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

% **Judgment reserved on: 02 May 2024**
**Judgment pronounced on: 30 May 2024**

\+ W.P.(C) 10214/2017

SANJEEV GOYAL ….. Petitioner

Through: Dr. M.K. Pandey & Dr. V.V. Chaudhary, Advs.

versus

UNION OF INDIA …..Respondent

Through: Ms. Pratima N. Lakra, CGSC with Ms. Vrinda Baheti & Ms. Kashish G. Baweja, Advs. for Resp./ UOI.
Mr. Puneet Rai, SSC with Mr. Rishabh Nangia, JSC, Mr. Ashvini Kumar & Mr. Nikhil Jain, Advs.

**CORAM:**
**HON'BLE MR. JUSTICE YASHWANT VARMA**
**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV**

**J U D G M E N T**

**PURUSHAINDRA KUMAR KAURAV, J.**

1. By way of the captioned writ petition, we are called upon to examine the constitutional validity of Section 31 of the Finance Act, 2017 [**"Act of 2017"**], which has brought about an amendment in the Income Tax Act, 1961 [**"Act"**] by inserting sub-section (3A) to Section 71 of the Act. The petitioner has essentially prayed for the following reliefs:-

> "a) Allow the instant petition and issue a writ of certiorari quashing section 31 of the Finance Act, whereby sub section (3A) has been inserted in Section 71 of the Income Tax Act to the effect that the assessee shall not be entitled to set-off of loss under the head "income from house property" to the extent the amount of the loss exceeds two lakh rupees. against income under another head; as being ultra vires the provisions of the Constitution of India.
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> b) ALTERNATIVELY issue a writ of Mandamus directing that Sub-section 3A to Section 71 of the Income Tax Act, 1961, is prospective in application and not applicable to the house loans raised prior to the amendment of the Income Tax Act, 1961 vide the Finance Act, 2017, i.e. prior to 01.04.2017 resulting in losses under the head "income from house property";"

2. The petitioner is a government employee who claims to have constructed his house in April, 2014 by incurring an expenditure of ₹1.35 crore. The said construction was financed through a housing loan, partially raised from the IDBI Bank and the rest from his father, amounting to ₹85,00,000/- and ₹50,00,000/-, respectively. The annual rent for the said house in the Financial Year [**"FY"**] 2016-17 was computed to be ₹1,20,000/-.

3. Since the house was constructed from borrowed capital, therefore, under Section 24 of the Act, the amount of interest payable on such capital was eligible for deduction from the head "Income from house property". The income chargeable under the said head was required to be computed after making deduction of the interest payable on such capital. The said deduction was also eligible for set off as per the provisions of Section 71 of the Act. Accordingly, after availing deduction in terms of aforesaid provisions of the Act and setting-off the same against his salary income, the petitioner appears to have filed his Income Tax Return [**"ITR"**] for the respective FYs i.e., 2014-15 to 2016-17.

4. However, by virtue of the Act of 2017, the threshold limit for set of loss under the head "Income from house property" against any

other head of income was restricted to an amount of ₹2 lakh for a particular Assessment Year [**"AY"**] with effect from 01.04.2018 i.e., for AY 2018-19 and subsequent AYs.

5. Learned counsel appearing on behalf of the petitioner submitted that the amendment to the Act of 2017 is against the tenets of the Constitution and is illegal as the same has been introduced with retrospective application, imposing a heavy tax liability on the petitioner. According to him, the said amendment has shorn off his pre-existing right to set off the loss exceeding ₹2,00,000/-, which has now been curtailed *vide* the Act of 2017.

6. He contended that the amendment is prejudicial to the interest of the petitioner, inasmuch as, at the time of raising funds through loans, the petitioner could not have foreseen that he would be disentitled from claiming the benefits of the provisions in question. He further submitted that the present amendment has caused a financial burden on the petitioner, leaving him with a meager disposable income to run the livelihood.

7. Learned counsel has also referred to the excerpts of the Budget Speech by the then Finance Minister, which has been annexed with the present petition, to contend that the legislative intent behind the enactment of the beneficial legislation under consideration was to provide an unhindered deduction and a vested entitlement to set off the actual amount of loss under the head "income from house property" against income from any other head. It was, therefore, asserted that insertion of sub-section (3A) to Section 71 of the Act amounts to a breach of promise, which consequently, attracts the doctrine of promissory estoppel against the respondent.

