

(2003) 09 BOM CK 0015

In the Bombay High Court

Case No : Suit No. 3699 of 1995 & Suit No. 3699 of 1995 26 September 2003

Boman P. Irani

APPELLANT

Vs

Manilal P. Gala

RESPONDENT

Date of Decision : 26-09-2003

Acts Referred:

Voluntary Disclosure of Income and Wealth Act, 1976 — Section 12

Citation : (2004) 134 TAXMAN 783

Hon'ble Judges : S.J. Vazifadar, J

Bench : Division Bench

Advocate : K.A. Sampat, Shailesh Shah, N.C. Parekh and Hindady, for the Appellant;

Judgement

Mr. Sampat, the learned counsel appearing on behalf of the plaintiff while cross-examining defendant No.1 called upon him to produce a letter dated 31-12-1975 purportedly addressed by the witness to the Commissioner. Mr. Shah, the learned counsel appearing on behalf of defendant No.1 objected even to the production of the document on the ground that the same was barred u/s 12 of the Voluntary Disclosure of Income and Wealth Act, 1976 (hereinafter referred to as the "1976 Act").

2. The document that the witness is called upon to produce is a covering letter in respect of the disclosure made by the witness under the Voluntary Disclosure Scheme of 1975. The letter refers to certain facts and attached thereto is the statement of income assessed, income to be disclosed, total tax due, tax paid and a token for balance of tax paid for the years 1967-68 to 1974-75.

3. The objection is of considerable importance. I would have marked the document tentatively as an exhibit after recording the objection and subject to the objection being decided at the last stage in the final judgment as held by the Supreme Court in Bipin Shantilal Panchal v. State of Gujarat AIR 2001 SC 1158. However, Mr. Shah objected even to the document being produced in evidence stating that the very production of the document would defeat the provisions of

the Voluntary Disclosure Scheme. in view thereof, I thought it appropriate as far as this document is concerned, to deal with objection at this stage itself.

4. In order to appreciate the objection, it is necessary to set out the relevant provisions of the 1976 Act. They are as under :

3. Charge of Income Tax on voluntarily disclosed income(1) Subject to the provisions of this Ordinance, where any person makes, on or after the date of commencement of this Ordinance but before the 1-1-1976, 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 (11 of 1922), or the Income Tax Act for any assessment year

(a) for which he has failed to furnish a return u/s 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 ordinance, 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 or to disclose fully and truly all material facts necessary for his assessment or otherwise,

then, notwithstanding anything contained in the said Acts or in any Finance Act, Income Tax shall be charged in respect of the income so declared (such income hereinafter referred to as the voluntarily disclosed income) at the rate or rates specified in the Schedule to this ordinance.

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

(i) the income assessable for any assessment year for which a notice u/s 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 ordinance;

(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) (hereinafter in this section, in sections 4 to 13 and in the Schedule to this ordinance referred to as the declarant) have been seized as a result of any search u/s 132 of the Income Tax Act or u/s 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 of the Official Gazette.

4. Particulars to be furnished in declaration

(1) The declaration under sub-section (1) of section 3 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.

(2) The declaration shall be signed

(a) where the declarant is an individual, by the individual himself; where such individual is absent from India, by the individual concerned or by some person duly authorised by him in this behalf; and where the individual is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf;

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12.(1) All particulars contained in a declaration made under sub-section (1) of section 3 shall be treated as confidential and notwithstanding anything contained in any law for the time being in force, no court or any other authority shall be entitled to require any public servant or the declarant to produce before it any such declaration or any part thereof or to give any evidence before it is in respect thereof.

(2) No public servant shall disclose any particulars contained in any such declaration except to any officer employed in the execution of any of the Acts mentioned in sub-section (1) of section 8, or the Wealth Tax Act, or to any officer appointed by the Controller and Auditor-General of India or the Board to audit Income Tax receipts or funds.

(3) The provisions of sub-sections (1) and (2) shall apply in relation to all documents and particulars relating to the investment in the securities referred to in sub-section (3) of section 3 (including the payment of interest on such securities) as they apply in relation to the declaration made under sub-section (1) of that section and the particulars contained therein.

5. Reading the aforesaid provisions together makes it clear that the bar is against requiring the declarant or a public servant to produce before the court the declaration itself or any part thereof. The words "part thereof" obviously refer to the part of the declaration. The further bar is against the court or any authority requiring a public servant or a declarant to give any evidence before it "in respect thereof". The words "in respect thereof" are qua declaration. Thus, the bar is qua the declaration contemplated under the Act.

6. Whether the evidence sought to be tendered or lead is a declaration or not will depend upon the facts of each case depending on the nature of the document and the contents thereof.

