IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H"NEW DELHI

BEFORE SHRICHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRIM BALAGANESH, ACCOUNTANT MEMBER

BMA Nos.01 to 03/Del/2025
निर्धारणवर्ष/Assessment Year: 2018-19

ADDL. COMMISSIONER OF INCOME TAX Range-7, Room No.329, E-2, ARA Centre, Jhandewalan Extn., New Delhi.	बनाम **Vs.**	DEEPAK JAIN, Farm No.23, Silver Oak, Farms Road No.1, Ghitorni, New Delhi. PAN No.AAEPJ1525D
अपीलार्थी **Appellant**		प्रत्यर्थी/**Respondent**

BMA No.06/Del/2024
निर्धारणवर्ष/Assessment Year: 2018-19

DEEPAK JAIN, Farm No.23, Silver Oak, Farms Road No.1, Ghitorni, New Delhi. PAN No.AAEPJ1525D	बनाम **Vs.**	ADIT (Inv.), New CGO Complex, N.H.-IV, NIT, Faridabad.
अपीलार्थी **Appellant**		प्रत्यर्थी/**Respondent**

&

BMA No.07/Del/2024
निर्धारणवर्ष/Assessment Year: 2018-19

DEEPAK JAIN, Farm No.23, Silver Oak, Farms Road No.1, Ghitorni, New Delhi. PAN No.AAEPJ1525D	बनाम **Vs.**	ADDL. COMMISSIONER OF INCOME TAX Range-7, Room No.329, E-2, ARA Centre, Jhandewalan Extn., New Delhi.
अपीलार्थी **Appellant**		प्रत्यर्थी/**Respondent**

Assessee by	Shri Gaurav Jain, Adv. & Shri Shubham Gupta, Adv.
Revenue by	Shri S.K. Jadhav, CIT DR

सुनवाईकीतारीख/ Date of hearing:	22.07.2025
उद्घोषणाकीतारीख/Pronouncement on	24.09.2025

आदेश /O R D E R

PER BENCH:

These appeals are filed by the Revenue and Assessee against orders of the Ld. CIT(Appeals) in restricting the addition made by the Assessing Officer u/s 10(3) of Black Money (undisclosed and foreign income and assets) and Imposition of Tax Act, 2015 (BMA) and partly deleting the penalty levied u/s 41/43 of BMA, by the Revenue and the assessee challenged the order of the Ld. CIT(Appeals) in partly sustaining the addition and penalty under BMA.

BMA No.01/D/2025, AY 2018-19 (Revenue Appeal):

Revenue in its above appeal raised the following effective grounds:

1. *"Whether on the facts and circumstances of the case and in law, Ld. CIT(A) is correct in deleting the addition of Rs.31,45,40,437/-by stating that the addition should be restricted to proportionate amount of beneficial shareholding held by the assessee in both foreign companies, which is 1 by 1000 shares, and ignoring the finding of the AO that the entry of Sh. Alhammadi, U.A.E. is nothing but to cover up of whole investment of the assessee and the assessee is the beneficial owner of the deposits as appearing in the foreign bank accounts of the above stated entities. Accordingly, the entities and their bank accounts were solely operated by the assessee during the relevant period.*

2. *Whether on the facts and circumstances of the case and in law. Ld. CIT(A) is correct in deleting the addition of Rs.31,45,40,437/- as the assessee had not declared the foreign assets even after the opportunity provided by the Govt. of India before the promulgation of Black Money(Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.*

3. *That the order of the CIT (A) is perverse, erroneous and is not tenable on facts and in law."*

<u>BMA No.02/D/2025, AY 2018-19 (Revenue Appeal)</u>:

Revenue in its above appeal raised the following effective grounds:

1. *"Whether on the facts and circumstances of the case and in law, Ld. CIT(A) is correct in deleting the addition of Rs.31,45,40,437/- and thereby cancelling the penalty u/s 43 of the BMA by stating that the penalty is not applicable as the aggregate balance in one or more bank accounts does not exceed Rs.5,00,000/- at any time during the previous year, and ignoring the finding of the AO that the entry of Sh. Alhammadi, UAE is nothing but to cover up of whole investment of the assessee and the assessee is the beneficial owner of the deposits as appearing in the foreign bank accounts of the above stated entities. Accordingly, the entities and their bank accounts were solely operated by the assessee during the relevant period.*

2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in deleting the addition of Rs.31,45,40,437/- and thereby cancelling the penalty u/s 43 of the BMA by stating that the penalty as the assessee had not declared the foreign assets even after the opportunity provided by the Govt. of India before the promulgation of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.*

3. *That the order of the CIT(A) is perverse, erroneous and is not tenable on facts and in law."*

<u>BMA No.03/D/2025, AY 2018-19 (Revenue Appeal)</u>:

Revenue in its above appeal raised the following effective grounds:

1. *"Whether on the facts and circumstances of the case and in law, Ld. CIT(A) is correct in deleting the addition of Rs.31,45,40,437/- and thereby limiting the penalty u/s 41 of the BMA to 3 times of tax of Rs.3,14,855/- by stating that the addition should be restricted to proportionate amount of beneficial shareholding held by the assessee in both foreign companies, which is 1 by 1000 shares, and ignoring the finding of the AO that the entry of Sh. Alhammadi, UAE is nothing but to cover up of whole investment of the assessee and the assessee is the beneficial owner of the deposits as appearing in the foreign bank accounts of the above stated entities. Accordingly, the entities and their bank accounts were solely operated by the assessee during the relevant period.*

2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in deleting the addition of Rs.31,45,40,437/- and thereby limiting the penalty u/s 41 of the BMA to 3 times of tax of Rs.3,14,855/- as the assessee had not declared the foreign assets even after the opportunity provided by the Govt. of India before the promulgation of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.*

3. *That the order of the CIT(A) is perverse, erroneous and is not tenable on facts and in law."*

<u>BMA No.06/D/2024, AY 2018-19 (Assessee Appeal)</u>:

Assesseein its appealraised the following grounds:

1. *"That the Ld. CIT(A) erred in facts and in law in not appreciating that the foreign entities in question were struck off in the year 2010 and 2011 as also the bank accounts in relation to the said entities being closed in*

the year 2009 and 2010, the provisions of the Black Money Act, being applicable from AY 2016-17 and onwards, the same cannot be applied retrospectively to assets having ceased to exist prior to the promulgation of the Act.

2. *The Ld. CIT(A) erred in law and on facts in not recognizing that the AO assumed jurisdiction under Section 10(1) of the Black Money Act without satisfying the mandatory jurisdictional condition of "receipt of information" as prescribed under Section 10 of the Act.*

3. *The Ld. CIT(A) erred in law and on facts in not appreciating that when proceedings were initiated under IT Act, proceedings under BMA are prohibited in as much as since the appellant, in facts of the present case, was under investigation with tax authorities since 2013 and consequently was debarred from making declaration (one-time voluntary compliance) under section 59 of the BMA; proceedings, if any could have been initiated under the IT Act and not BMA.*

4. *Without Prejudice, even assuming that the tax authorities were in possession of valid information for the assumption of jurisdiction, the Ld. CIT(A) erred in law and on facts in not appreciating that the alleged information having come to the knowledge of the tax authorities in 2013, initiation of present proceedings after inordinate delay of 3.5 years from the promulgation of the Act on 01.07.2015, renders the present proceedings barred by limitation.*

5. *The Ld. CIT(A) erred in law and on facts in not appreciating that the undisclosed income sought to be brought to tax admittedly pertains year prior to the AY 2018-19, in relation to which the present proceedings are initiated, the Respondent is bringing the said undisclosed foreign income to tax in incorrect assessment year, warranting quashing of the proceedings.*

6. *The Ld. CIT(A) erred in law and on facts by not appreciating that critical information and documents*

essential for completing the assessment were not provided to the petitioner.Without prejudice to the fact that non-availability of said documents demonstrates that the AO lacked a valid basis to assume jurisdiction under Section 10(1) of the Black Money Act; even if such documents existed, their concealment violates natural justice, rendering the proceedings null and void.

On Merits

7. *That the Ld. CIT(A) erred in law and on facts in confirming the addition of undisclosed asset to the extent of Rs.3,14,855/- and not deleting the entire addition made by the AO holding that the "appellant was not able to conclusively establish the source of investment for acquiring that I share".*

8. *The Ld. CIT(A) erred in law and on facts in not appreciating that the finding that "the appellant was not able to conclusively establish the source of investment for acquiring that I share" is contrary to his own findings that "that the statements recorded prior to the date of search under section 131 of the Act by the Investigation Wing as well as during the course of search u/s 132(4) of the Act, categorically established the version of the appellant that the aforesaid foreign companies were incorporated and owned by Mr. Alhammadi."*

9. *The Ld. CIT(A) erred in law and on facts in not appreciating that the finding that "the appellant was not able to conclusively establish the source of investment for acquiring that I share" is also contrary to his own findings that "the appellant being a meagre shareholder, had no control or link with the source of investment in the foreign companies or utilization of fund, to be called beneficiary thereof."*

10. *The Ld. CIT(A) erred in law and on facts in not appreciating that the finding that "the appellant was not able to conclusively establish the source of investment for acquiring that I share" is contrary to the facts on record which show that assets held by the companies were specifically earmarked as belonging to Mr.*

Alhammadi and at the time of closure of bank accounts funds were transferred / utilized at behest of Mr. Alhammadi without any benefit accruing to the appellant.

11. That Ld. CIT(A) erred in law and on facts in holding that the appellant was not able to conclusively establish the source of investment for acquiring that I share" withoutappreciating that in the facts of the case, it is well established thati) the appellant did not provide any consideration/investment into the company, ii) the appellant was only a nominal and negligible shareholder in the company, iii) the appellant was never in position to avail any benefit from the company, and iv) in the entire life cycle of the company, the appellant did not benefit from the aforesaid BVI entities, which is also not disputed the Ld CIT(A).

12. Each of the above grounds is independent and without prejudice to one another. The appellant craves leave to add, alter, amend or withdraw any ground or grounds of appeal at any time before or during the course of hearing of the appeal."

<u>BMA No.07/D/2024, AY 2018-19 (Assessee Appeal)</u>:

Assessee in its appeal raised the following grounds:

1. *"That the Ld. CIT(A) erred in facts and in law in not appreciating that the order u/s 10 of the Black Money Law is bad in law in account of various jurisdictional infirmities raised by the Appellant during the course of the proceedings before Ld. AO and Ld. CIT(A), thus the proceedings u/s 41 being consequential is also bad in law.*

2. *That the Ld. CIT(A) erred in facts and in law in not appreciating that while Assessment u/s 10 was done by the ADIT, Faridabad and the penalty notices dated 23.03.2021 were also issued by the same officer, however, the notice dated 26.03.2021 and subsequent proceedings including the order u/s 41 of the Act are passed by ACIT, Central Range-7, Delhi, without notice of change in jurisdiction.*

3. *That the Ld. CIT(A) erred in law and on facts in confirming the addition of undisclosed asset to the extent of Rs.3,14,855/- and not deleting the entire addition made by the AO holding that the "appellant was not able to conclusively establish the source of investment for acquiring that I share".*

4. *The Ld. CIT(A) erred in law and on facts in not appreciating that the finding of the CIT(A) in the order dated 18.10.2021, passed adjudicating the quantum appeal that "the appellant was not able to conclusively establish the source of investment for acquiring that I share" is contrary to the facts on record as also the own finding of the CIT(A), thus the proceedings u/s 41 being consequential is also based on erroneous finding of fact.*

5. *The Ld. CIT(A) erred in law and on facts in not appreciating that use of the word "may" in Section 41 clearly indicates that the imposition of such a penalty is not mandatory. The Assessing Officer would need to independent apply mind as to the addition made in the quantum order, justifying the imposition of penalty.*

6. *The Ld. CIT(A) erred in law and on facts in not appreciating that the underlying addition in the quantum order u/s 10(3) as also the addition sustained by the Ld.CIT(A), being based on mere estimation, penalty cannot be mechanically initiated and/or imposed."*

2. Brief facts are that the aforesaid appeals have been filed in connection with assessment order dated 01.08.2019 passed under section 10(3) of the Black Money (Undisclosed and Foreign Income and Assets) and Imposition of Tax Act, 2015 (hereinafter referred to as "the BMA") assessing undisclosed foreign income/assets of the assessee at Rs.31,48,55,300/- and imposing penalties on that basis

vide order dated 22.10.2024 and 23.10.2024 passed under section 41 and 43 of the BMA, respectively.

3. The facts containing list of dates and various events pertaining to these appeals are tabulated as under:-

Date	Particulars	Page No.
2005	Memorandum of Understanding between the Assessee and Mr. Alhammadi, resident of UAE, for undertaking business of Lighting Solutions for Automobiles and Infrastructure in UAE and South East Asia.	15
05.07.2005	M/s Alabama Assets Ltd was incorporated, M/s Articorp Ltd. was appointedas nominee director on behalf of Mr. Alhammadi and the assessee.	90
29.08.2005	M/s Articorp Ltd resigned on 29.08.2005 and Execorp Ltd was appointed in its place.	
29.08.2005	M/s Sharecorp was allotted 1 share of face value 1 USD as nominee share holder on behalf of the assessee	90
September, 2005	A sum of USD 200,000/- was remitted by the Alhammadi in the bank account of M/s Alabama Assets Ltd. as share capital.	19
30.09.2005	Mr. Alhammadi was sole appointed as Director of Alabama Assets Ltd. on the said date 999 shares of Alabama Assets Ltd. were allotted to Mr. Alhammadi.	90
18.08.2008	M/s Meadow Offshore Ltd. was incorporated. The bank account of the company was opened thereafter and the money in such bank account was infused by M/s Alabama Assets Ltd. as share capital Mr. Deepak Jain was appointed as the fiduciary/nominee director on behalf of Mr. Alabama Assets Ltd.	88
11.09.2008	The assesseewas allotted one shareas nominee shareholder on behalf of M/s Alabama Assets Ltd. Mr. Deepak Jain was appointed as the fiduciary/nominee director on behalf of M/s Alabama Assets Ltd.	88
06.10.2008	Mr. Alhammadi was sole appointed as Director of M/s Meadow Offshore Ltd. on the said date 999 shares of Alabama Assets Ltd. were allotted to Mr. Alhammadi.	88
31.03.2010	Termination of MOU between Assessee and Mr.	

	Alhammadi as the project could not take off	
15.10.2009	The bank account of M/s Alabama Assets Ltd. was closed and the amount was transferred to Mr. Alhammadi	41
04.06.2010	The bank account of M/s Meadow Offshore Ltd. was closed and the amount was transferred to Mr. Alhammadi.	41

4. The finding by the AO in the assessment order is that the Income Tax Department received information from International Consortium of Investigative Journalism (ICIJ) about assessee having interest in, *inter alia*, certain foreign companies incorporated in British Virgin Islands ("BVI"). Based on the aforesaid information so received, the Income Tax Authorities initiated investigation and enquiries through first summon dated 29.07.2013, issued under section 131(1A) of the IT Act. Thereafter, multiple summons dated 23.12.2015, 12.01.2016 and 26.04.2016 were issuedand inquiries were conducted, in response to which,statement of the assessee was recorded and the assessee explained the rationale behind incorporation of foreign companies in joint venture with a foreign national i.e. Mr. Alhammadi and that he was nominated by him as a nominal shareholder of the main company i.e. Alabama Assets Limited, of 1 out of 1000 shares, where the remaining shareholding of 999 out of 1000 shares were held by the said foreign nationali.eMrAlhammadi and the entire funds in that company were either contributed by him or by entities at his behest without any

contribution even for one share by the assessee. The assessee furnished contemporaneous evidences in respect of his explanation, which are tabulated as under:-

a) Copy of incorporation documents of M/s Alabama Assets Limited and M/s Meadow Offshore Limited.

b) Copy of documents of opening bank accounts in the name of M/s Alabama Assets Limited and M/s Meadow Offshore Limited and documents in relation to investments made therein.

c) Details of other directors along with investment made by them in these foreign entities.

d) Details of bank accounts held by the above foreign entities as well as the foreign bank accounts held by the assessee in his personal name.

e) Brief note about the Companies along with the interest of MrAlhammadi in the said entities.

f) Certificate of Incorporation of the above mentioned entities.

g) The family tree of the assessee and information in respect of the entities in which the assessee has controlling stake.

h) List of all assets held by the assessee and his family members acquired through remittance under LRS scheme of RBI.

i) Copies of bank accounts held in the name of the assessee as "Imprest A/c" on behalf of the above foreign entities.

j) Account Numbers of M/s Alabama Assets Limited and M/s Meadow Offshore Limited.

k) Letter dated 08.03.2016 from M/s Shaikha Ahmed, Advocates and Legal Consultants, the law firm Mr Ibrahim Ahmad Abdulla Albahri Hamdim along with his affidavit which enumerated the nature, extent and kind of business relationship that subsisted between MrAlhammadi and the assessee and nature and type of transactions that were entered into between them and the abovementioned foreign entities.

l) Copy of reply dated 19.05.2016 addressed to DDIT (Inv.) submitting that the information as asked by the Department was sought from MrAlhammadi vide letter dated 07.05.2016 and correspondence received from MrAlhammadi dated 17.05.2016, wherein MrAlhammadi provided with the Certificate of incumbency and other information regarding the use of the funds lying with the foreign entities.