8. According to him, since the amendment is retrospective in nature, the same is against the principle of fairness which must be the basis for every legal rule. He asserted that the impugned amendment creates an unreasonable restriction on the existing statutory rights of the taxpayers and thus, deprives them of their rightful claims, which is violative of Articles 14 and 19(1)(g) of the Constitution.

9. On the contrary, learned counsel for the respondent vehemently opposed the submissions. He submitted that the petitioner does not have any vested right to claim the benefit of the provisions in question in the same manner as he has been asserting since FY 2014-15. According to him, Section 31 of the Act of 2017 explicitly mentions that the said amendment will be applicable from AY 2018-19 onwards and carry forward of the unabsorbed losses shall be governed by the provisions of the Act. It was, therefore, contended that the submission of the petitioner with respect to the effect of amendment being retrospective is vague and devoid of any merits.

10. Learned counsel further submitted that the Legislature is duly empowered under the Constitution to levy and collect taxes and any such alleged right cannot be claimed by the petitioner on a mere presupposition for an indefinite period or an infinite amount. He also submitted that the petitioner has failed to allude to any evidence which would manifest that the impugned amendment is arbitrary or results into violation of fundamental rights of the petitioner.

11. As per the respondents, the rationale behind the amendment is that prior to the amendment, there was no upper limit (except in the case of self-occupied property) on deductions claimed by taxpayers, which led to the following two undesirable consequences: -

i. Escalation of property prices and reduction in supply of affordable housing to those in need.

ii. Decrease in tax revenue as the higher income group reduced its tax liability by claiming loss under the head "Income from house property" by making large interest payments and setting off the loss against income under other heads.

12. Learned counsel for the respondents, therefore, submitted that the insertion of sub-section (3A) to Section 71 of the Act is not a revenue raising measure, rather it is an anti-abuse provision which seeks to minimise revenue loss. He additionally submitted that the said amendment can neither be said to be arbitrary nor unconstitutional and there was no promise from the respondents with respect to the set off of losses for the period in question.

13. We have heard the learned counsels appearing on behalf of the parties and perused the record.

14. The case of the petitioner essentially rests on the premise that the amendment in Section 71 of the Act, allegedly having a retrospective operation, is unconstitutional, as it substantially affects his alleged untrammelled right to claim deduction as per the erstwhile position of law.

15. To appreciate the contention raised by the petitioner, it is germane to look into the relevant provisions of the Act in juxtaposition with the amendment brought about by the Act of 2017. It is seen that as on the date of construction of house of the petitioner in April 2014, the amount of interest payable on borrowed capital was eligible for deduction from the head "Income from house property". For the sake of clarity, Section 24 of the Act, as it then stood, reads as under: -

**"Deductions from income from house property.**

24. Income chargeable under the head "Income from house property" shall be computed after making the following deductions, namely:—
(a) a sum equal to thirty percent of the annual value;
**(b) where the property has been acquired, constructed, repaired, renewed or reconstructed with borrowed capital, the amount of any interest payable on such capital:**

Provided that in respect of property referred to in sub-section (2) of section 23, the amount of deduction shall not exceed thirty thousand rupees:
Provided further that where the property referred to in the first proviso is acquired or constructed with capital borrowed on or after the 1st day of April, 1999 and such acquisition or construction is completed within five years from the end of the financial year in which capital was borrowed, the amount of deduction under this clause shall not exceed two lakh rupees.

Explanation.—Where the property has been acquired or constructed with borrowed capital, the interest, if any, payable on such capital borrowed for the period prior to the previous year in which the property has been acquired or constructed, as reduced by any part thereof allowed as deduction under any other provision of this Act, shall be deducted under this clause in equal instalments for the said previous year and for each of the four immediately succeeding previous years:

Provided also that no deduction shall be made under the second proviso unless the assessee furnishes a certificate, from the person to whom any interest is payable on the capital borrowed, specifying the amount of interest payable by the assessee for the purpose of such acquisition or construction of the property, or, conversion of the whole or any part of the capital borrowed which remains to be repaid as a new loan.

Explanation.—For the purposes of this proviso, the expression "new loan" means the whole or any part of a loan taken by the assessee subsequent to the capital borrowed, for the purpose of repayment of such capital."

