IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **02.11.2018**

CORAM:

THE HONOURABLE MR. JUSTICE **S.MANIKUMAR**

AND

THE HONOURABLE MR. JUSTICE **SUBRAMONIAM PRASAD**

W.A.Nos.1125 to 1128, 1130 & 1131 of 2018,
W.P.Nos.13005 to 13007, 13008 to 13010,
13070 to 13072, 13041 to 13043, 11714,
11715 & 22329 to 22331 & 22333 of 2018
and Rev.Appl.Nos.79 to 82 of 2018
and Connected WMPs, CMPs and MPs.

W.A.No.1125 of 2018

Srinidhi Karti Chidambaram .. Appellant

-vs-

1.The Principal Chief Commissioner of
Income Tax (Tamil Nadu and Puducherry),
Main Building, No.121, Nungambakkam
High Road, Chennai 600 034.

2.The Director General of Income Tax (Investigation),
New Building, 2nd Floor, Investigation Wing,
New No.45, Old No.108, Nungambakkam
High Road, Chennai 600 034.

3.The Deputy Director of Income Tax (Investigation),
Unit – 3 (3), Room No.120, First Floor,
Investigation Wing Building, No.45, Uthamar
Gandhi Road, Nungambakkam High Road,
Chennai 600 034. .. Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 12.04.2018 passed in W.P.No.8832 of 2018 on the file of this Court.

For Appellant in all W.As., for Petitioners in all WPs. And for Respondent in Rev.Applns.	...	Mr.Gopal Subramanium, Sr. Counsel for M/s.C.Uma and Mr.N.R.R.Arun Natarajan Mr.AR.L.Sundaresan, Sr. Counsel
For respondents in all WAs. and WPs. and for Applicant in Rev.Applns.	...	Mr.Mr.G.Rajagopalan, Addl. Solicitor General Assisted by Mr.A.P.Srinivas

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COMMON JUDGEMENT

(Judgement of the Court was made by **S.MANIKUMAR, J.**)

Since, the issues involved in these Batch of cases, comprising of Writ Appeals, Writ Petitions and Review Applications are interconnected and interrelated, they were heard together and are being disposed of, by means of this Common Judgement.

2. Challenge in these batch of cases are as follows:

(A) WRIT APPEALS:

(i) **W.A.Nos.1125 to 1128, 1130 and 1130 and 1131 of 2018**, have been filed under Clause 15 of Letter Patents, against the common order dated 12.04.2018, made in W.P.Nos.8832 to 8835, 8840 and 8841 of 2018.

(B) WRIT PETITIONS, QUESTIONING THE COMPETENCE OF THE PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX (TAMIL NADU AND PUDUCHERRY) TO SANCTION PROSECUTION TO FILE THE COMPLAINT AGAINST THE WRIT PETITIONERS:

(ii) **W.P.Nos.13005 and 13071 of 2018** are for issuance of declaration, declaring that the Principal Director of Income Tax (Investigation), Chennai, 2nd respondent is not an authority having jurisdiction/competence under section 55 Block Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, to sanction prosecution or file a prosecution compliant for offences under Section 50 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 against the petitioners.

(C) WRIT PETITIONS, TO DECLARE SECTIONS 48 AND 50 OF THE BLACK MONEY ACT, AS UNCONSTITUTIONAL AND VIOLATIVE OF ARTICLE 14 OF THE CONSTITUTION OF INDIA:

(iii) **W.P.Nos.13006, 13008, 13009, 13041, 13042 and 13070 of 2018** are for issuance of declaration, declaring that Sections 48 and 50 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 are arbitrary, violative of Article 14 and 21 of Constitution of India, unless the true scope and meaning of the provisions of Chapter V of the Black money (undisclosed Foreign Income & Assets) and Imposition of Tax Act, 2015 are construed / interpreted to mean that a prosecution may be sanctioned and a prosecution complaint can be filed before the Jurisdictional Magistrate under the provisions of the said Chapter V only if and after the Assessing Officer concerned has passed an order under Section 10(3) of the Act holding that the assesse has undisclosed asset located outside India.

(iv) **W.P.No.11714 of 2018** is for issuance of a declaration, declaring that Section 50 of the Block Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act, 2016 is null and void unless the true scope and meaning of the provisions of Chapter V of the Block Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act, 2015 is construed that a prosecution may be sanctioned and a prosecution may be instituted under the provisions of the said Chapter V only if and after the Assessing Officer concerned has passed an order under Section 10(3) of the Act holding that the assessee has undisclosed foreign income and /or asset and has determined the sum payable by the assesses (subject to Appeal and further Appeals as provided in Chapter-II of the Act).

(D) WRIT PETITIONS, TO DECLARE CHIEF METROPOLITAN MAGISTRATE, IS NOT THE DESIGNATED COURT:

(v) **W.P.Nos.13007, 13010, 13043, and 13072 of 2018** were filed under Article 226 of the Constitution of India, for issuance of declaration, declaring that the Chief Metropolitan Magistrate, Egmore, Chennai is not the designated Special Court within the meaning of Section 84 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015,read with Section 280A of the Income Tax Act for the purpose of trying any offence under chapter V of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

(E) WRIT PETITIONS, FILED AGAINST THE SHOW CAUSE NOTICE AND ORDERS PASSED:

(vi) **W.P.No.11715 of 2018** is for issuance of a declaration, calling for the records relating to the show cause notice dated 13.04.2018 bearing File No.Pr.DIT (Inv) / Prosecution / 2018-19 for Assessment Year 2016-17 issued by the respondent No.1 and all proceedings consequential to the said show cause notice and quash the same as without jurisdiction.

(vii) **W.P.No.22329 of 2018** is for issuance of a declaration, calling for the records relating to the order dated 10.05.2018 passed by the 1st respondent under Section 55 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 according sanction to prosecute the petitioner for offence under Section 50 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 and the consequential prosecution complaint C.C.No.4483 of 2018 dated 11.05.2018 filed by the 2nd respondent before court of the Chief Metropolitan Magistrate, Egmore, Chennai and quash the same as without authority of law and illegal because of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 and especially.

(viii) **W.P.No.22330 of 2018** is for issuance of a declaration, calling for the records relating to the order dated 10.05.2018 passed by the 1st respondent under Section 55 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 according sanction to prosecute the petitioner for offence under Section 50 of the Black Money

(Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 and the consequential prosecution complaint C.C.No. 4485 of 2018 dated 11.05.2018 filed by the 2nd respondent before Court of the Chief Metropolitan Magistrate, Egmore, Chennai and quash the same as without authority.

(ix) **W.P.No.22331 of 2018** is for issuance of a declaration, calling for the records relating to the prosecution complaint C.C.No.4484 of 2018 dated 11.05.2018 filed by the 2nd respondent before court of the Chief Metropolitan Magistrate, Egmore, Chennai 600 008 and quash the same as without authority of law and illegal because the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 and especially Section 50 of the said Act, is not applicable to the petitioner and cannot be invoked against the petitioner in the facts and circumstances of the case.

(x) **W.P.No.22333 of 2018** is for a issuance of a declaration, calling for the records relating to the prosecution complaint C.C.No.4482 of 2018 dated 11-05-2018 filed by the 2nd Respondent before court of the Chief Metropolitan Magistrate, Egmore, Chennai-600 008 and quash the same as without authority of law and illegal because the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 and especially section 50 of the said Act is not applicable to the petitioners and cannot be invoked against the petitioners in the facts.

(C) REVIEW APPLICATIONS:

(xi) Review Application Nos.79 to 82 of 2018 were filed to review the orders, dated 12.06.2018 in W.M.P.No.15287 in W.P.No.13006 of 2018, W.M.P.No.15290 of 2018 in W.P.No.13009 of 2018, W.M.P.No.15324 of 2018 in W.P.No.13042 of 2018 and W.M.P.No.15352 of 2018 in W.P.No.13071 of 2018.

COMMON FACTS :-

3. For convenience, let us first consider W.P.Nos.13005, 13006, 13007, 13008, 13009, 13010, 13041, 13042, 13043 13070, 13071 and 13072 of 2018.

4. The said writ petitions are filed by

(i) Mrs.Nalini Chidambaram

(ii) Mrs.Srinidhi Karti Chidamnbaram

(iii) Mr.Karti P Chidambaram and

(iv) M/s Chess Global Advisory Services Private Limited, rep by its Director Mr.Karti P Chidambaram and 3 others respectively.

5. We briefly set out the common facts and individual case, put forth by each of the writ petitioner.

6. Common case of Mrs.Nalini Chidambaram (writ petitioner in W.P.Nos.13005 to 13007 of 2018, 22330 of 2018), Mrs.Srinidhi Karti P Chidambaram (writ petitioner in W.P.Nos.13008 to 13010 of 2018, 22329 of 2018), and Mr.Karti P.Chidambaram (writ petitioner in W.P.Nos.13041 to 13043 of 2018, W.P. No.22331 of 2018) is that the Reserve Bank of India introduced the Liberalized Remittance Scheme (LRS) on February 4, 2004, vide A.P. (DIR Series) Circular No.64, dated February 4, 2004 read with GOI Notification G.S.R. No.207(E), dated March 23, 2004, as a liberalization measure to facilitate resident individuals to remit funds abroad for permitted current or capital account transactions or combination of both. The permissible capital account transactions by an individual under Liberalized Remittance Scheme (LRS) of the RBI include, amongst others, purchase of property abroad.

7. During 03.06.2014 till 26.05.2015, under the Liberalised Remittance Scheme, Designated bankers/Authorised Dealers were permitted to allow remittances by resident individuals up to USD 1,25,000/- per Financial Year. The Scheme is available to all resident individuals including minors. In case of the remitter being a minor, Form A2 must be countersigned by the minor's natural guardian. Remittances under the Scheme can be consolidated in respect of family members subject to individual family members complying with its terms and conditions. The scheme, however, provides that clubbing is not permitted by other family members for capital account transactions such

as purchase of property, if they are not the co-owners of the investment/property.

8. The writ petitioners, have further stated that they decided to purchase a property at 5, Holben Close, Barton, Cambridge CB23 7AQ, hereinafter referred to as Cambridge Property. The Petitioners intended to purchase in equal shares in Cambridge property and appointed M/s. Hewtisons, LLP to be their legal counsel for completing the purchase.

9. It is the case of Mrs.Nalini Chidambaram (writ petitioner in W.P.Nos.13005 to 13007 of 2018), that on 25.3.2015, she wrote to the Manager, Canara Bank, requesting for foreign remittance of GBP 83,500 from their account. The purpose of the investment was stated as investment in real estate abroad. Another application cum declaration was submitted under the Liberalized Remittance Scheme for the same amount. She filled up form A2 under FEMA 1999. The name of the Beneficiary was stated as Hewitsons LLP Client account in Lloyds Bank, Cambridge, UK. M/s. Hewitsons LLP were the Solicitors appointed by her family to handle the Cambridge Property transaction. The swift code and other details were filled up. Another application cum declaration was submitted under the Liberalized Remittance Scheme for the same amount. She remitted Rs.77,60,470 equal to GBP 83,500/- (British Pounds) to the Beneficiaries account in UK from her bank account in Canara Bank, Kilpauk Branch on 26.03.2015.

10. Mrs.Nalini Chidambaram (writ petitioner in W.P.Nos.13005 to 13007 of 2018), has further submitted that on 06.04.2015, she remitted another amount of GBP 83,500/- to UK. On 28.05.2015, Mrs.Nalini Chidambaram acquired the property in Cambridge, UK, jointly with her son and daughter in law. The Beneficiaries name was stated as Hewitsons LLP Client account in Lloyds Bank, Cambridge, UK. The return for AY 2015-16 was filed on 30.09.2015. The remittance of Rs.77,60,470 was shown in the Schedule 6 : Current assets as advance for Cambridge Property. For AY 2015-16 a 1st Revised return was filed on 06.04.2016 and a 2nd Revised return was filed on 01.10.2016. for correcting certain minor errors.

11. It is her further case that her husband, Mr.P.Chidambaram, as a Member of Parliament from Rajya Sabha has filed the statement of assets and liabilities of himself and his spouse in the Parliament on 31.05.2016. The assets of the Spouse, i.e. Mrs.Nalini Chidambaram, including the foreign asset located in Cambridge, UK, was included in the list of assets owned by Mrs.Nalini Chidambaram.

12. Mrs.Nalini Chidambaram has filed return of Income for AY 2016-17 on 14.10.2016, under Section 139(1) of the Income Tax Act. Simultaneously, tax audit report was also filed electronically annexing the audited balance sheet of the Petitioner. Schedule 3 deals with the Immoveable Property, refers to the 1/3rd share of property, in Cambridge valued at Rs.1,55,21,181/-.

13. It is submitted by Mrs.Nalini Chidambaram that she filed her return of Income for AY 2016-17 on 14.10.2016 under Section 139 (1) of the IT Act. In the original return of income, due to a human error committed in the office of her Chartered Accountant, Part-B of Schedule FA, dealing with immovable properly held abroad, was not filled up. However, in the original return of income itself, the said amount of Rs.1,55,21,181 being the value of the foreign asset located in Cambridge, UK, was included among Rs.23,45,17,597 in Schedule - AL relating to "Assets and Liability at the end of the year".

14. It is further submitted that since the online format of Schedule-AL, prescribed by the Income Tax Department does not have separate columns for assets and liabilities in India and abroad, she could not have filled up the same in any column, distinguishing the assets owned by her in India and abroad. For AY 2016-17, on 17.10.2016, a 1st Revised return was filed for rectifying certain minor errors relating to TDS calculations.

15. On 02.08.2017, Mrs.Nalini Chidambaram received a notice, under Section 10(1) of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, for the Assessment Year 2015-16 and 2016-17 from the Deputy Director of Income Tax (Inv.), Unit - 3(3). The notice sought for the following documents:

> "(i) Copies of all documents in respect of investments made by you in the said property No.5, Holben Close, Barton,

Cambridge CB237AQ including agreement, sale deed, possession letter, etc.

(ii) Full details of total consideration paid for acquiring the property and your share in the consideration and title of the property along with details of other co-owners if any.

(iii) Details of immediate sources of funds for the investment

(iv) Copies of all Banks statements reflecting the remittance made towards purchase of the property

(v) A statement of all assets held by you either in your name or where you hold beneficial interest, both in India and abroad, including dates of acquisition."

16. Mrs.Nalini Chidambaram has further submitted that on 17.08.2017, her Chartered Accountant sent a reply questioning the jurisdiction of the said officer to issue a notice under section 10(1) of the Black Money Act. She also gave details of the information sought for by enclosing 10 annexures. She requested the officer to withdraw the notice issued to her under Section 10 (1) of Act 22 of 2015.

17. On 21.08.2017, she filed a 2nd revised return under Section 139(5) of the IT Act, showing the Cambridge property valued at Rs.1,55,21,181/- in part C of Schedule Foreign Assets (hitherto referred to as FA). The assessment order for the AY 2016-17 is yet to be passed. There was further correspondence, submission of documents and hearing before the Deputy Director of Income Tax (Inv.), Unit - 3(3) relating to the Cambridge

Property. On 30-10-2017 she filed the return for the AY 2017-18 under Section 139 (1) of the IT Act, showing the Cambridge property valued at Rs.1,55,21,181 /- in Part C of Schedule FA. According to the her, if the assessing officer considers the documents furnished by her objectively and in accordance with law, the assessing officer will have no other option, except to drop all the proceedings against her under the Black Money Act and pass a NIL assessment order under section 10(3) of Act 22 of 2015.

18. It is the further case of Mrs.Nalini Chidambaram that even before the Income Tax Officer passed the assessment order under the Income Tax Act for the AY 2016-17 and under Section 10(3) of the Black Money Act, two show cause notices dated 13.04.2018, were issued to her, by the Principal Chief Commissioner of Income Tax (Tamil Nadu and Puducherry), 2nd Respondent herein, under section 55(1) of the Black Money Act for prosecution of the Petitioner u/s 50 of the Black Money Act for the AY 2015-16 and AY 2016-17.

19. In the show cause notice, for the AY 2015-16, it was stated that as per the information received by the Assessing officer, it has been noticed that she has made investment in Cambridge property remitting Rs.77,60,470/- directly to Lloyds Bank, Cambridge to the Beneficiary Hewitsons LLP Client account. In the original return and the 2nd revised returns, remittance of Rs.77,60,470/- was not mentioned in Schedule FA and

therefore it is evident that she has wilfully failed to disclose the particulars of information regarding assets held outside India, in the return of income for AY 2015-16.

20. It was further alleged by the 2nd Respondent that the return of income for the AY 2016-17 does not mention the details of foreign asset in Schedule FA. However, after notice under Section 10(1) of the Black Money Act, a revised return was filed on 21.08.2017, with the details of foreign asset in Schedule FA. The revised return was not a voluntary act, but only after receipt of Section 10(1) notice. Thus, Mrs.Nalini Chidambaram has been asked to show cause why prosecution proceedings under section 50 of Act 22 of 2015 should not be initiated for the AY 2015-16 and AY 2016-17.

21. According to Mrs.Nalini Chidambaram, the show cause notice did not allege that she wilfully failed to furnish in the return, any information relating to asset located outside India. She has further contended that the hearing on the show cause notice was held on 27.04.2018 before the 2nd Respondent. Oral arguments were advanced and written submissions were given. As far as AY 2015-16 is concerned it was argued in the case of Mrs.Nalini Chidambaram, the Black Money Act does not apply to 2015-16 and hence, the show cause notice itself was without jurisdiction.

22. As far as AY 2016-17 is concerned, Mrs.Nalini Chidambaram has submitted that since the foreign asset was disclosed in the revised return which has obliterated/effaced the original return and hence section 50 of the Black Money Act is not attracted to the facts of the case.

23. According to Mrs.Nalini Chidambaram, arrest of her son based on a statement of an accused in judicial custody for murder of her daughter, registering an FIR without conducting a preliminary enquiry about incidents which happened 10 years ago, as held by the Hon'ble Supreme in Lalitha Kumari's case, reopening income tax assessments, without having reason to believe that she and the family members have failed to disclose fully and truly all the material particulars, relevant to the assessment and subjecting the family members to hostile discrimination.

24. Mrs.Srinidhi Karti P.Chidambaram (writ petitioner in W.P.Nos.13008 to 13010 of 2018) has stated that on 24.03.2015, she made an application to her banker, Indian Overseas Bank, Nungambakkam Branch, to transfer GBP 83,000 from her savings bank account with the said Branch, to the account of their legal counsel, M/s.Hewitsons, LLP Client Account, which is an escrow account maintained by the legal counsel to complete the purchase of the Cambridge property. The said amount was remitted to M/s.Hewitsons, LLP Client Account on 24.03.2015.

25. Mrs.Srinidhi Karti P.Chidambaram has further stated that on 07.04.2015, she made an application to her banker, Indian Overseas Bank, Nungambakkam Branch, to transfer GBP 84,000 from her savings bank account with the said Branch, to the account of her legal counsel, M/s. Hewitsons, LLP Client Account for purchase of the Cambridge property. The said amount was remitted to M/s. Hewitsons, LLP Client Account on 09.04.2015. Remittances limits were revised and Authorised Dealers were authorised to permit remittances by resident individuals up to USD 2,50,000 per Financial Year, with effect from 26.05.2015.

26. Mrs.Srinidhi Karti P.Chidambaram has further stated that after remittances of the money, on 28.05.2015, she along with her husband and mother-in-law, purchased the Cambridge property. The extract from the Official copy of register of title, as available in the online Land Registry of the United Kingdom reflects that the absolute title of ownership of the property located at 5, Holben Close, Barton, Cambridge CB23 7AQ belongs to herself, her husband Karti P Chidambaram and her mother-in-law Mrs.Nalini Chidambaram. It also be seen that the price stated to have been paid was GBP 535,000. On 28.08.2015, Mrs.Srinidhi Karti P. Chidambaram, filed her Return of Income for the AY 2015-16, wherein, the amounts transferred by her towards purchase of a property abroad were duly reflected in Schedule FA.

27. Mrs.Srinidhi Karti P Chidambaram has further stated that on 31.07.2016, she filed her Return of Income for the AY 2016-17 under section 139 (1) of the IT Act, wherein the amounts transferred by her towards purchase of a property abroad were duly reflected in Schedule FA as Rs. 1,55,07,510. During the financial year 2015 -16 relevant to the AY 2016-17 she has remitted the following amounts for maintenance of the Cambridge Property.

Date of Transfer	**Rs.**
20.07.2015	31,68,095
16.09.2015	33,14,536
11.03.2016	16,75,724
TOTAL	**81,58,355**

28. The remittance of Rs.81,58,355 to UK was not shown in Schedule FA since the said sum was not meant to acquire any tangible asset but for maintenance of Cambridge Property. Part B of Schedule-FA was not filled in, because it is titled "Details of Financial Interest in any Entity held (including any beneficial interest), at any time during the previous year". The assesse was advised that since she did not have any financial interest in any entity, it was not necessary to fill Part-B. However, in Schedule-AL relating to "Assets and Liability at the end of the year", against item 2(a)(w) - Loans and Advances given, a sum of Rs. 5,64,42,613/- was disclosed. This sum includes the three amounts mentioned above ie Rs.81,58,355 remitted to

Mrs.L.Mooney, an individual and the caretaker of the Cambridge Property towards maintenance and repairs.

29. Mrs.Srinidhi Karti P Chidambaram has further stated that on 04.08.2017, the Deputy Director of Income Tax (Inv.), Unit - 3(3) issued a notice to her u/s 10(1) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, alleging that the investments made by her, with respect to AY 2016-17 were not disclosed fully in Schedule - FA of the Return of Income filed for the said assessment years. The authority called upon her to furnish certain documents/information in relation to the investments made by her in the foreign property.

30. Mrs.Srinidhi Karti P Chidambaram has further stated that on 17.08.2017, her Authorized Representative appeared before the Deputy Director of Income Tax (Inv.), Unit - 3(3) and submitted that for issuing notice u/s 10(1) of the Black Money Act to any person, the jurisdictional fact is that the noticee should have undisclosed foreign assets within the meaning of Section 2(11) of the Black Money Act.

31. She further submitted that the said jurisdictional fact is completely absent in her case since the investment made by her in the foreign property has been disclosed in her Return of Income and as a result, the assets did not qualify as an "undisclosed asset" as envisaged in the Black Money Act.

The Authorized Representative further called upon the Deputy Director of Income Tax (Inv.), Unit - 3(3) to first decide on the question, as to whether the authority had the jurisdiction to issue the impugned notice.

32. Mrs.Srinidhi Karti P Chidambaram has further stated on 21.08.2017, the Deputy Director of Income Tax (Inv.), Unit - 3(3) issued a notice, substantiating his assumption of jurisdiction over her. The Deputy Director of Income Tax (Inv.), Unit - 3(3) informed her that as per documents available with the Department, it was evident that the total investment made by her in the foreign immovable property at No.5, Holben Close, Barton, Cambridge CB23 7AQ was Rs. 1,86,95,295/- as against Rs.1,55,07,510/- declared in her return of Income. The Deputy Director of Income Tax (Inv.), Unit - 3(3) also called for additional documents and information to be submitted. The Deputy Director of Income Tax (Inv.), Unit - 3(3) failed to appreciate that she had invested only a sum of Rs.1,55,07,510/ on the purchase of 1/3 rd of the Cambridge Property .

33. In respect of AY 2016-17, on advice of the Chartered Accountant, Mrs.Srinidhi Karti P.Chidambaram, the assesse filed a revised return of income on 22.08.2017, under Section 139(5) of the IT Act, within the due date. According to Mrs.Srinidhi Karti P.Chidambaram law allows an assessee to file more than one revised return of income as long as it is done within the stipulated time. Hence, the only return of income that is relevant and that

can be looked into is the last revised return of income filed within the stipulated time.

34. It is submitted that Part B of Schedule-FA was filled by way of abundant caution, showing the remittance of the above three amounts (totaling Rs.81,58,355). In Part C of Schedule FA, the investment, in Cambridge Property, disclosed in the original return, was repeated. Adding the two sums together, it will be seen that there has been a full disclosure.

Particulars	**Rs.**
Cost of Acquisition of Property	1,55,07,510
Expenses on Repairs and Maintenance	81,58,355
Total	**2,36,65,865**

35. Mrs.Srinidhi Karti P. Chidambaram has further stated that on 04.09.2017, her Authorized Representative explained to the Deputy Director of Income Tax (Inv.), Unit - 3(3) that the Petitioner had invested only a sum of Rs. 1,55,07,510/ on the purchase of 1/3rd of the Cambridge Property. The Authorised Representative, however, without prejudice, submitted the information and documents called for by the Deputy Director o f Income Tax (Inv.), Unit - 3(3) and requested for further time to submit the other information/documents.

36. Mrs.Srinidhi Karti P. Chidambaram has further stated that on 11.09.2017, the Authorized Representative of the Petitioner provided the

remainder of the information and documents called for by the Deputy Director of Income Tax (Inv.), Unit - 3(3).

37. Mrs.Srinidhi Karti P. Chidambaram has further stated that on 01.11.2017, the Deputy Director of Income Tax (Inv.), Unit - 3(3) issued summons to the Petitioner under Section 8 of the Black Money Act, calling upon her to produce her statement of net wealth from 2014 to 2017, an explanation on the basis on which part of the foreign remittance has been classified as 'Advance for financial interest' and necessary proof to substantiate her claim for the loan received from her mother-in-law. On 06.11.2017, her authorized representative appeared before the Deputy Director of Income Tax (Inv.), Unit - 3(3) and provided the details called for by him, in the summons, dated 01.11.2017 and further details as called for by the said authority, during the hearing on 06.11.2017.

38. Mrs.Srinidhi Karti P. Chidambaram has further stated that a scrutiny of the details sought for by the Deputy Director of Income Tax (Inv.), Unit - 3(3) shows that the Deputy Director of Income Tax (Inv.), Unit - 3(3) was only conducting a fishing and roving enquiry and sought for information not related to the objects of the Black Money Act. Despite giving all particulars relating to Black Money Act, the assessing officer has not passed any order under section 10(3) of the Black Money Act. If the assessing officer considers the documents furnished by the Petitioner

objectively in accordance with law he will have no other option except to drop all proceedings against her under the Black Money Act and pass a NIL Assessment order under Section 10(3) of the Black Money Act.

39. Mrs.Srinidhi Karti P. Chidambaram received a show-cause notice dated 13.01.2018 from the 2nd Respondent u/s 55(1) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. The show-cause notice was in respect of assessment year 2016-17 and pertains to Cambridge Property. The show-cause notice alleges that as per the information received by the assessing officer she has invested in immoveable property out side India was Rs.1,86,95,95. The notice stated that in the original return for AY 2016-17 on 31.07.2016 the investment in Cambridge property was disclosed as Rs.1,55,07,510 but after receipt of section 10(1) notice, a revised return was filed on 22.08.2017 revising the contents of schedule PA of the return of income. Hence, there is wilful failure to disclose about the particulars of the assets held out side India in the return filed.

40. In the reply to the show cause notice, it was pointed out that there are valid legal grounds to challenge the constitutional validity of the provisions of Chapter V of the Act or, in the alternative, to read down the provisions to render them unconstitutional and violative of Articles 14, 19 and 21 of the Constitution of India.

41. The hearing on the show cause notice was posted on 27-04-2018. During the proceedings, through her Authorised Representative, petitioners filed written submissions objecting to the show cause notice. Their counsel also advanced oral arguments stating among others, that they have filed a revised return under section 139(5) of the Income Tax Act disclosing all the assets located outside India in Schedule FA and such a revised return substitutes/effaces/obliterates the original return and hence the only return on record is the revised return filed by her on 04.09.2017 for the AY 2016-17 wherein the sum of Rs.1,55,21,181 was disclosed in Part B of Schedule FA as a matter of abundant caution). Hence there is no failure on her part to disclose the foreign assets in the Schedule FA much less a wilful failure. The allegation that the revised return was not filed voluntarily but only after the section 10(1) notice is untenable.

42. On 26.03.2015, Mr.Karti P Chidambaram (writ petitioner in W.P.Nos.13041 to 13043 of 2018) wrote to the Manager, Indian Overseas Bank, Nungambakkam Branch requesting for foreign remittance of GBP 83,000 from the Petitioner's account. The purpose of the investment was stated as investment in real estate abroad. Another application cum declaration was submitted under the Liberalized Remittance Scheme for the same amount. The Petitioner filled up Form A2 under FEMA 1999. The Beneficiary name was stated as Hewitsons LLP Client account in Lloyds Bank, Cambridge, UK. M/s. The swift code and other details were filled up.

43. Mr.Karti P Chidambaram (writ petitioner in W.P.Nos.13041 to 13043 of 2018) remitted Rs.77,60,500 equal to GBP 83,000/- (British Pounds) to the Beneficiaries account in UK from his bank account in Indian Overseas Bank, Nungambakkam Branch on 26.03.2015, for the intended purchase of a property in Cambridge, UK jointly with his mother and wife. He remitted another sum of Rs.77,85,120 equal to GBP 84,000/- (British Pounds) to the Beneficiaries account in UK from his bank account in Indian Overseas Bank, Nungambakkam Branch on 07.04.2015. He also remitted Rs.76,86,000 equal to GBP 84,000/- (British Pounds) to the Beneficiaries account in UK from his bank account in Indian Overseas Bank, Nungambakkam Branch on 10.04.2015.

44. On 28-05-2015, he acquired the property in Cambridge, which was registered jointly with his mother and wife and he has 1 /3rd share in the properly and his share of investment amounts to Rs.2,03,36,574. He has purchased a foreign asset in Cambridge UK from the known sources of income earned in India and voluntarily disclosed the foreign asset in multiple documents. He further states that he does not own any foreign asset purchased from any undisclosed sources or black money.

45. He further states that return for AY 2015-16 was filed on 25-08-2015. The remittance of Rs.77,60,500 was disclosed in Part-B of Schedule FA of the return of income. He filed return of Income for AY 2016-17 on

30.07.2016 under Section 139 (1) of the IT Act. In Part-C of Schedule-FA of the return of income, he had fully disclosed his share of investment (including amounts transferred from his minor daughter's account) in the Cambridge Property amounting to Rs.2,03,36,574. As a matter of abundant caution, he had also disclosed, in Part-B of Schedule FA of the return of income for AY 2016-17, all the amounts transferred from his bank account to the bank account of the caretaker of the property amounting to Rs.96,92,229. It is reiterated that the amounts transferred to the caretaker of the property were only towards general maintenance of the property and are as such only current account expenses and not capital account expenses. Therefore, there was no requirement for him to have actually disclosed the amounts transferred to the caretaker of the property for maintenance. There was however a clerical error committed in the office of his Chartered Accountant while filling up the said Part-B of Schedule-FA. Although the entire amount of Rs.96,92,229 had been disclosed, the beneficiary was mentioned as Hewitsons LLP instead of L.Mooney who is the caretaker of the property. A perusal of the bank forms and delivery reports provided by Indian Overseas Bank, Nungambakkam Branch, Chennai will make it abundantly clear that the funds were transferred and received only in the bank account of the caretaker of the property.

46. On 30.11.2015, Mr.Karti P Chidambaram remitted Rs.33,64,360 equal to GBP 33,104/ - (British Pounds) to the bank account of the caretaker

of the property, towards maintenance, repairs and general upkeep of the property that was purchased. The transfer was made from the Petitioner's bank account in Indian Overseas Bank, Nungambakkam Branch to the account of the Beneficiary, i.e the caretaker of the property.

47. Similarly, on 28.01.2016, Mr.Karti P Chidambaram remitted Rs.34,32,823 equal to GBP *35,1941* - (British Pounds) to the bank account of the caretaker of the property, towards maintenance, repairs and general upkeep of the property that was purchased. The transfer was made the Petitioner's bank account in Indian Overseas Bank, Nungambakkam Branch to the account of the Beneficiary, i.e the caretaker of the property.

48. It is the case of Mr.Karti P Chidambaram (writ petitioner in W.P.Nos.13041 to 13043 of 2018) that he is an Income Tax assessee for many years. He has been filing returns disclosing all assets and liabilities regularly in the returns and balance sheets. He has no undisclosed assets either in India or in any foreign location. He does not deal with black money.

49. Mr.Karti P Chidambaram (writ petitioner in W.P.Nos.13041 to 13043 of 2018) has filed return of Income for AY 2016-17 on 30.07.2016 under Section 139 (1) of the IT Act. In Part-C of Schedule-FA of the return of income, the Petitioner had fully disclosed his share of investment (including amounts transferred from his minor daughter's account) in the Cambridge

Property amounting to Rs.2,03,36,574. As a matter of abundant caution, the Petitioner had also disclosed, in Part-B of Schedule FA of the return of income for AY 2016-17, all the amounts transferred from his bank account to the bank account of the caretaker of the property amounting to Rs.96,92,229.

50. He submitted that the amounts transferred to the caretaker of the property were only towards general repairs and maintenance of the property and are as such only current account expenses and not capital account expenses. Therefore, there was no requirement for the Petitioner to have actually disclosed the amounts transferred to the caretaker of the property for repairs and maintenance. There was however a clerical error committed in the office of the Petitioner's Chartered Accountant while filling up the said Part-B of Schedule-FA. Although the entire amount of Rs.96,92,229 had been disclosed, the beneficiary was mentioned as Hewitsons LLP instead of L.Mooney who is the caretaker of the property. A perusal of the bank forms and delivery reports provided by Indian Overseas Bank, Nungambakkam Branch will make it abundantly clear that the funds were transferred and received only in the bank account of the caretaker of the properly.

51. The details of the application made by the petitioner to his Banker namely Indian Overseas Bank, Nungambakkam Branch, Chennai and the amount in Pounds/ Rupees remitted to the account of M/s.Hewtisons, LLP , U.K are given below:

Date of Application to the Banker	Amount (in foreign currency)	Amount (in Rs.)
26.03.2015	GBP 83,000	77,60,500
07.04.2015	GBP 84,000	77,85,120
10.04.2015	GBP 84,000	76,86,000
30.11.2015	GBP 33,104	33,64,360
28.01.2016	GBP 35,194	34,32,823
TOTAL		**3,00,28,803**

52. Out of the total sum of Rs.3,00,28,803/ , Rs.2,03,36,572/- in British pounds was sent to the Beneficiary Hewitsons LLP Client account in Lloyds Bank, Cambridge, UK. who was the legal counsel for completing the purchase of the Cambridge properly. The balance sum of Rs.96,92,229/- was sent to the Bank account of the caretaker of the property Ms.L.Mooney.

53. M/s.Chess Global Advisory Services Pvt. Ltd. had also made an investment in 0.77% of the Series-D Preferred Units (equivalent of preference shares in India) in a USA based Company, M/s.Nano Holdings, LLC. The investment was approved by the Board of Directors of Chess Global Advisory Services Private Limited. Since the investment was only in preferred units and not in any equity instruments, it does not confer any ownership rights upon Chess Global Advisory Services Private Limited. The only return on investment will be dividend and redemption of the preferred units. The registered owner of the 0.77% preferred units, as per the statutory records of Nano Holdings, LLC, is M/s. Chess Global Advisory Services Pvt. Ltd. and

not the Petitioner. Therefore, all the income will only accrue to the Company and he does not have any beneficial interest or ownership, in any form or manner, in the investments made in Nano Holdings, LLC, USA. Therefore, he had not made any disclosures in this regard in his return of income. M/s. Chess Global Advisory Services Pvt. Ltd. Has disclosed the investment of Rs. Rs. 80,01,110 in Totus Tennis Ltd, U.K. and Rs.3,27,62,500 in NanoHoldings, LLC, USA its Income Tax return.

54. Mr.Karti P Chidambaram, is the major shareholder and Director of Mis. Chess Global Advisory Services Private Limited, a Company registered in India. The Petitioner promoted a private limited company in the United Kingdom by the name of Totus Tennis Limited, which was a wholly owned subsidiary of Chess Global Advisory Services Private Limited. Since the Petitioner was a Director in both these companies and he was the promoter of Totus Tennis Limited, he had also declared in Part-B of Schedule-FA that he a direct beneficial interest in Totus Tennis Limited. In Part-B, under column "Total Investment (at cost)", the Petitioner had mentioned zero since all the investments in Totus Tennis Limited were made by only by Chess Global Advisory Services Private Limited and the Petitioner has not made any transfers or investments directly in Totus Tennis Limited.

55. Chess Global Advisory Services Pvt. Ltd. had also made an investment in 0.77% of the Series-D Preferred Units (equivalent of

preference shares In India) in US based Company, namely, M/s.Nano Holdings, LLC. The investment was approved by the Board of Directors of Chess Global Advisory Services Private Limited. Since the investment was only in preferred units and not in any equity instruments, it does not confer any ownership rights upon Chess Global Advisory Services Private Limited. The only return on investment will be dividend and redemption of the preferred units. The registered owner of the 0.77% preferred units, as per the statutory records of Nano Holdings, LLC, is Chess Global Advisory Services Pvt. Ltd. and not the Petitioner. Therefore, all the income will only accrue to the Company and the Petitioner does not have any beneficial interest or ownership, in any form or manner, in the investments made in Nano Holdings, LLC. Therefore, the Petitioner had not made any disclosures in this regard in his return of income.

56. Mr.Karti P Chidambaram has further stated that on 04.08.2017, the Deputy Director of Income Tax (Inv.), Unit - 3(3), Chennai issued a notice to the Petitioner u/s 10(1) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, alleging that the investments made by the Petitioner, w.r.t AY2015-16 and AY2016-17 were not disclosed fully in Schedule - FA of the Return of Income filed for the said assessment years. The authority called upon the Petitioner to furnish certain documents/information in relation to the investments made by him in the foreign property.

57. Mr.Karti P Chidambaram (writ petitioner in W.P.Nos.13041 to 13043 of 2018) has further stated that on 08.08.2017, the Deputy Director of Income Tax (Inv.), Unit - 3(3) issued another notice to the Petitioner u/s 10(1) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, alleging that certain investments in Nano Holdings, LLC USA made by Chess Global Advisory Services Private Limited during the AY2016-17 were not disclosed fully in Schedule – FA of the Return of Income filed for the said assessment year. The authority called upon the Petitioner to furnish certain documents/information in relation to the investments made by him in Nano Holdings, LLC.

58. Mr.Karti P Chidambaram, has further stated that on 17.08.2017, the Authorized Representative of the Petitioner appeared before the Deputy Director of Income Tax (Inv.), Unit - 3(3) and submitted that for issuing notice u/s 10(1) of the Black Money Act to any person, the jurisdictional fact is that the noticee should have undisclosed foreign assets within the meaning of Section 2(11) of the Black Money Act. He further submitted that the said jurisdictional fact is completely absent in the case of the Petitioner since the investment made by him in the foreign property has been disclosed in his Return of Income and as a result, the asset did not qualify as an "undisclosed asset" as envisaged in the Black Money Act. The Authorized Representative further called upon the Deputy Director of Income Tax (Inv.), Unit - 3(3) to first decide on the question whether the authority had the jurisdiction to issue the impugned notice.

59. Mr.Karti P Chidambaram, has stated that on 04.09.2017, the authorized representative of the Petitioner made further submissions, reiterating the fact that the foreign asset under question did not qualify as an "undisclosed asset" as envisaged in the Black Money Act, as the purchase of a property had been duly disclosed by the Petitioner in his Return of Income filed subsequent to the investment made in the foreign asset.

60. Mr.Karti P Chidambaram, has further stated that on 01.11.2017, the Deputy Director of Income Tax (Inv.), Unit - 3(3) issued a summons to the Petitioner under section 8 of the Black Money Act, calling upon him to produce further information/documents. On 06.11.2017, the authorized representative of the Petitioner appeared before the Deputy Director of Income Tax (Inv.), Unit - 3(3) and provided the details called for by him in the summons dated 01.11.2017. On 14.11.2017, the authorized representative of the Petitioner again appeared before the Deputy Director of Income Tax (Inv.), Unit - 3(3) and provided further details as called for by the said authority during the hearing on 06.11.2017.

61. A show cause notice, dated 13.04.2018 was issued to Mr.Karti P Chidambaram, by the 2nd Respondent under section 55(1) of the Black Money Act for prosecution of the Petitioner u/s 50 of the Black Money Act for AY 2016-17. It was alleged that the Petitioner had failed to furnish the information with respect to the foreign asset located outside India:

(i) The correct amount of investment i.e, Rs.3,00,23,9161 – in immovable property at 5, Holben Close, Barton, Cambridge – CB23 7AQ.

(ii) Information with respect to the beneficial ownership of payment from Nano Holdings, LLC

(iii) Amount of investment being Rs.80,01,110 with respect to the beneficial ownership of Totus Tennis Limited.

The Petitioner, Mr.Karti P Chidambaram, was asked to show-cause why prosecution proceedings under section 50 should not be sanctioned for the reasons stated above.

62. The details of the notices sent by the 2nd Respondent and the dates of submissions of documents by the AR of the Petitioner are given below:

Date of notice from the 2nd respondent	**Date of submission of documents by the AR of the petitioner**
04.08.2017 08.08.2017 Issued under Section 10(1) of the Black Money Act	17.08.2017 04.09.2017
01.11.2017 Issued under Section 8 of the Black Money Act	06.11.2017 14.11.2017

63. A show cause notice dated 13-04-2018 was issued to him by the 1st Respondent under section 55(1) of the Black Money Act for his prosecution u/s 50 of the Black Money Act for AY 2016-17. It was alleged in the show cause notice that section 54 of the Black Money Act presumed a

culpable mental state in any prosecution for any offence under the Act. It was alleged that he had failed to furnish the following information with respect to the foreign asset located outside India:

(i) The correct amount of investment i.e. Rs.3,00,23,916/- in immovable property at 5, Holben Close, Barton, Cambridge CB23 7AQ.

(ii) Information with respect to the beneficial ownership of payment from NanoHoldings, LLC

(iii) Amount of investment being Rs. 80,01,110 with respect to the beneficial ownership of Totus Tennis Limited.

He was asked to show-cause why prosecution proceedings under Section 50 should not be sanctioned for the reasons stated above.

64. All the Petitioners have 1/3rd share in the property. The Petitioners have submitted that they have purchased a foreign asset in Cambridge UK from the known sources of income earned in India and have voluntarily disclosed the foreign asset in multiple documents. The Petitioners further state that they do not own any foreign asset purchased from any undisclosed sources or black money.

65. Mrs.Nalini Chidambaram and her family members have submitted that the language of the show cause notice itself proved that the opportunity to show cause, as to why prosecution should not be launched under Section 50, was only an empty formality, and the 2nd Respondent has

predetermined to sanction prosecution, even though, it has been proved to the hilt before the Deputy Director of Income Tax (Inv.), Unit - 3(3) that, they have no undisclosed foreign asset, within the meaning of Section 2(11) of the Black Money Act. They had raised valid grounds to withdraw the show cause notice. Hearing itself was held in haste, without giving sufficient time, on another day, to make a detailed representation. From the haste, in which the hearing was concluded, it would be futile to wait for an objective order in accordance with law on the show cause notice.

66. Mrs.Nalini Chidambaram and her family members have further stated that they have been subjected to harassment for the last 3 years by the Central Agencies. Multiple searches were conducted by CBI and Enforcement Directorate, both under FEMA and PMLA, issued with several summons, even in the absence of a predicate offence, registration of an FIR under the Prevention of Corruption Act, without naming any public servant.

67. According to the petitioners, it is the only family in India, which has been subjected to multiple searches, within a span of just 2 years. In the searches, no incriminating documents have been seized, even though wide publicity was given in the media, while the searches were being conducted. Thus, according to the petitioners, taking note of the conduct of the Central Agencies in the past 3 years, it can be seen that respondents have been acting malafide, harassed them, without any justification.

68. Mrs.Nalini Chidambaram and her family members were shocked

to see the reports, both in TV and Print media that IT Department has filed complaints against Mr.P.Chidambaram's kin, under the Black Money Act, for allegedly not disclosing either partly or fully their foreign assets in violation of the Black Money Act. Through her advocate, Mrs.Nalini Chidambaram, wrote a letter dated 14.05.2018 to the 2nd Respondent, requesting to provide copies of the following documents at the earliest:

(a) Copy of the order passed against show-cause notice dated 13.04.2018.

(b) Copy of the sanction order for initiation of prosecution proceedings.

(c) Copy of the prosecution complaints.

Similarly, Mrs.Srinidhi Karti P Chidambaram (writ petitioner in W.P.Nos.13008 to 13010 of 2018), and Mr.Karti P Chidambaram (writ petitioner in W.P.Nos.13041 to 13043 of 2018) have written letters, dated 11.05.2018 and 14.05.2018 respectively, to the 2nd respondent, on the same lines.

69. According to the writ petitioners, they have received a letter, dated 21.05.2018, from the 2nd respondent, stating as follows:

"Please refer to the letter received from your counsel M/s. Lakshmikumaran & Sridharan, Attorneys, dated 14th May 2018, requesting for copy of order passed against show-cause notice dated 13.04.2018, copy of sanction order for initiation of prosecution proceedings and copy of prosecution complaint.

2. It is informed that after duly considering the oral as well as written submissions made by the authorized representatives on 27.04.2018, the sanction order has been

issued and complaint filed in the Court of the Chief Metropolitan Magistrate, Egmore, Chennai on 11.05.2018. As the documents have since been filed in the Court, the said documents would be served on the assessee by the Court as per the Court procedure".

70. M/s.Chess Global Advisory Services Pvt. Ltd., is a private limited company incorporated under the Companies Act, 1956. Mr.Karti P Chidambaram, Mr.A.Palaniappan and Mr.Goutham Tharanath Maroli are the Directors of M/s.Chess Global Advisory Services Private Limited. The Petitioner- Company has duly filed its return of income every year under the Income-tax Act.

71. On 20-04-2005, the Petitioner Company was incorporated with the Registrar of Companies, Chennai as Chess Healthcare Solution Private Limited. The main business activity of the Petitioner Company is to provide management consultancy and internal audit services. On 18.09.2013, the Company's name was changed to M/s.Chess Global Advisory Services Private Limited. On 13-03-2015 M/s. Totus Tennis Limited was incorporated in the United Kingdom as a wholly owned subsidiary of the Petitioner Company. The primary business activity of Totus is to identify and train talented sports persons and conduct tennis tournaments.

72. The 1st Petitioner company invested in Totus Tennis Ltd, UK, through its banker State Bank of India, Nungambakkam Branch (Authorized

Dealer), Chennai details of which are given below:

(a) Amount transferred for investment in equity shares of Totus Tennis

Date of Application to the Banker	Amount (in foreign currency)	Amount (in Rs.)
23.06.2015	GBP 1,000	1,00,295
TOTAL		**1,00,295**

(b) Amount transferred as advance for investment in equity shares of Totus Tennis / Loans & Advances:

Date of Application to be Banker	Amount (in foreign currency)	Amount (in Rs.)
23.06.2015	GBP 19,000	19,04,705
21.09.2015	USD 35,000	22,98,000
18.11.2015	EUR 25,000	17,36,000
08.01.2016	EUR 25,000	18,11,000
Foreign Exchange Profit / Loss		1,51,110
TOTAL		**97,00,815**

73. Nano Holdings, LLC, is an entity incorporated in the USA. Nano Holdings, LLC is a technology holding company which commercializes nano technologies from the best breed of chosen scientists and universities worldwide. On 06-08-2015, the 1st Petitioner Company applied to State Bank of India, Nungambakkam Branch, Chennai (Authorized Dealer) to transfer USD 500,000 to the bank account of Nano Holdings, LLC. On 20-08-2015, the transfer was effected and Rs. 3,27,62,500 was debited from the current account of the 1st Petitioner Company. Thus the investments in Totus Tennis Ltd and NanoHoldings, LLC are through banking channels in India under the liberalised Remittance Scheme and other regulations of the RBI. Thus the

entire investment is from a known source in India.

