IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

WRIT PETITION NO. 5630 OF 1997

1. Gopinath Manohar Wadi,
Age adult, Occ. Trade,
R/o. Vaibhav Nagar, At Dhule.

2. Bhikan Bapu Shelke,
Age adult, Occ. Trade,
R/o. Pot No. 40, Vishalnagar,

3. Smt. Ujjwala Sanjay Pawar,
(LR of the deceased Sanjay Maharu Pawar),
Age adult, Occ. Trade,
R/o. Mohadi (Upnagar), At Dhule.

4. Rajendra Popatrao Shinde
Since deceased through legal Representatives

4-A] Minakshi Rajendra Shinde,
Age : 40 years, Occu. Household

4-B] Swapnil Rajendra Shinde,
Age : 22 years, Occu. Education

4-C] Swait Rajendra Shinde,
Age : 14 years, Occu. Education,
Minor through its U/G Applicant No. 4-A

5. Prithviraj Chandrakant Shinde,
Age adult, Occ. Trade,
R/o Sambhaji Nagar, Plot No. 15,
Deopur, At Dhule.

6. Bharat Maharu Pawar,
Age adult, Occ. Trade,
R/o. Mohadi (Upnagar), At Dhule.

7. M/s. Mahendra Auto Service,
Awdhan, Agra Road, Dhule
through representative,
Shri Gopinath Manohar Wadi.

8. Ashok Kumar Bhagvandas Sangtani,
C/o. Mahendra Auto Service,
Awdhan, Agra Road, Dhule. **...Petitioners..**

Versus

1. The Union of India
Through Ministry of Finance,
North Block, New Delhi.
(Represented by its Secretary)

2. The Central Board of Direct Taxes,
New Delhi.

3. The Commissioner of Income Tax,
Nasik Division, Nasik.

4. The Asstt. Commissioner,
Income Tax Ward 2(I), Circle, Dhule. **..Respondents..**

WITH

WRIT PETITION NO. 5650 OF 1997

1. Vijaykumar Gopikishan Bagdia,
Age 49 Years, Occ. Trade,
R/o Laxminarayan Mill, Jalna. ...Petitioner..

Versus

1. The Union of India
Through Ministry of Finance,
North Block, New Delhi.
(Represented by its Secretary)

2. The Central Board of Direct Taxes,
New Delhi.

3. The Commissioner of Income Tax,
Aurangabad Division, Aurangabad.

4. The Asstt. Commissioner,
Income Tax, Circle No. 3(I), Aurangabad. **..Respondents..**

WITH

WRIT PETITION NO. 5651 OF 1997

1. Prakash Kevadamal Bajaj,
Age 46 Years, Occ. Trade,
R/o Agrawal Nagar, Malegaon Road,
Dhule.

2. Sau. Jankibai W/o Prakash Bajaj,
Age : 43 Years, Occ. Trade,

R/o Malegaon Road, Dhule. ...Petitioners..

Versus

1. The Union of India
Through Ministry of Finance,
North Block, New Delhi.
(Represented by its Secretary)

2. The Central Board of Direct Taxes,
New Delhi.

3. The Commissioner of Income Tax,
Nashik Division, Nashik.

4. The Asstt. Commissioner,
Income Tax Ward 2(I) Circle Dhule. **..Respondents..**

WITH

WRIT PETITION NO. 5675 OF 1997

1. Rameshchandra Dwarkadas Gindodia,
Age Adult, Occ. Trade,
R/o Jamnalal Bajaj Road, Dhule. ...Petitioner..

Versus

1. The Union of India
Through Ministry of Finance,
North Block, New Delhi.
(Represented by its Secretary)

2. The Central Board of Direct Taxes,
New Delhi.

3. The Commissioner of Income Tax,
Nasik Division, Nasik.

4. The Asstt. Commissioner,
Income Tax, Ward 2(1), Circle Dhule. **..Respondents..**

WITH

WRIT PETITION NO. 5649 OF 1997

1. Pannalal Mannalal Agrawal,
Age 59 years, Occ. Trade,
R/o Kadrabad, Jalna.

2. Rameshwar Mannalal Agrawal,

Age : 50 yrs., Occ. Trade,
R/o Kadrabad, Jalna.

3. Dr. Onkardas Mannalal Agrawal,
Age 55 yrs., Occ. Medical Practitioner,
Om Hospital, Jalna.

4. Dattulal Mannalal Agrawal,
Age 57 yrs., Occ. Trade,
R/o Kadrabad, Jalna.

5. Sunilkumar Pannalal Agrawal,
Age : 35 yrs., Occ. Trade,
R/o Kadrabad, Jalna. ...Petitioners..

Versus

1. The Union of India
Through Ministry of Finance,
North Block, New Delhi.
(Represented by its Secretary)

2. The Central Board of Direct Taxes,
New Delhi.

3. The Commissioner of Income Tax,
Aurangabad Division, Aurangabad.

4. The Asstt. Commissioner,
Income Tax, Circile No. 3(I), Aurangabad. **..Respondents..**

In all matters:
Mr S. P. Shah, Advocate for petitioner
Mr Alok Sharma, Advocate for respondents No. 1 to 4

CORAM : A. V. NIRGUDE &
V. L. ACHLIYA, JJ.

DATE OF RESERVING THE JUDGMENT : DECEMBER 16TH, 2014.
DATE OF PRONOUNCING THE JUDGMENT : MARCH 5TH, 2015.

JUDGMENT: (PER A. V. NIRGUDE, J.)

