आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,'A' JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड कमलेष जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

BMA No. 01/JP/2022
Assessment Year :2019-20

Shri Krishna Das Agarwal, B-302, Aurum Trimurty, Tilak Nagar, C-Scheme, Jaipur	बनाम Vs.	DDIT/ADIT(Inv.), Alwar
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAAPA 2701 Q		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

BMA No. 02, 03, 04 & 05/JP/2022
Assessment Year :2016-17, 2017-18, 2018-19 & 2019-20

Addl. Commissioner of Income Tax, Central Range, Jaipur	बनाम Vs.	Shri Krishna Das Agarwal, B-302, Aurum Trimurty, Tilak Nagar, C-Scheme, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAAPA 2701 Q		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Sh. Ashwani Taneja (Adv.)
Sh. Sankalp Malik (Adv.) &
Sh. Gaurav Nahata (CA)

राजस्व की ओर से/ Revenue by : Sh. James Kurian (CIT)

सुनवाई की तारीख/ Date of Hearing : 18/01/2023
उदघोषणा की तारीख/Date of Pronouncement: 13/04/2023

आदेश / ORDER

PER BENCH

These bunch of five appeals consist of one appeal filed by the assessee and other four filed by the revenue. These appeals are directed against the order of ld. Commissioner of Income Tax, Appeals-4, Jaipur [Here in after referred as Ld. CIT(A)] for the assessment year 2016-17, 2017-18, 2018-19 for all these years the order is dated 23.09.2022 and for A. Y. 2019-20 the order appealed is dated 31.08.2022. All these appeals are filed by the parties under the provision of section 18(1)/(2) of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 [here in after referred as "BMA" for short].

2. The issues involved in these appeals for all the years are almost identical, common and related one assessee. Therefore, all these appeals were heard together with the agreement of both the parties and are being disposed off by this consolidated order.

3. First of all, we take up the appeal of the revenue in appeal number BMA No. 03, 04 & 05/JP/2022 related to Assessment Year 2016-17, 2017-18 and 2018-19 respectively. In this three-appeal revenue has taken all most similar grounds except the figures changed in the others years. Therefore, to avoid the repetition we reiterated the ground taken by revenue in appeal number BMA No. 03/JP/2022 here in below so as to decide these three appeals of the revenue. The grounds raised by the revenue in BMA No 03/JP/2022 are as under:

> "1. The learned CIT Appeal has erred in law and on facts in granting relief to the taxpayer.

2. The learned CIT Appeal has erred in law and on facts in granting relief to the taxpayer by deleting the addition amounting to Rs 69,78,53,383/- which was made by the AO on protective basis in A.Y. 2016-17 on account of credits in the bank accounts of the assessee and foreign company M/s Agrasen Polymers FZE. The assessment for the A.Y. 2019-20 stands completed on income of Rs.1,46,42,44,881/- (this includes addition of Rs.69.78 crore) u/s 10(3) of the Black Money Act on a substantive basis. Second appeal before the Hon'ble ITAT has already been filed against deletion of substantive addition made by the AO, which is pending for adjudication.

3. The learned CIT Appeal has erred in granting relief to the taxpayer by admitting additional evidence, even though the additional evidence could not have been admitted as per stipulations laid down under Rule 46A of the Income Tax Rules 1962. Further, since the additional evidence itself was not to be admitted, and has been incorrectly admitted, relief (even otherwise contested by revenue), could not have been available to the assessee.

4. The learned CIT appeal has erred in law in not exercising powers granted to her within the meaning of provisions of 17(1)(c) of BMA(UFIA) and Imposition of tax Act, 2015 whereby the learned Commissioner Appeal was mandated to do inquiries herself or to get carried out further inquiries. Instead of doing the same, the learned CIT appeal chose to grant relief to the taxpayer.

5. The Appellant craves leave or reserves the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal."

4. The facts related to these years that the ld. AO has made the substantive addition in the A. Y. 2019-20 and protective addition as tabulated here in below in the following years, as the transactions are related / pertains that year:

Sr. No.	A.Y.	Date of Order	Amount of Tax Rs.	Amount of Addition Rs.
1.	2016 – 17	31.03.2021	20,93,56,020/-	69,78,53,383/-
2.	2017 – 18		10,93,08,670/-	36,43,62,230/-
3.	2018 – 19		2,57,30,120/-	8,57,67,060/-
TOTAL				1,14,79,82,673/-

5. Aggrieved from the order of the assessing officer making such protective addition the assessee preferred an appeal before the ld. CIT(A) for all these three years who allowed the appeal of the assessee stating that once the substantive addition made no protective addition sustained.

6. Revenue being not satisfied with the findings of the ld. CIT(A) has raised these appeals before us on the ground as raised here in above.

7. Apropos for these three appeal No. BMA No. 03, 04 & 05/JP/2022 filed by the revenue, the ld. AR of the assessee submitted that all these appeals filed by the revenue are infructuous and are required to be dismissed, if not withdraw the same at this stage. The reason placed by the ld. AR of the assessee that there is no concept of the protective addition and substantive addition qua assessee and assessment year. The revenue has to take a stand that in which year the income is chargeable to tax and accordingly the same can be charged to tax but the revenue cannot take a dual stand to charge income / assets in the different assessment year qua same assessee. Once the substantive addition is made in the case of the assessee same cannot be made in different year on protective basis. This is nothing but futile exercise. The ld. AR of the assessee submitted that the action of the ld. AO is under uncertainty and he cannot blow the hot and cold air on the same breath. The ld. AR of the assessee submitted that the provision of section 3 is very clear as regards the chargeability of the foreign assets. He has relied and read the provision of the Act and the same is haul out here in below:

Charge of tax

3. (1) There shall be charged on every assessee for every assessment year commencing on or after the 1st day of April, 2016, subject to the provisions of this Act, a tax in respect of his total undisclosed foreign income and asset of the previous year at the rate of thirty per cent of such undisclosed income and asset:
Provided that **an undisclosed asset located outside India shall be charged to tax on its value in the previous year in which such asset comes to the notice of the Assessing Officer**.
(2) For the purposes of this section, "value of an undisclosed asset" means the fair market value of an asset (including financial interest in any entity) determined in such manner as may be prescribed.

8. Based on the search conducted on 09.07.2018 the assets in dispute comes to the notices of the assessing officer in the financial year 2018-19 relevant to A. Y. 2019-20. The ld. AO based on that provision of section 3 has already charged foreign assets/income in A. Y. 2019-20 on substantive basis, then making the addition in A. Y. 2016-17, 2017-18 and 2018-19 on protective basis is against the provision law and judicial precedent. In addition to the above oral arguments the ld. AR of the assessee has relied upon the following written submission and the same is reproduced here in below:

A. Sh. K.D. Agrawal (hereinafter referred to as the "Appellant") is a senior citizen, aged 84 years and is presently enjoying a retired life. He is a regular taxpayer and has been awarded in past certificates of Appreciation from the Income Tax Department.

PB 216 – 217 are the copies of Certificate of Appreciation issued by the Income Tax Department for A.Y. 2016 – 17 & 2017 – 18

B. In the earlier years, viz. 2015, the Appellant along with a group of persons came together and incorporated a company in the Free Trade Zone of Ras-Al-Khaimah (UAE) – Agrasen Polymers FZE, to deal in masterbatches / polymers.

C. However, after a while, prices of the masterbatches in Indian markets became more competitive than UAE and because of this, the foreign company, M/s Agrasen Polymers FZE could not continue its business in UAE, as it became less profitable. Accordingly, it started to invest its funds in some investment products in UAE.

D. That however, it is pertinent to mention that all the assets belong to the company and the Appellant-assessee does not own any foreign asset in his individual capacity and has neither has any personal undisclosed foreign income and assets, in his individual capacity, nor is a beneficial owner of the assets of the company. Therefore, the taxability in the hands of the Appellant is wholly illegal and unjust.

PROCEEDINGS BY THE INCOME TAX AUTHORITIES

E. A Search action was conducted at the premises of Sh. K.D. Agrawal in July 2018 (F.Y. 2018 – 19) whereby certain documents concerning the transactions of a non-resident foreign company, viz. M/s Agrasen Polymers FZE were found.

F. Based on the same, additions to the tune of Rs. Rs. 1,14,79,82,673/- pertaining to the transactions undertaken by the foreign company from A.Y. 2016 – 17 to 2018-19 were added in the hands of the Assessee for these years on PROTECTIVE BASIS, vide Assessment Orders dated 31.03.2021, passed u/s 10(3) of the Black Money (Undisclosed Foreign Income & Assets) & Imposition of Tax Act, 2015 (hereinafter referred to as the "Black Money Act" or "The Act").

