

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

255-2

CWP No.25899 of 2021 (O&M)

Date of decision: 11.10.2023

KAILASH KUMAR AND ORS.

.... Petitioners

Versus

DEPUTY COMMISSIONER OF INCOME TAX

.... Respondent

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

Present : Mr. Divya Suri, Advocate
Ms. Sameeksha Gupta, Advocate for the petitioners.

Ms. Gauri Neo Rampal Opal, Sr. Standing Counsel
for the respondent.

RITU BAHRI, J. (Oral)

1. This writ petition has been taken up for final disposal with the consent of the counsel for the parties.

2. The petitioners challenge the vires of Prohibition of Benami Transaction Act, 1998 (For short-“**Benami Act**”) as amended by way of 2016 Amendment Act, on the ground that the provisions of the amending Act could not be operated retrospectively and therefore, he prayed for issuing a writ in the nature of mandamus and certiorari thereby declaring the retrospective operation and effect of the

amendment made in the Benami Act in the year 2016, and also prayed for issuing a writ in the nature of certiorari for quashing the notices dated 25.09.2020 (Annexure P-1), dated 25.09.2020 (Annexure P-2), dated 23.09.2020 (Annexure P-3), dated 24.09.2020 (Annexure P-4), dated 28.09.2020 (Annexure P-5), dated 18.09.2020 (Annexure P-6), dated 23.09.2020 (Annexure P-7) and dated 23.09.2020 (Annexure P-8).

3. Learned counsel for the petitioners has referred to a judgment passed by Hon'ble the Supreme Court in ***Union of India and Another vs. Ganpati Dealcom Pvt. Ltd., 2022 SCC Online SC 1064*** wherein the provisions of Section 3(2) of the un-amended Benami 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 petitioners also placed on record a copy of 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.

5. Though, a review petition as filed by the respondents in *Ganpati Dealcom Pvt. Ltd.*'s case (supra), is stated to be pending before Hon'ble Supreme Court, however, in case titled as *Union of India and others vs. M/S Nutrient Marine Foods Ltd.*, no leave has been granted to file appeal.

6. Since the present petition is squarely covered by the judgment passed by the Supreme Court in *Ganpati Dealcom Pvt. Ltd.*'s case (supra), therefore, this writ petition allowed and notices dated 25.09.2020 (Annexure P-1), dated 25.09.2020 (Annexure P-2), dated 23.09.2020 (Annexure P-3), dated 24.09.2020 (Annexure P-4), dated 28.09.2020 (Annexure P-5), dated 18.09.2020 (Annexure P-6), dated 23.09.2020 (Annexure P-7) and dated 23.09.2020 (Annexure P-8) are being quashed. However, it is clarified that the respondent shall be entitled to seek revival of the petition in case the review petition filed by the respondent in *Ganpati Dealcom Pvt. Ltd.* is allowed.

7. Pending application, if any, also stands disposed of.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

11.10.2023
pooja saini

Whether speaking/reasoned:	Yes/No.
Whether reportable :	Yes/No