DEWAN P. N. CHOPRA & CO.

INCOME TAX UPDATE

Retrospective application of Black Money Law unconstitutional – Karnataka High Court

Hon'ble Karnataka High Court, in the case of Smt. Dhanashree Ravindra Pandit & Others vs DDIT (Inv.), has quashed the criminal proceedings initiated by the income-tax department against petitioners connected to disclosure of overseas bank accounts and companies *that were closed well before the Black Money Act came into force.* The court ruled that the prosecution initiated against the petitioner did not and cannot pass constitutional muster under Article 20 of the Constitution of India.

For detail, please refer Karnataka High Court ruling in case of Smt. Dhanashree Ravindra Pandit & Others vs DDIT (Inv.) [Criminal Petition No. 101368 of 2019]

IN THE HIGH COURT OF KARNATAKA DHARWAD BENCH

DATED THIS THE 07TH DAY OF JUNE, 2024

R

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.101368 OF 2019

C/W
CRIMINAL PETITION No.101369 OF 2019
CRIMINAL PETITION No.101370 OF 2019
CRIMINAL PETITION No.101371 OF 2019
CRIMINAL PETITION No.101372 OF 2019
CRIMINAL PETITION No.101373 OF 2019
CRIMINAL PETITION No.101374 OF 2019
CRIMINAL PETITION No.101375 OF 2019

IN CRIMINAL PETITION No.101368 OF 2019

BETWEEN:

SMT. DHANASHREE RAVINDRA PANDIT
W/O RAVINDRA PANDIT
AGE: 51 YEARS, OCC: BUSINESS
R/O: 146 MADHUGANDH
GIRNAR HILLS, TILAKAWADI
BELAGAVI
KARNATAKA – 590 006.

... PETITIONER

(BY SRI SANGRAM S.KULKARNI, ADVOCATE)

AND:

THE INCOME TAX DEPARTMENT
REP. BY ITS DEPUTY DIRECTOR OF
INCOME TAX (INVESTIGATION)
UNIT 1, BELAGAVI

SHRI CHETAN D.KALAMKAR
AGE: ABOUT 30 YEARS, OCC: SERVICE
R/O: SADASHIV NAGAR
BELAGAVI – 590 003.

... RESPONDENT

(BY SRI Y.V.RAVIRAJ, ADVOCATE AND
SRI TULAJAPPA KALABURGI, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.242/2019 PENDING BEFORE THE JMFC IV-COURT, BELAGAVI, AGAINST THE PETITIONER FOR THE OFFENCES P/U/S 50 OF THE BM ACT & IT ACT, 2015.

IN CRIMINAL PETITION No.101369 OF 2019

BETWEEN:

SMT. DHANASHREE RAVINDRA PANDIT
W/O RAVINDRA PANDIT
AGE: 51 YEARS, OCC: BUSINESS
R/O: 146 MADHUGANDH
GIRNAR HILLS, TILAKAWADI
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IN CRIMINAL PETITION No.101370 OF 2019

BETWEEN:

SMT. MANGAL ARVIND GOGTE
W/O ARVIND GOGTE
AGE: 71 YEARS, OCC: BUSINESS
R/O: 146 MADHUGANDH
GIRNAR HILLS, TILAKAWADI
BELAGAVI, KARNATAKA – 590 006.

... PETITIONER

(BY SRI SANGRAM S.KULKARNI, ADVOCATE)

AND:

THE INCOME TAX DEPARTMENT
REP. BY ITS DEPUTY DIRECTOR OF
INCOME TAX (INVESTIGATION)
UNIT 1, BELAGAVI
SHRI CHETAN D.KALAMKAR
AGE: ABOUT 30 YEARS, OCC: SERVICE
R/O SADASHIV NAGAR, BELAGAVI – 590 003.

... RESPONDENT

(BY SRI Y.V.RAVIRAJ, ADVOCATE AND
SRI TULAJAPPA KALABURGI, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.246/2019 PENDING BEFORE THE JMFC IV-COURT, BELAGAVI, AGAINST THE PETITIONER FOR THE OFFENCES P/U/S 50 OF THE BM ACT & IT ACT, 2015.

IN CRIMINAL PETITION No.101371 OF 2019

BETWEEN:

SMT. MANGAL ARVIND GOGTE
W/O ARVIND GOGTE
AGE: 71 YEARS, OCC: BUSINESS
R/O: 146 MADHUGANDH
GIRNAR HILLS, VADGAO ROAD, HINDWADI
BELAGAVI, KARNATAKA – 590 006.

... PETITIONER

(BY SRI SANGRAM S.KULKARNI, ADVOCATE)

AND:

THE INCOME TAX DEPARTMENT
REP. BY ITS DEPUTY DIRECTOR OF
INCOME TAX (INVESTIGATION)
UNIT 1, BELAGAVI
SHRI CHETAN D.KALAMKAR
AGE: ABOUT 30 YEARS, OCC: SERVICE
R/O SADASHIV NAGAR, BELAGAVI – 590 003.

... RESPONDENT

(BY SRI Y.V.RAVIRAJ, ADVOCATE AND
SRI TULAJAPPA KALABURGI, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.239/2019 PENDING BEFORE THE JMFC IV-COURT, BELAGAVI, AGAINST THE PETITIONER FOR THE OFFENCES P/U/S 50 OF THE BM ACT & IT ACT, 2015.

IN CRIMINAL PETITION No.101372 OF 2019

BETWEEN:

SHRI ARVIND BALKRISHNA GOGTE
S/O BALKRISHNA GOGTE

AGE: 75 YEARS, OCC: BUSINESS
R/O: 146, MADHUGANDH
GIRNAR HILLS, TILAKWADI
BELAGAVI, KARNATAKA – 590 006.

... PETITIONER

(BY SRI SANGRAM S.KULKARNI, ADVOCATE)

AND:

THE INCOME TAX DEPARTMENT
REP. BY ITS DEPUTY DIRECTOR OF
INCOME TAX (INVESTIGATION)
UNIT 1, BELAGAVI
SHRI CHETAN D.KALAMKAR
AGE: ABOUT 30 YEARS, OCC: SERVICE,
R/O SADASHIV NAGAR, BELAGAVI – 590 003.

... RESPONDENT

(BY SRI Y.V.RAVIRAJ, ADVOCATE AND
SRI TULAJAPPA KALABURGI, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.241/2019 PENDING BEFORE THE JMFC IV-COURT, BELAGAVI, AGAINST THE PETITIONER FOR THE OFFENCES P/U/S 50 OF THE BM ACT & IT ACT, 2015.

