IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 1623 of 2015
with
SPECIAL CIVIL APPLICATION NO. 2115 of 2015
with
SPECIAL CIVIL APPLICATION NO. 4771 of 2015

FOR APPROVAL AND SIGNATURE :
HONOURABLE MR.JUSTICE M.R. SHAH Sd/-
and
HONOURABLE MR.JUSTICE S.H.VORA Sd/-
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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**YES**
2	To be referred to the Reporter or not ?	**YES**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**NO**
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	**NO**

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TATA TELESERVICES,....Petitioner(s)
Versus
UNION OF INDIA & 1....Respondent(s)
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Appearance:
S.C.A. No.1623 of 2015 :
MR MIHIR JOSHI SR.ADV. WITH MR VIMAL M PATEL, WITH ANUPAM MISHRA, ADVOCATES for the Petitioner
MR MANISH BHATT WITH MRS MAUNA M BHATT, ADVOCATES for the Respondent(s) No. 2
NOTICE UNSERVED for the Respondent(s) No. 1
S.C.A. No.2115 of 2015 :
MR MIHIR JOSHI SR.ADV. WITH MR PARTH CONTRACTOR, ADVOCATE for Singhi & Co. for the Petitioner
MR MANISH BHATT WITH MRS MAUNA M BHATT, ADVOCATES for the Respondent(s) No. 2
NOTICE UNSERVED for the Respondent(s) No. 1
S.C.A. No.4771 of 2015 :
MR RK PATEL, ADVOCATE for the Petitioner
MR MANISH BHATT WITH MRS MAUNA M BHATT, ADVOCATES for the Respondent(s) Nos. 1-2
==

CORAM: **HONOURABLE MR.JUSTICE M.R. SHAH**
and
HONOURABLE MR.JUSTICE S.H.VORA

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Date : 05/02/2016

CAV JUDGMENT
(PER : HONOURABLE MR.JUSTICE M.R. SHAH)

1.00. As common question of law and facts arise in this group of petitions, they are heard, decided and disposed of by this common judgement and order.

2.00. **Special Civil Application No. 1623 of 2015** :

By way of Special Civil Application No.1623 of 2015 under Article 226 of the Constitution of India, the petitioner - assessee M/s.Tata Teleservices has prayed for the following reliefs :-

> **(A) Your Lordships may be pleased to declare the impugned Summons dated 9/12/2014, impugned Notices dated 18/12/2014 and impugned Letters dated 18/12/2014, 29/12/2014 and 12/1/2015 issued by the respondent No. 2 are barred by limitation and be pleased to strike down the same as being wholly without jurisdiction;**

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> **(B) Your Lordships may be pleased to issue a writ, order or directions in the nature of certiorari or any other writ, order or direction of like nature, to call for, examine the records in relation to and quash the impugned Summons dated 9/12.2014, impugned Notices dated 18/12/2014 and impugned Letters dated 18/12/2014, 29/12/2014 and 12/1/2015 issued by Respondent No. 2 at Annexure "A" colly.;**

> **(C) Your Lordships may be pleased to issue a Writ of Mandamus, or a Writ in the nature of Mandamus, or any other appropriate Writ, Order of directions, restraining**

the Respondents by their servants, agents and subordinates from, directly or indirectly giving effect to or acting upon impugned Summons dated 9/12/2014, impugned Notices dated 18/12/2014 and impugned Letters dated 18/12/2014, 29/12/2014 and 12/1/2015 issued by the Respondent No. 2 at Annexure "A“ Colly.;

(D) Your Lordships may be pleased to issue a writ. order or directions in the nature of Prohibition or any other writ, order or direction of like nature, to quash the impugned Summons dated 9/12/2014, impugned Notices dated 18/12/2014 and impugned Letters dated 18/12/2014, 29/12/2014 and 12/1/2015 issued by the respondent No.2 at Annexure “A" Colly.;

(E) Your Lordships may be pleased to declare that the proceedings cannot be initiated and no order can he passed under Section 201 of the Act in respect of AY 2008-2009 and 2009-10 at any time after the expiry of two years from the end of the financial year in which the statement is filed for the said years;

(F) Your Lordships may be pleased to Declare that the proceedings consequent to notice issued under Section 201 (1) of the Act for Financial Year 2007-08 are barred by the proviso to Section 201 (3);

(G) Your Lordships may be pleased to Declare that the Section 2()1 of the Act as amended by the Finance (No.2) Act, 2014 is prospective and does not apply to proceedings where period of passing the orders has expired before 1/10/2014;

(H) Pending the hearing and final disposal of the petition Your Lordships may be pleased to stay the impugned Summons dated 9/12/2014, impugned Notices dated 18/12/2014 and impugned Letters dated 18/12/2014, 29/12/2014 and 12/1/2015 issued by Respondent No. 2 at Annexure "A" Colly.;

(I) Ex-parte ad-interim relief in terms of prayer (H) above may kindly be granted;

(J) For such further and other reliefs, including costs of this Petition, as this Hon'b1e Court may deem fit and proper in the nature and circumstances of the case.

2.01. **Special Civil Application No. 2115 of 2015** :

By way of Special Civil Application No.2115 of 2015, under Article 226 of the Constitution of India, the petitioner - assessee M/s.Tata Tele-services has also challenged the impugned notices issued under section 201(1) of the Income Tax Act, (hereinafter referred to as "the Act" for short) in respect of A.Y. 2008-09 – F.Y. 2007-08, mainly on the ground that the said notices are barred by proviso to section 201(3) of the Act. Therefore, as such, the reliefs sought in the Special Civil Application No. 2115 of 2015b is similar to that of reliefs prayed in Special Civil Application No. 1623 of 2015 but with respect different show cause notices and for different period.

2.02. **Special Civil Application No. 4771 of 2015** :

By way of Special Civil Application No.4771 of 2015, under Article 226 of the Constitution of India, the petitioner - another assessee – Troikaa Pharmaceuticals Ltd. has also

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challenged the impugned notices issued under section 201(1) and 201(1A) of the Income Tax Act, issued for A.Y. 2008-09.

3.00. Thus, in all these petitions, the respective petitioners - assessee have challenged the notices issued under section 201(1) of the Act on the ground that the said notices are barred by proviso to section 201(3) of the Act, as the same are issued at different time after expiry of two years from the end of the financial year in which the Statement is filed for the said years.

3.01. The respective petitioners have also prayed to declare that section 201 of the Act as amended by Finance Act, 2014 (Act No.2 of 2014) is prospective and does not apply to the proceedings where period of passing the order has expired before 1/10/2014.

4.00. Mr.Mihir Joshi, learned Senior Advocate has appeared on behalf of the petitioner in Special Civil Application No. 1623 of 2015 and Mr.R.K. Patel, learned advocate has appeared on behalf of the petitioner in Special Civil Application No. 4771 of 2015. Mr.M.R. Bhatt, learned Senior Advocate has appeared with Ms.Mauna Bhatt, learned advocate, on behalf of the Income Tax Department in all these matters.

5.00. For the sake of convenience, elaborate submissions made by Mr.Joshi, learned Senior Advocate appearing on behalf of the petitioner in Special Civil Application No. 1623 of 2015 are narrated, discussed and considered.

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6.00. Facts leading to the Special Civil Application No. 1623 of 2015 in nutshell are as under

6.01. The petitioner is engaged in the business of providing tele-communication services and selling service products across the country. According to the petitioner, it is governed by Tele-Communication Interconnection Usage Charges Regulation, 2003 issued by TRAI under the TRAI Act, 1997. That the petitioner filed its TDS statement regularly for the F.Y. 2007-08 for respective quarter. According to the petitioner, the period for passing order under Section 201 (3) expired on 31/03/2011 for relevant financial year. According to the petitioner, the petitioner filed its TDS statement regularly for the F.Y. 2008-2009 for respective quarter and therefore period for passing order under Section 201 (3) expired on 31/03/2012 for relevant financial year.

6.02. That the petitioner was served with the summons dated 09/10/2014 by respondent No. 2 requiring personal attendance in connection with proceedings under the Income Tax Act for A.Y. 2008-2009 and 2009-2010 seeking details regarding TDS for F.Y. 2007-2008 and 2008-2009. That the petitioner made submissions dated 15/12/2014 and contended that the assessment proceedings sought to be initiated are time barred in view of Section 201(3) of the Act as it stood at the end of the respective FY 2007-2008 and 2008-2009.

6.03. That according to the petitioner, the respondent No. 2 by a letter dated 18/12/2014 rejected the submissions without considering the issue of limitation. The petitioner vide letter dated 26/12/2014 gave a reply pointing out that the

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aspect regarding proceedings barred by the limitation while dealing the objections has not been considered. That in response thereto the respondent No. 2 by a letter am 29/12/2014 held that the proceedings for F.Y. 2007-2008 and 2008-2009 were valid and were within time relying upon the amended Section 201(3) of the Finance Act, 2014.

6.04. That the petitioner by reply dated 05/01/2015 reiterated its submissions in respect of the proceeding being time barred.

6.05. That the respondent No. 2 vide letter dated 12/01/2015 gave last opportunity to the petitioner to furnish the factual information as sought by the officer. Hence, the petitioner has preferred the Special Civil Application No. 1623 of 2015.

7.00. The challenge to the impugned notices / summonses which are issued under section 201 of the Act are mainly on the following grounds :-

(i) Section 201 provides for consequences of failure to deduct tax. The said Section 201 was amended by Finance Act, 2008 with retrospective effect from 01/06/2002 wherein the proceedings were to be initiated within reasonable period of time. Subsequently Section 201(3) and Section 201(4) were introduced w.e.f. 01/04/2010 by Finance (No.2) Act, 2009 which provided period of limitation of two years from the end of financial year in which the Statement is filed in a case and four years from the end of financial year where the Statement

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has not been filed. Therefore in the present case a limitation under Section 20l(3)(i) of the Act for passing orders expired on 31/03/2011 and 31/03/2012.

