

Tribhovandas Bhimji Zaveri vs Union Of India (Uoi) And Ors. on 8 September, 1993

Equivalent citations: [1993]204ITR368(SC), JT1993(5)SC177, 1993(3)SCALE712, 1993SUPP(4)SCC718, [1993]SUPP2SCR207

Author: S.P. Bharucha

Bench: B.P. Jeevan Reddy, S.P. Bharucha

JUDGMENT

S.P. Bharucha, J.

1. We are concerned in this appeal by special leave with the provisions of the Voluntary Disclosure of Income and Wealth Act, 1976 (hereinafter called "the said Act"), which was deemed to have come into force on 8th October, 1975. The said Act was preceded by an Ordinance in the same terms, called the Voluntary Disclosure of Income and Wealth Ordinance, 1975, which had come into force on that day.

2. The appellants are a partnership firm. Their accounting year is the Samvat Year. The accounting year relevant to the Samvat Year 2031 and to the Assessment year 1976-77 ended on 3rd November, 1975.

3. On 28th October, 1975, a search on the premises of the appellants under Section 132 of the Income-tax Act, 1961, was conducted by the Commissioner of Income-tax, Bombay City-1 (the third respondent). During the search, which continued from time to time until the end of December 1975, cash, jewellery, diamonds and books of account were seized. On 31st December, 1975, the appellants made a disclosure under Section 3(1) of the said Ordinance/Act for the Assessment Years 1965-66 to 1975-76. A copy of the appellants' declaration in this behalf has been placed before us. The appellants disclosed thereby for the said Assessment Years en bloc an income of Rs. 1.41 crores thus, Rs. 1.20 crores being the value of silver bars, silverware, diamonds, set jewellery and other ornaments; Rs. 20 lakhs in cash and Rs. 1 lakh being the value of miscellaneous assets, including furniture and fixtures. On 21st November, 1975 the 3rd respondent informed the appellants that since cash, jewellery, diamonds and books of accounts had been seized from the appellants before the declaration was filed, it was not in order under the terms of Section 3(2)(ii). He added that the declaration ought to be filed under Section 14(1). The appellants made a request for review of this decision which on 30th December, 1975, was rejected. On 31st December, 1975, which was the last date for filing of declarations under the said Ordinance/Act, the appellants made a declaration,

under protest, under the provisions of Section 14. The appellants made representations to the Central Board of Direct Taxes in furtherance of their desire to have the declaration under Section 3(1) accepted but on 20th June, 1980, the Board declined to interfere.

4. The appellants then filed a writ petition in the Delhi High Court impugning the decision to reject their declaration under Section 3. The writ petition was summarily dismissed. This appeal by special leave is preferred against that order.

5. For the purpose of appreciating the contentions raised, some provisions of the said Ordinance/Act must be noticed. Section 3 reads thus:

3.(1) Subject to the provisions of this Act, where any person makes, on or after the date of commencement of this Act but before the 1st day of January, 1976, a declaration in accordance with the provisions of Section 4 in respect of any income chargeable to tax under the Indian Income-tax Act, 1922 or the Income-tax Act for any assessment year -

(a) for which he has failed to furnish a return under Section 139 of the Income-tax Act, or

(b) which he has failed to disclose in a return of income furnished by him under the Income-tax Act before the date of commencement of this Act, or

(c) which has escaped assessment by reason of the omission or failure on the part of such person to make a return under the Indian Income-tax Act, 1922 or the Income-tax Act or to disclose fully and truly all material facts necessary for his assessment or otherwise, then, notwithstanding anything contained in the Indian Income-tax Act, 1922 or the Income-tax Act or in any Finance Act, income-tax shall be charged in respect of the income so declared (such income being hereinafter referred to as the voluntarily disclosed income) at the rate or rates specified in the Schedule.

(2) Nothing contained in Sub-section (1) shall apply in relation to -

(i) the income assessable for any assessment year for which a notice under Section 139 or Section 148 of the Income-tax Act has been served upon such person and the return has not been furnished before the commencement of this Act;

(ii) where any books of account, other documents, money, bullion, jewellery or other valuable articles or things belonging to the person making the declaration under Sub-section (1) (hereafter in this section, in Sections 4 to 13 and in the Schedule referred to as the declarant) have been seized as a result of any search under Section 132 of the Income-tax Act or under Section 37A of the Wealth-tax Act, the income in respect of the previous year in which such search was made or any earlier previous

year/ (3) In addition to the amount of income-tax to be paid under Sub-section (1), the declarant shall invest a sum equal to five per cent of the amount of the voluntarily disclosed income in such securities as the Central Government may notify in this behalf in the Official Gazette.