IN CRIMINAL PETITION No.101373 OF 2019

BETWEEN:

SHRI ARVIND BALKRISHNA GOGTE
S/O BALKRISHNA GOGTE
AGE: 75 YEARS, OCC: BUSINESS
R/O: 146, MADHUGANDH
GIRNAR HILLS, TILAKWADI
BELAGAVI, KARNATAKA – 590 006.

... PETITIONER

(BY SRI SANGRAM S.KULKARNI, ADVOCATE)

AND:

THE INCOME TAX DEPARTMENT
REP. BY ITS DEPUTY DIRECTOR OF
INCOME TAX (INVESTIGATION)
UNIT 1, BELAGAVI
SHRI CHETAN D.KALAMKAR
AGE: ABOUT 30 YEARS, OCC: SERVICE
R/O SADASHIV NAGAR, BELAGAVI – 590 003.

... RESPONDENT

(BY SRI Y.V.RAVIRAJ, ADVOCATE AND
SRI TULAJAPPA KALABURGI, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.245/2019 PENDING BEFORE THE JMFC IV-COURT, BELAGAVI, AGAINST THE PETITIONER FOR THE OFFENCES P/U/S 50 OF THE BM ACT & IT ACT, 2015.

IN CRIMINAL PETITION No.101374 OF 2019
BETWEEN:

SHRI MADHAV ARAVIND GOGTE
S/O ARVIND GOGTE
AGE: 47 YEARS, OCC: BUSINESS
R/O: 146 MADHUGANDH
GIRNAR HILLS, TILAKAWADI
BELAGAVI, KARNATAKA – 590 006.

... PETITIONER

(BY SRI SANGRAM S.KULKARNI, ADVOCATE)

AND:

THE INCOME TAX DEPARTMENT
REP. BY ITS DEPUTY DIRECTOR OF
INCOME TAX (INVESTIGATION)
UNIT 1, BELAGAVI

SHRI CHETAN D.KALAMKAR
AGE: ABOUT 30 YEARS, OCC: SERVICE
R/O: SADASHIV NAGAR
BELAGAVI – 590 003.

... RESPONDENT

(BY SRI Y.V.RAVIRAJ, ADVOCATE AND
SRI TULAJAPPA KALABURGI, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.244/2019 PENDING BEFORE THE JMFC IV-COURT, BELAGAVI, AGAINST THE PETITIONER FOR THE OFFENCES P/U/S 50 OF THE BM ACT & IT ACT, 2015.

IN CRIMINAL PETITION No.101375 OF 2019

BETWEEN:

SHRI MADHAV ARVIND GOGTE
S/O ARVIND GOGTE
AGE: 47 YEARS, OCC: BUSINESS
R/O: 146 MADHUGANDH
GIRNAR HILLS, TILAKAWADI
BELAGAVI, KARNATAKA – 590 006.

... PETITIONER

(BY SRI SANGRAM S.KULKARNI, ADVOCATE)

AND:

THE INCOME TAX DEPARTMENT
REP. BY ITS DEPUTY DIRECTOR OF
INCOME TAX (INVESTIGATION)
UNIT 1, BELAGAVI
SHRI CHETAN D.KALAMKAR,
AGE: ABOUT 30 YEARS, OCC: SERVICE
R/O SADASHIV NAGAR,
BELAGAVI – 590 003

... RESPONDENT

(BY SRI Y.V.RAVIRAJ, ADVOCATE AND
SRI TULAJAPPA KALABURGI, ADVOCATE)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.240/2019 PENDING BEFORE THE JMFC IV-COURT, BELAGAVI, AGAINST THE PETITIONER FOR THE OFFENCES P/U/S 50 OF THE BM ACT & IT ACT, 2015.

THESE CRIMINAL PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 10.10.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

Conglomeration of these cases call in question proceedings in different criminal cases all for the offence punishable under Section 50 of the Black Money (Undisclosed Foreign Income and Assets) Imposition of Tax Act, 2015 (hereinafter referred to as 'the Act' for short). The petitioners, in all these cases, are office bearers of certain business establishments who have been charged with the allegation of violation of the provisions of the Act. For the sake of convenience, the facts obtaining in Criminal Petition No.101368 of 2019, which are common to all the other petitions, would be noticed.

2. Heard Sri Sangram S. Kulkarni, learned counsel appearing for the petitioners and Sri Y.V. Raviraj, learned counsel appearing for the respondent.

3. Facts adumbrated are as follows:-

During the financial year 2007-08 and in specific on 17-03-2008 Gleaming Snow Worldwide Limited was incorporated as a British Virgin Island ('BVI') Company. On 12-05-2009 Oriental Success Universal Corporation ('Corporation' for short) gets incorporated as a BVI Company. On 12-06-2009 bank account of Oriental Success Universal Corporation is opened in UBS, Singapore. The bank account opening form submitted by the Corporation included 'Know Your Customer' documents and declaration of beneficial owner's identity in terms of laws prevailing in Singapore. The Gleaming Snow Worldwide Limited which was incorporated on 17-03-2008 is struck off at BVI. On 2 dates in the financial year 2010-11 i.e., on 08-01-2010 and 16.03.2010 an amount of US$16,000 and US$40,000 is credited to the Corporation's account. After the closure of the financial year, the

bank account with UBS, Singapore is closed. The Corporation also gets struck off at BVI on 02-11-2010.

4. Government of India brings in the Act on 01-04-2016. After coming into force of the Act, a notification is issued by Government of India on 14-03-2018 declaring the officer at Panaji, Goa to be the Assessing Officer for the purpose of the Act. The Assessing Officer on 26-03-2018 issues summons to petitioners invoking Section 8 of the Act. The petitioners are all members of one and the same family. On 09-04-2018 one of the petitioners tenders oral deposition before the respondent who was declared to be the Assessing Officer under the Act. On 25-06-2018 assessment proceedings under the Act are commenced by issuance of a notice under Section 10(1) of the Act for the financial year 2018-19 and assessment year 2019-20.

5. After about six months of commencement of proceedings, two show cause notices are issued by the respondent seeking to show cause as to why prosecution should not be initiated against all the petitioners under Sections 50 and 52 of the Act. The petitioners submit their interim reply on 21.02.2019 and additional reply on

14-03-2019. The Competent Authority then grants sanction to prosecute the petitioners for the offences under the Act. After obtaining such sanction, two complaints come to be registered before the IV Additional Judicial Magistrate First Class, Belagavi under Section 200 of the CrPC alleging offences punishable under Sections 50 and 52 of the Act. The registration of criminal case on the complaint filed by the authorized officer is what has driven the petitioners to this Court in the subject petition. Similar pleadings and similar circumstances form the fulcrum of the companion petitions and except the number of registration of criminal cases being different, all other legal contentions and facts are similar to the one being noticed.