16. The deduction provided for under Section 24 of the Act was also eligible for set off under the provisions of Section 71 of the Act. Section 71 of the Act is culled out as under:-

**"Set off of loss from one head against income from another.**

> 71. (1) Where in respect of any assessment year the net result of the computation under any head of income, other than "Capital gains", is a loss and the assessee has no income under the head "Capital gains", he shall, subject to the provisions of this Chapter, be entitled to have the amount of such loss set off against his income, if any, assessable for that Assessment year under any other head.
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> (2) Where in respect of any assessment year, the net result of the computation under any head of income, other than "Capital gains", is a loss and the assessee has income assessable under the head "Capital gains", such loss may, subject to the provisions of this Chapter, be set off against his income, if any, assessable for that assessment year under any head of income including the head "Capital gains" (whether relating to short-term capital assets or any other capital assets).
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> (2A) Notwithstanding anything contained in sub section (1) or subsection (2), where in respect of any assessment year, the net result of the computation under the head "Profits and gains of business or profession" is a loss and the assessee has income assessable under the head "Salaries", the assessee shall not be entitled to have such loss set off against such income.
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> (3) Where in respect of any assessment year, the net result of the computation under the head "Capital gains" is a loss and the assessee has income assessable under any other head of income, the assessee shall not be entitled to have such loss set off against income under the other head.
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> **(4) Where the net result of the computation under the head "Income from house property" is a loss, in respect of the assessment years commencing on the 1st day of April, 1995 and the 1st day of April, 1996, such loss shall be first set off under sub-sections (1) and (2) and thereafter the loss referred to in Section 71A shall be set off in the relevant assessment year in accordance with the provisions of that section."**

17. Undisputedly, adhering to the rigour of aforenoted provisions, the petitioner had assessed his tax liability and filed ITRs for respective FYs i.e., 2014-15, 2015-16 and 2016-17. During these FYs, the petitioner was duly allowed to set off the actual amount of loss under the head "Income from house property" against his salary income.

18. However, as per newly added sub-section (3A) to Section 71 of the Act, the set off of losses under the head "Income from house

property" against any other head of income has been restricted to ₹2 lakh for any particular AY beginning from AY 2018-19 and the same has triggered the controversy at hand. Section 31 of the Act of 2017, which led to the said amendment reads as under: -

> "FINANCE ACT, 2017
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> 31. Amendment of section 71 - In section 71 of the Income-tax Act, after sub-section (3), the following sub-section shall be inserted with effect from the 1st day of April, 2018, namely:—
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> (3A) Notwithstanding anything contained in sub-section (1) or sub-section (2), where in respect of any assessment year, the net result of the computation under the head "Income from house property" is a loss and the assessee has income assessable under any other head of income, the assessee shall not be entitled to set off such loss, to the extent the amount of the loss exceeds two lakh rupees, against income under the other head."

19. A conspectus of the aforementioned provisions would evince that the subsequent amendment in Section 71 of the Act only aims at capping the set off of losses under the head of "Income from house property" from any other head of income at ₹2 lakh. Put otherwise, with the insertion of sub-section (3A), instead of an indefinite amount which could have been set off as per Section 71 of the Act earlier, an assessee can now only set off a maximum amount of ₹2 lakh in the manner mentioned in the said Section *qua* the "Income from house property". Further, it is vividly discernible from a plain reading of the amended provision that the said amendment came into effect only from 01.04.2018 i.e., period commencing after the passing of the Act of 2017.

20. In order to test the contention raised by the petitioner with respect to retrospectivity of the concerned amendment, it is useful to draw a reference from the case of **Manish Kumar v. Union of India**

[(2021) 5 SCC 1], whereby, the concept of retrospectivity has been defined by the Supreme Court in the following words: -

> "408. What then is retrospectivity? It is ordinarily the new law being applied to cases or facts, which came into existence prior to the enacting of the law. A retrospective law, in other words, either supplants an existing law or creates a new one and the legislature contemplates that the new law would apply in respect of a completed transaction. It may amount to reopening, in other words, what is accomplished under the earlier law, if there was one, or creating a new law, which applies to a past transaction.
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> 409. "Meaning of "retrospective"—A statute is to be deemed to be retrospective, which takes away or impairs any vested right acquired under any existing laws, or creates a new obligation or imposes a new duty or attaches a new disability in respect to transactions or considerations already past." (See Craies on Statute Law, 7th Edn., p. 387.)"

