the Income Tax Act would, except for provision to the contrary, be applicable to assessments made under section 24 of the Finance (No. 2) Act, 1965. Accordingly when the assessment to income tax is made under the latter enactment, it will be governed by the general principle that a finding recorded therein governs only the particular person assessed. [852 B-D]

3. The finality enacted by sub.s. (8) of section 24 of the Finance (No. 2) Act, 1965 attaches to the assessment of the declarant only. It cannot in law operate in favour of or against any other person. [852 F]

3:1. The jurisdiction of an Income Tax officer when making an assessment is concerned primarily with the issue whether the receipt under consideration constitutes the income of the assessee before him. Any finding reached by the Income Tax officer touching a person not the assessee in the process of determining that issue cannot be regarded as an operative finding in favour of or against such person. The only exception of this rule centers on the limited class, and for the limited purpose, defined by the Supreme Court in Income Tax Officer, A-Ward, Sitapur v. Murlidhar Bhagwan Das, 52 I.T.R. 335 at 346. [852 D-F]

Ahmed Ibrahim S. Dhoraji v. The Commissioner of Wealth Tax Gujarat, [1981] 3 SCR p. 402 and Income Tax Officer, A-Ward, Sitapur v. Murlidhar Bhagwan Das, 52 ITR 335 at 346, applied.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Tax Reference Case No. 19 of 1975.

Tax Reference u/s. 256 of the Income Tax Act, 1961 made by the Income Tax Appellate Tribunal, Jabalpur Bench, Jabalpur in R.A. No. 221/Jab/73-74 arising out of I.T.A. No. 1560 (Jab)/1972-73 decided on 10-1-1974; Assessment Year 1967-68.

S. T. Desai, B.L. Noma and K.J. John for the Petitioner V.s. Desai, Champat Rai and Miss A. Subhashini for the Respondent.

The Judgment of A.P. Sen and E. S. Venkataramiah, JJ. was delivered by Sen, J. R.S. Pathak, J. gave a separate opinion.

PATHAK, J: I agree. The acceptance of a disclosure statement made by a declarant under s.24 of the Finance (No.

2) Act, 1965 cannot confer immunity on another person from tax liability in respect of the same sum of money. As was held by this Court in Ahmed Ibrahim S. Dhoraji v. The Commissioner (of Wealth Tax Gujarat the liability imposed under s.24 of the Finance (No. 2) Act, 1965 is identifiable with the income tax liability under the Income-tax Act. The scheme for voluntary disclosure of income and its taxation is only another mode provided by law for imposing income tax and recovering it. Consequently, the general principles which apply to assessments made under the Income-Tax Act would except for the provision to the contrary, be applicable to assessments made under s.24 of the Finance (No. 2) Act, 1965. Accordingly, when the assessment to income tax is made under the latter enactment, it will be governed by the general principle that a finding recorded therein governs only the particular person assessed. The jurisdiction of an Income Tax officer when making an assessment is concerned primarily with the issue whether the receipt under consideration constitutes the income of the assessee before him. Any finding reached by the Income Tax officer touching a person not the assessee in the process of determining that issue cannot be regarded as an operative finding in favour of or against such person. The only exception to this rule centres on the limited class, and for the limited purpose, defined by this Court in Income-Tax Officer, A-Ward Sitapur v. Murlidhar Bhagwan Das. Viewed in the light of that principle it is apparent that the finality enacted by sub-section (8) of section 24 of the Finance (No.

2) Act, 1965 attaches to the assessment of the declarant only. It cannot in law operate in favour of or against any other person.

I am of opinion that the making of an assessment against a declarant on his disclosure statement under s.24 of the Finance (No. 2) Act, 1965 cannot deprive an Income Tax officer of jurisdiction to assess the same receipt in the hands of another person if, in a properly constituted assessment proceeding under the Income Tax A Act, the receipt can be regarded as the taxable income of such other person. I would answer the first question in the affirmative, in favour of the Revenue and against the assessee. That being so, no answer is necessary to the second question. The Commissioner of Income-Tax is entitled to his costs of the reference.