6. The learned counsel appearing for the petitioners would vehemently contend that the Companies against whom the proceedings are sought to be initiated under the Act had been closed and struck off way back in the year 2010 long before coming into force of the Act and the Companies are not in existence from 2011 itself. The petitioners were only Directors of the said Companies and not the share holders. Therefore, for a law that

comes after the closer of Companies the petitioners cannot be hauled into the web of crime. He would submit that Article 20 of the Constitution of India provides that a person can be proceeded against only for any violation of law at the time of commission of offence and not any law that would come in future. The allegations levelled against the petitioners do not constitute an offence under Sections 50 or 52 of the Act. The Income Tax Act which governed the petitioners at the relevant point in time does not allege any violation of the said Act. Therefore, a post-facto law cannot be made applicable to the petitioners alleging violation of the Act. He would emphasize on the fact that admittedly the allegations pertained to the year 2009-10 and the Act has come into force in the year 2016 and, therefore, the entire proceedings are without jurisdiction.

7. On the other hand, the learned counsel representing the respondent Sri Y.V. Raviraj would seek to defend the action on the score that Section 72 of the Act is retrospective in operation and, therefore, proceedings under Section 72(c) of the Act can be initiated under the Act even if the offences are committed prior to

the coming into force of the Act. He would draw his entire sustenance on Section 72(c) of the Act. He would submit that it is a matter of investigation and the funds parked outside the country should be brought back to the country and, therefore, would seek dismissal of the petitions and continuance of proceedings against the petitioners.

8. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record. In furtherance whereof, the issue that falls for my consideration is,

"Whether the proceedings instituted against the petitioners under the Act for the alleged offences are tenable in law?

9. Before embarking upon consideration of facts of the case, I deem it appropriate to notice the objects and reasons behind the enactment and the provisions of the Act insofar as they are germane. The objects and reasons to bring in the subject Act are as follows:-

> *An Act to make provisions to deal with the problem of the Black money that is undisclosed foreign income and assets, the procedure for dealing with such income and assets and to provide for imposition of tax on any undisclosed foreign income and asset held outside India and for matters connected therewith or incidental thereto*
>
> *Be it enacted by Parliament in the Sixty-sixth Year of the Republic of India as follows:—*
>
> ***Statement of Objects and Reasons**.—Stashing away of black money abroad by some people with intent to evade taxes has been a matter of deep concern to the nation. 'Black Money' is a common expression used in reference to tax-evaded income. Evasion of tax robs the nation of critical resources necessary to undertake programs for social inclusion and economic development. It also puts a disproportionate burden on the honest taxpayers as they have to bear the brunt of higher taxes to make up for the revenue leakage caused by evasion. The money stashed away abroad by evading tax could also be used in ways which could threaten the national security."*

The aforesaid objects are the reasons for enactment of the Act which comes into force with effect from 01-07-2015. Section 2 of the Act deals with 'Definitions'. Section 2(11) and (12) is germane to be noticed and it reads as follows:

> *"**2. Definitions**.—In this Act, unless the context otherwise requires,—*
>
> *… … …*
>
> *(11) "undisclosed asset located outside India" means an asset (including financial interest in any entity) located outside India, held by the assessee in his name or in respect of which he is a beneficial owner, and he has no explanation about the source of investment in such asset or the explanation given by him is in the opinion of the Assessing Officer unsatisfactory;*

(12) "undisclosed foreign income and asset" means the total amount of undisclosed income of an assessee from a source located outside India and the value of an undisclosed asset located outside India, referred to in Section 4, and computed in the manner laid down in Section 5".

Section 3 deals with 'charge of tax'. Therefore, it is the charging section. It reads as follows:

*"**3. Charge of tax**.—(1) There shall be charged on every assessee for every assessment year commencing on or after the 1st day of April, 2016, subject to the provisions of this Act, a tax in respect of his total undisclosed foreign income and asset of the previous year at the rate of thirty per cent of such undisclosed income and asset:*

Provided that an undisclosed asset located outside India shall be charged to tax on its value in the previous year in which such asset comes to the notice of the Assessing Officer.

(2) For the purposes of this section "value of an undisclosed asset" means the fair market value of an asset (including financial interest in any entity) determined in such manner as may be prescribed."

Section 10 deals with 'assessment' and reads as follows:

*"**10. Assessment**.—(1) For the purposes of making an assessment or reassessment under this Act, the Assessing Officer may, on receipt of an information from an income-tax authority under the Income Tax Act or any other authority under any law for the time being in force or on coming of any information to his notice, serve on any person, a notice requiring him on a date to be specified to produce or cause to be produced such accounts or documents or evidence as the Assessing Officer may require for the purposes of this Act and*

may, from time to time, serve further notices requiring the production of such other accounts or documents or evidence as he may require.

(2) The Assessing Officer may make such inquiry, as he considers necessary, for the purpose of obtaining full information in respect of undisclosed foreign income and asset of any person for the relevant financial year or years.

(3) The Assessing Officer, after considering such accounts, documents or evidence, as he has obtained under sub-section (1), and after taking into account any relevant material which he has gathered, under sub-section (2) and any other evidence produced by the assessee, shall by an order in writing, assess [or reassess] the undisclosed foreign income and asset and determine the sum payable by the assessee.

(4) If any person fails to comply with all the terms of the notice under sub-section (1), the Assessing Officer shall, after taking into account all the relevant material which he has gathered and after giving the assessee an opportunity of being heard, make the assessment [or reassessment] of undisclosed foreign income and asset to the best of his judgment and determine the sum payable by the assessee."

Chapter-V deals with 'offences and prosecutions'. Sections 50 to 52 are the ones germane to be noticed under the chapter and they read as follows:

"***50. Punishment for failure to furnish in return of income, any information about an asset (including financial interest in any entity) located outside India***.— *If any person, being a resident other than not ordinarily resident in India within the meaning of clause (6) of Section 6 of the Income Tax Act, who has furnished the return of income for any previous year under sub-section (1) or sub-section (4) or sub-section (5) of Section 139 of that Act, willfully fails to furnish in such return any information*

relating to an asset (including financial interest in any entity) located outside India, held by him, as a beneficial owner or otherwise or in which he was a beneficiary, at any time during such previous year, or disclose any income from a source outside India, he shall be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine.

***51. Punishment for willful attempt to evade tax**.—(1) If a person, being a resident other than not ordinarily resident in India within the meaning of clause (6) of Section 6 of the Income Tax Act, willfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable under this Act, he shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to ten years and with fine.*

(2) If a person willfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and shall, in the discretion of the court, also be liable to fine.