Sr. No.	A.Y.	Date of Order	Amount of Tax Rs.	Amount of Addition Rs.
1.	2016 – 17	31.03.2021	20,93,56,020/-	69,78,53,383/-
2.	2017 – 18		10,93,08,670/-	36,43,62,230/-
3.	2018 – 19		2,57,30,120/-	8,57,67,060/-
TOTAL				1,14,79,82,673/-

G. With regard to the above additions, it is also submitted that the same additions aggregating to Rs. Rs. 1,14,79,82,673/- form a part of the additions made SUBSTANTIVELY BASIS for AY 2019-20.

H. Appeals were filed by the Assessee before the Ld. CIT(A) for all the above years. In the impugned orders passed by the Ld. CIT(A), the above-said additions made on PROTECTIVE BASIS for the first three years i.e., AY 2016-17, 2017-18 & 2018-19 were deleted by the Ld. CIT(A) on following two grounds:

i. On the ground that chargeability of tax on the impugned amounts could only arise in the previous year in which the information came to the knowledge of the Ld. Assessing Officer i.e., F.Y. 2018 – 19, relevant to A.Y. 2019 – 20.

ii. Further, as all these additions for A.Y. 2016 – 17 to 2018 – 19 had already been made and confirmed in the A.Y. 2019 – 20 that too on SUBSTANTIVE BASIS, upholding the addition in first three years also, would tantamount to double addition.

I. Against the deletion of additions by the Ld. CIT(A), in first three years the Department is now in appeal before your honours.

SUBMISSIONS:

1. It is submitted that no case for A.Y. 2016 – 17 to A.Y. 2018 – 19, could've been made in the first place, as the chargeability of tax under section 3 of the Black Money (UFIA) & imposition of Tax Act, 2015 can only be examined under the law in the previous year in which the information comes to the notice of the Ld. AO. For ready reference, the provision of Section 3 is reproduced for your kind perusal:

> *Charge of tax*
> *3. (1) There shall be charged on every assessee for every assessment year commencing on or after the 1st day of April, 2016, subject to the provisions of this Act, a tax in respect of his total undisclosed foreign income and asset of the previous year at the rate of thirty per cent of such undisclosed income and asset:*
>
> *Provided that an undisclosed asset located outside India shall be charged to tax on its value in the previous year in which such asset comes to the notice of the Assessing Officer.*
>
> *(2) For the purposes of this section, "value of an undisclosed asset" means the fair market value of an asset (including financial interest in any entity) determined in such manner as may be prescribed.*

2. In the present case, the own assertion of the Ld. Assessing Officer is that the alleged information qua the foreign assets admittedly came to the notice of the Ld. Assessing Officer at the time of search which was conducted on 09.07.2018 i.e., AY 2019-20, which is evident from the following findings available at Page 2 of the respective Assessment Orders reproduced as under:

> "*On 09.07.2018, a search & seizure action was conducted u/s 132(1) of the Income-Tax Act in the case of the assessee at his residence B-302, Aurum Trimurti, Tilak Marg, C-Scheme, Jaipur. During the course of search, evidences in the form of excel files were recovered from the e-mail account and personal Macbook of the assessee……."*

Therefore, as per Section 3, assessment was bound to be made only for the AY 2019-20 and could not have been made for any other year, viz. A.Y. 2016

– 17, 2017 – 18 and/or 2018 – 19. However, on perusal of the assessment order, it is clearly evident that the Ld. AO has made assessment not just in AY 2019-20 only but also made assessment for AY 2016-17, 2017-18 and 2018-19 on PROTECTIVE BASIS which came to be deleted by the Ld. CIT(A). Therefore, the department appeals filed qua A.Y. 2016 – 17 to A.Y. 2018 – 19 are liable to be quashed outrightly.

3. Without prejudice, it is to be noted that the department has filed appeal regarding the same issues for A.Y. 2016 – 17 to 2018 – 19 & also independently for A.Y. 2019 – 20, which tantamounts to a double addition and double proceedings regarding the same issues, which is impermissible in the eyes of law.

It is worth noting that the taxability of all the above impugned amounts which are subject matter of assessment have been assessed by the Ld. Assessing Officer, examined by the Ld. CIT(A) and not disputed as such by the Ld. Assessing Officer in the remand report dated 13.07.2022 for the A.Y. 2016-17 to A.Y. 2019-20. Therefore, it is prayed that the Appeals for A.Y. 2016 – 17 to A.Y. 2018 – 19 be quashed as the same is not in sustainable in the eyes of law."

9. On these three appeals the ld. DR relied upon the order of the assessing officer and grounds so raised and fairly admitted not to controvert the arguments of the ld. AR on merits.

10. We have elaborately heard the representative of both the parties for these appeals, persuaded the orders of the lower authorities and written submission of the ld. AR of the assessee. Thus, to adjudicate these appeals of the revenue only limited issue is before us whether the appeal of the revenue for the same assessee be challenged both count first when the addition is made substantively for one year and protective on the other years. The calculation of the amount is not under dispute or not under challenged before us. We are in agreement with the arguments of the ld. AR of the assessee that once the revenue is under appeal on the substantive addition and the assessee is not disputing the year of its chargeability there is no grievance left of the revenue and therefore, these appeals are not maintainable. The

bench noted that the for all these years the grievance of the revenue in all the appeals are admitting the additional evidence, deleting the protective addition and not making any further enquiry and granted the relief without conducting the enquiry in accordance with the provision section 17(1)(c) of BMA by ld. CIT(A). The bench has further noted that for all these years the amount in dispute is as under:

Sr. No.	Assessment year	Amount of Addition made protectively Rs.
1.	2016 – 17	69,78,53,383/-
2.	2017 – 18	36,43,62,230/-
3.	2018 – 19	8,57,67,060/-

11. On examination of the order of the assessment year 2019-20 we find that the similar addition form part of the addition made by the AO in accordance with the provision of section 3 of BMA in this case on substantive basis and all the grounds raised in these appeals are equally challenged by the revenue on substantive basis and therefore, we feel that the same are not required to be adjudicated under these appeals on protective additions deleted by the ld. CIT(A). The appeal for the assessment year 2019-20 is under adjudication before us and therefore, we are of the considered view that the appeal of the revenue on the same very addition on protective addition cannot be litigated once the issue of substantive addition is not disputed by the assessee and its year of chargeability.

12. Based on this observation we are of the considered view that once the substantive addition has been made in the year in which such assets come to the notice of the Assessing Officer that can be charged to tax in the year as per clear mandate of provision of law and since the matter is already under consideration for

assessment year 2019-20. The separate addition made in the respective years on protective basis and the appeal filed by the department against the finding of the ld. CIT(A) for these years is not maintainable and has rightly held by the ld. CIT(A) that the protective addition for the year under consideration is not warranted as the same is entirely contrary to the provision of section 3 of the Black money Act. The finding of the ld. CIT(A) for all the three are almost similar and therefore, her finding for the assessment year 2016-17 extracted for the sake of brevity.

> "(xxv) As regards the addition of Rs.69,78,53,383/- made by the AO in the year under consideration i.e. A.Y.2016-17, and in view of the aforesaid observations of the AO and submissions of the appellant, it transpires that it is an undisputed fact that the addition of Rs. 69,78,53,383/- for the year under consideration has been made on protective basis as mentioned by AO himself in Para 2.5 & 2.6 (Page 75 & 76) of the Assessment Order. The addition of the said amount has already been made for A.Y. 2019-20 on substantive basis in accordance with the provisions of Section 3 of the Black Money Act. The said section 3 of Black Money Act being the charging section is reproduced herein under:
>
> *".....Charge of tax*
>
> *3. (1) There shall be charged on every assessee for every assessment year commencing on or after the 1st day of April, 2016, subject to the provisions of this Act, a tax in respect of his total undisclosed foreign income and asset of the previous year at the rate of thirty per cent of such undisclosed income and asset:*
>
> *Provided that an undisclosed asset located outside India shall be charged to tax on its value in the previous year in which such asset comes to the notice of the Assessing Officer.*
>
> *(2) For the purposes of this section, "value of an undisclosed asset" means the fair market value of an asset (including financial interest in any entity) determined in such manner as may be prescribed...."*
>
> (xxvi) On perusal of the above, it is evident 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. In respect of the case on hand, it is an undisputed fact that the credit of Rs. 69,78,53,383/- appearing in foreign bank accounts located outside India during F.Y. 2015-16 relevant to A.Y. 2016-17 came to the notice of the AO during F.Y. 2018-19

relevant to A.Y. 2019-20 only and the substantive addition of the same has also been made by AO for A.Y. 2019-20.

