Pradnya

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 825 OF 2006

1. **All India Central Bank Officers Federation**, a trade union, having it's office at Kasturi Building, J. N. Tata Road, Churchgate, Bombay 400020]

2. **Shri Ramesh Chandra Agarwal**, General Secretary of the Petitioner No 1 residing at E-301, Central Apartments, Dayaldas Road, Vile Parle (East), Bombay 400057] …Petitioners

VERSUS

1. **Union of India**, through the Commissioner of Income Tax (Judicial) Ayakar Bhavan, Annexe Building third floor, New Marine Lines, Bombay 400020]

2. **The Central Board of Direct Taxes**, having it's Office at North Block, New Delhi, 110001]

3. **The Chief Commissioner of Income Tax**, Ayakar Bhavan, New Marine Lines, Bombay 400020]

4. **Central Bank of India**, constituted under the Banking Companies (Acquisition and]

transfer of undertakings) Act, 1970, and having its Central Office at Chander Mukhi, Nariman Point, Bombay 400021] …Respondents

WITH
NOTICE OF MOTION NO. 476 OF 2010
IN
WRIT PETITION NO. 825 OF 2006

All India Central Bank Officers' Federation and anr. …Applicants

VERSUS

Union of India and ors. …Respondents

WITH
NOTICE OF MOTION NO. 55 OF 2010
IN
WRIT PETITION NO. 825 OF 2006

All India Central Bank Officers Federation and anr. …Applicants

VERSUS

Union of India and ors. …Respondents

WITH
WRIT PETITION NO. 438 OF 2008

1. **The Canara Bank Officers' Association**, a Trade Union registered under the Trade Unions Act, having its registered office at 402-406, Himalaya House, 79, Mata Ramabai Ambedkar Marg, Fort, Mumbai 400 001]

2. **Shri Hanamant K. Kulkarni**, Vice President,]

Having his address at 21,]
Gurudarshan Manpada Road,]
Dombivli (East) 421201]

3. **Sri Avinash M Pandhare**,]
Having his address at 504-D,]
Mukund Canara Bank Officers']
Quarters Mahakali Caves Road,]
Andheri (East), Mumbai-400093]

4. **Ramachandra Anant Shahpurkar**,]
Having his address at 404-D,]
Mukund Canara Bank Officers']
Quarters Mahakali Caves Road,]
Andheri (East), Mumbai-400093] …Petitioners

VERSUS

1. **Union of India**,]
through the Commissioner of]
Income Tax (Judicial) having his]
address at Ayakar Bhavan,]
Annexe Building, third floor,]
New Marine Lines,]
Bombay 400020]

2. **The Central Board of Direct Taxes**,]
having it's office at North Block,]
New Delhi, 110001]

3. **The Chief Commissioner of**]
Income Tax, Ayakar Bhavan,]
New Marine Lines,]
Bombay 400020]

4. **Canara Bank**,]
Constituted under the Banking]
Companies (Acquisition and]
Transfer of Undertakings) Act,]
1970, and having its Head Office]
at 112, Jayachamrajendra Road,]
Bangalore 560 002]

5. **The Indian Banks Association**,]
An Association of Bank]
Managements, Having it's office at]
World Trade Centre, 6th Floor,]
Centre 1 Building, World Trade]
Centre Complex, Cuffe Parade,]
Mumbai – 400005] …Respondents

WITH

WRIT PETITION NO. 506 OF 1996

1. **Federation of Bank of India Officers Association**,]
having its registered office at]
Bank of India Building, 70-80,]
M.G. Road, Fort,]
Mumbai 400 023.]

2. **Manilal L. Gala**,]
being the President of]
Petitioner No.1, having office at]
Bank of India Building, 70-80,]
M.G. Road, Fort,]
Mumbai 400 023.] …Petitioners

VERSUS

1. **Union of India**,]
through the Office of the]
Central Government Advocate]
at Aaykar Bhavan,]
Annexe Building, 3rd floor,]
New Marine Lines,]
Bombay – 400 020]

2. **The Central Board of Direct Taxes**,]
having its office on North Block,]
New Delhi 110 001]

3. **The Chief Commissioner of Income Tax**, Aayakar Bhavan,]

New Marine Lines,]
Bombay – 400 020]

4. **Bank of India**,]
having its Head Office at Express]
Towers, Nariman Point,]
Mumbai 400 021] …Respondents

WITH

WRIT PETITION NO. 1350 OF 2008

Syndicate Bank Officers' Association,]
Lawrence & Mayo House, 4th floor,]
276, D. N. Road, Fort, Mumbai 400001]
through its General Secretary,]
Shri K. S. Shetty] …Petitioner

VERSUS

1. **Union of India**,]
through the Commissioner of]
Income-Tax (Judicial),]
Aayakar Bhavan, Annexe Building,]
3rd floor, New Marine Lines,]
Mumbai 400 020]

2. **The Central Board of Direct Taxes**,]
North Block, New Delhi 110 001]

3. **The Chief Commissioner of**]
Income-Tax, Aayakar Bhavan,]
New Marine Lines,]
Mumbai 400 020]

4. **Syndicate Bank**,]
a Nationalised Bank duly]
constituted under the Banking]
Companies (Acquisition and]
Transfer of Undertakings) Act,]
1970, and having its Central]
Accounts Department – Tax Cell]
at Head Office, Manipal]
(Karnataka)] …Respondents

WITH
WRIT PETITION NO. 1347 OF 2008

1. **The State Bank of India Officers Federation**, a Trade Union registered under the Trade Unions Act, having its registered office at 10th floor, State Bank Bhavan, Madame Cama Road, Mumbai 400 021]

2. **Shri V. D. Deshpande**, Joint General Secretary, All India State Bank Officers' Federation, 10th floor, State Bank Bhavan, Madame Cama Road, Nariman Point, Mumbai 400 021] …Petitioners

VERSUS

1. **Union of India**, (through the Commissioner of Income-Tax-Judicial), Aayakar Bhavan, Annexe Building, 3rd floor, New Marine Lines, Mumbai 400 020]

2. **The Central Board of Direct Taxes**, North Block, New Delhi - 110 001]

3. **The State Bank of India**, State Bank Bhavan, 10th floor, Mumbai – 400 021] …Respondents

WITH
NOTICE OF MOTION NO. 481 OF 2010
IN
WRIT PETITION NO. 1347 OF 2008

The State Bank of India Officers Federation and anr. …Applicants

VERSUS

Union of India and ors. …Respondents

WITH
WRIT PETITION NO. 928 OF 1994

1. **All India Central Bank Officers' Federation**,]
a Trade Union, having its Office]
at Kasturi Building,]
J. N. Tata Road, Churchgate,]
Bombay 400020]

2. **Shri Ramesh Chandra Agarwal**,]
General Secretary of the]
Petitioner No.1, residing at]
E-301, Central Apartments,]
Dayaldas Road, Vile Parle (E),]
Bombay 400057.] …Petitioners

VERSUS

1. **Union of India**,]
through the Office of the Central]
Government Advocate,]
at Aaykar Bhavan,]
Annexe Building, 3rd floor,]
New Marine Lines,]
Bombay – 400020]

2. **The Central Board of Direct Taxes**,]
having its Office on North Block,]
New Delhi - 110001]

3. **The Chief Commissioner of Income Tax**, Ayakar Bhavan,]
New Marine Lines,]
Bombay - 400020]

4. **Central Bank of India**,]
Constituted under the Banking]
Companies (Acquisition and]
Transfer of Undertakings) Act,]
1970, and having its Central Office]
at Chander Mukhi, Nariman point,]
Bombay 400 021] …Respondents

APPEARANCES-

Mr K. P. Anil Kumar, a/w Ms Jayshree Kumar, Ms Priyanka Kumar, Mr Chinmay Apte, for the Petitioner in WP/506/1996, WP/1350/2008 and WP/1347/2008.

Mr Shreyas Thakur, i/b. M. S. Bodhanwalla & Co., for Respondent No.4 in WP/506/1996.

Ms Ashna Shah, i/b. Mr Sean Wassoodew, for the Petitioners in WP/825/2006 and WP/438/2008.

Mr Sagar Amrut Rane, i/b. Raju Z. Moray, for the Petitioner in WP/928/1994.

Mr Suresh Kumar, for Respondent No.3 in WP/825/2006, for Respondent Nos.1 to 3 in WP/438/2008 and for Respondents in WP/1350/2008.

Mr P. C. Chottaray, for Respondents in WP/1347/2008.

Mr Aditya V. Tayade, i/b. Mr Piyush N. Shah, for Respondent No.4 in WP/438/2008.

Mr Vishal Talsania, a/w Mr Netaji Gawade i/b. M/s. Sanjay Udeshi & Co., for Respondent No.4 in WP/928/1994 and WP/825/2006.

CORAM : M.S.Sonak & Jitendra Jain, JJ.

RESERVED ON : 08 January 2025

PRONOUNCED ON : 20 January 2025

JUDGMENT (*Per MS Sonak J*):-

1. Heard learned counsel for the parties.

2. Learned counsel for the parties agree that a common judgment and order can dispose of these Petitions because substantially common issues of law and fact arise. Learned counsel agree that Writ Petition No.825 of 2006 may be treated as the lead Petition.

