

(1973) 11 GUJ CK 0014

In the Gujarat High Court

Case No : Special Civil Application No's. 235 of 1971 and 493, 648, 700 and 810 of 1972

Rahimbhai Karimbhai Nagriwala

APPELLANT

Vs

B.B. Patel and Others

RESPONDENT

Date of Decision : 05-11-1973

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)

Income Tax Act, 1961 — Section 271, 271(1), 274, 274(2), 52

Wealth Tax Act, 1957 — Section 18

Citation : (1974) 97 ITR 660

Hon'ble Judges : B.K. Mehta, J;B.J. Divan, J

Bench : Division Bench

Advocate : R.D. Pathak, for the Appellant; K.H. Kaji, for the Respondent

Judgement

Divan, C.J.—In each of these five special civil applications the petitioner concerned has challenged the constitutional validity of section

271(1)(c) and section 274(2) of the Income Tax Act, 1961, on the ground that these provisions of the Income Tax Act contravene the provisions

of articles 14, 19(1)(f), 19(1)(g), 31(1), 245 and 265 of the Constitution of India. Since the challenges are common and since Mr. Pathak has only

urged the constitutional validity in the course of the hearing before us and since he has made it clear that though he does not give up the question

regarding the merits of each particular case he was not pressing the merits before us since in the event of his losing the challenge to the

constitutional validity he would be arguing those questions on merits before the Income Tax authorities concerned, we will dispose of these five

special civil applications by this common judgment.

2. In order to appreciate the manner in which the challenge to the constitutional

validity arises, we need only set out the facts in Special Civil

Application No. 235 of 1971. The petitioner is carrying on business in Ahmedabad. On April 21, 1962, the petitioner had purchased a plot of land

admeasuring about 2,335 square yards at Rakhial, a village near Ahmedabad City. On January 1, 1968, the petitioner sold the land and he realised

a profit of Rs. 28,912. On March 5, 1969, he filed his return for the assessment year 1968-69 and in that return he showed his income from

business as Rs. 4,000 and that too on an estimate basis. In the original return he had not shown the income from sale of the land as part of his

income for the assessment year 1968-69. After the return was filed, the petitioner was required to produce the sale deed in respect of the land

which he had sold on January 1, 1968, and a copy of the sale deed was filed by the petitioner with the Income Tax Officer concerned on March

12, 1969. Thereafter, on March 19, 1969, the petitioner filed a revised return showing therein capital gain of Rs. 11,114 and income from business

on an estimate basis amounting to Rs. 3,000. On March 20, 1969, the Income Tax Officer passed the assessment order determining the profits

from land at Rs. 28,912 as income from business and he also issued a notice u/s 274 read with section 271 of the Income Tax Act, 1961, for

failure to furnish the return of income within the stipulated time and also for concealment and for furnishing inaccurate particulars of income. The

petitioner appealed against the order of assessment and by his order dated September 10, 1970, the Appellate Assistant Commissioner partially

allowed the appeal by treating the profit accrued to the petitioner on the sale of land as capital gain and not as income from business. The Income

Tax Officer, who is respondent No. 1 in this special civil application, then issued a fresh notice u/s 274 read with section 271 of the Act and

thereafter penalty u/s 271(1)(c) was levied at Rs. 13,854 being equal to 100 per cent. of the alleged concealed income. Under the circumstances

the petitioner has challenged the constitutional validity of section 271(1)(c) on various grounds. But, at the hearing of the special section civil

application before us, the challenge was confined only to two grounds.

3. The first ground of challenge was that the impugned section 271(1)(c)(iii) which is the principal clause which is impugned in this petition is

violative of article 14 of the Constitution inasmuch as there is no classification at

all even though there is a difference between various types of tax evasions. In support of this challenge, various submissions were made which we will set out herein in the course of this judgment. The alternative ground of challenge to the constitutional validity is that the impugned provisions are a colourable exercise of legislative power inasmuch as in the guise of levying penalty the legislature had enacted for expropriation of the whole of the property of the citizen. It was also contended that the impugned provisions are arbitrary and excessive and no care and deliberation appear in such a scheme of penalty and as a result no proper balance is struck between social control which is permissible in law and the freedom guaranteed by the Constitution.

