IN THE HIGH COURT OF JHARKHAND AT RANCHI
Tax Appeal No. 26 of 2016

The Commissioner of Income Tax, Jamshedpur, 47, CH Area, Bistupur, P.O. & P.S. Bistupur, Jamshedpur, District: Singhbhum East.

... ... Appellant

Versus

M/s New Punjab Motor Transport, Room No. 28, Parking Dimna Road, Mango, P.O. & P.S. Mango, Jamshedpur, District: Singhbhum East

... ... Respondent

with

Tax Appeal No. 28 of 2016

The Commissioner of Income Tax, Jamshedpur, 47, CH Area, Bistupur, P.O. & P.S. Bistupur, Jamshedpur, District: Singhbhum East.

... ... Appellant

Versus

M/s New Punjab Motor Transport, Room No. 28, Parking Dimna Road, Mango, P.O. & P.S. Mango, Jamshedpur, District: Singhbhum East

... ... Respondent

CORAM :HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON'BLE MR. JUSTICE RAJESH KUMAR

For the Appellant : Mr. Kumar Vaibhav, Advocate
For the Respondents : Mr. Mahendra Kumar Chowdhary, Adv.

C.A.V. on 21.04.2025 ***Pronounced on 25/04/2025***
Per Sujit Narayan Prasad, J.

1. Both the appeals have been directed to be heard together, as would be evident from order dated 06.11.2017 passed in Tax Appeal No. 28 of 2016.

Prayer:

2. Both the appeals have been directed against the order dated 11.03.2016 passed by learned Income Tax Appellate Tribunal, Circuit Bench, Ranchi in I.T.A. No.

308/Ran/14 and I.T.A. No. 309/Ran/14 respectively for the assessment year 2010-11 whereby and whereunder the learned Tribunal has dismissed the case of the Revenue Authority by allowing the case of the Assessee and thus deleted the entire addition made by the Assessing Officer.

Factual Aspect:

3. In both the cases, assessment order for Assessment Year 2010-11 was framed on 30-03-2013 under Section 143(3) of the Income Tax Act, 1961, on a total income of Rs. 8,99,42,090/-. The Assessee filed return disclosing total income of Rs. 9,36,120/-. The return was processed under Section 143(1) of the Act and same was selected for scrutiny under CASS. The reason for selection of the case for scrutiny assessment was to examine the various aspects of the contractor business. Finally, the Assessing Officer completed the assessment under Section 143(3) of the Act determining total income at Rs. 8,99,42,090/-. The Assessee being aggrieved challenged the Assessment Order of the AO before the CIT (A) being Appeal No. 520/Jsr./ 2012-13. The CIT(A) vide order dated 29-08-2014 has partly allowed the appeal of the assessee and sustained few additions made by the Assessment Officer. The assessee as well as the

Revenue Authority challenged the Order of the CIT (A) before the learned ITAT. The assessee's appeal was registered as I.T.A. No. 308/Ran/14 and the revenue's appeal was registered as I.T.A. No. 309/Ran/14 for the A.Y. 2010-11. The learned Tribunal vide its common order dated 11-03-2016 has been pleased to allow the case of the assessee and dismissed the case of the Revenue, and deleted the entire addition made by the AO.

4. Being aggrieved with the common order dated 11.03.2016 passed in I.T.A. No. 308/Ran/14 and I.T.A. No. 309/Ran/14 respectively, the appellant has approached this Court.

5. The matter was heard by the Co-ordinate Bench of this Court on 22nd October, 2018. The Co-ordinate Bench, after hearing learned counsel for the parties, admitted the appeal(s) for hearing on the following substantial questions of law:

I.Whether the Tribunal was right in deleting the addition made by the Assessing Officer as well as Commissioner under Section 4)(a)(ia) of the Income Tax Act, 1961 in respect of payments made without deduction of tax?

II.Whether the Commissioner and the Tribunal were right in law in allowing depreciation @ 30@ in respect of trucks, trailors and excavators treating them as plant and machinery?