SEN, J. This is a direct reference under s. 257 of the Income Tax Act, 1961 made by the Income Tax Appellate (Tribunal, Jabalpur, for short, The Appellate Tribunal), at the instance of the assessee. The reference is necessitated due to divergence of opinion, as reflected in the various decisions of different High Courts, with respect to the scope and effect of the Voluntary Disclosure Scheme under s. 24 of the Finance (No. 2) Act, 1965 (the 'Act', for short).

The assessee, Messrs. Jamnaprasad Kanhaiyalal, is a partnership firm. The firm consists of 4 partners, namely, Kanhaiyalal and his 3 major sons, Rajkumar, Swatantrakumar and Santoshkumar with his minor son Satishkumar admitted to the benefits of the partnership. In the course of assessment proceedings for the assessment year 1967-68, the relevant accounting year of which was the year ending Diwali, 1966, the Income Tax officer (ITO, for short) noticed in the books of account of the asssesee five Cash credits of Rs. 9,250 each in the names of five sons of Kanhaiyalal, as

detailed below:

Rs.

Sailendrakumar	5 yrs.	9,250/-
Satishkumar	9 yrs.	9,250/-
Sunilkumar	7 yrs.	9,250/-
Swatantrakumar	16 yrs.	9,250/-
Santoshkumar	18 yrs.	9,250/-
		46,250/-

The ITo accordingly called upon the assessee to explain the genuineness as well as the source of the cash credits. On being questioned, Kanhaiyalal the Managing Partner, disavowed ail knowledge as to the capacity of the creditors to advance the amounts in question.

On the contrary, he admitted that the creditors had no independent source of income of their own. In fact, he further stated that he could not explain the source of the cash credits.

It was contended before the ITo that the creditors having made voluntary disclosures under the Voluntary Disclosure Scheme and the disclosures made by them having been accepted by the Commissioner of Income Tax and tax paid thereon, the amount of Rs. 46,250 could not be treated as income of the assessee from undisclosed sources. The ITo, however, held that the disclosures made under the scheme granted immunity from further taxation only to the declarant, and not to person to whom the income actually belonged. He further held that the assessee having failed to prove the genuineness and source of the cash credits, the amount of Rs. 46,250 credited in the books of account of the assessee in the names of the creditors, who had no income of their own must be treated as the assessee's income from undisclosed sources. According to him, such cash credits were treated in their names after making false declarations under the Scheme, with a view to avoid a higher rate of taxation. He accordingly made an addition of Rs. 46,250 as assessee's income from undisclosed sources.

The Appellate Assistant Commissioner disagreed with the ITO, holding that when an amount was disclosed by a person under s. 24 of the Act, there was an immunity not only as regards the declarant, but there was also a finality as to the assessment. In his view, the entire statement of Kanhaiyalal had to be ignored, as it was not clear in what capacity the questions were put to him and the answers elicited because any investigation into the source of the deposits was prohibited and illegal under the Act. He accordingly held that the acceptance of the voluntary disclosures made by the creditors in question to the Commissioner and the payment of tax thereon precluded the Department from disputing that the income belonged to the said creditors-and as

the same income cannot be taxed twice, once in the hands of the creditors and again in the hands of the assessee, the order passed by the ITO in that behalf was unsustainable. The Appellate Assistant Commissioner, therefore, directed the deletion of Rs. 46,250. The Department went up in appeal before the Appellate Tribunal.

