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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 1180/2017 & C.M.No.5358/2017 (stay)

Reserved on: 25th May 2017

Pronounced on: 29th May 2017

STRATEGIC CREDIT CAPITAL

PVT. LTD. & ORS.

..... Petitioners

Through: Mr.P.Chidambaram, Sr.Advocate
with Mr.Siddhartha Das, Ms.Astha
Nigam, Advocates

Versus

RATNAKAR BANK LTD. & ANR.

..... Respondents

Through: Mr.Ateev Mathur, Advocate
with Ms.Jagriti Ahuja, Advocate for
RBL.

AND

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W.P.(C) 2375/2017 & C.M.No.10202/2017 (stay)

VEENA SINGH

..... Petitioner

Through: Mr.V.Lakshmikumaran, Mr.Tapas
Ram Misra, Mr.Saurav Sood, Mr.
Shashank Sharma, Mr.Subhashreer,
Advocates.

Versus

DIRECTOR OF INCOME-TAX

(INVESTIGATION)-I& ORS.

..... Respondents

Through: Mr.Rahul Kaushik, Sr.Standing
Counsel for Revenue.
Mr.Ateev Mathur, Advocate with

Ms.Jagriti Ahuja, Advocate for RBL.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE CHANDER SHEKHAR

JUDGMENT

29.05.2017

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Dr. S. Muralidhar, J.:

1. These two writ petitions under Article 226 of the Constitution of India arise from a common set of facts and seek similar reliefs. They are, accordingly, being disposed of by this common judgment.

The parties

2. The eight Petitioners in W.P.(C) No.1180/2017 are all companies: (1) Strategic Credit Capital Pvt. Ltd. ('SCCPL'), (2) Land Energy and Resources Ltd. ('LERL'), (3) Land Industrial and Infrastructure Ltd. ('LIIL'), (4) Participation Finance and Holding India Pvt. Ltd. ('PFHIPL'), (5) Empell Fortitus Pvt. Ltd. ('EFPL'), (6) Lionforge Intertrade Pvt. Ltd. ('LIPL'), (7) Principal Land Reality and Development Pvt. Ltd. ('PLRDPL'), (8) Exsto Foundation Enterprises and Reserves Ltd. ('EFERL'). It is significant that all these 8 Petitioners have the same address i.e., A-49, Mohan Cooperative Industrial Area, New Delhi – 110044.

3. The Respondents in this petition are Ratnakar Bank Ltd. ('RBL') and the Income Tax Department ('the Department') (Respondents 1 and 2 respectively).

4. In W.P.(C) No.2375/2017, the Petitioner is Ms. Veena Singh. The

Respondents are the Director of Income Tax (Investigation)-I ('DIT'), Assistant Director of Income Tax (Investigation), Unit 7(3) ('ADIT'), Income Tax Officer (Investigation), Special Cell ('ITO') and the Bank Manager of RBL (Respondents No. 1 to 4 respectively).

Search and survey

5. Both these petitions have been filed as a result of search, seizure and survey that was undertaken under Section 132(1) of the Income Tax Act ('the Act') by the Department on 11th January, 2017 at the residences of Mr.Mohnish Mohan Mukkar at Satbari, New Delhi, Kailash Colony and South Extension, Part-I and Vasant Kunj in New Delhi, and on 4th February, 2017 atChembur in Mumbai. A survey under Section 133A of the Act was conducted on 11th January, 2017 and 4th February, 2017 at Karol Bagh and Rajouri Garden Branches of RBL in Delhi, Kohinoor Magnetic Media Pvt. Ltd. and the 8 Petitioner companies [in W.P.(C) No.1180/2017] at Mohan Cooperative Industrial Estate, New Delhi, Lexis Networks LLP having offices at Barakhamba Road, Connaught Place and Kalkaji, Sahas Financial Services Pvt Ltd., Open source Consulting Pvt. Ltd., Lionforge Fracht Veranstalter Pvt. Ltd, Independent Trustee and Executor Agency India Pvt. Ltd., Kfour Consultancy Pvt. Ltd. The survey was also undertaken at the office premises of Mr.Mukkar and Mr.Venugopal Nair at Chembur Naka and Vikhroli East in Mumbai.

6. The case of the Department is that during search and survey proceedings, incriminating documents and evidences (including digital evidences such as emails, phone data, hard drives etc.) were found and seized. Before

proceeding to discuss the case of the Department, it is necessary to first discuss the case of the Petitioners.

Averments in W.P. (C) 1180 of 2017

7.1 W.P.(C) No.1180 of 2017 which is by 8 Petitioner companies was filed on 8th February, 2017 and is supported by an affidavit of Mr.Praveen Pandey, a resident of 547, Saket Court Complex, New Delhi describing himself as the Authorized Representative ('AR') of all the 8 Petitioners.

7.2 The averments in this petition are that survey proceedings were carried out in respect of 3 companies – Lionforge Logistics Pvt. Ltd., Halcyon Asia Business Development Pvt. Ltd. and Halcyon Asia Management Strategies Pvt. Ltd. as well as Mr.Mukkar. The 8 Petitioners state that they are not named in the survey. In para 5 of the petition, it is averred that “the said entities have no relation to Mr.Mohnish Mohan Mukkar in his personal capacity, and Mr.Mukkar is neither a shareholder nor a Director in the said companies”. It is then averred in para 6 that Mr. Mukkar was subjected to a search on 11th January, 2017 pursuant to which a restraint order under Section 132(3) of the Act was issued directing RBL to not release the bank accounts of 16 persons including the 8 Petitioner companies.

7.3 In para 7 of the writ petition, it is averred that certain letters dated 20th January, 2017 were written by the Petitioner companies to the Department requesting that the restraint order be lifted. It is then averred that “[i]t was clarified that the said entities had no relation to Mr.Mohnish Mohan Mukkar in his personal capacity and that the said person is neither a shareholder nor a Director in the said companies.”

7.4 It is submitted that “no action could have been initiated under Section 132(3) without there being any action initiated under Section 132.” It is averred that no liability has been established against the Petitioners with there being no tax demand upon them and that even a Show Cause Notice (‘SCN’) has not been issued.

7.5 It is averred in para 9 that on the evening of 7th February 2017, the Petitioners came to know through messages from the Bank (RBL) that their accounts had been debited by Rs.37,66,842.50 as per income tax notice and net balance was Re.0. There was another message debiting Rs.7,93,478. Further demand drafts (‘DDs’) in favour of the Department were prepared. It is pointed out that on 7th February, 2017 itself, the Petitioners through their counsel wrote to RBL requesting it not to honour the DDs. It is stated that the Petitioners owe monies to other entities in respect of the loans availed by the Petitioners and that it was not open to the Department to have debited their accounts. It is averred that the said monies were “proceeds of the loans taken from other entities”.

7.6 In para 11, the Petitioners have listed out the account numbers of the Petitioner companies from which the amounts were debited. Para 12 of the writ petition sets out the grounds. The essence of these grounds is that the action of the Department is arbitrary, illegal and unconstitutional and that on the mere asking of the Department, without issuing an SCN or a demand of assessment being served, debiting the accounts of the Petitioners with a total of Rs.23,14,64,825.30 without instructions was “expropriatory and has no sanction in law”. It is further stated that no opportunity of hearing was

granted to the Petitioners and the impugned actions were “in violation of the principles of natural justice”. It is averred that in the past several days, the representatives of the Petitioners have been attempting to meet the officials of the Department but to no avail. It is averred that the monies belonging to the Petitioners have been expropriated by the Department in “one shot” and “without complying with any semblance of law and procedures”. It is stated that the Petitioners “are engaged in legitimate business, and their entire business activities have been brought to a standstill.”

7.7 Accordingly, the main prayers in the W.P.(C) No.1180/2017 are to quash and set aside the impugned actions of the Department and for a direction to RBL to cancel the DDs and re-credit the funds in the accounts of the Petitioners and to direct RBL to not honour the DDs. Interim orders directing RBL not to honour the DDs have been prayed for.

7.8 This writ petition came up for hearing on 9th February, 2017. While directing notice to issue in the petitions, an interim order was passed restraining the Department from encashing the DDs until the next date of hearing to the extent of the amounts having been appropriated from the Petitioners’ accounts. On that date itself, the Reserve Bank of India, Respondent No.3, was deleted from the array of parties. The petition was then adjourned to for 19th April, 2017.

7.9 On 19th April, 2017, while recording the statement of the counsel for the Respondents that they would be filing their replies by 25th April, 2017, the Court directed the Petitioners in their rejoinder to disclose if they had regularly been filing their Income Tax Returns (‘ITRs’) and, if so, to enclose

copies of the latest ITRs with the rejoinder. Mr. Zoheb Hossain, the learned Senior Standing Counsel in the Department, stated that on 13th April, 2017, a representation has been received by the Department from the Petitioners under the proviso to Section 132B of the Act. He stated that the said representation would be examined and appropriate orders would be filed not later than 2 weeks from that date. The Court directed that a copy of the said decision to be placed on record before the next date and adjourned the case to 17th May, 2017. The interim orders were directed to continue till the next date.

7.10 On 17th May, 2017, the counsel for the Department informed the Court that the above representation of the Petitioners had been disposed of. The counter-affidavits had already been filed by the Department. The Petitioners were permitted to file a rejoinder by the next date. The Court, while directing the interim orders to continue, adjourned the case to 25th May, 2017.