4. In order to appreciate the contentions urged on behalf of both the sides it is necessary to set out in brief the history regarding the penalty

provisions under the Income Tax Act. The Indian Income Tax Act, 1922, continued to remain in force till March 31, 1962. Under the Act of

1922, u/s 28, no minimum penalty was laid down but the maximum penalty that could be imposed was 150 per cent. of the tax evaded by the

assessee. With effect from April 1, 1962, the Income Tax Act, 1961, came into force and for the first time a minimum penalty was laid down in

section 271. With effect from April 1, 1962, the minimum penalty prescribed was twenty per cent. of the tax evaded and the maximum still

continued as before at 150 per cent. of the tax evaded. With effect from April 1, 1964, an Explanation to section 271(1) was added and the

statutory presumption as laid down therein was required to be raised against the assessee. Between March 1, 1965, and May 31, 1965, the first

voluntary disclosure scheme was brought into force and under this scheme it was provided that if the assessee concerned paid 60 per cent. of the

concealed income as tax, then no other penalty would be levied against him. As the Finance Minister pointed out at the time when he made the

announcement regarding this scheme in Parliament, those persons who had undisclosed income to declare could make a declaration with relevant

particulars and at the same time deposit in cash at the Reserve Bank of India sixty per cent. of the income declared. The remaining 40 per cent. of

the income so declared could be taken to the assessee's books under intimation to the Income Tax authorities and no further question of

assessment in regard to the income so disclosed by this process would arise and the identity of the person was not to be revealed. This offer of voluntary disclosure was to remain only for three months from March 1, 1965, that is till the end of May, 1965. In order to induce people to come out quickly, with their disclosures, a rebate of 5 per cent. of the tax on all incomes declared and tax paid thereon in the month of March was to be given. In other words, those who declared their undisclosed income under this scheme in the month of March were to pay 57 per cent. instead of 60 per cent. of the tax. An option was given to the assessee if they felt that their tax liability in respect of amounts to be disclosed would be less than 57 or 60 per cent. to resort to normal disclosure and have the income so disclosed taxed at the appropriate rates by the Income Tax authorities after proper assessment.

5. Thereafter, on August 19, 1965, the second voluntary disclosure scheme was brought into force and this second voluntary disclosure scheme remained in force up to March 19, 1966. Under this second voluntary disclosure scheme, tax was to be charged on the hold of the disclosed income taken as a single block, at the rates prescribed for personal income or corporate income by the Finance Act, 1965, and not at an ad hoc concessional rate. Further, facilities were allowed for payment of the tax in appropriate installments extending over a period not exceeding four years, subject to a down payment of not less than 10 per cent. of the tax due and furnishing of security in respect of the balance. Income which had already been detected on materials available prior to the date of the disclosure were, however, to be assessed under the regular provisions of the Income Tax Act and not under this scheme. Any admissions made by a person in the declaration filed by him under the scheme in respect of such income were not to be used against him in assessing that income under the Income Tax Act. Under the second scheme also the disclosed income was not to be subject to any further proceedings of assessment and the identity of the declarant was not to be revealed and he was to be immune from penalty and prosecution for the past concealment of such disclosed income.

6. Thereafter, with effect from April 1, 1968, in order to counter tax evasions, the impugned section 271(1)(c)(iii) was brought on the statute book by Act 19 of 1969. Under the impugned section, if the Income Tax Officer or the

Appellate Assistant Commissioner in the course of any proceedings under the Act is satisfied that any person has concealed the particulars of his income or furnished inaccurate particulars of such income, he may direct that such person shall pay by way of penalty, in addition to any tax payable by him, a sum which shall not be less than, but which shall not exceed twice, the amount of the income in respect of which shall be exceeded twice, the amount of the income in respect of which the particulars have been concealed or inaccurate particulars have been furnished. Thus, under the provisions for minimum penalty, the minimum penalty is 100 per cent. of the income which has been concealed and the maximum penalty is 200 per cent. of the income concealed. It must be noted that this penalty has to be levied in addition to the tax which has to be paid on assessment in ordinary course.