3. The Petitioners are Associations/Federations of the officers of nationalised banks. They purport to represent the bank officers. In some of the Petitions, there was a prayer for a grant of leave to prosecute these Petitions in a representative capacity. However, such prayers were not pursued, possibly because the Petitioners felt that if the impugned provisions of the Income Tax Act, 1961 ("IT Act") were struck down, then the benefit of such striking down would inure to all the bank officers and not just the bank officers whom the Petitioners expressly represent.

4. Though the reliefs in some of these Petitions are somewhat convoluted and confused, the Petitioners mainly challenge Explanations 1 and 4 below Section 17(2) of the IT Act by the Finance Act, 2007, which entered force with limited retrospective effect. [Explanations 1 to 3 from 1 April 2002, and explanation 4, from 1 April 2006]. (impugned amendments).

5. The impugned amendments introduced a legal fiction that an employee shall be deemed to have received a concession in the value of rentals once it was established that the employee was provided an employer-owned accommodation and the rent recoverable or payable by the employee-assessee was less than the specified percentage of such employee's salary.

PETITIONER'S CONTENTIONS

6. Mr Sean Wassoodew, Mr K. P. Anil Kumar and Mr Sagar Rane, learned counsel for the Petitioners, contended that the impugned amendments were introduced to nullify or overrule

the Hon'ble Supreme Court's decision in **Arun Kumar and others vs. Union of India and others**[1]. They pointed out that the impugned amendments no longer rendered it necessary for the AOs to determine the jurisdictional fact of whether any concession in the matter of rent was actually granted by the employer to the employees. By a deeming provision, concession in the matter of rent was deemed provided upon fulfilment of some conditions. Accordingly, learned counsel for the Petitioners contended that this is a case of impermissible judicial override, which defies the doctrine of separation of powers. Mr Wassoodew relied on the decision of the Hon'ble Supreme Court in **Indian Aluminum Co. and others vs. State of Kerala and others**[2] to support this contention.

7. The learned counsel for the Petitioners submitted that the impugned amendments and the Explanations below Section 17(2)(ii) of the IT Act introduced thereby are inconsistent, repugnant and destructive of the main body of Section 17(2)(ii), which provides that a "perquisite" includes the value of any concession in the matter of rent respecting any accommodation provided to the assessee by his employer. They submitted that by introducing a legal fiction and dispensing with the requirement of determining whether any concession was being granted to the employees, Section 17(2)(ii) was rendered otiose.

8. Learned counsel for the Petitioners, without prejudice to the above contentions, contended that the legislature, by granting retrospectivity to the impugned amendments had acted with manifest arbitrariness. They submitted that there

[1] (2007) 1 SCC 732

[2] (1996) 7 SCC 637

was no ambiguity in Section 17(2)(ii) of the IT Act as interpreted by the Hon'ble Supreme Court in the case of *Arun Kumar* (supra). They submitted that in the absence of any ambiguity, it was not open to the legislature to introduce any Explanations and, by such Explanations, to create a legal fiction and bring about substantive and substantial changes regarding the taxability of perquisites. They submitted that the impugned amendments are neither clarificatory nor declaratory. Therefore, relying on **Union of India and others vs. Martin Lottery Agencies Limited**[3], they contended that the impugned amendments could not be construed as operating retrospectively.

9. Learned counsel for the Petitioners submitted that the impugned amendments are arbitrary, discriminatory and therefore violative of Article 14 of the Constitution of India because they discriminated between the bank employees and Central, State and even RBI employees in as much as the impugned amendments were not made applicable to the later three classes. Accordingly, they submitted that the classification made by the impugned amendments lacked any rational basis.

10. Learned counsel for the Petitioners submitted that the value of any concession in the matter of rent respecting any accommodation provided to the employee-assessee by his employer could never have been determined with reference to the employee's salary. The value of the concession had to be essentially determined with reference to the accommodation provided, its area, location, and other factors, including the

[3] (2009) 12 SCC 209

rent that such accommodation would typically fetch. Thus, applying an irrelevant parameter like the salary of the employees constituted an arbitrary and unreasonable exercise infringing the guarantee of non-arbitrariness in Article 14 of the Constitution.

11. Learned counsel for the Petitioners submitted that two or more employees living in the same building having almost identical accommodations in terms of area, etc., would be compelled to pay unequal taxes simply because of the differences in their positions and, consequently, the salaries drawn by them in the bank. This was a case of treating equals unequally, violating Article 14 of the Constitution.

12. Learned counsel for the Petitioners submitted that the impugned amendments place a cumbersome burden on the bank employees by ignoring the reality that the bank employees rarely have any option regarding the accommodation offered by the bank. They submitted that the bank employees are liable to be transferred nationwide. They are often transferred to remote places where decent accommodations are difficult. Still, even if the market rentals for such accommodations are much less than the specified salary percentage or even the rentals recovered by the banks from the employees, the impugned amendments levy or facilitate the levy of taxes on such alleged concession by creating a legal fiction. This is arbitrary, discriminatory, unconstitutional, null and void;

13. Learned counsel for the Petitioners submitted that the impugned amendments distinguish between accommodations in metropolitan and non-metropolitan areas, but no

distinction is made between urban and suburban areas. Without appreciating such fundamental distinctions, illogical, arbitrary and unreasonable criteria have been adopted to determine the value of the alleged concession and tax the employees. This is arbitrary, unreasonable, unconstitutional, null and void.

14. Learned counsel for the Petitioners submitted that the impugned amendments interfere with the staff regulations and the settlements between the banks and their employees. This is arbitrary and violative of Article 14 of the Constitution.

15. Mr. K. P. Anil Kumar submitted that the impugned amendment promoted double taxation. He argued that officers transferred from their hometowns usually rent out their accommodations. The rent they receive is taxed as income from house property. Because of the impugned amendments, such employees are forced to pay tax on the value of alleged concessions regarding rent provided by the banks. He submitted that such double taxation is ultra-vires the IT Act and, in any event, violates Article 14 of the Constitution.

16. Learned counsel Mr Sagar Rane, whilst adopting the arguments of Mr Wassoodew and Mr Anil Kumar, relied on the decision of the Division Bench of the Madhya Pradesh High Court in **Officers' Association, Bhilai Steel Plant vs. Union of India and others**[4]. In particular, he stressed on paragraph 8 in which it was noted that there was no deeming clause in the definition of "perquisite" contained in Section 17(2) of the IT Act. Further, if Rule 3 of the IT Rules were to be construed as

[4] (1983) Vol.139 ITR 937

having some deeming clause for determining the value of the concession in the matter of rent, then it would go beyond the rule-making power conferred by Section 295(2) of the IT Act and would be invalid.

17. Mr Rane submitted that the Explanations introduced by the impugned amendments also go beyond the substantive provisions in Section 17(2)(ii) of the IT Act and, to that extent, conflict with the main clauses they should explain. He submitted that this is also an additional ground for striking down the impugned amendments and the Explanations introduced by the impugned amendments.

18. For all the above reasons, the learned counsel for the Petitioners submitted that the impugned amendments should be declared illegal, unconstitutional, ultra-vires and struck down.

RESPONDENT'S RESPONSE

19. Mr Chottaray and Mr Suresh Kumar, learned counsel for the Respondents, submitted that this was not a case of any improper judicial override. They referred to some observations in paragraphs 86 and 99 of *Arun Kumar* (supra) and submitted that the Parliament addressed the shortcomings referred to in these paragraphs by introducing the impugned amendments. They submitted that most arguments based on alleged violation of Article 14 of the Constitution were considered and answered against the assessees in *Arun Kumar* (supra).

20. Learned counsel for the Respondents submitted that the amendments bring about uniformity, certainty and efficiency

in tax governance. Courts have upheld the constitutional validity of similar amendments. They relied on **All India Bank Officers' Confederation vs. Regional Manager, Central Bank of India and others**[5] to support their contentions.

21. Learned counsel for the Respondents submitted that there is a presumption of constitutionality, and the legislature should be allowed substantial flexibility and latitude regarding fiscal legislation. They submitted that nothing was wrong in creating a legal fiction or giving any limited retrospective effect to the impugned amendments. They submitted that the impugned amendments relate to the machinery for collecting or measuring such tax. Therefore, there was nothing wrong in construing such provisions retrospectively. In any event, they pointed out that the legislature had explicitly granted the impugned amendments a limited retrospective effect in the present case. They submitted that a legislature was competent to do so.

22. Learned counsel for the Respondents submitted that the impugned amendments ought not to be struck down based on illustrations or examples given by the Petitioners. They pointed out several instances where banks provided accommodations to their employees in prime locations by charging rents representing only a fraction of the standard or the market rents. Accordingly, they submitted that any minor crudities or imperfections should not be the factors in judging the validity of fiscal legislation.

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[5] (2024) 9 SCC 664

23. For all the above reasons, learned counsel for the Respondents submitted that these petitions be dismissed and the interim orders be vacated.

SUBMISSION ON BEHALF OF THE BANKS

24. Mr Talsania, learned counsel appearing on behalf of some of the banks, submitted that the banks had no concern with the constitutionality or otherwise of the impugned amendments. However, he pointed out that the banks were disabled from deducting tax at source due to the interim orders made in these Petitions. Therefore, if these Petitions are to be dismissed and the interim orders vacated, the banks should not be held as entities in default. He also pointed out the impossibility of now recovering any amounts from the employees since they may have long retired. He, therefore, submitted that if the Petitions are dismissed, the Revenue Department can always proceed to recover taxes from the employees without, in any manner, holding the banks responsible for recoveries.