5. The assessee was of the bonafide belief that he had furnished all the requisite documents with evidences before the investigation wing and had satisfied the IT department as the last reply was filed before the investigation wing on 19.05.2016. After a gap of 19 months, surprisingly, a search action under section 132 of the IT Act was conducted on him on 22.12.2017 wherein the affidavit of MrAlhammadi was found along with financial statements of aforementioned foreign entities; letter dated 17.05.2016 of MrAlhammadi along with the courier dated 17.05.2016 and certificate of incumbency of the aforementioned entities. Statement under section 132(4) of the IT Act was recorded on 22.12.2017 wherein the assessee reiterated that all investments were made by Mr Alhammadi. On 15.02.2018, another statement of assessee was recorded under section 132(4) of the IT Act wherein materials found during search and seizure were confronted to the assessee. The assessee also shared text messages to and from MrAlhammadi dated 14.02.2018 where MrAlhammadi refused to share financial of the

companies as also other documents stating that he had already done enough for the assessee. The IT Department kept the search proceedings in abeyance and proceeded to initiate action on the assessee invoking the provisions of Black Money Act (BMA). Accordingly , on 20.02.2018, a notice under section 10(1) of BMA was issued to the assessee. On 26.03.2018, reply was filed by the assessee to the notice issued under section 10(1) of BMA raising several jurisdictional issues and also explaining that the assessee had not made any investments in the aforementioned foreign entities. The following details were filed by the assessee in his reply dated 26.03.2018:-

Foreign Bank Accounts in the name of the assessee

a) Copy of extract of Income Tax Return of the assessee for AYs 2012-13 to 2016-17 evidencing that foreign bank account of Barclays Singapore and VONTOBEL Bank, AG, Zurich were duly disclosed in the return filed by the assessee.

b) Copy of bank statements of DBS Bank, Singapore in the name of the assessee opened pursuant to joint venture with Mr Alhammadi, maintained as imprest accounts for initial expenditure on behalf of M/s Alabama Assets Limited.

c) Copy of relevant extract of bank statement of DBS Bank, Singapore, evidencing closing balance as on December 2009 , which is reflected as "Imprest A/c –Deepak Jain" in the Balance Sheet of M/s Alabama Assets Limited.

d) Copy of the Account Closing Form , evidencing closure of bank account in DBS, Singapore on 13.05.2010.

e) Copy of bank statements of Emirates Bank, Dubai in the name of the assessee , opened pursuant to joint venture with Mr Alhammadi, maintained as imprest accounts for initial expenditure on behalf of M/s Meadow Offshore Limited.

f) Copy of relevant extract extract of bank statement of Emirates Bank, Dubai, evidencing closing balance as on December 2010, which is reflected as “Imprest A/c –Deepak Jain” in the Balance Sheet of M/s Meadow Offshore Limited.

g) Copy of extract of bank statement of Emirates Bank, Dubai, evidencing closure of bank account on 21.03.2011.

h) Documents pertaining to M/s Alabama Assets Limited

-Copy of financial statement of M/s Alabama Assets Limited as on 31.12.2009 and 31.12.2010.

-Copy of bank statements of M/s Alabama Assets Limited in UBS Bank, Singapore, reflecting payments made in Emirates Bank, Dubai, opened in the name of the assessee, maintained as “Imprest A/c” to incur initial expenses.

i) Documents pertaining to M/s Meadow Offshore Limited

-Copy of financial statement of M/s Meadow Offshore Limited as on 31.12.2010 and 31.12.2011.

-Copy of bank statements of M/s Meadow Offshore Limited in UBS Bank, Singapore, reflecting payments made into the DBS Bank Account, Singapore, held in the name of the assessee, maintained as “Imprest A/c” to incur initial expenses.

6. On 28.08.2018, summons under section 131(1A) of the IT Act was issued by the Learned ACIT to the assessee, to which reply letter dated 29.10.2018 was filed by the assessee on 30.10.2018. Income Tax Department made further enquiries with regard to the aforesaid information by making reference to Government of Foreign Countries

through FT & TR - Division of CBDT by virtue of the power available for exchange of information contained in respective DTAA entered with India, pursuant to section 90 of the IT Act, which revealed as under:-

a) Company's books of accounts , records, resolution etc are maintained at 6, Temasek Boulevard no. 09-05, Sutac Tower Four Singapore-038986, not at U.A.E. office of Sh. Alhammadi.

b) The Company's Resolution provided in response to FT & TR by BVI revealed that companies were formed for investment purpose not for purpose of lighting business.

c) Sh. Deepak Jain Claimed that he was introduced to MrAlhammadi through one Mr Amit Sharma. It was categorically asked to produce Sh. Amit Sharma vide note sheet entry dated 28.02.2019, but assessee Deepak Jain never produced amit Sharma for examination.

d) Sh. Deepak Jain has claimed that he has entered an MOU with Alhammadi to enter in the lighting business in UAE and Middle East, which was later on terminated. He was categorically asked vide note sheet entry dated 28.02.2018 to produce the MOU and termination document. Inspite of ample opportunity, he could not produce the copy of MOU and Termination documents.

7. The AO, however, disagreeing with the aforesaid explanations and evidences brought on record by the assessee, despite having conducted enquiries through the mode of the powers available for exchange of information under the respective DTAA, considered the assessee to be beneficial owner of the bank account of the foreign companies and made addition of entire credits in the bank account of foreign companies applying Rule 3 of the BMA Valuation Rules,

holding the same to be undisclosed foreign income/asset of the assessee at an amount of Rs.31,48,55,300/-.

8. The assessee challenged the aforesaid assessment order in first appeal before the CIT(A) on several grounds, covering challenges on the validity of jurisdiction assumed by the AO under BMA, or other legal issues regarding validity of the impugned assessment order as also addition on merits made by the AO.

9. The CIT(A) dismissed the jurisdictional and legal issues raised by the assessee, but reduced addition on merits by holding that the assessee at best could be held to be the beneficial owner of the amounts credited in the bank accounts of foreign companies only to the extent of his admitted proportionate holding in the foreign companies in the ratio of 1/1000. Therefore, the CIT(A) restricted the total addition made by AO at Rs.3,14,855/- and deleted the remaining addition.

10. The CIT(A) also modified the amount of penalty imposed by the AO under section 41 of the BMA in proportion to the addition sustained, and deleted the penalty of Rs.10 lakhs imposed by the AO under section 43 of the BMA for non-disclosure on the ground that the disputed asset had ceased to exist in the year 2009-10, whereas the

requirement of disclosure in return forms came in for the first time from Assessment Year 2012-13 and onwards and therefore, the assessee could not have been attributed with failure of disclosure, to be visited with penalty under the said section.

11. In the aforesaid background, the cross-appeals were filed both by the Revenue and the assessee against the decision of CIT(A) to the extent adverse to the assessee and Revenue. The Revenue primarily challenged the relief granted by the CIT(A) by deleting the additions made in the assessment order amounting to Rs.31,48,55,300/- and the corresponding reliefs granted on account of deletion of penalties imposed under section(s) 41 to 43 of BMA, whereas the assessee filed appeal against the action of CIT(A) in dismissing the jurisdictional and legal ground raised by the assessee as also confirming the addition to the extent of Rs.3,14,855/- made by the CIT(A) holding the appellant to be beneficial owner for the proportionate amount of credits in the bank account of the foreign company and sustaining corresponding proportionate addition of penalty sustained under section 41 of the BMA, through various Grounds of Appeal.

12. In the course of hearing, the Ld DR mainly relied upon the assessment order and justified the action of the AO in making the

impugned addition in the hands of the assessee for the following reasons:

i) The assessee despite knowing that the income tax department is aware of the existence of two foreign entities i.e M/s Alabama Assets Limited and M/s Meadow Offshore Limited and its shareholding pattern together with credits lying in their bank accounts, did not chose to avail the voluntary declaration scheme available for a limited period from 1.10.2015 to 31.12.2015. Hence having not availed the voluntary declaration scheme, the assessee automatically gets covered under the provisions of BMA.

ii) The assessee failed to explain the source of the funds deposited in the bank accounts of the foreign companies despite being the beneficial owner of one share in each.

iii) The AO disbelieved the statements of Sh. Deepak Jain and Mr. Alhammadi, reasoning that:

a) The books of accounts and corporate records of the companies were maintained at 6 Temasek Boulevard, Singapore, and not in the UAE office of Mr. Alhammadi, contrary to claims.

b) Company resolutions submitted in response to the FT&TR by BVI showed the companies were incorporated for investment purposes, not for a lighting business, as claimed, while no such resolutions were brought on record.

c) Sh. Deepak Jain claimed an MOU was executed with Mr. Alhammadi for entering the lighting business in UAE/Middle East, which was later terminated;however, despite specific directions vide note sheet dated 28.02.2018, he failed to produce either the MOU or the termination documents.

13. Further the Ld. DR submitted that based on the allegation that the assessee had not explained the purpose behind the incorporation of the foreign entities, the reason for holding beneficial ownership of

one share in each company, the circumstances under which the foreign bank accounts were operated by the assessee, the absence of audited balance sheets and MOUs, and the lack of clarity regarding the utilization of funds, the AO concluded that Mr. Alhammadi was merely a face and that the investments actually belonged to the appellant.

14. On the other hand, Ld. Counsel for the Assessee made the following elaborate submissions as under:

"A. __Jurisdictional Issues__:
I. __AO erred in initiating proceedings under BMA, after choosing to conduct the inquiries and investigation under the I.T. Act__:

The facts of the present case, relating to incorporation of foreign companies and the nature and quantum of the assessee's shareholding therein as also the entire sequence of events commencing from investigation proceedings under section 131 of I.T. Act, search under section 132 of the I.T. Act and initiation and conclusion of proceedings under section 10 of BMA are explained in the accompanying Chart of Dates attached as Annexure-A.

On perusal of the accompanying chart of dates, it would be seen that, the event of incorporation of companies and bank accounts commenced in 2005, in partnership with Mr. Alahammadi, but for want of actual take off of the joint venture project, the companies and bank account were closed in the year 2009 to 2010. In other words, it is emphasized that neither the companies or shareholding of the assessee in such companies or bank accounts of foreign companies were in existence at the time of promulgation of BMA on 01.07.2015 or initiation of proceedings under section 10 of BMA on 20.02.2018.

Further, it can be seen that the Revenue Authorities were in the possession of information relating to some link of assessee with the foreign companies way back in 2013 (possibly including the information received pursuant to exchange of information as per DTAA) inasmuch as the first summon was issued under section 131(1A) of the I.T. Act raising queries from the assessee directly in relation to the foreign companies vide notices summons dated 29.07.2013, 23.12.2013 and 12.01.2015.

All the aforesaid notices were issued prior to promulgation of BMA on 01.07.2015. Even after promulgation of BMA on 01.07.2015, the Revenue continued with investigation proceedings with respect to the impugned alleged foreign investment of the assessee through exercise of powers vested with them for conducting inquiries for the purposes of I.T. Act contained in section 131(1A) vide summons/notices dated 26.04.2116 and 05.05.2016.

It may be pertinent to point out that immediately after promulgation of BMA, the CBDT had vide notification 24.08.2015 (attached in the Case-laws compilation at Page 84) vested jurisdictions for investigation and assessment for the purposes of BMA with the relevant I.T. Authorities who were entrusted with powers of investigation or assessment under section 120 of the I.T. Act.

It is also pertinent to note that akin to the powers vested with the tax authorities to conduct inquiries and investigations under section 131 of the I.T. Act, the authorities were vested with similar powers for investigations and inquiries under section 8 of the BMA.

In view of the above, it would be appreciated that, despite the tax authorities having been in possession of the information relating to alleged holding of foreign undisclosed assets/income of the assessee after promulgation of BMA, the Revenue consciously chose to conduct investigations/inquiries under section 131 of the I.T. Act as also conducted search under section 132 of the Act, making the assessee to believe that he was sought to be assessed on the said issue under the I.T. Act. It was even after lapse of substantial time after search under section 132, that the Revenue changed the stand of not covering the impugned issue in the tax assessment completed under section 153A of the I.T. Act pursuant to search, but initiated proceedings under section 10 of BMA, vide first notice dated 20.02.2018.

It is the submission of the assessee that, BMA and I.T. Act are both parallel statutes which seek to impose tax on same income, albeit foreign income/assets of a Resident in India, without any non-obstante provision in any statute, whereby one statute exclude the other, akin to a situation, where alternate remedies are available to a litigant, (being the Revenue Authorities in the present case), doctrine of election or theory of approbate and reprobate comes into play, which provides that if the litigant has consciously chosen one option out of alternate and parallelremedies available in law and making the opposite party to believe of him pursuing such remedy, the first party cannot subsequently change the option or stand.

Attention, in this regard, is invited to the following decisions of the Courts, where the aforesaid doctrine of election/approbate and reprobate, which would squarely be applicable to the tax authorities, in the situation of present kind, has been explained in the following manner:

a. ***The Calcutta High Court in the case of Hiralal Alias Hiranand vs Commissioner of Customs and Ors. 2013 SCC Online Cal 17620 dated 19.09.2013 observed as under:***

> *26. The doctrine of election applies to cases when a man as against another has two alternative but mutually exclusive courses to resort to and he is to make an election between the two. If he by his conduct induces the other man to believe that he is pursuing a certain course leaving aside the other and as a result of it that induced other man alters his course of action he is not permitted to subsequently alter his stand by resorting to the other course which he had intentionally decided not to follow. Spencer Bower and Turner in their celebrated work on estoppel by representation had explained the essence of the doctrine of election:*
>
> > *"It is of the essence of election that the party electing shall be 'confronted' with two mutually exclusive courses of action between which he should mast, in fairness to the other party, make his choice ...In election he is always found confronted by a choice of two alternatives one of which he must eventually choose, to the exclusion of the other."*
>
> ....
>
> *29. Reference may be made to another case where the same principle was applied in the context of an action for specific performance of a*

contract or alternatively for damages. In the case of Meng Leong Development Pte. Ltd. v. lip Hong Trading Co. Pte. Ltd. reported in (1985) 1 All ER 120 (PC) the Judicial Committee of the Privy Council held that the purchaser had made an election to accept the trial judge's award of damages and abandoned his right of appeal seeking specific performance when he demanded and accepted the deposit of damages passed by the trial court. It was further held that since the vendor had altered his position to his detriment by raising and paying over the damages when he would not have been required to do so if the purchaser had sought specific performance on appeal, the purchaser was estopped from seeking specific performance on appeal. Lord Templeman delivering the majority judgment held that "the vendor was only liable to pay damages or to perform the contract and was not bound to suffer the infliction of both remedies, even with the hope of recovering from the effect of one of them in due course, subject to any order the court might care to make about costs or delay. The vendor having been obliged by the purchaser to comply with the order to pay damages was harassed by the order for specific performance. Once the damages had been raised and paid and accepted the purchaser was estopped by election from appealing against the order for the payment of those damages.

b. The Delhi High Court in the case of Ramaswamy Palledar vs Secretary to Government of NCT of Delhi and Anr., 2000 SCC OnLine Del 1010 observed as under:

7. Thus when the petitioner could not be permitted to file writ petition again, challenging his dismissal, on fresh grounds he could not be permitted to achieve this by invoking some other remedy. What cannot be done directly would not be permitted to be done indirectly.
Matter can be looked into from another angle also. When more than one forum are available to the petitioner to challenge a particular order and he elects to choose one forum, thereafter he is precluded from choosing other fora for same cause of action.This is popularly known as 'Doctrine of Election' which is based on the maxim "that a person cannot approbate or reprobate at the same time This same principle is stated in White and Tudor's Leading Cases in Equity Vol. 1 and Eds. at page 444 as follows:—

"Election is the obligation imposed upon a party by Courts of equity to choose between two inconsistent or alternative rights or claims in cases where there is clear intention of the person from whom he derives one that he should not enjoy both.''

....

10.It is totally misconceived on the part of the petitioner to contend that the remedies are based on two different cause of action. Cause of action is same namely, punishment of removal from service which was challenged by filing the writ petition and which was again sought to be challenged by raising the industrial dispute. It is the ground taken which may be different. Different grounds taken by the petitioner are confused as different causes of action. However, as pointed out above, it is not permissible for the petitioner to invent new grounds and elect new forum after having failed once on same in one particular forum. Accordingly, this writ petition is dismissed.

c. The Supreme Court in the case of Bank of India vs Lekhimoni Das and Others., (2000) 3 SCC 640 observed as under:

8. As a general principle where two remedies are available under law one of them should not be taken as operating in derogation of the other. A regular suit will not be barred by a summary and a concurrent remedy being also provided therefore, but if a party has elected to pursue one remedy he is bound by it and cannot on his failing therein proceed under another provision. A regular suit for compensation is not barred by the omission to proceed under the summary procedure provided under Section 95 CPC, but if an application is made and disposed of, such disposal would operate as a bar to a regular suit, whatever may be the result of the application……."

d.Dalip Singh vs Lal Singh and Ors., 2017 SCC Online HP 1422

It is, further, submitted that, the aforesaid doctrine has even been recognized by the CBDT while clarifying that, if the assessee was prohibited from availing the One time Amnesty Scheme under section 59 of the BMA, by virtue of the Bars imposed upon such assessee through various situation prescribed under section 71 of the said Act, the Revenue would have to proceed with assessment of such foreign income asset under the I.T. Act and not BMA;

The relevant portion of the aforesaid view of the CBDT contained in replies to Query No. 15 and 16 of the Circular No. 13 of 2015 dated 06.07.2015 is reproduced hereunder for ready reference:

> *Question No. 15: If a declaration of undisclosed foreign asset is made under Chapter VI of the Act and the same was found ineligible due to the reason that Government had prior information under DTAA then will the person be liable for consequences under the Act?*
>
> *Answer: In respect of such assets which have been duly declared in good faith under the tax compliance but not found eligible, he shall not be hit by section 72(c) of the Act and no action lies in respect of such assets under the Act. However, such information may be used for the purpose of the Income-tax Act.*
>
> *Question No. 16: In respect of the undisclosed foreign assets referred to in answer to question No. 15 above, where the proceedings under the Income-tax Act are initiated, can the options of settlement commission etc. under the Income-tax Act be availed in respect of such assets?*
>
> *Answer: All the provisions of the Income-tax Act shall be applicable in respect of those assets.*

The aforesaid legal position, in our respectful submission, reinforces the aforesaid Doctrine of Election, inasmuch as, it has been clarified that if an assessee is declined amnesty under BMA for want of pending proceedings under I.T. Act, then it has been made mandatory for the tax authorities to complete assessment of foreign income/asset under I.T. Act and not BMA.