(ii) That Section 201(3) of the Act was amended on 28/05/2012 by Finance Act, 2012 with retrospective effect from 01/04/2010 whereby the limitation was substituted from four years to six years for passing the order were the TDS statement had not been filed. The limitation of two years continued in case where the statement is filed. Therefore there was no effect on the limitation for the petitioner for the FY 2007-2008 and 2008-2009. Subsequently Section 201(3) of the Act was amended on 01/10/2014 by Finance Act, 2014 w.e.f. 01/10/2014 wherein Section 201 (3) (i) was omitted. The distinction between cases where statement has been filed and such statements was not filed was removed and the amendment prescribed a common period of limitation i.e. seven years from the end of financial year in which payment was made. The said amendment is not from retrospective date nor does it specifically say that it is from retrospective effect as it was said at the time of amendment by Finance Act, 2014. Therefore the said amendment as on 01/ 10/2014 is with prospective effect.

On the aforesaid grounds and submissions, the respective petitioners have challenged the impugned notices / summonses issued under section 201 of the Act.

8.0. That the amendment of Section 201 of the Act by Finance Act, 2014 was expressly made prospective w.e.f.

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01/10/2014 and therefore the impugned notices/summons for FY 2007-2008 and 2008-2009 where erroneously issued by respondent No. 2 since time limit for passing an order under Section 201(3) had already lapsed for the relevant financial years. Therefore respondent No. 2 had no power or authority under the amended Section 201 of the Act by Finance Act, 2014.

8.1.Mr.Mihir Joshi, learned Senior Advocate appearing on behalf of the petitioner has further submitted that the amendment in Section 201(3) of the Act vide Finance Act, 2012 was expressly made retrospective w.e.f. 01/04/2010. However the subsequent amendment in Section 201(3)iof the Act by Finance Act, 2014 is not made expressly with retrospective effect but the plain language of the amended section says that it is w.e.f. 01/10/2014.

In support of his above submissions, Mr.Joshi, learned Senior Advocate has heavily relied upon the decision of the Hon'ble Supreme Court in the case of **S. S. Gadgil Versus M/s. Lal & Co.,** reported in **AIR 1965 SC 720** (Para 12 and 13) as well as in the case of **J.P. Jani, ITO Versus Induprasad Devshanker Bhatt,** reported in **1969(1) SCR 714** (Para 4 and 5).

8.2.Mr.Mihir Joshi, learned Senior Advocate appearing on behalf of the petitioner has further submitted that the time period for passing an order had lapsed under Section 201 for the relevant financial year and therefore a vested right had accrued in favour of the petitioner which can only be taken away by an express retrospective amendment. Hence

the substantive right is conferred by a statute which remains unaffected by subsequent changes in law unless modified expressly or by necessary implication. It is trite law that every gimme is prospective unless it is expressly or by necessary implication made to have retrospective operation. Limitation provision therefore can be procedural in the context of one set of facts but substantive in the context of different set of facts because right can accrue to both the parties. In such a situation test is to see whether the statute, if applied retrospectively to a particular type of case would impair existing rights and obligations. An accrued right to plead a time barred, which is acquired after the lapse of the statutory period, is nevertheless a right, even though it arises under an Act which is procedural and a right which is not to be taken away pleading retrospective operation unless a contrary intention is discernible from the statute.

In support of his above submissions, Mr.Joshi, learned Senior Advocate has heavily relied upon the decision of the Hon'ble Supreme Court in the case of **Thirumalai Chemicals Ltd. Versus Union of India & other,** reported in **2011(6) SCC 739** (Para 23, 26, 29 to 32) as well as in the case of **Yew Bon Tew Versus Kenderaan Bas Mara**, reported in **(1983) 1 AC 553** (Privy Council).

8.3.Mr.Mihir Joshi, learned Senior Advocate appearing on behalf of the petitioner has further submitted that a fiscal statute, more particularly, on a provision such as the present one regulating period of limitation must receive

strict construction. Law of limitation is intended to give certainty and finality to legal proceedings and to avoid exposure to risk of litigation to a litigant for an indefinite period in future unforeseen events. Proceedings, which have attained finality under existing law due to bar of limitation cannot be held to be open for revival unless the amended provision is clearly given retrospective operation so as to allow upsetting of proceedings, which had already been concluded and attained finality . Taxing provisions imposing a liability is governed by normal presumption that it is not retrospective and settled principle of law is that the law to be applied is that which is in force in the assessment year unless otherwise provided expressly or by necessary implications. Even a procedural provision cannot in the absence of clear contrary intendment expressed therein be given greater retrospectively then is expressly mentioned so as to enable the authorities to affect finality of tax-assessment or to open up liabilities, which have become barred by lapse of time.

In support of his above submissions, Mr.Joshi, learned Senior Advocate has heavily relied upon the decision of the Hon'ble Supreme Court in the case of **K.M. Sharma Vs. ITO**, reported in **2002(4) SCC 339** (Para 14 & 21).

8.4.Mr.Mihir Joshi, learned Senior Advocate appearing on behalf of the petitioner has further submitted that the judgment cited by respondent No. 2 i.e. (i) in the case of **Ahmedabad Manufacturing & Calico Printing Co. Ltd. Vs. S. G. Mehta ITO,** reported in **(1968) 48 [TR 154** and

(ii) in the case of **Addl. Commissioner Vs. Jyoti Traders & Aur**. reported in **1999(2) SCC 77** would not apply in the present case as the interpretation of the amended Section by the Hon’ble Supreme Court in the case of Jyoti Traders was in respect of the proviso which provided that the assessment and reassessment may be made after the expiration of the period aforesaid but not after expiration of eight years from the end of such year. To understand it more precisely the relevant provision of Section 21 dealt in the said judgment read as under:

"Section 21. Assessment of tax on the turnover not assessed during the year.

(1)If the assessing authority has reason to believe that the whole or any part of the turnover of the dealer, for any assessment year or part thereof has escaped assessment to tax or has been under assessed or has been assessed to tax at a rate lower than that at which it is assessable under this Act, or any deductions or exemptions have been wrongly allowed in respect thereof the assessing authority may, after issuing notice to the dealer and making such inquiry as it may consider necessary, assess or re-assess the dealer or tax according to law :

Provided that the tax shall be charged at the rate at which it would have been charged had the turnover not escaped assessment, or full assessment as the case may

be.

Explanation. ....

(2)Except as otherwise provided in this section no order of assessment or re-assessment under any provision of this Act for any assessment year shall be made after the expiration of four years from the end of such year."

By the amending Act a proviso was added to sub-section 2 as under :-

"Provided that if the Commissioner of Sales Tax, on being satisfied on the basis of reasons recorded by the assessing authority that it is just and expedient so to do authorities the assessing authority in that behalf} such assessment or re-assessment may be made after the expiration of the period aforesaid but not 'after the expiration of eight years from the end of such year notwithstanding that such assessment or re-assessment' may involve a change of opinion. "

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Therefore under the proviso the assessment and reassessment may be made after the expiration of the period aforesaid but not after expiration of eight years from the end of such year. Hence it is expressly enables assessment where the period expires and that it operates upon expiry of the limitation period and any other reading would render it redundant. It is in this context the

Hon’ble Supreme Court observed that “We do not think that sub-section (2) and the proviso added to it leave anyone in doubt that as one the date when the proviso came into force, the Commissioner of Sales Tax could authorize making of assessment or reassessment after the expiration of 8 years from the end of that particular assessment year. It is immaterial if a period for assessment or reassessment under sub-section (2) of Section 21 before the addition of the said proviso had expired. "

8.5.Mr.Mihir Joshi, learned Senior Advocate appearing on behalf of the petitioner has submitted that as such, there is no conflict between the decision of the Hon'ble Supreme Court in the case of **K.M. Sharma** (supra) cited and relied upon by the petitioner and the decision of the Hon'ble Supreme Court in the case of **Jyoti Traders** (supra), cited and relied upon by the respondent.

8.6.Mr.Mihir Joshi, learned Senior Advocate appearing on behalf of the petitioner has submitted that without prejudice, even assuming without admitting that the there is a conflict between these two judgments, the judgment of **K.M. Sharma** (supra) will prevail over **Jyoti Traders** (supra) since it has been delivered by larger bench of Hon’ble Supreme Court.

8.7.Mr.Mihir Joshi, learned Senior Advocate appearing on behalf of the petitioner has submitted that the judgment relied on by the respondent No. 2 in the case of **CTO Vs. Biswanath Jhujhunwala & Anr.,** reported in **1996(5)**

SCC 626, for the principles laid down there in would not apply to the present case as the facts in the said judgment are different from the facts of the present case.

(a) In the said judgment, assessments were completed on 17/02/1969 and 26/03/1969. Under rule 80(5) of the Bengal Sales Tax Act, 1941 as it then stood, the assessment can be revised if the assessment has been made or the order has been passed more than four years previously. Accordingly the period of four years expired on 26/03/1973. The said sub rule 80(5) was amended by a notification dated 30/03/1974 w.e.f. 01/11/1971 under which the assessment can be revised if the assessment has been made or the order has been passed more than six years previously. Therefore it was with retrospective effect from 01/11/1971 though notification was dated 30/03/1974. Hence as on 1/11/1971 the period of four years under the unamended rule 80(5) had not expired. In that context at the time when the amended section came into force w.e.f. 1/11/1971, the period of four years i.e. the limitation had not expired and therefore the amended provision in the said judgment would apply to the assessments. In the present case the limitation for the relevant financial year expired on 31/03/2011 and 31/03/2012 and the amended Section 201 of the Income Tax Act came into force w.e.f. 01/10/2014 as on which date it had become time barred under the unamended provision.