EVALUATION OF THE RIVAL CONTENTIONS

25. The rival contentions now fall for our determination.

26. In some Petitions instituted before the Finance Act 2007 came into force, the Petitioners challenged the amended Rule 3(1) of the IT Rules, as notified in the official Government Gazette on 28 February 2005, as ultra-vires the constitution. However, after the Finance Act 2007 entered force and made amendments in Section 17(2) of the IT Act, the Petitioners amended these Petitions and sought a declaration that such amendments were ultra-vires the Constitution. At the hearing

of these Petitions, the Petitioners mainly challenged the impugned amendments introduced by the Finance Act, 2007 on the grounds that they were ultra-vires.

27. Sections 15 to 17 of the IT Act relate to Income Tax chargeable on salaries. Section 15 stipulates incomes that are chargeable to income tax as "Salaries". Section 16 prescribes the deductions allowable under "Salaries". Section 17 defines the expression "Salary", "Perquisites", and "Profits in lieu of salary" for the purposes of Sections 15 and 16.

28. Section 17(1) provides that "Salary" includes wages, annuity or pension, gratuity, fees, commissions, perquisites or profits in lieu of or in addition to salary or wages, and advance of salary, payments received by employees in respect of leave not availed of, the annual accretion to the balance at the credit of an employee participating in a recognised provident fund, etc.

29. Section 17(2) before its amendment by the Finance Act, 2007 read as follows: -

> "Perquisite" includes: -
>
> (i) the value of rent-free accommodation provided to the assessee by his employer.
>
> (ii) **the value of any concession in the matter of rent respecting any accommodation provided to the assessee by his employer.**

30. Section 11 of the Finance Act, 2007 introduced amendments in Section 17 of the IT Act. Accordingly, for the

convenience of reference, we transcribe Section 11 of the Finance Act, 2007: -

> "11. In section 17 of the Income-tax Act,—
>
> (a) in clause (I), in sub-clause (viii), for the words "Central Government", the words "Central Government or any other employer" shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 2004;
>
> (b) in clause (2),-
>
> (A) after sub-clause (ii),—
>
> (i) the following Explanations shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 2002, namely:—
>
> 'Explanation I.—For the purposes of this sub-clause, concession in the matter of rent shall be deemed to have been provided if,—
>
> (a) in a case where an unfurnished accommodation is provided by any employer other than the Central Government or any State Government and—
>
> (i) the accommodation is owned by the employer, the value of the accommodation determined at the rate of ten per cent of salary in cities having population exceeding four lakhs as per 1991 census and seven and one-half per cent of salary in other cities, in respect of the period during which the said accommodation was occupied by the assessee during the previous year, exceeds the rent recoverable from, or payable by, the assessee;
>
> (ii) the accommodation is taken on lease or rent by the employer, the value of the accommodation being the actual amount of lease rental paid or payable by the employer or ten per cent of salary, whichever is lower, in respect of the

period during which the said accommodation was occupied by the assessee during the previous year, exceeds the rent recoverable from, or payable by, the assessee;

(b) in a case where a furnished accommodation is provided by the Central Government or any State Government, the licence fee determined by the Central Government or any State Government in respect of the accommodation in accordance with the rules framed by such Government as increased by the value of furniture and fixtures in respect of the period during which the said accommodation was occupied by the assessee during the previous year, exceeds the aggregate of the rent recoverable from, or payable by, the assessee and any charges paid or payable for the furniture and fixtures by the assessee;

(c) in a case where a furnished accommodation is provided by an employer other than the Central Government or any State Government and -

(i) the accommodation is owned by the employer, the value of the accommodation determined under sub-clause (i) of clause (a) as increased by the value of the furniture and fixtures in respect of the period during which the said accommodation was occupied by the assessee during the previous year, exceeds the rent recoverable from, or payable by, the assessee;

(ii) the accommodation is taken on lease or rent by the employer, the value of the accommodation determined under sub-clause (ii) of clause (a) as increased by the value of the furniture and fixtures in respect of the period during which the said accommodation was occupied by the assessee during the previous year, exceeds the rent recoverable from, or payable by, the assessee;

(d) in a case where the accommodation is provided by the employer in a hotel (except where the assessee is provided such

accommodation for a period not exceeding in aggregate fifteen days on his transfer from one place to another), the value of the accommodation determined at the rate of twenty-four per cent of salary paid or payable for the previous year or the actual charges paid or payable to such hotel, whichever is lower, for the period during which such accommodation is provided, exceeds the rent recoverable from, or payable by, the assessee.

Explanation 2.—For the purposes of this sub-clause, value of furniture and fixtures shall be ten per cent per annum of the cost of furniture (including television sets, radio sets, refrigerators, other household appliances, airconditioning plant or equipment or other similar appliances or gadgets) or if such furniture is hired from a third party, the actual hire charges payable for the same as reduced by any charges paid or payable for the same by the assessee during the previous year.

Explanation 3.—For the purposes of this sub-clause, "salary" includes the pay, allowances, bonus or commission payable monthly or otherwise or any monetary payment, by whatever name called, from one or more employers, as the case may be, but does not include the following, namely:—

(a) dearness allowance or dearness pay unless it enters into the computation of superannuation or retirement benefits of the employee concerned;

(b) employer's contribution to the provident fund account of the employee;

(c) allowances which are exempted from the payment of tax;

(d) value of the perquisites specified in this clause;

(e) any payment or expenditure specifically excluded under the proviso to this clause;

(ii) in Explanation 1 as so inserted, for clause (a), the following clause shall be substituted and shall be deemed to have been substituted with effect from the 1st day of April, 2006, namely:-

"(a) in a case where an unfurnished accommodation is provided by any employer other than the Central Government or any State Government and-

(i) the accommodation is owned by the employer, the value of the accommodation determined at the specified rate in respect of the period during which the said accommodation was occupied by the assessee during the previous year, exceeds the rent recoverable from, or payable by, the assessee;

(ii) the accommodation is taken on lease or rent by the employer, the value of the accommodation being the actual amount of lease rental paid or payable by the employer or fifteen per cent of salary, whichever is lower, in respect of the period during which the said accommodation was occupied by the assessee during the previous year, exceeds the rent recoverable from, or payable by, the assessee;"

(iii) after Explanation 3 as so inserted, the following Explanation shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 2006, namely:—

'Explanation 4.- For the purposes of this sub-clause, "specified rate" shall be—

(i) fifteen per cent of salary in cities having population exceeding twenty-five lakhs as per 2001 census;

(ii) ten per cent of salary in cities having population exceeding ten lakhs but not exceeding twenty-five lakhs as per 2001 census; and

(iii) seven and one-half per cent of salary in any other place.';

> (B) in sub-clause (iii), the proviso shall be omitted with effect from the 1st day of April, 2008."

31. As noted above, the petitioners have challenged Section 11 of the Finance Act, 2007, or, more precisely, Section 11(b) of the Finance Act, 2007, to the extent that it amends Section 17(2) of the IT Act.

32. Before the impugned amendments, section 17(2)(ii) did not contain any deeming provision regarding the value of concession in the matter of rent respecting any accommodation provided to the assessee by his employer. Section 17(2)(ii) also did not provide for the machinery or the measure for computing the value of the concession. However, Rule 3 of the IT Rules, 1962, provided for such machinery and measure.

33. The Hon'ble Supreme Court, in the case of *Arun Kumar* (supra), upheld the constitutional validity of Rule 3(1) of the IT Rules. Still, it held that 'receiving a concession' was a jurisdictional fact for the purposes of Section 17(2)(ii), and therefore, the AOs had first to decide whether, in fact, any bank employee was in receipt of any concession in the matter of rent and only if the AOs were to determine that the assessee had received such concession, could the AOs proceed to calculate/determine the tax liability under Rule 3(1) of the IT Rules.

34. In paragraphs 86 and 99 of *Arun Kumar* (supra), the Hon'ble Supreme Court made the following observations:-

> "86. There is yet another aspect of the matter which is important and having a bearing on the question. We have extracted Section 17(2)(ii) in the earlier part of the

> judgment. **It does not contain any "deeming clause" that once it is established that an employee is paying rent less than 10 per cent of his salary in cities having population of four lakhs or 7.5 per cent in other cities, it should be deemed to be a "concession" within the meaning of the Act and such employee must be deemed to receive a "concession" in the form of "perquisite" in the payment of rent.** …."
>
> 99. For the foregoing reasons, we hold that though Rule 3 of the Rules cannot be held arbitrary, discriminatory or ultra vires Article 14 of the Constitution nor inconsistent with the parent Act [Section 17(2)(ii)], it is in the nature of machinery provision and applies only to the cases of concession in the matter of rent respecting any accommodation provided by an employer to his employees. **Whether or not Parliament could have in the exercise of legislative power created a "deeming fiction" as to concession in the matter of rent in certain circumstances (for which we express no final opinion), no such deeming provision is found in the Act.** It is, therefore, open to the assessee to contend that there is no concession in the matter of accommodation provided by the employer to the employees and the case is not covered by Section 17(2)(ii) of the Act."

35. The Hon'ble Supreme Court decided *Arun Kumar* (supra) on 15 September 2006. As a result, determining the value of any concession under Section 17(2)(ii) and taxing the same would have involved a humongous exercise involving the AOs examining the cases of lakhs of employees, collecting data about standard and market rents in cities and villages throughout the country, perhaps evaluating the infrastructure of the accommodation provided by the banks to their employees and several similar factors. Therefore, taking a hint from the observations in paragraphs 86 and 99 of *Arun Kumar* (supra), the legislature, through the Finance Act, 2007, introduced the impugned amendments in Section 17(2)(ii) of the IT Act.