It is respectfully submitted that the aforesaid theory has even been applied by the Hon'ble Gujarat High Court in the case of Principal Commissioner of Income Tax, Central vs.Income Tax Settlement Commission., [2020] 420 ITR 149 (Gujarat) where while dealing with the exactly similar controversy of interplay between the initiation of proceedings under the I.T. Act and BMA, the High Court held that, where the tax authorities consciously initiated proceedings under the I.T. Act and permitted the assessee to continue the same though filing a an application for Settlement before the Settlement Commission as per the provision of I.T. Act, the Revenue could not have subsequently changed the stand that, such proceedings needs to be dropped and be allowed to be proceed under BMA. The Hon'ble High Court held that the Revenue cannot approbate and reprobate and also held that both I.T. Act and BMA being

parallel Acts, where I.T. Act can also bring to tax foreign income assets, the Revenue cannot argue that such income can only be brought to tax under BMA.

In the facts of the said case search and seizure operation came to be conducted by the Investigating Wing under the provisions of the Income Tax Act, pursuant to which action was initiated against the assessee u/s 148 and 153 A of the Act. The main issue was non-disclosure of foreign income and assets including foreign bank accounts. The assessee filed application u/s 245C before the Settlement Commission disclosing undisclosed foreign income and asset. The said application was accepted by the Settlement Commission and proceeded with. The department however issued notices u/s 10(1) of the BMA. The Settlement Commission sought verification report from the Department, including clarification on whether it wished to proceed under the Black Money Act or continue with the pending proceedings before the Commission for the same income and assessee. The Department stated that it preferred to proceed with the assessment under Section 147 of the Income Tax Act. The Settlement Commission passed the order, dated 30-1-2019, made under sub-section (4) of section 245D. The Department preferred the writ petition stating that the foreign assets being subject matter of BMA, the Settlement Commission did not have the jurisdiction to decide the application.

The Hon'ble High Court rejecting the contention of the department held that the tax department cannot be permitted to approbate and reprobate at the same time, namely before the Settlement Commission to take a stand that the undisclosed foreign income and assets are governed by the provisions of the Income tax Act, 1961, for the relevant years in respect of which the proceedings were pending before the Settlement Commission, and now to take a somersault and say that the Settlement Commission had no jurisdiction to decide the applications under section 245C. The relevant extract of the judgement is produced as under:

> *42. In the present case, upon receipt of the application made under section 245C of the IT Act, the Settlement Commission has proceeded further in accordance with the provisions of*

section 245D of the IT Act. At the stage when it was brought to its notice that notices under section 10 of the Black Money Act had been issued to the contesting respondents, the Settlement Commission gave ample opportunity to the revenue to decide as to what course of action it wants to adopt, and it was the revenue which categorically invited an order from the Settlement Commission in respect of the undisclosed foreign income and assets disclosed before it. From the submissions advanced on behalf of the petitioner, nothing has been pointed out to show that the Settlement Commission has not followed any provision of law. The record of the case shows that the requirements of section 245D of the IT Act have been duly satisfied prior to the passing of the impugned order under section 245D(4) of the IT Act. Therefore, there is no infirmity or illegality in the approach adopted by the Settlement Commission, which has merely decided applications made under section 245C of the IT Act in accordance with law. As held by the Supreme Court in catena of decisions, an order of the Settlement Commission can be interfered with only if such order is found to be contrary to any provisions of the IT Act.

43. Besides, the petitioner cannot be permitted to approbate and reprobate at the same time, namely before the Settlement Commission to take a stand that the undisclosed foreign income and assets are governed by the provisions of the Income Tax Act, 1961 for the relevant years in respect of which the proceedings were pending before the Settlement Commission, and now to take a somersault and say that the Settlement Commission had no jurisdiction to decide the applications under section 245C of theITAct.

44. Another aspect of the matter is that the proceedings before the Settlement Commission were taken in connection with notices issued under section 148 and 153A of the Income Tax Act, and it is therefore, that the Settlement Commission had the jurisdiction to decide the applications under section 245C of that Act, which related to the proceedings in respect of those notices. If it was the case of the revenue that the undisclosed foreign income and asset of the contesting respondents were covered by the provisions of the Black Money Act, the notices under section 148 and 153A of the IT Act, which mainly related to undisclosed foreign income, ought to have been withdrawn and proceedings ought to have been initiated under the relevant provisions of the Black Money Act. However, it seems that since the notices under section 148 and 153A of the IT Act related to undisclosed foreign income ofperiods not

> *covered by the Black Money Act, such notices were not withdrawn and a conscious decision was taken to pursue the settlement proceedings. If that be so, it was always permissible for the assessees, namely the contesting respondents, to opt for settlement under Chapter XIX A of the IT Act and the Settlement Commission jurisdiction to decide the applications under section 245C of the IT Act in respect of the income disclosed therein.*

In view of the above, it is respectfully submitted that, considering the facts of the present case, where the Revenue chose to proceed against the assessee under the I.T. Act, even after promulgation of BMA on 01.07.2015, despite being vested with substantial powers for investigation and inquiries in terms of section 8 of BMA, and having conducted the extraordinary measure available to the Revenue by way of search under section 132 of the IT Act. the Revenue, in our respectful submission, could not have subsequently changed the original choice/stand of proceedings and assessing the assessee under I.T. Act, to thereafter initiate and complete proceedings under BMA, probably for the reason that assessment meet BMA was either preferential to the Revenue or more draconian for the assessee. Thus, the aforesaid change in stand, in our respectful submission, was in teeth of the aforesaid doctrine ofelection or theory of approbate and reprobate. Therefore, the initiation of such proceedings under BMA was beyond jurisdiction and non-est and deserves to be quashed on the said ground itself, at the threshold.

II. Without Prejudice BMA not applicable in case of assessee by virtue of the bar contained in section 71(d) of the Act:

Without prejudice to the submissions made earlier that, in facts of the present case, the Revenue having conducted proceedings under section 131/132 of the I.T. Act could not have proceeded against the assessee under BMA, it is respectfully submitted that, even otherwise, the applicability of BMA was prohibited upon the assessee by virtue of specific bar contained in section 71 (d) of the Act for reasons stated hereinafter.

32. It would be pertinent to point out that, Chapter-VI of the BMA, comprising of Section(s) 59 to 72, offered one time declaration scheme to the assessee(s) to declare of undisclosed foreign assets located outside India and pay tax on these assets,

and seek immunity from penalty and prosecution consequences contained in the BMA, which was a limited window available at the time of promulgation of the Act, between 01.07.2015 to 30.09.2015.

Section 71 of the said Chapter, however, prohibited assessee from seeking aforesaid amnesty by voluntary declaration under the aforesaid Chapter, if case of the assessee was covered within different situations prescribed in clauses (a), (b), (c) and (d) of section 71 of the said Chapter. Attention, in this regard, is invited to the relevant portion of section 71(d) which is relevant to the facts of the present case and reads as under:

> ***71. Chapter not to apply to certain persons.—The provisions of this Chapter shall not apply—***
>
> ………………………………
>
> *(d)in relation to any undisclosed asset located outside India which has been acquired from income chargeable to tax under the Income-tax Act for any previous year relevant to an assessment year prior to the assessment year beginning on the 1st day of April, 2016-*
>
> ……………………………………
>
> > *(iii) where any information has been received by the competent authority under an agreement entered into by the Central Government under section 90 or section 90A of the Income-tax Act in respect of such undisclosed asset.*
> >
> > …………………………………..

In terms of the aforesaid section, with emphasis laid on sub-clause (iii) of section 71(d), an assessee was prohibited from declaring undisclosed foreign asset located outside India and acquired in any previous year prior to AY 2016-17, if the Tax Department had received any information from the competent authority by virtue of clauses relating to exchange of information contained in DTAA entered with a foreign country by virtue of the power available under section 90 of the I.T. Act.

In facts of the present case, it can be seen that the Revenue Authorities were in possession of information relating to assessee's financial interest in the disputed foreign companies way-back in 2013, since repeated summons were issued commencing from 29.07.2013.

36. In view of the above, the assessee was under the bona-fide impression that the Revenue had received information pursuant to FT & TR reference and was not therefore eligible for aforementioned Amnesty Scheme and had even requested to be provided with information received, as can be gathered from the following extracts of reply dated 26.03.2018, filed during the course of assessment proceedings, which is reproduced hereunder:

> ………………………………..
>
> *Therefore, it is requested that the following details may kindly be supplied to me, to enable me to furnish further information/documents in this matter and to make it possible for me to respond to the Notice in a proper and complete manner:*
>
> *1) When was the information regarding the alleged interest in the foreign companies received by the Authorities and the source thereof.*
>
> *2) When were the documents pertaining to the alleged interest of the foreign companies, AAL and MOL along with their Bank accounts duly certified from such entities as well as the bankers received by the Authorities. The same should be provided to me*
>
> *3) When was the certified true copy of the forwarding letter from the competent authority of the country in which such entities were incorporated received by the Authorities;*
>
> *4) Certified true copies of the communication exchanged between the Authorities to establish the correctness and genuineness of me contents of the documents received, if any.*
>
> *5) When, how and in what manner did the so called documents on the basis of which the alleged interest of such foreign companies is attributed to me, come into the possession of the Income Tax Authorities and when the same were forwarded to the Ld. Assessing Officer.*

6) How was the authenticity of the contents of documents verified by the Indian Revenue Authorities? Copy of the verification report may kindly be provided.

7) A certified true copy of the verification report conducted by the Ld. AO to verify the genuineness and correctness of the above documents may also kindly be provided.

8) Whether the above documents were notarized or apostilled in accordance with the law. As you are aware, in the absence of the same, the documents cannot be relied upon. Your attention is invited to the judgment of the Hon'ble ITAT, Mumbai in the case of Hasan Ali Khan vs. DCIT, 2015-TIOL-2063-ITAT-MUM vide order dated 09.12.2015 as under:

> ....
>
> *The Clarifications on Tax Compliance for Undisclosed Foreign Income and Assets issued dated 06/07/2015, succinctly clarify in replies to questions 12 to 16 that person shall be debarred from making a declaration of an undisclosed foreign asset or income where the Central Government had received information in respect of such asset or income prior to the coming into force of the Act. This implies that information in possession of the Central Government prior to the coming into force of the Act has to be dealt as per the normal provisions of the Income Tax Act, 1961. Thus, all such cases where information was already available with the Central Government prior to coming into force of the Act. Therefore, as a corollary, any information with respect to undisclosed foreign income or asset, if it came to the possession of the Central Government prior to 01/07/2015, cannot be utilized either for relief through a voluntary declaration or for punitive action by framing an assessment under section 10(2) of the Act.*
>
> ...."

While the Revenue did not make available any of the aforesaid information requested or the source of such information, but it can be seen from the following relevant extracts of the assessment order at Para 3(c) that the Revenue had obtained information pursuant to FT & TR reference, which is reproduced hereunder for ready reference:

> *Further, the statement ofSh. DeepakJain and submission of Mr. Alhammadi are nothing but blatant lie. Reliance is placed on the reply to FT& TR reference that revealed the following facts:*

i) Company's books of accounts, records, resolution etc. are maintained at 6 Temasek Boulevard no.09-05, Sutac Tower four Singapore – 038986 not at U.A.E. office of Sh. Alhammudi.

ii) The company's Resolution provided in response to FT&TR by BVI revealed that companies were formed for investment purpose not for purpose of lighting business.

iii) Sh. Deepak Jain claimed that he was introduced to Mr. Alhammadi through one Mr. Amit Sharma. It was categorically asked to produce Sh. Amit Sharma videnote sheet entry dated 28.02.2019, but assessee Deepak Jain never produced Amit Sharma for examination.

iv) Sh. Deepak Jain has claimed that he has entered an MOU with Alhammadi to cater in the lighting business in UAE and Middle East, which was later on terminated. He was categorically asked vide note sheet entry dated 28.02.2018 to produce the MOU and termination document. In spite of ample opportunity he could not produce the copy of MOU and Termination documents.
................................"

In view of the above, it can be seen that the Revenue had obtained information relating to foreign entities pursuant to FT & TR reference, and if the information was not received pursuant to such reference, then the information would have, otherwise, become illegal to be acted upon.

In view of the above, the bar contained in section 71(d)(iii) was applicable upon the assessee, which brings the assessee outside the ambit of BMA and Revenue ought to have proceeded against assessee under the I.T. Act. In this connection, the view of the CBDT in replies to query no. 15 and 16 of Circular No 13 of 2015 reproduced supra is reiterated, which clearly opines that, in case of a situation covered by section 71(d), the Department ought to proceed under I.T. Act and not under BMA.

In view of the above, for the aforesaid additional reason, the impugned order and proceedings initiated under BMA deserves to be quashed for want of valid jurisdiction.

III. BMA not applicable to assets ceasing to exist before promulgation of BMA on 01.07.2015:

Further without prejudice to the above, it is the respectful submission of the assessee, that in facts of the present case, the foreign companies and bank account having ceased to exist in the year 2009/2010, much before the promulgation of the BMA on 1.7.2015, the said Act had no applicability on the assessee for the following reasons:

At the outset, attention is invited to Section 1(3) of the BMA which expressly mandates prospective applicability of the BMA to provide that "Save as otherwise provided in this Act, it shall come into force on the 1st day of July, 2015".

Further Section 2(11) of the Act defines the term "undisclosed foreign asset" to mean an asset located outside India held by the assessee in his name or in respect of which the assessee is the beneficial owner and the assessee offers no explanation about the source of investment in such asset. The use of the words "located", "is" and "held" in the said definition underscores the legislative intent that the provisions of the BMA apply only on assets held on commencement of the said Act as on 01.07.2015.

For the meaning of word 'is', reference can be made to the decision of the Hon'ble Supreme Court in the case of International Taxation 2(2)(2), New Delhi v. M/s Nestle SA. [Civil Appeal No. 1420 of 2023], where the Hon'ble Court interpreted the use of word 'is' as occurring in Clause IV(2) of the India-Netherlands DTAA. The relevant clause is reproduced as under:

....

> *If after the signature of this convention under any Convention or Agreement between India and a third State which is a member of the OECD, India should limit its taxation at source on dividends, interests, royalties, fees for technical services or payments for the use of equipment to a rate lower or a scope more restricted than the rate or scope provided for in this Convention on the said items of income, then as from the date on which the relevant Indian Convention or Agreement enters into force the same rate or scope as provided for in that Convention or Agreement on the said items of incomeshall also apply under this Convention.*

In regard the above, the question before the Hon'ble Court was, "Whether for beneficiary of the treaty to claim parity of tax rates with new DTAA entered by India with the third party, the

third-party at the time of entering into DTAA with India, should be a member of OECD". The Hon'ble Court, interpreted 'is' as occurring the aforesaid clause as denoting present signification. The relevant extract of the judgement is reproduced as under:

> ………………………………
>
> *48. The High Court had interpreted the term "is" occurring in the DTAAs [see Clause IV(2) of the India-Netherlands DTAA - the other two clauses in relation to France and Switzerland being similar], which according to it "describes a state of affairs than should exist not necessarily at the time when the subject DTAA was executed but when a request is made by the taxpayer or deductee for issuance of a lower rate withholding tax certificate u/s 197 of the Act. The word 'is'- is both autological and heterological. An autological word is one that expresses the property that it possesses. Opposite of that is a heterological word, i.e., it does not describe itself'. According to that interpretation of 'is, when the request for parity is made by a party seeking aid of the DTAA and Protocol containing a "same treatment" or in other words, a pull in clause, the court has to consider whether the "is a member" means the present tense, which is that the third party state should be a member of OECD when it enters into DTAA with India.*
>
> …………………….
>
> *51. From the above discussion, it is clear that the expression "is" has a present signification and it derives meaning from the context. Given this interpretation, the conclusion is that when a third party country enters into DTAA with India, it should be a member of OECD, for the earlier treaty beneficiary to claim parity."*

Reference is also made to the judgment of Hon'ble Supreme Court in the case of F.S. Gandhi vs. CWT: 184 ITR 34, wherein the word 'is' to be used in present case. Thus, in light of the above, triggering of sec. 2(11) of the Act is contingent upon an assessee currently holding the undisclosed foreign asset or being a beneficiary of the aforementioned asset, at least at the time of the promulgation of the BMA as on 1.7.2015.

Further section 3(1) of the Act seeks to charge tax on the undisclosed foreign income and assets of the relevant previous year starting on or after April 1,2016. The Proviso to the section, specifically addresses the taxation of undisclosed foreign assets,

allowing for their value to be taxed in the year in which such assets come to the notice of the Assessing Officer. Reference for the aforesaid interpretation of the Proviso can also be made to the "REPORT OF THE COMMITTEE CONSTITUTED BY CBDT TO IDENTIFY COMMON LEGAL ISSUES AND SUGGEST CONSISTENT POSITION OF THE GOVERNMENT ON BMA", whereby vide reply to Issue No. 4, it has been opined likewise. [Please refer Pg 43 of the Case Law Compilation -I], Thus, it is clear from the abovementioned provisions that ''undisclosed foreign asset", as defined in section 2(11) of the Act can only be brought to be tax, if the asset 'is' 'held' as on 1-7-2015, relevant to the Assessment Year 2016-17.

It is submitted, that the Revenue has deemed acquisition of the impugned assets in the AY 2018-19, by applying the provisions of section 72(c) of the Act, which deems date of acquisition of the foreign asset as the date when the notice is issued under section 10 of the BMA.

Reference in this regard is made to Chapter — VI of BMA. titled 'TAX COMPLIANCE FOR UNDISCLOSED FOREIGN INCOME AND ASSETS', which provided one time disclosure window from 01.07.2015 to 30.09.2015 for resident taxpayers to voluntarily declare any undisclosed assets located outside India. The said Chapter consists of provisions 59 to 72 of the Act. Section 59 of Chapter V of the Act allowed for the declaration of undisclosed foreign assets acquired from income chargeable under the Income Tax Act before the assessment year beginning on 01.04.2016. Sections 60 and 61 imposed tax and penalties on such disclosures. Importantly, Section 69 provided immunity to such individuals from assessment in Income Tax, Wealth Tax, and prosecution proceedings under prescribed Acts for such disclosures.

