



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.06.2021
PRONOUNCED ON : 25.10.2021

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THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.Nos.8146 to 8150, 2813 to 2815, 2817,
2818, 2820, 8540, 8352 and 3641 of 2020
and WMP. Nos.10321, 10023, 3258, 9685, 9682, 9683, 9684, 3253,
4289, 3252, 9677, 9678, 9680, 9681. 10322, 9676, 3255, 3256,
3257 and 9679 of 2020

1.M/s.Marg Realities Limited

(Now Known as M/s.Digital Accelerator Limited)
Rep. by its Authorized Signatory
57/2B Sai Subhodaya Apartment
Thiruvanmiyur, Chennai-600 041.

...Petitioner in W.P.No.8146 of 2020

1.M/s.Global Infoserv Limited

Rep. by its Authorized Signatory of
M/s.Marg Ltd. Group Mr.R.B.Srinivasan
No.57/2B Sai Subhodaya Apartment
East Coast Road, Thiruvanmiyur
Chennai-600 041.

...Petitioner in W.P.No.8147 of 2020

1.M/s.Venus Meridian Agencies Private Limited

Rep. by its Authorized Signatory of
M/s.Marg Ltd Group Mr.R.B.Srinivasan
No.28, 3rd Floor, Bashya Karlu Street
Kondithope, Chennai-600 079.

...Petitioner in W.P.No.8148 of 2020

1.M/s.Marg Capital Markets Limited

Rep. by its Authorized Signatory
M/s.Marg Ltd Group Mr.R.B.Srinivasan
57/2B Sai Subhodaya Apartment
East Coast Road, Thiruvanmiyur,
Chennai-600 041.

...Petitioner in W.P.No.8149 of 2020

1.M/s.Marg Projects and Infrasatructure Ltd

Rep. by its Authorized Signatory
M/s.Marg Ltd Group Mr.R.B.Srinivasan
57/2B Sai Subhodaya Apartment
East Coast Road, Thiruvanmiyur,
Chennai-600 041

...Petitioner in W.P.No.8150 of 2020

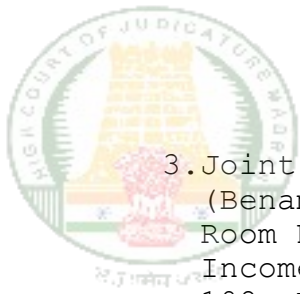


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- 1.N.Naveen Baalaji ...Petitioner in W.P.No.2813 of 2020
- 1.Mr.K.Nagarajan ...Petitioner in W.P.No.2814 of 2020
- 1.Mrs.N.Manjula ...Petitioner in W.P.No.2815 of 2020
- 1.Mrs.N.Sukanya ...Petitioner in W.P.No.2817 of 2020
- 1.Mr.K.Nagarajan ...Petitioner in W.P.No.2818 of 2020
- 1.M/s.Bonjour Bonheur Private limited
Represented its Managing Director
Mr.N.Naveen Baalaji, No.119,
Kosakadai Street,
Pondicherry -605 001. ...Petitioner in W.P.No.2820 of 2020
- 1.V.S.J.Dinakaran ...Petitioner in W.P.No.8540 of 2020
- 1.D.V.Balaji ...Petitioner in W.P.No.8352 of 2020
- 1.M/s.Ganga Foundations Private Limited
Rep. by its Managing Director
S.Senthil Kumar, No.2, 4th Floor,
Ishana Apartments,
Jayam Gardens, Ratterri Signal,
Jawaharlal Nehru Road,
Chennai - 600099. ...Petitioner in W.P.No.3641 of 2020

Vs.

- 1.The Deputy Commissioner of Income Tax
(Benami Prohibition),
Room No.104, 1st Floor,
Income Tax Investigation Wing Building,
108, M.G.Road,
Nungambakkam,
Chennai - 600 034. ...Sole Respondent in W.P.Nos.2813 to 2815,
2817, 2818, 2820, 3641 of 2020
- 2.The Adjudicating Authority,
Under the Prohibition of Benami
Property Transactions Act, 1988,
Room No.26, 4th Floor,
Jeevan Deep Building,
Parliament Street,
New Delhi. ...1st & 2nd Respondent in
W.P.Nos.8146 to 8150, 8540 of 2020



3. Joint Commissioner of Income Tax,
(Benami Prohibition) Approving Authority,
Room No.102, 1st Floor,
Income Tax Investigation Wing Building,
108, M.G.Road, Nungambakkam,
Chennai - 600 034.