(3) For the purposes of this section, a willful attempt to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof shall include a case where any person—

(i) has in his possession or control any books of account or other documents (being books of account or other documents relevant to any proceeding under this Act) containing a false entry or statement; or

(ii) makes or causes to be made any false entry or statement in such books of account or other documents; or

(iii) willlfully omits or causes to be omitted any relevant entry or statement in such books of account or other documents; or

(iv) causes any other circumstance to exist which will have the effect of enabling such person to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof.

***52. Punishment for false statement in verification**.—If a person, makes a statement in any verification under this Act or under any rule made thereunder, or delivers an account or statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine."*

Chapter-VI deals with 'tax compliance for undisclosed foreign income and assets'. Section 59 which is germane reads as follows:-

*"**59. Declaration of undisclosed foreign asset**.— Subject to the provisions of this Chapter, any person may make, on or after the date of commencement of this Act but on or before a date to be notified by the Central Government in the Official Gazette, a declaration in respect of any undisclosed asset located outside India and acquired from income chargeable to tax under the Income Tax Act for any assessment year prior to the assessment year beginning on 1st day of April, 2016—*

(a) for which he has failed to furnish a return under Section 139 of the Income Tax Act;

(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;

(c) which has escaped assessment by reason of the omission or failure on the part of such person to make a

return under the Income Tax Act or to disclose fully and truly all material facts necessary for the assessment or otherwise."

Section 72 reads as follows:

*"**72. Removal of doubts**.—For the removal of doubts, it is hereby declared that—*

(a) save as otherwise expressly provided in the Explanation to sub-section (1) of Section 69, nothing contained in this Chapter shall be construed as conferring any benefit, concession or immunity on any person other than the person making the declaration under this Chapter;

(b) where any declaration has been made under Section 59 but no tax and penalty has been paid within the time specified under Section 60 and Section 61, the value of such asset shall be chargeable to tax under this Act in the previous year in which such declaration is made;

(c) where any asset has been acquired or made prior to commencement of this Act, and no declaration in respect of such asset is made under this Chapter, such asset shall be deemed to have been acquired or made in the year in which a notice under Section 10 is issued by the Assessing Officer and the provisions of this Act shall apply accordingly."

(Emphasis supplied)

Section 2(11) and (12) define what is 'undisclosed asset located outside India'. An asset held by an assessee in his name or in respect of which he is the beneficial owner and he has no explanation about the source of investment, becomes an

undisclosed asset located outside India. Sub-section **(12) of Section 2** defines 'undisclosed foreign income and asset', to mean total amount of undisclosed income of an assessee from a source located outside India and the value thereof, the computation is referable to **Sections 4 and 5 of the Act**. Chapter-II deals with 'basis of charge'. Charge of tax is under Section 3. Therefore, Section 3 becomes a charging section. Section 10 deals with 'assessment'. For the purpose of assessment or re-assessment, a notice is to be issued on any person for production of accounts or documents or evidence which may be required for the purpose of the Act. What the Assessing Officer would undertake is dealt with under sub-sections (2) to (4) of Section 10. Section 50 which comes under Chapter-V dealing with 'offences and prosecutions' and punishes a person on his failure to furnish in the return of income or any information about an asset located outside India. Section 51 deals with willful attempt of an assessee to evade tax. Section 52 deals with a statement of the assessee which is found to be false on verification of a document which would become an offence under the Act. Section 72 which deals with 'removal of doubts' is what forms the fulcrum of the issue in the *lis*. Whenever

doubts would occur about execution of the provisions of the Act, they are to be thrashed out by taking recourse to Section 72. Sub-section (c) of section 72 is what has been pressed into service in the case at hand. It is these provisions of law that are germane to be noticed for resolution of the issue in the *lis*.

10. The facts that led to registration of the complaint against the petitioners in all these cases are the two Companies incorporated as British Virgin Island Companies in Singapore in the names and styles of Gleaming Snow Worldwide Limited and Oriental Success Universal Corporation which came to be incorporated on two dates i.e., on 17-03-2008 and 12-05-2009 respectively. The first Company that was incorporated was struck off from BVI and what remained was the second company/Oriental Success Universal Corporation. In the said company about US$56000 was credited into the bank account of the said Corporation in UBS Bank, Singapore. After the said deposit the account in the Bank of the Corporation was closed on 27-05-2010. After closure of the account, the Corporation was also struck off from the rolls of BVI, Singapore. Therefore, the incorporation and striking off of the

Companies took place between 12-06-2009 and 02-11-2010. The petitioners in all these cases are members of the same family. They were Directors of the aforesaid Companies at the time when the Companies were incorporated and closed. At that point in time, the Act was not in existence.

11. The Act, as observed hereinabove, comes into effect on 01-07-2015. Therefore, it is a case where all facts have happened five years prior to the Act itself coming into force. The respondent/prosecution takes recourse to Section 72 of the Act *supra* which dealt with removal of doubts. The respondent registers a complaint against the petitioners invoking Section 200 of the Cr.P.C. Since the entire proceedings have triggered by the registration of the complaint, I deem it appropriate to notice the complaint and it reads as follows:

> ***"COMPLAINT u/s 200 of THE CRIMINAL PROCEDURE CODE***
>
> ***(Offence Punishable Section 52 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015)***
>
> *1) The Complainant is the Deputy Director of Income Tax (Investigation) and a public servant. The*

complainant is filing the present complaint in his official capacity as a public servant representing the Income Tax Department. Hence, his presence may kindly be dispensed with in accordance with u/s 256 of The Code of Criminal Procedure.

2) *The complainant submits that the Principal Director of Income Tax (Investigation), Panaji has authorized the filing of the complaint vide his Sanction Order dt.: 25/03/2019.*

3) *The accused is assessable to tax under the jurisdiction of Deputy Commissioner of Income Tax, Circle-1, Belagavi; the assessment under the Act of the accused is under progress with Deputy Director of Income Tax (Inv.), Unit-1, Belagavi. That the Act will henceforth called as the "Act" in the top-numbered case for brevity and convenience.*

4) Show cause notice u/s. 52 of the Act was issued to the accused on 31.01.2019. As per the information received from tax authorities of British Virgin Islands (BVI) and Singapore establishes that the accused was a director of Oriental success Universal Corporation (OSUC) Limited. Information so received also establishes that the accused was one of the beneficial owners of the bank account no.152007 of the Oriental Success Universal Corporation (OSUC) Limited maintained with UBS Bank, Singapore. The said bank account shows credits of USD 16,000 on 08.01.2010 and USD 40,000 on 16.03.2010.