It is critical to note that section 71, specifically excludes the application of this Chapter as regards the person in the case of whom any information has been received by the competent authority under an agreement entered into by the Central Government under section 90 or section 90A of the Income-tax Act in respect of undisclosed asset, existing prior to the commencement of the Act. The relevant portion of the aforesaid section is reproduced hereunder for ready reference:

> ***71. Chapter not to apply to certain persons.- The provisions of this Chapter shall not apply –***

……………………..

In view of the above, it would be appreciated that the provisions of section 72(c), which deems acquisition of the assets in the year in which notice under section 10 is issued by the AO and therefore, triggering the applicability of BMA, on such asset, is limited to the assets which could have been disclosed under the aforementioned voluntary declaration scheme contained in Chapter-VI. If the assessee was prohibited from the declaration under the scheme by virtue of bar section contained in section 71 or no foreign asset located outside India, having been disposed much prior to promulgation of the Act and consequently, the benefit of declaration scheme not being available to such assessee, the deeming fiction containing any section 72(c) shall not be applicable.

In facts of the present case, the assessee was clearly outside the ambit of declaration scheme for twin reasons viz; (i) the asset having been ceased to exist in year 2009 / 2010 much prior to promulgation of BMA as on 01.07.2015 and therefore could not be said to be holding anyundisclosed asset located outside India" within the meaning of section 2(11) enabling it to make in declaration and pay tax thereon under section 59 of the BMA, and (ii) the assessee being clearly prohibited to avail the aforesaid benefit by virtue of bar contained in section 71(d)(iii) in the manner explained supra.

In view of the above, the provisions of section 72(c) were not applicable and therefore, by virtue of the clear prospective application of the BMA w.e.f. 01.07.2015 as per section 1(3) read with charging provision contained in section 3 w.e.f. A.Y. 2016-17, the said Act was not applicable upon the assessee, much less to bring to tax the foreign asset, being 1 / 1000 shares of the foreign companies, having been acquired and disposed between 2005 to 2010.

Further, it is submitted that Rule 3(1)(e), which provides that "value of an account with a bank shall be the sum of all the deposits made in the account with the bank since the date of opening of the account", seeks to tax deposits in foreign bank accounts, which are in the nature of income, as undisclosed foreign assets and thereby apply the provisions of the BMA retrospectively, supplants the main provision of the Act, which as shown supra

unequivocally provides that an undisclosed foreign asset shall be taxable under the provisions of BMA, if the same is 'held' as on promulgation of the Act i.e. AY 2016-17. Reference in this regard is placed on the following case laws, wherein Hon'ble Courts have held that rules cannot supplant the main provisions of the Act.

i) Commissioner of Income tax v. Taj Mahal Hotel [1971] 82 ITR 44(SC),

ii) St. Johns Teachers Training Institute vs Regional Director, National Council for Teacher Education and Ors., 2003 (3) SCC 321,

iii) Kerala State Electricity Board vs Thomas Joseph Alias Thomas M., Civil Appeal Nos. 9252-9253 of 2022, Supreme Court,

iv) Commissioner of Income tax, Chennia v. ChemplastSanmar Ltd.; [2009] 314 ITR 231 (Madras)

Further, it is submitted that barring Rule 3(1)(e) of the Black Money Rules which prescribes for valuation of bank account, when it comes to valuation of other category of assets referred to in other sub section of the said rule, the Fair Market value of such asset is defined to be market value as on date of valuation which is defined in Explanation 2 to Rule 3 of the Rules to be 1st April of the previous year. It is only with respect to Rule 3(1)(e) of the Act that thelegislature has prescribed a manifestly arbitrary methodof fixing the value asset being bank account by taking all credits in the bank account as its value. The bank account, it is submitted that even of it is valued, is to be valued based on bank balance as on particular date, akin to method of valuation prescribed for other assets.

By adopting the method of valuation by taking all credits in bank account without any cap on the date of credit or nature of credit, the receipts in the bank account are indirectly sought to be taxed in the guise of valuation of asset, which will extend beyond the substantive provision of Rule 3(1)(e) read with section 2(11) of the Act, which only brings to charge the value of the asset. As regards income, as pointed supra, the charge of tax is clearly prospective w.e.f. AY 2016-17.

It may be pertinent to point out, while the Ld. DR did not refer to any case laws on the controversy of the retrospective applicability or definition of undisclosed foreign asset contained in section 2(11), however, in all fairness it may be pertinent to refer to the following decisions, which may have some applicability on the present controversy, but are not applicable for the reasons mentioned herein below:

(i)Union of India vs Gautam Khaitan., [2020] 420 ITR 140 (SC)

The Black Money Act was originally stated to come into force on 1st April 2016, but this was preponed to 1st July 2015 via a "Removal of Difficulties" Order (Notification No. 56/2015). This was done to align the law's applicability with the one-time compliance window (under Section 59) for disclosing undisclosed foreign assets acquired before AY 2016-17 and taxed under Section 60, for which the date of declaration was fixed on 30.09.2015. This anti-dating was challenged in Hon'ble High Court of Delhi Gautam Khaitan v. Union of India., [2019] 415 ITR 99 (Delhi) on the ground that the CBDT could not change the commencement date fixed by Parliament without its approval. The Delhi High Court granted an interim stay, holding that powers under Sections 85 and 86 (for removing difficulties or making rules) could not be exercised before the Act came into force.

However, the Supreme Court in the case of Union of India, vs. Gautam Khaitan [2019][2020] 420 ITR 140 (SC), reversed the interim stay, upholding the validity of the Notification and the Removal of Difficulties Order, and remanded the matter back to the High Court for final adjudication, clarifying that the "observations made by us are only for the purposes ofexamining the correctness of the interim order passed by the High Court and the High Court would decide the writ petition uninfluenced by the same". It may be pertinent to note, that after the aforesaid set-aside the matter is still pending before the High Court, including on the issue of retrospective applicability of the BMA, implying that the decision of Supreme Court had not put quietus on the said issue.

The Hon'ble High Court of Karnataka in the case of Smt. Dhanashree Ravindra Pandit vs. Income Tax Department [2024]

466 ITR 1 (Karnataka) [07-06-2024], also had the occasion to deal with the decision of Supreme Court in the case of Gautam Khaitan (supra), while deciding the retrospective applicability of the provisions of section 50 and 51 of the BMA, which prescribes imprisonment for the offence of evading tax under BMA. In the said case, the Hon'ble Karnataka High Court has clearly observed that the said judgment of Hon'ble Supreme Court did not decide whether the provisions of the Act are retrospective or not, which is still pending. The relevant extract of the judgement of Hon'ble High Court of Karnataka is re-produced as under:

14. The Apex Court, after the Act coming into force, in the case of Union of India v. Gautam Khaitan [2019] 110 taxmann.com 272/[2020] 420 ITR 140/10 SCC 108 considering the tenor of the Act has held as follows:

15. It could therefore be seen that where no declaration in respect of the asset covered under the Black Money Act is made, such asset would be deemed to have been acquired or made in the year in which a notice under Section 10 is issued by the assessing officer and the provisions of the Act shall apply accordingly.

16. The offences in respect of which sanction has been granted are under Sections 50 and 51 of the Black Money Act, which read thus:

……………..

17. Section 50 provides that if any person, being a resident other than not ordinarily resident in India, who has furnished the return of income for any previous year under sub-section (1) or sub-section (4) or sub-section (5) of Section 139 of the Income Tax Act, willfully fails to furnish in such return any information relating to an asset (including financial interest in any entity) located outside India, held by a beneficial owner or otherwise or in which he was a beneficiary, at any time during such previous year, or disclose any income from a source outside India, he shall be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine.

18. The penalty of the offences under Section 51 is for wilful attempt in any manner whatsoever to evade the payment of any tax, penalty or interest chargeable orimposable under the Income Tax Act. The punishment provided under sub-section (1) is for rigorous imprisonment for a term which shad not be less than three years but which may extend to ten years and with fine. In respect to any other person not covered by sub-section (1) of Section 51, the punishment

provided is rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and shall, in the discretion of the court, also be liable to fine.

19. It could therefore be seen, that the scheme of the Black Money Act is to provide stringent measures for curbing the menace of black money. Various offences have been defined and stringent punishments have also been provided. However, the scheme of the Black Money Act also provided one time opportunity to make a declaration in respect of any undisclosed asset located outside India and acquired from income chargeable to tax under the Income Tax Act. Section 59 of the Black Money Act provided that such a declaration was to be made on or after the date of commencement of the Black Money Act, but on or before a date notified by the Central Government in the Official Gazette. The date so notified for making a declaration is 30-9-2015 whereas, the date for payment of tax and penalty was notified to be 31-122015. As such, an anomalous situation was arising if the date under sub-section (3) of Section 1 of the Black Money Act was to be retained as 1-4-2016, then the period for making a declaration would have been lapsed by 30-9-2015 and the date for payment of tax and penalty would have also been lapsed by 31-12-2015. However, in view of the date originally prescribed by sub-section (3) of Section 1 of the Black Money Act, such a declaration could have been made only after 1-4-2016. Therefore, in order to give the benefit to the assessee(s) and to remove the anomalies the date 1-7-2015 has been substituted in sub-section (3) of Section 1 of the Black Money Act, in place of 1-4-2016. This is done, so as to enable the assessee desiring to take benefit of Section 59 of the Black Money Act. By doing so, the assessees, who desired to take the'benefit of one time opportunity, could have made declaration prior to 30.9.2015 and paid the tax and penalty prior to 31.12.2015.

20. It would further be relevant to note that sub-section (3) of Section 1 of the Black Money Act, itself provides that save as otherwise provided in this Act, it shall come into force on 1st day of July, 2015. A conjoint reading of the various provisions would reveal that the assessing officer can charge the taxes only from the assessment year commencing on or after 1-4-2016. However, the value of the said asset has to be as per its valuation in the previous year. As such, even if there was no change of date in sub section (3) of Section 1 of the Black Money Act, the value of the asset was to be determined as per its valuation in the previous year. The date has been changed only for the purpose of enabling the assessee(s) to take benefit of Section 59 of the Black Money Act. The power has been exercised only in order to remove difficulties. The penal provisions under Sections 50 and 51 of the Black Money Act would come into play only when an assessee has failed to take benefit of Section 59 and neither disclosed assets covered by the Black Money Act nor paid the tax and penalty thereon. As such, we find that the

High Court was not right in holding that, by the notification/order impugned before it, the penal provisions were made retrospectively applicable."

<u>The crux of the case before the Apex Court or the finding as could be gathered from parasraph-20 supra is that an assessee if he fails to take benefit of Section 59 and it remains a fact that the assets are not disclosed, penal provisions under Sections 50 and 51 of the Act</u> *would kick in. A reading of the afore-quoted judgment of the Apex Court would make it clear that the question of retrospective applicability of Sections 50 and 51 qua Article 20 of the Constitution of India was not even an issue in the case before theApex Court, though the Apex Court interprets all the sections that are quotedhereinabove including Section 72(c). Therefore, the said judgment would not become completely applicable to the issue brought up before the Court in the subject list.*

....

(ii) <u>Rakesh Manohar Bhansali v. ACIT : 193 ITD 141 (Mum.)</u>

It is respectfully submitted that the aforesaid decision ought not to be relied upon, since the said decision has been rendered, without considering the interplay of section 72(d) with Chapter-VI and section 71 of BMA, which in the submission of the assessee supra, renders section 72(d) to be otiose/ inapplicable, where the assets could not have been declared under the amnesty scheme of Chapter VI. The said decision having not considered the aforesaid legal proposition, ought not to be relied upon and the Hon'ble Tribunal can always deviate from the said decision having regard to the settled legal position as per the following case-laws:

a. Raja Bahadur Vishveshwara Singh v. CIT: 41 ITR 685 (SC),

b. Dwarka Das KesardeoMorarka v. CIT : 44 ITR 529 (SC),

c. H. A. Shah And Company v. CIT: 30 ITR 618 (Bom.),

d. Jhaverbhai Patel y. CIT : 103 ITR 728 (Pat), Ambika Prasad Sonar v. CIT: 168 ITR 444 (All.);

e. CIT v. Mohanlal Ranchhodas: 203 ITR 304 (Guj.); CIT v. Kalpetta Estates Ltd.: 211 ITR 635 (Ker.);

f. Napar Drugs (P) Ltd. v. DCIT: 98 ITD 285 (TM)]

Reliance, in this regard, is also placed on the following case laws, wherein the Hon'ble Courts have held that where the decision of the coordinate bench is per-incuriam i.e in ignorance of law, the same may be deviated.

g. Hyder Consulting (UK) Limited vs Governor, State of Orissa., (2015) 2 SCC 189

h. State of UP &Anr. vs Synthetic and Chemical Limited., (1991) 4 SCC 139

i. Shiv Kumar &Anr. vs UOI., (2019) 10 SCC 229

Further, the aforesaid decision was rendered prior to the recent decision of Hon'ble Supreme Court in the case of Nestle (supra) where the interpretation given to the word "is" aligns with interpretation of the said word for the purposes of definition of undisclosed foreign asset located outside India contained in section 2(ii), the benefit of which was not available to the Mumbai Tribunal in the aforementioned decision.

In view of the above, it is submitted that, the assessing officer erred in making the impugned addition by initiating proceedings under section 10 of BMA. vs hieh deserves to be quashed.

B. <u>Merits</u>:

I.<u>Company is distinct from the shareholders</u>

It is relevant to note that a BVI company is a legal personality, separate and distinct from its members. The assets of the company belong solely to the company and not to the members of the company. Kind attention in this regard is invited to the landmark ruling of the Hon'ble Supreme Court in the case of Bacha F. Guzdar vs. CIT 27 ITR 1 (SC), holding that a shareholder, on investing money in the purchase of shares, gets no interest in the property of the company though he has only a right to participate in the profits as and when the company decides to do so. The Hon'ble apex Court observed as under:

> *"It was argued by Mr. Kolah on the strength of an observation made by Lord Anderson in Commissioners of Inland Revenue v. Forrest, that an investor buys in the 48 first place a share of the assets of the industrial concern proportionate to the number of shares he has purchased and also buys the right to participate in any profits which the company may make in the future. That a shareholder acquires a right to participate in the profits of the company may be readily conceded but it is not possible to accept the contention that the shareholder acquires any interest in the assets of the company. The use of the word 'assets' in the passage quoted above cannot be exploited to warrant the inference that a shareholder, on investing money in the purchase of shares, becomes entitled to the assets of the company and has any share in the property of the company. A shareholder has got no interest in the property of the company though he has undoubtedly a right to participate in the profits if and when the company decides to divide them. The interest of a shareholder visa-vis the company was explained in the Sholapur Mills case. That judgment negatives the position taken up on behalf of the appellant that a shareholder has got a right in the property of the company. It is true that the shareholders of the company have the sole determining voice in administering the affairs of the company and are entitled, as provided by the Articles of Association to declare that dividends should be distributed out of the profits of the company to the shareholders but the interest of the shareholder either individually or collectively does not amount to more than a right to participate in the profits of the company. The company is a juristic person and is distinct from the shareholders. It is the company which owns the property and not the shareholders.''*

In view of the above, credits in bank account of foreign company cannot be automatically deemed as undisclosed foreign income / assets of the assessee-shareholder (that, too, of 1 out of 1000 shares by piercing the corporate veil of such company. Attention, in this regard, is invited to Rule 3(1)(c), of the Valuation Rules, 2015 prescribed for valuation of foreign assets under BMA which specifically provides method of valuation of foreign asset being shares in a foreign company. Thus, the law also recognizes distinct entity of shareholders and the company and in case of foreign asset being company, it is only the value of shares, at best, that can be added in the hands of assessee in India and not the credits in bank account of such company, be deemed as income of the assessee.

Reference in this regard may also be made to the following:

(a) The Delhi High Court in the judgment dated 24.09.2014 in Crl. A. No.630/2008 (Rakesh Jain vs. Union of India) held that "where contravention is by a company, liability cannot be fastened on its Directors if the company itself is not proceeded against."

(b) The Hon'ble Supreme Court in the matter of Aneeta Hada vs. Godfather Travels & Ltd. (2012) 5 SCC 661 held that "in the context of section 141 of Negotiable Instruments Act, 1881, the absence of making the company, which issued the dishonored cheque, an accused, vicarious liability cannot be fastened on the directors of the company".

Reliance in particular is also placed on the judgement of ITAT Jaipur in the case of Krishna Das Agarwal v. DDIT/ADIT(Inv.), [2023] 150 taxmann.com 290 (Jaipur - Trib.), wherein the Hon'ble Tribunal in the context of additions made under BMA held that, the additions in the bank account of a company cannot be made in the hands of individual shareholder, the company being a separate entity in the eyes of law form the shareholder. The relevant extract of the judgement is reproduced as under:

"……………………….

38.1 The ld. AR of the assessee further relying on the definition given in the Income-tax Act, 1961 and for all purposes of the assessment, a company is treated to be a separate 'person' within the meaning of section 2(31) read with 2(17) of the Income-tax Act. In the case of assessee, company invested its own money and resources in the UAE to earn dividends, interest, gains, which cannot be taxed in the hands of the assessee in am manner. The taxability thereof in the hands of the assessee is not in consonance with the Black Money (Undisclosed Foreign Income and Asset) & Imposition of Tax Act. 2015. More so when, there is no iota of evidence that any funds belonged to and/or pertained to the assessee in his individual capacity. Nor is there any evidence to show that any income of the assessee was taken abroad, or earned in his individual nameand was omitted to be taxed in India. Therefore the taxability of any amount in the hands of the assessee will be unconstitutional as without bringing any evidence so as to prove that the assessee has directly, or indirectly, earned any income. In the search, revenue has not found any material in digital or in a seized material which suggest that there is an income accrued or arise to the assessee in his individual capacity. He also

submitted that the comparison in the present case, is that of a non-resident foreign company and not an Indian company. The said vital fact has been accepted and never been disputed by the Ld. AO in the Assessment Order dated 31-3-2021 and/or in the Remand Report dated 13-7-2022. He has further submitted that the Place of Effective Management (POEM) of the said foreign company is also situated outside India because of which, the company is a non-resident in India within the meaning ofsection 6 of the income tax act and none of the assets were liable to be taxed in India [Reliance was made to the CBDT circular dated 23-2-2017 bearing Circular No. 08/2017], Based on these clarifications by Board that in no view of the manner can taxability arise in the present case even on POEM and that the entire edifice of the case is wholly unjust and illegal.

