

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.283 OF 2019
IN
WRIT PETITION NO.1300 OF 2018

Anila Rasiklal Mehta and others ... Petitioners / Applicants
Vs.
The Union of India and others ... Respondents

Mr. Ravi Kadam, Senior Advocate along with Mr. Ashish Kamat, Ms Cheryl Fernandes, Ms Anushka Shah i/b. M/s. AZB Partners for Petitioners / Applicants.

Mr. Anil Singh, A.S.G. with Mr. Suresh Kumar, Ms Priyanka Tiwary, Ms Sumandevi Yadav and Mr. Mayur Jaisingh for Respondents.

**CORAM : UJJAL BHUYAN,
MILIND N. JADHAV, JJ.**

**Reserved on : FEBRUARY 05, 2020
Pronounced on: MARCH 13, 2020**

P.C. :

Heard Mr. Ravi Kadam, learned senior counsel along with Mr. Ashish Kamat, Ms Cheryl Fernandes and Ms Anushka Shah, learned counsel for the writ petitioners; also heard Mr. Anil Singh, learned Additional Solicitor General of India along with Mr. Suresh Kumar, learned counsel for the respondents.

2. This notice of motion has been sought for by the petitioners for stay of impugned notice dated 20.12.2017 as well as subsequent notices issued under the provisions of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 pending final hearing and disposal of the writ petition.

3. Case of the petitioners is that petitioner No.1 is the mother of petitioner No.3 whereas petitioner No.4 is the wife of petitioner No.3. Petitioner No.2 is the son of petitioner Nos.3 and 4. During the pendency

of the writ petition, petitioner No.4 expired on 12.01.2019 and following order passed in Chamber Summons No.182 of 2019, petitioner No.4 has been substituted by her legal representatives.

4. In the year 2013, respondent Nos.2 to 4 claimed that they had information that petitioner Nos.2 and 3 along with another related person Mr. Manoj Mehta, who is stated to be cousin of petitioner No.3, were holding undisclosed foreign accounts in the name of Red House Finance Limited, a body corporate incorporated and registered in Singapore. Pursuant to such information, summons under Section 131 of the Income Tax Act, 1961 (briefly 'the Act' hereinafter) came to be issued to petitioner Nos.2 and 3 as well as to Mr. Manoj Mehta. However, petitioners denied having any interest in Red House Finance Limited. According to the petitioners, the only foreign entity in which they had an interest was Sun Hill International Pte. Limited, Singapore which factum was disclosed in the return filed by them before the income tax authorities. It was further stated that Mr. Manoj Mehta was an overseas resident for the last 30 years and was carrying on overseas business.

4.1. It appears that income tax authorities made correspondence with authorities in British Virgin Islands and Singapore during May, 2014 seeking details of offshore accounts allegedly held by petitioner No.2. It further appears that Inland Revenue Authority of Singapore sent some details / information to their Indian counterparts in August, 2014. On the basis of such information, respondent Nos.2 to 4 alleged that petitioner Nos.2 and 3 held offshore accounts in foreign banks which were not disclosed in their income tax returns.

5. In the meanwhile on 26.05.2015, President of India gave assent to the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (for short 'the Black Money Act') which was published in the Gazette of India on 27.05.2015 and came into force with effect from 01.04.2016.

6. It is stated that respondent No.1 issued Circular Nos.12, 13 and 15 on 06.07.2015 giving clarifications on certain issues pertaining to applicability of the Black Money Act. As per the clarifications, in cases where income tax proceedings were ongoing and information had been received by the income tax authorities on undisclosed foreign income and assets of Indian assesseees, such assesseees were not entitled to avail making of declaration and payment of tax and penalty in terms of Sections 59 to 61 of the Black Money Act.

7. On 17.11.2015, a warrant under the Act was issued against petitioner Nos.2 and 3 followed by a search and seizure operation on 18.11.2015 in their residential as well as business premises.

8. It is contended by the petitioners that even after coming into force of the Black Money Act, respondents continued to proceed against the petitioners under the Act. It is stated that alleged violations were of the assessment years 2008-09 and 2009-10 when the Black Money Act was not in force.