...Respondents 1 to 3 in W.P.No.8352 of 2020

Prayer in W.P.Nos.8146 to 8150, 2813 to 2815, 2817, 2818, 2820, 8540, 3641 of 2020 : Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorari calling for the records on the file of the 1st respondent in Order No.44/DCIT(BP)/2019-20, 47/DCIT(BP)/2019-20, 45/DCIT(BP)/2019-20, 48/DCIT(BP)/2019-20, 46/DCIT(BP)/2019-20 and quash the impugned order dated 29.01.2020, 17/DCIT(BP)/2019-20, 18/DCIT(BP)/2019-20, 19/DCIT(BP)/2019-20, 20/DCIT(BP)/2019-20, 21/DCIT(BP)/2019-20, 16/DCIT(BP)/2019-20 and quash the impugned order dated 20.01.2020 and 23/DCIT(BP)/2019-20, quash the impugned order dated 23.01.2020 and 22/DCIT(BP)/2019-20 quash the impugned order dated 20.01.2020 passed under Section 24(4) of the Prohibition of Benami Property Transactions Act, 1988 as illegal, arbitrary and without jurisdiction and consequently direct the Respondent to supply all the relied upon documents including the sworn statements of Mrs.Krishnapriya and the Complete the sworn statement of Mrs.V.Sasikala in W.P.No.2813 to 2815 of 2020 and 2817, 2818, 2820 of 2020.

Prayer in W.P.No.8352 of 2020 : Call for records in the file of the First Respondent and quash the impugned order in Order No.42/DCIT(BP)/2019-20 dated 28.01.2020 passed under section 24 (4) of the prohibition of Benami Property Transactions Act, 1988 along with the notice in F No. IO / PBPT / Balaji / 208 in DIN ITBA / COM / F / 17 / 2019-20 / 1019650705 (1) dated 01.11.2019 issued under section 24(1) of the Prohibition of Benami Property Transactions Act, 1988 and the consequential reference made to the Scond Respondent under section 24(5) of the Prohibition of Benami Property Transaction ACT, 1988 in reference No. Chennai / PBPT / 24(5) / 208 vide letter dated 28.01.2020.

For Petitioner in
W.P.Nos.8146 to 8150,
2813 to 2815, 2817, 2818,
2820 &3641 of 2020 : Mr.R.V.Eashwar
Senior Counsel
For Mr.R.Sivaraman

For Petitioner in
W.P.No.8540 of 2020 : Mr.M.R.Venkatesh

For Petitioner in
W.P.No.8352 of 2020 : Mr.N.V.Balaji



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For Respondents in
the above W.Ps

: Mr.R.Sankaranarayanan
Addl. Solicitor General of India
Assisted by Ms.Sheela
Senior Standing Counsel

C O M M O N O R D E R

This batch involving fourteen Writ Petitions was heard on different dates and thereafter clubbed for the reason that the alleged beneficial owner in all the matters was the same person, viz., Mrs.V.K.Sasikala (henceforth and for the sake of brevity, referred to as 'VKS'). I have divided the writ petitions into three (3) batches wherein each of the sub-groups concern the transfer of an asset common to the constituents of that batch.

2.The submissions advanced by all petitioners are substantially similar and I will thus encapsulate the facts in relation to each of the batches first, including the issues raised by the respective parties and thereafter, answer the same in seriatim. Detailed submissions of Mr.R.V.Eashwar, learned Senior Counsel appearing for Mr.Sivaraman, Mr.M.R.Venkatesh and Mr.N.V.Balaji, all for the petitioners, and Mr.R.Sankaranarayanan, Additional Solicitor General of India appearing for Ms.Sheela have been heard.

Facts and legal submissions in Batch -I (W.P.Nos.3641, 8352 & 8540 of 2020)

3.The first batch of Writ Petitions relate to Ganga Foundations Private Limited (petitioner in W.P.No.3641 of 2020, and referred to hereinafter as 'company'), V.J.Dinakaran (petitioner in W.P.No.8540 of 2020) and D.V.Balaji (petitioner in W.P.No.8352 of 2020), and the common, connecting factor is the immovable property known as Spectrum Mall, located at Perambur, Chennai (Mall/Asset1/Property1). for the company,

4.Ganga Foundations, a private limited company ('Company') engaged in the business of real estate, initiated the construction and development of the mall in the year 2011 along with two land owners D.V.Balaji and one Shanmugadurai. The ratio for sharing of the built-up area as agreed upon by the parties was 65% to the builder and 35% to the land owners. The company claims to be the owner of 37972 sqft. undivided share of the mall.

5.The shares of the company in the property had been mortgaged with the Indian Overseas Bank as collateral for a term loan and overdraft facilities availed to meet day-to-day operations as well as construction and development activities.



The loans were subsequently transferred to the State Bank of India.

6. While this was so, in or around 2015, the company had, according to it, been under pressure to sell the property to VKS. The company would state that though it put up initial resistance to sell, it met several hurdles in operations, leading it to believe that it was only the refusal to sell that was leading to such difficulties.

7. As a result, it succumbed to the pressure and commenced negotiations for sale. A price of Rs.192.50 crores was agreed upon. At that juncture, demonetization was announced, notwithstanding which the negotiations for sale went full steam ahead. The petitioners were forced to sign a Memorandum of Understanding (MoU), which, according to them, contained several blank fields. No consideration was received at the time of signing of the MoU.

8. On 16.12.2016, the petitioners allege that a sum of Rs.130 crores was received in demonetized currency after the middleman deducted Rs.8 crores towards his share of the commission. Out of the remaining amount of Rs.119.82 crores, the amounts due to the co-owners was paid to them and the balance retained by the company. Nothing further was paid as, ostensibly, the parties awaited better times when funds could be arranged through regular banking channels.