The Appellate Tribunal, however, disagreed with the Appellate Assistant Commissioner and upheld the decision of the ITo. It was of the opinion that the ITo was justified in treating the cash credits appearing in the books of account of the assessee in the names of the creditors as unexplained cash credits, since it was found that the A income declared by the creditors did not belong to them, and there was nothing to prevent the same being taxed in the hands of the assessee to which it actually belonged. According to the Tribunal the immunity under s. 24 of the Act was conferred on the declarant only, and there was nothing to preclude an investigation into the true nature and source of the credits. The Appellate Tribunal, after taking into consideration the statement of Kanhaiyalal, and having regard to the age of the creditors and the fact that none of them had any independent source of income at any time, held that the ITo was justified in holding that the asssessee failed to discharge the burden of proof under s. 68 of the Income Tax Act, 1961 in regard to the nature and source of the cash credits and, therefore, it had to be treated as the assessee's income from undisclosed sources. Thereupon, the assessee applied to the Appellate Tribunal under s. 256 of the Income Tax Act, 1961 to refer the question of law arising out of its order, to the Madhya Pradesh High Court for its opinion.

There being a conflict of opinion between the different High Courts as to the true nature of the immunity granted under s. 24 of the Act, the Appellate Tribunal has made a reference under s. 257 of the Income Tax Act, 1961 to this Court, of the following questions of law, for its opinion, namely:

1. Whether on the facts and in the circumstances of the case, it was open to the Revenue authorities to investigate into the genuineness of the five credits aggregating to Rs. 46,250 and records a finding in regard thereto, when the Disclosure petitions made by the five creditors under Section 24 of the Finance (No. 2) Act, 1965, had been acted upon by the Revenue authorities ?

2. If the answer to the first question is in the negative and in favour of the assessee, whether the addition of Rs. 46,250 to the income of the assessee as representing its income from undisclosed sources, for the assessment years 1967-68, is valid and justified in law ?

The main question in controversy lies within a narrow compass. The question, in fact, is whether the provisions of s. 24 of the Act can be construed as conferring any benefit, concession or immunity on any person other than the person making the declaration under the provisions of the Act. It may be mentioned that to avoid any room for doubt, the legislature has introduced s. 18 in the Voluntary

Disclosures of Income and Wealth Act, 1976 (Act No. 8 of 1976) which specifically provides that save as otherwise provided in the Act, nothing contained in the Act shall be construed as conferring any benefit, concession or immunity on any person other than the person making the declaration under the provisions of the Act. The question for consideration is whether the absence of such a provision as is found in Act No. 8 of 1976 leads to the consequence that acceptance of a declaration under s. 24 of the Act confers a benefit which is not provided by the Act on a person other than the declarants and takes away the power of the ITO under s. 68 of the Income Tax Act, 1961 to make an investigation as to the nature and source of a cash credit appearing in the books of the assesssee to reject the explanation offered by the assessee as unsatisfactory and to treat it as his income from undisclosed sources.

Section 24 of the Finance (No. 2) Act, 1965 provided for the making of voluntary disclosures in respect of amounts representing income chargeable to tax under the Income Tax Act 1922 or the Income tax Act, 1961, for any assessment year commencing on or before April 1, 1964. On such disclosure being made under sub-s. (I) thereof, in the manner provided by sub-s. (2) the amount was to be charged to Income tax in accordance with sub-s. (3) which provided by a legal fiction that income tax shall be charged on the amounts of voluntarily disclosed income at certain specified rates "as if such amount were the total income of the declarant". There was a safeguard provided in sub-s. (4) that the benefit under the scheme would be available only in respect of the voluntarily disclosed income and not in respect of the amount detected or deemed to have been detected by the ITO before the date of declaration. When the Commissioner of Income Tax passed an order under sub-s. (4) there was an appeal provided to the Central Board of Revenue under sub-s. (S) and the Board was empowered under sub-s. (6) to pass such orders thereon as it deemed fit. There was a finality attached to the order of the Board under sub-s.