6. Though the issues were framed by the Court but, the parties have argued the matter on the issue that the law laid by Allahabad High Court in the case of ***CIT Vs. Vector Shipping Services (P) Ltd. [(2013) 262 CTR (All) 545]*** has been over-ruled by the Hon'ble Apex Court in the case of ***Palam Gas Service Vs. Commissioner of Income Tax [(2017) 7 SCC 613]*** which is the basis of passing the impugned order, as such with the consent of learned counsel for the parties, the Court is proceeding to examine the argument so advanced on this aspect of the matter.

Submission on behalf of appellant-Revenue Authority:

7. At the outset, learned counsel for the appellant-revenue has submitted that the impugned order has been passed based upon the judgment rendered by Allahabad High Court in the case of ***CIT Vs. Vector Shipping Services (P) Ltd. (supra)*** which has been held to be not a good law by the Hon'ble Apex Court in the case of ***Palam Gas Service Vs. Commissioner of Income Tax (supra).***

8. It has been submitted by referring to paragraph 19 of the said judgment, wherein it has been taken note of the fact that the High Court, after noticing the fact that since the amounts had already been paid, it straightaway concluded, without any discussion, that Section 40(*a*)(*i-a*) of the Act would apply only when the amount is "*payable*" and dismissed the appeal of the Department stating that the question of law framed did not arise for consideration. Thereafter, at paragraph 20 of the judgment, the Hon'ble Apex Court has over-ruled the judgment passed by Allahabad High Court holding it to be not good in law.

9. Learned counsel for the appellant, based upon the aforesaid ground, has submitted that since the very basis of impugned order has been held to be not good in law, therefore, the matter requires consideration.

Submission on behalf of respondent:

10. While on the other hand, Mr. Mahendra Kumar Choudhary, learned counsel appearing for the assessee has argued that even on merit there is no case of the revenue and as such these matters may be decided on its own merit. However, he has not disputed the fact that the law laid by Allahabad High Court in the case of ***CIT Vs. Vector Shipping Services (P) Ltd. (supra)*** has been

over-ruled by Hon'ble Apex Court in the case of ***Palam Gas Service Vs. Commissioner of Income Tax (supra).***

Analysis:

11. We have heard learned counsel for the parties and gone through the pleading made in the memo of appeal and the finding recorded by learned Tribunal.

12. The issue in dispute is consideration/interpretation of Section 40(*a*)(*i-a*) of the Income Tax Act, the same refers with respect to the payable amount. Section 40 of the Act enumerates certain situations wherein expenditure incurred by the assessee, in the course of his business, will not be allowed to be deducted in computing the income chargeable under the head "*Profits and Gains from Business or Profession*". One such contingency is provided in sub-clause (*i-a*) of clause (*a*) of Section 40. For ready reference, the said provision is quoted as under:

> "***40. Amounts not deductible***.—*Notwithstanding anything to the contrary in Sections 30 to 38, the following amounts shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession"—*
>
> *(i-a) any interest, commission or brokerage, fees for professional services or fees for technical services payable to a resident, or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work*

(including supply of labour for carrying out any work), on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid during the previous year, or in the subsequent year before the expiry of the time prescribed under sub-section (1) of Section 200:

Provided that where in respect of any such sum, tax has been deducted in any subsequent year or, has been deducted in the previous year but paid in any subsequent year after the expiry of the time prescribed under sub-section (1) of Section 200, such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid."

13. The fact about the applicability of Section 40(a)(i-a) of the Income Tax Act is not the dispute herein for which, the assessment has again been made and in consequence thereof, the notice was issued under Section 43(2) of the Income Tax Act, and the said reply having not been found to be satisfactory, fresh assessment order determining the total income of Rs. 8,99,42,090/- under Section 143(3) of the Income Tax Act, 1961 has been made. The said order of assessment has been challenged which went before the appellate authority i.e., before the C.I.T (A) in Appeal No.520/Jsr./ 2012-13 which was partly allowed vide order dated 29.08.2014 and sustained few additions made by the AO.

14. The Assessee as well as the Revenue challenged the Order of the CIT (A) before the learned ITAT. The Assessee's Appeal was registered as I.T.A. No.

