2024 INSC 648

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.706 OF 2020

RAVI AGRAWAL ... **PETITIONER**

VERSUS

UNION OF INDIA & ANOTHER ... **RESPONDENTS**

O R D E R

This writ petition is filed under Article 32 of the Constitution of India as a Public Interest Litigation seeking the following prayers to be granted in exercise of powers of this Court under Article 142 of the Constitution:

> "a. Issue a writ of Mandamus under Article 32 of the Constitution of India or any other appropriate writ, order or directions under Article 142 of the Constitution of the India to the Respondents to execute/carry out the decision/directions of the Central Information Commission given on 27th June, 2019 in the Second Appeal No.CIC/LICOI/A/ 2018/611292-BJ of the Petitioner.
>
> b. Issue a writ of Mandamus under Article 32 of the Constitution of India or any other appropriate writ, order or directions under Article 142 of the Constitution of the India to the Respondents to take cognizance of the judgment passed by the Apex Court in Writ Petition (Civil)

No.1107 of 2017 dated January 03, 2019 and initiate suitable necessary action accordingly.

c. Issue order or directions to annul/strike down clause(a) of sub-section (2) of Section 88DD of the Income Tax which is against the objective of the legislation and violating the fundamental rights of the handicapped person provided under Article 14 of the Constitution of the India.

d. Pass such other orders and further orders as may be deemed necessary on the facts and in the circumstances of the case."

2. We have heard Mr. Partha Sil learned counsel who has been appointed to assist this Court and learned senior counsel Mr. Kailash Vasdev for Respondent No.2 and learned senior counsel Ms. Nisha Bagchi for Respondent-Union of India and perused the material on record.

3. Having heard learned counsel for the respective parties, we find that the concerns expressed by the petitioner in this writ petition have been assuaged to a certain extent inasmuch as the Parliament has amended Section 80DD of the Income Tax Act, 1961 (hereinafter referred to as the "Act" for the sake of brevity). The said provision deals with payment of annuity of a lump sum amount for the benefit of a dependant, being a person with disability, in the event of death of the individual or the member of a Hindu Undivided Family (HUF) in whose name the subscription to the scheme stipulated in the said provision

has been made.

4. For easy reference, the said provision is extracted as under:

> "80DD. Deduction in respect of maintenance including medical treatment of a dependent who is a person with disability.–
>
> (1) Where an assessee, being an individual or a Hindu undivided family, who is a resident in India, has, during the previous year.-
>
> (a) incurred any expenditure for the medical treatment (including nursing), training and rehabilitation of a dependant, being a person with disability; or
>
> (b) paid or deposited any amount under a scheme framed in this behalf by the Life Insurance Corporation or any other insurer or the Administrator or the specified company subject to the conditions specified in sub-section (2) and approved by the Board in this behalf for the maintenance of a dependant, being a person with disability,
>
> the assessee shall, in accordance with and subject to the provisions of this section, be allowed a deduction of a sum of seventy-five thousand rupees from his gross total income in respect of the previous year:
>
> Provided that where such dependant is a person with severe disability, the provisions of this sub-section shall have effect as if for the words "seventy-five thousand rupees", the words "one hundred and twenty-five thousand rupees" had been substituted.
>
> (2) The deduction under clause (b) of sub-section (1) shall be allowed only if the following conditions are fulfilled, namely:-

(a) the scheme referred to in clause (b) of sub-section (1) provides for payment of annuity or lump sum amount for the benefit of a dependant, being a person with disability, in the event of the death of the individual or the member of the Hindu undivided family in whose name subscription to the scheme has been made;

(b) the assessee nominates either the dependant, being a person with disability or any other person or a trust to receive the payment on his behalf, for the benefit of the dependant, being a person with disability.

(3) If the dependant, being a person with disability, predeceases the individual or the member of the Hindu undivided family referred to in sub-section (2), an amount equal to the amount paid or deposited under clause (b) of sub-section (1) shall be deemed to be the income of the assessee of the previous year in which such amount is received by the assessee and shall accordingly be chargeable to tax as the income of that previous year.

(4) The assessee, claiming a deduction under this section, shall furnish a copy of the certificate issued by the medical authority in the prescribed form and manner, along with the return of income under section 139, in respect of the assessment year for which the deduction is claimed:

Provided that where the condition of disability requires reassessment of its extent after a period stipulated in the aforesaid certificate, no deduction under this section shall be allowed for any assessment year relating to any previous year beginning after the expiry of the previous year during which the aforesaid certificate of disability had expired, unless a new certificate is obtained from the medical authority in the form and manner, as may be prescribed, and a copy thereof is furnished along with the return of income."

By virtue of the Finance Act, 2022, Section 80DD was amended with effect from 01.04.2023, in the following terms:

(I) in sub-section (2), for clause (a), the following clause shall be substituted, namely:—

> "(a) the scheme referred to in clause (b) of sub-section (1) provides for payment of annuity or lump sum amount for the benefit of a dependant, being a person with disability,—
>
> (i) in the event of the death of the individual or the member of the Hindu undivided family in whose name subscription to the scheme has been made; or
>
> (ii) on attaining the age of sixty years or more by such individual or the member of the Hindu undivided family, and the payment or deposit to such scheme has been discontinued;";

(II) after sub-section (3), the following sub-section shall be inserted, namely:–

> "(3A) The provisions of sub-section (3) shall not apply to the amount received by the dependant, being a person with disability, before his death, by way of annuity or lump sum by application of the condition referred to in sub-clause (ii) of clause (a) of sub-section (2).".