9. It is stated that between November, 2015 and March, 2016 individual statements of the petitioners were recorded by the income tax authorities. Petitioners through out denied having any knowledge of any interest in Red House Finance Limited or any other undisclosed foreign entity.

10. On March 30 / 31, 2016 income tax authorities issued notices to petitioner Nos.2, 3 and 4 under Section 148 of the Act alleging that income chargeable to tax for the assessment years 2008-09 and 2009-10 had escaped assessment within the meaning of Section 147 of the Act.

11. It is stated that similar enquiries were made with respect to Mr. Manoj Mehta and his wife Mrs. Sangeeta Mehta. In June, 2016, they executed an affidavit which they submitted before the income tax authorities stating that they and not the petitioners were the beneficial

owners of the said foreign accounts and assets in question. Income tax authorities continued with the re-opening proceedings against the petitioners which according to the petitioners demonstrates that even after coming into force of the Black Money Act, respondents continued to pursue income tax proceedings against the petitioners under the Act.

12. On December 20, 2017, respondent No.2 issued impugned notices to the petitioners under Section 10(1) of the Black Money Act calling upon them to produce the details sought for in connection with the assessment for the assessment year 2017-18 under the Black Money Act. In the annexures appended to the individual notices, details of the foreign bank accounts allegedly held by the petitioners were mentioned along with the amounts credited thereto. The details were directed to be produced before the Additional Commissioner of Income Tax, Central Range-3, Mumbai i.e., respondent No.2 as it was stated that office of respondent No.2 was in possession of information of undisclosed foreign income and asset of the noticee during the previous year 2016-17 relevant to the assessment year 2017-18.

13. Thereafter Deputy Commissioner of Income Tax, Central Circle-3(1), Mumbai i.e., respondent No.3 passed assessment orders dated 30.12.2017 in respect of the petitioners under the Act. While passing the assessment order on reopening, reference was made to Section 4(3) of the Black Money Act to the effect that the income included in the total undisclosed foreign income and asset under the Black Money Act would not form part of the total income under the Act. It was mentioned that merit of escaped income was not gone through which was left to be decided by the authorities under the Black Money Act.

14. It is at this stage that the related writ petition came to be filed seeking the following reliefs:

“(a) this Hon’ble Court be pleased to issue a writ of mandamus, a writ in the nature of mandamus and / or any other appropriate writ and / or direction from this Hon’ble Court:

- (i) ordering and declaring that the provisions of the Black Money Act are not applicable to the petitioners in view of Chapter VI and other relevant provisions of the Black Money Act and / or inasmuch they are purported to apply to matters where proceedings are already initiated under the Act; and are illegal and unconstitutional.
 - (ii) in the alternative to prayer clause (a)(i) above, ordering and declaring that the provisions of the Black Money Act cannot be applied retrospectively and to that extent, are unconstitutional;
 - (iii) ordering and declaring that the impugned notices dated 20.12.2017 are illegal, unconstitutional and are not liable to be acted upon and / or enforced against the petitioners;
 - (iv) ordering and directing respondent Nos.1 to 4 to forthwith withdraw, cancel and/or recall the impugned notice dated December 20, 2017 issued against the petitioners and drop all purported proceedings under the Black Money Act initiated against the petitioners; and
 - (v) restraining and prohibiting respondent Nos.1 to 4, their respective servants, officers and agents from in any manner (directly or indirectly) proceeding against the petitioners, on the strength and / or basis of the impugned notices dated December 20, 2017 and / or otherwise under the provisions of the Black Money Act.
- (b) this Hon'ble Court be pleased to issue a writ of certiorari, or a writ in the nature of certiorari and / or any appropriate order or direction, inter alia calling for the records of the petitioners' case from the respondents, and upon considering the legality, validity and / or correctness thereof, this Hon'ble Court be pleased to quash and / or set aside the impugned notices dated December 20, 2017 and restrain respondent Nos.2 to 4 by a writ of mandamus from applying and / or proceeding against the petitioners under and in furtherance of the Black Money Act.
- (c) pending the hearing and final disposal of the Petition, this Hon'ble Court be pleased to:
- (i) stay the effect and / or operation and / or implementation of the impugned notices dated December 20, 2017 including a stay on the proceedings initiated pursuant to or under the impugned notice or under the provisions of the Black Money Act against the petitioners; and
 - (ii) restrain and prohibit respondent Nos.2 to 4, their servants, officers and /or agents from in any

