

6.1.2023

ks

sl. 39

WPA 29118 of 2022

Lingraj Suppliers Private Limited

Vs

Union of India & Ors.

Mr. Abhrotosh Majumdar, Ld. Sr. Adv.,

Mr. Pratyush Jhunjhuwala,

Mr. M. Kejriwal,

Mr. Kausheyo Roy

... For the Petitioner.

Mr. Vipul Kundalia,

Mr. Amit Sharma

... For the Income Tax Authority.

Mr. Abhidipto Tarafder

... For the Proforma Respondent.

Affidavit-of-service filed in court be kept with the record.

Heard Mr. Majumder, learned senior Advocate appearing for the petitioner and Mr. Kundalia, learned Advocate appearing for the respondents.

The subject matter of challenged in this writ petition is the legality of exercise of jurisdiction by the respondent authority concerned in invoking the relevant provisions of Sections 3 and 5 of Benami Transactions (Prohibition) Amendment Act, 2019 as to whether the same are to be given effect prospectively or retrospectively.

Mr. Majumder, learned senior Advocate appearing for the petitioner challenges the initiation of impugned proceeding under the aforesaid provisions of law on the ground that the officer concerned initiating the impugned proceeding tried to give effect to the

aforesaid provisions retrospectively as well as on the ground of territorial jurisdiction of the officer concerned and submits that on the issue of retrospectivity of the aforesaid provisions now stands settled by the judgment of the Hon'ble Supreme Court in the case of Union of India and Another vs. Ganpati Dealcom Pvt. Ltd. reported in 2022 SCC online SC 1064 and in view of the aforesaid judgment of the Hon'ble Supreme Court the impugned proceeding is contrary to law laid down by the Hon'ble Supreme Court.

Learned Advocate appearing for the petitioner also submits that the preliminary objection to the initiation of the impugned proceedings was taken before the respondent Authority concerned but was ignored by him and proceeded with the impugned proceedings. It appears from record that the petitioner has made a preliminary objection/reply to a show-cause notice dated 14th November, 2022, under Section 26(1) of the aforesaid Act as appears at page 960 of the writ petition, before the respondent/Adjudicating Authority on a reference made under Section 24(5) of the aforesaid Act which is still pending.

Mr. Kundalia, learned Advocate appearing for the respondents opposes this writ petition but he is not in a position to contradict the law settled by the Hon'ble

Supreme Court in the case of Ganpti Dealcom Pvt. Ltd.(supra). He also submits that the aforesaid judgment of the Hon'ble Supreme Court is not applicable to the case of the petitioner.

Considering the facts and circumstances of the case as appears from record, submission of the parties and the aforesaid judgment of the Hon'ble Supreme Court, this writ petition being WPA 29118 of 2022 is disposed of by directing the respondent Adjudicating Authority concerned/respondent No.3 to consider and dispose of the aforesaid objection/representation dated 14th November, 2022 in accordance with law and particularly by taking into consideration the aforesaid judgment of Hon'ble Supreme Court and pass a reasoned and speaking order after giving an opportunity of hearing to the petitioner or its authorized representative, within a period of eight weeks from the date of communication of this order.

Till the disposal of the aforesaid representation/objection dated 14th November, 2022, no further action coercive in nature shall be taken against the petitioner. Any further action in the impugned proceedings will depend upon the final outcome of the order to be passed on the aforesaid objection/representation.

(Md. Nizamuddin, J.)

