

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

- 233/3

CWP-7370 of 2021 (O&M)
Date of Decision:25.09.2023
- Mahesh Nagar

....Petitioner
- Versus
- Deputy Commissioner of Income Tax

.....Respondent
- 2)

CWP-7371 of 2021 (O&M)
- M/s Lambodar Arts Enterprise LLP

....Petitioners
- Versus
- Deputy Commissioner of Income Tax

.....Respondent
- 3)

CWP-7060 of 2021 (O&M)
- Rohtash Kumar

....Petitioner
- Versus
- Deputy Commissioner of Income Tax

.....Respondent

CORAM: HON’BLE MS. JUSTICE RITU BAHRI
HON’BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. R. Kartikeya, Advocate,
Ms. Ridhi Bansal, Advocate, and
Mr. Prashant Rana, Advocate,
for the petitioners (in all the three cases).

Mr. Sukant Gupta, Senior Standing Counsel
for the respondent (in all the three cases).

RITU BAHRI, J. (Oral)

1. All these three Writ Petitions are being taken up together for final disposal with the consent of learned counsel for the parties as the issues involved in these three cases are similar in nature. CWP-7370 of 2021 is being treated as the main case and the facts are taken up therefrom.

2. This petition has been filed under Articles 226/227 of the Constitution of India seeking direction to the respondent to quash the impugned notice dated 18.09.2020, 23.09.2020, 25.09.2020, 28.09.2020, 26.12.2020, 29.12.2020, 31.12.2020 (Annexure P-1 to P-25) issued under Section 24(1) of the Prohibition of Benami Property Transaction Act, 1988.

3. Reference at this stage can be made to a judgment passed by Hon'ble the Supreme Court in ***Union of India and Another vs. Ganpati Dealcom Pvt. Ltd. (supra), 2022 SCC Online SC 1064*** wherein the provisions of Section 3(2) of the un-amended Benami Transaction (Prohibition) Act, 1988 (for short-the Act, 1988) and Section 5 of the Act, 1988 had been declared unconstitutional and it was directed that the provisions of Section 5 of the Benami Transaction (Prohibition) Amendment Act, 2016 (for short-the Act, 2016) being punitive in nature could be applied only prospectively and not retroactively.

4. Learned counsel for the respondent has referred to the order dated 25.01.2023 passed by Hon'ble the Supreme Court in a review petition filed by the respondents bearing Review Petition (Civil) Diary No. 34619 of 2022 titled as ***Union of India vs. Ganpati Dealcom Pvt. Ltd.*** It is submitted that the same review petition is still pending.

5. In another case vide order dated 02.05.2023 passed by Hon'ble the

Supreme Court in SLP (Civil) No. 7978 of 2023 titled as *Union of India and others vs. M/S Nutrient Marine Foods Ltd. and another*, showing that the Union of India had not been granted leave to file appeal in view of judgment in case of *Ganpati Dealcom Pvt. Ltd.'s case (supra)*, with liberty to it to approach the Apex Court by filing afresh petition in case, the review petition was allowed.

6. In the present case Hon'ble the Supreme Court in case of *Union of India vs. Ganpati Dealcom Pvt. Ltd. (supra)* has declared the provisions of Section 3(2) of the un-amended Benami Transaction (Prohibition) Act, 1988 as unconstitutional.

7. The present Writ Petitions are squarely covered by the judgment of Hon'ble the Supreme Court in *Union of India vs. Ganpati Dealcom Pvt. Ltd. (supra)*. Accordingly, the Writ Petitions are being disposed of. The impugned notice dated 18.09.2020, 23.09.2020, 25.09.2020, 28.09.2020, 26.12.2020, 29.12.2020, 31.12.2020 (Annexure P-1 to P-25) are being quashed. However, it is clarified that the respondent shall be entitled to seek revival of the petitions in case the review petition filed by the Ganpati Dealcom Pvt. Ltd. is allowed.

8. Pending application (s), if any, stand (s) also disposed of.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

September 25, 2023
dinesh

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No