74. The details of the forms filed before the statutory authorities evidencing the investment of the Petitioner Company in Totus Tennis Limited and NanoHoldings, LLC, USA are given below:

i) On 16-09-2015, the RBI allotted the Unique Identification Number (UIN) in respect of the investments to be made by the 1st Petitioner Company in its whollyowned subsidiary, M/s. Totus Tennis Limited.

ii) On 15-07-2016, the Form FLA (Foreign Liabilities and Assets) for the financial year ending 31-03-2016, in respect of all the foreign liabilities and assets of the 1st Petitioner Company, was filed with the RBI.

iii) On 31-10-2016, the Form APR (Annual Performance Report), for the financial year ended 31-03-2016, in respect of the investment made by the 1st Petitioner Company in its wholly owned foreign subsidiary, M/s.Totus Tennis Limited and the investment made in NanoHoldings, LLC was filed by the 1st Petitioner Company with the RBI through the Authorized Dealer, viz. State Bank of India, Nungambakkam Branch.

iv) On 27-12-2016 the 1st Petitioner Company filed the annual accounts in Form-AOC 4 with the Ministry of Corporate Affairs. Complete details of the investments made in the wholly-owned foreign subsidiary, Totus Tennis Limited, including the consolidated statement of accounts of the Indian and Foreign Company were disclosed. The investment made in Nano Holdings, LLC was also fully and truly disclosed.

75. The facts of the case that are relevant to the Writ Petition are as follows:

" TOTUS TENNIS LIMITED"

a) For AY2016-17, the original return of income of the Petitioner-Company was filed on 15-10-2016, within the due date. For that assessment year, the only investment in a foreign asset was made on 01-07-2015 in equity shares of Totus Tennis Limited, a company incorporated in the United Kingdom and which is a wholly owned subsidiary of the Petitioner- Company. The amount invested was Rs.1,00,295/-. This was duly reflected in Part B of Schedule-FA: "Details of Financial Interest in any Entity held (including any beneficial interest) at any time during the previous year."

b) Thereafter, amounts were remitted by the Petitioner-Company to Totus Tennis Limited towards advance for allotment of shares. However, the shares are yet to be allotted and therefore the amounts were treated as advance. The details are as follows:-

Date of Transfer	**Rs.**
01-07-2015	18,09,505
22-09-2015	23,19,975
24-11-2015	18,85,668
13-01-2016	18,85,667
Total	**79,00,815**

c) In the original return of income, this amount of Rs. 79,00,815/- is reflected in the Balance Sheet as on 31-03-2016 which is part of the return, under heading II - Assets, sub-heading D *(iii)* – "Loans and Advances to Related Parties." Thus the sum of Rs.79,00,815/- has been fully disclosed. The said amount was not reflected in Schedule-FA because the

Petitioner- Company was advised by the Chartered Accountant that it did not fall under any of Parts A to G of Schedule - FA.

d) However, again on advice of the Chartered Accountant, the Petitioner- Company filed a revised return for AY2016-17 on 04.09.2017 under section 139(5) of the Income Tax Act within the due date. In the revised return, the four sums referred to in sub-para (b) above were disclosed in Part B of Schedule-FA. Thus, the investment in shares of Rs.1,00,295/- as well as the advance towards allotment of shares of Rs. 79,00,815/- were both fully disclosed in Schedule-FA. Show cause notice has been acknowledged. Section 139(5) of the IT Act reads as under:

"If any person, having furnished a return under sub-section (1) *or sub-section* (4), *discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.*

"NANOHOLDINGS, LLC"

a) On 20-08-2015, a sum of Rs. *3,27,62,5001-,* was invested in preferred units of Nano Holdings, LLC, a company incorporated in the United States of America. In the original return of income, this investment is reflected in the Balance Sheet as on 31-03-2016, under heading II - Assets, sub-heading *B(iii)* - "Investment in Preference Share". It was not reflected in Schedule-FA because the Petitioner- Company was advised by the Chartered Accountant that the investment in preferred units did not fall under any of Parts A to G of Schedule-FA.

b) However, again on the advice of the Chartered Accountant, the Petitioner- Company filed a revised return for AY2016-17 on 04.09.2017 under section 139(5) of the Income Tax Act within the due date. In the revised return, the sum of Rs. *3,27,62,5001*- was disclosed in Part B of Schedule-FA as a matter of abundant caution".

76. It will be seen from the above facts that all investments, remittances etc. made by the Petitioner- Company in Totus Tennis Limited and in NanoHoldings, LLC have been fully disclosed both in the original return of income as well as in the revised return of income. In particular, they were fully disclosed in Schedule-FA filed along with the revised return of income filed under section 139(5) of the IT Act. Both the original return and the revised return were filed by the Petitioner-Company on the basis of advice of the Chartered Accountant. Since the Black Money Act was a new piece of legislation, there was initially some uncertainty about what should be included in Schedule-FA. Later, it was decided that, for abundant caution, even advances towards allotment of shares in Totus Tennis Limited and investment in preferred units of NanoHoldings, LLC may be disclosed in Schedule-FA. Accordingly, the revised return of income was filed, on advice, within the due date. There is therefore no failure to disclose any information relating to a foreign asset (including financial interest in any entity), much less any wilful failure to disclose the said information.

77. on 15.10.2016 the company filed the Income Tax return for the AY 2016-17. In the return of income, a sum of Rs.1,00,295 was disclosed under the head "Investment in Equity instruments unlisted entities", the said amount being the investment in equity share capital of Totus Tennis Limited and the amount of Rs.79,00,815, being the amounts transferred to Totus Tennis Limited towards advance for investment in equity was disclosed under the head "Loans and Advances to Related Parties". The the sum of Rs.3,27,62,500 invested in Nano holdings, LLC, USA was disclosed as Investment in Preference Shares. Since the online format prescribed by the Income Tax Department does not have separate columns for investments in Indian company and foreign company, the Petitioner Company could not have filled in any columns distinguishing the investment in Indian companies and foreign companies. However, on the advice of the Chartered Accountant, a revised return was filed on 04.09.2017 (well within the stipulated date for filing revised return which was 31.03.2018), showing investment in Totus Tennis Limited of Rs. 1,00,295 and Rs.79,00,815 and the investment of Rs.3,27,62,500 in the preference shares of Nano Holdings, LLC, USA were shown in Schedule FA.

78. It is submitted that to the great surprise of the Petitioners, on 16-08-2017, the 2nd Respondent herein issued a notice to the 1st Petitioner Company under Section 10(1) of the Black Money (Undisclosed Foreign

Income & Assets) and Imposition of Tax Act 2915, hereinafter referred to as the Black Money Act. Details of the proceedings that took place thereafter, including the notices sent by the 2nd Respondent under section 10(1) and 8 of the Black Money Act and the dates when the 1st Petitioner thorough its authorised representatives submitted the documents sought for by the 2nd Respondent, are given below:

Date of notice from the 2nd Respondent	Date of submission of documents by the AR of the Petitioner
16.08.2017	04.09.2017 18.09.2017
01.11.2017	06.11.2017

79. It is submitted by the petitioner-Company that a scrutiny of the details sought for by the 2nd Respondent shows that the 2nd Respondent was only conducting a fishing and roving enquiry and most of the information sought for did not relate to the objects of the Black Money Act, 2015. Despite giving all particulars sought under the Black MoneyAct, the 2nd Respondent has not passed any order for the last 12 months on the reply given by the 1st Petitioner to the notice under Section 10(1) of Black Money Act . If the 2nd Respondent considers the documents furnished by the 1st Petitioner objectively in accordance with law he will have no other option except to drop all proceedings against the Petitioner under the Black Money Act, 2015.

80. In these circumstances, it is submitted by the petitioner Company

that it was shocked to receive a show cause notice from the 1st Respondent under section 55(1) of the Black Money Act asking the Petitioner to show cause why prosecution proceedings under section 50 of the Black Money Act should not be initiated against the 1st Petitioner Company for the AY 2016-17 for failure to furnish in the return of income, information about the assets (including financial interest) in any entity located outside India. In the show-cause notice, it was alleged that the 1st Petitioner had failed to disclose the particulars of information with regard to financial interest held outside India during the previous year. It was alleged that though a revised return had been filed for the AY 2016-17, the same was not done voluntarily but only after the issue of notice u/s 10(1) of the Black Money Act and, therefore, the 1st Petitioner Company is liable for prosecution under section 50 of the Black Money Act. Further, section 54 of the Black Money Act presumed a culpable mental state in any prosecution for any offence under the Act.

81. A reply was given by the Petitioner- Company and documents and evidence were produced. The last hearing was held on 14.11.2017. Despite the passage of over five months, the Assessing Officer has not passed an order under Section 10(3) of the Black Money Act. On 13.04.2018, a Show Cause Notice was issued by the 2nd Respondent to the Petitioners to show cause why prosecution should not be sanctioned for the alleged offence under Sec. 50 of the Black Money Act. The Petitioner-Company submitted its reply questioning the jurisdiction of the 2nd Respondent who issued the

notice. The averments/ allegations against the Petitioner-Company were totally baseless.

82. The hearing on the show cause notice was posted on 27-04-2018. During the proceedings, the Petitioner Company through its AR filed written submissions objecting to the show cause notice. The learned counsel for the Petitioners also advanced oral arguments stating that the 1st Petitioner had filed a revised return under section 139(5) of the Income Tax Act disclosing all the assets located outside India in schedule FA and such a revised return substitutes/effaces/ obliterates the original return and hence the only return on record is the revised return filed on 04.09.2017 for the AY 2016-17 wherein the sum of Rs. 80,01,110 in Totus Tennis Limited and Rs. 3,27,62,500 in NanoHoldings LLC was disclosed in Part B of Schedule FA. Hence there is no failure on the part of the Petitioner to disclose the foreign assets in the Schedule FA, much less a wilful failure. The allegation that the revised return was not filed voluntarily but only after the section 10(1) notice was stoutly refuted.

83. Being aggrieved with the show cause notice the Petitioner-Company filed W.P.No.11715 of 2018 on 01.05.2018 praying to quash the Show Cause Notice dated 13-04-2018 bearing File. No. Pr.DIT (Inv)/Prosecution /2018-19 for the Assessment Year 2016-17 issued by the

Respondent No.1. In W.M.P.No.13688 of 2018 the Petitioners sought for stay of the show cause notice. The learned counsel for the petitioners wrote a letter dated 01.05.2018 to the 1st Respondent asking for a copy of the order to be passed on the Show Cause Notice dated 13.04.2018.

84. It transpires that the 1st Respondent passed the sanction order dated 10-05-2018 sanctioning prosecution of the 1st Petitioner and its Directors for the offence under section 50 of the Black Money Act, 2015. (The 1st Petitioner is yet to receive the copy of the sanction order which has been passed in total violation of the order dated 03-05-2018 by the Division Bench of this Hon'ble court in W.M.P.No. 13688 of 2018 in W.P.No. 11715 of 2018 filed by the Petitioners).

85. The Petitioners were also not given further hearing on the show cause notice as per the directions of the Division Bench. The Petitioners were not given copy of the order passed by the 1st Respondent sanctioning prosecution. The Petitioners learnt from press reports that the 2nd Respondent had filed a prosecution complaint in C.C.NO.4482 of 2018 under Section 200 of Cr.P.C. for an offence under Section 50 r/w Section 56 of the Black Money (Undisclosed Foreign Income and Asset) and Imposition of Tax Act, 2015 for the AY 2016-17 against the Petitioners and its Directors on 11.05.2018.

86. In the above Writ Petitions the Petitioners filed interim petitions seeking interim direction and interim stay. By order, dated 12.06.2018, this Court directed the Principal Chief Commissioner of Income-Tax to furnish the copy of the orders, sanctioning prosecution and a copy of the prosecution complaint filed under Section 55 read with Section 50 of the Black Money Act to the petitioners, within 14.06.2018.

87. According to the petitioners, they filed applications in C.C.No.4482 to 4485 of 2018, asking for copy of the prosecution complaint filed by the 2nd Respondent in C.C.Nos.4482 to 4485 of 2018 and obtained the copy of the prosecution complaint. The Petitioners reserve their right to challenge the sanction for prosecution dated 10-05-2018 granted by the 1st Respondent as and when a copy of the said sanction order is furnished to the 1st Petitioner Company.

88. The Principal Chief Commissioner of Income Tax (Tamil Nadu and Puducherry), Chennai, 1st Respondent herein, passed the sanction orders, dated 10-05-2018, sanctioning prosecution of the Petitioners for offence under section 50 of the Black Money Act, 2015 and they were not given copy of the order passed by the 1st Respondent sanctioning prosecution. Petitioners learnt from the press reports that the 2nd Respondent filed prosecution complaint in C.C.Nos.4482 to 4485 of 2018 on 11.05.2018 under Section 200 of Cr.P.C. for an offence under Section 50 r/w Section 56 of the

Black Money (Undisclosed Foreign Income and Asset) and Imposition of Tax Act, 2015 for the AY 2016-17 against her on 11.05.2018.

89. Petitioners have submitted that the sanction orders, dated 10.05.2018, passed by the 1st Respondent and the prosecution complaint filed by the 2nd Respondent under Section 50 read with Section 55 of the Black Money Act, dated 11.05.2018, are without jurisdiction. The Chief Metropolitan Magistrate, Egmore, Chennai is also not the designated special court to try any prosecution complaint under the Black Money Act.

90. According to the petitioners, the 1st Respondent is yet to comply with the above direction. Except filing a review petition to review the order dated 12.06.2018 the 1st Respondent has not taken any steps to pursue the Review Petition. On 20.06.2018, the petitioners received summons in C.C.Nos.4482 to 4485 of 2018 from the Metropolitan Magistrate Court, Egmore directing her to appear in person on 25.06.2018.

91. On 25.06.2018, they filed applications in C.C.No.4483 of 2018 asking for copy of the prosecution complaint filed by the 2nd Respondent in C.C.No.4483 of 2018 and obtained the copy of the prosecution complaint. On 20.08.2018, she received the copy of the sanction order dated 10.05.2018 from the Chief Metropolitan Magistrate, Egmore, Chennai.

92. Thus, being aggrieved by the sanction order passed by the 1st

Respondent and the complaint in C.C.Nos.4482 to 4485 of 2018 filed by the 2nd Respondent before the Court of Chief Metropolitan Magistrate, Egmore, Chennai - 600 008 for the offence committed by her under Section 50 of the Black Money Act, 2015, W.P.Nos.22329 to 22331 and 22332 of 2018, have been filed.

93. Mrs.Nalini Chidambaram (writ petitioner in W.P.Nos.13005 to 13007 of 2018), Mrs.Srinidhi Karti P Chidambaram (writ petitioner in W.P.Nos.13008 to 13010 of 2018), and Mr.Karti P.Chidambaram (writ petitioner in W.P.Nos.13041 to 13043 of 2018) have stated that they have been subjected to malicious prosecution. In response to the letter written on behalf of the Petitioners to the 2nd Respondent, the Petitioners have received letter, dated 21.05.2018, stating that "after duly considering the oral as well as written submissions made by the authorized representatives on 27.04.2018, sanction order has been issued and complaint filed in the Court of the learned Chief Metropolitan Magistrate, Egmore, Chennai on 11.05.2018. As the documents have since been filed in the Court, the said documents would be served on the assessee by the Court as per the Court procedure".

94. It is submitted that all the provisions of the Black Money Act are attracted only in the case of "undisclosed foreign asset" or "undisclosed foreign income". In the case of the Petitioner-Company, there is no undisclosed foreign asset or undisclosed foreign income. No provision of the

Black Money Act is attracted to the facts of the present case. There was no failure, much less wilful failure, to furnish any information relating to the foreign asset. The Petitioner-Company filed the original return of income as well as the revised return of income on the advice of the Chartered Accountant and within the due stipulated under the Income-tax Act. There is no question of presuming a culpable mental state on the part of the Petitioner-Company or on the part of its Directors.

95. It is submitted by the petitioners that it is settled law that an assessee may file a revised return of income or even more than one revised return of income as long as they are filed within time. The revised return of income is the only relevant return of income that can be relied upon or referred to. The revised return of income obliterates or effaces any earlier return of income. It is also settled law that a return of income has many schedules and all the schedules are part of the 'return of income' referred to in Section 139 of the Income-tax Act.

96. Apprehending that with a malafide intention the 2nd Respondent, with post haste, may sanction prosecution against the Petitioner-Company and its Directors, the Petitioner-Company filed W.P.No.11715 of 2018 praying as follows:

"Issue a WRITOF CERTIORARI or any other Writ, Order or Direction calling for the records relating to the Show Cause

Notice dated 13.04.2018 bearing File. No. Pr.DIT (Inv)/Prosecution/2018-19 for the Assessment Year 2016-17 issued by the Respondent NO.1 and all proceedings consequential to the said Show Cause Notice and quash the same as without jurisdiction"

97. Mr.Gopal Subramaniam and Mr.AR.L.Sundaresan, learned senior counsels appearing for the petitioners submitted that:

(i) The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, as its name indicates, is targeted only at the undisclosed foreign income and undisclosed foreign asset. Referring to the Statement of Objects and Reasons, and the Long Title to the Act he submitted that the Act has been made to deal with Black Money, that is undisclosed foreign income and assets. The Act makes provisions for dealing with such income and assets, to provide for imposition of tax on undisclosed foreign income and assets and for matters connected therewith or incidental thereto. Learned senior counsel submitted that the provisions of the Act cannot be invoked or applied in a case where there is no undisclosed foreign income or asset.

(ii) Section 2(11) defines "undisclosed asset located outside India". The asset must be located outside India, it must be held by the assessee, and the assessee must have no explanation about the source of investment in such asset or the explanation is not satisfactory. Section 2(12) defines

"undisclosed foreign income and asset" . It is submitted that the various provisions of the Act will apply, or can be invoked, only if there is an undisclosed foreign asset (or income) within the meaning of Section 2(11) and 2(12) of the Act.

(iii) Learned senior counsel submitted that the provisions of Chapter III (Tax Management) or Chapter IV (Penalties) or Chapter V (Offences and Prosecutions) of the Act can be invoked only, if there is an undisclosed foreign asset (or income) within the meaning of Section 2(11) and Section 2 (12) of the Act. Learned senior counsel submitted that in the absence of any undisclosed foreign asset or income, the Act cannot be applied or invoked.

(iv) Learned senior counsel submitted that under the Act, whether there is an undisclosed foreign asset (or income), it can be decided only in the proceedings under Section 10 of the Act. Learned senior counsel submitted that the provisions of Chapter III and Chapter V of the Act, have to be read harmoniously. Hence, before invoking the provisions of Chapter V and, particularly Section 50 read with Section 55, it is necessary that proceedings should be initiated and completed under Section 10.

(v) Referring to the hierarchy of Authorities in the Black Money Act, 2015, learned senior counsel further submitted that it is only upon a finding by the Assessing Officer (subject to Appeal, further Appeals to the Tribunal, High Court and Supreme Court) can the provisions of Chapter V be invoked. Any other construction would lead to an absurd result that while prosecution may be sanctioned and actually instituted, the Assessing Officer may find

that there is no undisclosed foreign asset (or income). Meanwhile the assessee may have undergone trial and may have even been convicted.

(vi) Learned senior counsel further submitted that the question will then arise, what will happen to the trial or conviction. On the one hand there will be a finding by the Assessing Officer that there is no undisclosed foreign asset (or income), meaning that everything was disclosed and on the other hand there will be a sanction for prosecution, trial or even a conviction on the allegation that the assessee did not furnish any information relating to the foreign asset (or income). According to the learned senior counsel, the Black Money Act, 2015, does not intend such contradictory results and hence there is a need to read the provisions of Chapter III and Chapter V of the Act harmoniously.

(vii) Referring to Section 55 of the Act, learned senior counsel submitted that the authority to sanction prosecution under Chapter V is the Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General or Principal Commissioner or Commissioner, whereas the Assessing Officer will usually be in the rank of ITO or Assistant Commissioner. If sanction is accorded first under Section 55 of Chapter V by a superior officer, it would be unrealistic and futile to expect the Assessing Officer to reach a conclusion that there is no undisclosed foreign asset (or income) because such a conclusion will contradict and destroy the sanction given by a superior officer. He therefore submitted that a harmonious construction of the provisions of Chapter III and Chapter V of

the Act is absolutely necessary, and the process of sanctioning prosecution under Chapter V can be commenced only if and after the Assessing Officer has reached a conclusion adverse to the assessee under Section 10 of the Act (subject to Appeal and further Appeals). He therefore submitted that the impugned show cause notice issued for prosecution, sanction for prosecution and the complaint launched before the conclusion of proceedings under Section 10 are premature and without jurisdiction.

(viii) According to the learned senior counsel, in the present case, a notice was issued to the Petitioner on 02.08.2017 under Section 10(1) of the Act. A reply dated 17.08.2017 followed by clarifications have been submitted. An inquiry has been made by the Deputy Director of Income Tax (Inv) Unit 3 (3). However, for reasons that are not known, an assessment order has not been made under Section 10(3). The Petitioner verily believe that the answers provided to the notice are satisfactory and the proceedings deserve to be dropped and closed. In such circumstances, it is inexplicable how proceedings can be initiated under Chapter V of Act. It is submitted that the present notice under Section 55 read with Section 50 of the Black Money Act is unfair, arbitrary and without jurisdiction.

(ix) The Petitioners believe that their family has been singled out and threatened with prosecution without an order being passed first under Section 10 of the Act. There are numerous cases in the jurisdiction of the Principal Chief Commissioner, Chennai, as well as in other similar

jurisdictions, where proceedings have been initiated under Section 10 of the Act. The Petitioners believe that in no other case, assessees concerned have been threatened with prosecution before the conclusion of the proceedings under Section 10 of the Act. Petitioners have been singled out for discriminatory and unfair treatment.

(x) Learned senior counsel for the Petitioners submited that the offence under Section 50 is made out only if, in the return of income under sub-section (1) or sub-Section (4) or sub-Section (5) of Section 139 of the Income-tax Act, there has been a wilful failure to disclose any information relating to the foreign asset. In the present case, information relating to the foreign assets were disclosed in the return of income read with the balance sheet pertaining to AY 2016-17. A return of income includes all the schedules. Omission, if any, in the original return under Section 139(1) was corrected in the revised return under Section 139(5) of the Income-tax Act. The original return and the revised return were filed on the advice of her Chartered Accountant. The only return that is relevant and can be referred to is the revised return of income filed under Section 139(5) within the due date. There was no failure on the part of the Petitioners to disclose any information about the foreign asset, and certainly no wilful failure to disclose any information. On the facts of the present case, it would be totally unreasonable and perverse to conclude there has been any wilful failure to disclose any information about the foreign asset. Hence, the sanction order and all proceedings pursuant thereto deserve to be quashed as without

jurisdiction.

(xi) Learned senior counsel further submitted that every law must be interpreted in the light of the Statement of Objects and Reasons, the Long Title and the Preamble of the Act. So interpreted, it will be obvious that the provisions of Chapter V of the Black Money Act cannot be read literally to mean that it will apply to any "person" or to any "foreign asset". Chapter V will apply only to a person who is an "assessee" within the meaning of Section 2(2) of the Act and to a foreign asset within the meaning of Section 2(11) of the Act. An enquiry whether the assessee has disclosed the "foreign asset" is an enquiry that has to be made, invariably, under Chapter II of the Act. Where such an enquiry has been started in proceedings under Section 10 of the Act, it would be impermissible to pre-empt that enquiry and invoke Chapter V of the Act. Section 48 of the Act cannot be read literally to mean that irrespective of a proceeding under Section 10, which remains incomplete, prosecution can be sanctioned or initiated under Chapter V of the Act. Such an interpretation will render the provisions of Chapter V arbitrary, unjust, unreasonable and a gross invasion/violation of the fundamental rights of the Petitioner guaranteed under Articles 14, 19 and 21 of the Constitution of India.

(xii) Learned senior counsel further submitted that the provisions of Chapter V of the Black Money Act have to be read down and made consistent and harmonious with the other provisions of the Act. Otherwise, it is submitted, the provisions of Chapter V and in particular, Sections 48, 49, 50,

54, 55 and 56, would be violative of Articles 14, 19 and 21 of the Constitution of India.

(xiii) In view of the factual and legal submissions made above, the 2nd Respondent ought to have accepted the reply given by the Petitioner dated 27.04.2018 to the show-cause notice dated 13.04.2018 and dropped all further proceedings pursuant to the show-cause notice. But the 2nd Respondent erroneously and motivated by malice in law sanctioned prosecution against the Petitioner when the facts of the Petitioner's case do not warrant the sanction for prosecution for offence under section 50 of the Black Money Act."

98. Learned senior counsel further submitted that the 2nd respondent is not the competent authority to file the prosecution complaint before the jurisdictional magistrate. Section 84 of the Black Money Act states that the provisions of, among other sections, section 280D of the Income Tax Act shall apply with necessary modifications as if the said provisions referred to undisclosed foreign income and asset instead of Income Tax Act. Section 280D of the Income Tax Act states that the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Judge which is competent to try offences under the Income Tax Act. Reference has been made to section 195 of the Cr.P.C, 1973 which states that no Court shall take cognisance except on a complaint made in writing of the Court or of some other Court to which that Court is subordinate. Section 195 (4) reads as

follows:

> *"For the purpose of clause (b) of sub-section 1, a Court shall be deemed to be sub-ordinate to the Court to which appeals ordinarily lay from the appealable decrees or sentences of such former Court."*

99. Mr.Gopal Subramanium, learned senior counsel for the petitioners further submitted that under section 9(2) of the Black Money Act every tax authority shall be deemed to be a civil court for the purpose of section 195 of the Code of Criminal Procedure. Hence, the income tax officer having jurisdiction in relation to an assessee is deemed to be a Court within the meaning of section 195 of the Cr.P.C. On an analysis of the scheme of the Income Tax Act which is in pari materia with the scheme of the Black Money, Act, the Hon'ble Supreme Court in the case of **Babita Lila vs. Union of India** reported in **2016 9 SCC 647** held that section 195 Cr.P.C is an exception to ordinary rule that any person can make a complaint in respect of commission of an offence triable under Cr.P.C and for a valid complaint under section 195 Cr.P.C the mandate thereof has to be essentially complied with. The Hon'ble Supreme Court further held that Deputy Director of Investigation - 1 was not an authority to whom appeal would ordinarily lie from decisions/orders of the Income Tax Officers. Hence, the Deputy Director of Income Tax, Investigation - 1 was incompetent to lodge a complaint in view of the restrictive impositions of section 195 of the Cr.P.C. In the instant case, the 2nd Respondent is not an authority to whom an appeal would ordinarily

lie from the decisions of the assessing authority passing assessment order under section 10(3) of the Black Money Act and therefore, the 2nd Respondent is not competent to file the prosecution complaint under the Black Money Act as per the ruling of the Hon'ble Supreme Court in the above mentioned case.

100. Learned counsel for the petitioners have further contended that Section 84 of the Black Money Act states that the provisions of section 280A of the Income Tax Act shall apply with necessary modifications as if the said provisions referred to undisclosed foreign income and asset instead of Income Tax Act. Section 280A of the income Tax Act reads as follows:

> *"280A. Special Courts.-(1) The Central Government, in consultation with the Chief Justice of the High Court, may, for trial of offences punishable under this Chapter, by notification, designate one or more courts of Magistrate of the first class as Special Court for such area or areas or for such cases or class or group of cases as may be specified in the notification.*
>
> *Explanation: In this sub-section, "High Court" means the High Court of the State in which a Magistrate of first class designated as Special Court was functioning immediately before such designation."*

101. Mr.AR.L.Sundaresan, learned senior counsel submitted that the Chief Metropolitan Magistrate, Egmore, Chennai has not been designated as the Special Court for the purpose of the Black Money Act by the Central Government and therefore, the 2nd Respondent erred in law in filing the

prosecution complaint against her, under section 50 of the Black Money Act before an incompetent Court. The Chief Metropolitan Magistrate, Egmore, Chennai has no jurisdiction to take cognizance of the prosecution complaint filed by the 2nd Respondent against the Petitioner.

102. Learned Senior Counsel further contended that a prosecution for offence under section 50 of the Black Money Act at the instance of an authority who is not competent to sanction prosecution and a prosecution complaint filed by an incompetent authority before a Magistrate who is not the designated Special Court under section 84 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 read with section 280A of the Income Tax Act for trying offences under the Black Money Act is violative of the fundamental rights guaranteed under Articles 14 and 21 of the Constitution of India.

103. Per contra, Mr.G.Rajagopalan, learned Additional Solicitor General, made the following submissions :

(i) As far as Mrs.Nalini Chidambaram is concerned, there is no information in the return of Income of remittance of Rs.77,60,470/-, for the purpose of investment in property in Cambridge. There is no such discloser of information in the return of income and the statement of the petitioner is factually incorrect. In the schedule under the head, movable asset, a sum of Rs.3,63,02,499/-, has been shown as, loans and advances. However, it

cannot be said that the same would amount to disclosure of information that Rs.77,60,470/- was advance for purpose of purchase of immovable property located outside the Country.

(ii) In her return of income for the AY 2016-17 on 14.10.2016 and in the audit report, electronically uploaded on 17.10.2016, in Schedule 3 to the balance sheet, attached to the audit report, there is no break-up of the amount reflected in that schedule, and since the matter is under investigation, no conclusion can be drawn at this stage. Contention of the petitioner in W.P.No.13005 of 2018, that the assessing officer has no other option, except to pass orders, under Section 10(3) is far fetched and self serving.

(iii) In the last line of page 2 of para 2 of the show cause notice, under Section 55(1), dated 13.04.2018 for the Assessment Year 2016-17, she has wilfully failed to disclose the particulars of information held outside India, in the return of income filed by her. Even otherwise Section 54 of the Black Money Act, casts onus on the assessee, by stating that in a prosecution under the said chapter, the culpable mental state has to be presumed on the part of the accused which he/she can rebut to the satisfaction of the Court during the trial.

(iv) As far as Mrs.Srinidhi Karti Chidambaram, is concerned the sum of Rs.81,58,355/- remitted to Mrs.L.Mooney was part of the amount of Rs.5,64,42,613/-, shown against item 2(a)(iv) in Schedule-AL relating to "Assets and Liability at the end of the year", which is part of the original

return of income filed for the assessment year 2016-17, is devoid of merits, as the original return of income filed on 31.07.2016 and from the accompanying documents, it could never be inferred as to whether the investments made included the investments made outside the country in a foreign asset. Thus, she has failed "to provide" or "to make available" information relating to the "foreign asset" in the return of income filed originally on 31.07.2016.

(v) As far as Mr.Karti P.Chidambaram, is concerned, the foreign remittance applications submitted by him to the banks show the purpose as Investment in real estate abroad or Purchase of Immovable Property and therefore, the entire amount of Rs.3,00,23,916/- should have been shown by him, as Investment in the immovable property in Part C of Schedule FA. Even by his own admission, sum of Rs.96,92,229/- was remitted for the purpose of maintenance and repairs of the property purchased to L.Mooney, stated to be the caretaker of the Cambridge property. However, the same is disclosed in the return of income in Column C of Schedule FA as 'Advance for Financial Interest' in the entity Hewitsons LLP and thus, there is no true and complete disclosure.

(vi) Further as per the provisions of section 50 of the Black Money Act, 2015 a person shall be punishable for failure to furnish in the return of income any information relating to an asset. The word 'Information' means data that is accurate, specific, organized for a purpose leading to increase in

understanding and decrease in uncertainty. It is trite that information shall result in effective communication. Thus, he has failed to provide / make available material information as regards the total investment (at cost) of the immovable property held outside the country in Column C of Schedule FA and therefore, there is no merit in the contention of the petitioner that there is true disclosure in the return of income filed.

(vii) The Schedule FA in the return of income mandates that the amount of investment should be specified even in case of beneficial ownership. It was obligatory on the part of the accused to disclose the extent of his beneficial ownership in Totus Tennis Limited, instead he, has declared beneficial ownership at 0. Hence, the contention that he was not liable to disclose the extent of his beneficial interest as the investment was made by M/s Chess Global Advisory Services Private Limited, is devoid of merits.

(viii) As far as M/s.Chess Global Advisory Services Pvt. Ltd., is concerned Mr.Karti P.Chidambaram, has 80.2% shareholding made investment in a sum of Rs.3,27,62,500/- in Nanoholdings LLC USA. As per the tax laws of USA, a withholding agent relies upon a completed and signed Form W-8BEN to treat a payment associated with the Form as a payment to a foreign person who beneficially owns the amount paid. This form is given by a foreign person and a beneficial owner of an amount subject to withholding. As per Form W-8BEN signed and submitted before the US tax authorities, it is declared by petitioner himself that he, in the status of Individual, is the beneficial owner of all the income to which the form relates.

The Form is signed by the accused herein as beneficial owner in the capacity of Individual. Hence there is no merit in the contention of the petitioner that since, he in his individual capacity, has no connection with Nanoholdings, LLC, he has no financial interest in Nanoholdings LLC and hence there is no scope to disclose any financial interest. Further Form W-8BEN has been signed by the petitioner, Mr.Karti Chidambaram, in his individual capacity as total beneficial owner and not as a representative of any organization/corporation.

(ix) The contention that the foreign remittances of Rs.79,00,815/- made to Totus Tennis Limited towards advance for allotment of shares were reflected in the balance sheet as on 31.03.2016 under heading II - Assets, sub-heading D (iii) - "Loans and Advances to Related Parties", which is part of the original return of income filed, is factually incorrect that the foreign remittances of Rs.79,00,815/- made to Totus Tennis Limited towards advance for allotment of shares were not reflected in the return of income. In the balance sheet filed online as a single page attachment to Form 3CD, the investment made in Totus Tennis Limited, UK does not feature. The said contention of M/s.Chess Global Advisory Services Pvt. Ltd., is completely devoid of merits. From the original return of income filed on 15.10.2016 and from the accompanying documents, it could never be inferred whether the investments shown included the investments made outside the country in a foreign entity. The balance sheet filed online does not feature any item as "Loans and Advances to Related Parties". Thus, M/s.Chess Global Advisory

Services Pvt. Ltd., has failed "to provide or to make available information relating to the foreign asset" in the return of income filed originally on 15.10.2016. The Hon'ble Supreme Court in Kalyanji Mavji & Company Vs CIT (1976) 102 ITR 287 has observed that to "inform" means to make available and the details available to the ITO in the papers filed before him does not by its mere available become an item of information. It is transmuted into an item of information in his possession only when its existence is realized and its implications are recognized.

(x) The investments in Totus Tennis Limited, UK and Nanoholdings LLC, USA were not fully reported in the original income tax return. There are enquiries ongoing under section 10(2) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 pursuant to issue of notice under section 10(1) of the Act on 16.08.2017. As per the Scheme of the Black Money Act, the assessment of undisclosed foreign income and assets u/s 10(3) with respect to all the undisclosed foreign assets and income with reference to a particular period relevant to a particular A.Y. and not with respect to a particular asset also. Therefore the Act provided for necessary enquiry to be conducted by the assessing officer u/s 10(2) of the Black Money Act. Further, the time limit for passing the order u/s 10(3) has been stipulated by statute as two years from the end of the financial year in which notice u/s 10(1) has been issued.

(xi) Section 50 relates to punishment to furnish in return of income, any information about an asset (including financial interest in any entity)

located outside India. Further, the act of revising the return of income on 04.09.2017 by the petitioner was triggered by the issue of notice under section 10(1) by the 2nd Respondent on 16.08.2017. The act of revising the return of income on 04.09.2017 by M/s.Chess Global Advisory Services Pvt. Ltd., proves the non-disclosure in the original return and the revision of the return was triggered by the issue of notice under section 10(1) by the 2nd Respondent on 16.08.2017. Hence, presumption as to a culpable mental state as per section 54 is attracted. As regards presence of culpable mental state, the provisions of Section 54 of Black Money Act are very clear. The Court shall presume the existence of such culpable mental state and it is for M/s.Chess Global Advisory Services Pvt. Ltd., to prove that he had no such mental state in the prosecution. As per Section 54(2) of Black Money Act a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability. The mere assertion made by M/s.Chess Global Advisory Services Pvt. Ltd., that the return of income was filed on the advice of the Chartered Accountant and there is no willful failure on their part to disclose information relating to the asset is not borne out by the facts on record. In the return of income filed on 15.10.2016 for the impugned Assessment Year, the return has been verified and digitally signed by the petitioner solemnly declaring that the information given in the return is correct and complete.

(xii) After filing the original return of income on 15.10.2016, M/s.Chess

Global Advisory Services Pvt. Ltd., did not revise its return of income until receipt of notice under Section 10(1) of the Black Money Act. It was consequent to receipt of notice under Section 10(1) of the Black Money Act on 16.08.2017, wherein M/s.Chess Global Advisory Services Pvt. Ltd., had been called upon to provide details of the Nanoholdings LLC, USA and other assets located outside India that the petitioner furnished for the first time in Schedule FA, the relevant details of the foreign assets. Though it is settled law that the effective return for the purpose of assessment is a valid revised return, the ratio of the judicial pronouncements relied on by the petitioner is not applicable since the facts are distinguishable. There is no dispute that it was subsequent to the notice under Section 10(1) of BMA 2015, dated 16.08.2017, that the petitioner chose to file a revised return of income on 04.09.2017 in which the relevant information with regard to the foreign assets held were disclosed in Schedule FA. Revised return filed on 04.09.2017 is not a bonafide and voluntarily revised return of income. The filing of the said revised return is a subsequent event triggered by the issue of notice under section10(1) of Black Money Act. Even if the revised return replaces the original return for the purposes of assessment, the proceedings / events resulting in providing cause of action leading up to the revised return do not get obliterated. It is never the intention of the legislator that filing of the revised return would obliterate the proceedings until then. A return filed u/s 139(1) of the Income Tax Act can be revised only if M/s.Chess Global Advisory Services Pvt. Ltd., subsequently discovers any

omission or any wrong statement therein.

(xiii) As per the Scheme of the Black Money Act, the assessment of undisclosed foreign income and assets, under Section 10(3), with respect to all the undisclosed foreign assets and income, with reference to a particular period, relevant to a particular Assessment Year and not with respect to a particular asset also.

(xiv) The Act provided for necessary enquiry to be conducted by the assessing officer, under Section 10(2) of the Black Money Act. It is further contended that the time limit for passing the order, under Section 10(3) has been stipulated by statute, as two years from the end of the financial year in which notice, under Section 10(1) has been issued.

(xv) The law permits any assessee to file a revised return, when there is a valid original return, under Section 139(1) of the Income Tax Act. A return filed under Section 139(1) of the Income Tax Act, can be revised only if the petitioners subsequently discover any omission or any wrong statement therein. The said benefit is not available to the petitioners, who deliberately omitted to mention certain required details in the original return filed under Section 139(1), but later desires to take shelter under the provisions of Section 139(5) of the Income Tax Act, 1961. It was only after issue of notice, dated 02.08.2017 (In respect of Mrs.Nalini Chidambaram); notice, dated 04.08.2017 (in respect of Mrs.Srinidhi Karti Chidambaram); notice, dated 16.08.2017 (in respect of M/s.Chess Global Advisory Services Pvt. Ltd.,), under Section 10(1) of the Black Money Act, wherein the assessee was called

upon to provide specific details of the immovable property held in United Kingdom that the assessee furnished the relevant details of the foreign asset in the second revised return of income on 21.08.2017 (in respect of Mrs.Nalini Chidambaram) and 22.08.2017 (in respect of Mrs.Srinidhi Karti Chidambaram), which are not bonafide and voluntary.

(xvi) Placing reliance on a decision of the Allahabad High court in CIT vs. Radhey Shyam reported in 123 ITR 125, the 2nd respondent has submitted that the benefit of filing revised return cannot be claimed by a person, who has initially a filed return, knowing it to be false. This Court in CIT vs. J.K.A. Subraminia Chettiar reported in 110 ITR 602, held that section 139(5) is not applicable in cases of concealment or false statements. The return of income was revised second time furnishing details in schedule FA, only after the issue of notice, under Section 10(1) of the Black Money Act, indicates that the required details were consciously not furnished in the original return of income, as well as the first revised return and therefore, the benefit of the provisions of Section 139(5) is not applicable to the facts of this case.

(xvii) A complaint has been filed u/s 200 Cr.P.C. for offence u/s 50 of Black Money Act 2015 before the Court of Metropolitan Magistrate, Egmore on 11th May, 2018. It was informed to the petitioner as per this office letter dated 21-05-2018 that sanction order has been issued and complaint filed in the Court of Chief Metropolitan Magistrate and that since all the documents have been filed in the court, the said documents will be served on the

assessee as per Court procedure.

(xviii) As the writ petition filed by the petitioners are pending disposal. The contention that no steps were taken by the respondent to pursue the Review Petition is wholly untenable. The Court, after hearing both parties in detail, has reserved Judgement. In fact any further steps if taken by the respondent, would frustrate the Review Petition. The complaint has been filed by the respondent before the court of Competent jurisdiction.

(xix) The sanction order and prosecution complaint are as per provisions of law and also with valid jurisdiction.

(xx) The object of Black Money Act is not only assessment of total undisclosed foreign asset and income of an assessee, but also mandates true and full disclosure of such foreign asset or income to be disclosed voluntarily by a resident assessee in the return of income filed by him under the Income Tax Act, 1961 in the prescribed form and verified in the prescribed manner and setting forth the prescribed details. Failure to furnish return of income under Section 139(1) attracts prosecution under section 49 of Black Money Act. Failure to disclose fully and truly by such petitioner details of foreign assets and income in a return of income filed under Section 139(1) itself attracts prosecution under section 50 of Black Money Act and attempt in any manner to evade tax, penalty or interest attracts prosecution under section 51 of the Black Money Act. The contention that proceedings should be initiated and completed U/s 10 of the Black Money Act before invoking the provisions of Chapter V particularly Section 50 read with Section 55 is not

tenable. Section 10 deals with assessment of undisclosed foreign income and asset. As per section 2(11), undisclosed asset located outside India means an asset held by the petitioner in his name or in respect of which he is a beneficial owner, and he has no explanation about the source of investment in such asset or the explanation given by him is in the opinion of the Assessing Officer unsatisfactory. The provisions of Section 50 (falling under chapter V) are attracted for failure to furnish in a return of income filed any information about an asset (including financial interest in any entity) located outside India. Thus, it can be seen the proceedings under section 10 and proceedings under section 50 are separate and distinct. It is pertinent to point out here that even assuming that the petitioner has provided explanation to the satisfaction of the A.O regarding the source of investment of asset located outside India, still prosecution under Section 50 is attracted for failure to furnish any information of asset located outside India. It therefore follows that the process of sanctioning prosecution u/s 50 can commence even before completion of assessment U/s 10(3) of the Black Money Act. The scheme of the Act makes it clear that assessment and prosecution are not only distinct and separate but the two proceedings are independent and irrespective of the outcome of the assessment U/s 10(3) of the Black Money Act. Besides, it has been held by the Hon'ble Supreme Court in **P. Jeyappan Vs .S.K. PERUMAL, 1984 AIR (SC) 1693 = (1984) 149 ITR 696 (SC)** that the pendency of assessment proceedings cannot act as a bar to institution of criminal prosecution for offences punishable under the

provisions of law.

(xxi) As per section 55, Principal Commissioner of Income Tax is one of the authorities whose sanction is required for the launching of prosecution. Under section 6(1) of Black Money Act, the income tax authorities specified in section 116 of the Income-tax Act shall be the tax authorities for the purpose of Black Money Act. As per section 116 of the Income-tax Act as amended by Finance (No.2) Act, 2014, Principal Director of Income-tax or Principal Commissioner of Income tax is one of the Income-tax authorities. The powers of Principal Director of Income-tax are co-terminus with that of the Principal Commissioner of Income-tax. This is why the word 'or' has been used as an alternative in between Principal Director of Income-tax and Principal Commissioner of Income-tax to connote that both the authorities refer to one and the same. Further, it is submitted that the change of designation is only according to the place of posting and has nothing to do with regard to variation in powers of these two posts. Therefore, the contention of the petitioner that the Principal Director of Income-tax is not one of the authorities mentioned in section 55 has no merit as Principal Director is equal to Principal Commissioner, at whose sanction prosecution can be launched under Black Money Act. Further, it is also submitted that as per section 2(16) of the Income-tax Act, 1961, the word "Commissioner" has been defined, *inter-alia,* to include a person appointed as Principal Director of Income-tax. Since Commissioner is also one of the competent authorities for according sanction under section 55 of Black Money Act, the same

automatically covers Principal Director of Income-tax also. Further Sec.2(15) of the Black Money Act states that all other words and expressions used herein and not defined under the Income Tax Act shall have the meanings respectively assigned to them in the Act.

(xxii) The contention that all the proceedings under the Black Money Act against the petitioner ought to be dropped on the ground being without the jurisdiction, is devoid of merits. The ground raised that the sanction order passed by the first respondent and the complaint filed by the second respondent are totally misconceived in law and without jurisdiction, is wholly devoid of merits.

(xxiii) It is trite law that there should be strict interpretation of unambiguous provisions of law. There is no scope for convenient interpretation of law. Hence the ground that since the Black Money has not been defined in the Act and in the absence of black money being involved, provisions of the Black Money Act, are not attracted in the case of petitioner is entirely devoid of merits.

(xxiv) The contention that there should be willful failure is to be tested and hence section 50 of the BMA 2015 presumes the existence of culpable of mental state and it shall be the defence for the accused that he has no such mental state in the course of trial of offence. The further contention that CA concerned has explained that the original return was filed by him and that it was his decision to disclose the information in the original return in one of the Schedules is totally untenable. The Chartered Accountant is not to be an

arbiter of the statute; he has to strictly follow the mandate as laid down under the provisions of law. The contention that the first respondent has erred on in relying section 54 to presume existence of culpable mental stage is devoid of merits. The facts of the case prove that the petitioner has failed to establish beyond reasonable doubt that she has disclosed the foreign asset in the balance sheet of original return. It is open to the petitioner to rebut during the course of trial the absence or mens rea by furnishing evidence before the Court and not by mere theoretical assertion. In fact the petitioner resorts to selective quoting of various provisions of BMA 2015 to suit her convenience. The jurisdictional pronouncement relied upon by the petitioner are not distinguishable and not applicable to the instant case.

(xxv) The 2nd respondent Deputy Director of Income Tax (Investigation) is competent to file the complaint in this case as the prosecution is for the offence under the Black Money Act. The contention that the second respondent is not a competent authority to file prosecution complaint before the jurisdiction magistrate is devoid of merits. The contention that there is lack of clarity among Chartered Accountant as to how fill in various schedules are untenable.

(xxvi) The description in the Schedules are quite clear. The provisions of Black Money Act have not come into force all of a sudden. There was adequate debate and discussions about this Act in the professional bodies. The description in the Schedules are quite clear. Instructions are given to fill

up the form. In the top of the ITR form the instructions are referred to. The instructions clearly says that Schedule FA has to be filled up regarding the foreign asset. Then only Schedule AL comes and instructions clearly says that the assets referred to in Schedule FA shall not be included in Schedule AL. The ratio laid down in the case Price Water House Coopers Pvt Ltd is not applicable to the facts of the petitioner's case.