308/Ran/14 & the Revenue's Appeal was registered as I.T.A. No. 309/Ran/14 for the A.Y. 10-11.

15. The assesse relied upon the judgment passed in ***CIT Vs. Vector Shipping Services (P) Ltd. (supra),*** wherein consideration has been made that interest upon the TDS is not to be carried out on the amount already paid in the financial year. The Tribunal, relying the judgment rendered in the case of ***CIT Vs. Vector Shipping Services (P) Ltd. (supra),*** vide its common order dated 11-03-2016 has allowed the case of the Assessee and dismissed the case of the Revenue, and deleted the entire addition made by the AO.

16. Being aggrieved with the common order dated 11.03.2016 passed in I.T.A. No. 308/Ran/14 and I.T.A. No. 309/Ran/14, the appellant has approached this Court.

17. It is pertinent to note herein that consideration which has been given by the Allahabad High Court with respect to interpretation to provision of Section 40(*a*)(*i-a*) of the Income Tax Act, fell for consideration before the Hon'ble Apex Court in the case of ***Palam Gas Service Vs. Commissioner of Income Tax (supra)***.

18. The Hon'ble Apex Court has interpreted the issue namely the word '*payable'* in Section 40(*a*)(*i-a*) which

would mean only when the amount is payable and not when it is actually paid. Grammatically, it may be accepted that the two words i.e. "*payable*" and "*paid*", denote different meanings. For ready reference, paragraph 15, 16 and 17 is quoted as under:

> ***"15.*** *In the aforesaid backdrop, let us now deal with the issue, namely, the word "payable" in Section 40(a)(i-a) would mean only when the amount is payable and not when it is actually paid. Grammatically, it may be accepted that the two words i.e. "payable" and "paid", denote different meanings. The Punjab and Haryana High Court, in P.M.S. Diesels [P.M.S. Diesels v. CIT, 2015 SCC OnLine P&H 8793 : (2015) 374 ITR 562] , referred to above, rightly remarked that the word "payable" is, in fact, an antonym of the word "paid". At the same time, it took the view that it was not significant to the interpretation of Section 40(a)(i-a). Discussing this aspect further, the Punjab and Haryana High Court first dealt with the contention of the assessee that Section 40(a)(i-a) relates only to those assessees who follow the mercantile system and does not cover the cases where the assessees follow the cash system. That contention was rejected in the following manner: (SCC OnLine P&H paras 19-22)*
>
> *19. There is nothing that persuades us to accept this submission. The purpose of the section is to ensure the recovery of tax. We see no indication in the section that this object was confined to the recovery of tax from a particular type of assessee or assessees following a particular accounting practice. As far as this provision is concerned, it appears to make no difference to the Government as to the accounting system followed by the assessees. The Government is interested in the recovery of taxes. If for some reason, the Government was interested in ensuring the recovery of taxes only from assessees following the mercantile system, we would have expected the provision to*

so stipulate clearly, if not expressly. It is not suggested that assessees following the cash system are not liable to deduct tax at source. It is not suggested that the provisions of Chapter XVII-B do not apply to assessees following the cash system. There is nothing in Chapter XVII-B either that suggests otherwise.

20. Our view is fortified by the Explanatory Note to Finance Bill (No. 2) of 2004. Sub-clause (i-a) of clause (a) of Section 40 was introduced by the Finance Bill (No. 2) of 2004 with effect from 1-4-2005. The Explanatory Note to Finance Bill, 2004 stated:

'… With a view to augment compliance of TDS provisions, it is proposed to extend the provisions of Section 40(a)(i) to payments of interest, commission or brokerage, fees for professional services or fees for technical services to residents, and payments to a resident contractor or sub-contractor for carrying out any work (including supply of labour for carrying out any work), on which tax has not been deducted or after deduction, has not been paid before the expiry of the time prescribed under sub-section (1) of Section 200 and in accordance with the other provisions of Chapter XVII-B.'