Section 4 required the declaration to be in such form as was prescribed by the rules. It also set out how it was to be signed. Section 14, so far as it is relevant, reads thus:

14(1) Subject to the provisions of this section, where any books of account, other documents, money, bullion, jewellery or other valuable articles or things belonging to a person have been seized as a result of a search under Section 132 of the Income-tax Act or Section 37A of the Wealth-tax Act and such person (hereafter in this section referred to as the declarant) makes, on or after the date of commencement of this Act but before the 1st day of January, 1976, a declaration in accordance with Sub-section (2) in respect of any income relating to the previous year in which such search was made or any earlier previous year-

(a) for which he has failed to furnish a return under Section 139 of the Income-tax Act, or

(b) which he has failed to disclose in a return of income furnished by him under the Income-tax Act before the commencement of this Act, or

(c) which has escaped assessment by reason of the omission or failure on the part of such person to make a return under the Indian Income-tax Act, 1922, or the Income-tax Act, or to disclose fully and truly all material facts necessary for his assessment or otherwise, then, notwithstanding anything contained in any of the Acts mentioned in Sub-section (1) of Section 8 or the Wealth-tax Act, the amount of income so declared or, as the case may be, the value of the assets representing such income, shall not be taken into account for the purpose of -

(i) payment of interest by the declarant under Sub-section (8) of Section 139 of the Income-tax Act;

(ii) payment of interest by the declarant under Section 215 or Section 217 of the Income-tax Act or the corresponding provisions of the Indian Income-tax Act, 1922;

(iii) imposition of penalty on the declarant under the provisions of any of the said Acts, except under Section 221 of the Income-tax Act or the corresponding provisions of any of the other said Acts; and

(iv) prosecution of the declarant under the provisions of any of the said Acts.

(2) The declaration under Sub-section (1) shall be made to the Commissioner and shall be in such form and shall be verified in such manner as may be prescribed by rules made by the Board.

(3) A declaration under this section shall be signed by the person specified in Sub-section (2) of Section 4 as if the declaration had been made under that section,

(4) A copy of the declaration made by the declarant under Sub-section (i) shall be forwarded by the Commissioner to the Income-tax Officer and the information contained therein may be taken into account for the purposes of the proceedings relating to assessment or reassessment of the income of the declarant under the provisions of any of the Acts mentioned in Sub-section (1) of Section 8 or the Wealth-tax Act.

(5) The immunity provided under Sub-section (1) shall not be available to the declarant unless the tax chargeable in respect of the income of the previous year or years for which the declaration has been made is paid by the declarant in accordance with the provisions of Section 5.

6. Shri A.B. Divan, learned Counsel for the appellants, submitted that Section 3(1) did not and could not apply in respect of income for any assessment year subsequent to the Assessment Year 1975-76 because there could be no failure to file a return in respect of the Assessment Year 1976-77, the previous year whereof being 1975-76. and for subsequent years having regard to the period for which the said Ordinance/Act was to operate, viz., between 8th October, 1975, and 31st December, 1975, as the obligation to file the return had yet to arise. There was, therefore, no question of not disclosing income in a return or not filing a return so that Sub-clauses (a) and (b) in Sub-section (1) of Section 3 did not apply. Farther, there was no question of income escaping assessment under Sub-clause (c) of Sub-section (2) of Section 3 because that could arise only after an assessment had been made consequent upon filing a return. In other words, because the accounting year 1975-76 was still running during the period for which the said Ordinance/Act was to operate neither Sub-clause (a) nor (b) nor (c) of Sub-section (2) of Section 3 could apply to that accounting year. Section 3(2) started with the words 'Nothing contained in Sub-section (1) shall apply in relation to'; therefore, the first ingredient before Sub-section (2) could be invoked was the applicability of Sub-section (1) of Section 3 to the income sought to be declared. Sub-section (2) was in the nature of a proviso to Sub-section (1) and had to be construed accordingly. Where the income sought to be declared did not fall within the limitations of Sub-section (1), Sub-section (2) did not come into operation. Sub-section (1) assumed an obligation to file a return and that obligation had not arisen in respect of the running accounting year 1975-76. Hence, the fact that the search and seizure under Section 132 of the Income-tax Act, 1961, had been carried out during the accounting year 1975-76 did not exclude the income of that accounting year from being declared under Section 3. It was further argued that the words "where any books of account, other documents, money, gold and jewellery or other valuable articles or things belonging to the person making the declaration ...have been seized as a result of any search under Section 132 of the Income-tax Act..." meant that such seizure should have taken place before the coming into force of the said Ordinance/Act for, otherwise, the object thereof would not be achieved. The interpretation ought to be such as would

advance the object of the legislation, which was to motivate the disclosure of concealed income. No valid classification existed between those who were and those who were not searched during the relevant previous year. It would be an absurd result if a declaration made prior to the seizure could be nullified by such subsequent seizure.

7. In our view, learned Counsel for the Revenue was right in stressing that the case of the appellants fell squarely within the provisions of Section 14 and that, therefore, the decision to decline to accept the disclosure of income made by the appellants under Section 3 was justified.