21. Further, in the case of **SEBI v. Rajkumar Nagpal** [(2023) 8 SCC 274], the Supreme Court was of the opinion that operation of law in certain conditions which are antecedent to its passing would not render the same to be retrospective. The relevant paragraph of the said decision reads as under: -

> "102. Many decisions of this Court define "retroactivity" to mean laws which destroy or impair vested rights. In real terms, this is the definition of "retrospectivity" or "true retroactivity". "Quasi-retroactivity" or simply "retroactivity" on the other hand is a law which is applicable to an act or transaction that is still underway. Such an act or transaction has not been completed and is in the process of completion. Retroactive laws also apply where the status or character of a thing or situation arose prior to the passage of the law. **Merely because a law operates on certain circumstances which are antecedent to its passing does not mean that it is retrospective."**
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> [Emphasis supplied]

22. Moreover, since the petitioner has challenged the constitutional validity of Section 71(3A) of the Act, it is important to test the concerned provision on the edifice of the following parameters: -

I. Whether the Legislature lacked legislative competence for passing the impugned provision?

II. Whether the impugned provision lays down a criterion and classification which is discriminatory, arbitrary and fails to meet the test of reasonable classification and intelligible differentia for want of nexus with the object to be achieved by the Legislature? Or, more generally put, whether the impugned provision is violative of any provision of Part III of the Constitution?

23. The Constitution of India imposes two limitations on the legislative power of Parliament or the State Legislatures. The first is by way of legislative competence – in that the subjects of legislation are divided into three lists, with Parliament having the exclusive power to legislate on List I, the States having the exclusive power to legislate with respect to List II, and the two having concurrent power in relation to the subjects falling in List III. The first parameter, i.e. regarding the legislative competency of the Parliament has not been challenged by the petitioner. In any case, Article 265 of the Constitution stipulates that "No tax shall be levied or collected except by authority of law." Sub-section (3A) to Section 71 of the Act was introduced *vide* the Act of 2017, which was duly passed by the Parliament and therefore, there is no legislative incompetence in formulation of such law.

24. The second limitation is traceable from Part III of the Constitution, through Article 13, which renders a State action as unconstitutional if it violates the fundamental rights mentioned in Part III of the Constitution. The petitioner has averred that the law passed herein is amenable to challenge on the ground that the same is discriminatory and is unduly burdensome and thus, creates an unreasonable restriction on the right to carry on business. The argument

is essentially constructed on the edifice of restrospectivity. However, a salient aspect related to retrospective application, which emanates from the aforenoted decisions, is that retrospectivity of a new legislation must impair the vested rights of a person in order to be construed as adversely impacting the fundamental rights enshrined in the Constitution. The element of disturbance of a vested right lies at the core of any challenge on the basis of restrospectivity. In the instant case, neither the old provisions, as they existed, nor the amended provisions endeavour to create or disturb any indefeasible right in favour of the petitioner so as to allow him to claim any legitimate expectation to set off the amount in the manner canvassed before us.

25. Therefore, in the absence of any such crystallized right, the argument of the petitioner that the concerned amendment is violative of Article 14 of the Constitution does not hold any water. Additionally, the insertion of sub-section (3A) does not take away the benefits of deduction provided to the petitioner *in toto*, rather it only attempts to circumscribe the indefinite amount of set off to a certain amount. The change introduced by the impugned legislation is a reflection of the larger policy of the Legislature and has an equalizing effect on all the taxpayers claiming any deduction under the abovementioned head. It does not have the effect of creation of any separate class or classification. The class or category in which the petitioner has claimed the deduction is a pre-existing class and the petitioner forms part of the same. What the Legislature has merely done is to alter the criterion as a reasoned policy decision. It cannot be said that by virtue of the said amendment, a distinct class has been created without any rational nexus with the objective sought to be achieved through such exercise. The object is well explained by the respondent and the petitioner has not

questioned the stated objective as ill founded or otherwise in this proceeding.

26. Interestingly, in the case of **State Bank's Staff Union (Madras Circle) v. Union of India** [(2005) 7 SCC 584], the Supreme Court had taken a view that deletion of an existing provision or introduction of a new provision would not necessarily entail a violation of Article 14 of the Constitution. The relevant paragraph of the said decision reads as under:-

> **31. Learned counsel for the appellant submitted that vested rights cannot be taken away by the legislature by way of retrospective legislation. The plea is without substance. Whenever any amendment is brought in force retrospectively or any provision of the Act is deleted retrospectively, in this process rights of some are bound to be affected one way or the other. In every case the exercise by the legislature by introducing a new provision or deleting an existing provision with retrospective effect per se does not amount to violation of Article 14 of the Constitution.** The legislature can change, as observed by this Court in Cauvery Water Disputes Tribunal, Re [1993 Supp (1) SCC 96 (2)] the basis on which a decision is given by the Court and thus change the law in general, which will affect a class of persons and events at large. It cannot, however, set aside an individual decision inter partes and affect their rights and liabilities alone. Such an act on the part of the legislature amounts to exercising the judicial power by the State and to function as an appellate court or tribunal, which is against the concept of separation of powers.
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> [Emphasis supplied]