manner acting upon (directly or indirectly); giving effect to; implementing or otherwise proceeding against the petitioners under or in furtherance of the impugned notices dated December 20, 2017 and / or from taking any steps pursuant to and / or in furtherance of and / or so as to give effect to the impugned notices dated December 20, 2017 or in any manner proceeding against the petitioners under or in terms of the Black Money Act;

- (d) for ad-interim reliefs in terms of prayer clause (c)(i) to (iii) above;
- (e) for costs; and
- (f) for such further and other reliefs as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

15. Contention of the petitioners is that by virtue of Section 72(c) of the Black Money Act, the same has been given retrospective operation though an opportunity is granted to an assessee under the Black Money Act to make a declaration in respect of any undisclosed asset located outside India. If a declaration is made, the same is chargeable to tax and payment of penalty. It is contended that Sections 59 to 63 of the Black Money Act create a vested right in favour of every assessee under the said Act to make a declaration and thereafter make payment of tax and penalty. Such undisclosed foreign assets declared shall not be included in total income and shall not affect finality of the completed assessment. Besides, the declaration is not admissible in evidence against the declarant. In addition, certain other safeguards and rights are prescribed in favour of such assessee in view of the severeness of the Black Money Act.

16. However, Section 71(d)(iii) of the Black Money Act clarifies that the benefit of Sections 59 to 63 of the said Act would not be available where any information has been received by the competent authority under an agreement entered into by the Central Government under Sections 90 or 90A of the Act in respect of such undisclosed foreign assets. That apart where proceedings under the Act are pending, benefit

of Section 59 would not be available to such assessee.

17. In the case of the petitioners the alleged information was received by the respondents from the authorities in Singapore and British Virgin Islands pursuant to agreements entered into by respondent No.1 under Sections 90 or 90-A of the Act. Therefore, in the case of the petitioners Section 71(d)(iii) would apply and the benefit of Chapter VI of the Black Money Act comprising Sections 59 to 63 would be excluded. Thus, petitioners are statutorily dis-entitled from making declaration under Sections 59 and 62 of the Black Money Act. This, it is contended, is highly arbitrary and discriminatory besides being violative of Articles 14 and 20 of the Constitution of India. It is asserted that impugned notices having been issued on December 20, 2017 long after initiation of proceedings against the petitioners under the Act, the Black Money Act would not be applicable in respect of the petitioners in view of Sections 70, 71 and 72 of the Act.

18. In the course of hearing, Mr. Kadam specifically referred to the window of opportunity given to an assessee under Sections 59 to 63 of the Black Money Act to make a declaration of undisclosed foreign income and assets which is not available to an assessee who is already facing a proceeding under the Act. Exclusion of this category of assessee from making a declaration is highly arbitrary and discriminatory, he contends. It deprives such assessee from making a declaration and thereby escaping from the rigours of the Black Money Act. He submits that this Court taking the view that arguable questions have been raised by the petitioners had admitted the related writ petition for final hearing on 08.10.2018. Admittedly, a *prima facie* case is made out by the petitioners. They having been subjected to proceedings under the Act, the balance of convenience is in favour of the petitioners. That apart, in view of the fact that petitioners are statutorily debarred from making declaration under Sections 59 to 63 of the Black Money Act, they will suffer irreparable loss and injury if they are subjected to the rigours of

the Black Money Act, besides being highly unfair and inequitable. He, therefore, submits that impugned notices may be stayed during pendency of the writ petition.