In support of the reference, learned counsel for the assessee has, in substance, put forth a three-fold contention. It is submitted, firstly, that the ITO could not have treated the cash credits standing in the names of the sons of Kanhaiyalal, the Managing Partner as . the assessee's income from undisclosed sources, having regard to the fact that each one of them had made a declaration under sub-s. (I) and paid tax thereon under sub- s. (3). The submission is that it is not permissible for the Department to go into the question of the nature and source of the amount so declared in a voluntary disclosure under s.24 of the Act, and to say that it does not represent the income of the declarant. Secondly, it is urged that sub-s. (I) read with sub-s. (3) of s.24 of the Act has a overriding effect over s.68 of the Income Tax Act, 1961 and, therefore, the ITO could not make any investigation as to the nature and source of the cash credits, and thirdly, it is submitted that there cannot be double taxation of the same income, once in the hands of the creditors and again in the hands of the assessee. These submissions proceed on a wrongful assumption that there is a finality attached under sub-s. (8) to the legal fiction created by sub-s. (3) for which there is no basis whatever. The contentions cannot, in our opinion, prevail.

For an appreciations of the contentions raised, it is necessary to set out the relevant provisions of s.24 of the Act. Sub-s. (1), insofar as relevant reads .

(1) Subject to the provisions of this section, where any person makes, on or after the 19th day of August, 1965, and before the 1st day of April, 1966, a declaration in accordance with sub-section (2) in respect of the amount representing income chargeable to tax under the Indian Income-tax Act, 1922 (11 of 1922), or the Income-tax Act, 1961 (43 of 1961), for assessment year commencing on or before the 1st day of April, 1964-

(a) for which he has failed to furnish a return within the time allowed under section 22 of the Indian Income-tax Act, 1922 (11 of 1922), or section 139 of the Income-tax Act, 1961 (43 of 1961), or G

(b) which he has failed to disclose in a return of in come filed by him on or before the 19th day of August, 1965, under the Indian Income Tax Act, 1922 (11 of 1922) or the Income Tax Act, 1961 (43 of 1961), or

(c) which has escaped assessment by reason of the omission or failure on the part of such person to make a return under either of the said Acts to the Income-tax officer or to disclose fully and truly 11 material facts necessary for his assessment. he shall, notwithstanding anything contained in the said Acts, be charged income-tax in accordance with sub-section (3) in respect of the amount so declared or it more than one declaration has been made by a person the aggregate of the amounts declared therein, as reduced by any amount specified in any order made under sub-section (4) or, if such amount is altered by an order of the Board under sub-section (6), then such altered amount.....

Sub-s. (3) containing the legal fiction reads as follows:

> (3) Income-tax shall be charged on the amount of the voluntarily disclosed income-
>
> (a) where the declarant is a person other than a company, at the rates specified in paragraph A, and
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> (b) where the declarant is a company, at the rates specified in Paragraph F, of Part I of First Schedule to the Finance Act (X of 1965) as if such amount were the total income of the declarant Sub-s. (8) on which strong reliance is placed, runs thus:
>
> (8) An order under sub-section (6) shall be final and shall not be called in question before any Court of law or any other authority.

The crux of the matter is whether the provisions of s.24 of the Act can be construed as conferring any benefit, concession or immunity on any person other than the person making the declaration under the provisions of the Act. The question is whether the non-obstente clause contained in sub-s. (I) of s. 24 of the Act precludes the Department from proceeding against the person to whom the income actually belonged. The contention that there was an immunity not only as regards the declarant, but there was also a finality as to the assessment under s.24 of the Act stems from a misconception of the nature and scope of the Voluntary Disclosure Scheme.

Under sub-s. (I) of s.24, a person was required to make a voluntary disclosure in respect of the amount representing the income chargeable to tax under the Indian Income Tax Act, 1922 or the Income Tax Act, 1961 for any assessment year commencing on or before April 1, 1964. Sub s. (I) makes it clear that the declarations, which were expected to be made in the manner provided by sub-s. (2), were with regard to the income which was chargeable to tax under the Income Tax Acts of 1922 or 1961, but which was not disclosed at the proper time. Neither under the Act of 1922 nor under the Act of 1961, was a person required to submit a return with regard to the income which was either not earned or deemed to have been earned by him. It, therefore, follows that the declarations under sub-s. (2) of s.24 had to relate to income actually earned by him. The scheme only permitted the bringing forward of income to tax it did not require investigation of the claim of the declarant. If a person made a declaration, the Commissioner was under an obligation to assess him to tax.