36. The impugned amendments created a legal fiction based on which it could now be presumed that the employees allotted bank-owned accommodation are deemed to have received a concession in the matter of rent respecting such accommodation. The impugned amendments broadly measure the value of such concession as the difference between the specified percentage of the employee's salary and the rent recoverable or payable by such employees. A limited retrospective effect was also given to the impugned amendments, as otherwise, it would be almost impossible for the Revenue to determine in every individual case whether any concession was at all granted and the value of such concession.

37. The impugned amendments thus created a deeming fiction that once it was established that an employee was paying rent of less than 10% of his salary in cities having a population of four lakhs or 7.5% in other cities, it should be deemed to be a concession within the meaning of Section 17(2)(ii) of the IT Act and such employees must be deemed to receive 'concession' in the form of 'perquisites' in the payment of rent. This provision was given a retrospective effect from 1st April 2002 because otherwise, it would be almost impossible or disproportionately cumbersome for the revenue to compute whether an employee was indeed in receipt of any concession in the matter of rent respecting any accommodation provided by his employer. This was in the context of the observations in *Arun Kumar* (supra) that receiving a concession was a jurisdictional fact for the purposes of Section 17(2)(ii), and this fact had to be established by the revenue in each case before the value of

concession could be determined by following Rule 3(1) of the IT Rules.

38. Similarly, from 1 April 2006, the impugned amendment provides that a concession in the matter of rent shall be deemed provided at the specified rate by an employer to his employee by providing unfurnished employer-owned accommodation. The value of such concession in terms of Explanation 4 would be 15% of the salary in cities having a population exceeding twenty-five lakhs as per 2001 census; 10% of salary in cities having a population exceeding ten lakhs but not exceeding twenty-five lakhs as per 2001 census; and 7.5% of salary in any other place less the rent recoverable from or payable by the employee.

39. Thus, if for the period between 2002 to 2006, an employer were to have provided to his employee unfurnished employer-owned accommodation in a city having a population exceeding four lakhs as per the 1991 census and such employee had a monthly salary of Rs.1 lakh and was paying a monthly rent of Rs.5,000/- towards such accommodation, then, the value of the concession for the purposes of Section 17(2)(ii) had to be determined as the difference between 10% of such employee's salary i.e. Rs.10,000/- and the rental of Rs.5,000/- which such employee was payable to the employer. This means that the value of the concession would be computed at Rs.5,000/-, the amount on which such an employee would be liable to pay tax.

IMPERMISSIBLE JUDICIAL OVERRIDE ARGUMENT

40. The first and foremost challenge mounted against the impugned amendments was that the legislature introduced such amendments to overrule and nullify the decision in *Arun Kumar* (supra). Accordingly, it was urged that this was a case of impermissible judicial override. Strong reliance was placed on the observations in paragraph 56(8) of *Indian Aluminum Co. and others* (supra).

41. Paragraph 56(8) of *Indian Aluminum Co. and others* (supra) reads as follows: -

> "56(8). In exercising legislative power, the legislature by mere declaration, without anything more, cannot directly overrule, revise or override a judicial decision. It can render judicial decision ineffective by enacting valid law on the topic within its legislative field fundamentally altering or changing its character retrospectively. The changed or altered conditions are such that the previous decision would not have been rendered by the court, if those conditions had existed at the time of declaring the law as invalid. It is also empowered to give effect to retrospective legislation with a deeming date or with effect from a particular date. The legislature can change the character of the tax or duty from impermissible to permissible tax but the tax or levy should answer such character and the legislature is competent to recover the invalid tax validating such a tax on removing the invalid base for recovery from the subject or render the recovery from the State ineffectual. It is competent for the legislature to enact the law with retrospective effect and authorise its agencies to levy and collect the tax on that basis, make the imposition of levy collected and recovery of the tax made valid, notwithstanding the declaration by the court or the direction given for recovery thereof."

42. In *Arun Kumar* (supra), the challenge was to Rule 3(1) of the IT Rules, which was the machinery provision for determining the value of concession in the matter of rent respecting any accommodation provided by the employer to

his employee. The impugned rule had inter alia provided that the value of the concession would be the difference between the rentals paid by the employee to the employer and 10% of the salary in cities having a population of more than four lakhs and 7.5% of the salary in other cities. The validity of the rule was upheld by the Hon'ble Supreme Court, noting that the concepts of "fair rent", "market rent", "reasonable rent", or "standard rent" were consciously departed from. The criteria of linking the value of the concession with salary slabs of 10% and 7.5%, depending upon the city population, was also upheld. Thus, in principle, the challenge to Rule 3(1) of the IT Rules was expressly repelled.

43. However, in *Arun Kumar* (supra), the Hon'ble Supreme Court, being conscious that it was only dealing with the constitutional validity of a "Rule", as opposed to a "Primary Legislation" noted that the definition of "perquisite" included the value of a concession in the matter of rent respecting accommodation provided to the employees by the employer, and held that the factum of "receiving the concession" was a jurisdictional fact that had to be determined in each case by the Assessing Officer, before, the value of such concession could be regarded as a perquisite and brought to tax.

44. As noticed above, the Hon'ble Supreme Court, in paragraph 86, noted that there was no deeming provision either under the IT Act or the IT Rules based upon which the AOs could presume that a concession was received by an employee where the employer-bank allotted an accommodation owned by it to such employee. The impugned amendment has addressed this lacuna or shortcomings the Hon'ble Supreme Court flagged. Instead of simply amending

Rule 3(1) of the IT Rules, the legislature deemed it appropriate to amend Section 17 (2)(ii) of the IT Act so that any contention about the rules being ultra-vires the IT Act could be preempted.

45. *Arun Kumar* (supra) had otherwise upheld the validity of Rule 3(1) of the IT Rules after rejecting the challenges based on Article 14 or the challenges based on the rule travelling beyond the import of the parent Act. However, *Arun Kumar* (supra) had referred to the decision of the Division Bench of the Madhya Pradesh High Court in *Officers' Association, Bhilai Steel Plant* (supra) in which the Division Bench had also noted that there was no deeming clause in the definition of "perquisite" contained in Section 17(2) that once it was established that an employee was paying rent of less than 10% of his salary, it must be deemed that he was receiving a concession in the matter of rent and further "*no such deeming clause can be inferred from r.3.*" The Division Bench went on to observe:

> "Indeed, if r.3 were to be so construed, it will go beyond the rule making power conferred by s.295(2) and would become invalid."

46. Possibly, to ward off the challenge that Rule 3, if amended by introducing a deeming clause, might go beyond the rule-making power conferred by Section 295(2) of the IT Act, the legislature chose to amend Section 17 (2)(ii) and introduced a legal fiction therein. Since the primary legislation is amended, the challenge to the rules travelling beyond the Act would also stand addressed.

47. The above exercise by a competent legislature addressing the lacuna or the shortcomings pointed out by the Courts can hardly be regarded as an instance of impermissible judicial override. By introducing the impugned amendments, the legislature has neither overruled the decisions in *Arun Kumar* (supra) nor in *Officers' Association, Bhilai Steel Plant* (supra). The legislature has only taken immediate steps to repair or rectify the lacuna or the shortcomings flagged by these Court decisions. According to us, this is a time-tested and permissible legislative exercise, more so because the legislative competence of the Parliament to undertake such an exercise was never doubted and questioned.

48. In **M/s. Krishnamurthi and Co. ETC vs. State of Madras and another**[6]**,** the Hon'ble Supreme Court explained that in case the Court concludes that levy of tax is not valid as the legal provision enacted for this purpose does not warrant the levy of tax imposed because of some defect in phraseology or other infirmity, the legislature quite often passes an amending and validating Act. The object of such an enactment is to remove and rectify the defect in phraseology or lacuna of other nature and to validate the proceedings, including the realisation of tax, which has taken place in pursuance of the earlier enactment which has been found by the Court to be vitiated by an infirmity. In the very nature of things, such an amending and validating Act has a retrospective operation. Its aim is to effectuate and carry out the object for which the earlier principal Act had been enacted. *Such an amending and validating Act to make "small repairs" is a permissible mode of legislation and is frequently resorted to in fiscal enactments.*

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[6] AIR 1972 SC 2455

49. The Hon'ble Supreme Court also referred to a passage from 73 Harvard Law Review 692 at p. 705:

> *"It is necessary that the legislature should be able to cure inadvertent defects in statutes or their administration by making what has been aptly called 'small repairs'. Moreover, the individual who claims that a vested right has arisen from the defect is seeking a windfall since had the legislature's or administrator's action had the effect it was intended to and could have had, no such right would have arisen. Thus, the interest in the retroactive curing of such a defect in the administrative of government outweighs the individual's interest in benefiting from the defect…The Court has been extremely reluctant to override the legislative judgment as to the necessity for retrospective taxation, not only because of the paramount governmental interest in obtaining adequate revenues, but also because taxes are not in the nature of a penalty or a contractual obligation but rather a means of apportioning the costs of government among those who benefit from it."*

50. The above passage was quoted with approval by the Constitution Bench of this Court in the case of **Assistant Commissioner of Urban Land Tax and others vs. The Buckingham & Carnatic Co. Ltd, ETC**[7].

