HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Civil Writ Petition No. 3625/2020

Deepak Maratha S/o Ramchandra Maratha, Aged About 33 Years, Resident Of Near Dudheshwar Mahadev Mandir, Ghoron Ka Chowk, Jodhpur.

----Petitioner

Versus

1. Union Of India, Through Ministry Of Finance, New Delhi.
2. Principle Commissioner Of Income Tax- Ii, Ayakar Bhawan, Jodhpur.
3. The Income Tax Officer, Ward- 3(3), Jodhpur.

----Respondents

For Petitioner(s) : Mr. Sandeep Bhandawat,
Mr. Shanker Singh Shekhawat
Mr. Narendra Kumar Taparia

For Respondent(s) : Mr. K.K. Bissa
Mr. Askaran Maru

HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE SUNIL BENIWAL

Judgment

Reportable

Judgment Reserved on:- 23/03/2026

Pronounced on:- 27/05/2026

By the Court (Per Arun Monga, J):-

INTRODUCTORY

1. Under challenge herein, *inter alia*, is the retrospective applicability and to that extent constitutional validity of the Taxation Laws (Second Amendment) Act, 2016, TLAA for short, (Act No. 48 of 2016) notified midyear vide notification dated 15.12.2016. By virtue of the impugned enactment, amongst other things, Section 115BBE of the Income Tax

Act, 1961 (for short- the Act) was amended thereby enhancing the tax on unexplained income from 30% to 60% and; Section 271AAC was inserted in the Act for imposition of consequential penalty of 10% on the tax.

1.1. Also assailed is the Assessment Order dated 21.12.2019, passed by Respondent No. 4 (the Assessing Officer) qua financial year 2016-17. The petitioner has already preferred an appeal against the said assessment before the Commissioner of Income Tax (Appeals) as stated in ground 'E' of the petition. In the premise, we deem it appropriate to confine ourselves to examine the challenge to the retrospectivity validity of the notification/amendment dated 15.12.2016 vis-à-vis its effective date of coming into operation.

1.2. Sections 115BBE and 271AAC are intertwined, as the discussion in latter part will demonstrate. Section 271AAC cannot operate in isolation on its own. It is entirely dependent upon and triggered by a prior determination to be made for applicability of Section 115BBE.

1.3. The question herein is whether the amended as well as newly inserted sections, *ibid*, are applicable with retrospective effect from 01.04.2016 i.e. the date of commencement of the financial year or with immediate effect 15.12.2016 the date when it was notified or prospectively with effect from 01.04.2017 i.e. the date of commencement of forthcoming next financial year?

1.4. The prime contention of petitioner is that it is settled law that no tax liability can be created with retrospective effect. Therefore, once the financial year has commenced, the amendment cannot be applied for any concluded transaction during the financial year 2016-17 and/or income earned prior to 01.04.2017. More of it in greater details, later.

1.5. Before we proceed further, and in order to appreciate the text, context and intent of the competing contentions of both sides noted by

us in the judgment in their proper perspective, first the pre-amended and amended Sections 115BBE be seen at this stage, which are reproduced below for ready reference :-

PRE AMENDED SECTION 115BBE	AMENDED SECTION 115BBE
(1) Where the total income of an assessee includes any income referred to in section 68 section 69, section 684, section 688 section 690 or section 690, the income-tax. payable shall be the aggregate of- *(a) the amount of income-tax calculated on income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D, at the rate of thirty per cent, and* *(b) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (a).*	*(1) Where the total income of an assessee.-* *(a) includes any income referred to in section 68, section 69, section 69-A, section 69-B section 69-C or section 69-D and reflected in the return of income furnished under section 139,* *or* *(b) determined by the Assessing Officer includes any income referred to in section 68 section 69, section 69A section 68B, section 69C or section 69D, if such income is not covered under clause (a).the income-tax payable shall be the aggregate of-* *(i) the amount of income-tax calculated on the income referred to in clause (a) and clause (b), at the rate of [sixty percent];* *and* *(ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause(i).*

	(2) Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance [or set off of any loss]shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause (a) [and clause (b)] of sub-section (1).″

2. FACTS OF THE CASE/PETITION

2.1. By a Notification dated 8th November 2016, the Government of India demonetized currency notes of Rs. 500/- and Rs. 1000/- denominations i.e. specified bank notes- SBN for short. Members of the public were to deposit old currency (SBN) in their bank accounts on or before 30th December 2016.

2.2. During the financial year 2016-17, stating it to be cash proceeds in course of his routine business (jewellery and bullion), a cash sum of Rs.66,17,500/- (including SBN) was deposited by the petitioner in his bank accounts during November/December,2016 i.e. demonetization period.

2.3. The Taxation Laws (Second Amendment) Act, 2016 (Act No. 48 of 2016), was notified on 15.12.2016. By virtue of this, Section 115BBE of the Income Tax Act, 1961 was amended w.e.f. 01.04.2017, enhancing the rate of tax on income falling under Sections 68 to 69D from 30% to 60%, with an additional surcharge of 25% on such tax, resulting in an effective rate of 75% plus 10% of tax as penalty with cess, and thus an aggregate liability of 83.25% (inclusive of cess).

2.4. Petitioner herein is engaged in the business of jewellery and bullion. He filed his return of income under Section 139 of the Act for the Financial Year 2016–17 (01.04.2016 to 31.03.2017) on 30.10.2017, declaring income of Rs. 7,92,860/-.

2.5. After he filed the return, petitioner's case was selected for scrutiny through Computer Assisted Scrutiny Selection (CASS). Pursuant thereto, a notice dated 13.08.2018 under Section 143(2) of the Act was issued. During the course of assessment proceedings, notices under Section 142(1) and query letters were issued by the Assessing Officer. Same were duly responded by the petitioner.

2.6. Subsequently, vide the assessment order dated 21.12.2019, it was held that the petitioner/assessee's books of account were not true and correct. Being dissatisfied with their correctness, the books were rejected under Section 145(3) of the Act.

2.7. Consequently, vide impugned assessment order, it was held that the assessee/petitioner failed to explain/substantiate the cash deposit of Rs.66,17,500/- in the bank account during the demonetization period. Accordingly, the said amount was treated as unexplained money and added to the total income under Section 68 of the Income Tax Act, 1961. The total income was assessed at ₹74,10,360/- (i.e. 7,92,860/- + 66,17,500/-) under Section 144 of the Act.

2.8. It was directed that the tax @60% on the addition of Rs.66,17,500 (unexplained income) shall be computed in accordance with amended Section 115BBE of the Act. Demand notice and challan were issued. Interest was charged under Sections 234A, 234B, and 234C of the Act. A separate penalty notice under newly inserted Section 271AAC of the Act was also issued in respect of the income determined under Section 68 (unexplained income).

2.9. Prior to the amendment, such unexplained income falling within the purview of S.68 to 69D of the Act was taxable at the rate of 30% under Section 115BBE, but after amendment dated 15.12.2016, it has been enhanced from 30% to 60%, with effect from 01.04.2017.

2.10. The petitioner is aggrieved by the retrospective application of the amended provisions of Section 115BBE, whereby a higher rate of tax at 60% plus surcharge thereon and penalty have been imposed on his unexplained income earned prior to 01.04.2017 i.e. before the amendment in section, ibid.

2.11. Hence the instant petition challenging the validity and vires of the retrospective operation of the amended provisions of Section 115BBE of the Act.

3. STAND TAKEN IN THE REPLY BY THE RESPONDENTS

3.1. Reply has been filed opposing the petition and seeking dismissal thereof, stating *inter alia* that Parliament has the power to amend fiscal laws retrospectively.

3.2. It is also pleaded that in any case the amendment under challenge received assent from Honorable the President of India on 15.12.2016 before the financial year 2016-17 ended and, therefore, is applicable qua the assessments for that financial year. Thus it cannot be termed retrospective and challenge to the same on that ground is misconceived.

3.3. Stand taken on merits of assessment is that during the demonetization period, the assessee deposited cash of ₹66,17,500/- (inclusive of Specified Bank Notes) in his bank accounts. On examination of the books of account, a striking and unexplained disparity was found between the two financial years. The average monthly cash sales in FY 2016-17 stood at ₹6,97,271/-, as against ₹97,046/- in FY 2015-16 i.e. an increase of approximately seven times. Similarly, the average closing cash in hand rose from ₹3,26,623/- to ₹25,71,552/-, nearly eight times higher.

3.4. Furthermore, the purchase ledger reveals that gold/bullion purchases aggregating to approximately ₹1,49,15,839/- were booked

within a short span of five days immediately following the demonetization announcement, despite there being no material movement in gold prices during this period to justify such purchases.

3.5. The petitioner/assessee was called upon to produce sale bills and purchase vouchers for the period September to December 2016, but failed to do so. The closing cash in hand of ₹67,50,114/- as on 08.11.2016 (date of declaring demonetization) was thus found to be grossly inflated and inconsistent with the past cash balances.

3.6. Accordingly, the books of account were rejected under Section 145(3) of the Act, and the unexplained cash deposit of ₹66,17,500/- was added to the total income of the assessee as an unexplained cash credit under Section 68 of the Income Tax Act, 1961. Dismissal of petition is thus sought on all counts.

4. **ARGUMENTS ON BEHALF OF THE PETITIONER**

4.1. Mr. Sandeep Bhandawat, learned counsel for the petitioner submitted that the amendment to Section 115BBE of the Income Tax Act, 1961, introduced by the Taxation Laws (Second Amendment) Act, 2016, came into effect from 1st April, 2017 and is prospective in nature. It cannot, in law, be applied to transactions undertaken prior to the date of it’s coming into operation.