7. After April 1, 1968, the Government of India appointed a committee called the Direct Taxes Enquiry Committee, popularly known as Wanchoo

Committee, since it was presided over by K. N. Wanchoo, Retired Chief Justice of the Supreme Court of India, as the Chairman and the

committee submitted its report in the month of December, 1971. As a result of the recommendations of the Direct taxes Enquiry Committee, a new

Bill has been prepared by the Central Government and is at present pending before Parliament and under this pending Bill the proposal is to

correlate the penalty to the tax evaded and not to the income concealed but the amendment has not yet become law.

8. As regards the challenge on the basis of article 14 of the Constitution, it was contended that section 271(1)(c)(iii) violates article 14 inasmuch as

there is no classification at all even though there is a difference between various types of tax evasions. It was further contended in this connection

that discrimination arising out of the impugned provision is obvious and hostile discrimination and even the Government has accepted by the

proposed Bill after the report of the Direct Taxes Enquiry Committee that penalty should not be linked up with income which has been concealed

but should be linked with or correlated to the tax evaded by the assessee. It was also urged in this connection that the impugned provision hits

small evaders very hard. It was contended that u/s 271(1)(a)(i), failure to furnish a return results in a less severe penalty than concealment of

income because, u/s 271(1)(a)(i), the penalty would be in addition to the amount of the tax, if any payable by the assessee, a sum equivalent to two per cent. of the tax for every month during which the default continued, but not exceeding in the aggregate fifty per cent. of the tax. Thus, the penalty for failure to furnish the return in time results in the maximum penalty of fifty per cent. of the tax that he is liable to pay. In this connection it was further urged by Mr. Pathak that this particular provision works very hard and since income is the basis for penalty, extent of guilt and extent of penalty are not correlated. They work hardship in an unreasonable manner. It was contended that though the object of enacting the penalty provision is to see that tax on income is not evaded, in fact the penalty is correlated to the income concealed instead of to the tax evaded and he urged that in the context in which the provisions have been enacted, checking evasion of taxes must be considered to be the object of the impugned legislation.

9. The provisions of article 14 have been dealt with in various judgments of the Supreme Court and the position may be summarized as follows.

It is well-settled that while article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order,

however, to pass the test of permissible classification, two conditions must be fulfilled, namely; (i) that the classification must be founded on an

intelligible differential which distinguishes persons or things that are grouped together from others left out of the group; and (ii) that differential must

have a rational basis to the object sought to be achieved by the statute in question. The Supreme Court has dealt with the scope of classification in

taxation statutes in several of its decisions. We need refer to only a few of them in order to cull out the principles applicable to taxation statutes in

the context of article 14.

10. In *East India Tobacco Co. v. State of Andhra Pradesh* Venkatarama Aiyer J., delivering the judgment of the Supreme Court, cited the

following passage from Willis on Constitutional Law and he said that this passage correctly represents the position with reference to taxing statutes

under our Constitution :

A State does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even

rates for taxation if it does so reasonably.... The Supreme Court has been practical and has permitted a very wide latitude in classification for taxation.

11. It was also pointed out that in deciding whether a taxation law is discriminatory or not it is necessary to bear in mind that the State has a wide discretion in selecting the persons or objects it would tax, and that a statute is not open to attack on the ground that it taxes some persons and objects and not others. It is only when within the range of its selection, the law operates unequally, and that cannot be justified on the basis of any valid classification, that it would be violative of article 14. It was also pointed out that it is for the person who assails a legislation as discriminatory to establish that it is not based on a valid classification and it is well settled that this burden is all the heavier when the legislation under attack is a taxing statute. In taxation even more than in other fields, as pointed out by the Supreme Court of the United States in *Madden v. Kentucky* legislatures possess the greatest freedom in classification. The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it. How wide the powers of the legislature are in classifying objects for purposes of taxation was pointed out by the following passage from Rottschaefer in his Constitutional Law. The Federal Supreme Court has seldom held invalid any classification made in connection with the levying of property taxes. It has sustained the levy of a heavier burden of taxation upon motor vehicles using the public highways than that levied upon other forms of property, and the imposition of a heavier tax upon oil than upon other property. The equal protection clause does not prohibit the levy of a tax on ores which is not imposed upon similar interests in quarries, forests and other forms of wasting asset, nor even the imposition of a tax upon anthracite that is not levied upon bituminous coal. A statute providing for the assessment of one type of intangible at its actual value while other intangibles are assessed at their face value does not deny equal protection even when both are subject to the same rate of tax. The decisions of the Supreme Court in this field have permitted a State legislature to exercise an extremely wide discretion in classifying property for tax purposes so long as it refrained from clear and hostile discrimination against particular persons or classes.