Stand of RBL

8.1 RBL has filed a separate counter-affidavit in W.P. (C) 1180 of 2017 confirming that the companies had opened accounts with it. It is pointed out that the impleadment of RBL was misconceived and unwarranted since the grievance of the Petitioners was against the Department. RBL, without prejudice to the foregoing submissions, stated that “the Petitioner in the writ petition has averred that Mr. Mohnish Mukkar has no concern with the said accounts, which statement/averment is false to the knowledge of the Petitioner. It is submitted that at the time of opening of accounts, the

Petitioner had given a categorical declaration that Mr. Mohnish Mukkar is the beneficial owner of the accounts of the Petitioner and now, for the reasons best known to the Petitioner, the Petitioner has made the false averment. Thus, the present writ petition is liable to be dismissed for concealment of material facts.”

8.2 In para 7 of its counter-affidavit (which is a para-wise reply to para 7 of the writ petition), it is stated by RBL that “while opening the accounts by the Petitioners with the Respondent No.1, all the Petitioners have given a declaration that the owner and the beneficiary of the said accounts would be Mr. Mohnish Mukkar. It is further submitted that on 15.05.2017, the Answering Respondent has received a request from the Petitioner Companies to update the status of Beneficial Owner so as to record the name of Master Jeh Mohnish Mukkar. Copy of the request letters received from Petitioner Companies are attached along with the present counter affidavit and marked as Annexure R-5.”

The case of the Department in W.P. (C) 1180 of 2017

9.1 To turn to the version of the Department as far as W.P.(C) No.1180/2017 is concerned, it is stated at the outset that the Petitioners have suppressed material facts and ought not to be granted any relief. It is pointed out that from the documents seized and statements of persons recorded during the search and seizure and survey operations, it has emerged that “Mr. Mukkar was the key person controlling multiple companies through a complex web of holdings and cross holdings.” According to the Department, this fact was corroborated by the statements recorded on oath by the key associates of Mr. Mukkar, who according to the Department are:

(a) Ms.Veena Singh, who is stated to be actively involved in the day-to-day management of various companies controlled by Mr. Mukkar and works closely with him. This, according to the Department, is clear from the seized email backups and phone records.

(b) Mr.Venugopal Nair, who is stated to be a Chartered Accountant ('CA') of the group of companies controlled by Mr. Mukkar. An extract of his statement recorded under Section 131 of the Act on 1st February, 2017 and under Section 132(4) of the Act on oath on 4th February, 2017 has been enclosed.

(c) Mr.Raj Kumar Sehgal who is stated to be the Company Secretary of the group of companies controlled by Mr. Mukkar.

(d) Ms.Deepika Bajaj an employee of EFPL (Petitioner No. 5 in W.P. (C) 1180 of 2017) and looked after the administrative matters of various companies registered at A-49, Mohan Cooperative Industrial Area, Delhi.

9.2 It is stated, however, that in his statements made on oath during the search and survey proceedings, Mr. Mukkar gave false and misleading statements by denying that he had no active role in the day-to-day management of the Petitioner companies. It is further stated that during the search and survey proceedings, Mr. Mukkar as well as the other key associates had claimed that the web of companies were ultimately held by Elfington Trusts and/or Independent Trustees and Executors Private Limited (hereinafter referred to collectively as 'Trusts') which were for the benefit of Mr.Jeh Mukkar, who is the minor son of Mr. Mukkar. However, they had

failed to produce any documents to that end (like incorporation of trusts, names and addresses of the Trustees) nor did they reveal where the trusts were located in spite of being given sufficient opportunity and time.

9.3. Thus, it is stated that this delaying tactic was to mislead the Department as during the course of search and on perusal of email records, credible evidence in the hands of the Department indicated that Elfington goes by the name of 'Elfington Limited' registered in British Virgin Islands. In spite of specifically being asked under oath whether any of his family members held any foreign assets, Mr. Mukkar failed to make any revelations about the existence of a Trust or company or entities in the British Virgin Islands. It is stated that evidence has also been found regarding the existence of various companies in Hong Kong in which Ms. Veena Singh (key associate of Mr. Mukkar) was a Director. Investigations are stated to be underway to establish the ownership and other credentials of these off-shore companies and the implications that may arise from the point of view of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (hereinafter referred to as 'the Black Money Act').

9.4 It is stated that the definition of 'Beneficial Owner' as per Circular No.13 of 2015 issued by Central Board of Direct Taxes ('CBDT') is that which is provided in Explanations 4 and 5 to Section 139(1) of the Act. In terms thereof, "beneficial owner" in respect of an asset means "an individual who has provided, directly or indirectly, consideration for the asset for the immediate or future benefit, direct or indirect, of himself or any other person". The Department is stated to be examining the case from the

purview of the Black Money Act in the process of initiating necessary proceedings against Mr. Mukkar and others.

9.5 It is further stated in para 4.6.2 of the counter-affidavit in W.P.(C) No.1180 of 2017 that post demonetization there was a cash deposit totalling Rs.13,43,50,000/- in the bank accounts of three of the Petitioner companies viz., LERL (Petitioner No. 2), LIIL (Petitioner No.3) and LIPL (Petitioner No.6) in their accounts at RBL, Karol Bagh Branch. During the course of survey proceedings at RBL, it was discovered that there were more bank accounts including the rest of the Petitioner companies' accounts. Ms.Veena Singh (a key associate of Mr. Mukkar) was the authorized signatory of bank accounts of these eight companies, and Mr.Mukkar and/or Ms.Kiran Shiv Mukkar (mother of Mr. Mukkar) were the beneficial owners. The details received from RBL are set out in para 4.6.2 of the counter-affidavit as Table-5 and enclosed as Annexure R-9 to the counter-affidavit.

9.6The Branch Manager of RBL is supposed to have provided information to the Department that Rule 9(1A) of the Prevention of Money Laundering Rules, 2005 (hereinafter referred to as 'PML Rules') required every banking company to identify the beneficial owner and to take reasonable steps to verify its identity. It was explained that Rule 9(1A) of the PML Rules, 2005 requires that "every banking company, and financial institution, as the case may be, shall identify the beneficial owner and take all reasonable steps to verify his identity. The term "beneficial owner" has been defined as the natural person who ultimately owns or controls a client and / or the person on whose behalf the transaction is being conducted, and includes a person

who exercises ultimate effective control over a juridical person.” It was further explained that the Government of India had specified the procedure for determination of Beneficial Ownership. In terms thereof, (a) where the client is a company, the beneficial owner is “the natural person(s), who, whether acting alone or together, or through one or more juridical person, has a controlling ownership interest or who exercises control through other means.” The Explanation thereunder states: “For the purpose of this sub-clause – "Controlling ownership interest" means ownership of or entitlement to more than twenty-five percent of shares or capital or profits of the company;"Control" shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements."

9.7 Ms.Veena Singh is supposed to have volunteered during the search and survey proceedings to the Department that a major part of the cash was received from Deccan Chronicle Holdings Limited (‘DCHL’) who paid cash in tranches for the services rendered to them by and as per the agreements (September and October 2012) between (PFHIPL) and DCHL for providing services like restructuring plan, introducing them to buyers etc. It was stated by her that the said cash was subsequently extended as advances to other companies for the ongoing transactions.

9.8 It was disclosed by Mr. Mukkar in his statement to the Department that the money was received from DCHL. However, neither he nor Ms. Singh could produce any documents in support of this claim. It is explained that in

view of the fact that neither Mr. Mukkar nor Ms. Singh or other key associates could produce any documents/book of accounts/evidence during the course of search and survey proceedings that could help verify the nature and source of such huge cash, the accounts of the Petitioner companies were put under restraint under Section 132(3) of the Act on 11th January, 2017.

9.9 As regards the Petitioner companies, it is stated that the books of accounts of none of them was found at their registered office address (A-49, Mohan Cooperative Industrial Area). Mr. Mukkar and Ms. Singh stated on oath that the books of accounts were maintained in Mumbai by Mr. Nair and would be made available to the Department. Mr. Nair in his statement under oath under Section 131 of the Act on 1st February, 2017 denied that the books of accounts were maintained in Mumbai. This was followed by search and survey operation at the residential and office premises of Mr. Nair in Mumbai where he finally admitted that the books of accounts of all the companies controlled by Mr. Mukkar (including the Petitioner companies registered at A-49, Mohan Cooperative Industrial Estate) were maintained by Mr. Nair at his office in Chembur Naka, Mumbai. The counter-affidavit sets out the relevant portion of the said statement of Mr. Nair. The Department, accordingly, states that there was a wilful and deliberate attempt to prevent the Department from accessing the books of accounts of the Petitioner companies even though sufficient time and opportunity was granted to the Petitioners.

9.10 The counter-affidavit provides a summary of the statement made by Mr. Nair on 18th January, 2017 and the submission made through his AR. In

this, he states that source of cash totalling Rs.15 crores was received by PFHPL from DCHL. When he next appeared on 24th January, 2017 before the Department, the AR of Mr.Nair submitted covering letters stating that Mr. Mukkar was merely an advisor to a company named Halcyon Asia Support Private Limited ('Halcyon Asia') and played no role in the day-to-day management of either the Petitioner companies or other companies of the group.

9.11 The Department states that the letters of the Petitioner companies requesting lifting of the restraint order was received on 23rd January, 2017 and 24th January, 2017. These letters also contained 3 undated 'Fund Confirmation Letters' signed by Mr. Shakti Singh Jadaun, Director of PFHPL certifying that the advance in cash of Rs.7.5 crores, Rs.5 crores and Rs.2.5 crores were extended during the Financial Year ('FY') 2015-16 to LIIL, LERL and LIPL. It is stated that the ADIT asked the AR to furnish further documents relating to the above transactions involving DCHL and PFHPL and evidence to show that the accounts that were put under restraint were duly disclosed in the books of accounts as well as ITRs.

9.12 The Department states that on examination of the request letters for lifting the restraint on the bank accounts, it was observed that the Power of Attorney ('PoA') that was submitted by the AR of the Petitioner Companies (Kumra Bhati & Co., Chartered Accountants) was given to the AR by Mr.Praveen Kumar Pandey, an advocate, who in turn held the General Power of Attorney ('GPA') for the 9 companies, which included the 8 Petitioner companies, on behalf of 2 Directors of these companies – Mr.

