

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 04.09.2019

+ CRL.A. 877/2017

FINANCIAL INTELLIGENCE UNIT-IND Appellant

Versus

CORPORATION BANK Respondent

Advocates who appeared in this case:

For the Appellant : Mr Satish Aggarwala, Senior Standing Counsel with Mr Gagan Vaswani and Ms Radhika Narang, Advocates.

For the Respondent : Mr Sarvesh Kumar, Chief Manager with Mr Navjot, Asstt. Manager, Corporation Bank.

AND

+ CRL.A. 881/2017 and CRL.M.A. 16403/2017

FINANCIAL INTELLIGENCE UNIT-IND Appellant

Versus

FEDERAL BANK Respondent

Advocates who appeared in this case:

For the Appellant : Mr Satish Aggarwala, Senior Standing Counsel with Mr Gagan Vaswani and Ms Radhika Narang, Advocates.

For the Respondent : Mr Joby P. Varghese, Advocate.

AND

+ CRL.A. 882/2017 and CRL.M.A. 16401/2017

FINANCIAL INTELLIGENCE UNIT-IND Appellant

Versus

PUNJAB NATIONAL BANK Respondent

Advocates who appeared in this case:

For the Appellant : Mr Satish Aggarwala, Senior Standing

Counsel with Mr Gagan Vaswani and Ms Radhika Narang, Advocates.
For the Respondent : Ms Arti Singh, Ms Pooja Singh and Mr Aakashdeep Singh, Advocates.

AND

+ **CRL.A. 149/2018 and CRL.M.A. 2358/2018**

FINANCIAL INTELLIGENCE UNIT-IND Appellant

Versus

AXIS BANK Respondent

Advocates who appeared in this case:

For the Appellant : Mr Satish Aggarwala, Senior Standing Counsel with Mr Gagan Vaswani and Ms Radhika Narang, Advocates.
For the Respondent : Mr Harin Raval, Senior Advocate with Mr Sanjay Kapur, Ms Megha Karnwal and Mr Harshal Narayan, Advocates.

AND

+ **CRL.A. 150/2018 and Crl. M.A. Nos. 2360/2018 & 2362/2018**

FINANCIAL INTELLIGENCE UNIT-IND Appellant

Versus

CANARA BANK LTD Respondent

Advocates who appeared in this case:

For the Appellant : Mr Satish Aggarwala, Senior Standing Counsel with Mr Gagan Vaswani and Ms Radhika Narang, Advocates.
For the Respondent : MrPremtosh Mishra and Mr Mayank Tripathi, Advocates.

AND

+ **CRL.A. 169/2018 and CRL.M.A. 2753/2018 & 2755/2018**

FINANCIAL INTELLIGENCE UNIT - IND

DEPARTMENT OF REVENUE Appellant

Versus

YES BANK Respondent

Advocates who appeared in this case:

For the Appellant : Mr Satish Aggarwala, Senior Standing Counsel with Mr Gagan Vaswani and Ms Radhika Narang, Advocates.

For the Respondent : Mr Madhav Khurana and Mr V. Pasayat, Advocates.

AND

+ **CRL.A. 171/2018 and CRL.M.A. 2762/2018 & 2764/2018**

FINANCIAL INTELLIGENCE UNIT-IND Appellant

Versus

INDIAN BANK Respondent

Advocates who appeared in this case:

For the Appellant : Mr Satish Aggarwala, Senior Standing Counsel with Mr Gagan Vaswani and Ms Radhika Narang, Advocates.

For the Respondent : Ms Khyati Bhardwaj, Advocate.

AND

+ **CRL.A. 172/2018 and CRL.M.A. 2767/2018 & 2769/2018**

FINANCIAL INTELLIGENCE UNIT-IND Appellant

Versus

ALLAHABAD BANK Respondent

Advocates who appeared in this case:

For the Appellant : Mr Satish Aggarwala, Senior Standing Counsel with Mr Gagan Vaswani and Ms Radhika Narang, Advocates.

For the Respondent : Mr Rajesh Kumar Gautam, Ms Sakshi Gaur and Mr Sorabh Dahiya, Advocates.

