IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI'BMA*'BENCH, MUMBAI
[*THE BLACK MONEY (UNDISCLOSED FOREIGN INCOME AND ASSETS)& IMPOSITION OF TAX ACT, 2015]

[Coram: Pramod Kumar (Vice President),
and Ravish Sood (Judicial Member)]

BMA Nos. 03 and 05/Mum/2021
Assessment year 2017-18

RasheshManhar Bhansali ……..……Appellant
Nishika Terrace, 55A, 5th floor, AG Khan Road
Worli Sea Face, Mumbai 400006 [PAN: AABPB5614N]

Vs.

Additional Commissioner of Income Tax
Central Circle 1, Mumbai ……Respondent

and viceversa

Appearances by
P J Pardiwalla, Sr Advocate, *and* **Madhur Agarwal, Advocate,** *along with*
FenilBhatt,Prateek Jain and Mani Jain, *for the appellant*
Anand Mohan, Commissioner (DR), *for the respondent*

Dates of the hearings	:	05/10/21,25/10/2021 and 27/10/21
Date of pronouncement	:	02/11/2021

O R D E R

Per Pramod Kumar, VP:

1. This set of cross-appeals call into question the correctness of the order dated 5th July 2021 passed by the learned Commissioner (Appeals) in the matter of assessment under section 10(3) of the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act 2015 *(hereinafter referred to as '***the BMA'***)* for the assessment year 2017-18.This is amongst the first few cases, which is perhaps only the beginning of this new stream of cases, reaching this Tribunal concerning the assessments under thisAct. This legislation, it may be recalled, was brought in by the present Government in 2015, as a part of a series of measures, to address the menace of undisclosedincome and assets stashed abroad.

Factual backdrop:

2. It is a case whereinbased on the intelligence inputs with respect to offshore entities in the British Virgin Islands **(BVI),**that theincome tax investigation wing claims to have learnt that Gold Jewel Corporation (**GJC-BVI** in short), a company formed in the BVIon 7th July 2008, had its beneficial owners in India and that GJC-BVI operated certain bank account in the UBS, AG, Singapore branch (**UBS Bank**, in short). It appears that this input wasinvestigated further, information was successfully requisitioned from, amongst others, the Government of Singapore under the 'exchange of information' clause in the India Singapore Double Taxation Avoidance Agreement [(1994) 209 ITR (Stat) 1],and the inputs available to the investigation wing were analysed. Thetwo undisclosed bank accounts reflect credit entries of US$ 122,011,244 and US$ 25,011,282 (equal to Rs 999.74 crores, as computed by the

Assessing Officer by adopting the rate of 1US$ as equal to INR 68), but then many of these entries were intra-bank and contra entries. The incorporation documents of the GJC-BVI, the documents regarding the opening of and operation of the bank accounts with UBS,AG- including beneficial owner declaration, correspondence, account holder's instructions and bank statements, the KYC documents- including passport copies of the beneficial owners, and several other critical documents were obtained by the investigation wing. It was also found that Portcullis TrustNet BVI Ltd, (described as its incorporator and its first registered agent) assisted the assessee, or rather its 'master client' (a term used for the persons who coordinate the incorporation of an offshore entity, such as a banker), i.e. UBS AG's Singapore branch, in the incorporation of GJC-BVI, and the said entity was incorporated as a company under the BVI Business Companies Act, 2004. It was also found that during the period 2008 to 2011, certain bank accounts abroad were maintained and operated by RasheshManharBahansali (**RMB**- in short, or '**the assessee before us**') and his wife Ami Rashesh Bhansali (**ARB**- in short, or '**the assessee's wife**') and large amounts of credit entries were recorded in these accounts. One of these accounts (i.e. account no. 161753) was in the name of GJC-BVI and it was opened on 4th September 2008 and closed on 16th May 2011. This account showed credit entries of US $ 122,011,244 (equivalent to Rs 829,67,64,592 converting @ 1USD= INR 68). There was one more account (i.e. account no. 137274) was in the name of RMB, it was closed on 8th October 2008, and it showed credit entries of US$ 25,011,282 (equivalent to Rs 170,07,67,176). It appears that there was perhaps one more bank account, i.e. account no. 611254 in the same bank and this account is stated to be margin account of GJC's account no. 161753, but that does not find mention anywhere in the assessment or the appellate order before us, and is thus not a subject matter of proceedings before us. None of these accounts was reflected in the income tax returns filed by the assessee before us or by his wife, i.e. by RMB or ARB. It may be added that the investigation wing had some information, even if not backed by evidence or even if in the nature of preliminary leads, about assessee's connections with offshore companies- as evident from the summons dated 19th July 2013, issued by. The Dy Director of Income Tax (Investigations) which specifically required the assessee to disclose information about offshore entities "**in which you or your family members….. are promoter, partner, proprietor, trustee, settlor, beneficiary etc**" and "**state whether interest in such offshore entities were disclosed to the income tax authorities**". Nothing further happened thereafter, except for taking the reply on record. A similar summons, with a requisition for the same information, was again issued on 24th November 2014, by the then Dy Director of Investigation. Copies of this summons and replies thereto are placed before us on pages 1-24 of the paperbook filed by the assessee. The assessee was in denial mode and did not volunteer any information about the GJC-BVI or the bank accounts with the UBS Bank, Singapore. No such information was shared with the income tax authorities. It appears that the inputs available with the investigation wing were investigated further and relevant information was gathered from the agencies in different parts of the world. Armed with the information so collected, the investigation wing took steps to conduct search and seizure operations to take the matter to a logical conclusion.

3. It was in this backdrop that a search and seizure operation was carried out, on 17th March 2016, on the residential and commercial premises of the assessee before us. During these search operations, some of the material so collected by the investigation wing was confronted to the assessee, but assessee feigned completed ignorance about the GJC-BVI and about the offshore bank accounts, as described above, with the UBG AG's Singapore

branch.During these search operations, a statement of the assessee was recorded under section 132(4) and the assessee was specifically asked about the "particulars such as name and address of offshore entities like companies, firm, proprietary concerns or trusts etc. in which, either you or any of your family members are the director(s), authorized representative(s) or beneficial owner(s) or trustee(s), manager(s) or master client(s) or settler(s) or are present in any official capacity" butthe assessee replied that **"I am not personally the owner of any offshore entity. However, M/s Glodiam International Ltd. where I am a director has a fully owned subsidiary in New York in the name of M/s Goldiam USA Inc. and a Joint Venture called M/s. Goldiam HK Limited in Hongkong.** When asked about the business entities who have interest in offshore companies, the assessee once again referred to these companies and stated that **"Yes, M/s. Goldiam International Limited has a wholly-owned subsidiary in the USA called M/s. Goldiam USA Inc., in the USA. Further, there is also a Joint Venture company naming M/s. Goldiam HK Limited, Hongkong (A Joint venture between M/s. Goldiam International Ltd, Mumbai and M/s. Dia Gold Designs Limited or Mr. Milan Mehta or any of his family member (name of the other JV partner is subject to verification)".** When the assessee was asked whether he or any of his family members own any offshore companies or bank accounts, the assessee categorically replies in negative and stated that "**to the best of my knowledge, the answer is No",** and same was the position with respect to the question whether the assessee or any of his family members have earned any interest or dividend income from an offshore entity or have made any investment in any offshore entity. The next set of questions were about the specific information that the investigation wing had already gathered, but the assessee was completely in denial about the same. Some of these questions put by the search team and the answers as given by the assessee, which reflect the above position, are reproduced below:

Q 40. Are you aware about a concern M/s. Gold Jewel Corporation, BVI?

Ans. To the best of my knowledge, answer is No.

Q.41 Do you have any relation or connection in any manner whatsoever with the company M/s. Gold Jewel Corporation based in Portcullis, Trustnet Chambers, P.O. box 3444, Road Town, Tortola, British Virgin Islands (BVI)?

Ans. To the best of my knowledge, answer is No.

Q. 42 Do you have any business or personal transactions in any capacity in UBS AG Bank, Singapore or any other foreign bank in a foreign country?

Ans. No transactions have taken place.

Q.43 Did you sign any account agreement or any other document with UBS AG, Singapore or any other foreign bank in a foreign country in the last 10 years? If so, please state the detailed particulars of the same.

Ans. To the best of my knowledge, answer is No.

Q.44 Are you a beneficial owner or have any other interest in any foreign bank account?

Ans. Personally No. However, Goldiam subsidiary in America and Honkong has foreign bank accounts.

Q45. Did you have any business relations in any of your concerns with an entity M/s Hinkar Exports?

Ans. I do not remember at this moment However, I can check and confirm the same.

Q.46 Do you have any business connection or relation or any financial transactions of yours in your individual capacity or any of your family member or any of your entities in which you are having financial Interest in any manner whatsoever, with Hinkar Exports?

Ans. No

Q.47 Whether you had entered into any financial transactions with the Hinkar exports?

Ans. To the best of my knowledge, answer is No.

Q.48 Have you ever received any payments in India or out of India from Hinkar Export since the year 2008 in your personal capacity or in any of the entities to which you are associated in any manner whatsoever or having any financial interest?

Ans. In the personal capacity the answer is 'No'. For the business to the best of my knowledge, answer is No.

Q.49 What do you know about Shri Kamawat Surya Prakash?

Ans. I don't recall Shri Kamawat Surya Prakash.

Q.50 Do you have any business connection or relation or any financial transactions of yours in your individual capacity or any of your family members or any of your entities in which you are having financial and/ or controlling interest in any manner whatsoever with Shri Kamawat Surya Prakash?

Ans. As I don't recall the name, the answer is No.

Q.51 Have you ever received any payments in India or out of India from Shri Karnawat Surya Prakash since the year 2008 in your personal capacity or in any of the entities to which you are associated in any manner whatsoever or having any financial interest?

Ans. As I don't recall the name, the answer is No.

Q52 I am now showing you the correspondence between UBS AG, Singapore with M/s Gold Jewel Corporation, BVI, regarding Notification of Account Opening (Account No.161753) wherein it is stated, this account constitutes an Account as referred to in the Account Agreement; Account opening form signed by you and dated 26th August 2008 (the "Account Agreement"). Please go through the contents of this page and explain the document.

Ans. I have seen the Account Opening Form that you have shown. I don't recall seeing nor signing any such document in the past.

Q.53 I am showing you Account Opening Form for Corporation/ Trust/ Partnership/ Association of total 15 pages of Account No. 161753. On page No.3 of the Details and Mandate, the details of Corporation or Trust, Country and date of incorporation and registration number, registered office address, nature of business along with the names and specimen signatures of List of directors/partners/trustees/officers with Names of RasheshManharkumar Bhansali and Ami Rashesh Bhansali with designation as Directors along with your passport nos. F3687352 & Z1457657. Please go through the contents of page No.3 of the Account Mandate and offer your comments. Also please confirm as to whether the name and passport id number that appears on page No. 3 belong to you? Please explain these documents.

Ans. I don't recall signing any such document. Regarding Passport it is a xerox copy of my old passport. I do not know how this has gone to UBS AG Bank, Singapore.

Q.54 I am showing you the account Opening Form for Corporation/ Trust/ Partnership/ Association of total l5 pages of Account No.161753 whereas page No.5 reflects the name details of the Authorised E-mail like name: Bhansali Rashesh, ID/Passport No: F3687352 & E-mail address: *[redacted by us]* Please go through the contents of page 5 of these total 15 pages of Mandate and confirm as to whose name, Passport and E-mail details appears. Please explain these documents.

Ans. I am not aware and do not recall and I am surprised to see these pages. I think there is some huge mistake or conspiracy in this matter.

Q.55 I am showing you Account Opening Form for Corporation/ Trust/ Partnership/ Association of total 15 pages of Account No.161753 whereat page No. 11 reflects Authorized Representatives, passport nos, and signature of Director. These details include Authorized Representatives as RasheshManharkumar Bhansali (Passport ID: F 3687352) and Ami Rashesh Bhansali (Passport ID: Z 1457657) with signatures in the presence of a witness named Arunabh Banerjee and the place is mentioned as Singapore and date mentioned is 26.08.2008. Please go through the contents of this document and explain.

Ans. I have seen the contents of the document. I do not recall signing this document. The place mentioned is Singapore I will check and get back whether on that date if I was in Singapore or not.

Q.56 I am now showing you a document titled "Declaration of the beneficial owner's identity in respect of foreign bank account No.161753 [1 to 2 pages]. On page 1, there are details of the beneficial owner(s) of the assets deposited with the Bank is/are which shows that RasheshManharkumar Bhansali and Ami Rashesh Bhansali as beneficial owners of the assets deposited in this account. This beneficial owners declaration form also has details like date of birth, nationality, passport no, residential address, occupation, email address, mobile no. Please go through the contents of this document and explain.

Ans. I have been shown these documents and I am not aware how my passport is assigned to this bank account. I am in shock to see this.

Q.57 Further "Declaration of the beneficial owner's identity" is having signatures of both the beneficial owners RasheshManharkumar Bhansali and Ami Rashes Bhansali of the assets deposited in this account no: 161753 with the UBS, AG Bank; Singapore with place of signature as Singapore on 26.08.2008. Please go through the contents and signatures of this document and explain.

Ans. I will need to verify the whereabouts of myself and Ami Bansali on 26.08.2008 and get back. I will verify by 20.04.2016.

Q.58 In the KYC Documents received there are copies of certified true copy of passports of Shri RasheshManharkumar Bhansali and Smt Ami Rashesh Bhansali. Please go through the contents of these documents and explain.

Ans. These certified true copies specially of passports are used frequently by me for opening any D'mat account, bank account in India, visa purposes etc. etc. I am not sure how this has gone to Singapore.

Q.59 I am now showing you a document titled "Corporate Certificate" in respect of foreign bank account No. 161753 [4 to 5 pages). On page 4 there are details of Name of Charger as Gold Jewel Corporation, Names of Authorised Representatives as RasheshManharkurnar Bhansali and Ami Rashesh Bhansali. Please go through the contents -of this document and explain.

Ans. I have seen the pages that have shown to me. Again I am shocked to see our names on it.

Q.60 I am showing you Incorporation details/certificates related to Gold Jewel Corporation at BVI which consists of Resolution of opening of bank account with UBS, AG, Singapore, details of Register of Directors, Consent to act as Directors,

Application for shares, Share Certificate which are duly signed by Sh. RasheshManharkumar Bhansali and Smt. Ami Rashesh Bhansali. Please to through the contents of this document and explain?

Ans: I have seen the pages that have shown to me and again state I don't have any comments to offer on the same.

Q.60 Perusal of the bank statement of foreign bank account No.161753 with UBS AG, Singapore branch, standing in the name of Gold Jewel Corporation reveals the some of the credit amount as under:

Date	Name of Creditor	Amount in US$
08/06/2009	Gold Jewel Corporation	125,954
16/11/2009	Gold Jewel Corporation	20,645
22/02/2010	Gold Jewel Corporation	3,213,307
25/09/2008	Hinkar Exports	50,000
26/09/2008	Karnawat Surya Prakash	49,972
04/12/2008	Munish Anand/Sunish Anand	32,301
	TOTAL	34,92,179

Please explain the nature of these credit entries. Also please state as to whether these amounts have been reflected in your returns of Income for the F.Y. 2008-09 & 2009-10 relevant to AY 2009-10 & 2010-11 as you being the beneficial owner of the said foreign entity's bank account. Also please explain and provide details of other offshore bank accounts held in the name Gold Jewel Corporation as 3 credits are received from Gold Jewel Corporation itself. Please explain what are your business transactions with Hinkar Exports, Kamawat Surya Prakash Munish Anand and Sunish Anand?

Ans. The bank statement shown to me do not have my signature, nevertheless, it would not be true as I believe there is some conspiracy or fraud over here.

Q.62 Please provide details like address, contact no, residential status of Kamawat Surya Prakash and Munish Anand/Sunish Anand?

Ans: I do not know them.

Q.63 Please explain as to whether you are having any financial interest in a foreign entity known as M/s. Hinkar Exports?

Ans. I don't have any financial interest in the foreign entity called as M/s. Hinkar Exports.

Q.64 Please explain as to whom the debits from bank account No. 161753 of Gold Jewel Corporation with UBS AG, Singapore branch, are going in different years.

Ans. I do not know.

Q.65 Perusal of the bank statement of foreign bank account No. 161753 of Gold Jewel Corporation with UBS AG, Singapore branch, there is an outgoing payment of USD$ 3702810 on 26.9.2008 to Shri RasheshManharkumar Bhansali. What do you know about this outgoing payment. Please furnish details of account no, name of the bank, bank address to which this amount is going. Please also explain whether this receipt is reflected in your regular books of accounts or not?

Ans. I do not know.

Q.66 Perusal of the bank statement of foreign bank account No. 161753 of Gold Jewel Corporation with UBS AG, Singapore branch there are outgoing payment of USD 71303, 29308, 13000 respectively on 10.06.2009, 12.06.2009, 18.11.2009 being transfer of amount to the account of M/s Goldiam international Limited. Please explain the nature of these debit entries in the foreign bank account of Gold Jewel Corporation. Please explain whether these receipts are reflected in the regular books of accounts of M/s. Goldiam International Limited. Please provide ledger copies of these receipts in the books of accounts of M/s Goldiam International Limited. Also provide details of bank account to which these remittance are received by M/s Goldiam international Limited?

Ans. I am not aware of these entries and will verify. I will verify by 20.04.2016.

Q.67 Perusal of the bank statement of foreign bank account No. 161753 of Gold Jewel Corporation with UBS AG, Singapore branch there are outgoing payment of USD 21587, 36800 respectively on 12-06-2009, 28-08-2009 being transfer of amount to the account of M/s. Goldiam international Limited. Please explain the nature of these debit entries in the foreign bank account of Gold Jewel Corporation. Please explain how these receipts are reflected in the regular books of accounts of M/s. Goldiam Jewellery Limited. Please provide ledger copies of these receipts in the books of accounts of M/s Goldiam International Limited. Also provide details of bank account to which these remittance are received by M/s Goldiam international Limited?

Ans. I am not aware of these entries and will verify. I will verify by 20.04.2016.

Q.68 Perusal of the bank statement of foreign bank account No.161753 of Gold Jewel Corporation with UBS AG, Singapore branch, shows debit entry of US$ 19743 as an outgoing payment as on 08.02.2010 to another bank account of Gold Jewel Corporation. Please explain the nature of this transaction and also please state as to which other account belongs to Gold Jewel Corporation this debit is going?

Ans. I do not know.

Q.69 Perusal of the bank statement of account No. 161753 of Gold Jewel Corporation with UBS AG, Singapore branch, shows debit entry of US$ 18000 as an outgoing payment as on 08-02-2010 to another bank accout1t of Gold Jewel Corporation. Please explain the nature of this transaction and also please state as to which other account belongs to Gold Jewel Corporation this debit is going?

Ans. I do not know.

Q.70 The total credits appearing in the foreign bank account No. 161753 of Gold Jewel Corporation with UBS AG, Singapore branch over a number of years are US$ 122,011,244 [equivalent to Rs.829,67,64,592 taking the rate of Rs.68 per USD$ as sourced from the website of statebanic.com], year-wise breakup of which is as follows. The credit entries as appearing in foreign bank account No.161753 over the years we listed in tabular form and the same is annexed hereto and made as a part of this Statement and is marked Annexure 'A '. Please explain the sources of these credits in the said bank account and whether these credits are reflected in your income tax returns.

F.Y.	Amount (USD$)
2008-09	12018359
2009-10	109992885
Total	122011244
x 68	829,67,64,592

Ans. Some one a proper CA needs to study the credits and debits of these entries to ascertain the figures further statement I do not know and since I do not know they will not reflect in my tax returns.

Q.71 The facts available indicate that you and your wife are a beneficial owner in the bank account No. 161753 of Gold Jewel Corporation with UBS AG, Singapore branch You have not explained the sources of credits received in the said bank account. Please state as to why the sum of Rs. 829,67,64,592/- should not be treated as your income for these years in view of the fact that you are the beneficial owner of the said foreign bank account.

Ans. As stated earlier these do not belong to me hence I have no comments for the same.

Q.72 Please explain as to why your contention that you are not the beneficial owner of the assets, including foreign bank account of M/s Gold Jewel Corporation should be accepted in view of the contrary facts present.

Ans. I believe there is some fraud and I am not the owner of this bank account.

Q.73 The documents gathered from intelligence in respect of the foreign bank account No. 161753 with UBS AG Bank, Singapore branch, reveal your name as the beneficial owner and authorized representative along with copy of your passport. Please explain as to why you should not be held as the beneficial owner of this bank account.

Ans. I believe there is some fraud and I am not the owner of this bank account.

Q.74 You have denied that neither you nor your family members are beneficial owners or authorized representative in any offshore entity or any of their foreign bank accounts. However, the documents gathered from Intelligence reveal that you are the beneficial owner of the foreign bank account No. 161753 of an entity known as Gold Jewel Corporation. Please state as to why suitable action should not be taken in your case for giving false statement on oath.

Ans. This is not my bank account I do not know anything about this.

Q.75 You have stated that you have no relationship with Gold Jewel Corporation in the capacity of the beneficial owner. However, the documents received from Singapore Tax Authorities indicate that you are the beneficial owner and authorized signatory of the offshore bank account No. 161753 with UBS AG Bank, Singapore branch and offshore entity M/s Gold Jewel Corporation. Please explain as to why suitable action should not be taken in your case for giving false statement on oath?

Ans. This is not my bank account. I do not know anything about this.

Q.76 The evidence available with this Department including documents received from Singapore Tax Authorities indicates that you are the beneficial owner of a foreign bank account number 161753 with UBS AG Bank, Singapore branch. This bank account and investments made in offshore entity vis. Gold Jewel Corporation have also not been disclosed in your income tax returns. Please explain as to why the investments so made in the said offshore entity and its foreign bank account be not considered as your unexplained income and accordingly the penalty and prosecution proceedings be considered in your case under the relevant provisions of the Income Tax Act 1961 and the Black Money Act, 2015,

Ans. As stated earlier I will need legal representative to look at all these law few questions and reply as I am being framed on paper from UBS AG Bank, Singapore. The accuracy of data and beneficial has to be proved.
…….

Q.78 I am showing you bank statement of Bank account no. 137274 in UBS AG Bank Singapore. This bank statement has been received from sovereign authority Singapore. You may go through the said bank statement. Does this bank account belongs to you. Please explain.

Ans. This Bank account also does not belong to me.

Q.79 Please explain the credit entries appearing in this bank account including the sources of the same.

Ans. I do not know.

Q. 80 The examination of the said bank account shows that there are credit entries of USD$ 2,50,11,282 during the FY 2008-09. Please explain the sources of these credit entries.

Ans. I do not know and I do not remember.

Date	Name	Credit in US$	Debit in US$
04-08-2008	Asha Samir Bhansali [Sister of Rashesh M. Bhansali]	21,86,000	
05-08-2008	Sahil Pravin Jain		21,86,000
25-09-2008	Gold Jewel Corporation	37,02,810	

Q.81 Please explain these entries.

Ans. I do not have an explanation as they do not belong to me.

Q 82. The bank statement of Bank account no. 137274 in (UBS AG Bank Singapore in your name. Please explain as to whether the transactions in this account are reflected in you tax returns in India.

Ans. These are not reflecting in my income tax returns filed in India.

Q.83 You have not been able to explain the sources of credits in Bank account no. 137274 in UBS AG Bank Singapore in your name. Please explain as to why the said credits at USD$ 2,50,11,282 amounting to Rs 170,07,67,176/-@Rs. 68 exchange rate be not considered as you undisclosed income from unexplained sources.

Ans. As stated earlier these do not belong to me hence I have no comments for the same.

Q.84 In replies to earlier questions, you have mentioned that you do not have any foreign bank account. However, it has come to notice that you have bank account no. 137274 in UBS AG Bank Singapore in your name. This means that you have given a wrong statement on oath. Please explain why action may not be taken for giving false statement on oath.

Ans. This is not my bank account. I do not know anything about this.

4. The assessee was thus in complete denial about the existence of GJC-BVI and the bank accounts with UBS Bank, even though there was overwhelming evidence not only to show that the assessee owned the GJC-BVI but also to establish that the assessee was operating the bank accounts in question. On the basis of inputs from the investigation wing, these accounts had credits aggregating to Rs 999.75 crores. It was also noted that there were transactions, in the UBS Bank accounts, with the companies controlled by the assessee. While the search operations covered the assessee, his wife, and three other entities substantially owned or controlled by the assessee, a survey under section 133A was conducted on three other entities substantially owned or controlled by the assessee. The resultant proceedings under the Income Tax Act, 1961, were initiated against all these entities. It was, however, also noted that as the matter pertained to the undisclosed offshore company, i.e. GJC-BVI, and undisclosed bank accounts, i.e. in the UBS Bank, proceedings were also required to be initiated under the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act 2015. Accordingly, on 17th August 2017, a notice under section 10(1) of the BMA was served on the assessee informing the assessee that there is certain specific information concerning the assets held abroad and requiring the assessee to produce or cause to be produced, the accounts and documents specified in the annexure, and furnish in writing, and verified in the prescribed manner, the information called for on the points and matters specified therein. The assessee was, inter alia, asked to furnish the list of all bank accounts held outside India and to furnish complete details of all such accounts right from the date of opening till date, a detailed note on the transactions carried out in these foreign bank accounts and their tax treatment. Instead of complying with this requisition, the assessee submitted that the BMA is not applicable in this case because it applies only from 1st April 2016 onwards, i.e.the assessment year 2016-17. It was also pointed out that somewhat similar requisitions were made by the income tax authorities on 19th July 2013 and 24th January 2014, which have been replied to, and a search operation was carried out on the assessee on 17th March 2016 for which post search assessment proceedings are being carried out separately anyway. It was thus contended that there can notbe two parallel proceedings on the same subject, and that, in any event, the bank accounts in question pertain to the period prior to the BMA coming in force. The assessee thus denied the applicability of BMA on these facts. Without prejudice to this stand, the assessee further requested the Assessing Officer to "give copies of the alleged specific information regarding foreign bank accounts" as the assessee "needs to be informed about the basis on which such assessment or reassessment *(under the BMA)* is proposed to be made". The stand so taken by the assessee was rejected by the Assessing Officer and it was, inter alia, explained that what is material is that when a foreign asset or a foreign income is known to the Assessing Officer after the commencement of the BMA, as precisely is the case, and it is wholly immaterial as to the year in which the asset came into existence or existed. A fresh notice under section 10(1) was issued on 28th January 2019 seeking details of, amongst other things, the bank accounts abroad, assets held abroad, and the family members. On 7th February 2019, in response to a

request of the assessee, the assessee was also provided copies of bank statements, KYC details held by UBS Bank abroad and other related documents. On 8th February 2019, once again the assessee made his submissions but was in complete denial of the offshore entity and the UBS Bank accounts in Singapore. On 11th February 2019, finally, the assessee was issued summons under section 8(b) of BMA and the contents of this summon were as follows:

".....In this connection, your attention is invited to the notice u/s 10(1) of The Black Money (Undisclosed Foreign Income and Assets) And Imposition of Tax Act, 2015, dated 28-01-2019, wherein the following details were called for:

1. Complete details of family members.

2. Details of all Indian and overseas/foreign Bank Account held singly and/or jointly by you during the period of F.Y. 2008-09 to 2017-18.