12. Thus, unless the petitioner succeeds in establishing that there was a clear and hostile discrimination by virtue of the impugned legislation, the challenge on the ground of article 14 cannot be sustained.

13. In *Twyford tea Co. v. State of Kerala* the decision in *East India Tobacco Company's* case was followed and it was pointed out that in order to be able to succeed in the charge of discrimination, so far as taxation statutes are concerned, a person must establish conclusively that persons equally circumstances have been treated unequally and vice versa.

14. Again, in *Vivian Joseph Ferreira v. Municipal Corporation of Greater Bombay* the court again referred to the two earlier decisions in *East*

India Tobacco Company and *Twyford Tea Company* and it was held that the taxing statute is not invalid on the ground of discrimination merely

because other objects could have been but are not taxed by the legislature. It was held that when a statute divides the objects of tax into groups or

categories, so long as there is equality and uniformity within each groups the tax cannot be attacked on the ground of its being discriminatory,

although due to fortuitous circumstances or a particular situation some included in a class or group may get some advantage over others, provided

of course they are not sought out for special treatment. Likewise, the mere fact that a tax falls more heavily on some in the same group or category

is by itself not a ground for its invalidity, for then hardly any tax, for instance, sales tax and excise tax, can escape such a charge.

15. It is true that even provisions of a taxing statute can under certain circumstances be successfully challenged as violative of article 14 of the

constitution. Instances of such successful challenges are not lacking. To give only a few of such successful challenges, in *Bidi Supply Co. v. Union*

of India, the petitioner, who was carrying on business as manufacturer and seller of bidi, which had its head officer and place of business in

Calcutta, where also its books of accounts were kept, was being assessed by the appropriate Income Tax Officer in Calcutta. The Central Board

of Revenue, without giving any previous notice, passed an order of transfer from the Income Tax Officer, District III (I), Calcutta, to the Income

Tax Officer, Special Circle, Ranchi. The Income Tax Officer at Ranchi called upon the petitioner to submit its return for the assessment year 1955-

56 and the petitioner applied to the Supreme Court under article 32 of the

Constitution for relief alleging that the order of transfer infringed its fundamental rights under articles 14, 19(1)(g) and 31. the majority of the learned judges held that the Income Tax department had by an illegal order denied to the petitioner, as compared with other bidi merchants who were similarly situate, equality before the law or the equal protection of laws and the petitioner could legitimately complain of an infraction of his fundamental right under article 14 of the Constitution and, therefore, the order was liable to be set aside.

16. In *Khandige Sham Bhat v. Agricultural Income Tax Officer* it was held that the impugned provision pertaining to agricultural Income Tax in the State of Kerala was not violative of article 14 of the Constitution of India. It was held that the classification was founded on an intelligible differential between the assesses of the two parts of the State and the differential had a rational relationship to the object of the amending Act and, therefore, there was no discrimination.

17. In *K. T. Moopil Nair v. State of Kerala* the majority of the learned judges of the Supreme Court struck down the Travancore-Cochin Land Tax Act as unconstitutional and violative of article 14 of the Constitution, It was held on the facts of that particular case that there was no attempt at classification in the provisions of the Act and hence the court held that there was no equality before the law. It was one of those cases where the lack of classification created inequality. It was, therefore, clearly hit by the prohibition to deny equality before the law contained in article 14 of the Constitution.