AND

+ **CRL.A. 173/2018 and CRL.M.A. 2772/2018 & 2774/2018**

FINANCIAL INTELLIGENCE UNIT-IND Appellant

Versus

INDUSIND BANK LTD Respondent

Advocates who appeared in this case:

For the Appellant : Mr Satish Aggarwala, Senior Standing Counsel with Mr Gagan Vaswani and Ms Radhika Narang, Advocates.

For the Respondent : Mr Gyanendra Kumar, Ms Shikha Tandon and Ms Sayesha Bhattacharya, Advocates.

AND

+ **CRL.A. 174/2018 and CRL.M.A. 2781/2018 & 2783/2018**

FINANCIAL INTELLIGENCE UNIT-IND Appellant

Versus

BANK OF INDIA Respondent

Advocates who appeared in this case:

For the Appellant : Mr Satish Aggarwala, Senior Standing Counsel with Mr Gagan Vaswani and Ms Radhika Narang, Advocates.

For the Respondent : Mr Vipin Jai, Advocate.

AND

+ **CRL.A. 175/2018 and CRL.M.A. 2789/2018 & 2791/2018**

**FINANCIAL INTELLIGENCE UNIT -IND
DEPARTMENT OF REVENUE** Appellant

Versus

BANK OF MAHARASTHRA Respondent

Advocates who appeared in this case:

For the Appellant : Mr Satish Aggarwala, Senior Standing

Counsel with Mr Gagan Vaswani and Ms
Radhika Narang, Advocates.
For the Respondent : Mr B.P. Singh and Mr Chandan Jha,
Advocates.

AND

+ **CRL.A. 178/2018 and CRL.M.A. 2798/2018 & 2800/2018**

FINANCIAL INTELLIGENCE UNIT-IND Appellant

Versus

STATE BANK OF INDIA Respondent

Advocates who appeared in this case:

For the Appellant : Ms Radhika Narang, Advocate.
For the Respondent : Mr Sanjay Kapur, Ms Megha Karnwal and
Mr Harshal Narayan, Advocates.

AND

+ **CRL.A. 179/2018 and CRL.M.A. 2803/2018 & 2805/2018**

FINANCIAL INTELLIGENCE UNIT-IND Appellant

Versus

ICICI BANK LIMITED Respondent

Advocates who appeared in this case:

For the Appellant : Ms Radhika Narang, Advocate.
For the Respondent : Mr Mohit Mathur, Senior Advocate with
Mr Lalit Chauhan and Mr Aditya Sharma,
Advocates.

AND

+ **CRL.A. 180/2018 and CRL.M.A. 2831/2018 & 2833/2018**

FINANCIAL INTELLIGENCE UNIT-IND Appellant

Versus

HDFC BANK LTD Respondent

Advocates who appeared in this case:

For the Appellant : Ms Radhika Narang, Advocate.
For the Respondent : Mr Dayan Krishnan, Senior Advocate with
Saifur R. Faridi, Ms Manvi Priya and Ms
Smarika Singh, Advocates.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The Financial Intelligence Unit-IND, Department of Revenue, Ministry of Finance, Government of India (hereafter 'FIU') has filed the present appeals – fourteen in number – under Section 42 of the Prevention of Money-Laundering Act, 2002 (hereafter 'the Act') impugning a common judgment dated 28.06.2017 (hereafter 'the impugned order'), passed by the Appellate Tribunal, Prevention of Money Laundering Act (hereafter 'the Appellate Tribunal').

2. By the impugned order, the Appellate Tribunal had modified the orders passed by the Director, FIU under Section 13(2) of the Act. By those orders, the Director, FIU had imposed the maximum fine of ₹1,00,000/- for each instance of failure on part of the respondent banks to comply with the obligations as set out in Section 12 of the Act, read with Prevention of Money Laundering (Maintenance and Records) Rules, 2005 (hereafter 'the Rules'). Whilst the Appellate Tribunal rejected the contention of the respondent banks that there was no failure to report any suspicious transactions, it proceeded to reduce the punitive measure as imposed by the Director, FIU. The Appellate

Tribunal held that the violation of the reporting obligations on part of the respondent banks warranted issuance of a warning in writing under Section 13(2)(a) of the Act, instead of a monetary penalty as imposed under Section 13(2)(d) of the Act. Accordingly, the respective orders imposing penalty on the respondent banks were modified to the aforesaid extent.