(xxvii) The case laws were relied on by the petitioner are distinguishable and not relevant to decide the issue in question. The action of respondent 1 and 2 are as per law and as per jurisdiction.

Heard the learned Senior Counsels for the parties and perused the materials available on record.

104. The Black Money Act, 2015, was enacted to deal with the problem of Black Money, that is undisclosed foreign income and asset. If an asset is purchased outside the country, from a source, within the country, which is disclosed, then Black Money Act, cannot be attracted.

105. The Object of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, is extracted hereunder:-

> "An Act to make provisions to deal with the problem of the Black money that is undisclosed foreign income and assets,

the procedure for dealing with such income and assets and to provide for imposition of tax on any undisclosed foreign income and asset held outside India and for matters connected therewith or incidental thereto."

106. Let us consider few provisions of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (hereinafter referred to as "Black Money Act").

i) As per Section 2(1) of the Black Money Act, "Appellate Tribunal" means the Appellate Tribunal constituted under section 252 of the Income-Tax Act. As per Section 2(2), "assessee" means a person, being a resident other than not ordinarily resident in India within the meaning of clause (6) of section 6 of the Income-tax Act, by whom tax in respect of undisclosed foreign income and assets, or any other sum of money, is payable under this Act and includes every person who is deemed to be an assessee in default under this Act.

ii) As per Section 2(11), "undisclosed asset located outside India" means an asset (including financial interest in any entity) located outside India, held by the assessee in his name or in respect of which he is a beneficial owner, and he has no explanation about the source of investment in such asset or the explanation given by him is in the opinion of the Assessing Officer unsatisfactory. As per Section 2(12) "undisclosed foreign income and asset" means the total amount of undisclosed income of an assessee from a source located outside India and the value of an undisclosed

asset located outside India, referred to in section 4, and computed in the manner laid down in section 5.

iii) It is relevant to extract few more provisions from the Black Money Act, 2015, as follows:

3. Charge of tax:-

(1) There shall be charged on every assessee for every assessment year commencing on or after the 1st day of April, 2016, subject to the provisions of this Act, a tax in respect of his total undisclosed foreign income and asset of the previous year at the rate of thirty per cent. of such undisclosed income and asset:

Provided that an undisclosed asset located outside India shall be charged to tax on its value in the previous year in which such asset comes to the notice of the Assessing Officer.

(2) For the purposes of this section, "value of an undisclosed asset" means the fair market value of an asset (including financial interest in any entity) determined in such manner as may be prescribed.

4. Scope of total undisclosed foreign income and asset:

(1) Subject to the provisions of this Act, the total undisclosed foreign income and asset of any previous year of an assessee shall be,—

(a) the income from a source located outside India, which has not been disclosed in the return of income furnished within the time specified in Explanation 2 to sub-section (1) or under sub-section (4) or sub-section (5) of section 139 of the Income-tax Act;

(b) the income, from a source located outside India, in

respect of which a return is required to be furnished under section 139 of the Income-tax Act but no return of income has been furnished within the time specified in Explanation 2 to sub-section (1) or under sub-section (4) or sub-section (5) of section 139 of the said Act; and

(c) the value of an undisclosed asset located outside India.

(2) Notwithstanding anything contained in sub-section (1), any variation made in the income from a source outside India in the assessment or reassessment of the total income of any previous year, of the assessee under the Income-tax Act in accordance with the provisions of section 29 to section 43C or section 57 to section 59 or section 92C of the said Act, shall not be included in the total undisclosed foreign income.

(3) The income included in the total undisclosed foreign income and asset under this Act shall not form part of the total income under the Income-tax Act.

6. Tax authorities:-

(1) The income-tax authorities specified in section 116 of the Income-tax Act shall be the tax authorities for the purposes of this Act.

(2) Every such authority shall exercise the powers and perform the functions of a tax authority under this Act in respect of any person within his jurisdiction.

(3) Subject to the provisions of sub-section (4), the jurisdiction of a tax authority under this Act shall be the same as he has under the Income-tax Act by virtue of orders or directions issued under section 120 of that Act (including orders or directions assigning the concurrent jurisdiction) or under any other provision of that Act.

(4) The tax authority having jurisdiction in relation to an assessee who has no income assessable to income-tax under the Income-tax Act shall be the tax authority having jurisdiction in respect of the area in which the assessee resides or carries on its business or has its principal place of business.

(5) Section 118 of the Income-tax Act and any notification issued thereunder shall apply in relation to the control of tax authorities as they apply in relation to the control of the corresponding income-tax authorities, except to the extent to which the Board may, by notification in the Official Gazette, otherwise direct in respect of any tax authority.

10. Assessment:- (1) For the purposes of making an assessment or reassessment under this Act, the Assessing Officer may, on receipt of an information from an income-tax authority under the Income-tax Act or any other authority under any law for the time being in force or on coming of any information to his notice, serve on any person, a notice requiring him on a date to be specified to produce or cause to be produced such accounts or documents or evidence as the Assessing Officer may require for the purposes of this Act and may, from time to time, serve further notices requiring the production of such other accounts or documents or evidence as he may require.

(2) The Assessing Officer may make such inquiry, as he considers necessary, for the purpose of obtaining full information in respect of undisclosed foreign income and asset of any person for the relevant financial year or years.

(3) The Assessing Officer, after considering such accounts, documents or evidence, as he has obtained under sub-section (1), and after taking into account any relevant

material which he has gathered under sub-section (2) and any other evidence produced by the assessee, shall by an order in writing, assess the undisclosed foreign income and asset and determine the sum payable by the assessee.

(4) If any person fails to comply with all the terms of the notice under sub-section (1), the Assessing Officer shall, after taking into account all the relevant material which he has gathered and after giving the assessee an opportunity of being heard, make the assessment of undisclosed foreign income and asset to the best of his judgment and determine the sum payable by the assessee.

15. Appeals to the Commissioner (Appeals):-

(1) Any person, –

(a) objecting to the amount of tax on undisclosed foreign income and asset for which he is assessed by the Assessing Officer; or

(b) denying his liability to be assessed under this Act; or

(c) objecting to any penalty imposed by the Assessing Officer; or

(d) objecting to an order of rectification having the effect of enhancing the assessment or reducing the refund; or

(e) objecting to an order refusing to allow the claim made by the assessee for a rectification under section 12, may appeal to the Commissioner (Appeals).

(2) Every appeal shall be filed in such form and verified in such manner and be accompanied by a fee as may be prescribed.

(3) An appeal shall be presented within a period of thirty days from —

(a) the date of service of the notice of demand relating to

the assessment or penalty, or

(b) the date on which the intimation of the order sought to be appealed against is served in any other case.

(4) The Commissioner (Appeals) may admit an appeal after the expiration of the period referred to in sub-section (3),

(a) if he is satisfied that the appellant had sufficient cause for not presenting it within that period; and

(b) the delay in preferring the appeal does not exceed a period of one year.

(5) The Commissioner (Appeals) shall hear and determine the appeal and, subject to the provisions of this Act, pass such orders as he thinks fit and such orders may include an order enhancing the assessment or penalty:

Provided that an order enhancing the assessment or penalty shall not be made unless the assessee has been given a reasonable opportunity of being heard.

16. Procedure to be followed in appeal:-

(1) The Commissioner (Appeals) shall fix a date and place for the hearing of the appeal, and shall give notice of the same to the appellant and the Assessing Officer against whose order the appeal is preferred.

(2) The following shall have the right to be heard at the hearing of the appeal, namely:—

(a) the appellant, either in person or by an authorised representative;

(b) the Assessing Officer, either in person or by a representative.

(3) The Commissioner (Appeals) may adjourn the hearing of the appeal whenever he considers it necessary or expedient to do so.

(4) The Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit.

(5) The Commissioner (Appeals) may, during the proceedings before him, direct the Assessing Officer to make an inquiry and report to him on the points arising out of any question of law or fact.

(6) The Commissioner (Appeals) may, at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the grounds of appeal, if the Commissioner (Appeals) is satisfied that the omission was not wilful or unreasonable.

(7) The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons therefor.

(8) Every appeal preferred under section 15 shall be heard and disposed of by the Commissioner (Appeals) as expeditiously as possible and endeavour shall be made to dispose of such appeal within a period of one year from the end of the financial year in which the appeal is preferred.

(9) On the disposal of the appeal, the Commissioner (Appeals) shall communicate the order passed by him to the assessee and to the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner.

17. Powers of Commissioner (Appeals):-

(1) In disposing of an appeal, the Commissioner (Appeals) shall have the following powers, namely:—

(a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment;

(b) in an appeal against an order imposing a penalty, he may confirm or cancel such order;

(c) in any other case, he may determine the issues arising in the appeal and pass such orders thereon, as he thinks fit.

(2) The Commissioner (Appeals) may consider and decide any matter which was not considered by the Assessing Officer.

(3) The Commissioner (Appeals) shall not enhance an assessment or a penalty unless the appellant has been given an opportunity of being heard.

(4) In disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before him by the appellant.

41. Penalty in relation to undisclosed foreign income and asset:-

The Assessing Officer may direct that in a case where tax has been computed under section 10 in respect of undisclosed foreign income and asset, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him, a sum equal to three times the tax computed under that section.

43. Penalty for failure to furnish in return of income, an information or furnish inaccurate particulars about an asset (including financial interest in any entity) located outside India:-

If any person, being a resident other than not ordinarily resident in India within the meaning of clause (*6*) of section 6 of the Income-tax Act, 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 said Act, fails to furnish

any information or furnishes inaccurate particulars in such return relating to any asset (including financial interest in any entity) located outside India, held by him as a beneficial owner or otherwise, or in respect of which he was a beneficiary, or relating to any income from a source located outside India, at any time during such previous year, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of ten lakh rupees:

Provided that this section shall not apply in respect of an asset, being one or more bank accounts having an aggregate balance which does not exceed a value equivalent to five hundred thousand rupees at any time during the previous year.

49. Punishment for failure to furnish return in relation to foreign income and asset:-

If a person, being a resident other than not ordinarily resident in India within the meaning of clause (*6*) of section 6 of the Income-tax Act, who at any time during the previous year, held any asset (including financial interest in any entity) located outside India as a beneficial owner or otherwise, or was a beneficiary of such asset or had income from a source outside India and wilfully fails to furnish in due time the return of income which he is required to furnish under sub-section (*1*) of section 139 of that Act, 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:

Provided that a person shall not be proceeded against under this section for failure to furnish in due time the return of income under sub-section (*1*) of section 139 of the Income tax Act if the return is furnished by him before the expiry of the assessment year.

50. Punishment for failure to furnish in return of income, any information about an asset (including financial interest in any entity) located outside India:-

If any person, being a resident other than not ordinarily resident in India within the meaning of clause (*6*) of section 6 of the Income-tax Act, 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 that Act, wilfully fails to furnish in such return any information relating to an asset (including financial interest in any entity) located outside India, held by him, as 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.

54. Presumption as to culpable mental state:-

(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.—In this sub-section, "culpable mental state" includes intention, motive or knowledge of a fact or belief in, or reason to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

55. Prosecution to be at instance of Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner:-

(1) A person shall not be proceeded against for an offence under section 49 to section 53 (both inclusive) except with the sanction of the Principal Commissioner or Commissioner or the Commissioner (Appeals), as the case may be.

(2) The Principal Chief Commissioner or the Chief Commissioner may issue such instructions, or directions, to the tax authorities referred to in sub-section (1) as he may think fit for the institution of proceedings under this section.

(3) The power of the Board to issue orders, instructions or directions under this Act shall include the power to issue orders, instructions or directions (including instructions or directions to obtain its previous approval) to other tax authorities for the proper initiation of proceedings of offences (including an authorisation to file and pursue complaints by one or more Inspectors of tax) under this section.

59. Declaration of undisclosed foreign asset:

Subject to the provisions of this Chapter, any person may make, on or after the date of commencement of this Act but on or before a date to be notified by the Central Government in the Official Gazette, a declaration in respect of any undisclosed asset located outside India and acquired from income chargeable to tax under the Income-tax Act for any assessment year prior to the assessment year beginning on 1st day of April, 2016—

(*a*) for which he has failed to furnish a return under section 139 of the Income-tax Act;

(*b*) which he has failed to disclose in a return of income

furnished by him under the Income-tax Act before the date of commencement of this Act;

(*c*) which has escaped assessment by reason of the omission or failure on the part of such person to make a return under the Income-tax Act or to disclose fully and truly all material facts necessary for the assessment or otherwise.

84. Application of Provisions of Income-tax Act:-

The provisions of clauses (c) and (d) of sub-section (1) of section 90, clauses (c) and (d) of sub-section (1) of section 90A, sections 119, 133, 134, 135, 138, Chapter XV and sections 237, 240, 245, 280, 280A, 280B, 280D, 281, 281B and 284 of the Income-tax Act shall apply with necessary modifications as if the said provisions refer to undisclosed foreign income and asset instead of to income-tax.

107. Let us consider few provisions of the Income Tax Act, 1961, as hereunder:-

"**139(1).** Every Person -

(a) being a company (or a firm); or

(b) being a person other than a company (or a firm), if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income tax, shall, on or before the due date, furnish a return of his income or the income of such other person during the previous year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed :

Provided that a person referred to in clause (b), who is

not required to furnish a return under this sub-section and residing in such area as may be specified by the Board in this behalf by notification in the Official Gazette, and who [during the previous year incurs an expenditure of fifty thousand rupees or more towards consumption of electricity or] at any time during the previous year fulfils any one of the following conditions, namely :—

(i) is in occupation of an immovable property exceeding a specified floor area, whether by way of ownership, tenancy or otherwise, as may be specified by the Board in this behalf; or

(ii) is the owner or the lessee of a motor vehicle other than a two wheeled motor vehicle, whether having any detachable side car having extra wheel attached to such two-wheeled motor vehicle or not; or

(iii) .....

(iv) has incurred expenditure for himself or any other person on travel to any foreign country; or

(v) is the holder of a credit card, not being an "add-on" card, issued by any bank or institution; or

(vi) is a member of a club where entrance fee charged is twenty-five thousand rupees or more,

shall furnish a return, of his income [during any previous year ending before the 1st day of April, 2005], on or before the due date in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed :

Provided further that the Central Government may, by notification in the Official Gazette, specify the class or classes of persons to whom the provisions of the first proviso shall not apply:

Provided also that every company [or a firm] shall furnish on or before the due date the return in respect of its income or loss in every previous year :

Provided also that a person, being a resident other than not ordinarily resident of India within the meaning of clause (6) of section 6, who is not required to furnish a return under this sub-section and who at any time during the previous year-

(a) holds, as a beneficial owner or otherwise, any asset (including any financial interest in any entity) located outside India or has signing authority in any account located outside India; or

(b) is a beneficiary of any asset (including any financial interest in any entity) located outside India, shall furnish, on or before the due date, a return in respect of his income or loss for the previous year in such form and verified in such manner and setting forth such other particulars as may be prescribed:

Provided also that nothing contained in the fourth proviso shall apply to an individual, being a beneficiary of any asset (including any financial interest in any entity) located outside India where, income, if any, arising from such asset is includible in the income of the person referred to in clause (a) of that proviso in accordance with the provisions of this Act:

Provided also that every person, being an individual or a Hindu undivided family or an association of persons or a body of individuals, whether incorporated or not, or an artificial juridical person, if his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year, without giving effect to the provisions of section 10A or section 10B or section 10BA or Chapter VI-A exceeded the maximum amount which is not chargeable to

income-tax, shall, on or before the due date, furnish a return of his income or the income of such other person during the previous year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed.

Explanation 1.—For the purposes of this sub-section, the expression "motor vehicle" shall have the meaning assigned to it in clause (28) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988).

Explanation 2.—In this sub-section, "due date" means,—

(a) where the assessee (other than an assessee referred to in clause (aa) is -

(i) a company; or

(ii) a person (other than a company) whose accounts are required to be audited under this Act or under any other law for the time being in force; or

(iii) a working partner of a firm whose accounts are required to be audited under this Act or under any other law for the time being in force, the [30th day of September] of the assessment year; (aa) in the case of an assessee being a company, which is required to furnish a report referred to in section 92E, the 30th day of November of the assessment year;

(b) in the case of a person other than a company, referred to in the first proviso to this sub-section, the 31st day of October of the assessment year;

(c) in the case of any other assessee, the 31st day of July of the assessment year.

Explanation 3.—For the purposes of this sub-section, the expression "travel to any foreign country" does not include travel to the neighbouring countries or to such places of

pilgrimage as the Board may specify in this behalf by notification in the Official Gazette.

Explanation 4.- For the purpose of this section "beneficial owner" in respect of an asset means an individual who has provided, directly or indirectly, consideration for the asset for the immediate or future benefit, direct or indirect, of himself or any other person.

Explanation 5 - For the purposes of this section "beneficiary" in respect of an asset means an individual who derives benefit from the asset during the previous year and the consideration for such asset has been provided by any person other than such beneficiary.

139(4). Any person who has not furnished a return within the time allowed to him under sub-section (1), or within the time allowed under a notice issued under subsection (1) of section 142, may furnish the return for any previous year at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

(4A) Every person in receipt of income derived from property held under trust or other legal obligation wholly for charitable or religious purposes or in part only for such purposes, or of income being voluntary contributions referred to in sub-clause (iia) of clause (24) of section 2, shall, if the total income in respect of which he is assessable as a representative assessee (the total income for this purpose being computed under this Act without giving effect to the provisions of sections 11 and 12) exceeds the maximum amount which is not chargeable to income-tax, furnish a return of such income of the previous year in the prescribed form and verified in the

prescribed manner and setting forth such other particulars as may be prescribed and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under sub-section (1).

(4B) The chief executive officer (whether such chief executive officer is known as Secretary or by any other designation) of every political party shall, if the total income in respect of which the political party is assessable (the total income for this purpose being computed under this Act without giving effect to the provisions of section 13A) exceeds the maximum amount which is not chargeable to income-tax, furnish a return of such income of the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and all the provisions of this Act, shall, so far as may be, apply as if it were a return required to be furnished under sub-section (1). 93(4C) Every—

(a) research association referred to in clause (21) of section 10;

(b) news agency referred to in clause (22B) of section 10;

(c) association or institution referred to in clause (23A) of section 10;

(ca) person referred to in clause (23AAA) of section 10;

(d) institution referred to in clause (23B) of section 10;

(e) fund or institution referred to in sub-clause (iv) or trust or institution referred to in sub-clause (v) or any university or other educational institution referred to in sub-clause (iiiad) or sub-clause (vi) or any hospital or other medical institution referred to in sub-clause (iiiae) or sub-clause (via) of clause

(23C) of section 10;

(ea) Mutual Fund referred to in clause (23D) of section 10;

(eb) securitisation trust referred to in clause (23DA) of section 10;

(eba) Investor Protection Fund referred to in clause (23EC) or clause (23ED) of section 10;

(ebb) Core Settlement Guaranee Fund referred to in clause (23EE) of section 10;

(ec) venture capital company or venture capital fund referred to in clause (23FB) of section 10;

(f) trade union referred to in sub-clause (a) or association referred to in sub-clause (b) of clause (24) of section 10;

(fa) Board or Authority referred to in clause (29A) of section 10;

(g) body or authority or Board or Trust or Commission (by whatever name called) referred to in clause (46) of section 10;

(h) infrastructure debt fund referred to in clause (47) of section 10, shall, if the total income in respect of which such research association, news agency, association or institution, (person or) fund or trust or university or other educational institution or any hospital or other medical institution or trade union or body or authority or Board or Trust or Commission or infrastructure debt fund is assessable, without giving effect to the provisions of section 10, exceeds the maximum amount which is not chargeable to income-tax, furnish a return of such income of the previous year in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and all the provisions of this

Act shall, so far as may be, apply as if it were a return required to be furnished under sub-section (1).

(4D) Every university, college or other institution referred to in clause (ii) and clause (iii) of sub-section (1) of section 35, which is not required to furnish return of income or loss under any other provision of this section, shall furnish the return in respect of its income or loss in every previous year and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under sub-section (1).

139(5). If any person, having furnished a return under sub-section (1), or in pursuance of a notice issued under sub-section (1) of section 142, discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

Note: Substituted by the Finance Act, 2016, w.e.f. 1.4.2017. Prior to its substitution sub-section (5), as substituted by the Direct Tax Laws (Amendment) Act, 1987, w.e.f. 1-4-1989, read as under:

"(5) If any person, having furnished a return under sub-section (1), or in pursuance of a notice issued under sub-section (1) of section 142, discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier:

Provided that where the return relates to the previous year relevant to the assessment year commencing on the 1st day of April 1988, or any earlier assessment year, the reference

to one year aforesaid shall be construed as a reference to two years from the end of the relevant assessment year."

108. Section 4 of the Act states that the total Foreign Income and assessment of any previous year of an assesses shall be, as per Sub-Sections (a), (b) and (c) of Section 4 of the Act.

109. Sub-section (a) of Section 4 of the Act speaks about the income from a source outside India, which has not been disclosed in the return of income furnished within the time specified in Explanation 2 to sub-section (1) or under sub-section (4) or sub-section (5) of section 139 of the Income-tax Act and as per sub Section (b) of Section 4. It is not the case of the respondents that there is any income from the source outside India which has not been disclosed in the returns submitted by the petitioners.

110. It is the case of the respondents that the assesses did not disclose the details of the foreign asset, in the return submitted under Section 139(1) of the Act and only after the issuance of the notice under Section 10 of the Act, a further return under Section 139 (5) has been submitted and thus the offence under Section 50 of the Act is attracted. At the risk of repetition, Section 50 of the Black Money Act, 2015 is reproduced hereunder:

"Section 50. Punishment for failure to furnish in return of income, any information about an asset

(including financial interest in any entity) located outside India:-

If any person, being a resident other than not ordinarily resident in India within the meaning of clause (6) of section 6 of the Income-tax Act, 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 that Act, wilfully fails to furnish in such return any information relating to an asset (including financial interest in any entity) located outside India, held by him, as 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."

111. Notice under Section 10(1) of the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act, 2015, dated 02.08.2017, for the Assessment Years 2015-16 and 2016-17, issued to Smt.Nalini Chidambaram, is extracted hereunder:

Office of the Deputy Director of Income Tax (Investigation),
Unit 3(3), Chennai, Room No.120, 1st Floor,
Investigation Wing Building,
No.46, Uthamar Gandhi Road,
Nungambakkam, Chennai - 600 034.

No.DDIT/Unit3(3)/BMAct/01 02/08/2017

To

Smt.Nalini Chidambaram,
Kartika, No.16, Pycorofts Garden Road,

Chennai - 600006.

Madam,

Sub: Notice u/s 10(1) of the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act, 2015 - A.Ys.2015-16 & 2016-17 - Issue of Notice - Reg.

*****

Pursuant to receipt of information to the effect that you have made certain investments in acquiring assets abroad, particularly in a property known as 5, Holben Close, Barton, Cambridge CB237AQ for which an amount of Rs.77,60,794 was paid by you in the Financial Year 2014-15 relevant to Asst.Year 2015-16 and Rs.77,69,272, was paid by you in the Financial Year 2015-16 relevant to Asst.Year 2016-17 and also that you have not disclosed the said foreign assets/financial interests in Schedule FA of the Returns of Income filed by you for the Asst.Years 2015-16 & 2016-17 on 30/09/2015 and17/10/2016, respectively, and for the purposes of making an assessment in your case under the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act, 2015, you are hereby required to produce the following information/documents:

(i) Copies of all documents in respect of investments made by you in the said property, No.5, Holben Close, Barton, Cambridge CB237AQ including agreement, sale deed, possession letter, etc.

(ii) Full details of total consideration paid for acquiring the property and your share in the consideration and title of the property along with details of other co-owners, if any.

(iii) Details of immediate sources of funds for the investment.

(iv) Copies of all Banks statements reflecting the remittance made towards purchase of the property.

(v) A statement of all assets held by you either in your name or where you hold beneficial interest, both in India and abroad, including

dates of acquisition.

This notice is issued by the undersigned in terms of Notification No.1, issued by the DIT (Inv.), Chennai Pursuant to the Notification No.39/2017/13/2015-ITA-I in S.O.1590(E) dated 16th May, 2017 issued by the Central Board of Taxes, New Delhi.

The above information/documents shall be produced or caused to be produced either personally or through a representative duly authorized in writing in this behalf on 16.08.2017 at 11.30 a.m. at the office of the undersigned at No.46 (Old No.108), MG Road, Nungambakkam, Chennai - 600 034.

Sd/-KANNAN NARAYANAN,I.R.S.
Deputy Director of Income Tax (Inv.),
Unit 3(3), Chennai."

112. Reply given by the Chartered Accountant on behalf of Nalini Chidambaram, to the Deputy Director of Income Tax (Investigation), Chennai/third respondent, dated 17.08.2017, is extracted hereunder:-

Rajagopal and Badri Narayanan
CHARTERED ACCOUNTANTS

New No.38/23,
Venkatesa Agraharam,
Mylapore, Chennai-4.
INDIA

17.08.2017

To

Mr.Kannan Narayanan, I.R.S.,
Deputy Director of Income Tax (Inv),
Unit 3(3), Chennai,
Room No.120, 1st Floor, Investigation Wing Building,
No.46, Uthamar Gandhi Road,
Nungambakkam,
Chennai - 600 034.

Sir,

Ref:- Your Notice having Ref. No.DDIT/Unit 3(3)/BMAct/01 dated 02-08-2017.

Sub:- Notice u/s 10(1) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015-A.Y.2016-17.

****

Under instructions from my client Mrs.Nalini Chidambaram, residing at No.16 Pycrofts Garden Road, Chennai 600 034 I am issuing the following reply to the notice referred above dated 02-08-2017.

2. Parliament passed the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (Act 22 of 2015) which came into force on the 1st day of July, 2015.

3. Section 2 of the Act contains the definitions.

4. Section 3 of the Act is the charging section.

5. Section 4 of the said Act deals with scope of total undisclosed foreign income and asset.

6. Section 10 of the said Act deals with Assessment.

7. Reading the aforesaid provisions of the Act, it is submitted that for issuing notice under Section 10(1) under Act 22 of 2015 to any person the jurisdictional fact is that the notice should have undisclosed foreign asset within the meaning of Section 2(11) of the Act.

8. The said jurisdictional fact is totally absent in the case of my client since there is no foreign asset which has not been disclosed in the return of my client. The foreign asset owned by my client is the property at 5, Holben Close, Barton, Cambridge which has been disclosed in my client's balance sheet and tax audit report which form part of the return of income. Thus the asset is not an "undisclosed asset" and you have full information

about the said asset. The foreign remittance for purchase of the said foreign asset was through normal banking channels as per RBI guidelines. The relevant documents are enclosed with this reply.

9. I may also point out that you have not disclosed the source of information based on which the notice under Section 10(1) has been issued.

10. It is apparent that when the asset has been disclosed in the I.T. returns, you have exceeded your authority in issuing the notice under Section 10(1) of the Act 22 of 2015 to my client.

11. Since the jurisdictional fact to invoke the provisions of Act 22 of 2015 is not present, your notice itself is without jurisdiction. Hence, I request you to first decide the question whether you had the jurisdiction to issue the notice under reply, before calling upon my client to answer further questions or produce further documents that have to relevance to the notice under Act 22 of 2015.

12. In the light of the above, I request you to withdraw the notice issued under Section 10(1) of Act 22 of 2015 to my client."

113. Similar notices, under Section 10(1) of the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act, 2015, dated 04.08.2017, 04.08.2017 and 16.08.2017, for the Assessment Years 2015-16 and 2016-17, issued to Ms.Srinidhi Karti Chidambaram, Shri Karti P. Chidambaram, and Principal Officer, M/s Chess Global Advisory Services Private Limited, Chennai respectively, calling for the abovesaid documents, to

be produced, on or before 16.05.2017, are extracted hereunder:

(Ms.Srinidhi Karti Chidambaram)

"Pursuant to receipt of information to the effect that you have made certain investments in acquiring assets abroad, particularly in a property known as 5, Holben Close, Barton, Cambridge CB237AQ for which an amount of Rs.77,60,794 was paid by you in the Financial Year 2014-15 relevant to Asst.Year 2015-16 and Rs.1,09,72,501, was paid by you in the Financial Year 2015-16 relevant to Asst.Year 2016-17 and also that you have not disclosed the said foreign assets/financial interests fully in Schedule FA of the Return of Income filed by you for the Asst.Year 2016-17 on 30/07/2016 and for the purpose of making an assessment in your case under the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act, 2015"

(Shri.Karti P. Chidambaram)

"Pursuant to receipt of information to the effect that you have made certain investments in acquiring assets abroad, particularly in a property known as 5, Holben Close, Barton, Cambridge CB237AQ for which an amount of Rs.77,60,794 was paid by you in the Financial Year 2014-15 relevant to Asst.Year 2015-16 and Rs.1,54,97,263 (inclusive of Rs.77.05 lakhs paid in the name of your minor daughter), was paid by you in the Financial Year 2015-16 relevant to Asst.Year 2016-17 and also that you have not disclosed the said foreign assets/financial interests fully in Schedule FA of the Return of Income filed by you for the Asst.Year 2016-17 on 30/07/2016 and for the purpose of making an assessment in your case under the Black

Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act, 2015"

(M/s Chess Global Advisory Services Private Limited,)

"Pursuant to receipt of information to the effect that M/s Chess Global Advisory Services Private Limited, have made certain investments in acquiring assets abroad, particularly in Nano Holdings LLC USA as a member of the limited liability company for which an amount of USD 499965 amount to Rs.3,32,47,672 was paid by M/s Chess Global Advisory Services Private Limited (AACCC5763B), in the Financial Year 2015-16 relevant to Asst.Year 2016-17 and also that the company (M/s Chess Global Advisory Services Private Limited) have not disclosed the said foreign assets/financial interests in the Return of Income filed for the Asst.Year 2016-17 on 15/10/2016 and for the purpose of making an assessment in case of the company under the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act, 2015"

114. Similar replies have been filed by Ms.Srinidhi Karti Chidambaram, Shri Karti P. Chidambaram, and Principal Officer, M/s Chess Global Advisory Services Private Limited, Chennai respectively, through their Chartered Accountants.

115. Bare reading of Section 10 of the Black Money Act makes it clear

that when proceedings are taken under Section 10 of the Black Money Act, it is for the assessment or reassessment of the undisclosed foreign income and assets. Thus, the respondents have proceeded on the premise that the petitioners have not disclosed the foreign assets/financial interest in their return filed, under the Income Tax Act.

116. As per Section 49 of the Black Money Act, 2015, punishment for failure to furnish in return of income, any information about an asset (including financial interest in any entity) located outside India can be inflicted if any person, being a resident other than not ordinarily resident in India within the meaning of clause (*6*) of section 6 of the Income-tax Act, 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 said Act, fails to furnish any information or furnishes inaccurate particulars in such return relating to any asset (including financial interest in any entity) located outside India, held by him as a beneficial owner or otherwise, or in respect of which he was a beneficiary, or relating to any income from a source located outside India, at any time during such previous year, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of ten lakh rupees: Provided that this section shall not apply in respect of an asset, being one or more bank accounts having an aggregate balance which does not exceed a value equivalent to five hundred thousand rupees at any time during the previous year.

117. In all these cases, the petitioners have submitted their returns under sub-section (1) of Section 139 of the Act and on receipt of notice under Section 10 of the Black Money Act, 2015 submitted their returns under Section 139(5) of the Income Tax Act, 1962. Section 50 of the Act contemplates that there should be failure to furnish return of income of any information about an asset (including financial interest in any entity) located outside India and that such failure should be wilful.

118. Reading of Section 50 indicates that the assessees can submit returns under sub-sections (1) or (4) or (5) of Section 139 of the Income Tax Act, 1962 and in such return, i.e. the return of income permissible under Income Tax Act, 1962, the assesses should have wilfully failed to furnish any information relating to an asset (including financial interest in any entity). The expression such returns used in Section 50 of the Act has an important bearing on the case on hand because to invoke Section 50 of the Act, the assesses should have filed return of income under sub-section (1) or (4) or (5) of Section 139 of the Act.

119. Question to be considered in these cases is, "whether the assesses have filed such returns, as required under Section 50 of the Black Money Act?"

120. Section 2(2) of the Act defines Assessee, an assessee is a person who is the resident within the meaning of Section 6(6) of the Income Tax Act by whom tax in respect of undisclosed foreign income and asset or any other sum of money is payable under the Black Money (Undisclosed Foreign Income and Asset) and Imposition of Tax Act, 2015 (hereinafter called as the Black Money Act). It also includes every person who is in default under the Black Money Act.

121. Section 2(11) defines "Undisclosed asset located outside India". This definition only includes undisclosed asset which is located outside India, held by an assessee in his name or where the assessee is mere beneficiary owner (Binamidhar). For an asset become "undisclosed located outside India", the assessee should have no explanation about the source of investment for purchasing the asset or the explanation given by him to the Assessing Officer is unsatisfactory.

122. Section 2(12) defines "Undisclosed foreign Income and Assets". This definition means the total amount of undisclosed income and asset from a source located outside India and the value of the undisclosed asset located outside India.

123. Analysis of Section 2(11) and 2(12) of the Black Money Act, would show that Section 2(11) applies when an assessee has undisclosed foreign asset, from a source of income, within the country. On the other hand, to attract Section 2(11) of the Act, an assessee must have undisclosed

foreign income and undisclosed foreign asset. If the assessee, has not disclosed the foreign asset and he has no source of income, outside the country, then an offence under Section 49 of the Black Money Act, 2015, is attracted. If an assessee, has both undisclosed foreign income and undisclosed foreign asset, then the offence under Section 50 of the Black Money Act, 2015, is attracted.

124. Section 4 of the Black Money Act, 2015, defines "the scope of total undisclosed foreign income and asset". Section 4 reads thus:

> *4. Scope of total undisclosed foreign income and asset.—*
>
> *(1) Subject to the provisions of this Act, the total undisclosed foreign income and asset of any previous year of an assessee shall be,—*
>
> *(a) the income from a source located outside India, which has not been disclosed in the return of income furnished within the time specified in Explanation 2 to sub-section (1) or under sub-section (4) or sub-section (5) of section 139 of the Income-tax Act;*
>
> *(b) the income, from a source located outside India, in respect of which a return is required to be furnished under section 139 of the Income-tax Act but no return of income has been furnished within the time specified in Explanation 2 to sub-section (1) or under sub-section (4) or sub-section (5) of section 139 of the said Act; and*
>
> *(c) the value of an undisclosed asset located outside India.*
>
> *(2) Notwithstanding anything contained in sub-section*

(1), any variation made in the income from a source outside India in the assessment or reassessment of the total income of any previous year, of the assessee under the Income-tax Act in accordance with the provisions of section 29 to section 43C or section 57 to section 59 or section 92C of the said Act, shall not be included in the total undisclosed foreign income.

(3) The income included in the total undisclosed foreign income and asset under this Act shall not form part of the total income under the Income-tax Act.

125. Though the opening words of Section 4 comes only within the four corners of the Section 2(12), but actually it also includes the value of the undisclosed asset located outside India as defined in Section 2(11). Section 5 is the Section for computing undisclosed foreign income and asset. Section 5 computes the undisclosed foreign income and it also take in to ambit, the value of asset located outside India which an assessee has not been able to satisfactorily explain to the Assessing Officer.

126. If the assessee is able to explain the source of asset, then the value of the asset is reduced from the undisclosed foreign income. A reading of 4 and 5 therefore show that, they take in their ambit undisclosed asset, outside India, without there being any source of income in India, provided the assessee has not been able to explain the source.

127. If the assessee has a foreign income and a foreign asset which is

undisclosed in the return, then no explanation need be called for. The moment of a person has foreign income and a foreign asset which may or may not have been purchased form the foreign income, the explanation of the assessee need not be called for and the value of the asset will come within the scope of Section 4. However, the value of the asset can be deducted from the total income for the purpose of Black Money Act, if the assessee is able to explain the source of income.

128. Mr.Gopal Subramanium, learned Senior Advocate for the petitioners has contended that an assessee can file the revised return of income under Section 139(5) of the Income Tax Act, provided it is filed within the prescribed time. He submitted that once a revised return is filed, under Section 139(5) of the Income Tax Act, then it is the only relevant return that can be relied upon or referred to. To substantiate his contention, learned Senior Advocate placed reliance on the following judgements:

(i) In **Commissioner of Income-Tax v. Mangalore Chemicals** reported in **1991 (191) ITR 156 (KAR),** the Karnataka High Court, on the question, as to whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in law while holding that when once a valid revised return was filed by the assessee, it completely effaces and obliterates the original return and, therefore, it is only the revised return that has to be taken into account for the purpose of making the assessment?, held as follows:

"13. Regarding question No. 1, much discussion is not necessary because once the original return is withdrawn or is substituted by filing a valid revised return, the natural consequences is that the earlier return would be effaced or obliterated or all purposes under the Act. The answer to the first question is, therefore, necessarily in the affirmative and against the Revenue."

(ii) In **Commissioner of Income-Tax v. Arun Textile "C"** reported in **1991 (192) ITR 700 (Guj.),** a Hon'ble Division Bench of the Gujarat High Court, after considering the decision of the Punjab and Haryana High Court, held that once *the revised return has been filed under Section 139(5), the original return was substituted by the revised return as a result of the amendments made in the original return by the revised return. Therefore, where an assessee did not claim depreciation in the revised return, which was claimed in the original return, it was not open to the income-tax authorities to take into consideration the original return for that purpose.*

(iii) In **Chief Commissioner of Income Tax v. Machine Tool Corporation of India** reported in **ILR 1992 Kar. 3304,** one of the issues considered by the Hon'ble Bench was, whether, on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in concuding that the revised return is totally in substitution of the original return and that the revised return alone has to be taken into consideration in completing the

assessment? The Karnataka High Court, at paragraph No.6, held as follows:

"6. The next point for consideration is regarding the effect of a revised return. This aspect has been considered at length by the Gujarat High Court in ***Commissioner of Income-Tax v. Arun Textile "C"*** *reported in* ***1991 (192) ITR 700 (Guj.)****. It is held that once a revised return is filed under Section 139(5), the original return is substituted by the revised return. Consequently, the entries in the relevant column of the original return seeking depreciation cannot be used for any purpose. It is, therefore, not open to the Income-tax Officer to advert to the original returns or the statement filed along with it for the purpose of allowing deduction after such claim was expressly withdrawn under the revised return."*

(iv) In **CIT v. Mahindra Mills** reported in **2000 (3) SCC 615,** the Hon'ble Supreme Court, at Paragraph 41, held as follows:

"Section 34 is not in the nature of merely an enabling provision. In the absence of particulars of depreciation as required by Section 34, there is no mandate on the Income-tax Officer under Section 29 to compute the income by allowing depreciation under Section 32. In the second Madras case (CIT v. Southern Petro Chemicals Industries Corporation Ltd., [233 ITR 400] the assessee did claim depreciation but he withdrew the same in the revised return. On that basis it was held that since the assessee had furnished the particulars regarding the claim of depreciation in the original return the assessee would not be able to withdraw his claim for depreciation. It would appear that High Court proceeded on the basis that the revised return was not a valid return under Section 139(5) of the Act.

High Court followed its earlier decision in Dasa Prakash Bottling Co. To us it appears that if the revised return is a valid return and the assessee has withdrawn the claim of depreciation it cannot be granted relying on the original return when the assessment is based on the revised return."

(v) In **Principal Commissioner of Income-Tax v. Trisha Krishnan [Tax Case Appeal No.239 of 2017, dated 14.06.2018],** the Hon'ble First Bench of this Court, while considering a case on concealment, and taking note of the judgment in J.K.A. Subramania Chettiar's case, at paras 3(l) to 3(n), discussed and held as follows:

"3(l) Though it was not argued in the course of oral submissions, in the hearing before us, we find that in the written submissions filed by the Revenue, the learned counsel for the Revenue has pressed into service a judgment of a Division Bench of this Court, being Commissioner of Income-tax Vs. J.K.A. Subramania Chettiar [(1977) 110 ITR 602 (MAD)]. Pressing into service this judgment, the Revenue would contend that meaning of the words 'Omission' and 'Discover', as occurring in Section 139(5) of the Income-tax Act, 1961, have to be read in the light of the ratio in J.K.A. Subramania Chettiar's case. We find that the ratio in J.K.A. Subramania Chettiar's case runs as follows:

"In our opinion, Section 139(5) will apply only to a limited category of cases, namely, where in the original return there was any omission or any wrong statement. The very word " omission " connotes an unintentional act. Equally, the words "wrong statement" will not take in "a statement known to be

false to the person who made the Statement." However, the word "discovers" occurring in Section 139(5) will make it clear that at the time of discovery only, a person who has furnished a return finds out that an inadvertent omission or an unintended wrong statement had crept in the return filed by him. If a person who furnished the return was aware of the falsity of the statement and the incorrectness of the particulars of income even at the time when he filed the original return, there was no question of that person subsequently discovering the existence of the omission or creeping in of the wrong statement in the return already filed by him. Therefore, we are of the opinion that Section 139(5) will apply only to cases of "omission or wrong statements" and not to cases of "concealment or false statements ". This conclusion of ours derives support from the language used in Section 139(5)."

3(m) However, we find that J.K.A. Subramania Chettiar's case was one where certain hundi transactions that the Assessee came forward to disclose in the revised return, were found to be of bogus nature and ultimately, the falsity of hundi transactions was admitted. More over, it was a clear case of filing revised returns after being 'found out'. Therefore, J.K.A. Subramania Chettiar's case is clearly distinguishable on facts and whatever the Division Bench has opined there is only in the context of that factual matrix. In our opinion, it does not help the Revenue in the instant case owing to the factual matrix. However, even if the opinion of the Division Bench, which has been extracted supra, is applied to the facts of this case, it does not help the Revenue as there was no concealment by the Assessee and there was no statement made by the Assessee knowing it to be false. As stated supra, the balance sheet

revealed the advances received and at that point of time, the question of whether advances received in the assessment year should be shown in the same assessment year, was before the CIT for previous assessment years for the same Assessee.

3(n) Therefore, we have no hesitation in persuading ourselves to hold that the Assessee, in the instant case, has not concealed the income deliberately (particularly in the light of the fact that advances have been shown in the balance sheet filed even along with the original return) and therefore, is not liable for imposition of penalty under Section 271(1)(c) of the IT Act."

129. Let us also consider few other decisions on the aspect of submission of revised return and its effect. Sub-section (5) of section 139 of the Income Tax Act, 1961, permits an assessee to file a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of assessment, whichever is earlier, is he discovers any omission or wrong statement in the return filed by him. **If an assessee, having furnished a return of his own accord or in response to a special notice served on him, discovers any omission or wrong statement therein, he may furnish a revised return at any time before the assessment is made. Income-tax Act contemplates filing by the assessee of a correct and complete return. The law gives him a right to substitute and bring on record a correct and complete return if he discovers any omission or wrong statement in the return**

originally filed by him. The right to file a revised return granted to an assessee under sub-section (5) is a right given by the sub-section itself.

130. ***CIT v. Mangalore Chemicals & Fertilizers Ltd.*** reported in ***(1991) 191 ITR 156, 164 (Karn)***, the Karnataka High Court held that once the original return is withdrawn or substituted by filing a valid revised return, the natural consequence is that the earlier return would be effaced or obliterated for all purposes under the Act. In other words, once a revised return is filed under section 139(5), the original return is substituted by the revised return [(CIT v. Arun Textile 'C', (1991) 192 ITR 700, 708 (Guj); Chief CIT (Administration) v. Machine Tool Corporation of India Ltd., (1993) 201 ITR 101, 103-04 (Karn), K.E. Sunil Babu, Asst. CIT v.Steel Processors, (2006) 286 ITR 315 (Karn)].

131. In ***Satyabhama Thakur (Dr)(Mrs) v CIT (1997) 223 ITR 791 (Pat); Mittal Alloys and Steels v CIT (2008) 299 ITR 291 (P&H)*** it is held that where an assessee discovered any **omission or wrong statement** even in a revised return he can still be entitled to furnish another revised return and such a revised return may be **furnished at any time before the assessment is made**.

132. In, ***ITO v Radhakrishna Stores, Stationery and Book Merchants*** reported in ***(1999) 240 ITR 544 (Mad)*** it was held that a revised return filed even on the basis of errors found during enquiry should not justify prosecution. This court required proof of mens rea in such cases.

This court considered that the mistakes attributed to a part time accountant resulting in errors and alternatives need not be treated as establishing such mens rea on the part of the proprietors. This court further observed that, if such a view is not taken, innocent assessees as well as auditors, who help or assist the assessees, could be made liable at one or other point of time for bona fide mistakes with dangerous consequences.

133. A similar view was taken by the Gauhathi High Court, in ***Khandelwal Construction v Swadesh Ranjan Dey, ITO,*** reported in **1999 240 ITR 585 Gauhati**, where prosecution was launched merely on the basis of certain additions made in the assessment. This court held that merely because certain addition is made, it does not mean that an offence has been committed. To arrive at the conclusion, this court referred to a decision in Md. Iqbal Ahmed v State of Andhra Pradesh, wherein it was held that even a letter of sanction, consent or authorisation for prosecution must contain facts constituting offence.

134. In ***Kalyanpur Cement Ltd v JCIT*** reported in ***(2005) 276 ITR 49 (Cal).*** it was held that even a second revised return is valid as long as it is filed in time, **notwithstanding an earlier order of intimation under section 143(1)(a) and an order under section 154 thereon.**

135. In ***CIT v. Jagish Ram Krishan Chand, (2008) 304 ITR 45***

(HP), Himachal Pradesh High Court held that as per section 139(5), if any assessee who had furnished a return under section 139(1) or section 139(2), discovers any omission or any wrong statement, he can file a revised return under Section 139(5) at any time before the assessment is made.

136. In ***Pyramid Saimira Theatre Ltd. v CIT,*** reported in ***(2009) 316 ITR 75 (Mad)*** it is held that the section does not prescribe an intermediary step or provide for an interlocutory order accepting or rejecting the revised return and thereafter proceeding with the assessment. It is only in the order of assessment that the AO is competent to accept or reject the revised return. The consideration of the revised return is part of a composite exercise of an assessment.

137. In ***CIT v. Himgiri Foods Ltd.,*** reported in ***(2011) 333 ITR 508, 512 (Guj)***, the Gujarat High Court held that validity of the return filed under section 139(5) cannot be gone into, if the revised return is filed within the prescribed period of limitation.

138. A revised return is permissible where an assessee discovers **any omission or any wrong statement** therein. It is construed that the assessee should have **discovered it and not** the Assessing Officer. Even if there is a discovery by the Assessing Officer under the scheme of Income

Tax Act, 1962, it cannot be said that the assessee has no right to file revised return which is also a statutory return.

139. Under the scheme of Income Tax Act, 1962, a revised return is permitted to be filed if there is any bona fide mistake and the assessing authority upon proof of the bona fide reasons can accept the revised return and pass necessary orders in accordance with law. Once the income-tax authorities have accepted the revised returns filed under section 139(5), it became explicit that the return filed earlier was a bona fide mistake and did not indicate any element of mens rea.

140. The respondents have relied on the following decisions to contend that submission of revised return under Section 139(5) of the Income Tax Act, was not voluntary and only on the discovery that the assessees have failed to furnish the details of the foreign asset and hence there is culpable state of mind, and the above facts can be gone into only at the time of trial and not in writ petitions.