8. Section 14, shorn of verbiage, states that where books of account, other documents, money, bullion, jewellery or other valuable articles or things belonging to a person have been seized as a result of a search under Section 132 of the Income-tax Act, 1961, and such person makes, between the period 8th October, 1975 and 31st December, 1975, a declaration in respect of any income relating to the previous year in which such search was made or in respect of any earlier previous year for which he has either failed to furnish a return or which he has failed to disclose in the return which he has filed or which has escaped assessment by reason of his omission or failure to disclose fully and truly all material facts necessary for his assessment or otherwise, then the amount of income so declared shall not be taken into account for payment of interest under Section 139 or Section 215 or Section 217 of the Income-tax Act, 1961, or the corresponding provisions of the earlier Act, for the imposition of penalty, except under Section 221 of the Income-tax Act, 1961, or the corresponding provisions of the earlier Act, and for the prosecution of declarant under any of the provisions of these Acts. The case of the appellants falls within the category of a declaration in respect of income relating to the previous year in which the search was made, that is, for its previous years in which it was not disclosed. The appellants' declaration of such income could have been made only under the provisions of Section 14.

9. Let us now turn to Section 3 and see what income may and what income may not be declared thereunder. Sub-section (1) of Section 3 states that the declaration of the income thereunder must be made between 8th October, 1975 and 31st December, 1975, and it must be in a declaration which is in accordance with the provisions of Section 4. The declaration under Section 3 must be in respect of income chargeable to tax under the Income-tax Act, 1961, or the earlier Act for any assessment year for which the declarant has failed to furnish a return, or which he has failed to disclose in his return filed before 8th October, 1975, or which has escaped assessment by reason of his failure to make a return or to disclose fully and truly all material facts necessary for his assessment or otherwise. In respect of such declared income, income-tax is chargeable only at the concessional rates specified in the Schedule to the Ordinance/Act. Sub-section (2) of Section 3 states that nothing contained in Sub-section (1) shall apply, so far as is relevant to the case before us, to income in respect of a previous year in which a search as been made under Section 132 of the Income-tax Act, 1961, and books of account, other documents, money, bullion, jewellery or other articles and things belonging to the person making the declaration under Sub-section (1) have been seized and to the income of any previous year prior to the previous year in which the search and seizure were made.

10. In the first place, the words "in respect of a previous year in which a search has been made" cannot be so read as to mean that, for the provisions of Sub-section (2) of Section 3 to apply, the

search and seizure should have taken place before the Ordinance/Act came into force. The words are too clear for that. They can only be interpreted to mean what they plainly say.

11. Clearly, the object of the said Act is to motivate the voluntary declaration of concealed income and with that object in -mind the schedule to the Act prescribes concessional rates of tax. A declaration of concealed income made after books of account or other documents or valuable assets have been seized cannot be said to be a voluntary disclosure; it is made because the books, documents and assets seized would disclose to the assessing authority the concealment of income. Such concealment could have been in respect of the previous year in which the seizure was made or in respect of any previous year prior thereto. The provisions of Sub-section (2), therefore, must be read as substantive provisions which debar an assessee who has declared concealed income for a previous year during which a seizure of his books, documents or valuable assets has been made or for any previous years prior thereto from getting the advantage of the concessional rates of tax set out in the Schedule. Such assessee is, however, not entirely excluded from the ambit of the legislation for he may file a declaration under Section 14 and obtain the comparatively limited - but still substantial - benefits prescribed therein.

12. We do not find ourselves in agreement with Mr. Divan's submission that Sub-section (2) of Section 3 should be construed as if it were a proviso to Sub-section (1) and to treat it as merely carving out of the ambit of Sub-section (1), The authorities dealing with the manner of interpreting a proviso need not, therefore, be dealt with. Nor do we agree with Mr. Divan when he says that reading the words of Sub-section (2) literally will produce an absurd result. The words of Sub-section (2) are clear and unambiguous; the words must, therefore, be interpreted as they read. So read, they harmonise with the provisions of Section 14. To those assesseees who have declared concealed income, subsequent to a seizure during a previous year, for that previous year or any previous year prior thereto the more beneficial provisions of Section 3 do not apply, for the declaration is not really voluntary, and the less beneficial provisions of Section 14 do. Certainly, the classification between those who make truly voluntary disclosures of concealed income and those who are impelled to make such disclosures because seizures of their books, documents and assets have already been effected is real and valid and bears a nexus to the object to be won. Emphasis was laid upon the fact that even a seizure during the previous year subsequent to the making of the declaration under Section 3 could nullify the declaration if the provisions of Sub-Action (2) thereof were read as we read them, and this would lead to the absurd position that some income-tax authority, with that object in mind, could conduct a search, seize some articles' and so invalidate the declaration. The said Ordinance/Act does not say that upon a declaration being made thereunder the income-tax authorities are de-barred from conducting a search and effecting a seizure in respect of the previous year concerned. There is no reason to assume that such search or seizure, if conducted, would be for any ulterior motive. It could well be that an assessee has disclosed only a part of his concealed income for a previous year and a search and seizure is required to unearth the rest.

13. Upon the interpretation placed by us on Section 3 "and Section 14, we are of the view that the appellants' declaration of concealed income was rightly rejected under Section 3 and the High Court was justified in dismissing the appellants' writ petition thereagainst.

14. The appeal is, accordingly, dismissed. The appellants shall pay to the respondents the costs of the appeal quantified in the sum of Rs. 5,000/-.