3. Details of all overseas and Indian Bank Accounts in the name of all concerns of Goldiam Group in which you are director/partner/shareholder and/ or otherwise holding a position of beneficiary in any manner whatsoever.

4. Details of assets in India and/or overseas, held by you, your family members and any concern of the Goldiam Group.

In this regard, this office is in receipt of your reply dated 08-02-2019, submitted with this effect on 11-02-2019, wherein it is informed that neither you and/or any of your family members have any foreign Bank Account and/or asset. Further, it is also informed that no concern of Goldiam Group is having any foreign asset and/ or any overseas bank Account.

Your attention is drawn to the details and photo copies of relevant documents in respect of Overseas Bank Account No.161753 and 137274, maintained with UBS AG, Singapore, provided to your Authorized Representatives, vide this office order sheet noting dated 09-02-2011, which is as under:

1. Notification of Account opening (A/c No.161753) in the name of M/s Gold Jewel Corporation which mentions that the Account Opening form is duly signed by you on 26-08-2008.

2. The part-1 of Account opening form containing details and mandate as under:

Name of the Corporation	**Gold Jewel Corporation**		
Address	**British Virgin Island**		
Date of incorporation	**07-07-2008**		
Registration No.	**1491607**		
Nature of Business	**Investment Holdings**		
List of directors	**Name**	**Rashesh**	**Ami**

		Manharkumar Bhansali	**Rashesh Bhansali**
	Designation	**Director**	**Director**
	Passport No.	**F3687352**	**Z1457657**
Signing Authority	**Any one signature is required for written instructions**		
Correspondence Through	**Retained mail**		
Power of Attorney	**None**		
Details of authorized e mail	**Name**	**Rashesh Bhansali**	
	Passport No.	**F3687352**	
	e-mail address	*[redacted]*	

3. Appendix-1, which mentions that each of the directors, vide Board meeting dated 12-08-2008, have resolved to have received and reviewed the copies of Bank Account Agreements and other relevant documents.

4. Declaration of the beneficial owner's identity form, which mentions the following details:

Client	**M/s Gold Jewel Corporation**
First name	**RasheshManharkurnar Bhansali**
Date of birth	**06-07-1968**
Nationality	**Indian**
Identity type	**Passport No.-F3687352**
Residential Address	**Nishika Terraces, 55A, 5th Floor, Worli Sea Face, Ag. Khan Road, Mumbai- 30**
Occupation	**Business**
Country	**India**
e-mail address	*[redacted]*
Mobile No.	*[redacted]*

Further, details of the other beneficial owner is mentioned as

Client	**M/s Gold Jewel Corporation**
First name	**Ami Rashesh Bhansali**
Date of birth	**23-05-1968**
Nationality	**Indian**
Identity type	**Passport No.- Z1457657**
Residential Address	**1001, Sri RamikrishnaSadan, Pochikhanwala Road, Worli, Mumbai-25**
Occupation	**Business**
Country	**India**
e-mail address	*[redacted]*

Mobile No.	*[redacted]*

The place on the documents is mentioned as Singapore and date of document is shown at 26-08-2018. The document is duly signed by Shri Rashesh M. Bhansali and Smt. Ami Rashesh Bhansali.

5. Copy of Passport of RasheshManharkumar Bhansali having the following details:

Type of Passport	**P**
Country	**India**
Passport No.	**F3687352**
Name	**RasheshManharkumar Bhansali**
Nationality	**Indian**
Sex	**M**
Date of birth	**06-07-1968**
Place of birth	**Mumbai MS**
Place of Issue	**Mumbai**
Date of issue	**03-05-2005**
Date of expiry	**15-02-2020**
Father's name	**Bhansali Manharkumar**
Mother's name	**Bhansali Shobhana**
Spouse name	**Bhansali Ami Rashesh**
Address	**Nishika Terraces 55th Floor, A.G. Khan Road, Worli Sea face, Mumbai-400 030**

6. Copy of Passport of Ami Rashesh Bhansali having the following details:

Type of Passport	**P**
Country	**India**
Passport No.	**Z1457657**
Name	**Ami Rashesh Bhansali**
Nationality	**Indian**
Sex	**Female**
Date of birth	**23-05-1968**
Place of birth	**Mumbai MS**
Place of Issue	**Mumbai**
Date of issue	**19-03-2005 (the month appears to be 03)**
Date of expiry	**18-03-2011**
Address	**1001, SrriRamikrishnaSadan, Sir Pochikhanwala Road, Worli, Mumbai-25**

The documents are certified as True Copy by Arunabh Banerjee, WM India Intl. Asia, UBS AG, Singapore on 28-08-2008.

7. Memorandum of Charge, issued to the UBS AG bank wherein, the charger and borrowers are mentioned as Gold Jewel Corporation, Portcullis Trustnet Chambers, P.O. Box-3444, Road Town, Toriola, British Virgin Islands.

8. MOA and AOA of Gold Jewel Corporation, director's resolution adopted without a meeting on 12-08-2008 specifying Shri Rashes ManharkumarBhansaliaAmi Rashesh Bhansali as directors and details of their share holding in Gold Jewel Corporation. The documents are signed by Shri RasheshManharkumar Bhansali and Smt. Ami Rashesh Bhansali.

9. Appointment of first Registered Agent's appointment of first Director(s) of Gold Jewel Corporation as Shri RasheshManharkumar Bhansali and Smt. Ami Rashesh Bhansali. The document is dated 12-08-2008.

10. Separate consent letters to act as a director issued and signed by Shri RasheshManharkumar Bhansali and Smt. Ami Rashesh Bhansali. The letter is issued to M/s Gold Jewel Corporation.

11. Share Certificate No.-001 issued by M/s Gold Jewel Corporation on 12-08-2018 whereby, the company has issued one share to Shri RasheshManharkumar Bhansali and Smt. Ami Rashesh Bhansali out of 50,000 shares authorized to be issued. The certificate is signed by Shri RasheshManharkumar Bhansali.

12. Appendix-2 which is a letter dated 16-05-2011 issued by UBS AG to M/s Gold Jewel Corporation for closure of account No.-161753 and transfer of any asset as per the instruction.

13. Application for shares dated 12-8-2008 made and duly signed by Shri RasheshManharkumar Bhansali and Smt. Ami Rashesh Bhansali. The letter is addressed to the Board of directors of M/s Gold Jewel Corporation. Amount of USD 1 is shown to have been paid for the shares.

14. Bank Account Statement for A/c No.-161753 reflecting all credit, debit and balance entries.

15. Bank Account Statement for A/c No.-137274 reflecting all credit, debit and balance entries.

16. Letter duly signed by Shri Rashesh M. Bhansali, requesting remittance of USD 71103.31 from Account No. 161753 to HSBC Mumbai account of Goldian International Ltd., USD 36,800 to HSBC Mumbai account owned by Goldian Jewellery Ltd.,

During the statement rendered u/s.132(4) of the Income-tax Act, 1961, dated 18-03-2016 the documents viz. account opening forms, copies of details and documents provided to the bank and correspondence between the UBS AG, Singapore with M/s Gold Jewel Corporation, BVI, Application form for issue of shares, Share Certificate, instructions issued to USB, AG Bank Singapore for

various remittances etc. were shown to you and was confronted to you. However, you have denied to have any connection with M/s Gold Jewel Corporation, BVI. Further, you have also denied to have operated foreign accounts as mentioned above in UBS AG Bank, Singapore, in any capacity and also, beneficial ownership of the Account No. 161753 and 137274 is denied.

The copies of the above mentioned documents have their own legal sanctity and validity. The documents and sequence of events, clearly and with forceful impact, indicate that you are one of the director in M/s Gold Jewel Corporation and the beneficial owner of the bank account in the UBS AG Bank, Singapore, as mentioned above.

Investigation and enquiries further revealed that during the period of 2008 to 2010, the two offshore bank accounts as mentioned above were maintained and operated by Shri Rashesh M. Bhansali and Smt. Ami Rashesh Bhansali and large amount of credit entries were recorded which were not reported in their respective income-tax returns for the relevant Assessment years. Information were gathered from the Singapore Competent Authorities in this regard. The details of Bank Accounts are as under:

Name of the Bank	Account No.	Total Credit in USD	INR value of credits as on the Account the date of search (@Rs.68)	Name of the Account Holder	Date of opening of Bank Account	Date of Account closure
UBS AG Singapore	161753	122011244	8296764592	Gold Jewel Corporation	04-09-2008	16-05-2011
UBS AG Singapore	137274	25011282	1700767176	Rashesh M. Bhansali	-	08-10-2008
Total		147022526	9997531768			

The Financial Year wise details of credits in the aforementioned accounts are as under:

Account No.	F.Y.	Amount in USD
161753	2008-09	12,018,359
	2009-10	10,99,92,885
	Total	829,67,64,592
	X 68 = INR	

Account No.	F.Y.	Amount in USD
137274	2008-09	250,11,282
	Total	250,11,282
	X 68 = INR	170,07,67, 176

Therefore the Grand Total of undisclosed credits detected in both the account numbers i.e. 161753 and 137274 are as follows.

F.Y.	Amount in USD

2008-09	**3,70,29,641**
2009-10	**10,99,92,885**
Total	**14,70,22,526**
x68= INR	**999,75,31,768**

In the instance, you are summoned u/s 8(b) of the Black Money (Undisclosed Foreign Income and Assets) And Imposition of Tax Act, 2015, to attend before the undersigned in person on 19-02-2019 at 03:00 pm and explain and show cause as to why all the credits in account No.-161 753 and 137274 maintained in UBS, AG, Singapore, totalling to Rs.999,75,31,768/- should not be treated as income illegally obtained/earned and not declared for tax purposes and should not be brought under the definition of Black Money' and brought to tax as per the provisions of the Black Money (Undisclosed Foreign Income and Assets) And Imposition of Tax Act, 2015.

It may please be noted that this Summons is issued u/s 8(b) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. It is further seen from the records of this office that no proper compliance to the earlier notices have been made. In this connection, since, sufficient opportunities have already been provided to you earlier, you are informed that this is the last and final opportunity of being heard which is being given to you.

In the instance of noncompliance to this summon/ notice, an ex parte order u/s 10(4) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, will be passed on the basis of materials/information available on records, without any further notice and/ or opportunity.

Failure to comply shall also entail invocation of Penalty provisions u/s 45 of the Black Money (Undisclosed Foreign Income and Assets) And Imposition of Tax Act, 2015.

5. On 19th February 2019, the assessee, in response to the summons, once again stated, as he had stated time and again, that he or his family hadno connection whatsoever "with the alleged two bank accounts *(in the UBS Bank, Singapore)*". While the assessee was in complete denial about the facts, he did raise several legal arguments in support of the non-applicability of the BMA on the facts of this case, and also referred to the pending writ petition before Hon'ble Bombay High Court challenging the proceedings in question. It was also stated that so far as GJC-BVI is concerned, it is a separate legal entity and even a beneficial owner of the said company, which the assessee reiterated that he is not, can at best be taxed in respect of dividends. It was also pointed out that admittedly no dividends were paid by the said company. It was then pointed out that the expression Assessing Officer includes an Assistant Director or Deputy Director which includes an officer posted in the investigation wing, and since the existence of these bank accounts was in the knowledge of the officers in the investigation wing- as evident from the fact that the assessee was served a show-cause notice in respect of these accounts on 19th July 2013, the valuation date for the asset can at best be as on 19th July 2013. It was then pointed out that as per the bank statements furnished to the assessee, there are loan entries of as much as US$ 11,73,75,690.53, the loan availed cannot be treated as an undisclosed asset of the assessee. It was then submitted that the inter- bank transfers from or to loan account stand fully

explained, and, to that extent, these amounts cannot be taxed in the hands of the assessee. On that day, i.e. 19th February 2019, the assessee had appeared in person before the Assessing Officer, and the statement of the assessee under section 8(b) of BMA was recorded. Some of the questions and answers recorded in this statement were as follows:

Q.7 I am showing you photo copies of Indian Passports on which names are mentioned as RasheshManharkumar Bhansali. Please verify the same and confirm whether this is the copy of passport belong to you.

Ans. Yes. This Passport belongs to me.

Q.8 I am showing you a copy of Memorandum of Articles (MOA) and Article of Association (AOA). It is seen from the MOA, that an entity by the name of M/s Gold Jewel Corporation was incorporated on 07-07-2008 and registered in the territory of British Virgin Islands through the first registered agent M/s Portcullis TrustNet (BV) Limited, as per the BVI Business Companies Act, 2004. The document is signed by you and Smt. Ami Rashesh Bhansali. Please peruse the same carefully and comment on the same.

Ans. I am not aware of this document. These document are not signed by me and/or Smt. Ami Rashesh Bhansali.

Q.9 I am showing you the director's resolution of M/s Gold Jewellery Corporation, dated 12-08-2008, whereby the following resolutions were adopted.

i Certificate of incorporation number of Gold Jewel Corporation (BVI) is 1491607.

ii. Shri RasheshManharkumar Bhansali and Smt. Ami Rashesh Bhansali are appointed as first directors.

iii. The Company can issue maximum number of 50,000 shares of a single class.

iv. The company has received application of shares and the shares were approved and the company has issued 1 share of USD 1 to RasheshManharkumar Bhansali and Ami Rashesh Bhansali as joint tenants with right of survivorship.

v. The books of accounts, records, resolutions and minutes of the company are kept at c/o UBS AG, Singapore, one Raffles Quay. # 50-12, North Tower, Singapore 048583 and the original register of members and directors to be kept at c/o Portcullis Trustnet Chambers, P.O. Box No.-3444, Road Town Tortala, British Virgin Islands

vi. A bank account in the name of the company be opened with UBS, AG, Singapore and the Account Opening Mandates and forms be signed and account be operated by RasheshManharkumar Bhansali and Ami Rashesh Bhansali.

Please peruse the Board's resolution dated 12-08-2008 and confirm the content therein and also, please confirm that the resolution is signed by you and Smt. Ami Rashesh Bhansali as directors.

Ans. I have reviewed the documents shown to me. I am seeing account number 161753 declaring the beneficial owner's identity. I would like to state that Ami Bhansali has not signed this document and her signatures are not there confirming she is not a beneficial owner of Account No.-161753 belonging to Gold Jewel Corporation, whereas the other signature looks like mine but, is it not signed by me. On reviewing another document, Corporation/Trust Signed by Some Arunabh Banerjee states that the place of signing the document was in Singapore on 26-08-2008. I would like to state that neither me nor Ami were in Singapore on 26-08-2008. Further, I would like to state that I have seen all the documents as, mentioned above and confirm that I am not at all aware of any of the documents and they are not signed by me.

Q.10 From the documents is it is evident that you and Smt. Ami Rashesh Bhansali are the first directors of the company M/s Gold Jewel Corporation appointed by the first Agent M/s Portcullis Trustnet (BV Limited. Please confirm the same.

Ans. I am not aware of the company Gold Jewel Corporation, the documents that states that we are the first directors of the companies. To the best of my knowledge they are not signed by us.

Q.11 I am showing you a copy of document 'Consent to Act as a director' issued to M/s. Gold Jewel Corporation and signed by you and Smt. Ami RasheshBhansalias director. Please peruse the same and confirm that you and Smt. Ami Rashesh Bhansali have signed and issued your consent letter to M/s Gold Jewel Corporation giving consent of directorship effectively from 12-08-2008.

Ans. I am not aware of the company Gold Jewel Corporation, the documents that states that we are the first directors of the companies. To the best of my knowledge they are not signed by us.

Q.12 I am showing you a copy of document 'Register of directors' of M/s Gold Jewel Corporation wherein the names of RasheshManharkumar Bhansali and Smt. Ami Rashesh Bhansali are recorded as directors of the company appointed on 12-08-2008. This document is certified by competent authority of UBS, AG, Singapore. Please peruse the same and comment on the content of the document.

Ans. I am not aware of the company Gold Jewel Corporation, the documents that states that we are the first directors of the companies. To the best of my knowledge they are not signed by us.

Q.13 Please peruse the copy of Share Certificate being shown to you bearing Certificate No.-001, issued by M/s Gold Jewel Corporation, certifying to have

issued you and Smt. Ami Rashesh Bhansali one number of share. The document is issued on 12-08-2008 under your signature as a director. Please

Ans. I am not aware of the company Gold Jewel Corporation, the documents that states that we are the first directors of the companies. To the best of my knowledge they are not signed by us.

Q.14 From the documents i.e. MOA, AOA, appointment of directors, director's register and director's Resolution, Application for shares, Shares Certificate etc., shown to you and answers given by you in response to above questions, it is established that M/s Gold Jewel Corporation is an offshore entity incorporated and registered in British Virgin Island. Please confirm the same.

Ans. As I have stated above, I and Ami Bhansali have not signed any such documents and we are not aware of M/s Gold Jewel Corporation.

Q.15 From the documents shown to you especially the Board's resolution dated 12-08-2008, is evident that the company, by passing a board's resolution of the aforesaid date, decided to open Bank Account in UBS, AG, Singapore. The document is signed by you and Smt. Ami Rashesh Bhansali as directors. Please confirm the same and comment of the same.

Ans. As I have already stated in reply to the foregoing questions, I and Ami Bhansali have not signed any documents, and we are not aware of any such bank account in UBS, AG, Singapore.

Q.16 In order to open a bank account No.-161753, in the name of M/s Gold Jewel Corporation, a copy of declaration of the beneficial owner's identity was submitted to the UBS AG, Singapore, mentioning that you and Smt. Ami Rashesh Bhansali are the beneficial owners of M/s Gold Jewel Corporation (BV). The document is signed by you on 26-08-2008. Please go through the same carefully and confirm the same.

Ans. As replied earlier, from the documents shown on beneficial owner's identity: It may be noted that there is no signature of Ami Bhansali on this document and for me, the signature is not done by me.

Q.17 Please peruse the copy of bank account opening form submitted in UBS, AG, Singapore signed by you and Smt. Ami Rashesh Bhansali. It is seen from the document submitted with the bank that copy of your Passport bearing number F3687352 as well as copy of Passport of Smt. Ami Rashesh Bhansali bearing No. Z1457657 was provided to the bank as identity proof. Please confirm that you and Smt. Ami Rashesh Bhansali have signed near the details of Passports in the bank account opening form. Please also confirm that the copies of passport, bearing numbers as mentioned above belong to you and Smt. Ami Rashesh Bhansali.

Ans. I confirm that the Passport numbers belong to me and Ami Bhansali but we have not given our passport for the purpose of opening any such alleged bank account.

Q.18 In whose custody these passports are kept and how come their specific details and photo copies were obtained for the purpose of above documentation?

Ans. The Passports are kept at my residence. Regarding the photo copies of the Passport, I have not given the same for the purpose of opening Bank Account in UBS AG, Singapore.

Q.19 I am showing you copy of Bank Account opening form in respect of Account No.-161753, wherein a mandate was given to the bank that the Authorized e-mail of communication will be rabindic@gmail.com of RasheshBhansai. Please confirm that this information/ mandate was given to the bank in the account opening form duly signed by you and Smt. Ami Rashesh Bhansali.

Ans. To the best of my knowledge, these documents are not signed by me and Ami Bhansali and we are not aware of the e-mail id mentioned in the question.

Q.20 From the various documents viz, MOA, AOA, appointment of directors, director's register and director's Resolution, Application for shares, Shares Certificate, bank account opening form etc., above questions and their respective replies given by you, it is established that you and Smt. Ami Rashesh Bhansali are the shareholders and director of M/s Gold Jewel Corporation and you and Ami Rashesh Bhansali had opened a bank account No.-161 753 in the UBS, AG Singapore, with a declaration that you and Smt. Ami Rashesh Bhansali are the beneficial owner of the Bank Account being the directors of M/s Gold Jewel Corporation, Please confirm and comment on the same.

Ans. As per the documents shown to me, we have not opened any such bank account. Ami bhansali's signature is not there in the beneficial owner' statement in account No. 161753 and I also confirm that none of the document is signed by me and Ami Bhansali.

Q.21 I am showing you copy of notification of account opening of account No.-161753 wherein UBS, AG, Singapore has notified M/s. Gold Jewel Corporation vide notification dated 04-09-2019 for opening of bark account No. 161753. Please go through the same and comment on the same.

Ans. We have not receive this notification and do not know anything about it.

Q.22 Please state the business activities of M/s Gold Jewel Corporation with detailed modus operandi.

Ans. I have no idea about the business activities of M/s Gold Jewel Corporation.

Q.23 Please explain all the credit and debit entries in the bank accounts number 161753 and 137274.

Ans. The entries appearing in the bank account statements for both the accounts are self explanatory in the wordings as loans and time deposits given by the bank.

Q.24 Vide letter dated 05.02.2019 your Authorized representatives had requested for copies of bank account opening form and bank account statement in respect of Bank Account No.- 161753 (Gold Jewel Corporation) and 137274 (RasheshManharkumar Bhansali) opened in UBS, AG, Singapore, which was provided to the Authorized Representatives vide order sheet noting dated 07-02-2019. Please confirm that you have received the requisite documents on 07-02-2019 and carefully perused and studied the same. Please comment on the same.

Ans. Yes, we have received the copies of the requisite documents. I state that I and Ami Bhansali have no connection with Gold Jewel Corporation and the bank accounts No.-161 753 and 37274 in the UBS, AG, Singapore. We have not signed any documents as can be seen from the copies provided.

Q.25 I am showing you copy of document marked as Annexure 4 The document is a "Special Instruction" dated 10-06-2009 given to Anurabh Banerjee of UBS, AG, Singapore, by you and under your signature for Gold Jewel Corporation. As per the "Special Instruction", you have instructed the bank to remit USD 71,503.31 from account No.-161753 (Gold Jewel Corporation, BVI) to account No.- 110-018397-001 (Goldiam International Ltd., India.) against invoice Nos. J-25, J-117, J-1052, J-175, S-8, J-8 and J-454. Please go through the Special Instruction and explain the transaction.

Ans. I have not given any such instruction to the bank and the signature on the instruction is not mine.

Q.26 I am showing you copy of document "Remittance Instruction given to Anurabh Banerjee of UBS, AG, Singapore, by you and under your signature for Gold Jewel Corporation. As per the "Remittance Instruction", you have instructed the bank to remit USD 36,800 from account No.-161753 (Gold Jewel Corporation, BVI) to HSBC India account No.- 000-64417-2 with instruction for onward credit to HSBC Lokhandwala Branch account 110-023587-001 (Goldiam Jewellery Ltd.) Please go through the remittance instruction, confirm that the instruction was issued by you under your signature and explain the transaction.

Ans. I have not given any such instruction to the bank and the signature on the instruction is not mine.

Q.27 I am showing you copy of document instructing Anurabh Banerjee of UBS, AG, Singapore, by you and under your signature for Gold Jewel Corporation. As per the "Remittance Instruction", you have instructed the bank to remit USD 18,000 as per instructions. Please go through the remittance instruction, confirm

that the instruction was issued by you under your signature and explain the transaction.

Ans. I have not given any such instruction to the bank and the signature on the instruction is rot mine.

Q.28 I am showing you copy of document instructing Anurabh Banerjee of UBS, AG, Singapore, by you and under your signature for Gold Jewel Corporation. As per the "Remittance Instruction", you have instructed the bank to remit USD 13,000 to HSBC Mumbai at Swift Address MRMDUS33 on ABA route No.-021-001-088 with instruction for onward credit to HSBC Lokhandwala A/c No.-1 10 018397-001 of Goldiam International Ltd. Please go through the remittance instruction, confirm that the instruction was issued by you under your signature and explain the transaction.

Ans. I have not given any such instruction to the bank and the signature on the instruction is not mine.

Q.29 In your statement u/s 132(4) of the Income tax Act, dated 18-03-2016, in answer to Q. No. -35, you have stated that you are not owner of any offshore entity however from the MOA, AOA, Share application, Share certificate and bank account opening form shows that you are the beneficial owner of M/s. Gold Jewel Corporation and Bank account No.-161753 and 137274. All the aforementioned document bear your signature which matches with your signature as seen from copy of your Indian Passport bearing No.- F3687352. Please comment

Ans. All the signature on the documents do seem like mine and that of Ami Bhansali. However, we have not signed any such documents under consideration.

Q.30 In your statement u/s 132(4) of the Income tax Act, dated 18-03-2016, in answer to Q.No.-41, you have stated that you are not connected with Gold Jewel Corporation, BVI, an offshore entity, however from the MOA, AOA, Share application, Share certificate and bank account opening form shows that you are the beneficial owner of M/s Gold Jewel Corporation. All the aforementioned documents bear your signature which matches with your signature as seen from copy of your Indian Passport bearing No.- F3687352. Please Comment.

Ans. The document of beneficial owner does not have signature of Ami Bhansali and on all the documents, the signature looks like mine and that of Ami Bhansali but we have not signed any such documents.

