State, Cbi vs Sashi Balasubramanian & Anr on 31 October, 2006

Equivalent citations: 2006 AIR SCW 5572, (2007) 51 ALLINDCAS 303 (SC), 2007 TAX. L. R. 17, (2006) 204 ELT 193, (2006) 157 TAXMAN 261, (2007) 2 SUPREME 153, (2006) 10 SCALE 541, (2007) 1 CHANDCRIC 258, (2006) 206 CURTAXREP 587, (2007) 289 ITR 8, (2007) 1 MAD LJ(CRI) 601, (2006) 4 RECCRIR 947, (2007) 1 CURCRIR 28, 2006 (13) SCC 252, (2007) 2 CRIMES 91, 2007 (3) SCC (CRI) 337

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Bench: S.B. Sinha, Dalveer Bhandari

CASE NO.:
Appeal (crl.) 1100 of 2006

PETITIONER:
State, CBI

RESPONDENT:
Sashi Balasubramanian & Anr.

DATE OF JUDGMENT: 31/10/2006

BENCH:
S.B. Sinha & Dalveer Bhandari

JUDGMENT:

J U D G M E N T [Arising out of SLP (Crl..) No.996 of 2006] S.B. SINHA, J.

Delay condoned.

Leave granted.

Interpretation and/or application of the Kar Vivad Samadhan Scheme 1998 framed under the Finance (No.2) Act, 1998 is in question in this appeal which arises out of a judgment and order dated 20.01.2005 passed by the High Court of Madras in Crl.OP Nos.31422 and 36254 of 2004.

Shorn of all unnecessary details, the fact of the matter is as under :

> One M/s Best Fabrics (for short, the Company) had applied for an advance licence on 29.01.1993 from the Office of the Joint Director General of Foreign Trade, Chennai for import of cotton fabrics showing the export order for 47136 sets of cotton mens ensemble under the Duty Exemption Entitlement Certificate (for

short, the Scheme). Upon scrutiny the application, a recommendation, however, was made to allow the said company to import cotton fabrics of 44 inch widths . As the item was not figuring in the standard input and output norms book, the file was placed before Respondent No. 1, Smt. Sashi Balasubramanian, by Sri V. Rajpriyan, Respondent No. 2 herein, for placing before the Zonal Advance Licensing Committee for recommendations as regards quantity and description of the goods to be allowed for import.

Approval for advance licence was granted by Smt. Sashi Balasubramanian. On allegations in regard to the grant of the said licence, a First Information Report was lodged on

02.03.1995 for commission of offences under Sections 120-B, 420 and 471 of the Indian Penal Code, Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and Section 136 of the Customs Act, 1962.

The Company and its Directors, however, in the meanwhile filed an application in terms of the Scheme. Declarations were filed on 31.12.1998. The charge-sheet in the criminal case was filed on 12.04.1999.

Originally, there were seven accused; three out of them were the private parties, namely, M/s Best Fabrics, Shri S. Vaidyanathan and Shri Bharath Bhushan Goyal. Smt. Sashi Balasubramanian, Respondent No.1 herein, was the Deputy Director General of Foreign Trade and Shri V. Rajpriyan , Respondent No.2 herein, was the Controller of Exports and Imports. Apart from Respondents herein, two other officials were also arrayed as accused persons in the charge- sheet, namely, Shri S. Ramanathan, Assistant Collector and Shri A. Sivaram Kumar, Apprising Officer.

Accused Nos. 1 to 4 filed an application for quashing the criminal proceedings as against them before the High Court of Madras, which was registered as CC No. 34 of 1999. It is stated that by an order dated 29.04.2004, the said application has been allowed. No appeal is said to have preferred therefrom.

Respondents thereafter filed an application before the High Court with the self-same prayer, which by reason of the impugned judgment has been allowed.

Appellant is, thus, before us.

Mr. Vikas Singh, the learned Additional Solicitor General appearing on behalf Appellant urged :

(i) Having regard to the nature of the Scheme, the High Court committed a manifest error in opining that as the private parties became entitled to immunity from prosecution, the official respondents would also be covered thereby.