21. The adherence to the provisions ensures not merely the collection of tax but also enables the authorities to bring within their fold all such persons who are liable to come within the network of taxpayers. The intention was to ensure the collection of tax irrespective of the system of accounting followed by the assessees. We do not see how this dual purpose of augmenting the compliance of Chapter XVII and bringing within the Department's fold taxpayers is served by confining the provisions of Section 40(a)(i-a) to assessees who follow the mercantile system. Nor do we find anything that indicates that for some reason the legislature intended achieving these objectives only by confining the operation of Section 40(a)(i-a) to assessees who follow the mercantile system.

22. The same view was taken by a Division Bench of the Calcutta High Court in CIT v. Crescent Export Syndicate [CIT v. Crescent Export Syndicate, 2013 SCC OnLine Cal 23014 : (2013) 262 CTR 525 : (2013) 216 Taxman 258] . It was held: (SCC OnLine Cal para 9)

*'9. … "12.3. It is noticeable that Section 40(a) is applicable irrespective of the method of accounting followed by an assessee. Therefore, by using the term "payable" legislature included the entire accrued liability. If assessee was following mercantile system of accounting, then the moment amount was credited to the account of payee on accrual of liability, TDS was required to be made but if assessee was following cash system of accounting, then on making payment TDS was to be made as the liability was discharged by making payment. The TDS provisions are applicable both in the situation of actual payment as well of the credit of the amount. It becomes very clear from the fact that the phrase, "on which tax is deductible at source under Chapter XVII-B", was not there in the Bill but incorporated in the Act. This was not without any purpose."' [**Ed.**: As observed in Merilyn Shipping & Transports v. CIT, ITA No. 477/viz of 2008, order dated 29-3-2012 (ITAT)] "*

***16.** We approve the aforesaid view as well. As a fortiori, it follows that Section 40(a)(i-a) covers not only those cases where the amount is payable but also when it is paid. In this behalf, one has to keep in mind the purpose with which Section 40 was enacted and that has already been noted above. We have also to keep in mind the provisions of Sections 194-C and 200. Once it is found that the aforesaid sections mandate a person to deduct tax at source not only on the amounts payable but also when the sums are actually paid to the contractor, any person who does not adhere to this statutory obligation has to suffer the consequences which are stipulated in the Act itself. Certain consequences of failure to deduct tax at source from the payments made, where tax was to be deducted at source or failure to pay the same to the credit of the Central*

Government, are stipulated in Section 201 of the Act. This section provides that in that contingency, such a person would be deemed to be an assessee in default in respect of such tax. While stipulating this consequence, Section 201 categorically states that the aforesaid sections would be without prejudice to any other consequences which that defaulter may incur. Other consequences are provided under Section 40(a)(i-a) of the Act, namely, payments made by such a person to a contractor shall not be treated as deductible expenditure. When read in this context, it is clear that Section 40(a)(i-a) deals with the nature of default and the consequences thereof. Default is relatable to Chapter XVII-B (in the instant case Sections 194-C and 200, which provisions are in the aforesaid Chapter). When the entire scheme of obligation to deduct the tax at source and paying it over to the Central Government is read holistically, it cannot be held that the word "payable" occurring in Section 40(a)(i-a) refers to only those cases where the amount is yet to be paid and does not cover the cases where the amount is actually paid. If the provision is interpreted in the manner suggested by the appellant herein, then even when it is found that a person, like the appellant, has violated the provisions of Chapter XVII-B (or specifically Sections 194-C and 200 in the instant case), he would still go scot-free, without suffering the consequences of such monetary default in spite of specific provisions laying down these consequences.

17. *The Punjab and Haryana High Court has exhaustively interpreted Section 40(a)(i-a) keeping in mind different aspects. We would again quote the following paragraphs from the said judgment, with our complete approval thereto: (P.M.S. Diesels case [P.M.S. Diesels v. CIT, 2015 SCC OnLine P&H 8793 : (2015) 374 ITR 562] , SCC OnLine P&H paras 26-28)*

> *"26. Further, the mere incurring of a liability does not require an assessee to deduct the tax at source even if such payments, if made, would require an*

assessee to deduct the tax at source. The liability to deduct tax at source under Chapter XVII-B arises only upon payments being made or where so specified under the sections in Chapter XVII, the amount is credited to the account of the payee. In other words, the liability to deduct tax at source arises not on account of the assessee being liable to the payee but only upon the liability being discharged in the case of an assessee following the cash system and upon credit being given by an assessee following the mercantile system. This is clear from every section in Chapter XVII.

