REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No.1563 OF 2019

(Arising out of S.L.P.(Crl.) No. 4911 of 2019)

UNION OF INDIA AND ORS. .... APPELLANT(S)

VERSUS

GAUTAM KHAITAN .... RESPONDENT(S)

J U D G M E N T

B.R. GAVAI, J.

Leave granted.

2. The present appeal challenges the interim order passed by the Division Bench of the Delhi High Court in Writ Petition (Crl.) No. 618 of 2019 dated 16.05.2019 thereby, restraining the appellants herein from taking and/or continuing any action against the writ petitioner (respondent herein) pursuant to the Order dated 22.01.2019 under Section 55 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax

Act, 2015 (hereinafter referred to as the "Black Money Act") passed by Appellant No. 2 herein.

3. We have heard Mr. Tushar Mehta, learned Solicitor General appearing on behalf of the appellants, and Mr. P.V. Kapur, learned senior counsel appearing on behalf of the sole respondent.

4. The short question that falls for consideration is, as to whether the High Court was right in observing that while exercise of the powers under the provisions of Sections 85 and 86 of the Black Money Act, the Central Government has made the said Act retrospectively applicable from 01.07.2015 and passed a restraint order.

5. From the Statement of Objects and Reasons, it could be seen that the Black Money Act has been enacted for the following purposes :

(a) To unearth the black money stashed in foreign countries; and

(b) To prevent unaccounted money going abroad.

(c) To punish the persons indulging in illegitimate means of generating money causing loss to the revenue

(d) To prevent illegitimate income and assets kept outside the country from being utilised in ways which are detrimental to India's social, economic and strategic interest and its national security.

6. The Black Money Act has been passed by the Parliament on 11.05.2015 and it has received Presidential assent on 26.05.2015. Sub-section (3) of Section 1 provides, that save as otherwise provided in the said Act, it shall come into force on the 1st day of April, 2016. However, by the notification/ order notified on 01.07.2015, which have been impugned before the High Court, it has been provided, that the Black Money Act shall come into force on 01.07.2015, i.e., the date on which the order is issued under the provisions of sub-section (1) of Section 86 of the Black Money Act.

7. It will be relevant to refer to Section 3 of the Black Money Act, which is a charging section.

> "**3. Charge of Tax -** (1) There shall be charged on every assessee for every assessment year commencing on or after the 1st day of April, 2016, subject to the provisions of this Act, a tax in respect of his total undisclosed foreign income and asset of the previous year at the rate of thirty per cent of such undisclosed income and asset:
>
> Provided that an undisclosed asset located outside India shall be charged to tax on its value in the previous year in which such asset comes to the notice of the Assessing Officer.
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> (2) For the purposes of this section, "value of an undisclosed asset" means the fair market value of an asset (including financial interest in any entity) determined in such manner as may be prescribed."

8. It could thus be seen, that Section 3 provides that tax shall be charged on every assessee for every assessment year commencing on or after the 1st day of April, 2016 in respect of his total undisclosed foreign income and assets of the previous year. The rate of the said tax has been quantified at thirty per cent. The proviso to sub-section (1) of Section 3 of the Black Money Act provides, that undisclosed assets located outside India shall be charged to tax on its value in the previous year in which such asset comes to the notice of the Assessing Officer.

9. It could thus clearly be seen, that the proviso to sub-section (1) of Section 3 of the Black Money Act, makes it clear that the undisclosed asset located outside India shall be charged to tax on its value in previous year in which, such an asset comes to the notice of Assessing Officer. Clause (9) of Section 2 of the Black Money Act defines "previous year". Four different definitions have been given in sub-clauses (a), (b), (c) and (d). For the present matter, sub-clause (d) of clause (9) of Section 2 would be relevant, which reads thus:

> **"(9)** "previous year" means—
>
> (a) …
>
> (b) …

(c) …

(d) the period of twelve months commencing on the 1st day of April of the relevant year in any other case,

and which immediately precedes the assessment year."

10. It could thus be seen, that the previous year in the present case would mean a period of twelve months commencing on the 1st day of April of the relevant year and which immediately precedes the assessment year.