(ii) The High Court misconstrued and misinterpreted the provisions of Section 95 (iii) of the Act.

(iii) Public Servants were not entitled to any relief under the said Scheme and far less immunity from prosecution.

Dr. Manish Singhvi and Mr. T. Raja, the learned counsel appearing on behalf of Respondents, on the other hand submitted :

(i) The High Court cannot be said to have acted illegally and without jurisdiction, as Respondents herein were also entitled to the benefit of immunity scheme.

(ii) The doctrine of parity is applicable in the instant case, and, thus, as other accused similarly situated had been held to be entitled to the benefit of declaration dated 31.12.1998 made under the Scheme, there is no reason as to why Respondents would not be entitled thereto.

(iii) Section 95 of the Act cannot be invoked for the said offence and in that view of the matter, it is impermissible in law to split up the offences between private parties and the public servants, particularly when charges had been framed under Section 120-B of the Indian Penal Code.

(iv) As the charges formed part of the same transaction, either all the persons involved therein may be proceeded against or none at all.

(v) Section 95(iii) of the Act, as the High Court has rightly opined, must be held to be inapplicable in the facts and circumstances of the case.

(vi) In any event, even if the allegations made against Respondents are taken to be correct and accepted in its entirety, the same does not constitute any offence as alleged or at all.

An additional submission was made by Mr. T. Raja that his client having worked under the orders of Smt. Sashi Balasubramanian, cannot be said to have committed any offence at all.

The Parliament enacted the Finance Act, 1998. It came into force with effect from 29.03.1998. Chapter IV of the said Act provides for the Kar Vivad Samadhan Scheme, 1998 . It came into force with effect from the 1st day of September, 1998.

Declarant has been defined in Section 87(a) to mean a person making a declaration under Section 88. Disputed tax has been defined in Section 87(f) to mean the total tax determined and payable, in respect of an assessment year under any direct tax enactment but which remains unpaid as on the date of making the declaration under Section 88. Indirect tax enactment has been defined in Section 87(j) in the following terms :

(j) indirect tax enactment means the Customs Act, 1962 (52 of 1962) or the Central Excise Act, 1944 (1 of 1944) or the Customs Tariff Act, 1975 (51 of 1975) or the Central Excise Tariff Act, 1985 (5 of 1986) or the relevant Act and includes the rules or regulations made under such enactment; Section 87(k) of the Act defines the person to mean :

(k) person includes

(i) an individual,

(ii) a Hindu undivided family,

(iii) a company,

(iv) a firm

(v) an association of persons or a body of individuals, whether incorporated or not,

(vi) a local authority,

(vii) every artificial juridical person, not falling within any of the preceding sub-clauses;

(viii) assessee, as defined in rule 2 of the Central Excise Rules, 1944;

(ix) exporter as defined in clause (20) of section 2 of the Customs Act, 1962 (52 of 1962);

(x) importer as defined in clause (26) of section 2 of the Customs Act, 1962 (52) of 1962);

(xi) any person against whom proceedings have been initiated and are pending under any direct tax enactment or indirect tax enactment. Section 88, inter alia, provides :

88. Subject to the provisions of this Scheme, where any person makes, on or after the 1st day of September, 1998 but on or before the 31st day of December, 19998, a declaration to the designated authority in accordance with the provisions of section 89 in respect of tax arrear, then, notwithstanding anything contained in any direct tax enactment or indirect tax enactment or any other provision of any law for the time being in force, the amount payable under this Scheme by the declarant shall be determined at the rates specified hereunder, namely :-

(f) where the tax arrears is payable under the indirect tax enactment -

(i) in a case where the tax arrear comprises fine, penalty or interest but does not include duties (including drawback of duty, credit of duty or any amount representing duty) or cesses, at the rate of fifty per cent, of the amount of such fine, penalty or interest, due or interest, due or payable as on the date of making a declaration under section 88,