38.4 Even as per the Income-tax Act, 1961 and for all purposes of the assessment, a company is treated to be a separate 'person' within the meaning of section 2(31) read with 2(17) of the Income-tax Act. In the present case, Company invested its own money and resources in the UAE to earn dividends, interest, gains, which cannot be taxed in the hands of the Appellant in any manner. The taxability thereof in the hands of the Appellant is not in consonance with the Black Money (Undisclosed Foreign Income and Asset) & Imposition of Tax Act, 2015. More so when, there is no iota of evidence that any funds belonged to and/or pertained to the Appellant in his individual capacity found during the search except the statement of the assessee. Nor is there any evidence to show that any income of the Appellant was taken abroad and was omitted to be taxed in India. Therefore, the taxability of any amount in the hands of the Appellant will be unconstitutional and hence illegal.

38.6 Without prejudice to the above, the comparison in the present case is that of a non-resident foreign company and not an Indian company. The said vital fact has been accepted and never been disputed by the Ld. AO in the Assessment Order dated 31.3.2021 and/or in the Remand Report dated 13-7-2022.

38.7 We further note that the place of Effective Management of the said foreign company M/s. Agrasen Polymers FZE is also situated outside India because of which, the company is a non-resident in India within the meaning of section 6 of the income tax act and none of the assets were liable to be taxed in India. Reference has been made to the CBDT circular dated 23-2-2017 bearing Circular No. 08/2017. Therefore, in no view of the manner taxability arise in the present case proving that the entire edifice of the case is wholly unjust and illegal.

38.8 Therefore, considering the facts and circumstances discussed above and various evidences produced by the assessee and respectfully following the case laws cited by the assessee, we are of the view that the non-resident foreign company M/s. Agrasen Polymers FZE based at UAE is a separate legal entity and all the funds/investments etc. belong to the company and no tax liability can be fastened on the assessee. Thus we allow this ground No. 9 of the assessee.

…………………………."

Having regard to the aforesaid settled legal position, the purported transactions of the BVI entity, in no case could be considered/ taxed in the hands of the appellant.

Simply put, looked at from any angle, the only conclusion that follows in the present case is that the so-called transactions of the BVI entity foreign company have no relevance for the purpose of taxation under the provisions of the BMA and in any case, the said transactions have no relevance, for the purpose of taxation in the hands of the appellant.

Thus, on the aforesaid basis as well, the transactions in the Bank account of the companies could not be deemed as belonging to the appellant and the appellant be deemed as beneficial owner thereof.

For the aforesaid cumulative reasons, it is the submission of the appellant that the impugned addition made in the assessment order is illegal and, therefore, deserves to be deleted.

II.Further without Prejudice, no addition even for one share, as assessee is not beneficial owner of shares, having not made any investment to acquire the same.

Without prejudice to the above multiple jurisdictional issues arising in the present matter, it is submitted that, no addition even otherwise of entire credits in bank account of foreign banks could have been made in the hands of assessee herein, since there is contemporaneous evidence brought on record by the assessee as also corroborated with material found even in the course of search conducted under section 132, which is deemed to be true and correct by virtue of the fiction contained in section 132(4A) of the I.T. Act, that the - (i) the assessee was only the shareholder of 1 out of 1000 shares of the foreign companies,

which is not even disputed by the AO; (ii) the assessee did not even make any investment of funds to acquire one share, which was acquired as a nominee shareholder for which payment, if any, was made by the other shareholder / JV Partner in the foreign company viz. Mr. Alahammadi.

The list of such evidences which have been elaborately detailed by the CIT(A) at Page No.64 to 74 / Para 17 to 23 of CIT(A) Order are summarized hereinbelow:

(i) Affidavit dated 08.02.2016, of Mr. Alahammadi, even found during search, duly verified and endorsed by his lawyers viz. Mr. ShaikinAhmed. /Advocate and Legal Consultants;

(ii) Letter dated 17.05.2016, from Mr. Alahammadi confirming his investments in the foreign companies and acquisition of assets and liabilities of the companies at the time of closure;

Company's books of accounts, records, resolutions etc. were maintained at 6 Temasek Boulevard no. 09-05, Sutae Tower four Singapore-038986, not UAE office of Mr. Alhammadi;	*That as shown from the affidavit of Mr.Alhammadi, thebooks of accounts of the assessee were not maintained by the appellant but Mr. Alhammadi. The appellant isnot aware about the whereabouts of the books of account and the reason for maintenance of same at Singapore. In any case, the address as mentioned by the Ld. AO at Singapore does not, undisputedly, belong to the appellant. That apart, the appellant was never confronted with any document which shows that the books of accounts were maintained at such address as claimed by the Ld. AO.*
The company's resolution provided in response to the FT&TR by BVI revealed that companies were formed for investment purpose not for purpose of lighting business	*That Mr. Alhammadi had clearly stated in his affidavit that it was mutually agreed that Mr. Alhammadi may also do business other than lighting such as investment in securities*

	in which the appellant will have no interest. It was in this regard the company's resolution may reveal that companies were formed for investment purposes. It is pertinent to mention here that the appellant has not been confronted with any of the said resolution and hence no reliance can be placed by Assessing Officer on same, nor the appellant can provide any definite answers there against.
Sh. Deepak Jain claimed that he was introduced to Mr.Alhammadi through one Mr. Amit Sharma. It was categorically asked to produce Sh. Amit Sharma vide note sheet dated 28.02.2019, but assessee never produced Amit Sharma for examination.	*That Mr. Amit Sharma was a business partner of Mr.Alhammadi. As of today, the appellant is not associated with Mr. Amit Sharma in any capacity and is not aware about the whereabouts of Mr. Amit Sharma. The existence of Mr. Amit Sharma has been confirmed by Mr. Alhammadi in his Affidavit as well as his letter dated 17.05.2016.* *In any case, the existence of Mr.Amit Sharma is irrelevant for the issue at hand. The entire facts are to be corroborated with existence of Mr. Alhammadi, for which the appellant has produced contemporaneous evidences, including his Affidavit and Passport details.* *The Ld. Assessing Officer is seeking to draw adverse inference from absence of Mr. Amit Sharma, which is irrelevant and ignoring other evidence supporting stated facts.*
Sh. Deepak Jain had claimed that he entered an MOU with Alhammadi to enter into	*The appellant did not have the copy of MOU at the time of assessment, since the same was*

lighting business in UAE and Middle east, which was later on terminated. He was categorically asked vide note sheet entry dated 28.02.2018 to produce the MOU and termination document. In spite of ample opportunity, he could not produce the copy of MOU and termination documents.	*terminated much earlier, and the original of the same was in possession of Mr.Alhammadi. Considering that the terms and conditions of the MOU have been stated by appellant on oath and also confirmed by Mr. Alhammadi in his affidavit, the submission or non submission of MOU matters little for the purposes of adjudication of the present matter. Thus, non production of MOU is irrelevant and the Ld.AO is drawing adverse inference for want of its production, on surmises and conjectures.*
The appellant failed to explain source of funds	*The appellant has clearly discharged burden of proving source of funds as emanating from Alhammadi, which is corroborated through his confirmation/sworn affidavit.* *Considering that, the appellant was only nominal shareholder, holding one out of 1000 shares, the appellant cannot be placed with more heavy burden of proving source of source. The rejection of the appellant's explanation is based on mere whims and surmises of the Ld. AO, which needs to be ignored.*
Foreign Companies were incorporated in BVI and UAE was nowhere in picture.	*It is true that companies were incorporated in BVI, however, control and management through appointment of Mr. Alhammadi as substantial shareholder and Director, vested in UAE. The BVI laws permitted incorporation of companies by foreign nationals, which cannot be viewed adversely when permitted by those laws.*
The appellant has not	*The appellant has cried hoarse*

justified commercial expediency behind the proposed venture.	*on several occasions explaining the commercial expediency behind entering into joint venture/MOU with Mr. Ahlammadi, which has been vindicated by him through sworn Affidavit and several letters and communications exchanged between appellant and Mr. Alhammadi. Once, the Appellant has explained the commercial expediency, it is not in the mouth of the Ld.AO to question the prudence behind such decision. The law in this regard is well settled and necessary reference can be made to the decision of Supreme Court in the case of S.A. Builders: 288 ITR 1.*
	In view of the above, it is the submission of the appellant, that the Ld. AO has made various allegations and/or drew adverse inferences merely on surmises and conjectures, dehors any incriminating material/information in his possession or received from any other recognized body, suggesting that the appellant was beneficial owner of funds credited in bank accounts of foreign companies, more so when the nominal shareholding of the appellant, viz., one out of 1000 shares was accepted and not disputed by the Ld. AO.

Further, reliance is placed on the order of CIT(A), wherein after considering the assessment order, assessee's submissions and assessee's rebuttal to allegations of the AO at Paras 28 of the CIT(A) order, the CIT(A) duly appreciated the facts, that the

appellant could not be considered as owner/beneficial owner of entire credits in the bank accounts of foreign companies and deleted the addition by restricting it to the value of the entire credits in the ratio of 1/1000, being the proportionate shareholding of the assesses, observing as under:

> *"33. It is the contention of the appellant, mainly through 8 sub-grounds of Ground No.6, that he did not make any direct investment in the aforesaid companies including acquiring beneficial shareholdings therein, which according to him was completely made by UAE resident viz. Mr. Ibrahim Abdullah Alhammadi, a citizen and resident of UAE who held Passport No.FY8447511 issued by Government of UAE, which is disputed by the AO for want of complete evidence supporting the said submission of the appellant. The appellant seeks to support his submissions through various independent evidences, which were received from Mr. Alhammadi at request of the appellant and had already been filed prior to the date of search before the investigation wing. It remains uncontroverted that during the course of search, the documents which had already been filed along with other documents and evidences corroborating the version of the appellant were found and seized. In fact, the statements recorded prior to the date of search under section 131 of the Act by the Investigation Wing as well as during the course of search u/s 132(4) of the Act, categorically established the version of the appellant that the aforesaid foreigncompanies were incorporated and owned by Mr. Alhammadi. The followingfacts and evidences were filed by the appellant before the Investigation Wing prior to the date of search which in addition to other documents/evidences were also found and seized during the course of search, the summary whereof is as follows:*
>
> *(i) Letter dated 17.05.2016 written by Mr. Alhammadi to the appellant; which was*

furnished by the appellant to Department vide letter dated 19.05.2016 and was also found during the course of Search along with the evidence at courier receipt originating from UAE to the address of appellant in India.

(ii) Affidavit dated 08.12,2016 of Mr. Alhammadi, which apart from carrying his signature, was also verified and endorsed by UAE Lawyers viz. Shailcha Ahmed, Advocates and Legal Consultants. (Filed prior to the date of search as well as found and seized during the course of search)

(iii) Certificate of incumbency issued by Dubai Independent Consultant Firm, viz., Business Management World confirming details of shareholding / Directorship held by various person in the aforesaid company including time to time movement therein, which clearly established that the appellant only held 1 share out of 1000 equity shares of both of the said foreign companies. (Filed prior to the date of search as well as found and seized during the course of search)

(iv) The Balance-Sheet of M/s. Meadow Offshore Limited for calendar year 2010-11 as also of M/s. Alabama Assets Limited for calendar year 2009-10, which were found from the appellant's premises only during the Search and are listed at Annexure A-1, Pages 17 — 18 of the PB, also reflected the following information:

- *The appellant only held 1 (one) out of 1000 shares each in both the companies, with remaining 999 shares in each company being held by Mr. Alhammadi;*

- *The assets held by the companies were specifically earmarked as belonging to Mr. ALhammadi; likewise liabilities were also specifically earmarked belonging to Mr. Alhammadi;*
- *There were no assets or liabilities earmarked to the appellant. The appellant*

only had bank balance by way of his bank accounts in his personal name opened as Imprest Account, which had some opening balances, which also reduced to nil as on the closing date of the balance sheet of aforesaid companies i.e. on 2011 for Meadow Offshore Ltd. and 2010 for Alabama Assets Ltd.

34. *The list of various crucial evidences, which were although filed by the appellant but were also found from the appellant premises during the course of search under section 132 of the Act, are as under:*

Annexure No.	***Page No.***	***Description***
A-1	*2 to 12*	*Affidavit of Mr. Alhammadi: The said pages are Affidavit of Mr. Alhammadi clarifying that both the impugned companies were managed by him.*
A-1	*13*	*This page contains letter dated May 7, 2016 written by Mr. Deepak Jain to Mr. Alhammadi wherein certain documents and information like copies of audited financials and bank statements etc. was requested by Mr. Deepak Jain in respect of AAL and MOL as desired by the Investigation wing of the Income Tax Department.*
A-1	*17*	*This page contain copy of financial statement of Meadows Offshore Limited for the calendar year 2011.*
A-1	*18*	*This page contains copy of financial statement of AAL for the calendar year 2010*
A-1	*19*	*This page contains letter dated 17.05.2016 written by Mr. Alhammadi to Mr. Deepak Jain stating his inability to provide further information regarding the two*
A-1	*20 to 23*	*These pages contains Certificate of Incumbency issued by Dubai based independent consultant firm M/s Business*

		Management World, Chartered Accountants, wherein details of shareholding / directorship of the impugnedcompany were provided.
A-1	*24 To 25*	*These pages contains letter dated 17.05.2016 written by Mr. Alhammadi in the favour of Mr. Deepak Jain enclosing the details required by Income Tax Wing, Faridabad in respect of two companies AAL and MOL*

35. *The said facts were even sworn on affidavit by Mr. Alhammadi and were also stated on oath by the appellant at the time of his statement under section132(4) of the Act.*

36. *In view of the aforesaid contemporaneous documents, the undisputed facts, which remain uncontroverted by the AO through any cogent material/evidence, are that two foreign companies viz. M/s. Alabama Assets Ltd and M/s. Meadow Offshore Ltd were incorporated in BVI in collaboration with a foreign/non-resident citizen of UAE i.e. Mr. Ibrahim Abdullah Alhammadi. The majority of shareholding in the said both companies aggregating to 999 out of 1000 shares belong to him and the appellant held 1 out of 1000 shares only in each company. The appellant, being a meagre shareholder, had no control or link with the source of investment in the foreign companies or utilization of fund, to be called beneficiary thereof.*

37. *In view of the aforesaid contemporaneous documents, the undisputed facts, which remain uncontroverted by the AO through any cogent material/evidence, are that two foreign companies viz. M/s. Alabama Assets Ltd and M/s. Meadow Offshore Ltd were incorporated in BVI in collaboration with a foreign/non-resident citizen of UAE i.e. Mr. Ibrahim Abdullah Alhammadi. The majority of shareholding in the said both companies aggregating to 999 out of 1000 shares belong to him and the appellant held 1 out of 1000 shares only in each company. The appellant, being a meagre shareholder, had no control or link with the source of investment in the foreign*

companies or utilization of fund, to be called beneficiary thereof.

38. *The Statute through section 132(4A) of the Act draws presumption regarding truthfulness of the document found in the course of search as also to statements recorded on oath at the time of search under section 132(4) of the Act. Thus, veracity of such documents cannot be ignored unless contrary evidence is available on record. The allegations made by $t_i$ll AO in the impugned order, which were duly rebutted by the appellant were unfounded and without basis dehors any contrary evidences on record. Once the appellant had discharged the burden placed on him for old transaction, through best possible documents available with him and even corroborated with documents found in search, the AO could not have disregarded the same by raising doubts and suspicion, not backed by any evidence, even after seeking information through foreign references.*

39. *The existence and truthfulness of the aforesaid various contemporaneous documents filed by the appellant cannot be disputed, more so when substantial documents were even found from the appellant premises during the course of Search under section 132 of the Act. Section 132(4A) of the Act in unequivocal terms raises an irrebuttable presumption that contents of documents found at the time of Search are true and correct. The following various decisions relied upon by the appellant support the aforesaid proposition:*
    - *CIT vs. Indeo Airways (P) Ltd. [2012126 taxmann.com 244 (Delhi)*
    - *CIT v. P.D. Abraham Alias Appachan [349 ITR 442] (Ker.)*
    - *Biren V. Savia v. ACIT (2006) 100 TTJ 1006 (Mum.)*
    - *Navjivan Oil Mills v. CIT (2001) 252 ITR 41 7 (Guj)*
    - *Glass Lines Equipment Co. Ltd. v. CIT (2002) 253 ITR 454 (Guj)*
    - *Chancier Mohan Mehta v. ACIT (Inv.) (1999) 71 ITD 245 (Pune)*

40. *Thus, the appellant cannot be said to be beneficial owner of the entire deposits in bank account of foreign companies, moreso when the source of deposits has been admitted to be*

related to a foreign citizen i.e. Mr. Alhammadi and the appellant only held but 1 out of 1000 shares of said company.

41. Insofar as two personal bank accounts opened in the name of appellant, the appellant has explained before the lower authorities at different stages, that the said accounts were lmprest accounts, opened on behalf of foreign companies, in order to meet expenses relating to activities of said companies. The said accounts were even reflected as assets of the said Companies in the aforementioned Balance Sheets, found and seized in the course of search under section 132 of the Act. The reply filed by the appellant in this regard is reproduced hereinabovc. The sources of deposits in said bank accounts and utilization thereof for activities of foreign companies has also been accepted by the AO inasmuch as no adverse inference or addition to that effect was made in the impugned order. Further, in any case, when the source of deposits in said bank account(s) has been attributed from two foreign companies, source of which is addressed primarily to foreign party, the source of deposits in the bank account stands explained which brings them outside the purview of section 2(11) read with section 3 of BMA, which precisely has been accepted by the AO. Furthermore, since the said bank accounts were closed prior to AY 2012-13 (on 13.5.2010 :DBS Singapore) and (on 21.3:2[1]011: Emirates, NBD), there was no obligation on the part of the appellant to disclose the same in his return of income as well, since the requirement of disclosure came for the first time from AY 2012-13.