4.2. Notwithstanding the prospective character of the amendment, the petitioner has been subjected to the enhanced rate of tax of 60% in respect of transactions that were completed well before the amendment came into force. An amendment that is substantive in nature, as the present amendment undoubtedly is, inasmuch as it creates an entirely new and significantly higher tax liability, cannot be given retrospective effect so as to fasten an enhanced fiscal burden upon transactions that stood concluded under the law as it then existed.

4.3. The plain language deployed in the amendment, by its own terms, seeks to prospectively enhance the rate of tax from 30% to 60% under Section 115BBE and to impose a consequential penalty of 10% of the tax so payable under Section 271AAC. The prospective character of the amendment is apparent on the face of the legislation itself. It necessarily follows that the amendment can have no application to transactions that were already completed before it came into force. To apply it otherwise would be to give the amendment a retrospective operation that the legislature did not intend and that the law does not permit.

4.4. Such retrospective levy of an enhanced rate of tax, together with the penalty and applicable surcharge, results in an effective tax liability of 83.25%. The retrospective invocation of Section 115BBE has accordingly been challenged on the ground that its retrospective application is unreasonable, arbitrary and violative of the settled principles of taxation law, as well as the constitutional guarantee against arbitrary State action.

4.5. On merits of the impugned Assessment Order, he would argue that it is wholly arbitrary, illegal, and contrary to settled law, and is liable to be quashed and set aside on the following grounds:

(i) The assessing officer has gravely erred in law in failing to appreciate that the cash deposits made by the petitioner were duly explained and supported by adequate material. The assessing officer could not, in law, treat such deposits as unexplained under section 68 of the Act.

(ii) Even assuming, *arguendo*, that such deposits were liable to be treated as unexplained cash credits, the assessing officer could not have levied tax at the enhanced rate of 60% in respect of transactions/deposits made prior to 01.04.2017 i.e. the date on

which the Amendment in section 115BBE came into effect. The imposition of the enhanced rate, instead of earlier rate of 30%, is without legal authority and contrary to law.

4.6. Though the petitioner has already preferred a statutory appeal before the competent appellate authority, but the said appellate authority lacks jurisdiction to adjudicate upon the constitutional validity and vires of the statutory amendment. Hence the instant constitutional challenge under Article 226 of the Constitution of India.

5. **SUBMISSIONS ON BEHALF OF THE RESPONDENTS**

5.1. Mr. K.K. Bissa, learned counsel on behalf of the respondents would argue that the legislature is fully competent to enact fresh legislation with retrospective effect, or to alter the character of an earlier statute. Parliament is the sovereign legislative authority in respect of subjects enumerated in List I of the Seventh Schedule to the Constitution of India, and in exercise of that sovereign authority, Parliament is competent to enact legislation with retrospective effect. The amendment to Section 115BBE falls squarely within that legislative competence and cannot be impeached on the ground of retrospectivity alone.

5.2. Learned counsel for the respondents would thus urge that the Parliament has the sovereign authority to make a legislation retrospectively, therefore, the contention of petitioner qua the retrospective applicability of the provisions of law is not tenable at the very threshold.

5.3. As an argument in the alternative, it is submitted that, in any case, the Taxation Laws (Second Amendment) Bill, 2016, after it was duly passed by Parliament, received the assent of the President of India and had been notified on 15th December, 2016. The timing of the said enactment is not without significance. It coincides directly with the

demonetization of Specified Bank Notes announced on 08th November, 2016, a measure specifically directed at unearthing and taxing unaccounted black money circulating in the economy.

5.4. The legislative intent, discernible from the timing i.e. in the middle of financial year 2016-17 and context of the enactment, is clear and unambiguous. The amendment was intended to operate during Financial Year 2016-17 itself. The legislature, by enacting the amendment, obtaining the Presidential assent and notifying the enactment on 15th December, 2016 i.e. well before the close of Financial Year 2016-17 on 31st March, 2017, manifested a clear intention that the enhanced rate of tax should apply to income arising on and after 1st April, 2016, being the commencement of the financial year relevant to Assessment Year 2017-18.

5.5. Accordingly, it is submitted that any income falling within the purview of Section 115BBE, that is, income determined under Sections 68, 69, 69A, 69B, 69C, and 69D of the Act, and arising during Financial Year 2016-17, is liable to be taxed at the enhanced rate of 60% as prescribed by the amended provision. The amendment was notified before the close of the financial year to which the assessee's income relates, its application to income of that year cannot be characterised as retrospective. Seen from that angle, there is thus no retrospective applicability, is the submission.

5.6. On merits of the assessment, Mr. Bissa would submit that on a perusal of the material on record, it was observed that there was an abnormal and unexplained increase in the sales declared by the assessee during the pre-demonetization period, as compared to the regular sales declared in earlier months and in the preceding financial year. In the course of the assessment proceedings, the assessee was called upon to furnish sale bills and purchase vouchers, particularly in

respect of purchases made during September, October, November, and December 2016. No such details were furnished by the assessee at any point during the assessment proceedings.

5.7. The Assessing Officer was thus fully justified in rejecting the said books of account under Section 145(3) of the Income Tax Act, 1961, being dissatisfied with the correctness and completeness of the accounts. The assessee failed to satisfactorily explain the sum of ₹66,17,500/- deposited in the bank account during the demonetization period. The said amount was, therefore, rightly treated as unexplained money and added to the total income of the assessee as an unexplained cash credit under Section 68 of the Income Tax Act, 1961.

6. **DISCUSSION & ANALYSIS**

6.1. In the aforesaid backdrop of the rival contentions we shall now proceed to render our opinion by recording discussion after analysis of the applicable law.

POSITION OF LAW

6.2. At the outset, before embarking on the legal analysis, we deem it necessary to record a caveat viz. it is settled law that Parliament is competent to enact legislation with retrospective effect, even in fiscal matters, whether by way of amendment or fresh enactment. Provided, such an intent is expressly stated. In certain cases, retrospectivity may also arise by necessary implication, to be ascertained by reference to the surrounding circumstances and the objects and reasons of the enactment/amendment. It is precisely in this latter category where the grey area lies. It is there that the debate at times becomes contentiously two pronged with the conflict as to which interpretation should prevail. This aspect is examined in greater detail in the discussion that follows.

6.3. The Parliament of India derives its competence to enact laws levying income tax primarily from Article 246 of the Constitution of India. Said Article distributes legislative powers between Parliament and the State Legislatures. By virtue of Entry 82 of List I (Union List) of the Seventh Schedule, Parliament is vested with the exclusive power to legislate in respect of *"taxes on income other than agricultural income".* It is in exercise of this constituent power that Parliament enacted the Income Tax Act, 1961, which is the principal legislation governing the levy and collection of direct taxes on income in India.

6.4. Section 4 of the Income Tax Act, 1961 is the principal charging section of the Act. It reads as under:

> ***"4. Charge of income-tax.***
>
> (1). *Where any Central Act enacts that income-tax shall be charged for any assessment year at any rate or rates, income-tax at that rate or those rates shall be charged for that year in accordance with, and subject to the provisions (including provisions for the levy of additional income-tax) of, this Act in respect of the total income of the previous year of every person:*
>
> *Provided that where by virtue of any provision of this Act income-tax is to be charged in respect of the income of a period other than the previous year, income-tax shall be charged accordingly.*
>
> *(2). In respect of income chargeable under sub-section (1), income-tax shall be deducted at the source or paid in advance, where it is so deductible or payable under any provision of this Act."*

Section 4 thus makes it unequivocally clear that income tax is not inherent or automatic. It is a statutory levy under a Central Act. No income tax can be levied unless a Central Act, i.e., the annual Finance Act, specifically enacts that income tax shall be charged for a given assessment year at prescribed rates. In the absence of such enactment, no charge arises.

6.5. The charge under Section 4 is levied on the total income of the financial year/previous year of every person. Two concepts are therefore central to the operation of Section 4:

(i) **Financial Year/Previous year** — The financial year immediately preceding the assessment year, being the year in

which the income is *earned*. Under Section 3 of the Act, the financial year is the financial year commencing on 01st April and ending on 31st March.

(ii) **Assessment Year** — The next year *following* the financial year, being the year in which the income is *assessed* and tax is charged. E.g., for the case in hand, income earned during the Financial Year 2016-17 (01.04.2016 to 31.03.2017) would be assessed in Assessment Year 2017-18.

In light of the above, it is pertinent to note that the rate at which tax is charged is the rate prescribed by the Central Act for the financial year in which the income was earned, and the rate so prescribed shall apply to the assessment for that year. This is the cornerstone of the annual Finance Act mechanism. Parliament thus enacts a Finance Act each year specifying the rates of income tax applicable to the income for the relevant financial year.

6.6. To sharpen the discussion a little more, the most significant legal implication of Section 4, flows from the phrase *"for any assessment year."* The Hon'ble Supreme Court way back in 1966 in ***Karimtharuvi Tea Estate Ltd. v. State of Kerala***[1] ***(*****Three Judges Bench*****),*** laid down the following proposition (which holds the field till date), arising directly from Section 4:

> *"The Income-tax Act, as it stands amended on the first day of April of any financial year must apply to the assessments of that year. Any amendments in the Act which come into force after the first day of April of a financial year would not apply to the assessment for that year, even if the assessment is actually made after the amendments have come into force."*

6.7. Accordingly, the imposition of tax principle can be established thus:

1 (1966) 60 ITR 262 (SC)

(i). The law governing the assessment of income for a given financial year is the law as it stands on 01st April of that calendar year.

(ii). An amendment introduced after 01st April of a financial year does not apply to the assessments for that year (unless it so specifically states otherwise).