3. Mr Aggarwala, learned counsel appearing for the FIU, has assailed the impugned order passed by the Appellate Tribunal on a solitary ground. He submits that Section 13(2) of the Act, as in force prior to 15.02.2013, did not contemplate issuance of a warning for failure to comply with the provisions of Section 12 of the Act. He has earnestly contended that the failure to comply with the provisions of Section 12 of the Act, prior to 15.02.2013, was required to be visited with monetary fine which could not be less than ₹10,000/- for each failure.

4. In view of the aforesaid, the only question that is required to be considered by this Court is whether the Appellate Tribunal could modify the order passed by the Director, FIU by reducing the penalty imposed.

5. The controversy in the present case arises from a sting operation that was conducted by reporters of an online media portal named “Cobrapost.com” (hereafter ‘Cobrapost’). Sometime in the year 2012-13 (dates on which the sting operation was conducted are not on record), the reporters of the media portal, Cobrapost, conducted a sting

operation called “Operation Red Spider” (hereafter “the sting operation”). The sting operation, *inter alia*, entailed undercover reporters approaching employees of various banks representing themselves to be customers who required to open accounts to deposit black money belonging to “a Minister” and for laundering the same. The sting operation was designed to expose the role of banks in money laundering.

6. The conversations between the reporters acting as prospective customers and officials of various banks were recorded and were reported on the media portal, Cobrapost. The said conversations, essentially, indicated that officials of the banks had expressed willingness to accept deposits of black money in accounts to be opened by the reporters posing as prospective customers. Some of the conversations indicated that the employees of banks had discussed the methodology for laundering the black money by investing the same in insurance schemes. Some of the conversations also indicated that the bank officials had agreed to facilitate hiring of lockers for storing currency. These conversations were placed in the public domain. The respondent banks do not dispute that the said conversations did take place. However, they contend that the conversations placed on the website are not complete and have been edited and extracted in a manner so as to feed the perception that the respondent banks are complicit in money laundering.

7. After the conversations recorded during the sting operation were put in public domain, the FIU issued letters to the respondent

banks and the said proceedings culminated in orders imposing monetary fines, under Section 13 of the Act, on them.

8. The controversy involved in these appeals is common and for the sake of brevity, only facts as obtaining in Crl.A. 149/2018 (relating to Axis Bank Ltd.), are noticed hereafter.

9. It is stated that the reporters of Cobrapost had conducted the sting operation at thirteen branches of Axis Bank Ltd (hereafter Axis Bank). The conversations recorded in the sting operations were posted on the website, cobrapost.com. Axis Bank states that immediately on becoming aware of the same, it appointed M/s KPMG Pvt. Ltd. (a firm of well-known auditors) to investigate the allegations published on the website cobrapost.com. Thereafter, on 08.05.2013, the FIU issued a letter calling upon Axis Bank to provide certain information under Section 12(a) of the Act, in reference to the sting operation conducted by the reporters of Cobrapost. Axis Bank responded by a letter dated 24.05.2013, forwarding the information as sought by the FIU.

10. Thereafter, in June 2013 M/s KPMG Pvt. Ltd. submitted its report dated 20.06.2013 to Axis Bank.

11. On 17.12.2013, the FIU issued a show cause notice, under Section 13 of the Act, alleging non-compliance of the provisions of Section 12 of the Act read with the Rules. The FIU proceeded on the basis that the conversations recorded in the sting operation constituted 'suspicious transactions' within the meaning of Rule 2(g) of the Rules,

and since Axis Bank had failed to file any Suspicious Transaction Reports (STRs) in respect of the said attempted transactions, it was alleged that it had violated the provisions of Section 12 of the Act.