(xxvii) In view of the above facts of the case and Section 3 of the Black Money Act, the contentions of the appellant as presented in Ground of Appeal No. 13 that under the facts and the circumstances of the case and in law, protective assessment for the assessment year under consideration is not warranted as the same is entirely contrary to the provisions of Section 3 of the Black Money Act is found acceptable.

(xxviii) Similarly, Ground of Appeal No. 14 wherein the appellant has contended that the concerned addition of Rs. 69,78,53,383/-in F.Y. 2015-16 relevant to A.Y. 2016-17 results in double taxation of the same amount also finds favour with this office. As the said addition of Rs. 69,78,53,383/- is contrary to the provisions of charging section of Black Money Act and as the said amount has already been added to the Total Income of appellant for A.Y. 2019-20, being the year in which the undisclosed asset came to the notice of the AO, the addition Rs. 69,78,53,383/- is not sustainable in the year under consideration, being made on protective basis, and is deleted in the A.Y.2016-17.

(xxix) In view of the aforesaid discussion, the grounds of appeal no. 1,5 to 14 raised by the Ld.A.R. of the appellant for the A.Y. 2016-17 are treated as allowed.

6. Based on the above discussion and as per provisions of Section 3 of Black Money Act, it is abundantly clear that answer to the question as to whether the addition of Rs. 69,78,53,383/- is legally sustainable or not shall have effect on determination of Total for A.Y. 2019-20 and not concerned A.Y. 2016-17. The appellant has also challenged the addition of Rs. 146,42,44,881 made on substantive basis for A.Y. 2019- 20 wherein the concerned amount of addition of Rs. 69,78,53,383 is also included. Therefore, the discussion on legal validity and sustainability of the said addition of Rs. 69,78,53,383/- on merits has been made while finalizing the Appellate Order for A.Y. 2019-20. Therefore, the other grounds of appeal, for the sake of brevity, are not discussed here in this Appellate Order and are accordingly, treated as disposed off."

13. On perusal of the above finding of the ld. CIT(A) we do not find any error in these cases. Even the ld. DR did not controvert the finding of ld. CIT(A) either by filing the submission or by way of oral argument in the proceedings before us. Therefore, in terms of these observations of facts, the appeal filed by the Revenue

for these 3 years are become infructuous and required to be dismissed. Thus, the appeal of the revenue in BMA No. 03, 04 & 05/JP/2022 related to Assessment Year 2016-17, 2017-18 and 2018-19 has no merits and thus, the same are dismissed.

14. Now we take up the appeal of the assessee in appeal number BMA No. 01/JP/2022 related to Assessment Year 2019-20. The assessee has raised the following grounds :-

> "The Appellant respectively craves leave to prefer an appeal under Section 18(1) of the Black Money (Undisclosed Income & Assets) and Imposition of Tax Act, 2015 the Black Money Act") against the Order dated 31.08.2022 passed by the Ld. CIT(A)4, Jaipur [CIT(A) received by the Appellant on 05.09.2022. Based on the facts and circumstances of the case, the Appellant respectfully submits that the Ld. CIT(A), while passing the Appellate Order, has erred on the following grounds, each of which is independent and without prejudice to each other.
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> 1. Under the facts and the circumstances of the case and in law, the order dated 31.08.2022 passed by the Ld. CIT(A) under the Black Money Act, by sustaining the addition in the hands of the Appellant on account of the value of the alleged undisclosed foreign assets amounting to Rs. 23,74,26,443/-, is perverse, incorrect, non-speaking, arbitrary and bad in law.
>
> 2. Under the facts and circumstances of the case and in law, the Ld. CIT(A) has grossly erred in sustaining the addition of Rs. 19,68,01,923/- (18,56,28,608+ 1.11.73,315) on account of credits in the bank accounts of Agrasen Polymers FZE (Foreign Company") which do not belong to the Appellant.
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> 3. Under the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in sustaining the addition of Rs. 2,34,26,056/- made by the Ld. AO, which pertains to the dividend earned by the Foreign Company on the investments made. Under the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in sustaining the addition of Rs. 16,76,574/- made by the Ld. AO that pertains to the interest earned by the Foreign Company.
>
> 5. Under the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in sustaining the addition of Rs. 1,42,67,290/- on account of cash deposits in the foreign bank accounts without considering that the cash deposits were made out of the withdrawals made from the said accounts.

6. Under the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in sustaining the addition of Rs. 12,54,600/- on account of re-payments received from the staff of the Foreign Company to whom the said company gave loans.

7. Under the facts and circumstances of the case and in law, the Ld. CIT(A) and Ld. AO have failed to consider the transfer of funds from the bank accounts of the Foreign Company to the Appellant and vice-versa, which clearly establishes that the money in foreign bank accounts and investments (foreign assets) were owned by the foreign company.

8. Under the facts and the circumstances of the case and in law, the Ld. CIT(A) has grossly erred in passing the order without considering the detailed submissions, Paper Book, assessment records and documents in relation to the Foreign Company placed on record by the Appellant during the course of appellate proceedings.

9. Under the facts and the circumstances of the case and in law, the Ld. CIT(A) has vehemently erred in not appreciating that the AO had incorrectly treated the foreign company's assets as the Appellant's assets without considering that a company has a separate legal identity from its shareholders and is separately assessed to tax

10. Under the facts and the circumstances of the case and in law, the Ld. CIT(A) has grossly erred in alleging that the Appellant is the beneficial owner and sole signatory in the Foreign Company.

11. Under the facts and the circumstances of the case and in law, the Ld. CIT(A) has erred in observing that the Appellant was statutorily bound to not only disclose the complete details of the Foreign Company in his ITR but is also mandatorily bound to provide the source of funds in the hands of the said company.

12. Under the facts and the circumstances of the case and in law, the Ld. CIT(A) has grossly erred in alleging that the Appellant admitted to have received commission income from companies/ persons of UAE and Turkey directly in his UAE-based bank accounts without appreciating the correct facts on record.

13. Under the facts and the circumstances of the case and in law, the Ld. CIT(A) and Ld. AO have failed to properly consider Rule 3(1)(e) of the Black Money Rules, as per which while computing the value of bank accounts, only 'deposits' have to be considered and not "loans".

14. Under the facts and the circumstances of the case and in law, the Ld. CIT(A) and the Ld. AO have failed to consider the original returns of income

for AY 2018-19 and AY 2019-20 and the revised return of income for AY 2017-18, wherein due disclosures with respect to foreign assets were made by the Appellant.

15. Under the facts and circumstances of the case and in law, the Ld. AO has not given due consideration to the fact that the Appellant is above 84 years of age and has not been given due opportunity of being heard to present his case before launching the Prosecution proceedings, which is against the principles of natural justice.

16. The Appellant craves leave to add, amend, and modify all or any grounds of appeal on or before the hearing date."

15. The brief facts of the case are that Shri K.D. Agrawal (hereinafter referred to as the "Appellant") is a senior citizen, aged 84 years and is presently enjoying a retired life. He is a regular taxpayer and has been awarded Certificates of Appreciation from the Income Tax Department.

PB 216 – 217 are the copies of Certificate of Appreciation issued by the Income Tax Department for A.Y. 2016 – 17 & 2017 – 18.

15.1. In the earlier years, the appellant along with a group of persons came together and incorporated a company in the Free Trade Zone of Ras-Al-Khaimah (UAE) – Agrasen Polymers FZE, in order to deal in master batches / polymers. That, however, after a while, prices of the master batches in Indian markets became more competitive than UAE and because of this, the foreign company, M/s Agrasen Polymers FZE could not continue its business in UAE. Accordingly, it started to invest its surplus funds in some investment products in UAE.

15.2. That however, it is pertinent to mention, at the very outset that all the assets belong to the company and the appellant-assessee does not own any foreign asset in his individual / personal capacity, nor is a beneficial owner of the assets of the

company. Therefore, the taxability in the hands of the Appellant is wholly illegal and unjust.