Q.31 In your statement u/s 132/4) of the Income tax Act, dated 18-03-2016, in answer to Q. No.-42, you have stated that no transactions have taken place by you in any capacity in UBS AG Bank, Singapore. However, from the MOA, AOA, Share application, Share certificate and bank account opening form, instruction issued to the UBS, AG, Singapore and copy of account statement etc. shows that you are the beneficial owner of M/s Gold Jewel Corporation and instructed the Bank UBS AG, Singapore at various occasions under your

signature and accordingly transactions were made. All the aforementioned documents bear your signature which matches with your signature as seen from copy of your Indian Passport bearing No. - F3687352. Please comment.

Ans. I have not signed any such documents

Q.32 In your statement u/s 132(4) of the Income tax Act, dated 18-03-2016, in answer to Q.No.-43, you have stated that you have not signed any account opening documents and any other do with UBS AG, Singapore. However from the MOA, AOA, Share application, Share certificate and bank account opening form, instruction issued to the Bank UBS AG, Singapore at various occasions under your signature and accordingly transactions were made. Al the aforementioned documents bear your signature which matches with your signature as seen from copy of your Indian Passport bearing No.- F3687352. Please comment.

Ans. I have not signed any such documents.

Q.33 You have denied to have signed any of the following document as shown to you.

i. Memorandum of Association of M/s Gold Jewel Corporation
ii. Article of Association of M/s Gold Jewel Corporation
iii. Application for issuance of Shares of M/s Gold Jewel Corporation
iv. Share Certificate of M/s Gold Jewel Corporation
v. Bank account opening form for A/c No/-161753 and 137274 in the UBS AG, Singapore.
vi. Beneficial owner declaration form.
vii. Instructions given to the bank

Please state what is your comments on the signature? If the signatures are not yours, what could be reason for somebody else for income for using you signature?

Ans. I have seen the documents as being shown to me and I can only say that these are not my signatures. I have no further comments to offer.

Q.34 Who is Ms. Asha Samir Bhansali and what is her profession?

Ans. Asha Samir Bhansali is my elder sister. She lives in the USA with her husband and two children. I do not even know what her profession is.

Q.35 Please describe the business of her husband and children.

Ans. I am not aware of their business as I am not connected in business with them.

Q.36. When did you last meet. and/or spoke to Ms. Asha Samir Bhansali, her husband and children?

Ans. I met Asha six month back when she was in Mumbai.

Q.37 How is your terms with her, her husband and her children?

Ans. I do not have good terms with Asha for more than 15 years approx. I have normal and plutonic kind of relationship with them.

Q.38 Did you and/ or any of your concern ever had any kind of transactions (whether business or personal) with her, her husband and children?
Ans. To the best of my knowledge neither I nor any of my concerns ever had any kind of transaction whether business or personal with her, her husband and children.

Q.39 I am showing you an entry in the bank statement for Account No. 137274 maintained in your name in UBS AG, Singapore. On 04-08-2008, an amount of USD 21,86,000 is credited in the Account by Asha was this transfer of for Asha Samir Bhansali. What is your comment on the same and what was this transfer of huge amount for?

Ans. I do not know anything about this transaction.

Q.40 Who is Shri Sahil Pravin Jain?

Ans. I do not know him.

Q.41 I am showing you an entry in the bank statement for Account No. 137274 maintained in your name in UBS AG, Singapore. On 05-08-2008, an amount of USD 21,86,000 is debited from the Account by Sahil Pravin Jain. What is your comment on the same and what was this transfer of huge amount for?

Ans. I do not know anything about this transaction.

Q.42 Do you know any concern in the name of M/s Hinkar Exports?

Ans. I do not know any such concern.

Q.43 I am showing you an entry in the bank statement for Account No.-161753 maintained in the name of Gold Jewel Corporation, BVI in UBS AG, Singapore. On 25-09-2008, an amount of USD 50,000 is credited in the Account by M/s Hinkar Exports. What is your comment on the same and what was this transfer of huge amount for?

Ans. I do not know anything about this transaction.

Q44 Who is Shri Karnawat Surya Prakash?

Ans. I do not know any such person.

Q.45 I am showing you an entry in the bank statement for Account No.-161753 maintained in the name of Gold Jewel Corporation, BVI in UBS AG, Singapore. On 26-09-2008, an amount of USD 49972 is credited in the Account by Shri Karnawat Surya Prakash. What is your comment about this entry and what was this transaction for?

Ans. I do not know anything about this transaction.

Q.46 Who is Munish Anand and Sunish Anand?

Ans. I do not know any of them.

Q.47 I am showing you an entry in the bank statement for Account No.-161753 maintained in the name of Gold Jewel Corporation, BVI in UBS AG, Singapore. On 26-09-2008, an amount of USD 3702810.82 is shown to be debited by RasheshManharkumar Bhansali i.e. you. What is your comment about this entry and what was this transaction for?

Ans. I do not know anything about this transaction.

Q.48 Vide Order Sheet noting dated 07-02-2019, copy of Bank Statement in respect of Account No.-161 753 and 137274 maintained n UBS AG, Singapore in the name of Gold Jewel Corporation, BVI and you respectively have been provided to your Authorized Representative. Have you gone through the Bank Statements?

Ans. More or less I have gone through the provided photo state copies of the Bank
Statements as mentioned above.

Q.49 I am again showing you the copy of Bank Statements in respect of Account No.-161753 and 137274. Can you please go through the same and explain the credit and debit entries appearing in the bank statements?

Ans. Prima facie on seeing these, it seems there are a lot of Bank Loans given and taken back by the bank. There are lot of words used by the bank such as Time Loan, Call Deposit, Time Loan Repayment, Call Deposit Repayment etc. These words indicate that the bank has given loans to the account and recovered later. Regarding other entries, you have already asked above with individual names which have been answered accordingly. It must be stated that huge amounts are in the tune of Bank Loan received and recovered and the exact amounts on Time Call deposits repayments etc. should be confirmed by the said bank.

Q.50 Do you know Arunabh Banerjee.

Ans. I have seen his name initially in the search when the paper was shown to me. To the best of my memory, I have never met him.

Q.51 Did you speak to him ever telephone and/ or ever communicated with him through e-mail and/ or social media?

Ans. SinceI have never met him, I have never communicated with him over social media and to the best of my knowledge, over telephone andmail.

Q.52 I am showing you some communication made to Shri Anurabh Banerjee by you in which you have instructed him to remit USD 71103.31, 36,800, 18,000 and 13,000 to GoldiamInternational Ltd. on various occasions. Being a director in M/s Goldiam International which has received the sun as instructed, please explain the transaction.

Ans. I am seeing again photo copies of this communication where the signatures seem to be mine but are not signed by me.

Q.53 Please state whether M/s Goldiam International Has received USD 71103.31, 36,800, 18,000 and 13,000 from M/s Gold Jewel Corporation, BVIP?

Ans. I will check and get back to you on this.

Q.54 Please furnish the bank statements of all bank accounts of M/s Goldiam International from the period from F.Y.-2007-08 to 2011-12.

Ans. I do not have them readily available with me. I will furnish the same with you by as soon as possible.

6. The Assessing Officer noted the above and also reproduced the copies of documentary evidence such as bank's notification of account opening, account opening form, details and mandates to the bank, correspondence and instructions, investment services, agreements with the bank and signatures, declaration of beneficial ownership as declared, copies of passports, memorandum of charge, memorandum and articles of association of GJC-BVI, directors' resolutions, register of directors, consent to act as directors, share certificates, account closing reference, application for shares etc. It was noted that the GJC-BVI was incorporated, through Portcullis TrustNet (BVI) Ltd and that vide directors' resolution dated 12th August 2008, duly signed by the assessee and Ami Rashesh Bhansali, the assessee and Ami Rashesh Bhansali were appointed directors of GJC-BVI, and their application for shares was duly approved by the Board, one share of US $ 1 was jointly allotted as 'joint tenants with right of survivorship' to the assessee and Amir Rashesh Bhansali, and that the books of accounts, records, resolutions and minutes of the company be kept at UBS Bank AG, Singapore, and that bank account of GJC-BVI be opened with UBS Singapore and operated by the assessee or by his wife, signing singly for an unlimited amount. All the details on records were analyzed and the Assessing Officer came to the conclusion that the assessee was operating the UBS Bank account under his signatures and making several transactions with the Indian entities as well. So far as one aspect of the transactions from these UBS Bank is concerned, the Assessing Officer observed as follows

7.4 From the above, it can be seen that outward remittances were made on the instances of the assessee, i.e. Shri RasheshManhakumar Bhansali. Shri

RasheshManharkumar Bhansali used to give instruction to the UBS, AG, Singapore, under his signature and the same amount is shown to have been outgoing from the Account No. 61753 and reach its destination in India through SWIFT transfer. The transfer of funds from the undisclosed offshore Bank Account to Indian concerns have been done under the instruction of Shri RasheshManharkumar Bhansali clearly proves the ownership of the undisclosed Bank Account by Shri RasheshManharkumar Bhansali and Smt. Ami Rashesh Bhansali.

7.5 As can be seen from the instructions that there is a specific way and route used to transfer the money from the undisclosed offshore Bank Account to destination Bank Accounts of the Indian entity of the Assessee. Remittances from the offshore Bank Account is made through Swift transfer to Mumbai through HSBC New York using ABA Route numbers and HSBC New York Chips Codes to HSBC in India with instruction to credit the Bank Accounts of the Indian entities.

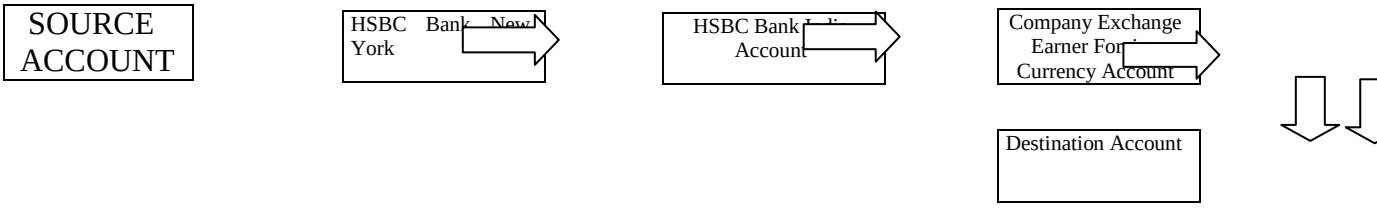
7.6 The terminology used in the process are illustrated as under:

SWIFT Transfer- SWIFT is an abbreviated form of Society for Worldwide Interbank Financial Telecommunication'. The service of SWIFT is used by the Banks and other financial organization across the world to send and receive financial transaction information in a standardized, secured and reliable environment.

ABA Route Number- ABA is an abbreviation for American Bankers Association'. ABA Route No. is a unique number assigned by the ABA that identifies a specific federal or state bank or saving institution. ABA transit number is used to identify the financial institution responsible for payment of a Cheques or other negotiable instrument.

CHIPS- CHIPS is an abbreviation for "Clearing House Interbank Payments System, This is a Private Clearing House in the United States for large-value transactions. The entire route of transfer of money from the undisclosed Bank Account to destination Account is illustrated as under.

To further illustrate the channels of transaction the following diagrams is exhibited for a better understanding.



7.7 The linear chain of transaction in the foregoing discussions established the very fact that Shri RasheshManharkumar Bhansali and Smt. Ami Rashesh Bhansali incorporated offshore entity in the name of M/s Gold Jewel

Corporation in the British Virgin Islands and they are the directors, equal share holders and beneficial owners of the aforesaid Company. Further Bank Account No.-161753 and 137274 were opened in the UBS, AG, Singapore and the Account No. 161753 was held in the name of M/s. Gold Jewel Corporation and Shri RasheshManharkumar Bhansali and Smt. Ami Rashesh Bhansali were the beneficial owners of this Bank Account. Account No. 137274 was held in the name of Shri RasheshManharkumar Bhansali. Instructions were given to the UBS, AG, Singapore by Shri RasheshManharkumar Bhansali for executing transactions.

7. On 28th March 2019, as the assessment proceedings under the BMA were on the verge of completion, the assessee finally owned up the bank accounts and submitted as follows:

1. This refers to the ongoing assessment proceedings under section 10 of the Black Money Act, 2015.

2. While I continue to maintain that Black Money Act is not applicable in the present case, it is self-evident from the photocopies of the bank statement which are relied upon, as evidence, against me, that there are large numbers of loan entries and re-deposits in the accounts. The credit entries in the same bank statements relate to the loan taken from UBS Bank, and the same has been repaid with interest to UBS Bank, which is reflected by the debit entries in the same bank statement. Assuming that the Black Money Act does apply, the tax leviable on the undisclosed income. There is no tax leviable on loans availed and repaid. Loans are in the nature of liability, and cannot be treated as income for the purpose of tax.

3. On this basis, the actual tax on the alleged" undisclosed foreign income" (revealed from the photocopies of the bank statements) cannot be so high as sought to be demanded, as is clear from a detailed worksheet explaining the nature of entries which is enclosed herewith.

4. It is therefore, submitted that, by no stretch of imaginations the amount of Rs.999 crores sustainable. Apparently, in calculating this exorbitant and exaggerated figure of Rs.999 Crores, without ascertaining the true nature of the credit/ deposit-whether income or liability, which is legally not permissible since every credit entry is not an income liable to tax.

5. Hence, on taking the Department's own evidence (which does not require further evidence to be produced by me), the tax liability, if any, under the Black Money Act, cannot be so high.

6. With great respect, I am entitled to raise/place/make my defense on the basis of Department's case only, without being required to produce any further evidence from my side. However, with a view to test the correct position, in law, merely owning the bank accounts will not automatically attract the provisions of the Black Money Act, since, as per the evidence produced by the department, the Bank accounts were operated only during the assessment years 2008-09 to 2010-11 and closed during year 2008 & 2011, which is well before the Bank Money Act

came into force. Besides, information with respect to such bank accounts was available with the Department in 2013-14, which also is before the Black Money Act was enacted. As such, by owning the accounts also, I do not fall under the Black Money Act, more so for reasons, which are particularly set out in Writ petition No. 40 of 2019 filed by me before the Hon'ble Bombay High Court, and which is pending.

7. I may add that there are good reasons why I did not own up the bank accounts in my statements under section 132 of the Income tax, 1961. One of the primary reasons is that the alleged accounts opening form shows that the bank account was opened in Singapore and the Bank opening form purportedly bears my signature having been made at Singapore, whereas my passport is proof of the fact that I was not in Singapore, but in India on the alleged date of opening of the bank account. I had for the first time, come across the photocopies of the bank papers of the alleged statements when they were shown to me and while my statements were being recorded during the period of search i.e. 17th to 19th March, 2016. It is only yesterday, while cleaning up the heap of papers recovered from my father, Shri Manharkumar Bhansali's old office which was sold recently, I found some papers pertaining to these bank accounts. These papers as now found are photocopies of papers which are being relied upon against me and my wife by the department in respect of these two bank accounts. Looking at these, I recall that my father had got me and my wife Mrs. Ami Bhansali to sign some such papers many years back. It thus appeared that these signed papers are pertaining to the very same two accounts which must have got opened by my father in the names of my wife and myself, for reasons best known to him. I immediately took legal advice and accordingly in light of this, I do hereby categorically own up these accounts viz.: account number-1372 74 belonging to Rashesh Bhansali and account number 161753 belonging to Gold Jewel Corporation, where beneficial owner is Rashesh Bhansali only though shareholders are Rashes Bhansali & Ami Bhansali. I am giving explanation to the entries appearing in these two accounts to the best of my ability in the Annexure enclosed.

8. The above submissions are without prejudice to my rights and contentions in pending Writ Petition No. 40 of 2019 and the order of admission passed therein today, and subject to the further orders of the Hon'ble Courts.

8. The assessee then also submitted an explanation for the entries in the bank accounts. An effort was made to explain each of the entries in the bank statements shown by the assessee. It was also submitted by the assessee that unexplained entries, not supported by the withdrawals, in account nos. 161753 and 137274 were only US $ 7,15,538.58 and US $ 1,29,688.92 respectively, which, vide statement dated 28th March 2019, the assessee offered to tax.

9. It was explained that all the investments were made out of borrowings from the same bank and that “there was no collateral security given to the bank against the loan availed”. It was also contended that “the loan was taken from the same bank which was invested with them in their own suggested schemes like various structural products, callable notes and

bonds etc". It was explained that "on maturity or redemption, the bank would take the loan back along with their interest and credited the difference to the account which was the actual gain" In effect thus, here was a banker which gave assessee loans for the entire amount needed for purchasing their own products, and the only effective financial transaction was a net gain to the assessee on redemption.

10. In view of the submissions so made by the assessee on 28th March 2019, the summons under section 8(b) was issued for an appearance on that day itself, and a formal statement of the assessee was recorded. Some of the questions and answers so recorded are as follows:

> Q.5 In continuation to your earlier submissions furnished with this office in connection with Assessment proceedings in your case u/s 10(3) of the Black Money (Undisclosed Foreign Income and Assets) And Imposition of Tax Act, you have made further submission dated 28-03-2019. Please go through the same and confirm that the submission is made by you.
>
> **Ans. I have gone through the submission dated 28-03-2019 furnished in your office by me and on behalf of Smt. Ami Rashesh Bhansali. I confirm that the same is made by me and duly signed by me and Ami Bhansali.**
>
> Q.6 During the course of Search Proceedings, subsequent proceedings and in your submissions and statement u/s 8(b) of the Black Money Act, 2015 dated 19-02-2019, during the course of Assessment proceedings u/s 10(3) of the Black Money (Undisclosed Foreign Income And Assets) And Imposition Of Tax Act, 2015, you have been denying the ownership of the offshore entity M/s Gold Jewel Corporation and offshore Bank Account Nos.-161753 and 137274 held and maintained in the UBS, AG, Singapore. Contrary to the same, in your submission dated 28-03-2019 you have stated that Bank Account No 161753 belongs to M/s. Gold Jewel Corporation and Account No 137274 belongs, to you and you are the beneficial owner of both the aforesaid Bank Accounts Please comment on the changed stand of yours.
>
> **Ans. It is true that during the course of Search proceedings, subsequent proceedings and during the course of Assessment proceedings, I have been denying the ownership of the Bank Account No 161753 and 137274 held in the name of M/s Gold Jewel Corporation and Rashesh M. Bhansali respectively, However, during the Search, I maintain, that it was for the first time, I saw the Bank Accounts Statements and other documents pertaining to the aforesaid accounts. Hence, I had denied them as I did not know anything about the same. As per my submissions today, i.e, 28-03-2019, I want to state that on cleaning up the heap of papers recovered from the old office of my father Late Shri Manharkumar Bhansali, I found some papers relating to these Bank Accounts. Looking at this and not understanding why these papers were with him only lead me to think that years back he had taken some signatures on Bank opening forms from me and Ami Bhansali for whatever reason he knew best. It seems he did open the aforesaid Bank Accounts in our names and operated the same. As I have come to know about this yesterday and on taking legal opinion also, I now am able to own up these accounts opened and operated by my father in my name. Please also note that the beneficial owner in the account No 161753 was always Rasesh Bhansali only.**

Q.7 In your reply to Q. No 6 above, you have stated that your father did open Bank Account No 161753 and 137274 in the UBS, AG, Singapore, in your name and in the name of Ami Bhansali. If at all you did not recollect this at the time Search and subsequent proceedings, did you not speak to your father about the issues raised during the course of Search and/or afterwards?

Ans. During the Search, the concerned officer took me to another room and she showed me the related documents. Post that, he took me to my factory and then next day to my other office. Post the Search was over, I did tell my father about the question asked. As I could see, the eminent stress on him due to his old age and various age related ailments, I did not press on this matter further with him.

Q.8 Being the director in all of the group companies, you the person looking after the business affairs of the group. Why and with what motive would your father open offshore Bank Accounts and incorporate offshore entity in the name of Gold Jewel Corporation, BVI ?

Ans. I was the director in all our Group Companies. My expertise/role was only limited towards production, marketing and purchase of Raw Materials. My father who was Chairman and Managing Director, was always in control of finance and investments. All the policy decisions of finance, borrowing, investment expansion of business etc. were taken by him only. In these departments, papers that were sent to me and Ami for signatures by my father were unquestionably signed by me and Ami. The motive behind having an offshore entity andbank accounts are best known to him.

Q.9 Please furnish the explanation of each and every entry appearing in the Bank Statement in respect of Bank Account No. 161753 and 137274.

Ans. Sir, I have appended the detailed explanation of each and every entry with my submission dated 28-03-2019 wherein, I have quantified an amount of US$ 7,15,538.58 and US$ 1,29,688.92 as credits in bank account not supported by withdrawal in Bank Account No. 161753 and 137274 respectively. This may therefore be treated as income and taxed accordingly.

Q.10 I am again showing you some communication made to Shri Anurabh Banerjee by you in which you have instructed him to remit USD 71103.31, 36,800, 18,000 and 13,000 from Bank Account No 161753 to Goldiam International Ltd. in India on various occasion, please explain the transaction and also confirm that the instructions to the bank were issued by you.

Ans. As I have mentioned earlier, all finance, investments, payments, bank related work was always controlled by my father. At the instances of my father, I signed the instructions for remittances. However, I was not aware the nature and the purpose of the transactions. As stated earlier, I used to sign papers sent by my father unquestionably as he was my father and also the Chairman of the Group.

Q.11 As per instructions given by you remittance of US$ 71103.31, and 13,000 were made from Bank Account No. 161753 to Goldiam International Ltd. in India. Further, an amount of US$ 36,800 was remitted from Account No. 161753 to M/s GoldiamJewllery Ltd. in India. Also an amount of US$ 18000 was remitted to Newmont (Hong Kong) Ltd. please explain the treatment of these amounts in the respective companies.

Ans. Amount of US$ 71103.31 and 13000 remitted to Goldiam International has been accounted for in the books of accounts of the company and offered for taxation. Similarly, the amount of US$ 36800 remitted to Goldiam Jewellery Ltd. has also been accounted for in the books of accounts of the company and offered for taxation. However, I do not know Newmont (Hong Kong) Ltd. and what the remittance was made for.

Q.12 As can be seen from the records the Bank account No. 161753 was jointly held and operated by you and Smt. Ami Bhansali. In your statement, you are stating that you are the only beneficial owner of the Bank Account No. 161753 However, in the Bank Account Opening form the names mentioned as beneficial owner are Rashesh M. Bhansali and Ami R. Bhansali. Further, in another KYC document, it is clearly mentioned that Rashesh Bhansali and Ami Bhansali will operate the bank account for an unlimited amount. Please offer your comments on the same.

Ans. The account number 161753 pertained to M/s Gold Jewel Corporation, BVI. As a legal requirement for all companies, there needs to be at least two directors and therefore, I think, Ami being a housewife was also made director for the namesake purpose and for compliance only. She had no active role in operations of that company. Similarly, her name was added in the bank Account opening form for namesake purpose only. I think, her name was also included by my father in the Bank account to safeguard the interest in case of any eventuality. As you can see, her signatures are not there in the beneficial owner form, which is a part of the KYC documents. There is no records of her operating the bank account no. 161753 and she never issued any instructions to the bank for receipt and/or payments or any other operations from this account. Therefore, under no grounds can she be made as beneficial owner. Due to the above mentioned reasons, I would like to request you that the credits in both the bank accounts which are not supported by withdrawals may be added to my income and not in her income which would meet the end of justice.

Q.15 When was the account No. 137274 which was held in your personal name, opened?

Ans. Since, this is a very old matter, I do not remember when exactly it was opened by my father in my name. However, it was somewhere in financial year 2008-09 as per your records.

Q.16 I am showing you the statement of Bank Account No. 137274. The statement show a negative opening balance of US$(-) 73.62. Please explain the same.

Ans. As I understand, these are some account opening/ bank charged they must have debited.

Q.17 It is seen from the bank statement of the Account No. 137274 that an amount of US$ 5000000 was taken from the bank as Callable Range Accrual Note on which quarterly periodical interest was received in the same account. Please explain how the same was redeemed and where?

Ans. The Callable Range Accrual Note of US$ 5000000 was purchased on 15-05-2008 from the bank in my name in account No. 137274. The maturity date of this note was 15-05-2018 and interest was received on the same on quarterly basis which was credited in the bank account No. 137274 only. However, to the best of my understanding upon the closure of this account, the note was transferred in the name of M/s Gold Jewel Corporation, BVI and the further quarterly interest were credited in account No. 161753. As can be seen from the account statement, the Callable Range Accrual Note was redeemed prematurely on 22-02-2010. Since the note was prematurely redeemed, as per the terms of the Note, the redemption value of US$ 3213307.63 was credited in the account No. 161753.

Q.18 I am showing you the copy of Bank Account Statement in respect of Account No. 161753 and 137274. On occasions Loans are received from the Bank which were later on repaid. Please state what collateral security was given to the Bank to avail such loans.

Ans. There was no collateral security given to the bank against the loan availed. The loans taken was never gone out of the account. The loan was taken from the same bank which was invested with them in their own suggested schemes like various structural products, callable notes and bonds etc. So in reality, the loan amount was held with the bank only for which there was no requirement of any collateral security. On maturity or redemption, the Bank would take the loan back along with their interest and credited the difference to the account which was the actual gain.

Q.19 On 22-02-2010, an amount is seen to be credited in Bank account No. 161753. The transaction details as mentioned in the account statement is incoming payment: Gold Jewel Corporation'. Please explain what is this credit amount and where has this come from and how can Gold Jewel Corporation pay to Gold Jewel Corporation?

Ans. Sir, In the Bank Account No. 161753. I will take you to Bank Account Statement on 18-02-2010, when a UBS-Callable Range Accrual Note of US$ 5000000 was taken from the Bank by M/s Gold Jewel Corporation. The Accrual; note was to be redeemed on 15-05-2018. However, it was prematurely redeemed and the redemption proceeds were again credited to the same account of M/s Gold Jewel Corporation.

Q.20 Do you wish to say anything else?

Ans. Yes sir. The above statement is given by me in a conscious and sound state of mind, without any undue pressure coercion, threat. I have read the statement

and the statement is correctly recorded as per my say. I shall standby my above statement. Furthermore, I plead to give me immunity from penalty and prosecution proceedings under the Act.