9. The transaction came to light in the course of a search conducted in the premise of the company consequent upon a search conducted in the premises of VKS. The respondents concluded that the transaction was a benami transaction as defined under the Prohibition of the Benami Property Transactions Act, 1988 (in short 'PBPT Act') and that the petitioners were holding Spectrum Mall as benamidhar of VKS.

10. The petitioners argue that the aforesaid conclusion was entirely erroneous, as the Mall had been built by the efforts and resources of the petitioners and there is no question of any other party holding title to the same, either beneficial or otherwise. The transaction of sale to VKS had been envisaged and proceeded with as a purely commercial transaction that does not come within the cover of the PBPT Act.

11. That apart, consideration had itself been paid only in part, and that too, in demonetized currency which had ceased to be legal tender with effect from the date of announcement of demonetization, being 08.11.2016. This would militate against the conclusion sought to be arrived at by the respondents since the definition of 'benami transaction' under the Act would stand



attracted only to cases where the arrangement was established to be an illegal or malafide arrangement made with dubious design where full legal consideration had been paid.

12. Apart from being a simple commercial transaction that had not fructified, the consideration had been remitted only in part. On all fronts, therefore the present transaction does not qualify to be a benami transaction. That apart, the burden that was cast upon the investigating officer under Section 24 requires reasons to be recorded to support his belief that the property in question constituted benami property.

13. The petitioner argues that no material was available with the Department to discharge such onerous burden and thus the assumption of jurisdiction was itself bad in law. That apart, the procedure set out under Section 24 required the respondents to supply all materials in their possession to the petitioner to afford full opportunity for their response/rebuttal. The sheet anchor of the respondents' arguments is the MoU and this critical document is nowhere to be seen.

14. Admittedly no MoU is available or has been made available by the respondents in the course of the hearing. In fact, learned counsel for the respondents have categorically admitted the position that no MoU had been found even in the course of the search. That apart, other documents such as the documents seized in the course of search and the sworn statements recorded from various persons have also admittedly not been furnished to the petitioners on the avowed understanding that the same will be supplied to them in the course of proceedings for adjudication.

15. The petitioners submit that the show cause notices issued under Section 24(1) hardly indicate any 'reason to believe' or independent application of mind to the facts and circumstances of the respective cases and whether the transactions in question constituted benami transactions, and merely adopt the identical contents of the communication of the forwarding authority.

16. The forwarding authority, who is the Deputy Commissioner of Income Tax, Benami Prohibition, refers to the search and seizure action in the case of VKS, and vide communication dated 14.05.2019, refers to the search conducted and evidences found in her premises. He comes to the conclusion, on the basis of certain papers / documents and cash found in the course of search as well as material found in the mobile phone of her niece, that as on 08.11.2016, VKS was in possession of substantial cash that had been advanced to various entities



received from the lessees to whom space had been leased in the Mall and such transactions were conducted through normal banking routes. The rental income was being offered by the company to income tax regularly.

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23.The petitioners rely upon the decisions in the cases of (i)Andaman Timber Industries V. Commissioner of Central Excise, Kolkata - II (62 Taxmann.com 3) (ii) Thilagarathinam Match Works Vs. Commissioner of Central Excise, Tirunelveli (46 taxmann.com 382) (iii).Automotive Tyre Manufacturers Association V. Designated Authority and others (2011 (2) SCC 258) and (iv) Sri Meenakshi Mills Ltd. V. CIT (AIR 1957 SC 49).

Facts and legal submissions in Batch -II (W.P.Nos.8146 to 8150 of 2020)

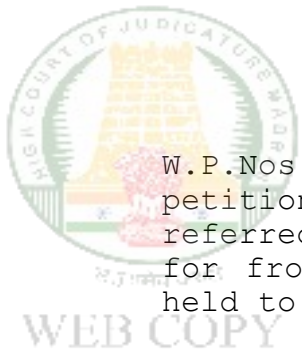
24.The second sub-batch of Writ Petitions involve various entities that are constituents of the Marg group. A search was conducted in the premises of VKS in November, 2017 and in the course of search, documents were found, impounded and seized and sworn statements, recorded. Entities of Marg group had received notices under the provisions of the Income Tax Act, 1961 (in short 'I.T. Act') calling for return of income for various assessment years.

25.The petitioners approached the Income Tax Settlement Commission for settlement of the disputes and demands under the assessments, but their applications were dismissed by the Settlement Commission on 31.12.2019 stating that there had been no full and true disclosure by the petitioners. Assessment proceedings thus continued and have been completed adverse to the petitioners.

26.At the time of hearing of the Writ Petitions, learned counsel for the petitioners convey to the Court the intention of the petitioners to challenge orders of assessment by way of statutory appeals. Simultaneous therewith, the petitioners were in receipt of show cause notices under Section 24(1) of the PBPT Act on 01.11.2019.

27.The petitioner in W.P.No.8146 of 2020 is Marg Realities Limited, name subsequently changed to Digital Accelerator Limited. The petitioners in W.P.Nos.8147 to 8150 of 2020 are shareholders in Digital Accelerator Limited. (W.P.Nos.8146 to 8150 of 2020).