(b) Further in the said judgment the Rule 80(5) of the Bengal Sales Tax Rules, 1941 gave powers to revise the

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assessment which has been made or order has been passed more than four years previously. It was amended by a notification issued on 30/03/1974 amending w.e.f. 01/11/1971 giving powers to revise the assessment which has been made or the order has been filed more than six years previously. Therefore the rule itself provided for previous six years. Hence the language is unambiguous and therefore the court observed that it must be assumed that the legislature intended that the amended provision to apply even to assessments that have so become final. (Para 13). In the present case the amended Section 201 has come into force w.e.f. 01/10/2014 not to pass an order at any time after the expiry of the seven years from the end of the financial year in which the payment is made or credit is given. Therefore the language is very clear and expressive which does not cover the assessment proceedings which are time barred on the date when the amended Section 201 came into force as on 01/10/2014. The language of Section 201 is ambiguous if it is interpreted in the manner to apply in respect of the assessment proceeding which are time barred under the unamended Section 201. It is presumed that the legislature does not intend to make any change in the existing law beyond that which is expressly stated in, or follows by necessary implication from, the language of the statute in question. The language used is not to be either stretched in favour of the revenue or narrowed in favour of the assessee. It is essential not to confound what is actually or virtually prohibited or enjoined by the statutory language with what is really beyond the enacting part. The words that

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have been used in the amended section must apply as they stand, however unreasonable or unjust the consequences, and however strongly it may suspect that it was not the real intention of the legislature. Therefore the language of the amended Section 201(3) by the Finance Act, 2014 is clear as it does not expressly provides or mentions to commence proceedings in respect of FY or extend the time limit from retrospective effect which had already expired.

8.8.Mr.Mihir Joshi, learned Senior Advocate appearing on behalf of the petitioner has submitted that even decision of the Hon'ble Supreme Court in the case of **N.Ranga Rao and Sons v. State of Karnataka,** reported in **2007 (9) SCC 691** and in the case of **Thirumalai Chemicals Ltd. Versus Union of India & other,** reported in **2011 (6) SCC 379** relied upon by Mr.Bhatt, learned Senior Advocate appearing on behalf of the Income Tax Department contending that the aspect of limitation is a procedural law and same would not apply to the facts of the case as the said judgement do not deal with the aspects where vested right has accrued in favour of the petitioner as it becomes a substantive right once the proceedings are time barred and attained finality and that to when the amended provision is not given retrospective effect in order to cover the proceedings which are time barred.

Making above submissions and relying upon above decisions, it is requested to allow the Special Civil Application No. 1623 of 2015.

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9.00. Mr.R.K. Patel, learned advocate appearing on behalf of the petitioner in Special Civil Application No. 4771 of 2015 has reiterated what is submitted by Mr.Joshi, learned Senior Advocate appearing on behalf of the petitioner in Special Civil Application No. 1623 of 2015.

10.00. All these petitions are opposed by Mr.M.R. Bhatt, learned counsel appearing on behalf of the revenue - Income Tax Department.

10.01. Mr.M.R. Bhatt, learned counsel appearing on behalf of the revenue has vehemently submitted that as in the present petition the respective petitioners have challenged the notices / summonses issued by the respondent No.2, they cannot / may not be entertained solely on the ground that all these petitions are at the stage of Show Cause Notice. It is submitted that it is well settled proposition of law that ordinarily the petition against the Show Cause notice would not be entertained particularly when the petitioners are having adequate statutory remedy under the Income Tax Act itself. In support of his above submission he has heavily relied upon the decision of this Court in the case of **INOX AIR PRODUCTS LTD Versus Union of India and others,** rendered in **Special Civil Application No. 16725 of 2013**. It is submitted that in the aforesaid decision, relying upon the decision of the Hon'ble Supreme Court reported in the case of **Bellary Steels & Alloys Ltd. Versus CCT**, reported in **(2009) 17 SCC 547** as well as in the case of **Indo Asahi Glass Co. Ltd. Versus ITO**, reported in **(2002) 10 SCC 444**, this court has not entertained the petitions which were filed

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against the Show Cause Notice.

10.02. Mr.M.R. Bhatt, learned counsel appearing on behalf of the revenue has further submitted that the contention on behalf of the petitioners that the impugned notices under section 201(1) are barred by proviso to section 201(3) of the Act, is untenable in law. It is submitted that section 201(3) as amended by Finance Act (No.2) of 2014 specifically provides for consequences of failure to deduct or pay the Income Tax and it further provides that no order shall be made under sub-section (1) deeming a person to be an assessee any default for failure to deduct the whole or any part of the tax from a person resident in India, at any time after the expiry of 7 years from the end of the Financial year in which payment is made or credit is given. It is submitted that, therefore, the Section itself provides for limitation period of 7 years from the end of the financial year in which payment is made or credit is given. It is submitted that in the instant case, period of 7 years has not elapsed from the end of financial year in which payment is made or credit is given. It is submitted that, therefore, the impugned notices / summonses cannot be said to be barred by period of limitation as provided under the Act.

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10.03. Mr.M.R. Bhatt, learned counsel appearing on behalf of the revenue has further submitted that earlier provision had bifurcation as contained in clauses (i) and (ii) of sub- section (3) with regard to statement being filed, payment made or credit given. It is submitted that as compared thereto, the legislature has done away with this distinction and the amendment prescribes a common period of limitation so as to

align the time limit with the provision of Section 148 of the Act.

10.04. Mr.M.R. Bhatt, learned counsel appearing on behalf of the revenue has heavily relied upon the Memorandum to the Finance Bill (No.2) 2014. It is submitted that in the Memorandum it is specifically noted that as TDS defaults are generally in respect of the transaction not reflected in the TDS statement, it is proposed to omit clauses (i) and (ii) of sub-section (3) of Section 201.

10.05. Mr.M.R. Bhatt, learned counsel appearing on behalf of the revenue has vehemently submitted that the legislature can provide for a larger period of limitation.

In support of his above submission, he has heavily relied upon the following decisions of the Hon'ble Supreme Court :-

(1).AIR 1963 S.C. 1436 : 48 ITR 154 (Ahmedabad Manufacturing And Calico Printing Co. Ltd. Versus Income Tax Officer and others);

(2).1999(2) SCC 77 (Additional Commissioner Vs. Jyoti Traders);

(3).2007 (9) SCC 691 (N.Ranga Rao and Sons v. State of Karnataka)

(4).1996 (5) SCC 626 (CTO Versus Bishwanath Jhunjhunwala).

10.06. Mr.M.R. Bhatt, learned counsel appearing on behalf of the revenue has further submitted that in the present case section 201(3) does not provide that the period is available only where limitation has not expired. It is submitted that as such the law that prevailed at the time of issuance of notice is required to be applied. It is submitted that section 201(3) provides for issuance of notice within 7 years. It is submitted that the language of section 201(3) as amended by Finance Act (No.2) 2014 being plain, unambiguous, literal, the same is required to be applied while

giving liberal meaning to to it.

10.07. Mr.M.R. Bhatt, learned counsel appearing on behalf of the revenue has further submitted that in the present case larger period of limitation as provided under section 201(3) as amended by Finance Act (No.2) which provides for 7 years time is not applied, in that case, the purpose and object of amendment in section 201(3) of the Act would be frustrated.

10.08. Mr.M.R. Bhatt, learned counsel appearing on behalf of the revenue has further submitted that as such similar provision is also incorporated in Section l49(1)(c) of the Act providing for a larger period of limitation where foreign assets are involved.

10.09. Now, so far as the reliance placed upon the decision of the Hon'ble Supreme Court in the case of S.S.Gadgil (Supra), by the learned advocate appearing on behalf of the petitioners, is concerned, it is vehemently submitted by Mr.Bhatt, learned counsel appearing on behalf of the revenue that the said decision is distinguishable. It is submitted that in the aforesaid case, the Hon'ble Supreme Court was considering the provisions of Sections 37 of 1922 Act. It is submitted that unamended Section 34(1)(iii) provided for a period of one year in respect of an agent. It is submitted that by the amended clause (iii), a negative covenant was placed putting an embargo on the assessing officer not to issue a notice after an expiry of two years. It is

submitted that it is only by reason of this negative proviso that petition came to be allowed by the Court as can be seen from para 3 of the judgment. It is submitted that In the present case, there is no such negative proviso. It is submitted that in fact in the said decision also in para 5, the Hon'ble Supreme Court has observed that "there was no scope for issuing a notice unless the Legislature expressly gave power to the Income Tax officer to issue notice under the amended section notwithstanding the expiry of the period under the unamended provision or unless there was overlapping of the period within which notice could be issued under the old and the amended provision".

10.10. Mr.M.R. Bhatt, learned counsel appearing on behalf of the revenue has further submitted that the decision of the Hon'ble Supreme Court in the case of **K.M. Sharma** (supra), which has been heavily relied upon by the learned advocate appearing on behalf of the petitioners, shall not be applicable to the facts of the case on hand. It is submitted that in the aforesaid decision in the case of **Ahmedabad Manufacturing & Calico Printing Co. Ltd.** (supra) was not brought to the notice of the Hon'ble Court which is a Constitution Bench decision. It is submitted that, therefore, the decision in the case of **Poolpandi Versus Superintendent, Central Excise**, reported in **1992 (3) SCC 259** and decision in the case of **CTO Versus Bishwanath Jhunjhunwala**, reported in **1996 (5) SCC 626**, which take note of the aforesaid Constitutional Bench decision, are required to be applied.