11. As for the reasons as to why the UBS Bank account and the offshore company in GJC-BVI was being owned up at this stage, the assessee had an interesting explanation set out in the affidavit dated 29th March 2019 as follows:

I, RasheshManharkumar Bhansali, residing at 5th Floor, 55A, Nishika Terrace, AG Khan Road, Worli Sea Face, Mumbai - 400 030, do hereby solemnly affirm as under:

1. I say that my father Late Shri Manharkumar Bhansali used to operate from office premises at The Capital 7th Floor, Bandra-Kurla Complex, Mumbai, till he expired in October 2017. I say that in or about July 2018, the said office, which had become inoperative, was sold. Because I have the office in the same building, all the leftover articles and documents were packed up and stored in office. Since last couple of weeks, because of approaching year end, I started to open and sort out these papers bit by bit. On 28th March 2019, while I was clearing these papers I found some papers relating to the Bank accounts which are a subject matter of present investigations by you.

2. I say that, looking at these, I recalled that my father had got me and my wife, Mrs. Ami Bhansali to sign some such papers many years back. My father, who was Chairman and Managing Director, was always in control of finance and investments. All the policy decisions of finance, borrowing, investment expansion of business etc. were taken by him only. In these department; papers that were sent to me and Ami for signatures by my father were unquestionably signed by me and Ami. It thus appeared that those signed papers were pertaining to the very same two accounts which must have got opened by my father in our names, for reasons best known to him. I am not aware as to why these accounts were got opened by my father. I immediately took legal advice and accordingly in light of this, I do hereby categorically own up these accounts viz. account number - 137274 belonging to Rashesh Bhansali and account number - 161753 belonging to M/s. Gold Jewel Corporation, where beneficial owner is Rashesh Bhansali only though shareholders are Rashesh Bhansali & Ami Bhansali. My wife, Ami Bhansali was never a beneficial owner of M/s. Gold Jewel Corporation which is also clear from the fact that the beneficial owner form shown by you also does not bear her signature.

3. There has been no collateral given for availing the loans which are reflected in the statements of accounts shown by you to me. In fact these statements reflect that the loans taken from the same bank were invested with them in their own structural products, Callable notes, bonds etc.; that the same never went out of the account; that in reality the loan amount was held with the bank only and that on maturity or redemption, the Bank would take the loan back alongwith their interest and credit the difference to the account, which was

the only actual gain. These statements reflect that there is no credit balance on closure of both the accounts.

4. I have now verified from the records in India that the remittances from the aforesaid accounts to the recipient Indian concerns were duly disclosed in the books of accounts of the recipients and offered to taxation.

5. I say that whatever I have stated above is true to the best of my knowledge.

Solemnly affirmed at Mumbai, on this 29th day of March, 2019

12. The Assessing Officer then proceeded to conclude as follows:

9.1 The submission dated 28-03-2019, Statement of the Assessee recorded u/s 8(b) of the of the Black Money (Undisclosed Foreign Income and Assets) And Imposition of Tax Act, 2015, on 28-03-2019, and affidavit of the Assessee dated 29-03-2019 were considered carefully. In this regard, it is pertinent to mention that the Assessee in the Statement dated 28-03-2019, has stated that he was made a director of M/s. Gold that the Assessee was one of the director in the aforesaid offshore entity and the offshore Bank Account No. 161753 and 137274 were held by him and therefore, the Assessee is held to be beneficial owner and accountable for the transactions made in the Bank Accounts.

9.2 Further, the explanation of the Assessee on the entries of the Bank Account No. 161753 cannot be accepted in toto. An amount of US $ 3213307.60 is shown as incoming payment credited from Gold Jewel Corporation on 22-02-2010. The Assessee has stated that the same is premature redemption of investment. However, he failed to substantiate the claim as to why the same should not be considered as a part of income in the statement and explanation of bank Account. The Assessee has not been able to furnish any documentary evidence in support of the claim.

9.3 The onus to prove that the amount of US$ 3213307.60 shown at credit side, does not form the part of income lies on the Assessee, and the Assessee could not bring on record any material fact for the same. This clearly triggers a strong belief that the Assessee has no specific explanation to offer in this regard.

9.4 Further, it is noticed from the Bank Account Statement that an Jewel Corporation, BVI, by his father, and accordingly he was also made the joint holder in the Bank Account No. 161753 in the UBS, AG,Singapore along with Smt. Ami Rashesh Bhansali. The version of the Assessee is not acceptable in view of the facts on records. Since, the Assessee was a director in M/s Gold Jewel Corporation and was a joint holder of the Bank Account No. 161753; for whatever purpose, he accountable for the transaction made through the Bank Account. It is a fact on record that he issued instructions to the UBS, AG, Singapore, for remittance of amount from Account No. 161753 on various,

occasions. The fact is established through various documentary evidences provided by the Competent Authorities of Singapore through the FT &TR, which has been discussed in length in the foregoing Paragraphs herein above, that the Assessee was a director in the offshore entity M/s Gold Jewel Corporation, BVI, and was a joint account holder in the Bank Account No. 161753 held in the name of M/s Gold Jewel Corporation, BVI, andmaintained in the UBS, AG, Singapore. The Assessee was also holding Bank account No. 137274 in the same Bank. The Assessee has signed various documents with regards to incorporation of the offshore entity and opening of bank Account. Further, the Assessee has not denied that the documents were signed by him. Therefore, the very fact is established amount of US$ 87500 being quarterly interest at 7% on Callable Range Accrual Note is credited periodically in the Bank Account No.161753. One of such credit was due between the periods from 12-06-2008 to 28-08-2008. However, entries are missing in the bank account for this period. Which is also required to be added in the total undisclosed income out of the Bank Account No. 161753.

9.5. It is pertinent to mention here that it was the onus of the assessee to bring material facts on the records of the assessing officer to establish the claim as to why she should not be considered as a beneficial owner of M/s, Gold Jewel Corporation, BVI and Bank Account No. 161753. Further, the assessee also failed to give proper justification, of the credit amount of US$ 3213307.60 and also remained silent on the amount of interest to the tune of US$ 87500. Thus the Assessee failed to discharge his duty on both the counts. It is also pertinent to mention here that section 101 of the Indian Evidence Act, 1872 states that whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person. According to Section 103 of the Indian Evidence Act, 1872, the burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence. Section 106 of Indian Evidence Act, 1872 says that when any fact is especially within the knowledge of any person, then burden of proving that fact is upon him. All the aforesaid provisions are applicable to the assessee. This is a fact which he asserts. Therefore, burden lies on the person to prove the said facts (Section 101 and 103 Indian Evidence Act 1872). Secondly, this is a fact that the amount of US$ 3213307.60 was credited in the Bank Account No. 161753. Therefore, the burden is on the assessee to establish that fact that why she should not be considered as beneficial owner of M/s Gold Jewel Corporation, BVI and the Account no. 161753 and also, why the amount of US$ 3213307.60 should not be treated as a part of her income. However, the burden of proof was not discharged. Therefore, the assessee has failed to discharge the onus of proving and establishing as to why she should not be considered as beneficial owner of M/s. Gold jewel Corporation, BVI and the Account no. 161753 and the aforesaid amount should not be considered as a part of income

9.6 It is therefore, construed that, the assessee is a beneficial owner of offshore entity M/s Gold Jewel Corporation and Bank Account No. 161753 and 137274 maintained in the UBS, AG, Singapore.

13. Aggrieved by the stand so taken by the Assessing Officer, the assessee carried the matter in appeal before the CIT(A) on the following grounds:

1) On the facts and circumstances of the case and in law, the learned Assessing Officer erred in passing the impugned order without affording adequate opportunity of being heard to the assessee.

2) On the facts and circumstances of the case and in law, the learned Assessing Officer erred in invoking the provisions of Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act, 2015 since the same are neither attracted nor applicable to the assessee.

3) On the facts and circumstances of the case and in law, the learned Assessing Officer erred in passing the impugned assessment order u/s 10(3) of Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act, 2015 which is bad in law and without jurisdiction.

4) On the facts and circumstances of the case and in law, the learned Assessing Officer erred in taxing the amounts of Rs.42,00,75,526/-(being equivalent to $.6323886.24).

a) On the facts and circumstances of the case and in law, the learned Assessing Officer erred in taxing the amounts of Rs. 2,37,67,078.59 / - (being equivalent to $357793.52) being the amount reflected in bank account no. 161753 belonging to M/s. Gold Jewel Corporation, in the hands of the assessee.

b) On the facts and circumstances of the case and in law, the learned Assessing Officer erred in taxing the amounts of Rs. 86,14,820/ - (being equivalent to $ 129688.92) being the amount reflected in bank account no. 137274, in the hands of the assessee.

c) On the facts and circumstances of the case and in law, the learned Assessing Officer erred in taxing an amount of Rs. 10,67,24,870 /- (being equivalent to $1606653.8) being the amount reflected in the bank account no.161753, in the hands of the assessee.

d) On the facts and circumstances of the case and in law, the learned Assessing Officer erred in taxing an amount of Rs. 29,06,172/ - (being equivalent to $ 43750) alleged to be credited in the bank account no.161753 on an estimated basis, in the hands of the assessee.

e) On the facts and circumstances of the case and in law, the learned Assessing Officer erred in taxing an amount of Rs. 13,28,53,600/- (being equivalent to $20,00,000) being the amount reflected in the bank account no.137274, in the hands of the assessee.

f) On the facts and circumstances of the case and in law, the learned Assessing Officer erred in taxing an amount of Rs. 14,52,08,985/- (being equivalent to $21,86,000) being the amount reflected in the bank account no.137274, in the hands of the assessee.

5) On the facts and circumstances of the case and in law, the learned Assessing Officer erred in adopting the conversion rate of USD to INR 66.4268) On the facts and circumstances of the case and in law, the learned Assessing Officer erred in levying surcharge while calculating the total demand, as per the ground/s contained in the assessment order or otherwise.

7) On the facts and circumstances of the case and in law, the learned Assessing Officer erred in levying cess while calculating the total demand, as per the ground/s contained in the assessment order or otherwise,

8) On the facts and circumstances of the case and in law, the learned Assessing Officer erred in levying interest u/s 234A, B&C while calculating the total demand, as per the ground/s contained in the assessment order or otherwise.

14. In appeal before the CIT(A), there were two sets of arguments- first, against inapplicability of the BMA on the facts of the case; and, second, against the impugned additions made by the Assessing Officer. So far as the first set of arguments were concerned, these arguments were rejected in entirety, and, in broad terms, it was held that even if an asset has been acquired before commencement of the BMA, the same would be taxable in the year in which it comes to the notice of the Assessing Officer. It was held that it is not a condition precedent for taxation under the BMA that the asset must continue to be held at the point of time when it is being brought to tax. A reference was made to the clarifications issued by the CBDT, to the provisions of the BMA, and to the Hon'ble Supreme Court's judgment in the case of **Gautam KhaitanVs Union of India [(2019) 110 taxmann.com 272 (SC)]**. It was also held that while an officer working in the investigation, whether a DDIT or ADIT, is an income tax authority under section 116, it is the matter coming to the notice of the 'Assessing Officer' which is relevant for the application of BMA. So far as the factual part is concerned, the learned CIT(A) accepted explanation of the assessee so far as credit of US$ 3,213,307.60, as amount received on redemption of investment was concerned. Learned CIT(A) was of the view that once it is not in dispute that the amount is received on account of investments held earlier, it cannot be said that the amount is unexplained. However, he confirmed the remaining addition in respect of the balance amounts approving the line of reasoning adopted by the Assessing Officer. Neither the assessee nor the Assessing Officer is satisfied with the stand so taken by the learned CIT(A). While the assessee is aggrieved of the additional sustained in his hands, the Assessing Officer is aggrieved of the relief granted by the learned CIT(A). The assessee as also the Assessing Officer is now in appeal before us.

Issues in appeal:

15. When these appeals came up for hearing before us, Shri Pardiwalla, learned counsel for the assessee, submitted that broadly speaking, there are six questions that are required to be adjudicated by us, and identified these six questions for our consideration. It was submitted that once these six questions are answered, most of the issues in these appeals will

be settled. We are urged to adjudicate on these questions first. One of the questions he framed, i.e. with respect to the challenge to the Assessing Officer's jurisdiction, was later dropped by him on instructions. One question, representing the grievance of the Assessing Officer in appeal, was added to these questions. The questions finally framed for our adjudication, as learned representatives specifically agreed, are up as follows:

(a) **Whether a bank account abroad or any unaccounted asset abroad, which did not exist as at the point of time when the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act 2015 came into force, i.e. 1st July 2015, can be assessed under the said legislation?**

(b) Whether an undisclosed bank account abroad can be treated as an asset under section 2(12) of the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act 2015?

(c) Whether the provisions of the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act 2015 can be pressed into service in respect of an undisclosed foreign asset or income which was already in the knowledge of the revenue authorities as at the point when the said legislation came into force?

(d) Whether the assessee can be treated as a beneficial owner, under Explanation 4 to Section 139(1) of the Income Tax Act, 1961- which, according to the learned counsel, holds good in the present context as well, of the account in the name of the Gold Jewell Corporation BVI, and be thus assessed in respect of the same, and, whether, in this regard, the coordinate bench decision in the case of ACIT Vs Jitendra Mehra (BMA No. 1/Del/20; order dated 7th July 2021) does not constitute a binding precedent inasmuch as it does not take into account Section 2(15) of the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act 2015?

(e) Whether the authorities below were justified in assessing the amounts, represented by certain entries in the bank account, under the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act 2015, even though the assessee had furnished due and reasonable explanations in respect of the same?

(f) Whether the learned CIT(A) was justified in deleting the amount of US $ 32,13,307.60 in UBS Bank Singapore account no. 161753 on the ground that the related bank credit on 22.2.2010 stands reasonably explained by the assessee, whereas under section 2(11) of the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act 2015, what needs to explained is the source of investment and not merely the accounting entry?

Rival contentions:

16. Shri Pardiwalla, learned senior counsel appearing for the assessee, took pains to take us through various provisions of the BMA, and explained to us the scheme of the Act. One of the points he highlighted is that, according to him, what it covers is those undisclosed foreign assets that existed at the point of time when provisions of the Act came into force. It was pointed out that Section 1(3) provides that "**save as otherwise provided in this Act, it shall come into force on the 1st day of April 2015**". It is then also pointed out that the expression 1st day of April 2015 was substituted for "1st day of April 2016" by the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act (Removal of Difficulties) Order, 2015. It is thus submitted that the provisions of the Act came into effect from 1st April 2015. Learned counsel then takes is to the provisions of Section 2(11) which provides that "'**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**". Learned counsel submits that the wordings of the provision clearly refers to the expression "which is held by the assessee" or of which the assessee "is a beneficial owner", which indicates the continuing existence of the asset. When the asset does not exist, at the point of time when the law came into effect, there cannot be any occasion to invoke the provisions of the said Act. The basic contention of learned senior counsel, in this regard, is that while this Act came in force with effect from 1st April 2015, as is provided by Section 1(3) of the Act, and while the definition of undisclosed asset under section 2(11) refers to the undisclosed asset of which the assessee "is" beneficial owner, the relevant bank accounts did not exist at the point of time when the Act came into force, and, therefore, the provisions of this Act cannot be pressed into service vis-à-vis a bank account which did not exist on that date. He took us through Hon'ble Supreme Court's judgment in the case of **FS Gandhi Vs CWT [(1990) 184 ITR 34 (SC)]**in support of the connotations of expression "is" appearing in the statute, and submitted that the ratio of this case will squarely apply to the fact situation that we are dealing with. Learned counsel has also emphasized the fact that the assessee has been taxed on assets, and, not on income from these assets is evident from the fact that if the assessee was to be assessed on income, only the net receipts (i.e. net of expenses) could have been taken into account while the Assessing Officer has simply taken into account the gross receipts. Learned counsel further submits that wherever lawmakers wanted to use the expression "has been", as would probably cover the assets not existing at the point of time when BMA came into force, the legislature has specifically done so, for example in section 5(1)(ii) where the expression "is" as also "has been" used alongside.

17. It is pointed out that as on the point of time when the provisions of the BMA came in force, i.e. on 1st April 2015, the related bank accounts were already closed. The bank account no 134274 was closed on 8th October 2008, and bank account no. 161753 was closed on 16th May 2011. It is thus contended that under section 3 the charge of taxis "in respect of his total undisclosed foreign income and asset of the previous year" and when there is no undisclosed foreign income or asset, at the point of time when the first previous year under the BMA commenced, there cannot be any occasion for bringing the same to tax under the BMA. Learned counsel submits that Gautam Khaitan*(supra)* decision relied upon by the learned CIT(A) is completely out of place inasmuch as this is a case that dealt with the question of whether the application of Act could be extended to 1st April 2015, as against 1st April 2016 originally enacted, under section 86 of the BMA. It was thus urged that the action of the authorities below in applying the provisions of the BMA cannot be sustained in law.

18. Learned senior counsel's next proposition is that a bank account abroad *per se*, whether it existed at the point of time of the provisions of the BMA came into force or not, cannot be treated as an asset or an income for the purpose of Section 2 (11). It is submitted that a bank account statement could be a relevant document but it does not constitute an asset particularly when an account is no longer in existence. Learned senior submits that section 2(11) refers to only such assets which have a cost of acquisition as section 2(11) defines the undisclosed asset located outside India as "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". It is thus submitted that an asset, as the language of section 2(11) suggests, has to be acquired for a cost, because it is only when there is no explanation, or unreasonable explanation, for investment in such asset that the asset can be treated as assessable under section 3. He gives the example of a house property held abroad and submits that it will have a value in much as it constitutes an investment. He, however, submits that under rule 3 (e) of the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Rules, 2015 *(***BMR**, *in short*) a mechanism has indeed been provided for valuing a bank account, but then the provisions of the rule cannot override the provisions of the Act. He then takes us through the provisions of rule 3(e) which provide that "**value of an account with a bank shall be, (i) the sum of all the deposits made in the account with the bank since the date of opening of the account; or (ii) where a declaration of such account has been made under Chapter VI and the value of the account as computed under sub-clause (i) has been charged to tax and penalty under that Chapter, the sum of all the deposits made in the account with the bank since the date of such declaration**" subject to the proviso that "**where any deposit is made from the proceeds of any withdrawal from the account, such deposit shall not be taken into consideration while computing the value of the account**". It is his submission that the said rule undoubtedly covers the valuation of an undisclosed foreign bank account as well, but, in doing so, the rule goes well beyond the scope of the related provisions of the BMA. If Section 2(11) does not cover a bank account, this rule is irrelevant and we must read down the same. On the question whether we have the powers to read down the provisions of the rules, learned counsel relies upon Hon'ble jurisdictional High Court's judgment in the case of **CIT Vs Bombay State Corporation [(1979) 118 ITR 399 (Bom**)]. It is submitted that a bank account is not an asset even though it may represent assets, but since it is not an asset, whether a mechanism to value the same is provided or not, it cannot be brought to tax under BMA. We are urged to read down the provisions of rule 3(e).We are then urged to read the language of section 3, alongwith CBDT clarification under reply to question 13. He states that what can be assessed in the hands of the assessee is either an asset or an income. The bank account is not an asset under BMA as it did not exist at the point of time when BMA came into force and in any case, there is no net balance in the account eventually, and it is not income because what can be taxed is only income and not simply the credits. Learned senior counsel fairly submits that rule 3(e), the mechanism of valuing the bank account has been provided but then he submits that it is well settled in law that the provisions of the rules cannot override the provisions of the parent Act. Therefore, if a bank account cannot be treated as an asset under the BMA, it cannot be open to us that a bank asset is an asset because a mechanism has been provided to compute the value of bank account under rules framed under the BMA. On the basis of this line of argument, learned senior counsel urges us to hold that the bank account nos. 161753 and 137274, which were closed much before the BMA came into force, did not constitute an asset, and, accordingly, these bank accounts

cannot be assessed in the hands of the assessee. Learned counsel submits that in any case the Assessing Officer could bring any income, even if not covered by the BMA, to tax in the post search assessments, and as such, there is no loss of revenue on account of a bank account being taken out of the ambit of Section 2(11) and (12). It is further urged that credit entries in these accounts cannot be treated as income because the expression 'income' inherently refers to the earnings from the receipts which can only be net of the expenses.

19. Learned senior counsel then submits that the bank accounts in question cannot be said to be undisclosed assets inasmuch these assets were in the knowledge of the income tax authorities much before the provisions of the BMA came into effect. Learned counsel then invites our attention to the CBDT circular no. 13 of 2015, dated 6th July 2015, which, in reply to question no. 12, admits that an assessee cannot make a declaration in respect of an undisclosed asset in respect of which the Government has received the information. He submits that it was in 2013 for the first time that the assessee received a notice in respect of these bank accounts, and the Government as such aware and had received the information about these bank accounts much before the BMA came into force. It is thus submitted that the bank accounts in question, even if treated as foreign assets, cannot be treated as unaccounted foreign assets.

20. Learned senior counsel's next point is that the assessee cannot be said to be the beneficial owner of the bank accounts in question. Learned counsel submits that the expression 'beneficial owner' is a well-defined expression under the BMA, inasmuch as Section 2(15) of the BMA provides that **"all words and expressions used herein** *(i.e. Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act 2015)* **but not defined, and defined under the Income Tax Act, 1961, shall have the meaning respectively assigned them in that Act**" and inasmuch as Explanation 4 to Section 139(1) of the Income Tax Act, 1961, states that "**'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**". Learned counsel submits that, therefore, unless it is shown that an assessee has, directly or indirectly, provided consideration for that asset, an assessee cannot be said to be owner thereof. It is then submitted that there is nothing to demonstrate that the assessee has paid any consideration for the asset in question- the company or the bank account. We are thus urged to hold that the assessee could not be treated as a beneficial owner of the bank accounts in question. He further submitted that he is alive to the fact that a coordinate bench of this Tribunal, in the case of **ACIT Vs Jitendra Mehra (BMA No. 1/Del/20; order dated 6th July 2021)** has rejected this approach by holding that the definition under the Income Tax Act, 1961 in this regard will not hold good but as this position is clearly contrary to Section 2(15) of the BMA, this decision is required not to be taken into account. When it was put to him that the contextual reference for the meaning of 'beneficial ownership' in the context of unaccounted offshore assets may be materially different, learned counsel submits that even the definition under Explanation 4 to Section 139(1) is in the context of offshore assets only, and, to highlight this aspect of the matter, he takes us to the fourth proviso to Section 139(1). We are thus urged to vacate the impugned additions for this reason as well and hold that the assessee was not a beneficial owner of the bank accounts in question.

21. Learned senior counsel then briefly addressed us on merits, He submitted that when each of the entries in the bank account is explained, there cannot be any question of any addition being made. Learned counsel submitted that what is being added in the hands of the

assessee is value of an undisclosed asset and, therefore, all that is to be seen is whether the entry stands explained or not. When it was pointed out that the assessee has not even given the complete bank accounts and the assessee has not explained the source of investments, it was submitted that the additions have been made based on the documents on record, and, therefore, the documents not produced cease to be relevant and that his instructions are that the investments have been made out of borrowings. Learned counsel submits that, as per information available to him, whatever is invested is out of the funds provided by the bank on loan, and that no collateral security or margin money has been provided by the assessee. When it was pointed out that while the bank account shows interest income of US $ 4,36,527.78 but what is the position concerningthe taxability of the asset on which this interest income is earned, learned counsel submitted that the investments, on which this interest income is earned, was made out of the borrowed funds. He also points out that the asset in question, i.e. 7% UBS Callable Accrual Note 2008, for the US $ 5 million was acquired out of borrowed funds on 15th May 2008. It is pointed out that the early redemption of these securities, for the US $ 3,212,766, on 18th February 2010, was treated as unexplained by the Assessing Officer, but satisfied with the fact that these securities were purchased out of borrowed funds, and to that extent, this credit stands unexplained, this addition has been deleted by the learned CIT(A). Learned senior counsel thus justified the action of the CIT(A) on this point, which is a subject matter of revenue's appeal and is referred to in question (f) framed in paragraph 11 of this order. Learned counsel once again emphasized that what has been brought to tax is only the impact of unexplained entries but once all the entries are explained, there cannot be any occasion to make any additions in respect of the same. Learned counsel submitted that the assessee, on his own has accepted unexplained credit entries to the extent of US $ 7,15,538.58 in respect of UBS Bank account no. 161753, but the Assessing Officer has made the addition of US $ 3,213,307 in respect of early redemption of investments, as discussed a short while ago- which has been deleted by the CIT(A), and the US $ 87,500 in respect of missing entry of interest on securities, While so far as the addition of US $ 3,213,307, learned counsel took us through the order of the learned CIT(A) and justified the same, no specific arguments were addressed on the addition of US $ 87,500 beyond saying that the addition is devoid of any basis. As regards account no. 137274, learned counsel points out that the addition of US $ 2,000,000 in respect of early redemption of 7.5% ANZ Callable Daly Range Accrual note, but then this investment was made out of the borrowings, and, to that extent, it stands explained and should be deleted. As regards the addition of US $ 2,186,000 on account of remittance received on 4th August 2008, from Asha Samir Bhansali, it has been explained as loan from sister and there is a corresponding entry the very next day i.e. 5th August 2008. It is thus nothing more than a contra entry and fully explained. It is once again emphasized that once a credit entry is reasonably explained and is not of the income nature, no additions can be made in respect of the same. Learned senior counsel for the assessee did not say much on the facts of the case, and when asked about the conduct of the assessee, he did not make any further submissions on the conduct on what the assessee has already explained at the assessment stage. He nevertheless pointed out that the requirement of disclosure of foreign bank accounts in the income tax returns did not exist at the relevant point of time and, therefore, the assessee could not be said to be at fault on this point. Learned senior counsel submits that once the affidavit of the assessee, owning up these bank accounts have been accepted by the Assessing Officer, it cannot be open to him to disregard the part of the affidavit which supports the case of the assessee. In this backdrop, it is urged that the assessee's wife did not have anything to do with the bank accounts and she was not the beneficial owner of these bank accounts. In case anything is to be taxed in respect of these bank accounts, the same should only be made in the hands of this assessee. It is also

pointed out that, according to this affidavit, no collateral security was given for the loans availed by the assessee. In particular, our attention is invited to the statement made in the affidavit to the effect that "loans taken from the bank were invested with them in their own structured products, callable notes, bonds etc; that, in reality, the loan amount was held in the bank only and that on maturity or redemption, the bank would take the loan back along with the interest, and credit the difference to the account which was the actual gain". It was explained that for this reason there was no credit balance on the closure of accounts. It is submitted that it is not open to us to disregard the affidavit on these issues when the same has been accepted for bringing the accounts in question to tax.