(ii) in any other case, at the rate of fifty per cent, of the amount of duties (including drawback of duty, credit of duty or any amount representing duty) or cess due or payable on the date of making a declaration under section 88. A declaration is required to be filed in the form prescribed therefor. Time and manner of payment of tax arrears is provided for in Section 90. Section 91 provides for immunity from prosecution and imposition of penalty in certain cases. Section 95 provides for exceptions as regards the applicability of the Scheme, Clause (iii) whereof, which is relevant for our purpose, reads as under :

95. The provisions of this Section shall not apply

(iii) to any person in respect of whom prosecution for any offence punishable under Chapter IX or Chapter XVII of the Indian Penal Code (45 of 1860), the Foreign Exchange Regulation Act, 1973 (46 of 1973), the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), the Terrorists and Disruptive Activities (Prevention) Act, 1987 (28 of 1987), the Prevention of Corruption Act, 1988 (49 of 1988), or for the purpose of enforcement of any civil liability has been instituted on or before the filing of the declaration or such person has been convicted of any such offence punishable under any such enactment. The principal questions which arise for consideration are

(i) Whether the Scheme is applicable in relation to a public servant ?

(ii) When does a prosecution start ?;

(iii) Whether the offences enumerated under Section 95(iii) are excluded from immunity in terms of Section 91 of the Act ?

The Scheme provides for an exception to the general law. It provides for the mode and manner in which the arrears of tax was to be collected. It dealt with direct and indirect taxes only. Ex facie public servants would not come within the purview of the Act.

Counsel for Respondents, however, suggest that public servants would also come within the purview of the Act as against them also proceedings had been initiated.

Section 2(k)(xi), while defining a person undoubtedly embraces within its fold those against whom proceedings have been initiated, but the same relate to direct or indirect tax enactments. Proceedings contemplated under the Act must have a nexus with arrears of tax. Public servants who can never file a declaration would not, in our considered view, come within the purview thereof.

Of course, there exists a distinction between a person and a declarant . However, declaration is to be filed by a person who would come within the purview of the said term, as has been stated in the interpretation clause contained in Section 2(k) of the Act. Section 88 provides for a declaration to be made by a person and, declarant means a person making a declaration. The applicability of the provisions of the Act must be judged in the aforesaid context.

The definition of person must be read having regard to term declarant i.e. who files a declaration.

A public servant is enjoined with a duty to enforce tax enactments. A declaration in terms of Section 88 can be filed by a declarant for determination of the tax arrear under the Scheme at the rates specified thereunder. Public servants, therefore, cannot not take the benefit of the scheme. Section 90 provides for the time and manner of payment of tax arrear. The amount of arrear of tax is required to be determined within a period of sixty days from the date of receipt of the declaration under Section 91, whereupon a certificate is to be granted in such form as may be prescribed. The certificate is granted only to the declarant, which would contain the particulars of tax arrears and the sum payable after such determination towards full and final settlement of tax arrears.

The immunity under the scheme is an not absolute one. The designated authority may impose certain conditions while making an inquiry contained in Section 90.

The immunity granted is subject to the conditions provided in Section 90. The immunity is in relation to institution of any proceeding for prosecution for any offence. Such offence may be either under the direct tax enactment or indirect enactment. Immunity is also granted from imposition of penalty under such enactments. However, immunity also extends to matters covered under the declaration under Section 88. Section 95 provides for an exception to the Scheme. Once the provisions of Section 95 are attracted, the Scheme shall not apply. A determination might have been made although the Scheme was not applied, but the same may not per se confer a right of obtaining any immunity in terms of Section 91 of the Act. Clause (iii) of Section 95 while laying down the exceptions, enumerates offences under Chapter IX or Chapter XVII of the IPC and certain other statutes. It also makes an exception, if a proceeding for enforcement of any civil liability has been instituted. Clause (iii) of Section 95 would be attracted if, inter alia, any prosecution for any offence enumerated thereunder has been instituted on or before the filing of the declaration.

The First Information Report in regard to the offences committed, as indicated hereinbefore, was lodged on 02.03.1995. The investigation started immediately thereafter. The investigation was being carried on by the Central Bureau of Investigation (Economic Offences Wing). Only at a much later stage, namely, more than three years thereafter, i.e. on 31.12.1998, declarations were filed. Charge-sheet in the criminal case was filed on 12.04.1999.

