

(1997) 12 DEL CK 0062

Delhi High Court

Case No: Civil Writ Appeal No. 4994 and 9172 of 1997

Chotubhai

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision: Dec. 17, 1997

Acts Referred:

- Constitution of India, 1950 - Article 226
- Finance Act, 1997 - Section 64(1)

Citation: (1998) 74 DLT 789 : (1997) 95 TAXMAN 629

Hon'ble Judges: R.C. Lahoti, J; J.B. Goel, J

Bench: Division Bench

Advocate: A.B. Divan, S. Ganesh, Zatin Zaveri, Sarabjeet Sharma, B.S. Sharma, R.D. Jolly, P.L. Bansal, Gopal Subramaniam and Ashok Gupta, for the Appellant;

Judgement

R.C. Lahoti, J.

(1) Present petitioners, the two assessee residing at Mumbai and assessable under the Income Tax Act, 1961 at Mumbai have filed the present petition laying challenge to the following communication (Annexure-H) made to the addressee therein who is respondent No. 3 in the petition :

"F.NO.286/167/97-IT (Inv.II) Government of India Ministry of Finance Department of Revenue Central Board of Direct Taxes New Delhi, the 1st October, 1997 To, The Chairman, Development Credit Bank Ltd., 204, Raheja Centre, 221, Nariman Point, Mumbai. Subject : Surveys on branches of the Development Credit Bank and the VDIS of the Government of India Ref : Your letter dated 28.8.97 on the above subject. Sir, With reference to the above, I am directed to state that the deposit holders in your Bank, whose accounts are restrained u / Section 132(3) of the Income Tax Act, 1961, cannot avail of the Voluntary Disclosure of Income Scheme of the Government of India. This issues with the approval of Chairman (DT). Yours faithfully, sd/- (Mrs. Samita Jhingran) Under Secretary (Inv.-II)"

(2) In addition, the petitioners seek a mandamus to the respondents No. 1 & 2 to issue a certificate u/s 68(2) of the Finance Act, 1997 by accepting the petitioners declaration u/s 64(1) of the Finance Act, 1997 which provides for a scheme popularly known as Voluntary Disclosure of Income Scheme, 1997 (hereinafter, VDIS for short).

(3) The relevant facts in brief. Development Credit Bank Limited, a Banking Company having its registered office at 154, Svp Road, Dongri, Mumbai-400009 is a tax paying corporate entity. On 7.2.97 most of its branches in Mumbai and its outlying suburbs were searched u/s 132 of Income Tax Act, 1961 (hereinafter I. T. Act for short). Consequent to the search and seizure, in exercise of the powers conferred u/s 132(3) of the I. T. Act a prohibitory order was issued in respect of certain deposits with the Bank which includes the deposits made by the two petitioners. On 28.8.97, the bank addressed a communication to Mr. A.K. Batabayal, Member Investigation, Cadet, North Block, Parliament Street, New Delhi whereby stating the facts relating to the search and the preceding survey, the Bank sought for the following reliefs :

"(I)The prohibitory orders relating to the aforesaid deposits be extended up to 31st December, 1997, in order to be co-terminus with the Vdi Scheme. (ii) In respect of any such deposit which will become subject matter of a declaration under VDIS, out of the deposit, provision be made for payment of tax which we understand would be 30% of amounts so declared. (iii) To facilitate this the It department may give a conditional order that the Bank would release only 70% of the funds and the balance 30% will be remitted by the Bank to the Government of India as Income Tax under the Vdi Scheme."

(4) In response to the above said letter, the impugned communication referred to in para (i) above was made to the respondent No. 3.

(5) On 1st July, 1997 came into force the Voluntary Disclosure of Income Scheme, 1997 enacted and introduced by the Finance Act, 1997, Procedures by the Voluntary Disclosure of Income Rules, 1997. The scheme provides an opportunity to persons who have evaded tax in the past to declare their undisclosed income, pay a reasonable tax (@ 30% in the case of individuals) and to earn immunity from any further investigation and penal consequences. The person making disclosure has to file a declaration in the prescribed form, prescribed by payment of tax or pay the tax within a period of 3 months from the date of filing of declaration, failure wherefrom would entail the declaration being treated as void. Subject to declaration having been made with payment of tax and compliance with incidental formalities, a certificate u/s 68(2) of the Act would issue. The declaration has to be accompanied by proof of payment of tax, but the declarant may instead of paying the tax before making the declaration seek three months time for payment of tax from the date of declaration subject to payment of interest at the prescribed rate.

