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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 16816/2006**

SAROJ DASSANI

.....Petitioner

Through: None.

versus

UOI

.....Respondent

Through: Mr. Ruchir Bhatia, SSC, Mr. Anant Mann, JSC and Ms. Lopamudra Mahapatra, Adv.

CORAM:

HON'BLE MR. JUSTICE DINESH MEHTA

HON'BLE MR. JUSTICE VINOD KUMAR

ORDER

13.01.2026

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1. The instant petition has been preferred with the following prayers:-

“(i) declare the provisions of the Taxation laws (Amendment) Act, 2005 sofar as it relates to the retrospective amendments of section 28 and 80 HHC of the Income Tax Act, (Annexure No.1) as ultra vires the Consitution and liable to be struck down; and

(ii) declare that the CBDT circular No.2 of 2002 dated 17.01.2006 (Annexure No.2) a ultra vires and unauthorised by insofar it relates to the levy of tax retrospectively on taxpayers by denying the legitimate deductions otherwise admissible.

(iii) restrain the Respondents from giving effect to the retrospective amendments and CBDT Circular against the Petitioner by issuing a writ of prohibition for the purpose coupled with a writ of mandamus directing the Respondents to complete the regular assessment in accordance with law as if the retrospective amendments had not been made and CBDT Circular had not been issued by Respondents.

(iv) restrain by a writ of prohibition the



Respondents from reopening any of the past assessments of the Petitioner to give effect to the unconstitutional retrospective amendments in sections 28 and 80 HHC of the Income Tax Act during the pendency of the present writ petition.

(v) restrain the Respondents from raising any demands towards tax, interest of penalty against the Petitioner based on then retrospective amendments referred to above.

(vi) grant of interim exparte stay of operation of the impugned provisions, circulars, notice and letter referred to above and direct the Respondents to be guided by them.”

2. The petitioner’s challenge is essentially to the retrospectivity given to the Amendment brought in Section 80HHC and Section 28 of the Income Tax Act, 1961 (*hereinafter referred to as ‘the Act of 1961’*).

3. We may note that Hon’ble the Supreme Court vide its judgment in the case of **Johnson G. Ommen v. Commissioner of Income Tax (Central)** reported in [2023] 295 Taxman 221 (SC), while placing reliance on the judgment dated 30.03.2015 passed by Hon’ble the Supreme Court in **Commissioner of Income Tax v. Avani Exports** reported in [2015] 232 Taxman 357 (SC) and judgment dated 02.12.2016 in **Union of India v. Paliwal Overseas (P.) Ltd.** reported in [2017] 244 Taxman 195 (SC), held that the amendment cannot be given retrospective effect. Relevant part of the judgment of Johnson G. Ommen (supra) reads is reproduced hereinfra :-

“11. This Court in Avani Exports(supra) held as under:

‘5. We find that in essence the High Court has quashed the severable part of third and fourth proviso to section 80-HHC(3) and it becomes clear therefrom that challenge which was laid to the conditions contained in the said provisions by respondent has succeeded. However, to make the position crystal clear, we substitute the direction of the High Court with the following



direction:

“Having seen the twin conditions and since section 80HHC benefit is not available after 1-4-2025, we are satisfied that cases of exporters having a turnover below and those above Rs.10 crores should be treated similarly. This order is in substitution of the Judgment in appeal.’

12. This position has been clarified by this Court in *Union of India v. Paliwal Overseas (P) Ltd.* [2017] 77 taxmann.com 35/244 Taxman 195 (SC)/[(2016) 16 SCC 697] by holding as under:

“2. The only question of law to be decided is whether section 80-HHC of the Income-tax Act, 1961 as amended in 2005 is prospective in operation. It has since been settled by this Court”

4. Said judgment of the Supreme Court in the case of *Johnson G. Ommen* (supra) is based upon another judgment of Hon’ble the Supreme Court in the case of *Avani Exports* (supra), which arose from the Gujarat High Court’s judgment dated 02.07.2012 reported in [2012] 209 Taxman (Guj) wherein the Gujarat High Court had held thus :

“26. On consideration of the entire materials on record, we, therefore, find substance in the contention of the learned counsel for the petitioners that the impugned amendment is violative for its retrospective operation in order to overcome the decision of the Tribunal, and at the same time, for depriving the benefit earlier granted to a class of the assessee whose assessments were still pending although such benefit will be available to the assessee whose assessments have already been concluded. In other words, in this type of substantive amendment, retrospective operation can be given only if it is for the benefit of the assessee but not in a case where it affects even a few section of assessee.”

27. We, accordingly, quash the impugned amendment only to this extent that the operation of the said section could be given effect from the date of amendment and not in respect of earlier assessment years of the assessee whose export turn-over is above Rs.10 crore. In other words, the retrospective amendment should not be detrimental to any of the assessee.”

5. If the judgment dated 30.03.2015 passed by Hon’ble the Supreme



Court in Avani Exports (supra) is read in conjunction with the judgement of the Gujarat High Court dated 02.07.2012, it is clear that the finding recorded in para 26, reproduced hereinabove, was upheld with some alteration in para 27 of the said judgment, that too in favour of the assesseees and direction given in para 27 of aforesaid judgment was substituted by the following:

“Having seen the twin conditions and since 80HHC benefit is not available after 1.4.05, we are satisfied that cases of exporters having a turnover below and those above 10 cr. Should be treated similarly. This order is in substitution of the judgment in Appeal”.

6. The consequence of the judgment dated 30.03.2015 of Hon’ble the Supreme Court, is that irrespective of the amount involved, the amendment brought in Section 80HHC of the Act of 1961 cannot be given retrospective effect.

7. In view of the aforesaid, this writ petition is allowed in light of the aforesaid judgment dated 30.03.2015 of Hon’ble the Supreme Court rendered in the case of Avani Exports (supra).

8. Consequence to follow.

9. A copy of the order be sent to the petitioner.

DINESH MEHTA, J

VINOD KUMAR, J

JANUARY 13, 2026/cd