6.8. In the context of controversy in hand, Part-D of Chapter III and Chapter IV of The Income Tax Act, 1961 draws out a fundamental and legally distinct two broad heads/categories of income, insofar as the basis and rate of levy are concerned, viz.:

(i) Part-D of Chapter III (Normal slab):-

Income from Business or Profession which is governed by Sections 28 to 44 of the Act;

Sections 28 to 44 of the Act constitute the statutory framework for the computation and levy of tax on income, at the rate of normal slab for income from business or profession. Section 28 is the charging provision under this head, and it brings to tax profits and gains of any business or profession carried on by the assessee at any time during the previous year. The categories of income chargeable under Section 28 include Profits and gains of any business or profession;

And;

(ii) Chapter IV (Residuary or penal slab):-

Unexplained or Undisclosed Income which is governed by Sections 68 to 69D of the Act;

Sections 68 to 69D of the Act, which are residuary in nature, deal with a fundamentally different category of income, i.e. , income that is unexplained, undisclosed, or inadequately explained by the assessee and is taxed at rate of penal slab. These provisions

operate as deeming provisions since they deem certain receipts, credits, investments, or expenditures to constitute income of the assessee, in the absence of a satisfactory explanation of their nature and source.

6.9. These two categories (income heads), as above, differ not merely in their nature and source, but also in the manner in which they are brought to tax, the rate at which they are taxed, and the respective presumptions that operate in favour of or against the assessee in each case.

6.10. For brevity, the Key Points of distinction between the two separate heads of taxing i.e. normal slab and penal slab, supra, by way of a comparative analysis, is tabulated below:-

Parameter	Normal slab-Sections 28 to 44	Penal slab-Sections 68 to 69D
Nature of income	Actual income from business or profession	Deemed income from unexplained receipts, investments, or expenditure
Basis of charge	Actual profits computed after deductions	Legal presumption arising from failure to explain
Disclosure	Voluntarily declared by assessee	Not declared — detected or inferred by Assessing Officer
Books of account	Supported by books and records	Arises from unexplained entries in books or unexplained assets
Rate of tax	Normal slab rates (maximum 30%)	Flat rate of 60% (post amendment) under Section 115BBE
Deductions and set-off	Permissible under Sections 30 to 44	Expressly prohibited under Section 115BBE(2)
Surcharge	Standard surcharge as applicable	Additional surcharge of 25% under Section 115BBE
Penalty	Under Section 270A for under-reporting or misreporting	Under Section 271AAC at 10% of tax payable under Section 115BBE
Burden of proof	On the Revenue to establish understatement	On the assessee to explain the nature and source of credit or investment

The distinction tabulated above, in the two categories of the income heads, is the root of the challenge to the retrospective application of Section 115BBE.

6.11. As is borne out, income from business or profession falling under Sections 28 to 44 of the Act is taxed at the normal slab rates under section 115 BAC applicable to the assessee, as prescribed by the relevant annual Finance Act for the assessment year. The assessee is entitled to claim all permissible deductions, set-offs, and carry-forward of losses against such income.

6.12. Whereas, income determined under Sections 68 to 69D, prior to the amendment by the Taxation Laws (Second Amendment) Act-2016, was taxed at a flat rate of 30% under Section 115BBE. Following the amendment, with effect from 01.04.2017, the rate of tax was enhanced to 60%, with an additional surcharge of 25% on such tax , resulting in an effective rate of 75%, and inclusive of cess, an aggregate liability of 83.25%. Further, as per amendment no deduction for expenditure, allowance, or set-off of any loss is permissible against such income.

6.13. It is to be noted that Section 115BBE has no application to business income chargeable to tax under Sections 28 to 44 of the Act. Its operation is confined exclusively to income falling within the residuary categories (section 68 to 69D).

6.14. In the present case, the assessee has declared his income for the financial year 2016-17 under Section 28, but the assessing officer has treated the same as falling under Section 68. Thus amended provision for enhanced rate of 60% prescribed under section 115BBE has been invoked, plus 10% consequential penalty and plus surcharge etc.

6.15. At this stage, it is pertinent to note Section 271AAC[2] of the Income-Tax Act, 1961, a penalty provision connected to income taxed

2 Ins. vide The Taxation Laws (Second Amendment) Act, 2016

under Section 115BBE. It was introduced vide same amendment in 2016 to penalize certain unexplained incomes that fall under residuary sections 68-69D, *ibid*. When such income is taxable under Section 115BBE, a penalty may be levied (10% of tax payable under 115BBE). For ease of reference same is as under :-

> ***"Section 271AAC. Penalty in respect of certain income***
>
> ***(1).*** *The Assessing Officer may, notwithstanding anything contained in this Act other than the provisions of section 271AAB, direct that, in a case where the income determined includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D for any previous year, the assessee shall be liable to pay by way of penalty, a sum computed at the rate of ten per cent of the tax payable under clause (i) of sub-section (1) of section 115BBE.*
>
> ***Provided that*** *no penalty shall be levied in respect of income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D to the extent such income has been included by the assessee in the return of income furnished under section 139 and the tax in accordance with the provisions of Section 115BBE(1)(i) of the Act has been paid on or before the end of the relevant previous year.*
>
> ***(2).*** *No penalty under the provisions of section 270A shall be imposed upon the assessee in respect of the income referred to in sub-section (1).*
>
> ***(3).*** *The provisions of sections 274 and 275 shall, as far as may be, apply in relation to the penalty referred to in this section."*

6.16. Section 271AAC is thus a penal provision operating in conjunction with Section 115BBE. It is, in substance, a consequential and dependent provision. Its operation is intrinsically contingent upon a prior determination that qualifying income exists and has been taxed within the framework of Section 115BBE. It does not constitute an independent or free-standing penal charge. In the absence of a valid determination under Section 115BBE, no penalty under Section 271AAC can be sustained.

6.17. Sections 115BBE and 271AAC are intertwined, though not symmetrically so. Section 115BBE operates independently as it stands alone on its own legs and applies regardless of whether or not Section 271AAC is invoked. Section 271AAC, however, cannot operate in isolation on its own; it is entirely dependent upon and triggered by a

prior determination made for applicability of Section 115BBE. In other words, Section 115BBE can exist and operate without Section 271AAC, but Section 271AAC cannot be invoked without Section 115BBE first coming into play.

LEGISLATIVE HISTORY OF SECTION 115BBE

PART-I

6.18. With the above understanding in place, it may be useful to briefly trace the legislative evolution of Section 115BBE, from its original insertion in the Income Tax Act to its subsequent amendments.

6.19. Section 115BBE was first introduced into the Income Tax Act by the Finance Act, 2012, with effect from 01.04.2013. Pertinently, the rate of income tax in the normal slab was 30% in year 2013. In its original form, section 115BBE, when initially inserted w.e.f. 2013, also prescribed a flat rate of 30% income tax on income determined under Sections 68, 69, 69A, 69B, 69C, and 69D of the Act. These provisions deal with the following categories of unexplained income:

Section	Nature of Income Deemed
68	Unexplained cash credits found in the books of the assessee
69	Unexplained investments made by the assessee
69A	Unexplained money, bullion, jewellery, or other valuable articles found in possession of the assessee
69B	Investments or expenditure recorded in books at amounts lower than actual the difference being deemed income
69C	Unexplained expenditure incurred by the assessee
69D	Amounts borrowed or repaid on hundi otherwise than through account payee cheque

PART-II

6.20. Moving on now to the amendment in the section 115BBE. First let us also see it’s Statement of Objects and Reasons.

STATEMENT OF OBJECTS AND REASONS OF BILL NO. 299 OF 2016 I.E. THE TAXATION LAWS (SECOND AMENDMENT) BILL, 2016

6.21. The Taxation Laws (Second Amendment) Bill, 2016 was introduced in Lok Sabha by late Shri Arun Jaitley, Minister of Finance and Corporate Affairs, on 28.11.2016, and passed by Lok Sabha on the same day. The Statement of Objects and Reasons of the Bill reads as under:

> *"Evasion of taxes deprives the nation of critical resources which could enable the Government to undertake anti-poverty and development programmes. It also puts a disproportionate burden on the honest taxpayers who have to bear the brunt of higher taxes to make up for the revenue leakage.*
>
> *As a step forward to curb black money, bank notes of existing series of denomination of the value of Rs. 500 and Rs. 1000 [Specified Bank Notes (SBN)] have been recently withdrawn by the Reserve Bank of India. Concerns have been raised that some of the existing provisions of the Income-tax Act, 1961 (the Act) can possibly be used for concealing black money. Accordingly, the Government proposes to amend the provisions of the Act to ensure that defaulting assessees are subjected to tax at a higher rate and stringent penalty provision.*
>
> *The existing provisions of section 115BBE of the Act provide for levy of tax at the rate of thirty per cent. on certain incomes determined under sections 68, 69, 69A, 69B, 69C and 69D of the Act. It is proposed to amend section 115BBE of the Act to provide that tax in respect of such income shall be charged at the rate of sixty per cent. with a surcharge of twenty-five per cent. of tax (i.e., fifteen per cent. of such income). No deduction or allowance in respect of any expenditure or set-off of any loss shall be allowed to the assessee in computing such income.*
>
> *Therefore, an alternative scheme namely, the 'Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016' (PMGKY) is proposed to be provided in the Bill.*
>
> *The Bill seeks to achieve the above objectives.*
>
> *—Arun Jaitley, New Delhi, 26th November, 2016"*

6.22. Deployment of the language in the Bill, i.e., *"proposes to amend"* and *"to ensure that defaulting assessees are subjected,"* is prospective in character. It addresses future conduct and not concluded transactions. Under settled canons of statutory construction, when a taxing statute creates a new liability or enhances an enhanced liability, it must express the retrospective intent in clear and unambiguous terms. No such expression is to be found in Objects and Reasons.