5) The accused has denied her investments, interests, beneficial ownership of the abovementioned entities as beneficial ownership of the Bank Account bearing no. 152007, of Oriental Success Universal Corporation (OSUC) Limited maintained with UBS Bank, Singapore in his statements recorded u/s 131 of the Income Tax Act, 1961 on 10.12.2015 and 17.03.2017 before the

Assistant Director of Income Tax (Inv.), Unit-1 Belagavi as well as the statement recorded u/s 8(1) of the Act 09.04.2018 before the Assistant Director of Income Tax(Inv.), Unit-1, Belagavi who has been notified under the Act to exercise the concurrent jurisdiction under Act in the case of the accused vide the Principal Director of Income Tax(Investigation) office notification F.No.PNJ/Prosn/PDIT(Inv.)/2017-18/01 dated 14.03.2018. This denial by the accused is contrary to the evidence gathered in the form of information received from the competent authorities of the foreign jurisdictions of BVI and Singapore. The evidences which establish the accused the director and shareholder of the companies, Gleaming Snow Worldwide Limited (GSWL) and Oriental Success Universal Corporation (OSUC) Limited, BVI as well as the beneficial owner of the bank account of Oriental Success Universal Corporation (OSUC) Limited maintained the UBS Bank, Singapore bearing Account number 152007 are as under:

(i) The incorporation documents received from BVI tax Authorities in of Oriental Success Universal Corporation Ltd, BVI, contain the copies of the Register of Directors as well as Register of Shareholders. As per the documents, the accused is a director of the company.

(ii) The KYC documents provided by the BVI tax Authorities in respect of the incorporation of Oriental Success Universal Corporation Ltd, BVI, contain the passport copy of the accused bearing Passport No. Z1366831.

(iii) Singapore Tax Authorities have provided the information in respect of the bank account of the Oriental Success Universal Corporation

Ltd, BVI maintained with UBS Bank, Singapore, bearing account no. 152007. The said details contain the Account Opening form signed by the assessee, declaration of the beneficial owner ship of the assessee by herself under her signatures, copies of the passport bearing no. Z1366831 belonging to the assessee used as one of the KYC document and also the incorporation documents of Oriental Success Universal Corporation Ltd, BVI along with her description as the director of the said entity which has also been used as one of the KYC document.

(iv) Singapore Tax Authorities have also provided the bank statement of the said account maintained with UBS AG, Singapore and as per the analysis of the said account, two major deposits amounting to USD 16,000 and USD 40,000, were credited in the said account on 08.01.2010 and 16.03.2010 respectively.

(v) The signatures of the accused on all statements recorded before the Assistant Director of Income Tax (Inv.), Unit-1, Belagavi match with her signatures on the documents provided by UBS AG through Inland Revenue Authority of Singapore.

6) However, the accused has made false statement u/s 8(1) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 recorded on 09.04.2018 in the office of Assistant Director of Income Tax(Inv.), Unit-1, Belagavi. The accused has denied having any interest in any foreign entity located outside India or having beneficial ownership of the foreign bank account as discussed above. The accused has failed to provide correct information

regarding his interests in Oriental Success Universal Corporation, BVI and Gleaming Snow Worldwide Limited, BVI and the foreign bank account in the UBS, Singapore in the statement recorded u/s 8(1) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. The accused interest in the foreign entity located outside India and being beneficial owner of the foreign bank account is evident from the information received from the foreign jurisdictions of BVI and Singapore. Considering these facts, the accused was given an opportunity to show cause as why prosecution u/s 52 of the Black Money (Undisclosed, Foreign Income and Assets) and Imposition of Tax Act, 2015 should not be launched against her.

7) In her reply (dated: 21/02/2019) to the showcause notice, the accused has submitted that the process of sanctioning of prosecution under Chapter V of the Act can be commenced only if and after the Assessing Officer has reached a conclusion adverse to the accused u/s 10 of the Act. As per the section 50 of the Act, there is no bearing on the completion of assessment u/s 10 of the Act to launch the prosecution. Prosecution u/s 52 of the Act can be launched irrespective of the completion of assessment u/s 10 of the Act. Therefore, this argument of the accused cannot be accepted.

8) The accused has further submitted that he has not made any false statement she has referred only to Q.No.7 of the statement recorded u/s 8(1) of the Balance Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 on 09.04.2018. Whereas, when the accused was specifically asked regarding account of Oriental Success Corporation maintained with UBS, Singapore with account number 152007, the accused did not provide the true answer regarding him being the beneficial owner of that account. The

relevant part of the statement is reproduced as follows:

Q.No.17	***As per Information received by this office, Oriental Success Universal Corporation (OSUC) wherein you are director; has maintained account number 152007 with UBS, Singapore Branch. The account was opened on 12.06.2009 and closed on 27.05.2010. Please offer your comments in this regard.***
Ans.	*Sir, as stated earlier, neither me nor my family members nor any of my firms or companies have any foreign bank account. If my personal details like passport number, etc have been misused, I am not aware about it.*

The accused has stated that her personal details have been misused but it evident from the information received from UBS, Singapore that the accused himself has signed on the 'Corporate Certificate' that contains the passport numbers of the accused and her family members. It is clearly mentioned on the 'Corporate Certificate' that "the specimen signatures set out above are the authentic signatures of the named persons". The 'Corporate Certificate' has been certified by the father (Shri. Arvind Balakrishna Gogte) and mother (Smt. Mangal Arvind Gogte) of the accused. The signature of the accused on the 'Corporate Certificate' is the same as the signature of the accused on statement recorded u/s 8(1) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. Therefore, accused statement that her personal details like passport number, etc had been misused is false.

9) The accused in her reply dated 14.03.2019 raised objections regarding jurisdiction of the undersigned to issue show cause notices for prosecution. As per accused reply, section 55 of the Act does not mention Principal Director of Income Tax as sanctioning authority. Section 55 mentions

Principal Commissioner, Commissioner, or Commissioner (Appeals) as sanctioning authorities. As per section 2(16) of the Income Tax Act, 1961 commissioner means a person appointed to be Principal Director of Income Tax. There is no explicit definition of 'Commissioner' in the Act, but as per the Section 2(15) of the Act definition of 'Commissioner' can be referred as provided in Income Tax Act, 1961. Definition of the 'Commissioner' provided in section 2(16) of Income Tax Act, 1961 is applicable in the present context as there is no other explicit definition in the Act. Therefore, the arguments of the accused in this regard are not accepted.

Also, as per CBDT gazette notification dated 16.05.2017 powers have been conferred to the officers of Directorates of the Income Tax for the implementation of the Act. Therefore, proceedings such as prosecutions has to be initiated from the Directorates of Income Tax only. The accused has relied on various case laws pertaining to the Income Tax Act, 1961 to support his arguments. It is to be noted that Hon. Madras High Court in its judgment in KrishnaswamyVijaykumar (2017) case has ruled that Principal Director of Income Tax has sufficient jurisdiction to proceed with the prosecution proceedings u/s 279 of the Income Tax Act, 1961.