27. Take for instance, the case of an assessee, who follows the cash system of accounting and where the assessee who though liable to pay the contractor, fails to do so for any reason. The assessee is not then liable to deduct tax at source. Take also the case of an assessee, who follows the mercantile system. Such an assessee may have incurred the liability to pay amounts to a party. Such an assessee is also not bound to deduct tax at source unless he credits such sums to the account of the party/payee, such as, a contractor. This is clear from Section 194-C set out earlier. The liability to deduct tax at source, in the case of an assessee following the cash system, arises only when the payment is made and in the case of an assessee following the mercantile system, when he credits such sum to the account of the party entitled to receive the payment.

28. The Government has nothing to do with the dispute between the assessee and the payee such as a contractor. The provisions of the Act including Section 40 and the provisions of Chapter XVII do not entitle the tax authorities to adjudicate the liability of an assessee to make payment to the payee/other contracting party. The appellant's submission, if accepted, would require an adjudication by the tax

> *authorities as to the liability of the assessee to make payment. They would then be required to investigate all the records of an assessee to ascertain its liability to third parties. This could in many cases be an extremely complicated task especially in the absence of the third party. The third party may not press the claim. The parties may settle the dispute, if any. This is an exercise not even remotely required or even contemplated by the section."*

19. The Hon'ble Apex Court in the light of consideration so made has been pleased to hold that the view taken by the High Courts of Punjab and Haryana [*P.M.S. Diesels* v. *CIT*, 2015 SCC OnLine P&H 8793 : (2015) 374 ITR 562] , Madras [*Tube Investments of India Ltd.* v. *CIT*, 2009 SCC OnLine Mad 2976 : (2010) 325 ITR 610] and Calcutta [*CIT* v. *Crescent Export Syndicate*, 2013 SCC OnLine Cal 23014 : (2013) 262 CTR 525 : (2013) 216 Taxman 258] as the correct view.

20. The Hon'ble Apex Court has also considered the judgment passed by the Allahabad High Court in *CIT* v. *Vector Shipping Services (P) Ltd.*, the very basis upon which the appellate forum has passed the order in favour of the assesse holding therein that no doubt, the special leave petition there against was dismissed by this Court in limine. However, that would not amount to confirming the view of the Allahabad High Court Court in *V.M. Salgaocar & Bros. (P) Ltd.* v. *CIT* [*V.M. Salgaocar &*

Bros. (P) Ltd. v. *CIT*, (2000) 5 SCC 373 : (2000) 243 ITR 383] and *Supreme Court Employees' Welfare Assn.* v. *Union of India* [*Supreme Court Employees' Welfare Assn.* v. *Union of India*, (1989) 4 SCC 187 : 1989 SCC (L&S) 569]], accordingly, the view taken by Allahabad High Court was overruled.

21. For ready reference, the paragraph 19 and 20 of the judgment is quoted as under:

> ***"19.*** *Insofar as judgment of the Allahabad High Court [CIT v. Vector Shipping Services (P) Ltd., 2013 SCC OnLine All 13698 : (2013) 357 ITR 642] is concerned, reading thereof would reflect that the High Court, after noticing the fact that since the amounts had already been paid, it straightaway concluded, without any discussion, that Section 40(a)(i-a) would apply only when the amount is "payable" and dismissed the appeal of the Department stating that the question of law framed did not arise for consideration. No doubt, the special leave petition there against was dismissed by this Court in limine. However, that would not amount to confirming the view of the Allahabad High Court [see V.M. Salgaocar & Bros. (P) Ltd. v. CIT [V.M. Salgaocar & Bros. (P) Ltd. v. CIT, (2000) 5 SCC 373 : (2000) 243 ITR 383] and Supreme Court Employees' Welfare Assn. v. Union of India [Supreme Court Employees' Welfare Assn. v. Union of India, (1989) 4 SCC 187 : 1989 SCC (L&S) 569]].*
>
> ***20.*** *In view of the aforesaid discussion, we hold that the view taken by the High Courts of Punjab and Haryana [P.M.S. Diesels v. CIT, 2015 SCC OnLine P&H 8793 : (2015) 374 ITR 562] , Madras [Tube Investments of India Ltd. v. CIT, 2009 SCC OnLine*