19. Respondents have filed two affidavits in reply. Stand taken in the affidavits is that bar of Section 71(d)(iii) would apply when information of undisclosed foreign assets was received by the competent authority on or before 30th June, 2015 i.e., before the date of commencement of the Black Money Act. In the case of the petitioners, information regarding undisclosed foreign assets was detected during the course of search action initiated on 18.11.2015 in the office premises of Sur Gems Group at Mumbai.

20. As regards petitioner No.1, information about her having foreign bank account was received in the month of April, 2016. It is contended that grievance made by the petitioners that they were prohibited or restrained from making disclosure during the compliance window available from 01.07.2015 to 30.09.2015 is not tenable.

21. While asserting the constitutionality of the Black Money Act and validity of the notices issued to the petitioners under the said Act, it is submitted that information was received from intelligence sources that petitioner Nos.2 and 3 alongwith Mr. Manoj Mehta were holding foreign accounts in the name of Red House Finance Limited, a British Virgin Island based entity. On enquiry, it was found that petitioners did not disclose the foreign assets under the Act. Thereafter, a search and seizure operation were initiated on the Sur Gems Group and the petitioners on 18.11.2015. During the search, statements of petitioner Nos.2 and 3 were recorded where they denied existence of any undisclosed foreign assets. Prosecution complaint has been lodged against the two petitioners for making false statement on oath. Contesting the main contention of the petitioners that they were prevented from making disclosure of undisclosed foreign assets and subsequent payment of tax and penalty

under the provisions of the Black Money Act, it is stated that petitioners never admitted having any undisclosed foreign assets and continued to deny the same. Therefore, this contention of the petitioners is only hypothetical.

21.1. Regarding contention of the petitioners that Black Money Act cannot be invoked against them as prior proceedings under the Act were commenced, it is stated that proceedings under the Act were closed after issue of notice under the Black Money Act since it was found that undisclosed foreign assets are liable to be taxed under the Black Money Act.

21.2. Petitioners' main contention that they were statutorily prevented from making disclosure of undisclosed foreign assets under the Black Money Act is only academic because at no point of time, including in the income tax proceedings, they admitted that they had undisclosed foreign assets.

22. Regarding the contention of the petitioners that alleged violations of acquiring undisclosed foreign assets having taken place in the assessment years 2008-09 and 2009-10, provisions of the Black Money Act cannot be made applicable since the Black Money Act came into effect from assessment year 2016-17, it is contended that provisions of the Black Money Act are applicable to undisclosed foreign assets which come to the notice of the assessing officer. Under the Black Money Act, such assets are liable to be taxed in the year when it comes to the notice of the assessing officer. In the case of the petitioners, information of undisclosed foreign assets held by the petitioners came to the notice of respondent No.3 during the financial year 2016-17 for which relevant assessment year is 2017-18. Therefore, impugned notices dated December 20, 2017 were rightly issued.

23. That apart, grievance of the petitioners that impugned notices are

violative of Article 20 of the Constitution of India has been denied.

24. Stating that by the impugned notices, petitioners have been asked to furnish information relating to undisclosed foreign assets, it is contended that writ court may not interfere with the notices at this stage. It is stated that an aggrieved assessee under the Black Money Act has an hierarchy of alternative remedy. Therefore, Court may not entertain the writ petition and grant interim relief.

25. Mr. Singh, learned Additional Solicitor General submits that the Black Money Act is a special legislation enacted by the Parliament to deal with the evil of undisclosed foreign assets and income which legitimately belongs to the nation. While Court may examine validity of the challenge made to the constitutionality of the Act, question of stay does not arise as by the impugned notices, petitioners have only been called upon to furnish certain specific information. The Black Money Act contains exhaustive provisions of appeal in case petitioners are aggrieved at any stage.

25.1. Mr. Singh submits that Calcutta High Court in *Shrivardhan Mohta Vs. Union of India*, (2019) 102 taxmann.com 273 dismissed a writ petition seeking declaration that provisions of the Black Money Act must be applied prospectively with effect from 01.04.2016 and seeking quashing of notices issued under the said Act. That apart, Supreme Court in *Union of India Vs. Gautan Khaitan*, (2019) 110 taxmann.com 272 interfered with the restraint order passed by the Delhi High Court. Supreme Court held that interim order passed by the Delhi High Court was not sustainable and accordingly vacated the same. He, therefore, submits that no case for passing any interim order is made out. Notice of motion may be dismissed.