It is in the aforementioned context, interpretation of the word prosecution assumes significance. The term prosecution would include institution or commencement of a criminal proceeding. It may include also an inquiry or investigation. The terms prosecution and cognizance are not interchangeable. They carry different meanings. Different statutes provide for grant of sanction at different stages.

In initio means in the beginning. The dictionary meaning of initiation is cause to begin. Whereas some statutes provide for grant of sanction before a prosecution is initiated, some others postulate grant of sanction before a cognizance is taken by Court. However, meaning of the word may vary from case to case. In its wider sense, the prosecution means a proceeding by way of indictment or information, and is not necessarily confined to prosecution for an offence.

The term prosecution has been instituted would not mean when charge-sheet has been filed and cognizance has been taken. It must be given its ordinary meaning.

The Legislature with a definite purpose thought of granting an exemption from the operation of the Act, if no prosecution is initiated under the provisions of the statute specified thereunder. Chapter IX of the Penal Code deals with public servants. Chapter XVII thereof deals with offences relating to property. Offences under other enactments are of serious nature. Thus, presumably commission of offences under the other Acts enumerated therein were considered to be serious enough by the Parliament, so as to exclude the application of the Scheme, which includes Prevention of Corruption Act.

In any view of the matter, an immunity is granted only in respect of offences purported to have been committed under direct tax enactment or indirect tax enactment, but by no stretch of imagination, the same would be granted in respect of offences under the Prevention of Corruption Act. A person may commit several offences under different Acts; immunity granted in relation to one Act would not mean that immunity granted would automatically extend to others. By way of example , we may notice that a person may be prosecuted for commission of an offence in relation to property under the Indian Penal Code as also under another Act, say for example, the Prevention of Corruption Act. Whereas charges under the Prevention of Corruption Act may fail, no sanction having been accorded therefor, the charges under the Penal Code would not.

The High Court has not held that the offences alleged against Respondents are so inextricably connected that it cannot be separated so much so that in the event if it be held that private parties cannot be proceeded with at all, the case against public servants, would invariably fail. We, thus, as at present advised, do not intend to delve deep into the said question. However, to be fair to learned counsel, we may notice the decisions cited at the bar.

Reliance placed by Mr. Singhvi on Devarapalli Lakshminarayana Reddy and Others v. V. Narayana Reddy and Others [(1976) 3 SCC 252] has no application to the facts and circumstances of the present case. The question which arose for consideration therein was required to be determined in the context of the provisions of Sections 200 and 202 of the 1898 Code vis-`-vis Sections 200 and 202 of the 1973 Code. The question was as to whether cognizance is taken before issuance of process

or not. It in that context, it was stated :

> 4. This raises the incidental question: What is meant by taking cognizance of an offence by a Magistrate within the contemplation of Section 190? This expression has not been defined in the Code. But from the scheme of the Code, the content and marginal heading of Section 190 and the caption of Chapter XIV under which Sections 190 to 199 occur, it is clear that a case can be said to be instituted in a court only when the court takes cognizance of the offence alleged therein. The ways in which such cognizance can be taken are set out in clauses (a), (b) and (c) of Section 190(1).

Whether the Magistrate has or has not taken cognizance of the offence will depend on the circumstances of the particular case including the mode in which the case is sought to be instituted, and the nature of the preliminary action, if any, taken by the Magistrate. Broadly speaking, when on receiving a complaint, the Magistrate applies his mind for the purposes of proceeding under Section 200 and the succeeding sections in Chapter XV to the Code of 1973, he is said to have taken cognizance of the offence within the meaning to Section 190(l)(a). It, instead of proceeding under Chapter XV, he has, in the judicial exercise of his discretion, taken action of some other kind, such as issuing a search warrant for the purpose of investigation, or ordering investigation by the police under Section 156(3), he cannot be said to have taken cognizance of any offence. Institution of a prosecution and institution of a complaint case in a criminal court stand on different footings. Whereas summons to an accused in a complaint case can be issued only upon taking cognizance of the offence, the same would not mean in a case where first information report has been lodged resulting in initiation of investigation or where it has been referred to police or other authorities for enquiry; even then a prosecution may not be held to have been initiated at that stage.