15.3. A Search action was conducted at the premises of Shri K.D. Agrawal in July 2018 (F.Y. 2018 – 19) whereby certain documents concerning the banking transactions of the foreign company, viz. M/s Agrasen Polymers FZE were found. Based on the search, a high-pitched addition to the tune of Rs. 146,42,44,881/- including to the transactions undertaken by the non-resident foreign company from A.Y. 2016 – 17 to 2018-19 & A.Y. 2019 – 20 were added in the hands of the assessee in the Assessment Year 2019 – 20 on Substantive Basis, vide an Assessment Order dated 31.03.2021, passed u/s 10(3) of the Black Money (Undisclosed Foreign Income & Assets) & Imposition of Tax Act, 2015 (hereinafter referred to as the "Black Money Act" or "The Act"). Aggrieved by the assessment order, an Appeal was filed before the Ld. CIT(A) whereby the claims of the Appellant were substantially accepted; however, additions to the tune of Rs. 23,74,26,443/- were sustained.

16. Being aggrieved, now the assessee is in appeal before us against the sustenance of the above-said amount of Rs. 23,74,26,443/-, which belonged to the company and the taxability thereof in the hands of the Appellant. For ready reference, the breakup of the additions so made, and the corresponding decision of the Ld. CIT(A) is tabulated as under:

Sr. No.	Particulars	Addition made by AO	Additions sustained by the CIT(A)	Amount Deleted by the CIT(A)
1.	Addition made on account of the credits in the following Bank Accounts of M/s Agrasen Polymers FZE and the accounts held by the Appellant in fiduciary capacity for the company during F.Y. 2015 – 16 and F.Y. 2018 – 19 AE470271226001850542017 – Appellant – Fiduciary Capacity AE410271226001850542028 – Appellant – Fiduciary Capacity AE920271161201822102010 – Company AE610271161371822102026 – Company AE060276031498079255014 – Appellant – Fiduciary Capacity AE550271031591850542039 – Belongs neither to the company, nor to the Appellant in fiduciary / individual capacity	INR 136,73,10,855	INR 23,74,26,443	INR 1,12,98,84,412
2.	Income Allegedly earned on Investments in OMI	INR 9,69,34,026	-	INR 9,69,34,026
	TOTAL	INR 146,42,44,881	INR 23,74,26,443	INR 1,22,68,18,438

17. Before us, the ld. A/R of the assessee has submitted his ground-wise written submissions as under :-

"GROUND NOS. 1, 8, 11, 15 & 16 ARE GENERAL AND INCIDENTAL TO THE OTHER GROUNDS OF APPEAL AND THEREFORE, BE READ IN CONJUNCTION.

GROUND NO. 9 – THAT THE LD. CIT(A) ERRED IN NOT RECOGNIZING THAT THE COMPANY VIZ. AGRASEN POLYMERS FZE HAS SEPARATE LEGAL ENTITY AND THAT ALL THE FUNDS / INVESTMENTS ETC. BELONGED TO THE COMPANY ALONE. THEREFORE, THE TAXABILITY LEVIED IN THE HANDS OF THE APPELANTS IS WHOLLY UNJUST, ILLEGAL AND LIABLE TO BE QUASHED OUTRIGHTLY

1. The said issue has not been addressed by the Ld. Assessing Officer, nor by the Ld. CIT(A), as the appellant and M/s Agrasen Polymers FZE have been considered as one, and all transactions solely belonging to the company have illegally been taxed in the hands of the Appellant.

2. At the very outset, the entire proceedings have been made out against the assets of a company, viz. Agrasen Polymers FZE, which is undeniably a separate legal entity, having an independent identity, capable of holding assets in its own name for the furtherance of its own objectives and purposes. Therefore, the claim of taxing the Appellant in his individual capacity of the assets of the company is wholly illegal and unsustainable, by any stretch of imagination.

3. It is pertinent to note that the company, viz. Agrasen Polymers FZE has also disclosed the transactions/bank accounts in its Audited Financial Statements, submitted to the Authorities of the Free Trade Zone of Ras Al Khaimah.

AY 2015 – 16 (01.01.2015 – 31.12.2015)

PB 286-299	Copy of Auditors Report, Director's Report & the Financial Statements of M/s Agrasen Polymers FZE audited & approved by M/s Ramesh Ramu & Audit Associates, UAE on 07.04.2016 which was even submitted to the authorities of the Free Trade Zone of Ras Al Khaimah.
PB 288	is the copy of the Director's Report prepared by the directors of the company.
PB 289	is the independent Auditor's Report prepared by M/s Ramesh Ramu & Audit Associates, UAE on 07.04.2016
PB 290	is the copy of the Statement of Financial Position of M/s Agrasen Polymers FZE akin to a Balance Sheet.
PB 291	is the copy of the Statement of Comprehensive Income audited & approved by the Auditors Ramesh Ramu & Audit Associates on 07.04.2016 whereby the Net Revenue, Expenses, Net Income/Loss is duly mentioned.

PB 294	is the copy of notes to Financial Statements of M/s Agrasen Polymers FZE where at point 1 (b), the factum of the company being duly registered and undertaking activities of trading Plastic and Nylon raw materials and also the fact that the company has invested its own resources to earn dividend/interest/gains has duly been mentioned.
PB 296	is the copy of the Notes to Financial Statements whereby at point no. 4, Investments to the tune of AED 7,457,719 made by the Company are mentioned.
PB 297	Copy of the Notes to Financial Statements for year ending 31st December 2015 whereby at point number 6, the bank accounts held by the company in its own name and also that of the two bank accounts held by the manager (Appellant) maintained for making investment and to take benefit of Leverage from banks.
PB 297 & 298	is the copy of the Notes to Financial Statements of M/s Agrasen Polymers FZE whereby at point no. 8 (PB 297) & point 12 (PB 298), the Financial Liabilities – in the form of Trade and Other Payables to the tune of 9,976,302/- (18.6 Cr INR) is duly mentioned to be belonging to the company.

AY 2016 – 17 (01.01.2016 -31.12.2016)

PB 422-438	Copy of Auditors Report, Director's Report & the Financial Statements of M/s Agrasen Polymers FZE audited & approved by M/s Ramesh Ramu & Audit Associates, UAE on 10.04.2017 which was even submitted to the authorities of the Free Trade Zone of Ras Al Khaimah
PB 425	is the copy of the Director's Report prepared by the directors of the company.
PB 426-428	is the independent Auditor's Report prepared by M/s Ramesh Ramu & Audit Associates, UAE on 10.04.2017.
PB 429	is the copy of Statement of Financial Position of M/s Agrasen Polymers FZE akin to a Balance Sheet.
PB 430	is the Copy of the Statement of Comprehensive Income audited by the Auditors M/s Ramesh Ramu & Audit Associates on 10.04.2017 whereby the Net Revenue, Expenses, Net Income/Loss is duly mentioned.

PB 433	is the copy of notes to Financial Statements of M/s Agrasen Polymers FZE where at point 1 (b), the factum of the company being duly registered and undertaking activities of trading Plastic and Nylon raw materials and also the fact that the company has invested its own resources to earn dividend/interest/gains has duly been mentioned.
PB 435	is the copy of the Notes to Financial Statements whereby at point no. 4, Investments to the tune of AED 8,233,239/- made by the Company are mentioned.
PB 436	Copy of the Notes to Financial Statements for year ending 31st December 2016 whereby at point number 6, the bank accounts held by the company in its own name and also that of the two bank accounts held by the manager (Appellant) maintained for making investment and to take benefit of Leverage from banks, in fiduciary capacity on behalf of the company.
PB 436 & 437	is the copy of the Notes to Financial Statements of M/s Agrasen Polymers FZE whereby at point no. 8 (PB 436) & point 12 (PB 437), the Financial Liabilities – in the form of Trade and Other Payables to the tune of 9,579,750/- is duly mentioned to be belonging to the company.

AY 2017 – 18 (01.01.2017 -31.12.2017)

PB 588-603	Copy of Auditors Report, Director's Report & the Financial Statements of M/s Agrasen Polymers FZE audited & approved by M/s Ramesh Ramu & Audit Associates, UAE on 13.05.2018 which was even submitted to the authorities of the Free Trade Zone of Ras Al Khaimah
PB 591	is the copy of the Director's Report prepared by the directors of the company.
PB592-593	is the independent Auditor's Report prepared by M/s Ramesh Ramu & Audit Associates, UAE on 13.05.2018.
PB 594	is the copy of Statement of Financial Position of M/s Agrasen Polymers FZE akin to a Balance Sheet.
PB 595	is the Copy of the Statement of Comprehensive Income audited by the Auditors M/s Ramesh Ramu & Audit

Associates on 13.05.2018 whereby the Net Revenue, Expenses, Net Income/Loss is duly mentioned.

PB 598 — is the copy of notes to Financial Statements of M/s Agrasen Polymers FZE where at point 1 (b), the factum of the company being duly registered and undertaking activities of trading Plastic and Nylon raw materials and also the fact that the company has invested its own resources to earn dividend/interest/gains has duly been mentioned.