42. However, the facts remain that the appellant was beneficial owner of 1 out of 1000 shares of the foreign companies and the appellant was not able to conclusively establish the source of investment for acquiring that 1 share.

43. In such circumstances, the addition of foreign undisclosed assets / or income should have been restricted to proportionate amount of beneficial shareholding held by the appellant in both foreign companies, which is 1 by 1000 shares.

44. Accordingly, the addition made by the assessing officer for aggregate amount of Rs.31,48,55,300/- is restricted to 1 by 1000, which is the percentage of deemed beneficial shareholding of the appellant and therefore, the addition is

*restricted to deemed value of Rs.3,14,855/- only, and the balance amount of Rs.31,45,40,437/- is hereby **deleted.**"*

In view of the aforesaid categorical finding of facts by the CIT(A), which even remain uncontroverted by the Revenue including in the present proceedings before the ITAT, it is submitted that the assessee could not be considered as owner/beneficial owner of the amounts credited in the bank account of foreign companies.

While the CIT(A) has restricted the addition to Rs.3,14,855/-, being 1/1000 of the total value of credits in the bank account being Rs.31,48,55,300/-, the assessee has disputed the said addition through Grounds no. 7 to 11 of its appeal, on the ground that, (i) when the contemporaneous evidences available on record clearly demonstrated that no part of investment was made by the assessee in acquiring even one share of the foreign company, the assessee could not have been considered as 'beneficial owner' of the said share leave alone credits in the bank account of foreign companies within the meaning of section 2(11) of the BMA; (ii) without prejudice to the above, the addition, if any, should have been made not on the basis of proportionate value of credits in bank account of foreign companies, but as per the value of shares of the company of the previous year in which notice under section 10 was issued (as per Proviso to section 3(1) of BMA) which would be nil, having regard to the fact that the shares and the companies ceased to exist in that year.

Reliance is placed on the following decisions of the Tribunal wherein it has been held that, having regard to the definition of 'beneficial owner' contained in Explanation 4 to section 139(1) of the Act read with section 2(11) and 2(15) of the BMA, unless there is a direct investment by an assessee in acquiring a foreign asset, the assessee cannot be considered as 'beneficial owner' of such asset:

a. ACIT, Range 70, New Delhi v. Jatinder Mehra., [2021] 190 ITD 611 (Delhi - Trib.)

"...
*21. Now coming to the appeal of the ld AO, facts of the bank account shows that The Bank Account A/c No. 806694 maintained in the "Clariden Leu Ltd. Bank" (Presently Credit Suisse) is in the name of the foreign company 'Watergate Advisors Ltd.' (WAL), whose sole shareholder and director is the son of the Assessee, Shri Rajneesh Mehra, who has been stated to be a non resident since 1998. **The Bank Account Opening Form enclosed at pages 174-191 of the paper***

book, reveals at page 176 that the account stood in the sole name of the Company "Watergate Advisors Limited." Assessee has submitted a certificate of incumbency dated 12/03/2018 issued by the registered agent of WAL which was also submitted before the A.O., shows that the company WAL was incorporated in BVI on 18/03/2011 and that Shri Rajneesh Mehra was the sole shareholder and director of the said Company. *Thus according to this certificate the ownership of the account rests exclusively with Shri Rajneesh Mehra as in case of liquidation or winding up of a company, all its assets and liabilities are distributed amongst its shareholders only However, it is also stated by the assessee that Shri Rajneesh Mehra being the sole owner of the bank account, out of love and respect, mentioned the name of the Assessee, Jatinder Mehra, as the "Beneficial Owner" at column 4.3 of the Form, which is placed at page 183 of the paper book.*

…..

24…The third condition that now required to be tested is whether the assessee is the beneficial owner in respect of such asset. The term "beneficial owner" is not defined under the black money act. However, the income tax act defines this term with respect to the requirement of the filing of the return of income u/s 139 of the income tax act.

25. However, as the entity involved where the money is found credited, it needs to be examined whether the assessee has 'beneficial ownership' on these companies/entities. ***As stated earlier The Black Money Act 2015 does not define the term 'beneficial ownership' and The Income-tax Act 1961 explanation 4 to Section 139 (1) defines the same. However, it is not necessary that to examine the provisions of The Black Money Act only the definition provided Under the Income-tax Act is required to be seen. According to provisions of Section 84 of The Black Money Act, only certain provisions of The Income-tax Act are made applicable to the black money act. This Section does not include the provisions of Section 139 (1) of The Income-tax Act. Therefore, the beneficial ownership is required to be understood with respect to its dictionary meaning and also other provisions of other statute also keeping in mind the nature of the object and purposes of the Black Money Act.***

26. In Black's law dictionary the beneficial ownership is defined as 'one recognized in equity as the owner of something because use and title belonged to that person,

even though legal title may belong to someone else, esp one for whom property is held in trust.'
27. Similarly the Webster's dictionary also defines beneficial owner as one who is entitled to receive the income of an "estate without its title, custody or control."
28. The beneficial ownership concept is also dealt with extensively in the corporate laws such as The Companies Act and various circulars issued by SEBI. The Companies ' Act 2013 prescribes maintenance of a register of beneficial ownership. Section 90(1) of The Companies Act 2013 states that
.....
34. Considering the definition of beneficial owner read with benami transaction, the primary conditions for a person to be considered as a beneficial owner under the Benami Act, may be summarized as under:

(a) Could cover 'any person'
(b) The consideration has been provided by such person other than the person holding/owning the property and such other person also hold the property.
(c) Property of any kind
.....
39. Testing the transactions before us it is apparent that assessee does not own any share capital in case of Watergate advisors Limited as well as it also does not controls the above company as he does not have any shareholding or management rights in that company.
40. With respect to the mention of the name of the assessee in the account opening form as beneficial owner, assessee has relied upon the decision of the coordinate bench in case of Kamal Galani case (supra) wherein in para number 13 onwards the coordinate bench has held that merely mentioning the name of the assessee in the account opening form which is rebutted by the assessee by filing an affidavit and complete details of the ownership of the bank account, the assessee cannot be held the beneficial owner of such sum. Therefore, such solitary fact cannot lead to addition in the hence of the assessee where there is no other evidence available with respect to the ownership or beneficial ownership over such bank account. In view of this it is apparent that the mere account opening form where the assessee is mentioned as the beneficial owner of the account mentioning is details of his passport as an identification document, does not necessarily, in absence of any other corroborative evidence of the beneficial ownership of the

assessee over that for an asset cannot lead to taxability in the hands of the assessee Under the Black Money Act.
41. In view of above facts, we hold that assessee does not have beneficial ownership of the amount deposited in Watergate advisors Limited, assessee also do not held that asset. The learned CIT - A has also held so giving the detailed reasons as reproduced above. ***The learned departmental representative could not show us any evidence that assessee is the owner or beneficial owner of the sum lying in the bank account of Watergate advisors Limited. The assessee has given an overwhelming evidence of the fact that money belong to the son of the assessee which were not at all controverted by the learned assessing officer. In view of this we hold that the learned CIT - A is correct in deleting the addition of Rs. 56,647,000/- in the hands of the assessee. Accordingly, we confirm the order of the learned CIT appeal and all the 4 grounds stated in the appeal of the learned assessing officer are dismissed.***
….”

b. Narayanaswamy Ramamoorthy v. DDIT (Investigation)., [2024] 113 ITR(T) 18 (Chennai - Trib.)

"…

We do not find any merits in the findings of the Assessing Officer for the simply reasons that, except CRS information, the Assessing Officer does not have any other evidence to allege that the assessee has made contribution to the above trusts. *The Assessing Officer neither having the bank statement of the assessee to allege that the assessee has made outward remittance of funds, nor proved that the assessee is deriving any income from above trusts outside India. Although, initial contribution of 3,500 GBP towards corpus of the trust was shown to have paid by the assessee as a Settlor, but the assessee has proved that even said contribution was made by his son Shri. Balaji Ramamoorthy, a citizen of USA. The allegation of the Assessing Officer and CIT(A) that, because the assessee is a settlor of the trust, he remains principal beneficiary is totally incorrect and devoid of merits, more particularly in the context when other trustee are managing the affairs of the trust and also beneficial owners of trust properties.*
……

15. Coming back to the investment in Dalham Trust under account no. GG004793_ADR06332. There is no dispute with regard to the aggregate account balance to the extent of Rs. 2,00,23,778/-. Shri.Balaji Ramamoorthy, son of the appellant has owned up and explained source for investment in the trust. Further, the Assessing Officer on the basis of CRS information in Insight portal came to the conclusion that the assessee is a beneficial owner of the trust and value of investment in the trust is undisclosed foreign income/asset u/s. 10(3) of Black Money (Undisclosed Foreign Income and Asset) and Imposition of Tax Act, 2015. ***In our considered view, the Assessing Officer is completely erred in arriving at a conclusion that the assessee is a beneficial owner only on the basis of recitals of trust deed, even though he does not have any other corroborative evidence to prove his allegation that the assessee is a beneficial owner and value of investment in the trust is undisclosed income of the assessee. We further noted that, Shri. Balaji Ramamoorthy has filed a confirmation letter and also explained*** *source for investment in Dalham Trust. Therefore, once investment in trust has been owned up and explained by a non-resident, then the question of making additions towards investment in said trusts in the hands of the assessee only on the basis of recitals of trust deed is incorrect, more particularly when the assessee is able to explain with necessary evidences that he has not made any contribution to the trust. In the present case, the Assessing Officer except CRS information in Insight portal, does not have any other evidence to prove his allegation that the assessee is invested in the trusts.* ***Therefore, we are of the considered view, that the Assessing Officer is erred in making additions towards account balance in the Dalham Trust under account no. GG004793_ADR06332 for aggregate of Rs. 2,00,23,778/- as unexplained investment in foreign asset/income of the appellant u/s. 10(3) of Black Money (Undisclosed Foreign Income and Asset) and Imposition of Tax Act, 2015.*** *In so far as observations of the Assessing Officer with regard to non disclosure of foreign asset/income in income tax returns filed by the assessee, in our considered view, when assessee does not have any investment in foreign asset or does not earn any income from foreign asset, then the question of disclosure in ITR does not arise and thus, on that basis no adverse inference can be taken against the assessee. 16. In this view of the matter and considering facts and circumstances of the case, we are of the considered view that the Assessing Officer is completely*

erred in making additions towards account balance in the name of the Windsor Trust and Dalham Trust, in the hands of the assessee as undisclosed foreign income/asset u/s. 10(3) of Black Money (Undisclosed Foreign Income and Asset) and Imposition of Tax Act, 2015. The ld. CIT(A), without appreciating relevant facts simply sustained additions made by the Assessing Officer. Thus, we set aside the order of the ld. CIT(A) and direct the Assessing Officer to delete the additions made towards account balance in both trusts u/s. 10(3) of Black Money (Undisclosed Foreign Income and Asset) and Imposition of Tax Act, 2015.
…..”

c. ***Additional Commissioner of Income-tax (Inv.) v. Himanshu Gupta., [2025] 174 taxmann.com 649 (Delhi - Trib.)***

“…
12. So far as the amount involved in debit note is concerned, it is also a matter of fact that this debit note pertains to transaction entered into between two corporate entities and even after search, nothing has been found from the premises of the assessee which would show that in fact the assessee has received this amount in cash or kind. Therefore, there is no error in the order of the ld. CIT(A) in deleting the addition. We affirm the same.
….”

d. ***Sri Srinjoy Bose v. A.D.I.T. (Inv.)., /[2023] 200 taxmann.com 200 (Kolkata - Trib.)***

“…
13. Now, in light of the provisions of section 2(11) & 2(12) of the Black Money Act, 2015 first we notice that in the instant case the issue is only with regard to the alleged undisclosed foreign asset i.e. the investment in the insurance policy and there is no issue of undisclosed foreign income because the assessee only received the reduced amount of investment. So, we will just focus on the issue that as to whether the alleged foreign asset is an undisclosed asset located outside India. Provision of Section 2(11) of the Black Money Act, 2015 provides for the definition of undisclosed asset located outside India as stated above, and in our humble understanding, following two conditions need to be fulfilled by the Revenue authorities to bring a particular foreign asset under the category of undisclosed asset located outside India

held by the assessee in his name or in respect of which he is a beneficial owner. The first condition is that such asset is not disclosed by the assessee in the return of income or any other place of disclosure as provided under the Black Money Act, 2015 and secondly, the assessee is unable to offer any explanation about the source of investment in such asset or the explanation given by him is unsatisfactory in the opinion of ld. AO.

14. Now, so far as explanation about the source of alleged investment, in the case under consideration is concerned, ***we find that the assessee has successfully explained the source of investment which is undoubtedly from the income earned outside India, part of which was paid by the assessee in the capacity of a non-resident Indian and the remaining part being paid by assessee's father who is also a non-resident Indian from his sources of income/asset located outside India.There is no iota of evidence bring forth by the Revenue authorities which could indicate that any element of the alleged investment in foreign asset is from so-called black money earned in India. Complete details of the bank account along with date of payment of the premium of the insurance policy supports this fact that the assessee has successfully explained the source of investment in the alleged foreign asset in the form of investment in insurance policy.***
...."

e. ***Nirmal Jethalal Modi v. DDIT/Adit (Inv.)-2(1).,[2025] 173 taxmann.com 400 (Mumbai - Trib.)***

"....
12*...In the instant case, the sequence of events that have been narrated by the assessee would show that the bank accounts have been opened by the parents of the assessee and they were only operating the bank accounts during their life time. Further, the deposits, which is sought to be taxed in the hands of the assessee have been made earlier to the year 2010. It included transfers from other bank accounts and in those bank accounts, the deposits would have been made even earlier. The assessee has stated that his father was doing business in Sudan and before bank authorities also, the assessee has stated that the trade name of business was"BABU'. The fact the parents of the assessee had resided in Sudan is proved by the passport of the mother and also by the fact that his brother has born in Sudan. The entries in*

the passport of the mother also show that she was managing her affairs independently including the bank accounts. ***Hence, in our view, these facts and the surrounding circumstances would show that the impugned deposits have been made by the parents of the assessee out of their income earned abroad. Accordingly, we are of the view that the AO was not right in assessing the impugned deposits in the hands of the assessee****. Accordingly, we set aside the order passed by the Ld.CIT(A) and direct the AO to delete the additions made by him.*

13. In the result, the appeal filed by the assessee is allowed…"

f. ***Krishna Das Agarwal v. DDIT/ADIT(Inv.), [2023] 150 taxmann.com 290 (Jaipur - Trib.),***

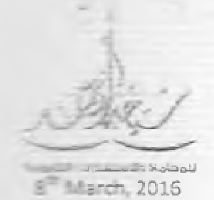
Final Prayer

In view of the above, insofar as the merits of the addition is concerned, it is respectfully submitted that the order of CIT(A) may kindly be affirmed, subject to deletion of the nominal addition of Rs.3,14,855/- made by the CIT(A), for reasons stated above. Consequently, the penalty imposed by the assessing officer under section 41 and reduced by the CIT(A) proportionately also needs to be deleted completely. As regards, the penalty of Rs. 10,00,000 imposed under section 43 of the BMA for non-disclosure, it is respectfully submitted, that the order of CIT(A) needs to be upheld.

15. It is pertinent to note that assessee had been categorically stating that he had not made any investment in the foreign entities incorporated outside India. Since Mr. Alahammadi had made the investment in the foreign entities, i.e.M/s Alabama Assets Limited and M/s Meadow Offshore Limited, the proceeds in the bank accounts of the aforesaid foreign entities were handed over to Mr. Alahammadi pursuant to the closure of the bank accounts in the

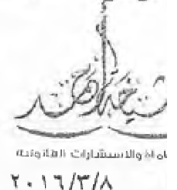
years 2009 and 2010, as the case may be. The assessee, right from the inception, i.e. before the investigation wing in July 2013 onwards, had been categorically stating that he had not made any investment in foreign entities at all. Even the 1 share held by him as Nominee had been funded only by Mr Alahammadi. He had also categorically stated that the entire investments have been made only by Mr Alahammadi. To this effect, MrAlahammadi had also given a confirmation supported by an affidavit affirming the aforesaid facts. In fact, the affidavit of MrAlahammadi was also found during the course of search conducted on the assesseeon 22.12.2017. For the sake of convenience, the entire affidavit is reproduced below:-

Ann - 5 **14**



شيخة أحمد للمحاماة والإستشارات القانونية

Shaikha Ahmed Advocates & Legal Consultants



8th March, 2016

٢٠١٦/٣/٨

TO WHOM SO EVER IT MAY CONCERN

This letter confirms that Mr. Ibrahim Ahmad Abdulla Alhammadi, citizen of United Arab Emirates and holder of passport no FY8447511 and resident of Dubai, UAE is our Client known to us for past 5 years and has signed the Affidavit enclosed along with this letter in our presence.

Yours Sincerely,

FOR [signature]

شهادة لمن يهمه الأمر

تؤكد هذه الرسالة على أن السيد/ إبراهيم أحمد عبد الله الحمادى ، مواطن من الإمارات العربية المتحدة ويحمل جواز سفر رقم FY8447511 ومقيم في دبي، الإمارات العربية المتحدة هو عميلنا ومعروف لدينا منذ الخمس سنوات الماضية وقام بتوقيع الإفادة المرفقة بهذه الرسالة لدينا لسنوات ال ٥ الماضية والتي وقعتها إفادة المغلقة جنبا إلى جنب مع هذه الرسالة في وجودنا.