6.23. A perusal of Statement of Objects and Reasons of the above Bill further reveals that it was brought against the backdrop of demonetization. The stated objects were threefold:

(i). to prevent existing provisions of the Income Tax Act from being misused to conceal black money deposited in banks following the withdrawal of Specified Bank Notes;

(ii). to subject defaulting assesses to tax at a significantly higher rate with stringent penalties;

and

(iii). to simultaneously offer a voluntary disclosure avenue through the Pradhan Mantri Garib Kalyan Yojana, 2016 (PMGKY).

PART -III

THE TAXATION LAWS (SECOND AMENDMENT) ACT, 2016

(THE AMENDING ACT)

6.24. The above Bill received Presidential assent on 15.12.2016 and was notified on the same date as "The Taxation Laws (Second Amendment) Act, 2016" (Act No. 48 of 2016). The operative amendment to Section 115BBE(1) substituted the existing sub-section (1) so as to enhance the rate of tax from 30% to 60%, with a surcharge of 25% thereon, and bifurcating the charging provision into clause (a) (income disclosed in the return) and clause (b) (income determined by the Assessing Officer) was expressly stated to take effect from 01.04.2017.

6.25. Additionally, Section 115BBE(2) was amended by Chapter III of the same Act to insert the words "or set off of any loss", also with effect from 01.04.2017. In other words, no such deduction would be allowed.

THE FINANCE ACT, 2018

6.26. The Finance Act, 2018 (No. 13 of 2018), enacted on 29.03.2018, made a further amendment to Section 115BBE(2) with retrospective effect by expressly stating so. It inserted the words "and clause (b)" after "clause (a)" in sub-section (2), and declared that this insertion "shall be deemed to have been inserted with effect from the 1st day of April, 2017."

NET RESULT AS ON TODAY

6.27. The amended Section 115BBE as on date has already been reproduced in para 1.5 of the introductory part. Net result of amendment of Section 115BBE from title to time has resulted in following material changes :

(a). The rate of tax on income falling under Sections 68 to 69D was enhanced from 30% to 60%, with an additional surcharge of 25% on such tax, resulting in an effective rate of 75% plus 10% of tax as penalty with cess, and thus an aggregate liability of 83.25% (inclusive of cess);

and

(b). No deduction in respect of any expenditure, allowance, or set-off of any loss was to be permitted against income so determined.

7. **CASE LAW**

Having examined the statutory provisions, as above, let us now turn to the relevant case law to aid in their interpretation (starting from year 1966 right up to 2025).

7.1. **Karimtharuvi Tea Estate Vs. State of Kerala**[3]

(1966-SC- Three Judges Bench)

Hon'ble Supreme Court was dealing with the case where a provision imposing tax came in force on September 1st, 1957, i.e. after the

3 (1966) 60 ITR 262: 1965 SCC OnLine SC 233

commencement of F.Y. 1957-58. The issue was whether it could be applicable retrospectively so as to be treated as law in force for assessment of that F.Y. from *01.04.1957 to 31.03.1958*. Relevant portion of the judgment is as below:

> *"**8.Now, it is well settled that the Income Tax Act, as it stands amended on the first day of April of any financial year must apply to the assessments of that year. Any amendments in the Act which come into force after the first day of April of a financial year, would not apply to the assessment for that year, even if the assessment is actually made after the amendments come into force.***
>
> *X-X-X-X*

7.2. **Govinddas v. Income Tax Officer**[4]

(1976-SC- Three Judges Bench)

> *"11. Now it is a well settled rule of interpretation hallowed by time and sanctified by judicial decisions that, unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure. The general rule as stated by Halsbury in Vol. 36 of the Laws of England (3rd Edn.) and reiterated in several decisions of this Court as well as English courts is that all statutes other than those which are merely declaratory or which relate only to matters of procedure or of evidence are prima facie prospective and retrospective operation should not be given to a statute so as to affect, alter or destroy an existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only. xxxxx xxxxx"*

7.3. **CIT vs. Vatika Township.**[5]

(2015-SC- Constitution Bench of Five Judges)

Hon'ble Supreme Court was dealing with a situation whether in the case of a search carried out under Section 132 of the Act, the tax chargeable at the rate of 60% could be retrospective. The situation was thus similar to one in hand other than the fact that the chargeable Sections were different. Amendment carried out therein was under Section 113 of the Income-Tax Act vide Finance Act, 2002, whereby the rate of surcharge was increased from 30% to 60%. The case pertains to a search which took place on 14.07.1999. The question thus arose as to the assessment of the income discovered during the search, the Finance Act

4 (1976) 1 SCC 906
5 (2015) 1 SCC 1

of 1999 was to be applied or the subsequent amendment inserted in Section 113 by the Finance Act, 2002. Dealing with the situation, Apex Court observed as under:

"28. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bedrock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as lex prospicit non respicit: law looks forward not backward. As was observed in Phillips v. Eyre, a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.

29. The obvious basis of the principle against retrospectivity is the principle of "fairness", which must be the basis of every legal rule as was observed in L' Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co. Ltd. Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later.

30. We would also like to point out, for the sake of completeness, that where a benefit is conferred by a legislation, the rule against a retrospective construction is different. If a legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators' object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect. This exactly is the justification to treat procedural provisions as retrospective. In Govt. of India v. Indian Tobacco Assn. 8, the doctrine of fairness was held to be relevant factor to construe a statute conferring a benefit, in the context of it to be given a retrospective operation. The same doctrine of fairness, to hold that a statute was retrospective in nature, was applied in Vijay v. State of Maharashtra. It was held that where a law is enacted for the benefit of community as a whole, even in the absence of a provision the statute may be held to be retrospective in nature. However, we are (sic not) confronted with any such situation here.

31. In such cases, retrospectivity is attached to benefit the persons in contradistinction to the provision imposing some burden or liability where the presumption attaches towards prospectivity. In the instant case, the proviso added to Section 113 of the Act is not beneficial to the assessee. On the contrary, it is a provision which is onerous to the assessee. Therefore, in a case like this, we have to proceed with the normal rule of presumption against retrospective operation. Thus, the rule against retrospective operation is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct

implication. Dogmatically framed, the rule is no more than a presumption, and thus could be displaced by outweighing factors."

7.4. **Maruthi Babu Rao vs. ACIT**[6]

(2019-Kerala High Court - Division Bench)

"10. x-x-x-x

The well established position as argued by the learned Standing Counsel, as is clearly discernible from the precedents too; is that the rate prescribed by a Finance Act brought into effect from the 1st of April of an year would apply to the assessments made in that year relating to the previous year. The precedents would also indicate that there cannot be disturbance caused to accrued rights or obligations imposed, unless the legislative intent clearly indicates a retrospective effect as has been declared by another Constitution Bench in Vatika Township Pvt. Ltd.This is the legal aspect on which the facts in the present case has to be applied.

Before we look at the amendments carried out, on facts, there were two seizures of cash made on 02.08.2016 and 03.11.2016 respectively of Rs.1,05,03,500/- and Rs.1,24,68,750/- both in the F.Y 2016-2017. The persons from whom the cash was seized as also the appellant herein admitted that it belonged to the appellant who carries on trading in gold bullion. The appellant not having produced any books of accounts or cash flow statements failed to establish the source of the money seized; which was included in the total income under Section 69A of the IT Act. The writ petition or the appeal does not challenge such inclusion. On the said amounts tax was imposed @60% under Section 115BBE and surcharge @25%. The amendments to the Finance Act were bythe2ndAmendmentActdated15.12.2016. The enhancement of tax under Section 115BBE was made effective only from 01.04.2017; the commencement of the assessment year 2017-2018, in which the assessments of the previous year are carried out.

The assessee contends that the seizures were made prior to the amendment. The affidavits admitting the ownership of amounts seized were also submitted prior to the amendment. The assessee was not aware of the enhanced tax liability when the admissions were made before the authorities. The assessee has also made an attempt to relate the amendments to the demonetization of the specified currencies announced on 08.11.2016 which contention we reject at the outset. The subject amendments which are relevant for our consideration have no direct link with the demonetization introduced or the taxation and investment regime of Pradhaan Mantri Garib Kalyan Yojana 2016 brought in under Chapter IX A of the 2nd amendment Act. The 2nd amendment Act as is clear from the Statements of Objects and Reasons, was to curb, evasion of tax andblack money as also plug loopholes in the IT Act and to ensure that defaulting assessees are subjected to higher tax and stringent penalty provision. Both the measures spoken of herein were to further the said objects and there cannot be any nexus assumed nor is it discernible.

x-x-x-x-x-x

13. Section 115 BBE was inserted by Finance Act 2012 w.e.f 01.04.2013. As on 01.04.2016 the financial year in which the subject seizures occurred Section 155BBE provided for 30% tax on income referred to in Sections 68, 69, 69A, 69B, 69C and 69D. The same was amended by the 2nd Amendment Act; w.e.f. 01.04.2017, enhancing the rate to 60%. Hence there was no new liability created and the rate of tax merely stood enhanced which is applicable to the assessments carried on in that year. The enhanced rate applies from the commencement of the assessment year, which relates to the previous financial year.

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6 WA. No.984/2019, Kerala High Court

14. Likewise it was by Chapter II with heading 'Rates of Income Tax', as provided in the Finance Act 2016, that a surcharge was introduced by way of the 3rd proviso of Section 2(9) of that Finance Act. This comes into effect from the Financial Year 2016-2017; which is the year in which the subject seizures were occasioned. The proviso refers to various provisions where the advance tax computed under the first proviso stands increased by a surcharge for the purpose of the Union. Section 115BBE is one of the provisions referred to in the 3rd proviso and in the case of individuals the surcharge was @15% where the total income exceeds one crore, as on 01.04.2016. By the 2nd Amendment Act Section 2 of the Finance Act, 2016 stood amended by which 115BBE was omitted from the 3rd proviso. After the 6th proviso yet another proviso was inserted which provided for the 'advance tax' computed under the first proviso, in respect of any income chargeable to tax under Section 115BBE(1)(i), to be increased by a surcharge for the purposes of the Union, calculated @25%. Hence there is no new liability of surcharge created and it is a mere enhancement of the rate of surcharge.