PB 600 — is the copy of the Notes to Financial Statements whereby at point no. 4, Investments to the tune of AED 5,530,785/- made by the Company are mentioned.

PB 601 — Copy of the Notes to Financial Statements for year ending 31st December 2017 whereby at point number 6, the bank accounts held by the company in its own name and also that of the two bank accounts held by the manager (Appellant) maintained for making investment and to take benefit of Leverage from banks, in fiduciary capacity on behalf of the company.

PB 601 & 602 — is the copy of the Notes to Financial Statements of M/s Agrasen Polymers FZE whereby at point no. 8 (PB 601) & point 12 (PB 602), the Financial Liabilities – in the form of Trade and Other Payables to the tune of 9,840,450/- is duly mentioned to be belonging to the company.

AY 2018 – 19 (01.01.2018 -31.12.2018)

PB 710-725 — Copy of Auditors Report, Director's Report & the Financial Statements of M/s Agrasen Polymers FZE audited & approved by M/s Ramesh Ramu & Audit Associates, UAE on 22.01.2019 which was even submitted to the authorities of the Free Trade Zone of Ras Al Khaimah

PB 713 — is the copy of the Director's Report prepared by the directors of the company.

PB 714-715 — is the independent Auditor's Report prepared by M/s Ramesh Ramu & Audit Associates, UAE on 22.01.2019.

PB 716 — is the copy of Statement of Financial Position of M/s Agrasen Polymers FZE akin to a Balance Sheet.

PB 717	is the Copy of the Statement of Comprehensive Income audited by the Auditors M/s Ramesh Ramu & Audit Associates on 22.01.2019 whereby the Net Revenue, Expenses, Net Income/Loss is duly mentioned.
PB 720	is the copy of notes to Financial Statements of M/s Agrasen Polymers FZE where at point 1 (b), the factum of the company being duly registered and undertaking activities of trading Plastic and Nylon raw materials and also the fact that the company has invested its own resources to earn dividend/interest/gains has duly been mentioned.
PB 722	is the copy of the Notes to Financial Statements whereby at point no. 4, Investments to the tune of AED 3,195,075/- made by the Company are mentioned.
PB 723	Copy of the Notes to Financial Statements for year ending 31st December 2018 whereby at point number 6, the bank accounts held by the company in its own name and also that of the two bank accounts held by the manager (Appellant) maintained for making investment and to take benefit of Leverage from banks, in fiduciary capacity on behalf of the company.
PB 723 & 724	is the copy of the Notes to Financial Statements of M/s Agrasen Polymers FZE whereby at point no. 8 (PB 723) & point 12 (PB 724), the Financial Liabilities – in the form of Trade and Other Payables to the tune of 3,358,200/- is duly mentioned to be belonging to the company.

4. That the concept of a separate legal entity has been a time old principle, which rather forms the backbone of legal jurisprudence. For ready reference reliance is placed on the following judicial precedents as under:

> *MRS. BACHA F. GUZDAR vs. CIT SUPREME COURT OF INDIA (1955) 27 ITR 0001*
> *Agricultural income—Dividend from tea companies—Assessee, a shareholder in a company engaged in manufacture of tea whose income was exempt to the extent of 60 per cent, receiving dividends from such company—Dividends arose to the shareholder due to investment in the company—Shareholder has no direct relationship with land as the same belongs only to the company, nor to its shareholders, nor directors*

BHARAT HARI SINGHANIA & ORS. ETC. vs. COMMISSIONER OF WEALTH TAX & ORSSUPREME COURT OF INDIA (1994) 207 ITR 0001

Held : Wealth being assessed is that of the shareholder and not of the company. The company may own agricultural assets and if company were to be liable to wealth tax, the said assets may be excludible in its hands. But that has no relevance to the case of a shareholder. The shareholder does not own and cannot claim any portion of the property held by the company of which he is a shareholder. The company is an independent juristic entity. An assessee holding shares in a company whose assets comprise wholly or partly of agricultural land, is not entitled to exclude such shares from his wealth.—Bacha F. Guzdar vs. CIT (1955) 27 ITR 1 (SC) : 1955 (1) SCR 876

SALOMON V SALOMON & CO LTD (1897)
Mr. Salomon had a boot manufacturing business which he decided to incorporate into a private limited company. He sold his business to the newly formed company, A Salomon & Co Ltd, and took his payment by shares and a debenture or debt of £10,000. Mr Salomon owned 20,000 £1 shares, and his wife and five children owned one share each. Some years later the company went into liquidation, and Mr Salomon claimed to be entitled to be paid first as a secured debenture holder. The liquidator and the other creditors objected to this, claiming that it was unfair for the person who formed and ran the company to get paid first. However, the House of Lords held that the company was a different legal person from the shareholders, and thus Mr Salomon, as a shareholder and creditor, was totally separate in law from the company A Salomon & Co Ltd. The result was that Mr Salomon was entitled to be repaid the debt as the first secured creditor.
In this case, Mr Salomon was the major shareholder, a director, an employee and a creditor of the company he created. It is quite common in Ireland for one person to have such a variety of roles and still be a different legal entity from the company.

LEE V LEE`S AIR FARMING LTD (1961)
In this case, Mr. Lee formed his crop spraying business into a limited company in which he was director, shareholder and employee. When he was killed in a flying accident, his widow sought social welfare compensation from the State, arguing that Mr. Lee was a workman under the law. The State argued that Mr. Lee was self-employed and thus not covered by the legislation. The court held that Mr. Lee and the company he had formed were separate entities, and it was possible for Mr. Lee to be employed by Lee`s Air Farming.

STATE TRADING CORPORATION OF INDIA LTD. AIR (1963) SC 1811
It was held that as soon as citizens form a company, the rights guaranteed to them by article 19(1)c has been exercised and no

restraint has been placed on the right and no infringement of that right is made. Once a company or corporation is formed, the business which is carried on by the such company or corporation is the business of that company or corporation and is not the business of the citizens who get the company or corporation incorporated and the rights of the incorporated body must be judged on that footing and cannot be judged on the assumption that they are the rights attributed to the business of individual citizens.

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

6. That not just a company, even a partnership firm has a separate legal entity. In light of the same, reliance is placed on the judgment of the Hon'ble Delhi High Court in CIT vs. Nagpur Golden Transport Co., [1998] 233 ITR 389 (Delhi) has held as under:

Whether while framing an order of assessment under provisions of Act, firm and its partners are to be treated as two separate legal entities and payment of interest to a firm cannot be treated in tax law as payment of interest to its partners - Held, yes - Whether, Therefore, payment of interest by assessee firm to another firm could not be treated as payment of interest to partners of that firm within meaning of section 40(b) even though partners in two firms were common - Held, yes

7. Without prejudice to the above, the comparison in the present case, is that of a non-resident foreign company and not an Indian company. The said vital fact has been accepted and never been disputed by the Ld. AO in the Assessment Order dated 31.03.2021 and/or in the Remand Report dated 13.07.2022.

8. Further, without prejudice to the above, the Place of Effective Management of the said foreign company is also situated outside India because of which, the company is a non-resident in India within the meaning of section 6 of the income tax act and none of the assets were liable to be taxed in India. A Ready reference can be made to the CBDT circular dated 23.02.2017 bearing Circular No. 08/2017. Therefore, in no view of the manner can taxability arise in the

present case proving that the entire edifice of the case is wholly unjust and illegal.

GROUND NO. 14 – THE ASSESSEE MADE DUE DISCLOSURES AS ALLOWABLE IN LAW, THAT TOO PRIOR TO THE ISSUANCE OF NOTICES UNDER THE BLACK MONEY (UFIA) & IMPOSITION OF TAX ACT, 2015, PROVING THAT THE ENTIRE CASE IS BASED ON A PRE-CONCEIVED NOTION.

9. It is to be noted that the alleged information admittedly came to the notice of the Ld. Assessing Officer during the course of search proceedings conducted in July 2018, i.e., during F.Y. 2018 – 19 relevant to A.Y. 2019 – 20, therefore, taxability if any, can only be made for the year under consideration, viz. A.Y. 2019 – 20.

10. In this regard, it is pertinent to note that the Appellant made due disclosures in his Original Return filed u/s 139(1) of the Income Tax Act, 1961 for A.Y. 2018 – 19 & 2019 – 20 regarding having financial interest (in a fiduciary capacity) and a signing authority for and on behalf of the company. Therefore, even the case of non-disclosure cannot be made out against the Appellant.