Shakti Singh Jadaun and Mr. Lokesh Kumar Pachauri. Copies of the authorization letters dated 20th January, 2017 under Section 288 of the Act issued by Mr. Praveen Kumar Pandey in favour of Kumra Bhatia & Co. has been enclosed to the counter -affidavit as Annexure R-15.

9.13 The Department's counter-affidavit then proceeds to list out the names of the Directors of the Petitioner Companies on whose behalf letters were submitted to the Department. It says that Mr. Jadaun, Mr. Pachauri and Ms.Padmavathy are shown to be the Directors of LIIL and LERL, Mr.Jadaun, Mr.Pachauri, Mr.Happy Passi are the Directors of LIPL, Mr. Jadaun and Mr.Ashwani Sehgal are the Directors of EFPL, Mr. Jadaun and Ms.Padmavathy are the Directors of EFERL, Mr. Jadaun and Mr. Pachauri are the Directors of Jemma Consultants and Advisors Pvt. Ltd. ('JCAPL'), Mr. Pachauri and Mr. Sehgal are the Directors of Perpetual Care and Servicing Pvt. Ltd., Mr. Jadaun and Mr. Sehgal are the Directors of PRDPL, and Mr. Jadaun and Ms.Padmavathy are the Directors of SCCPL.

9.14 Since the address mentioned in the PoA for both Mr. Jadaun and Mr. Pachauri was H-II, Madangir, New Delhi, summons under Section 131(1A) of the Act were issued on the above address and field enquiries were also made. This address was found to be incomplete and the correct address was House No.309, H-II, Madangir, New Delhi. Thereafter, submissions were recorded of both Mr. Pachauri and Mr. Jadaun between 27th January, 2017 and 30th January, 2017.

9.15 The Department states that as far as Mr.Pachauri was concerned, he was 24 years old, a Class XII pass and he did not know English; he could

only sign his name in English; he got his statement recorded in Hindi; he denied signing the PoA on 19th January, 2017; did not know the names of the other Directors of the Companies in which he was a Director except Mr. Jadaun who was his childhood friend. He was employed by Mr. Sehgal (the Company Secretary for the Petitioner companies) for Rs.12,000/- per month for signing as Director for various companies. He was not aware of the names of these companies; did not know either Mr.Praveen Kumar Pandey or Kumra Bhati & Co. (the AR) and denied having signed the PoA. “In fact he asserted that his signature carried on the document appeared to be forged.”; he was not aware of the knowledge of the request letters for lifting of the restraint and was not aware of the lifting of restraint on the bank accounts of the companies of which he was a Director. He had no information of the cash deposited in these Companies’ bank accounts.

9.16 As far as Mr. Jadaun is concerned, he was 22 years old, he, too, was employed by Mr. Raj Kumar Sehgal at Rs.12,000/- per month to sign as Director for various companies. He, too, could only sign his name in English and denied his working understanding of the language. He got a statement recorded in Hindi. He, too, did not know activities and operation details of the companies; denied signing the PoA on 19th January, 2017; did not know the other Directors of the Company except Mr. Pachauri who was his childhood friend. He also did not know either Mr. Praveen Kumar Pandey or Kumra Bhatia & Co. and was not aware of the bank accounts in the name of the companies in RBL. He denied having knowledge of the ‘Fund Confirmation Letters’ bearing his signatures which were submitted to the Department on behalf of the three Petitioner Companies. He denied having

knowledge of such huge amounts of cash deposited in their accounts.

9.17 The statement of Mr. Ashwani Sehgal (a driver by profession who was a Director in three of the companies) and of Mr. Happy Passi were recorded. It emerged that each of them was employed by Mr. Raj Kumar Sehgal for Rs.6,000/- per month to sign as Director of various companies. Their knowledge of the affairs of the companies was no different from that of Mr. Pachauri and Mr. Jadaun. It is stated that efforts were made by the Department to find out about Ms. Padmavathy, who was not found at her declared address. Her current address was not known to any of her colleagues.

9.18 The counter-affidavit of the Department further refers to the fact that on 3rd February, 2017, Mr. Nair appeared and filed belated ITRs for seven of the Petitioner companies. On analysing the data base of the Department it was revealed that the said Petitioner companies had defaulted in filing the ITRs. They had filed them only after the search and survey was conducted by the Department. The details of the filing of the ITRs of the 8 Petitioner companies for the AY 2015-16 onwards have been set out as Table No. 7 in the counter-affidavit. The gross total income of 5 of the companies is Rs.0. PRDPL is shown to have filed no returns. PFHIPL filed a return for AYs 2015-16 and 2016-17 on 14th February, 2017 disclosing a grand income of Rs. 2,06,46,794 and SCCPL on 2nd February, 2017 for the aforementioned AYs showing a total income of Rs.20,29,344 and Rs.16,32,462 respectively. From the Ministry of Corporate Affairs database it was revealed that the Petitioner companies had also defaulted on a regular basis in filing their

mandatory forms and details under the Companies Act, 2013.

9.19 It is stated by the Department that pursuant to the summons issued under Section 131(1A) of the Act to DCHL on 25th January, 2017, it informed the Department by a letter dated 2nd February, 2017 that from 3rd October, 2012 till 22nd August, 2013 Rs.10.50 crores (net of TDS) was paid to PFHIPL through bank transfers and no cash payment was made till the date of submission of the reply to the Department.

9.20 The Department states that the bank records at RBL showed that Mr. Mukkar was the beneficial owner of the bank account of the companies including the Petitioner companies. On the basis of the statements made and evidence gathered, it was sufficiently established that Mr. Mukkar was the key person controlling the companies and their bank accounts at RBL. The Directors of these companies were only dummies and “there is a deliberate attempt to disprove that the real control and management of these companies lies with Mr. Mohnish Mohan Mukkar.” A reference was also made to the amendment to The Benami Transactions (Prohibition) Amendment Act, 2016 and the amended definition of ‘Benami Transactions’. It is stated that a separate satisfaction note was drawn and separate warrants were issued against each of the Petitioner companies’ bank accounts for the seizure of money along with the beneficial owners in these companies’ bank accounts.

9.21 It is pointed by the Department out that the Petitioner has deliberately suppressed the fact that they were provided sufficient opportunity and time to furnish proof regarding the nature and source of funds; that the Companies’ Directors, Mr. Pachauri and Mr. Jadaun, were themselves

unaware of the request letter seeking lifting of the restraints or even of the bank accounts. It is stated that at no point in time was the opportunity of hearing denied to the Petitioner companies. It is stated that “none of these facts have been placed on record by the Petitioner, thus, disentitling the Petitioner from any discretionary relief from this Hon'ble Court.”

9.22 With specific reference to the averments in para 5.7 of the Writ Petition (C) No. 1180 of 2017 in the para-wise reply contained in the Department's counter-affidavit, the Department has stated that the Petitioner had suppressed the fact that the request letters for lifting of restraint were written on behalf of the Directors of the Petitioner companies (Mr. Jadaun and Mr. Pachauri) who, under oath, denied having any knowledge of the said letters or even the existence of the bank accounts or of the Companies' activities. It is contended that the Petitioners having approached the Department under Section 132B of the Act for lifting of the restraint, the writ petition was not maintainable. According to the Department, since the Directors of the Companies had denied signing the GPA in favour of Mr. Praveen Pandey, the deponent of the affidavit filed in support of the writ petition, the very authenticity and veracity of the said writ petition was in question.

9.23 The Department filed an additional affidavit on 15th May, 2017 enclosing a copy of the order passed on 2nd May, 2017 in the case of PRDPL, 3rd May, 2017 in the case of EFPL, PFHIPL, LIIL, LERL, SSCPL and EFERL, and 4th May, 2017 in the case of LIPL under Section 132B of the Act by the Income Tax Officer. In each of these orders, the request for lifting of the restraint was declined since the source of funds had not been

satisfactorily explained and therefore, the funds were unaccounted and unexplained. Thus, there being no outstanding tax liability or pending assessment was 'immaterial'. Each of these orders is a detailed one which need not be further set out in the present proceedings.

Rejoinder of the Petitioners in W.P. (C) 1180 of 2017

10.1 In Writ Petition (C) No. 1180 of 2017, a rejoinder has been filed on 16th May, 2017 to the Department's counter-affidavit. The rejoinder is supported by the affidavit of Mr. Praveen Pandey giving his address as A-115, South City 2, Gurugram, Haryana. It is stated that the Department has "tried to build a lot of prejudice by attempting to link the companies with Mr. Mohnish Mukkar." The rejoinder then proceeds to "see through the attempted creation of prejudice".

10.2 The Petitioners in their rejoinder decide that offence is the best form of defence. In para 4c, the Petitioners state:

"In the entire counter affidavit, almost the entire energy of the Department has been diverted to proving the role of Mr. Mohnish Mukkar in these companies. Without prejudice, and assuming that to be so, the question is then what? Merely because Mr. Mohnish Mukkar may be involved, does not entitle the Department to seize the bank accounts and bring the business to a standstill. The entire counter affidavit has been unable to suggest even a reasonable estimate of what the undisclosed income is, or what the assessable amount could be?"

10.3 It is claimed that the Petitioners being separate legal entities, the Department cannot seize their bank accounts without the authority of law. According to the Petitioners, the question whether the money lying in the bank account would constitute cash in terms of Section 132 of the Act and

whether it could be seized is an important question and the Department has no answer to it. It is submitted that Sections 132 and 132B of the Act do not confer power to seize the money lying in a bank account. It is submitted that a bank account, which is a debt owed by the bank towards the account holder, is an actionable claim in the hands of the account holder and cannot be seized. According to the Petitioners, the credit standing in a bank account is not 'money' or 'cash' but rather is a debt owed by the Bank to the customer. It is contended that there is no power under Section 132B to even issue a garnishee order.