5. Learned counsel for the petitioner submitted that having regard to the order passed by this Court in the case of ***Ravi Agrawal vs. Union of India,*** being Writ Petition (C) No.1107/2017 disposed of on 03.01.2019 and the observations made therein, the Parliament has

amended Section 80DD of the Act in terms of Section 21 of the Finance Act, 2022. Consequently, on attaining the age of 60 years or more by an individual subscriber or a member of an HUF, the payment or deposit to the scheme envisaged under Section 80DD can be discontinued and the monetary benefit which would have accumulated can be made use of. It is submitted that the said amendment ought to be made retrospective as the same is with effect from 01.04.2023 to the existing policies as it will benefit a large number of subscribers who are interested in making use of the benefit of the such policies for the benefit of the disabled persons on turning 60 years of age. That an option could be reserved to the subscribers to have the benefit of the amendment in respect of policies which were made much prior to 2014 as in the said year such policies have been discontinued. He contended that if the amendment is given a retrospective effect, many subscribers as well as disabled persons would benefit and hence the concerns of the petitioner being purely in public interest may be considered and relief may be granted.

6. *Per contra,* learned senior counsel appearing for the respondent contended that Section 80DD refers to a situation where the benefit of the policy would be provided to a disabled person only on the death or demise of the caregiver or the subscriber. The event at which the

benefit of the policy would be given to the disabled person is on the death of the subscriber. It is only then the policy would come to end and the monetary benefit would be given to the disabled person. That there is a salient object with which the terms and conditions of the policy have been devised. That having regard to the order of this Court on 03.01.2019, there has been an insertion of a clause under Section 80DD taking into consideration the concern expressed by the very same petitioner herein in the earlier writ petition and to that extent, amendment has been made. But it is too farfetched for the petitioner to seek retrospective operation of the said amendment to the existing policies. It was contended that the terms of the policies cannot be changed subsequent to their crystallization and the premiums being paid on the said terms. Therefore, there can be no retrospective operation of the amendments.

7. We have considered the submissions advanced at the Bar in light of the object of Section 80DD and the fact that pursuant to the order of this Court, the Parliament has taken note of the observations made in the said order and has amended Section 80DD as extracted above. We find it difficult to accept the plea made by the learned counsel for the petitioner to the effect that the said amendment be applied retrospectively to policies which were taken prior to 2014 so that the

benefit of the amendment is given to those subscribers also. The reasons are not far to see. The whole object of Jeevan Adhar Policy is to benefit disabled persons by making provision by the subscriber post his demise. The concern and apprehension of a caregiver or subscriber of a policy for a disabled family member or other person for whose benefit the policy is taken after the demise of the caregiver is of utmost significance. It is only with that object that the caregiver or a subscriber would take such a policy so that he would not leave a disabled person in the lurch on his demise. If that is the object of the policy then we do not think the subscriber or the caregiver of the subscriber should be given the liberty to discontinue the policy during his lifetime on attaining 60 years of age. That would only go against the object with which the policy has been taken and against the interest of the beneficiary, namely, a disabled person.

8. In the circumstances, we do not think that the plea for retrospective operation of the amendment is in the interest of the disabled persons nor can this Court give a retrospective operation to the amendment. This is particularly having regard to the fact that an insurance contract is in a sense, a commercial contract, having certain terms and conditions and the sub-stratum of the contract cannot be removed by giving a retrospective operation to the

amendment. The benefit under Section 80DD of the Act would have been availed by the subscribers at the time when they have subscribed to the policy.

9. It is also relevant to note that the order passed by this Court on 10.02.2023 in Contempt Petition (C) No.408/2024 arising from W.P.(C) No.1107/2017 (the earlier writ petition), this Court disposed of the contempt petition for the reason that the Respondent-Union of India had amended Section 80DD of the Act via Budget 2022-2023 Finance Act and therefore, the grievance of the persons like the petitioner had stood addressed though with prospective effect.

10. We have also considered the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region, 1992; and the subsequent enactments, namely, the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which has been substituted by the Rights of Persons with Disabilities Act, 2016, as well as the Convention on the Rights of Persons with Disabilities and Optional Protocol 2006; and, the provisions of the Life Insurance Corporation Act, 1956.

11. In view of the said observations, we are not inclined to take a different view of the matter and particularly having regard to the

reasons assigned by us as aforesaid.

In the circumstances, the writ petition stands disposed of.

We place on record our sincere appreciation for the valuable assistance rendered by Mr. Partha Sil, learned counsel appointed to assist this Court.

. . . . . J.
(B.V. NAGARATHNA)

. . . . . J.
(NONGMEIKAPAM KOTISWAR SINGH)

New Delhi;
August 20, 2024