26. Petitioners have filed rejoinder affidavit to the affidavits-in-reply

filed by the respondents.

27. Submissions made by learned counsel for the parties have been considered.

28. At the outset, we may advert to the Black Money Act. As per the statement of objects and reasons of the aforesaid Act, it is mentioned that 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, besides putting disproportionate burden on the honest tax-payers as they have to bear the brunt of higher taxes to make up for the revenue leakage caused by evasion. Such black money could also be used in ways which could threaten the national security. Stating that the Central Government is strongly committed to the task of tracking down and bringing back undisclosed foreign assets and income which legitimately belong to the nation with the Supreme Court of India also expressing concern over this issue and recognizing the limitation of the existing legislation, the Black Money Act has been enacted to deal with the problem of black money i.e., undisclosed foreign income and assets and the procedure for dealing with such income and assets and to provide for imposition of tax on any undisclosed foreign income and assets held outside India and for matters connected therewith or incidental thereto.

29. In **Gautam Khaitan** (*supra*), Supreme Court noted that the Black Money Act has been enacted for the following purposes:-

- a) to unearth the black money stashed in foreign countries;
- b) to prevent unaccounted money going abroad;
- c) to punish the persons indulging in illegitimate means of generating money causing loss to the revenue; and
- d) to prevent illegitimate income and assets kept outside the country from being utilized in ways which are detrimental to India's social, economic and strategic interest and its national security.

30. The Black Money Act was passed by the Parliament on 11.05.2015 and received Presidential assent on 26.05.2015. It was published in the Gazette of India on 27.05.2015. As per Section 1(3), it shall come into force on the 1st day of July, 2015 (Initially it was notified as the 1st day of April, 2016).

30.1. Section 3 of the Black Money Act is the charging section. Sub-section (1) says that there shall be charged on every assessee for every assessment year commencing on or after the 1st day of April, 2016, a tax in respect of his total undisclosed foreign income and asset of the previous year at the rate of thirty percent of such undisclosed income and asset. As per the proviso, 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. Sub-section (2) explains the expression “value of an undisclosed asset”.

30.2. While Section 4 deals with scope of total undisclosed foreign income and asset, Section 5 provides for computation of total undisclosed foreign income and asset.

30.3. Section 6(1) clarifies that the income-tax authorities specified in Section 116 of the Act shall be the authorities for the purposes of the Black Money Act.

30.4. Section 10 deals with assessment and under sub-section (1), the assessing officer is empowered to issue notice to any person for the purpose of making an assessment in terms of sub-section(3).

30.5. Section 11 provides the limitation period for completion of assessment and re-assessment.

30.6. Sections 15 to 22 deal with appellate provisions. However, Section 23 vests power of revision on the Principal Commissioner or Commissioner in respect of revision of order which is construed to be

erroneous insofar it is prejudicial to the interests of the revenue.

30.7. Chapter IV of the Black Money Act deals with penalties and as per Section 41 forming part of Chapter IV, penalty imposed can be as high as a sum equal to three times the tax computed. Offences and prosecutions are provided in Chapter V.

31. Chapter VI of the Black Money Act deals with tax compliance for undisclosed foreign income and assets. Chapter VI comprises of Sections 59 to 72. Section 59 is quite relevant. It says that any person may make on or after the date of commencement of the Act but before such date to be notified by the Central Government, a declaration in respect of any undisclosed asset located outside India and acquired from income chargeable to tax under the Act for any assessment year prior to the assessment year beginning on 1st day of April, 2016 in the event of three situations, i.e., (a) for which he has failed to furnish a return under Section 139 of the Act; (b) which he has failed to disclose in his return under the Act before the date of commencement of the Black Money Act; and (c) which has escaped assessment by reason of the omission or failure on his part to make a return under the Act or to disclose fully and truly all material facts necessary for the assessment or otherwise. It may be mentioned that in exercise of the powers conferred by Section 59, Central Government appointed 30th day of September, 2015 as the date on or before which a person may make a declaration in respect of an undisclosed asset located outside India and 31st day of December, 2015 as the date on or before which such person should pay the tax and the penalty on such undisclosed asset located outside India and so declared.