(i) In ***C.I.T. vs. J.K.A. Subramania Chettiar*** reported in ***(1977) 110 ITR 602 (Mad)***, a Division Bench of the Madras High Court held as follows:

> *12. The question then for consideration is whether the fact that the assessee filed a petition before the Commissioner under Section 271(4A) of the Act and also filed a second return on February 7, 1968, will be sufficient to absolve him from*

liability to penalty under Section 271(1)(c) of the Act.

We may mention in this context that even in the second return the assessee had not given the true particulars of income and this is made clear by the assessee's own stand that if some of the claims put forward by him with reference to import licences had been admitted, the income determined would get reduced by about Rs. 1,50,000. As we have pointed out already the income determined by the Income-tax Officer was Rs. 3,13,854. If that incomers reduced by Rs. 1,50,000 still the income from business would be Rs. 1,63,854 which is certainly not the one returned by the assessee in the second return filed on February 7, 1968. Therefore, in whichever way the matter is looked at, still the assessee had concealed particulars of his income in both the returns. Hence, we are of the opinion that the assessee cannot escape from liability to penalty under Section 271(1)(c) of the Act.

13. Considerable stress appears to have been laid on the assessee's filing the second return on February 7, 1968. We are of the opinion that the filing of the second return by the assessee is not of any consequence against the background of the facts set out above.

14. Section 139 of the Act deals with filing of the return and Sub-section (5) of that section states :

" If any person having furnished a return under Sub-section (1) or Sub-section (2), discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the assessment is made. "

15. In our opinion, Section 139(5) will apply only to a limited category of cases, namely, where in the original return there was any omission or any wrong statement. The very word

" omission " connotes an unintentional act. Equally, the words " wrong statement " will not take in " a statement known to be false to the person who made the Statement. " However, the word " discovers " occurring in Section 139(5) will make it clear that at the time of discovery only, a person who has furnished a return finds out that an inadvertent omission or an unintended wrong statement had crept. in the return filed by him. If a person who furnished the return was aware of the falsity of the statement and the incorrectness of the particulars of income even at the time when he filed the original return, there was no question of that person subsequently discovering the existence of the omission or creeping in of the wrong statement in the return already filed by him. Therefore, we are of the opinion that Section 139(5) will apply only to cases of " omission or wrong statements " and not to cases of " concealment or false statements ". This conclusion of ours derives support from the language used in Section 139(5).

16. As far as the present case is concerned, the second return filed by the assessee on February 7, 1968, whether the same was filed before any investigation was started by the income-tax department or after the investigation was started by it, will not be a revised return as contemplated by Section 139(5) of the Act. All that can be stated is that if, after having filed the return on March 16, 1964, the assessee furnished further particulars to the Income-tax Officer with reference to his income, "the Income-tax Officer was certainly bound to take note of those particulars, as he was bound to take note of the particulars even if they were furnished by a third party. Therefore, the fact that the assessee furnished the second return on February 7, 1968, even before any investigation was

started by the income-tax department cannot be of any assistance to him, if the case does not fall within the scope of Section 139(5) of the Act. As a matter of fact, whether the assessee furnished the particulars before any detection was made by the department or not may be relevant only when the Commissioner is considering the question as to whether the minimum penalty imposable under Section 271(1) should be waived or reduced, on an application made by an assessee under Section 271(4A) of the Act, because Section 271(4A)(ii)(a) expressly states that the Commissioner may, in his discretion, reduce or waive the amount of minimum penalty imposable on a person under Clause (iii) of Sub-section (1), if he is satisfied that such person has, prior to the detection by the Income-tax Officer, of the concealment of particulars of income in respect of which the penalty is imposable, or of the inaccuracy of particulars furnished in respect of such income, voluntarily and in good faith, made full and true disclosure of such particulars. However, such considerations are foreign to the scope of Section 271(1)(c) of the Act. Consequently, we are of the opinion that the Tribunal was in error in holding that there had been no concealment of particulars of income in the present case.

(ii) In ***Hakam Singh vs. Commissioner of Income Tax*** reported in ***(1980) 124 ITR 228 (Allahabad)***, a Hon'ble Division Bench of the Allahabad High Court, held as follows:

"*8. The question is whether a return, filed out of a sense*

of fear of penalty or prosecution, is voluntary. The I.T. Act does not define the term "voluntarily". The word "voluntary" has been denned in Shorter Oxford Dictionary, Vol. 2, p. 2371, as performed or done of one's own free will, impulse or choice not constrained, prompted or suggested by another, proceeding from the free unprompted or unconstrained will of a person. A return filed under the constraint of exposure to adverse action by the I.T. departnent, in our opinion, will not be voluntary within the meaning of s. 273A. The action of the petitioners in filing the returns after the books of account had been seized at a raid was impelled by the compelling circumstance that the petitioner was likely to be dealt with under the penal provisions of the I.T. Act. The action of the petitioner in filing the returns under such a constraint cannot be said to be voluntary. In Mool Chand Mahesh Chand v. CIT [1978] 115 ITR 1 (All), the ITO started investigation by asking for details in respect of several matters while conducting the assessment proceedings for the year 1969-70. Thereafter, the assessee filed returns for the years 1964-65 to 1970-71. It was held that since the investigation had started and concealed income had come to light, it was a case covered by the word "detection" occurring in s. 273A. It was further observed that in these circumstances the returns were filed after the assessee felt that the game was up because the investigation initiated by the ITO exposed him to a situation that he had assessable income in respect of other years; it cannot be said that the filing of the return was voluntary. This decision shows that the term "voluntary" under Section 273Ahas been used to indicate an action free of any constraint. A return filed in order to save oneself from a

possible penal action cannot be termed "voluntary".

9. Learned counsel for the assessee invited our attention to Clause (b) of s. 273A(1) which lays down that in a case where there has been concealment or furnishing of inaccurate particulars of the income by the assessee, the Commissioner is entitled to exercise his discretion to waive or reduce the penalty if he is satisfied that prior to the detection by the ITO of the concealment of the particulars of income or of the inaccuracy of particulars furnished in respect of such income, the assessee has voluntarily and in good faith made full and true disclosure of such particulars, and contended that this provision clearly contemplates that an assessee can voluntarily make true disclosure of the particulars of his income even at a stage after certain documents that could incriminate the assessee had been seized, but before the default made by the assessee is actually detected. He urged that, in the circumstances, there is no reason to hold that under Clause (a) of Section 273A any disclosure of the income made by the assessee, after certain incriminating books or documents have been seized, cannot be voluntary.

10. We are unable to accept this submission. Whereas Clause (a) lays down that in order to qualify for reduction or waiver of penalty in the case of non-filing or late filing of return without sufficient cause, the assessee must voluntarily disclose his income before a notice under Section 139(2) of the Act is issued, Clause (b) provides that in the case of penalty leviable for concealment or wrong furnishing of particulars of income, the penalty can be reduced or waived only if the assessee voluntarily discloses his income before such concealment or furnishing of wrong particulars is actually detected. Both these

provisions merely speak of the point of time before which the disclosure of income has to be made by the assessee so as to enable him to make a request for waiving or reducing the penalty imposed or imposable on him. There is nothing in these Clauses which is directed to indicate that the expression "voluntary" used therein has been used in a sense different from that as explained by us above.

(iii) In ***P.Jayappan vs. S.K.Perumal*** reported in ***(1984) 149 ITR 696 (SC)***, the Hon'ble Supreme Court in the preamble paragraph observed as hereunder:

For the assessment year 1977-78, he filed his return under the Act on January 20, 1978 disclosing an income of Rs. 13,380/- alongwith the profit and loss account, trial balance, income tax adjustment statement and a copy of the capital account. The return was accepted. On August 20 and 21, 1981, a search was conducted at the residence of the petitioner under section 132 of the Act which resulted in the seizure of several documents and account books which revealed the suppression of purchase of chicory seeds, the existence of several bank accounts, fixed deposits, investments in the names of his wife and daughters and several bank accounts not disclose in the statements filed alongwith the return. The trading and profit and loss account for the assessment year 1977-78 filed alongwith the return showed that he had purchased chicory seeds of the value of Rs. 65,797/- as against Rs. 2,15,729/- as per the seized accounts. There were several other wrong statements in the accounts. On the basis of the allegation that the petitioner had deliberately filed a false return and had kept

false accounts with the intention of using them as genuine evidence in the assessment proceedings, a complaint was filed against him in the Court of the Additional Chief Judicial Magistrate (Economic Offences), Madurai for taking action against him for offence punishable under section 276C and section 277 of the Act and under sections 193 and 196 of the Indian Penal Code. Similarly three other complaints were filed against the petitioner for the same offences said to have been committed by him in respect of three succeeding assessment years 1978-79, 1979-80 and 1980-81 before the same Magistrate.

In the said case at paragraph No.4, the Hon'ble Supreme Court held as hereunder:

"4. At the outset it has to be stated that there is no provision in law which provides that a prosecution for the offences in question cannot be launched until reassessment proceedings initiated against the assessee are completed. Section 279 of the Act provides that a person shall not be proceeded against for an offence punishable under section 276C or section 277 of the Act except at the instance of the Commissioner. It further provides that a person shall not be proceeded against for an offence punishable under those provisions in relation to the assessment for an assessment year in respect of which penalty is imposed or imposable on him under clause (iii) of sub-section (1) of section 271 has been reduced or waived by an order under section 273A. The Commissioner has the power either before or after the institution of proceedings to compound any such offence. In this case it is not claimed that the Commissioner has not

initiated the proceedings for instituting the complaints. No other legal bar for the institution of the proceedings is urged except stating that in the event of the petitioner being exonerated in the reassessment proceedings, the prosecutions may have to be dropped. It is true that as observed by this Court in Uttam Chand & Ors. v. Income-tax officer, Central Circle, Amritsar(1) the prosecution once initiated may be quashed in the light of a finding favourable to the assessee recorded by an authority under the Act subsequently in respect of the relevant assessment proceedings but that decision is no authority for the proposition that no proceedings can be initiated at all under section 276C and section 277 as long as some proceeding under the Act in which there is a chance of success of the assessee is pending. A mere expectation of success in some proceeding in appeal or reference under the Act cannot come in the way of the institution of the criminal proceedings under section 276C and section 277 of the Act. In the criminal case all the ingredients of the offence in question have to be established in order to secure the conviction of the accused. The criminal court no doubt has to give due regard to the result of any proceeding under the Act having a bearing on the question in issue and in an appropriate case it may drop the proceedings in the light of an order passed under the Act. It does not, however, mean that the result of a proceeding under the Act would be binding on the criminal court. The criminal court has to judge the case independently on the evidence placed before it. Otherwise there is a danger of a contention being advanced that whenever the assessee or any other person liable under the Act has failed to convince the authorities in the proceedings under the Act that he has not deliberately

made any false statement or that he has not fabricated any material evidence, the conviction of such person should invariably follow in the criminal court. The High Court of Punjab and Haryana has correctly applied the rule regarding the maintainability of prosecution in such circumstances in M/s. Telu Ram Raungi Ram & Anr. v. Income-tax officer A Ward Hoshiarpur & Anr(1). We do not however, agree with the view expressed by the High Court of Calcutta in Jyoti Prakash Mitter v. Haramohan Chowdhury.(2) In that case on a complaint made against the assessee for an offence punishable undersection 277 of the Act, the Chief Metropolitan Magistrate issued process. Thereupon the assessee questioned the validity of the initiation of the criminal proceedings before the High Court of Calcutta on the ground that until the penalty proceedings initiated in respect of the same period under section 271(1)(c) of the Act were finally disposed of, no complaint could be filed. The contention of the assessee was that the prosecution was opposed to the principles of natural justice as he would be deprived of the benefit of a finding which was likely to be recorded in his favour in the penalty proceedings. It was urged on behalf of the Department that the penalty proceedings under section 271(1)(c) had no direct bearing on the maintainability of a prosecution launched under Chapter XXII of the Act. The High Court took the view which according to us is an erroneous one that the provisions of section 279(1A) of the Act established the necessity for the completion of the penalty proceedings before the institution of the prosecution and therefore as long as the penalty proceedings were pending the criminal proceedings could not be instituted. Section 279(1A) of the Act merely states that a person shall not be proceeded

against for an offence under section 276C or section 277 in relation to the assessment for an assessment year in respect of which the penalty imposed or imposable on him under clause (iii) of sub- section (1) of section 271 has been reduced or waived by an order under section 273A. Section 273A(1)(ii) provides that notwithstanding anything contained in the Act, the Commissioner may, in his discretion, whether on his own motion or otherwise, reduce or waive the penalty if the conditions mentioned therein are satisfied. The power conferred on the Commissioner under section 273A is an overriding power which he may exercise at his discretion. It is only where the Commissioner reduces or waives the penalty imposed or imposable under section 271(1)(iii) of the Act in exercise of his discretion under section 273A, section 279(1A) comes into operation and acts as a statutory bar for proceeding with the prosecution under section 276C or section 277. It does not, however, provide that merely because there is a possibility of the Commissioner passing an order undersection 273A, the prosecution shall not be instituted. The reason given by the High Court of Calcutta, therefore, does not appeal to us.

(iv) In ***S.R.Arulprakasam v. Smt.Prema Malini Vasan, ITO*** reported in ***163 ITR 487 (Mad)***, a learned single Judge of this court, at paragraphs 9, 11 and 12 held as hereunder:

"9. The thrust of the arguments of learned counsel for the petitioner is based upon the revised return submitted by him before the completion of the assessment for the year 1977-78 under section 139(5) of the Income-tax Act. Section 139(5) of the Income-tax Act lays Act lays down that Act lays

down that if any person having furnished a return under sub-section (1) or sub-section (2) discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the assessment is made. According to the learned counsel for the petitioner, section 139(5) of the Income-tax Act gives locus poenitentiae to the assessee and the revised return takes the place of the original return, which thereafter becomes non est in the eye of law and hence no proceedings for penalty or for prosecution could be based on the original return submitted by the assessee. I am afraid the contention is far fetched and cannot be accepted. It is opposed to the long line of decisions on this aspect.

11. After reviewing the aforesaid, decisions, a Bench of this court in a very recent decision in CIT v. Ramadas Pharmacy [1970] 77 ITR 276 held that the mere fact that the assessee filed a revised return after concealment had been detected by the Income-tax Officer would not wipe out the contumacious conduct on the part of the assessee in filing the original return, which, if it had been accepted would have resulted in avoidance of tax. The Bench, however, pointed out that in the proceedings for imposition of penalty, the original return along should not be considered in isolation without reference to the subsequent conduct of the assessee and all the facts and circumstances commencing with the filing of the original return and ending with the assessment may be taken as relevant for considering the assessee's liability for penalty. While it is held that the filing of the revised return will not expatiate the contumacious conduct on the part of an assessee in not having disclosed the true income in the original return and will not be a bar to the initiation of the penalty

proceedings, it will not likewise be a bar to the launching of criminal prosecution. It cannot, therefore, be said that the original return is completely wiped out and no prosecution can be instituted on the basis of the original return.

12. In the original return submitted by the petitioner, he has given a false return of income at Rs. 1,03,740 while the real income has finally been adjudicated upon by the Tribunal at Rs. 2,34,233. In the profit and loss account submitted along with the original return, the collections have been falsely given at Rs. 14,89,681 which is less by more than a lakh of rupees than the real collection as disclosed by the revised by the revised return. The petitioner, has, therefore, made a false return under verification and delivered a false statement of account along with it and the provisions of section 277of the Income-tax Act are prima facie attracted. The petitioner has wilfully attempted to evade tax by submitting such a false return and he, therefore, comes within the mischief of section 276C(1) of the Income-tax Act. Under Explanation to section 276C(1), the mere possession or control of any books of accounts or other documents containing a false entry or statement does itself amount to an attempt to evade tax within the meaning of section 276C(1) of the Act. The furnishing in a statement of profit and loss account showing a false amount of collection would amount to giving false evidence within the meaning of section 193 of the Indian Penal Code. By submitting a false return and a false statement of profit and loss account, the petitioner has attempted to deceive the Income-tax Officer and to fraudulently and dishonestly induce him to pass an order of assessment on the basis of the false return and thereby evade proper taxation.

Prima facie the provisions of the aforesaid sections come into play. The question whether the petitioner was misled by his accountant or whether he deliberately and wilfully submitted the false return, the false statement of account and maintained a false account is a matter which has to be gone into in the trial court and not in these proceedings for quashing.

(v) In ***Ajay Medical Agency v. Commissioner of Income Tax*** reported in ***(1998) 233 ITR 413 (HP)***, a Hon'ble Division Bench of Himachal Pradesh High Court, held as hereunder:

It is that order of the Commissioner with which the assessee is aggrieved. A perusal of section 273A shows that the following conditions shall be satisfied by the assessee in order to invoke the benefit of the section in cases which fall within the scope of Section 271(1)(c). Under clause (b) of section 273A(1), the assessee has to furnish in respect of an income with reference to which there was concealment of particulars of income or inaccuracy of particulars voluntarily and in good faith, full and true disclosure of such particulars prior to the detection by the Income-tax Officer. Thus, it is a condition precedent for invoking this sub-section on the part of the assessee to furnish full and true disclosure of particulars before the detection by the Income-tax officer. Such furnishing of full and true disclosure of particulars shall be made voluntarily and in good faith by the assessee. If that condition is satisfied, the section goes on to say that he shall also co-operate in any enquiry relating to the assessment of his income and has either paid or made satisfactory arrangements

for the payment of any tax or interest payable in consequence of an order passed under the Act in respect of the relevant assessment years. It is not necessary for us to consider whether the latter part of the section has been complied with by the assessee in this case. It is evident from the facts of the case stated above that the disclosure of full and true particulars has come into existence only after the detection of the defective returns by the Income-tax Officer. Consequently, the assessee is not entitled to the benefit of clause (b) section 273A(1). The view expressed by the Commissioner of Income-tax is, therefore, correct. We do not find any justification to interfere with the order passed by the Commissioner. Hence, these two writ petitions are dismissed. There will be no order as to costs. Interim orders are vacated.

141. Before adverting to the decisions relied on by the learned senior counsel for the parties, we deem it fit to consider few decisions of the Hon'ble Supreme Court on interpretation of statutes.

142. In the process of interpreting a statute or a provision, it should also be kept in mind that it is the duty of the Court to conceive and perceive the true intention of the Legislature and in the words of Hon'ble Justice G.P.Singh, in his Book, "Interpretation of Statutes", **"how far and to what extent each component part of the statute influences the meaning of the other part, would be different in each given case.** Let us consider some judgments on the interpretation of statutes,

(i) In Justice G.P. Singh's Principles of Statutory Interpretation (11th Edn., 2008), the learned author states (at pages 135 and 136) that: "Consideration of hardship, injustice or absurdity as avoiding a particular construction is a rule which must be applied with great care. "The argument ab inconvenienti", said LORD MOULTON, "is one which requires to be used with great caution"."

(ii) In the words of Tindal, C.J., in **Sussex Peerage** case **[(1844) 11 Cl & F 85],** "If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves so alone in such cases best declare the intent of the lawgiver.

(iii) In **Nairin v. University of St. Andrews** reported in **1909 AC 147,** the Hon'ble Apex Court held that, "**Unless there is any ambiguity it would not be open to the Court to depart from the normal rule of construction which is that the intention of the Legislature should be primarily gathered from the words which are used. It is only when the words used are ambiguous that they would stand to be examined and construed in the light of surrounding circumstances and constitutional principle and practice.**"

(iv) In **Poppatlal Shah v. State of Madras** reported in **AIR 1953 SC 274,** the Supreme Court held that, **"It is settled rule of construction that to ascertain the legislative intent all the constituent parts of a statute are to be taken together and each word, phrase and sentence is to be considered in the light of the general purpose and object of the Act itself."**

(v) In **Rao Shive Bahadur Singh v. State,** reported in **AIR 1953 SC 394,** the Hon'ble Supreme Court held that, **"it is incumbent on the Court to avoid a construction, if reasonably permissible on the language, which would render a part of the statute devoid of any meaning or application."**

(vi) What is the spirit of law, Hon'ble Mr. Justice S.R.Das in **Rananjaya Singh v. Baijnath Singh** reported in **AIR 1954 SC 749,** said that, **"The spirit of the law may well be an elusive and unsafe guide and the supposed spirit can certainly not be given effect to in opposition to the plain language of the Sections of the Act."**

(vii) In **Hari Prasad Shivashanker Shukla v. A.D.Divelkar** reported in **AIR 1957 SC 121,** the Hon'ble Apex Court held that, **"It is true that an artificial definition may include a meaning different from or in excess of the ordinary acceptation of the word which is the**

subject of definition; but there must then be compelling words to show that such a meaning different from or in excess of the ordinary meaning is intended, Where, within the framework of the ordinary acceptation of the word, every single requirement of the definition clause is fulfilled, it would be wrong to take the definition as destroying the essential meaning of the word defined."

(viii) In **Kanai Lal Sur v. Paramnidhi Sadhukhan** reported in **AIR 1957 SC 907,** the Supreme Court held that,

> "**it must always be borne in mind that the first and primary rule of construction is that the intention of the Legislature must be found in the words used by the Legislature itself. If the words used are capable of one construction only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act.**
>
> **The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise. When the material words are capable of two constructions, one of which is likely to defeat or impair the policy of the Act whilst the other construction is likely to assist the achievement of the said policy, then the courts would prefer to adopt the latter construction.**

It is only in such cases that it becomes relevant to consider the mischief and defect which the, Act purports to remedy and correct."

(ix) In **Attorney-General v. HRH Prince Ernest Augustus of Hanover** reported in **(1957) 1 All.ER 49,** Lord Somervell of Harrow has explained unambiguous, as "unambiguous in context".

(x) In **State of W.B., v. Union of India** reported in **AIR 1963 SC 1241,** the Hon'ble Apex Court held that **in considering the expression used by the Legislature, the Court should have regard to the aim, object and scope of the statute to be read in its entirety.**

(xi) In **State of Uttar Pradesh v. Dr.Vijay Anand Maharaj** reported in **AIR 1963 SC 946,** the Hon'ble Supreme Court held as follows:

"But it is said, relying upon certain passages in Maxwell on the Interpretation of Statutes, at p, 68, and in Crawford on "Statutory Construction' at p. 492, that **it is the duty of the Judge "to make such construction of a statute as shall suppress the mischief and advance the remedy," and for that purpose the more extended meaning could be attributed to the words so as to bring all matters fairly within the scope of such a statute even though outside the letter, if within its spirit or reason.** But both Maxwell and Crawford administered a caution in resorting to such a construction. Maxwell says at p.68 of his book:

"The construction must not, of course, be strained to include cases plainly omitted from the natural meaning of the words."

Crawford says that a liberal construction does not justify an extension of the statute's scope beyond the contemplation of the Legislature.

The fundamental and elementary rule of construction is that the words and phrases used by the Legislature shall be given their ordinary meaning and shall be constructed according to the rules of grammar. When the language is plain and unambiguous and admits of only one meaning, no question of construction of a statute arises, for the Act speaks for itself. It is a well recognized rule of construction that the meaning must be collected from the expressed intention of the Legislature."

(xii) In **Namamal v. Radhey Shyam** reported in **AIR 1970 Rajasthan 26,** the Court held as follows:

"It was observed by Pollock C. B. in Waugh v. Mid-dleton, 1853-8 Ex 352 (356):-- "**It must, however, be conceded that where the grammatical construction is clear and manifest and without doubt, that construction ought to prevail, unless there be some strong and obvious reason to the contrary.** But the rule adverted to is subject to this condition, that however plain the apparent grammatical construction of a sentence may be, if it be properly clear from the contents of the same document that the apparent grammatical construction cannot be the true one, then that

which, upon the whole, is the true meaning shall prevail, in spite of the grammatical construction of a particular part of it." And substantially the same opinion is expressed by Lord Selborne in Caledonian Ry, v. North British Ry. (1881) 6 AC 114 (222):-- "The mere literal construction of a statute ought not to prevail if it is opposed to the intentions of the legislature as apparent by the statute, and if the words are sufficiently flexible to admit of some other construction by which, that intention can be better effectuated." Again Lord Fitzgerald in Bradlaugh v. Clarke, (1883) 8 AC 354 at p. 384 observed as follows:-- "I apprehend it is a rule in the construction of statutes that in the first instance the grammatical sense of the words is to be adhered to. If that is contrary to, or inconsistent with, any expressed intention or declared purpose of the statutes, or if it would involve any absurdity, repugnance, or inconsistency, the grammatical sense must then be modified, extended, or abridged, so far as to avoid such an inconvenience, but no further." 11. Maxwell in his book on Interpretation of Statutes (11th Edition) at page 226 observes thus:--

"The rule of strict construction, however, whenever invoked, comes attended with qualifications and other rules no less important, and it is by the light which each contributes that the meaning must be determined. Among them is the rule that that sense of the words is to be adopted which best harmonises with the context and promotes in the fullest manner the policy and object of the legislature. The paramount object, in construing penal as well us other statutes, is to ascertain the legislative intent and the rule of strict construction is not violated by permitting the words to have their full meaning, or the more extensive of two meanings, when best effectuating the

intention. **They are indeed frequently taken in the widest sense, sometimes even in a sense more wide than etymologically belongs or is popularly attached to them, in order to carry out effectually the legislative intent, or, to use Sir Edward Cole's words, to suppress the mischief and advance the remedy."**

(xiii) In **Commissioner of Sales Tax v. M/s.Mangal Sen Shyamlal** reported in **1975 (4) SCC 35 = AIR 1975 SC 1106,** the Hon'ble Apex Court held that,

"A statute is supposed to be an authentic repository of the legislative will and the function of a court is to interpret it "according to the intent of them that made it". From that function the court is. not to resile. It has to abide by the maxim, *"ut res magis valiat quam pereat"*, lest the intention of the legislature may go in vain or be left to evaporate into thin air."

(xiv) In **C.I.T., Madras v. T.Sundram Iyengar (P) Ltd.,** reported in **1976 (1) SCC 77,** the Hon'ble Supreme Court held that, **if the language of the statute is clear and unambiguous and if two interpretations are not reasonably possible, it would be wrong to discard the plain meaning of the words used, in order to meet a possible injustice.**

(xv) **If the words are precise and unambiguous, then it should be accepted, as declaring the express intention of the legislature.** In

Ku.Sonia Bhatia v. State of U.P., and others reported in **1981 (2) SCC 585 = AIR 1981 SC 1274,** the Hon'ble Supreme Court held that **a legislature does not waste words, without any intention and every word that is used by the legislature must be given its due import and significance.**

(xvi) In **Philips India Ltd., v. Labour Court** reported in **1985 (3) SCC 103,** the Hon'ble Apex Court, at Paragraph 15, held as follows:

> "(15) **No cannon of statutory construction is more firmly, established than that the statute must be read as a whole.** This is a general rule of construction applicable to all statutes alike which is spoken of as construction ex visceribus actus. This rule of statutory construction is so firmly established that it is variously styled as 'elementary rule' (See **Attorney General v. Bastow [(1957) 1 All.ER 497]**) and as a 'settled rule' (See **Poppatlal Shall v. State of – Madras [1953 SCR 667 : AIR 1953 SC 274]**). **The only recognised exception to this well-laid principle is that it cannot be called in aid to alter the meaning of what is of itself clear and explicit. Lord Coke laid down that: 'it is the most natural and genuine exposition of a statute, to construe one part of a statute by another part of the same statute, for that best expresseth meaning of the makers'** (Quoted with approval in **Punjab Breverages Pvt. Ltd. v. Suresh Chand [(1978) 3 SCR 370 : (1978) 2 SCC 144 : 1978 SCC (L&S) 165]).**"

(xvii) In **Nyadar Singh v. Union of India** reported in **AIR 1988 SC**

1979, the Hon'ble Apex Court observed that ambiguity need not necessarily be a grammatical ambiguity, but one of the appropriateness of the meaning in a particular context.

(xviii) **It is a well settled law of interpretation that "when the words of the statute are clear, plain or unambiguous, ie., they are reasonably susceptible to only one meaning, the Courts are bound to give effect to that meaning irrespective of consequences.** Reference can be made to the decision of the Hon'ble Apex Court in **Nelson Motis v. Union of India** reported in **AIR 1992 SC 1981.**

(xix) In **M/s.Oswal Agro Mills Ltd., v. Collector of Central Excise and others** reported in **1993 Supp (3) SCC 716 = AIR 1993 SC 2288,** the Hon'ble Hon'ble Apex Court held that, **where the words of the statute are plain and clear, there is no room for applying any of the principles of interpretation, which are merely presumption in cases of ambiguity in the statute. The Court would interpret them as they stand.**

(xx) In **Ombalika Das and Another vs. Hulisa Shaw** reported in **(2002) 4 SCC 539,** the Hon'ble Supreme Court at paragraph No.12, held as follows:

> 12...Resort can be had to the legislative intent for the purpose of interpreting a provision of law, when the

language employed by the legislature is doubtful or susceptible of meanings more than one. However, when the language is plain and explicit and does not admit of any doubtful interpretation, in that case, we cannot, by reference to an assumed legislative intent, expand the meaning of an expression employed by the legislature..."

(xxi) In **Shashikant Singh Vs. Tarkeshwar Singh** and another, reported in **(2002) 5 SCC 738,** paragraph Nos.8 and 10, held thus:-

"8. When a statute is passed for the purpose of enabling something to be done, and prescribes the way in which it is to be done, it may be either an absolute enactment or a directory enactment. The difference being that an absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially. No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed. (Craies On Statute Law, 7th Edn. Pages 260-262). 10. Where a statute does not consist merely of one enactment, but contains a number of different provisions regulating the manner in which something is to be done, it often happens that some of these provisions are to be treated as being directory only, while others are to be considered absolute and essential; that is to say, some of the provisions may be disregarded without rendering invalid the thing to be done, but others not. (Craies On Statute Law, 7th Edn. Pages 266-267)."

(xxii) In **Nasiruddin v. Sita Ram Agarwal** reported in **(2003) 2 SCC 577,** the Hon'ble Supreme Court held as follows:

> "**35. In a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom....**
>
> **37. The court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot rewrite or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of the legislation must be gathered from the language used.** .....**But the intention of the legislature must be found out from the scheme of the Act."**

(xxiii) In **Mithilesh Singh vs. Union of India and others** reported in **(2003) 3 SCC 309** at paragraph No.8, the Hon'ble Supreme Court, held as follows:

> "8.....The intention of legislature is primarily to be gathered from the language used, and as a consequence a

construction which results in rejection of words as meaningless has to be avoided. It is not a sound principle of construction to brush aside word (s) in a statute as being inapposite surplusage: if they can have appropriate application in circumstances conceivably within the contemplation of the statute. In the interpretation of statutes the Courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect. The Legislature is deemed not to waste its words or to say anything in vain."

(xxiv) In **Indian Dental Association, Kerala v. Union of India** reported in **2004 (1) Kant. LJ 282,** the Court held that,

"The cardinal rule for the construction of Acts of Parliament is that they should be construed according to the intention expressed in the Acts themselves. The object of all interpretation is to discover the intention of Parliament, "but the intention of Parliament must be deduced from the language used", for it is well-accepted that the beliefs and assumptions of those who frame Acts of Parliament cannot make the law. If the words of the statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their ordinary and natural sense. Where the laguage of an Act is clear and explicit, the Court must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the Legislature. Where the language is plain and admits of but one meaning, the task of interpretation can hardly be

said to arise. The decision in a case calls for a full and fair application of particular statutory language to particular facts as found. It is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the Legislature intended something which it omitted to express. A construction which would leave without effect any part of the language of a statute will normally be rejected."

(xxv) In **State of Jharkhand v. Govind Singh** reported in **(2005) 10 SCC 437,** the Hon'ble Supreme Court held that,

"12. It is said that a statute is an edict of the legislature. The elementary principle of interpreting or construing a statute is to gather the mens or sententia legis of the legislature.

13. Interpretation postulates the search for the true meaning of the words used in the statute as a medium of expression to communicate a particular thought. The task is not easy as the "language" is often misunderstood even in ordinary conversation or correspondence. The tragedy is that although in the matter of correspondence or conversation the person who has spoken the words or used the language can be approached for clarification, the legislature cannot be approached as the legislature, after enacting a law or Act, becomes functus officio so far as that particular Act is concerned and it cannot itself interpret it. No doubt, the legislature retains the power to amend or repeal the

law so made and can also declare its meaning, but that can be done only by making another law or statute after undertaking the whole process of law-making.

14. Statute being an edict of the legislature, it is necessary that it is expressed in clear and unambiguous language.....

15. Where, however, the words were clear, there is no obscurity, there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to innovate or take upon itself the task of amending or altering the statutory provisions. In that situation the judges should not proclaim that they are playing the role of a lawmaker merely for an exhibition of judicial valour. They have to remember that there is a line, though thin, which separates adjudication from legislation. That line should not be crossed or erased. This can be vouchsafed by "an alert recognition of the necessity not to cross it and instinctive, as well as trained reluctance to do so". (See Frankfurter: "*Some Reflections on the Reading of Statutes*" in *Essays on Jurisprudence*, Columbia Law Review, p. 51.)

16. It is true that this Court in interpreting the Constitution enjoys a freedom which is not available in interpreting a statute and, therefore, it will be useful at this stage to reproduce what Lord Diplock said in *Duport Steels Ltd.* v. *Sirs [(1980 (1) All.ER 529]* (All ER at p. 542*c-d*):

"It endangers continued public confidence in the political impartiality of the judiciary, which is essential to the continuance of the rule of law, if judges, under the

guise of interpretation, provide their own preferred amendments to statutes which experience of their operation has shown to have had consequences that members of the court before whom the matter comes consider to be injurious to the public interest.

19. In D.R. Venkatachalam v. Dy. Transport Commr. [1977 (2) SCC 273] it was observed that courts must avoid the danger of a priori determination of the meaning of a provision based on their own preconceived notions of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. They are not entitled to usurp legislative function under the disguise of interpretation."

(xxvi) In **Vemareddy Kumaraswamy Reddy v. State of A.P.,** reported in **(2006) 2 SCC 670,** the Hon'ble Supreme Court held that,

"12. It is said that a statute is an edict of the legislature. The elementary principle of interpreting or construing a statute is to gather the *mens* or *sententia legis* of the legislature. It is well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous."

(xxvii) In **A.N.Roy Commissioner of Police v. Suresh Sham Singh** reported in **AIR 2006 SC 2677,** the Hon'ble Apex Court held that,

"It is now well settled principle of law that, the Court cannot change the scope of legislation or intention, when the language of the statute is plain and

unambiguous. Narrow and pedantic construction may not always be given effect to. Courts should avoid a construction, which would reduce the legislation to futility. It is also well settled that every statute is to be interpreted without any violence to its language. It is also trite that when an expression is capable of more than one meaning, the Court would attempt to resolve the ambiguity in a manner consistent with the purpose of the provision, having regard to the great consequences of the alternative constructions."

(xxviii) In **Adamji Lookmanji & Co. v. State of Maharastra** reported in **AIR 2007 Bom. 56,** the Bombay High Court held that, **when the words of status are clear, plain or unambiguous, and reasonably susceptible to only meaning, Courts are bound to give effect to that meaning irrespective of the consequences. The intention of the legislature is primarily to be gathered from the language used. Attention should be paid to what has been said in the statute, as also to what has not been said.**

(xxix) In **Visitor Amu v. K.S.Misra** reported in **2007 (8) SCC 594,** the Hon'ble Supreme Court held that,

"It is well settled principle of interpretation of the statute that it is incumbent upon the Court to avoid a construction, if reasonably permissible on the language,

which will render a part of the statute devoid of any meaning or application. The Courts always presume that the legislature inserted every part thereof for a purpose and the legislative intent is that every of the statute should have effect. The legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons. It is not a sound principle of construction to brush aside words in a statute as being in apposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute."

(xxx) In **Mohd. Shahabuddin v. State of Bihar,** reported in **(2010) 4 SCC 653,** the Hon'ble Supreme Court held that,

"179. Even otherwise, it is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. The language employed in a statute is a determinative factor of the legislative intent. If the language of the enactment is clear and unambiguous, it would not be proper for the courts to add any words thereto and evolve some legislative intent, not found in the statute. Reference in this regard may be made to a recent decision of this Court in Ansal Properties & Industries Ltd. v. State of Haryana [2009 (3) SCC 553]

180. Further, it is a well-established principle of statutory interpretation that the legislature is specially

precise and careful in its choice of language. Thus, if a statutory provision is enacted by the legislature, which prescribes a condition at one place but not at some other place in the same provision, the only reasonable interpretation which can be resorted to by the courts is that such was the intention of the legislature and that the provision was consciously enacted in that manner. In such cases, it will be wrong to presume that such omission was inadvertent or that by incorporating the condition at one place in the provision the legislature also intended the condition to be applied at some other place in that provision."

(xxxi) In **Satheedevi v. Prasanna** reported in **(2010) 5 SCC 622,** the Hon'ble Supreme Court held as follows:

"12. Before proceeding further, we may notice two well-recognised rules of interpretation of statutes. The first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself. If the words used are capable of one construction, only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act. The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the

Act can legitimately arise—Kanai Lal Sur v. Paramnidhi Sadhukhan [AIR 1957 SC 907]

13. The other important rule of interpretation is that the court cannot rewrite, recast or reframe the legislation because it has no power to do so. The court cannot add words to a statute or read words which are not there in it. Even if there is a defect or an omission in the statute, the court cannot correct the defect or supply the omission - Union of India v. Deoki Nandan Aggarwal [1992 Supp (1) SCC 323] and Shyam Kishori Devi v. Patna Municipal Corpn. [AIR 1966 SC 1678]"

(xxxii) In **Sri Jeyaram Educational Trust & Ors., v. A.G.Syed Mohideen & Ors.** reported in **2010 CIJ 273 SC (1),** the Hon'ble Apex Court held that,

"6. It is now well settled that a provision of a statute should have to be read as it is, in a natural manner, plain and straight, without adding, substituting or omitting any words. While doing so, the words used in the provision should be assigned and ascribed their natural, ordinary or popular meaning. Only when such plain and straight reading, or ascribing the natural and normal meaning to the words on such reading, leads to ambiguity, vagueness, uncertainty, or absurdity which were not obviously intended by the Legislature or the Lawmaker, a court should open its interpretation tool kit containing the settled rules of construction and interpretation, to arrive at the true meaning of the provision. While using the tools of interpretation, the

court should remember that it is not the author of the Statute who is empowered to amend, substitute or delete, so as to change the structure and contents. A court as an interpreter cannot alter or amend the law. It can only interpret the provision, to make it meaningful and workable so as to achieve the legislative object, when there is vagueness, ambiguity or absurdity. The purpose of interpretation is not to make a provision what the Judge thinks it should be, but to make it what the legislature intended it to be."

(xxxiii) In **Delhi Airtech Services (P) Ltd. v. State of U.P.,** reported in **(2011) 9 SCC 354,** the Hon'ble Supreme Court, while dealing with a provision under Section 17(3-A) of the Act, held that,

"**55. It is well settled as a canon of construction that a statute has to be read as a whole and in its context. In *Attorney General* v. *Prince Ernest Augustus of Hanover [1957 AC 436],* Lord Viscount Simonds very elegantly stated the principle that it is the duty of court to examine every word of a statute in its context. The learned Law Lord further said that in understanding the meaning of the provision, the Court must take into consideration "not only other enacting provisions of the same statute, but its preamble, the existing state of the law, other statutes in pari materia, and the mischief which I can, by those and other legitimate means, discern that the statute was intended to remedy." (All ER p. 531)**

143. In **P.Jayappan's** case, the return was accepted. Subsequently, a search was conducted in the residence of the petitioner therein, under Section 132 of the Act, which resulted in the seizure of several documents and account books, which revealed the suppression of purchase of certain item, the existence of several bank accounts, fixed deposits, investments in the names of petitioner's wife and daughters and several bank accounts not disclose in the statements filed alongwith the return. There were several other wrong statements in the accounts. On the basis of the allegation that the petitioner therein had deliberately filed a false return and had kept false accounts with the intention of using them as genuine evidence in the assessment proceedings, a complaint was filed against him in the Court of the Additional Chief Judicial Magistrate (Economic Offences), Madurai. On the abovesaid facts, the High Court declined to quash the criminal proceedings. One of the ground that prosecution should not be launched, till the completion of re-assessment proceedings, was negatived. Facts of the reported case are inapposite to the case on hand. In **P.Jayappan's** case, there was no submission of a revised return.

144. In **J.K.A.Subramania Chettiar's** case, the assessee filed a return, disclosing the income. Subsequently, the assessee filed a second return, showing the enhanced income. ITO completed the assessment, on

the total income, higher than the returned income. Penal proceedings were initiated for the concealment. In the reported case, the assessee himself admitted that he had filed a petition, under Section 271(4A) of the Income Tax Act, before the Commissioner of Income-tax, wherein, he has stated that the credits found in his accounts were bogus; that his account books could not be relied upon and that he had not utilised the import licences, but had sold them away. On the above admission and documents, concealment of income was arrived at. Concealment is a deliberate act, where there is falsity of statements.

145. Though the respondents therein in the case on hand, before us, contended that it is the Department which found out the variation in the returns filed subsequently, under Section 139(5) of the Income Tax Act and therefore, Section 55 of the Black Money Act, 2015, is applicable, we are not inclined to accept the said submission for the reason that to invoke Section 55 of the Act, Section 2(11) should be attracted, by which, the assessing officer, has to form an opinion that the explanation offered was not satisfactory.

146. In **J.K.A.Subramania Chettiar's** case, the Hon'ble Division Bench of this Court has held that if, on the other hand, the defect in the original return was merely an inadvertent omission or unintended wrong

statement, certainly the assessee had a right to have the same corrected and to file a revised return under Section 22(3) of the 1922 Act or under Section 139(5) of the Act and **whether the assessee so files a revised return voluntarily or after the Income-tax Officer has noticed the omission or wrong statement will be totally immaterial.** Thus, as per the judgment of **J.K.A.Subramania Chettiar's** case, revised return under Section 139(5) of the Act, is permissible, even after the notice given under Section 10(1). While dealing with Section 139(5) of the Act, the Hon'ble Division Bench, held as follows:

> "15. In our opinion, Section 139(5) will apply only to a limited category of cases, namely, where in the original return there was any omission or any wrong statement. The very word "omission" connotes an unintentional act. Equally, the words "wrong statement" will not take in "a statement known to be false to the person who made the Statement." However, the word "discovers" occurring in Section 139(5) will make it clear that at the time of discovery only, a person who has furnished a return finds out that an inadvertent omission or an unintended wrong statement had crept in the return filed by him. If a person who furnished the return was aware of the falsity of the statement and the incorrectness of the particulars of income even at the time when he filed the original return, there was no question of that person subsequently discovering the existence of the omission or creeping in of the wrong statement in the return already filed by him. **Therefore, we are of the opinion that Section 139(5) will apply only to cases of "omission or wrong**

statements" and not to cases of "concealment or false statements". This conclusion of ours derives support from the language used in Section 139(5)."

147. In the case on hand, there is no false statement and the averment of the department is to the discovery of "an omission or failure to furnish information about the details of the assets." **J.K.A.Subramania Chettiar's** case, relied on by the Department/respondents would not render any assistance to the case of the respondents.

148. Though in **Hakam Singh's** case, decision of the Allahabad High Court, was referred to support the case of the Department that failure to furnish the details of the foreign asset, was not voluntary, but made after the issuance of notice, under Section 10(1) of the Black Money Act and therefore, Section 55 of the said Act, is attracted, we are not inclined to accept the case of the same, for the reason that in the reported case, there was a raid and books of accounts were seized and it was found that the income was above the taxable limit and thereafter, the assessee filed another return and in the abovesaid facts and circumstances, the Court held that submission of a subsequent return, was held as involuntary. In the case on hand, though there was search, no material has been recovered and that there is nothing on record to suggest that there was any undisclosed foreign income in the returns, submitted by any of the petitioners.

149. **S.R.Arulprakasam's** case, rendered by a learned single Judge of this Court was also a case of raid, wherein, there was discovery of cash and duplicate books of accounts. Though the learned counsel for the respondents therein contended that it was not open to the petitioners therein to contend that an explanation has been given to the respondents for not furnishing the details of the assets and in the case on hand, relied on Paragraph 12 of the said judgment, wherein, a learned single Judge, on the facts and circumstances of **S.R.Arulprakasam's** case, held that, "The question whether the petitioner was misled by his accountant or whether he deliberately and wilfully submitted the false return, the false statement of account and maintained a false account is a matter, which has to be gone into in the trial Court and not in these proceedings for quashing", we are not inclined to accept the said preposition.

150. That apart, in **S.R.Arulprakasam's** case, the income shown by the assessee was Rs.1,03,740/-, but it was adjudicated at Rs.2,34,233/-. False declaration was apparent. Yet another factor that would be seen from **S.R.Arulprakasam's** case, is that prosecution has been launched only after adjudication. Whereas, in the case on hand, though a reply has been given to the notice, under Section 10(1) of the Black Money Act, 2015, no order has been passed and even before the conclusion of the assessment proceedings, sanction has been granted and prosecution launched. Filing of false return or

false statement for profit and loss accounts, was the main issue in **S.R.Arulprakasam's** case and therefore, Sections 276(C)(1) and 277 were invoked. Both the Sections are extracted hereunder:

> "276C(1) : If a person wilfully attempts in any manner whatsoever to evade any tax, penalty or interest chargeable or imposable under this Act, he shall, without prejudice to any penalty that may be imposable on him under any other provision of this Act, be punishable, -
>
> (i) in a case where the amount sought to be evaded exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;
>
> (ii) in any other case, with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine.....
>
> Explanation. - For the purposes of this section, a wilful attempt to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof shall include a case where any person -
>
> (i) has in his possession or control any books of account or other documents (being books of account or other documents relevant to any proceeding under this Act) containing a false entry or statement; or
>
> (ii) makes or causes to be made any false entry or statement in such books of account or other documents; or
>
> (iii) wilfully omits or causes to be omitted any relevant entry or statement in such books of account or other documents; or
>
> (vi) causes any other circumstances to exist which will

have the effect of enabling such person to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof."

.....

277. If a person makes a statement in any verification under this Act or under any rule made thereunder, or delivers an account or statement which is false, and which he either knows or believes to be false, or dose, not believe to be true, he shall be punishable,-

(i) in a case where the amount of tax, which would have been evaded if the statement or account had been accepted as true, exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less then six months but which may extend to seven year and with fine;

(ii) in any other case with rigorous imprisonment for a term which shall not be less than three months but which may extend to three years and with fine."

151. In the case on hand before us, there is no allegation of false statement or false accounts and for the reasons, stated supra, the judgment in **S.R.Arulprakasam's** case, is not applicable.

152. **Ajay Medical Agency's** case (cited supra), is also a case of concealment of income. In the reported case, ITO opined that there was a deliberate concealment of income by the assessee. The assessee has offered his explanation and filed his revised return. Before the Commissioner of Income Tax, the assessee filed an application and the Commissioner passed

an order, holding that the assessee would not be entitled to the benefit of Clause (b) of Section 273A(1) of the Income Tax Act.