12. The show cause notice was followed by another letter dated 18.12.2013, whereby the FIU sought certain further information from Axis Bank. Axis Bank responded to the show cause notice by a letter dated 24.01.2014, wherein it denied the allegation that it had violated any provisions of the Act. It was contended on behalf of Axis Bank that none of the reporters who had carried out the sting operations had disclosed their identity and had merely made certain enquiries from certain bank officials. It contended that the said conversations do not constitute suspicious transactions as contemplated under Clause (g) of Rule 2 of the Rules read with Clause (h) of the said Rules.

13. Axis Bank was granted a hearing on 25.03.2014. During the course of hearing, Axis Bank was provided transcripts of the conversations recorded in the sting operations. Thereafter, by a letter dated 28.05.2014, the FIU permitted Axis Bank to file additional submissions with respect to the contents of the transcripts that were provided during the course of the hearing on 25.03.2014. Axis Bank responded and sent a letter dated 10.06.2014, *inter alia*, stating that it had also prepared transcripts of the conversations from the videos which were recorded during the sting operations. It stated that the transcripts were generally aligned. However, some key conversations as reported in the transcript, provided by the FIU, were not reflected in the videos of the sting operation.

14. Thereafter, the FIU passed an order dated 23.03.2015, holding Axis Bank guilty of not complying with the provisions of Section 12 of the Act read with Rules 2, 3, 5 and 7 of the Rules and imposing a monetary fine of ₹13,00,000/- for thirteen instances (the sting operation conducted in thirteen branches) of failure.

15. Aggrieved by the same, Axis Bank filed an appeal before the Appellate Tribunal, *inter alia*, contending that the conversations reported did not constitute suspicious transactions within the meaning of Rule 2(g) of the Rules and therefore, did not warrant submissions of any STR.

16. The said appeal was disposed of by the impugned order. The Appellate Tribunal rejected the contention that the conversations recorded during the sting operation did not constitute attempted transactions so as to fall within the meaning of suspicious transaction under Rule 2(g) of the Rules. Accordingly, it held that the said transactions ought to have been reported. However, the Appellate Tribunal also held that said non-compliances did not warrant imposition of the maximum penalty and this was a fit case where a penalty of warning, provided under Section 13(2)(a) of the Act, ought to have been issued. The Appellate Tribunal, accordingly, modified the order dated 23.03.2015.

Reasons and Conclusion

17. At the outset, it is necessary to note that the above appeals were taken up for hearing on 23.08.2019. At the said hearing, it was

contended on behalf of the FIU that a warning, under Section 13(2)(a) of the Act, could not be issued as the said provision had come into force after the offence had been committed. It was stated that Section 13(2) of the Act, as in force prior to 15.02.2013, provided for a minimum fine of ₹10,000/-. In view of this contention, this Court passed the following order:-

- “1. Substantial arguments have been heard.
2. Mr Aggarwala, learned counsel appearing for the petitioner shall submit a tabular statement indicating (a) the dates on which the sting operation was conducted/recorded; (b) the date on which the adjudication order was passed in the above matter and other connected cases.
3. He is also at liberty to file authorities in support of his contention that the provisions of Section 13 of the Prevention of Money Laundering Act, 2002, could not be applied retrospectively by the Tribunal.
4. The learned counsel appearing for respondent is also at liberty to file copies of the authorities relied upon by him.
5. List on 27.08.2019.”

18. On 27.08.2019, Mr Aggarwala, learned counsel appearing for the FIU, stated that the dates on which the sting operation was conducted were not on record. He stated that inquiries would have to be made from Cobrapost to ascertain the dates on which the sting operation was conducted and the conversations recorded.

19. In view of the above, it is apparent that FIU's contention that provisions of Section 13(2) of the Act, as in force prior to amendment on 15.02.2013, are applicable, is bereft of any factual foundation. The said contention is premised on the basis that the sting operation had been conducted prior to 15.02.2013 and, therefore, the respondent banks had violated the provisions of the Act, prior to Section 13(2) of the Act being amended. Consequently, the respondent banks are required to be visited with penalty as provided under Section 13(2) of the Act as in force prior to 15.02.2013. However, since there is no material on record to establish that the sting operation had been conducted prior to 15.02.2013, the aforesaid contention is unfounded.