In respect of the voluntary disclosures made, a declarant acquired an immunity from further investigation as to the nature and source of the income. He also acquired certain benefits. One of the distinctive features of the scheme was that tax was chargeable on the whole of the disclosed income taken as a single block at rates prescribed for personal income or for corporate income under the Act, and not at an ad hoc concessional rate. Further, facilities were allowed to payment of tax in appropriate instalments extending over a period not exceeding four years, subject to a down payment of not less than 10% of the tax due and furnishing a security in respect of the balance. Income which had already been detected on the material available prior to the date of disclosure, was, however, to be assessed under the regular provisions of the Income Tax Act and not under the scheme. Any admissions made by a person in the declarations filed by him under the scheme in respect of such income were not to be used in assessing that income under the Income Tax Act. Under the scheme, the disclosed income was not to be subject to any further proceedings of assessment. The identity of the declarant was not to be revealed and he was also immune from penalty and prosecution for the past concealment of the disclosed income. It is, therefore, obvious that the Act granted immunity only to the declarant alone and not to other persons to whom the income really belonged.

The scheme of the Act makes it abundantly clear that it was to protect only those who preferred to disclose the income they themselves had earned in the past and which they had failed to disclose at the appropriate time. It is undoubtedly true that the Act was brought on the statute book to unearth the unaccounted money. But there is no warrant for the proposition that by enacting the same, the legislature intended to permit, or connive at, any fraud sought to be committed by making benami declarations. If the contentions were to be accepted, it would follow that an assessee in the higher income group could, with immunity, find out a few near relatives who would oblige him by filing returns under s.24 of the Act disclosing unaccounted income of the assessee as their own and claiming that the said income was kept by them in deposit with the assessee.

That takes us to the contention based on the legal fiction contained in sub-s. (3) of s.24 of the Act and the finality of the assessment, by virtue of sub-s. (8) thereof. The legal fiction contained in sub-s. (3) of s.24 of the Act, construed in the light of the other provisions; must mean that the income voluntarily disclosed shall be deemed to be the income of the declarant. The words "as if such income were the total income of the declarant" can only mean that even though the income did

not actually belong to the declarant lt would be treated to be his income for purposes of payment of income tax under the scheme. If, therefore, a person made a false declaration with regard to income not earned by him, it is difficult to comprehend how the Department could be prevented from proceeding against the person to whom the income actually belonged and during the course of whose assessment the concealed income is detected. It, therefore, logically follows that on a disclosure being made, the amount was not to be charged to income tax in accordance with sub-s. (3) of s.24 of the Act, taking the disclosed income as the taxable income of the declarant.

The immunity under s. 24 of the Act was conferred on the declarant only and there was nothing to preclude an investigation into the true nature and source of the credits. The ITO was, therefore, justified in treating the cash credits in the books of account of the assessee in the names of the creditors as unexplained cash credits. The finality under sub-s. (8) is to the order of the Central Board of Revenue under sub-s. (6). Under sub-s. (4) the Commissioner of Income Tax was required, within thirty days, if satisfied that the whole or any part of the income declared had been detected or deemed to have been detected by the ITO prior to the date of declaration, to make an order in writing to that effect and forward a copy thereof to the declarant. Any person who objected to such an order could appeal under sub- s. (5) to the Central Board of Revenue stating the grounds for such an objection. The Board was empowered to pass such orders as it thought fit under sub-s. (6). This order of the Board under sub-s. (6) was final and conclusive by reason of sub-s. (8). Thus, the finality under sub-s. (8) was to the order of the Board under sub-s. (6) of s. 24 and not to the assessment of tax made on the declarations furnished by the creditors under the scheme, by virtue of the legal fiction contained in sub-s. (3) of s. 24 of the Act.

