$~R-12, 13 & 14

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

Date of decision : 10.01.2018

\+ **W.P.(C) 3768/2006**

SARITA HANDA ..... Petitioner

versus

UOI & ORS. ..... Respondents

W.P.(C) 3772/2006

M/S SARITA HANDA EXPORTS P. LTD. ..... Petitioner

versus

UOI & ORS ..... Respondents

W.P.(C) 10783/2009

M/S OMSONS WORLDWIDE ..... Petitioner

versus

UOI & ORS. ..... Respondents

Present : Mr. Ruchir Bhatia, Advocate for respondents in item nos. 12 and 14.
Mr. Asheesh Jain, Senior Standing Counsel with Mr. Shahrukh Ejaz, Advocate for respondents in item no. 13.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

HON'BLE MR. JUSTICE S. RAVINDRA BHAT (ORAL)

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In all these cases, retrospective amendment to Sections 28 and

80 HHC of the Income Tax Act 1961 ('the Act') and the validity of CBDT Circular dated 17.1.2006 (no. 2 of 2006), made in the light of the amendments, has been called into question.

2. The petitioner also seeks consequential relief by way of quashing of orders, which seek to give effect to the retrospective amendments and the CBDT circular.

3. This Court had issued Rule and admitted these petitions to hearing. In the meanwhile, the Gujarat High Court vide its judgment in '*Avani Exports and others vs. Commissioner of Income-tax and others*, (2012) 348 ITR (Guj) held that the amendments were unconstitutional. That judgment became the subject matter of the appeal to the Supreme Court in *'Commissioner of Income-tax vs. Avani Exports', (2015)* 58 taxmann.com 100 (SC), which affirmed the declaration and held that the retrospectivity ascribed to the amendments, was unconstitutional. Consequently, the amendments became, in effect, prospective in nature.

4. This Court notices that in the meanwhile, a Division Bench of this Court in *'Pawan Kumar Jain vs. Union of India',* (2014) 46 taxmann.com 341 (Delhi) had also concluded that the amendment could not be treated as retrospective and directed further relief. In the light of these developments, the Court is of the opinion that the provisions are to be treated as prospective and not retrospective; the reliefs in these proceedings are therefore, to be granted. Writ petitions are allowed in terms of the declaration of law in *Avani Exports*; any

demands made or benefits sought to be curtailed or withdrawn, are declared as illegal.

5. Writ petitions are allowed in the above terms.

6. Rule made absolute.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

JANUARY 10, 2018
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