153. In **Ajay Medical Agency's** case, the assessing officer has formed an opinion that there is a deliberate concealment by the assessee. In the case on hand, there is no opinion of the assessing officer that the explanation offered by the assessee as unsatisfactory and thus, Section 2(11) is attracted. But the 1st respondent has proceeded to issue a show cause notice, under Section 55 of the Black Money Act, 2015, and thereafter, issued sanction orders for prosecution. On facts, the decision in **Ajay Medical Agency's** case, is not applicable to the case on hand.

154. In **Prakash Nath Khanna's** case (cited supra), relied on by the learned Senior Counsel for the respondents, the assessee therein did not file returns for the year 1988-89, in time. Return of income was to be filed, on or before 31.07.1988. But the return was filed only on 21.03.1991. Assessment under Section 143(3) of the Act was completed on 26.8.1991. Proceedings for late submission of return were initiated against the assessee under Section 271(1)(a) of the Income Tax Act, Act and penalty was imposed. Proceedings in terms of Section 276-CC of the Act were also initiated and complaint was filed before the concerned Court. Cognizance was taken and process was issued. Writ petitions were filed, challenging the legality of the criminal proceedings. High Court dismissed the same. Section 276-CC of the said Act, reads thus,

"276-CC. Failure to furnish returns of income: If a person wilfully fails to furnish in due time the return of income which he is required to furnish under sub-section (1) of Section 139 or by notice given under sub-section (2) of Section 139 or Section 148, he shall be punishable,-

(i) in a case where the amount of tax, which would have been evaded if the failure had not been discovered, exceeds one hundred thousand rupees, with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine;

(ii) in any other case, with imprisonment for a term which shall not be less than three months but which may extend to three years and with fine:

Provided that a person shall not be proceeded against under this section for failure to furnish in due time the return of income under sub- section (1) of Section 139-

(i)for any assessment year commencing prior to the Ist day of April, 1975; or

(ii)for any assessment year commencing on or after the Ist day of April, 1975, if-

(a)the return is furnished by him before the expiry of the assessment year; or

(b)the tax payable by him on the total income determined on regular assessment, as reduced by the advance tax, if any, paid, and any tax deducted at source, does not exceed three thousand rupees".

155. On the above facts, taking note of Section 278-E of the Income Tax Act, 1961, dealing with presumption with culpable mental state, the Hon'ble Supreme Court, held that it is for the accused to take a defence, in

respect of the offence, charged before the trial Court, as to, there was any wilful failure to submit a return. Case on hand, is not a wilful failure to submit a return. Failure to furnish return within time, attracts Section 276-CC of the Income Tax Act, 1961, and in such circumstances, the Hon'ble Supreme Court held as above. Whereas, in the case on hand, there should be a wilful failure to furnish in return, submitted under sub-Section (1) or (4) or (5) of Section 139 of the Income Tax Act, 1961, any information about an asset (including financial interest in any entity) located outside India.

156. In ***Assistant Collector of Customs, Bombay and Another Vs. Behramji Merwanji Damania***, reported in ***AIR 1970 SC 962,*** held thus:-

> "4....accused persons and some other unknown persons had entered into a conspiracy at Bombay and other places in the beginning Of October, 1959 or India and in pursuance of that conspiracy they had smuggled several items of foreign goods in the years 1959 and 1960.
>
> 5. In that connection an enquiry was held by the Customs authorities. In the course of the enquiry some of the goods said to have been smuggled were seized. After the close of the enquiry those goods were ordered to be confiscated. In addition penalty was imposed on some of the accused. Thereafter on February 19, 1965, the Assistant Collector of Customs, Bombay after obtaining the required sanction of the Government flied a complaint against five persons including the appellants in Criminal Appeal No. 35 of 1967 (accused Nos. 1 and 2 in the case) under Section 120-B IPC read with clauses (37), (75), (76) and (81) of Section 167 of the Sea Customs Act, 1878 (Act

VIII of 1878) as well as under Section 5 of the Imports and Exports (Control) Act, 1947. Before the commencement of the enquiry in that complaint, the 1st accused filed on August 3, 1965, the application mentioned above.

....

7. Reliance on Article 20(2) is placed under the following circumstances. In the enquiry held by the Collector of Customs, he gave the benefit of doubt to Accused 1 and 2. This is what he stated therein:

"As regards M/s. Lamel Enterprises (of which Accused 1 is the proprietor and Accused No. 2 is the Manager) although it is apparent that they have directly assisted the importers in their illegal activities and are morally guilty. Since there is no conclusive evidence against them to hold them as persons concerned in the act of unauthorised importation, they escape on a benefit of doubt."

8. Despite this finding the Assistant Collector in his complaint referred to earlier seeks to prosecute these accused persons. Hence the question is whether that prosecution is barred under Article 20(2) of the Constitution which says that no person shall be prosecuted and punished for the same offence more than once. This Article has no direct bearing on the question at issue. Evidently those accused persons want to spell out from this Article the rule of *autrfois acquit* embodied in Section 403, Criminal Procedure Code. Assuming we can do that still it is not possible to hold that a proceeding before the Collector of Customs is a prosecution for an offence. In order to get the benefit of Section 403, Criminal Procedure Code or Article 20(2), it is necessary for an accused person to establish that he had been tried by a "Court of competent jurisdiction" for

an offence and he is convicted or acquitted of that offence and the said conviction or acquittal is in force. If that much is established, it can be contended that he is not liable to be tried again for the same offence nor on the same facts for any other offence for which a different charge from the one made against him might have been made under Section 236 or for which he' might have been convicted under-Section 237. It has been repeatedly held by this Court that adjudication before a Collector of Customs is not a "prosecution" nor the Collector of Customs a "Court". In *Maqbool Hussain v. State of Bombay* (1), this Court held that the wording of Article 20 of the Constitution and the words used therein show that the proceedings therein contemplated are proceedings of the nature of criminal proceedings before a court of law or a judicial tribunal and "prosecution" in this context would mean an initiation or starting of proceedings of a criminal nature before a court of law or a judicial tribunal in accordance with the procedure prescribed in the statute which creates the offence and regulates the procedure. This Court further held that where a person against whom proceedings had been taken by the Sea Customs authorities under Section 167 of the Sea Customs Act and an order for confiscation of goods had been passed, was subsequently prosecuted before a criminal court for an offence under Section 23 of the Foreign Exchange Regulation Act in respect of the same act, the proceeding before the Sea Customs authorities was not a "prosecution" and the order for confiscation was not a "punishment" inflicted by a Court or judicial tribunal within the meaning of Article 20(2) of the Constitution and hence his subsequent prosecution was not

barred. The said rule was reiterated in Thomas Dana v. State of Punjab (2) and in several other cases.

157. In ***Assistant Commissioner Vs. Velliappa Textile Ltd.,*** reported in ***(2003) 132 Taxman 165 (SC)***, the question was whether sanction of the commissioner granted under Section 279 could be vitiated for the failure to observe the principles of natural justice inasmuch as no opportunity of hearing was given to the respondents therein before the sanction is given. Said judgment is not applicable to the case on hand.

158. In ***Krishnaswami Vijayakumar Vs. Principal Director of Income-tax (Inv.) Chennai***, reported in ***(2017) 88 taxmann.com 114 (Madras)***, the petitioner therein challenged a show cause notice issued prior to the initiation of prosecution proceedings under Section 276 C(1) of the Income Tax Act, 1961. By observing that the petitioner therein has to respond to the show cause and the challenge on the ground of show cause notice is premature, this Court rejected the plea. Court has further held that the respondent therein is one of the alternative authorities enumerated in the proviso to Section 279(1) of the Act and therefore, has jurisdiction to issue the show cause notice. However at paragraph No.18 of the judgment, held as follows:-

18. The decisions, which were referred to by the learned counsel for the petitioner in the cases of Babita Lila and Bhupen Champak Lal Dalal were all matters, in which, proceedings were

initiated after the criminal law was set in motion before the concerned criminal courts. Therefore, in my considered view, it is too early for the petitioner now to place reliance on T.S.SIVAGNANAM,J RS those decisions and if, ultimately, the authorities are of the opinion that prosecution has to be launched, then, it is well open to the petitioner to raise all defenses.

159. On the facts and circumstances, L.R.Melwani's case is not applicable to the case on hand. Though the proposition of law is that there can be a simultaneous prosecution and assessment proceedings, but on the facts and circumstances of the case on hand, we are of the view that prosecution can be launched only if the case falls under 2(11) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 and only if the assessee wilful fails to furnish the details of the asset in the return under Section 135(1) or (4) or (5) of the Income Tax Act, 1961.

160. **Sasi Enterpreses's** case (cited supra), is also a case of failure to furnish returns and prosecution was launched by presuming culpable state of mind and therefore, the said judgment is not applicable to the case on hand.

161. The word return is common in Section 139(1), 139(4) and 139(5) of the Income Tax Act. In Section 50 of the Black Money (Undisclosed

Foreign Income and Assets) and Imposition of Tax Act, 2015, the word "or" is used and therefore it is contended that the legislature has envisaged only one return, and when the assessees have disclosed the information in the assessment filed under Section 139(5) of the Income Tax Act, there is no failure on their part to furnish information muchless, willful failure and hence Section 50 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 is not attracted. It is also contended when the words "such return" are used, it is only one return, which in this case on hand is the revised return filed under Section 139(5) of the Income Tax Act 1961.

162. Section 50 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, cannot be dehorse Section 2(11) of the said Act or the scheme of the Income Tax Act 1961, which permits submission of revised return and Section 139(5) of the Income Tax Act. In Section 50 of the Black Money Act, 2015, the words, 'or' , and 'such', are used. Let us consider as to how the word, 'or' used in Section 50 of the Black Money Act, 2015, has to be interpreted.

(i) In Whartan's Law Lexicon, the word, "Or" has been explained in Page 387 in Garrow's Law of Wills and Administration (Wellington, New Zealand), as a word of considerable flexibility in its use but the fundamental meaning is always that of an alternative or contrast or a substitution. The precise effect on connecting words, phrases or clauses by 'or' will depend on

the context. For the purpose of this chapter its use will be considered under the following heads: (1) as introducing an original gift by way of substitution, (2) as introducing a synonymous or explanatory expression, (3) in enumerating persons, things, or qualifications for some purpose as for selection or distribution. 'Or' is used also to indicate purely exclusive alternatives, as in the expression, a fine of two pounds or a week's imprisonment'.

(ii) Dictionary meaning of the word 'or' is considered in paragraph 11, in the decision of the Hon'ble Supreme Court in **Municipal Corporation of Delhi v. Tek Chand Bhatia** reported in **AIR 1989 SC 360,** as follows:

> "11.....In Stroud's Judicial Dictionary, 3rd Edn., vol. 1, it is stated st p. 135:
>
> "And" has generally a cumulative sense, requiring the fulfillment of all the conditions that it joins together, and herein it is the antithesis of OR. Sometimes, however, even in such a connection, it is, by force of a context, read as "or"."
>
> While dealing with the topic 'OR is read as AND, and vice versa' Stroud says in vol. 3, at p. 2009:
>
> "You will find it said in some cases that 'or' means 'and'; but 'or' never does mean 'and'."
>
> Similarly, in Maxwell on Interpretation of Statutes, 11th Edn., p. 229- A 30, it has been accepted that 'to carry out the intention of the legislature, it is occasionally found necessary to read the conjunctions "or" and "and"

one for the other'. The word 'or' is normally disjunctive and 'and' is normally conjunctive, but at times they are read as Vice versa. As Scrutton L.J. said in Green v. Premier Glynrhonwy Slate Co.('). 'you do sometimes read 'or' as 'and' in a statute. .. But you do not do it unless you are obliged, because 'or' does not generally mean 'and' and 'and' does not generally mean 'or'. As Lord Halsbury L.C. Observed in Marsey Docks & Harbour Board v. Henderson(') the reading of 'or' as 'and' is not to be resorted to "unless some other part of the same statute or the clear intention of it requires that to be done". The substitution of conjunctions, however, has been sometimes made without sufficient reasons, and it has been doubted whether some of cases of turning 'or' into 'and' and vice versa have not gone to the extreme limit of interpretation.

(iii) In **J.Jayalalitha v. Union of India** reported in **(1999) 5 SCC 138**, the Hon'ble Supreme Court at para 9, held as under:

"9.....The dictionary meaning of the word "or" is "a particle used to connect words, phrases, or classes representing alternatives". The word "or", which is a conjunction, is normally used for the purpose of joining alternatives and also to join rephrasing of the same thing but at times to mean "and" also. Alternatives need not always be mutually exclusive....."

(iv) In **Fakir Mohd. (dead) by Lrs v. Sita Ram** reported in **(2002)**

1 SCC 741, the Hon'ble Supreme Court, at paragraph No.7, considered the word 'or' as follows:

> "7. The word "or" is normally disjunctive and the word "and" is normally conjunctive. But at times they are read as vice-versa to give effect to the manifest intent of the legislature as disclosed from the context. It is permissible to read "or" as "and" and vice versa if some other part of the same statute, or the legislative intent clearly spelled out, require that to be done. (See Statutory Interpretation by Justice G.P. Singh, 8th Edn., 2001, p.370)"

163. Having regard to statutory right of an assessee to submit a revised return under Section 139(5) of the Income Tax Act, 1961, the word, "or" in Section 50 of the Black Money Act, 2015, has to be read as disjunctive only and the word, "or" cannot be meant as "and", ie., conjunctively and it would result in an absurd situation of taking into consideration three returns together, which is not legislative intent. Thus, the word 'or' has to be understood to mean only as, alternative.

164. Let us consider as to how the word 'such' in Section 55 of the Black Money Act, 2015 has to be interpreted.

(i) Usage of the word "Such" return after the expression, "who has furnished the return of income for any previous year under Sub Section 1 or Sub Section 4 or Sub Section 5 of that Act" followed by a comma, requires to

be examined as to whether Section 55 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, refers only one return or more.

(ii) In Oxford Dictionary, the word "such" is defined as,

"determiner, predeterminer, and pronoun 1 of the type previously mentioned: [as determiner] I have been involved in many such courses l [as predeterminer] I longed to find a kindred spirit, and in him I thought I had found such a person l [as pronoun] we were second-class citizens and they treated us as such.

2 (such - as/that) of the type about to be mentioned:[as determiner] there is no such thing as a free lunch l [as predeterminer] the farm is organized in such a way that it can be run by two adults l [as pronoun] the wound was such that I had to have stitches.

3. to so high a degree; so great (often used to emphazise a quality): [as determiner] this material is of such importance that it has a powerful bearing on the case l [as predeterminer] autumn's such a beautiful season l [as pronoun] such is the elegance of his typeface that it is still a favourite of designers.

- PHRASES and such and similar things: he had activities like the scouts and Sunday school and such. as such [often with negative] in the exact sense of the word: it is possible to stay overnight here although there is no guest house as such. such-and-such used to refer vaguely to a person or thing that does not need to be specified: so many enterprises to be sold by such-and-such a date. such as 1 for example: wild flowers

such as mountain pansy and wild thyme. 2 of a kind that; like: an event such as we've shared, 3 archaic those who: such as alter in a moment, win not credit in a month. such as it is (or they are) what little there is; for what it's worth: the plot, such as it is, takes road movie form. such a one as Fax? such that to the extent that: the linking of sentences such that they constitute a narrative.

ORIGIN Old English swilc, swyle; related to Dutch zulk, German solch, from the Germanic bases of so and alike."

(iii) "Such" is defined by Webster as "having the particular quality or character specified; representing or referring to the object as already particularized in terms which are not mentioned.

(iv) According to Black's Law Dictionary, Such means, "of that kind, having a particular quality or character specified. Identical with, being the same as what has been mentioned. Alike, similar, of the like kind. 'Such' represents the object as already particularized in terms which are not mentioned, and is a descriptive and relative word, referring to the last antecedent.

(v) "Such", like "said", generally refers to its last antecedent (see hereon *per* Halsbury C., *Ex.p.Barnes* [1896] AC 150. See also *Duffield v. M' Naster* [1906] 1 Lr. R. 350, 358.

(vi) In **I.T.Commissioner v. Shree Jagan Nath Maheswary,** reported in **AIR 1957 Punjab 226,** a Hon'ble Division Bench of the Punjab

High Court, held as follows:

> "In its grammatical usage, and in its natural and ordinary sense, the word "such" is understood to refer to the last antecedent, unless, the meaning of the sentence would thereby be impaired, which does not, seem to be the case here. The word "such" indicates something just before specified, or spoken of, that is proximately, and not merely previously. It particularises the immediately preceding antecedent, and not everything that has gone before. It signifies what has preceded proximately and not just previously or formerly."

(vii) In **Union of India Vs. Wazir Singh** reported in **AIR 1980 Raj. 252** a Hon'ble Division Bench of the Rajasthan High Court, pointed out that the word, 'such' refers to previously indicated, characterised or specified and that 'such' is an adjective, meaning the one previously indicated or refers to only to something which has been said before.

(viii) Dictionary meaning of the word "such" has been considered in **Central Bank of India v. Ravindra and others** reported in **(2002) 1 SCC 367**, by the Hon'ble Supreme Court, at paragraph No.43, as under:

> 43. Webster defines "such" as "having the particular quality or character specified; certain; representing the object as already particularised in terms which are not mentioned. In New Webster's Dictionary And Thesaurus, mean-ing of "such" is given

as "of a kind previously or about to be mentioned or implied; of the same quality as something just mentioned (used to avoid the repetition of one word twice in a sentence); of a degree or quantity stated or implicit; the same as something just mentioned (used to avoid repetition of one word twice in a sentence); that part of something just stated or about to be stated." Thus, generally speaking, the use of the word "such" as an adjective prefixed to a noun is indicative of the draftsman's intention that he is assigning the same meaning or characteristic to the noun as has been previously indicated or that he is referring to something which has been said before. This principle has all the more vigorous application when the two places employing the same expression, at earlier place the expression having been defined or characterised and at the latter place having been qualified by use of the word "such", are situated in close proximity.

165. The words starting from, "who has furnished the return of income for any previous year under sub-section (1) or sub-section (4) or sub-section(5) of that Act, followed by a comma, and the word such return, can only mean one return. If such interpretation is not given, then the usage of the words, 'or' and 'such return', in Section 55 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, would be redundant. If the word 'or' is not given the meaning as alternative, or substitute, ie., disjunctive, then there will be material alteration to Section

55 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. If the arguments of the respondents have to be accepted then it would amount to deleting the words "or" and "such, from Section 55 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. While arriving at the above conclusion, we also take support from the judgments of the Hon'ble Supreme Court, as to how a provision has to be interpreted. Courts cannot add or delete a word, from the statute. Useful reference can be made to few decisions:

(i) In **CIT v. Badhraja and Company** reported in **1994 Supp (1) SCC 280,** the Hon'ble Apex Court held that the object oriented approach, however, cannot be carried to the extent of doing violence to the plain meaning of the Section used by rewriting the Section or substituting the words in the place of actual words used by the legislature.

(ii) In **Dadi Jagannadham v. Jammulu Ramulu reported in (2001) 7 SCC 71,** the Hon'ble Supreme Court held that,

> "**13.** We have considered the submissions made by the parties. **The settled principles of interpretation are that the court must proceed on the assumption that the legislature did not make a mistake and that it did what it intended to do. The court must, as far as possible, adopt a construction which will carry out the obvious intention of the legislature. Undoubtedly if there is a defect or an omission in the words used by the legislature, the court**

would not go to its aid to correct or make up the deficiency. The court could not add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. The court cannot aid the legislature's defective phrasing of an Act, or add and mend, and, by construction, make up deficiencies which are there."

(iii) In **Nasiruddin v. Sita Ram Agarwal** reported in **(2003) 2 SCC 577,** the Hon'ble Supreme Court held as follows:

"**35. In a case where the statutory provision is plain and unambiguous, the court shall not interpret the same in a different manner, only because of harsh consequences arising therefrom....**

37. The court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot rewrite or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of the legislation must be gathered from the language used. It may be true that use of the expression "shall or may" is not decisive for arriving at a finding as to whether the statute is directory or mandatory. **But the**

intention of the legislature must be found out from the scheme of the Act. It is also equally well settled that when negative words are used the courts will presume that the intention of the legislature was that the provisions are mandatory in character."

(iv) In **Institute of C.A. of India v. Ajit Kumar Iddya** reported in **AIR 2003 Kant. 187,** the Karnataka High Court held that, **"So far as the cardinal law of interpretation is concerned, it is settled that if the language is simple and unambiguous, it is to be read with the clear intention of the legislation. Otherwise also, any addition/subtraction of a word is not permissible. In other words, it is not proper to use a sense, which is different from what the word used ordinarily conveys. The duty of the Court is not to fill up the gap by stretching a word used. It is also settled that a provision is to be read as a whole and while interpreting, the intention and object of the legislation have to be looked upon. However, each case depends upon the facts of its own."**

(v) In **Indian Dental Association, Kerala v. Union of India** reported in **2004 (1) Kant. LJ 282,** the Court held that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the Legislature intended something which it omitted to express.

(vi) In **Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd.,** reported in **(2008) 4 SCC 755,** the Hon'ble Supreme Court, at Paragraphs 52, 54, 55 and 56, held as follows:

> "**52. No doubt ordinarily the literal rule of interpretation should be followed, and hence the court should neither add nor delete words in a statute. However, in exceptional cases this can be done where not doing so would deprive certain existing words in a statute of all meaning, or some part of the statute may become absurd.**
>
> 54. Thus, in ***Surjit Singh Kalra*** **v.** ***Union of India,*** this Court has observed that **sometimes courts can supply words which have been accidentally omitted.**
>
> **55.** In G.P. Singh's *Principles of Statutory Interpretation*, 9th Edn., 2004 at pp. 71-74 **several decisions of this Court and foreign courts have been referred to where the court has added words to a statute (though cautioning that normally this should not be done).**
>
> **56.** Hence we have to add the aforementioned words at the end of Section 175 otherwise there will be an irreconcilable conflict between Section 174 and Section 175."

(viii) In **Phool Patti v. Ram Singh** reported in **(2009) 13 SCC 22,** the Hon'ble Supreme Court held that,

"9. It is a well-settled principle of interpretation that the court cannot add words to the statute or change its language, particularly when on a plain reading the meaning seems to be clear."

(ix) In **Mohd. Shahabuddin v. State of Bihar,** reported in **(2010) 4 SCC 653,** the Hon'ble Supreme Court held that,

"**179. Even otherwise, it is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. The language employed in a statute is a determinative factor of the legislative intent. If the language of the enactment is clear and unambiguous, it would not be proper for the courts to add any words thereto and evolve some legislative intent, not found in the statute."**

166. It is trite law, that while interpreting a statute, courts should not cause inconvenience and hardship. A few decisions in this regard are:

(i) In **Ram Rattan v. Parma Nand** reported in **AIR 1946 PC 51,** the Hon'ble Mr. Justice S.R.Das, held as follows:

"***The cardinal rule of construction of statutes is to read the statutes literally, that is, by giving to the words their ordinary, natural and grammatical meaning.*** *If, however, such a reading leads to absurdity and the words are susceptible of another meaning, the Court may adopt the same. But if no such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation.* ***In the***

present case, the literal construction leads to no apparent absurdity and therefore, there can be no compelling reason for departing from that golden rule of construction."

(ii) The Hon'ble Supreme Court in **Bhatia International vs. Bulk Trading S.A. and Another** reported in **(2002) 4 SCC 105**, at paragraph No.15, held as follows:

"15.....The conventional way of interpreting a statute is to seek the intention of its makers. If a statutory provision is open to more than one interpretation then the Court has to choose that interpretation which represents the true intention of the legislature. This task often is not an easy one and several difficulties arise on account of variety of reasons, but at the same, it must be borne in mind that it is impossible even for the most imaginative legislature to forestall exhaustively situations and circumstances that may emerge after enacting a statute where its application may be called for. It is in such a situation the Courts' duty to expound arises with a caution that the Court should not try to legislate. While examining a particular provision of a statute to find out whether the jurisdiction of a Court is ousted or not, the principle of universal application is that ordinarily the jurisdiction may not be ousted unless the very statutory provision explicitly indicates or even by inferential conclusion the Court arrives at the same when such a conclusion is the only conclusion. Notwithstanding the conventional principle that the duty of judges is to expound and not to legislate.

The Courts have taken the view that the judicial art of interpretation and appraisal is imbued with creativity and realism and since interpretation always implied a degree of discretion and choice, the Court would adopt particularly in areas such as, constitutional adjudication dealing with social and defuse rights. Courts are therefore, held as "finishers, refiners, and polishers of legislatures which gives them in a state requiring varying degrees of further processing". (see Corrocraft Ltd., v. Pan American Airways (1968) 3 WLR 714 at page 732, AIR 1975 SC 1951 at page 1957. If a language used is capable of bearing more than one construction, in selecting the true meaning, regard must be had to the consequences, resulting from adopting the alternative constructions. A construction that results in hardship, serious inconvenience, injustice, absurdity or anomaly or which leads to inconsistency or uncertainty and friction in the system which the statute purports to regulate has to be rejected and preference should be given to that construction which avoids such results. (see Johnson vs. Moreton (1978) 3 All. ER 37 and Stock vs. Frank Jones (Tipton) Ltd. (1978) 1 All. ER 948). In selecting out of different interpretations the Court will adopt that which is just reasonable and sensible rather than that which is none of those things, as it may be presumed that the legislature should have used the word in that interpretation which least offends our sense of justice. In Shanon Realites Ltd. vs. Sant Michael (924) A.C. page 185 at page 192-193 Lord Shaw stated, "where words of a statute are clear, they must, of course, be followed, but in

their Lordships opinion where alternative constructions are equally open that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system." This principle was accepted by Subba Rao, J. while construing Section 193 of the Sea Customs Act and in coming to the conclusion that the Chief of Customs Authority was not an officer of custom. (AIR 1961 SC 1549).

(iii) In **State of Haryana v. Suresh** reported in **2007 (3) KLT 213,** the Hon'ble Supreme Court held that,

"One of the basic principles of Interpretation of Statutes is to construe them according to plain, literal and grammatical meaning of the words. If that is contrary, to or inconsistent with any express intention or declared purpose of the Statute, or if it would involve any absurdity, repugnancy or inconsistency, the grammatical sense must then be modified, extended or abridged, so far as to avoid such an inconvenience, but no further. The onus of showing that the words do not mean what they say lies heavily on the party who alleges it must advance something which clearly shows that the grammatical construction would be repugnant to the intention of the Act or lead to some manifest absurdity."

167. Though the learned Additional Solicitor General of India submitted that the facts stated in the complaint have to be gone into only in trial, and in

these writ petitions, it is the submission of Mr.Gopal Subramanium, learned Senior Counsel that there is a jurisdictional error committed by the authorities in not considering the fact that the assessees have furnished the details of the assets in the revised return and therefore, writ court can go into the issue. On the said issue, let us consider few decisions,

(i) In **Anisminic Ltd. v. The Foreign Compensation Commissioner**, **(1969) 1 All ER 208**, Lord Reid at pages 213 and 214 of the Report stated as follows:

> *"It has sometimes been said that it is only where a tribunal acts without jurisdiction that its decision is a nullity. But in such cases the words "jurisdiction has been used in a very wide sense, and I have come to the conclusion that it is better not to use the term except in the narrow and original sense of the tribunal being entitled to enter on the enquiry in question. But there are many cases where, although the tribunal had jurisdiction to enter on the enquiry, it has done or failed to do something in the course of the enquiry which is of such a nature that its decision is a nullity. It may have given its decision in had faith. It may have made a decision which it had no power to make. It may have failed in the course of the enquiry to comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may*

have based its decision on some matter which, under the provisions setting it up, it had no right to take into account. I do not intend this list to be exhaustive. But if it decides a question remitted to if for decision without committing any of these errors it is as much entitled to decide that question wrongly as it is to decide it rightly."

(ii) In ***Union of India Vs. Tarachand Gupta and Brothers***, reported in ***1971 (1) SCC 486***, the Hon'ble Supreme Court at paragraph 22, held thus:-

"22. ....The word "jurisdiction" has both a narrow and a wider meaning. In the sense of the former, it means the authority to embark upon an enquiry; in the sense of the latter it is used in several aspects, one of such aspects being that the decision of the tribunal is in non-compliance with the provisions of the Act. Accordingly, a determination by a tribunal of a question other than the one which the statute directs it to decide would be a decision not under the provisions of the Act, and therefore, in excess of its jurisdiction."

(iii) In ***Shri.M.L.Sethi Vs. Shri R.P.Kapur***, reported in ***(1972) 2 SCC 427***, the Hon'ble Supreme Court at paragraph 12, held thus:-

"12....The "jurisdiction" is a verbal coat of many colours. Jurisdiction originally seems to have had the meaning which Lord Reid ascribed to it in Anisminic Ltd. v. Foreign Compensation Commission, namely, the entitlement "to enter upon the enquiry in question". If there was an entitlement to enter upon an enquiry into the question, then any subsequent

error could only be regarded as an error within the jurisdiction. The best known formulation of this theory is that made by Lord Denean in R. v. Bolton. He said that the question of jurisdiction is determinable at the commencement, not at the conclusion of the enquiry. In Anisminic Ltd. case (supra), Lord Reid said:

"But there are many cases where, although the tribunal had jurisdiction to enter on the enquiry it has done or failed to do something in the course of the enquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the enquiry to comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on some matter which, under the provisions setting it up, it had no right to take into account. I do not intend this list to be exhaustive."

In the same case, Lord Pearce said:

"Lack of jurisdiction may arise in various ways. There may be an absence of those formalities or things which are conditions precedent to the tribunal having any jurisdiction to embark on an enquiry. Or the tribunal may at the end make an order that it has no jurisdiction to make. Or, in the intervening stage while engaged on a proper enquiry, the tribunal may depart from the rules of natural justice; or it may ask itself the wrong questions; or it may take into account matters which it was not directed to take into account.Thereby it would step

outside its jurisdiction. It would turn its inquiry into something not directed by Parliament and fail to make the inquiry which the Parliament did direct. Any of these things would cause its purported decision to be a nullity."

The dicta of the majority of the House of Lords in the above case would show the extent to which `lack' and 'excess' of jurisdiction have been assimilated or, in other words, the extent to which we have moved away from the traditional concept of "jurisdiction". The effect of the dicta in that case is to reduce the difference 'between jurisdictional error and error of law within jurisdiction almost to vanishing point. The practical effect of the decision is that any error of law can be reckoned as jurisdictional. This comes perilously close to saying that there is jurisdiction it the decision is right in law but none if it is wrong. Almost any misconstruction of a statute can be represented as "basing their decision on a matter with which they have no right to deal", "imposing an unwarranted condition" or "addressing themselves to a wrong question". The majority opinion in the, case leaves a Court or Tribunal with virtually no margin of legal error. Whether there is excess of jurisdiction or merely error within jurisdiction can be determined only by construing the empowering statute, which will, give little guidance. It is really a question of how much latitude the Court is prepared to allow. In the end it can only be a value judgment (see H.W.R. Wade, "Constitutional and Administrative Aspects of the Anismanic case", Law Quarterly Review, Vol. 85, 1969, p. 198). Why is it that a wrong decision on a question of limitation or res judicata 'was treated as a jurisdictional error and liable to be interfered with in revision ? It is a it difficult to understand how an erroneous decision on a question of limitation or res judicata

would oust the jurisdiction of the Court in the primitive sense of the term and render the decision or a decree embodying the decision a nullity liable to collateral attack. The reason can only be that the error of law was considered as vital by the Court. And there is no yardstick to determine the magnitude of the error other than the opinion of the Court."

(iv) In **Raza Textiles Ltd., v. Income Tax Officer, Rampur** reported in **1973 (1) SCC 633,** the Hon'ble Supreme Court held as follows:

"No authority, much less a quasi-judicial authority, can confer jurisdiction on itself by deciding a jurisdictional fact wrongly The question whether the jurisdictional fact has been rightly decided or not is a question that is open for examination by the High Court in an application for a writ of certiorari. If the High Court comes to the conclusion, as the learned single Judge has done in this case, that the Income-tax Officer had clutched at the jurisdiction by deciding a jurisdictional fact erroneously, then the assesses was entitled for the writ of certiorari prayed for by him. It is incomprehensible to think that a quasi-judicial authority like the Income-tax Officer can erroneously decide a jurisdictional fact and thereafter proceed to impose a levy on a citizen. In our opinion the Appellate Bench is wholly wrong in opining that the Income-tax Officer can "decide either way".

(v) In ***Shrisht Dhawan (SMT) Vs. M/s.Shaw Brothers***, reported in ***(1992) 1 SCC 534***, the Hon'ble Supreme Court at paragraph 19, held thus:-

"19....What, then, is an error in respect of jurisdictional fact? A jurisdictional fact is one on existence or non-existence of

which depends assumption or refusal to assume jurisdiction by a Court, tribunal or an authority. In Black's Legal Dictionary it is explained as a fact which must exist before a court can properly assume jurisdiction of a particular case. Mistake of fact in relation to jurisdiction is an error of jurisdictional fact. No statutory authority or tribunal can assume jurisdiction in respect of subject matter which the statute does not confer on it and if by deciding erroneously the fact on which jurisdiction depends the court or tribunal exercises the jurisdiction then the order is vitiated. Error of jurisdictional fact renders the order ultra vires and bad. In Raza Textiles it was held that a court or tribunal cannot confer jurisdiction on itself by deciding a jurisdictional fact wrongly."

(vi) In **Arun Kumar v. Union of India** reported in **2007 (1) SCC 732,** the Hon'ble Supreme Court, at Paragraphs 74, 80 to 84, held as follows:

"74. A "jurisdictional fact" is a fact which must exist before a Court, Tribunal or an Authority assumes jurisdiction over a particular matter. A jurisdictional fact is one on existence or non-existence of which depends jurisdiction of a court, a tribunal or an authority. It is the fact upon which an administrative agency's power to act depends. If the jurisdictional fact does not exist, the court, authority or officer cannot act. If a Court or authority wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari. The underlying principle is that by erroneously assuming existence of such jurisdictional fact, no authority can confer upon itself jurisdiction which it otherwise does not

posses.

.....

80. The Court relied upon a decision in ***White & Collins v. Minister of Health (1939) 2 KB 838 : 108 LJ KB 768,*** *wherein a question debated was whether the court had jurisdiction to review the finding of administrative authority on a question of fact. The relevant Act enabled the local authority to acquire land compulsorily for housing of working classes. But it was expressly provided that no land could be acquired which at the date of compulsory purchase formed part of park, garden or pleasure-ground. An order of compulsory purchase was made which was challenged by the owner contending that the land was a part of park. The Minister directed public inquiry and on the basis of the report submitted, confirmed the order.*

81. Interfering with the finding of the Minister and setting aside the order, the Court of Appeal stated:

"The first and the most important matter to bear in mind is that the jurisdiction to make the order is dependent on a finding of fact; for, unless the land can be held not to be part of a park or not to be required for amenity or convenience, there is no jurisdiction in the borough council to make, or in the Minister to confirm, the order. In such a case it seems almost self-evident that the Court which has to consider whether there is jurisdiction to make or confirm the order must be entitled to review the vital finding on which the existence of the jurisdiction relied upon depends. If this were not so, the right to apply to the Court would be illusory." [See also Rex v. Shoredich Assessment Committee; (1910) 2 KB 859 : 80 LJ KB 185].

82. A question under the Income Tax Act, 1922 arose in ***Raza Textiles Ltd., v. Income Tax Officer, Rampur, (1973)***

1 SCC 633 : AIR 1973 SC 1362. *In that case, the ITO directed X to pay certain amount of tax rejecting the contention of X that he was not a non-resident firm. The Tribunal confirmed the order. A single Judge of the High Court of Allahabad held X as non-resident firm and not liable to deduct tax at source. The Division Bench, however, set aside the order observing that*

"ITO had jurisdiction to decide the question either way. It cannot be said that the Officer assumed jurisdiction by a wrong decision on this question of residence".

X approached this Court.

83. Allowing the appeal and setting aside the order of the Division Bench, this Court stated:

"The Appellate Bench appears to have been under the impression that the Income-tax Officer was the sole judge of the fact whether the firm in question was resident or non-resident. This conclusion, in our opinion, is wholly wrong. No authority, much less a quasi-judicial authority, can confer jurisdiction on itself by deciding a jurisdictional fact wrongly The question whether the jurisdictional fact has been rightly decided or not is a question that is open for examination by the High Court in an application for a writ of certiorari. If the High Court comes to the conclusion, as the learned single Judge has done in this case, that the Income-tax Officer had clutched at the jurisdiction by deciding a jurisdictional fact erroneously, then the assesses was entitled for the writ of certiorari prayed for by him. It is incomprehensible to think that a quasi- judicial authority like the Income-tax Officer can erroneously decide a jurisdictional fact and thereafter proceed to impose a levy on a citizen." (emphasis supplied)

84. From the above decisions, it is clear that existence of 'jurisdictional fact' is sine qua non for the exercise of power. If the jurisdictional fact exists, the authority can proceed with the case and take an appropriate decision in accordance with law. Once the authority has jurisdiction in the matter on existence of 'jurisdictional fact', it can decide the 'fact in issue' or 'adjudicatory fact'. A wrong decision on 'fact in issue' or on 'adjudicatory fact' would not make the decision of the authority without jurisdiction or vulnerable provided essential or fundamental fact as to existence of jurisdiction is present."

(vii) In ***Carona Ltd Vs. M/s.Parvathy Swaminathan & Sons***, reported in ***2007 (1) SCC 559***, the Hon'ble Supreme Court at paragraph Nos. 21 to 24 and 31, held thus:-

21. Stated simply, the fact or facts upon which the jurisdiction of a Court, a Tribunal or an Authority depends can be said to be a 'jurisdictional fact'. If the jurisdictional fact exists, a Court, Tribunal or Authority has jurisdiction to decide other issues. If such fact does not exist, a Court, Tribunal or Authority cannot act. It is also well settled that a Court or a Tribunal cannot wrongly assume existence of jurisdictional fact and proceed to decide a matter. The underlying principle is that by erroneously assuming existence of a jurisdictional fact, a subordinate Court or an inferior Tribunal cannot confer upon itself jurisdiction which it otherwise does not posses.

22. In Halsbury's Laws of England, (4th Edn.), Vol.1, para 55, p.61; Reissue, Vol.1(1), para 68, pp.114- 15, it has been stated: "Where the jurisdiction of a tribunal is dependent on the existence of a particular state of affairs, that state of affairs may

be described as preliminary to, or collateral to the merits of the issue. If, at the inception of an inquiry by an inferior tribunal, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether to act or not and can give a ruling on the preliminary or collateral issue; but that ruling is not conclusive".

23. The existence of a jurisdictional fact is thus a sine qua non or condition precedent to the assumption of jurisdiction by a Court or Tribunal.

JURISDICTIONAL FACT AND ADJUDICATORY FACT

24. But there is distinction between 'jurisdictional fact' and 'adjudicatory fact' which cannot be ignored. An 'adjudicatory fact' is a 'fact in issue' and can be determined by a Court, Tribunal or Authority on 'merits', on the basis of evidence adduced by the parties. It is no doubt true that it is very difficult to distinguish 'jurisdictional fact' and 'fact in issue' or 'adjudicatory fact'. Nonetheless the difference between the two cannot be overlooked.

.....

31.It is thus clear that for assumption of jurisdiction by a Court or a Tribunal, existence of jurisdictional fact is a condition precedent. But once such jurisdictional fact is found to exist, the Court or Tribunal has power to decide adjudicatory facts or facts in issue.

(viii) In ***Ramesh Chandra Sankla Vs. Vikram Cement***, reported in ***(2008) 14 SCC 58***, the Hon'ble Supreme Court at paragraphs 68 to 70, held thus:-

"68. A `jurisdictional fact' is one on existence of which depends jurisdiction of a Court, Tribunal or an Authority. If the

jurisdictional fact does not exist, the Court or Tribunal cannot act. If an inferior Court or Tribunal wrongly assumes the existence of such fact, a writ of certiorari lies. The underlying principle is that by erroneously assuming existence of jurisdictional fact, a subordinate Court or an inferior Tribunal cannot confer upon itself jurisdiction which it otherwise does not possess.

69. The counsel referred to a recent decision of this Court in Arun Kumar v. Union of India. Speaking for the Court, one of us (C.K. Thakker, J.) observed: (SCC p.758, para 74)

"74. A `jurisdictional fact' is a fact which must exist before a Court, Tribunal or an Authority assumes jurisdiction over a particular matter. A jurisdictional fact is one on existence or non-existence of which depends jurisdiction of a court, a tribunal or an authority. It is the fact upon which an administrative agency's power to act depends. If the jurisdictional fact does not exist, the court, authority or officer cannot act. If a Court or authority wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari. The underlying principle is that by erroneously assuming existence of such jurisdictional fact, no authority can confer upon itself jurisdiction which it otherwise does not posses".

It was further observed: (SCC p.759, para 76)

76. "The existence of jurisdictional fact is thus sine qua non or condition precedent for the exercise of power by a court of limited jurisdiction".

70. Drawing the distinction between `jurisdictional fact' and `adjudicatory fact', the Court stated: (Arun Kumar case, SCC p.761, para 84)

"84.... it is clear that existence of `jurisdictional fact' is sine qua non for the exercise of power. If the jurisdictional fact exists, the authority can proceed with the case and take an appropriate decision in accordance with law. Once the authority has jurisdiction in the matter on existence of `jurisdictional fact', it can decide the `fact in issue' or `adjudicatory fact'. A wrong decision on `fact in issue' or on `adjudicatory fact' would not make the decision of the authority without jurisdiction or vulnerable provided essential or fundamental fact as to existence of jurisdiction is present".

The principle was reiterated in Carona Ltd. v. Parvathy Swaminathan & Others, (2007) 1 SCC 559."

168. From the above judgments, it could be deduced that existence of jurisdictional fact is a *sine qua non* for exercise of power. A jurisdictional fact is one on existence or non-existence of which depends jurisdiction on a Court or tribunal or authority, as the case may be. If the jurisdictional fact does not exist, the Court, authority or officer cannot act. If a court or authority has wrongly assumes the existence of such fact, the order can be quashed by a writ of certiorari.

169. If the jurisdictional fact exists, the authority can proceed further and exercise his power and take a decision in accordance with law. No Court or tribunal, statutory authority can assume jurisdiction, in respect of a matter which the statute does not confer on it. Error on jurisdictional fact, renders

the order, ultra vires and bad. In the case on hand, as rightly submitted by Mr.Gopal Subramanium, learned Senior Counsel, that in the light of sections 2(11) and 50 of the Black Money Act, 2015, jurisdictional fact to enquire does not exist and that the Principal Director of Income Tax/first respondent herein, has assumed jurisdiction that he can enquire into the matter under Section 55 of the Act, by issuing a show cause notice.

170. The petitioners have relied on **Babita Lila v. Union of India** reported in **2016(9) SCC 647,** to contend that the Principal Director of Income Tax (INV), is not one of the authorities, who could sanction prosecution for an reference under Section 50 of the Black Money Act. In the said judgment, two issues were considered by the Hon'ble Supreme Court,

> (i) Whether the Deputy Director of Income Tax (Investigation) I, Bhopal (M.P.), was competent to lodge the complaint, under Section 195 IPC, against the appellant-accused for making false statements on oath during the search operations carried out by Income Tax Authorities.
>
> (ii) Whether criminal proceedings had arisen within the jurisdiction of the Court of Chief Judicial Magistrate, Bhopal."

At paragraph Nos.66 to 68, the Hon'ble Supreme Court in **Babita Lila's** case, held as follows:

> *"66. In this persuasive backdrop, the conferment of appellate jurisdiction on the Deputy Commissioner of Appeals from the orders/decisions of the assessing officers as is apparent from Section 246 of the Act, has to be construed as a*

conscious statutory mandate. This is more so as noticed hereinabove, the Deputy Director of Income Tax, Deputy Commissioner of Income Tax and the Deputy Commissioner of Income Tax (Appeals) have been otherwise placed at par in the list of income tax authorities provided by Section 116 of the Act. The omission to either vest the Deputy Director of Income Tax with the appellate powers or to contemplate the said post to be an appellate forum from the orders/decisions of the assessing officers cannot thus be accidental or unintended. The relevant provisions of the Act pertaining to the powers, duties and jurisdiction of the various income tax authorities do not leave any room for doubt, in our estimate, to conclude otherwise. True it is, that the Deputy Commissioner of Appeals has been construed in terms of Section 246 of the Act to be an appellate forum from the orders as enumerated in sub-section (1) thereof, but in absence of any provision in the statute nominating the Deputy Director of Income Tax to be an appellate forum for any order/decision of the assessing officer/I.T.O., the inevitable conclusion is that the said authority i.e. Deputy Director of Income Tax cannot be construed to be one before whom an appeal from any order/decision of any income tax authority, lower in rank would ordinarily lie.

67. The Parliament has unmistakably designated the Deputy Commissioner (Appeals) to be the appellate forum from the orders as enumerated under Section 246(1) of the Act. This however, in our view, as observed hereinabove does not detract from the recognition of this authority to be the appellate forum before whom appeals from the decisions of an assessing officer or of an officer of the same rank thereto would

generally and ordinarily lie even in the contingencies not referred to in particular in sub section 1 of Section 246. This is more so, to reiterate, in absence of any provision under the Act envisaging the Deputy Director of Income Tax to be an appellate forum in any eventuality beyond those contemplated in Section 246(1) of the Act. Neither the hierarchy of the income tax authorities as listed in Section 116 of the Act nor in the notification issued under Section 118 thereof, nor their duties, functions, jurisdictions as prescribed by the cognate provisions alluded heretobefore, permit a deduction that in the scheme of the legislation, the Deputy Director of Income Tax has been conceived also to be an appellate forum to which appeals from the orders/decisions of the I.T.Os./assessing officers would ordinarily lie within the meaning of Section 195(4) of the Code. The Deputy Director of Income Tax (Investigation)-I Bhopal, (M.P.), in our unhesitant opinion, therefore cannot be construed to be an authority to whom appeal would ordinarily lie from the decisions/orders of the I.T.Os. involved in the search proceedings in the case in hand so as to empower him to lodge the complaint in view of the restrictive preconditions imposed by Section 195 of the Code. The complaint filed by the Deputy Director of Income Tax, (Investigation)-I, Bhopal (M.P.), thus on an overall analysis of the facts of the case and the law involved has to be held as incompetent.

68. The cavil on the competence of the Court of the Chief Judicial Magistrate, Bhopal to entertain the complaint and take cognizance of the offences alleged, though reduced to an academic exercise, in view of the above determination needs to be dealt with in the passing."

After considering the provisions of the Income Tax Act, 1961 and the Code of Criminal Procedure, the Hon'ble Supreme Court in **Babita Lila's** case (cited supra), held that the Deputy Director of Income Tax (Investigation), is incompetent to lodge a complaint. Above said decision is squarely applicable to the case of the petitioners. Hence Deputy Director of Income-Tax (Inv.), Unit-3(3), Chennai, is not competent to lodge the complaints.