22. When we asked the learned counsel whether it makes any sense for any financial institution to grant any loans to a customer, without any margin, for investing in the products of the assessee, learned counsel did not have anything much to say, beyond what has been submitted before the authorities below at various stages, but he submitted that he will take further instructions on this aspect. Learned counsel concluded by submitting that in case there are any more specific questions on facts, the same will be dealt with at the rejoinder stage.

23. Shri Anand Mohan, learned Commissioner (Departmental Representative), submitted that the assessee before us was in denial mode all along and it was just at the fag end of the assessment proceedings, and just three days before the end of the time limit for completing the assessment, that the assessee owned up the bank account and furnished his explanations in this regard. This action on the part of the assessee, according to the learned Commissioner, was part of the strategy of the assessee to pre-empt a thorough examination of the details furnished. Learned Commissioner submitted that the assessee has been completely non-cooperative right from the beginning, and has not furnished any information other than what was anyway in the possession of the Assessing Officer. It is submitted that the explanations of the assessee during the search proceedings, during the BMA proceedings as also the story cooked up for explaining the delay in owning up the bank accounts, lack any credibility. Learned Commissioner submits that the assessee has not come clean about these bank accounts and continued to be evasive even during the assessment and appellate proceedings.

24. As for the question that the BMA provisions cannot have any retrospective applications inasmuch as the assets did not exist at the point of time when the provisions of the BMA came into effect, learned Commissioner, relying upon the elaborate reasoning set out in the impugned order, stated that it is not a condition precedent for charging an asset under this Act that the assessee must continue to hold or be a beneficial owner of the asset in question. All that is necessary, according to Shri Mohan, is that the related assets must come to the notice of the Assessing Officer in the relevant previous year and that is what proviso to Section 3(1) specifically provides. Learned Commissioner then referred to the provision of Section 72(c) which provides that even in respect of the assets acquired prior to the commencement of BMA, as long as the declaration has not been made in respect of the same, such assets can also be subjected to assessment under the BMA.

25. Learned CIT(DR) then submits that no word in a statute can be interpreted in such a manner so as to make the entire scheme of the Act redundant. It is submitted that the scheme of the Act, duly supported by interpretations by Hon'ble Courts above as also by CBDT in the circulars issued on the subject, clearly provides that the assets held in past can also be subjected to assessment under the BMA when these assets are undeclared ones, and that is how the provisions of the Act must be construed. He then submits that there is no question of

rule 3 (e) being contrary to the BMA provisions, and quite to the contrary, the provisions of the Act and the Rules must be read in a holistic manner so as to bring out the true scope of the provisions of the Act. When we do so, according to the learned counsel, the inevitable corollary is that a bank account is also required to be treated as an asset, as it existed as an asset in past- which is what matters, and as it represented the assets reflected in the transactions. Our attention is then invited to rule 3 (e) of the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Rules, 2015 *(***BMR**, *in short)* which clearly provides that "**value of an account with a bank shall be, (i) the sum of all the deposits made in the account with the bank since the date of opening of the account; or (ii) where a declaration of such account has been made under Chapter VI and the value of the account as computed under sub-clause (i) has been charged to tax and penalty under that Chapter, the sum of all the deposits made in the account with the bank since the date of such declaration**" subject to the proviso that "**where any deposit is made from the proceeds of any withdrawal from the account, such deposit shall not be taken into consideration while computing the value of the account**". It is then submitted that as rightly held by the coordinate bench in the case of Jitendra Mehra (supra), even a bank account is an asset, and even if a bank account pertained to the earlier years, it will be brought to tax in the year in which it came to the notice of the Assessing Officer. Learned Commissioner (DR) submits that it is anyway a non-issue because what has been brought to tax are only interest entries and unexplained credits which are of income nature anyway. As for the connotations of the expression 'beneficial owner' under the ITA, learned CIT(DR) submits that the assessee had much more than beneficial ownership of the bank accounts. The assessee directly owned, operated and maintained the bank accounts in question, and, therefore, it cannot be said that the accounts did not belong to the assessee. It was also submitted that as for the consideration for these assets, held as unaccounted assets abroad, flows through unofficial channels and in dark, and it can never be thus possible to prove the payment of such consideration. We are urged to hold that the definition set out in Explanation 4 to Section 139(1) of the ITA will not hold good in this regard.

26. Learned CIT(DR) explains that the inquiries conducted in 2013 were by the investigation wing, and, therefore, it could not be said that the Assessing Officer was aware of the existence of these bank accounts. What really matters is the previous year in which the Assessing Officer comes to know about these assets- as is the clear mandate of the proviso to Section 3(1). As for the clarification, that is not in the nature if a concession and it only explains the scope of declarations to be made under the BMA. It is thus submitted that the circular is being quoted out of context.

27. As regards the explanation for the credit entry of US $ 3,212,766, on 18th February 2010, in the bank account, it is submitted that the entry may be explained inasmuch as it is a transparent manner, and, therefore, the investment does not remain unexplained. It is pointed out that the assessee has not given bank statements for the earlier period, and even this is not clear as to how margin monies are maintained for loans on these investments. Keeping all these factors in mind, according to the learned CIT(DR), learned CIT(A) has wrongly deleted this addition, and we are urged to restore the same. As regards other additions on the basis of credits, learned CIT(DR) relied upon the findings of the Assessing Officer. In particular, it was pointed out that the addition of US $ 2,186,000 is justified since the explanation of the assessee is not supported by any document, material or confirmation. Similarly, so far as credit of US $ 2,000,000 is concerned, it may be for redemption of securities but then the source of investment in the securities is not properly explained- save and except for reference

to certain entries. As regards the addition of US $ 87,500, it was noted that there is no explanation for the same. We were thus urged to vacate the relief granted by the CIT(A) in respect of US $ 3,212,766, and confirm the additions of US $ 2,000,000, US $ 2,186,000, and the US $ 87,500 which have been confirmed by the learned CIT(A) as well. Learned CIT(DR) submits, in response to our question about the nature of transactions that these aspects indeed require deeper examination than on record, and, as the final fact-finding authority, rather than confining ourselves to limited findings on the record, we may give a direction for an examination of entries in detail, should that be considered necessary.

28. In the brief rejoinder given by Shri Madhur Agarwal, learned counsel for the assessee, the points made by the learned senior counsel were reiterated. It was submitted that all the credit entries are properly explained and whatever has not been explained, the assessee has, on his own, accepted tax liability in respect of the US $ 7,15,538 and the US $ 1,29,688 in these two accounts. Learned counsel once again explained the entries in the books of accounts and justified the same. When it was put to him that as to how could a bank advance loan, for investment in its own products, without any margin money or without any collateral security, learned counsel did not have much to say. While he painstakingly took us through the bank statements and attempted to explain every entry, he could not explain th commercial rationale for such a structure. He once again submitted that he has instructions to say that neither there was margin money nor collateral security for these borrowings. When we asked him as to how can the assessee be trusted for his explanation in the absence of any documentary evidence to substantiate the same and as to why has the assessee has not furnished the complete bank statements at least, learned counsel simply relied upon the stand of the assessee on the instructions as received from the assessee. Learned counsel nevertheless addressed us at length on legal principles and broadly reiterated the stand of the learned senior counsel. He submitted that it is not the asset held in past which is outside the ambit of BMA but his contention is that a bank account that is closed now cannot be taxed in respect of its balance earlier. It was then pointed out that what can be taxed in BMA is either an asset or an income, but credit entries cannot be equated with income and the bank account is not an asset anyway. The concept of beneficial ownership under the ITA was reiterated again, and it was submitted that the case of the Assessing Officer is that the assessee was the beneficial owner of the bank accounts but then the conditions precedent for establishing 'beneficial ownership' are not satisfied. It was once again pointed out that not only the bank accounts were known to the assessee, these bank accounts were duly investigated upon as far back as in 2013 and, therefore, it could not be said that these are undisclosed foreign assets. In response to our specific question about funding of the investments, learned counsel filed a written statement which, inter alia, states that:

> **On perusal of the entries in the bank accounts, it can be observed that the bank account reflect various entries in the nature of loans, investments, call deposits, interest, etc. The assessee has predominantly obtained loans from UBS bank on certain interest and has invested the same in callable bonds giving interest. The assessee would also keep the surplus fund in the call deposits which were in the nature of fixed deposits. The banks provided loans against the investments to be made in their own portfolios and against call deposits made by the assessee. Further, the loans were short term. The assessee would either repay loans out of the call deposit or take a fresh loan to pay the earlier loan. Further, the assessee would make investment out of the loans taken from the banks or out of the call deposit. As a result, the assessee would earn interest on investment and profit on**

sale of investment. Similarly, the assessee would pay interest on loans or incur loss on sale of investment.

29. On the strength of these submissions, we were once again urged to confirm the relief of US $ 3,212,766 granted by the CIT(A), and delete the additions of US $ 2,186,000, US $ 2,000,000, and the US $ 87,500 confirmed by the learned CIT(A). Learned counsel once again submitted that he has no objection to the entire disputed addition being confirmed, to the extent sustainable in law, in the hands of the assessee, as the assessee is a beneficial owner of both of these accounts.

30. The matter was once again fixed for hearing on 27th October 2021, two days after the conclusion of hearing, for certain clarifications and for the perusal of assessment records, in the presence of the assessee, as we were not satisfied by the explanations of the assessee on the margin money and the collateral security.

31. During the course of perusal of assessment records, we noticed that, as evident from the supplementary appraisal report on 14th August 2017, that there was one more bank account, i.e. account no. 611254, maintained with UBS Bank Singapore, but somehow it has not been taken into account in any of the orders of the authorities below. However, we declined to take judicial note of the same as it was marked 'confidential' and a copy of this was not furnished to the assessee. Learned Commissioner (DR), however, prayed that a judicial note may be taken of the same and that he is willing to allow access to this report to the assessee. Learned counsel for the assessee also did not object to judicial note being taken in respect of the same. In these circumstances, we havetaken note of the following observation made in the said appraisal report only with a view to point out our doubt that the assessee has not shared full facts even now:

> **……An indicative annexure based on the brief analysis of the contents of the statement of the account for the Account No. 611254 held by the GJC with the UBS AG, Singapore from the period December 2008 (account opening) to May 2011 (account closing) is enclosed. <u>As per the information received, the account number 611254 is the margin account to the GJC's account number 161753</u> and no separate account opening form is required**……
>
> *[Emphasis, by underlining, supplied by us]*

32. Learned counsel submits that he has no idea about this account and that he will take instructions. He submits that he will need time to obtain a copy of the account and analyze the same. We do not think it is necessary to deal with this account on merits as we cannot enhance the scope of the proceedings. The additions in respect of the said account is not an issue before us as on now. We are not inclined to deal with those aspects of the matter or to broaden the scope of controversy before us. Suffice to note that this input suggests that the assessee has not been truthful at any stage of these proceedings, even before us. Learned counsel has nevertheless been granted time till 28th October morning to take instructions on the limited aspect as to whether or not such an account existed, and, if yes, why was that information not shared with the income tax authorities. There has been no response till the time of pronouncement of this order.

<u>Challenge to the proceedings under the BMA</u>

before Hon'ble Bombay High Court

33. We may, at this stage, also take note of a writ petition (i.e. WP No. 40 of 2019) filed by the assessee, and of Hon'ble Bombay High Court 's order dated 28th March 2019 thereof. Their Lordships' order is reproduced below for ready reference:

> **Several legal issues including the challenge to the constutionality of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Act 2015, require detailed consideration, hence, Rule.**
>
> **In view of the challenge to the Union legislation, let there shall be notice of admission be issued to the learned Attorney General.**
>
> **Having heard the learned counsel for petitioner, however, we donot find any reason to either stay any of the provisions of the Act, or to prevent Competent Authority from passing appropriate orders on pending proceedings. Interim reliefs prayed in the petition are, therefore, refused.**
>
> ***Sd/xx*** ***Sd/xx***
> **[SARANG V KOTWAL, J]** **[AKIL KURESHI, J]**

34. We have also perused a copy of the writ petition no. 10362/21 filed by the assessee before Hon'ble Bombay High Court, on 26th April 2021, a copy of which was available in the assessment records placed for our perusal, but we find it wholly unconnected with the controversy before us inasmuch as this writ petition deals with a challenge to the recovery proceedings in respect of the demands impugned in appeal before us, while we are not really concerned with that aspect of the matter as on now. That's not in challenge before us.

35. Learned senior counsel has submitted that as the very foundational legal provisions, under the BMA, are in challenge before the Hon'ble High Court, and as he undertakes to make a mention before Their Lordships- as soon as the Hon'ble High Court reconvenes, seeking an early hearing of the writ petition no. 40 of 2019, the hearing of these appeals may be kept in abeyance till the writ petition is disposed of. He submits that this will ensure that there is no multiplicity of proceedings in the sense that in the event of Hon'ble Bombay High Court upholding the challenge to the constitutional validity of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act 2015, the present proceedings will be rendered infructuous. Learned Commissioner (DR), on the other hand, prays that once the matter has come up for hearing, it is only appropriate that the matter be disposed ofat the earliest convenience. However, the learned Commissioner leaves the matter to the bench.

36. We are unable to accede to the request made by the learned senior counsel. There is no question of any parallel proceedings. As a final fact-finding authority, it is our bounden duty to place on record our understanding of the law and our understanding of the correct facts, and our reasons for having formed that opinion, so that Their Lordships can take appropriate judicial call thereon whenever the occasion arises. Our work is, in a way, is to put the things in proper perspective, whether legal or factual- and more so factual, and to facilitate superior judicial calls by Hon'ble Courts above. Whatever we hold is, and shall always remain, subject to whatever Their Lordships decide. In any case, the issues raised in

the said writ petition are wholly unconnected with our adjudication, as evident from the following extracts from the writ petition (see page 324 of the assessee's paper book):

> **POINTS TO BE URGED:**
>
> **A. Retrospective operation of Black Money Act in terms of Section 72(c) leading to duality of proceedings is *ultra vires* the provisions of the Black Money Act and unconstitutional. Section 72(c) of the Black Money Act cannot travel beyond the charging Section 3 (1) of the Black Money Act. The legal fiction created by Section 72 (c) of the Black Money Act cannot dilute the provisions of the charging section.**
>
> **B. On completion of Re-Assessments under the Income Tax Act, the jurisdiction of the officers to institute or continue proceedings under the Black Money Act is wholly ousted.**
>
> **C. Retrospective operation of Black Money Act in terms of Section 7(c) suffers from the vices of an *ex post facto* penal statue and is violative of Article 20 (1) of the Constitution of India.**
>
> **D. Provisions of Chapter VI including Section 72 (c) has been wrongly invoked in the present case.**

37. We have also noted that Their Lordships have specifically declined a stay on the applicability of the provisions of the Act or a stay on proceedings by the authorities. We must humbly bow to the superior wisdom of Hon'ble Courts above. When Their Lordships considered opinion is that no such stay is warranted on the facts and in the circumstances of the case and even till the writ petition is disposed of, it cannot be open to us either to stay the proceedings till the writ petition is disposed of, or, in any manner, delay the disposal of these appeals till the writ petition is disposed of. In any event, having carefully perused the material on record and having considered the entirety of the case, we do not think it to be a fit case for holding these proceedings in abeyance till the disposal of the aforesaid writ petition. This prayer of the assessee is, thus, rejected.

Our analysis:

38. While we will deal with the questions, as framed by the representatives, and then proceed to dispose of the specific grounds of appeal, in the light of, inter alia, our answers to these questions, we deem it appropriate to first deal with questions (e) and (f), which predominantly requires a factual analysis and, of course, reference to some legal developments and legal propositions.

39. The enactment of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act 2015 did not only reflect the beginning of the relentless efforts of the present Government to check the menace of undisclosed assets and income stashed abroad but it also provided a window to all the wrongdoers to come clean, to pay their taxes honestly and to enjoy being on the right side of the law.

40. Unfortunately, however, many in our citizenry did not take this opportunity seriously and with the respect it deserved. They were blinded by the perception that our preceding establishments and the foreign Governments as also the multilateral forums, while giving this cause a somewhat superficial support, have all along been seen as turning a Nelson's eye to such things, and by the hope that this approach will continue to hold good until the proverbial Nelson, as the phrase goes,'got his eye back'. [Incidentally, Horatio Nelson, the character behind these famous expressions, i.e. 'turning Nelson's eye (*signifying turning a blind eye*)' and 'not until Nelson gets his eye back *(signifying something to last forever)*' was a British naval commander (1758-1805) who was blind in one eye and who never got this eye back.]

41. The way things have unfolded in India, and way Indian initiative has found support from the global quarters, however, these perceptions turned out to be incorrect.

42. A series of administrative steps as also legislative changes, beginning with the setting up of the SIT. enactment of the Black Money (Unaccounted Foreign Income and Assets) and Imposition of Tax Act 2015, strengthening the institutional framework for the exchange of information and clearly discernible thrust on enforcement of law are pointers in this directions. While it may still take time to see the complete results of this exercise, and what we see now is only the tip of the iceberg, the cases like this aptly demonstrate that the efforts are yielding results, even if the pace of progress is slow due to the delays inherent in a just, fair and transparent legal process.

43. The information about the GJC-BVI and assessee's linkage with the same was in the public domain as far back as 2013, as could be seen in the Indian Express press report oninvestigations done by the International Council of Investigative Journalists- see item 74 (http://archive.indianexpress.com/news/icij-probe-list-of-indians-in-tax-havens/1129752/3) but there was no action taken on the same. An enquiry was initiated by the investigation wing, as evident from the notice dated 19th July 2013 but the assessee did not even fully comply with the requisition for information, and till 24th November 2014 nobody even reminded the assessee about the remaining details which were said to be "under compilation and will take some more time" (see letter dated 1st October 2013- at page 5 of the paper-book, the last sentence). It was only on 24th November 2014 that the follow-up investigations were perhaps initiated and the process of collecting the requisite intelligence information, under the Exchange of Information clauses in respective treaties as also from other sources, started. Once the investigation wing had sufficient information, a search and seizure operation was carried out in early 2016 and the resultant proceedings are before us.

44. In the meantime, however, there was a very significant opportunity to those having unaccounted foreign assets, to come clean and mend their ways. Section 59 of the BMA provided for a declaration that "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 Indiaand 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; and (c) which has escaped assessment because 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". In between the point of time when

the inquiry concerning assessee's unaccounted foreign bank and the offshore company started and till the point of time when search and seizure operation was carried out, the assessee had an opportunity to come clean- the opportunity which the assessee never availed.

45. As early as 2013, the assessee was asked by the Dy Director of Investigation (Mumbai) if he was associated with any offshore companies, but the assessee replied in negative. On 17th March 2016, during the income tax department's search operation, the assessee was specifically asked about the GJC-BVI and whether he had any connection with the GJV-BVI, the assessee feigned ignorance about it. He was asked about the UBS Bank Singapore account, and he feigned ignorance about it. The assessee was confronted with the material that the Government had obtained, under the exchange of information enabled by the applicable tax treaties, including the material on which signatures of the assessee appeared and which was in assessee's own handwriting, but the assessee declined having signed these papers and went to the extent of saying that "**I think there is some huge mistake or conspiracy in the matter**". When the assessee was asked about the persons with whom the assessee had transactions through these bank accounts, he refused any information about them. When the assessee was shown entries in the bank accounts, he was completely evasive and went to extent of saying that "**I believe that there is some fraud and I am not the owner of this bank account**". All this was being said on the face of the material officially received from the Government of Singapore, which included papers signed by him, incorporation details of the GJC-BVI, board resolutions of the GJC-BVI duly signed by him, clear handwritten instructions to the bankers, bank account opening forms duly signed by the assessee, statements of these accounts and evidence of transactions in these accounts directly with the companies owned and controlled by the assessee, and with close relatives of the assessee. All this is simply brushed aside and the assessee denies everything. That is not the end of the matter. The statement of the assessee is again recorded under section 8(b) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, and once again he denies anything to do with the GJC-BVI and accounts with the UBS Bank, Singapore. We have exhaustively reproduced the relevant questions and answers in paragraph 5, starting at page 19, earlier in this order. When asked about GJC-BVI and his being one of the directors thereof, the assessee states that "**I am not aware about the company Gold Jewel Corporation, though the documents state that we***(he and his wife)* **are the first directors of the company. To the best of my knowledge, these documents are not signed by us**". When asked about the bank account, he declined having signed the related documents and claims that he is "**not aware of any such bank account in UBS AG, Singapore**". However, when asked about entries in the bank accounts, he states that **"the entries appearing in the bank account statements of both the accounts are self-explanatory in the wording as loans and time deposits given by the bank".** It is not his account but he is wise enough to explain the entries as loans and time deposits "given by the bank"; that is somewhat unusual. The assessee is then shown specific written directions to the bank, in his own handwriting, but once again, he denies everything. The assessee was completely in denial mode all along the assessment proceedings, but just three days before the time limit for framing the BMA assessment order is to come to an end, the assessee owns up the offshore company as also the UBS AG's bank accounts in Singapore.

46. Let us take a pause here and consider how bonafide is this act of owning up the bank account, including the bank account in the name of GJC-BVI, and whether the Assessing Officer benefit from his act in any manner or learnt anything more than whathe already knew.

47. The assessee has a very interesting, and somewhat dramatic, explanation for this change of heart in owning up the bank accounts. On 28th March 2019, he informed the Assessing Officer that "**it is only yesterday while cleaning up the heap of papers recovered from my father, Shri Manharkumar Bhansali's old office which was sold recently, I found some papers pertaining to these bank accounts …(*which)*….<u>are photocopies of papers which are being relied upon against me and my wife by the department in respect of these two bank accounts</u>. Looking at these, I recall that my father had got me and my wife Mrs. Ami Bhansali to sign some such papers many years back. It thus appeared that these signed papers are pertaining to the very same two accounts which must have got opened by my father in the names of my wife and myself, for reasons best known to him"**The assessee claims that he took the legal advice, immediately on finding these papers, and in the light of the legal advice so obtained, **"I do hereby categorically own up these accounts viz.: account number-1372 74 belonging to Rashesh Bhansali and account number 161753 belonging to Gold Jewel Corporation, where the beneficial owner is Rashesh Bhansali only though shareholders are Rashes Bhansali & Ami Bhansali"** and that **"I am***(he is)* **giving explanation to the entries appearing in these two accounts to the best of my ability in the Annexure enclosed".** The same is the story repeated in the affidavit dated 29th March 2019, as also in the statement recorded under section 8(b) on 28th March 2019.

48. Trigger by the sight of a bunch of papers, that the assessee had seen several times before as well, the assessee's amnesia suddenly vanished and he could recall even each entry is quite a bit of detail within a few hours, as also the point of time when he signed the papers and at whose instance he signed the papers. It is indeed amazing that within hours of seeing the same papers in his father's office, which were shown to him umpteen times- including by the Assessing Officer, by the search team during the search proceedings, and even copies of which were handed over on 7th February 2019, the assessee recalled everything with immense clarity, he took the legal advice and even prepared the explanation for each entry. While the letter owning up the bank accounts was handed over on 28th March 2019, the heading of attachment as "Annexure to letter dated 27th March 2019- Total transactions in account reflecting as per bank account", with six-page explanations for each entry in these bank accounts, shows that this elaborate statement was also drawn up on 27th March 2019 itself. The assessee accepts that these papers are nothing more than copies of the very same papers that were shown to him by set of copies.