27. Thus, it is seen that the amendment is applicable to all the category of persons without any apparent or real discriminatory classification. As a sequitur, it cannot be said to be against the tenets of equality encapsulated in Article 14 of the Constitution. Notably, the petitioner's challenge regarding Article 14 is only based on the test of reasonable classification and intelligible differentia, and the same has been turned down by us. There is no challenge on the ground of manifest arbitrariness.

28. Despite so, for the clarity of reasoning, we have no hesitation in noting that the impugned legislation does not fall foul of the test of manifest arbitrariness as well. The changes introduced by the legislation is well intended and is based on relevant considerations, including abuse of erstwhile provisions and financial health of the economy. The Legislature has been guided by verifiable data and has not proceeded in a whimsical manner.

29. With respect to the challenge raised in light of the infraction of fundamental right to trade under Article 19(1)(g) of the Constitution, the scope of the said right cannot be extended to protect one's right to profit. The right to carry on any business is certainly subject to regulatory parameters and a challenge against any such regulatory parameter could not be premised on the sole basis that it curtails the profit. There ought to be an infraction of the Constitution for attracting judicial review. A crucial test for determining any violation of Article 19 of the Constitution is the test of proportionality or the doctrine of proportionality. The impugned provision does not create an absolute restriction on the taxpayer's pre-existing right to claim the deduction in question and the capping of ₹2 lakh is meant to prevent the abuse of the relevant provision. The tool adopted to prevent this abuse is also reasonable and it is not the case of the petitioner that the Legislature had a less restrictive tool to achieve the object. Therefore, the impugned law is proportionate with the object sought to be achieved and cannot be faulted for being violative of Article 19.

30. Moreover, the alteration in the manner of imposing tax in the present case cannot be said to deprive the taxpayer from a benefit, rather it tantamounts to a realignment of the existing provisions bearing in mind the broader economic and policy considerations, which the

Legislature is duly empowered to do. Reliance can be placed upon the decision in the case of **Nazeria Motor Service v. State of Andhra Pradesh** [(1969) 2 SCC 576], wherein, the Supreme Court held that the assumptions that profits would be diminished or greatly reduced cannot be construed in a sense that there is infringement of the fundamental rights under Part III of the Constitution.

31. Further, the petitioner has also failed to allude to any specific material which could suggest that the amended provision is liable to be struck down on account of any permissible parameters. In any case, it has been well-settled that the State must be left with a wide latitude in devising ways and means of fiscal or regulatory measures and the Court should not, unless compelled by the statute or by the Constitution, transcend into this field, or invalidate such law. [See: **Government of Andhra Pradesh v. Smt P. Lakshmidevi,** AIR 2008 SC 1640]

32. Considering the foregoing discussion, we do not find any force in the arguments of the petitioner which are purportedly based upon a self-imposed belief and assumption that the benefits under the old taxation regime shall be continued to be offered till an indefinite period. As a matter of fact, neither the earlier provisions nor the amended law, expressly or indirectly, deal with any such promise by the Legislature and thus, there is clearly no applicability of the doctrine of promissory estoppel in the present case.

33. Also, the decision of the Supreme Court in the case of **CIT v. Vatika Township Pvt. Ltd.** [(2015) 1 SCC 1] has been heavily relied upon by the petitioner. However, the said case does not come to rescue the case of the petitioner, inasmuch as, the question posited before the Court therein was to determine whether the proviso appended to Section 113 by Finance Act, 2002 was to be applied prospectively or

not. In the case at hand, it is palpably observed that the "Notes on Clauses", appended to Section 31 of the Act of 2017, clearly stipulate that the amendment shall be applicable from AY 2018-19.

34. In view of the aforesaid, both the issues are answered in favour of the respondents and against the petitioner. Accordingly, the writ petition is devoid of merits and is hereby dismissed. Pending application(s), if any, are also disposed of.

**PURUSHAINDRA KUMAR KAURAV, J.**

**YASHWANT VARMA, J.**

**MAY 30, 2024/p**