> *Mad 2976 : (2010) 325 ITR 610] and Calcutta [CIT v. Crescent Export Syndicate, 2013 SCC OnLine Cal 23014 : (2013) 262 CTR 525 : (2013) 216 Taxman 258] is the correct view and the judgment of the Allahabad High Court in CIT v. Vector Shipping Services (P) Ltd. [CIT v. Vector Shipping Services (P) Ltd., 2013 SCC OnLine All 13698 : (2013) 357 ITR 642] did not decide the question of law correctly. Thus, insofar as the judgment of the Allahabad High Court is concerned, we overrule the same. Consequences of the aforesaid discussion will be to answer the question against the appellant/assessee thereby approving the view taken by the High Court."*

22. Admittedly, the impugned order has been passed on 11.03.2016 and the judgment has been passed in ***Palam Gas Service Vs. Commissioner of Income Tax (supra)*** is on 03.05.2017 i.e., subsequent to the impugned order. Therefore, the question may arise that as to *whether the judgment which is subsequent to the decision taken by the forum can be made applicable retrospectively?*

23. The aforesaid issue has been considered by the Hon'ble Apex Court in the recent judgment rendered in the case of ***Directorate of Revenue Intelligence vs. Raj Kumar Arora & Ors. [Criminal Appeal No. 1319 of 2013]*** passed on 17th April, 2025, wherein the law has been laid down that the when a previous judgment is overruled by a subsequent one, the later judgment operates retrospectively, as it clarifies the correct legal

position that may have been misunderstood due to the earlier ruling, therefore, if the subsequent decision alters or overrules the earlier one, it cannot be said to have made a new law. The Hon'ble Apex Court after framing the issue as to "Whether the decision in *Sanjeev V. Deshpande (supra)* should operate with prospective effect?, has answered the same as under:

> ***"II. "Whether the decision in Sanjeev V. Deshpande (supra) should operate with prospective effect?***
>
> ***a.An overruling decision generally operates retrospectively.***
>
> ***91.****The declaration of a statute dealing with substantive rights, by the legislature, is considered to be prospective unless it is expressly or by necessary implication made to have retrospective operation. The legal maxim "Nova Constitutio Futuris Forman Imponere Debet, Non Praeteritis" indicating that a new law ought to regulate what is to follow and not the past, carries with it a presumption of prospectivity and this presumption is generally said to operate unless the contrary is shown by an express provision in the statute or if the retrospectivity is otherwise discernible through necessary implication. This is because such statutes would have the consequence of affecting vested rights, impose new burdens or impair existing obligations. However, when a decision rendering an opinion as regards the interpretation of a penal provision is subsequently overruled by the decision of a larger bench, the consequence of the overruling is starkly different and by default, retrospective. This is because it is settled law that the law declared by this Court is retrospective and is normally assumed to be the law from the inception.*
>
> ***92.****The operation of a newly enacted statute or rule must not be confused with the effect of a judgment. A judgement or decision which interprets a statute or provision thereof*

declares the meaning of the statute as it should be construed from the date of its enactment. In other words, the judgment declares what the legislature had said at the time when the law was promulgated and therefore, it has retrospective effect. On the contrary, it is the statute or the rule which is presumed to be prospective unless expressly made retrospective. What follows from the same, is that a decision or judgment enunciating a principle of law is applicable to all cases irrespective of the stage of pendency before different forums since what has been enunciated is the meaning of the law which existed from the inception of the concerned statute or provision. What has been declared to be the law of the land must be held to have always been the law of the land. This conclusion also stems from the rationale that the duty of the court is not to "pronounce a new law but to maintain and expound the old one". The judge rather than being the creator of the law, is only its discoverer