18. One case of the Supreme Court which was very strongly relied upon by Mr. Pathak was the decision of the Supreme Court in *Badri Prasad v.*

Collector, Central Excise. In *Badri Prasad's* case, the Supreme Court was considering the provisions of the Gold Control Act and particularly

those provisions which required the pawn brokers to maintain certain registers. The penalty for not making the proper declaration was confiscation

of gold u/s 71 of the Act and the Supreme Court held that section 71 appeared to place an unreasonable restriction on the right of a person to

acquire, hold and dispose of gold articles and gold ornaments. It may be applied indiscriminately and could not, therefore, be upheld as saved by

article 19(5) and (6) of the Constitution.

19. Mr. Pathak relied upon this decision of the Supreme Court for the purpose of pointing out that when a penalty is capable of being applied

indiscriminately, it will also violate article 14 of the Constitution. In our opinion, Badri Prasad's case, Which dealt with the provisions of the Gold

Control Act and the penalty not in a taxing statute and which struck down the section imposing penalty for non-maintenance of certain registers or

failure to declare by the pawn broker, cannot stand on the same footing as a taxing statute and, therefore, the observations of the Supreme Court

in Badri Prasad's case cannot help the petitioner in the present case.

20. In State of Andhra Pradesh v. Nalla Raja Reddy Subba Rao C. J. pointed out that the minimum flat rate for the provision of land revenue

where the classification was based on avacuts was unreasonable and was violative of article 14 of the Constitution. It was pointed out that there

was no reasonable relationship between the extent of the avacut and the assessment payable in respect of an acre of land forming part of that

avacut. It was, therefore, held that the Andhra Pradesh Land revenue (Additional Assessment) and Cess Revision Act as amended by the

subsequent enactments of the Andhra Pradesh Legislature was violative of article 14 of the Constitution. In this case the Supreme Court followed

the earlier decision in K. T. Moopil Nair's case and it was held that Supreme Court while conceding a larger discretion to the legislature in the

matter of fiscal adjustment would insist that a fiscal statute just like any other statute cannot infringe article 14 of the Constitution by introducing

unreasonable discrimination between persons or property either by classification or lack of classification.

21. In our opinion, the challenge of Mr. Pathak on the ground of article 14 must fail because in this piece of taxing statute he has not been able to

point out any hostile discrimination against a particular type of taxpayer. The fact that the penalty with effect from April 1, 1968, is linked up with

the income concealed rather than with the tax evaded shows the gravity which the legislature attaches to such tax evasions. The fact that u/s 271(1)

(a)(i) the penalty for not filing a return is correlated to the amount of the tax evaded as against the correlation of penalty to concealed income under

the impugned provisions of section 271(1)(c)(iii) is totally beside the point because, so far as concealed income is concerned, the penalty for

concealed income proceeds on altogether a different footing from penalty for omission to file a return in time. It must not be forgotten that the

history of legislation which we have pointed out shows that Parliament has progressively moved more and more stringent measures of penalty

obviously with a view to deter people from evading tax by concealing their income.

22. In *Commissioner of Income Tax v. Anwar Ali, Grover J.* delivering the judgment of the Supreme Court, has pointed out that one of the

principal objects in enacting section 28 (penalty provision in the 192 Act) is to provide a deterrent against recurrence of default on the part of the

assessee. The section is penal in the sense that its consequences are intended to be an effective deterrent which will put a stop to practices which

the legislature considers to be against the public interest. It is, therefore, clear that we must proceed in the light of this decision of the Supreme

Court that the object of the legislation behind all these penalty provisions, whether in section 28 of the 1922 Act or in section 271(1) of the 1961

Act is to provide a deterrent against tax evasion and the provisions are intended to be by way of an effective deterrent to put a stop to the practice

which the legislature considers to be against the public interest.

23. It was contended by Mr. Pathak in this connection that the Wanchoo Committee in its report has observed at page 10 in clause (g) of

paragraph 2.20 as follows :

Yet a another important cause of tax evasion is said to be the lack of an effective enforcement machinery. It is pointed out that the Income Tax

administration has not been able to achieve a major breakthrough in fighting evasion for certain technical as well as administrative reasons. In this

connection, some have even pointed out that tax administration is not able to function independently and also that the set up of the department itself

is not quite conducive to effective enforcement of laws. There are others who feel that taxation laws and administrative policies themselves have

certain loopholes which water down their efficacy. It is contended that frequent resort to voluntary disclosure schemes to net in untaxed income,

absence of an effective intelligence machinery in the Income Tax department and lack of a vigorous prosecution policy for tax offences provide

encouragement to tax evaders to carry on with their nefarious activities with

impunity in the belief that the department will not detect them. We agree with this view substantially and do feel that there is need and scope for more vigorous enforcement of tax laws.