10.4 It is stated that only under Section 281B of the Act can a restraint order can be passed by way of attachment, but then again, not for “actual realization.” Attachment does not mean that a direction can be passed directing the Bank to pay off the debt to a third party. Further, it is submitted that the manner of attachment and sale of a person’s property has been provided in Part 2 of the II Schedule which is to be read with Rule 20 (which requires issuance of a warrant defining the sum to be realized, which is absent in the present case). In terms of Rule 26(1)(c)(i), a debt can be attached only by way of a written order prohibiting the creditor from recovering the debt and the debtor from making payment thereof until further orders of the Taxing recovery Officer. It is stated that there is no power for an actual debit to the bank account and realization of the debt by a third party such as the Department.

10.5 It is submitted by the Petitioners that under the second proviso to Section 132B(1) of the Act, the seizure cannot exist beyond 120 days. Since

120 days have already lapsed from 11th January, 2017, there is no justification for continuing the restraint on the Petitioner's bank account.

10.6 The rejoinder then sets out the details of the (i) the nature of the activities of the Petitioner and the revenue stream; (ii) relevant facts leading to the deposit of cash and search and seizure of relevant documents; (iii) cooperation extended by Petitioners during and post search; and (iv) question of law regarding competence of the Department in directing RBL to issue DDs without an ascertained tax demand against the Petitioners.

10.7 While these details need not be discussed at this stage, it is significant that for the first time the Petitioners disclose that they can be divided into two groups of companies i.e., non-banking financial companies ('NBFCs') and Special Purpose Vehicles ('SPVs'). It is disclosed again for the first time in para 1.2 that:

"With the increase of the NPAs in the Banking Sector and in an effort to attract foreign capital to industries in need of financial and operational turnaround, in 2015 the Participation Group floated the SPVs under Emppel Fortitus Private Limited (the Emppel Group) for and on behalf of a foreign investor, Elfington Limited, with the intent of having a dedicated platform which would eventually be sold to Elfington Limited...

The Emppel Group and the Participation were to receive sweat equity between December of 2016 and January of 2017 from Elfington Limited in Elfington Limited, which was cancelled upon the discovery by Elfington Limited of the search & seizure action against Mr. Mohnish Mukkar."

10.8 In the rejoinder in paras 1.3 to 1.5, it is now stated as under:

"1.3 That the Petitioner No. 2,3,6,7 & 8 are wholly owned

subsidiaries of Petitioner No. 5, whereas Petitioner No. 1 is a wholly owned subsidiary of Petitioner No. 4. The same is reflected from the financials and tax returns of the Petitioners for the last two financial years are annexed herewith as Annexure P-1.

1.4. That the Petitioner No. 5 is a company held by Elfington Holdings and Elfington Fincorp (hereinafter referred to as 'Trusts' under the Trusteeship of Independent Trustees and Executors Agency Pvt. Ltd.. These Trusts are registered in India under the provisions of the Indian Trusts Act, 1888. The Petitioner No. 4 is held by Independent Trustees and Executors Agency Pvt. Ltd. Independent Trustees and Executors Agency Pvt. Ltd. is holding the assets on behalf of Mstr Jeh Mohnish Mukkar, the s/o of Mr. Mohnish Mukkar under custody of Mrs. Kiran Shiv Mohan. This arrangement is on account of a family settlement or arrangement, which resulted in the relinquishment of rights by Mr. Mohnish Mukkar in his father's estate in favour of his son in 2006. Annexure P - 2. As a consequence of this settlement, upon the passing away of Mr. Mohnish Mukkar's father in 2015, who was a foreign resident, Mr. Mohnish Mukkar was not entitled to receive any benefits in India or Overseas.

1.5. In their activist business adventure of asset reconstruction and debt recovery the two groups i.e., NBFC and SPV, following the structure of an asset manager, are advised by Halcyon Asia Support Services Private Limited having its registered office at A-49, Mohan Industrial Co-operative Estate, Mathura Road, New Delhi. Mr. Mohnish Mukkar serves as the principal Strategic Advisor to Halcyon Asia Support Services Private Limited."

10.9 The rejoinder sets out elaborately the past business relationship with DHCL and the litigation involving it and seeks to explain the source of the cash of Rs. 15 crores in cash which was received by Petitioner No. 4 (PFHIPL), out of which Rs. 13.43 crores was made available by it to Petitioner Nos. 2 (LERL), 3 (LIIL) and 6 (LIPL). In para 8 of the rejoinder as regards Mr. Mukkar, attention is drawn to "ground h of the writ petition,

wherein the Petitioners have specifically stated that Mr. Mohnish Mohan Mukkar is neither a shareholder nor a director in any of the Petitioners.” It is asserted that the Department's counter-affidavit “nowhere mentions or establishes Mr. Mohnish Mohan Mukkar to be a Director or shareholder in any of the Petitioners.”

10.10 It should be recalled at this stage that para 4.6.2.II of the Department's counter-affidavit sets out in Table 5 the details obtained from RBL showing that Beneficial Owner No.1 of the accounts of the Petitioners is Mr. Mohnish Mohan Mukkar and Beneficial Owner No.2 is Kiran Shiv Mukkar. The Authorised Signatory No.1 in all accounts is Ms. Veena Singh. This table also shows that there are two accounts for SCCPL. The ninth account is of EFPL where Beneficial Owner No.1 is Kiran Shiv Mukkar and Beneficial Owner No.2 is Mr. Mohnish Mohan Mukkar. In para 17 of the rejoinder it is stated as follows:

"That the averments made in Paragraph 4.6.2.II.,that it was during the course of survey proceedings that it was discovered that the account in which cash was deposited had Mr. Mohnish Mohan Mukkar as the beneficial owner, are denied. The table no. 5 as produced at pg. no. 23 of the counter affidavit merely depicts the cash balance and is in fact misleading as it portrays Mr. Mohnish Mohan Mukkar as the beneficial owner and which is factually incorrect in terms of Rule 9-A(1) of the Prevention of Money Laundering (Maintenance of Record etc.) Rules, 2005."

10.11 Significantly, the averment of the Department that the said details were with RBL and provided by RBL to the Department is not denied by the Petitioners.

10.12 It is significant that in respect of some of the crucial averments in the Department's counter-affidavit in paras 4.6.2 VIII, XII, XIV to XIX, XXI, XXIII (i.e. paras 21, 24, 26, 28 and 30 of the rejoinder affidavit), there is no reply at all given by the Petitioners. This is a glaring omission since these paras of the Department's counter-affidavit set out in detail the responses by 'Directors' of these Petitioners to specific questions about their role, the responses, the role of Mr. Praveen Pandey and the company secretary, Mr. Sehgal, the failure to file returns under the Companies Act and so on. Even the averment in para 4.6.2.XIII of the counter-affidavit giving the names of the Directors is met with a casual response that the filing of the letter for lifting the restraint submitted by the AR is an 'admitted fact'. It is also pointed out by the Department in these paras that there is a suppression of the fact of questioning of the Directors of these companies on several dates. In effect, therefore, there is no denial of these averments of the Department. Likewise, the averment in para 5.7 of the Department's counter-affidavit that the Directors of these companies were 'dummy directors' is not answered at all!

10.13. The Petitioners have not filed a rejoinder to the counter-affidavit filed by RBL. The averments in that affidavit, therefore, remain uncontroverted.

11.1 Additionally, Petitioner Nos. 2, 3 and 6 have filed a reply to the Department's additional affidavit. This is again supported by the affidavit of Mr. Praveen Pandey who now gives his address as resident of A-115, South City 2, Gurugram, Haryana. This reply starts by stating that it is "well settled that the Petitioners 2, 3 and 6 received funds and cash from Petitioner No.4

Participation Finance & Holding India Pvt. Ltd." and that it is "undisputed that Petitioners No. 2, 3 and 6 deposited the cash, which was reflected in their books of accounts and ledgers, much prior to act of demonetization and also confirmed on their balance sheets as confirmed on September 6, 2017?"... in their respective accounts in RBL Bank in Karol Bagh..."

11.2 It is stated that since RBL had placed limits on the amounts that could be deposited in a single day, funds were deposited on different dates i.e., 10th, 11th, 12th and 13th November, 2016. It is clear that "appropriate disclosures regarding the cash deposits were made in a timely fashion on the online portal established by the Income Tax Department for this purpose and the Petitioners No. 2, 3 and 6 received e-verification confirmations." Therefore, according to Petitioner Nos. 2, 3 and 6, there was no question of undisclosed income at their hands as they had met their initial and only substantial burden i.e., disclosure of the party they received cash from.

11.3 The rest of the paragraphs are devoted to demonstrating how the balances in the accounts of these three Petitioners could not be said to be undisclosed income and that no warrants of authorisation had been issued against these companies. It is, accordingly, submitted that an additional affidavit filed with the ADIT should be rejected.

11.4 Another reply to the Department's additional affidavit has been filed on behalf of Petitioners 1, 5, 7 and 8. The attempt in this affidavit is to demonstrate, therefore, that the funds in their accounts "are the proceeds of a transaction with Religare Finvest Limited" which were made available by it to enable a "large ticket restructuring." The fund flow statement confirming

the bank statements of Petitioner Nos. 1, 5 and 7 is enclosed. These Petitioners protest against “lumping all Petitioners and clouding the issue” by the Department. It is stated that no action under Section 132 was initiated against these companies; that Petitioner No. 1 was involved in restructuring related actions and the Petitioners, jointly, have over other 18 litigations pending at various stages. This reply dated 23rd May, 2017 is also supported by the affidavit of Mr. Praveen Pandey.