28.The Notice is issued on the premise that the petitioners are benamidars for VKS with respect to various properties, (in W.P.No.8146 of 2020, immovable property situated at No.16 Rajiv Gandhi, Karapakkam, Chennai, known as Marg Square and in



W.P.Nos.8147 to 8150 of 2020, 9,90,000 equity shares held by the petitioner in Digital Accelerators Limited (collectively referred to as 'property 2'/asset 2)). A explanation was sought for from the petitioners as to why the said properties not be held to be benami in their hands.

29.The petitioners, on 18.11.2019, replied to the notices objecting to the proposal that the properties constitute benami assets. They stated that Digital Accelerator Limited had commenced the construction of Marg Square as a commercial building in 2005. The property had comprised two blocks and was built on 2,33,079 sq.ft. The intention was to construct the property and rent it to multinational companies, particularly those in the arena of Information Technology.

30.A loan had been availed by the petitioner from the Oriental Bank of Commerce that had subsequently been taken over by ICICI Bank in 2011. Additional financial assistance was obtained from Indian Bank and the petitioner had given a corporate guarantee in this regard. The property started fetching rentals from 2006 onwards, when it was occupied by Sathyam Infotech and thereafter by Tata Consultancy Services in 2011.

31.As part of the financial facilities, term loans had been sanctioned by ICICI Bank for settling of the petitioners dues with Oriental Bank of Commerce as well as to meet other financial obligations. The petitioner was however unable to service the term loans and the loan accounts were thus classified as NPAs in or around the middle of 2016.

32.The petitioner also faced SARFAESI action and had to defend O.A.No.540 of 2016 before the Debt Recovery Tribunal - II at Chennai. On 17.04.2017, a garnishee order had been passed by the Tribunal attaching any remittances received from the property towards the repayment of the bank loans. In view of the financial difficulties, the petitioner intended to dispose the immovable asset and started scouting for good offers.

33.Demonetization had been announced in the first week of November, 2016 when according to the petitioners one Mr.Senthil, Advocate had approached the promoter of the Marg Reality Group. He claimed to represent the former Chief Minister of Tamil Nadu and her associates and negotiated the purchase of equity shares of the petitioners. Pressure was applied upon the promoters to part with the shares under threat of dire consequences, if they were not so inclined.

34.On account of the pressure applied, the promoters were forced to succumb. The consideration for the sale of the shares



was fixed at Rs.170 crores and the transaction was to be completed before the end of April, 2017. According to the petitioner, the entire transaction was open and transparent and had been carried out only through banking channels. A draft Memorandum of Understanding (hereinafter referred to as MoU) had also been prepared in regard to the transfer of the shares.

35.At that juncture, and pending finalization of the transaction, the petitioner had been suddenly told that part of the consideration would only be paid in demonetized currency for onward transmission to various other persons identified by the middleman. After a series of negotiations, an amount of Rs.115 crores had been agreed to be paid in the form of raw materials for completion of unfinished building projects that were to be regularized by material bills and invoices.

36.The petitioners were called upon to execute a MoU which, according to them, was blank in regard to the name of the buyer. It was duly agreed that a sum of Rs.105 crores in demonetized currency would be handed over to the promoter after the middleman retained a sum of Rs.10.00 crores as his share. The instructions were to disburse the amount of Rs.105 crores to various named entities/persons.

37.After distribution, as instructed, the petitioners claim to have received raw materials for the purpose of its building projects. Thereafter, according to the petitioners, there was no move from the vendor, to proceed with the transaction, despite repeated reminders from the petitioners. At that juncture, the petitioners were faced with income tax search action which it is addressing separately.

38.The petitioners submit that under no circumstances can a transaction of the aforesaid nature fall within the description of a benami transaction as, to begin with, the petitioners are not benamidars of property 2/asset 2, but its rightful owners. The petitioners refer to a copy of the MoU dated 04.12.2016 which was found in the course of a search in the residential premises of VKS on 18.11.2017.

39.As per the MoU, a copy of which has been circulated to the Court, the petitioner is referred to as 'first party' and 11 other parties, the name and description of the 11th party being left blank, propose to transfer their equity shareholding in the first party company to the 11th party. The parties also confirm receipt of a sum of Rs.115 crores in lumpsum from the 11th party, who agrees to pay the balance of Rs.55 crores on or before 30.04.2017.



40.The petitioners point out that since the subject of the MoU was only the equity shares, there is no question of attachment of Marg Square as it does not figure anywhere in the MoU. The immovable property is an asset, different and distinct from the equity shares and the two must not be confused. Thus, what had transpired between the petitioners and the vendor was a pure commercial transaction and it does not answer to the definition of a benami transaction under the PBPT Act.

41.That apart, the term 'consideration' defined under the PBPT Act connotes full consideration and not part consideration. In the present case, admittedly the petitioner has received only part consideration of Rs.115 crores as against total consideration of a sum of Rs.170 crores. In such a case, the provisions of the PBPT Act cannot be invoked. The burden of proving, since that the petitioner does not answer to the term 'benamidhar' and that the transaction in question does not fall within the scope of a benami transaction under the PBPT Act, lies heavily on the respondents, and it was incumbent upon the respondents to have discharged that burden fully.