171. In **Bacha F. Guzdar v. Commissioner of Income Tax, Bombay** reported in **1995 (1) SCR 876,** the Hon'ble Supreme Court, at para No.7 held as follows:

> *7....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. The dividend is a share of the profits declared by the company as liable to be distributed among the shareholders. Reliance is placed on behalf of the appellant on a passage in Buckley's Companies Act, 12th Ed., page 894, where the etymological meaning of dividend is given as dividendum, the total divisible sum but in its ordinary sense it means the sum paid and received as the*

quotient forming the share of the divisible sum payable to the recipient. This statement does not justify the contention that shareholders are owners of a divisible sum or that they are owners of the property of the company. The proper approach to the solution of the question is to concentrate on the plain words of the definition of agricultural income which connects in no uncertain language revenue with the land from which it directly springs and a stray observation in a case which has no bearing upon the present question does not advance the solution of the question. There is nothing in the Indian law to warrant the assumption that a shareholder who buys shares buys any interest in the property of the company which is a juristic person entirely distinct from the shareholders. The true position of a shareholder is that on buying shares an investor becomes entitled to participate in the profits of the company in which he holds the shares if and when the company declares, subject to the Articles of Association, that the profits or any portion thereof should be distributed by way of dividends among the shareholders. He has undoubtedly a further right to participate in the assets of the company which would be left over after winding up, but not in the assets as a whole as Lord Anderson puts it.

On the facts and circumstances of the case on hand, **Bacha F. Guzdar's** case is applicable to the case of M/s.Chess Global Advisory Services (P) Ltd. and others, petitioners in W.P. Nos.13070 and 13071 of 2018.

172. Show cause notice, dated 13.04.2018, issued under Section 55(1) of the Black Money (Undisclosed Foreign Income and Assets) And

Imposition of Tax Act, 2015, against Mrs.Nalini Chidambaram, is as follows:

(Smt. Nalini Chidambaram)

"As per information received by the Assessing Officer, it has been noticed that you had made investment in an immovable property at No.5, Holben Close, Barton, Cambridge CB237AQ, United Kingdom during the Financial Year 2015-16 relevant to the Assessment Year 2016-17. As per Information on record, you had made remittance of R5.1,55,21,1011- to Lloyds Bank, 3, Sidney Street, Cambridge CB2 3HQ, in the name of the, beneficiary Hewitsons LLP Client Account, for the purpose of Investment in real estate as is evidenced by the declarations made by you to the bank.

2. The return of income filed for Assessment Year 2016-17 in the status or resident does not mention the details of the foreign asset in Schedule FA. However, after the receipt of notice under section 10(1) of the Black Money Act, a revised return of Income has been filed on 21.08.2017 with the foreign asset details mentioned in Schedule FA. Further, the tax audit report and the balance sheet uploaded while filing the first revised return of income on 17.10.2016 does not contain details of the foreign asset. Only the balance sheet filed on 07.08.2017 before filing the second revised return of Income on 21.08.2017 contain a mention of the foreign asset held. The difference in the details of the assets outside India as per the original and the second revised return is tabulated as under.

Details of Assets held outside India as per Schedule FA of the original and first revised returns of income for Assessment Year 2016-17 filed on 14.10.2016 and 17.10.2016 respectively		Details of Assets outside India as per Schedule FA of the revised return of Income filed on 21.08.2017		Difference in the Details of Asset outside India as per the Original / first revised return of income and the second revised return of income.	
Description	Value (in INR)	Description	Value	Description	Value
NIL	NIL	5, Holben Close, Barton Cambridge CB237AQ	1,55,21,181/-	5, Holben Close, Barton Cambridge CB237AQ	1,55,21,181/-

Thus, it is clearly evident from the table above that the assessee has failed to disclose information about the Investment of Rs.1,55,21,181/- in the Immovable property at 5, Holben Close, Barton Cambridge CB237AO in its original as well as the first revised return of income for Assessment Year 2016-17. Further, even the revision of the Information in the second revised return of Income on 21..08.2017 has taken place only after issue of notice u/s 10(1) of the Black Money Act on (12.08.2017 and is not a voluntary act. Hence, it is clearly evident that there is willful failure to disclose the particulars of information about the assets held outside India in the return of income filed.

3. The said failure attracts the provisions of section 50 of the Black Money (Undisclosed Foreign Income and Assets) And Imposition of Tax Act, 2015. The section is reproduced below for ready reference.

'If any person, being a resident other than not ordinarily resident in India within the meaning of clause (6) of section 6 of the Income-tax Act, who has furnished the return of Income for any previous year under sub-section (I) or sub-section (4) or sub-section (5) of section 139 of that 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

him, as 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'.

4. Under Section 50 of the Black Money Act, If any resident person who has furnished the return of income for any previous year under sub-section (1) or subsection (4) or sub-section (5) of Section 139 of the IT Act 1961, willfully fails to furnish in such Return any information relating to an asset located outside India held by him as a beneficial owner or otherwise, 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. In the instant case, the assessee has filed its return of income for Assessment Year 2015-16 and Assessment Year 2016-17 in the status of a resident, but has not disclosed the investment of Rs.77,60,470/- and Rs.1,55,21,181/- In the immovable property at 5, Holben Close, Barton Cambridge CB237AQ for Assessment Year 2015-16 and Assessment Year 2016-17 respectively. Though a revised return has been filed for Assessment Year 2016-17, the same was not done voluntarily but only after the issue of notice under section 10(1) of the Black Money Act. Therefore, the assessee is liable for prosecution under section SO the Black Money Act. Further, section 54 of the Black Money Act presumes a culpable mental state In any prosecution for any offence under the Act. The said section is reproduced as under:

54. Presumption as to culpable mental state.

(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. Explanation.—In this .sub-section, "culpable mental state" Includes intention, motive or knowledge of a fact or belief in, or reason to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the court believes It to exist beyond reasonable doubt and not merely when its existence Is established by a preponderance of probability.'

5. You are hereby given an opportunity to furnish your objections, if any either in person or through an authorized representative duly authorized in this behalf or by way of written submissions, with necessary evidence, to show cause why prosecution proceedings under section 50 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, should not be initiated against you for the Assessment Year 2016-17 for failure to furnish in the return of income information about the asset (including financial interest in any entity) located outside India. The case is posted for hearing on 20th April 2018 at 11.30 AM before the undersigned at Room No.207, No.46, Mahatma Gandhi Road, Nungambakkam, Chennai 600034. In the event of failure to attend, the undersigned shall be constrained to pass appropriate order under the provisions of law (Section 55(1) Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015) on the basis of material available on record."

173. Written submissions made by the Authorised representative on behalf of Nalini Chidambaram, for the assessment year 2016-2017, dated 27.04.2018, to the Principal Director of Income Tax (Inv), Chennai, is extracted hereunder:-

Rajagopal and Badri Narayanan
CHARTERED ACCOUNTANTS

New No.38/23, Venkatesa
Agraharam, Mylapore,
Chennai - 600 004. INDIA

27.04.2018

To

The Principal Director of Income Tax (Inv)
New Income Tax Building
No. 46(Old No. 108)
Mahatma Gandhi Road,
Chennai- 600 034

Madam,

Sub: Issue of show-cause notice dated 13-04-2018 u/s 55(1) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 - Prosecution proceedings u/s 50 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 - in the case of Smt. Nalini Chidambaram (PAN: AAAPC5521E) - Assessment Year 2016-17

1. I am a Chartered Accountant and the authorized representative of the assessee /noticee Smt. Nalini Chidambaram and I am authorized to submit this reply to your show-cause notice.

2. The show-cause notice is in respect of assessment year 2016-17 and pertains to an Immovable property at No.5, Holben Close, Barton, Cambridge CB23 7AQ, United Kingdom *(hereinafter referred to as the Cambridge Property.)* the show-cause notice alleges that as per the information received by the

Assessing Officer, the assessee has failed to disclose information about the investment in the Cambridge Property in the original as well as the revised returns of Income for AY 2016-17, which is an offence under section 50 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 *(hereinafter referred to as the Black Money Act.)* At the outset, it is denied that any offence has been committed under section 50 of the Black Money Act. A detailed reply is given hereunder.

3. The Cambridge Property was acquired on 28-05-2015.

4. It is settled law that when a revised return of Income is filed under section 139(5), it completely obliterates/effaces/substitutes the original return of income filed under section 139(1). The assessee relies on the following judgments:

- 191 ITR 156
- 192 ITR 700
- 201 ITR 101
- 2002 3 SCC 615
- 90 ITR 236

The law allows an assessee to file more than one revised return of income as long as it is done within the stipulated time. Hence, the only return of income that is relevant and that can be looked into is the last revised return of income filed within the stipulated time.

5. In respect of AY 2016-17, the assesses filed the original return of income under 139(1) of the I.T Act on 14-10-2016 within the due date. In that return of income, there was an inadvertent omission to fill Schedule-FA. This was a human error committed in the office of the Chartered Accountant.* However, in Schedule-AL relating to Assets and Liability, against item 1(a

and b) - Land and Building, a sum of Rs.23,45,17,597/-was disclosed. This sum included the Rs.1,55,21,181/- which is the investment in the Cambridge Property. It is relevant to note that the balance sheet of the assessee filed along with the tax audit report also disclosed the same figure of Rs.23,45,17,596/-, which included the investment in the Cambridge Property of Rs.1,55,21,181/-. If the schedules to the Balance Sheet are called for (and they will be produced at the hearing before you), It will be seen that Schedule 3 specifically discloses the investment in the Cambridge Property of Rs.1,55,21,181/-. (A revised return of Income was filed 3 days later on 17-10-2016 to correct some minor errors) * *Reliance is placed on the judgement reported in 2012 11 SCC 316*

6. Moreover, in respect of AY 2016-17, on advice of her Chartered Accountant, the assessee filed a revised return of income on 21-08-2017 under section 139(5) of the IT Act, within the due date. In the said revised return of income, Schedule FA was duly filled in and in Part-C thereof the investment in the Cambridge Property, the investment of Rs.1,55,21,181/- was fully disclosed. Section 139(5) of the IT Act reads as under:

"If any person, having furnished a return under sub-section (1) or sub-section (4), discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier."

The said section enables an assessee to file a revised return of income if the assessee discovers any omission. Hence, the revised return correcting the omission is well within the rights of

the assessee.

7. It is necessary to recall that before your show cause notice, proceedings were instituted against the assessee under section 10(1) by the Deputy Director of Income Tax (Inv.), Unit - 3(3) by notice dated 02-08-2017, in respect of the same Cambridge Property. Replies were filed to the notice, documents were produced and evidence adduced. The proceedings rest with the last hearing by the officer concerned on 20-10-2017. Despite the passage of over 5 months no orders have been passed under section 10(3) of the Black Money Act. It is submitted that satisfactory replies, documents and evidence have been furnished to the officer concerned to establish that there was no "undisclosed foreign asset" and hence the provisions of the Black Money Act were not attracted.

8. It is submitted that all the provisions of the Black Money Act are attracted only in the case of "undisclosed foreign asset" or "undisclosed foreign income" In the case of the provision of the Black Money Act, including section 50 or section 54 is attracted. Detailed grounds of law are urged herein under in grounds A to J.

9. In Para 2 of your show cause notice, you have acknowledged that the investment in the Cambridge Property was only Rs.1,55,21,181/-. In Para 4, you have erroneously referred to two amounts. The sum of Rs. 77,60,470/- remitted to the Solicitor as advance on 25-03-2015 is included in the sum of Rs.1,55,21,181/- which is the assessee's Investment in the Cambridge Property (purchased jointly along with members of her family.)

10. Section 50 the Black Money Act is attracted only if the assessee willfully falls to furnish any information relating to the

foreign asset in the return of income filed under section 139 (1) or revised return of Income filed under section 139 (5). For the reasons stated hereinabove, it is obvious that information relating to the foreign asset (investment) was fully disclosed both in the original return of income as well as in the revised return of income.

11. Your allegations in paragraph 4 are baseless and untenable in law. In particular, your allegation that the revised return was not done voluntarily but only after the issue of notice u/s 10(1) of the Black Money Act is completely untenable in law. There is no connection between the notice u/s 10(1) of the Black Money Act and the filing of the revised return. An attempt to connect the two dates is untenable and irrelevant. Every return of income and every revised return of income is always filed by the assessee voluntarily. In any event, section 50 of the Black Money Act recognizes a revised return of income under section 139(5) of the I.T Act. Besides, section 50 does not include an ingredient distinguishing between so called voluntary or involuntary revised return of income.

12. As regards the reference to section 54 of the Black Money Act, it is submitted that there is no question of section 54 being attracted to the facts of the present case. In the first place, there was no failure, much less willful failure, to furnish any information relating to the foreign asset. The assessee filed the original return as well as the revised return on the advice of her Chartered Accountant and there is no question of presuming a culpable mental state on the part of the accused.

13. Hence, the assessee submits that the present show cause notice dated 13-04-2018 is without jurisdiction, unfair and discriminatory, on the following among other grounds:

GROUNDS

A. The Black Money (Undisclosed Foreign Income and Assets) and imposition of Tax Act, 2015, as its name indicates, is targeted only at undisclosed foreign Income and undisclosed foreign asset. The Statement of Objects and Reasons as well as the Long Title to the Act further make it clear that the Act has been made to deal with Black Money that is undisclosed foreign income and assets. The Act makes provisions for dealing with such Income and assets, to provide for imposition of tax on undisclosed foreign Income and assets and for matters connected therewith or Incidental thereto. The provisions of the Act cannot be invoked or applied in a case where there is no undisclosed foreign Income or asset.

B. Section 2(10) defines "undisclosed asset located outside India". The asset must be located outside India, it must be held by the assessee, and the assessee must have no explanation about the source of investment in such asset or the explanation is not satisfactory. Section 2(11) defines "undisclosed foreign income and asset" and refers to the definition in Section 2(10). It is submitted that the various provisions of the Act will apply, or can be invoked, only if there is an undisclosed foreign asset (or income) within the meaning of Section 2(10) and 2(11) of the Act.

C. The provisions of Chapter III (Tax Management) or Chapter IV (Penalties) or Chapter V (Offences and Prosecutions) of the Act can be invoked only if there is an undisclosed foreign asset (or income) within the meaning of Section 2(10) and Section 2 (11) of the Act. In the absence of any undisclosed foreign asset or income, the Act cannot be applied or invoked.

D. Under the Act, whether there is an undisclosed foreign

asset (or income) can be decided only in proceedings under Section 10 of the Act. The provisions of Chapter III and Chapter V have to be read harmoniously. Hence, before invoking the provisions of Chapter V and, particularly Section 50 read with Section 55, it is necessary that proceedings should be initiated and completed under Section 10. It is only upon a finding by the Assessing Officer (subject to Appeal, further Appeals to the Tribunal, High Court and Supreme Court) can the provisions of Chapter V be invoked. Any other construction would lead to the absurd result that while prosecution may be sanctioned and actually instituted, the Assessing Officer may find that there is no undisclosed foreign asset (or income). Meanwhile the assessee may have undergone trial and may have even been convicted. The question will then arise what will happen to the trial or the conviction. On the one hand there will be a finding by the Assessing Officer that there is no undisclosed foreign asset (or income), meaning that everything was disclosed; on the other hand there will be a sanction for prosecution, trial or even a conviction on the allegation that the assessee did not furnish any information relating to the foreign asset (or income). Obviously, the Act does not intend such contradictory results and hence the need to read the provisions of Chapter III and Chapter V of the Act harmoniously.

E. The authority to sanction prosecution under Chapter V is the Principal Chief Commissioner or Principal Director Generator Chief Commissioner or Director General or Principal Commissioner or Commissioner, whereas the Assessing Officer will usually be of the rank of ITO or Assistant Commissioner. If sanction is accorded first under Section 55 of Chapter V by a superior officer, it would be unrealistic and futile to expect that

the Assessing Officer will reach a conclusion that there is no undisclosed foreign asset (or income) because such a conclusion will contradict and destroy the sanction given by a superior officer. Hence a harmonious construction of the provisions of Chapter III and Chapter V of the Act is absolutely necessary, and the process of sanctioning prosecution under Chapter V can be commenced only if and after the Assessing Officer has. reached a conclusion adverse to the assessee under Section 10 of the Act (subject to Appeal and further Appeals). Hence, the impugned show cause notice before the conclusion of proceedings under Section 10 is premature and without jurisdiction.

F. In the present case, a notice was issued to the assessee on 02.08.2017 under Section 10(1) of the Act. A reply dated 17.08.2017 and 18.08.2017 followed by clarifications have been submitted. An inquiry has been made by the Assessing officer. However, for reasons that are not known, an order has not been made under Section 10(3). The assessee verily believes that the answers provided to the notice are satisfactory and the proceedings deserve to be dropped and closed. In such circumstances, it is inexplicable how proceedings can be initiated under Chapter V of Act. It is submitted that the present notice under Section 55 read with Section 50 of the Act is unfair, arbitrary and without jurisdiction.

G. The assessee verily believes that she and her family members have been singled out and threatened with prosecution without an order being passed first under Section 10 of the Act. There are numerous cases in the jurisdiction of the Principal Chief Commissioner, Chennai, as well as in other similar jurisdictions, where proceedings have been initiated

under Section 10 of the Act. The assessee verily believes that in no other case has the assessee concerned been threatened with prosecution before the conclusion of the proceedings under Section 10 of the Act. It is clear the assessee (and the members of her family) have been singled out for discriminatory and unfair treatment. The assessee submits that the present proceedings are unfair, discriminatory, malafide and without jurisdiction.

H. Without prejudice to the above grounds, the assessee submits that the offence under Section 50 is made out only if, in the return of income under sub-section (1) or sub-Sectlon (4) or sub-Section (5) of Section 139 of the income-tax Act, there has been a wilful failure to disclose any information relating to the foreign asset A return of income includes all the schedules. Omission, if any, in the original return under Section 139(1) was corrected in the revised return under Section 139(5) of the Income-tax Act. The original return and the revised return were filed on the advice of her Chartered Accountant. There was no failure to disclose any information about the foreign asset, and certainly no wilful failure to disclose any information. On the facts of the present case, it would be totally unreasonable and perverse to conclude there has been wilful failure to disclose any information about the foreign asset. Hence, the present show cause notice deserves to be dropped.

I. The assessee submits that there are valid legal grounds to challenge the constitutional validity of the provisions of Chapter V of the Act or, in the alternative, to read down the said provisions to render them constitutional and not violative of Articles 14, 19 and 21 of the Constitution of India. The assessee reserves the right to raise these grounds in the appropriate

Court of law.

14. In the above circumstances it is requested you may kindly withdraw the show cause notice dated 13-04-2018 and drop the proceedings against the assessee/noticee.

15. The show cause notice originally posted the case for hearing on 20-04-2018. On that day, a request was made for a further 3 weeks' time. However, time was granted only upto 27-04-2018. The time granted was insufficient. Nevertheless, this reply is being filed on 27-04-2018. It is requested that a date may be fixed for oral hearing and sufficient time and opportunity may be given to the authorized representative/counsel of the assessee to make oral submissions before you.

16. It is noticed that the show cause notice has been issued by the Principal Director of Income Tax (Inv.), Chennai. However, the sanctioning authority under Section 55 is the Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General or Principal Commissioner or Commissioner. In case such a sanction is contemplated, it is prayed that the assessee should be given notice and also an opportunity of being heard by the sanctioning authority before granting such sanction for prosecution after giving the copy of the report submitted by yourself to comply with the principles of natural justice'.' Accordingly, the date and time of hearing by the sanctioning authority may kindly be intimated to the assessee."

174. Similar show cause notices, dated 13.04.2018, issued under Section 55(1) of the Black Money (Undisclosed Foreign Income and Assets) And Imposition of Tax Act, 2015, against Smt.Srinidhi Karti Chidambaram, Shri.Karti P. Chidambaram and Shri.Karti P. Chidambaram, Director,

M/s.Chess Global Advisory Services Pvt. Ltd., are as follows:

(Smt.Srinidhi Karti Chidambaram)

As per information received by the Assessing Officer, the total investment made towards investment In Immovable property outside India was Rs.1,86,95,295/-.

2. The original return of income was filed by you for the Assessment Year 2016-17 on 31.07.2016 disclosing income of Rs.87,44,580/- in the status of resident. As per Schedule FA In the said return of income, it is seen that you have disclosed Investment of Rs.1,55,07,510/- as Investment In Immovable property at No.5, Holben Close, Barton, Cambridge CB237AQ, United Kingdom. Under the circumstances, a notice u/s 10(1) of the Black Money (Undisclosed Foreign Income and Assets) And Imposition of Tax Act, 2015 was issued and served subsequent to which a revised return of income was filed on 22.08.2017 revising the contents of Schedule FA of the return of Income.

3. As per the original return of income filed on 31.07.2016, only Sub-head C of Schedule FA has been filled up. Sub-head C mentions the details of immovable property held (Including any beneficial Interest) at any time during the previous year. In the said original return of Income, it contains details of only one Immovable property held outside India i.e. at 5, Holben Close, Barton, Cambridge CB237AQ, UK with total investment shown at Rs.1,55,07,510/-. However, in the revised return of income filed by you on 22.08.2017, Schedule FA has Sub-head B also filled up apart from Sub-head C. Sub-head B to Schedule FA mentions the details of financial Interest in any entity held (including any beneficial Interest) at any time during the previous year. In the said revised return of income filed on 22.08.2017, in Sub-Head B to Schedule FA, you have disclosed

financial / beneficial Interest of Rs.31,68,095/- (held since 20.07.2015), financial / beneficial interest of Rs.33,14,536/- (held since 16.09.2015) and of Rs.16,75,724 (held since 11.03.2016) In Hewitsons LLP, Cambridge, United Kingdom. Thus, in the revised return of Income, there is total investment In financial interest disclosed of Rs.81,58,355/- which is subsequent to the issue of notice u/s 10(1) of Black Money (Undisclosed Foreign Income and Assets)And Imposition of Tax Act, 2015.

4. The difference In the details of the assets outside India as per the original and the revised return Is tabulated as under:

Details of Assets held outside India as per Schedule FA of the original return of income filed on 31.07.2016		Details of Assets outside India as per Schedule FA of the revised return of Income filed on 22.08.2017		Difference in the Details of Asset outside India as per the Original and Revised returns of income	
Description	Value (in INR)	Description	Value (In INR)	Description	Value
5, Holben Close, Barton Cambridge CB237AQ	1,55,07,510/-	5, Holben Close, Barton Cambridge CB237AQ	1,55,07,510/-	NIL	NIL
NIL	NIL	Hewitsons LLP	81,58,355/-	Hewitsons LLP	81,58,355/-

5. Under the circumstances, it is clearly evident that you have failed to disclose information about the investment in Hewitsons LLP of Rs.81,58,355/- in the original return of income filed. A revised return of income was filed subsequent to issue of notice u/s 10(1) of the Black Money (Undisclosed Foreign Income and Assets) And Imposition of Tax Act, 2015 on 04.08.2017 in which the said investment in Hewitsons LLP came to be disclosed. Hence, there is willful failure to disclose the particulars of information about the assets held outside India in the return of income filed.

(Shri. Karti P. Chidambaram)

As per Information received by the Assessing Officer, it is seen that you have made an Investment of Rs.3,00,23,916/- in Immovable property / real estate located outside India, at 5, Holben Close, Barton, Cambridge, CB237A9, as shown hereunder:

S.No	Person making foreign remittance	Date of foreign remittance	Purpose of Remittance as stated in the foreign remittance application to the bank	Name of beneficiary as per the application to the bank	Amount as per documents (in INR)
(1)	(2)	(3)	(4)	(5)	(6)
1	Karti P. Chidambaram	26/03/2015	Investment in real estate abroad	Hewitsons LLP Client Account	77,55,613
2	Karti P. Chidambaram	08/04/2015	Investment in real estate abroad	Hewitsons LLP Client Account	77,85,120
3	Aditi Nalini Chidambaram (daughter of Karti P.Chidambaram	13/04/2015	Purchase of Immovable Property	Hewitsons LLP Client Account	76,86,000
4	Aditi Nalini Chidambaram (daughter of Karti P.Chidambaram	11/12/2015	Investment in real estate abroad - refurbishment expenses	L.Mooney	33,64,360
5	Aditi Nalini Chidambaram (daughter of Karti P.Chidambaram	28/01/2016	Investment in real estate abroad - refurbishment expenses	L.Mooney	34,32,823
				TOTAL	3,00,23,916

2. Further, on enquiries made and on the basis of information on record, it has come to notice that you are the beneficial owner of the income accruing / arising from Nanoholdings LLC, USA. As per Form W-8131EN submitted before the Internal Revenue Service, USA and signed by you in the status of individual, you are the beneficial owner of all the Income accruing / arising to you within the meaning of Income-tax Treaty between United States and India. Besides, from the bank statements which are on records, it is observed that the immediate source of funds for investment of Rs.3.27 Crores in Nanoholdings LLC, USA has come from you through M/s. Chess

Global Advisory Services Pvt. Ltd.

3. The return of Income for the Assessment Year 2016-17 was filed by you on 30.07.2016 disclosing Income of Rs.59,43,090/- in the status of resident. In Schedule FA to the said return of Income, It is seen that the assessee has disclosed in Sub Head B to Schedule FA [details of financial Interest In any entity held (Including any beneficial interest) at any time during the previous year] investment of Rs.96,92,229/- In Hewitsons LLP (held since 13.04.2015) and Investment 'NIL' in Totus Tennis Ltd (held since 13.03.2015). Further in Sub-head C, the assessee has shown Investment of 2,03,36,574/- being Investment in immovable property at 5, Holhen Close, Barton, Cambridge, C3237AQ
(held since 28.05.2015).

4. In the return of income filed by you on 30.07.2016, you have mentioned '0' Investment in Part B of Schedule FA as regards financial interest in Totus Tennis Limited. However, as per information which is on record, there is an Investment of Rs.80,01,110/- made by you in Totus Tennis Limited which has not been disclosed in the said return of Income.

5. From the discussions in the above paragraphs, it is clearly evident that you have willfully failed to disclose the particulars of information regarding the assets located outside India in the return of income filed. The said failure to disclose attracts the provisions of Section 50 of the Black Money Act. The section is reproduced below for ready reference."

(**Shri Karti P.Chidambaram, Director in M/s.Chess Global Advisory Services P Ltd.)**

The assessee company (M/s. Chess Global Advisory Services P Ltd) had flied the original return of income for the

Assessment Year 2016-17 on 15.10.2016 disclosing Income of Rs.66,450/- in the status of resident. As per Schedule FA in the said return of Income, It is seen that the assessee has disclosed financial interest of Rs.1,00,295/- in Totus Tennis Ltd, United Kingdom.

2. As per information received by the Assessing Officer, M/s.Chess Global Advisory Services Pvt. Ltd. had made an investment of USD 499965 in Nanoholdings LLC, USA on 20.08.2015. The same was not reflected in the original return of Income on 15.10.2016 flied for Assessment Year 2016-17. Under the circumstances, a notice u/s 10(1) of the Black Money (Undisclosed Foreign Income and Assets) And Imposition of Tax Act, 2015 was issued and served subsequent to which a revised return of Income was filed on 04.09.2017 revising the contents of Schedule FA of the return of Income originally Filed.

3. As per the original return of Income filed on 15.10.2016, disclosure was made in Schedule FA only in one row mentioning the financial interest held in Totus Tennis Limited amounting to Rs.1,00,295/-. However, in the revised return of Income flied by the assessee on 04.09.2017, in Schedule FA assessee has disclosed financial interest of Rs.1,00,295/- (held since 1.7.2015), financial Interest of Rs.18,09,505 (held since 1.7.2015), financial interest of Rs.23,19,975/- (held since 22.11.2015), financial interest of Rs.18,85,668/- (held since 24.11.2015) and financial Interest of Rs.18,85,667 (held since 13.01.2016) in Totus Tennis Ltd, UK. Further, financial Interest of Rs.3,27,62,500/- (held since 20.08.2015) in Nanoholdings LLC has also been admitted.

4. The difference in the details of the assets outside India

as per the original and the revised return Is tabulated as under.

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Thus, it is clearly evident from the table above that the assessee has falled to disclose Information about the investment in Nanoholdings LLC of Rs.3,27,62,500/- in the original return of income and also under-reported the value of its investment in Totus Tennis Limited to the extent of Rs.79,00,815/-. Further, even the revision of the information has taken place only after issue of notice u/s.10(1) of the Black Money Act on 08.08.2017 and hence is not a voluntary act. Hence, it is clearly evident that the assessee has willfully failed to disclose the particulars of information about the assets outside India in its original return of Income."

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7. The company and its directors are thus liable for prosecution u/s. 50 r.w.s. 54 of the Black Money Act. The details of the company's directors are as under.

S.No.	**Director's Name**	**Address**
1	Shri Karti P. Chidambaram	Karthika, No.16, Pycrofts Garden Road, Chennai - 600006
2	Shri A.Palaniappan	No.35, Orur Olcot Kuppam Road, Besant Nagar, Chennai - 600090.
3	Shri Gautham Tharanath Maroll	No.806, 10th Cross, 10th Main Road, Indira Nagar 2nd Stage, Bengaluru - 560038

175. Similar replies were given by Smt.Srinidhi Karti Chidambaram, Shri.Karti P. Chidambaram and Shri.Karti P. Chidambaram, Director, M/s.Chess Global Advisory Services Pvt. Ltd., for the show cause notices,

details of which, are recorded in the sanction order.

176. Proceedings of the Principal Director of Income Tax (INV.), Chennai, dated 10.05.2018, sanctioning prosecution in case of Smt. Srinidhi Karti Chidambaram, are as follows:

"WHEREAS I have carefully perused the report of the Deputy Director of Income-Tax (Inv.), Unit-3(3), Chennai dated 02.04.2018 and the connected records placed before me by the Deputy Director of Income-Tax(Inv.), Unit-3(3), Chennai for according sanction under s.55 for initiating prosecution u/s.50 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 in the case of M/s. Chess Global Advisory Services Private Limited for the Assessment Year 2016-17. The following important documents were considered in the instant proceedings among others.

S.No.	Description of the document
1.	The original return of income for Assessment Year 2016-17 filed by the assessee in the status of "Resident" on 31.07.2016
2.	Notice u/s 10(1) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 dated 04.08.2017.
3.	The revised return of income for Assessment Year 2016-17 filed by the assessee in the status of "Resident" on 22.08.2017.
4.	Show-cause notice dated 13.04.2018 issued to the assessee regarding launching of prosecution proceedings u/s 55 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.
5.	Letter dated 18.04.2018 from Shri. R. Balchandran, authorized representative of the assessee company to seek an adjournment for hearing.

S.No.	Description of the document
6.	The written submissions made by the Assessee's Representative during the hearing on 27.04.2018.

2. As per information received, the assessee had made investments of Rs.1,55,07,510/- in the immovable property located at 5, Holben Close, Barton Cambridge CB237AQ and further additional investment of Rs.81,58,355/-. However, in Schedule FA of the original return of Income filed by the assessee for the impugned year, the investment of Rs.1,55,07,510/- alone was disclosed. There was no information in Schedule FA of the original return of income filed on 31.07.2016 regarding investment of Rs.81,58,355/-a foreign asset.

3. Whereas, a Notice U/s 10(1) of the Black Money Act dated 04.08.2017 was issued calling for the following details:

(i) Copies of all documents in respect of investments made by the assessee in No.5, Holben Close, Barton, Cambridge CB237AQ including agreement, sale deed, possession letter, etc.

(ii) Full details of total consideration paid for acquiring the property and share of the assessee in the consideration and title of the property along with details of other co-owners, if any.

(iii) Details of immediate sources of funds for the investment.

(iv) Copies of all Bank statements reflecting the remittances made towards
purchase of the property.

(v) A statement of all assets held by you either in your name or where you
hold beneficial interest, both in India and abroad, including

dates of acquisition.

4. Whereas after receipt of the notice under s.10(1) of the Black Money (Undisclosed Foreign Income And Assets) and Imposition of Tax Act, 2015 (BMA 2015 for short) dated 04.08.2017, the assessee filed a revised return of income in the status of 'Resident' on 22.08.2017 for the impugned assessment year. In the revised return of Income flied on 22.08.2017, the assessee reported the investment of Rs.81,58,355/- in Hewitsons LLP, UK.

5. Whereas, it Is seen that the assessee had failed to disclose information regarding the Investment in Hewitsons LLP UK of Rs.81,58,355/-. The assessee has disclosed the information relating to the asset located outside India only in the revised return of income filed by her on 22.08.2017 and it has been done only after issue of notice under s.10(1) of the BMA 2015 on 04.08.2017. In the circumstances, *prima facie,* there Is willful failure to disclose the particulars relating to the asset held outside India in the return of income filed voluntarily under s. 139(1) of the IT Act, 1961.

6. Whereas a notice dated 13.04.2018 was issued to show cause why sanction under s.55 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 should not be issued for launching prosecution under s. 50 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 for failure to furnish in the return of income filed under s.139(1) of IT Act information relating to the asset located outside India. Opportunity of being heard was accorded to the assessee and the case was posted for hearing on 20th April 2018.

7. Whereas the assessee as per letter dated April 18,

2018 sought adjournment through the Authorised representative Shri R.Balachandran who had appeared under authorization. After carefully considering the submissions made, the case was posted for hearing on 27th April, 2018 Which was taken note of by the Authorised representative.

8. Whereas the assessee was heard on 27.04.2018 through her Authorised Representatives, Shri R. Balachandran, CA and Shri Raghavan Ramabadran, Advocate. The representatives made oral submissions. The authorized representatives also made written submissions which have been placed on record.

The submissions made have been carefully considered. The submissions made by the assessee are summarized as hereunder:

a) It is a settled law that when a revised return is filed under section 139(5), it completely obliterates/effaces/substitutes the original return of Income filed under section 139(1). The assessee relied on the following judgments:

- *191 ITR 156*
- *192 ITR 700*
- *201 ITR 101*
- *2002 3 SCC 615*
- *90 ITR 236*

The law allows an assessee to file more than one revised return of income as long as it is done within the stipulated time. Hence, the only return of income that is relevant and that can be looked into is the last revised return of income filed within the stipulated time.

b) In respect of AY 2016-17, the assessee filed the

original return of income under section 139(1) of the IT Act on 31.07.2016 within the due date. In that return of Income, Part 8 of Schedule FA was not filled in because it is titled "Details of Financial Interest in any Entity held (including any beneficial interest) at any time during the previous year". The assessee was advised that since she did not have any financial interest in any entity, it was not necessary to fill Part-B. However, in Schedule-AL relating to "Assets and Liability at the end of the year", against item 2(a)(iv) - Loans and Advances given, a Sum of Rs.5,64,42,613/- was disclosed. This sum includes the amount of Rs.81,58,355/- remitted to Mrs.L.Mooney, an individual and the caretaker of the Cambridge Property towards maintenance and repairs. This amount of Rs.81,58,355/- remitted to Mrs.L.Mooney was filled in Part B of Schedule FA in the revised return of Income by way of abundant precaution.

c) The Black Money (Undisclosed Foreign Income & Assets) And Imposition of Tax Act, 2015 is targeted at undisclosed foreign Income and undisclosed foreign asset. The various provisions of the Act will apply only if there is undisclosed foreign asset or income within the meaning of Section 2(10) and 2(11) of the Act. Hence, it is necessary that proceedings should be initiated and completed u/s 10 before invoking the provisions of Chapter V, particularly, Section 50 read with Section 55. The process of sanctioning prosecution can commence only if and after the AO has reached a conclusion adverse to the assessee under section 10 of the Act.

d) Proceedings under 10(1) have been instituted by the DDIT (Inv), Unit-3(3) in respect of the same Cambridge property and replies have been filed. Despite passage of over 5 months, no order under 5.10(3) of the BMA 2015 have been

passed. Satisfactory reply has been given to establish that there was no undisclosed foreign asset and hence, provisions of BMA 2015 are not attracted The proceedings are unfair and the assessee and the members of the family are singled out for discriminatory and unfair treatment.

e) The allegation that the revised return was not done voluntarily but only after the issue of notice under s.10(1) of the BMA 2015 is untenable. There is no connection between the notice *under s.10(1) of the BMA 2015 and the filing of the revised return. Any attempt to connect the two dates Is untenable and irrelevant.*

f) There is no question of section 54 being attracted to the facts of the present case; the assessee filed original as well as return of income and there is no question of presuming a culpable mental state.

g) The authority to sanction prosecution under chapter V is a Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General or Principal Commissioner or Commissioner and if sanction is accorded first by Superior Officers, it is unrealistic and futile to expect that the A.0, a junior Officer, will reach a conclusion that there was no undisclosed foreign asset or income.

h) The time granted is insufficient. The show cause was originally posted for hearing on 20.04.2018 and though a request was made for further three week's time, time was granted only up to 27.04.2018. Hence, an opportunity may be granted for an oral hearing and the case fixed to another date.

On the basis of the above submissions made orally as well as in writing, it was requested that the show cause dated 13.04.2018 may be withdrawn and the proceedings against the

assessee may be withdrawn.

9. The documents which are on record have been perused. The submissions made by the assessee orally as well as in writing has been carefully considered. It is held that the prayer made to withdraw the show cause notice issued and to drop the proceedings initiated cannot be acceded to for the following reasons:

a) It is the contention of the assessee that since the assessee had filed revised return of income under s.139(5) in which the relevant details had been shown in Schedule FA of the return of income, there is no failure to disclose any information relating to an asset located outside India. It is pertinent to point out here that after filing the original return of income on 31.07.2016, the assessee did not revise its return of income until receipt of notice under s.10(1) of the BMA 2015. It was consequent to receipt of notice under s.10(1) of the BMA 2015 on 04.80.2017, wherein the assessee had been called upon to provide details of the immovable property located outside India that the assessee furnished for the first time in Schedule FA, the details of the foreign remittance made to the extent of Rs.81,58,355/-. However, even the said remittance has been reported in Schedule FA as financial interest in Hewitsons LLP and not as advances made to Mrs.L.Mooney. According to the assessee, once a revised return of income has been filed under 139(5), it completely obliterates the return of income filed under s.139(1) and in support of which the assessee has relied upon certain judicial pronouncements. Though it is settled law that the effective return for the purpose of assessment, and is the return filed by the assessee on the basis of which he wants his income to be assessed, the said ratio of the judicial

pronouncements relied on by the assessee is not applicable since the facts are distinguishable. There is no dispute that it was subsequent to the notice under s.10(1) of BMA 2015 dated 04.08.2017 that the assessee chose to file a revised return of income on 22.08.2017 in which the information with regard to the foreign assets held were disclosed in Schedule FA. It therefore follows that the revised return filed on 22.08.2017 is not a bonafide and voluntary revised return of income. The filing of the said revised return of income is a subsequent event triggered by the issue of notice under s.10(1) of BMA 2015 and however much the assessee may deny the same, the facts speak otherwise. The doctrine of merger applies only for the purpose of assessment and not in the matters of prosecution. Even if the revised return replaces the original return, the proceedings / events resulting in the cause of action leading up to the revised return do not get obliterated. It Is never the intention of the Legislature that filing of the revised return would obliterate the 'proceedings until then. The requirement under s.139(5) is that the omission or wrong statement In the original return must be due to a bonafide Inadvertent error. The facts of the instant case show that the filing of the revised return has been an after thought influenced by the issue of notice under s.10(1) of BMA 2015. The bonafides of the assessee, on the facts of the instant case are not proved. If the original return of income has to be obliterated by a revised return of income, then the revised return of Income should be bonafide return of income under s.139(5). In the Instant case It is not so. Further, as per the provisions of section 139(5) an opportunity is afforded to revise the return if there is a omission wrong statement on account of a bonafide mistake and If such return

has to be furnished before the expiry of one year from the end of the relevant assessment year **or before the completion of assessment** whichever Is earlier. It thus follows that in such a case once the revised return is filed, the original return must be taken to have been withdrawn for the **purpose of assessment.** It means that the filing of a revised return is for the purpose of returning the correct income that is liable to tax and the benefit of the section can not be made use of to escape. from the rigor of prosecution. Hence, the revised return of Income filed by the assessee will not exonerate the assessee from the offence under 5.50 of BMA 2015. In fact, on a careful reading of the provisions of s.50, it becomes very clear that if an assessee files any return of income u/s 139(4) or 139(5) and If there is the said omissions in any such return which was filed, an offence under s.50 of BMA 2015 is made out.

b) The assessee has contended that the sum of Rs.81,58,355/- remitted to Mrs.L.Mooney was part of the amount of Rs.5,64,42,613/- shown against item 2(a)(iv) in Schedule-AL relating to "Assets and Liability at the end of the year", which is part of the original return of income filed for the assessment year 2016-17. The said contention of the assessee is completely devoid of merits. From the original return of income filed on 31.07.2016 and from the accompanying documents, it could never by inferred whether the investments made included the investments made outside the country in a foreign asset. Thus, assessee has failed "to provide" or "to make available" information relating to the "foreign asset" in the return of income filed originally on 31.07.2016. The Hon'ble Supreme Court in Kalyanji Mavji & Company Vs. CIT (1976) 102 ITR 287 has observed that to "inform" means to make available

and the details available to the ITO in the papers filed before him does not by its mere available become an item of information. It is transmuted into an item of information in his possession only when its existence is realized and its implications are recognized. Further, as per section 139(1) of the IT Act, every person, shall, on or before the due date furnish a return of the income in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed. For valid disclosure under BMA, 2015, the Schedule FA is prescribed for furnishing details of foreign asset / income.

c) The object of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (BMA 2015 for short) is not only assessment of total disclosed foreign asset and income of an assessee but also mandates true and full disclosure of such foreign asset or income to be disclosed voluntarily by a resident assessee in the return of income filed by him under the Income Tax Act, 1961. Failure of such assessee to furnish return of income under s.139(1) attracts prosecution under s.49 of BMA, 2015; Failure to disclose fully and truly by such assessee details of foreign assets and income in a return of income filed under s.139(1) attracts prosecution under s.50 of BMA 2015 and attempts in any manner to evade tax, penalty that proceedings should be initiated and completed U/s 10 of the BMA before invoking the provisions of Chapter of V particularly Section 50 read with Section 55 is not tenable. Section 10 deals with assessment of undisclosed foreign income and asset. As per section 2(11), undisclosed asset located outside India means an asset held by the assessee in his name or in respect of which he is a beneficial owner, and he has no

explanation about the source of Investment in such asset or the explanation given by him is in the opinion of the Assessing Officer unsatisfactory. The provisions of Section 50 (falling under chapter V) are attracted for failure to furnish in a return of income filed any information about an asset (including financial interest in any entity) located outside India. Thus it can be seen the proceedings under s 10 and proceedings under 5.50 are separate and distinct. It is pertinent to point out here that even assuming that the assessee has provided explanation to the satisfaction of the A.0, regarding the source of investment of asset located outside India, still prosecution under s.50 is attracted for failure to furnish any information of asset located outside India in return of Income filed in the prescribed form setting forth such details in the prescribed manner. It therefore follows that the process of sanctioning prosecution can commence even before completion of assessment U/s 10(3) of the BMA, 2015. The scheme of the Act makes It clear that assessment and prosecution are not only distinct and separate but the two proceedings are independent and irrespective of the outcome of the assessment under s.10(3) of the BMA, 2015. Besides, it has been held by the Hon'ble Supreme Court in P.Jeyappan Vs S.K. PERUMAL, 1984 AIR 1693 that the pendency of assessment proceedings cannot act as a bar to institution of criminal prosecution for offences punishable under the provisions of law.

d) The contention that it is over five months since proceedings under s. 10(1) of BMA 2015 have been initiated and that no order under s.10(3) of the BMA 2015 has been passed and thereby the assessee and: the members of her family have been singled out for unfair and discriminated treatment are

devoid of merits. The provisions of section 11 of BMA 2015 enables the Assessing Officer to pass the order of assessment before expiry of two years from the end of the financial year in which the notice under s.10(1) has been issued. In the Instant case, the notice under 10 (1) of BMA 2015 was issued on 02.08.2017 and therefore, the Assessing Officer has to pass the Order under s.10(3) of BMA 2015 on or before 31.03.2020. Further, under s.10(2) the Act mandates that before passing the Order of Assessment under s.10(3), the AO shell obtain full information in respect of undisclosed foreign income / asset after making such enquiries as he considers necessary. It Is also to be mentioned here that as per section 2(11) of BMA 2015, "undisclosed asset located outside India" means an asset (including financial Interest In any entity) located outside India, held by the assessee In his name or in respect of which he is a beneficial owner, and he has no explanation about the source of investment In such asset or the explanation given by him is in the opinion of the Assessing Officer is unsatisfactory. It is only after due enquiry as mandated under section 10(2) of BMA 2015 that AO can pass order under s.10(3) of the Act. It is not for the assessee to stipulate a deadline for passing an order under s.10(3) as convenient to her, inspite of the specific time limit given under the Act. Further, the nature of offence under s.50 is as a result of non-disclosure in the return of Income and not as a result of assessment of undisclosed foreign income or asset.

e) The contention made by the assessee that there Is no connection between the notice under s.10(1) issued dated 04.08.2017 under the provisions of BMA 2015 and the filing of the revised return Ion 22.08.2017 is wholly untenable. It Is only and only after notice under 10 (1) of BMA dated 04.08.2017 was

issued and served on the assessee that the assessee filed the revised return on 22.08.2017 disclosing additional information relating to the foreign assets held in UK in Schedule FA. Thus, the filing of the revised return is clearly triggered by the notice issued under section 10(1) of the 'BMA, 2015. Hence, there is clear connection/nexus between the two dates I.e the date of issue of notice under section 10(1) and filing of second revised return Wherein Information was furnished for the first time in Column B of Schedule FA detailing the financial interest In Hewitsons LLP aggregating to Rs.81,58,355/- was revealed. But for the notice issued under s.10(1) of BMA 2015, the Information with regard to the said remittance relating to investment / advance for purchase of Immovable property would not have been disclosed.

f) As regards presence of culpable merital state, the provisions of 5.54 of BMA 2015 are very clear. The court shall presume the existence of such culpable mental state and It Is for the assessee to prove that he had no such mental state in the prosecution. As per s. 54(2) of BMA, 2015 this fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability. The mere assertion made by the assessee that the return of income was filed on the advice of the Chartered Accountant and there is no willful failure on her part to disclose information relating to the asset is not borne out by the facts on record. In the return of income filed on 31.07.2016 for the Impugned Assessment Year, the return has been verified and digitally signed by the assessee solemnly declaring that the information given in the return is correct and complete.

g) The submission made by the assessee that if sanction is first accorded u/s 55 by a superior authority it would be unrealistic to expect a junior officer i.e Assessing Officer to reach a conclusion that there is no undisclosed foreign asset is devoid of merits. As stated earlier, proceedings u/s 50 are initiated when there is failure to furnish information with regard to asset located outside India. These proceedings have no material nexus with the finding of A.O u/s 10 in determining whether any asset located outside India is undisclosed or not. Further, the mandate provided in the BMA 2015 under s.55 that prosecution shall be only at the instance of Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is only to serve as a safe guard against arbitrary exercise of powers by junior functionaries. In fact, it is a beneficial provision provided so as to safeguard the rights of the tax payers.

h) With regard to the submission that no sufficient opportunity was given and that another date may be fixed for oral hearing, the assessee was afforded sufficient opportunity by reposting the case to 27th April, 2018 considering the pleadings made in the application for adjournment. The case was originally fixed for hearing on 20th April, 2018. It is pertinent to point out here that on the date of 271h April, 2018, the assessee was given sufficient time and opportunity. Both the authorized representatives i.e. Shri R.Baiachandran, CA and Shri Raghavan Ramabadran, Advocate made exhaustive oral submissions to the various issues raised in the show cause notice issued. Further, Shri.R.Balachandran, CA furnished detailed submissions in writing which have been placed on record and considered. In fact, the authorized representatives

were accorded adequate opportunity to make detailed oral submissions on each and every issue raised in the show cause notice issued. It was also mentioned to the authorized representatives that due process of law has been followed and the sanctioning authority in this case has issued the show cause notice and hence, the assessee need not have any apprehensions on this score. It is further pointed out that as per Chapter III, Tax Management - BMA 2015, the Income Tax Authorities specified in Section 116 of the IT Act shall be the Tax Authorities for the purpose of BMA 2015; as per sub section (ba) of section 116 of the Income Tax Act, Principal Directors of Income Tax or Principal Commissioners of Income Tax are also Income Tax authorities for the purpose of the Act.