What transpires from the said decision is that whereas before cognizance is taken, application of mind on the part of the court is imperative, taking action of some other kind would not mean that cognizance has been taken. In some cases, even after lodging of the F.I.R., a preliminary enquiry which may not be an investigation into the crime, may be initiated.

Strong reliance has also been placed on Basir-ul-Haq and Others v. State of West Bengal [(1953) SCR 836]. The question which arose for consideration therein was whether having regard to the nature of the offence allegedly committed by the accused named therein, it was capable to be split up. In the aforementioned context, it was held that if the offences are inseparable or incapable of being split up, the Court will have no other option but to pass a judgment of acquittal, stating :

> 4. Though, in our judgment, Section 195 does not bar the trial of an accused person for a distinct offence disclosed by the same facts and which is not included within the ambit of that section, it has also to be borne in mind that the provisions of that section cannot be evaded by resorting to devices or camouflages. The test whether there is evasion of the section or not is whether the facts disclose primarily and essentially an offence for which a complaint of the court or of the public servant is required. In other words, the provisions of the section cannot be evaded by the device

> of charging a person with an offence to which that section does not apply and then convicting him of an offence to which it does, upon the ground that such latter offence is a minor offence of the same character, or by describing the offence as being one punishable under some other section of the Indian Penal Code, though in truth and substance the offence falls in the category of sections mentioned in Section 195 of the Criminal Procedure Code . [Emphasis supplied] The observations in the said judgment must be held to have been made in the factual matrix obtaining therein and not de hors the same.

In the instant case, resorting to any device or camouflage has not been alleged. It is also not a case that the provisions of the Indian Penal Code or the Prevention of Corruption Act cannot be said to have any application, although linked with an offence under Section 136 of the Customs Act.

An ultimate purpose of commission of an offence may be to commit one offence under one statute, but indisputably in the process thereof offences under other statutes may also be committed.

In Hira Lal Hari Lal Bhagwati v. CBI, New Delhi [(2003) 5 SCC 257] this Court indisputably proceeded to hold that the immunity was qua offence but Appellants therein before this Court were the assessees. The prosecution was also launched therein after a declaration was made.

We may also notice that Brijesh Kumar, J. in his concurring but separate judgment took into consideration the fact situation obtaining therein, namely, initiation of a criminal proceeding after issuance of a declaration and after withdrawal of the case, in the High Court in the following terms :

> On the one hand final settlement was made after determining the tax liability on the premise that the appellants were neither convicted nor criminal proceedings were pending, relating to any offence under Chapter IX or XVII IPC, yet the criminal proceedings are being prosecuted which is apparently against the very spirit of the Scheme promulgated under the Finance (No. 2) Act of 1998. If a person against whom criminal proceedings were pending, relating to offence under Chapter IX or XVII IPC or who stood convicted under any of the provisions of those chapters, he would not have been eligible to seek benefit under the Scheme and after accepting that position and the due settlement, there was no occasion to initiate and continue the criminal proceedings, which could bring about the conviction of the same persons, in case prosecution ended successfully in favour of the State and against the appellants. If such a condition is provided that on a particular date a criminal proceeding should not be pending against a person nor should he have been convicted of an offence, as a condition precedent for a settlement, and on that basis a settlement is brought about, it does not mean that later on, one could turn around and get the declarant convicted for a criminal offence too, after settlement of the liability. More so, when in view of Section 90 sub-section (4) of the Scheme the declarant is obliged to withdraw an appeal or proceedings regarding tax liability pending before the High Court or the Supreme Court, which had also been done in the case in hand.