تفضلوا بقبول فائق الإحترام ،

P.O. Box 61441 Dubai, U.A.E

Aan-5 **15**

AFFIDAVIT

I, Ibrahim Ahmad Abdulla Alhammadi citizen of United Arab Emirates and holder of passport no FY8447511 issued by the Govt of UAE on 18.08.2013do hereby affirm as under:

1. That I have beenthe owner/ Promotor of Kebab Grill 44 LLC, Ming Bowl Restaurant LLC, Kharti Facilities Management Services LLC and also own the Franchise of WH Smith UAE. I have been engaged in the businesses including Real Estate, Retail and other sectors in Middle East and Europe.

2. That I was introduced to Mr. DEEPAK JAIN, citizen of India and currently holding Passport noZ3491102 issued by the Government of India on 18/2/2016 by my friend and business Partner Mr. Amit Sharma in 2004-05

3. That Mr. DEEPAK JAIN and I willingly became business associates by entering into Memorandum of Understanding in 2005 for undertaking the business of providing Lighting solutions for Automobiles and Infrastructure in United Arab Emirates and South East Asia.

4. That I entered into the MOU with Mr. DEEPAK JAIN as he had extensive knowledge of Lighting Industry and my group was looking to expand ourbusiness operations in Middle East and South East Asia.

5. That the entire funding for the Projects was to be done by me directly or through my affiliates/associated entities. Mr. DEEPAK JAIN or his family members or Group concerns were not

إفادة

أنا/ إبراهيم أحمد عبد الله الحمادي، مواطن من دولة الإمارات العربية المتحدة، أحمل جواز سفر رقم FY8447511 صادر من حكومة دولة الإمارات العربية المتحدة بتاريخ ٢٠١٣/٨/١٨ بموجبه أؤكد وأقر بما يلي:

١- بأني كنت المالك والمروج ل كبابجريل ٤٤ ش.ذ.م.م، مطعم مينغ بول ش.ذ.م.م، كارتي لخدمات إدارةمنشآت وأيضًا مالك امتياز دبليو اتش سميث الإمارات العربية المتحدة، وقد اشتركت في الأنشطةالتجارية،التي تشمل العقارات والقطاعات الأخرى في الشرق الأوسطوأوروبا

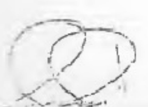
٢- وقدتعرفت على السيد/ ديباك جين، مواطن هندي ويحمل في الوقت الحالي جواز سفر رقمZ3491102 صادر من حكومة الهند بتاريخ ٢٠١٦/٢/١٨عن طريق صديقي وشريكي التجاري السيد/ اميت شارما في عام ٢٠٠٤-٢٠٠٥.

٣- وعليه فإني والسيد/ ديباك جين كان لدينا الرغبة لنصبح شركاء عمل بإبرام مذكرة التفاهم هذه بتاريخ ٢٠٠٥ للتعهد بالأعمال التجارية لتزويد حلول الاضاءة للسيارات والبنية التحتية في دولة الإمارات العربية المتحدة ودول جنوب شرق آسيا.

٤- وأني أبرمت مذكرة التفاهم مع السيد/ ديباك جين حيث إنه لديه معرفة كبيرة بصناعة الإضاءة وكانت مجموعة شركاتي تبحث عن توسيع أعمالها التجارية في الشرق الأوسط ودول جنوب شرق أسيا.

٥- كان من المقرر توفير جميع تمويلات المشروع من جانبي بشكل مباشر أو عن طريق شركاتي التابعة/ الكيانات ذات الصلة. لا يلتزم السيد/ ديباك جين أو أعضاء أسرته أو شركاته المعنية بتقديم أي

1



Aun-5 **16**

required to bring in any investment into the Projects.

استثمارات للمشاريع.

6. That Mr. DEEPAK JAIN was required to render his professional services as contained in Para 5.1(b) of the MOU. As per the MOU, his share in the business of providing Lighting Solutions for Automobiles in United Arab Emirates and South East Asia was agreed to be 25% of net profits from said business/project only as Sweat Equity. The said Sweat Equity was to be vested in Mr. Deepak Jain upon the successful implementation of the projects.

٦- أنه تعين على السيد/ ديباك جين تقديم خدماته المهنية وفقًا لما هو مقرر في الفقرة رقم ٥,١ (ب)من مذكرة التفاهم. وفقًا لمذكرة التفاهم، تم الاتفاق على أن تكون حصته في الأعمال التجارية لتوفير حلول الإضاءة للسيارات في الإمارات العربية المتحدة ودول جنوب شرق آسيا بنسبة صافي ٢٥% من أرباح الأعمال التجارية / المشروع المذكور كمساهمة بالجهد والعمل فقط. تُمنح المساهمة بالجهد والعمل إلى السيد/ ديباك جين عند تنفيذ المشروع بنجاح.

7. That it was further agreed in Para 5.3of the MOU that I will be free to have one or more Partners or Joint Ventures. However, in such an eventuality, the Sweat Equity of Mr. Deepak Jain will remain protected.

٧- تم الاتفاق كذلك في الفقرة ٥,٣من مذكرة التفاهم بأنه سيكون لي مطلق الحرية بأن يكون لي شريك أو أكثر أو مشاريع مشتركة. إضافة لذلك، في مثل هذه الاحتمالات، ستظل المساهمة بالجهد والعمل للسيد/ ديباك جين محمية.

8. That it was also mutually agreed in Para 5.6of the MOU that I may do business other than lighting business also in the company to be setup under the MOU. However, as regards the profits / losses of business other than lighting business, Mr. Deepak Jain will not be entitled to any Sweat Equity as he would not be participating in such other activities.

٨- تم الاتفاق كذلك بيننا في الفقرة ٥,٦من مذكرة التفاهم بأنه يجوز لي تنفيذ الأعمال التجارية خلاف أعمال الإضاءة أيضًا في الشركة والتي يتم تنفيذها بموجب مذكرة التفاهم. إضافة لذلك، فيما يتعلق بالأرباح والخسائر للأعمال التجارية بعيدًا عن أعمال الإضاءة، لا يحق للسيد/ ديباك جين الحصول على مساهمة بالجهد والعمل إذا لم يشارك في هذه الأنشطة الأخرى.

9. That pursuant to Para 5.1(d) of the MOU, on my request, Mr. DEEPAK JAIN set up the corporate structure for our joint venture by setting up ALABAMA ASSETS LTD.that was incorporated in the British Virgin Islands on 5th July, 2005.

٩- أنه بموجب الفقرة ٥,١ (ب)من مذكرة التفاهم، بناء على طلبي، يقوم السيد/ ديباك جين بتأسيس الهيكل المؤسسي لمشروعنا المشترك بتأسيس شركة الباما اسيتس ليمتد والتي تم تأسيسها في جزر العذراء البريطانية بتاريخ ٥ يوليو ٢٠٠٥.

10. That the authorized capital of ALABAMA ASSETS LTD. was US $50,000.

١٠- كان رأس المال المعتمد لشركة الباما اسيتس ليمتد مبلغ [illegible] دولار أمريكي.

2

Ann-5 **17**

11. That after incorporation of ALABAMA ASSETS LTD., M/S Sharecorp Ltd. (our Fiduciary) was allotted 1 equity share having face value of US$1. M/S Acticorp Ltd. were appointed by us as our nominee first Director.Mr. DEEPAK JAINwas nominally recorded as beneficial owner of the one Equity share held by M/S Sharecorp Ltd. at the time of incorporation.

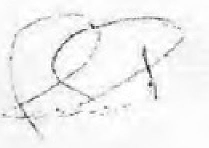
١١- أنه بعد تأسيس شركة الباما اسيتس ليمتد، تم تخصيص حصة مساهمة واحدة بقيمة اسمية ١ دولار أمريكي إلى السادة شركة/ شيركورب ليمتد (وكيلنا المفوض). تم تعين السادة شركة/ اكتيكورب ليمتد. من جانبا كمرشحنا ليكون المدير الأول وتم تسجيل السيد/ ديباك جين كمالك مستفيد من حصة مساهمة واحدة التي تمتلكها شركة/ شيركورب ليمتد في وقت التأسيس.

12. That with a view to venture into Lighting Solutions for Infrastructure Projects in United Arab Emirates and South East Asia business under the ownership structure of ALABAMA ASSETS LTD., Mr. DEEPAK JAIN was asked/authorised to incorporate MEADOW OFFSHORE LTD.in BVI. The said Company was incorporated on 18.08.2008 and was having Authorized Capital of US$ 50,000.

١٢- كان ذلك بهدف الدخول في مشروع حلول الإضاءة لمشاريع البنية التحتية في الإمارات العربية المتحدة ودول جنوب شرق آسيا تحت هيكل ملكية/ الباما اسيتس ليمتد، وقد تم مطالبة/ تخويل السيد/ ديباك جين بتأسيس ميدو اوفشور ليمتد ج.ع.ب. تم تأسيس الشركة المذكورة بتاريخ ٢٠٠٨/٨/١٨ وكان لها رأس مال معتمد بقيمة ٥٠,٠٠٠ دولار أمريكي.

13. That immediately after incorporation of Meadow Offshore Ltd., ALABAMA ASSETS LTD.requested Mr. DEEPAK JAIN to hold 1 equity share having face value of US$1 each on behalf of and as a Nominee of ALABAMA ASSETS LTD., also requested Mr. DEEPAK JAIN to become the first Director of the Meadow Offshore Ltd. on behalf of and as a Nominee of ALABAMA ASSETS LTD.Therefore, to begin with, DEEPAK JAIN was nominallyrecorded as beneficial owner of the one Equity share held in his name. The ultimate beneficial ownership of this 1 Equity Share rested in ALABAMA ASSETS LTD. at all times.

١٣- وقد طلبت من السيد/ ديبك جين فورًا بعد تأسيس ميدو اوفشور ليمتد، الباما اسيتس ليمتد بحيازة حصة مساهمة واحدة بقيمة اسمية ١ دولار أمريكي نيابة عنا وبصفته مرشح عن الباما اسيتس ليمتد. طلبت أيضًا من السيد/ ديباك جين ليكون المدير الأول لـ ميدو اوفشور ليمتد نيابة عنا وبصفته مرشح عن الباما اسيتس ليمتد. وعليه من أجل البدء، تم تسجيل السيد/ ديباك جين اسميًا كمالك مستفيد بحصة مساهمة واحدة باسمه. تكون ملكية الفائدة النهائية لحصة المساهمة الواحدة هذه في شركة الباما اسيتس ليمتد في جميع الأوقات.



Ann – 5 **18**

14. That both the Companies were got incorporated by us through M/S PortcullisTrustnet (BVI) Ltd and they were appointed by us as the initial registered agents.

١٤- تم تأسيس كلا الشركتين من جانبنا عن طريق السادة شركة/ بورتكيليس ترستنت (ج.ع.ب) ليمتد وتم تعينهم من جانبنا كوكلاء مسجلين أوليين.

15. That these two companies opened bank account with UBS AG, Singapore.The Bank account of ALABAMA ASSETS LTD.was opened soon after incorporation and was operated by fiduciaries and Nominee Directors jointly appointed by us as contemplated in the MOU. The Bank account of MEADOW OFFSHORE LTD. was opened soon after incorporation and was operated by Mr. DEEPAK JAIN who was Nominee Director on our behalf and on behalf of ALABAMA ASSETS LTD. as contemplated in the MOU.

١٥- قامت تلك الشركتين بفتح حساب بنكي لدى يو بي إس إيه جي سنغافورة. تم فتح الحساب البنكي لـ الباما اسيتس ليمتد بوقت قصير بعد التأسيس وتم تشغيله من جانب الوكلاء والمديرين المعينين بالتضامن المعينين من جانبنا وفقًا لما هو منصوص عليه في مذكرة التفاهم. تم فتح الحساب البنكي لـ ميدو اوفشور ليمتد بوقت قصير بعد التأسيس وتم تشغيله من جانب السيد/ ديباك جين والذي كان يتقلد منصب المدير المعين نيابة عنا ونيابة عن الباما اسيتس ليمتد وفقًا لما هو منصوص عليه مذكرة التفاهم.

16. That Mr. DEEPAK JAIN, either directly or through nominee, held the following position in any of the companies mentioned above:-

i) ALABAMA ASSETS LTD.

Recorded as initial beneficial owner in respect of 1 Equity share of 1US $ as nominee of and on behalf of both of us in terms of MOU.

ii) MEADOW OFFSHORE LTD.

Recorded as initial Shareholder, initial Director and initial beneficial owner in respect of 1 Equity share of 1US $ as nominee of and on behalf of ALABAMA ASSETS LTD. in terms of MOU.

١٦- يحتفظ السيد/ ديباك جين سواء بطرقة مباشرة أو عن طريق مرشح، بالمنصب التالي في أي من الشركات المذكورة سالفًا:

١) الباما اسيتس ليمتد، مسجل كمالك مستفيد أولي فيما يتعلق بحصة مساهمة واحدة بقيمة ١ دولار أمريكي بصفته مرشح نيابة عن عنا فيما يتعلق بمذكرة التفاهم.

٢) ميدو اوفشور ليمتد مسجل كمالك حصة أولية، مدير أولي ومالك مستفيد أولي فيما يتعلق بحصة مساهمة واحدة قيمة ١ دولار أمريكي كمرشح نيابة عن الباما اسيتس ليمتد فيما يتعلق بمذكرة التفاهم.

17. That after the bank account was opened

١٧- بعد فتح الحساب البنكي في سبتمبر

Ann 5 **19**

inSeptember, 2005 a sum of US$200,000 was remittec into the bank account of Alabama Assets Ltd. under my instructions as Share Application Money. Later on, out of this amount, I was allotted 999equity shares having face value of US$1 each per equity share.

٢٠٠٥، تم إيداع مبلغ ٢٠٠,٠٠٠ دولار أمريكي في الحساب البنكي لـ الباما اسيتس ليمتد بموجب التعليمات على أنه مبلغ طلب الحصة. في وقت لاحق، بعيدًا عن هذا المبلغ، تم تخصيص ٩٩٩حضص مساهمة لصالحي بقيمة اسمية ١ دولار أمريكي لكل حصة مساهمة.

18. That the funds infused in ALABAMA ASSETS LTD. were entirely raised/ arranged by me/ under my instructions and from my sources. Mr. DEEPAK JAIN did not make any contribution in ALABAMA ASSETS LTD. whether by way of Share Capital, Share Application Money or Loans/ Advances or on any other account.

١٨- تم طرح المبالغ المخصصة لـ الباما اسيتس ليمتد بالكامل / وإدارتها من جانبي / بموجب تعليماتي وبناء على مصادري. لم يقدم السيد/ ديباك جين أي مساهمة في الباما اسيتس ليمتد سواء عن طريق رأس المال المساهم أو مبلغ طلب الحصة أو القروض/ السلفيات أو أي حساب آخر.

19. That the Share capital in MEADOW OFFSHORE LTD. was infused by ALABAMA ASSETS LTD.

١٩- تم تخصيص رأس المال المساهم في ميدو اوفشور ليمتد من جانب الباما اسيتس ليمتد.

20. That the bank accounts of these two Companies were managed through Fiduciaries and Nominee Directors chosen/appointed/changed by both of us.

٢٠- تم إدارة الحسابات البنكية هذه لتلك الشركتين عن طريق الوكلاء والمديرين المرشحين الذين تم اختيارهم / تعينهم/ تغيرهم منجانب كل واحد منا.

واحد منا.

21. That with a view to enable Mr. DEEPAK JAIN to directly incur expenses (without having to seek reimbursement) relating to the business of the Companies, two Bank Accounts were opened in his personal name in DBS Bank, SingaporeA/c No. 074-8-017536 and Emirates Bank International PJSC now renamed as Emirates NBD in A/cNo. 0073-051288-100 till April' 2009 later A/c No. 02113679C4101 from June' 2009as imprest accounts.

٢١- بهدف مساعدة السيد/ ديباك جين بتكبد النفقات بطريقة مباشرة (دون الحاجة لطلب سداد النفقات) فيما يتعلق بأعمال الشركة، تم فتح حسابين بنكيين باسمه الشخصي في بنك دي بي إس، سنغافورة حساب رقم ٠٧٤٨٠١٧٥٣٦، وبنك الإماراتي الدولي ش.م.ع. والآن يُعرف بـ بنك الإمارات دبي الوطني حساب رقم ٠٠٧٣٠٥١٢٨٨١٠٠ حتى أبريل ٢٠٠٩ فيما بعد حساب رقم ٠٢١١٣٦٧٩٠٤١٠١ من يونيو ٢٠٠٩ وهو حسابات سلفة.

5

Ann-5 **20**

22. That following sumswere transferred by ALABAMA ASSETS LTD. from the bank account no. 163284 held with UBS AG,Singapore and MEADOW OFFSHORE LTD. from bank account no. 155285held with UBS AG,Singapore to his Bank accounts with DBS and Emirates Ban kas Imprest:-

٢٢- عقب ذلك تم تمويل المبالغ التالية من جانب الباما اسيتس ليمتد من الحساب البنكي رقم ١٦٣٢٨٤ لدى يو بي إس إيه جي، سنغافورة و ميدو اوفشور ليمتد من الحساب البنكي رقم ١٥٥٢٨٥ لدى يو بي إس إيه جي، سنغافورة لحسابته البنكية لدى دي بي إس وبنك الإمارات كسلفة مستديمة:

Date	Transfer From	Transfer To	Amount US$
09.04.2009	MEADOW OFFSHORE LTD.	Emirates Bank, Dubai	2,000
24.04.2009	ALABAMA ASSETS LTD.	DBS, Singapore	5,000
28.07.2009	ALABAMA ASSETS LTD.	DBS, Singapore	5,000
28.10.2009	MEADOW OFFSHORE LTD.	DBS, Singapore	9,000
[illegible] 2009	MEADOW OFFSHORE LTD.	Emirates Bank, Dubai	15,000
30.03.2010	MEADOW OFFSHORE LTD.	Emirates Bank, Dubai	9,000
TOTAL			45,000

التاريخ	محول من	محول إلى	المبلغ بالدولار الأمريكي
٢٠٠٩/٤/٩	ميدو اوفشور ليمتد	بنك الإمارات - دبي	٢,٠٠٠
٢٠٠٩/٤/٢٤	الباما اسيتس ليمتد	دي بي إس - سنغافورة	٥,٠٠٠
٢٠٠٩/٧/٢٨	الباما اسيتس ليمتد	دي بي إس - سنغافورة	٥,٠٠٠
٢٠٠٩/١٠/٢٨	ميدو اوفشور ليمتد	دي بي إس - سنغافورة	٩,٠٠٠
٢٠٠٩/١١/٢	ميدو اوفشور ليمتد	بنك الإمارات - دبي	١٥,٠٠٠
٢٠١٠/٣/٣٠	ميدو اوفشور ليمتد	بنك الإمارات - دبي	٩,٠٠٠
الإجمالي			٤٥,٠٠٠

23. That these amounts were spent by Mr. DEEPAK JAIN towards the business related expenses of the Companies and theseBank Accountsweredulу incorporated in the books of accounts of ALABAMA ASSETS LTD. andMEADOW OFFSHORE LTD.as Imprest Account.