51. Even paragraph 56(8) of *Indian Aluminum Co. and others* (supra), after holding that the legislature cannot, by a mere declaration, without anything more, directly overrule, revise or override a judicial decision, has held that the legislature can render a judicial decision ineffective by enacting valid law on the topic within its legislative field fundamentally altering or changing its character retrospectively. The changed or altered conditions should be such that the Court would not have rendered the previous

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[7] (1970) 1 SCR 268

decision, if those conditions had existed at the time of declaring the law invalid. The legislature is competent to enact the law with retrospective effect and authorise its agencies to levy and collect tax on that basis, make the imposition of the levy collected and the recovery of the tax made valid, notwithstanding the declaration by the Court or a direction given for the recovery thereof.

52. In the present case, by the impugned amendments, the legislature has not made a mere declaration, without anything more and attempted to overrule the decision in *Arun Kumar* (supra). The impugned amendments are broadly quite consistent with the law in *Arun Kumar* (supra). However, since *Arun Kumar* (supra) had noted the absence of a deeming provision and, based upon such absence, ruled that the AOs had to verify case-wise whether any concession in the value of rent was indeed granted, the law was amended with limited retrospective effect to create a fiction. The amended law primarily incorporates the machinery and measure provisions in the principal Act. The exercise, therefore, is quite consistent with the law laid down in *Indian Aluminum Co. and others* (supra).

53. In **Serum Institute of India (P.) Ltd. vs. Union of India**[8], the constitutional validity of sub-clause (xviii) of Section 2(24) of the IT Act, inserted by the Finance Act, 2015, was under challenge. This sub-clause provided that all incentives given in whichever form by the government and with whatever purpose or objective were to be treated as "income" irrespective of whether such incentives were capital or

[8] [2023] 157 taxmann.com 107 (Bombay)

revenue in nature. One of the main challenges was that the legislature, by the impugned amendment, had overruled judicial precedents that distinguished capital receipts from revenue receipts, subsuming both under "income" and subjecting them to taxation, overriding established legal principles.

54. The Petitioners referred to several judicial precedents that held that "income" includes only "capital receipts" and not "revenue receipts." The precedents also stated that a capital or revenue receipt had to be determined based on a "purpose test." Therefore, the incentives and subsidies received on the capital account would not qualify as "income" and would not be taxed. The Petitioners argued that by doing away with this distinction, the legislature had overruled judicial precedents without bothering to remove or alter the basis of such judicial pronouncement. Therefore, it was contended that this was a case of impermissible judicial override.

55. A Coordinate Bench of this Court rejected the above contentions, which were quite similar to those now raised on behalf of the Petitioners, by referring to the decision of the Hon'ble Supreme Court in the case of **M/s. Hindustan Gum and Chemicals Ltd. vs. State of Haryana and others**[9]**.** Here, the Court held that it was permissible for a competent legislature to overcome the effect of a decision of a Court setting aside the imposition of tax by passing suitable legislation, amending the relevant provisions of the statute concerned with retrospective effect, thus taking away the basis on which the

[9] (1985) 4 SCC 124

decision of the Court had been rendered and by enacting appropriate provision validating the levy and collection of tax made before the decision in question was rendered.

56. Incidentally, one of the arguments in *Serum Institute of India (P.) Ltd.* (supra) was that the legislature could have removed the lacuna pointed out in judicial precedents only by providing an "Explanation" to the section and not by introducing an independent sub-clause. This argument was rejected. In the present case, however, the legislature has addressed the lacuna or shortcomings by providing a series of explanations. Since the Act is amended, the argument about Rule 3(1) of the IT Rules travelling beyond the parent Act also no longer holds good.

57. By introducing the impugned amendments, the legislature, apart from addressing the lacuna and shortcomings pointed out in the Court decisions, has provided consistency, clarity and uncertainty. These factors promote good tax governance. In fiscal matters or tax measure laws, it is well settled that the legislature enjoys far greater latitude than what may be permitted in non-fiscal legislation.

58. For all the above reasons, we see no force in the contention that the impugned amendments constitute an instance of impermissible judicial override or that the legislature has overruled the judicial precedents in *Arun Kumar* (supra) or *Officers' Association, Bhilai Steel Plant* (supra).

ARGUMENTS ABOUT THE SCOPE OF EXPLANATIONS AND LEGAL FICTION

59. The next contention is about the impugned amendments being inconsistent, repugnant and destructive of the main body of Section 17(2)(ii), which provides that a "perquisite" includes the value of any concession in the matter of rent respecting any accommodation provided to the assessee by his employer. The Petitioners submitted that by introducing a legal fiction and dispensing with the requirement of determining whether any concession was at all granted to the employees, the main body of Section 17(2)(ii) was destroyed and rendered otiose. The Petitioners contended that what may not be a "concession" is now regarded as a concession and brought to tax by such a legislative exercise. In short, the contention was that the legislature could not introduce a legal fiction and impose tax by calling something a "concession" even though the same may not, in fact, be a concession.

60. As noted earlier, the Coordinate Bench considered and rejected a very similar argument in *Serum Institute of India (P.) Ltd.* (supra). There, the argument was that the legislature bid something that was not a "capital receipt" to be treated as such and sought to tax it. The Coordinate Bench held that the legislature was very competent to do this, and there was no question of any destruction of the main body of the Act involved.

61. It is very well settled that the legislature is quite competent to create a legal fiction, in other words, to enact a deeming provision to assume the existence of a fact that may

not really exist, provided the declaration of non-existent facts as existing does not offend the constitution. (see **J. K. Cotton Spinning and Weaving Mills Ltd. & another vs. Union Of India & others**[10]). In interpreting a provision creating a legal fiction, the court is to ascertain for what purpose the fiction is created. After ascertaining this, the court is to assume all those facts and consequences which are incidental or inevitable corollaries to the giving effect to the fiction.

62. In **CIT, Bombay vs. Bombay Trust Corporation**[11], the Privy Council, in interpreting a fiction created by the Indian Income-tax Act, 1922, which by section 43 provided that under certain circumstances, an agent shall for all the purposes of this Act, be deemed to be such agent of a non-resident person and which by section 42 further provided that such agent shall be deemed to be, for all the purposes of this Act, the assessee, held that such agent was an assessee for all the purposes of the Act and hence chargeable to income-tax, assesseee being defined by section 2(2) as the person by whom income-tax is payable. Viscount Dunedin, in that connection, observed:-

> *"Now when a person is `deemed to be' something the only meaning possible is that whereas he is not in reality that something the Act of Parliament requires him to be treated as if he were."*

63. In **East End Dwelling Co. Ltd. vs. Finsbury Borough Council**[12], Lord Asquith stated: *"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequence and incidents which, if the putative state of affairs had in fact*

[10] AIR 1988 SC 191

[11] AIR 1930 PC 54

[12] (1951) 2 All ER 587

existed, must inevitably have flowed from or accompanied it-. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."

64. Thus, the arguments about the impugned amendments being inconsistent, repugnant and destructive of the main body of Section 17(2)(ii) of the IT Act carry no force and cannot be accepted, as discussed earlier, the legislature creating legal fiction is a permissible legislative exercise. If such exercise is shown not to offend any constitutional provisions, there is no scope to interfere with such an exercise.

65. The following argument about the necessity of introducing an explanation without demonstrating that there was any ambiguity in Section 17(2)(ii) of the IT Act also cannot be accepted. The purposes of introducing or adding an explanation to a Section can be manifold. The legislature has broad discretion in such matters.

66. In **Dattatraya Govind Mahajan and others vs. State of Maharashtra and another**[13], it was held that a mere description of a certain provision, such as an Explanation, is not decisive of its true meaning. The orthodox function of an Explanation, indeed, is to explain the meaning and effect of the primary provision to which it is an Explanation and to clear up any doubt or ambiguity in it. Still, ultimately, it is the intention of the Legislature that is paramount, and mere use of a label cannot control or deflect such intention.

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[13] AIR 1977 SC 915

67. An Explanation, even though it may not have been made retrospective in its operation, can have an effect even for the period prior to its insertion as it clarifies the provision of the section as existing [**CIT vs Doraiswami Chetty (P) Ltd.**[14]]. To the same effect are the observations in **R. M. Krishnaswamy Naidu & Sons and others vs. The State of Madras**[15] where it was held that an 'Explanation' merely elucidates the meaning of a provision and, when inserted as a subsequent amendment, can be considered retrospective in scope.

68. Therefore, the impugned amendments and the explanations introduced thereby cannot be struck down either because the legislature was incompetent to create a legal fiction, because such an explanation was unnecessary, because it destroyed the principal section, or because they were otherwise unconstitutional, ultra-vires, or null and void.

RETROSPECTIVITY ARGUMENT

69. The following argument concerns the retrospectivity of the impugned amendments. The basic contention was that the impugned amendments were neither clarificatory nor declaratory. They introduced a new and substantive liability, so giving such amendments a retrospective effect is an impermissible legislative exercise. In any event, it was contended that giving such retrospectively renders the impugned amendments ultra-vires of Article 14 of the Constitution. Strong reliance was placed on *Martin Lottery Agencies Limited* (supra).

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[14] (1990) 183 ITR 559 SC

[15] (1965) 16 STC 671 (MAD)

70. In *Martin Lottery Agencies Limited* (supra) the explanation appended to sub-clause (ii) of Section 65(19) of the Goods and Services Tax Act had not been given any retrospective effect by the legislature. Still, the Revenue contended that since the explanation was clarificatory or declaratory, it should be construed as having a retrospective effect. On the other hand, the assessee claimed the explanation sought to include "lottery tickets" in the definition of "goods"; therefore, the explanation was a substantive amendment to the existing law. The assesses contended that such an explanation could not be construed as retrospective without any explicit legislative provision or intendment.