10. Whereas on a careful consideration of the aforesaid facts and circumstances of the case and the provisions of law, I am satisfied that there exists a *prima facie* case to initiate prosecution against the assessee for the offence in terms of section 50 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 for the Assessment Year 2616-17.

11. Now, therefore, in exercise of the powers conferred upon me under section 55 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, I Susie B. Varghese, Principal Director of Income-tax(Inv.), Chennai, do hereby accord sanction for filing a complaint against Smt. Srinidhi Karti Chidambaram for offence under s.50 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 for the Assessment Year 2016-17 and also do hereby authorize Shri.Kannan Narayanan, DDIT (Inv.), Unit-3(3), Chennai to file the complaint in the Court of

the Chief Metropolitan Magistrate, Egmore, Chennal - 600 003 or such other competent court having jurisdiction."

177. Proceedings of the Principal Director of Income Tax (INV.), Chennai, dated 10.05.2018, have been issued, sanctioning prosecution against Smt.Nalini Chidambaram, Shri.Karti P. Chidambaram and Shri.Karti P. Chidambaram, Director, M/s.Chess Global Advisory Services Pvt. Ltd. Except the amount of deposit by each of the writ petitioners, averments made in the complaints, filed against each of them, are similar and therefore, there is no need to extract, except to the extent, indicating the relevant portion in the complaints,

(Mrs.Nalini Chidambaram)

WHEREAS I have carefully perused the Report of the Deputy Director of Income-Tax(Inv,), Unit-3(3), Chennai dated 02.04.2018 and the connected records placed before me by the Deputy Director of Income-Tax(Inv.), Unit-3(3), Chennai for according sanction under s.55 for initiating prosecution under s.50 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 in the case of Smt. Nallni Chidambaram for the Assessment Year 2016-17. The following important documents were considered in the proceedings.

S.No.	Description of the document
1.	The Original return of income for Assessment Year 2016-17 filed by the assessee in the status of 'Resident' on 14.10.2016

S.No.	Description of the document
2.	Tax Audit Report dated 14.10.2016 filed on 17.10.2016 for Assessment Year 2016-17
3.	Revised return of income filed by the assessee in the status of 'Resident' for the Assessment Year 2016-17 on 17.10.2016
4.	Notice under s.10(1) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 dated 02.08.2017
5.	Tax Audit Report filed on 07.08.2017 for Assessment Year 2016-17
6.	Revised return of income filed by the assessee in the status of 'Resident' for the Assessment Year 2016-17 on 21.08.2017
7.	Show-cause notice dated 13.04.2018 issued to the assessee proposing sanction under s.55 for launching of prosecution proceedings under s.50 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015
8.	Letter daetd 19.04.2018 from Smt.Nalini Chidambaram authorizing Shri P.S.Prabhakar, Chartered Accountant to seek an adjournment for hearing.
9.	Letter in F.No.Pr.DIT (Inv)/Prosecution/2018-19 dated 20.04.2018 issued by the Principal Director of Income-tax (Inv.), TN & P reposting the case for hearing on 27th April, 2018.
10.	The written submissions made by the Assessee's Representative during the hearing on 27.04.2018.

2. As per information received by the Assessing Officer(DDIT (Inv), Unit-3(3), Chennai), the assessee had made investment in an immovable property at No.5, Holben Close, Barton, Cambridge CB237AQ, United Kingdom during the Financial Year 2015-16 relevant to the Assessment Year 2016-17. As per information on record, the assessee had made remittance of Rs.1,55,21,181/- to Lloyds Bank, 3, Sidney Street, Cambridge CB2 3HQ, in the name of the beneficiary Hewitsons

LLP Client Account, for the purpose of investment in real estate as is evidenced by the declarations made by the assessee to the bank. The property was registered on 01.05.2015. The assessee has not disclosed information relating to the said investment in immovable property located, outside the country in the return of income filed under s.139(1) of the IT Act; 1961 on 14.10.2016 in the status of 'Resident' for the Assessment year 2016-17 in Schedule FA of the said return of income. Column C of Schedule FA that mandates disclosure of details of Immovable property held (including any beneficial interest) has been left blank. The assessee filed a revised return under s.139(5) on 17,10.2016 for the impugned assessment year, but the said return too did not disclose, any information with respect to the immovable property located outside India in Schedule FA. A notice under s. 10(1) of the Black Money (Undisclosed Foreign Income And Assets) and Imposition of Tax Act, 2015 dated 04.08.2017 was issued and served on the assessee.

3. Whereas, in the Notice under s. 10(1) of the Black Money (Undisclosed Foreign Income And Assets) and Imposition of Tax Act, 2015, the following information/documents were required to be furnished:

(i) Copies of all documents in respect of investments made by the assessee outside India at No.5, Holben Close, Barton, Cambridge CB237AQ including agreement, sale deed, possession letter, etc.

(ii) Full details of total consideration paid for acquiring the property and share of the assessee in the consideration and title of the property along with details of other co-owners, if any.

(iii) Details of immediate sources of funds for the investment in the said property.

(iv) Copies of all Bank statements reflecting the remittances made towards purchase of the said property.

(v) A statement of all assets held by the assessee either in her own name or where she holds beneficial interest, both in India and abroad, including dates of acquisition.

4. After receipt of the notice under s.10(1) of the Black Money (Undisclosed Foreign Income And Assets) and Imposition of Tax Act, 2015 (BMA 2015 for short) dated 02.08.2017, the assessee filed a second revised return of income in the status of 'Resident' on 21.08.2017 for the impugned assessment year. In the second revised return of income filed on 21.08.2017, the assessee admitted the details of immovable property held by her outside the country i.e. in UK. As per the information disclosed in Column C of Schedule FA, the address of the property now given as 5, Holben Close, Barton, Cambridge and is stated to have been acquired on 01.05.2015 at cost of Rs.1,55,21,181/-.

5. Whereas, it is seen that the assessee had failed to disclose information regarding the investment of Rs.1,55,21,181/- in the Immovable property at No.5, Holben Close, Barton Cambridge CB237AQ in its original as well as the first revised return of income for Assessment Year 2016-17 that were filed voluntarily. The assessee has disclosed the information relating to the asset located outside India only in the second revised return Of income filed by her on 21.08.2017 and it has been done only after issue of notice under s.10(1) of the BMA 2015 on 02,08.2017. In the circumstances, *prima facie,* there is willful failure to disclose the particulars relating to the asset held outside India in the return of income filed

voluntarily under s. 139(1) of the IT Act, 1961.

.....

10. Whereas on a careful consideration of the aforesaid facts and circumstances of the case and the provisions of law, I am satisfied that there exists a *prima facie* case to initiate prosecution against the assessee for the offence in terms of section 50 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 for the Assessment Year 2016-17.

11. Now, therefore, in exercise of the powers conferred upon me under section 55 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, I Susie B. Varghese, Principal Director of Income-tax(Inv.), Chennai, do hereby accord sanction for filing a complaint against Smt. Nalini Chidambaram for offence under s.50 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 for the Assessment Year 2016-17 and also do hereby authorize Shri.Kannan Narayanan, DDIT (Inv.), Unit-3(3), Chennai to file the complaint in the Court of the Chief Metropolitan Magistrate, Egmore, Chennai - 600 003 or such other competent court having jurisdiction."

178. As complaints filed under Section 200 Cr.P.C., for an offence, under Section 50 r/w. Section 55 of the BM Act, against writ petitioners are similar. Suffice to extract one such complaint, which is as follows:

Complaint filed *under* Section 200 Cr.P.C. for an offence u/s.50 read with Sec.55 of the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act,

2015 for the AY.2016-17:

1. The complainant is the Deputy Director of Income-tax, Unit 3(3), Nungambakkam, Chennai 600 034. He is a public servant, competent and authorized to file this complaint and this complaint is instituted as such.

2. This complaint is filed in pursuance of the Sanction accorded by the Principal Director of Income-tax (Investigation), Tamil Nadu & Puducherry, Chennai within the meaning of section 55 of the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act, 2015, for the prosecution of the above accused for the offence under section 50 of the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act, 2015. The said original sanction order dated 10.05.2018 is submitted before this Hon'ble Court along with the complaint.

3. The address for service of the complainant is Shri.L.MURALI KRISHNAN, Special, Public Prosecutor, Income Tax Department, Government of India at Singapore Plaza, No.164 Linghi Chetty Street, Chennai - 600 001.

4. The address for service of process on the accused is as stated above.

5. This complaint is in respect of the Assessment Year 2016-17 the relevant previous year being the financial year commencing on 01.04.2015 and ending on 31.03.2016.

6. The complainant submits that the 1st accused is an accused and having the PAN -AACCC5783B. The accused 2 to 4 are the directors of the 1st accused company. The accused 2 to 4 have keenly participated in the day to day, affairs of the first accused company who were in charge of the day, to day attain, of the company during the periods when the offence was

committed. Therefore as per, Section 55 of the Black Money (Undisclosed Foreign Income and Assets) and imposition of Tax Act, 2015 all the accused are equally liable for the commission of the offence and are liable to be prosecuted.

7. The complainant submits that the 1st accused is a Company and an assessee and having the PAN -AACCC5763B and the 2nd to 4th accused are the directors of the 1st accused company. The accused have committed an offence within the meaning of Section 50 of the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act, 2015 as explained below.

8. The complainant states that as per information received, the accused had made investments of Rs.3,27,62,500/- in Nanoholdings LLC, USA and Rs,80,01,110/- in Totus Tennis Limited, UK. However, in Schedule FA of the original return of income filed by the 1st accused for the impugned year on 15.10.2016, the investment in Totus Tennis Limited, UK to the extent of Rs.1,00,295/- was only reported. The accused had totally failed to disclose the investment of Rs.3,27,62,500/- made in Nanoholdings LLC, USA and had under-reported the investment in Totus Tennis Limited, UK to the extent of Rs.79,00,815/- (Rs.80,01,110 minus Rs.1,00,295/-).

9. The complainant states that hence notice under s. 10(1) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (herein after referred to as the Black Money Act, 2015) dated 16.08.2017 was issued calling for the following details (a) Copies of all documents in respect of investments made by M/s Chess Global Advisory Services Private Limited in NanoHoldings LLC USA including

copies of membership certificate, Balance sheet, profit and loss account etc. (b) Full details of total consideration paid for acquiring the asset/investment/beneficial interest the share of the company in the consideration and title of the asset/investment/beneficial interest along with details of other co-owners, if any, I Details of immediate sources of funds for making the said investment, (d) Copies of all Bank statements reflecting the remittances made towards investment in the said asset/investment/beneficial interest and (e) statement of all assets held by the company as on 31.03.2016 and on 31.03.2017 either in its own name or where the company holds beneficial interest, both in India and abroad, including their dates of acquisition.

10. The complainant states that the accused had failed to furnish the following information with respect to the foreign assets local outside India, viz., the correct amount of investment i.e.,Rs.80,01,110/- in Totus Tennis Limited, UK, and Information with respect to investment of Rs.3,27,62,500/- made in Nanoholding LLC, USA in the return of income under section 139(1) of the Income Tax Act, 1931 on 15.10.2016. Hence, notice dated 13.04.2018 was issued to show cause why sanction under s.55 of the Black Money Act, 2015 should not be issued for launching prosecution under s. 50 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 for failure to furnish in the return(s) of income information / complete information relating to the assets located outside India. Opportunity of being heard was accorded to the accused and the case was posted for hearing on 20th April 2018.

11. The complainant states that vide letter dated April 18,

2018 the accused sought adjournment and the case was reposted for hearing on 27th April, 2018. On 27.04.2018, the authorized representative of the accused appeared and made detailed oral submissions and filed written submissions as follows.

a) The accused has filed revised return of income u/s.139(5) of the Income Tax Act, 1961 which completely obliterates the original return of Income filed u/s.139(1) and the information about the investment in the Cambridge property was reflected in the revised return of income filed u/s.139(5) of the Income Tax Act, 1961

b) M/s.Chess Global Advisory Services Pvt. Ltd. invested a sum of Rs.1,00,295/- in equity shares of Totus Tennis Limited on 01.07.2015. This was duly reflected in Part B of Schedule FA. The other foreign remittances of Rs.79,00,815/- made to Totus Tennis Limited towards advance for allotment of shares were reflected in the Balance Sheet as on 31.03.2016 under heading II Assets, sub-heading D (iii) "Loans and Advances to Related Parties" which is part of the original return of income filed and thus are fully disclosed. The said amount being Rs.79,00,815/- was not reflected in the Schedule-FA because the accused was advised by the Chartered Accountant that it did not fall under any of Parts A to G of Schedule-FA. However, again on advice of the Chartered Accountant, the accused company filed a revised return for AY 2016-17 on 04.09.2017 within the due date, in the revised return, the investment in shares of Rs.1,00,295/- as well as the advance towards allotment of shares of Rs.79,00,815/- were both fully disclosed in Schedule-FA.

c) M/s.Chess Global Advisory Services Pvt. Ltd. invested a sum of Rs.3,27,62,500/- in preferred units of Nanoholdings LLC,

USA. The said investment is reflected in the original return of income in the Balance Sheet as on 31.03.2016 under heading II - Assets, sub-heading B (iii) " Investment in Preferred Share" The said amount being Rs.3,27,62,500/- was not reflected in the Schedule-FA because the accused was advised by the Chartered Accountant that it did not fall under any of Parts A to G of Schedule-FA. However, again on advice of the Chartered Accountant, the accused company filed a revised return for AY 2016-17 on 04.09.2017 and in the said revised return of income a sum of Rs.3,27,62,500/-was disclosed in Part B of Schedule-FA as a matter of abundant caution.

d) The Black Money (Undisclosed Foreign Income & Assets) And Imposition of Tax Act, 2015 is targeted at undisclosed foreign income and undisclosed foreign asset. The various provisions of the Act will apply only if there is undisclosed foreign asset or income within the meaning of Section 2(10) and 2(11) of the Act. Hence, it is necessary that proceedings should be initiated and completed under s.10 before invoking the provisions of Chapter V, particularly, Section 50 read with Section 55. The process of sanctioning prosecution can commence only if and after the AO has reached a conclusion adverse to the accused under s. 10 of the Act.

e) Proceedings under 10(1) have been instituted by the DDIT (Inv), Unit-3(3) in respect of the aforesaid sums of money and replies have been filed. Despite passage of over 5 months no order under s 10(3) of the BMA 2015 have been passed. Satisfactory reply has been given to establish that there was no undisclosed foreign asset and hence, provisions of BMA 2015 are not attracted. The proceedings are unfair and the accused and the members of the family are singled out for discriminatory

and unfair treatment.

f) The allegation that the revised return was not done voluntarily but only after the Issue of notice under s. 10(1) of the BMA 2015 is untenable. There is no connection between the notice under s.10(1) of the BMA 2015 and the filing of the revised return. Any attempt to connect the two dates is untenable and irrelevant.

g) There is no question of section 54 being attracted to the facts of the present case; the accused filed original as well as return of income and there is no question of presuming a culpable, mental state.

h) The authority to sanction prosecution under chapter V is a Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General or Principal Commissioner or Commissioner and if sanction is accorded first by Superior Officers, it is unrealistic and futile to expect that the A.O, a junior Officer, will reach a conclusion that there was no undisclosed foreign asset or income.

i) The time granted is insufficient. The show cause was originally posted for hearing on 20.04.2018 and though a request was made for further three week's time, time was granted only upto 27.04.2018. Hence, an opportunity may be granted for an oral hearing and the case fixed to another date.

12. The complainant states that the explanation and submissions made by the accused cannot be accepted and are not satisfactory for the following reasons:

a) It is the contention of the accused that since the accused had filed revised return of income under s.139(5) in which the relevant details had been shown in Schedule FA of the return of income, there is no failure to disclose any information

relating to an asset located outside India. It is pertinent to point out here that after filing the original return of income on 15.10.2016, the accused did not revise its return of income until receipt of notice under s,10(1) of the Black Money Act, 2015 dated 16.08.2017. It was subsequent to receipt of notice under s.10(1) of the Black Money Act, 2015 on 16.08.2017, wherein the accused had been called upon to provide details of investment in Nanoholdings LLC, USA and details of other assets located outside India that the accused, furnished for the first time in Schedule FA, the relevant information relating to the foreign assets held. It therefore follows that the revised return filed on 21.08.2017 is not a bonafide and voluntary revised return of income. The filing of the said revised return of income is a subsequent event triggered by the issue of notice under Sec. 10(1) of Black Money Act, 2015 and however much the accused may deny the same, the facts speak otherwise. The doctrine of merger applied only for the purposes of assessment and not in the matters of prosecution. Even if the revised return replaces the original return, the proceedings I events ''resulting in the cause of action leading up to the revised return do not get obliterated. The requirement under s.139(5) is that the omission or wrong statement in the original return must be due to a bonafide inadvertent error. The facts of the instant case show that the filing of the revised return has been an afterthought influenced by the issue of notice under s.10(1) of Black Money Act, 2015. The bonafides of the accused, on the facts of the instant case are not proved. If the original return of income has to be obliterated by a revised return of income, then the revised return of income should be a bonafide return of income u/s 139(5). In the instant case it is not so. Further, as

per the provisions of section 139(5) an opportunity is afforded to revise the return if there is an omission or wrong statement on account of a bonafide mistake and such return has to be furnished before the expiry of one year from the end of the relevant assessment year or before the completion of assessment whichever is earlier. It thus follows that in such a case once a revised return is filed, the original return must be taken to have been withdrawn for the purpose of assessment. Hence, it means that filing of revised return is for the purpose of returning the correct income that is liable to tax and the benefit of the section cannot be taken recourse to escape from the rigor of prosecution. Hence the subsequent the revised return of income filed by the accused will not exonerate the accused from the offence under s.50 of Black Money Act, 2015.

b) The accused has contended that the foreign remittances of Rs.79,00,815/- made to Totus Tennis Limited towards advance for allotment of shares were reflected in the balance sheet as on 31.03.2016 under heading li - Assets, sub-headtng D (m) - "Loans and Advances to Related Parties" which is part of the original return of income filed and thus are fully disclosed, it is factually incorrect that the foreign remittances of Rs.79,00,815/- made to Totus Tennis Limited towards advance for allotment of shares were reflected in the return of income. In the balance sheet filed online as a single page attachment to Form 3CD, the investment madein Totus Tennis Limited, UK does not feature. The said contention of the accused is completely devoid of merits. From the original return of income filed on 15.10.2016 and from the accompanying documents, it could never be inferred whether the investments made included the investments made outside the country in a foreign asset.

The balance sheet filed online does not feature any item as "Loans and Advances to Related Parties" Thus, accused has failed "to provide" or "to make available" information relating to the foreign asset in the return of income filed originally on 14.10.2016.

c) The further contention that the information relating to the investments were not reflected in Schedule FA since it did not fall under any of Parts of Schedule FA as it is completely devoid of merits. Column B of Schedule FA mandates the accused to provide information I details of financial interest in any entity held. The fact that after issue of notice under s.10(1) of Black Money Act, 2015, the accused had chosen to provide information relating to the foreign assets held in column B of Schedule FA clearly testifies to the hollowness of such a contention. Further the contention that the said amount was not reflected in Schedule FA because it did not fall under any of parts A to G of Schedule FA is totally unfounded. The amount of Rs.79,00,815/- were remitted by the company for allotment of shares in Totus Tennis Ltd, UK and therefore the amounts were in the nature of financial interest held by the accused company m the said entity, assuming the same to have been an advance.

d) The accused has contended that the investment of Rs.3,27,62,500/- in preferred units of Nanoholdings LLC, USA were reflected in the balance sheet as on 31.03.2016 under heading II-Assets, sub-heading B(iii) - "Investment in Preferred Share" which is part of the original return of income fried and thus are fully disclosed. It is factually incorrect that the said investment was reflected in the return of income. In the balance sheet filed online as a single page attachment to Form 3CD the investment in Nanoholdings LLC, USA does not feature. The said

contention of the accused is completely devoid of merits. From the original return of income filed on 15.10.2016 and from the accompanying documents, it could never be inferred whether the investments made included the investments made outside the country in a foreign asset. The balance sheet filed online does not feature any item as "Investment in Preferred Share". Thus, accused has failed "to provide or to make available information relating to the foreign asset" in the return of income filed originally on 14.10.2016. The accused has entirely failed to provide any information in Schedule FA of the return of income filed voluntarily on 15.10.2016 of the investment of Rs.3,27,62,500/- in Nanoholdings LLC,USA.

e) The object of the Black Money Act, 2015 is not only assessment of total undisclosed foreign asset and income of an accused but also mandates true and full disclosure of such foreign asset or income to be disclosed voluntarily by a resident accused in the return of income filed by him under the income Tax Act, 1961 Failure of such accused to furnish return of income under Sec.139(1) of the Income Tax Act, 1961 attracts prosecution under s.49 of Black Money Act, 2015 and attempt in any manner to evade tax, penalty or interest attracts prosecution under Sec.51 of the Black Money Act, 2015. The contention that proceedings should be initiated and completed U/s 10 of the Black Money Act, 2015 before invoking the provisions of Chapter V particularly Section 50 read with Section 55 is not tenable. Section 10 deals with assessment of undisclosed foreign income and asset. Sec.48 of the Black Money Act, 2015 clearly stipulates that the provisions of Chapter V shall be independent of any order under the said Act that may be made or has not been made, on any person and it

shall be no defence that the order has not been made on account of time limitation or for any other reason Besides, it has been held by the Hon'ble Supreme Court in P. Jeyappan Vs .S.K. Perumal 1984 AIR 1693 that the pendency of assessment proceedings cannot act as a bar to institution of criminal prosecution for offences punishable under the provisions of law.

f) As regards the contention that proceedings u/s. 10 of the Black Money Act, 2015 have not been finalized and thereby the accused and the members of her family have been singled out for unfair and discriminated treatment are devoid of merits, it is to be noted that he provisions of section 11 of Black Money Act, 2015 enables the Assessing Officer to pass the order of assessment before expiry of two years from the end of the financial year in which the notice under s.10(1) has been issued. It is not for the accused to stipulate a deadline for passing an order under s.10(3) as convenient to her, inspite of the specific time limit given under the Act. Further, the nature of offence under s.50 is as a result of non-disclosure in the return of income and not as a result of assessment of undisclosed foreign income or asset.

g) The contention made by the accused that there is no connection between the notice under s. 10(1) of the Black Money Act, 2015 and filing of revised return is wholly untenable. It is only and only after notice under 10 (1) of Black Money Act, 2015 dated 02.08.2017 was issued and served on the accused that the accused filed the second revised return on 21.08.2017 disclosing complete information with regard to investment of a sum of Rs.80,01,110/- in Totus Tennis Ltd (in the original return of income filed, the accused had only disclosed Rs,1,00,295/- as investment in Totus Tennis Ltd, UK). Even if the contention that

Rs.79,00,815/- only represent advance for allotment of shares is accepted, even then the accused was under mandate to disclose information with regard to the foreign remittance of the sum of Rs.79,00,815/- in Column B of Schedule FA which is regarding details of financial interest in any entity, including beneficial interest. Certainly there is no dispute that the entire investment of Rs.3,27,62,500/- in preferred units of Nanoholdings LLC, USA was never disclosed in the original return of income filed on 14.10.2016. After issue of notice under s.10(1) of BMA 2015, the accused chose to disclose the entire investment made both in Totus Tennis Ltd, UK and Nanoholdings LLC, USA. Thus, the filing of the second revised return is clearly triggered by the notice issued Under section 10 of the Black Money Act, 2015. Had it been otherwise in the first return voluntarily filed by the accused on 14.10.2016 the relevant information / complete information with regard to the foreign assets located outside India would have been disclosed. Thus there is clear connection/nexus between the two dates i.e the date of issue of Notice under section 10(1) and filing of second revised return wherein- information relating to the foreign assets were disclosed.

h) As regards presence of culpable menial state, the provisions of s.54 of Black Money Act, 2015 clearly states that, the Court shall presume the existence of such culpable mental state and it is for the accused to prove that he had no such mental state in the prosecution. The mere assertion made by the accused that the return of income was filed on the advice of the Chartered Accountant and there is no willful failure on her, part to disclose information relating to the asset is not borne out by the facts on record. In the return of income filed on

30.07.2016 for the impugned Assessment Year, the return has been verified and digitally signed by the accused solemnly declaring that the information given in the return is correct and complete.

13. The complainant states that thus the facts and circumstances of the case are indicative of willfulness and deliberateness on the part of the accused to furnish information with regard to the investment in foreign asset made by the accused during the AY.2016-17 in the Return of Income fled by her u/s.139(1) of the Income Tax Act, 1961 and the provisions of Section 54 of the Black Money Act, 2015 relating to guilt and presumption of culpable state of mind in the part of the accused is to be presumed by this Hon'ble Court.

14. The above offence has been committed within the jurisdiction of this Hon'ble Court.

15. In these circumstances, it is expedient and in the interest of justice that charges be made against the accused for the above offence and the accused be dealt with in accordance with law and be punished for the offence committed in accordance with law and thus render justice.

16. A list of prosecution witnesses and list of documents is given hereunder.

17. The complainant, therefore, prays that this Hon'ble Court may graciously be pleased to take this complaint on file, issue processes to the Accused and deal with them and punish them for the offence committed by her under Section 50 of the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act, 2015, in accordance with law and thus render justice.

Dated at Chennai on this the 11day of May 2018

COMPLAINANT
KANNAN NARAYANAN
Deputy Director of Income Tax(Inv.)
Unit - 3(3), Chennai-34.

179. Details of the assets furnished in the Returns submitted by the petitioners, under Section 139(1) and 139(5) of the Income Tax Act, are given hereunder:

Original Return of Income filed on 28.08.2015 by Mrs. Srinidhi Karthi Chidambaram for the Assessment Year 2015-16:-

Schedule FA: Details of Foreign Assets and Income from any source outside India:-

A	Details of Foreign Bank Accounts held (including any beneficial interest) at any time during the previous year											
Sl.No. (1)	Country Name and Code (2)	Name of the Bank (3a)	Address of the Bank (3b)	Account holder name (4)	Status (5)	Account Number (6)	Account opening date (7)	Peak Balance During the Year (8)	Interest accrued in the account (9)	Interest taxable and offered in this return		
										Amount (10)	Schedule where offered (11)	Item number of schedule (12)

B	Details of Financial Interest in any Entity held (including any beneficial interest) at any time during the previous year											
Sl.No. (1)	Country Name and Code (2)	Nature of entity (3)	Name of the Entity (4a)	Address of the Entity (4b)	Nature of Interest (5)	Date since held (6)	Total Investment (at cost) (7)	Income accrued from such Interest (8)	Nature of Income (9)	Interest taxable and offered in this return		
										Amount (10)	Schedule where offered (11)	Item number of schedule (12)
1	44 - UNITED KINGDOM OF GREAT BRITAIN AND NORTERN IRELAND	LLP	HEWITSONS LLP CLIENT ACCOUNT	SHAKESPEAR HOUSE 42 NEW MARKET ROAD CAMBRIDGE CB5 8EP DX 133155 CAMBRIDGE 8 ENGLAND	DIRECT	24/03/2015	7716510	0	0	0	0	0

C	Details of Immovable Property held (including any beneficial interest) at any time during the previous year										
SI.No (1)	Country Name and Code (2)	Address of the Property (3)	Ownership (4)	Date of acquisition (5)	Total Investment (at cost) (6)	Income derived from the Property (7)	Nature of Income (8)	Income taxable and offered in this return		
								Amount (9)	Schedule where offered (10)	Item number of schedule (11)

D	Details of any other Capital Asset held (including any beneficial interest) at any time during the previous year							
Sl.No (1)	Country Name and	Nature of Asset	Ownership (4)	Date of acquisition	Total Investment	Income derived	Nature of Income	Income taxable and offered in this return

D	Details of any other Capital Asset held (including any beneficial interest) at any time during the previous year									
	Code (2)	(3)		(5)	(at cost) (6)	from the Asset (7)	(8)	Amount (9)	Schedule where offered (10)	Item number of schedule (11)
E	Details of account(s) in which you have signing authority held (including any beneficial interest) at any time during the previous year and which has not been included in A to D above.									
Sl.No (1)	Name of the Institution in which the account is held (2)	Address of the Institution (3)	Name of the account holder (4)	Account Number (5)	Peak Balance/Investment during the year (6)	Whether income accrued is taxable in your hands (7)	In (7) is yes, Income accrued in the account (8)	If (7) is yes, Income offered in this return		
								Amount (9)	Schedule where offered (10)	Item number of schedule (11)

Original Return of Income filed on 31.07.2016 by Mrs. Srinidhi Karthi Chidambaram for the Assessment Year 2016-17:-

Schedule FA:- Details of Foreign Assets and Income from any source outside India:-

A	Details of Foreign Bank Accounts held (including any beneficial interest) at any time during the previous year											
Sl.No. (1)	Country Name and Code (2)	Name of the Bank (3a)	Address of the Bank (3b)	Account holder name (4)	Status (5)	Account Number (6)	Account opening date (7)	Peak Balance During the Year (8)	Interest accrued in the account (9)	Interest taxable and offered in this return		
										Amount (10)	Schedule where offered (11)	Item number of schedule (12)

B	Details of Financial Interest in any Entity held (including any beneficial interest) at any time during the previous year											
Sl.No. (1)	Country Name and Code (2)	Nature of entity (3)	Name of the Entity (4a)	Address of the Entity (4b)	Nature of Interest (5)	Date since held (6)	Total Investment (at cost) (7)	Income accrued from such Interest (8)	Nature of Income (9)	Interest taxable and offered in this return		
										Amount (10)	Schedule where offered (11)	Item number of schedule (12)

C	Details of Immovable Property held (including any beneficial interest) at any time during the previous year									
SI.No (1)	Country Name and Code (2)	Address of the Property (3)	Ownership (4)	Date of acquisition (5)	Total Investment (at cost) (6)	Income derived from the Property (7)	Nature of Income (8)	Income taxable and offered in this return		
								Amount (9)	Schedule where offered (10)	Item number of schedule (11)
1	44 - UK	5 Holben Close, BARTON Cambridge CB23 7AQ	DIRECT	28/05/2015	155027510	0	0	0	0	0

D	Details of any other Capital Asset held (including any beneficial interest) at any time during the previous year									
Sl.No (1)	Country Name and Code (2)	Nature of Asset (3)	Ownership (4)	Date of acquisition (5)	Total Investment (at cost) (6)	Income derived from the Asset (7)	Nature of Income (8)	Income taxable and offered in this return		
								Amount (9)	Schedule where offered (10)	Item number of schedule (11)

Return of Income filed on 30.07.2017 by Mrs. Srinidhi Karthi Chidambaram for the Assessment Year 2017-18:-

A	Details of Foreign Bank Accounts held (including any beneficial interest) at any time during the previous year											
Sl.No. (1)	Country Name and Code (2)	Name of the Bank (3a)	Address of the Bank (3b)	Account holder name (4)	Status (5)	Account Number (6)	Account opening date (7)	Peak Balance During the Year (8)	Interest accrued in the account (9)	Interest taxable and offered in this return		
										Amount (10)	Schedule where offered (11)	Item number of schedule (12)

B	Details of Financial Interest in any Entity held (including any beneficial interest) at any time during the previous year											
Sl.No. (1)	Country Name and Code (2)	Nature of entity (3)	Name of the Entity (4a)	Address of the Entity (4b)	Nature of Interest Direct/ Beneficial/Owner/Beneficiary (5)	Date since held (6)	Total Investment (at cost) (in rupees) (7)	Income accrued from such Interest (8)	Nature of Income (9)	Interest taxable and offered in this return		
										Amount (10)	Schedule where offered (11)	Item number of schedule (12)
1	UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND	ADVANCE FOR FINANCIAL INTEREST	HEWITSONS LLP	SHAKESPEAR HOUSE, 42 NEW MARKET ROAD, CHAMBRIDGE, CB 58EP	DIRECT	13/04/2015	22796437	0	0	0	NIL	NIL

C	Details of Immovable Property held (including any beneficial interest) at any time during the previous year								
SI.No (1)	Country Name and Code (2)	Address of the Property (3)	Ownership-Direct/ Beneficial owner/Beneficiary (4)	Date of acquisition (5)	Total Investment (at cost) (in rupees) (6)	Income derived from the Property (7)	Nature of Income (8)	Income taxable and offered in this return	
								Amount (9)	Schedule where offered (10)	Item number of schedule (11)
1	44 - UK	5 Holben Close, BARTON Cambridge CB23 7AQ	DIRECT	28/05/2015	11507510	0	0	0	NIL	NIL

D	Details of any other Capital Asset held (including any beneficial interest) at any time during the previous year								
Sl.No (1)	Country Name and Code (2)	Nature of Asset (3)	Ownership-Direct/Beneficial owner/Beneficiary (4)	Date of acquisition (5)	Total Investment (at cost) (6)	Income derived from the Asset (7)	Nature of Income (8)	Income taxable and offered in this return	
								Amount (9)	Schedule where offered (10)	Item number of schedule (11)

E	Details of account(s) in which you have signing authority held (including any beneficial interest) at any time during the previous year and which has not been included in A to D above.								
Sl.No (1)	Name of the Institution in which the account is held (2)	Address of the Institution (3)	Name of the account holder (4)	Account Number (5)	Peak Balance/Investment during the year (6)	Whether income accrued is taxable in your hands (7)	In (7) is yes, Income accrued in the account (8)	If (7) is yes, Income offered in this return	
								Amount (9)	Schedule where offered (10)	Item number of schedule (11)

F	Details of trusts, created under the laws of a country outside India, in which you are a trustee, beneficiary or settlor													
Sl. No (1)	Country Name and Code (2)	Name of the Trust (3a)	Address of the Trust (3b)	Name of the trustees (4a)	Address of the trustees (4b)	Name of the Settlor (5a)	Address of the Settlor (5b)	Name of Beneficiaries (6a)	Address of Beneficiaries (6b)	Date since position held (7)	Whether income derived is taxable in you hands (8)	If (8) is yes, Income derived from the trust (9)	If (8) is yes, Income offered in this return	
													Amount (10)	Schedule where offered (11)	Item number of schedule (12)

G	Details of any other income derived from any source outside India which is not included in,-(i) items A to F above and, (ii) income under the head business or profession

Return of Income filed by Mrs.Nalini Chidambaram, dated 14.10.2016 for the Assessment Year 2016-17 (Original), under Section 139(1) of the Income Tax Act:-

C. Details of Immovable Property held (including any beneficial interest) at any time during the previous year:-

SI.No (1)	Country Name and Code (2)	Address of the Property (3)	Ownership (4)	Date of acquisition (5)	Total Investment (at cost) (6)	Income derived from the Property (7)	Nature of Income (8)	Income taxable and offered in this return		
								Amount (9)	Schedule where offered (10)	Item number of schedule (11)

Return of Income filed by Mrs.Nalini Chidambaram, dated 21.08.2017 for the Assessment Year 2016-17 [Revised Return under Section 139(5)]:-

Schedule FA: Details of Foreign Assets and Income from any source outside India:-

A	Details of Foreign Bank Accounts held (including any beneficial interest) at any time during the previous year											
Sl.No. (1)	Country Name and Code (2)	Name of the Bank (3a)	Address of the Bank (3b)	Account holder name (4)	Status (5)	Account Number (6)	Account opening date (7)	Peak Balance During the Year (8)	Interest accrued in the account (9)	Interest taxable and offered in this return		
										Amount (10)	Schedule where offered (11)	Item number of schedule (12)

B	Details of Financial Interest in any Entity held (including any beneficial interest) at any time during the previous year											
Sl.No. (1)	Country Name and Code (2)	Nature of entity (3)	Name of the Entity (4a)	Address of the Entity (4b)	Nature of Interest (5)	Date since held (6)	Total Investment (at cost) (7)	Income accrued from such Interest (8)	Nature of Income (9)	Interest taxable and offered in this return		
										Amount (10)	Schedule where offered (11)	Item number of schedule (12)

C	Details of Immovable Property held (including any beneficial interest) at any time during the previous year:-									
SI.No (1)	Country Name and Code (2)	Address of the Property (3)	Ownership (4)	Date of acquisition (5)	Total Investment (at cost) (6)	Income derived from the Property (7)	Nature of Income (8)	Income taxable and offered in this return		
								Amount (9)	Schedule where offered (10)	Item number of schedule (11)
1	44 - UK	5, HOLBEN CLOSE, BARTON, CAMBRIDGE	DIRECT	01/05/2015	15521181	0	NA	0	NA	NA

D	Details of any other Capital Asset held (including any beneficial interest) at any time during the previous year									
SI.No (1)	Country Name and Code (2)	Nature of Asset (3)	Ownership (4)	Date of acquisition (5)	Total Investment (at cost) (6)	Income derived from the Asset (7)	Nature of Income (8)	Income taxable and offered in this return		
								Amount (9)	Schedule where offered (10)	Item number of schedule (11)

E	Details of account(s) in which you have signing authority held (including any beneficial interest) at any time during the previous year and which has not been included in A to D above.									
Sl.No (1)	Name of the Institution in which the account is held (2)	Address of the Institution (3)	Name of the account holder (4)	Account Number (5)	Peak Balance/Investment during the year (6)	Whether income accrued is taxable in your hands (7)	In (7) is yes, Income accrued in the account (8)	If (7) is yes, Income offered in this return		
								Amount (9)	Schedule where offered (10)	Item number of schedule (11)

F	Details of trusts, created under the laws of a country outside India, in which you are a trustee, beneficiary or settlor														
Sl.No (1)	Country Name and Code (2)	Name of the Trust (3a)	Address of the Trust (3b)	Name of the trustee (4a)	Address of the trustee (4b)	Name of the Settlor (5a)	Address of the Settlor (5b)	Name of Beneficiaries (6a)	Address of Beneficiaries (6b)	Date since position held (7)	Whether income derived is taxable in you hands (8)	If (8) is yes, Income derived from the trust (9)	If (8) is yes, Income offered in this return		
													Amount (10)	Schedule where offered (11)	Item number of schedule (12)

G	Details of any other income derived from any source outside India which is not included in,-(i) items A to F above and, (ii) income under the head business or profession								
Sl.No. (1)	Country Name and Code	Name of the person from whom derived (3a)	Address of the person from whom derived (3b)	Income derived (4)	Nature of income (5)	Whether taxable in your hands? (6)	If (6) is yes, Income offered in this return		
							Amount (7)	Schedule where offered (8)	Item number of schedule (9)

Particulars	Rs
Schedule 1 : Capital A/c	
Opening Balance	295,967,599
Less :	
Drawings	(602,973)
Medical Expenses	(57,597)
Muttukadu Land Advance	(40,800,000)
Property Tax	(119,218)
Sale proceeds Muttukadu Land	(46,990,660)
Add :	
Income tax and Wealth Tax Paid	590,274
Agriculture Income	6,225,972
Interest on FD	1,251,871
Bank Interest	155,235
Dividend Received	144,795
Rental Income	1,800,000
Other Interest	171,896
Sale of Innova Car	460,000
Nalini Chidambaram Capital	39,310,925
Gain on sale of Muttukadu Land	40,525,000
Add : Profit for the year	4,778,867
Closing Balance	302,811,986
Schedule 2 : Current Liabilities	
TDS Payable	29,133
Total	29,133
Schedule 3 : Immovable Property	
Kailash Estate	11,796,682
Karaikudi - Agricultural Land	254,000
Managiri Land & House	43,178,234
Sivagangai Office Premises	3,267,500
Delhi House	160,500,000
Cambridge Property (1/3rd share)	15,521,181
Total	**234,517,597**

180. Schedule to the balance sheet does indicate that Mrs.Nalini Chidambaram had disclosed that she owns 1/3rd share in Cambridge property. On receipt of the notices, under Section 10, a revised return under Section 139(5) was filed, wherein, in schedule FA, the entire property in cambridge, has been disclosed. Caption of Schedule FA deals with the details

of the foreign assets and income from any source, outside India.

181. Perusal of the Schedule FA, would prima facie indicate that this schedule would apply only for cases, which comes under Section 2(12) of the BM Act, meaning thereby, this schedule, would have to be filled, only when the assessee has a foreign asset and also foreign income. In case, the assessee does not have foreign income, schedule FA need not be filled up. Even though, Table 'C' in Schedule FA, warrants that the assessee must give details of Immovable Property held (including any beneficial interest) at any time during the previous year, the title of FA indicates that the Schedule FA should be filled up by an assessee, who has both foreign assets and source of income, outside the country. Even if it is held that Table 'C' in Schedule FA would take into its ambit, assets held in foreign country, even without a source of income, outside the country, yet in the present case, the existence of said property has been revealed in the annexure to the balance sheet.

182. As discussed earlier, the information as sought for, under Section 10, has been furnished, in the return filed under Section 139(5) of the Income Tax Act. The notice, under Section 10 of Black Money Act, has been issued, even before the time period, for filing a revised return, under Section 139(5), is over, and at best, be construed only as a notice, under Section 142 of the Income Tax Act, for further information.

Return of Income filed by Mrs.Nalini Chidambaram, dated 30.10.2017 for the Assessment Year 2017-18:-

Schedule FA:- Details of Foreign Assets and Income from any source outside India:-

A	Details of Foreign Bank Accounts held (including any beneficial interest) at any time during the previous year													
Sl.No. (1)	Country Code and Name (2a)	Zip Code (2b)	Name of the Bank (3a)	Address of the Bank (3b)	Account holder name (4)	Status-Owner/Beneficial owner/Beneficiary (5)	Account Number (6a)	IBAN/SWIFT Code (6b)	Account opening date (7)	Peak Balance During the Year (8)	Interest accrued in the account (9)	Income taxable and offered in this return		
												Amount (10)	Schedule where offered (11)	Item number of schedule (12)

B	Details of Foreign Interest in any Entity held (including any beneficial interest) at any time during the previous year													
Sl.No. (1)	Country Code and Name (2a)	Zip Code (2b)	Name of entity (3a)	Nature of Entity (4a)	Address of the Entity (4b)	Nature of Interest (5)	Date since held (6)	Total Investment (at cost) (7)	Income accrued from such Interest (8)	Nature of Income (9)	Income taxable and offered in this return			
											Amount (10)	Schedule where offered (11)	Item number of schedule (12)	

Details of Immovable Property held (including any beneficial interest) at any time during the previous year										
Country Name and Code (2a)	Zip Code (2b)	Address of the Property (3)	Ownership (4)	Date of acquisition (5)	Total Investment (at cost) (in rupees) (6)	Income derived from the property (7)	Nature of Income (8)	Income taxable and offered in this return		
								Amount (9)	Schedule where offered (10)	Item number of schedule (11)
44 - UNITED KINGDOM OF GREAT BRITAIN AND NORTHEARN IRELAND	CB237AQ	5, Holben Close, Barton, Cambridge	DIRECT	15/06/2015	15521181	0	0	0	Not Applicable	Not Applicable

D	Details of any other Capital Asset held (including any beneficial interest) at any time during the previous year										
Sl.No (1)	Country Code and Name (2a)	Zip Code (2b)	Nature of Asset (3)	Ownership (4)	Date of acquisition (5)	Total Investment (at cost) (6)	Income derived from the asset (7)	Nature of Income (8)	Income taxable and offered in this return		
									Amount (9)	Schedule where offered (10)	Item number of schedule (11)

E	Details of account(s) in which you have signing authority held (including any beneficial interest) at any time during the previous year and which has not been included in A to D above.										
Sl.No.	Name of the Institution in which the account is held (2)	Address of the Institution (3a)	Country Code and Name (3b)	Zip Code (3c)	Name of the account holder (4)	Account Number (5)	Peak Balance/Investment during the year (6)	Whether income accrued is taxable in your hands? (7)	If (7) is yes, Income accrued in the account (8)	If (7) is yes, Income offered in this return		
										Amount (9)	Schedule where offered (10)	Item number of schedule (11)

Return of Income filed by Mr.Karthi P Chidambaram, dated 25.08.2015 for the Assessment Year 2015-16:-

Schedule FA: Details of Foreign Assets and Income from any source outside India:-

A	Details of Foreign Bank Accounts held (including any beneficial interest) at any time during the previous year									
Sl.No. (1)	Country Name and	Name of the Bank	Address of the Bank	Account holder	Status (5)	Account Number	Account opening	Peak Balance	Interest accrued in	Interest taxable and offered in this return

A	Details of Foreign Bank Accounts held (including any beneficial interest) at any time during the previous year											
	Code (2)	(3a)	(3b)	name (4)		(6)	date (7)	During the Year (8)	the account (9)	Amount (10)	Schedule where offered (11)	Item number of schedule (12)

B	Details of Financial Interest in any Entity held (including any beneficial interest) at any time during the previous year											
Sl.No. (1)	Country Name and Code (2)	Nature of entity (3)	Name of the Entity (4a)	Address of the Entity (4b)	Nature of Interest (5)	Date since held (6)	Total Investment (at cost) (7)	Income accrued from such Interest (8)	Nature of Income (9)	Interest taxable and offered in this return		
										Amount (10)	Schedule where offered (11)	Item number of schedule (12)
1	44 - UK	ADVANCE FOR PURCHASE OF IMMOVABLE PROPERTY	HEWITSONS LLP	SHAKESPEAR HOUSE, 42 NEW MARKET ROAD, CAMBRIDGE, CB5 8EP	DIRECT 26/03/2015	26/03/2015	7755613	0	0	0	0	0
2	44 - UK	PRIVATE LIMITED COMPANY	TOTUS TENNIS LIMITED	DEVONSHIRE HOUSE, 60 GOSWELL ROAD, LONDON EC 1M 7AD	BENEFICIAL_OWNER	13/03/2015	0	0	0	0	0	0

C	Details of Immovable Property held (including any beneficial interest) at any time during the previous year								
Sl.No (1)	Country Name and Code (2)	Address of the Property (3)	Ownership (4)	Date of acquisition (5)	Total Investment (at cost) (6)	Income derived from the Property (7)	Nature of Income (8)	Income taxable and offered in this return	
								Amount (9)	Schedule where offered (10)	Item number of schedule (11)

D	Details of any other Capital Asset held (including any beneficial interest) at any time during the previous year								
Sl.No (1)	Country Name and Code (2)	Nature of Asset (3)	Ownership (4)	Date of acquisition (5)	Total Investment (at cost) (6)	Income derived from the Asset (7)	Nature of Income (8)	Income taxable and offered in this return	
								Amount (9)	Schedule where offered (10)	Item number of schedule (11)

E	Details of account(s) in which you have signing authority held (including any beneficial interest) at any time during the previous year and which has not been included in A to D above.								
Sl.No (1)	Name of the Institution in which the account is held (2)	Address of the Institution (3)	Name of the account holder (4)	Account Number (5)	Peak Balance/Investment during the year (6)	Whether income accrued is taxable in your hands (7)	In (7) is yes, Income accrued in the account (8)	If (7) is yes, Income offered in this return	
								Amount (9)	Schedule where offered (10)	Item number of schedule (11)

Return of Income filed, dated 30.07.2016 by Mr.Karthi P Chidambaram for the Assessment Year 2016-17:-

Schedule FA: Details of Foreign Assets and Income from any source outside India:-

A	Details of Foreign Bank Accounts held (including any beneficial interest) at any time during the previous year											
Sl.No. (1)	Country Name and Code (2)	Name of the Bank (3a)	Address of the Bank (3b)	Account holder name (4)	Status (5)	Account Number (6)	Account opening date (7)	Peak Balance During the Year (8)	Interest accrued in the account (9)	Interest taxable and offered in this return		
										Amount (10)	Schedule where offered (11)	Item number of schedule (12)

B	Details of Financial Interest in any Entity held (including any beneficial interest) at any time during the previous year											
Sl.No. (1)	Country Name and Code (2)	Nature of entity (3)	Name of the Entity (4a)	Address of the Entity (4b)	Nature of Interest (5)	Date since held (6)	Total Investment (at cost) (7)	Income accrued from such Interest (8)	Nature of Income (9)	Interest taxable and offered in this return		
										Amount (10)	Schedule where offered (11)	Item number of schedule (12)
1	44 - UK	ADVANCE FOR FINANCIAL INTEREST	HEWITSONS LLP	SHAKESPEAR HOUSE, 42 NEW MARKET ROAD, CAMBRIDGE, CB58EP	DIRECT	13/04/2015	9692229	0	0	0	NIL	NIL
2	44 - UK	PRIVATE LIMITED COMPANY	TOTUS TENNIS LIMITED	DEVONS HIRE HOUSE, 60 GOSWELL ROAD, LONDON EC 1M 7AD	BENEFICIAL_OWNER	13/03/2015	0	0	0	0	NIL	NIL

C	Details of Immovable Property held (including any beneficial interest) at any time during the previous year										
SI.No (1)	Country Name and Code (2)	Address of the Property (3)	Ownership (4)	Date of acquisition (5)	Total Investment (at cost) (6)	Income derived from the Property (7)	Nature of Income (8)	Income taxable and offered in this return			
								Amount (9)	Schedule where offered (10)	Item number of schedule (11)	
1	44 - UK	5 HOLBEN CLOSE, BARTON, CAMBRIDGE, CB23 7AQ	DIRECT	28/05/2015	20336574	0	0	0	NIL	NIL	

D	Details of any other Capital Asset held (including any beneficial interest) at any time during the previous year									
Sl.No (1)	Country Name and Code (2)	Nature of Asset (3)	Ownership (4)	Date of acquisition (5)	Total Investment (at cost) (6)	Income derived from the Asset (7)	Nature of Income (8)	Income taxable and offered in this return		
								Amount (9)	Schedule where offered (10)	Item number of schedule (11)
E	Details of account(s) in which you have signing authority held (including any beneficial interest) at any time during the previous year and which has not been included in A to D above.									
Sl.No (1)	Name of the Institution in which the account is held (2)	Address of the Institution (3)	Name of the account holder (4)	Account Number (5)	Peak Balance/Investment during the year (6)	Whether income accrued is taxable in your hands (7)	In (7) is yes, Income accrued in the account (8)	If (7) is yes, Income offered in this return		
								Amount (9)	Schedule where offered (10)	Item number of schedule (11)

F	Details of trusts, created under the laws of a country outside India, in which you are a trustee, beneficiary or settlor														
Sl. No (1)	Country Name and Code (2)	Name of the Trust (3a)	Address of the Trust (3b)	Name of the trustee (4a)	Address of the trustee (4b)	Name of the Settlor (5a)	Address of the Settlor (5b)	Name of Beneficiaries (6a)	Address of Beneficiaries (6b)	Date since position held (7)	Whether income derived is taxable in you hands (8)	If (8) is yes, Income derived from the trust (9)	If (8) is yes, Income offered in this return		
													Amount (10)	Schedule where offered (11)	Item number of schedule (12)

G	Details of any other income derived from any source outside India which is not included in,-(i) items A to F above and, (ii) income under the head business or profession								
Sl.No. (1)	Country Name and Code	Name of the person from whom derived (3a)	Address of the person from whom derived (3b)	Income derived (4)	Nature of income (5)	Whether taxable in your hands? (6)	If (6) is yes, Income offered in this return		
							Amount (7)	Schedule where offered (8)	Item number of schedule (9)
Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil	Nil
NOTE	Please refer to instructions for filing out this schedule. In case of an individual, not being an Indian citizen, who is in India on a business, employment or student visa, an asset acquired during any previous year in which he was non-resident is not mandatory to be reported in this schedule if no income is derived from that asset during the current previous year.								

