

I N D E X

P A G E S

1. Counter affidavit for and on
behalf of the respondent No.1. 1 - 10

IN THE SUPREME COURT OF INDIA
(CIVIL ORIGINAL JURISDICTION)

WRIT PETITION (CIVIL) NO. 880 OF 2017

IN THE MATTER OF

Association of Democratic Reforms & Anr. ...Petitioners

Versus

Union of India & Ors

....Respondents

COUNTER AFFIDAVIT FOR AND ON BNEHALF OF THE
RESPONDENT NO.1.

I, P.K. Kanojia the Deputy Commissioner of Income Tax (&R) working in the office of DGIT (L&R) New Delhi do hereby solemnly affirm and state as follows;

1. I am presently working as Deputy Commissioner of Income Tax (L&R), I have gone through the list of dates and the writ petition filed by the Petitioner herein and have understood the contents of the same. All the averments allegations contained in

the list of dates and the writ petition are misleading. All the averments and allegations in the list of dates and in the writ petition are denied except those are specifically admitted hereunder.

2. That the deponent is filing this reply solely in response to facts alleged in the writ petition and seek to reserve his rights to file any additional replies at later stage if that would be required in the later stage.
3. In reply to the writ petition, most respectfully submits here that the comments of the TPL Division of CBDT, with regard to the issue of exemption of tax on contribution to political parties by way of electoral Bonds, as referred to in many places in the petition, are as under:
 - a) With an intention of reducing the cash transactions and to move towards the less cash economy, the Government has taken several measures under the

income tax Act, 1961 from time to time which include disallowance of business expenditure incurred in cash exceeding a certain threshold under section 40A (3) of the Act, levy of penalty under section 271 D and 271 E of the Act, in case of any loan or deposit received or repaid in cash as per sections 269SS and 269T of the Act, respectively, mandatory quoting of PAN in respect of various cash transactions as specified in rule 114B, etc.

- b) Funding of political parties, which is mostly in cash, is also an area of concern. The provisions of section 13A of the Income-tax Act, inter-alia provides that political parties that are registered with the Election Commission of India are exempt from paying income tax subject to the conditions as specified.

- c) Prior to the amendment carried out in Section 13A vide Finance Act, 2017, the conditions for availing exemption under the income-tax Act, 1961 were that such political party keeps and maintains such books of account and other documents, maintains a record of voluntary contribution in excess of twenty thousand rupees, accounts are audited by an accountant as defined in the Explanation below sub-section (2) of section 288 and furnishes a report under sub-section (3) of section 29C of Representation of the people's Act, 1951. Therefore, the earlier provision under section 13A did not put any limit on contribution of donation made in cash to political parties.
- d) Further there was a concern among the donors that with their identity revealed, there is competitive pressure from the political parties for the donation. Also

as the large amount of political funding was in the form of cash, source of funding was unaccounted/unexplained.

4. Hence in order to tackle the situation of funding of political parties in cash and to maintain the anonymity of the donor,

(a) A mechanism of political funding by way of electoral bonds' was introduced. The electoral bond scheme ensures that the money flowing into the political parties is accounted for/ from explained sources. The electoral bond has been defined in the explanation in the section 13A as a bond referred to in the Explanation to sub-section (3) of section 31 of the Reserve Bank of India Act, 1934 (2 of 1934).

(b) also the amendment was made in the Income tax Act, 1961 vide Finance Act, 2017, and a ceiling was placed on the

amount of donation, to be received by political parties, i.e., no donations of Rs. 2000/- or more shall be received otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account or through electoral bonds.

5. It is further important to submits here that explanatory memorandum to the finance Act, 2017 provides for the following explanation with regard to amendments made in finance Act 2017:

"The existing provisions of section 13A of Act, inter alia provides that political parties that are registered with the Election Commission of India, are exempt from paying income-tax. To avail the exemption, the political parties are required to submit a report to the Election Commission of India as

mandated under sub-section(3) of section 29C of the representation of the people Act, 1951 (43 of 1951) furnishing the details of contributions received by a political party in excess of Rs. 20,000 from any person. However, under existing provisions of the Act, there* is no restriction of receipt of any amount of donation in cash by a political party.

Secondly, a political party is also required to file its return of income under section 139(48) of the Act, if its income exceeds the maximum amount not chargeable to tax (without considering the exemption under section 13A). However, filing of the return is not a condition precedent for availing exemption under the said section.

In order to discourage the cash transactions and to bring transparency in the source of funding to political parties, it is proposed to amend the provisions of section 13A to provide for additional conditions for availing the benefit of the said section which are as under;

- 1) No donations of Rs. 2000/- or more is received otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account or through electoral bonds,
- 2) Political party furnishes a return of income for the previous year in accordance with the provisions of sub-section (4B) of section 139 on or before the due date under section 139.

6. Further, in order to address the concern of anonymity of the donors, it is proposed to amend the said section to provide that the political shall not be required to furnish the name and address of the donors who contribute by way of electoral bond"
7. As far as the conditionality's and the mechanism of issuing of electoral bonds is concerned, this division has nothing to comment as the same is under the domain of Department of Economic Affairs.
8. It is therefore, submitted that serious prejudice will be caused to the respondent if stay is granted in the present Writ Petition.
9. In view of the above, the Answering Respondent most respectfully submits that the relief prayed for cannot be granted by this Hon'ble Court and further submits that the instant Writ Petition lacks merit and deserves to be dismissed.

10. The Answering Respondent craves leave of this Hon'ble Court to add, alter or amend any of the above submissions at a later stage, if so advised.

DEPONENT

VERIFICATION

Verified at New Delhi on this 10th day of January 2017 that the contents of the accompanying Counter Affidavit are true and correct to the best of my knowledge and belief based on the records of the case no part of which is false and nothing material has been concealed therefrom.

DEPONENT