71. In the above context, the Hon'ble Supreme Court accepted the assessees' contention that the explanation was not clarificatory or declaratory and that it brought about a substantive change in the legal position. Therefore, the Hon'ble Supreme Court concluded that in the absence of any specific retrospectivity being granted by the legislature, the same could not be construed retrospectively under the guise of interpretation.

72. In the present case, the legislature has specifically given a limited retrospective effect to the impugned amendments. Therefore, there is no question of "construction" involved. Even the issue of the amendment being clarificatory or substantive is irrelevant in the present case. The discussion in *Martin Lottery Agencies Limited* (supra) was in the content of the legislature introducing the explanation through the Finance Act, 1994, without stating whether the amendment was to take effect retrospectively or prospectively. Therefore, to determine whether such an amendment should be

construed retrospectively or prospectively, the Court had to go into the issue of whether the amendment was clarificatory/declaratory or whether the same introduced a substantive change in the legal position from that which obtained earlier. Having concluded that there was a substantive change, the Court ruled that the amendment could not be construed retrospectively. Therefore, based on *Martin Lottery Agencies Limited* (supra), we cannot find any fault with the impugned amendments being given a limited retrospectivity.

73. In **Additional Commissioner of Income Tax vs. Bharat V Patel**[16]**,** the Hon'ble Supreme Court was considering a challenge to the amendments to Section 17(2) of the IT Act by which certain benefits transferred by the employer to the employees were sought to be brought within the ambit of the tax net. One of the issues involved was whether the amendment was retrospective or would only apply prospectively. The revenue contended that the amendment was clarificatory and, hence, retrospective. The assessee claimed that the amendment was substantive and, therefore, prospective in nature.

74. The Hon'ble Supreme Court, upon examining the rival contentions, concluded that the Respondent got the Stock Appreciation Rights (SARs) and eventually received an amount on account of its redemption before 1 April 2000. On that date, the amendment of the Finance Act, 1999 came into force. Therefore, the Hon'ble Supreme Court concluded: ***"In the absence of any express statutory provision regarding the***

[16] (2018) 15 SCC 670

applicability of such amendment from retrospective effect, *we do not find any force in the argument of the revenue that such amendment came into force retrospectively. It is well established rule of interpretation that taxing provisions shall be construed strictly so that no person who is otherwise not liable to pay tax, be made liable to pay tax."*

75. As noted earlier, the legislature has made express provisions about retrospectivity in the present case. Therefore, relying upon the decision where no such express provision was made, the Petitioners cannot contend that the impugned amendments cannot be given retrospective effect or that they violate Article 14 of the Constitution because they have been given a retrospective effect.

76. Regarding the argument of retrospectivity, we note that in *Arun Kumar* (supra), the provision of Rule 3(1) was held to pertain to the machinery for valuing and taxing the "perquisite." Such machinery provisions, being procedural, are held to apply even to pending proceedings. There is no general rule against construing these provisions retrospectively or holding that any retrospective construction of such provisions would render them ultra-vires Article 14 of the Constitution or any other constitutional guarantees.

77. In **Commissioner of Wealth Tax, Meerut vs. Sharvan Kumar Swarup and Sons**[17] the issue which arose before the Hon'ble Supreme Court was whether prescribing method and mode of valuation alters the substantive right or whether the rule is merely procedural or whether it applies to all pending assessments proceedings which had been initiated even before

[17] (1994) 210 ITR 886

the commencement of the relevant assessment year but were yet to be completed. The Hon'ble Supreme Court held the provisions to be procedural in nature and, therefore, applicable with retrospective effect even to the pending proceedings. The Court referred to its decision in **Murarilal Mahabir Prasad & Ors. vs B. R. Vad & Ors.**[18] in which it was held that the provisions prescribed for machinery for computation of tax and not to bring a charge are to be construed as machinery provisions which would therefore apply retrospectively.

78. In **Associated Cement Company Ltd vs. Commercial Tax Officer, Kota & Ors.**[19]**,** the Hon'ble Supreme Court held that the distinction must be made by the Courts while interpreting the provisions of a taxing statute between charging provisions which imposed the charge to tax and machinery provisions which provide the machinery for quantification of the tax and levying, and collection of tax so imposed. While charging provisions are construed strictly, machinery sections are generally not subject to rigorous construction. The Courts are expected to construe the machinery sections in such a manner that the charge to tax is not defeated.

79. In **Aditya Cement Staff Club vs Union of India & Ors.**[20]**,** the Court explained that perquisites had been considered substantively to be forming part of the salary, and the value of different perquisites had to be included in the computation of total taxable income under the head 'income from salaries'. Once it is determined that the particular advantage, benefit or

[18] 1976 (37) STC 77 (SC)

[19](1981) 48 STC 466 SC

[20] 2002 SCC OnLine Raj 937

amenity received forms part of perquisite as defined under Section 17(2) of the IT Act, the question of its quantification falls within the machinery provision for quantification of proper tax liability of the taxpayer, which can be left to be determined according to well-known principles of valuing a particular advantage to the assessee when he receives it with reference to the cost which the assessee is likely to incur in securing that advantage and to enquire into the price which it was likely to pay for getting those amenities or benefits. The Court held that the cost at which the benefit is received by an assessee so also the value of the payment in the hands of the recipient of such a benefit on a fixed percentage of salary received by him to avoid the determination at different variable factors, which may result in arriving at different conclusions on the same set of facts by different assessing authorities was a well-known method of valuation.

80. In the present case, however, we need not explore whether the Explanations inserted by the impugned amendments are clarificatory. This is because the issue of construction and determining retrospectivity arises when a legislature is either silent or ambiguous. Here, the legislature, has expressly provided a limited retrospective operation. There is nothing inherently wrong in providing for such a retrospective operation. Therefore, merely because a limited retrospectivity is granted to the impugned amendments, we cannot hold that the impugned amendments violate Article 14 of the Constitution or otherwise ultra-vires the constitutional provisions.

81. For all the above reasons, we find no force in the challenge based on the retrospectivity of the impugned amendments.

CHALLENGES BASED ON ARTICLE 14 OF THE CONSTITUTION

82. The following argument is about the impugned amendments violating Article 14 of the Constitution of India.

83. Most of the arguments based on Article 14 of the Constitution, now raised by the Petitioners, were considered and rejected by the Hon'ble Supreme Court in *Arun Kumar* (supra) in the context of Rule 3(1) of the IT Rules. This Rule also distinguished between Central/State Government employees and other employees. This Rule also determined the value of the concession based on the employees' salaries, and the percentage of the salary was linked to the city's population where the accommodation was provided. Therefore, following the reasoning in *Arun Kumar* (supra), most of the challenges now raised will have to be rejected.

84. In *Arun Kumar* (supra), the Court explained that Rule 3 before its amendment in 2001 was different as it dealt with the calculation method of concession, keeping in view the concept of "fair rental value". The amended rule, however, did away with the idea of fair rental value. The only method adopted was to calculate the rent based on the population of the city in question. Therefore, the Court held that there was no necessity to grant the assessee an opportunity to satisfy the Assessing Officer that the rent sought to be recovered from the employee was not a concession and that it was the fair

rent, the reasonable rent, the market rent or the standard rent. The Court explicitly held that the criteria adopted by the Rule-making authority in treating cities with populations of less than four lakhs and more than four lakhs could not be said to be arbitrary and unreasonable. The fixation of rent based on the city's population cannot be interfered with in exercising the power of judicial review.

85. Besides, when it comes to challenges to the constitutional validity of fiscal legislation, we must bear in mind and apply certain well-settled principles. The first is the presumption in favour of the statute's constitutionality and that the burden is upon the Petitioners who attack the statute to show that there has been a clear transgression of the constitutional principles. This Rule assumes that the legislature understands and correctly appreciates the needs of its people, its laws are directed to problems made manifest by experience and its discrimination is based on adequate grounds. The presumption of constitutionality is so strong that to sustain it, the Court may consider matters of common knowledge, matters of common report, and the history of the times. It may assume every state of fact that can be conceived existed at the time of legislation. (see **RK Garg & Ors. vs. Union of India & Ors.**[21]).

86. The second principle of equal importance is that the laws relating to economic activities should be viewed with greater latitude than the laws touching civil rights such as freedom of speech, religion, etc. In this field, the Court should extend greater play in the joints to the legislature because the

[21] (1982) 133 ITR 239 (SC)

legislature must deal with complex problems that do not admit solutions through any doctrine or straitjacket formula. The Courts should feel more inclined to give judicial deference to the legislative judgment in economic regulation than in other areas where fundamental human rights are involved. (See RK Garg, etc).

87. In the context of fiscal legislation, the Courts in India have followed Justice Frankfurter's opinion in **Morey vs. Doud**[22]:

> *"In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial difference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts and the number of times the judges have been overruled by events-self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability."*

88. Several judicial precedents require the courts to recognise that economic or fiscal legislation is directed to practical problems. The financial and fiscal mechanism is highly sensitive and complex; many issues are singular or contingent, and the laws are not abstract propositions or do not relate to abstract units that could be measured by abstract symmetry. The exact wisdom and nice adoption of remedy are not always possible. The legislative judgment is essentially a prophecy based on meagre and un-interpreted references. Therefore, every legislation, particularly in economic matters, is essentially empiric and is based on experimentation or what one may call the trial-and-error method, and therefore, it

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[22] 354 US 457 (1957)

cannot provide for all possible situations or anticipate all possible abuses. (See RK Garg etc.).