15. In the financial year 2016-17 itself the tax as provided under section 115BBE and the surcharge on advance tax was available as discernible from the IT Act and Finance Act, 2016 as it stood on 1.4.2016 itself. A major misdemeanor leading to assessment of income as accrued under Section 69A invites the consequences of Section 115BBE and surcharge provided under Section 2(9) of the Finance Act, 2016. When it stands enhanced from 01.04.2017, for every assessment carried out in that year, related to the previous year, the rates as applicable on 01.04.2017 has to be applied. There being no new liability created or obligation imposed, the arguments raised by the appellant's counsel fails. The appellant cannot have a contention that he committed the misconduct on the expectation that if he were caught he would have to shell out only lesser amounts as tax and surcharge. ***There is no right accrued on the assessee to commit an offence on the expectation of a lesser penalty.***

x-x-x-x-x

17. In the instant case surcharge was imposed by Finance Act, 2016 and the rate stood enhanced by Finance Act, 2017. The Income Tax even as per the Finance Act was to be at the rate specified in Part I of the 1st Schedule which shall be increased by surcharge for purposes of the Union. Surcharge hence partakes the character of Income tax and Article 271 itself empowers the Parliament, at any time to increase any of the duties or taxes by a surcharge for the purpose of the Union and it forms part of the Consolidated fund. So when a surcharge is imposed it is in effect an enhancement of the tax or duty. The provision in the Finance Act also employs the words 'the income tax computed ... shall be increased by a surcharge'. Section 4 of the IT Act squarely applies to the surcharge imposed. The judgment of the learned Single Judge is affirmed for the for the reasoning herein above and the Writ Appeal would stand dismissed without any order as to costs."

7.5. **CIT vs. Prakash Chand Lunia**[7]

(2024-SC-Concurring view of His Lordship Sh. M.M Sundresh, J.)

"14. Section 115BBE of the Act deals with levy of tax on income as mentioned in Section 68, 69, and 69A to 69D of the Act. If a case comes under Section 115BBE sub-section (1) of the Act, the rate of income tax shall be at 60%.

15. The object of this provision is to fill up the loopholes and to make sure unaccounted money either generated or used, more so in the nature of Black Money, is penalized. When this provision was introduced in the year 2012, the rate of tax was fixed at the rate of 30%. The Bill also speaks about the objective behind not allowing any deduction to the assessee in computing deemed income under Section 68, 69 and 69A to 69D of the Act. That was

7 (2024) 1 SCC 204

the reason why a decision was made to impose greater tax burden. The rate of tax was increased by a subsequent amendment to 60%.

16. Sub-section (2) of Section 115BBE starts with a non-obstante clause. It will have precedence over any other provision contained in the Act, while dealing with a deduction in respect of any expenditure or allowance or set off of any loss. In other words, no such deduction would be allowed under any provision of the Act in computing an assessee's income under sub-section (1). An amendment has been introduced by Finance Act, 2016 with the inclusion of 'set off of any loss' being not allowable. Sub-section (2) once again does not speak about loss but the fact that it makes a reference to 'set off of any loss' would reiterate the view taken earlier, while considering the scope and ambit of Section 37 of the Act, that such a loss has to be read into expenditure, at least while applying the test for the purpose of deduction. To make the position clear one has to understand that the amendment merely speaks about the right of the assessee to set off the loss which presupposes that the loss has to be treated as a facet of expenditure.

x-x-x-x-x-x

27. In view of the aforesaid discussion, I am inclined to hold that the appeal of the Revenue deserves to be allowed, though conscious of the fact that Section 115BBE of the Act may not have an application to the case on hand being prospective in nature."

7.6. **S.M.I.L.E. Microfinance vs. ACIT**[8]

(2020-Madras High Court- SB)

While discussing the objects and reasons of the Taxation Law (Second Amendment) Act, 2016, Madras High Court has also held that the legislative intent was not to impose 60% rate of tax retrospectively and the same is applicable for the transactions which take place after 01.04.2017 which is the cut-off date.

"*In the aforesaid objects and reasons nowhere it is stated that due to "demonetization" the unaccounted money ought to be charged 60% rate of tax. It only states that step had been taken to curb black money by withdrawing Specified Bank Notes of denomination of Rs.500 and Rs.1000. And also states the people may find illegal ways of converting their black money into black again, hence as per experts advice heavy penalty ought to be levied. From the language of the object "that instead of allowing people to find illegal ways of converting their black money into black again", it is evident that the government is intended to impose the same for future transactions. Especially the use of word "again" in the object would clearly indicate it is for future transactions i.e. from 01.04.2017. Therefore this Court is of the considered opinion that the revenue is empowered to impose 60% rate of tax for the transactions from 01.04.2017 onwards and not prior to the said cut-off date. And for prior transaction the revenue is empowered to impose only 30% rate of tax.*"

8. **CASE IN HAND**

8.1 Against this backdrop, the core question that falls for adjudication is as below :-

8 W.P.(MD) No.2078 of 2020, Madras High Court

Whether the amendment to Section 115BBE, which enhanced the rate of tax from 30% to 60%, can lawfully be applied to income arising from transactions completed during Financial Year 2016-17 w.e.f. 01.04.2016 to 31.03.2017,and/or more specifically, whether such enhanced rate operates from 15.12.2016, being the date of notification/Presidential assent to the amending Act, or only from 01.04.2017, being the effective date expressly specified in the amending provision itself ?

8.2. The amendment assumes particular significance in the context of Section 4 of the Income Tax Act. Under Section 4, income earned during a previous year is assessed to tax in the immediately following assessment year, at the rates prescribed for that (previous) year. The amendment to Section 115BBE is expressly stated to take effect from 01.04.2017, it thus directly bears upon income earned during FY 2017-18 which falls for assessment in AY 2018-19. Thus, in ordinary course, rate of tax applicable to the income of FY 2016-17 is therefore the rate prescribed for AY 2017-18 by the Finance Act of 2016.

8.3. To resolve the question, i.e., can the amended rate of 60% be applied for the assessment year 2017-18, and to find answers, it is necessary to examine the intent of the legislature. The legislative chronology set out below provides the essential context within which that intent falls:-

Date	Event
01.04.2016	FY 2016-17 commences. Tax Rate under Section 115BBE stands at 30%.
14.05.2016	THE FINANCE ACT, 2016 No.28 OF 2016 was notified wherein vide its section 53 the existing section 115 BBE was slightly amended but prospectively i.e. effective 01.4.2017.
08.11.2016	Demonetization announced. SBNs of Rs. 500/- and Rs. 1,000/- withdrawn.

Date	Event
28.11.2016	Taxation Laws (Second Amendment) Bill introduced and passed in Lok Sabha to amend Section 115 BBE and insert Section 271 AAC along with Pradhan Mantri Garib Kalyan Yojana (PMGKY).
15.12.2016	Presidential assent accorded and notification issued and Taxation Laws (Second Amendment) Act comes into force "at once" except where provided otherwise
17.12.2016	(PMGKY) notified and became operative.
01.04.2017	Amendment to Section 115BBE(1) and Section 271AAC were expressly stated to take effect from this day
28.03.2018	The Finance Act, 2018 No.13 of 2018 was notified wherein existing Section 115BBE was amended with retrospective effect from 01.04.2017.

To be noted here from the above chronology, that the Financial Year 2016-17 had already commenced on 01.04.2016. As per section 4, all transactions undertaken from 01.04.2016 to 14.12.2016 or 31.03.2017 were governed by the law as it stood on those dates, which prescribed a rate of 30% under the then unamended section 115BBE.

8.4. Relevant of Finance Act, 2016 reads as under:

"THE FINANCE ACT, 2016
No. 28 OF 2016

[14th May, 2016.]

An Act to give effect to the financial proposals of the Central Government for the financial year 2016-2017.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:-

CHAPTER I
PRELIMINARY

1. Short title and commencement-

(1) This Act may be called the Finance Act, 2016.

(2) Save as otherwise provided in this Act, Sections 2 to 115 shall be deemed to have come into force on the 1st day of April, 2016.

x-x-x-x

53. Amendment of section 115BBE-

In section 115BBE of the Income-tax Act, in sub-section (2), after the word "allowance", the words "or set off of any loss" shall be inserted with effect from the 1st day of April, 2017.

x-x-x-x

Perusal of the above shows that while it is stated in Section 2 that the Act will come in force w.e.f. 01.04.2016, but as per Section 53, amendment in 115 BBE shall come in force w.e.f. 01.04.2017.

8.5. The text and legislative intent qua the Section 115BBE amendment being prospective w.e.f. 01.04.2017 is also very clear from the plain language used in the Finance Act, 2016 [as well as the language used in Taxation Law (Second Amendment) Act, 2016-dealt with in the succeeding paragraph].

8.6. Let us now examine the effective date of amendment in section 115BBE as per The Taxation Laws (Second Amendment) Act, 2016" (Act No. 48 of 2016) which came into operation w.e.f 15.12.016. Relevant extract thereof is as below:-

"THE TAXATION LAWS (SECOND AMENDMENT) ACT, 2016
(No. 48 OF 2016)

[15th December, 2016.]