PB 542 - 543	is the copy of the return filed by A.Y. 2018 – 19 whereby due disclosures regarding the Financial Interest & Signing Authority had been made by the Appellant.
PB 605	is the copy of the ITR Acknowledgement of the ITR filed u/s 139(1), viz. on or before due date.
PB 606 – 640	is the copy of the ITR Form filed by the Appellant for A.Y. 2019 – 20, whereby in schedule FA (Pg. 628 & 629-630), due disclosure has been made by the Appellant in his return.

Thus, no tax liability, let alone even penalty, can be imposed on the Appellant as the entire edifice of the case, built solely on suspicion and surmises, deserves to be quashed and no amount can be taxed in the hands of the Appellant, as the same in no manner, can be called as the income of the Appellant.

Further, any incorrect allegation on the part of the Department with respect to Non-Disclosure in the return for the A.Y. 2017 – 18 to 2018 –19 is unjustifiable as the Appellant, after coming to be aware of the legal compliances, i.e., requirement of disclosures, even amended / revised his previous returns for A.Y. 2017 – 18 and made due disclosures about the bank accounts which he held on behalf of the company and also the financial interest in the company.

PB 303	is the copy of the ITR Acknowledgement of the ITR filed u/s 139(5) for AY 2017-18.

PB 304-329 is the copy of the ITR Form filed by the Appellant for A.Y. 2017-18, whereby in schedule FA (Pg. 326, & 327), due disclosure has been made by the Appellant in his return.

PB 376 – 377 is the copy of the revised return filed for A.Y. 2017 – 18 whereby due disclosures regarding the Financial Interest & Signing Authority had been made by the Appellant.

PB 844 is the copy of chart of dates of return filed original and revised.

Without prejudice, even if the Appellant wouldn't have taken above-mentioned steps, even then penalty / assessment / addition in the hands of the Appellant cannot be made solely because of mere non-disclosure. In this regard reliance is placed on the order, as under:

> ACIT vs. Leena Gandhi Tiwari, [2022] 96 ITR(T) 384 (Mumbai - Trib.)[29-03-2022]
>
> *Where assessee was a signatory in a foreign bank account owned by her mother and she failed to disclose same while filing her income-tax return, however disclosure was made while filing return under section 153A, since such non-disclosure of a foreign asset was a bona fide mistake, penalty could not be imposed under section 43 of Black Money Act.*

Therefore, the additions of transactions in the hands of the Appellant which solely belong to the non-resident foreign company cannot be added in the hands of the Appellant.

GROUND NO. 10 – THE LD. ASSESSING OFFICER AND THE LD.CIT(A) ERRED IN HOLDING THE APPELLANT TO BE A BENEFICIAL OWNER OF THE ALLEGED UNDISCLOSED ASSETS AND THE INCOME THEREFROM, WHICH SOLELY AND INDEPNDENTLY BELONGS ONLY TO THE NON-RESIDENT FOREIGN COMPANY, M/S AGRASEN POLYMERS FZE.

11. The said issue has been addressed by the Ld. Assessing Officer at Para 5.12 Page 56 of his order.

12. On Appeal, the Ld. CIT(A) has placed blind reliance on the version of the Ld. Assessing Officer the said issue has been dealt by the Ld. CIT(A) at Para 6.2 (xiii) Page 37 of his order, whereby, without considering the basic tenets / provisions of law, the Appellant has erroneously been held to be the 'beneficial owner' qua the assets of the non-resident foreign company.

13. It is submitted that the Appellant has been illegally deemed to be the beneficial owner of the assets of the company, viz. M/s Agrasen Polymers FZE, whereas as mentioned above, there is no income of the Appellant, which remained

untaxed. Therefore, in the absence of any investment / withdrawal / benefit derived by the Appellant, there remains no taxability of any sum in the hands of the Appellant.

14. In this regard, reliance is placed on the judgment of *ACIT vs. Jatinder Mehra, [2021] 190 ITD 611 (Delhi – Trib.)* rendered in the context of *'beneficial ownership'* under the Black Money Act, wherein it was held that:

> *To identify a beneficial owner of an asset, said person should have nexus, direct or indirect to source of asset and he must have provided funds for said asset; mere account opening form of an overseas bank account where assessee was mentioned as beneficial owner of account, mentioning details of his passport as an identification document, did not necessarily, in absence of any other corroborative evidence of beneficial ownership of assessee over asset, lead to taxability in hands of assessee under Black Money Act.*

15. It is submitted that the Appellant has been subjected to tax in respect of the bank account of the Foreign Company by treating him to be the 'beneficial owner'. The term "beneficial owner" is not defined in the Black Money Act but is defined in Explanation 4 to Section 139(1) of the IT Act, 1961.

16. On perusal of the definition of the term "Beneficial owner", it is evident that a beneficial owner in respect of an asset would be a person who provides consideration for the asset for the immediate or future benefit of himself or any other person. Thus, it is relevant to understand the meaning of term 'beneficial owner' by making reference to Income Tax Act, 1961, wherein the said term has been defined in Explanation to Section 139(1) of the Income Tax Act, 1961.

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

17. That in the present case, the assets, i.e., the foreign bank accounts and foreign investments, were solely the assets of the foreign company and consideration for the said assets, i.e., the money flew from the bank account of the Foreign Company itself. The Foreign company deposited or made investments out of its own funds in the bank accounts in question. Thus, the Appellant clearly does not fall in the ambit of the term "beneficial owner" as he is not the provider of the consideration of the asset. Hence, the allegation of the Ld. Assessing Officer confirmed by the Ld. CIT(A) that the Appellant is the" beneficial owner" of the assets of the Foreign Company is misconceived, against the law and deserves to be annulled.

Reliance is placed on the following judgments:

> ITO v. Electro Ferro Alloys Ltd. [2012] 25 taxmann.com 458 (Ahd. - Trib.) where the relevant finding of the coordinate bench reads as under:
>
> "5. 2. On consideration of the facts of the appellant's case it is noticed that the motor car was purchased, though in the name of the appellant's director, it was purchased out of the funds of the appellant-company and it is also not in dispute that the motor car was purchased for the purpose of business of the appellant. Thus the motor car being, business asset of the appellant and purchased for the purpose of business and used as such by the appellant, in view of the decision in the case of Mysore Minerals Ltd. [1999] 239 ITR 775 (SC) referred to above and other decisions cited by the learned authorised representative, I hold that the disallowance made by the Assessing Officer on this ground is not justified and hence the same is directed to be deleted.

18. We further state that there were three directors in the Foreign Company viz. M/s Agrasen Polymers FZE. The company is established in the Free Trade Zone in UAE and two directors, who are locals, stay in Dubai. The Appellant was one of the Directors and the signing authority on behalf of the Company, and cannot be termed as a beneficiary as no amount has been received by the Appellant from the company in the form of remuneration or commission or profit or in any manner and neither is there any evidence suggesting the same, in the absence of which, the additions made in the hands of the Appellant by holding him to be a beneficial owner, is unjust, illegal, notional and not grounded on actual facts and/or law.

PB 889 – 894 is the copy of the submissions dated 18.07.2022 filed before the Commissioner of Income Tax (Appeals)-3, Jaipur regarding the issue of no 'beneficial ownership' of the Appellant.

19. In light of the above, it is most respectfully submitted that the Ld. Assessing Officer as well the Ld. CIT(A) erred in holding the Appellant to be the 'Beneficial Owner' without there being any iota of evidence to justify any benefit or even any contribution made by the Appellant.

GROUND NO. 3 – DIVIDEND OF RS. 2,34,26,056/- PERTAINS TO THE COMPANY AND DOES NOT BELONG OR BENEFIT THE APPELLANT THEREFORE CANNOT BE TAXED IN THE HANDS OF THE APPELLANT

20. The said amount formed a part of the total credits, hence has not been expressly discussed by the Ld. Assessing Officer. Even, the Ld. CIT(A) has also not recorded his findings qua this issue in the Appellate Order.

21. It is to be noted that the non-resident foreign company viz. M/s Agrasen Polymers FZE had made investments which are duly disclosed in its Financial Statements

PB 296 is the copy of the Financial Statement of M/s Agrasen Polymers FZE for the period ending on 31st December 2015 audited & approved M/s Ramesh Ramu & Audit Associates, wherein the investments have duly been disclosed.

PB 435-436 is the copy of the Financial Statement of M/s Agrasen Polymers FZE for the period ending on 31st December 2016 audited & approved by M/s Ramesh Ramu & Audit Associates, wherein the investments have been disclosed and dividends received thereon have also been disclosed.