20. It is also relevant to note that some of the respondent banks had expressly asserted that the sting operation was conducted after 15.02.2013. It is noticed that Axis Bank Ltd. had asserted that the sting operation was conducted between March 2013 to May 2013. This assertion was not controverted. Clearly, in this case, it is not open for the FIU to contend that Section 13(2) of the Act, as in force prior to 15.02.2013, is applicable. Since the factual foundation on which the FIU's contention is based is not discernable from the record, the present appeals must fail.

21. In view of the above, it is not necessary for this Court to examine the contention on merits. However, for the sake of completeness, this Court considers it apposite to examine the same.

22. At this stage, it is necessary to refer to Section 13 of the Act as was in force prior to 15.02.2013. The same is set out below:-

“13. Powers of Director to impose fine- (1) The Director may, either of his own motion or on an application made by any authority, officer or person, call for records referred to in sub-section (1) of section 12 and may make such inquiry or cause such inquiry to be made, as he thinks fit

(2) If the Director, in the course of any inquiry, finds that a banking company, financial institution or an intermediary or any of its officers has failed to comply with the provisions contained in section 12, then, without prejudice to any other action that may be taken under any other provisions of this Act, he may, by an order, levy a fine on such banking company or financial institution or intermediary which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure.

(3) The Director shall forward a copy of the order passed under sub-section (2) to every banking company, financial institution or intermediary or person who is a party to the proceedings under that sub-section.”

23. Section 13 of the Act was amended by virtue of Section 11 of the Prevention of Money-Laundering (Amendment) Act, 2012 with effect from 15.02.2013. Section 13 of the Act as amended is set out below:-

“13. Powers of Director to impose fine.-(1) The Director may, either of his own motion or on an application made by any authority, officer or person, make such inquiry or cause such inquiry to be made, as he thinks fit to be necessary, with regard to the obligations of the reporting entity, under this Chapter.

(1A) If at any stage of inquiry or any other proceedings before him, the Director having regard to the nature and complexity of the case, is of the opinion that it is necessary to do so, he may direct the concerned reporting entity to get its records, as may be specified, audited by an accountant from amongst a panel of accountants, maintained by the Central Government for this purpose.

(1B) The expenses of, and incidental to, any audit under sub-section (1A) shall be borne by the Central Government.

(2) If the Director, in the course of any inquiry, finds that a reporting entity or its designated director on the Board or any of its employees has failed to comply with the obligations under this Chapter, then, without prejudice to any other action that may be taken under any other provisions of this Act, he may-

- (a) issue a warning in writing; or
- (b) direct such reporting entity or its designated director on the Board or any of its employees, to comply with specific instructions; or
- (c) direct such reporting entity or its designated director on the Board or any of its employees, to send reports at such interval as may be prescribed on the measures it is taking; or
- (d) by an order, impose a monetary penalty on such reporting entity or its designated director on the Board or any of its employees, which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure.

(3) The Director shall forward a copy of the order passed under sub-section(2) to every banking company, financial institution or intermediary or person who is a party to the proceedings under that sub-section.

Explanation.-For the purpose of this section, "accountant" shall mean a chartered accountant within the meaning of the Chartered Accountant Act, 1949 (38 of 1949)."

24. It is seen from the above that sub-section (2) of Section 13, as in force prior to 15.02.2013, expressly provided that in case a banking company, financial institution or intermediary or any of its officers fail to comply with the provisions of Section 12 of the Act, then the Director, FIU may by an order, levy fine on such banking companies, financial institution or intermediary which shall not be less than ₹10,000/- but may extend to ₹1,00,000/- for each failure.

25. Section 13(2) of the Act was substituted by Clause (iii) of Section 11 of the Prevention of Money-Laundering (Amendment) Act, 2012. By virtue of the said amendment, it was no longer necessary for the Director to impose a monetary fine; he was enabled to pass other orders as may be warranted, including issuing a warning in writing or issuing directions for compliance with specific instructions or issuing directions for sending reports as may be prescribed on the measures being taken by the reporting entity.

26. It is relevant to note that in these cases, all orders passed by the Director, FIU, under Section 13(2) of the Act, were after 15.02.2013.