1. All these petitions can be decided by this common judgment because they raise a common question.

2. Facts in brief are as under:-

Finance Act, 1997 (for short "the Act"), was enacted by the Central Government and a scheme by name Voluntary Disclosure of Income Scheme, 1997 (in short "VDIS") was declared under Chapter IV of the Act. The scheme was made effective from 1st July, 1997 and was to remain in force till 31st December, 1997. The scheme provided that, a person may make a declaration during the scheme period in respect of any income chargeable to tax under Income Tax Act for any assessment year for which he had failed to furnish a return under the Act. In case such declaration is made, such person should pay the tax payable to the income so declared and he would then be saved from penal consequences. During the enforcement of the scheme on 10th July, 1997, offices / houses of the petitioners were searched by the Income Tax Officers under Section 132 of the Income Tax Act. The petitioners then submitted their disclosure under the Scheme, but the respondent-authorities refused to give benefit of the scheme to them by placing reliance on Section 64 of the Finance Act. Section 64 of the Act reads as under: -

Charge of tax on voluntarily disclosed income.

64.(1) Subject to the provisions of this Scheme, where any person makes, on or after the date of commencement of this Scheme but on or before the 31st day of December, 1997, a declaration in accordance with the provisions of section 65 in respect of any income chargeable to tax under the Income-tax Act for any assessment year-

(a) for which he has failed to furnish a return under section 139 of the Income-tax Act;

(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 Scheme;

(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 his assessment or otherwise.

3. It is pertinent to note that, Clause 'ii' of Sub-Section (2) of Section 64 used past tense thereby indicating that the scheme will not apply in respect of income of previous year in which a search under Section 132 was initiated or survey was carried out under Section 133A of Income Tax Act in respect of any previous year. The petitioners contended that, the interpretation of Section 64(2)(ii) by respondent-authorities is erroneous. They also contended that in case Section 64(2)(ii) is interpreted to include persons whose premises were searched after 1st July, 1997, and therefore they are disqualified from taking benefit of the scheme would render provisions of Section 64(2)(ii) *ultra vires* to Constitution. In other words, the petitioners interpreted Section 64(2)(ii) to mean the disqualification provided under Section 64(2)(ii) would be to those persons whose premises

were searched prior to 1st July, 1997 and not during the period of scheme. We are not inclined to accept this interpretation and we hold that the action of the authorities was not illegal.

4. We place reliance on two judgments. First judgment of Karnataka High Court in the case of ***Micro Labs Ltd., Micro Ethicals, Micro Nova Pharmaceuticals Ltd. and Brown and Burk Pharmaceuticals Vs. Deputy Commissioner of Income Tax (Assessment) and Ors.*** reported in *AIR 2001 Karnataka 333*. This judgment is applicable to even the facts of the cases before us. Even before the Division Bench of the Karnatka High Court, similar submissions were asserted that Section 64(2)(ii) seeks to differentiate between persons who have been searched and who have not been searched and such differentiation has neither any rationale, nor any nexus to the object of the scheme etc. It was also suggested to that Court that there is no fetter on the discretion on the part of the Income-tax Department to pick and choose whomsoever it prefers to search regardless of the fact whether anything is found or not, such person's eligibility to take benefit under the scheme is destroyed for ever. The Division Bench of Karnataka High Court also took notice of the fact that the constitutional validity of the entire VDIS was considered and upheld by a Division Bench of the Bombay High Court in ***All India Federation of Tax Practitioners v Union of India*** reported in *[1997] 228 ITR 68* and the said decision of the Bombay

High Court was affirmed by the Supreme Court. To repel the submission that Section 64(2)(ii) seeks to discriminate against the persons who have been searched and persons who have not been searched, the Division Bench of Karnataka High Court stated as follows:

> *14. The persons referred to in Section 64(2)(ii) form a distinct class and are different from others. The three categories refer to or relate to a class in respect of which there was some kind of detection of concealed income or some action related to detection of concealed income. Section 132 enables search and seizure of documents, money etc., which are not disclosed ; Section 132A enables requisition books of account, etc., relating to undisclosed income ; and Section 133A enables survey and making of inventory which may lead to discovery of undisclosed income. These three categories are matters in regard to which notices can be issued under Section 142 or Section 148. Search under Section 132 is followed by assessment under Chapter XIV-B of the Act. A request under Section 132A is initiation of process to discover material related to concealed income. A survey under Section 133A will lead to discovery of available assets and discovery of concealed income. Thus, all the three categories which are excluded from the benefit of Section 64(1) are persons in regard to whom there is initiation or some kind of action relating to discovery of concealed income. Such persons are different and distinct from those in regard to whom no proceedings, process or action has been initiated to find out concealed income. In fact, initiation of action for search under Section 132 or requisition under Section 132 is authorised by the*

respective empowered authority, only where, in consequence of information in his possession, he has reason to believe that there is some concealment or existence of other conditions stipulated in the said section.

15. As observed by the Supreme Court in the decisions in R. K. Garg v. Union of India and Secretary to Government of Madras v. P. R. Sriramulu, AIR 1996 SC 676, a large discretion in the Legislature is recognised by courts in making such laws. It cannot be said that there is no rationale in differentiating between persons who have been searched on the basis of some information regarding concealment of income and persons who have not been searched. To find out whether the classification has any nexus to the object sought to be achieved, not only the object of framing the VDI Scheme, but also the object of introducing sections 132, 132A and 133A of the Income-tax Act should be kept in view. It is obvious that Section 64(2)(ii) is intended to maintain the deterrent effect of sections 132, 132A and 133A of the Income-tax Act on tax evaders. The intention of the VDI Scheme is not to nullify any provision of the Income-tax Act, but to achieve the stated object of the VDI Scheme, within the framework of the Income-tax Act without jeopardising the effect of the existing provisions of that Act.

4. In view of this authoritative statement of law, we find no merit in the challenge and petitions stand dismissed.

(V. L. ACHLIYA, J.) **(A. V. NIRGUDE, J.)**

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