10.11. Mr.M.R. Bhatt, learned counsel appearing on behalf of the revenue has further submitted that even in the decision in the case of **Thirumalai Chemicals Ltd.** (supra), it is held that the aspect of limitation is a procedural matter.

Making above submissions and heavily relied upon the statement and objects of amendment in Section 201(3) of the Act and relying upon the above decisions, it is requested to dismiss the present petitions.

11.00. Heard the learned counsel appearing on behalf of the respective parties at length.

11.01. At the outset, it is required to be noted that in the present petitions, the petitioners have challenged the impugned notices / summonses issued under section 201 of the Income Tax Act. The learned counsel appearing on behalf of the revenue has raised objection against the maintainability and/or entertainability of the present petitions against the Show Cause Notice. However, it is required to be noted that in the present case, the issue involved is pure question of law, more particularly as to whether, section 201(3) as amended by Finance Act (No.2) 2014 would be applicable retrospectively or not? Under the circumstances, when pure question of law is involved, this Court is of the opinion that present petitions cannot be dismissed solely on the ground that the present petitions are against the Show Cause Notices. At this stage decision of the Hon'ble Supreme Court in the case of **Harbanslal Sahnia and another Versus Indian Oil Corpn.**

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and others, reported in **(2003) 2 SCC 107** (para 7) as well as another decision of the Hon'ble Supreme Court in the case of **Filterco and another Versus Commissioner of Sales Tax, Madhya Pradsesh and another**, reported in **(1986) 24 ELT 180 SC**, are required to be referred to and considered. Considering the law laid down by the Hon’ble Supreme Court in the aforesaid decisions and as observed hereinabove, as the present petitions involve pure question of law, the objections raised by the revenue against entertainability and/or maintainability of the present petitions against the show cause notices are hereby overrules and the present petitions are considered on merits.

11.02. Short question posed for consideration of these petitions is as to, whether section 201(3) of the Income Tax Act as amended on 1/10/2014 by Finance Act of 2014 would be applicable retrospectively or prospectively and whether the said provision would be applicable with respect to the proceedings under the Income Tax Act for A.Y. 2008-09 and 2009-2010?, the proceedings which had already become time barred in view of the provisions of section 201(3) of the Act prior to amendment in section 201(3) of the Act by Finance Act 2014?

12.00. While considering the aforesaid question, provisions of section 201 of the Income Tax Act, as amended from time to time, are required to be considered.

12.01. Section 201 of the Act provides for consequences of

failure to deduct tax in accordance with the provisions of the Act. Section 201 of the Act as amended by Finance Act of 2008 with retrospective effect from 1/6/2002 reads as under :

"Consequences of failure to deduct or pay.

201. (1) Where any person, including the principal officer of a company,-

(a) who is required to deduct any sum in accordance with the provisions of this Act; or

(b) referred to in sub-section (IA) of section 192, being an employer, does not deduct, or does not pay, or after so deducting fails to pay, the whole or any part of the tax, as required by or under this Act, then, such person, shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of such tax:

Provided that no penalty shall be charged under Section 221 from such person, unless the Assessing Officer is satisfied that such person, without good and sufficient reasons, has failed to deduct and pay such tax.

(1A) Without prejudice to the provisions of sub-section (1), if any such person, principal officer or company as is referred to in that sub- section does not deduct the whole or any part of the tax] or after deducting fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest at one per cent for every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is actually paid and such interest shall be paid before furnishing the quarterly

statement for each quarter in accordance with the provisions of sub-section (3) of section 20;

(2) Where the tax has not been paid as aforesaid after it is deducted, the amount of the tax together with the amount of simple interest thereon referred to in sub-section (IA) shall be a charged upon all the assets of the person, or the company, as the case may be. referred to in sub-section (1). "

12.02. Subsequently, section 201 of the Act came to be amended. Sub-sections (3) and (4) came to be introduced w.e.f. 1/4/2010. Section 201 as amended by Finance Act No.2 of 2009 w.e.f. 1/4/2010 reads as under :

"201. (1) Where any person, including the principal officer of a company -

(a) who is required to deduct any sum in accordance with the provisions of this Act; or

(b) referred to in sub-section (IA) of section 192, being an employer, does not deduct, or does not pay, or after so deducting fails to pay, the whole or any part of the tax, as required by or under this Act, then, such person, shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of such tax:

Provided that no penalty shall be charged under section 121 from such person, unless the Assessing Officer is satisfied that such person, without good and sufficient reasons, has failed to deduct and pay such tax.

(1A) Without prejudice to the provisions of sub-section (1), if any such person, principal officer or company as is referred to in that sub-section does not deduct the whole or any part of the tax or after deducting fails to pay the tax as required by or under this Act, he or it shall be liable to pay simple interest, -

(i) at one per cent for every month or part of a month on the amount of such tax from the date on which such tax was deductible to the date on which such tax is deducted; and

(ii) at one and one half per cent for every month or part of a month on the amount of such tax from the date on which such tax was deducted to the date on which such tax is actually paid, and such interest shall be paid before furnishing the statement in accordance with the provisions of sub-section (3) of section 200.

(2). Where the tax has not been paid as aforesaid after it is deducted, the amount of the tax together with the amount of simple interest thereon referred to in sub-section (1A) shall be a charge upon all the assets of the person, or the company, as the case may be, referred to in sub-section (1).

(3). No order shall be made under sub-section (1) deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from

a person resident in India, at any time after the expiry of -

(i). two years from the end of the financial year in which the statement is filed in a case where the statement referred to in section 200 has been filed;

(ii). four years from the end of the financial year in which payment is made or credit is given, in any other case :

Provided that such order for a financial year commencing on or before the 1st day of April, 2007 may be passed at any time on or before the 31st day of March, 2011.

(4). The provisions of sub-clause (ii) of sub-section (3) of section 153 and of Explanation 1 to section 153 shall, so far as may, apply to the time limit prescribed in sub-section (3).”

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12.03. Subsequently, section 201(3)(ii) of the Act came to be amended by Finance Act of 2012 with retrospective effect from 1/4/2010 whereby in sub-section (3) in clause (ii) words “four years” came to be substituted by words “six years”. Amended section 201(3) reads as under :

12.04. Subsequently, section 201(3)(ii) of the Act, was amended by Finance Act, 2012, with retrospective effect from 01/04/2010, whereby in sub-section (3), in clause (ii), for the

words ‘four years", the words "six years" shall be substituted. The amended Section 201(3) read as under:

“201(3). No order shall be made under sub-section (1) deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a person resident in India, at any time after the expiry of -

(i) two years from the end of the financial year in which the statement is filed in a case where the statement referred to in section 200 has been filed:

(ii) six years from the end of the financial year in which payment is made or credit is given, in any other case:

Provided that such order for a financial year commencing on or before the 1st day of April, 2007 may be passed at any time on or before the 31st day March, 2011.”

12.05. Subsequently, section 201(3) of the Act has been further amended by Finance Act No.2 of 2014 w.e.f. 1/10/2014, which reads as under :

“Consequences of failure to deduct or pay :

201(3). No order shall be made under sub-section (1) deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a person resident in India, at any time after the expiry of seven years from the end of the financial year in which payment is made or credit is given.”

As stated hereinabove, question posed before this Court is whether section 201(3) of the Income Tax Act as amended by Finance Act No.2 of 2014 would be applicable prospectively or retrospectively.

12.06. From the aforesaid chronological events and section 201 as amended from time to time, it emerges that prior to section 201 came to be amended by Finance Act No.2 of 2009, Income Tax Act did not provide for any limitation of time for passing an order under section 201(1) holding a person to be an assessee in default. It appears that in absence of such a time limit, dispute arose when the proceedings were taken up or completed after substantial time has elapsed. Therefore, by Finance Act No.2 of 2009 sub-sections (3) and (4) came to be introduced w.e.f. 1/4/2010 and it provided that an order under section 201(1) for failure to deduct the whole or any part of the tax as required under the Act, if the deductee is a resident payer, shall be passed within two years from the end of the financial year in which statement of tax deducted at source is filed by the deductor. It further provides that where no such statement is filed, said order can be passed up till 4 years from the end of the financial year in which payment is made or credit is given.

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12.07. At this stage, it is required to be noted that sub-section (3)(i) of section 201 came to be introduced by Finance Act No.2 of 2009 which provided that such order for a financial year commencing on or before the 1st day of April 2007 may be passed at any time on or before 31st day of March, 2011. As per Memorandum of Finance Bill No.2 of 2009, in respect of

F.Y.2007-08 and earlier years only proceedings that were pending could be completed by 31/3/2011 and as such no fresh proceedings could be commenced for the said period.

12.08. The reasons for amendment so stated in the memorandum to the Finance Bill No.2 of 2009 reads as under ;

> **"Providing time limits for passing of orders u/s. 201(1) holding a person to be an assessee in default.**
>
> Currently, the Income Tax Act does not provide for any limitation of time for passing an order u/s. 201(1) holding a person to be an assessee in default. **In the absence of such a time limit, disputes arise when these proceedings are taken up or completed after substantial time has elapsed.**
>
> In order to bring certainty on this issue, it is proposed to provide for express time limits in the Act within which specified order u/s. 201 (1) will be passed.
>
> **It is proposed that an order u/s 201(1) for failure to deduct the whole or any part of the tax as required under this Act, if the deductee is a resident taxpayer shall be passed within two years from the end of the financial year in which the statement of tax deduction at source is filed by the deductor**. Where no such statement is filed, such order can be passed up till four years from the end of the financial year in which the payment is made or credit is given. **To provide sufficient time for pending cases, it is proposed to provide that such proceedings for a financial year beginning from 1st April, 2007 and earlier years can be completed by the 31st March, 2011.**

However, no time-limits have been prescribed for order under sub-section (1) of section 201 where-

(a). the deductor has deducted but not deposited the tax deducted at source, as this would be a case of defalcation of government dues;

(b). the employer has failed to pay the tax wholly or partly, under sub-section (1A) of section 192, as the employee would not have paid tax on such perquisites;

(c). the deductee is a non-resident as it may not be administratively possible to recover the tax from the non-resident.