24. Mr. Pathak contended that this passage from the Direct Taxes Enquiry Committee Report clearly brings out that the stringent measures of penalty had become necessary because as enacted in the impugned provisions of section 271(1)(c)(iii), the taxation laws were not being properly enforced. In our opinion, the challenge on the basis of constitutional validity under article 14 cannot succeed on this argument. Ultimately, if at all the challenge succeeds, it must be on the ground of hostile discrimination, but no such hostile discrimination in the impugned provisions can be detected.

25. The Madras High Court has pointed out in *Sivagaminatha Moopanar & Sons v. Income Tax Officer*, that section 28 of the 1922 Act was

enacted for the purpose of rendering evasion unprofitable and of securing to the State compensation for damages caused by attempted evasion.

Nor was it correct to regard the ingredients of the misconduct under the two provisions as identical. The falsity of a declaration wilfully made is

enough to satisfy the requirements of section 52; whether that declaration results in concealment is not material for the purpose of that section. On

the other hand, section 28 (1) (c) is concerned with the effect of the "inaccurate particulars deliberately furnished", that is, "concealment" and unless

this result was achieved, no penalty could be imposed. Undoubtedly, there might be overlapping in some concrete instance but every case that fell

within section 52 need not necessarily also be within the scope of section 28 (1) (c). The function and purpose of section 28 (4) was to make

provision for a statutory concession to the assessee in the overlapping cases. These two remedies or proceedings could have been taken at the

same time and it was the case, for instance, in the United States of America. But a concession has been granted to the defaulting or evading

assessee by section 28 (4), the concession being that if a penalty has been levied from an assessee a prosecution on the same facts was not to be

launched. Viewed in this light that section 28 (4) was in the nature of a concession, there was no question of article 14 being attracted to invalidate

section 28. The Madras High Court pointed out quoting from the decision of the

Supreme Court of the United States of America in *Helvering v.*

Mitchell :

Congress may impose both a criminal and a civil sanction in respect of the same act or omission. The remedial character of sanctions imposing

additions to a tax has been made clear by this court in passing upon similar legislation. They are provided primarily as a safeguard for the

protection of the revenue and to reimburse the Government for the heavy expense of investigation and the loss resulting from taxpayer's fraud"....

26. It was also pointed out that the penalties imposed by the legislature to enforce the tax laws embrace both civil and criminal sanctions. The

former consist of additions to the tax upon determinations of fact made by an administrative agency and with no burden on the Government to

prove its case beyond a reasonable doubt. The latter consist of penal offences enforced by the criminal process in the familiar manner. Invocation

of one does not exclude resort to the other. Thus, it is clear that merely because a penalty is provided for concealing income and that penalty is

correlated to the income concealing income and that penalty is correlated to the income concealed rather than to the tax evaded, it cannot be said

that the provision is a piece of hostile legislation or hostile discrimination. The apparent harshness of the provision in the case of evaders of small

income arises merely because at the lower levels of taxation the tax imposed is on a much lesser basis than on the higher slabs of income.

Therefore, the higher the slab and the greater the extent of the income concealed, the lesser will be the ratio of the penalty, maximum and minimum,

to the tax actually evaded as a result of concealment of such income. But this result has been brought about by the higher rates of taxation in the

upper brackets of income. It has again to be borne in mind that in any particular case the actual proportion between the penalty imposed and the

tax evaded will depend upon the rate of tax applicable to the assessee concerned and again the penalty is to be levied on the basis of the

concealed income and not on the basis of the entire income.