10) Even though the accused was one of the beneficial owners of a bank account located outside India in UBS, Singapore, he has failed to provide true and correct information regarding the foreign bank account in his statement recorded u/s 8(1) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. Therefore, the Principal Director of Income tax, Panaji was satisfied that the accused has given false statement on oath u/s 8(1) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. Therefore, the accused is liable to be proceeded u/s. 52 of the

Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

11) *The above narrated facts and events clearly demonstrate that the misdeeds and offences committed by the accused are wilful and deliberate. The accused has not offered any evidence to demonstrate that her misdeeds were due to reasons beyond her control. Hence, the statutory presumption contained in section 54 of the Act may kindly be raised against the accused.*

12) *In view of the above, the accused is liable to be prosecuted for the offence punishable u/s 52 of the Black Money (Undisclosed Foreign Income and Assets)*

13) *The offence is committed within the jurisdiction of this hon'ble Court. Hence this hon'ble is competent to try the offence.*

PRAYER

WHEREFORE, the complainant prays that this hon'ble Court may be pleased take cognizance of the offence punishable u/s 52 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, summon the accused, him and punish him in accordance with law in the interest of justice.

Place: Belagavi
Date: 29/03/2019″

(Emphasis added)

The crux of the complaint is that UBS Bank, Singapore has in its statement divulged that the petitioners in the years 2009-10 had deposited US$16000 and US$40000 in two different transactions

and that would become an offence under Sections 50 and 52 of the Act. Section 50 makes it an offence if the assessee fails to furnish any information of an asset located outside India including financial interest. As on the date of the Act coming into force, there was neither any financial interest of the petitioners nor any foreign asset, as everything had been closed in the year 2010 itself. What the respondent would do is taking recourse to Section 72 of the Act to register the aforesaid complaint. Section 72 deals with removal of doubts and creates a deeming section in terms of Section 72(c). Section 72(c) directs that when an asset has been acquired prior to commencement of the Act and no declaration in respect of such asset is made under this Chapter, such asset will be deemed to have been acquired or made in the year in which notice under Section 10 is issued by the Assessing Officer and the provisions of the Act will apply. Section 72 observes that if no declaration is made by an assessee even if the asset was made prior to coming into force of the Act, it shall be deemed to be an offence under the Act. In effect what Section 72 would mean that the facts/allegations that were never in existence as on the date of commencement of the Act can also be deemed to have been committed under the Act.

12. It becomes germane, at this juncture, to consider where a legal fiction or a deeming fiction is created under Section 72(c) of the Act or criminal liability under Sections 50 and 52 could be imposed. The Apex Court in the case of ***KUMARAN v. STATE OF KERALA***[1] considers what is deeming section or a legal fiction that is created and holds as follows:

> *"…. …. ….*
>
> ***27.*** *These two judgments make it clear that the deeming fiction of Section 431 CrPC extends not only to Section 421, but also to Section 64 of the Penal Code. This being the case, Section 70 IPC, which is the last in the group of sections dealing with sentence of imprisonment for non-payment of fine must also be included as applying directly to compensation under Section 357(3) as well. The position in law now becomes clear. The deeming provision in Section 431 will apply to Section 421(1) as well, despite the fact that the last part of the proviso to Section 421(1) makes a reference only to an order for payment of expenses or compensation out of a fine, which would necessarily refer only to Section 357(1) and not Section 357(3). Despite this being so, so long as compensation has been directed to be paid, albeit under Section 357(3), Section 431, Section 70 IPC and Section 421(1) proviso would make it clear that by a legal fiction, even though a default sentence has been suffered, yet, compensation would be recoverable in the manner provided under Section 421(1). This would, however, be without the necessity for recording any special reasons. This is because Section 421(1) proviso contains the disjunctive "or" following the recommendation of the Law Commission, that the proviso to old Section 386(1) should not be a bar to the issue of a warrant for levy of fine, even when a sentence of imprisonment for default has been fully undergone. The last part inserted into the proviso to Section 421(1) as a result of*

[1] *(2017) 7 SCC 471*

this recommendation of the Law Commission is a category by itself which applies to compensation payable out of a fine under Section 357(1) and, by applying the fiction contained in Section 431, to compensation payable under Section 357(3).

28. As is well known, a legal fiction is not to be extended beyond the purpose for which it is created or beyond the language of the section by which it is created. For example, see Prakash H. Jain v. Marie Fernandes [Prakash H. Jain v. Marie Fernandes, (2003) 8 SCC 431 at p. 438] . However, once the purpose of the legal fiction is ascertained, full effect must be given, and it should be carried to its logical conclusion*. This is clear from the celebrated passage in East End Dwellings Co. Ltd. v. Finsbury Borough Council [East End Dwellings Co. Ltd. v. Finsbury Borough Council, 1952 AC 109 : (1951) 2 All ER 587 at p. 589 (HL)] : (AC pp. 132-33)*

> *"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of those in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."*

> ***29.*** *The legal fiction enacted under Section 431 is not limited to "the purpose of this Act" unlike Section 6-A of the Central Sales Tax Act, as was the case in Ashok Leyland Ltd. v. State of T.N. [Ashok Leyland Ltd. v. State of T.N., (2004) 3 SCC 1, paras 32 and 76] Thus it is clear that the object of the legal fiction created by Section 431 is to extend for the purpose of recovery of compensation until such recovery is completed — and this would necessarily take us not only to Section 421 CrPC but also to Section 70 of the Penal Code, a companion criminal statute, as has been held above."*
>
> *(Emphasis supplied)*

The Apex Court holds that a legal fiction or a deeming fiction should not be extended beyond the purpose of the Act for which it is created or beyond the language deployed in the enactment. In the case at hand what is given effect to under Section 72(c) is a deeming section which creates criminal liability. It is a matter of record that all the facts that become the offences are alleged to have happened five years prior to the Act coming into force. It now becomes germane to notice Article 20 of the Constitution of India which makes it a fundamental right to a person who would be convicted for an offence except for violation of law in force at the time of commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force. The first part of it is what becomes necessary to be noticed to the facts obtaining in the case at hand.