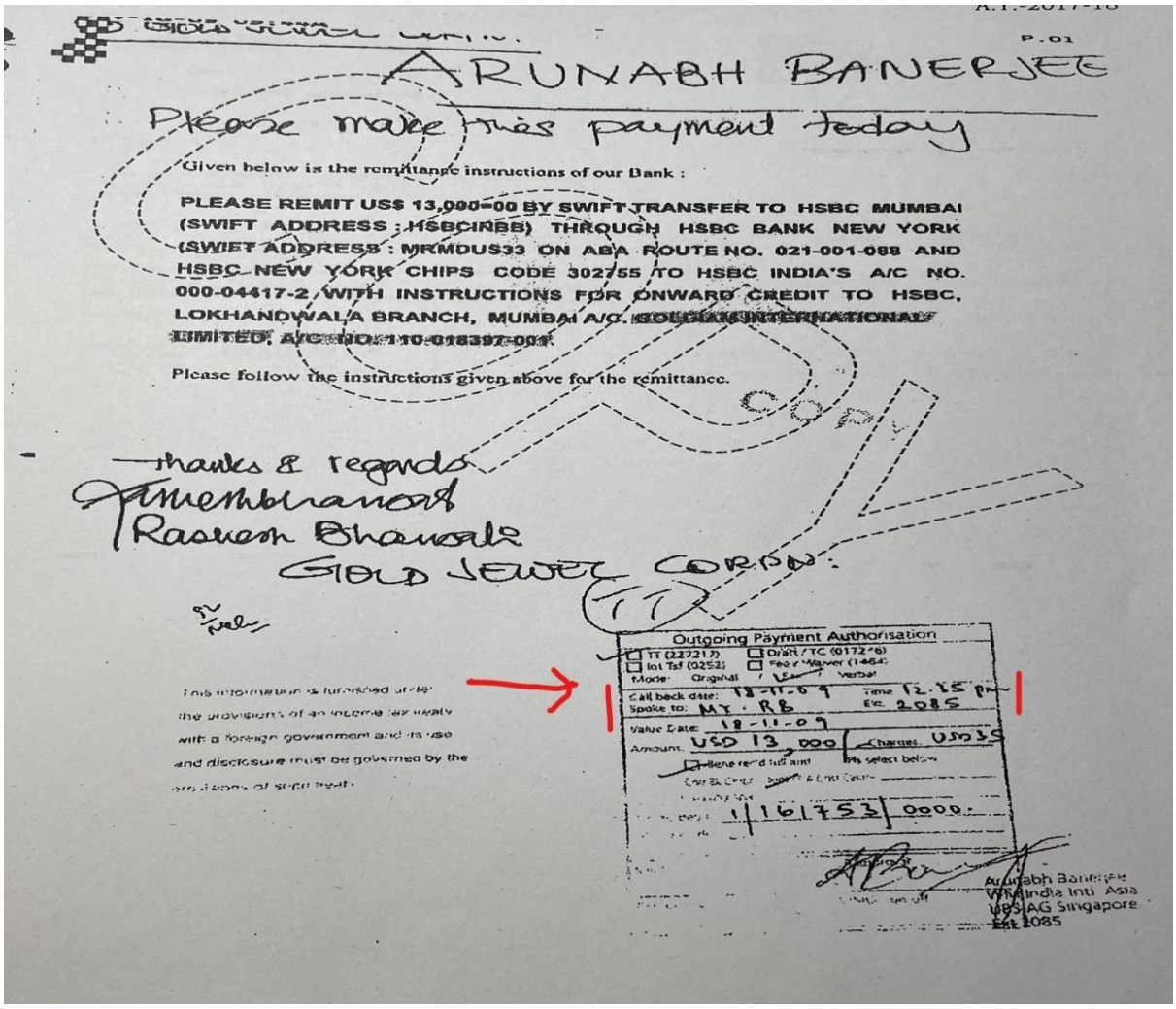
49. That certainly is an outlandish explanation, and, if anything, it shows the contempt that the assessee has for the wisdom of those who are to examine such explanations. The assessee also appears to be inconsistent in his approach. It is interesting to note that while, even according to the assessee's admission, he realized on 27th March 2019 that these bank accounts are his own accounts but then, on 28th March 2019 he was in Hon'ble Bombay High Court, to plead for interim relief his writ petition no. 40 of 2019 [which *inter alia* stated that "**at all times, the petitioners have denied and holding such accounts***(i.e. bank accounts with UBS Singapore)***and still continue to deny the same**"- internal page 334 of the assessee's paper-book], and Their Lordships declined interim reliefs prayed by the assessee, but then nothing on the records suggests that the assessee did inform Hon'ble Bombay High Court of this critical development. There is nothing to even remotely suggest that the facts set out in the writ petition before Hon'ble Bombay High Court were corrected. What follows is that the assessee was untruthful before the Hon'ble Bombay High Court, even according to his own admission of wisdom having dawned on him on 27th March 2019, but even that did

not yield him any relief- as evident from Their Lordship's order declining interim relief prayed for- see para 33 at page 47-48 earlier in this order. Not only the assessee has taken the contradictory stand at different times, the assessee has also takenthe contradictory stand before different forums at the same time. We may, in this regard, refer to the dictum known as '*falsus in uno, falsus in omnibus'* (false in one thing, false in everything) which has been referred to, with approval, by the Hon'ble Calcutta High Court in the case of **Amal Kumar Chakraborty v. CIT [(1994) 207 ITR 376 (Cal)]**. In this case, Hon'ble Calcutta High Court has observed that, "**Here, we go by the dictum *'falsus in uno, falsus in omnibus'*. Though applicable in criminal law, it is a sound principle to apply in taxation when the matter is one of finding of fact on the basis of statements of witness and their judicial evaluation**". The expression '***falsus in uno, falsus in omnibus***' is a Latin phrase meaning "false in one thing, false in everything' and is well accepted legal doctrine in common law jurisdictions. In one of the coordinate bench decisions in the case of **Friends Overseas Pvt Ltd Vs DCIT [(2001) 73 TTJ 367 (Del)]**, authored by one of us (*i.e. the Vice President),* this reasoning was adopted in rejecting the statement in a search case where contradictory stands were taken, and this line of reasoning was approved by Hon'ble Delhi High Court in the judgment reported as **Friends Overseas Pvt Ltd Vs CIT [(2004) 269 ITR 268 (Del)].**The explanation of the assessee does not, in view of the detailed discussions above, in the light of the human probabilities and on account of less than acceptable conduct on the part of the assessee, merit acceptance. As we will see a little later now, even on merits, there is reasonable uncontroverted and contemporaneous evidence, received through the Government of Singapore, to establish that the assessee did actually operate these accounts and that the assessee made clearly discernible efforts to withhold the truth.

50. That is, of course, besides the point that, as we will see a little later, the assessee did not enlighten the Assessing Officer anything that the Assessing Officer did not already know. The moment the assessee is asked about anything else, that is not known to the Assessing Officer, he once again feigns his ignorance, and amnesia hits him again. Coming back to the explanation given by the assessee, it is only elementary that when an asessee is required to give an explanation, it is not that his onus is discharged the minute he gives any explanation, howsoever improbable it is.Hon'ble Supreme Court has, in the case of **CIT v. Mussadilal Ram Bharose [(1987) 165 ITR 14 (SC)]**, although in the context of penalty, has observed, approving a ful bench decision of Hon'ble Patna High Court , that "**it was plain on principle that it was not the law that the moment any fantastic or unacceptable explanation was given, the burden placed upon him would be discharged and the presumption rebutted. We agree. We further agree that it is not the law that any and every explanation by the assessee must be accepted. It must be acceptable explanation, acceptable to a fact-finding body**." On a similar note, Hon'ble Supreme Court's observation, in the case of **CIT v. Durga Prasad More [(1971) 82 ITR 540 (SC)]**, to the effect that "**Science has not yet invented any instrument to test the reliability of the evidence placed before a court or tribunal. Therefore, the courts and Tribunals have to judge the evidence before them by applying the test of human probabilities**". When such are the views of Hon'ble Supreme Court even on the reliability of 'evidence', it is futile to even suggest that 'explanations' given by the assessee should be treated as gospel truth without putting them to elementary tests in the light of what really happens in a real world. This approach is also echoed by Hon'ble Supreme Court in **SumatiDayal v. CIT [(1995) 214 ITR 801 (SC)]**, wherein Their Lordships rejected the theory that it is for alleger to prove that the apparent and not real, and observed that, "**This, in our opinion, is a superficial approach to the problem. The matter has to be considered in the light of human probabilities……In**

our opinion, the majority opinion after considering surrounding circumstances and applying the test of human probabilities has rightly concluded that the appellant's claim ……. is not genuine. It cannot be said that the explanation offered by the appellant in respect of the said amounts has been rejected unreasonably".

51. The assessee has conveniently passed on the entire blame on his father, making the best out of the unfortunate fact that well his father is no more in the world and, therefore, this explanation cannot be proven wrong. Interestingly, however, his father was alive when search proceedings were conducted. In the statement recorded on 28th March 2019, when the assessee was specifically asked "**if at all you did not recollect this** *(the details of bank accounts)* **at the time of search and subsequent proceedings, did you not speak to your father about the issues raised during the course of search and/ or afterwards**", the assessee explained that "**Post the search was over, I did tell my father about the questions asked**" but "**As I could see, the immense stress on him due to his old age and various age related ailments, I did not press on this matter further with him**". Clearly, therefore, the father was told about all these papers, and yet he did not have anything to enlighten the assessee on. He had the papers and father together, yet he did not recall anything. Now you have the papers and memories of father, and everything is recalled to the extent planned. This admission is also incorrect and misleading when he says that "**It seems he** *(late father of the assessee)* **open the aforesaid bank account in our names and operated the same**. As I have come to know about this yesterday and on taking legal opinion also, I now am able to own up **these accounts opened and operated by my father in my name**". This statement appears to be*ex facie* incorrect in the light of the following instructions, including handwritten instructions, given by the assessee to the UBS Bank, Singapore (marked for the attention of Arunabh Banerjee, who is described as an employee of UBS AG, as evident from the rubber stamp marking in the account opening contract and at most of the documents reproduced in the assessment order- "Arunabh Banerjee, Wealth Management India Int'l Asia, UBS AG Singapore, Extn 2085"), and bank's internal marking shows not only the fact that the assessee was called back to confirm the instructions but even the date and time when the call back was given.When the assessee was asked about Arunabh Banerjee, during the course of recording a statement, the assessee had stated that "**I do not know Arunabh Banerjee and hence do not have any relation with him…**". That was clearly untrue. Not only thus the assessee sign the instructions, but the assessee was also called back on the same by the bank official Arunabh Banerjee and the assessee was fully aware of what the instructions were. As if even this was not enough, inmany cases, the transactions were with the Indian companies, managed by the assessee, and the impact of these transactions could not, therefore, have been missed. See, for example, one of the bank instructions received under exchange of information from the Government of Singapore, which is also reproduced on page 144 of the assessment order. The instruction was to pay the US $ 13,000 to the assessee's Indian company Goldiam International Ltd, through HSBC New York.As per noting by Anirudh Banerjee, he called back Mr R B (the assesseee) on 13 November 2009 at 12.35 pm, obviously to reconfirm the instructions, and then made the remittance of US $ 13,000. In the bank statement of GJC-BVI, this amount is shown as debited on 18th November 2009, and a copy of the relevant extracts of the bank statement is reproduced at page 145 of the assessment order. On the next page of the assessment order, a copy of the bank account of the Indian entity is reproduced which confirms that the credit of US $ 13,000 was duly given to the Indian bank account. The end to end transactions, in full knowledge of the assessee, is thus established.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Please follow the instructions given above for the remittance.

thanks & regards

Rasiklal Bhanushali

GOLD JEWEL CORPN.

Outgoing Payment Authorisation

Call back date: 18-11-09 Time 12.35 pm

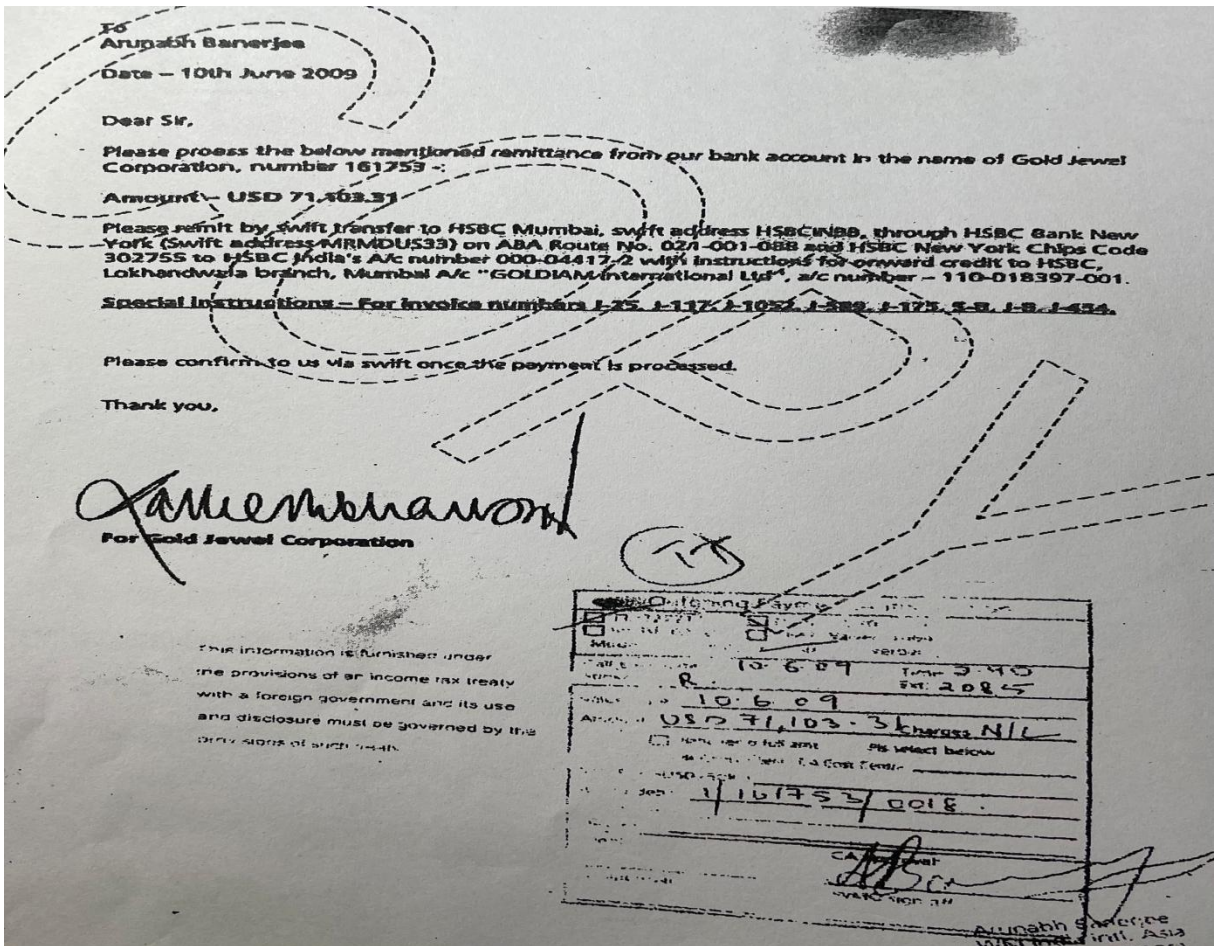
Spoke to: MY · RB Ext. 2085

Value Date: 18-11-09

Amount: USD 13,000

Arunabh Banerjee
VP India Intl Asia
UBS AG Singapore
Ext 2085

52. To take another example, on 10th June 2009, the assessee sends instruction to Arunabh Banerjee to remit US $ 71,103.31 to his Indian company Goldiam International Ltd (HSBC India account no. 110-018397-001), giving reference of various invoices. As per bank notings, Banerjee called him back that very day at 2.40 pm. A copy of this document is placed at page 141 of the assessment order. The Bank account of GJC-BVI with UBS Singapore, a copy of which is placed at page 142 of the assessment order, shows the entry for this remittance and the remittance charge of US $ 20. To add to this, a copy of the bank account of GoldiamInternational Ltd (HSBC India account no. 110-018397-001) at page 143 of the assessment order shows the credit to the Indian company controlled by the assessee. A copy of each of these bank instructions, debit to the GJC-BVI's account and credit to assessee's Indian company's account are placed below, exactly in that sequence:



To
Arunabh Banerjee

Date – 10th June 2009

Dear Sir,

Please process the below mentioned remittance from our bank account in the name of Gold Jewel Corporation, number 161753 –:

Amount – USD 71,103.31

Please remit by swift transfer to HSBC Mumbai, swift address HSBCINBB, through HSBC Bank New York (Swift address MRMDUS33) on ABA Route No. 021-001-088 and HSBC New York Chips Code 302755 to HSBC India's A/c number 000-04417-2 with instructions for onward credit to HSBC, Lokhandwala branch, Mumbai A/c "GOLDIAM International Ltd", a/c number – 110-018397-001.

Special instructions – For invoice numbers I-75, I-117, I-1057, I-289, I-175, S-8, I-8, I-454.

Please confirm to us via swift once the payment is processed.

Thank you,

For Gold Jewel Corporation

This information is furnished under the provisions of an income tax treaty with a foreign government and its use and disclosure must be governed by the

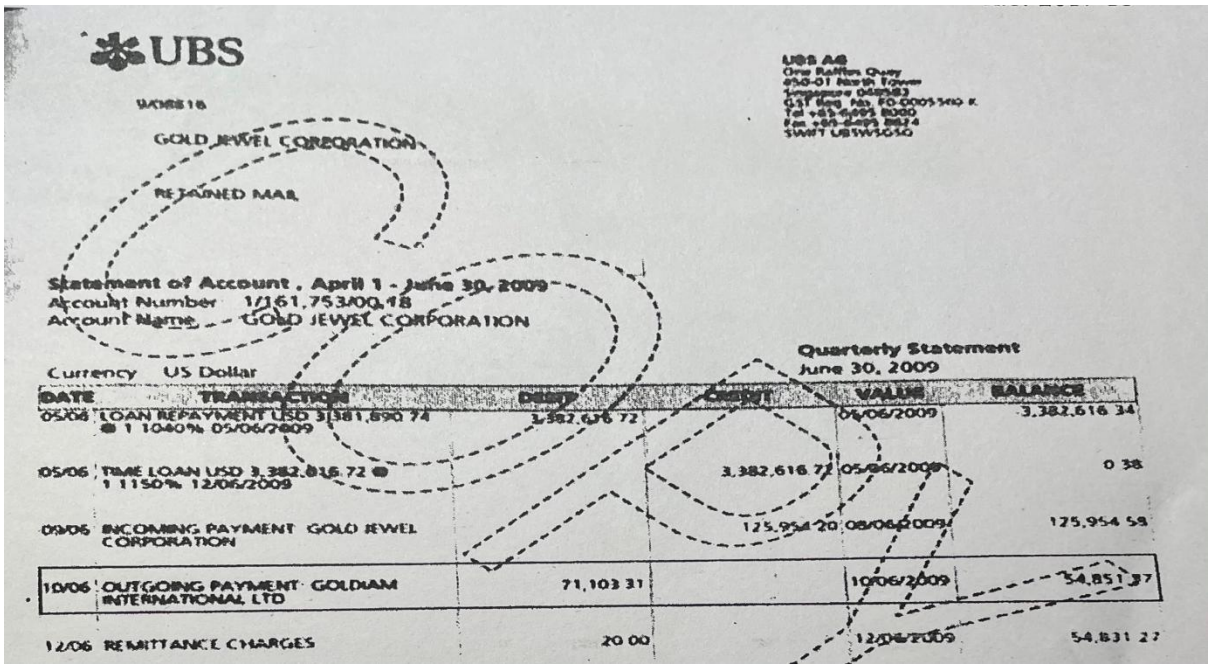
10 6 09

10 6 09

USD 71,103.31 Charges NIL

1/161753/0018

Arunabh Banerjee



UBS

GOLD JEWEL CORPORATION

RETAINED MAIL

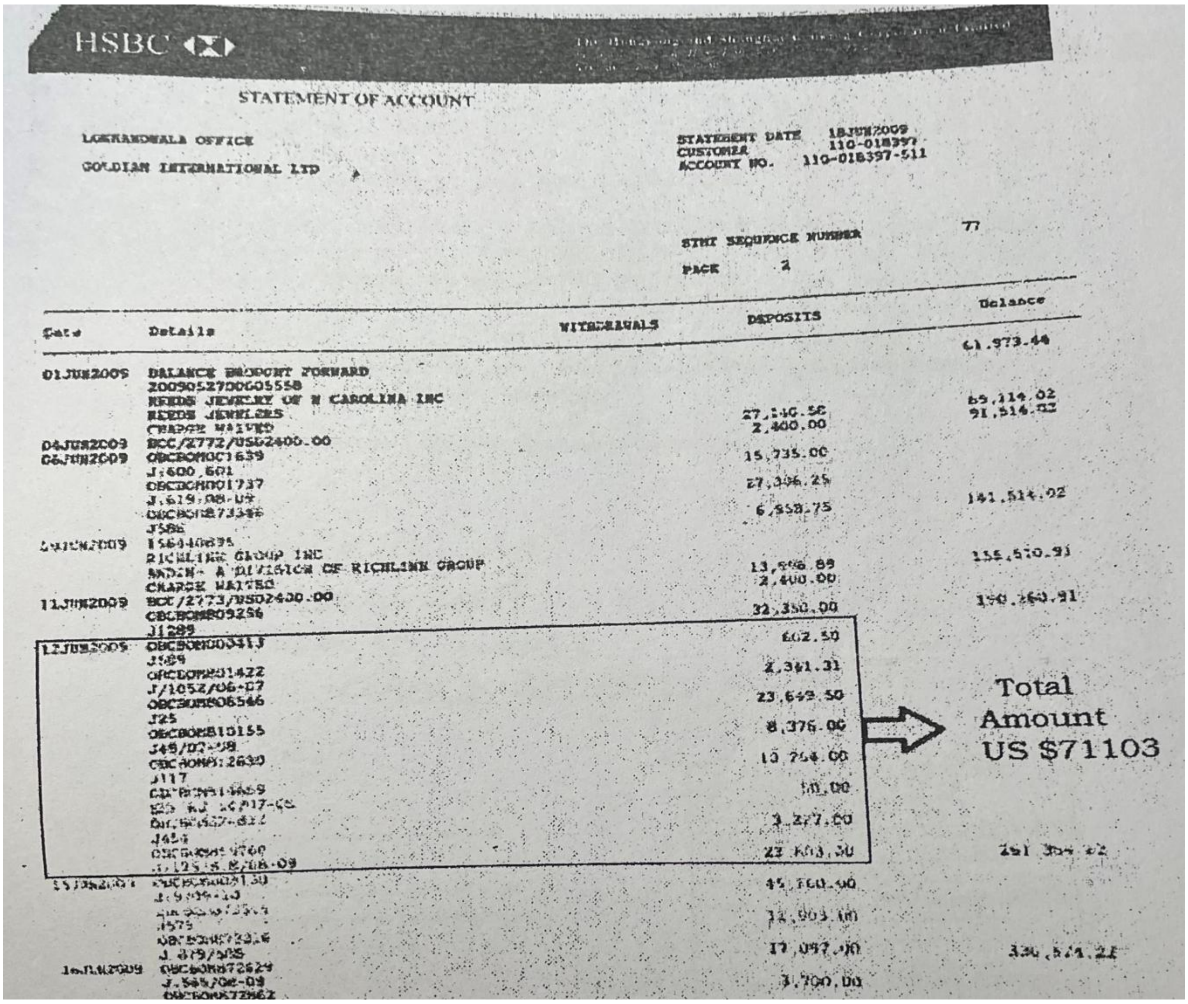
UBS AG

Statement of Account , April 1 - June 30, 2009
Account Number 1/161,753/00,18
Account Name GOLD JEWEL CORPORATION

Quarterly Statement
June 30, 2009

Currency US Dollar

DATE	TRANSACTION	DEBIT	CREDIT	VALUE	BALANCE
05/06	LOAN REPAYMENT USD 3,381,690 74 @ 1 1040% 05/06/2009	3,382,616 72		05/06/2009	3,382,616 34
05/06	TIME LOAN USD 3,382,616 72 @ 1 1150% 12/06/2009		3,382,616 72	05/06/2009	0 38
09/06	INCOMING PAYMENT GOLD JEWEL CORPORATION		125,954 20	08/06/2009	125,954 58
10/06	OUTGOING PAYMENT GOLDIAM INTERNATIONAL LTD	71,103 31		10/06/2009	54,851 27
12/06	REMITTANCE CHARGES	20 00		12/06/2009	54,831 27



HSBC

STATEMENT OF ACCOUNT

LOKHANDWALA OFFICE

GOLDIAN INTERNATIONAL LTD

STATEMENT DATE 18JUN2009
CUSTOMER 110-018397
ACCOUNT NO. 110-018397-511

STMT SEQUENCE NUMBER 77

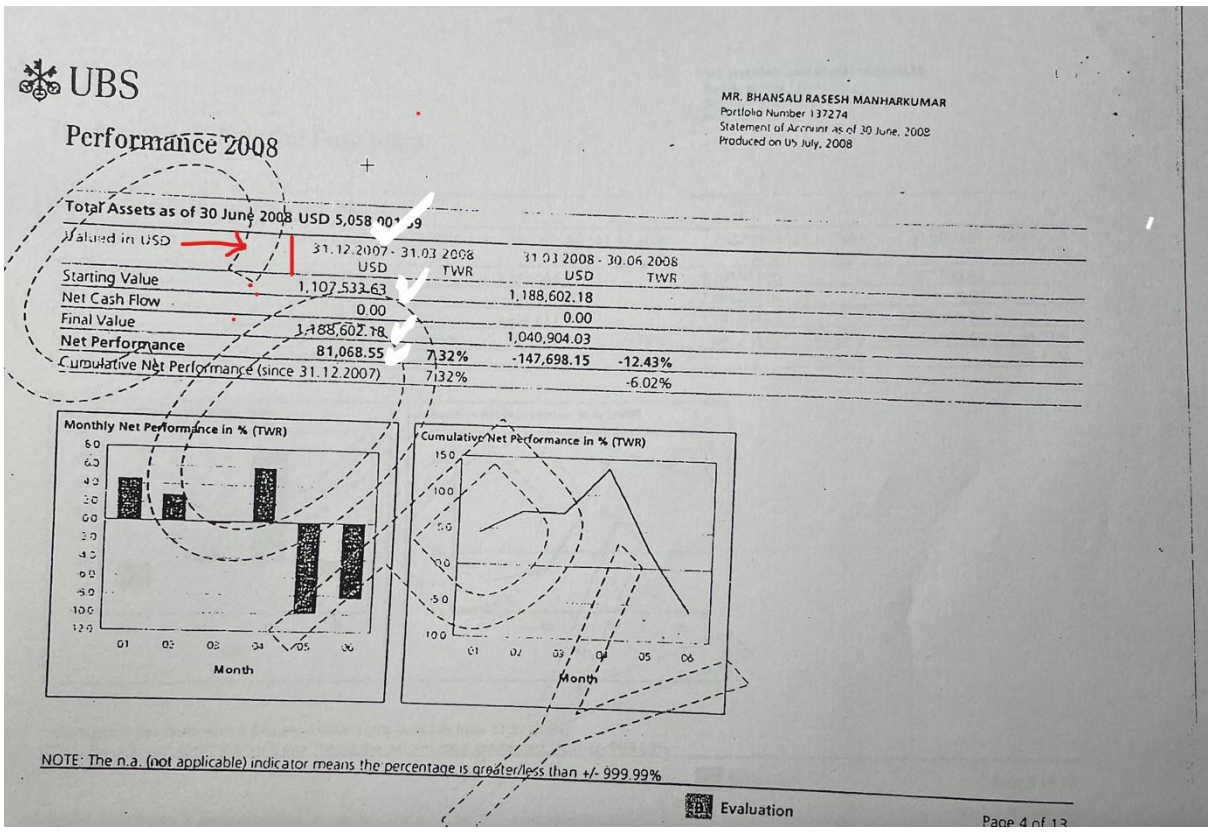
PAGE 2

Date	Details	Withdrawals	Deposits	Balance
				61,973.44
01JUN2009	BALANCE BROUGHT FORWARD 20090527000605558 REEDS JEWELRY OF N CAROLINA INC REEDS JEWELERS CHARGE WAIVED		27,140.58 2,400.00	65,114.02 91,514.02
04JUN2009	BCC/2772/USD2400.00			
06JUN2009	OBCBOM001639 J;600,601 OBCBOM001737 J,619;08-09 OBCBOM873346 J586		15,735.00 27,306.25 6,558.75	141,514.02
[illegible]	156440835 RICHLINE GROUP INC ANDIN - A DIVISION OF RICHLINE GROUP CHARGE WAIVED		13,956.89 2,400.00	155,510.91
11JUN2009	BCC/2773/USD2400.00 OBCBOM809256 J1289		32,350.00	190,260.91
12JUN2009			602.50 2,341.31 23,649.50 8,376.00 13,754.00 50.00 3,277.00 23,603.50	261,364.02
[illegible]			45,760.00 [illegible] 17,097.00	[illegible]
[illegible]			3,700.00	

53. It is also important to bear in mind the fact that these documents are received from official Government sources and these documents form part of contemporaneous records maintained by a bank. In view of our discussions above, the assessee has been untruthful all along and the explanation of the assessee does not inspire any confidence.