27. Under these circumstances it is obvious that the impugned provisions of section 271(1)(iii) cannot be said to violate article 14 of the

Constitution. As regards the challenge on the grounds of article 19(1)(f), it cannot be said that the provisions are expropriatory. After all, all kinds

of punishments and penalties can be said to be expropriatory in the sense that some part of the property of the delinquent concerned goes to the State. But, it must be borne in mind, as pointed out by the High Court of Australia in *Burton v. Honsen* that the power to impose punishment and penalties is incidental to the power for vindicating the main purpose of that power. Dixon C. J. has pointed out at page 177 of the report that the power to impose a forfeiture in the case of offences is something which is incidental to the main power and everything which is incidental to the main purpose is contained within the power itself so that it extends to matters which are necessary for the reasonable fulfillment of the legislative power over the subject-matter and thus the power to impose a penalty is for the purpose of vindicating the main power which is conferred by the statute in question. It cannot be doubted that the power to levy tax on income is vested in Parliament and, as incidental thereto, the power to impose penalties to vindicate that particular power of imposition of tax must also be given to the legislature.

28. In *Assistant Commissioner of Urban Land Tax, Madras v. Buckingham* and pointed out that in applying the test of reasonableness it is also

essential to notice that the power of taxation is generally regarded as an essential attribute of sovereignty and constitutional provisions relating to the

power of taxation are regarded not as grant of power but as limitation upon the power which would otherwise be practically without limit. The

Supreme Court relied upon the following passage in *Raj Ramkrishna v. State of Bihar* :

It is, of course, true that the power of taxing the people and their property is an essential attribute of the Government and Government may

legitimately exercise the said power by reference to the objects to which it is applicable to the utmost extent to which Government thinks it

expedient to do so. The objects to be taxed so long as they happen to be within the legislative competence of the legislature can be taxed by the

legislature according to the exigencies of its needs, because there can be no doubt that the State is entitled to raise revenue by taxation. The

quantum of tax levied by the taxing statute, the conditions subject to which it is levied, the manner in which it is sought to be recovered, are all

matters within the competence of the legislature, and in dealing with the contention raised by a citizen that the taxing statute contravenes article 19,

courts would naturally be circumspect and cautious. Where for instance it appears that the taxing statute is plainly discriminatory, or provides no procedural machinery for assessment and levy of the tax, or that it is confiscatory, courts would be justified in striking down the impugned statute as unconstitutional. In such cases, the character of the material provisions of the impugned statute is such that the court would feel justified in taking the view that, in substance, the taxing statute is a cloak adopted by the legislature for achieving its confiscatory purposes.

29. In the instant case no such question of a cloak can be said to arise. The object of the legislature in the impugned provision is not to provide for any confiscation but to provide a penalty for concealment of income and that too by providing a deterrent penalty. Deterrence is the main theme or object behind the imposition of penalty and we may reiterate that the whole object as shown by the history to this scheme of provisions is to provide gradually more and more deterrent penalties with a view to see that tax evasion does not take place and result in detriment to society as whole. In our opinion, therefore, it is not possible to say that in the instant case the provisions of section 271(1)(c)(iii) infringe article 19(1)(f) of the Constitution.

30. It may be pointed out that u/s 18 of the Wealth-tax Act, the penalty for failure to furnish returns, to comply with notices and concealment of assets, is correlated to the value of the assets. In the case of Janab M. M. Sultan Ibrahim Adhum v. Wealth-tax Officer, the Madras High Court has held that these penalty provisions of the Wealth-tax Act are not violative of articles 14 and 19(1)(f) of the Constitution. The Madras High Court held that the penal provisions intended to prevent evasion of tax and concealment of wealth is saved by article 19(5) as a reasonable restriction on the fundamental right of the petitioner under article 19(1)(f) of the Constitution in the interest of the general public.

31. Under these circumstances both the challenges to the constitutional validity of the impugned provisions fail. We may point out that the other grounds of challenge to the constitutional validity have not been proceed before us and we, therefore, have not dealt with those challenges on the grounds of articles 31(1), 245 and 265 of the Constitution. We have confined our judgment only to the challenges under articles 14 and 19(1)(f)

since they were pressed before us.

32. The result, therefore, is that each of these special civil applications fails and is dismissed. Rule in each matter is discharged with costs.