It is proposed to make these amendments effective from 1st April, 2010. **Accordingly it will apply to such orders passed on or after the 1st April, 20I0.**

From the aforesaid chronological events, it appears that section 201(3)(ii) of the Act came to be further amended by Finance Act of 2012, however, with retrospective effect from 1/4/2010 whereby in sub-section (3) in clause (ii), further words "four years" came to be substituted by words "six years".

Thus, period for passing order in respect of cases where statement referred to in section 200 of the Act were not filed, was extended from four years to six years.

12.09. It is also required to be noted that other provisions of section 201(3) clause (1) and proviso thereof remain same including last date for passing order for F.Y. 2007-08.

12.10. At this stage, it is required to be noted that in the present cases, limitation for passing orders as per the provisions prevailing at the relevant time and even as provided under section 201(3)(i) as amended by Finance Act of 2012 had already expired on 31/3/2011 and 31/3/2012, respectively.

12.11. That thereafter, section 201(3) of the Act has been further amended by Finance Act No.2 of 2014 w.e.f. 1/10/2014, by which, time limit provided under section 201(3)(ii) of the Act for passing order under section 201(1) of the Act came to be extended by one year and it also provides that no orders shall be made under sub-section (1) holding a person to be in default for failure to deduct whole or part of the tax from a person resident in India at any time after expiry of seven years from the end of the financial year in which payment is made or credit is given.

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12.12. By Finance Act No.2 of 2012, even distinction between the cases, statement has been filed and where such statement was not filed also has been removed and the amendment prescribes a common period of limitation i.e. seven years from the end of the financial year in which payment was made.

12.13. The reasons for amendment in section 201(3) so stated in the memorandum to the Finance Bill No.2 of 2014 reads as under :

"Tax Deduction at Source :

Under Chapter X VII-B of the Act. a person is required to deduct tax on certain specified payments at the specified rates if the payment exceeds specified threshold. The person deducting tax ("the detductor") is required to 'file a quarterly statement of tax deduction at source (TDS) containing the prescribed details of deduction of tax made during the quarter by the prescribed due date.

Currently, a deductor is allowed to file correction statement for rectification / updation of the information furnished in the original TDS statement as per the Centralized Processing of Statements of Tax Deducted at Source Scheme, 2013 notified vide Notification No.03/2013 dated 15th January, 2013. However, there does not exist any express provision in the Act for enabling a deductor to file correction statement. In order to bring clarity in the matter relating to filing of correction statement, it is proposed to amend section 200 of the Act to allow the deductor to file correction statements. Consequently. it is also proposed to amend provisions of section 200A of the Act for enabling processing of correction statement filed.

The existing provisions of section 201(1) of the Act provide for passing of an order deeming a payer as assessee in default if he does not deduct or does not pay or after deduction fails to pay the whole or part of the tax as per the provisions of Chapter XVII-B of the Act. Section 201 (3) of the Act provides for time limit for passing of order under section 201(1) of the Act for deeming a payer as assessee in default for failure to deduct tax from payments made to a resident. Clause 201(3) of the Act provides that no order under section

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201(1) of the Act shall be passed after expiry of two years from the end of the financial year in which TDS statement has been filed. Currently. the processing of TDS statement is done in the computerized environment and mainly focuses on the transactions reported in the TDS statement filed by the deductor. Therefore, there there is no rationale for not treating the deductor as assessee in default in respect of the TDS default after two years only on the basis that the deductor has filed TDS statement as TDS defaults are generally in respect of the transaction not reported in the TDS statement. It is, therefore, proposed to omit clause (i) of sub-section (3) of section 201 of the Act which provides time limit of two years for passing order under section 201(1) of the Act for cases in which TDS statement have been/filed.

Currently, clause (ii) of section 201(3) of the Act provides a time limit of six years from the end of the financial year in which payment / credit is made for passing of order under section 201(1) of the Act for cases in which TDS statement has not been filed. However, notice under section 148 of the Act may be issued for reassessment up to 6 years from the end of the assessment year for which the income has escaped assessment. Therefore, section 148 of the Act allows reopening of cases of one more preceding previous year than specified under section 201(3)(ii) of the Act. Due to this, order under section 201(1) of the Act cannot be passed in respect of defaults relating to TDS which comes to the notice during search/reassessment proceeding in respect of previous year which is not covered under section 201(3)(ii) of the Act for passing order under section 201(1) of the Act shall be extended by one more year.

The existing provisions of section 271H of the Act provides for levy of penalty for failure to furnish TDS/TCS statements in certain cases or furnishing of incorrect information in TDS/ TCS statements. The existing provisions of section 271H of the Act do not specify the authority which would be competent to levy the penalty under the said section. Therefore, provisions of section 271H are proposed to be amended to provide that the penalty under section 271H of the Act shall be levied by the Assessing officer."

12.14. At this stage, it is required to be noted that earlier section 201(3) of the Act as amended by Finance Act, 2012 amended on 28/5/2012 was specifically made applicable retrospectively w.e.f. 1/14/2012, whereby limitation period was substituted from four years to six years for passing orders where TDS Statement had not been filed. However, section 201(3) of the Act as amended by Finance Act No.2 of 2014, as mentioned in the memorandum of the Finance Bill No.2 of 2014 is stated to have effect from 1st October, 2014.

Thus, wherever the Parliament / Legislature wanted to make provisions applicable retrospectively, it has been so provided.

12.15. At this stage, it is required to be noted that while making amendment in section 201(3) of the Act by Finance Act No.2 of 2014, does not so specifically provide that the said amendment shall be made applicable retrospectively.

12.16. On the other-hand, it is specifically stated that the said amendment will take effect from 1/10/2014. As observed hereinabove, in the present cases, limitations provided for passing order under section 201(1) of the Act for A.Y. 2007-08 and 2008-09 had already been expired on 31/3/2011 and 31/3/2012, respectively, i.e. prior to section 201(3) came to be amended by Finance Act No.2 of 2014.

13.00. In the backdrop of the above facts, few decisions of the Hon'ble Supreme Court on the point and more particularly, with respect to retrospective applicability of the provisions of the Act are required to be referred to and considered.

13.01. In the case of S.S. Gadgil (supra), the Hon'ble Supreme Court has observed and held that in absence of an express provision or clear implication, legislature does not intend to attribute to the amending provision a greater retrospectivity than is expressly mentioned, nor to authorize the Income Tax Officer to commence proceedings which before the new Act came into force had upon the expiry of the period provided, become barred. In the aforesaid decision, the Hon'ble Supreme Court had an occasion to consider the question, as to, whether in case where the right to assess or reassess has lapsed on account of expiry of the period of limitation prescribed under the earlier statute, the Income Tax Officer can exercise his powers to assess or reassess under the amending statute which gives an expressly period of limitation and to that, the Hon'ble Supreme Court has noted decision of the Calcutta High Court in the case of Calcutta Discount

Company Ltd. reported in 1953 (23) ITR 471 (AIR 1953 Calcutta 721) and consequently has held the notice issued relying on amended section invalid by further observing that section as amended not to be given greater retrospectivity than is expressly mentioned. In the aforesaid decision in the case of S.S. Gadgil (supra) in para 12 and 13, the Hon'ble Supreme Court has observed and held as under :

> **"12. In considering whether the amended statute applies, the question is one of interpretation i.e. to ascertain whether it was the intention of the Legislature to deprive a tax payer of the plea that action for assessment or re-assessment could not be commenced, on the ground that before the amending Act became effective, it was barred. Therefore the view that even when the right to assess or reassess has lapsed on account of the expiry of the period of limitation prescribed under the earlier statute, the Income-tax Officer can exercise his powers to assess or re-assess under the amending statute which gives an extended period of limitation was not accepted in Calcutta Discount Company's case, 1953-23 ITR 471 : (AIR 1953 Cal 721).**
>
> **13. As we have already pointed out the right to commence a proceeding for assessment against the assessee as an agent of a non-resident party under the Income-tax Act before it was amended, ended on March 31, 1956. It is true that under the amending Act by S.18 of the Finance Act, 1956, authority was conferred upon**

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the Income-tax Officer to assess a person as an agent of a foreign party under S. 43 within two years from the end of the year of assessment. But authority of the Income-tax Officer under the Act before it was amended by the Finance Act of 1956 having already come to an end, the amending provision will not assist him to commence a proceeding even though at the date when he issued the notice it is within the period provided by that amending Act. This will be so, notwithstanding the fact that there has been no determinable point of time between the expiry of the time provided under the old Act and the commencement of the amending Act. The legislature has given to S. 18 of the Finance Act 1956, only a limited retrospective operation i.e. up to April 1,1956, only. That provision must be read subject to the rule that in the absence of an express provision or clear implication, the Legislature does not intend to attribute to the amending provision a greater retrospectivity than is expressly mentioned, nor to authorize the Income-tax Officer to commence proceedings which before the new Act came into force had by the expiry of the period provided become barred."