PB 600-601 is the copy of the Financial Statement of M/s Agrasen Polymers FZE for the period ending on 31st December 2017 audited & approved by M/s Ramesh Ramu & Audit Associates, wherein the investments have been disclosed and dividends received thereon have also been disclosed.

PB 722-723 is the copy of the Financial Statement of M/s Agrasen Polymers FZE for the period ending on 31st December 2018 audited & approved by M/s Ramesh Ramu & Audit Associates, wherein the investments have been disclosed and dividends received thereon have also been disclosed.

PB 885-888 is the copy of the Reply dated 08.08.2022 filed before the Ld. CIT(A) whereby the Appellant duly explained the transactions of credits in the bank accounts of the non-resident foreign company.

22. That from these investments, the company, viz. M/s Agrasen Polymers FZE earned dividend income of Rs. 2.34 Crores during F.Y. 2016 – 17 to 2018 – 19 which has incorrectly been added as the income of the Appellant, whereas, the investments and the benefits therefrom, solely pertain to the Company, in its individual capacity. It is pertinent to note that not even an iota of any amount from the above-said amount has ever been received by the Assessee, nor is there any such allegation made by the Ld. AO in the Assessment Order dated 31.03.2021 nor in the Remand Report dated 13.07.2022, nor the Ld. CIT(A) brought out any adverse evidence in this regard on record. Therefore, taxing the same, in the hands of the Appellant is wholly incorrect and illegal, as the same is not in the nature of income of the Assessee and is not an asset belonging or pertaining to the assessee.

GROUND NO. 4 – THE AMOUNT OF RS. 16,76,574/- PERTAINS TO THE INTEREST EARNED BY THE NON-RESIDENT COMPANY ALONE AND CANNOT BE TAXED IN THE HANDS OF THE APPELLANT

23. The said amount formed a part of the total credits, hence has not been expressly discussed by the Ld. Assessing Officer, however, the Ld. CIT(A) has also not recorded his findings qua this issue in the Appellate Order.

24. That as mentioned above, the bank account pertained to the non-resident company, the interest earned from the bank has been credited in the bank account held by the company, or on behalf of the company, can only be income of the company. Therefore, taxing the same in the hands of the Appellant is wholly illegal and liable to be quashed.

PB 436 is the copy of the Financial Statement of M/s Agrasen Polymers FZE for the period ending on 31st December 2016 audited & approved by M/s Ramesh Ramu & Audit Associates, wherein the interest income has been disclosed.

PB 601 is the copy of the Financial Statement of M/s Agrasen Polymers FZE for the period ending on 31st December 2017 audited & approved by M/s Ramesh Ramu & Audit Associates, wherein the interest income has been disclosed.

PB 723 is the copy of the Financial Statement of M/s Agrasen Polymers FZE for the period ending on 31st December 2018 audited & approved by M/s Ramesh Ramu & Audit Associates, wherein the interest income has been disclosed.

PB 773 is the copy of Annexure 8 of Reply dated 12.07.2022 filed before the Ld. CIT(A) wherein the details of the Interest Received by M/s Agrasen Polymers FZE was categorically provided. (Also see PB 755)

PB 883 is the copy of the Reply to the Remand Report filed before the Ld. CIT(A).

25. That however, no specific adjudication has been done by the Ld. CIT(A) and this amount has been sustained from the general pool of additions, which is evident from Page 43 of the Order of the Ld. CIT(A). Therefore, as due submissions backed up by clinching evidence, the impugned addition sustained by the Ld. CIT(A) deserves to be quashed.

GROUND NO.5 – THE ADDITION OF RS. 1,42,67,290/- IS ILLEGAL AS THE SAME WERE MERE DEPOSITS MADE OUT OF THE WITHDRAWLS FROM THE BANK ACCOUNTS AND THEREFORE CANNOT BE ADDED AGAIN

26. The said amount formed a part of the total credits, hence has not been expressly discussed by the Ld. Assessing Officer either in his order, however, the said aspect was raised before the Ld. CIT(A) in reply to the remand report (PB 874) the Ld. CIT(A), while upholding the addition, has recorded his findings qua the issue at Para 6.2 (xxii) Page 41 of the Appellate Order.

27. That in order to meet day-to-day expenditures for the business of the Company, certain withdrawals were made by the Company, directly from the bank accounts and after utilsing the amounts, the remaining/balance amounts were deposited back in the respective bank accounts.

28. It is therefore stated that the addition of these amounts, tantamounts to double addition as cash in hand withdrawn from the bank has been deposited in bank which cannot be added as the amount has already been added at the time of withdrawal being the balance available in bank.

PB 775	is the copy of Annexure 10 of Reply dated 12.07.2022 filed before the Ld. CIT(A) wherein the details of the cash deposits out of withdrawals after meeting expense of M/s Agrasen Polymers FZE was categorically provided. (See PB 755)
Pg. …..	Synopsis is the Reconciliation chart extracted from the bank statement is being provided here for the sake of convenience

29. In any manner, the deposits / withdrawals pertain and belong to the company, M/s Agrasen Polymers FZE and not to the Appellant. Therefore, in any view of the manner, taxing the said amount in the hands of the Appellant is wholly illegal and unjust.

GROUND NO. 6 – RS. 12,54,600/- PERTAINS TO REPAYMENT OF LOAN BY STAFF TO THE COMPANY ALONE AND IS NOT IN THE NATURE OF INCOME AND IN ANY MANNER, THE SAID AMOUNT HAS BEEN CONSIDERED AS ALL CREDITS HAVE BEEN CONSDIERED. THEREFORE, THE ADDITION OF THE SAID AMOUNT IS ILLEGAL AS THE SAME IS NOT IN THE NATURE OF INCOME AND ALSO AMOUNTS TO DOUBLE ADDITION, THEREFORE, ILLEGAL.

30. The said amount formed a part of the total credits, hence has not been expressly discussed by the Ld. Assessing Officer, however, the said issue was addressed by the Ld. Assessing Officer in his remand report (PB 875) and a reply thereto was offered in the reply to the remand report (PB 881). Thereafter, the Ld. CIT(A) has recorded his findings qua the issue at Para 6.2 (xxiii) Page 42 of the Appellate Order and confirmed the addition.

PB 776 is the copy of Annexure 11 of Reply dated 12.07.2022 filed before the Ld. CIT(A) wherein the details of the staff loan repaid to the non-resident company viz. M/s Agrasen Polymers FZE alone was categorically provided.

31. Without prejudice to the above, the said addition is made qua the repayment of loan given by the Company to its staff, the initial amount of loan given (being a part of the total credits) has already been considered. Therefore, addition of this amount amounts to double addition.

32. Without prejudice, the said amount pertains to repayment of loan by the staff to the non-resident company viz. M/s Agrasen Polymers FZE and therefore, is not in the nature of income. Let alone that of the Appellant, who is only a director in the non-resident company, M/s Agrasen Polymers FZE gave the loan and received the repayment thereof.

GROUND NO. 2 & 13 – CREDITS OF RS. 19,68,01,923/- APPEARING IN THE ACCOUNT BELONGS TO THE COMPANY, M/S AGRASEN POLYMERS FZE, AND NOT TO THE APPELLANT, AND THAT TOO IN THE NATURE OF A LIABILITY AND THEREFORE NOT LIABLE TO BE TAXED IN HIS HANDS OF THE APPELLANT

33. The said amount of Rs. 19,68,01,923/- formed a part of the total credits of Rs. 136,73,10,855/- hence has not been expressly discussed by the Ld. Assessing Officer, however, the Ld. CIT(A) has also not recorded his findings qua this issue in the Appellate Order, and after deleting the double additions so made, has merely sustained this amount (which remained a part of the credits).

34. It is stated that Rs. 19,68,01,923/- represents credits in bank accounts of the non-resident foreign company viz. M/s Agrasen Polymers FZE.

35. It is stated that at the time of opening the bank account of the non-resident foreign company viz. M/s Agrasen Polymers FZE, Rs. 18,56,28,608/- (AED 10487493 at PB 236 – 237) were credited in account no. ending with 2010 and Rs. 1,11,73,315/- (AED 4,99,460 + 77,123 PB 496) were transferred in the account no. ending with 2026 in the year 2017. The company had taken some loan from their own sources which was credited in the bank account of the company. The same was also informed to the CIT(A) during the proceedings, which is evident from the reply of the remand report (PB 882). However, the same was of no avail as the same was not taken into consideration which is evident as there has been no discussion whatsoever about the said additions in the Appellate Order passed by the CIT(A).