89. There may be crudities and inequities in complicated experimental economic legislation, but it cannot be struck down as invalid on that account alone. The courts cannot, as pointed out by the United States Supreme Court in **Secretary of Agriculture vs. Central Reig Refining Company**[23] be converted into tribunals to relieve such crudities and inequities. *There may even be possibilities of abuse, but that too cannot of itself be a ground for invalidating the legislation, because it is not possible for any legislature to anticipate as if by some divine prescience, distortions and abuses of its legislation which may be made by those subject to its provisions and to provide against such distortions and abuses*.

90. Indeed, however great the care bestowed on its framing may be, it is difficult to conceive of legislation that is incapable of being abused by perverted human ingenuity. The Court must, therefore, adjudge the constitutionality of such legislation by *the generality of its provisions and not by its crudities or inequities or by the possibilities of abuse of any of its provisions.* If any crudities, inequities or possibilities of abuse come to light, the legislature can always step in and enact suitable amendatory legislation. That is the essence of a pragmatic approach, which must guide and inspire the legislature in dealing with complex economic issues. (See RK Garg etc.).

91. Several precedents suggest that the Courts must *"be resilient, not rigid, forward looking, not static, liberal, not*

[23] (1950) 94 L. Ed. 381

verbal" while examining the constitutional validity of fiscal legislations. These precedents require the Courts not to substitute their social and economic beliefs for the judgment of the legislative bodies. These precedents require the Courts to defer to legislative judgment in matters relating to social and economic policies, and the Courts must not interfere unless the legislative exercise appears to be palpably arbitrary. The Courts must remember that the problems of the government are practical and may justify rough accommodations, though they may sometimes seem illogical and unscientific. In this area where the trial and error method is well accepted, the government's errors should be subject to minimal judicial review. The Courts must remember that the trial-and-error method is inherent in every legislative effort to deal with an obstinate social or economic issue.

92. In **Federation of Hotel and Restaurant Association of India vs. Union of India & Ors.**[24]**,** the Constitution Bench of our Supreme Court has held that though taxing laws are not outside article 14, however, having regard to the wide variety of diverse economic criteria that go into the formulation of a fiscal policy, legislature enjoys wide latitude in the matter of taxation. Legislative assumption cannot be condemned as irrational. Judicial veto is to be exercised only in cases that leave no room for reasonable doubt. Unless a fiscal statute is manifestly arbitrary or discriminatory in its provisions or its operation, it is typically upheld. This allows for a broad range of discretion for the legislature in determining the classes of individuals or entities that are subject to or exempt from taxation, if there is a rational basis for such a classification.

[24] AIR 1990 SC 1637

93. No precise or set formulae, doctrinaire tests, or precise scientific principles of exclusion or inclusion are to be applied. The test to be used could be of palpable arbitrariness applied in the context of the felt needs of the times and societal exigencies informed by experience. The Courts have permitted the legislatures to exercise vast discretion in classifying items for tax purposes so long as it refrains from clear and hostile discrimination against particular persons or classes. In examining the allegations of hostile, discriminatory treatment, what is looked into is not its phraseology but the actual effect of its provisions. One must look beyond the classification and to the purposes of the law. Classifications based on differences in the value of articles or the economic superiority of the persons of incidence are well recognised.

94. A reasonable classification includes all who are similarly situated and none who are not. Further, differentia must have a rational nexus with the object sought to be achieved by the law. A taxing statute is not, per se, a restriction of freedom under article 19(1)(g). In its effectuation, the tax policy might, of course, cause some hardship in some individual cases. But that is inevitable, so long as law represents a process of abstraction from the generality of cases and reflects the highest common factor. Then again, the mere excessiveness of a tax or even the circumstance that its imposition might tend towards the diminution of the earnings or profits of the persons of incidence does not, per se, and without more, constitute a violation of constitutional rights.

95. In **Union of India and ors. vs. M/s. Nitdip Textile Processors Pvt. Ltd. and anr.**[25] the Hon'ble Supreme has held that a taxation statute can pick and choose to tax some for functional expediency and even otherwise. The power to classify is extremely broad and based on diverse considerations of executive pragmatism, and the judicature cannot rush where even the Legislature warily treads. All these operational restraints on judicial power must weigh more emphatically where the subject is taxation. Discrimination resulting from fortuitous circumstances arising out of particular situations, in which some taxpayers find themselves, is not hit by Article 14 if the legislation is of general application and does not single them out for harsh treatment. Advantages or disadvantages to individual assessees are accidental and inevitable. They are inherent in every taxing statute as it must draw a line somewhere, and some cases necessarily fall on the other side of the line.

96. In **Elel Hotels and Investments Ltd. and anr. vs. Union of India**[26]**,** the Hon'ble Supreme Court has held that it is now well-settled that a vast latitude is available to the Legislature in classifying objects, persons and things for taxation purposes. It must be so having regard to the complexities involved in formulating a taxation policy. Taxation is no longer a mere source of raising money to defray the government's expenses. It is a recognised fiscal tool for achieving fiscal and social objectives. The differentia of classification presupposes and proceeds on the premise that it distinguishes and keeps hotels with higher economic status

[25](2012) 1 SCC 226

[26](1989) 3 SCC 698

apart as distinct classes reflected in one of the indicia of such economic superiority.

97. In **Spences Hotel (P) Ltd. vs. State of West Bengal**[27] the Hon'ble Supreme Court has held that "*Perfect equality in taxation has been said time and again, to be impossible and unattainable. Approximation to it is all that can be had. Under any system of taxation, however, wisely and carefully framed, a disproportionate share of the public burdens would be thrown on certain kinds of property, because they are visible and tangible, while others are of a nature to elude vigilance. It is only where statutes are passed which impose taxes on false and unjust principle, or operate to produce gross inequality, so that they cannot be deemed in any just sense proportional in their effect on those who are to bear the public charges that courts can interpose and arrest the course of legislation by declaring such enactments void.*" "*Perfectly equal taxation*", *it has been said,* "*will remain an unattainable good as long as laws and Government and man are imperfect.*" "*Perfect uniformity and perfect equality of taxation*", *in all aspects in which the human mind can view it, is a baseless dream".*

98. Thus, applying the above principles to the case at hand, the contentions relating to the classification between government servants and others, urban and non-urban areas, or the arguments based on the alleged lack of nexus between salaries of the employees and the computation of concession in matters of rents for accommodation provided by the employer, would not pass muster. Even the instances cited by the Petitioners could, at the highest, be regarded as some

[27](1991) 2 SCC 154

crudities or inequities. Based on the same, there is no scope to interfere with economic or fiscal legislation. The learned Counsel for the Respondents also referred to instances where bank employees are provided accommodation in areas where the rentals would far exceed even fifty to sixty per cent of the salaries of such employees. They gave instances of areas like Nariman Point in Bombay to support their argument that the rentals would exceed the salaries drawn by the bank employees.

99. Again, we must clarify that it is not open for us to decide on the constitutional validity of economic or fiscal legislation based on such crudities and inequities. Even individual hardships are not very relevant in such matters. There is nothing arbitrary or manifestly arbitrary in linking the issue of determination of the value of the concession with the salary structure of the bank employees. Based upon such instances, examples or arguments, we cannot hold that the classification or the criteria adopted was not within the broad and flexible range available to the legislature in such matters. Such classifications or adopting such criteria do not transgress the fundamental principles of equality. The impugned amendments are not vulnerable on the grounds of discrimination merely because the burden of taxes is higher upon the employees who draw higher salaries from the bank.

100. Simply because bank employees drawing higher salaries are called upon to bear a proportionately higher burden does not mean that there is any hostile discrimination within the class or any manifest arbitrariness involved in the impugned amendments. Classifications based on the economic superiority of the persons of incidence are well recognised.

101. In **M/s. Kodar & Ors vs. State of Kerala & Ors**[28], the tax rate depended on turnover. This, in effect, meant that the tax rate on the sale of the same goods would vary with a dealer's turnover. The Petitioners alleged that turnover volume had no nexus with the imposition of sales tax on the same set of goods, and therefore, there was a violation of Article 14 of the Constitution. Rejecting this contention, the Court explained that just as in taxes upon income or upon transfers at death, so also in imposts upon business, the little man, because of inferior capacity to pay, should bear a lighter load of taxes relatively as well as absolutely, than is borne by the big one. The flat rate is less efficient than the graded one as an instrument of social justice. The large dealer occupies a position of economic superiority because of his greater volume of business. And, to make his tax heavier, both absolutely and relatively, is not arbitrary discrimination but an attempt to proportion the payment to capacity to pay and thus to arrive at a more genuine equality. The Court held that the economic wisdom of tax is within the exclusive province of the legislature. The only question for the Court to consider is whether there is rationality in the legislature's belief that the capacity to pay the tax increases, by and large, with a rise in receipts. For this, the Hon'ble Supreme Court followed the dissenting opinions of Justice Cardozo, Justice Brandeis and Justice Stone in **Stewart Dry Goods Co. V. Lewis**[29].