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13.02. A similar view has been taken by the Hon'ble Supreme Court in the case of **J. P. Jani, Income Tax Officer, Circle IV, Ward-G, Ahmedabad and another, versus Induprasad Deveshanker Bhatt,** reported in **AIR 1969 S.C. 778** and while interpreting section 297(2)(d)(ii) of the Income Tax Act, after considering the earlier decision of the Hon'ble Supreme Court in the case of **S. S. Gadgil versus**

Lal and Co., [1964-53 ITR 231 = AIR 1965 SC 171], the Hon'ble Supreme Court in para 5 and 6 has observed and held as under :-

> **“5. On behalf of the appellants Mr. Narasaraju stressed the argument that the High Court was in error in holding that the provisions of the new Act of 1961 were not applicable in cases where the time limit fixed in the old Act had expired before the coming into force of the new Act. It was contended that Section 297 (2) (d) (ii) of the new Act was wide in its sweep and it took in all assessment years after the year ending on 31st March, 1940 irrespective of the question whether the right to reopen the assessment in respect of any such assessment years was barred or not under the old Act at the date when the new Act came into force. According to Mr. Narasaraju the legislative intention was that once the new Act came into force, the question whether the assessment in respect of any assessment year after the year ending on 31st March, 1940 was liable to be reopened or not should be decided with reference to the provisions of the new Act. It was argued that the new Act authorized such assessment to be reopened whatever might be the position in regard to the right to re-open such assessment under the old Act. In our opinion, the argument put forward by Mr. Narasaraju is not warranted. It is admitted in this case that the right of the Income Tax Officer to re-open the assessment for the year 1947-48 was barred under the old Act before the new Act came into force. In our opinion it is not permissible to construe Section 297 (2) (d) (ii) of the Act as reviving the right of the Income Tax Officer to re-open the assessment which was already barred under the old Act. The reason is that such a construction of**

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Section 297 (2) (d) (ii) would be tantamount to giving of retrospective operation to that Section which is not warranted either by the express language of the Section or by necessary implication. The principle is based on the well-known rule of interpretation that unless the terms of the statute expressly so provide or unless there is a necessary implication, retrospective operation should not be given to the statute so as to affect, alter or destroy any right already acquired or to revive any remedy already lost by efflux of time. On behalf of the appellants reference was made to the opening phrase "Where in respect of any assessment year after the year ending on the 31st day of March, 1940" occurring in S. 297 (2) (d) (ii) of the new Act, but these general words cannot take in their sweep all assessment years subsequent to the year ending on 31st March, 1940 without regard to the question whether the right to re-open the assessment in respect of any assessment year was or was not barred under the repealed Act. We consider that the language of the new Section must be read as applicable only to those cases where the right of the Income Tax Officer to reopen the assessment was not barred under the repealed Section. In our view the new statute does not disclose in express terms or by necessary implication that there was a revival of the right of the Income Tax Officer to re-open an assessment which was already barred under the old Act. This view is borne out by the decision of this court in S. S. Gadgil v. Lal and Co., 1964-53 ITR 231= (AIR 1965 SC 171). In that case, a notice was issued against the assessee as an agent of a non-resident on 27th March, 1957 and that notice related to the assessment year 1954-55. Under clause (iii) of the proviso to Section 34 (1) as it stood prior to its amendment by the Finance Act, 1956, a notice of assessment or reassessment could not be issued

against a person deemed to be an agent of a non-resident after the expiry of one year from the end of the year of assessment. The right to commence a proceeding for assessment against the assessee as agent of a non-resident for the assessment year 1954-55 therefore ended on 31st March, 1956 under the new Act before its amendment in 1956. This provision was, however, amended by the Finance Act, 1956 and under the amended provision the period of limitation was extended to two years from the end of the assessment year. The amendment was made on 8th September, 1958 but was given effect from 1st April, 1956. Since the time within which notice could be issued against a person deemed to be an agent of a non-resident was extended to two years from the end of the assessment year, it was contended on behalf of the Income Tax Officer that the notice issued by him was within the terms of the amended provision and was, therefore, a valid notice. Now the notice issued on 27th March, 1957 was clearly within a period of two years from the end of the assessment year 1954-55 and if the amended provision applied, the notice would be a valid notice. It was, however, held by this Court that notice was not a valid notice inasmuch as the right of the Income Tax Officer to re-open the assessment of the assessee under the unamended provision became barred on 31st March 1956 and the amended provision did not operate against him so as to authorize the Income Tax Officer to commence proceedings for re-opening the assessment of the assessee in a case where before the amended provision came into force, the proceedings had become barred under the unamended provision. At page 240 of the Report (ITR) = (at p. 177 of AIR), Shah, J. speaking or the Court observed as follows:-

"As we have already pointed out, the right to

commence a proceeding for assessment against the assessee as an agent of a non-resident party under the Income Tax Act before it was amended, ended on March 31, 1956. It is true that under the amending Act by Section 18 of the Finance Act, 1956, authority was conferred upon the Income Tax Officer to assess a person as an agent of a foreign party under Section 43 within two years from the end of the year of assessment. But authority of the Income Tax Officer under the Act before it was amended by the Finance Act of 1956, having already come to an end the amending provision will not assist him to commence a proceeding even though at the date when he issued the notice it is within the period provided by that amending Act. This will be so, notwithstanding the fact that there has been no determinable point of time between the expiry of the time provided under the old Act and the commencement of the amending Act. The legislature has given to Section 18 of the Finance Act 1956, only a limited retrospective operation, i. e. up to April 1, 1956 only. That provision must be read subject to the rule that in the absence of an express provision or clear implication, the legislature does not intend to attribute to the amending provision a greater retrospectivity than is expressly mentioned, nor to authorize the Income Tax Officer to commence proceedings which before the new Act came into force had by the expiry of the period provided become barred".

6. In our opinion, the principle of this decision applies in the present case and it must be held that on a proper construction of Section 297 (2) (d) (ii) of the new Act, the Income Tax Officer cannot issue a notice under Section 148 in order to re-open the assessment of an assessee in a case where the right to re-open the assessment was barred under the old Act at the date

when the new Act came into force. It follows therefore that the notices dated 13-11-1963 and 9-1-1964 issued by the Income Tax Officer, Ahmedabad were illegal and ultra vires and were rightly quashed by the Gujarat High Court by the grant of a writ."

13.03. In the case of **New India Insurance Comnpany Ltd. versus Smt. Shanti Misra, Adult** reported in **(1975) 2 SCC 840**, in para 7 the Hon'ble Supreme Court has observed and held as under :

"7. In our opinion taking recourse to the proviso appended to sub-section (3) of Section 110A for excusing the delay made in the filing of the application between the date of the accident and the date of the constitution of the Tribunal is not correct. Section 5 of the Limitation Act, 1963 or the proviso to sub-section (3) of Section l10A of the Act are meant to condone the default of the party on the ground of sufficient cause, But if a party is not able to file an application for no fault of his but because the Tribunal was not in existence, it will not be a case where it can be said that the "applicant was prevented by sufficient cause from making the application in time" within the meaning of the proviso. The time taken between the date of the accident and the constitution of the Tribunal cannot be condoned under the proviso. Then, will the application be barred under sub-section (3) of Section 110A? Our answer is in the negative and for two reasons:

(1) Time for the purpose of filing the application under Section 110A did not start running before the constitution of the Tribunal. Time had started running for the filing of the suit but before it had

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expired the forum was changed. And for the purpose of the changed forum, time could not be deemed to have started running before a remedy of going to the new forum is made available.

(2) Even though by and large the law of limitation has been held to be a procedural law, there are exceptions to this principle. Generally the law of limitation which is in vogue on the date of the commencement of the action governs it. But there are certain exceptions to this principle. The new law of limitation providing a longer period cannot revive a dead remedy. Nor can it suddenly extinguish vested right of action by providing for a shorter period of limitation."

13.04. In the case of **Thirumalai Chemicals Limited versus Union of India and Others** reported in **(2011) 6 SCC 739**, while discussing the law of limitation, the Hon'ble Supreme Court in paragraph Nos.29 to 33 has observed and held as under :

"Law of Limitation

29. Law of limitation is generally regarded as procedural and its object is not to create any right but to prescribe periods within which legal proceedings be instituted for enforcement of rights which exist under substantive law. On expiry of the period of limitation, the right to sue comes to an end and if a particular right of action had become time barred under the earlier statute of limitation the right is not revived by the provision of the latest statute. Statutes of limitation are thus retrospective insofar as they apply

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to all legal proceedings brought after their operation for enforcing cause of action accrued earlier, but they are prospective in the sense that neither have the effect of reviving the right of action which is already barred on the date of their coming into operation, nor do they have effect of extinguishing a right of action subsisting on that date. Bennion on Statutory Interpretation 5th Edn.(2008) Page 321 while dealing with retrospective operation of procedural provisions has stated that provisions laying down limitation periods fall into a special category and opined that although prima facie procedural, they are capable of effectively depriving persons of accrued rights and therefore they need be approached with caution.

30.**Learned author in order to establish the above proposition referred to the decision of the Court of Appeal in The Ydun case [THE YDUN (1899) Probate Division at page 236 (The Court of Appeal) where the Court held that the amending legislation dealt with procedure only and therefore applied to all actions whether commenced before or after the passing of the Act and even in respect of previously accrued rights. The principle laid down in "The Ydun" was applied in The King v. Chandra Dharma (1905) 2 KB 335 and it was held that if a statute shortening the time within which proceedings can be taken is retrospective then it is impossible to give good reason, why a statute extending the time within which proceedings be taken, should not be held to be retrospective.**

31.**The Judicial Committee of Privy Council in Yew Bon Tew v. Kenderaan Bas Mara (1982) 3 All E.R. 833, opined that whether statute has retrospective effect, cannot in all cases safely be applied by classifying statute as**

procedural or substantive and pointed out in certain situation the Court would rule against a retrospective operation.