93. *This Court in* ***Sarwan Kumar and Another v. Madan Lal Aggarwal*** *reported in (****2003) 4 SCC 147****, opined that when this Court interprets an existing law while overruling the interpretation assigned to it earlier, it cannot be said that a new law is laid down. The declaration of law relates back to the law itself. In other words, it would be deemed that the law was never otherwise. Herein, a 5-judge bench of this Court in* ***Gian Devi Anand v. Jeevan Kumar and Others*** *reported in* ***(1985) 2 SCC 683*** *had held that the rule of heritability extends to the statutory tenancy of a commercial premises as much as to a residential premises under the Delhi Rent Control Act, 1958****. In light of the same, the question for determination in* ***Sarwan Kumar*** *(supra) was whether a decree for ejectment which was passed by a civil court qua a commercial tenancy on the basis that the tenancy was not heritable, before the declaration of law in* ***Gian Devi Anand*** *(supra), was executable or not? By stating that the jurisdiction of the civil court to pass the decree for ejectment was barred and that the decree obtained by the decree-holder cannot be executed owing to*

it being a nullity and non-est, this Court observed as follows

> *15. [...] The doctrine of "prospective overruling" was initiallymade applicable to the matters arising under the Constitution but we understand the same has since been made applicable to the matters arising under the statutes as well. Under the doctrine of "prospective overruling" the law declared by the Court applies to the cases arising in future only and its applicability to the cases which have attained finality is saved because the repeal would otherwise work hardship on those who had trusted to its existence. Invocation of the doctrine of "prospective overruling" is left to the discretion of the Court to mould with the justice of the cause or the matter before the Court. This Court while deciding Gian Devi Anand case [(1985) 2 SCC 683 : 1985 Supp (1) SCR 1] did not hold that the law declared by it would be prospective in operation. It was not for the High Court to say that the law laid down by this Court in Gian Devi Anand case [(1985) 2 SCC 683 : 1985 Supp (1) SCR 1] would be prospective in operation. If this is to be accepted then conflicting rules can supposedly be laid down by different High Courts regarding the applicability of the law laid down by this Court in Gian Devi Anand case [(1985) 2 SCC 683 : 1985 Supp (1) SCR 1] or any other case. Such a situation cannot be permitted to arise. In the absence of any direction by this Court that the rule laid down by this Court would be prospective in operation, the finding recorded by the High Court that the rule laid down in Gian Devi Anand case [(1985) 2 SCC 683 : 1985 Supp (1) SCR 1] by this Court would be applicable to the cases arising from the date of the judgment of this Court cannot be accepted being erroneous.*

20. [...] This Court in Gian Devi Anand case [(1985) 2 SCC 683 : 1985 Supp (1) SCR 1] did not lay down any new law but only interpreted the existing law which was in force. As was observed by this Court in Lily Thomas case [(2000) 6 SCC 224 : 2000 SCC (Cri) 1056] the interpretation of a provision relates back to the date of the law itself and cannot be prospective of the judgment. When the court decides that the interpretation given to a particular provision earlier was not legal, it declares the law as it stood right from the beginning as per its decision. In Gian Devi case [(1980) 17 DLT 197] the interpretation given by the Delhi High Court that commercial tenancies were not heritable was overruled being erroneous. Interpretation given by the Delhi High Court was not legal. ***The interpretation given by this Court declaring that the commercial tenancies heritable would be the law as it stood from the beginning as per the interpretation put by this Court. It would be deemed that the law was never otherwise. Jurisdiction of the civil court has not been taken away by the interpretation given by this Court. This Court declared that the civil court had no jurisdiction to pass such a decree. It was not a question of taking away the jurisdiction; it was the declaration of law by this Court to that effect****. The civil court assumed the jurisdiction on the basis of the interpretation given by the High Court in Gian Devi case [(1980) 17 DLT 197] which was set aside by this Court.*

(Emphasis supplied)