32. As per Section 60, in case of such declaration, the undisclosed asset located outside India shall be chargeable to tax at the rate of thirty percent of the value of such undisclosed asset on the date of commencement of the Act. Penalty is provided under Section 61 which in the event of such declaration is at the rate of one hundred percent of the tax. Section 62 deals with manner of the declaration and Section 63

provides for time for payment of tax in the event of such declaration which as noted above was 31st day of December, 2015. Section 64 clarifies that the amount of undisclosed investment in an asset located outside India and declared in accordance with Section 59 shall not be included in the total income of the declarant for any assessment year under the Act, if the declarant makes the payment of tax and penalty as provided under Sections 60 and 61. Under Section 67, declaration made under Section 59 shall not be admissible in evidence against the declarant.

33. Section 71 provides that Chapter VI of the Black Money Act would not apply to certain persons. Clause (d) and more particularly, sub-clause (iii) thereof is relevant. Clause (d) says that provisions of Chapter VI shall not apply in relation to any undisclosed asset located outside India which has been acquired from income chargeable to tax under the Act for any previous year relevant to an assessment year prior to the assessment year beginning on the 1st day of April, 2016 where notice has been issued for assessment or re-assessment as per sub-clause (i) or where search under Section 132 of the Act has been conducted or a survey has been carried out under Section 133-A of the Act as per sub-clause (ii). Sub-clause (iii) says that Chapter VI shall also not apply in relation to any undisclosed asset located outside India, which has been acquired from income chargeable to tax under the Act for any previous year relevant to any assessment year prior to the assessment year beginning on the 1st day of April, 2016 where any information has been received by the competent authority under an agreement entered into by the Central Government under Section 90 or Section 90-A of the Act in respect of such undisclosed asset. As per the *explanation*, asset shall include a bank account whether having any balance or not.

34. Before winding up our summary survey of the Black Money Act, we may mention that Section 72 makes certain declarations for removal of doubts. As per Clause (a), it is clarified that nothing contained in

Chapter-VI shall be construed as conferring any benefit, concession or immunity on any person other than the person making the declaration; (b) where any declaration has been made under Section 59 but no tax and penalty has been paid within the time specified, the value of such asset shall be chargeable to tax under the Black Money Act in the previous year in which such declaration is made; (c) where any asset has been acquired or made prior to commencement of the Black Money Act and no declaration in respect of such asset is made under Chapter-VI, 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 the Black Money Act shall apply accordingly.

35. From the above, it is evident that prior to issuance of the impugned notices dated December 20, 2017, petitioners were subjected to proceedings under the Act though the income tax proceedings were concluded on December 30, 2017 to the effect that issue relating to escaped income was left to be decided by the authorities under the Black Money Act. It is also evident that income tax proceedings pertaining to the petitioners were reopened following receipt of information in respect of undisclosed asset by the competent authority in terms of agreements entered into by the Central Government under Section 90 or Section 90A of the Act. On the basis of such information, search and seizure operations were carried out in the premises of the petitioners under Section 132 of the Act leading to issuance of notice under Section 148 of the Act. Therefore, in terms of Clause (d) of Section 71, provisions of Chapter-VI would not be applicable in the case of the petitioners. This position has also been clarified by the departmental circulars. Therefore, unlike other persons in respect of whom the Black Money Act is sought to be made applicable, petitioners and similar category of assesseees under the Act would be statutorily barred from making a declaration in terms of Section 59 of the Black Money Act. This has been contended by the petitioners to be highly arbitrary and discriminatory.