102. The Court held that the capacity of a dealer, in particular circumstances, to pay tax is not an irrelevant factor in determining the tax rate, and one index of capacity is the

[28] AIR 1974 SC 2272

[29] 294 US 550

quantum of turnover. The argument that a dealer beyond a certain limit is obliged to pay higher tax when others bear less tax, and it is consequently discriminatory, really misses the point, namely that former kind of dealers are in a position of economic superiority because of their volume of business and form a class by themselves. They cannot be treated as on par with comparatively small dealers. An attempt to proportion the payment to capacity to pay and thus bring about real and factual equality cannot be ruled out as irrelevant in the tax levy on the sale or purchase of goods. The object of a tax is not only to raise revenue but also to regulate the economic life of the society.

103. In the *Federation of Hotel and Restaurant Association of India* (supra), the Constitution Bench rejected similar arguments by explaining that the classifications based on differences in the value of articles or economic superiority of the persons of incidents are well recognised. The Court explained that the reasonable classification includes all who are similarly situated and none who are not. To ascertain whether persons are equally placed, one must look beyond the classification and the law's purposes. In the context of expenditure tax, the Court upheld the classification between hotels where units of residential accommodation were priced at over Rs.400/- per day per individual and others, which were not as a valid classification. The Court held that such a classification cannot be said to be arbitrary or unintelligible nor as being without a rational nexus with the object of law. The Court deferred to the legislative wisdom in classifying persons based on the economic superiority of those who might enjoy its customs, comforts and services.

104. The Court held that the legislative assumption cannot be condemned as irrational. It is equally well recognised that judicial veto is to be exercised only in cases that leave no room for reasonable doubt. Constitutionality is to be presumed. The question of arbitrariness cannot be decided in the abstract. These are policy decisions where the legislature has been vested with significant latitude. The legislature has created a legal fiction, and further rational criteria are provided for measuring and levying the tax. Such a provision introduces certainty and clarity. Due to such a provision, there is tax efficiency, which is, in the long run, beneficial to both the taxpayer and the tax authorities. Therefore, the impugned amendments cannot be declared ultra-vires, irrational or unconstitutional.

105. After referring to the decisions in **Union of India vs. Bombay Tyre International Ltd**[30] and **CCE vs. Grasim Industries Ltd.**[31] the Court held that there ought to be a "nexus" between the nature of tax and the measure of tax. However, the measure cannot be controlled by the rigours of the nature of tax. The nexus between the measure and levy of tax need not be "direct and immediate". The nexus must be "reasonable" and have some relationship with the nature of levy. The reasonability of the nexus will largely depend upon the nature of the tax and the means available to the legislature to designate the measure of the tax. Since the levy measure is a matter of legislative policy and convenience, the reasonability of the nexus between the measure and tax must be determined by the courts on a case-to-case basis. While

[30](1984) 1 SCC 467, para 14

[31](2018) 7 SCC 233

doing so, the Court will bear in mind the fundamental principle that the legislature possesses broad discretion in matters of fiscal levies. (See ***Express Hotels (P) Ltd. vs. State of Gujarat***[32]).

106. The impugned amendments introduce a legal fiction subject to fulfilling certain conditions. These conditions determine the existence and measure of the concession in the matter of renting employer-owned accommodation allotted to employees. The necessity of the AO undertaking the disproportionately cumbersome exercise of determining each case is substantially dispensed with. The computation is made relatively easy. The tax efficiency is increased. The taxpayer and the revenue know where they stand on this subject. The litigation and controversies could be expected to be reduced if not eliminated. The criteria and classification adopted are reasonable and have a clear nexus with the objects of the impugned amendments. By following the principles to judge the constitutional validity of taxing legislation, no case of judicial veto is made out.

107. In *All India Bank Officers' Confederation* (supra), Rule 3(7)(i) of the IT Rules was challenged. This Rule provided that the value of interest-free or concessional loans granted by the banks to its employees was to be treated as "other fringe benefit or amenity" for the purpose of Section 17(2)(viii) and, therefore, taxable as a perquisite. Further, this Rule also prescribed the method of valuation of the interest-free/concessional loan for taxation by linking the same to the PLR of SBI. After considering arguments like those raised in the present Petitions, the Hon'ble Supreme

[32](1989) 2 SCC 677, Para 25

Court rejected the challenge. The Court held that the impugned rule, positing the SBI's rate of interest as a benchmark to determine the value of the benefit to the assessee compared to the interest rates charged by several other individual banks, was not arbitrary or irrational. By this Rule, unequals were not treated as equals. SBI was the country's largest bank; their fixed interest rates invariably impacted and affected the interest rates charged by other banks. Therefore, by fixing a clear benchmark for computation of the perquisite, *the rule obviated ascertainment of interest rates charged by different banks from the customers and, in that sense, checked unnecessary litigation*.

108. The Court held that the impugned rule provided *consistency, clarity and certainty*. *Where there is certainty and clarity, there is tax efficiency, which benefits the taxpayers and the tax authorities. These are all hallmarks of good tax litigation.* Therefore, based on a uniform approach yet premised on a bare determining principle aligning with the constitutional values, the impugned rule could not be struck down as ultra-vires or unconstitutional.

109. The Court also noted that fiscal or tax measures laws enjoy greater latitude than other statutes when it comes to a uniform approach. The legislature should be allowed some flexibility in such matters, and courts would be more inclined to make judicial deference to legislative wisdom. *Commercial and tax legislation tend to be highly sensitive and complex as they deal with multiple problems and are contingent. Courts do not interfere with legislation which prevents possibilities of abuse and promotes certainty. The Court noted that the complex problem had been solved using a straitjacket formula, which*

merited judicial acceptance. To hold otherwise would meet multiple problems/issues and override legislative wisdom. The Court accepted the universal test by introducing the impugned rule and observed that this test was pragmatic, fair and just.

110. There is yet another aspect that bears consideration in these matters. As noticed earlier, the value of concession in rents respecting accommodation provided by an employer to an employee was always included in the definition of perquisite, and the value of such concession was taxable. Just like Rule 3(1) of the IT Rules, the impugned amendments only provide the machinery for assessing and recovering such tax. Contrary to what was feebly contented, the impugned amendments do not create any taxing liability or amend the charging provisions for the first time. Therefore, the arguments regarding the validity of such provisions, including the issue of prospectivity or retrospectivity of such provisions, must be considered slightly differently.

111. In **Mineral Area Development Authority and another vs. Steel Authority of India and another**[33], the Hon'ble Supreme Court has explained that among its elements, a tax has to provide for the charge of tax, the incidence of tax, the measure of tax and will contain provisions like the machinery for assessment and recovery. The Court held that it is now a well-settled principle that the determination of the principles for assessing the amount of tax is within the legislative domain (See ***S. Kodar vs State of Kerala***[34]). The quantification or measurement of liability is done based on the procedures laid down by the competent legislature (see ***Shaktikumar M.***

[33](2024) 10 SCC 1

[34](1974) 4 SCC 422, Para 10

Sancheti vs. State of Maharashtra[35]). In situations where the legislature selects one method out of the many available for assessing tax, the courts should not strike down the levy on the ground that the legislature should have adopted another method unless the method is capricious, fanciful, arbitrary or clearly unjust (See ***Khandige Sham Bhat vs. CIT (Ag)***[36]. Although the liability may be quantified or measured in many ways, there is a clear distinction between the subject matter of a tax and the standard by which the amount of tax is calculated. Therefore, by bearing in mind that the impugned provisions are concerned with the machinery for assessment and recovery, we are satisfied that no case is made to interfere with the said provisions or strike down such provisions as being ultra-vires or unconstitutional.

112. For all the above reasons we see not much force in the challenges to the impugned amendments on the grounds of any breach of Article 14 of the Constitution or any other constitutional provisions.

BANK'S SUBMISSION

113. Now, regarding the contention raised by Mr Talsania on behalf of the banks, it is true that on account of the interim reliefs granted, some of the banks may not have been able to make any deductions of the tax at source.

114. At this stage, it is too premature to decide whether the banks could be held to be "assesses in default" or made liable to pay any taxes on behalf of the employees. Therefore, we do not wish to make any observations on this issue. However, we

[35](1995) 1 SCC 351, Para 3.

[36]1962 SCC OnLine SC 15, Para 10

clarify that if and when such issues arise, all parties' contentions regarding this issue are kept open. Such issues should be dealt with in accordance with law by all concerned.

115. The revenue authorities must consider that this Court had interdicted tax deductions at source through interim orders that operated during the pendency of some of these Petitions. The tax authorities must also consider the plight of the banks vis-a-vis its employees, most of whom must have retired by now. In any event, for the present, since such issues are yet to arise, we make no further observations on such matters, leaving all contentions of parties open.

CONCLUSION

116. For the above reasons, we dismiss these Petitions and vacate the interim reliefs granted. There shall be no costs order.

117. All pending Notice of Motions are disposed of.

118. All concerned to act on an authenticated copy of this order.

(Jitendra Jain, J) **(M. S. Sonak, J)**

After pronouncement :

119. At this stage, learned counsel for the Petitioners in Writ Petition Nos.825 of 2006 and 438 of 2008 seeks for continuation of the interim relief.

120. The interim relief had only restrained the banks from deducting tax at source. Accordingly, we are not inclined to extend this interim relief, now that we have upheld the constitutional validity of the impugned amendments. No case of any immediate prejudice is also made out by the Petitioners or employees whom they purport to represent. Accordingly, this request for continuation of interim relief is denied.

(Jitendra Jain, J) **(M. S. Sonak, J)**