An Act further to amend the Income-tax Act, 1961 and the Finance Act, 2016.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:-

CHAPTER 1
PRELIMINARY

1. Short title and commencement-
(1) This Act may be called the Taxation Laws (Second Amendment) Act, 2016.
(2) ***Save as otherwise provided in this Act, it shall come into force at once****.*

CHAPTER II
INCOME-TAX

2. Amendment of section 115BBE -

In the Income-tax Act, 1961 (hereinafter referred to as the Income-tax Act), in section 115BBE, for sub-section (1), the following sub-section shall be substituted ***with effect from the 1st day of April, 2017****, namely:-*

(1) Where the total income of an assessee,-

(a) *includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D and reflected in the return of income furnished under section 139;*
or
(b) *determined by the Assessing Officer includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D. if such income is not covered under clause (a),the income-tax payable shall be the aggregate of-*
(i) the amount of income-tax calculated on the income referred to in clause (a) and clause (b), at the rate of sixty per cent.;

and

(ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (i)."

x-x-x-x

CHAPTER III

FINANCE ACT 28 of 2016.

53. Amendment of section 115BBE:

In section 115BBE of the Income Tax Act, in sub section (s); after the word "allowance", the words "or set off of any loss" shall be inserted ***with effect from the 1st day of April, 2017****."*

x-x-x-x-x-x

CHAPTER IXA

TAXATION AND INVESTMENT REGIME FOR PRADHAN MANTRI GARIB KALYAN YOJANA, 2016

199A. Short title and commencement -

(1). This Scheme may be called the Taxation and Investment Regime for Pradhan Mantri Garib Kalyan Yojana, 2016.

(2). It shall come into force on such date as the Central Government may, by notification, in the Official Gazette, appoint.

199B. Definitions.

In this Scheme, unless the context otherwise requires,-

(a) "declarant" means a person making the declaration under sub-section (1) of section 199C;

(b) "Income-tax Act" means the Income-tax Act, 1961;

(c) "Pradhan Mantri Garib Kalyan Deposit Scheme, 2016" (hereinafter in this Chapter referred to as "the Deposit Scheme") means a scheme notified by the Central Government in consultation with the Reserve Bank of India in the Official Gazette; and

(d) all other words and expressions used in this Scheme but not defined and defined in the Income-tax Act shall have the meanings respectively assigned to them in that Act.

199C. Declaration of undisclosed income.

(1) Subject to the provisions of this Scheme, any person may make, on or after the date of commencement of this Scheme but on or before a date to be notified by the Central Government in the Official Gazette, a declaration in respect of any income, in the form of cash or deposit in an account maintained by the person with a specified entity, chargeable to tax under the Income-tax Act for any assessment year commencing on or before the 1st day of April, 2017.

(2) No deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed against the income in respect of which a declaration under sub-section (1) is made.

Explanation. For the purposes of this section, "specified entity" shall mean-

(i) the Reserve Bank of India;

(ii) any banking company or co-operative bank, to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act);

(iii) any Head Post Office or Sub-Post Office; and

(iv) any other entity as may be notified by the Central Government in the Official Gazette in this behalf."

8.6.1. The amending Act provides in Section 1(2) that it shall come into force *"at once"*, i.e., immediately upon Presidential assent (given on 15.12.2016), subject, of course to the caveat as per the opening words in sub Section 1(2), i.e., "save otherwise provided". Pertinently, the operative amendment to Section 115BBE(1) is separately expressed to take effect *"from the 1st day of April, 2017".* This leaves no room for any doubt or speculation that though other provisions of The Amendment Act came into force on 15.12.2016, but Section 2 thereof for the amendment to Section 115BBE(1) is/was to take effect on 01.04.2017.

8.6.2. We find that the expression *"at once"* in Section 1(2) is significant in TLAA, 2016. It conveys the legislature's intent that the Act operates from the date of notification qua most of its sections, except where it provides otherwise, illustratively as mentioned in the table below:-

WITH EFFECT FROM	**SECTIONS**
15.12.2016	3, 5, 199A, 199B to 199R.
01.04.2017	2, 4, 199C.

If the amendment were intended to apply only from 01.04.2017, the words *"at once"* would be rendered meaningless. No doubt, wherever specific future dates are given it applies with effect such specified future dates.

8.6.3. Conversely, opposite argument is that making it retrospective from 01.04.2016 would render the mid-year enactment purposeless. But we are of the opinion, as already discussed above, that the language of the Amendment Act clearly shows that midyear enactment is applicable with effect from 15.12.2016, the date of notification, save as provided otherwise in the amendment Act. This construction gives

meaning to *"at once"*, preserves the prospective character of the provision, and avoids a retrospective or retroactive levy. Support for this construction is also found in the amended provisions of Sections 271AAB and 271AAC, which specifically mention the date of notification as the operative trigger.

8.6.4. Even Statement of Objects and Reasons of the above Act, as already discussed in the preceding part, reveals that it discloses no legislative intent to tax transactions completed prior to 01.04.2017 at the enhanced rate.

8.7. **INCOME DISCLOSURE SCHEME, 2016**

Prior to demonetization, the Income Disclosure Scheme (IDS), 2016 was promulgated, operative from June 1, 2016 to September 30, 2016. The effective tax rate under the IDS was 45% of undisclosed income, inclusive of surcharge and penalty.

8.8. **THE DEMONETIZATION CONTEXT**

By Notification S.O. 3408(E) dated 08.11.2016 issued by the Ministry of Economic Affairs, the Central Government declared that existing bank notes of denominations of Rs. 500/- and Rs. 1,000/- (Specified Bank Notes) would cease to be legal tender with effect from 09.11.2016. Members of the public were called upon to deposit their old currency in bank accounts on or before 30.12.2016.

8.9. **PRADHAN MANTRI GARIB KALYAN YOJANA, 2016**

8.9.1. Aside above, the Government's simultaneous introduction of the PMGKY is itself an admission that there existed a class of assessees who had deposited undisclosed income during demonetization and required a regularisation avenue. If the enhanced rate of 60% was intended to apply only to post-demonetisation deposits not declared under PMGKY, it cannot in logic or in law be extended to transactions carried out *prior to 08.11.2016*, transactions wholly unconnected with demonetisation

and completed at a time when no legislative change was even under contemplation.

8.9.2. Following demonetization, as per Taxation Laws (Second Amendment) Act, vide notification dated 15.12.2016 the Government introduced the Pradhan Mantri Garib Kalyan Yojana, 2016 (PMGKY), available to assessees who had deposited undisclosed income in bank accounts during the demonetization period. The composite levy under the PMGKY was 50% of undisclosed income, comprising tax at 30%, a Pradhan Mantri Garib Kalyan Cess of 33% on such tax, and a penalty of 10%. Additionally, the declarant was required to deposit 25% of the undisclosed income in specified entities for a period of up to four years without interest. The PMGKY remained operative from 17.12.2016 to 31.03.2017.

8.9.3. Pertinently, it's so appears that intention of the parliament was to caution the public at large that those who are keeping the black money stacked up, this was their chance to legitimise the same under the amnesty scheme of Pradhan Mantri Garib Kalyan Yojna, and; if they fail to do so, with effect from 01.04.2017, they would be subjected to the penal provisions of the Section 115BBE. In another words tax payable under PMGKY was 50% as against 83.25% under Section 115BBE i.e. for every Rupees 100/- all that one would get to retain is Rs. 16.75.

THE FINANCE ACT, 2017

8.10. The table below culled out from The Finance Act 2017, showing different effective dates, also fortifies our view that the legislature was fully cognisant of the distinction between retrospective, prospective, and immediately operative amendments, and thus deployed precise language accordingly.

Sections having retrospective effect

Effective From	Sections
1 April 1962	50(i) (Explanatory/clarificatory)
1 October 1975	50(ii), 51(Explanatory/clarificatory)
1 April 1998	6(c)(i) (Explanatory/clarificatory)
1 April 2012	4(i) (Explanatory/clarificatory)
1 April 2013	6(a) (Substituting)
1 April 2015	4(ii), 6(d) (Explanatory/clarificatory)
1 April 2016	5, 25(f), 68(b) (Explanatory/clarificatory)

Sections having immediate effect

Effective From	Sections
1 April 2017	2, 3 (except 3(a), 6, 15(a), 20, 21, 29, 41, 47, 49, 52, 53, 54, 56, 60, 65, 66, 67, 70, 71, 72, 73, 74, 75, 77, 78, 79, 80, 81, 82, 83, 84, 85, 87, 88

Sections having prospective effect

Effective From	Sections
1 June 2017	70, 64
1 April 2018	3(a), 6(b), 6(c)(ii), 6(e), 6(f), 7, 8, 9, 10, 11, 12, 13, 14, 15(b), 16, 17, 18, 19, 22, 23, 24, 25(a) to 25(e), 26, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 42, 43, 44, 45, 46, 48, 55, 57, 58, 59, 61, 62, 63, 68(a), 69, 76, 86

THE FINANCE ACT, 2018

8.11. Likewise, position gets even clearer qua the legislative intent when one sees Finance Act, 2018 which is not only instructive, but also conveys the Legislature's conscious approach where it has to make laws retrospectively and/or prospectively. Reference may be had to such an illustration of Finance Act, 2018, which for ready reference is a below:

"THE FINANCE ACT, 2018
No. 13 OF 2018

[28th March, 2018.]

An Act to give effect to the financial proposals of the Central Government for the financial year 2018-2019.
BE it enacted by Parliament in the Sixty-ninth Year of the Republic of India as follows:-

CHAPTER I
PRELIMINARY

1. Short title and commencement -
(1) This Act may be called the Finance Act, 2018.
(2) Save as otherwise provided in this Act, sections 2 to 55 shall come into force on the 1st day of April, 2018.

x-x-x-x

*36. **Amendment of section 115BBE** -*
In section 115BBE of the Income-tax Act, in sub-section (2), after the word, brackets and letter "clause (a)", the words, brackets and letter "and clause (b)" shall be inserted and shall be deemed to have been inserted with effect from the 1st day of April, 2017."

