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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 8422/2022

RAJESH KATYAL

..... Petitioner

Through: Mr. Sidhartha Das, Advocate.

versus

INCOME TAX DEPARTMENT, NEW DELHI Respondent

Through: Mr. Zoheb Hossain, Senior Standing
Counsel for Revenue with Mr. Vipul
Agrawal & Mr. Parth Semwal,
Advocates.

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Date of Decision: 03rd November, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. Present writ petition has been filed seeking a direction for quashing and to set aside the Show Cause Notice dated 04th April, 2022 ('SCN') issued by the Respondent under Section 53 of the Prohibition of Benami Property Transactions Act, 1988, as amended by the Benami Transactions (Prohibition) Amendment Act, 2016 (the 'Act of 2016'), which came into effect on 01st November 2016, against the Petitioner.

2. Learned counsel for the Petitioner states that SCN has been issued with respect to purchase of lands by M/s AK Infosystem Pvt. Ltd., ('the company') between the period from 2007 to 2010 and transfer of shares held

by the Petitioner in the said company on 31st May, 2014. He states that the newly enacted provisions of the Act of 2016, which came into effect on 01st November, 2016, cannot be applied against the Petitioner retrospectively for the transactions which were admittedly undertaken prior to coming into effect of the said provisions. He states that the Petitioner cannot be punished under the amended Section 53 (1) of the Act, which was brought into effect on 01st November, 2016 for a transaction which was undertaken prior to its coming into effect.

3. He states that the said issue is no longer *res integra* in view of the authoritative judgment dated 23rd August, 2022 of the Supreme Court in ***Union of India and Another. v. Ganpati Dealcom Pvt. Ltd., [2022] SCC OnLine SC 1064***, holding that concerned authorities cannot initiate or continue criminal prosecution for transactions entered into prior to the coming into force of the Act of 2016 and declaring that all such prosecutions shall stand quashed.

4. Issue notice. Mr. Zoheb Hossain, accepts notice. He states that the Department is in a process of filing a Review Petition before the Hon'ble Supreme Court against the judgment in ***Ganpati Dealcom*** (supra).

5. We have heard the learned counsel for the parties. M/s AK Infosystems Pvt. Ltd. is the owner of the land alleged to be held *benami*. The Petitioner resigned as a director of M/s AK Infosystems Pvt. Ltd. on 01st August, 2008 and he sold his entire shareholding in the said company on 31st May, 2014.

6. The Supreme Court in the judgment of ***Ganpati Dealcom*** (supra) has at paragraph no.92 recorded the concession made by the Union of India that the offence under Section 53 of the Act of 2016 is prospective and would

only apply to those transactions which were entered into after amendment came into force i.e., 01st November, 2016. The Supreme Court at paragraph nos. 94 and 130(e) of the said judgment has categorically held that the Act of 2016 which contains the criminal provisions is applicable only prospectively and quashed the prosecution proceedings. The relevant paragraphs of the judgement read as under:

“92. As per the concession made by the Union of India and a fair reading of Section 53 of the 2016 Act, the offence under the aforesaid provision is prospective, and only applied to those transactions that were entered into after the amendment came into force, viz., 25.10.2016. Any contrary interpretation of Section 3 of the 1988 Act would be violative of Article 20(1) of the Constitution. Article 20(1) reads as under:

20. Protection in respect of conviction for offences

(1) No person shall be convicted of any offence except for violation of the law in force at the time of the 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 at the time of the commission of the offence.

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94. In the case at hand, the 2016 Act containing the criminal provisions is applicable only prospectively, as the relevant Sections of the pre-amendment 1988 Act containing the penal provision, have been declared as unconstitutional. Therefore, the question of construction of the 2016 Act as retroactive qua the penal provisions under Sections 3 or 53, does not arise.

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130. In view of the above discussion, we hold as under:

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e) Concerned authorities cannot initiate or continue criminal prosecution or confiscation proceedings for transactions entered into prior to the coming into force of the 2016 Act, viz., 25.10.2016. As a consequence of the above declaration, all such prosecutions or confiscation proceedings shall stand quashed.”

7. It is admitted in the present case that the alleged *benami* transactions undertaken by the Petitioner were entered prior to 01st November 2016. In light of the law as declared by the Supreme Court in ***Ganapati Dealcom*** (supra), the present writ petition is allowed. The Show Cause Notice dated 04th April, 2022 shall stand quashed.

MANMEET PRITAM SINGH ARORA, J

MANMOHAN, J

NOVEMBER 03, 2022
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