That is to say that on one hand the declarant is not permitted to pursue the remedy, regarding tax liability, which is already pending before the courts of law, as they are either deemed to be withdrawn by operation of law or they have to be withdrawn by a positive act of the party and yet prosecute such persons for their conviction as well. The declarant could not be dragged and chased in criminal proceedings after closing the other opening making it a dead end. It is highly unreasonable and arbitrary to do so and initiation and continuance of such proceedings lack bona fides. An accused may be discharged from a criminal case under Section 245 of the Code, if his civil liability has been determined in his favour; but the same must have a direct nexus with his criminal liability. He would not acquire any immunity only because civil and criminal liabilities have some connection, however, remote the same may be. The connection between the two types of liabilities must be direct and proximate. If in incurring the civil liability, he has committed offences wherewith determination thereof has no nexus, the immunity would not extend thereto.

We will give a simple example. A person while obtaining undue favour from an authority under the indirect tax enactment, offers a bribe. Obtaining of an undue favour resulting in prosecution under the indirect tax enactment may be a separate offence , but involvement of the public servant qua offences under the Prevention of Corruption Act would be a separate and distinct one.

It is one thing to say that an Act constitutes both civil and criminal wrong and in the self same fact, when compounding of offence is effected in relation to the civil dispute, the High Court may be justified in quashing a complaint under the criminal case as was done in Central Bureau of Investigation, SPE, SIU (X), New Delhi v. Duncans Agro Industries Ltd., Calcutta [(1996) 5 SCC 591], but it is another thing to say that prosecution under other statute would also fail. It is in that view of the matter, this Court stated the law in the following terms :

> 6. After giving our careful consideration to the facts and circumstances of the case and the submissions made by the respective counsel for the parties, it appears to us that for the purpose of quashing the complaint, it is necessary to consider whether the allegations in the complaint prima facie make out an offence or not. It is not necessary to scrutinise the allegations for the purpose of deciding whether such allegations are likely to be upheld in the trial. Any action by way of quashing the complaint is an action to be taken at the threshold before evidences are led in support of the complaint. For quashing the complaint by way of action at the threshold, it is, therefore, necessary to consider whether on the face of the allegations, a criminal offence is constituted or not. Reliance has also been placed on K.C. Builders and Another v. Assistant Commissioner of Income Tax [(2004) 2 SCC 731]. The question which arose for consideration therein was as to whether mens rea is an essential ingredient for imposition of penalty under Section 271(1)(c) of the Income Tax Act. In that case, finding of concealment and subsequent levy of penalties had been struck down by the Tribunal. The assessment year was directed to be corrected in terms of Section 154 of the Act. It was in that fact situation, this Court opined that if the Tribunal has set aside the order of imposing a penalty for concealment, there would be no concealment in the eyes of the law and, therefore, the prosecution should be proceeded against the accused and, thus, further proceedings would be illegal and

without jurisdiction, stating :

When the Tribunal has set aside the levy of penalty, the criminal proceedings against the appellants cannot survive for further consideration In the fact of that case, it was held that the charge of conspiracy had not been proved and no case had also been made out for establishing the offence of cheating. The gist of the prosecution case therein was that the accused had filed false returns of income before the Department which led concealment of income to evade tax. The question, therefore, was as to whether there had been any concealment of income at all. The said decision, therefore, cannot have any application whatsoever.

Reliance has also been placed on Central Bureau of Investigation v. Akhilesh Singh [(2005) 1 SCC 478]. In that case, out of the three accused, two were discharged and in that view of the matter it was held that the basis of alleged conspiracy by the respondent therein with Dr. Sanjay Singh lost its substratum. It was in the factual matrix of the case exercise of jurisdiction by the High Court under Section 482 of the Code of Criminal Procedure was held to be not to be suffering from any illegality or infirmity.

We may, however, notice that in R.K. Garg etc. v. Union of India and Others [(1981) 4 SCC 675], it was held that only because exemption had been granted in relation to purchase of bearer bonds, the same would not mean that the offender shall stand immuned from other offences also.