8.12. For better understanding of the legislative intent of their awareness and knowing it fully with respect to retrospectivity or prospectivity or with immediate effect, the Finance Act, 2018 vis-a-vis various Sections being effective from different dates can be better understood from the following table.

With Effect From	Sections
1st April, 2017	10, 11, 13, 15, 35, 36, 47, 55
1st April, 2018	2, 18, 22, 24, 25, 28, 37, 40, 41, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54
1st April, 2019	3, 4, 5, 6, 7, 8, 9, 12, 14, 16, 17, 19, 20, 21, 23, 26, 27, 29, 30, 31, 32, 33, 34, 38, 39

The table above demonstrates that the legislature was / is fully cognisant of the distinction between retrospective, prospective, and immediately operative amendments, and deployed precise language accordingly.

8.13. No language of the kind has been employed in the Taxation Laws (Second Amendment) Act, 2016 in relation to Section 115BBE to show retrospectivity.

8.14. The amending Act contains an internal distinction that is itself instructive. Section 1(2) provides that the Act shall come into force "at once" i.e., immediately upon Presidential assent on 15.12.2016, subject to what is otherwise provided. However, the operative

amendment to Section 115BBE(1) is separately expressed to take effect "from the 1st day of April, 2017."If the enhanced rate of tax was nonetheless to be applied to the entirety of FY 2016-17, for transactions completed before 01.04.2017 and or even before 08.11.2016 (demonetization) or 15.11.2016 (date of amendment), the different dates ("at once" i.e. 15.12.2016 and 01.04.2017) of coming into force of the specified provisions would be rendered mutually incongruent.

8.15. To elaborate it further. The Finance Act, 2018 was enacted w.e.f. 28.03.2018, but it clearly states that the amendments in Section 115AD shall be w.e.f. 01.04.2019 i.e. prospective in nature, whereas it is clearly stated that amendment in Section 115BA and amendment in Section 115BBE in its Sub-section 2 shall come into effect from 1st day of April, 2017 i.e. retrospective. No such language has been deployed qua the amendment carried out vide Taxation Law (Second Amendment) Act, 2016, wherein not only it is borne out that is prospective in nature, but a clear cut-off date has been given i.e. 01.04.2017 for section 2 to come into force.

8.16. Thus, The Finance Act, 2018 which is a subsequent Legislation also buttresses our above view. The Finance Act, 2018 amended Section 115BBE(2) so as to bring clause (b) of Sub-section (1) expressly within its ambit, and specifically assigned retrospective effect from 01.04.2017 to that amendment. The other provisions of the Finance Act, 2018 were to come into force on the 1st day of April, 2018, without any retrospective declaration. This deliberate contrast conclusively demonstrates that where the legislature intends retrospectivity, it says so in express terms. The absence of any such declaration in the Taxation Laws (Second Amendment) Act, 2016, in respect of transactions prior to 15.12.2016, must be construed as a conscious legislative choice in favour of prospective operation.

CIRCULAR No.11/2019

8.17. To be also noted that, separately, by the Finance Act, 2016, Section 115BBE(2) was amended by insertion of the words *"or set off of any loss"*. As a consequence, no set-off of any loss and no deduction for expenditure or allowance is permissible against income determined under Sections 68 to 69D and taxed under Section 115BBE. As is also confirmed by clarificatory CBDT Circular No. 11/2019 dated 19.06.2019, this restriction operates prospectively with effect from 01.04.2017. Thus for all assessment years prior to AY 2017-18, an assessee retains the right to claim set-off of eligible losses. Circular, *ibid*, reads as under:-

"Central Board of Direct Taxes
North-Block, New Delhi,

Dated the 19th of June, 2019

Subject: Clarification regarding non-allowability of set-off of losses against the deemed income under section 115BBE of the Income-tax Act, 1961 prior to assessment-year 2017-18-reg.

With effect from 01.04.2017, sub-section (2) of section 115BBE of the Income-tax Act, 1961 (Act) provides that where total income of an assessee includes any income referred to in section(s) 68/69/69A/698/69C/69D of the Act, no deduction in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee under any provisions of the Act in computing the income referred to in section 115BBE(1) of the Act.

2. In this regard, it has been brought to the notice of the Central Board of Direct Taxes (the Board) that in assessments prior to assessment year 2017-18, while some of the Assessing Officers have allowed set off of losses against the additions made by them under Section(s) 68/69/69A/69B/ 69C/69D, in some cases, set off of losses against the additions made under Section 115BBE(1) of the Act have not been allowed. As the amendment inserting the words 'or set off of any loss' is applicable with effect from 1st of April, 2017 and applies from assessment year 2017-18 onwards, conflicting views have been taken by the Assessing Officers in assessments for years prior to assessment year 2017-18. The matter has been referred to the Board so that a consistent approach is adopted by the Assessing Officers while applying provision of section 115BBE in assessments for period prior to the assessment year 2017-18.

3. The Board has examined the matter. The Circular No. 3/2017 of the Board dated 20th January, 2017 which contains Explanatory notes to the provisions of the Finance Act, 2016, at para 46.2, regarding amendment made in section 115BBE(2) of the Act mentions that currently there is uncertainty on the issue of set-off of losses against income referred to in section 115BBE. It also further mentions that the pre-amended provision of section 115BBE of the Act did not convey the intention that losses shall not be allowed to be set-off against income referred to in section 115BBE of the Act and hence, the amendment was made vide the Finance Act, 2016.

> *4. Thus keeping the legislative intent behind amendment in section 115BBE(2) vide the Finance Act, 2016 to remove any ambiguity of interpretation, the Board is of the view that since the term 'or set off of any loss' was specifically inserted only vide the Finance Act 2016, w.e.f. 01.04.2017, an assessee is entitled to claim set-off of loss against income determined under section 115BBE of the Act till the assessment year 2016-17.*
> *5. The contents of this Circular may be circulated widely for information of all stakeholders and departmental officers. The pending assessments and litigations on this issue may be handled accordingly.*
> *6. Hindi version to follow."*

In light of the above, it is not in dispute that retrospective amendment of a statute can be carried out by the Parliament. To that extent, the argument of the respondents is acceptable, but the retrospectivity must be so specifically stated or shown while enacting the law.

SATUTUORY LAW VIS A VIS CASE LAW

9. **Vatika — The Governing Principle**

The Hon'ble Supreme Court in ***CIT v. Vatika Township Pvt. Ltd.*** (supra), reaffirmed that substantive law is presumed to operate prospectively unless expressly made retrospective, and that an amendment imposing a higher tax burden on an assessee cannot be said to be intended to remove hardship. Such retrospective levy would itself cause undue hardship to the assessee. It is a well-settled principle that taxing statutes must be construed strictly, and any ambiguity must be resolved in favour of the taxpayer.

10. At the cost of repetition, in ***Karimtharuvi Tea Estate Ltd. v. State of Kerala*** (supra) the Supreme Court laid down the following proposition:

> *"The Income-tax Act, as it stands amended on the first day of April of any financial year must apply to the assessments of that year. Any amendments in the Act which come into force after the first day of April of a financial year would not apply to the assessment for that year, even if the assessment is actually made after the amendments have come into force."*

11. Applying above principle, the Income Tax Act as it stood on 01.04.2016, with Section 115BBE prescribing a rate of 30%, must govern the assessment for Financial Year 2016-17. The amending Act came into force on 15.12.2016, that too with the exception of section 115BBE, which is effective from 01.04.2017. The amendment accordingly ought not to apply to assessments for Financial Year 2016-17.

12. Even otherwise, in light of our discussion in the preceding part, it is amply clear, that, on all counts i.e. letter, spirit and legislative intent, the amendment in section 115BBE and insertion of section 271AAC, are prospective in nature and hence applicable with effect from 01.04.2017 and cannot be applied retrospectively to any transaction which has taken place prior there to.

13. The respondents' contention is that since the amending Act received Presidential assent on 15.12.2016 i.e. before the commencement of Assessment Year 2017-18 on 01.04.2017, therefore, the amendment is applicable w.e.f. 01.04.2016 or in the alternative w.e.f. 15.12.2016. This contention conflates two distinct questions:

(i) when the assessment is made,

and

(ii) when the transactions giving rise to the income occurred.

In terms of ***Karimtharuvi,*** (supra), the Income Tax Act, as it stands on first day of April of any financial year must apply to assessment of that year. Applying an enhanced rate, introduced during the course of a financial year that had already commenced, to transactions already completed weeks and months before the amendment was even introduced in Parliament, that too, in the absence of any express text for retrospective effect of the legislation or even it's implied retrospectivity, amounts to a retroactive enhancement of tax liability on

completed transactions, which as is borne out not permissible. Therefore, such an interpretation is clearly not tenable. Accordingly, we reject the respondents' contention that the amendment enacted on 15.12.2016 is effective and applicable from 01.04.2016 and alternatively from 15.12.2016.

14. As regards the view taken in ***Maruthi Babu Rao v. ACIT***, (supra), we are in respectful agreement to the extent that an enhancement of surcharge does not constitute a new levy of tax. Surcharge is since merely a derivative addition to an already computed principal liability, having no independent existence of its own, and Parliament's power under Article 271 to impose surcharge "at any time" lends further support to that position. Surcharge is thus not an independent levy, it is a percentage addition to tax already computed. It has no independent existence; it attaches to and rides upon the principal tax liability. It does not itself define what income is taxable, at what rate, or for which year. Its character is therefore derivative and consequential, not substantive. Furthermore, since surcharge is computed as a percentage of tax already determined, it does not alter the taxable event, the head of income, or the base on which tax is charged. It merely adjusts the quantum of the final levy upward. For this reason, an enhancement of surcharge rate, unlike an enhancement of the principal rate, may legitimately be characterised as not creating a "new liability" but only modifying an existing one in its quantum. Surcharge, being thus a percentage addition to a tax already computed, having no independent existence, does not define the taxable event, the charge, or the rate of the principal levy. Its enhancement, therefore, may not constitute the creation of a new liability in the strict sense. To this limited extent, we are also in respectful agreement with the reasoning in Maruthi Babu Rao.