Return of Income filed by M/s.Chess Global Advisory Services

Private Limited, Chennai, dated 15.10.2016 for the Assessment Year 2016-17:-

Schedule FA:- Details of Foreign Assets and Income from any source outside India.

A	Details of Foreign Bank Accounts held (including any beneficial interest) at any time during the previous year											
Sl.No. (1)	Country Name and Code (2)	Name of the Bank (3a)	Address of the Bank (3b)	Account holder name (4)	Status - Owner/Beneficial owner / Beneficiary (5)	Account Number (6)	Account opening date (7)	Peak Balance During the Year (in rupees) (8)	Interest accrued in the account (9)	Interest taxable and offered in this return		
										Amount (10)	Schedule where offered (11)	Item number of schedule (12)

B	Details of Financial Interest in any Entity held (including any beneficial interest) at any time during the previous year											
Sl.No. (1)	Country Name and Code (2)	Nature of entity (3)	Name of the Entity (4a)	Address of the Entity (4b)	Nature of Interest - Direct/Beneficial owner / Beneficiary (5)	Date since held (6)	Total Investment (at cost) (in rupees) (7)	Income accrued from such Interest (8)	Nature of Income (9)	Interest taxable and offered in this return		
										Amount (10)	Schedule where offered (11)	Item number of schedule (12)
1	44 - UNITED KINGDOM OF GREAT BRITAIN AND NORTERN IRELAND	PRIVATE LIMITED	TOTUS TENNIS LIMITED	DEVONSHIRE HOUSE, NO.60 GOSWELL ROAD, LAND ON	DIRECT	01/07/2015	100295	0	0	0	0	0

C	Details of Immovable Property held (including any beneficial interest) at any time during the previous year							
SI.No (1)	Country Name and Code (2)	Address of the Property (3)	Ownership - Direct/Beneficial owner/Beneficiary (4)	Date of acquisition (5)	Total Investment (at cost) (in rupees) (6)	Income derived from the Property (7)	Nature of Income (8)	Income taxable and offered in this return
								Amount (9) / Schedule where offered (10) / Item number of schedule (11)

D	Details of any other Capital Asset held (including any beneficial interest) at any time during the previous year							
Sl.No (1)	Country Name and Code (2)	Nature of Asset (3)	Ownership - Direct/Beneficial owner/Beneficiary (4)	Date of acquisition (5)	Total Investment (at cost) (6)	Income derived from the Asset (7)	Nature of Income (8)	Income taxable and offered in this return
								Amount (9) / Schedule where offered (10) / Item number of schedule (11)

E	Details of account(s) in which you have signing authority held (including any beneficial interest) at any time during the previous year and which has not been included in A to D above.							
Sl.No (1)	Name of the Institution in which the account is held (2)	Address of the Institution (3)	Name of the account holder (4)	Account Number (5)	Peak Balance/Investment during the year (in rupees) (6)	Whether income accrued is taxable in your hands? (7)	In (7) is yes, Income accrued in the account (8)	If (7) is yes, Income offered in this return
								Amount (9) / Schedule where offered (10) / Item number of schedule (11)

F	Details of trusts, created under the laws of a country outside India, in which you are a trustee, beneficiary or settlor													
Sl. No (1)	Country Name and Code (2)	Name of the Trust (3a)	Address of the Trust (3b)	Name of the trustee (4a)	Address of the trustee (4b)	Name of the Settlor (5a)	Address of the Settlor (5b)	Name of Beneficiaries (6a)	Address of Beneficiaries (6b)	Date since position held (7)	Whether income derived is taxable in you hands (8)	If (8) is yes, Income derived from the trust (9)	If (8) is yes, Income offered in this return	
													Amount (10) / Schedule where offered (11) / Item number of schedule (12)	

Revised Return of Income, dated 04.09.2017, filed by M/s.Chess Global Advisory Services Private Limited, Chennai for the Assessment Year 2016-17:-

Schedule FA:- Details of Foreign Assets and Income from any source outside India.

A	Details of Foreign Bank Accounts held (including any beneficial interest) at any time during the previous year											
Sl.No. (1)	Country Name and Code (2)	Name of the Bank (3a)	Address of the Bank (3b)	Account holder name (4)	Status - Owner/Beneficial owner / Beneficiary (5)	Account Number (6)	Account opening date (7)	Peak Balance During the Year (in rupees) (8)	Interest accrued in the account (9)	Interest taxable and offered in this return		
										Amount (10)	Schedule where offered (11)	Item number of schedule (12)

B	Details of Financial Interest in any Entity held (including any beneficial interest) at any time during the previous year											
Sl.No. (1)	Country Name and Code (2)	Nature of entity (3)	Name of the Entity (4a)	Address of the Entity (4b)	Nature of Interest - Direct/ Beneficial owner / Beneficiary (5)	Date since held (6)	Total Investment (at cost) (in rupees) (7)	Income accrued from such Interest (8)	Nature of Income (9)	Interest taxable and offered in this return		
										Amount (10)	Schedule where offered (11)	Item number of schedule (12)
1	44 - UK	PRIVATE LIMITED	TOTUS TENNIS LIMITED	DEVONSHIRE HOUSE, NO.60 GOSWELL ROAD, LAND ON	DIRECT	01/07/2015	100295	0	0	0	0	0
2	44 - UK	PRIVATE LIMITED	TOTUS TENNIS LIMITED	DEVONSHIRE HOUSE, NO.60 GOSWELL ROAD, LAND ON	DIRECT	01/07/2015	1809505	0	0	0	0	0
3	44 - UK	PRIVATE LIMITED	TOTUS TENNIS LIMITED	DEVONSHIRE HOUSE, NO.60 GOSWELL ROAD, LAND ON	DIRECT	22/09/2015	2319975	0	0	0	0	0
4	44 - UK	PRIVATE LIMITED	TOTUS TENNIS LIMITED	DEVONSHIRE HOUSE, NO.60 GOSWELL ROAD, LAND ON	DIRECT	24/11/2015	188568	0	0	0	0	0
5	44 - UK	PRIVATE LIMITED	TOTUS TENNIS LIMITED	DEVONSHIRE HOUSE, NO.60 GOSWELL ROAD, LAND ON	DIRECT	13/01/2016	1885667	0	0	0	0	0
6	2 - USA	LLC	NANOHOLDINGS LLC	112 ROWAYTON AVE, STITE3 ROWAYTON CT 06853	DIRECT	20/08/20150	32762500	0	0	0	0	0

C	Details of Immovable Property held (including any beneficial interest) at any time during the previous year									
SI.No (1)	Country Name and Code (2)	Address of the Property (3)	Ownership - Direct/ Beneficial owner/ Beneficiary (4)	Date of acquisition (5)	Total Investment (at cost) (in rupees) (6)	Income derived from the Property (7)	Nature of Income (8)	Income taxable and offered in this return		
								Amount (9)	Schedule where offered (10)	Item number of schedule (11)

D	Details of any other Capital Asset held (including any beneficial interest) at any time during the previous year									
Sl.No (1)	Country Name and Code (2)	Nature of Asset (3)	Ownership - Direct/ Beneficial owner/ Beneficiary (4)	Date of acquisition (5)	Total Investment (at cost) (6)	Income derived from the Asset (7)	Nature of Income (8)	Income taxable and offered in this return		
								Amount (9)	Schedule where offered (10)	Item number of schedule (11)

E	Details of account(s) in which you have signing authority held (including any beneficial interest) at any time during the previous year and which has not been included in A to D above.									
Sl.No (1)	Name of the Institution in which the account is held (2)	Address of the Institution (3)	Name of the account holder (4)	Account Number (5)	Peak Balance/ Investment during the year (in rupees) (6)	Whether income accrued is taxable in your hands? (7)	In (7) is yes, Income accrued in the account (8)	If (7) is yes, Income offered in this return		
								Amount (9)	Schedule where offered (10)	Item number of schedule (11)

183. In the notices issued under Section 10(1) of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, the Deputy Director of Income Tax (Inv) Unit - 3(3), has alleged that the petitioners, have not disclosed foreign asset/financial interest in schedule-FA and for the purpose of assessment, under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, the petitioners have been directed to produce information and documents. Details of the alleged non-disclosure, are as follows:-

Nalini Chidambaram	You have "not disclosed the said foreign assets/financial interests in Schedule FA of the Returns of Income filed by you for the Assessment Years 2015-16 and 2016-17 on 30/09/2015 and 17/10/2016", respectively.
Srinidhi Karti Chidambaram	You have "not disclosed the said foreign assets/financial interests fully in Schedule FA of the Return of Income filed by you for the Assessment Year 2016-17 on 30/07/2016".
Karti P. Chidambaram	You have "not disclosed the said foreign assets/financial interests fully in Schedule FA of the Return of Income filed by you for the Assessment Year 2016-17 on 30/07/2016".
M/s.Chess Global Advisory Services Private Limited	The company (M/s.Chess Global Advisory Services Private Limited) have "not disclosed the said foreign assets/financial interests in the Return of Income filed for the Assessment Year 2016-17 on 15/10/2016".

184. An analysis of Sections 49 and 50 of the BM Act, would show that when an assessee has got a source of income outside the country and an foreign asset, then when the details of such asset is not furnished in his

return, under Section 139(1), an offence, under Section 49 of the BM Act, is attracted. Section 50, on the other hand, gets attracted only when information relating to an asset located outside India, has not been furnished, in 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.

185. The Legislature has consciously included Section 139(4) and 139(5) in Section 50 of the BM Act and has excluded it in Section 49 of the BM Act. The petitioners are being prosecuted under Section 50 of the BM Act. If the contention of the Department is accepted, then the term "or sub-Section (4) or sub-Section (5) of Section 139" would be rendered meaningless. The purpose of Section 139(5) of the IT Act, as discussed above, is to enable the assessee, to file a revised return, if having furnished a return, under sub-Section (1) or sub-Section (4), the assessee discovers any omission or any wrong statement therein. Even assuming that schedule AL would take into its ambit, discovery of an asset, outside the country, even if there is no source of income, outside the country, even then, an offence under Section 50 cannot be attracted, till the time period for filing a return, under Section 139(5) of the Income Tax Act, is not over.

186. This is not a case, where there is complete failure to disclose of the existence of asset, outside the country. As stated earlier, all the parties,

including Nalini Chidambaram, had disclosed the existence of the foreign asset (Nalini Chidambaram having disclosed the same in the schedules annex to the balance sheet). Srinidi Chidambaram and Karthi P Chidambaram had disclosed the existence of asset in their original return, under Section 139(1) itself.

187. It is pertinent to mention here that Section 139(5) was amended in 01.04.2017. Prior to 01.04.2017, Section 139(5) reads as hereunder:

> *"(5) If any person, having furnished a return under sub-Section (1), or in pursuances of a notice issued under sub-Section (1) of section 142, discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier:*
>
> *Provided that where the return relates to the previous year relevant to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year, the reference to one year aforesaid shall be construed as a reference to two years from the end of the relevant assessment year."*

188. Reading of Section 139(5), as it stood then, would show that the assessee was permitted to file revised return, under Section 139(5), even in pursuance to the notice, under sub-Section (1) to Section 142. If the

assessee discovers omission or any wrong statement, in pursuance to the notice, under Section 142, he still had an option to file a revised return at any time, before expiry of one year, from the end of the relevant assessment year, in which case, as stated above, the notice under Section 10, can at best be construed only as a notice, under Section 142 of the Income Tax Act.

189. It is trite law that a Section which has a penal consequence has to be read strictly and therefore, the words, "or sub-Section (4) or sub-Section (5) of Section 139" has to be given some meaning and an offence, under Section 50 of the BM Act, would be attracted, only after the period to file the revised return, under Section 139(5) is over and if there is a wilful failure to furnish the information of a foreign asset/financial interest in the return. Except in cases, of course, where there is a complete fraud played by the assessee, by filing a false return.

190. As per the definition 2(11) of the Black Money Act, 2015 (1) there should be an asset including financial interest in any entity; (2) it must be outside India; (3) He has no explanation to offer about the source of investment in such asset; or the explanation offered by the assessee, is in the opinion of the assessing officer's unsatisfactory.

191. In the case on hand, the assessees held asset outside India. They have offered an explanation that the said property has been purchased from a source of income in India. It is not the case of the respondents that the assessees have not offered any explanation about the source of income. Section 2(11) is attracted, when the assessee has no explanation to offer

about the source of income and if any explanation is offered, such explanation in the opinion of the Assessing Officer, should be unsatisfactory. When the assessee has offered explanation, about the source of investment and paid tax, then it is the duty of the assessing officer to come to the conclusion that in his opinion, the explanation offered is not satisfactory. The words, "in the opinion of the assessing officer", with reference to the expression, "he has no explanation about the source of investment in such assessment or the explanation given by him, is not satisfactory, makes it clear that the assessing officer should arrive at the subjective satisfaction on the source of investment, in such assessment. Formation of opinion, as to the source of investment is an important element, engrained in the definition. Section 2(11) is attracted, if only the assessee has no explanation to offer and if the explanation offered is not satisfactory.

192. In the case on hand, before the Assessing Officer could form an opinion, under Section 2(11) of the Act, the respondent has issued show cause notices, dated 13.04.2018, as to why, prosecution should not be initiated. It is the duty of the assessing officer,

(i) to consider the explanation;

(ii) to arrive at a decision or form an opinion and

(iii) record reasons, as to why, the explanation is not satisfactory.

If the assessing officer has not formed an opinion that the explanation offered is unsatisfactory, then the very foundation to proceed further, is lost.

193. Section 2(11) of the Black Money Act, contemplates exercise of power coupled with a duty. Power coupled with a duty to act, to promote the object of the Act, cannot be exercised arbitrarily.

194. It is also useful to refer as to what ***Lord Cairns*** said in ***Julius vs. Lord Bishop of Oxford, in (1874-80) 5 AC 214 : 1847-80 All England Reporter 43 HL***, considered in ***State (Delhi Admn.) Vs. I.K.Nangia and another,*** reported in ***(1980) 1 SCC 258***, held thus:-

> *"There may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something, in the conditions under which it is to be done, something in the title of the persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed to exercise that power when called upon to do so."*

195. Maxwell on Interpretation of Statutes, ***11th Edn. at Page 231***, referred to in *I.K.Nangia's* case is reproduced hereunder:-

> *"Statutes which authorise persons to do acts For the benefit of others, or, as it is sometimes said, for the public good or the advancement of justice, have often given rise to controversy when conferring the authority in terms simply enabling and not mandatory. In enacting that they "may" or "shall, if they think fit", or, "shall have power", or that "it shall be lawful" for them to do such acts, a statute appears to use the language of mere permission, but it has been so often decided as*

to have become an axiom that in such cases such expressions may have-to say the least-a compulsory force, and so could seem to be modified by judicial exposition. (Emphasis supplied)."

196. Though in ***Kumari Shrilekha Vidyarthi and Others vs. State of U.P. and Others***, reported in ***(1991) 1 SCC 212***, the Hon'ble Supreme Court considered appointment to the office of Public Prosecutor/Law Officers, a State action, reference can be made to few paragraphs on the aspect of arbitrariness:

"35. It is now too well-settled that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution and basic to the rule of law, the system which governs us. Arbitrariness is the very negation of the rule of law. Satisfaction of this basic test in every State action is sine qua lion to its validity and in this respect, the State cannot claim comparison with a private individual even in the field of contract. This distinction between the State and a private individual in the field of contract has to be borne in the mind.

36. The meaning and true import of arbitrariness is more easily visualized than precisely stated or defined. The question, whether an impugned act is arbitrary or not, is ultimately to be answered on the facts and in the circumstances of a given case. An obvious test to apply is to see whether there is any discernible principle emerging from the impugned act and if so, does it satisfy the test of reasonableness. Where a mode is prescribed for doing an act and there is no impediment in following that procedure, performance of the act otherwise and in a manner which does not disclose any discernible principle

which is reasonable, may itself attract the vice of arbitrariness. Every State action must be informed by reason and it follows that an act uninformed by reason, is arbitrary. Rule of law contemplates governance by laws and not by humour, whims or caprices of the men to whom the governance is entrusted for the time being. It is trite that be you ever so high, the laws are above you'. This is what men in power must remember, always.

37. Almost a quarter century back, this Court in S.G. Jaisinghani v. Union of India and Ors., [1967] 2 SCR 703, at p. 7 18-19, indicated the test of arbitrariness and the pit- falls to be avoided in all State actions to prevent that vice, in a passage as under:

"In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (See Dicey--"Law of the Constitution"-Tenth Edn., Introduction cx). "Law has reached its finest moments", stated Douglas, J. in United States v. Wunderlick, (*), "when it has freed man from the unlimited discretion of some ruler ... Where discretion is absolute, man has always suffered". It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord

Mansfield stated it in classic terms in the case of John Wilker (*), "means sound discretion guided by law. It must be governed by rule, not humour: it must not be arbitrary, vague and fanciful."

38. After Jaisinghani's case (supra), long strides have been taken in several well-known decisions of this Court expanding the scope of judicial review in such matters. It has been emphasized time and again that arbitrariness is anathema to State action in every sphere and wherever the vice percolates, this Court would not be impeded by technicalities to trace it and strike it down. This is the surest way to ensure the majesty of rule of law guaranteed by the Constitution of India. It is, therefore, obvious that irrespective of the nature of appointment of the Government Counsel in the districts in the State of U.P. and the security of tenure being even minimal as claimed by the State, the impugned circular, in order to survive, must withstand the attack of arbitrariness and be supported as an informed decision which is reasonable.

39. No doubt, it is for the person alleging arbitrariness who has to prove it. This can be done by showing in the first instance that the impugned State action is uninformed by reason inasmuch as there is no discernible principle on which it is based or it is Contrary to the prescribed mode of exercise of the power or is unreasonable. If this is shown, then the burden is shifted to the State to repel the attack by disclosing the material and reasons which led to the action being taken in order to show that it was an informed decision Which was reasonable. If after a prima facie case of arbitrariness is made out, the State is unable to show that the decision is an informed action which is reasonable, the State action must perish as

arbitrary."

197. At this juncture, it is useful to refer, ***De Smith's Judicial Review of Administrative Action, Fourth Edition Page 283 and 285***, considered in ***Andhra Pradesh S.R.T.C. v. State Transport Appellate Tribunal***, reported in ***1998 7 SCC 353***, held as follows:-

"An authority may have a discretion whether to exercise a power, and a discretion in the manner of exercising it. But discretionary powers are frequently coupled with duties. A Minister may be empowered to confirm or refuse to confirm a compulsory purchase order. In making his decision he is entitled to exercise a very wide discretion, but he is under a legal duty to determine the application for confirmation one way or the other. Again, to the extent that a discretionary power is not absolute, the repository of a discretion is under a legal duty to observe certain requirements that condition the manner in which its discretion may be exercised." Page 285:-

"The relevant principles formulated by the courts may be broadly summarised as follows. The authority in which a discretion is authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it: it must not act under the dictation of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion it must not do what it has been forbidden to do, nor must it do what it has not been authorised to do. it must act in good faith, must have regard to

all relevant considerations and must not be swayed by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously."

198. Before proceeding with any action, it is the duty of the assessing officer to arrive at a conclusion, as to whether, there is an undisclosed income under Section 2(11) and a duty is cast on the assessing officer to form an opinion, under Section 2(11). Expression, "undisclosed source of investment" depends on the existence of the above and the opinion is dependent on each one of the facts. Show cause notice issued is totally extraneous to Section 2(11) of the Act.

199. At this juncture, it is pertinent to consider, what "satisfaction" means. "Satisfaction" means to be satisfied with a state of things, meaning thereby, to be satisfied in one's own mind. Satisfaction is essentially a conclusion of mind. The word "satisfied" means, "makes up its mind". Reference can be made to the decision, Blyth vs Blyth reported in (1966) 1 All England Reporter 541, Smith,J., in Angland vs Payne reported in (1944) NLLR 610, 626 stated that "satisfied" means, a mind which has reached a clear conclusion.

200. Referring to the clarifications on tax compliance, on undisclosed foreign income and assets, Circular No.13 of 2015, dated 06.07.2015, issued by the Central Board of Direct Taxes (TPL Division), Department of Revenue,

Ministry of Finance, Government of India, on the frequently asked questions and answers given by the Board and in particular, to Question No.18 and the answer given, Mr.Gopal Subramanium, learned Senior Counsel submitted that there was a serious flaw in the software prepared by the Department in Schedule FA of the Income Tax Returns and therefore, Question No.18 came to be raised by the assessees and answered by the Board. Question No.18 and the answer are extracted hereunder:

> "***Question No.18: A person holds certain foreign assets which are fully explained and acquired out of tax paid income. However, he has not reported these assets in Schedule FA of the Income-tax Return in the past. Should he declare such assets under Chapter VI of the Act?***
>
> ***Answer:*** Since, these assets are fully explained they are not treated as undisclosed foreign assets and should not be declared under Chapter VI of the Act. However, if these assets are not reported in Schedule FA of the Income-tax return for assessment year 2016-17 (relating to previous year 2015-16) or any subsequent assessment year by a person, being a resident (other than not ordinarily resident), then he shall be liable for penalty of Rs.10 lakhs under Section 43 of the Act. The penalty is, however, not applicable in respect of an asset being one or more foreign bank accounts having an aggregate balance not exceeding an amount equivalent to Rs.5 Lakhs, at any time during the previous year."

201. Reading of the question raised and the answer given by the

Board, makes it clear that when a person holds certain foreign assets, which are fully explained and acquired, out of tax paid income, but the assessee did not report the said assets in Schedule FA of the Income Tax Returns, in the past and as to the specific question of the assessee, as to whether, he should declare such assets under Chapter VI of the Black Money Act, the Central Board of Direct Taxes, in its letter, dated 06.07.2015, has opined that, if the assets are not reported, in Schedule FA of the Income-tax return for assessment year 2016-17 (relating to previous year 2015-16) or any subsequent assessment year by a person, being a resident (other than not ordinarily resident), then he shall be liable for penalty of Rs.10 lakhs under Section 43 of the Act. Penalty, however, is not applicable in respect of an asset, being one or more foreign bank accounts, having an aggregate balance not exceeding an amount equivalent to Rs.5 Lakhs, at any time during the previous year.

202. In the case on hand, the assessees have furnished the details of the assets in Schedule FA of the Income-Tax returns, under Section 139(5). Thus, even taking it for granted that the assessees have omitted to furnish the details in the returns under Section 139(1) of the Act, in the light of the decision of Central Board of Direct Taxes, prosecution cannot be launched, but at best, there could only be penal proceedings.

203. Income Tax Department and Government of India have

introduced a scheme, called as, "Income Declaration Scheme, 2016", which has come into force, on the first day of June, 2016. Chapter IX of the Finance Act, 2016 and Section 183 deals with declaration of undisclosed income and it reads thus,

> "183. (1) Subject to the provisions of this Scheme, any person may make, on or after the date of commencement of this Scheme but before a date to be notified by the Central Government in the Official Gazette, a declaration in respect of any income chargeable to tax under the Income-tax Act for any assessment year prior to the assessment year beginning on the 1st day of April, 2017-
>
> (a) for which he has failed to furnish a return under section 139 of the Income-tax Act;
>
> (b) which he has failed to disclose in a return of income furnished by him under the Income-tax Act before the date of commencement of this Scheme;
>
> (c) which has escaped assessment by reason of the omission or failure on the part of such person to furnish a return under the Income-tax Act or to disclose fully and truly all material facts necessary for the assessment or otherwise.
>
> (2) Where the income chargeable to tax is declared in the form of investment in any asset, the fair market value of such asset as on the date of commencement of this Scheme shall be deemed to be the undisclosed income for the purposes of sub-section (1).
>
> (3) The fair market value of any asset shall be determined in such manner, as may be prescribed.
>
> (4) No deduction in respect of any expenditure or allowance shall be allowed against the income in respect of

which declaration under this section is made."

204. As per Section 196(d) of Income Declaration Scheme, 2016, the provision of the scheme shall not apply, in relation to any undisclosed foreign income and asset which is chargeable to tax under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (22 of 2015).

205. Under the Scheme, even in case of (i) failure to furnish a return, under Section 139 of the Income Tax Act; (ii) failure to disclose in a return of income furnished by him under the Income-tax Act, before the date of commencement of this Scheme; and (iii) in the case of escaped assessment, by reason of omission or failure to furnish a return under the Income-tax Act or to disclose fully and truly all material facts necessary for the assessment or otherwise, the assessees can make a declaration to disclose fully or truly, all material facts necessary for assessment or otherwise.

206. The expression, "or otherwise", has been used in Section 186(1)(c) of the Act, let us consider few decision as to how the words or otherwise has been interpreted by the Courts.

207. In **Chotanagpur Banking Association Ltd and others v. Govt. of India and others** reported in **AIR 1957 PATNA 666**, a Hon'ble

Division Bench of the Patna High Court held as follows:

20. There is no doubt that the word "or" in "or otherwise'' is a disjunctive that marks an alternative which generally corresponds to the word "either". Where general words follow the designation of particular things, or classes of persons or subjects, the general words will usually be construed to include only those persons or things of the same class or general nature as those specifically enumerated. This is the rule known as "ejusdem generis", and it is founded upon the idea that if the legislature intended the general words to be used in an unrestricted sense, the particular classes would not have 'been mentioned. It is specially applicable to penal statutes.

But under no circumstances, and regardless of the type of statute involved, must the rule be used where the language of the statute under consideration is plain and there is no uncertainty. Its use is permissible only as an aid to the Court in its attempt to ascertain the intent of the law makers. Nor will it to be proper for the Court to follow the rule where to do so will defeat or impair the plain purpose of the legislature. It cannot be employed to restrict the operation of an Act within narrower limits than was intended by the lawmakers.

Nor is the rule to be applied where specific words enumerate subjects which greatly differ from each other, or where the specific words exhaust all the objects of the class mentioned. Under these circumstances, the general words must have a different meaning from that of the

specific words or be meaningless; See Crawford, The Construction. of Statutes, 1940 Edition, pages 326-28.

21. It should be remembered that the rule of construction, which is called the ejusdem generis doctrine, or sometimes the doctrine 'noscitur a sociis". which is that, where general wards immediately follow or are closely associated with specific words, their meaning must be limited by reference to the 'preceding words' is one which ought to be applied with great caution; because it implies a departure from the natural meaning of words, in order to give them a meaning which may or may not have been the intention of the legislature: Smelting Co. of Australia, Ltd. v. Commr. of Inland Revenue, (1897) 1 QB 175 at p. 182 (A).

22. The principle, which should govern such a case, in my opinion, has been clearly set out in Randall on Cardinal Rules of Legal Interpretation, Third Edition, at page 355. They are in these words :

"General words in a statute are prima facie to be taken in their usual sense.

General words following specific words in a statute are prima facie to be taken in their general sense unless the reasonable interpretation of the statute requires them to be used in a sense limited to things ejusdem generis with those which have been specifically mentioned before.

If the particular words exhaust the whole genus the general word must refer to some larger genus."

23. One of the safest guides to the construction of such sweeping general words is to find out the intention

of the legislature in using such general words, when it is difficult to apply them in their literal sense and to hold them to be limited to alia similia. As observed by Hawkins, J. in Hawke V. Dunn, (1897) 1 QB 579, at p. 586 (B) :

"I, of course, recognise the usual rule observed in the construction of Acts of Parliament, that general, following specific, words should, be limited to things ejusdem generis with those before enumerated; but this rule of construction must be controlled by another equally general one, that Acts of Parliament ought, like wills or other documents, to be construed so as to carry out the object sought to be accomplished by them so far as it can be collected from the language employed."

24. The question when the rule of ejusdem generis is to be applied with reference to the words "Or otherwise" came up for determination recently before the Supreme Court in Lila Vati Bai v. State of Bombay, (S) AIR 1957 SC 521 (C). Their Lordships were considering the constitutionality of the Bombay Land Requisition Act (Act XXXIII), 1948. Explanation (a) to Section 6 of the Act contained the words (omitting other words not necessary) "premises which are in the occupation of the landlord, the tenant or the sub-tenant, as the case may be, shall be deemed to become vacant when such landlord ceases to be in occupation.....upon termination of his tenancy, eviction, or assignment or- transfer in any other manner of his interest in the promises 'or otherwise' (underlined (here in ' ') by me)".

The argument presented there was that in that case admittedly there was no termination, eviction, assignment or transfer, and that the words "or otherwise" must be construed as ejusdem generis with the words immediately preceding them. This argument, which was pressed as an off-shoot of the main argument, was ejected by their Lordships. In delivering the unanimous opinion of the Court his Lordship Sinha, J. observed :

"In the second place, the rule of ejusdem generis sought to be pressed in aid of the petitioner can possibly have no application. The Legislature has been cautious and thorough-going enough to bar all avenues of escape by using the words "or otherwise". Those words are not words of limitation but of extension so as to cover all possible ways in which a vacancy may occur. Generally speaking, a tenant's occupation of his premises ceases when his tenancy is terminated by acts of parties or by operation of law or by eviction by the landlord or by assignment or transfer of the tenant's interest. But the Legislature, when it used the words "or otherwise" apparently intended to cover other cases which may not come within the meaning of the preceding clauses, for example, a case where the tenant's occupation has ceased as a result of trespass by a third party.

The Legislature, in our opinion, intended to cover all possible cases of vacancy occurring due to any reasons whatsoever. Hence, far from using those words ejusdem generis with the preceding clauses of the explanation, the Legislature used those words in an all

inclusive sense. NO decided case of any Court, holding that the words "or otherwise" have ever been used in the sense contended for on behalf of the petitioner, has been brought to our notice."

His Lordship proceeding further referred, by way of illustration, the case of Skinner & Co. v. Shew and Co. (1893) 1 Ch 413 (D), and observed:

"The rule of ejusdem generis is intended to be applied where general words have been used following particular and specific words of the same nature on the established rule of construction that the Legislature presumed to use the general words in a restricted sense, that is to say, as belonging to the same genus as the particular and specific words. Such a restricted meaning has to be given to words of general import only where the context of the whole scheme of legislation requires it. But where the context and the object and mischief of the enactment do not require such restricted meaning to be attached to words of general import, it becomes the duty of the Courts to give these words their plain and ordinary meaning. In our opinion, in the context of the object and the mischief of the enactment there is no room for the application of the rule of ejusdem generis. Hence it follows that the vacancy as declared by the order impugned in this case, even though it may not be covered by the specific words used, is certainly covered by the legal import of the words "or otherwise"."

In my judgment, therefore, the rule of ejusdem generis pressed in aid of his argument by Mr. Chatterji cannot be applied here.

25. In the present case, there is no doubt that if the ejusdem generis doctrine is applied, it would impily a departure from the natural meaning of words in order to give them a meaning which may or may not have been the intention of the Legislature. If the intention of the Legislature would have been to include in the words "or otherwise" the same kind of transfer which is contemplated by the earlier words "by way o±" transfer", there was no necessity of using the general words "or otherwise", in that, the earlier specific words "by way of transfer" were wide enough to include all kinds of transfers. An interpretation of the general words "or otherwise", limiting them to the matters and things of the same kind as the previous words would make the general words "or otherwise" following the pre ceding specific words, redundant In my opinion, therefore, the proper construction to be applied to the present case is to construe the general words "or otherwise" in such a way as to carry out the object sought to he accomplished by them, so, far as it can be collected from the language employed. The Legislature, when it used the words "or otherwise", apparently intended to cover other cases which may not come within the meaning of the preceding words. The Legislature, in our opinion, intended to cover all possible cases of transfers, which were not transfers inter vivos or by act of parties. Hence, far from iising those words ejusdem generis with the preceding words, the Legislature used those words in an all inclusive sense to bar all avenues of escape. These words "or otherwise", are, therefore, not words of limitation, but of extension

so as to cover all possible ways in which title may vest in the land in the unauthorised occupation of the person concerned.

26. An acquisition under Rule 75A(3) of the Defence of India Rules is not a transfer in the strict sense, properly speaking but such an acquisition by operation of law amounts to a statutory transfer which would be a transfer in the wider sense, although not a transfer in the narrower sense so as to come under the Transfer of Property Act. It follows, therefore, that such a statutory transfer is one of such legal transfers which was certainly covered by the legal import of the words "or otherwise", and, which was obviously in contemplation of the Legislature in providing the general words "or otherwise", after the preceding specific words "by way of transfer", in Section 2 (ii)(e) of the Bihar Land Encroachment Act, 1950, even though such a statutory transfer may not be covered by the specific words used.

208. In **George Da Costa v. Controller of Estate Duty, Mysore** reported in **AIR 1967 SC 849**, the Hon'ble Supreme Court, based on the decision of Hamilton J in 1911-2-KB 688, and the expression by contract or otherwise, subject matter therein, construed the word, 'otherwise', as ejusdem generis and thus at paragraph No.6, held as follows:

"(6) The second part of the section has two limbs: the deceased must be entirely excluded (i) from the property, and (ii) from any benefit by contract or otherwise. It was argued for the appellant that the

expression "by contract or otherwise" should be construed ejusdem generis and reference was made to the decision of Hamilton, J. in 1911-2 KB 688. On this aspect of the case we think that the argument of the appellant is justified. In the context of the section the word "otherwise" should, in our opinion, be construed ejusdem generis and it must be interpreted to mean some kind of legal obligation or some transaction enforceable at law or in equity which, though not in the form of a contract, may confer a benefit on the donor.

209. In **R&B Falcon (A) PTY Limited vs. Commissioner of Income Tax** reported in **(2008) 12 SCC 466**, the Hon'ble Supreme Court at paragraph Nos.24 to 26, considered the word, 'otherwise', as follows:

"24. The Advanced Law Lexicon defines "otherwise" as:

"By other like means; contrarily; different from that to which it relates; in a different manner; in another way; in any other way; differently in other respects in different respects; in some other like capacity."

25. "Otherwise" is defined by the Standard Dictionary as meaning 'in a different manner, in another way; differently in other respects'; by Webster, 'in a different manner; in other respects'.

26. As a general rule, 'otherwise' when following an enumeration, should receive an ejusdem generis interpretation (per CLEASBY, B. Monck v. Hilton, 46 LJMC 167, The words 'or otherwise', in law, when used as a general phrase following an enumeration of

particulars, are commonly interpreted in a restricted sense, as referring to such other matters as a are kindred to the classes before mentioned, (Cent. Dict.)"

210. In the said reported case, the Hon'ble Supreme Court further held that, "If the latter part of sub-Section (3) cannot be given any meaning, it will result in an anomaly or absurdity. It is also now a well settled principle of law that the Court shall avoid such constructions which would render a part of the statutory provision otiose or meaningless."

211. When the language of the scheme, 2016, is referable to the whole of Section 139 of the Income Tax Act, 1961, it is not open to the respondents to restrict only to the return filed, under Section 139(1) of the Income Tax Act.

212. Section 183(1)(C) of the Scheme, enables the assessee not only to disclose fully and truly all material facts, necessary for assessment, or otherwise. The words, "or otherwise" have to be given the meaning that it is not only for assessment, but for any other action to be taken, under the Income Tax Act, 1961 or Black Money Act, 2015, as the case may be. Permission granted to submit a declaration of fully and truly all material facts, should be for all purposes and for any other action to be taken, under the Income Tax Act, 1961 or Black Money Act, 2015. In this context, it is useful to refer few judgments of the Hon'ble Supreme Court on purposive

construction of a statute, in the case on hand, Section 183(1)(c) of the Finance Act.

(i) In **Tanna & Modi vs. CIT, Mumbai XXV and Others** reported in **(2007) 7 SCC 434**, the Hon'ble Supreme Court at paragraph No.22 held as follows:

> 22. In Francis Bennion's Statutory Interpretation, purposive construction has been described in the following manner:
>
> "A purposive construction of an enactment is one which gives effect to the legislative purpose by -
>
> (a) following the literal meaning of the enactment where that meaning is in accordance with the legislative purpose (in this Code called a purposive and literal construction), or
>
> (b) applying a strained meaning where the literal meaning is not in accordance with the legislative purpose (in the Code called a purposive and strained construction).

213. In the light of the above decisions and discussion, we are of the considered view that Section 55 Block Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 is not attracted. There was no failure to furnish any information relating to any foreign asset or investment. The Company has filed the original return of income, as well as the revised return of income within the time stipulated under the Income Tax Act, 1961. An assessee can file a revised return of income or even more than one

revised return of income under Section 139(5) of the Income Tax Act, 1961 as long as it is filed within time. Revised return of income is the only relevant return of income that can be relied upon or referred to. Revised return of income obliterates or effaces any earlier return of income. A return of income has many schedules and all the schedules are part of the 'return of income' referred to in Section 139 of the Income-tax Act. Offence under Section 50 is made out only if, in the return of income under sub-section (1) or sub-Section (4) or Sub- Section (5) of Section 139 of the Income-tax Act, there has been a wilful failure to disclose any information relating to foreign asset.

214. It is an admitted fact that the foreign asset in each case was acquired with money that was disclosed in the books of account of the assessee (and tax paid) and which was remitted through banking channels under schemes approved by the RBI. There is no allegation of Black Money or unaccounted money or money that has escaped tax or money that was remitted through illegal channels. It is not disputed by the Income-Tax department - that the source of investment was tax paid money remitted through banking channels in accordance with schemes approved by the RBI.

215. In the case of the petitioners, the asset was ultimately disclosed in Schedule FA and in the case of Karti P Chidambaram, in the Original return of income and, in the other three cases, in the Revised return of income filed

within the due date.

216. Though reliance was placed to paragraph Nos.5 and 7 of the Order dated 03.05.2018, that this Court directed the Authority to bear in mind all the relevant provisions of the Income Tax Act and Black Money Act and the implications that they may throw. But the Authorities were also directed to grant the Petitioners due and proper opportunity to present their side of the case and disregarding the directions of this High Court, the Authority, without applying his mind to the two questions set out in the Order and without giving an opportunity to the noticees/assessees, proceeded to sanction prosecution and filed the complaints against the Petitioners on 11.05.2018, in view of the foregoing discussions, it is not necessary to delve into the said aspect.

217. In the light of the decisions, on the power coupled with duty and on consideration of the materials, we are of the view that the Sanctioning Authority has failed to consider the above, and has come to an erroneous conclusion that the case deserve prosecution for non-disclosure of the details of the asset in the return filed under Section 139(1) of the Act. Sanction order deserves to be set aside and accordingly, set aside.

218. Going by the definition of Section 50 of the Black Money Act, read with Section 2(11) of the Act, and in the light of the above discussion and

decisions, we are of the view that the offence under Section 50 is not made out. Consequently, complaints filed in C.C.Nos.4482 to 4485 of 2018 dated 11.05.2018 are quashed.

219. In W.P.Nos.8834 and 8835, the petitioners therein have sought for Writs of Prohibition, prohibiting the Principal Chief Commissioner of Income Tax (Tamil Nadu and Puducherry), Chennai, 1st respondent therein, from sanctioning any prosecution against them and the Director General of Income Tax (Investigation) and Deputy Director of Income Tax (Investigation), Chennai, respondents 2 and 3 therein, from instituting any prosecution against them, under Chapter V of the Act (Act 22 of 2015) before the Special Court for Economic Offences.

220. W.P.Nos.8832, 8833, 8840 and 8841 of 2018, have been filed, for a direction, to the Deputy Director of Income Tax (Investigation), Chennai, 3rd respondent herein, to pass orders forthwith under Section 10(3) of the Act (Act 22 of 2015), dated 04.08.2017, 08.08.2017, 01.11.2017 and 31.08.2017 issued by the 3rd respondent therein, to them, under Section 10(1) of the Act 22 of 2015 and replies furnished by them to the said notices on 17.08.2017, 04.09.2017, 07.11.2017, 14.11.2017 and 07.02.2018 and pursuant to the enquiry conducted by the 3rd respondent.

221. After hearing the parties, all the writ petitions were dismissed, by a common order, dated 12.04.2018. Being aggrieved by the same, W.A.Nos.1125 to 1128, 1130 and 1130 and 1131 of 2018, have been filed.

As the sanction orders and prosecution proceedings have been quashed by this Court, no further orders are required in appeals in W.A.Nos.1125 to 1128, 1130 and 1130 and 1131 of 2018.

222. W.P.Nos.13005 and 13071 of 2018 are for issuance of declaration, declaring that the Principal Director of Income Tax (Investigation), Chennai, 2nd respondent is not an authority having jurisdiction/competence under section 55 Block Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, to sanction prosecution or file a prosecution compliant for offences under Section 50 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 against the petitioners. This Court, on 12.10.2018, has passed the following orders,

> *"On this day, when W.P.Nos.13005 of 2018, etc. batch were listed for further arguments, on the aspect, as to whether, the Court can take cognizance of the complaint, in the absence of a notification, under Section 80 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, read with Section 280-A of the Income Tax Act, referring to Section Section 80 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 and Section 280-A of the Income Tax Act, Mr.A.P.Srinivas, learned Central Government Standing Counsel submitted that even in the absence of any notification, issued by the State/Central Government, still, the Court not lesser than Chief Metropolitan Magistrate, is empowered to take cognizance of complaint and proceed further. He further submitted that prosecution if any launched by the Department of Income Tax, cannot be said to be faulty and that Court has no power to proceed further. He further*

added that if there is no notification, it cannot be understood that no prosecution can ever be lodged under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. Submission is placed on record."

223. Respondents in their counter affidavit have contended that as per section 2(16) of the Income-tax Act, 1961, the word "Commissioner" has been defined, *inter-alia,* to include a person appointed as Principal Director of Income-tax and since the Commissioner is also one of the competent authority for according sanction under section 55 of the Black Money Act, the same covers the Principal Director of Income-tax also. Except Mr.ARL.Sundaresan, learned Senior Counsel for the petitioners, no serious contentions, on the above aspect, were made. Respondents have explained the competence of the Principal Director of Income Tax, and other authorities under the Income Tax Act, 1961, to accord sanction for prosecution and going through the provisions of the Income Tax Act, 1961, we do not accept the contention of the petitioners that the Principal Director of Income Tax is not an authority, jurisdiction/competence under Section 55 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, to sanction prosecution or file a prosecution complaint for offences, under Section 50 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

224. In the light of the above, W.P.Nos.13005 and 13071 of 2018 are

disposed of.

225. In the light of the above discussion, there no need to delve into the review petitions and hence, they are dismissed.

No Cost. Consequently connected miscellaneous petitions are closed.

(S.M.K., J.) (S.P., J.)
02.11.2018

Index : Yes/No
Internet : Yes/No
kk/dm/asr

S.MANIKUMAR, J.

AND

SUBRAMONIAM PRASAD, J.

kk/dm/asr

W.A.Nos.1125 to 1128, 1130 & 1131 of 2018,
W.P.Nos.13005 to 13007, 13008 to 13010,
13070 to 13072, 13041 to 13043, 11714,
11715 & 22329 to 22331 & 22333 of 2018
and Rev.Appl.Nos.79 to 82 of 2018
and Connected WMPs, CMPs and MPs.

Dated : 02.11.2018