36. It may be mentioned that this Court on 08.10.2018 had admitted the writ petition for hearing by issuing rule observing that arguable questions have been raised. Admittedly, when rule is issued, it presupposes existence of a *prima facie* case; in the absence of which rule is not ordinarily issued by the Court.

37. Evidently, provisions of the Black Money Act are extremely severe having stringent penalty provisions and also leading to offences and prosecutions. Therefore, to enable a person to come clean and to shield himself from the rigours of the said Black Money Act, a small window is provided in Section 59 to make a declaration of such undisclosed foreign income and asset. The window was for the period upto 30th day of September, 2015. According to the petitioners, they were statutorily debarred from making a declaration under Section 59 in view of Section 71 (d).

38. On the other hand, respondents have taken the stand that such contention of the petitioners is hypothetical inasmuch as petitioners never admitted having any undisclosed foreign asset and continue to deny the same till date. According to the respondents, this contention is of academic interest only as even in the income tax proceedings, petitioners never admitted that they had undisclosed foreign asset.

39. That apart, a reading of Section 72 (c) may indicate that provisions of the Black Money Act have been given retrospective operation. This is also a highly debatable issue since the Black Money Act contains provisions for imposition of penalty and for initiation of prosecution.

40. However, we have to bear in mind that there is always a presumption as to constitutionality of a statute and the burden lies heavily on him who challenges the constitutionality.

41. In **Shrivardhan Mohta** (*supra*), Calcutta High Court in the facts and circumstances of that case dismissed the writ petition seeking a declaration that provisions of the Black Money Act should be applied prospectively and, therefore, the consequential notices should be quashed.

42. Delhi High Court in **Gautam Khaitan** (*supra*), had passed a restraint order restraining the authorities under the Black Money Act from taking any action pursuant to order passed under Section 55 of the said Act for prosecution. This was challenged by the revenue before the Supreme Court. The question which fell for consideration was whether the High Court was right in observing that the Central Government has given retrospective operation to the provisions of the Black Money Act. After dilating on different provisions of the Black Money Act, it was noted that initially, 01.04.2016 was mentioned as the date for coming into force of the Black Money Act. Supreme Court noted that this created an anomalous situation since the declaration under Section 59 was to be made on or before 30.09.2015 and the tax and penalty paid on or before 31.12.2015 which periods were over i.e., had lapsed when the Black Money Act came into effect on 01.04.2016. Therefore, this date appearing in Section 1(3) was substituted and the date of giving effect was notified as 01.07.2015 so as to enable persons desiring of taking benefit under Section 59 of the Black Money Act to avail the benefit. Thus the date 01.04.2016 was changed to 01.07.2015 only to enable the assesseees to take benefit of Section 59. The power to make substitution was exercised only to remove difficulties. Having clarified the position, Supreme Court observed that assessing officer can charge tax only from the assessment year commencing on or after 01.04.2016. In the facts of that case, it was noted that the assessment year under consideration was 2019-2020. In such circumstances, Supreme Court held that the High Court was not right in holding that the penal provisions were made retrospectively applicable. Having said that, Supreme Court held that 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 the benefit of Section 59 and neither disclosed assets covered by the Black Money Act nor paid the tax and penalty thereon.

43. On thorough consideration, we find that facts of the present case are distinguishable from the facts in the case of **Gautam Khaitan** (*supra*). That apart, the issue raised by the petitioners that they were statutorily barred from making declaration under Section 59 of the Black Money Act was not an issue in **Gautam Khaitan** (*supra*). It is another matter that in the income tax proceedings petitioners had not disclosed any black money or asset; rather have denied the same.

44. In such circumstances and taking an overall view of the matter, we feel that while respondents may proceed pursuant to the impugned notices dated December 20, 2017, no coercive measures may be taken against the petitioners if the occasion so arises.

45. Ordered accordingly.

46. Further, we are of the view that an early hearing of the related writ petition is called for. Accordingly, Registry is directed to place the matter on board after the ensuing summer vacation for fixing a date of hearing.

47. Notice of motion is discharged.

(MILIND N. JADHAV, J.)

(UJJAL BHUYAN, J.)

Minal Parab