(6) The amount of voluntarily disclosed income enjoys immunity from being included in the total income of the declarant for any assessment year. The tax so

paid shall not be refundable under any circumstances.

(7) The petitioners want to take benefit of VDIS. However, they have not so far made any declaration much less paid the amount of tax. According to the petitioners, the declaration which they propose to make is not going to be accepted and they will be denied benefit of the VDIS in view of the opinion already expressed by the Cadet in its communication dated 1.10.97 (Annexure-H) made to the respondent No. 3. In the above said back-drop of events the reliefs set out in paras 1 and 2 above have been sought for.

(8) The Bank-respondent No. 3 has entered appearance supporting the petitioners. However, on behalf of the respondents No. 1 & 2 the petition has been opposed tooth and nail not only on merits but also raising an objection to the jurisdictional competence of this Court to entertain this petition by reference to its territorial jurisdiction. It has also been submitted that the petition is pre-mature

(9) Having heard the learned Counsel for the parties, we are satisfied that this petition by the petitioners herein invoking the writ jurisdiction of this Court (at Delhi) is entirely misconceived and has to be dismissed.

(10) Admittedly, the petitioners are permanently sustained at Mumbai and are liable to be assessed at Mumbai. The declaration under the VDIS which is yet to be made by the petitioners would be made only before the Commissioner of Income- tax at Mumbai and it is the latter only who would issue the certificate u/s 68(2) to the petitioners. All these proceedings are yet to take place. The idea of the petitioners behind invoking the writ jurisdiction of the High Court is to seek an adjudication of an issue which has not yet arisen. Learned Counsel for the petitioners submitted that the tax once paid by them would not be refunded in any circumstances and the petitioner would be placed in a situation incapable of solution if they make a declaration and pay the tax. It was submitted that this Court should Therefore adjudicate upon the merits of the controversy raised. We are not impressed at all. It is for the petitioners to decide whether they wish to make a declaration under the VDIS and pay the tax voluntarily. Nobody compels them to do so. If they wish to take advantage under the Scheme they should also be prepared to suffer the risk explicitly inherent in the Scheme. We are not exercising any advisory jurisdiction so as to embark upon adjudicating upon a controversy which is yet to arise so as to advise the petitioners whether they should act under the Scheme or not.

(11) The learned Counsel for the petitioners submitted that the opinion which the Cadet has expressed in the impugned letter dated 1.10.97 would bind the subordinate authorities under the Income Tax Act and in the face of this letter (unless it be quashed by this Court) it would be futile for the petitioners to expect any favourable action from the subordinate authorities at Mumbai in favor of the petitioners. Reference was made to Section 119 of the Income Tax Act, 1961 which in our opinion is entirely misconceived. Section 119 of the Act contemplates orders,

instructions and directions being issued by the Board to the Income Tax Authorities for the proper administration of the Act. The provision contemplates orders etc. of general character and not one governing an individual case. The impugned communication dated 1.10.97 is made to the respondent No. 3 and not to the petitioners. It is certainly not a communication made by the Board to any Income-tax Authority. The said communication is in response to the letters originating from the respondent No. 3 and seeking release of the deposits from the prohibitory orders. It does not have any insignia of an order, instruction or direction u/s 119 of the Act. We are not impressed by the submission of the learned Counsel for the petitioners that the said communication would bind the Income Tax Authorities or the petitioners while applying and extending or availing the benefit of the VDIS to the petitioners if the same be otherwise legally available. The communication dated 1.10.97 does not provide any cause of action to the petitioners. In our opinion, the petitioners are at liberty to make a declaration, pay the tax and pray for issuance of certificate u/s 68(2) to the Commissioner of Income- tax at Mumbai and seek an appropriate relief from an appropriate Forum in the event of certificate being illegally or unreasonably withheld by the Appropriate Authority. None of these steps or actions are contemplated within the territorial jurisdiction of the High Court of Delhi.

(12) For the foregoing reasons, we are of the opinion that the present petition is pre-mature and certainly it does not lie within the competence of the High Court of Delhi by reference to its territorial jurisdiction.

(13) The petition is dismissed.