7. The question that therefore requires to be considered is whether the letter dated 31-12-1975 can be said to be a declaration within the meaning of that expression in the 1976 Act. The question must be answered in the negative. It is necessary to set out the letter in detail. Before doing so, however, I must note that both the attachment as well as the Annexure to the letter are clearly declarations which the declarant cannot be called upon to give evidence of. The covering letter reads as under :

I am a partner in the firm of M/s. Roopsons, Bhullabhai Desai Road, Bombay-400 026.

The said firm was searched in August, 1974 and thereby as a partner, in the said firm, my residential place at Surya Apartments was also searched and gold jewellery ornaments which were belonged to my wife were seized. But afterwards by an order u/s 132(5) of the Act, in the case of firm and also the said seized, gold-jewellery ornaments having been proved by my wife as "Shreedhan" and the same being belonged to her, the said ornaments were released.

Now under the Voluntary Disclosure Scheme, I decided to disclose some income and had discussion with your kind honour in the matter by my representative, when your kind honour suggested him to disclose in Form No. "B" and thus I am submitting herewith Form No. "B" in duplicates duly filled in accompanied with statement of Income assessed, Income to be disclosed, total tax due, tax paid and a token for balance of tax paid for the years 1967-68 to 1974-75 (8 years) which may please be accepted and may be ordered to be dealt with accordingly.

8. I must clarify at the outset that merely by virtue of being a covering letter a document may not fall outside the purview of section 12. The answer to the question whether a document constitutes a declaration would depend upon the contents thereof. If the contents of the letter itself indicate or set out the details of the disclosure, the same would fall within the purview of section 12. In any event, a declarant cannot be required to produce at least that part of the letter which constitutes a declaration. Nor can a declarant be required to give evidence in respect thereof, i.e., in respect of that part of the letter that constitutes a declaration.

9. The document in question is no doubt a covering letter, for-warding therewith and attaching thereto details which constitute a declaration. There is however nothing in the text itself that constitutes such a declaration. Neither the disclosure nor the attachment/annexure to the letter can be compelled to be produced. However, Mr. Sampat on behalf of the plaintiff, seeks to rely upon the admission contained in the letter by defendant No.1 that he was a partner of the suit firm.

10. The second paragraph of the letter clearly has nothing to do with the disclosure. It pertains to proceedings relating to the search and seizure and the subsequent release of the ornaments belonging to the witness's wife. That paragraph itself contains the necessary admission. To prove it, Mr. Sampat relies upon the document. That part of the letter therefore can certainly be called for.

11. The fact that the disclosure under the Voluntary Disclosure Scheme was made has already been deposed to by the witness. Paragraphs 1 and 3 of the letter do nothing more than refer to the same disclosure. All that is done in addition thereto is a recital of the fact that the details pertaining to the disclosure are attached and enclosed. The attachment and enclosure are not incorporated in

the covering letter. The disclosure itself, therefore is not be found in any part of the covering letter. In the circumstances, even these paragraphs cannot be barred for being required to be produced.

12. In order to sustain the contention that the declaring cannot be called upon to produce the declaration or any part thereof or to give evidence in respect thereof, it must be established that the document constitutes a declaration. It is the particulars inherently and intrinsically connected to the declaration that are protected by section 12. Particulars, which have no connection with and are dehors, the declaration are not protected u/s 12.

13. A view to the contrary would lead to absurd consequences. For instance, an issue may arise as to whether the witness was in a particular city on a given day. If, in fact, the witness was not in the city on that date, and was not even in the country in which the city is situated on that date, his passport would be of great importance, if not clinching evidence. If, for any reason, a declarant under the Voluntary Disclosure Scheme refers to and for the purpose of the declaration or otherwise, encloses his passport, or a copy thereof, it can hardly be said that the same constitutes a declaration or a part of a declaration within the meaning of the 1976 Act and the production thereof is barred u/s 12 thereof.

14. The reliance upon section 11 of the Act is misconceived. Section 11 reads as under :

Notwithstanding anything contained in any other law for the time being in force nothing contained in any declaration made under sub-section (1) of section 3 shall be admissible in evidence against the declarant for the purpose of any proceeding relating to imposition of penalty or for the purposes of prosecution under any of the Acts mentioned in sub-section (1) of section 8 of the Wealth Tax Act. (Emphasis herein italicised in print supplied)

This suit is clearly not a proceeding of the nature contemplated in section 11. It is neither a proceeding relating to the imposition of penalty nor one for the purposes of prosecution under any of the Acts mentioned in section 8(1) of the Wealth Tax Act.

15. In the circumstances, the objection is over-ruled insofar as the letter is concerned. The witness is called upon to produce the letter without the annexure and the attachment thereto.