11.5 A separate reply has been filed by Petitioner No.4 (again supported by the affidavit of Mr. Praveen Pandey). Here, it is stated that at the end of March 31st, 2015, DCHL owed Petitioner No.4 Rs. 15 crores “which amount was paid in cash in various instalments in the financial year 2015-2016 and was set aside to be utilized for another restructuring transaction that involved payments to labours and contractors that were ordinarily paid in cash.” In para 6 of this reply, it is stated that “Mr. Shakti Singh by a sworn affidavit realistically contextualizes his responses to the ADIT and provides further documentation regarding the account confirmation(s) pertaining to the cash deposit. Which, evidence, interestingly has already been provided to ADIT in charge on numerous occasions, but, has not been taken on record. Annexure.” There is in fact no such Annexure. In para 7 of this rejoinder statement, it is averred that DCHL had clearly “evaded the question posed by the Department in order to avoid other sanctions or re-open a criminal case, which they desperately want closed.”

11.6 A reference is made to the written confirmations/sworn affidavits by Mr. T. Venkatram Reddy, the Chairman of DCHL, in proceedings in this

Court and in arbitration proceedings. It is averred, therefore, that this evidence being relied upon by Respondent No.2 was completely in apposite to the other uncontroversial record placed before Respondent No. 2 and, therefore, cannot form the basis of any review. It is stated that “this one-off cash dealing was an aberration against the backdrop of extreme circumstances, which cannot be ignored, as they have been. Having established the source, Petitioner No. 4 believes a review of the tax liability, if any, arising out of the receipt of the cash in the hands of the Petitioner No. 4 becomes integral to the disposition of this instant proceeding.” The attempt of Petitioner No.4 has been to show that its income in 2015-16 was accounted for and fully disclosed and that there should be no question of any further tax liability. This is also supported by the affidavit of Mr. Praveen Pandey. Enclosed with this reply is an audit report of DHCL titled ‘Review of Financial Operations October 2012 to March 2013’.

11.7 Another reply to the additional affidavit of Respondent No.2 has been filed on behalf of the Petitioners where it is denied that the Petitioners are ‘Shell Companies’. It is stated that they are SPVs involved in transactions for the purposes of restructuring; that over the past 10 years they have, at times material to their operations, managed, for their own debt recoveries and third party actions, a substantial number of entities, which term includes companies incorporated under the Companies Act and Trusts.” Some illustrations have been given to show the kind of restructuring that is undertaken.

11.8 Annexure-1 enclosed with this reply is a copy of the authorisation and

board resolution in favour of Mr. Praveen Pandey. The first document starts with the stamp paper which is dated 12th February, 2015 which covers a Loan Agreement between Religare Finvest Ltd. and Perpetual Capital and Servicing Pvt. Ltd. A stamp paper dated 18th May, 2017 purchased by PFHPL followed by a document 'Affidavit & Ratification' stating that "the Affiant hereby confirms that on January 19, 2017 Mr. Praveen Pandey was duly authorised via Power of Attorney issued by the Affiant on behalf of the Affiant." The said statement purports to ratify the action of Mr. Praveen Pandey in executing a PoA in favour of M/s. Kumra and Bhatia. It further states that on 8th February, 2017, Mr. Praveen Pandey was authorised by board resolution executed by the 'Affiant' granting, amongst other things, Mr. Praveen Pandey "the right to enter into or execute any documents pertaining to representations in any judicial or quasi-judicial proceedings."

11.9 At the end of the document is a purported signature which could be of Mr. Shakti Singh Jadaun above a line which is titled as 'name of affiant'. This document has two witnesses and is notarised by Mr. Kamlesh Sharma with his registration no. 2630. There is another document which is the certified true copy of resolution of the board meeting of PFHIPL held on 10th May, 2017, again notarised by Mr. Kamlesh Sharma on 19th May, 2017. It is signed by Shakti Singh Jadaun. There is a further resolution dated 8th February, 2017 passed in the meeting of PFHIPL held on 16th January, 2017 authorising Mr. Pandey to execute documents etc. This, too, has been notarised by Mr. Kamlesh Sharma on 19th May, 2017. There is another similar 'Affidavit & Ratification' as well as a copy of the board resolution in respect of EFPL dated 10th May, 2017 signed by Mr. Jadaun.

11.10 Another document titled ‘Affidavit & Ratification’ on behalf of LIPL has purportedly been executed by Mr. Lokesh Pachauri (Affiant No. 1) and Mr. Ram Murti Kumar (Affiant No. 2) stating that an additional board resolution was provided to Mr. Pandey on 10th May, 2017. This has also been attested by Mr. Kamlesh Sharma, Notary Public on 19th May, 2017. None of these notarised papers show that there was any identification of signature in front of the Notary. There is a GPA of Mr. Jadaun where he states that he is 22 years old, residing at H-II, Madangiri, New Delhi – 110062 and appoints Mr. Praveen Kumar Pandey, having office at Ch. No. 547, Lawyers Block, Saket Court Complex, New Delhi, as his legal attorney. This, too, has been attested by Mr. Kamlesh Sharma on 19th January, 2017 and then with a date of 19th May, 2017.

11.11 In the GPA Mr. Jadaun discloses that he is a Director of as many as 20 companies a list of which is enclosed therewith. Likewise, Mr. Pachauri aged 24 years has signed a GPA which has no witness and yet notarised by the same Mr. Kamlesh Sharma, first with the date of 19th January, 2017 and then with a date of 19th May, 2017. Mr. Pachauri is also a Director of these 20 companies. Similar ratifications are supposedly issued on behalf of each of the other Petitioners.

Averments in W.P. (C) 2375 of 2017

12.1 W.P.(C) No. 2375 of 2017 has been filed by Ms. Veena Singh who describes herself in para 2.1 of the petition as “an individual who is working in the professional capacity with Emppel Fortitus Private Limited.” She too states that a search and seizure operation under Section 132(1) of the Act

was carried out at her residential premises on 11th January, 2017 with the warrant of search in the case of Mr. Mukkar. She states that there was no warrant issued in her name. She states that the search operations continued for more than 48 hours at a stretch leaving the almirah under seal and restraint. The search was concluded on 13th January, 2017. Enclosed with the petition is a copy of the Panchnama (Annexure - 1). She, too, refers to the restraint order passed under Section 132(3) of the Act and that one of the bank accounts mentioned therein was her savings account with the Karol Bagh Branch of RBL.

12.2 She states in para 2.5 that her AR filed a series of letters providing information to the ADIT pursuant to the summons issued to her on 25th January, 2017. It is further stated by revocation order dated 6th February, 2017 issued by the ADIT that restraint from 10 out of the 16 bank accounts was lifted with a direction to RBL to make DDs for the balance available in the Petitioner's accounts in favour of the Department. Pursuant thereto, RBL debited the accounts of the 9 companies and prepared the DDs amounting to Rs. 23.14 crores. The information of debit of account of the 9 companies was received through SMS by the companies. She refers to the fact that W.P.(C) No. 1180 of 2017 was filed by the companies (in fact there are only 8 companies which filed the writ petition. One of them, SCCL, has two bank accounts). A reference is also made to the interim order passed by this Court on 9th February, 2017.

12.3 Ms. Singh states that on 2nd March, 2017, her premises was searched, the almirah was opened, the contents thereof (cash of Rs. 6,02,000/-) was

seized and the same almirah was put under restraint under Section 132(3) of the Act. In the evening of 10th March, 2017 Ms. Singh received an automated SMS from RBL intimating withdrawal of funds from savings accounts in the sum of Rs. 77,53,177/-. She contends that all the actions were taken in haste by the Department with no outstanding tax liabilities/pending assessment demand against her and, therefore, it was without the authority of law.

12.4 Para 3 of the writ petition sets out the grounds. These are more or less on the same lines as in W.P.(C) No. 1180 of 2017. Here, additionally, it is urged that the actions of the Respondents are arbitrary, perverse, malafide, unreasonable and also in violation of Article 300A of the Constitution of India. It is stated that restraint was placed on the Petitioner's account when the object of the search was the undisclosed income of Mr. Mukkar.

12.5 The prayer in W.P. (C) 2375 of 2017 filed on 14th March, 2017, is that the Court should quash and set aside the actions of the Department, countermand the DDs and re-credit the funds in the account of the Petitioner. Interim orders are prayed for in this writ petition as well.

12.6. W.P. (C) 2375 of 2017 was listed first on 14th March, 2017. While directing notice to issue to the Respondents, the Court on that date restrained the Department from encashing the DDs till the next date of hearing to the extent of the amount that had been appropriated from the Petitioner's account. The Petitioner was permitted to operate the account subject to the above orders. This petition was heard along with W.P.(C) No. 1180/2017 on 19th April, 2017 and since then. The interim orders have continued.

Department's counter affidavit in W P (C) 2375 of 2017

13.1 In the reply filed to the Writ Petition (C) No. 2375 of 2017, it is pointed out by the Department that apart from what has been stated in the counter-affidavit in response to the petition by the companies, during the search of Ms. Veena Singh it was found that she had her own account at RBL and had received Rs.2 crores from an account in the name of EFERL (Petitioner No. 8 in W.P. (C) 1180 of 2017) on 30th August, 2016. When the said account of EFERL was examined, the source of Rs.2 crores that were transferred to Ms. Veena Singh was a sum of Rs. 22 crores received from PFHIPL (Petitioner No. 4 in W.P. (C) 1180 of 2017) on 26th May, 2016. When PFHIPL's account was examined, it was seen that on the same date it had received Rs. 22 crores from EFPL (Petitioner No. 5 in W.P. (C) 1180 of 2017). A diagrammatic representation of the source of transactions is set out in the counter-affidavit.