54. We may at this stage also take note of the fact that one more account of the assessee, i.e. margin money account no. 611254, has been mentioned in the supplementary appraisal report dated 14th August 2012- which was duly confronted to the assessee, but the assessee could not make any statement about the existence or otherwise of this bank account. The assessee was not truthful at any stage, nor is the assessee truthful even now. When we look at the bank statement for account no 137274 in the name of the assessee, this begins from 31st March 2008 and shows an opening negative balance of US $ 73.62. When the assessee was asked about this amount, he states that "**these** *(i.e. US $ 73.62)* **are some account opening/bank charges they must have debited",** suggesting that there were no transactions prior to that date. When asked about when was this account opened, the assessee states that "**this is a very old matter**" and that he does "**not remember when exactly as it opened by my father in my name**" and that "**however, it was somewhere in 2008-09 as your** *(AO's)* **records**". These statements, however, clearly contradict the information obtained, under the exchange of information program, from the Singapore Government, which shows that the total assets in that account in the UBS, as of 31.12.2007, were the US $ 1,107,533.63. A copy

of the said document, a copy of which was duly furnished to the assessee as well on 7th February 2019 and is also placed before us at page 49 of revenue's paper-book, is as follows:



UBS

MR. BHANSALI RASESH MANHARKUMAR
Portfolio Number 137274
Statement of Account as of 30 June, 2008
Produced on 05 July, 2008

Performance 2008

Total Assets as of 30 June 2008 USD 5,058 90[illegible]9

Valued in USD

		31.12.2007 - 31.03.2008		31.03.2008 - 30.06.2008	
		USD	TWR	USD	TWR
Starting Value		1,107,533.63		1,188,602.18	
Net Cash Flow		0.00		0.00	
Final Value		1,188,602.18		1,040,904.03	
Net Performance		81,068.55	7.32%	-147,698.15	-12.43%
Cumulative Net Performance (since 31.12.2007)			7.32%		-6.02%

Monthly Net Performance in % (TWR)

Month

Cumulative Net Performance in % (TWR)

Month

NOTE: The n.a. (not applicable) indicator means the percentage is greater/less than +/- 999.99%

Evaluation

Page 4 of 13

55. It is also important to note that on 7th April 2008, there is an entry of US $ 37,250 on account of interest on 7.45% ANZ Callable Daily Range Accrual Note 2006- 5.10.2016. Clearly, therefore, the assessee had some investments, which were not included in the opening balance of US $ 73.62 negative, and which earned sizable interest of US $ 37,250 which the assessee has offered to tax in these proceedings. In any case, US $ 73.62 is too odd a figure to be charged for something like account opening, and since the assessee has not shown any assets prior to the 31st March 2008, there is no question of any charges as well. The above statement also shows the net portfolio value of US $ 1,107,532.63 (i.e. investments, net of borrowings) as on 31st December 2007 but neither the assessee has shown any papers for the same nor made any disclosure in respect of the same. The uncontroverted material on record clearly shows that the account existed from a date much prior to 1st April 2008, but there is no information available in respect of the same, and as such income discernible therefrom has not been brought to tax. What is the point of owning up these accounts, when the assessee does not give any further information about these accounts and leaves it to the authorities to gather the information on their own? When the assessee owns up these accounts, he has to at least share the complete statement of accounts- if nothing else. We have also noted that, as evident from the material in the possession of the Assessing Officer, the books of accounts of GJC-BVI were kept at USB, AG, and the assessee could have therefore shared the same. However, there is not even a whisper about the financial statements of the GJC-BVI and other assets of, or transactions by, the GJC-BVI. The conduct of the assessee is thus indeed wanting, and non-cooperative.

56. This account also shows several entries with respect to the call deposits, such as on 8th April 2008, a debit of US $ 2,037,250 as transfer to call deposit and on 10th April and 11th April credits of US $ 397,619.24 and the US $ 382,188.19 as "decrease of call deposits". Obviously, there has to be a call deposit account of the assessee but, despite our specific questions, no details are pointed out in respect thereof. All that is explained is that the credit from call deposit is explained by the call deposit being placed, but that does not answer the question as to what is the balance of the call deposit and what are the transactions there. Wherever the amounts are not matching or cannot be explained by any of the contra entries, the same has been offered to tax. There is certainly no objection to such amounts being offered to tax, as long as the Assessing Officer accepts the same, but that does not mean that all the explanations are to be accepted on the face value. There are clear missing links in the information furnished, and it cannot even be an excuse that the assessee could not have gathered the requisite information from his banker in Singapore and shared the same with the Assessing Officer. As is noted at page 128 of the assessment order, the books of accounts and records of GJC-BVI were kept with UBS AG, Singapore, and the assessee was also confronted with the board resolution to that effect duly signed by the assessee, but the assessee did not bother to share the same. That is not an approach on the part of the assessee which can be appreciated or admired.And yes, the assessee has not served any information about where seed funds came in these accounts and where did the closing funds disappear. When we asked about the source of initial deposits to make investments, we were told that the assessee had taken the loans from the bank itself to make investments in the bank itself. When we asked for the margin monies, the assessee claimed ignorance about the same. When we asked about the destination of closing amounts, we were told that the accounts were squared up after settling the losses on investments. It is difficult to believe that these explanations could be given with a straight face. Even if one believes that the assessee did not know till 27th March 2019 that he owned these bank accounts, though one will have to be either too naïve or too stupid to believe such implausible and outlandish stories, obviously nothing prevented the assessee, at least on 27th March 2019, to ask UBS Bank Singapore to share all the necessary details- such as complete statements of all bank accounts operated by the assessee, the statutory documents and the books of accounts of GJV-BVI which were stated to have been kept with UBS AG at Singapore, and the foundational details such as dates of opening and closing the bank accounts.

57. Yet, one purpose of the assessee was perhaps served by this admission, and that purpose of sharing an analysis of bank account at the fag end of the assessment proceedings, knowing fully well that in the short span of 3 days available for framing the assessment and that the Assessing Officer cannot examine the same properly, could possibly be to create confusion in the process of assessment. If that was the object, the assessee does indeed appear to be successful. On the last few days available to the Assessing Officer, he was busy examining the explanations for the entries and rejecting the same wherever found to be incorrect. Rather than doing an assessment of unaccounted foreign income and assets, the Assessing Officer ended up doing an assessment on the basis of unexplained credits in bank accounts. As a matter of fact, when during the course of hearing before us, we asked learned Senior Advocate ShriPardiwalla whether he was explaining the credit entries in the bank accounts or he was explaining the unaccounted assets and income, learned senior counsel candidly pointed out that all that the Assessing Officer has done is to make an assessment on the basis of unexplained credits and it cannot be open to us to take any other approach at this stage.

58. Let us, in this light, address ourselves to the undisclosed assets and income offered to tax by the assessee, and the additions made thereto by the Assessing Officer.

59. The starting point of assessment of the bank accounts was the statement, explaining the bank entries, as given by the assessee.

60. So far as UBS bank account no. 161753, in the name of Gold Jewel Corporation, is concerned, the assessee, on his own, accepted the 'assessable income', on account of unexplained entries, at the US $ 7,15,538.58. This is the figure as per 'Annexure to letter dated 27.3.2019' filed with the Assessing Officer on 28.3.2019. The ownership of this account, for the detailed reasons set out earlier in this order and independent of the affidavit filed by the assessee, is beyond the slightest doubt, and the explanation, for the delay in owning up the bank account, as given by the assessee stands rejected.

61. There are two adjustments that the Assessing Officer has made to this declaration of income.

62. The first addition is with respect to the credit of US $ 32,13,307.60 which is described in the bank statement as 'Incoming payment: Gold Jewel Corporation' and the value date is 22.02.2010. The explanation given by the assessee, in the remark column of his chart, is 'Maturity of Investments' but there is nothing to show that the said investment was ever accounted for. As noted by the Assessing Officer, 'the assessee has not been able to furnish any documentary evidence in support of the claim'. The Assessing Officer thus proceeded to treat this credit also as unexplained, and, accordingly, a part of the income offered by the assessee. However, when matter travelled in appeal before the learned CIT(A), he deleted the addition so made by the Assessing Officer, and observed that this amount stands explained inasmuch as it is on account of sale of 7% UBS Callable Range Accrual Notes which were purchased by the assessee to the debit of another account (i.e. RaseshManhan Bhansali's account no. 137274) on 15th May 2008. None of these submissions is based on copies of any sale or purchase documents produced by the assessee, but only simply based on the bland explanations given by the assessee. There is no evidence whatsoever to support the sale or purchase of a security, the nature of security or any other details. As for account no 13274, as we have already noted, this is an old account and, as evident from the material on record-extracts from which have been reproduced earlier in this order, it was in existence at least on 31.12.2007 with a substantial net worth (i.e. investments minus loans) in excess of US $ 1 million and yet there is neither any explanation for credits to this bank account nor copies of the statement of account for the earlier period. One cannot, therefore, proceed on the basis, even if the purchase of the redeemed security from that account is established, logically come to the conclusion that the investment in the said property is out of accounted funds. As for learned CIT(A)'s observations that a mere credit to the bank account cannot be treated as income, he ought to have appreciated the approach adopted by the assessee who has, on his own, proceeded on the basis that the unexplained entries in the bank accounts are required to be treated as income of the assessee, and the Assessing Officer has simply accepted that approach. It cannot, therefore, be open to the assessee to contend that even though the receipt is unexplained, it cannot be treated as income. Learned CIT(A), therefore, erred in deleting the impugned addition of US $ 32,13,307.60 and we reverse his action on this point.

63. The second adjustment is of US $ 87,500 on account of missing interest credit of US $ 87,500 on account of quarterly interest on 7% UBS Callable Range Accrual note of US $ 5

million. It is an agreed position that the assessee held this security at the relevant point of time and that this amount would have been due on account of interest income from that security. It is also an admitted position that the bank statement from this account, for the period of 12.6.2009 to 28.8.2009 (wrongly mentioned by the Assessing Officer as 12.6.2008 to 28.8.2008), is missing, and that closing figure on 12.6.2008 and opening figure on 28.8.2008 are different- see pages 139 and 140 of the paper-book filed by the assessee. Under these circumstances, the interest entry on the due date is a reasonable inference, and the Assessing Officer has rightly made the addition for this missing entry of interest income, and the CIT(A) has rightly confirmed the same. We see no need to interfere in the matter and confirm the action of the authorities below on this point.

64. On a separate note, it is an interesting co-incidence that seemingly the Singapore Government authorities, most likely on account of an oversight, did not send the bank statement for the period 12.6.2009 to 28.8.2009, and even though the assessee had already found another set of bank statements etc in his office as evident from his statement in the affidavit of 29th March 2019 to the effect " **I found some papers pertaining to these bank accounts …(*which)*….<u>are photocopies of papers which are being relied upon against me and my wife by the department in respect of these two bank accounts</u>",** the papers missing in both the set of bank statements are for the same period. That is a very interesting coincidence, a coincidence if it is.

65. It is in this backdrop that, as against an unaccounted foreign income of US $ 7,15,538.58 disclosed by the assessee, the unaccounted foreign income, from this account, was assessed at the US $ 40,16,394.64. The correct figure, as per our calculations, seems to be the US $ 40,16,346.18, but then looking at the smallness of difference, we leave it at that. We confirm the action of the Assessing Officer in this regard and vacate the relief granted by the learned CIT(A).

66. So far as UBS account no. 137274 is concerned, the assessee has, as per 'Annexure to letter dated 27th March 2019, offered unaccounted foreign income of US $ 1,29,688.92 to tax, by offering unexplained credits in the said bank account as unaccounted foreign income. In this computation also, the Assessing Officer has made two adjustments which have been confirmed by the learned CIT(A) as well.

67. The first adjustment made by the Assessing Officer is the US $ 2,000,000 which is a credit in the bank account on 7th April 2008 and bank account narration is given as "**Early Redemption of US$ 2,000,000 ANZ Callable Daily Range Note 2006- 5.10.2016@ 100.0**". Interestingly that is a bank account in respect of which the assessee has given bank statement only from 31st March 2008, starting with a negative balance of US $ 73.62, and it has just three entries prior to this investment redemption entry- two contra entries, cancelling each other, for a time loan, and time loan repayment, for the US $ 397,275.51 and one entry signifying receipt of US $ 87,250 on account of "**Interest received 7.45%ANZ Callable Daily Range Note 2006- 5.10.2016".** There are two things clearly discernible from this bank statement- first, that the investments were not made out of accounted funds, as there is no explanation whatsoever for the bank transactions prior to 31st March 2008; and – second, that the interest was definitely held for a period well before 31st March 2008, as the interest of US $ 87,250 could not have been earned on the securities worth the US $ 2,000,000 in just 7 days. The description also suggests that the security in question was acquired on 5.10.2006, as, in consonance with other similar transactions entered by the assessee with the same bank,

these callable notes seem to be for a ten-year tenure redeemable on completion of 10 years. Therefore, it will be logical to assume that callable security redeemable on 5.10. 2006 but we are not really concerned with even that aspect of the matter, because, whether acquired in 2006 or not, it was definitely acquired before 31st March 2008, and, therefore, it cannot be said to be out of accounted assets. The explanation of the assessee has been rightly rejected by the authorities below. We confirm the action of the authorities below and decline to interfere with this adjustment as well.

68. The second adjustment made by the Assessing Officer, which has also been sustained in the first appeal, is with respect to credit of US $ 2,186,000 on 4th August 2008 with narration as "I**ncoming payment: Asha Sameer Bhansali**". The assessee has explained this entry as "loan from sister" in the explanation dated 27th March 2019 filed before the Assessing Officer. There is, however, no supporting evidence of any kind. There are no details about when was the amount paid back, and what was the occasion for this loan. Interestingly, when the assessee was confronted with the details of this transaction during the search operations, the assessee had stated that "**I do not have an explanation as they***(these transactions)* **do not belong to me**". When the assessee was asked about the business of his sister Asha, and her husband, the assessee had stated that **"I am not aware of their business as I am not connected in business with them"** and when asked whether he had any transactions with his sister, the assessee had categorically stated, even while acknowledging good relations with her and having spoken to her just six months back, **"To the best of my knowledge neither I nor any of my concerns ever had any kind of transaction whether business or personal with her, her husband and children".** If such be statements made by the assessee on oath, either the assessee was knowingly untruthful then or he is untruthful now. A loan of more than US $ 2 million from one's sistercannot slip out of mind soeasily and for so long. Be that as it may, there is no documentation whatsoever to even indicate the nature of the transaction and that it is out of accounted assets abroad. There is nothing on record to show that it was a loan, that it was a genuine transaction and that the person giving US $ 2,186,000 as the loan had the means to give the same out of accounted funds. Even going by the methodology that the assessee has adopted, this amount of US $ 2,186,000 is required to be treated as income reflected in the UBS bank account in question. The authorities below were thus quite justified in including this amount in unaccounted income reflected in the said bank account. We approve the action of the authorities below on this point and decline to interfere on this count as well.

69. It is in this backdrop that, as against an unaccounted foreign income of US $ 1,29,688.92 disclosed by the assessee, the unaccounted foreign income, from this account, was assessed at the US $ 43,15,688.92. We confirm the action of the Assessing Officer in this regard and vacate the relief granted by the learned CIT(A). The correct undisclosed foreign income from these two accounts with UBS AG Singapore was thus US $ 83,32,083.56, or say US $ 8,332,083.56. No interference is called for in this computation.

70. In view of the above discussions as also bearing in mind the entirety of the case, question nos. (e) and (f) posed for our consideration, which are broadly factual in nature as is discussed above, stand answered in negative, and in favour of the Assessing Officer.

71. Let us now move on to deal with all the legal questions posed for our consideration and these legal questionsare (a) whether a bank account abroad or any unaccounted asset abroad, which did not exist as at the point of time when the Black Money (Undisclosed

Foreign Income & Assets) and Imposition of Tax Act 2015 came in force, i.e. 1st July 2015, can be assessed under the said legislation? and (b) whether an undisclosed bank account abroad can be treated as an asset under section 2(11) of the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act 2015?The questions so framed by the learned senior counselproceed on the assumption that what has been brought to tax in the impugned assessment is the value of the asset by way of undisclosed foreign bank accounts, and that this has been valued under rule 3(e) of the BMR.

72. This presumption, in our humble understanding, is incorrect.

73. We may, at the outset, make it clear that in the present case the Assessing Officer has simply accepted the approach adopted by the assessee and the said approach is that credits for interest income and the unexplained credits in the undisclosed bank accounts have been offered to tax as undisclosed foreign income.

74. So far as bank account no. 137274 is concerned, out of US $ 1,29,688.92 offered to tax by the assessee, US $ 1,24,750 pertained to the interest entries and minor entries which could not be explained by the assessee and accepted as income. Similarly, so far as bank account no. 161753 is concerned, out of US $ 7,15,538.58 offered to tax by the assessee, US $ 4,36,527.78 pertains to interest credits and the remaining amounts have been offered to tax as unexplained receipts. The presumption of an unexplained credit being in the nature of income is not at all alien to the income tax jurisprudence, and, is rather an integral part of the income tax jurisprudence. The same principle, therefore, holds good in the present context, for the computation of income, as well. There is no provision in the BMA that comes in the way of these principles, as the variation from income tax law is only with respect to deduction for expenditure to earn the said income, whether allowable under the Income Tax Act or not, being declined.We may, in this regard, refer to the provisions of Section 5(1)(i) provides that "**In computing the total undisclosed foreign income and asset of any previous year of an assessee no deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed to the assessee, whether or not it is allowable in accordance with the provisions of the Income-tax Act**".

75. A reference to the provisions of Section 5(1)(i) of the BMA also takes care of the point frequently raised by the learned senior counsel that if the impugned assessment was to be in respect of an income, the Assessing Officer should also have taken the debit entries reflecting expenditure, thus, in effect, taking into account the receipts net of expenses incurred. That's not permissible under the BMA. To that extent, there is variation in the approach in computing under the ITA and the BMA, and such a variation has the sanction of law. When an undisclosed foreign income is to be computed under the BMA, no deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed to the assessee, whether or not it is allowable in accordance with the provisions of the ITA.

76. In any event, there is no reference to valuation of bank account under rule 3(e) of BMR in the submissions of the assessee, before the Assessing Officer, in the computation of taxable income, in the assessment order or in the documents relating to, and the computation of taxable income is in the manner and on the basis of an approach adopted by the assessee, and the assessee can not be aggrieved of his approach being accepted by the Assessing Officer.

77. Let us take a look at the scheme of taxation of unaccounted foreign income and assets. As we do so, it is also important to bear in mind the fact so far as the assessment of undisclosed foreign income and assets is concerned, the Act does not provide any different treatment, and the differentiation being sought to be canvassed by the learned senior counsel, therefore, is a distinction without any material difference. Under section 2(12), 'undisclosed foreign income and asset' means '**total amount of undisclosed income of an assessee from a source outside India, and value of disclosed asset located outside India, referred to in Section 4, and computed in the manner laid down in Section 5'**. Section 4 (1), in turn provides, that "**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**". In effect thus, Section 4 (1) refers to three things- first, income earned from a source outside India which is not disclosed in the income tax return filed; second, income earned from a source outside India in respect of which income tax return is required to be filed but has not been filed; and, finally; third- the value of an undisclosed asset outside India. All the three segments are required to be taken together for the same treatment, taxable at the flat rate of 30% and subject to penalty at the flat rate of 90%, without any differentiation. As a matter of fact, when we see the wordings of Section 4(3), that aspects become more clear as this sub section provides that **"(t)he 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".** In effect thus, whether it is an undisclosed asset or an undisclosed income, it is treated as 'income included in the total undisclosed income and assets**.** Whatever is taxed under the BMA, thus has to get out of the taxation under the Income Tax Act. As regards the analysis of Section 5(1)(i) for the present purposes, as we have noted earlier, provides that, inter alia, no deductions for earning an income are to be allowed in the computation of income, and that also shows that it is, what learned counsel terms as, the undisclosed receipts simpliciter which are subjected to tax under the Act. Section 5(1)(ii) provides that where an undisclosed foreign asset is acquired, partly or wholly, out of income assessed in the hands of the assessee, and assessee furnishes evidence to that effect, to that extent, the assessee shall give relief from double taxation of the same income. No such differentiation thus, as is argued before us, is material in the context of the present case.

77. Clearly, therefore, what is offered to tax even by the assessee is of predominantly of unambiguously income nature, as also unexplained credits in the bank accounts which are also of income nature. It is, therefore, wrong to proceed on the basis that what has been taxed is only the value of an undisclosed asset and not an income.

78. Let us now move to the question, as has been put by the learned senior counsel, i.e whether a bank account, which did not exist at the point of time when the provisions of the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act 2015 came in force, i.e. 1st July 2015, can be treated as an 'undisclosed asset' under section 2(11) of the Act and bebrought to tax as such, under this legislation.

79. Given the facts of this case, and in the light of the preceding discussion, this question appears to be infructuous and wholly academic. Be that as it may, for the sake of completeness and now that we have had the benefit of listening to very erudite contentions, by learned senior counsel and by the learned Commissioner (DR) on this issue, let us deal with this contention on merit.

80. The basic thrust of learned counsel's submission is on the expression "is a beneficial owner" and reliance upon Hon'ble Supreme Court's judgment in FS Gandhi's case *(supra).*

81. Let us first deal with learned counsel's reliance on Hon'ble Supreme Court's judgment in the case of FS Gandhi *(supra).* This decision was in the context of Section 2(e) of the Wealth Tax Act 1957 and dealt with the connotations of expression "(***e*) 'assets' includes property of every description, movable or immovable, but does not include….(iii) any interest in property where the interest "is available" to an assessee for a period not exceeding six years from the date the interest vests in the assessee***[Emphasis, by underlining as also be bracketing the words "is available", supplied by us]*" It was in this context that Their Lordships had observed as follows:

> **The word 'available' is preceded by the word 'is' and is followed by the words 'for a period not exceeding six years'. The word 'is', although normally referring to the present often has a future meaning. It may also have a past signification as in the sense of 'has been' (*See Black's Law Dictionary*, 5th edn. , p. 745) . We are of the view that in view of the words 'for a period not exceeding six years' which follow the word 'available' the word 'is' must be construed as referring to the present and the future. In that sense it would mean that the interest is presently available and is to be available in future for a period not exceeding six years.**
>
> *[Emphasis, by underlining, supplied by us]*

82. While learned counsel refers to Their Lordship's observation to the effect that **"***(t)***he word 'is', although normally referring to the present often has a future meaning",** we must point out the underlined portion above which (a) acknowledges that the word "is" may have past significance in the sense of "has been"; and (b) emphasizes that the critical factor leading to the "present and future meaning" being assigned by Their Lordships is the word "available" immediately following the word "is". Their Lordships have thus clearly hedged the assigned meaning given to the expression "is" as wholly "contextual" in the sentence using the expression "is", and certainly that is not the situation before us. In our considered view, therefore, Their Lordships' observations do not support the interpretation sought to be canvassed.

83. Section 2(11) uses the undisclosed foreign assets as "**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**". There is no indication anywhere that the assessee must continue to hold the asset anywhere, and proviso to Section 3(1) on the contrary, specifically mentions about the assets held in the past inasmuch as it provides that "**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". So if the BMA comes

in force from 1st April 2016, and an asset held prior to 1st April 2016 comes to the notice of the Assessing Officer, the Assessing Officer is clearly within his powers to bring it to tax. If at all, Hon'ble Supreme Court's FS Gandhi judgment (supra) has relevance in this context, the relevance is of the words "**The word 'is', although normally referring to the present often has a future meaning,…may also have a past signification as in the sense of 'has been' (*See Black's Law Dictionary,* 5th edn. , p. 745) .**That negates the interpretation sought to be canvassed before us. As regards learned counsel's submission that wherever lawmakers wanted to use the expression, they have done so- as in Section 5(1)(ii), and, therefore, we must not construe the word "is" in the sense of "has been" as well, such a contention does not appeal to us. The situations that Section 5(1)(ii) is dealing with is a situation in which the past situation, such as the fact of assessment of an income, is being specifically dealt with, alongside a situation of future, such as assessability of an income, and, therefore, the expression "is" and "has been" used. That situation is materially different from the definition of an undisclosed asset loan outside India, which includes the assets existing at present as also existing in past, and, therefore, the expression "is" here is in the sense of "is" and "has been" as well- a situation where the extended definition of "is", as theorised by the Black's Law Dictionary and as implicitly approved by Hon'ble Supreme Court in F S Gandhi's case *(supra),* will come into play.

84. It is anyway elementary, and has been reiterated time and again by Hon'ble Supreme Court- including in the landmark judgment in the case of **CIT Vs Sun Engineering Works Pvt Ltd [(1992) 198 ITR 287 (SC)],** that a decision of Hon'bleCourt "**takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a latter case, the Courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings**". As noted by Their Lordships, in **H.H. Maharajadhiraja Madhav Rao Jiwaji Rao Scindia Bahadur v. Union of India [1971] 3 SCR 9,** Hon'ble Supreme Court cautioned: "**It is not proper to regard a word, a clause or a sentence occurring in a judgment of the Supreme Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment**."