27. As noticed above, the only question that falls for consideration is whether the amended provisions of Section 13 of the Act, which provide for a lesser punitive measure, are applicable retrospectively. In *T. Barai v. Henry Ah Hoe and Anr.: (1983) 1 SCC 177*, the Supreme Court had explained that insofar as a new enactment creates

new offences or enhances punishment for a particular type of offence, no person can be convicted by such *ex post facto* law nor can the enhanced punishment prescribed by the amendment, be imposed. However, if a punishment for an offence is reduced, there is no reason why the accused should not have the benefit of the reduced punishment. It was further explained that the rule of beneficial construction requires that even an *ex post facto* law should be applied to mitigate the rigors of the law. The relevant extract of the said decision is set out below:-

“22. It is only retroactive criminal legislation that is prohibited under Article 20(1). The prohibition contained in Article 20(1) is that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence prohibits nor shall he be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. It is quite clear that insofar as the Central Amendment Act creates new offences or enhances punishment for a particular type of offence no person can be convicted by such *ex post facto* law nor can the enhanced punishment prescribed by the amendment be applicable. But insofar as the Central Amendment Act reduces the punishment for an offence punishable under Section 16(1)(a) of the Act, there is no reason why the accused should not have the benefit of such reduced punishment. The rule of beneficial construction requires that even *ex post facto* law of such a type should be applied to mitigate the rigour of the law. The principle is based both on sound reason and common sense. This finds support in the following passage from Craies on Statute Law, 7th Edn., at pp. 388-89:

“A retrospective statute is different from an ex post facto statute. “Every ex post facto law...” said Chase, J., in the American case of *Calder v. Bull* [3 US (3 Dall) 386: 1 L Ed 648 (1798)] “must necessarily be retrospective, but every retrospective law is not an ex post facto law. Every law that takes away or impairs rights vested agreeably to existing laws is retrospective, and is generally unjust and may be oppressive; it is a good general rule that a law should have no retrospect, but in cases in which the laws may justly and for the benefit of the community and also of individuals relate to a time antecedent to their commencement: as statutes of oblivion or of pardon. They are certainly retrospective, and literally both concerning and after the facts committed. But *I do not consider any law ex post facto within the prohibition that mollifies the rigour of the criminal law, but only those that create or aggravate the crime, or increase the punishment or change the rules of evidence for the purpose of conviction....* There is a great and apparent difference between making an unlawful act lawful and the making an innocent action criminal and punishing it as a crime.”

23. To illustrate, if Parliament were to reenact Section 302 of the Indian Penal Code, 1860 and provide that the punishment for an offence of murder shall be sentence for imprisonment for life instead of the present sentence of death or imprisonment for life, then it cannot be that the courts would still award a sentence of death even in pending cases.

24. In *Rattan Lal v. State of Punjab* [AIR 1965 SC 444: (1964) 7 SCR 676: (1965) 1 SCJ 779: (1965) 1 Cri LJ 360], the question that fell for consideration was whether an appellate court can extend the benefit of Probation of Offenders Act, 1958 which had come into force after the

accused had been convicted of a criminal offence. The Court by majority of 2: 1 answered the question in the affirmative. Subba Rao, J. who delivered a majority opinion, concluded that in considering the question, the rule of beneficial construction required that even ex post facto law of the type involved in that case should be applied to reduce the punishment.”

28. The said decision was followed by the Supreme Court in its subsequent decision in ***Nemi Chand v. State of Rajasthan: Crl. A. No. 214 of 2016 decided on 10.03.2016.***

29. Mr Aggarwala sought to distinguish the aforesaid decisions by contending that the decisions were rendered in the context of laws relating to criminal offences. He submitted that in the present cases, the respondent banks have suffered a civil liability and, therefore, the said decisions are inapplicable.