13.2 It is further pointed out that money lying in the bank account of Ms. Veena Singh was from the same companies whose accounts had been seized. She was issued summons on 25th January, 2017 asking to disclose details such as source of deposits etc. and several opportunities on various dates were provided to her thereafter. It was found that she had wilfully suppressed information about her financial interest and directorship/shareholdings in several companies based in Hong Kong and British Virgin Islands as well as her role in managing these companies and her authorised signatory status for some of the bank accounts located in Singapore. These details were withheld by her in her statement recorded on

oath on 11th January, 2017 and in her preliminary statement under Section 131 of the Act.

13.3 The Department states that her AR submitted that Rs.2 crores were received as a personal loan from EFERL. However, this was not supported by any documents like a Loan Agreement etc. The confirmation on behalf of EFERL was signed by Mr. Praveen Pandey as AR. The Directors of EFERL were Ms. Padmavathy and Mr. Jadaun. Mr. Jadaun had in his statement on 30th January, 2017 denied signing any GPA in favour of Mr. Pandey. The confirmation of having given the loan to her was signed by Mr. Pandey. Since the source of money lying in the account of EFERL, PFHIPL and EFPL could not be satisfactorily explained by those companies, the money was seized; and the money lying in Ms. Singh's account was nothing but part of the unexplained money in the above accounts. These companies were controlled by Mr. Mukkar and that is how her account was also seized.

Rejoinder of Ms. Veena Singh

14.1 A rejoinder affidavit has been filed by Veena Singh where there is a broad general denial of what has been stated in the counter-affidavit filed by the Department. She seeks to explain amounts found in her bank account as having been received by her “pre-demonetization as part of the Petitioners professional engagement” and that it “simply cannot be garnished.” It is submitted that with the seizure of such funds, the Department “demonstrated a deliberate disregard for the Income Tax Act and exceeded their authority.”

14.2 Each and every legal argument made in the rejoinder of the Petitioners in W.P. (C) No. 1180 of 2017 has been repeated verbatim by Ms. Veena

Singh in her rejoinder. It is submitted that “only money lying as actual cash, gold etc. can be seized which is available during the search.” It is stated that the money lying in the bank account is a debt owed by the bank towards the account holder i.e., an actionable claim in the hands of the account holder and cannot, therefore, be seized. It is stated that the credit standing in a bank account is not ‘money’ or ‘cash’ but rather is a debt owed by the bank to the customer.

14.3 In her rejoinder, Ms. Veena Singh states that she furnished all the information and made complete and full disclosure to the Department in response to the summons issued to her and has enclosed copies of the replies furnished by her to the various queries raised by the Department. In the parawise reply, she now submits that “it has never been the case of the Petitioner that she is not associated with either the Companies or Mr. Mohnish Mohan Mukkar.” She claimed to have furnished a full disclosure as regards Rs. 2 crores received by her from EFERL – this was personal loan given to her by banking channels and that since this pertained to 2016-17 i.e., the ongoing financial year, the relevant declaration “under appropriate head would be provided in the due course.” She claims that an opportunity given must be real and effective and not merely notional.

Submissions on behalf of the Department

15. When the matters were heard on 25th May, 2017, a preliminary objection was raised by Mr. Rahul Kaushik, learned Senior Standing Counsel appearing for the Department, that with there being deliberate suppression of material facts, both the petitions should be dismissed with exemplary costs.

The fact that Mr. Mohnish Mohan Mukkar was the beneficial owner of the Petitioner companies as per the records of RBL was not only not disclosed in the petitions but a clear attempt was made to mislead the Court that these companies had nothing to do with Mr. Mohnish Mohan Mukkar.

16. Mr Kaushik also referred to the fact that the statement of Mr. Jadaun and Mr. Pachauri denying that they had signed a GPA authorising Mr. Pandey raised serious doubts whether Mr. Pandey could have sworn to the affidavit in support of the petition. He pointed out that it was now sought to be projected that Mr. Praveen Pandey was authorised by the GPA dated 18th January, 2017 and a board resolution dated 8th February, 2017. Although the stamp paper is dated 19th May, 2017, the document has been signed by Mr. Jadaun on 18th May, 2017.

17. A reference was made by Mr. Kaushik to Section 85 of the Evidence Act, 1872 ('EA') under which the Court presumes that every document pertaining to a PoA is genuine if it has been executed before and authenticated by a Notary Public. The GPA was signed on 18th January, 2017 on a stamp paper of 19th January, 2017 and attested both on 19th January and on 19th May, 2017 with the executants not being identified by anyone and there being no witnesses. Therefore, this could not be a valid GPA. He also pointed out that the signatures of Mr. Jadaun in the board resolution, in the Aadhar Card and GPA are all different which make all these documents extremely doubtful.

18. On merits, Mr. Kaushik referred to the decisions in ***Lan Eseda Steels Ltd. v. Assistant Commissioner of Income Tax (1994) 209 ITR 901 (AP)***

and *Sardar Santosh Singh v. Commissioner of Income Tax (2001) 248 ITR 532 (Jharkand)* and stated that unexplained bank deposits constitute income and hence a valuable article was within the meaning of Section 132(1)(c) of the Act. Referring to Section 132(3) of the Act and Section 2(11) of the Black Money Act, he submitted that a bank account is also recognised as an asset. He submitted that once unaccounted money is deposited in bank account, it could not be held to be immune from seizure. The very purpose of Section 132 would be defeated if it was held that money deposited in account was immune to seizure.

Submissions on behalf of the Petitioner

19. Mr. Chidambaram, learned Senior counsel appearing for the Petitioners in Writ Petition (C) No. 1180 of 2017 and Mr. V. Lakshmikumaran, learned counsel appearing for the Petitioner, Ms. Veena Singh, in Writ Petition (C) No. 2375 of 2017 submitted that the entire action of the Department was without the authority of law. It was submitted that no answer was provided by the Department as to how they could have directed RBL to prepare DDs for the sums lying in the bank accounts without there being any search under Section 132 in respect of the 8 companies. It is submitted that restraint under Section 132(3) of the Act can only be in respect of undisclosed assets of personal search. Assets of a third party not subject to search could not be the subject matter of restraint under Section 132(3) of the Act.

20. It is pointed out that the Petitioners have correctly stated that Mr. Mohnish Mohan Mukkar is neither a shareholder nor a director and that the two parent companies i.e., EFPL and EPHIPL are held by Trusts.

21. On merits, Mr. Chidambaram relied on the decisions in *Smt. Bimla Singh v. Chief Commissioner of Income Tax* (1998) 230 ITR 349 (HC) (Patna), *Jagdishprasad M. Joshi v. Deputy Commissioner of Income Tax* (2005) 273 ITR 296 (HC) (Bom), *Dheer Singh v. Assistant Director of Income Tax* (1998) 230 ITR 343 (All.), *Visa Comtrade Limited v. UOI* (2011) 338 ITR 343 (Orissa), *Raj Kumar v. Union of India* (2000) 242 ITR 584 (P&H), *Windson Electronics Pvt. Ltd. v. Union of India* (2004) 269 ITR 481 (Cal.) and *Puspa Ranjan Sahoo v. Assistant Director of Income Tax* (2012) 252 CTR 113 (Orissa) to urge that during the course of the search there could not be an attachment of the assets of a person other than the searched person much less any direction issued that the money lying in any bank account should be transferred to the Department. Unless the tax liability is finally quantified, an Assessing Officer ('AO') could only retain in his capacity such assets as in his opinion would satisfy the amounts referred to in Clauses 2 and 3 of Section 132. He submitted that the said provision did not confer any authority to release assets and to convert them into cash.

22. Mr. Lakshmikumaran, learned counsel appearing for Ms. Veena Singh, reiterated the stand taken by her in the writ petition and in her rejoinder. He sought to urge the fact that Ms. Singh mentioning nothing at all in the petition in the first instance about being an associate of Mr. Mukkar cannot be construed as suppression of a material fact. In "the factual submissions" tendered on 26th May, 2017, apart from stating that she renders professional services to EFPL, Ms. Singh admitted that she was also an authorised signatory of the bank accounts of each of the Petitioners in W.P. (C) No.

1180 of 2017. She stated that she was regular in filing her ITRs and discharging her tax liabilities.

23. The Petitioners in W.P. (C) 1180 of 2017 have also tendered written submissions after the arguments concluded. Therein it is stated that Mr. Mukkar was not permitted to be a shareholder or Director but his son, Mr. Jeh Mohnish Mukkar, is the 100% beneficial owner under the Trusts, however, under the custody of Mrs. Kiran Shiv Mohan, Mr. Jeh Mukkar's mother. It is stated that the Petitioner companies, whose bank accounts are the subject matter of restraint, are subsidiaries of EFPL and EPHIPL which at the top tier are held by the four family trusts, namely, "Sovereign Trustee & Custodians, Foundation Fiduciaries and Nominees, Elfington FinCorp and Elfington Holdings, sole beneficiary of which is Master Jeh Mohnish Mukkar (minor) under the guardianship of Ms. Kiran Shiv Mohan (grandmother)."

24. In para 12 of the written submissions, the stand of the Department that the companies could be the benami of Mr. Mukkar is sought to be rejected since the duly audited accounts of the companies are stated to have been filed with the Registrar of Companies. It is further stated in para 13 of the written submissions that "[i]t is also a matter of record that none of these bank accounts are operated by Mr. Mohnish Mukkar; no moneys have been deposited therein by Mr. Mohnish Mukkar nor any moneys withdrawn therefrom for his benefit. The authorized signatory (ies) of the aforesaid bank accounts as per the bank records are persons other than Mr. Mohnish Mukkar. In the conspectus of the aforesaid undisputed facts, the Petitioner

fails to understand as to why the bank accounts belonging to the aforesaid companies are being regarded as undisclosed asset(s) of Mr. Mohnish Mukkar, so as to be subject to restraint under section 132(3) of the Act.”