42.However, the petitioners received impugned orders dated 29.01.2020 under Section 24(4) of the PBPT Act, in terms of which, the provisional attachment of the property originally made was extended/continued till such time, and subject to a final order being passed by the second respondent, which would be an order of adjudication. The show cause notices and the impugned orders proceed on suspicions and surmises, whereas, the PBPT Act, which casts a very onerous liability upon the parties, calls for strict and minute compliance with all its provisions.

Facts and legal submissions in Batch -III (W.P.Nos.2813 to 2815, 2817, 2818 and 2820 of 2020)

43.The third sub-batch batch of Writ Petitions relate to a resort located at Nos.7, 8 and 9, East Coast Road, Manjakuppam Village, Tindivanam Taluk, Villupuram District including constructions buildings, machinery, fittings and furniture along with the wind mill of 1250 KW (property 3/asset 3)which is alleged to be benami property enuring to VKS and held by the petitioners as benamidars.

44.The asset is owned by a company, Bonjour Bonheur Private Limited, that promoted a resort under the name and style of Ocean Spray. Its promoters are five individuals, who are Writ Petitioners in W.P.Nos.2813 to 2815, 2817 and 2818 of 2020. The resort was run on land that belonged to a promoter/director (petitioner in W.P.No.2818 of 2020) that was leased to the company for this purpose.



45.The promoters/individuals are all constituents of the same family and run a business under the name and style of Pondicherry Sri Lakshmi Jewellery. Consequent upon a search in the premises of VKS, a search was also conducted in the premises of the petitioners and proceedings for block assessments are on-going in the all cases. Simultaneous therewith, the petitioners received show cause notices under PBPT Act similar to the case of the other petitioners in the previous sub-groups.

46.The factual matrix remains more or less the same as in the earlier two batches, except that in this case, the sale of the resort to VKS was initiated voluntarily by the petitioners and not under any threat as alleged by the petitioners in those batches. The consideration was fixed at a sum of Rs.168 crores. The facts relating to demonetisation and that too, in part settlement of the total consideration as in the other cases, are identical in the present group as well, as the amount received was a sum of Rs.135.25 crores as against the consideration fixed at a sum of Rs.168 crores.

47.These petitioners would also state that an incomplete MoU was executed by them wherein the name of the purchaser was left blank. At the time of execution of MoU, share certificates had been handed over to the representatives of VKS. The submissions advanced by these petitioners to the effect that the transaction is commercial is the same as argued by the other petitioners.

48.In all the cases, the consideration has been added as income from other sources under Section 156(20(9) of the I.T. Act and those assessments are under challenge before the appellate authorities.

Common defence of the respondents

49.The respondents raise a preliminary objection that the Writ Petitions are not maintainable. According to the respondents, sufficient materials were gathered in the course of the search of the premises, both that of the petitioners as well as of VKS and it is only thereafter that the first respondent has passed the impugned orders in terms of Section 24(4) of the PBPT Act. The petitioners were heard prior to passing of the order and their replies were considered. The Writ Petitions are liable to be dismissed as pre-mature and the petitioners directed to co-operate in the proceedings to follow.

50.According to the respondents, proceedings under Section 24 only require a recording of prima facie satisfaction that all was not well as regards a particular transaction. This requirement stands satisfied in the present case as the



materials found have led to a prima facie satisfaction upon the strength of which the assets in question have been attached, pending adjudication.

51. Section 25 of the PBPT Act provides for a full-fledged adjudication requiring the parties to be heard in full, prior to any decision being taken in the matter. The provision also specifically requires the respondents to serve all material upon which they rely to the petitioners, to ensure that they are fully aware of the basis upon which allegations were being levelled in regard to the assets in question and would be able to meet the same effectively. The respondents would emphasize that they intend to comply with the mandate of Section in full, and faithfully.

52. Respondents rely on the following judgments for the proposition that proceedings under Section 24 are provisional and preliminary in nature and it is for the parties to make their objections in detail before the adjudicating authority on all aspects of the matter that must, and will be heard and decided on merits. No doubt, prior to doing so, the authority will ensure that the entirety of the material relied upon by the Department in support of the allegations that the assets are benami will be supplied to the petitioners, the petitioners heard in full and only then a decision taken as to whether the transactions are benami in nature and the petitioners, benamidhars.