32. Limitation provisions therefore can be procedural in the context of one set of facts but substantive in the context of different set of facts because rights can accrue to both the parties. In such a situation, test is to see whether the statute, if applied retrospectively to a particular type of case, would impair existing rights and obligations. An accrued right to plead a time bar, which is acquired after the lapse of the statutory period, is nevertheless a right, even though it arises under an Act which is procedural and a right which is not to be taken away pleading retrospective operation unless a contrary intention is discernible from the statute. Therefore, unless the language clearly manifests in express terms or by necessary implication, a contrary intention a statute divesting vested rights is to be construed as prospective.

33. A statute, merely procedural is to be construed as retrospective and a statute while procedural in nature affects vested rights adversely is to be construed as prospective. The manner of filing an appeal, under sub-section (2) of Section 19 of FEMA and the time within which such an appeal has to be preferred and the power conferred on the Tribunal to condone delay under the proviso to sub-section (2) of Section 19 are matters of procedure and act retrospectively, so as to cover causes of action which arose under FERA. "

13.05. At this stage, decision of the Judicial Committee of the Privy Council in the case of **Yew Bon Tew also known as**

Yong Boon Tiew Versus Kenderran Bas Mara, reported in **1983 (1) A.C. 553** is required to be referred to and considered. In the aforesaid decision, Privy Council has observed and held as under :

> **"A statute of limitations may be described either as procedural or as substantive. For example, in English law, at the expiration of the period prescribed for any person to bring an action to recover land, the title of that person to the land is extinguished. Such a limitation therefore goes to the cause of action itself. In most cases however the English Limitation Act only takes away the remedies by action or by set-off; it goes only to the conduct of the suit; it leaves the claimant's right otherwise untouched in theory so that, in the case of a debt, if the statute-barred creditor has any means of enforcing his claim other than by action or set-off, the Act does not prevent his recovering by those means. In this sense, the 1948 Ordinance and the 1974 Act are procedural. Cf. Harris Vs. Quine (1869) L.R. 4 Q.B. 653 and Rodriguez Vs. Parker [1967] 1 Q.B. 116.**
>
> **Apart from the provisions of the Interpretation Statutes, there is at common law a prima facie. Rule of construction that a statute should not be interpreted retrospectively so as to impair an existing right or obligation unless that result is unavoidable on the language used. A statute is retrospective if it takes away or impairs a vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability, in regard to events already past. There is however said to be an exception in the case of a statute which is purely procedural, because no person has a vested right in any particular**

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course of procedure, but only a right to prosecute or defend a suit according to the rules for the conduct of an action for the time being prescribed.

But these expressions “retrospective” and “procedural”‘, though useful in a particular context, are equivocal and therefore can be misleading. A statute which is retrospective in relation to one aspect of a case (e.g. because it applies to a pre-statute cause of action) may at the same time be prospective in relation to another aspect of the same case (e.g. because it applies only to the post-statute commencement of proceedings to enforce that cause of action); and an Act which is procedural in one sense may in particular circumstances do far more than regulate the course of proceedings, because it may, on one interpretation revive or destroy the cause of action itself.

Whether a statute is to be construed in a retrospective sense, and if so to what extent, depends, on the intention of the legislature as expressed in the wording of the statute, having regard to the normal canons of construction and to the relevant provisions of any interpretation statute.

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From authorities cited, it is my considered judgment that whether the prospective or retrospective Rule of construction should apply depends on the nature of the new statute or amending statute. If it is purely a procedural statute and does not deal with substantive rights then the retrospective Rule of construction should apply. But where the statute deals with substantive rights, or deals with both procedural and

substantive rights, then the prospective Rule of construction is applicable... From the authority laid down in 'The Ydun' I am of the View that the amending Act deals only in procedure. In the absence of any express provision to the contrary, the amending Act should, therefore, apply retrospectively.

The learned judge added that, if the Plaintiffs had begun their action before the 1974 Act came into force, the Defendants would have escaped liability, thus taking the view that the Act, though retrospective in relation to a cause of action, was prospective in relation to an action to enforce that cause of action. Their Lordships mention the learned judge's comment only to illustrate the different senses in which a statute can be said to be retrospective or prospective.

The Defendants appealed. The Federal Court adopted a more flexible approach to the "procedural" test: -

> **"The pertinent question for determination is the nature of [the 1974 Act] - does it affect rights or procedure? An Act which makes alteration in procedure only is retrospective : see "The Ydun". In our view there are no cases upon which differences of opinion may more readily be entertained, or which are more embarrassing to dispose of, than the cases where the court has to decide whether or not an amending statute affects procedure and consequently will operate retrospectively or affects substantive rights and therefore in the absence of a clear contrary intention, should not be read as**

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acting retrospectively. The distinction between procedural matters and substantive rights must often be of great fineness. Each case therefore must be looked at subjectively; there will inevitably be some matters that are classified as being concerned with substantive rights which at first sight must be considered procedural and vice versa."

The Federal Court developed this line of reasoning by referring to part of the judgment of Williams J. in Maxwell Vs. Murphy. The passage in the judgment of Williams J. (at page 277) which the Federal Court found of great assistance, as also have their Lordships, reads as follows : -

"Statutes of limitation are often classed as procedural statutes. But it would be unwise to attribute a prima facie retrospective effect to all statutes of limitation. Two classes of case can be considered. existing statute of limitation may be altered by enlarging or abridging the time within which proceedings may be instituted. If the time is enlarged whilst a person is still within time under the existing law to institute a cause of action the statute might well be classed as procedural. Similarly if the time is abridged whilst such person is still left with time within which to institute a cause of action, the abridgment might again be classed as procedural. But if the time is enlarged when a person is out of time to institute a cause of action so as

to enable the action to be brought within the new time or is abridged so as to deprive him of time within which to institute it whilst he still has time to so, very different considerations could arise.

A cause of action which can be enforced is a very different thing to a cause of action the remedy for which is barred by lapse of time. Statutes which enable a person to enforce a cause of action which was then barred or provide a bar to an existing cause of action by abridging the time for its institution could hardly be described as merely procedural. They would affect substantive rights".

Whether a statute has a retrospective effect cannot in all cases safely be decided by classifying the statute as procedural or substantive. For example, in "The Ydun" case the barque might have grounded on 13 May instead of 13 September 1893 and the Act might have come into force on 5 December 1893 when it received the Royal Assent, instead of 27 days later. Had those been the facts the Act would, if its procedural character were the true criterion of its effect, have deprived the owners of their ability to pursue their cause of action on the day the Act reached the Statute Book. A Limitation Act which had such a decisive effect on an existing cause of action would not be "merely procedural" in any ordinary sense of that expression. Their Lordships assume (without expressing an opinion) that "The Ydun" case was, on its facts, correctly decided.

> **Their Lordships consider that the proper approach to the construction of the 1974 Act is not to decide what label to apply to it, procedural or otherwise but to see whether the statute, if applied retrospectively to a particular type of case, would impair existing rights and obligations. The Appellants assert that a Limitation Act does not impair existing rights because the cause of action remains, on the basis that all that is affected is the remedy. There is logic in the distinction on the particular facts of "The Ydun" case, because the right to sue remained, for a while, totally unimpaired. But in most cases the loss, as distinct from curtailment, of the right to sue is equivalent to the loss of the cause of action. The Public Authorities Protection Act can be regarded as procedural on the facts of "The Ydun" case, but a slight alteration to those facts would have made it substantive. A limitation act may therefore be procedural in the context of one set of facts, but substantive in the context of a different set of facts."**

In the aforesaid decision, ultimately it is ruled that an accrued right to plead a time barred which is acquired after the lapse of the statutory period is in every sense a right even though it arises under an Act which is procedural. It is further observed and ruled that it is right which is not to be taken away by conferring on the statute a retrospective operation unless such a construction is unavoidable.

13.06. In the case of **K.M. Sharma versus Income Tax Officer, Ward 13(7), New Delhi** reported in **2002 (4) SCC 339**, the Hon'ble Supreme Court in paragraph Nos.14 and 21 has observed and held as under :

"14. Fiscal statute more particularly on a provision such as the present one regulating period of limitation must receive strict construction. Law of limitation is intended to give certainty and finality to legal proceedings and to avoid exposure to risk of litigation to litigant for indefinite period on future unforeseen events. Proceedings, which have attained finality under existing law due to bar of limitation cannot be held to be open for revival unless the amended provision is clearly given retrospective operation so as to allow upsetting of proceedings, which had already been concluded and attained finality. The amendment to sub-section (1) of Section 150 is not expressed to be retrospective and, therefore, has to be held as only prospective. The amendment made to sub-section (1) of Section 150 which intends to lift embargo of period of limitation under Section 149 to enable Authorities to reopen assessments not only on the basis of Orders passed in proceedings under the IT Act but also on Order of a Court in any proceedings under any law has to be applied prospectively on or after 1-4-1989 when the said amendment was introduced to sub-section (1). The provision in sub-section (1) therefore can have only prospective operation to assessments, which have not become final due to expiry of period of limitation prescribed for assessment under Section 149 of the Act.

21. On a proper construction of the provisions of Section 150(1) and the effect of its operation from 1-4-1989, we are clearly of the opinion that the provisions cannot be given retrospective effect prior to 1-4-1989 for assessments which have already become final due to bar of limitation prior to 1-4-1989. Taxing

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provision imposing a liability is governed by normal presumption that it is not retrospective and settled principle of law is that the law to be applied is that which is in force in the assessment year unless otherwise provided expressly or by necessary implication. Even a procedural provision cannot in the absence of clear contrary intendment expressed therein be given greater retrospectivity than is expressly mentioned so as to enable the Authorities to affect finality of tax assessments or to open up liabilities, which have become barred by lapse of time. Our conclusion, therefore, is that sub-section (1) of Section 150, as amended with effect from 1-4-1989, does not enable the Authorities to reopen assessments, which have become final due to bar of limitation prior to 1-4-1989 and this position is applicable equally to reassessments proposed on the basis of Orders passed under the Act or under any other law."