13. It is apposite to refer to the Constitution Bench judgment of the Apex Court in the case of ***RAO SHIV BAHADUR SINGH v. STATE OF VINDHYA PRADESH***[2]. In the said judgment the Apex Court interprets Article 20 of the Constitution of India. Facts

[2] *(1953) 2 SCC 111*

obtaining before the Supreme Court are noticed at paragraphs 1 to 5. Based upon the said facts, the Apex Court holds as follows:

> ***"17. This article in its broad import has been enacted to prohibit convictions and sentences under ex post facto laws****. The principle underlying such prohibition has been very elaborately discussed and pointed out in the very learned judgment of Willes, J. in the well-known case of Phillips v. Eyre [Phillips v. Eyre, (1870) LR 6 QB 1 at pp. 23 and 25] and also by the Supreme Court of USA in Calder v. Bull [Calder v. Bull, 1 L Ed 648 at p. 649 : 3 US (3 Dall) 386 (1798)] . In the English case it is explained that ex post facto laws are laws which voided and punished what had been lawful when done.* ***There can be no doubt as to the paramount importance of the principle that such ex post facto laws, which retrospectively create offences and punish them are bad as being highly inequitable and unjust. In the English system of jurisprudence repugnance of such laws to universal notions of fairness and justice is treated as a ground not for invalidating the law itself but as compelling a beneficent construction thereof where the language of the statute by any means permits it. In the American system, however, such ex post facto laws are themselves rendered invalid by virtue of Article 1, Sections 9 and 10 of its Constitution****.*
>
> ***18.*** *It is contended by the learned Attorney General that Article 20 of the Constitution was meant to bring about nothing more than the invalidity of such ex post facto laws in the post-Constitution period but that the validity of the pre-Constitution laws in this behalf was not intended to be affected in any way. The case in Keshavan Madhava Menon v. State of Bombay [Keshavan Madhava Menon v. State of Bombay, 1951 SCC 16 : 1951 SCR 228] has been relied on to show that the fundamental rights guaranteed under the Constitution have no retrospective operation, and that the invalidity of laws brought about by Article 13(1) of the Constitution relates only to the future operation of the pre-Constitution laws which are in violation of the fundamental rights. On this footing it was*

argued that even on the assumption of the convictions in this case being in respect of new offences created by Ordinance 48 of 1949 after the commission of the offences charged, the fundamental right guaranteed under Article 20 is not attracted thereto so as to invalidate such convictions. This contention, however, cannot be upheld.

19. *On a careful consideration of the respective articles, one is struck by the marked difference in language used in the Indian and American Constitutions. Sections 9(3) and 10 of Article 1 of the American Constitution merely say that "No ex post facto law shall be passed …" and "No State shall pass ex post facto law…". But in Article 20 of the Indian Constitution the language used is in much wider terms, and what is prohibited is the conviction of a person or his subjection to a penalty under ex post facto laws.* ***The prohibition under the article is not confined to the passing or the validity of the law, but extends to the conviction or the sentence and is based on its character as an ex post facto law. The fullest effect must therefore be given to the actual words used in the article. Nor does such a construction of Article 20 result in giving retrospective operation to the fundamental right thereby recognised. All that it amounts to is that the future operation of the fundamental right declared in Article 20 may also in certain cases result from acts and situations which had their commencement in the pre-Constitution period.***

20. *In R. v. St. Mary's, Whitechapel Inhabitants [R. v. St. Mary's, Whitechapel Inhabitants, (1848) 12 QB 120 : 116 ER 811 at p. 814] Lord Denman, C.J. pointed out that a statute which in its direct operation is prospective cannot properly be called a retrospective statute because a part of the requisites for its action is drawn from a time antecedent to its passing.* ***The general principle therefore that the fundamental rights have no retrospective operation is not in any way affected by giving the fullest effect to the wording of Article 20. This article must accordingly be taken to prohibit all convictions or subjections to penalty after the Constitution in respect of ex post facto laws whether the same was a post-Constitution law or a pre-Constitution law****. That such is the intendment of the wording used in Article 20(1) is confirmed by the similar*

> *wording used in Articles 20(2) and 20(3). Under Article 20(2), for instance, it cannot be reasonably urged that the prohibition of double jeopardy applies only when both the occasions therefor arise after the Constitution. Similarly, under Article 20(3) it cannot be suggested that a person accused before the Constitution can be compelled to be a witness against himself, if after the Constitution the case is pending."*
>
> *(Emphasis supplied)*

The facts before the Apex Court were that accused 1 and 2 were Minister for Industries and Secretary of Commerce and Industries in the Government of Vindhya Pradesh. An agreement had been entered into on 01-08-1936 for carrying on diamond mining operation for 15 years. Accused 1 and 2 therein are alleged to have obtained illegal gratification in a sum of ₹25,000/- on 11-04-1949 and had also indulged in certain forgery of documents to favour the Syndicate. The allegations were the offences punishable under Section 120B, 161, 465 and 466 of the IPC. The trial Court acquitted the accused. The Appellate Court convicted accused Nos.1 and 2 for offences punishable under Sections 120B and 161 of the IPC and in addition accused No.1 was convicted for the offences punishable under Sections 465 and 466 of the IPC. The foundation for the said charge was an Ordinance that was brought into effect

on 11-09-1949. The contention before the Apex Court was that it violated Articles 14 and 21 of the Constitution of India as by the time the matter was before the Apex Court, the Constitution had come into force. The Apex Court holds that the alleged date of illegal gratification was 11-04-1949 and the Ordinance based upon which the accused were charged comes into effect as on 11-09-1949, five months after the alleged act. Therefore, the Apex Court declined to accept the contention that the Ordinance would be deemed to have come into effect from 09-08-1948 as depicted therein and the conviction must be sustained. The Apex Court holds that law must actually be in force on the date of commission of the offence and not deemed to be in force. It further holds that the object of Article 20 of the Constitution is law in force, actually in force and not a law deemed to be in force. The Apex Court further holds that, if the deeming section is given credence and criminal law is affirmed, it would defeat the tenor of Article 20 of the Constitution, as every post-facto law could be made retrospective. Therefore, the Constitution Bench upturns the conviction and acquits accused 1 and 2 on the ground that the provision would not

pass muster of Article 20 of the Constitution of India. The said judgment has stood the test of time.

14. The Apex Court, after the Act coming into force, in the case of ***UNION OF INDIA v. GAUTAM KHAITAN***[3] considering the tenor of the Act has held as follows:

> ***"15.*** *It could therefore be seen that where no declaration in respect of the asset covered under the Black Money Act is made, such asset would be deemed to have been acquired or made in the year in which a notice under Section 10 is issued by the assessing officer and the provisions of the Act shall apply accordingly.*
>
> ***16.*** *The offences in respect of which sanction has been granted are under Sections 50 and 51 of the Black Money Act, which read thus:*
>
> > *"**50. Punishment for failure to furnish in return of income, any information about an asset (including financial interest in any entity) located outside India**.— If any person, being a resident other than not ordinarily resident in India within the meaning of clause (6) of Section 6 of the Income Tax Act, who has furnished the return of income for any previous year under sub-section (1) or sub-section (4) or sub-section (5) of Section 139 of that Act, wilfully fails to furnish in such return any information relating to an asset (including financial interest in any entity) located outside India, held by him, as a beneficial owner or otherwise or in which he was a beneficiary, at any time during such previous year, or disclose any income from a source outside India, he shall be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine.*

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[3] *(2019) 10 SCC 108*

51. Punishment for wilful attempt to evade tax.— *(1) If a person, being a resident other than not ordinarily resident in India within the meaning of clause (6) of Section 6 of the Income Tax Act, wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable under this Act, he shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to ten years and with fine.*

(2) If a person wilfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and shall, in the discretion of the court, also be liable to fine.