- i. Kanwar Natwar Singh Vs Directorate of Enforcement ((2010) 13 SCC 255)
- ii. Kailash Assudani Vs Commissioner of Income-Tax (W.P.No.10280 of 2017 dated 03.08.2017)
- iii. Kailash Assudani Vs Commissioner of Income-Tax (W.A.No.704 of 2017 dated 16.08.2017)
- iv. Harivallabh Mohanlal Joshi & Ors. Vs Union of India & Ors. (W.P.No.16633 of 2018 dated 13.08.2018)
- v. Adjudicating Authority Vs Kundan Trading Co. (R/Letters Patent appeal No.748 of 2019 dated 02.04.2019)
- vi. Tulsiram & Ors. Vs ACIT (BP) (W.P.(C) No.3819 of 2019 dated 15.01.2019)
- vii. VPC & Co. Vs Adjudicating Authority & Anr. (W.P.No.25406 of 2018 dated 23.10.2019)
- viii. Mohammed Ibrahim Sait Vs The Deputy Director, Directorate of Enforcement and Ors. (W.P.(MD) No.17114 of 2019 dated 15.10.2019)
- ix. Simmant Kohli Vs Union of India & Ors. (w.P.Nos.3957 and 3963 of 2019 dated 17.12.2019)
- x. Tulsiram & Ors. Vs ACIT (BP) (W.A.No.29 of 2020 dated 06.02.2020)



53. The respondents also advance submissions in regard to the merits of the matter pointing out that the PBPT Act does not make any differentiation between a commercial transaction vis-a-vis any other kind of transaction. Thus, any transaction which results in the property of a beneficial owner being camouflaged as one belonging to a benamidhar would come within the sweep of the PBPT Act.

54. As to the argument that only part consideration as per MoU has been received, the respondents would state that there is no necessity for the Department to await completion of the transaction in full and in fact, doing so would be fatal to the interests of the Department. My attention is drawn to the definitions under the PBPT Act to illustrate that any transaction or arrangement where a property is held directly or indirectly by a third party for the immediate or future benefit of another person who has provided the consideration would fall within the definition of benami transaction. Such consideration can be either part or whole, as the enactment does not contain any stipulation, or make any differentiation in this regard.

55. Judgments in the celebrated cases of Phool Chand Bajran Lal V. Income Tax Officer (203 ITR 456), Income Tax Officer V. Lakhmani Mewaldas (1976 (3) SCR 956), and Aslam Mohd Merchant V. Competent Authority ((2008) 14 SCC 186) are cited to state that the belief that an officer holds that the property was benami at the time of invocation of power of attachment under Section 24, is only a prima facie belief, based on available evidences and materials found in the course of search and enquiry thereafter. This requirement is satisfied in the present case.

Discussion and Reasoning

56. The PBPT Act has been enacted with the intention of prohibiting benami transactions and protecting the right of the State to recover property held as benami. The definitions as relevant for deciding this matter are set out in terms of Section 2(8) which defines 'benami property' and Section 2(9) which defines 'benami transaction'. Both are extracted below:

2(8) 'benami property' means any property which is the subject matter of a benami transaction and also includes the proceeds from such property;

2(9) 'benami transaction' means -

(A) a transaction or an arrangement-

(a) where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and

(b) the property is held for the immediate or future benefit, direct or indirect, of the person who has



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provided the consideration, except when the property is held by—

(i) a Karta, or a member of a Hindu undivided family, as the case may be, and the property is held for his benefit or benefit of other members in the family and the consideration for such property has been provided or paid out of the known sources of the Hindu undivided family;

(ii) a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner, director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1996 (22 of 1996) and any other person as may be notified by the Central Government for this purpose;

(iii) any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual;

(iv) any person in the name of his brother or sister or lineal ascendant or descendant, where the names of brother or sister or lineal ascendant or descendant and the individual appear as joint owners in any document, and the consideration for such property has been provided or paid out of the known sources of the individual; or

(B) a transaction or an arrangement in respect of a property carried out or made in a fictitious name; or

(C) a transaction or an arrangement in respect of a property where the owner of the property is not aware of, or, denies knowledge of, such ownership;

(D) a transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious;

Explanation.—For the removal of doubts, it is hereby declared that benami transaction shall not include any transaction involving the allowing of possession of any property to be taken or retained in part performance of a contract referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882), if, under any law for the time being in force,—

(i) consideration for such property has been provided by the person to whom possession of property has been allowed but the person who has granted possession thereof continues to hold ownership of such property;



- (ii) stamp duty on such transaction or arrangement has been paid; and
- (iii) the contract has been registered.

57. A blanket restriction is cast upon all persons, by virtue of Section 3 of the Act, to enter into a benami transaction, Section 4 prohibits any person from instituting a claim or action to enforce any right in regard to benami property as against any other person claiming to be the real owner of the property, and Section 5 states that any property which is the subject matter of benami transactions, once established to be so, shall be liable to be confiscated by the Central Government.

58. We then move on to Chapter IV which deals with attachment, adjudication and confiscation of benami properties, as Chapter III which enumerates the various authorities under the Act may not hold any relevance to us now. Chapter III relates to the process of investigation carried out by the Initiating Officer pursuant to which, he, if convinced prima facie that the property is being held as benami, records his reasons in writing, and issues notice to the alleged benamidhars to show cause as to why the specified property not be treated as benami property.

59. It is a settled position that where the notice/show cause notice indicates a basis that would justify its issuance, Courts are not expected to examine the sufficiency or validity of such reasons. In the present case, the show cause notices indicate some material that the Department relies upon to come to the prima facie decision that the transactions are benami in nature.