85. Learned senior counsel has taken pains to demonstrate that the reliance placed by the learned CIT(A), as also by the learned Commissioner (DR), on Hon'ble Supreme Court's judgment in the case of Gautam Khaitan*(supra).*It is contended that this judicial precedent cannot be considered an authority for the proposition that an asset, which did not exist at the point of time when the provisions of the BMA came into effect, can be brought to tax under the BMA.

86. This argument, given our findings earlier in this order and having rejected plea of the learned senior counsel on merits, is somewhat academic. As long as conclusions arrived at by the learned CIT(A) are correct, it does not really matter as to what was the reasoning adopted.

87. Be that as it may, we have noted that Hon'ble Supreme Court's judgment has observed that… a "**bare reading of the provisions of section 3, read with section 2(9)(d), of the Black Money Act, would unambiguously show, that the legislative intent insofar as the charging tax on an undisclosed asset located outside India is concerned, is to charge the tax on its value in the previous year in which such asset comes to the notice**

of the Assessing Officer" and that "*(b)***y virtue of these provisions, if such asset comes to the notice of Assessing Officer on 01.04.2016, he could charge such asset(s) on the basis of its value as would be ascertained in a previous year ending on 31.03.2016. A perusal of Section 3 of the Black Money Act, would further reveal, that what is relevant is the date on which the Assessing Officer notices the acquisition by an assessee of undisclosed asset located outside India**". Once Their Lordships categorically appreciate that the relevant point of time for taxation, under the BMA, of an undisclosed foreign asset is the point of time when such an asset come to the notice of the Government, it is immaterial as to whether it existed at the point of time of taxation, or, for that purpose, even at the point of time when the provisions of the BMA came into existence.

88. In view of the above discussions, we approve the reasoning adopted by the learned CIT(A), and reject the contention of the learned senior counsel.

89. The question, therefore, as to whether a bank account abroad or any unaccounted asset abroad, which did not exist as at the point of time when the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act 2015 came in force, i.e. 1st July 2015, can be assessed under the said legislation, is thus answered in positive and in favour of the revenue.

90. The next question posed for our consideration is whether an undisclosed foreign bank account *per se*, whether it existed at the point of time of the provisions of the BMA came into force or not, can be treated as an asset under section 2(11) of the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act 2015?As we have mentioned earlier as well, this question is wholly academic inasmuch as whether a bank account *per se*, whether it existed at the point of time of the provisions of the BMA came into force or not, it is immaterial for the present purposes because, in our considered view,what has been brought to tax is the only the income clearly discernible from the bank account in question and not the value of the asset itself.

91. Learned senior counsel's suggestion that section 2(11) refers to only such assets which have a cost of acquisition as section 2(11) defines the undisclosed asset located outside India as "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", does not appeal to us for the simple reason that an amount receivable from the bank in respect of a bank account is certainly an asset of the person holding that account, for all practical and legal purposes. While such a bank account is an asset, the cost of this asset is the deposits made in the account by the account holder or receipts diverted to such an account by the account holder. If the owner of a bank account has say Rs 10 crore in a bank account, he has to explain the source of investment in this bank account. If, for example, he can substantiate that, out of this Rs 10 crores, he has transferred Rs 5 crores from his other bank account, which is duly disclosed to the tax authorities, to that extent, the investment is explained. The requirements of section 2(11) can thus be clearly satisfied even in respect of a bank account. One has to understand that a bank account, in whatever way it is described, is an asset in the sense that it gives you ownership of the credit balance, in the books of the bank, in that account. Of course, when it is debit balance, reflecting borrowings, that reflects a liability, but we are not really concerned about that fact situation.

92. We, therefore, hold that an undisclosed foreign bank account *per se*can indeed be treated as an asset under section 2(11) of the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act 2015.

93. Once we hold so, the plea of the learned senior counsel that rule 3(e) of BMR cannot go beyond the scope of section 2(11) is rendered wholly academic. We can only add that the valuation mechanism of the value of a bank account, as envisaged in rule 3(e), confirms the intent of the legislature, and understanding of policy makers, always was to include the bank account in the scope of undisclosed foreign assets.

94. As we part with this aspect of the matter, let us briefly deal with the scope of rule 3(1)(e) as well. Rule 3(1)(e) of theBlack Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules 2015,provides that for the purposes of chargeability of tax under section 3(2) , the fair market valueof an account with a bank shall be, **(i) the sum of all the deposits made in the account with the bank since the date of opening of the account; or(ii) where a declaration of such account has been made under Chapter VI and thevalue of the account as computed under sub-clause (i) has been charged to tax and penalty under that Chapter, the sum of all the deposits made in the account with the bank since the date of such declaration"** subject to the proviso that **"where any deposit is made from the proceeds of any withdrawal from the account, such deposit shall not be taken into consideration while computing the value of the account".** Whether rule 3(1)(e) is on the statute or not, this is the right way, even from a common-sense perspective discussed earlier. It is not the case that it is because of rule 3(1)(e) that a bank account is being treated as an asset under section 2(11). Rule or no rule, the position would be the same.

95. The next question that the learned senior counsel wants us to adjudicate upon is whether the provisions of the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act 2015 can be pressed into service in respect of an undisclosed foreign asset or income which was already in the knowledge of the revenue authorities as at the point when the said legislation came into force.

96. So far as this plea is concerned, we find that proviso to Section 3 (1) that an undisclosed foreign asset located outside India shall be charged to tax on its value in the previous year in which "it comes to the notice of the Assessing Officer". Quite clearly, thus, its being in the notice of the Assessing Officer which is a critical factor. Unless it comes to the notice of the Assessing Officer, the taxation of the asset does not get triggered. So far as an undisclosed income from a source is concerned, it is a negative definition in the sense that under section 4(1)(a) and (b) provide that **"subject to the provisions of this Act, the total undisclosed foreign income …… 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.** Therefore, whether an undisclosed foreign income is in the knowledge of the Assessing Officer at any point of time or not is not the material factor; the material factor is that it should remain undisclosed in the

income tax return or return of income in respect of the same is not filed. While the investigation wing was indeed carrying out inquiries even before the point of time when the provisions of the BMA came into effect but that factor, as the above analysis of legal position indicates, is not a material factor.

97. Learned counsel, however, has more armoury in store. He now leans on a CBDT clarification in support of his plea. Our attention is invited to CBDT circular no. 13 of 2015, dated the 6th July 2015, which is in a question and answer form, and one set of question-answer given therein is as follows:

> Question No.13:How would the person know that the Government has received information of an undisclosed foreign asset held by him which will make the declaration ineligible?
>
> Answer:The person may not know that **the Government has information about undisclosed foreign asset held by him** if the same has not been communicated to him in any enquiry/proceeding under the Income-tax Act. After the person has filed a declaration, which is to be filed latest by 30th September, 2015, he will be issued intimation by the Principal Commissioner/Commissioner by 31th October, 2015, **whether any information has been received by the Government** and consequently whether he is eligible to make the payment on the declaration made. If no information has been received up to 30th June, 2015 by the Government in respect of such asset the person will be allowed a time upto 31st December, 2015 for payment of tax and penalty in respect of the declared asset.
>
> There may be a case where person makes declaration in respect of 5 assets **whereas the Government has information** about only 1 asset. In such situation the person will be eligible to declare the balance 4 assets under Chapter VI of the Act. In such case the declarant, on receipt of intimation by the Principal Commissioner/Commissioner, shall revise the declaration made within 15 days of such receipt of intimation to exclude the asset which is not eligible for declaration. Tax and penalty on the eligible assets under the Act shall be payable in respect of the revised declaration by 31st of December, 2015. In respect of the ineligible assets provisions of the Income-tax Act shall apply.
>
> *[All emphasis, by underlining etc, is supplied by us]*

98. It is contended that the reference in the above question is for the matter being in the knowledge of the Government of India, and not the Assessing Officer alone. This circular, being in the nature of a concession- even if that be so, will bind all the field officers. It is thus submitted that *dehors* the wordings of Section 3 and 4, the provisions of circular should be given effect, and the cases in the knowledge of the Government of India, as at the point of time when the provisions of the BMA came into effect, be taken out of the ambit of the BMA.

99. We see no merits in this plea either. The opening words of this CBDT circular indicate that it is issued in the context of the compliance window offered by the BMA. These words are "**The Black Money (Undisclosed Foreign Income and Assets) and Imposition**

of Tax Act, 2015 (hereinafter referred to as 'the Act') has introduced a tax compliance provision under Chapter VI of the Act. The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015 (hereinafter referred to as 'the Rules') have been notified. In regard to the scheme queries have been received from the public about the scope of the scheme and the procedure to be followed. The Board has considered the same and decided to clarify the points raised by issue of a circular in the form of questions and answers". This circular is not in the context of, or for the purpose of, the assessment, and its binding nature must thus remain confined to the compliance window, under chapter VI of the BMA, for which the circular was issued. In any event, neither it dilute the impact of sections 3 and 4, nor of any other statutory provision. Even going by the learned counsel's contention, it had restricted the scope of compliance window by excluding not only the matters in the knowledge of the Assessing Officer but also in the knowledge of the other functionaries of the Government of India. That circular goes beyond the scope of the statutory provision, and, even going by the argument of the learned counsel, imposes conditions tougher than the law envisaged. As is the well-settled legal position, such circulars do not bind the assessee. Nothing, therefore, turns on the circular. Yes, if the same logic is employed in the assessment proceedings, this could have been of some help, if at all, to the assessee, but neither this circular is issued for the purposes of assessment, nor it can have application for anything other than availing the compliance window.

100. We, therefore, hold that the provisions of the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act 2015 can indeed be pressed into service in respect of an undisclosed foreign asset or income even if it was already in the knowledge of any Governmental authorities, other than the jurisdictional Assessing Officer, as at the point when the said legislation came into force. This question is thus decided against the assessee.

101. The last question that learned counsel has framed for our consideration is whether the assessee can be treated as a beneficial owner, under Explanation 4 to Section 139(1) of the Income Tax Act, 1961- which holds good in the present context as well, of the account in the name of the Gold Jewell Corporation BVI, and be thus assessed in respect of the same, and, whether, in this regard, the coordinate bench decision in the case of ACIT Vs Jitendra Mehra (BMA No. 1/Del/20; order dated 7th July 2021) does not constitute a binding precedent inasmuch as it does not take into account Section 2(15) of the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act 2015?

102. We take up the second limb of this question first. It is indeed true that, as rightly pointed out by the learned senior counsel, Section 2(15) of the BMA provides that **"all words and expressions used herein** *(i.e. Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act 2015)* **but not defined, and defined under the Income Tax Act, 1961, shall meaning respectively assigned them in that Act**" and that Explanation 4 to Section 139(1) of the Income Tax Act, 1961, states that "**'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**". In the case of Jitendra Mehta, however, the coordinate bench has proceeded on the basis that "… it is not necessary that to examine the provisions of The Black Money Act only the definition provided under the Income Tax Act is required to be seen…….the beneficial ownership is required to be understood with respect to its dictionary meaning and also other provisions of other statute also keeping in mind the nature of the object and purposes of the Black Money Act". To the extent that these observations overlook the

existence of Section 2(15) of BMA, the coordinate bench did indeed err. However, that by itself, does not mean that the decision of the coordinate bench is *per incuriam*; the reasoning may be *per incuriam*, that does not necessarily mean that decision is also *per incuriam*. While there is indeed an error is reasoning process, as noted above, we may add that, in our considered view, whether a term is defined under the Income Tax Act or not, we must bear also in mind the fact that such a definition comes into play only when the context does not require otherwise. When the definitions under section 2 of the ITA stand incorporated in the BMA, the rider of this definition that is "In this Act, unless the context otherwise requires" must stand incorporated. The context of the definition under the ITA and the BMA must therefore meet to invoke the definition, under the ITA, for the purposes of the BMA. In other words, the definition provided is subject to "unless the context requires otherwise" condition, and, therefore, merely because the expression 'beneficial ownership' is defined under Explanation 4 to Section 139 (1), that definition would not automatically apply to the BMA context as well.

103. When we put this proposition to the learned senior counsel, he hastened to add that the context for our purposes as also for Section 139(1) is the same. He took us through the provisions of Section 139 to emphasize this point- particularly the fourth proviso to Section 139(1) and Explanation 4 to Section 139(1). It is then pointed out that under Explanation 4 to Section 139(1) 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". Learned counsel, therefore,submits that, therefore, unless it is shown that an assessee has, directly or indirectly, provided consideration for that asset, an assessee cannot be said to be 'beneficial owner' thereof. It is then submitted that there is nothing to demonstrate that the assessee has paid any consideration for the asset in question- the company or the bank account. We are thus urged to hold that the assessee could not be treated as a beneficial owner of the bank accounts in question.

104. It is only elementary that BMA is enacted to deal with, as its preamble aptly puts it, "the problem of the black money that is undisclosed foreign income and assets", and, as such, it deals with the underbelly of the world of offshore companies and tax havens. The present context of 'beneficial ownership' is thus diametrically different inasmuch as, unlike the Income Tax Act, it does not deal with transparent business transactions of the normal bonafide business world. Unlike in the situations dealt with in the Income Tax Act, which, more often than not and as a matter of course, deal with the genuine businesses which exist transparently and above board, the BMA deals with the hidden assets located outside India, and undisclosed incomes earned outside India. The monies and incomes stashed abroad in the undisclosed offshore entities in the tax havens and undisclosed foreign bank accounts are, as a rule, not out of the legitimate gains of businesses. Infact, when an assessee can demonstrate that the monies invested in the offshore companies and undisclosed accounts abroad are out of their legitimate earnings, for this reason alone, these investments get outside the ambit of the BMA. The provisions of this Act come into play only when the monies invested are not out of legitimate earnings of the assessee, and, therefore, to expect that the Assessing Officer is required to prove that the assessee has paid consideration for these undisclosed investments before these investments can be said to be undisclosed, is wholly unrealistic. If someone has to invest in an undisclosed offshore entity or an undisclosed foreign bank account, he would not make the investments through official channels. To

expect that when an undisclosed asset in the name of an assessee, or a company which is owned by him, is detected abroad, the Assessing Officer will also be required to prove that the assessee has paid, directly or indirectly, for that asset, before the provisions of BMA can be invoked is contrary to common sense. It will make the provisions of the BMA unworkable inasmuch as the Assessing Officer can never prove, let us say, hawala transactions, or account receivables being diverted to the offshore accounts, which are inherently outside the books of accounts of legitimate businesses. The Assessing Officer thus has to first find out the undisclosed assets, and then he has to prove that the assessee paid, directly or indirectly, for these assets. If the routing of consideration was so transparent that the Assessing Officer could identify the same, it would not normally be for an undisclosed asset. The provisions of BMA can never be put into effect, but then, as is the well-settled position of law, the law can only so be interpreted so as to make it workable rather than redundant, as is the prescription of the Latin maxim '***ut res magis valeat quampereat'***. A statute is supposed to be an authentic repository of the legislative will and the function of a judicial forum is to interpret it "according to the intent of them that made it." From that function the judicial forum can not resile, it has to abide by the maxim *ut res magis valeat quampereat*, lest the intention of the legislature may go in vain or be left to evaporate in thin air. (See CST v. Mangal Sen Shyam Lal AIR 1975 SC 1106.) The judicial forums should thus as far as possible avoid that construction that attributes irrationality to the legislature. Viewed thus, if we are to hold that definition of 'beneficial owner' as assigned by Explanation 4 to Section 139(1) is to equally apply, we will end up in a situation in which the BMA itself will become unworkable. Therefore, for both of these reasons- i.e. (a) the contextual requirements being otherwise, and (b) the adoption of this meaning rendering the provisions of BMA becoming unworkable, the definition under Explanation 4 to Section 139(1) cannot be adopted in the context of the BMA. We reject this plea of the learned counsel as well.

105. As arguments of the learned senior counsel were on the short point of applicability of the definition of 'beneficial owner' under the Income Tax Act, a plea that we have rejected, we see no need to deal with the broad question as to what will constitute 'beneficial owner' under the BMA, or to deal with the question whether the coordinate bench decision, on this aspect, calls for reconsideration. These issues must be left open as of now. In any event, as we have noted earlier, this issue is wholly academic in the present case because we have categorically held that what is taxed, in the impugned assessments, is not the value of the undisclosed asset but undisclosed foreign income. Whatever be the connotations of 'beneficial owner' under the BMA, our conclusions thus remain intact.

106. All the questions posed for our consideration are thus answered against the assessee and in favour of the Assessing Officer.Learned senior counsel for the assessee has fairly submitted that our answers to these six questions will decide all, but one, of the grounds of appeal of the assessee, to the extent, pressed, and the grievance raised in the appeal filed by the Assessing Officer.

107.. The only remaining issue is in respect of the levy of interest under sections 40(1) and (2) of the BMA, which, in turn, refers to interest under sections 234A, 234B and 234C. Learned senior counsel submits that the question of levy of interest under sections 40(1) and 40(2) is only with respect to tax on an undisclosed foreign income and not in respect of tax on

an undisclosed foreign asset. Since, according to the learned senior counsel, it is a case of tax on the unaccounted foreign asset by way of bank account, the provisions of Section 40(1) and 40(2) will not come into play. While we agree with the learned senior counsel on legal principle, and to that extent, his plea is indeed well taken, we reject this plea on the short ground that, as held by us for the detailed reasons set out earlier in this order, what has been assessed in the impugned assessments is undisclosed foreign income. On account of this factual aspect, even though learned senior counsel is correct in his legal plea, the assessee gets no relief in respect of levy of interest under sections 40(1) and 40(2), referable to Section 234A, 234B and 234 C. To sum up, the grounds of appeal raised in these appeals are disposed of as shown below:

BMA 03/M/2021;Y 2017-18

Rashesh M. Bhansali Vs Addl Commissioner of Income Tax

1) In the facts and circumstances of the case and in law, learned CIT(A) erred in confirming the action of Assessing Officer in invoking the provisions of Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act, 2015 since the same are neither attracted nor applicable in the case of the appellant.

Dismissed

2) In the facts and circumstances of the case and in law, learned CIT(A) erred in confirming the action of Assessing Officer in passing the impugned assessment order dated 31.03.2019 u/s 10(3) of Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act, 2015 which is bad in law and without jurisdiction.

Dismissed

3) In the facts and circumstances of the case and in law, Learned CIT(A) has erred in rejecting various grounds urged on behalf of the Appellant with respect to the assailability of Order passed by Assessing Officer that too based on conjectures and surmises. The Learned CIT(A) has failed to even deal with various contentions raised on behalf of the Appellant including as contained in the Written Submissions filed on 14.06.2021 by the Appellant.

No specific arguments raised; dismissed for want of prosecution.

4) In the facts and circumstances of the case and in law, Learned CIT(A) erred in the confirming the action of Assessing Officer in taxing the amounts of Rs.31,33,50,656/- (being equivalent to $47,17,232.44).

a) In the facts and circumstances of the case and in law, Learned CIT(A) erred in Confirming the action of Assessing Officer in taxing the amounts of Rs. 2,37,67,078.59/- (being equivalent to $ 3,57,793.52) being the amount reflected in bank account no. 161753

belonging to M/s. Gold Jewel Corporation, in the hands of the appellant.

b) In the facts and circumstances of the case and in law, Learned CIT (A) erred in confirming the action of Assessing Officer in taxing an amount of Rs. 29,06,172/- (being equivalent to $43,750) alleged to be credited in the bank account no.l61753 belonging to M/s. Gold Jewel Corporation on an estimated basis, in the hands of the appellant.

c) In the facts and circumstances of the case and in law, Learned CIT(A) erred in confirming the action of Assessing Officer in taxing an amount of Rs. 13,28,53,600/- (being equivalent to $ 20,00,000) being the amount reflected in the bank account no.137274, in the hands of the appellant.

d) ln the facts and circumstances of the case and in law, Learned CIT(A) erred in confirming the action of Assessing Officer in taxing an amount of Rs. 14,52,08,985/- (being equivalent to $ 21,86,000) being the amount reflected in the bank account no.137274, in the hands of the appellant.

e) In the facts and circumstances of the case and in law, Learned CIT(A) erred in confirming the action of Assessing Officer in taxing the amounts of Rs. 86,14,820/-(being equivalent to $ 1,29,688.92) being the amount reflected in bank account no. 137274, in the hands of the appellant.

Dismissed.

5) In the facts and circumstances of the case and in law, Learned CIT(A) erred in confirming the action of Assessing Officer in adopting the conversion rate of USD to INR@66.4268.

No specific arguments raised; dismissed for want of prosecution.

6) In the facts and circumstances of the case and in law, Learned CIT (A) erred in confirming the action of Assessing Officer in levying interest u/s 234A, B & C while calculating the total demand, as per the ground/s contained in the assessment order or otherwise.

Dismissed.

7) Even otherwise, the Impugned Order is bad under the law and is required to be set aside.

No adjudication required

8) The Appellant craves leaves to alter, amend, withdraw or substitute any ground or grounds or to add any new ground or grounds of appeal on or before the hearing.

No adjudication required

BMA 05/M/2021; AY 2017-18

Addl Commissioner of Income Tax Vs Rashesh M. Bhansali

Grounds of appeal

1. Whether on the facts and circumstances of the case and in law, the CIT(A) was correct in holding that the source of credit of US$ 32,13,307.60 in bank account no. 161753 on 22.02.2010 was premature redemption of investment, when the assessee has failed to satisfactorily proof the same and thus the burden of proof remains un-discharged by the assessee.

Allowed

2. Whether on the facts and circumstances of the case and in law, the CIT(A) was erred in not treating the credit of US$ 32,13,307.60 in bank account no. 161753 on 22.02.2010 as undisclosed asset, when as per section 2(11) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, unsatisfactory explanation regarding source of investment in a foreign asset renders such asset to be an undisclosed asset located outside India.

Allowed

108. In view of the above discussions, and bearing in mind the entirety of the case, we uphold the action of the Assessing Officer in bringing to tax, in the hands of the assessee, the income reflected, to the extent information was available to him, in respect of undisclosed accounts with UBS AG, Singapore, under the Black Money (Undisclosed Income and Assets) & Imposition of Tax Act, 2015. The order of the Assessing Officer is thus restored and the relief granted by the learned CIT(A) is vacated.

109. Learned Commissioner (DR) has made an interesting prayer in the end. He submits that it was only 3 days prior to the time barring date of 31st March 2019, i.e. on 28th March 2019, the assessee owned up these two bank accounts and gave the explanation for various entries. It is submitted that the Assessing Officer did not have much time to examine the entries in various bank accounts, and there are certain aspects of the matter which he overlooked in the process. We are then reminded that as a last fact-finding authority, it is this Tribunal's duty to ensure that, on one hand, the correct income of the assessee is taxed, and, on the other hand, the Government is not deprived of its legitimate tax dues. In this backdrop, a prayer is made that a clear direction may be given to the lower authorities to further examine the related aspects under the Income Tax Act, particularly when there is sufficient time available for reopening the assessment under the Income Tax Act. Learned counsel for the assessee, on the other hand, submits that no such directions are warranted, and that will be beyond the scope of powers of the Tribunal. If any proceedings can be taken under the Income Tax Act, it is for the Assessing Officer to do so. We are thus urged to refrain from going beyond the scope of the issues raised in the appeal before us. However, we are of the

considered view that it is indeed going much beyond the call of our duty to give a specific direction calling upon the Assessing Officer to examine this matter any further. No findings or directions can be given unless such a finding or direction is required for disposal of appeals before us. The statutory provisions in Section 11(3) with respect to findings or directions by the Tribunal, and the impact thereof on the time limit of completion of assessment or reassessment, are somewhat akin to the provisions of Section 153(3) of the Income Tax Act. In the case of **Rajinder Nath Vs CIT [(1999) 120 ITR 14 (SC)],**and dealing the scope of the provisions of Section 153(3), Hon'ble Supreme Court has held that "**The expressions 'finding' and 'direction' are limited in their meaning. A finding given in an appeal, revision or reference arising out of an assessment must be a finding necessary for the disposal of the particular case, that *is* to say, in respect of the particular assessee and in relation to the particular assessment year. To be a necessary finding it must be directly involved in the disposal of the case**" and that the reference to finding and directions being given by the appellate authorities or Courts are not in the nature of "**a provision enlarging the jurisdiction of the authority or court**". So far as disposal of these appeals is concerned, we see no need to give any specific directions to the authorities. Whatever the Assessing Officer has done has been confirmed, and we cannot go beyond that.The question as to whether any of our observations given during the course of our adjudication can be construed as 'findings' for Section 11(3) is hypothetical as of now. If the law permitsthe tax authorities to take remedial measures based on these findings, they are surely at liberty to do so; they don't need our directions. However, when the law does not permit the tax authorities to take any such remedial measures based on these findings, we cannot direct them to take any remedial measuresfor doing that either. We leave it at that.

110. On the brighter side for the tax administration, however, all their concerted efforts to address the problem of undisclosed assets and incomes stashed abroad have started yielding tangible results.On the face of it, the manner in which the intelligence is developed, information is gathered and the official channels for the exchange of information are used, is truly creditable.Assuming that the implementation of this new legislation is less than perfect, even if that be so, such shortcomings can only be ephemeral, whereas changes it will inevitably bring along will be long lasting. The initial pace of results may indeed be slow, as is inherent in every legal process andevery new initiative, but the direction is unambiguous, the impact these results are making in the mindset of the people, and the way these results have a significant deterrent effect on persons concerned, is truly very critical, and that is what really matters.

Our conclusions:

111. In the result, while the appeal of the assessee is dismissed, the appeal of the Assessing Officer is allowed. Pronounced in the open court today on the 2nd day of November 2021

Sd/- ***Sd/-***
Ravish Sood **Pramod Kumar**
(Judicial Member) (Vice President)
Mumbai, dated the 2nddayof November, 2021

Copies to: *(1)* *The appellant* *(2)* *The respondent*
(3) *CIT* *(4)* *CIT(A)*
(5) *DR* *(6)* *Guard File*

By order

Assistant Registrar/ Sr PS
Income Tax Appellate Tribunal
Mumbai benches, Mumbai