13.07. In the case of **Manan Corporation Vs. Assistant commissioner of Income-tax**, reported in 356 ITR 44, the Division Bench of this court in para 28 and 30 has observed and held as under :-

"28. ... In the case of *Commissioner of Income-Tax vs. Gold Coin Health Food P. Ltd.* reported in 304 ITR 308, the Hon'ble Supreme Court of India has held as under :

In Zile Singh v. State of Haryana [2004] 8 SCC 1, it was observed as follows :

"13. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. But the rule in

general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the Legislature to affect existing rights, it is deemed to be prospective only - 'nova constitutio futuris forman imponere debet non praeteritis' – a new law ought to regulate what is to follow, not the past. (See Principles of Statutory Interpretation by Justice G. P. Singh, 9th Edn., 2004 at page 438.) It is not necessary that an express provision be made to make a statute retrospective and the presumption against a case where the new law is made to cure an acknowledged evil for the benefit of the community as a whole. (ibid., page 440).

14. The presumption against retrospective operation is not applicable to declaratory statutes... In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is 'to explain' an earlier Act, it would be without object unless construed retrospectively. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well-settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended... An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect (ibid., pages 468-69).

15. Though retrospectivity is not to be presumed

and rather there is presumption against retrospectivity, according to Craies (Statute Law, 7th Edn.), it is open for the Legislature to enact laws having retrospective operation. This can be achieved by express enactment or by necessary implication from the language employed. If it is a necessary implication from the language employed that the Legislature intended a particular section to have a retrospective operation, the courts will give it such an operation. In the absence of a retrospective operation having been expressly given, the courts may be called upon to construe the provisions and answer the question whether the Legislature had sufficiently expressed that intention giving the statute retrospectively. Four factors are suggested as relevant : (i) general scope and purview of the statute; (ii) the remedy sought to be applied; (iii) the former state of the law; and (iv) what it was the Legislature contemplated (page 388). The rule against retrospectivity does not extend to protect from the effect of a repeal, a privilege which did not amount to accrued right (page 392).”

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“30. In the case of *National Agricultural Co-operative Marketing Federation of India Ltd. and another, vs. Union of India and others* reported in AIR 2003 SC 1329, the Hon'ble Supreme Court has held in paragraphs 15, 16 and 17 as under :

“15. The legislative power either to introduce enactments for the first time or to amend the enacted law with retrospective effect, is not only subject to the

question of competence but is also subject to the question of competence but is also subject to several judicially recognized limitations with some of which we are at present concerned. The first is the requirement that the words used must expressly provide or clearly imply retrospective operation. The second is that the retrospectivity must be reasonable and not excessive or harsh, otherwise it runs the risk of being struck down as unconstitutional. The third is apposite where the legislation is introduced to overcome a judicial decision. Here the power cannot be used to subvert the decision without removing the statutory basis of the decision."

16. There is no fixed formula for the expression of legislative intent to give retrospectivity to an enactment."Sometimes this is done by providing for jurisdiction where jurisdiction had not been properly invested before. Sometimes this is done by reenacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the reenacted law. Sometimes the Legislature gives its own meaning and interpretation of the law under which tax was collected and by legislative fiat makes the new meaning binding upon Courts. The Legislature may follow anyone method or all of them.

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17. A validating clause coupled with a substantive statutory change is therefore only one of the methods to leave actions unsustainable under the unamended statute, undisturbed. Consequently, the absence of a validating clause would not by itself affect the retrospective operation of the statutory provision, if such retrospectivity is otherwise apparent."

13.08. Identical question came to be considered by the Hon'ble Supreme Court in the case of **K.M. Sharma** (supra) and while considering the question whether the provisions of section 150(1) as amended from 1/4/1989 can be given retrospective effect prior to 1/4/1989 for assessments which have already become final due to bar of limitation prior to 1/4/1989, while holding that the said provision cannot be given retrospective effect prior to 1/4/1989 for assessments which have already become final due to bar of limitation prior to 1/4/1989, in paragraph Nos.14 and 21 the Hon'ble Supreme Court has observed and held as under :-

> **"14. Fiscal statute more particularly on a provision such as the present one regulating period of limitation must receive strict construction. Law of limitation is intended to give certainty and finality to legal proceedings and to avoid exposure to risk of litigation to litigant for indefinite period on future unforeseen events. Proceedings, which have attained finality under existing law due to bar of limitation cannot be held to be open for revival unless the amended provision is clearly given retrospective operation so as to allow upsetting of proceedings, which had already been concluded and attained finality. The amendment to sub-section (1) of Section 150 is not expressed to be retrospective and, therefore, has to be held as only prospective. The amendment made to sub-section (1) of Section 150 which intends to lift embargo of period of limitation under Section 149 to enable Authorities to reopen assessments not only on the basis of Orders passed in proceedings under the IT Act but also on Order of a Court in any proceedings under any law has to be applied prospectively on or after 1-4-1989 when the said amendment was introduced to sub-section (1). The provision in sub-section (1) therefore can have only prospective operation to assessments, which have not become final due to expiry of period of limitation prescribed for assessment under Section 149 of the Act.**
>
> **21. On a proper construction of the provisions of Section 150(1) and the effect of its operation from 1-4-1989, we are clearly of the opinion that the provisions cannot be given retrospective effect prior to**

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> **1-4-1989 for assessments which have already become final due to bar of limitation prior to 1-4-1989. Taxing provision imposing a liability is governed by normal presumption that it is not retrospective and settled principle of law is that the law to be applied is that which is in force in the assessment year unless otherwise provided expressly or by necessary implication. Even a procedural provision cannot in the absence of clear contrary intendment expressed therein be given greater retrospectivity than is expressly mentioned so as to enable the Authorities to affect finality of tax assessments or to open up liabilities, which have become barred by lapse of time. Our conclusion, therefore, is that sub-section (1) of Section 150, as amended with effect from 1-4-1989, does not enable the Authorities to reopen assessments, which have become final due to bar of limitation prior to 1-4-1989 and this position is applicable equally to reassessments proposed on the basis of Orders passed under the Act or under any other law."**

14.00. Now, so far as reliance placed upon the decisions of the Hon'ble Supreme Court in the case of Ahmedabad Manufacturing & Calico Printing Co. Ltd. (supra) as well as another decision of the Hon'ble Supreme Court in the case of Jyoti Traders (supra), by the learned counsel appearing on behalf of the revenue is concerned, on facts and considering the provisions which came to be considered by the Hon'ble Supreme Court in the aforesaid decisions, none of the aforesaid decisions shall be applicable to the facts of the case on hand.

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In the case of Jyoti Traders (supra), the Hon'ble Supreme Court was considering the proviso to section 21 which specifically provided that assessment and reassessment may be made after expiration of the period aforesaid but not after the expiration of 8 years and from the end of such year. In the aforesaid proviso it expressly enabled assessment where

period expires and it operates upon expiry of limitation period. Therefore, the said decision shall not be applicable considering the wordings used in section 201 as amended by Finance Act, 2014, more particularly when it has been expressly provided and/or made prospective w.e.f. 1/4/2010.

14.01. Now, so far as the reliance placed upon the decision of the Hon'ble Supreme Court in the case of Biswanath Jhujhunwala & Anr. (supra) by the learned counsel appearing on behalf of the revenue is concerned, considering the language used in the notification which felt for consideration by the Hon'ble Supreme Court and observations made by the Hon'ble Supreme Court in para 12 and 13 and considering the provisions of section 201 as amended by Finance Act, 2014 and the Statement and Object while amending section 201, as referred to hereinabove, the said decision shall not be applicable to the facts of the case on hand.

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15.00. Considering the law laid down by the Hon'ble Supreme Court in the aforesaid decisions, to the facts of the case on hand and more particularly considering the fact that while amending section 201 by Finance Act, 2014, it has been specifically mentioned that the same shall be applicable w.e.f. 1/10/2014 and even considering the fact that proceedings for F.Y. 2007-08 and 2008-09 had become time barred and/or for the aforesaid financial years, limitation under section 201(3)(i) of the Act had already expired on 31/3/2011 and 31/3/2012, respectively, much prior to the amendment in section 201 as amended by Finance Act, 2014 and therefore, as such a right has been accrued in favour of the assessee and considering

the fact that wherever legislature wanted to give retrospective effect so specifically provided while amending section 201(3) (ii) of the Act as was amended by Finance Act, 2012 with retrospective effect from 1/4/2010, it is to be held that section 201(3), as amended by Finance Act No.2 of 2014 shall not be applicable retrospectively and therefore, no order under section 201(i) of the Act can be passed for which limitation had already expired prior to amended section 201(3) as amended by Finance Act No.2 of 2014. Under the circumstances, the impugned notices / summonses cannot be sustained and the same deserve to be quashed and set aside and writ of prohibition, as prayed for, deserves to be granted.

16.00. In view of the above and for the reasons stated above, all these petitions succeed. The impugned notices / summonses are held to be invalid and the same are hereby quashed and set aside and the respondents herein are hereby restrained by writ of prohibition from proceedings with the impugned notices / summonses which are, as such, hereby quashed and set aside. Rule is made absolute accordingly in each of the petitions. In the facts and circumstances of the case, there shall be no order as to costs.

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Sd/-
(M.R.SHAH, J.)
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(S.H.VORA, J.)

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