94*.While addressing the issue of the temporal and retrospective effect of a judicial decision and declaring that a tribunal or court is bound by a higher court's decision on the point in issue, irrespective of whether it is declared*

either prior to or subsequent to the order which is sought to be called into question by a party, this Court in ***Assistant Commissioner, Income Tax, Rajkot v. Saurashtra Kutch Stick Exchange Limited*** *reported in* ***(2008) 14 SCC 171*** *stated that a judicial decision acts retrospectively by placing reliance on the Blackstonian theory. According to this theory, it is not the function of the court to pronounce a "new rule" but to maintain and expound the "old one". Therefore, if the subsequent decision alters or overrules the earlier one, it cannot be said to have made a new law. The correct principle of law is just discovered and applied retrospectively. In other words, if in a given situation an earlier decision of the court operated for quite some time and it is overruled by a subsequent decision, the decision rendered subsequently would have retrospective effect and would serve to clarify the legal position which was not clearly understood earlier. Any transaction would then be covered by the law declared by the overruling decision. The overruling is generally retrospective with the only caveat being that matters that are res judicatae or accounts that have been settled in the meantime would not be disturbed. The relevant*

observations made by this Court are reproduced hereinbelow:

> *"35. In our judgment, it is also well settled that a judicial decision acts retrospectively.* ***According to Blackstonian theory, it is not the function of the court to pronounce a "new rule" but to maintain and expound the "old one". In other words, Judges do not make law, they only discover or find the correct law. The law has always been the same. If a subsequent decision alters the earlier one, it (the later decision) does not make new law. It only discovers the correct principle of law which has to be applied retrospectively. To put it differently, even where an earlier decision of the court operated for quite some time, the decision rendered later on would have retrospective effect clarifying***

> ***the legal position which was earlier not correctly understood***.
>
> *36. Salmond in his well-known work states:*
>
> ***"[T]he theory of case law is that a judge does not make law; he merely declares it; and the overruling of a previous decision is a declaration that the supposed rule never was law. Hence any intermediate transactions made on the strength of the supposed rule are governed by the law established in the overruling decision. The overruling is retrospective, except as regards matters that are res judicatae or accounts that have been settled in the meantime."***
>
> ***(Emphasis supplied)***

24. Herein, in the instant case also, the sole consideration taken by the forum is the judgment passed by the Allahabad High Court in ***CIT Vs. Vector Shipping Services (P) Ltd. (supra),*** which has been over-ruled by the Hon'ble Apex Court in the case of ***Palam Gas Service Vs. Commissioner of Income Tax (supra),*** holding therein that the Allahabad High Court has not laid down good law; meaning thereby the error has been rectified by the Hon'ble Apex Court, said to be committed by the Allahabad High Court, by laying down the correct law. Therefore, applying the law laid down by the Hon'ble Apex Court in the case of ***Directorate of Revenue Intelligence vs. Raj Kumar Arora & Ors.*** (supra), will have retrospective application.

25. This Court, taking into consideration the fact the forum has passed the impugned order solely taking into consideration the judgment passed by Allahabad High Court in the case of ***CIT Vs. Vector Shipping Services (P) Ltd. (supra)*** which has been over-ruled holding the same to be not good in law by the Hon'ble Apex Court, as such it is not rendered to be in existence, as such the impugned order requires interference.

26. In view thereof, order dated 11.03.2016 passed by the Income Tax Appellate Tribunal, Circuit Bench, Ranchi in I.T.A. No. 308/Ran/14 and I.T.A. No. 309/Ran/14 requires interference.

27. Accordingly, the impugned order dated 11.03.2016 passed by the Income Tax Appellate Tribunal, Circuit Bench, Ranchi in I.T.A. No. 308/Ran/14 and I.T.A. No. 309/Ran/14 are hereby quashed and set aside.

28. The matter is remitted before the forum, i.e. Income Tax Appellate Tribunal, Circuit Bench, Ranchi for fresh adjudication of the issue, taking into consideration the observation made by this Court, as above.

29. The parties are at liberty to raise all legal/factual issue before the forum in accordance with law.

30. It is made clear that the Tribunal shall pass order afresh without being prejudice of the order passed by this Court.

31. With the aforesaid observations and directions, both the appeals stands disposed of.

32. Interlocutory Application(s), if any, stands disposed of.

I agree **(Sujit Narayan Prasad, J.)**

(Rajesh Kumar, J.) **(Rajesh Kumar, J.)**

Alankar/
A.F.R