11. A bare reading of the provisions of Section 3 read with Section 2(9)(d) of the Black Money Act would unambiguously show, that the legislative intent insofar as the charging tax on undisclosed asset located outside India is concerned, is to charge the tax on its value in the previous year in which such asset comes to the notice of the Assessing Officer. The previous year in the present case would be a period of twelve months commencing on the 1st day of April of the relevant year and which immediately precedes the assessment year.

12. It could thus be seen, that Section 3 read with Section 2 (9)(d) of the Black Money Act would permit the Assessing Officer, while assessing the case of an assessee for assessment year commencing after 01.04.2016, to bring the undisclosed asset located outside India under the tax net on the value of the

said property within a period of twelve months, prior to the date on which such asset comes to the notice of the Assessing Officer. By virtue of these provisions, if such asset comes to the notice of Assessing Officer on 01.04.2016, he could charge such asset(s) on the basis of its value as would be ascertained in a previous year ending on 31.03.2016. A perusal of Section 3 of the Black Money Act would further reveal, that what is relevant is the date on which the Assessing Officer notices the acquisition by an assessee of undisclosed asset located outside India. However, for the purposes of taxation, the value of such asset has to be ascertained as is in the immediate previous year.

13. A perusal of Section 59 of the Black Money Act would further reveal, that an opportunity is given to the assessee to make a declaration in respect of any undisclosed asset located outside India and acquired from income chargeable to tax under the Income-tax Act, for any assessment year prior to the assessment year beginning on 01.04.2016. Section 59 further provides, that such a declaration has to be made on or after the date of commencement of the Black Money Act, however, before the date to be notified by the Central Government. The Central Government, in exercise of the powers under Section 59 of the Black Money Act, published a Notification on 01.07.2015,

notifying 30.09.2015 as the date on or before which a person is required to make a declaration in respect of an undisclosed asset located outside India. It also notifies 31.12.2015 as the date on or before which the person shall pay the tax and penalty in respect of such undisclosed asset located outside India.

14. It could thus be seen, that Section 59 of the Black Money Act gives an opportunity to the assessees who have acquired an asset located outside India, which is acquired from income chargeable to tax under the Income-tax Act. The assessee has been given an opportunity to declare such asset and pay the tax and penalty thereon. The consequences of the non-declaration have been provided under Section 72(c) of the Black Money Act, which reads thus:

> "**Section 72 Removal of doubts. –** For the removal of doubts, it is hereby declared that-
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> (a) ...
>
> (b) ...
>
> (c) where any asset has been acquired or made prior to commencement of this Act, and no declaration in respect of such asset is made under this Chapter, such asset shall be deemed to have been acquired or made in the year in which a notice under section 10 is issued by the Assessing Officer and the provisions of this Act shall apply accordingly."

15. It could therefore be seen, that where no declaration in respect of the asset covered under the Black Money Act is made,

such asset would be deemed to have been acquired or made in the year in which a notice under Section 10 is issued by the Assessing Officer and the provisions of the Act shall apply accordingly.

16. The offences in respect of which sanction has been granted are under Sections 50 and 51 of the Black Money Act, which read thus :

> "**50. Punishment for failure to furnish in return of income, any information about an asset (including financial interest in any entity) located outside India.-** If any person, being a resident other than not ordinarily resident in India within the meaning of clause (6) of section 6 of the Income-tax Act, who has furnished the return of income for any previous year under sub-section (1) or sub-section (4) or sub-section (5) of section 139 of that Act, wilfully fails to furnish in such return any information relating to an asset (including financial interest in any entity) located outside India, held by him, as a beneficial owner or otherwise or in which he was a beneficiary, at any time during such previous year, or disclose any income from a source outside India, he shall be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine.
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> **51. Punishment for wilful attempt to evade tax –**
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> (1) If a person, being a resident other than not ordinarily resident in India within the meaning of clause (6) of section 6 of the Income-tax Act, wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable under this Act, he shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to ten years and with fine.

(2) If a person wilfully attempts in any manner whatsoever to evade the payment of any tax, penalty or interest under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and shall, in the discretion of the court, also be liable to fine.

(3) For the purposes of this section, a wilful attempt to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof shall include a case where any person—

(i) has in his possession or control any books of account or other documents (being books of account or other documents relevant to any proceeding under this Act) containing a false entry or statement;

(ii) makes or causes to be made any false entry or statement in such books of account or other documents; or

(iii) wilfully omits or causes to be omitted any relevant entry or statement in such books of account or other documents; or

(iv) causes any other circumstance to exist which will have the effect of enabling such person to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof."