14.1. However, having said as above, we are unable to subscribe to the view taken therein that an enhancement of the principal rate of tax under Section 115BBE from 30% to 60% can be similarly equated with surcharge. Supreme Court judgments in **Karimtharuvi Tea Estate** (supra) and **Vatika Township** (supra) have been relied in **Maruthi Babu Rao v. ACIT** (supra). Combined reading of the aforesaid Supreme Court judgments, in our opinion, shows that the Income Tax Act, as it stands on first day of April of any financial year must apply to assessment of that year and that any amendments in the Act which come into force after the first day of April of a financial year would not apply to the assessment for that year, even if the assessment is actually made after the amendments have come into force.

14.2. Learned Division Bench of Kerala High Court also observed that there cannot be disturbance caused to accrued rights or obligations. It then proceeded on the premise that the rate prescribed by a Finance Act brought into effect from the 1st of April of an year would apply to the assessments made in that year relating to the previous year, unless the legislative intent clearly indicates a retrospective effect. The terms 'assessment of that year' is different from the term 'assessment made in that year'. The distinction may be demonstrated thus- the assessment of income of financial year 2015-2016 would be made in next following year 2016-2017 (which would be corresponding assessment year for the income of the financial year 2015-2016) and similarly, the assessment of income of financial year 2016-2017 would be made in next following year 2017-2018(which would be corresponding assessment year for the income of financial year 2016-2017).

14.3. To carry the discussion forward, we find that there is variance between the view taken in the aforesaid judgments of the Apex Court

vis-à-vis that taken by Kerala High Court qua the distinction between the terms "assessment of that year" as against "assessment made in that year" and with due respect. Perusal of judgment shows that having proceeded on the premise that the rate prescribed by a Finance Act brought into effect from the 1st of April of an year would apply to the assessments made in that year relating to the previous year as stated above, the peculiar facts of the particular pending case were noted. In that case, there were two seizures of cash made on 02.08.2016 and 03.11.2016 respectively of Rs, 1,05,03,500/- and Rs. 1,24,68,750/- both in the financial year 2016-2017. The person from whom the cash was seized as also the appellant admitted that it belonged to the appellant, who carried on trading in gold bullion. The appellant not having produced any books of account or cash flow statements failed to establish the source of the money seized, which was included in the total income under section 69 A of the IT Act. The writ petition (which stood dismissed by the learned Single Judge) or the appeal before the learned Division Bench did not challenge such inclusion. The learned Division Bench observed that a major misdemeanor leading to assessment of income as accrued under section 69A invites the consequences of section 115 BBE and surcharge and surcharge provided under section 2(9) of the Finance Act, 2016 and that when it stands enhanced from 01.04.2017, for every assessment carried out in that year, the rates as applicable on 01.04.2017 has to be applied; that the appellant could not have a contention that he committed the misconduct on the expectation that if he were caught, he would have to shell out only lesser amounts as tax and surcharge. The learned Division Bench emphatically observed that there is no right accrued on the assessee to commit an offence on the expectation of a lesser penalty and dismissed the appeal.

14.4. Since, there were two seizures of cash (and not disclosures) made on 02.08.2016 and 03.11.2016 respectively of Rs, 1,05,03,500/- and Rs. 1,24,68,750/- in the Kerala case, quite obviously, it was a case a dishonest concealment of income by the assessee, which was unearthed by the two seizures of cash. There are absolutely no such facts and circumstances in present case to warrant an adverse view of the petitioner's conduct.

14.5. In the case in hand, assessee had voluntarily disclosed that the relevant sum of Rs.66,17,500/- deposited in his bank accounts during November/December,2016 was part of his business income for financial year 2016-2017. True, the assessing officer was not satisfied the explanation of the assessee about this income. But the fact remains that there was no absolutely no concealment of income by the assesse in this case, unlike the case of in **Maruthi Babu Rao** (supra), in which the assessee had dishonestly concealed his income and it was unearthed by two seizures. Perusal of the judgment ibid shows that the fact of dishonest concealment of income and it's having been unearthed by two seizures were treated by the learned Division Bench as acts of major misdemeanor by the assessee and his misconduct had considerably weighed with the Division Bench while upholding the dismissal of his writ petition by the learned single judge of the court in exercise of it's extraordinary writ jurisdiction under Article 226/227 of the Constitution of India. Other than stating that there was no new liability created and the rate of tax merely stood enhanced, there is no discussion found in the judgment for a conclusion drawn (in para 13) that the enhanced rate of tax was applicable to the assessments carried out in that year and that the enhanced rate (of tax) applied from the commencement of the assessment year, which relates to the previous year.

14.6. The rate prescribed in the principal charging section , Section 115BBE itself, is an integral and inseparable component of the substantive tax liability. It determines the precise fiscal consequence that attaches to the taxable event. An assessee who completes a transaction under a regime prescribing 30% tax acquires, at that moment, a vested right to be assessed at that rate. The subsequent doubling of that rate, from 30% to 60%, without express retrospective language, cannot reach back to alter the consequence of a transaction already complete.

14.7. There is yet another aspect of the matter. The distinction between "imposing a new tax" and "enhancing an existing rate" has never been recognised as a basis for implying retrospectivity in taxing statutes. Both create or increase a fiscal burden on the subject. As **Vatika** (supra) holds, citing Halsbury: "retrospective operation should not be given to a statute so as to affect, alter or destroy an existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the enactment." An enhancement of rate from 30% to 60%, i.e., doubling the burden, plainly "affects or alters" existing rights and cannot be treated as a mere procedural or clarificatory change.

14.8. In our opinion, enhancement of principal tax certainly creates new liability. The rate prescribed in the principal charging section is an integral and inseparable component of the substantive tax liability, it defines the precise fiscal consequence that attaches to the taxable event, and an assessee who completes a transaction under a regime prescribing 30% acquires, at that moment, a vested right accrues in his favour to be assessed at that rate. The subsequent doubling of that rate, without any express language for retrospectivity of the doubling of

rate of tax cannot relate back and to alter the legal consequences of a transaction already completed.

14.9. Respectfully speaking, this is precisely the principle affirmed by three Judges Bench of the Apex Court in Karimtharuvi Tea Estate and by the Constitution Bench in Vatika Township. We are bound by the law laid down by a **Three Judges Bench** of the Apex Court ***Karimtharuvi Tea Estate Ltd. vs. State of Kerala*** (which holds the field till date) that *"The Income-tax Act, as it stands amended on the first day of April of any financial year must apply to the assessments of that year. Any amendments in the Act which come into force after the first day of April of a financial year would not apply to the assessment for that year, even if the assessment is actually made after the amendments have come into force."*

14.10. We are also bound to follow the law laid down in the Constitution Bench of the Apex Court in in Vatika supra, while dealing with the proviso added to Section 113 of the Income Tax Act, and observing/holding that *"the addition of the said proviso, is not beneficial to the assessee. On the contrary, it is a provision which is onerous to the assessee. Therefore, in a case like this, we have to proceed with the normal rule of presumption against retrospective operation. Thus, the rule against retrospective operation is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. Dogmatically framed, the rule is no more than a presumption, and thus could be displaced by outweighing factors".*

14.11. In our opinion, the principles laid down in the two Supreme Court judgments, supra, seem to also cover and apply to the enhancement of the principal rate of tax.

15. Thus, in view of the binding precedents of the Hon'ble Supreme Court, we respectfully differ with the view taken by the learned Division Bench of Kerala High Court in **Maruthi Babu Rao**, *ibid*, to the effect that by enhancement of rate of tax, no new liability was created and

that the enhanced rate of tax applies from the commencement of the assessment year, which relates to the previous financial year.

16. The fundamental rule of interpretation is that legislation is presumed to operate prospectively unless a contrary intention clearly appears, grounded in the principle of *lex prospicit non respicit, i.e.,* law looks forward not backward, since every person is entitled to arrange his affairs by relying on existing law without finding later on that his plans have been upset retrospectively.

17. SUMMARY/CONCLUSION

As an upshot of the discussion and analysis, as above, in our opinion, the Correct Legal Position which emerges is summarized as below :-

(i) The law applicable to an assessment year is the law in force on the first day of that year — i.e., 01st April. A provision coming into force after that date, without express retrospective language, cannot be applied to assessments for that year.

(ii) Changes in law occurring after the commencement of a financial year cannot govern the tax liability for that year unless the amendment is expressly made retrospective.

(iii) The amendment to Section 115BBE came into force on 01.04.2017 i.e. the first day of financial year 2017-18. For FY 2016-17, the law in force on 01.04.2016, prescribing a rate of 30%, must govern. The enhanced rate of tax @60% came into force on 01.04.2017 and can apply only from that date, i.e. for financial year 2017-18 onwards.

(iv) The Taxation Laws (Second Amendment) Act, 2016 contains no express language for it’s retrospective effect of section 115BBE.

18. We thus hold that the Taxation Laws (Second Amendment) Act, 2016 is prospective in effect as specified therein (from 15.12.2016 except the amendment of Section 115BBE, which is effective from 01.04.2017). The question framed in para 8.1, in the preceding part, is answered accordingly.

19. The appellate authority shall therefore proceed further to adjudicate the assessment order impugned before it keeping in mind what has been enunciated hereinabove, in accordance with law.

20. The petition stands disposed of in the aforesaid terms.

(SUNIL BENIWAL),J **(ARUN MONGA),J**

2-Dhananjay Sharma/
Anshul/-