٢٣- تم إنفاق هذه المبالغ من جانب السيد/ ديباك جين مقابل الأعمال المتعلقة بنفقات الشركات وتم تدوين هذه الحسابات البنكية حسب الأصول في دفاتر حسابات الباما اسيتس ليمتد و ميدو اوفشور ليمتد كحساب سلفة مستديمة.

24. That after incorporation and opening up bank accounts the capital structure of the companies was changed and myself and my nominees became shareholders and Directors of these companies.

٢٤- بعد تأسيس وفتح الحسابات البنكية تم تغيير أساس رأس المال للشركات وأصبحت أنا والمرشحين من جانبي مساهمين ومديرين في هذه الشركات.

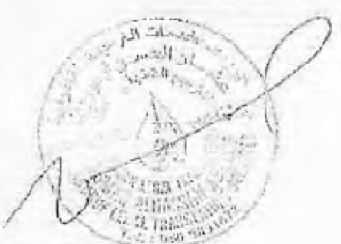
25. That the Books of Accounts and Statutory records of both the companies were maintained in my office at

٢٥- تم الاحتفاظ بدفاتر الحسابات والسجلات القانونية في مكتبي على العنوان مكتب

6

Ann-5 **21**

Office 413, Building 4, Emaar Business Park, the Greens, Dubai UAE.	رقم ٤١٣، بناية ٤، اعمار بيزنس بارك، ذا جرينزدبي، الإمارات العربية المتحدة.
26. That the Books of Accounts were duly audited by our Auditors in UAE.	٢٦- تم تدقيق دفاتر الحسابات هذه حسب الأصول من جانب مدققينا في الإمارات العربية المتحدة.
27. That all the Board Meetings were held outside Indiaand all decisions related to these two companies were taken at the meetings held outside India.	٢٧- تم انعقاد اجتماعات مجلس الإدارة خارج الهند وتم اتخاذ جميع القرارات المتعلقة بهاتين الشركتين في الاجتماعات المنعقدة بالخارج بالهند.
28. That myself and Mr. DEEPAK JAIN, at all times, jointly held the exclusive right toappoint/remove/alter nominee directors on the Board of Directors of the above-mentioned companies.	٢٨- قمت أنا والسيد/ ديباك جين. في جميع الأوقات بالتضامن بتحديد الحق الحصري بتعيين / حذف / تغيير المديرين المعينين في مجلس الإدارة للشركات سالفة الذكر.
29. That the management, control and decision making regarding all the above mentioned companies/entities rested at all time in our joint hands.	٢٩- تظل الإدارة والمراقبة واتخاذ القرارات فيما يتعلق بجميع الشركات / الكيانات تحت أيدينا في جميع الأوقات.
30. That the role of Mr. DEEPAK JAIN was to assist my team in execution of the Projects.	٣٠- كان دور السيد/ ديباك جين مساعدة فريقي في تنفيذ المشاريع.
31. That Mr. DEEPAK JAIN, directly or indirectly, did not make any investment, in cash or in kind, whether by way of equity or loan, in the above mentioned entities and the entire investment, by way of equity and loan, was made by me, directly and through my group entities. This investment structure of the entities was in accordance with para 5.1(a) and 7.1 of the MOU.	٣١- لم يقم السيد/ ديباك جين بطريقة مباشرة أو غير مباشرة بعمل أي استثمارات نقدًا أو عينًا سواء عن طريق الأسهم أو القروض. في الكيانات سالفة الذكر وكامل الاستثمارات، عن طريق الأسهم والقروض الممنوحة من جانبي، بطريقة مباشرة وعن طريق مجموعة شركاتي. تم الاستناد في أساس استثمارات الشركات هذه على الفقرة ٥,١ (أ) و ٧,١من مذكرة التفاهم.



Ann-5

32. That the funds infused by me or my group concerns/entities or under my instructions were, pending the implementation of the project, used for making short term investments in securities. That the profit or loss arising from investments in securities was entirely to my account and Mr. DEEPAK JAIN had no share in the profit or loss arising from investments in securities.

٣٢- تم استخدام المبالغ المقدمة من جانبي أو من جانب مصالح/ كيانات مجموعتي أو تحت تعليماتي، توقفًا على تنفيذ المشروع، في استثمارات قصيرة الأجل في الأوراق المالية. تحملت الربح والخسارة الناشئين من استثمارات الأوراق المالية بالكامل على حسابي ولم يساهم السيد/ ديباك جين في الربح أو الخسارة الناشئين من الاستثمارات في الأوراق المالية.

33. That despite of our best intention and sincere efforts the project could not take off till 2010.Therefore, Bank Account of ALABAMA ASSETS LTD. was closed in 2009 and of MEADOW OFFSHORE LTD. was closed in 2010.

٣٣- بالرغم ما لدينا من حسن النية والجهود المخلصة لم يتم الانتهاء من المشروع حتى عام ٢٠١٠. لذلك تم غلق الحساب البنكي لـ الباما اسيتس ليمتد في ٢٠٠٩ وغلق حساب ميدو اوفشور ليمتد في ٢٠١٠

34. No interest, dividend or remuneration was paid to me or Mr. DEEPAK JAIN from any of these two companies.

٣٤- لم يتم سداد أي فائدة أو أرباح أو مكافآت لي أو إلى السيد ديباك جين من جانب أي من هاتين الشركتين

35. That the name of ALABAMA ASSETS LTD. was struck off in 2010 and the name of MEADOW OFFSHORE LTD. was struck off in 2011.

٣٥- تم شطب اسم الباما اسيتس ليمتد عام ٢٠١٠ وشطب اسم ميدو اوفشور ليمتد عام ٢٠١١.

36. That I decided to terminate the MOU as there was not much progress and I felt that Mr. DEEPAK JAIN was not putting in the desired time and effort for the MOU business on account of his own business interest/ commitments in India.

٣٦- وقد قررت إنهاء مذكرة التفاهم حيث لم يكن هناك أي تقدم وأن السيد/ ديباك جين لم يكن هو الاختيار المناسب من حيث الوقت والمجهود فيما يتعلق بأعمال مذكرة التفاهم على حساب فوائده التجارية / والتزاماته الخاصة في الهند.

37. That the MOU was terminated on March 31, 2010.

٣٧- وقد تم إنهاء مذكرة التفاهم بتاريخ ٣١ مارس ٢٠١٠

38. That upon termination of the MOU Mr. DEEPAK JAIN

٣٨- عند إنهاء مذكرة التفاهم، أنسحب

Ann-5 23

exited from the MOU and its Business and all the assets and liabilities including funds, Bank accounts, assets etc remained with me or my Nominees, employees or appointees.	لسيد/ ديباك جين من مذكرة التفاهم وقد ظلت جميع أعماله التجارية وجميع الأصول والمسئوليات بما في ذلك الأموال والحسابات البنكية والأصول وغيره معي أو المرشحين من جانبي أو الموظفين التابعين لي أو المعينين من جانبي.
hereby declare that whatever has been stated above is, to he best of my knowledge, true and correct.	بموجبه اقر بأن جميع ما ورد سالفًا، وفقًا لحد علمي، يعتبر حقيقي وصحيح.

16. The aforesaid affidavit has been duly confirmed by Shri Shaikha Ahmed, Advocates & Legal Consultants at UAE vide letter dated 8.3.2016 which is enclosed in Page 14 of the Paper Book. The aforesaid affidavit together with the letter of the Advocate & Legal Consultant at UAE were filed by the assessee on 10.3.2016 before the investigation wing itself. At the cost of repetition, it is pertinent to state that this affidavit was indeed found during the course of search conducted under section 132 of the Act on the

assessee on 22.12.2017. As could be seen from the aforesaid affidavit vide clause 5 and 6 thereon, the entire funds were invested by MrAlahammadi and assessee only joined in professional capacity to render technical support in establishing the lighting solutions business proposed in UAE and South East Asia. The aforesaid affidavit also confirms the fact of existence of MOU entered into between assessee and MrAlahammadi in the year 2005 and the same getting terminated on 31.3.2010. Hence the grievance of the revenue that MOU and its termination not furnished by the assessee thereby drawing adverse inference on the assessee, stands duly addressed. It could also be seen that the affidavit duly confirms the fact vide Clause 38 thereon that after termination of the MOU, all the assets and liabilities including bank balances remained with MrAlahammadi or his nominees and not the assessee. Further as per Clause 18 of the affidavit, the funds infused in M/s Alabama Assets Limited were entirely arranged by MrAlahammadi from his sources and assessee did not make any contribution thereon, whether by way of share capital, share application money, or loans / advances or on any other account. Similarly the share capital in M/s Meadow Offshore Limited was infused by M/s Alabama Assets Limited, which fact is confirmed in Clause 19 of the affidavit.

The affidavit also confirms that shareholding of the assessee is only to the extent of 1 out of 1000 equity shares in M/s Alabama Assets Limited in the capacity of nominee shareholder vide Clause 16 of the affidavit. As per Clause 21 of the affidavit, with a view to enable the assessee to directly incur expenses without having to seek reimbursement relating to the business of the foreign entities, two bank accounts were opened in his personal name in DBS Bank, Singapore and Emirates Bank International, PJSC (now renamed as Emirates NBD). These amounts were spent by the assessee towards business related expenses of the foreign entities and these bank accounts were duly incorporated in the books of accounts of M/s Alabama Assets Limited and M/s Meadow Offshore Limited as "Imprest Account", which fact is confirmed in Clauses 21 and 23 of the affidavit. Further Clause 30 and 31 of the affidavit specifically detail the role of assessee to only assist Mr Alahammadi's team in execution of the projects and assessee did not make any investment in cash or in kind directly or indirectly whether by way of equity or loan in the abovementioned foreign entities. Further the entire investment by way of equity or loan was made by MrAlahammadi or his group entities and the investment structure was in accordance with Para 5.1(a) and Para 7.1. of MOU. Further, Clause 33 of the

affidavit states despite best efforts, the lighting solutions project could not take off till 2010, the bank account of M/s Alabama Assets Limited was closed in 2009 and of M/s Meadow Offshore Limited was closed in 2010 and no interest / dividend / remuneration was paid to MrAlahammadi or the assessee from any of these companies. Ultimately, the name of M/s Alabama Assets Limited was struck off from the relevant Registrar of Companies in the year 2010 and the name of M/s Meadow Offshore Limited was similarly struck off in the year 2011. Closure of the companies gets further corroborated with the closure of bank accounts and proceeds being given to Mr Alahammadi. Either way, the closure of bank accounts of two foreign entities in the year 2009 / 2010 as the case may be, is not disputed by the revenue in as much as the addition has also been made as per the credits in the bank account upto the year 2009-10 / 2010-11 only.

17. Furthermore, the Balance Sheet of M/s Alabama Assets Limited and M/s Meadow Offshore Limited were also found during the course of search on assessee on 22.12.2017 which reflected the shareholding pattern and the entire funding infused by MrAlahammadiin the form of loans and liabilities.

18. All these facts categorically go to prove that assesseecannot be in any manner whatsoever connected to the investments made in the aforesaid two foreign entities and the creditswhich were lying thereon. Further, it is also pertinent to note that in the balance sheet of M/s Alabama Assets Limited and M/s Meadow Offshore Limited, it has been categorically reflected that the entire shareholding in the said companies were held by MrAlahammadiand name of the assesseeis reflected there on only as a Nominee Shareholder holding one share.

19. In view of the aforesaid detailed reasoning supported by contemporaneous documents found during the course of search, the stand taken by the assesseeright from 29.07.2013 i.e. from investigation wing proceedings onwards, gets established beyond reasonable doubt. Hence, there is absolutely no case for implicating or impleading the assesseeto the investments made in the foreign entities and the proceeds of the bank account closure of the foreign entities. It is absolutely not in dispute that the total proceeds of the bank accounts of the foreign entities were withdrawn by Mr Alahammadi only and not by the assessee herein.

Further the letter dated 17.5.2016 addressed by Mr Alahammadi to the assessee stating the fact of closure of bank accounts in the year 2009 and 2010 of two foreign entities and the proceeds were withdrawn by Mr Alahammadi, was also found during the course of search conducted on assessee on 22.12.2017. In this regard, it would be pertinent to reproduce the last paragraph of the aforesaid letter dated 17.5.2016 found during the course of search which was addressed by MrAlahammadi to the assessee herein:-

> ***I share your concerns and anxieties, especially in view of the fact that you had neither invested one cent in these companies, nor you received even one cent as an income from these companies. I wish that the matter gets resolved at any early date.***
>
> **(emphasis supplied by us)**

20. Further we find that the assessee during the course of search gave a statement under section 132(4) of the Act on 22.12.2017 itself , wherein in response to specific questions posed to him with regard to business activities and source of funding made in the foreign entities, the assessee deposed all the above facts reproduced hereunder:-

> *Q.No.11 Please state the business activities carried out by M/s Alabama Assets Limited (AAL) and M/s Meadow Offshore Limited and your relationship with these concerns ?*

Ans: I was the nominee Director having one share and the balance 999 was held by the other Director Mr Al Hamidi. The details of all have been furnished by me to the authorities at Faridabad to Mr Vinod Sharma, Deputy Director of Income Tax (Inv.) Faridabad around two years back. There was set up to do joint feasibility study for market and since the project did not materialise. It had been basically disbanded.

Q. No. 12 Please state your role as a nominee Director in these two concerns ?

Ans : As the nominee Director on behalf of the other Director Mr Al Hamidi, I was supposed to carry out feasibility study for lighting in Dubai market. However, I would like to state that the feasibility study did not materialise.

Q.No. 13 Please state what was the source of funding in the two companies referred to in Q. No. 11 ?

Ans: The source of funding had come from Mr Al Hamidi. The bank statement and also the statement by Mr Al Hamidi has been furnished by me to the Faridabad office.

Q. No. 14 As stated by you in Q. No. 11 that the joint feasibility study for market could not materialise and the companies were disbanded. Please state the utilization of funds after disbandment ?

Ans: After disbandment I am not aware of the company's activities. However, I have furnished the statement of accounts to the authorities.

21. This statement of the assessee under section 132(4) of the Act on 22.12.2017 gets further strengthened with the corroborative evidences found during the course of search which have already been dealt hereinabove and thereby carrying evidentiary value. It

is pertinent to note that this statement was never retracted by the assessee at any point of time.

22. It would not be out of place to mention here that the affidavit of MrAlahammadi , the Balance Sheets of two foreign entities and the letter addressed by MrAlahammadi to the assessee dated 17.5.2016, having been found during the course of search under section 132 of the Income Tax Act on assessee on 22.12.2017, need to be presumed to be true and correct in consonance with the provisions of section 132(4A) read with section 292C of the Income Tax Act. This presumption had not been rebutted by both assessee as well as by the revenue by bringing any contrary evidences on record.

23. Hence the credits in the bank accounts of foreign entities cannot be the subject matter of any addition in the hands of the assessee in the assessment framed under section 10(3) of the BMA and more so in view of the fact that the foreign entities are distinct and separate from its shareholders. Accordingly, the grounds raised by the assessee on merits of the additions are hereby directed to be deleted.

24. Since the entire addition has been deleted on merits in the hands of the assessee, the other legal arguments advanced by the Learned Counsel for the assessee challenging the applicability of provisions of BMA and defended by the Learned Departmental Representative need not be gone into and they are left open.

25. In the result, the appeal of the assessee in BMA No. 6/Del/2024 is partly allowed in the abovementioned terms and appeal of the revenue in BMA No. 1/Del/2025 is dismissed.

26. Since the quantum proceedings are decided in favour of the assessee, the appeals against Penalty levied under section 41 of BMA would have no legs to stand and hence is hereby directed to be deleted. The appeal of the assessee in BMA No. 7/Del/2024 is allowed and appeal of the revenue in BMA No. 3/Del/2025 is dismissed.

27. With regard to the appeal of the revenue in BMA No. 2/Del/2025 for non-reporting of the alleged asset, we find that the CIT(A) has rightly deleted the addition since the reporting requirement came in for the first time from Assessment Year 2012-13 and onwards, and since the asset had already ceased to exist

prior to that year in the present case, the assessee cannot be attributed with default of disclosure to be invited with penalty under section 43 of the BMA. Accordingly, the appeal of the revenue in BMA No. 2/Del/2025 is dismissed.

28. To sum up,

Appeal by	Appeal No.	Underlying order under section of BMA	Result
Assessee	6/Del/2024	10(3) - Quantum	Partly Allowed
Assessee	7/Del/2024	41 -Penalty	Allowed
Department	1/Del/2025	10(3)-Quantum	Dismissed
Department	2/Del/2025	41 -Penalty	Dismissed
Department	3/Del/2025	43 -Penalty for non-disclosure	Dismissed

Order pronounced in the open court on 24.09.2025

Sd/-	**Sd/-**
(M BALAGANESH)	**(C.N. PRASAD)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 24.09.2025

**Kavita Arora, Sr. P.S.*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI