IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2024

CORAM

THE HON'BLE MR. JUSTICE R. MAHADEVAN

AND

THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

C.M.A. Nos. 409 to 417 of 2024

&

C.M.P. Nos. 4406, 4411, 4413, 4414, 4417, 4416, 4420,4421 & 4422 of 2024

C.M.A. No. 409 of 2024

1. Deputy Commissioner of Income Tax,
(Benami Prohibition),
Room No.104, 1st Floor,
Income Tax Investigation Wing Building,
108, M.G. Road, Nungambakkam,
Chennai – 600 034.

2. Additional Commissioner of Income Tax (Benami Prohibition),
Room No.102, 1st Floor,
Income Tax Investigation Wing Building,
108, M.G. Road, Nungambakkam,
Chennai – 600 034. ..Appellants

Vs.

M/s. Anjani Constructions Pvt. Ltd.,
rep. by its Director,
Shri Ravi Rajagopal,
Sai Subhodaya Apartments,
57/2B, East Coast Road,
Thiruvanmiyur,
Chennai 600 041. ..Respondent

Prayer: Civil Miscellaneous Appeal as against the order dated 15.12.2022 passed by the Appellate Tribunal for Prohibition of Benami Property Transaction Act, 1988, New Delhi, in FPA – PBPT – 1972/CHN/2022 under the Prohibition of Benami Property Transaction Act (PBPT) 1988 (Act No. 43 as amended in 2016).

For Appellants :: Ms.M. Sheela

For Respondent :: Mr.R. Sivaraman

COMMON JUDGMENT

(Judgment of the Court was delivered by ***R. Mahadevan,J***.)

Challenging the common order dated 15.12.2022, passed by the Appellate Tribunal for Prohibition of Benami Property Transaction Act, 1988, New Delhi, in the appeals filed by the respective respondent under the Prohibition of Benami Property Transaction Act, 1988 (Act No.43 as amended in 2016), the appellants have preferred these civil miscellaneous appeals before this court.

2. Today, when the matters were taken up for hearing, the learned counsel appearing for both sides in unison, submitted that a batch of appeals *viz*., C.M.A.No.2604 of 2023 etc. cases, challenging the very same impugned order of the Appellate Tribunal, was disposed of, by this court, by passing a detailed judgment on 20.11.2023, the relevant passage of which is

usefully extracted below:

"6. The issue involved in this batch of appeals lies in a narrow campus. It is vehemently contended on the side of the appellants that Section 5 of the Prohibition of Benami Property Transactions Act, 1988, as amended by the Benami Transactions (Prohibition) Amendment Act, 2016 will have retrospective effect and therefore, the common order passed by the Tribunal, to the contrary, is liable to be interfered with. It is further submitted by the learned Special Public Prosecutor that without going into the merits of the case, the Tribunal disposed of the appeals filed by the respondent(s) herein only by placing reliance on the decision of the Honourable Supreme Court in the case of Union of India vs. Ganapati Dealcom P Ltd., mentioned supra. However, it is sought to be contended on the side of the appellants that the Department has already preferred a Review Petition in Diary No. 34619 of 2022 (Review Petition No. (Civil) 359 of 2023) before the Honourable Supreme Court and it is pending adjudication. Therefore, the learned counsel prayed for allowing these appeals by setting aside the common order impugned in these appeals.

7. It is no doubt true that the Tribunal placed reliance on the decision of the Honourable Supreme court in Union of India vs. Ganapati Dealcom P Ltd., wherein, it was categorically held that 'the provisions under section 5 of the 2016 Act, being punitive in nature, can only be applied prospectively and not retrospectively', allowed the appeals filed by the respondent(s) herein by setting aside the order of the Adjudicating Authority confirming the action of initiating officer in reference to the alleged benami transaction of a period prior to the Amendment Act of 2016. For better appreciation, the operative portion of the said decision of the Honourable Supreme Court is extracted below:

"In view of the above discussion, we hold as under:

a) Section 3 (2) of the unamended 1988 Act is declared as unconstitutional for being manifestly arbitrary. Accordingly, Section 3 (2) *of the 2016 Act is also unconstitutional as it is violative of Article 20 (1) of the Constitution.*

b) In rem forfeiture provision under Section 5 of the unamended Act of 1988, prior to the 2016 Amendment Act, was unconstitutional for being manifestly arbitrary.

c) The 2016 Amendment Act was not merely procedural, rather, prescribed substantive provisions.

d) In rem forfeiture provision under Section 5 of the 2016 Act, being punitive in nature, can only be applied prospectively and not retroactively.

e) Concerned authorities cannot initiate or continue criminal prosecution or confiscation proceedings for transactions entered into prior to the coming into force of the 2016 Act, viz., 25.10.2016. As a consequence of the above declaration, all such prosecutions or confiscation proceedings shall stand quashed.

f) As this Court is not concerned with the constitutionality of such independent forfeiture proceedings contemplated under the 2016 Amendment Act on the other grounds, the aforesaid questions are left open to be adjudicated in appropriate proceedings."

However, the Tribunal in the order impugned herein, has categorically observed as follows:

"It is however made clear that if the Apex Court reviews its judgment, the respondent would be at liberty to take appropriate remedy pursuance to it which includes filing a review petition before this Tribunal.

It is also made clear that if the Department has an independent right to initiate the action taking the Amendment Act, 2016 to be prospective and does not offend the judgment of the Apex Court in the case of UOI v/s M/s.Ganpati Dealcom (supra) then this order would not come in their way as otherwise action can be governed by para 130(f) of the judgment (supra)."

8.Recently, the issue involved herein came up for consideration before the Telengana High Court in ***Nutrient Marine Foods Ltd. vs.***

Adjudicating Authority, Chennai [(2023) 152 taxmann.com 86 (Telengana)] *and it was observed as follows:*

"It is submitted that the present writ petitions are covered by the common judgment delivered in Neopride Pharmaceuticals Ltd., vs. Adjuidcating Authority (W.P. No. 33191 of 2022, dated 13-09-2022) and batch which were allowed. In the said case the Court took the view that section 2 (9) (a) and 2 (9) (c) inserted by the Amendment Act, 2016 are prospective in nature because these two provisions have significantly and substantially widened the definition of 'benami transaction' than as was there in the unamended Benami Property Act of 1988. Further, taking note of the fact that Central Government had notified the date of coming into force of the Amendment Act of 2016 as 01-11-2016 this Court held that these two provisions cannot be applied to a transaction,w hich took place prior to 01-1102016. The Amendment Act of 2016 is not merely procedural but prescribes substantial provisions. Therefore, concerned authorities cannot initiate or continue criminal prosecution or confisctation proceedings for transactions entered into prior to coming into force of the 2016 Amendment Act i.e., 25.10.2016. As a consequence, in that case impugned show cause notices, provisional attachment orders as well as the adjudicating orders passed by the various authorities under the Benami Property Act as amended by the Amendment Act of 2016 impugned in the batch of writ petitions were set aside and quashed

Accordingly, the present writ petitions are also allowed in terms of the aforesaid judgment."

8.1. As against the decision of the Telengana High Court, mentioned above, an appeal was filed by the department and the Honourable Supreme Court in ***Assistant Commissioner of Income Tax vs. Nutrient Marine Foods Limited [(2023) 152 taxmann.com 87 (SC)]*** *has dismissed the same, in the following terms:*

"1. The issues raised in this petition is squarely covered by the judgment of this Court in Union of India v. Ganpati Dealcom (P) Ltd., (2022) (4) taxmann.com 389/289 Taxman 177/447 ITR 108/2022 SCC Online SC 1064. Learned counsel for the petitioner (s) contend that review of the said judgment is pending.

2. Since as of now the issue stands covered by the judgment in the case of Ganapati Dealcom (supra) we dismiss this special leave petition for the same reasons and ground.

3. Delay, if any, is condoned.

4. However, liberty to the petitioners to approach this Court again by filing a fresh petition in case the review petition (s) is allowed, is kept reserved. Pending application (s), if any, shall stand disposed of."

9. *In view of the above, this court is of the opinion that as on date, the decision of the Hon'ble supreme court in Union of India v. Ganapati Dealcom Pvt Ltd (supra) holds the field and hence, the arguments advanced on the side of the appellants that the provisions of Section 5 of the Amended Act, 2016 have to be applied retrospectively, cannot be countenanced. Further, it is to be noted that in the Review Petition (Civil) Diary No. 34619 of 2022 filed by the Department to review the order passed by the Honourable Supreme Court in Union of India vs. Ganapati Dealcom Pvt Ltd., by order dated 25.01.2023, delay was condoned and the application for oral hearing of the review petition was allowed, however, no stay order was granted. In such circumstances, pendency of the review of the decision in Union of India vs. Ganapati Dealcom Pvt. Ltd, cannot be a ground to interfere with the order passed by the Tribunal. It is also well settled that mere pendency of the Review Petition will not be a ground to assail the orders impugned in the appeals. In this context, it is useful to refer to the decision of the Honourable Supreme Court in* ***Union Territory of Ladakh and others vs. Jammu and Kashmir National Conference and another (Civil Appeal No. 5707 of 2023 (Special Leave Petition (Civil) No. 18727 of 2023 dated 06.09.2023)*** *wherein, it was held as follows:*

"35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts

will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. it is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Bench of equal stength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5 Judge Bench in National Insurance Company Limied v. Pranay Sethi (2017) 16 SCC 680. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it."

Thus, we find no reason much less valid reason to interfere with the order of the Tribunal, which is impugned herein.

10. At this stage, the learned Special Public Prosecutor appearing for the appellants submitted that liberty may be given to the appellants to proceed further depending on the outcome of the Review Petition pending before the Honourable Supreme Court. It is always open to the appellants herein to proceed further on the basis of the outcome of the Review Petition in Diary No. 34619 of 2022 (Review Petition No. (Civil) 359 of 2023) filed by them before the Honourable Supreme Court.

11. Subject to the aforesaid observation, all these Civil Miscellaneous Appeals are disposed of. No costs."

Therefore, the learned counsel prayed for similar order in these appeals as well.

3. Following the earlier order passed by this Court, all these civil miscellaneous appeals are disposed of, leaving it open to the appellants

herein to proceed further on the basis of the outcome of the Review Petition in Diary No.34619 of 2022 (Review Petition No. (Civil) 359 of 2023) filed by them before the Honourable Supreme Court. No costs. Consequently, all the connected Miscellaneous Petitions are closed.

(R.M.D., J)   (M.S.Q., J)
23.02.2024

To

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R. MAHADEVAN,J.

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MOHAMMED SHAFFIQ,J.

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