60. The provisions of Section 24 deal with the process by which property is attached and the procedure to be followed by the respondents in that regard. Section 24 is extracted below:

24. Notice and attachment of property involved in benami transaction.—(1) Where the Initiating Officer, on the basis of material in his possession, has reason to believe that any person is a benamidar in respect of a property, he may, after recording reasons in writing, issue a notice to the person to show cause within such time as may be specified in the notice why the property should not be treated as benami property.

(2) Where a notice under sub-section (1) specifies any property as being held by a benamidar referred to in that sub-section, a copy of the notice shall also be issued to the beneficial owner if his identity is known.



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(3) Where the Initiating Officer is of the opinion that the person in possession of the property held benami may alienate the property during the period specified in the notice, he may, with the previous approval of the Approving Authority, by order in writing, attach provisionally the property in the manner as may be prescribed, for a period not exceeding ninety days from the date of issue of notice under sub-section (1).

(4) The Initiating Officer, after making such inquiries and calling for such reports or evidence as he deems fit and taking into account all relevant materials, shall, within a period of ninety days from the date of issue of notice under sub-section (1),—

(a) where the provisional attachment has been made under sub-section (3),—

(i) pass an order continuing the provisional attachment of the property with the prior approval of the Approving Authority, till the passing of the order by the Adjudicating Authority under sub-section (3) of section 26; or

(ii) revoke the provisional attachment of the property with the prior approval of the Approving Authority; 12

(b) where provisional attachment has not been made under sub-section (3),—

(i) pass an order provisionally attaching the property with the prior approval of the Approving Authority, till the passing of the order by the Adjudicating Authority under sub-section (3) of section 26; or

(ii) decide not to attach the property as specified in the notice, with the prior approval of the Approving Authority.

(5) Where the Initiating Officer passes an order continuing the provisional attachment of the property under sub-clause (i) of clause (a) of sub-section (4) or passes an order provisionally attaching the property under sub-clause (i) of clause (b) of that sub-section, he shall, within fifteen days from the date of the attachment, draw up a statement of the case and refer it to the Adjudicating Authority.

61. The present cases rest at this stage and the impugned orders have been passed in terms of Section 24(4) whereunder, the initiating officer has made enquiries, called for reports or evidences as he may deem fit and has passed an order continuing the provisional attachment of the property with prior approval of the adjudicating authority, till, and subject to the passing of orders by the adjudicating authority under Section 26(3).



The procedure of adjudication is set out in detail under Section 26 and confiscation and vesting of benami property under Section 27, if the conclusion in the adjudication is adverse to the parties.

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62. Before dealing with the issue of whether the respondents have followed the integrity of the procedure as stipulated under Section 24, I deal with the argument of the petitioners in regard to whether there is an overlap between a 'commercial transaction' and a 'benami transaction'. I see no such demarcation or differentiation as set out under Section 2(9), that defines a benami transaction. There are certain exclusions that are set out in Section 2(9) (A) (b) and those exclusions are admittedly not applicable in the present case.

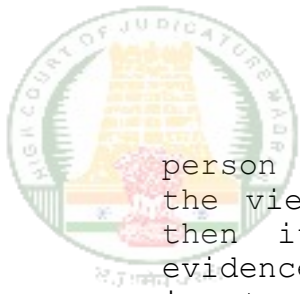
63. A transaction, to stand outside the scope of benami transaction, should be one where the consideration has been paid by the one purporting to purchase the property and in whom ownership to the property will vest.

64. No doubt there is a class of transaction wherein, property may vest in one person, whereas consideration flows from another, such as instances when the purchase of a property is by way of financial accommodation. However, it is for the parties concerned to establish with evidence that the transaction in question is a business transaction simplicitor, with all parameters being transparent and fully disclosed.

65. The nature of the transactions in question have to be established by the petitioner before the authorities upon the respondents discharging the initial burden cast upon them to furnish the primary evidences available with them to the effect that the property is benami in nature. This is a rebuttable presumption and the effectiveness of the rebuttal will depend on the evidences furnished by the noticees to the authorities.

66. In my considered view, therefore, the enquiry contemplated at the stage of initial investigation is only preliminary, based upon prima facie reasons and conclusions. A detailed verification of the evidences as regards whether the transactions were benami or otherwise can, and must only be undertaken in the course of adjudication and not at the stage of preliminary enquiry.

67. In the case of Mangathai Ammal V. Rajeswari (111 taxmann.com 275) the Hon'ble Supreme Court dealt with a challenge to a judgment of this Court in an Appeal Suit. The contention that was accepted was that the burden of proving that a particular sale was benami in nature and that the appellant - purchaser was not the real owner, rested on the



person making such allegation. Thus, if the Department were of the view that the sale of the asset was a benami transaction, then it is for the Department to bring on record enough evidences to clinch such an allegation. This is also the ratio in two other judgments of the Hon'ble Supreme Court in Automotive Tyre Manufacturers Association V. Designated Authority and others(2011 (2) SCC 258) and Sri Meenakshi Mills Ltd. V. CIT (AIR 1957 SC 49).

