

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 3652 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 4249 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 4230 of 2021****With****R/SPECIAL CIVIL APPLICATION NO. 5388 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 5422 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 5415 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 5424 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 5433 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 5656 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 5637 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 5638 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 5639 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 5893 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 6099 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 6058 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 6032 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 6084 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 6085 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 6087 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 6088 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 6447 of 2020****With****R/SPECIAL CIVIL APPLICATION NO. 6404 of 2020**

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R/SPECIAL CIVIL APPLICATION NO. 6638 of 2020
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R/SPECIAL CIVIL APPLICATION NO. 6900 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 7631 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 9227 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 11868 of 2020
With
R/SPECIAL CIVIL APPLICATION NO. 11783 of 2020

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DHANESHBHAI PARSHOTTAMDAS SONI

Versus

UNION OF INDIA & ORS.

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Appearance:

HLP ASSOCIATES LLP(9263) for the Petitioner(s) No. 1
MR DEVANG VYAS(2794) for the Respondent(s) No. 1,2
MR.VARUN K.PATEL(3802) for the Respondent(s) No. 3

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CORAM: **HONOURABLE MR. JUSTICE BHARGAV D. KARIA**
and
HONOURABLE MR. JUSTICE NIRAL R. MEHTA

Date : 12/08/2024

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard learned advocate Mr.Chintan Dave for HLP Associates LLP, learned advocate Mr.B.S. Soparkar, learned advocate Mr.Sudhir Mehta, learned advocate Mr.Ketan Shah, learned advocate Mr.Jimi Patel, learned advocate Mr.Darshan Patel, learned advocate Mr.Jainish P. Shah, learned advocate Mr.Darshan B. Gandhi, learned advocate Mr.Jaimin R. Dave for the petitioner and learned Senior Standing Counsel Mr.Varun Patel and learned Senior Standing Counsel Mr.Karan Sanghani for the respondent, in the respective petitions.

2. This Court passed the following order on 10.2.2020 in SCA No.3652 of 2020 :

"1. By this writ-application under Article 226 of the Constitution of India, the writ-applicant engaged in the business of jewellery, bullion and construction seeks to challenge the constitutional validity of the notification dated 15.12.2016, wherein by insertion of the Taxation Laws (Second Amendment) Act, 2016 (No.48 of 2016), the provision as contained in Section 115BBE of the Income Tax Act, 1961 (for short the "Act1961") came to be retrospectively amended with effect from 1st April,2017 applicable for the assessment year 2017-18.

2. It is the case of the writ-applicant that by

virtue of the retrospective amendment of Section 115BBE of Act-1961, the writ-applicant is saddled with higher rate of tax of 60% for the transactions that were affected by the writ-applicant prior to insertion of the said section. It is the case of the writ-applicant that any amendment in the statute having the character of substantive provision cannot be given retrospective effect. It was submitted that by way of introducing the amendment to Section 115BBE of Act-1961, the legislature has attempted to levy tax and penalty for the transactions that have taken place prior to the introduction of the impugned notification. It was contended that the retrospective levy of tax under Section 115BBE of Act-1961 along with surcharge has effectively resulted in a tax liability at the rate of 83.25%. Therefore, the challenge to the validity of Section 115BBE of Act,1961 is essentially on the ground of unreasonableness and arbitrariness.

3. We take notice of the fact that the writ-applicant has also challenged the Assessment Order dated 29.12.2013 passed by the respondent no.3. We are informed that against the said assessment order, an appeal has been preferred before the CIT(Appeal). We are inclined to look into the challenge to the validity of the notification dated 15.12.2016.

Let NOTICE be issued to the respondents and learned Attorney General of India returnable on 24.02.2020.

On the returnable date, notify the matter on top of the board.

Direct service is permitted."

3. It appears that thereafter, the matters were heard from time to time and are pending for consideration.

4. In view of the controversy raised in these petitions with regard to the challenge to vires of Section 115BBE of the Income-Tax Act, 1961, the same requires consideration.

5. Hence, Rule.

6. The ad-interim relief granted earlier to continue till the final disposal of these petitions. The respondents shall not make any coercive recovery of the outstanding dues of the petitioner during pendency of these petitions.

7. Direct service, through e-mail, is permitted.

(BHARGAV D. KARIA, J)

V.J. SATWARA

(NIRAL R. MEHTA, J)