(3) For the purposes of this section, a wilful attempt to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof shall include a case where any person—

(i) has in his possession or control any books of account or other documents (being books of account or other documents relevant to any proceeding under this Act) containing a false entry or statement; or

(ii) makes or causes to be made any false entry or statement in such books of account or other documents; or

(iii) wilfully omits or causes to be omitted any relevant entry or statement in such books of account or other documents; or

(iv) causes any other circumstance to exist which will have the effect of enabling such person to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof."

17. *Section 50 provides that if any person, being a resident other than not ordinarily resident in India, who has furnished the return of income for any previous year under sub-section (1) or sub-section (4) or sub-section (5) of Section 139 of the Income Tax Act, willfully fails to furnish in such return any information relating to an asset (including financial*

interest in any entity) located outside India, held by a beneficial owner or otherwise or in which he was a beneficiary, at any time during such previous year, or disclose any income from a source outside India, he shall be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine.

18. *The penalty of the offences under Section 51 is for wilful attempt in any manner whatsoever to evade the payment of any tax, penalty or interest chargeable or imposable under the Income Tax Act. The punishment provided under sub-section (1) is for rigorous imprisonment for a term which shall not be less than three years but which may extend to ten years and with fine. In respect to any other person not covered by sub-section (1) of Section 51, the punishment provided is rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and shall, in the discretion of the court, also be liable to fine.*

19. *It could therefore be seen, that the scheme of the Black Money Act is to provide stringent measures for curbing the menace of black money. Various offences have been defined and stringent punishments have also been provided. However, the scheme of the Black Money Act also provided one time opportunity to make a declaration in respect of any undisclosed asset located outside India and acquired from income chargeable to tax under the Income Tax Act. Section 59 of the Black Money Act provided that such a declaration was to be made on or after the date of commencement of the Black Money Act, but on or before a date notified by the Central Government in the Official Gazette. The date so notified for making a declaration is 30-9-2015 whereas, the date for payment of tax and penalty was notified to be 31-12-2015. As such, an anomalous situation was arising if the date under sub-section (3) of Section 1 of the Black Money Act was to be retained as 1-4-2016, then the period for making a declaration would have been lapsed by 30-9-2015 and the date for payment of tax and penalty would have also been lapsed by 31-12-2015. However, in view of the date originally prescribed by sub-section (3) of Section 1 of the Black Money Act, such a declaration could have been made only after 1-4-*

2016. Therefore, in order to give the benefit to the assessee(s) and to remove the anomalies the date 1-7-2015 has been substituted in sub-section (3) of Section 1 of the Black Money Act, in place of 1-4-2016. This is done, so as to enable the assessee desiring to take benefit of Section 59 of the Black Money Act. By doing so, the assessees, who desired to take the benefit of one time opportunity, could have made declaration prior to 30.9.2015 and paid the tax and penalty prior to 31.12.2015.

20. *It would further be relevant to note that sub-section (3) of Section 1 of the Black Money Act, itself provides that save as otherwise provided in this Act, it shall come into force on 1st day of July, 2015. A conjoint reading of the various provisions would reveal that the assessing officer can charge the taxes only from the assessment year commencing on or after 1-4-2016. However, the value of the said asset has to be as per its valuation in the previous year. As such, even if there was no change of date in sub-section (3) of Section 1 of the Black Money Act, the value of the asset was to be determined as per its valuation in the previous year. The date has been changed only for the purpose of enabling the assessee(s) to take benefit of Section 59 of the Black Money Act. The power has been exercised only in order to remove difficulties. The penal provisions under Sections 50 and 51 of the Black Money Act would come into play only when an assessee has failed to take benefit of Section 59 and neither disclosed assets covered by the Black Money Act nor paid the tax and penalty thereon. As such, we find that the High Court was not right in holding that, by the notification/order impugned before it, the penal provisions were made retrospectively applicable."*

The crux of the case before the Apex Court or the finding as could be gathered from paragraph-20 *supra* is that an assessee if he fails to take benefit of Section 59 and it remains a fact that the assets are not disclosed, penal provisions under Sections 50 and 51 of the Act would kick in. A reading of the afore-quoted judgment of the

Apex Court would make it clear that the question of retrospective applicability of Sections 50 and 51 *qua* Article 20 of the Constitution of India was not even an issue in the case before the Apex Court, though the Apex Court interprets all the sections that are quoted hereinabove including Section 72(c). Therefore, the said judgment would not become completely applicable to the issue brought up before the Court in the subject *lis*.

15. In the considered view of the Court, the prosecution so initiated against these petitioners did not and cannot pass constitutional muster under Article 20 of the Constitution of India. Non-disclosure of an assessment of the tax return for the year 2007-08 or 2009-10 cannot be used to criminally prosecute these petitioners, for an act that has come into force in the year 2015. The law, as on the date alleged, was not the law of such disclosure of assessment. Therefore, the criminal law cannot be set into motion against the petitioners in the aforesaid facts of the case, as it cannot pass muster of Article 20 of the Constitution of India. *A caveat*, this Court is considering the criminal liability fastened upon the petitioners by the prosecution including under Section 72(c) of

the Act and the consideration has led to an unmistakable conclusion that it falls foul of Article 20 of the Constitution of India. The Special enactment is a statute. Article 20 comes under Chapter III of the Constitution of India, a fundamental right. Constitution of India is not a statute. It is the fountain head of all statutes including the special statute. Therefore, the rigour of any provision of the Act should pass muster of Article 20 of the Constitution of India and it fails to pass such muster in the case at hand and the failure leads to obliteration of the crime against the petitioners.

16. For the aforesaid reasons, I pass the following:

O R D E R

(i) Criminal Petitions are allowed.

(ii) The proceedings in C.C.Nos.242 of 2019, 243 of 2019, 246 of 2019, 239 of 2019, 241 of 2019, 245 of 2019, 244 of 2019 and 240 of 2019 pending before the IV Additional Judicial Magistrate First Class, Belagavi stand quashed.

As a consequence, pending applications, if any, also stand disposed.

Sd/-
JUDGE

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CT:SS