68.The thrust of the petitioner's case is the alleged insufficiency of materials as well as the fact that the evidences gathered are unreliable. However, and at the risk of repetition, the enquiry conducted under Section 24 is only a preliminary enquiry and the use of the phrase 'reason to believe' only indicates a prima facie satisfaction that all was not well as regards a particular transaction. In the present case, the trajectory of events as has been noticed by me in the preceding paragraphs of this order do not lead to the conclusion that the respondents had no reasons at all to justify the invocation of Section 24.

69.Yet another ground aken by the petitioners is as regards the denial of opportunity to cross examine the parties at the stage of investigation. As regards this, the respondents deny that such opportunity was sought for by all petitioners. In any event, they reiterate that opportunity for cross examination will be granted, as appropriate, in the course of adjudication proceedings.

70.In Andaman Timber Industries(supra), the Hon'ble Supreme Court has held that where the noticee has sought an opportunity of cross-examination, denial of the same would result in violation of the principles of natural justice. The challenge in that case was to a demand raised in the Central Excise Act, 1944. The demand was challenged all the way to Tribunal which confirmed the same, rejecting the petitioner's request for cross examination stating that the same was unnecessary as it would not bringforth any new material and the burden lay upon those assesseees to establish their stand.

71.However, the Hon'ble Supreme Court differed with the High Court stating that where the statements of witnesses are the basis of adverse action, then not allowing the party to cross examine the witness would be a serious flaw that would render that order a nullity. In that case, the assessee had wanted to discredit testimony of the buyers and establish that the goods have been sold to them at prices that were at variance with the price list. Notably, there was no other evidence on the basis of which the demand could have been confirmed and since that opportunity had been denied, the demand had been set aside.



72. In the present case, the testimony of the parties is one among other material that the respondents claim to be in possession of. The petitioners also rely upon a decision of the learned single Judge in Thilagarathinam Match Works Vs. Commissioner of Central Excise, Tirunelveli (46 taxmann.com 382) to the effect that where the assessee asks for a request for cross examination, such request must be acceded to.

73. Thus, the process and procedure as envisaged for provisional attachment under Section 24 is of a narrower compass when compared with the process of adjudication to follow thereafter. That apart, not all the petitioners before me appear to have sought an opportunity to cross examine witnesses. It would thus suffice to state that it is open to the petitioners to make such request for cross-examination once they have been supplied with the relied upon documents at the time of adjudication, and such request, if and when made, will be considered by the respondents in accordance with law.

74. The argument that it is only when full consideration is paid, that enquiry under PBPT Act may be commenced, is left open to be decided in the course of adjudication. On the aspect of demonetization, there is no question that currency notes of the value of Rs.500/- and Rs.1000/-, once demonetized, do not constitute legal tender and it is a plausible argument to state that 'consideration' must comprise of legal tender alone.

75. However, the mode of payment employed as between the parties and the actual amount transacted are pure questions of fact that are best left for verification and determination by the authorities concerned. This question is also left open for decision in the course of adjudication by the authorities.

76. The challenge to the impugned orders under Section 24(4) fails and the respondents are directed to proceed in line with Sections 25 and 26 forthwith. All writ petitions are dismissed. The petitioners were protected during the pendency of these Writ Petitions by virtue of an undertaking given by learned Standing Counsel for the respondents that there would be no escalation of the matter to the stage of adjudication. With the passing of this order that undertaking does not continue any longer.

77. The respondents will continue with adjudication under Section 25 and complete proceedings in light with the mandate of that Section. Notices under Section 26 of the PBPT Act will be issued within a period of 30 days from date of issue of these orders accompanied with all material that the respondents rely on and proceedings under Section 26 shall be conducted scrupulously in line with the mandate thereof.



78. The petitioners shall be afforded full opportunity to put forth all contentions before the adjudicating authority who shall take note of the same and pass speaking orders in accordance with law. Connected Miscellaneous Petitions are closed and the order of interim protection, if any, stands vacated forthwith. No costs.

Sd/-
Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar

S1

To

1. The Deputy Commissioner of Income Tax
(Benami Prohibition),
Room No.104, 1st Floor,
Income Tax Investigation Wing Building,
108, M.G.Road, Nungambakkam,
Chennai - 600 034.
2. The Adjudicating Authority,
Under the Prohibition of Benami
Property Transactions Act, 1988,
Room No.26, 4th Floor, Jeevan Deep Building,
Parliament Street, New Delhi.
3. Joint Commissioner of Income Tax,
(Benami Prohibition, Approving Authority,
Room No.102, 1st Floor,
Income Tax Investigation Wing Building,
108, M.G.Road, Nungambakkam,
Chennai - 600 034.

+15ccs to Mr.R.Sivaraman, Advocate Sr.No.54987

+1cc to M/s.N.V.Balaji, Advocate Sr.No.55469

W.P.Nos.8146 to 8150, 2813 to 2815, 2817,
2818, 2820, 8540, 8352 and 3641 of 2020
and WMP. Nos.10321, 10023, 3258, 9685, 9682,
9683, 9684, 3253, 4289, 3252, 9677, 9678, 9680, 9681,
10322, 9676, 3255, 3256, 3257 and 9679 of 2020

NR (CO)
RVM(27/01/2022)