25. It is then stated in para 14 that the Petitioner furnished a declaration of beneficial interest disclosing the sole and exclusive interest of Master Jeh Mohnish Mukkar through Ms. Kiran Shiv Mohan, grandmother, by the declaration acknowledged by RBL on 21st June, 2016. A reference is made to a letter dated 1st May, 2017 addressed by Mr. Drone Sharma, Advocate to RBL to substitute the name of Master Jeh Mohnish Mukkar as the beneficial owner. It is stated that “since as per the requirements of the Bank, a minor could not be described as a beneficial owner, the Bank *suo motu* added the names of Mrs. Kiran Shiv Mohan and/or Mr. Mohnish Mukkar as beneficial owners, as per the e-mail trail.” A reference is made to some exchanges of SMS’ between one Mr. Anuj Mehra, a representative of RBL and Mr. Mohnish Mohan Mukkar about Master Jeh Mohnish Mukkar being the beneficial owner.

26. The attempt in this note of factual submissions is to show that the bank accounts of the Petitioners cannot be regarded as benami of Mr. Mukkar and that each of these companies has a separate legal existence and that Mr. Mukkar has no personal ownership interest nor is he in charge of the affairs of the Petitioners in a fiduciary or advisory capacity. It is stated that he has not conducted “any affairs of the Petitioners in his personal capacity.” An alternative prayer is made that at least the funds of EFERL which are the proceeds of the joint venture for debt restructuring with Religare Finvest

Ltd. should be released as that is causing irreparable financial harm to the Petitioners.

Suppression of material facts by the Petitioners

27. The first issue that the Court proceeds to address is whether there has been any suppression of material facts by the 8 Petitioners in W. P. (C) No. 1180 of 2017 and Ms. Veena Singh in W. P. (C) No. 2375 of 2017. The relevant pleadings in both the writ petitions have been referred to extensively hereinabove.

28. In the first place, it requires to be noticed that both, the 8 Petitioners companies as well as Ms. Veena Singh have approached this Court claiming an identical relief viz., the restraint placed by the Department on their respective bank accounts should be lifted. This restraint, admittedly, was placed pursuant to the search, seizure and survey undertaken under Sections 132 and 133 of the Act on 11th January, 2017 and 4th February, 2017 at the various residences and business premises of Mr. Mohnish Mohan Mukkar and his associates, employees etc. It is not in dispute that the search authorization was issued in the name of Mr. Mukkar.

29. Section 132(1) of the Act envisages that a person could be in possession of undisclosed income not only in his or her own bank account but in the bank account of someone else. Therefore, it could be parked in somebody else's account. The legislature has deliberately prefaced the words 'safe', 'locker', 'place', 'books of account' etc. with the word 'any' and not 'his' or 'her' or 'its'. Section 132(1) of the Act requires the satisfaction note in the case of Mr. Mukkar to reflect the Department's "reason to believe" that Mr.

Mukkar's undisclosed income is in the bank accounts of the Petitioner companies and of Ms Veena Singh. In such event, it is not necessary that there must be a separate search warrant in the names of the Petitioner companies and Ms. Veena Singh for there to be search and seizure of their respective bank accounts.

30. It requires to be noticed at this stage that there is no challenge in either petition to the validity of the search on the ground of absence of the satisfaction note *qua* Mr. Mukkar or that such satisfaction note does not meet the requirement of the law. This is understandable considering that both sets of Petitioners were, in the first instance, when they approached this Court, desperate to demonstrate how they have nothing to do with Mr. Mukkar.

31. As far as the 8 Petitioner companies in W.P. (C) No. 1180 of 2017 are concerned, they asserted in paras 5 and 7 of the writ petition that “the said entities have no relation to Mr. Mohnish Mohan Mukkar in his personal capacity, and Mr. Mukkar is neither a shareholder nor a Director in the said companies”. The Petitioners presumed they were being clever by using the words ‘personal capacity’ and adding that Mr. Mukkar was neither a shareholder nor a Director in their companies. That these disclaimers were made with a view to mislead the Court into believing that the Petitioner had nothing to do with Mr. Mukkar is apparent in light of the details provided by RBL to the Department which show that in the nine accounts maintained with RBL of these 8 companies, Mr. Mukkar is Beneficial Owner No.1 in eight of them and his mother in the ninth account.

32. Even after the Department pointed this out and set out the details in Table 5 and annexed the actual document provided by RBL as Annexure R-9 to its counter-affidavit, the Petitioners glibly maintained in their rejoinder that the table “merely depicts the cash balance and is in fact misleading as it portrays Mr. Mohnish Mohan Mukkar as the beneficial owner and which is factually incorrect in terms of Rule 9-A(l) of the Prevention of Money Laundering (Maintenance of Record etc.) Rules, 2005.” The Petitioners have not denied that the information available with RBL does in fact show Mr. Mukkar to be Beneficial Owner No.1 of 8 of the bank accounts and his mother in the ninth account (where he is Beneficial Owner No.2).

33. Also, the Petitioners have not filed any rejoinder to deny the assertion by RBL in its separate counter-affidavit that: “the Petitioner in the writ petition has averred that Mr. Mohnish Mukkar has no concern with the said accounts, which statement/averment is false to the knowledge of the Petitioner. It is submitted that at the time of opening of accounts, the Petitioner had given a categorical declaration that Mr. Mohnish Mukkar is the beneficial owner of the accounts of the Petitioner and now, for the reasons best known to the Petitioner, the Petitioner has made the false averment. Thus, the present writ petition is liable to be dismissed for concealment of material facts.”

34. On the contrary, in their written submissions tendered to the Court, the Petitioners have confirmed the following statement in RBL's counter-affidavit: “It is further submitted that on 15.05.2017, the Answering Respondent has received a request from the Petitioner Companies to update

the status of Beneficial Owner so as to record the name of Master Jeh Mohnish Mukkar. Copy of the request letters received from Petitioner Companies are attached along with the present counter-affidavit and marked as Annexure R-5.” The Petitioners have themselves placed on record the letter of Mr. Drone Sharma, Advocate making the above request on their behalf. Therefore, even till date, Beneficial Owner No.1 in 8 of the bank accounts and Beneficial Owner No.2 in the ninth account is Mr. Mukkar.

35. The above facts, which were material facts in the context of the search of Mr. Mukkar by the Department, were in the knowledge of the Petitioners and yet they persisted with the false and misleading statement that they have no relation with Mr. Mukkar “in his personal capacity”. The fact that he may neither be a shareholder nor a Director in any of them is of little significance when in fact he is Beneficial Owner No.1 in their bank accounts. Their mere dismissal of the details available in the records of RBL as being ‘incorrect’ is without basis and cannot enable them to escape the consequences of making false and misleading statements on affidavit on more than one occasion in these proceedings.

36. The brazenness of the conduct of the Petitioners in W.P. (C) No. 1180 of 2017 is even more evident when they pose the query in their rejoinder – “Without prejudice, and assuming that to be so, the question is then what?” If this is the understanding of a litigant of the duty they owe to the Court, then they require to be reminded that there is no excuse for a litigant not to be utterly truthful and place before it all the facts within their knowledge. This attempt by the Petitioners to obtain interim orders by speaking half-

truths and misleading the Court about material facts simply cannot be countenanced.

37. As already noticed hereinbefore, there is not even an attempt by the Petitioners to deal with, leave alone deny, the averments in the Department's counter-affidavit about Mr. Jadaun's and Mr. Pachauri's recorded statements which throw serious doubts on whether Mr. Praveen Pandey, the deponent of the affidavits, was in support of each of the pleadings of the Petitioners (be it the petition or the rejoinder or the replies to the additional affidavit). The Department has pointed out how the petition makes it appear that nothing happened after the accounts were frozen whereas the statements of the Directors of these companies was recorded over several dates in which they made disclosures that confirmed the Department's case that they were mere Dummy Directors and that the 'key person' was Mr. Mukkar. There is no denial of these averments of the Department. All of this points to even more serious and egregious suppression of material facts.

38. The fact that pursuant to the search authorization issued in the name of Mr. Mukkar, the bank accounts of the Petitioner companies were frozen necessitated them having to make a full and complete disclosure of all the material facts within their knowledge concerning Mr. Mukkar in the petition filed in this Court. However, the Petitioners in W.P. (C) No. 1180 of 2017 have miserably failed to do. They have deliberately suppressed material facts and have persisted in that conduct even after the facts were brought to light by the Department in its counter-affidavit.

39. The case of Ms. Veena Singh, the Petitioner in W. P. (C) No. 2375 of W.P.(C) 1180/2017 & W.P.(C) No.2375/2017

2017, is equally inexcusable. In her petition as originally filed, she is silent about her being authorised signatory No.1 of the 9 bank accounts maintained by the 8 Petitioner companies in W.P. (C) 1180 of 2017, Beneficial Owner No.1 of eight of them being Mr. Mukkar. She has no convincing explanation for suppressing this material fact which had a direct bearing on the action of the Department in attaching her bank account.

40. In response to the counter-affidavit filed by the Department which brought forth the above details, Ms. Singh in her rejoinder states “it has never been the case of the Petitioner that she is not associated with either the companies or Mr. Mohnish Mohan Mukkar.” This is too casual a response to a serious charge of deliberate suppression of material facts. It is apparent from a reading of the pleadings that she does not dispute being a key associate of Mr. Mukkar. The crucial link for the purposes of Section 132(1) of the Act appears to be provided by Ms. Singh herself in the casual approach taken by her in her rejoinder and the written submissions.