The next question that calls for determination is whether the non-obstante clause contained in sub-s. (1) of s. 24 of the Act precludes the Department from proceeding against the person to whom the income actually belonged. Under sub-s. (1) of s. 24 the declaration was required to be made in respect of the amount which represented the income of the declarant. The declaration could not be made in respect of an amount which was not the income of the declarant. If, therefore, a person made a false declaration with respect to an amount which was not his income, but was the income of somebody else, then there was nothing to prevent an investigation into the true nature and sources of the said amount. There was nothing in s. 24 of the Act which prevented the ITO, if he was not satisfied with the explanation of an assessee about the genuineness or source of an amount found credited in his books, in spite of its having already been made the subject of a declaration by the creditor and then taxed under the scheme. We find no warrant for the submission that s. 24 had an overriding effect over s. 68 of the Income Tax Act, 1961, insofar as the persons other than the declarants were concerned.

In our judgment, the legal fiction created by sub-s. (3) of s. 24 of the Act by virtue of which the amount declared by the declarant was to be charged to income tax "as if such amount were the total income of the declarant"

> was limited in its scope, and it cannot be invoked in assessment proceedings relating to any person other than the person making the declaration under the Act so as to rule out the applicability of s. 68 of the Income Tax Act, 1961.

The last question that remains is whether the same income cannot be taxed twice, once in the hands of the creditors and again in the hands of the assessee. In a case of this description, there is no question of double taxation. The situation is of the assessee's own making in getting false declarations filed in the names of the creditors with a view to avoid higher slab of taxation. Once it was found that the income declared by the creditors did not belong to them, there was nothing to prevent the same being taxed in the hands of the assessee to which it actually belonged.

It follows that the decisions of the Gujarat High Court in Manilal Gafoorbhai Shah v. Commissioner of Income Tax, of the Allahabad High Court in Badri Prasad & Sons v. Commissioner of Income Tax, and Pioneer Trading Syndicate v. Commissioner of Income Tax, Lucknow and of the Madhya Pradesh High Court in Addl. Commissioner of Income Tax v. Samrathmal Santoshchand which lay down the true scope of the Voluntary Disclosure Scheme under s. 24 of the Act must be upheld. The decisions of the Delhi High Court in Rattan Lal & Ors v. Income Tax Officer and Shakuntala Devi & ors. v. C.I.T. and of the Jammu & Kashmir High Court in Mohd. Ahsan Wani v. C.I.T., taking a view to the contrary, are overruled.

The Income Tax officer was entitled to determine whether the amount disclosed was or was not the income of the declarant, while dealing with the case of another assessee under s. 68 of the Income Tax Act, 1961. The legal fiction created by sub-s. (3) of s. 24 was restricted to the Voluntary Disclosure Scheme itself. The protection enjoyed by the declarant under that scheme extended only to the amounts so declared being not liable to be added, in any assessment, of the declarant. There was no absolute finality attached to the declaration especially when the nature and source of the sum declared was being determined for the purpose of its inclusion in the income of an assessee other than the declarant. There was, therefore, nothing which prevented the Income Tax officer from investigating into the nature and source of the sums credited in the books of account of an assessee and reject his explanation to the effect that the sums belonged to the persons who had made declarations about them under s. 24 of the Act.

Accordingly, the reference must be answered in favour of the Revenue and against the assessee. Our answer to the first question is that the legal fiction created by sub-s. (3) of s. 24 of the Finance (No.2) Act, 1965 by virtue of which the amounts disclosed by the declarants had to be charged to income tax "as if such amount were the total income of the declarants" was limited in its scope and could not be invoked in the assessment proceedings relating to the assessee in whose books of account the cash credits appear.

The answer to the first question is sufficient to dispose of the second. On the construction placed on sub-s. (3) of s. 24 of the Act, it must also be held that the ITO was justified in treating the cash credits appearing in the books of account of the assessee, amounting to Rs. 46,250 as the assessee's income from undisclosed sources, since the assessee failed to discharge the burden of proof placed

upon him under s. 68 of the Income Tax Act, 1961. The Commissioner of Income Tax shall be entitled to his costs of the reference.

S.R.