17. Section 50 provides that if any person, being a resident other than not ordinarily resident in India, who has furnished the return of income for any previous year under sub-section (1) or sub-section (4) or sub-section (5) of Section 139 of the Income-tax Act, wilfully fails to furnish in such return any information relating to an asset (including financial interest in any entity) located outside India, held by a beneficial owner or

otherwise or in which he was a beneficiary, at any time during such previous year, or disclose any income from a source outside India, he shall be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine.

18. The penalty of the offences under Section 51 is for wilful attempt in any manner whatsoever to evade the payment of any tax, penalty or interest chargeable or imposable under the Income-tax Act. The punishment provided under sub-section (1) is for rigorous imprisonment for a term which shall not be less than three years but which may extend to ten years and with fine. In respect to any other person not covered by sub-section (1) of Section 51, the punishment provided is rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and shall, in the discretion of the court, also be liable to fine.

19. It could therefore be seen, that the scheme of the Black Money Act is to provide stringent measures for curbing the menace of black money. Various offences have been defined and stringent punishments have also been provided. However, the scheme of the Black Money Act also provided one time opportunity to make a declaration in respect of any undisclosed

asset located outside India and acquired from income chargeable to tax under the Income-tax Act. Section 59 of the Black Money Act provided that such a declaration was to be made on or after the date of commencement of the Black Money Act, but on or before a date notified by the Central Government in the Official Gazette. The date so notified for making a declaration is 30.09.2015 whereas, the date for payment of tax and penalty was notified to be 31.12.2015. As such, an anomalous situation was arising if the date under sub-section (3) of Section 1 of the Black Money Act was to be retained as 01.04.2016, then the period for making a declaration would have been lapsed by 30.09.2015 and the date for payment of tax and penalty would have also been lapsed by 31.12.2015. However, in view of the date originally prescribed by sub-section (3) of Section 1 of the Black Money Act, such a declaration could have been made only after 01.04.2016. Therefore, in order to give the benefit to the assessee(s) and to remove the anomalies the date 01.07.2015 has been substituted in sub-section (3) of Section 1 of the Black Money Act, in place of 01.04.2016. This is done, so as to enable the assessee desiring to take benefit of Section 59 of the Black Money Act. By doing so, the assessees, who desired to take the benefit of one time opportunity, could

have made declaration prior to 30th September, 2015 and paid the tax and penalty prior to 31st December, 2015.

20. It would further be relevant to note that sub-section (3) of Section 1 of the Black Money Act, itself provides that save as otherwise provided in this Act, it shall come into force on 1st day of July, 2015. A conjoint reading of the various provisions would reveal, that the Assessing Officer can charge the taxes only from the assessment year commencing on or after 01.04.2016. However, the value of the said asset has to be as per its valuation in the previous year. As such, even if there was no change of date in sub-section (3) of Section 1 of the Black Money Act, the value of the asset was to be determined as per its valuation in the previous year. The date has been changed only for the purpose of enabling the assessee(s) to take benefit of Section 59 of the Black Money Act. The power has been exercised only in order to remove difficulties. The penal provisions under Sections 50 and 51 of the Black Money Act would come into play only when an assessee has failed to take benefit of Section 59 and neither disclosed assets covered by the Black Money Act nor paid the tax and penalty thereon. As such, we find that the High Court was not right in holding that, by the

notification/order impugned before it, the penal provisions were made retrospectively applicable.

21. In any case, in the factual scenario of the present case, it would reveal, that the assessment year in consideration was 2019-2020 and the previous year relevant to the assessment year was the year ending on 31.03.2019.

22. In that view of the matter, we find that the interim order passed by the High Court is not sustainable in law, the same is quashed and set aside.

23. The High Court is requested to decide the writ petition on its own merits. However, we clarify that the observations made by us are only for the purposes of examining the correctness of the interim order passed by the High Court and the High Court would decide the writ petition uninfluenced by the same.

24. The appeal stands allowed as indicated above.

.....J.
[ARUN MISHRA]

.....J.
[M. R. SHAH]

.....J.
[B.R. GAVAI]

NEW DELHI;
OCTOBER 15, 2019.