30. This Court finds no merit in the aforesaid contention. Even if it is assumed that the liability imposed on the respondent banks is a civil liability, no distinction can be drawn on the aforesaid ground so as to deprive the respondents of the rule of beneficial construction. It is also relevant to refer to the decision of the Supreme Court in ***Commissioner of Tax (Central)-I, New Delhi v. Vatika Township Private Limited: (2015) 1 SCC 1.*** In the said case, the Supreme Court had authoritatively held that if a legislation confers the benefit on some persons without inflicting a corresponding detriment on some other person or where it appears that the intention of legislature is to confer such benefit, the rule of purposive construction would be

applicable and the said legislation would be construed as applicable with retrospective effect. The relevant extract of the said decision is set out below:-

“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.* [(1994) 1 AC 486 : (1994) 2 WLR 39 : (1994) 1 All ER 20 (HL)] 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.* [(2005) 7 SCC 396] , 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* [(2006) 6 SCC 289]. 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.”

31. The object of amending Section 13(2) of the Act is clearly to enable the Director, FIU to issue such orders as may be warranted. Under the unamended provision, the Director had no discretion except to levy a fine in cases where failure to comply with the provisions of Section 12 of the Act was established. He, however, had the discretion to determine the quantum of fine within the limits as prescribed. The maximum fine that could be imposed by him was ₹1,00,000/- for each failure. The same could be reduced, however; but not less than

₹10,000/-. The rigors of the aforesaid provisions have been relaxed by virtue of Section 11(iii) of the Prevention of Money-Laundering (Amendment) Act, 2012. Thus, in cases where only a warning is warranted, it is not necessary for the Director to impose a monetary fine. Clearly, the object of substituting Sub-section (2) of Section 13 of the Act, is to enable the Director to impose a lesser penalty of a warning in writing, or to issue specific instructions or call for reports where warranted. Given the objective of the legislature, there is no reason why such provision should not be construed as applicable retrospectively.

32. It is well settled that fairness is one of the guiding principles in construing whether a statute is applicable retrospectively. This principle has been pithily stated by the author in Maxwell on The Interpretation of Statutes, 12th ed (1969), p 215, in the following words:-

“Upon the presumption that the legislature does not intend what is unjust rests the leaning against giving certain statutes a retrospective operation.”

33. In ***Secretary of State for Social Security v. Tunncliffe: (1991) 2 All ER 712***, Staughton LJ had observed as under:-

“In my judgment the true principle is that Parliament is presumed not to have intended to alter the law applicable to past events and transactions in a manner which is unfair to those concerned in them, unless a contrary intention appears. It is not simply a question of classifying an enactment as retrospective or not retrospective. Rather it may well be a matter of degree – the greater the unfairness,

the more it is to be expected that Parliament will make it clear if that is intended.”

34. Thus, the law that empowers any vested right, or creates any obligations or imposes duty or attaches new disability, must be applied prospectively unless the intention of the legislature to apply the same retrospectively is clear from the terms of enactment or is to be necessarily inferred. (See: *Maxwell The Interpretation of Statutes (12thedn, 1969)* and *Craies on Statute Law (7thedn, 1971)*).

35. The rule that the enactment must be construed as prospective is not applicable in cases of a beneficial legislation. In such cases, the same must be construed retrospectively. It would be unfair to impose a higher punishment than as prescribed under a statute as currently in force, merely because the person visited with such punishment has committed the offence / default prior to the legislation being enacted.

36. In view of the above, even if it is assumed that the sting operation was conducted prior to 15.02.2013, there is no infirmity in the decision of the Appellate Tribunal to modify the punishment from a monetary fine to a warning in writing, in terms of Section 13(2)(a) of the Act as substituted with effect from 15.02.2013.

37. Before concluding, it is also necessary to note that the respondents bank had contended that the Appellate Tribunal had erred in holding that the conversations with bank officials of respondent banks, as recorded during the sting operation, could not be construed as a suspicious transaction. It is also contended that the said

conversations were inadmissible in evidence and could not have been considered for imposing any punishment on the respondents. It is clarified that this Court has not examined these contentions because the respondent banks have not appealed against the impugned order and have accepted the same.

38. For the reasons stated above, the appeals are dismissed.

39. All pending applications are also disposed of. The parties are left to bear their own costs.

SEPTEMBER 4, 2019
RK

VIBHU BAKHRU, J



न्यायमेव जयते