Bhagwati, J. speaking for the majority opined :

It will be seen that the immunities granted under Section 3, sub-section (1) are very limited in scope. They do not protect the holder of Special Bearer Bonds from any inquiry or investigation into concealed income which could have been made if he had not subscribed to or acquired Special Bearer Bonds. There is no immunity from taxation given to the black money which may be invested in Special Bearer Bonds. That money remains subject to tax with all consequential penalties, if it can be discovered independently of the fact of subscription to or acquisition of Special Bearer Bonds. The only protection given by Section 3, sub- section (1) is that the fact of subscription to or acquisition of Special Bearer Bonds shall be ignored altogether and shall not be relied upon as evidence showing possession of undisclosed money. This provision relegates the Revenue to the position as if Special Bearer Bonds had not been purchased at all. If without taking into account the fact of subscription to or acquisition of Special Bearer Bonds and totally ignoring it as if it were non-existent, any inquiry or investigation into concealed income could be carried out and such income detected and unearthed, it would be open to the Revenue to do so and it would be no answer for the assessee to say that this money has been invested by him in Special Bearer Bonds and it is therefore exempt from tax or that he is on that account not liable to prosecution and penalty for concealment of such income. This is

the main difference between the impugned Act and the Taxation Laws (Amendment and Miscellaneous Provisions) Act, 1965. Under the latter Act, where gold is acquired by a person out of his undisclosed income, which is the same thing as black money, and such gold is tendered by him as subscription for the National Defence Gold Bonds, 1980, the income invested in such gold is exempted from tax, but where Special Bearer Bonds are purchased out of undisclosed income under the impugned Act, the income invested in the Special Bearer Bonds is not exempt from tax and if independently of the fact of purchase of the Special Bearer Bonds and ignoring them altogether, such income can be detected, it would be subject to tax. The entire machinery of the taxation laws for inquiry and investigation into concealed income is thus left untouched and no protection is granted to a person in respect of his concealed income merely because he has invested such income in Special Bearer Bonds. It is therefore incorrect to say that as soon as any person purchases Special Bearer Bonds, he is immunised against the processes of taxation laws. Here there is no amnesty granted in respect of any part of the concealed income even though it be invested in Special Bearer Bonds. The whole object of the impugned Act is to induce those having black money to convert it into white money by making it available to the State for productive purposes, without granting in return any immunity in respect of such black money, if it could be detected through the ordinary processes of taxation laws without taking into account the fact of purchase of Special Bearer Bonds . We may at this stage deal with another contention viz.

that if in the connected matter where other public servants were parties, , no appeal having been filed from the judgment of the High Court by the C.B.I., this appeal would be maintainable. This aspect of the matter has been considered by a three-Judge Bench of this Court in Government of West Bengal v. Tarun K. Roy and Others [(2004) 1 SCC 347], wherein it was categorically stated :

Non-filing of an appeal, in any event, would not be a ground for refusing to consider a matter on its own merits. (See State of Maharashtra v. Digambar10.)

29. In State of Bihar v. Ramdeo Yadav11 wherein this Court noticed Debdas Kumar1 by holding: (SCC p. 494, para 4) . Shri B.B. Singh, the learned counsel for the appellants, contended that though an appeal against the earlier order of the High Court has not been filed, since larger public interest is involved in the interpretation given by the High Court following its earlier judgment, the matter requires consideration by this Court. We find force in this contention. In the similar circumstances, this Court in State of Maharashtra v.

Digambar10 and in State of W.B. v. Debdas Kumar1 had held that though an appeal was not filed against an earlier order, when public interest is involved in interpretation of law, the Court is entitled to go into the question. [See also Union of India v. Pramod Gupta (Dead) by Lrs. and Others (2005) 12 SCC 1] In this case also public interest is involved as interpretation of the provisions of the Act were in question. Yet again there cannot be any equality in illegality.

[See Secretary, State of Karnataka and Others v. Umadevi (3) and Others [(2006) 4 SCC 1] We, therefore, are of the opinion that the impugned judgment cannot be sustained. It is set aside accordingly.

The High Court, however, did not go into the merit of the matter. It proceeded on the basis that the continuation of the prosecution as against Respondents was unsustainable in law. Although prosecution as against Respondents herein may be held to be not maintainable, in our opinion, they are entitled to contend that even if the materials brought on records are given face value and taken to be correct in their entirety, no case has been made out as against them.

The appeal is allowed, the impugned judgment is set aside with the aforementioned observations. No costs.