41. Ms. Singh admits to being associated with at least one of the companies in her professional capacity. She should be aware of the consequences of suppressing the fact that she is authorized signatory No.1 of the bank accounts of all 8 companies with RBL. And in these bank accounts, Mr. Mukkar is Beneficial Owner No.1. The suppression of these material facts, which were within her knowledge, in her petition is, therefore, not excusable.

42. It is sought to be suggested by Mr. Chidambaram that the writ petitions were drafted in a hurry. However, if that were true then in the rejoinder

affidavits filed by both sets of Petitioners some attempt ought to have been made to justify their missing out the material facts in the main petition. On the contrary, both rejoinders only serve to confirm the deliberate suppression of material facts by both sets of Petitioners.

43. The suppression of material facts by both Petitioners in W.P. (C) 1180 of 2017 and 2375 of 2017 cannot but be viewed as deliberate. The Court is satisfied that the Petitioners have not come to Court with clean hands and do not deserve to be granted any of the reliefs prayed for by them.

44. The Court exercises extraordinary jurisdiction under Article 226 of the Constitution. Unless there are extenuating circumstances that render the statutory remedies illusory or inefficacious or ineffective for various reasons, the Court is slow to entertain writ petitions that challenge the exercise of statutory powers. Having the jurisdiction to entertain a writ petition is one thing but the actual exercise of the jurisdiction to entertain it is another. Nevertheless, every litigant seeking to persuade the Court to exercise its writ jurisdiction, or for that matter in any other jurisdiction, must be prepared to state the full facts within the knowledge of such litigant. This is a non-compromisable bare minimum requirement that must be fulfilled if the Court should exercise its jurisdiction to grant relief to a litigant.

45. The consequences of not making a clean breast of all facts within the knowledge of a litigant before a Court has serious consequences. In ***S. P. Chengalvaraya Naidu v. Jagannath AIR 1994 SC 853***, the Supreme Court reminded:

“The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean-hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax- evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court - process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person [whose] case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.”

46. In *S.J.S. Enterprises v. State of Bihar (2004) 7 SCC 166*, it was held:

“As a general rule, suppression of a material fact by a litigant disqualifies such litigant from obtaining any relief. This rule has been evolved out of the need of the Courts to deter a litigant from abusing the process of Court by deceiving it. But the suppressed fact must be a material one in the sense that had it not been suppressed it would have had an effect on the merits of the case.”

47. In *Prestige Lights Ltd. v. State Bank of India (2007) 8 SCC 449*, the Supreme Court held:

"The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a Court of Law is also a Court of Equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the Writ Court may refuse to entertain the petition and dismiss it without entering into merits of the matter."

48. In the present case, both Petitioners not only suppressed material facts in their petitions in the first place, but after this was pointed out in the Department's counter-affidavit, the Petitioners were most casual in their

response thereto making no attempt to justify the suppression of such material facts. In fact, the length of the respective rejoinders in both petitions only serves to demonstrate the extent to which material facts within the knowledge of the Petitioners were not placed before the Court in the first instance.

49. The above findings by themselves are sufficient to dismiss both petitions with exemplary costs. Nevertheless, since the issue regarding the powers of the Department to require RBL to prepare DDs for the amounts in the accounts that were frozen has been argued at length, the Court proceeds to discuss the issue.

Validity of the impugned orders

50. The main argument on merits by both Petitioners is that without a search warrant in their respective names, and without there being a demand raised and finalised, there is no power under Section 132 read with Section 132B of the Act to require RBL to issue a DD favouring the Department for the balance sum lying in the account that has been frozen.

51. There is a fallacy as to the presumption of the Petitioners in both the writ petitions that monies lying in their bank accounts cannot possibly belong to Mr. Mukkar in whose name the search authorization had been issued. *Prima facie* there appears to be a strong case made by the Department that the money in the said bank accounts is, in fact, the undisclosed income of Mr. Mukkar. There appears to be sufficient justification at this stage for the Department to proceed to attach the bank accounts.

52. Section 132(1)(c) permits search to be undertaken by the Department if there is reason to believe that a person is in possession “of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property which has not been, or would not be, disclosed” for the purposes of the Act, referred to as “the undisclosed income or property”. In that event, the Department can authorise the officers mentioned under Section 132(1) to:

- (i) “enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept;”
- (ii) “break open the lock of any door, box, locker, safe, almirah or other receptacle...”;
- (iii) search any person who has got out of, or is about to get into, or is in, the building, place, vessel etc... “if the authorised officer has reason to suspect that a such person has secreted about his person any such books of account, other documents, money, bullion, jewellery or other valuable article or thing;”
- (iv) “seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search;”
- (v) “place marks of identification on any books of account or other documents or make or cause to be made extracts or copies therefrom;”
- (vi) “make a note or an inventory of any such money, bullion,

jewellery or other valuable article or thing.”

53. For the purposes of the present petitions, the emphasis would be on the expression “any money” and “other valuable article or thing”. The context in which these words occur cannot possibly exclude money in a bank account. The contention that this could only mean ‘cash’ and not money in a bank account may be an attractive argument but not in the context in which the above expression occurs. It is certainly a valuable thing. In other words, a sum in a bank account is not outside the ambit of Section 132(1) of the Act and can be subject to search and seizure.

54. As already noticed, a person could be in possession of undisclosed income not only in his or her own account but in someone else's account. In the context of the present petitions, therefore, when pursuant to the search warrant, the Department proceeded to search and seize not only valuable things etc. found in the premises of Mr. Mukkar but also those in the accounts of the 8 Petitioner companies as well as that of Ms. Veena Singh, they could do so as long as they were satisfied that what constitutes Mr. Mukkar's undisclosed income was in the accounts of the 8 companies and Ms. Veena Singh.

55. The second proviso to Section 132(1) read with Section 132(3) permits the Department to require the bank in which the account that is subject to search is located to freeze it since it may not be possible “to take physical possession” immediately of such “valuable article or thing and remove it to a safe place.” Section 132B deals with the powers of the authorised officer to deal with the valuable thing which has been so seized and the conditions on

which the restraint placed may be lifted.

56. It requires to be also noted at this stage that the rejection of the Petitioners' representations under the proviso to Section 132B of the Act has not yet been challenged. It will be open to the Petitioners to seek appropriate remedies in that regard.

57. The assertion by both sets of Petitioners that this is 'realization' of the debt owed by the bank to the Petitioners and that the amount therein cannot be transferred to the Department is based on an incorrect understanding of the legal position under Section 281B of the Act. The said provision states that in order to protect the interests of the Revenue, it may be necessary to go in for a provisional attachment. Therefore, the direction issued to RBL by the Department does not mean that the money is finally taken over by the Revenue. It will undoubtedly be kept in a suspense account like a PD Account to await the final orders in the assessment proceedings and the issues raised as a consequence thereof. For this purpose, as already observed, the argument that this does not constitute 'assets' or 'money' within the meaning of Section 132(1) read with Section 133 of the Act has not merit.

58. The decisions cited by learned counsel for the Petitioners do not appear to have discussed the purport of Section 281B of the Act which has a direct bearing in this case. The Department has been able to demonstrate at this stage that the monies in these bank accounts were essentially the undisclosed income of the 'key person' i.e. Mr. Mukkar. The restraint order under Section 132(3) of the Act passed in this case was but a logical corollary of the search

action and permissible under the Act. Consequently, even on merits, not even a *prima facie* case has been made out by either of the Petitioners.

59. The Court, however, clarifies that the above observations on merits is only in order to deal with the submissions made by the Petitioners at this stage and is not intended to influence the further proceedings in the matter including the assessment proceedings and thereafter. Those will be decided on merits uninfluenced by the above *prima facie* observations.

Conclusion

60. For the aforementioned reasons, the interim order dated 9th February, 2017 passed by this Court in Writ Petition (Civil) No. 1180 of 2017 and the interim order dated 14th March, 2017 in Writ Petition (Civil) No. 2375 of 2017 which have continued thereafter are hereby vacated. Both these writ petitions are dismissed with costs of Rs. 1 lakh each which will be paid by the Petitioners to the Department within four weeks from today.

Proceedings under Section 340 Cr PC

61. The Court is satisfied that the conditions exist for initiation of action under Section 340 of the Code of Criminal Procedure, 1973 ('Cr PC') against both sets of Petitioners. In other words, the Court is satisfied that:

(i) Both sets of Petitioners i.e., the 8 companies who are Petitioners in W.P. (C) 1180 of 2017 as well as their authorised representative, Mr. Praveen Pandey, who is the deponent in support of the petitions and rejoinders and replies filed by them, and Ms. Veena Singh, the Petitioner in W.P. (C) 2375 of 2017 have given false affidavits in the present proceedings before this

Court; and

(ii) It is expedient in the interests of justice that an inquiry should be made against the above persons in relation to the offences committed by them as contemplated by Section 195(1)(b) Cr PC.

62. The Court is satisfied that both sets of Petitioners i.e., the 8 Petitioners in W.P. (C) 1180 of 2017 as well as their AR, Mr. Praveen Pandey and Ms. Veena Singh, the Petitioner in W.P. (C) 2375 of 2017, have made deliberate false statements on oath and have also suppressed material facts in the pleadings before this Court with a clear attempt to mislead the Court. Having regard to the impact this has on the administration of justice, the Court is satisfied that a *prima facie* case is made out for a complaint being filed against the above persons to be prosecuted under Section 193 IPC.

63. The Court, therefore, directs the Registrar General of this Court to forthwith file, on the basis of this judgment, a written complaint before the concerned appropriate Court against the aforementioned persons under Section 340 read with Section 197 Cr PC thereof.

S. MURALIDHAR, J

CHANDER SHEKHAR, J

MAY 29, 2017

'anb'/dn/rk