36. It is further stated that said payables of the company are the liability in the nature of loans taken by the foreign company viz. M/s Agrasen Polymers FZE which is not an income or an asset, rather a liability and, therefore, they are

out of the purview of Black Money Act. An asset is a resource with economic value that an individual, corporation, or country owns or controls with the expectation that it will provide a future benefit. Assets are reported on a company's balance sheet and are bought or created to increase a firm's value or benefit the firm's operations. An asset can be thought of as something that, in the future, can generate cash flow, reduce expenses, or improve sales, regardless of whether it's manufacturing equipment or a patent. We, therefore, state that loan cannot, under any circumstances, be classified ~ as an asset and that the Ld. Assessing Officer has wrongly made the additions.

37. Furthermore, it can be seen from the audited Balance Sheets of the non-resident foreign company viz. M/s Agrasen Polymers FZE, that the liability in the nature of loan is duly reflected in the payables side of the Balance Sheet and, therefore, cannot be added as an asset of the assessee.

PB 236-237 & 496 are the copies of the respective Bank Statement reflecting the amount of funds being received in the bank account of the company.

PB 290, 297 are the copy of the balance sheet which clearly reflects the amount of loan taken by the non-resident foreign company.

PB 771 - 755 is the copy of Annexure 6 submitted to the Ld. CIT(A) along with the reply dated 12.07.2022, which clearly demonstrates the amount of loan received by the non-resident Foreign Company.

38. Further, it can be seen from the balance sheet that major portion of loan has already been returned and only Rs 6.70 Cr (Approx.) is outstanding as trade and other payables under the head liabilities, as per the balance Sheet of 2018.

PB 724 is the copy of the Notes to Accounts forming part of the Audited Financials of M/s Agrasen Polymers FZE, whereby Trade and other Payables have reduced to 3,358,200 Dirhams (equivalent to Approx. 6.5 Cr)

PB 801&802 are the Copies of Bank Statement of account no. ending with 2026, whereby amount of loan was returned (AED 8,25,000/- PB 801, AED 6,50,000/-, AED 600,000/-, AED 500,000/-, AED 750,000/-, AED 1,550,000/- & AED 1,150,000/- (PB 802)) by the non-resident Foreign Company viz. M/s Agrasen Polymers FZE.

For the sake of convenience to the bench a tabulated chart has been produced below of the repayment made:

Sr. No.	Date	Cheque No.	Amount	Currency	Reference of PB
1.	12.09.2018	175294	8,25,000	AED	801
2.	07.08.2018	175288	6,50,000		802
3.	07.08.2018	175287	6,00,000		802
4.	07.08.2018	175289	5,00,000		802
5.	08.08.2018	175290	750,000		802
6.	29.08.2018	175291	1,550,000		802
7.	05.09.2018	175292	1,150,000		802
TOTAL			6,025,000		

39. Thus, this amount, firstly and undisputedly was a loan (liability), which was taken by the non-resident foreign company and has been repaid back by the company alone. This unequivocally proves that the same did not belong or even pertain to the Appellant. It clearly belonged to the company and that too as a liability, therefore, by no stretch of imagination can be taxed in the hands of the Appellant. Secondly, even if is presumed to be belonging to the Appellant, even then, it is a loan, viz. falling in the nature of a 'liability' and not 'income', in any which manner. Therefore, the addition of Rs. 19,68,01,923/- is wholly illegal and liable to be quashed.

GROUND NO. 12 – UNDER THE FACTS AND THE CIRCUMSTANCES OF THE CASE AND IN LAW, THE LD. CIT(A) HAS GROSSLY ERRED IN ALLEGING THAT THE APPELLANT ADMITTED HAVING RECEIVED COMMISSION INCOME FROM COMPANIES/ PERSONS OF UAE AND TURKEY DIRECTLY IN HIS UAE-BASED BANK ACCOUNTS WITHOUT APPRECIATING THE CORRECT FACTS ON RECORD.

40. It is most respectfully submitted that the facts of case have been incorrectly interpreted and wrongly portrayed. It has been alleged that the Appellant admitted that certain commission received by him was taken aboard directly to UAE in M/s Agrasen Polymers FZE, which is wholly incorrect and unjust.

PB 200 – 201 is the copy of the statement of the Appellant recorded u/s 132(4) of the Income Tax Act, 1961 whereby the Appellant mentioned that commission / incentive was paid by the Turkish companies to maintain continuity.

41. The statement has been misinterpreted as the transactions were between foreign companies and the companies in which the Appellant was acting in Fiduciary Capacity. No such amount was received by the Appellant on his personal account. Neither was the same the income of the Appellant.

42. Furthermore, there is no whisper as to any amount / transaction which could've been this alleged commission amount, if any. Therefore, taxing any/all

transactions, that too of a non-resident foreign company in the hands of the Appellant is wholly illegal, unjust, and liable to be quashed.

43. It is further to be noted that this was a case of search, where documents from the laptop etc. were recovered. However, no such document has admittedly been found showing any such commission amount to be received by the non-resident Foreign Company, let alone the Appellant in his personal capacity. Therefore, no reliance, let alone any adverse observation can be based on that statement to make any addition in the hands of the Appellant. In this regard, reliance is placed on the following judgments:

CIT v. Harjeev Aggarwal: [2016] 229 DLT 33

Statement recorded during the course of search, on a standalone basis, without any reference to material found/discovered during the search would not empower the AO to make block assessment merely because of any admission made by Assessee during the search operation.

CIT vs. Naresh Kumar Agarwal, I.T.T.A No.112 OF 2003 dated 09.09.2014 (Andhra Pradesh High Court)

……The circumstances under which a statement is recorded from an assessee, in the course of search and seizure, are not difficult to imagine. He is virtually put under pressure and is denied of access to external advice or opportunity to think independently. A battalion of officers, who hardly feel any limits on their power, pounce upon the assessee, as though he is a hardcore criminal. The nature of steps, taken during the course of search are sometimes frightening. Locks are broken, seats of sofas are mercilessly cut and opened. Every possible item is forcibly dissected. Even the pillows are not spared and their acts are backed by the powers of an investigating officer under Section 94 of Cr.P.C by operation of sub-section (13) of Section 132 of the Act. The objective may be genuine, and the exercise may be legal. However, the freedom of a citizen that transcends, even the Constitution cannot be treated as non- existent……

……..This, in turn, is referable to a time-tested right of an individual which is recognised under Article 20(3)of the Constitution of India which mandates no person, accused of any offence, shall be compelled to be a witness against himself. The citing of a statement of an individual as the only evidence, in the penal proceedings initiated against him, is never treated as part of a developed and mature legal system. Section 31 of the Evidence Act, 1872 also assumes significance in this regard. It reads: Admissions not conclusive proof, but, may

estop:Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained……"

B.R. Associates Pvt. Ltd. Vs ACIT (ITAT Delhi)
In absence of adverse material found during search, no addition could be made merely on the basis of statement recorded under section 132(4) of Income Tax Act, 1961 which did not constitute conclusive evidence and having been given under pressure was immediately retracted. Additions made u/s 153A of the Act, in the absence of incriminating material found as a result of search is outside the scope of section 153A of the Act.

44. It is therefore submitted that no reliance can be placed on such a statement without there being any corroborative material found the course of search or otherwise, to justify the allegation.

ADDITIONAL SUBMISSION ON GROUND NO.1 & 13: – THE LD. ASSESSING OFFICER AS WELL AS THE LD. CIT(A) ERRED IN TAXING THE APPELLANT WITHOUT CONSIDERING THAT THERE IS NO SCOPE OF UNDISCLOSED FOREIGN INCOME & ASSET IN THE HANDS OF THE APPELLANT AS PER SECTION 4 OF THE BLACK MONEY (UFIA) & IMPOSITION OF TAX ACT, 2015.

45. It is to be noted that there is no income earned by the Appellant which has been omitted to be disclosed in the return of the Appellant, nor is there any 'undisclosed asset located outside India' which can be taxed in the hands of the Appellant-assessee, therefore, the liability ascribed on the Appellant is wholly without jurisdiction as there exists no 'Scope of total undisclosed foreign income and asset' in the hands of the Appellant as per section 4 of the Act.

46. For ready reference, the provision of section 4 is reproduced as under:

4. Scope of total undisclosed foreign income and asset.—

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

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

(b) the income, from a source located outside India, in respect of which a return is required to be furnished under section 139 of the Income-tax Act but no return of income has been furnished within the time specified in Explanation 2 to sub-

section (1) or under sub-section (4) or sub-section (5) of section 139 of the said Act; and

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

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

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

That from a bare perusal of the provision above, there can be any scope of undisclosed foreign income and asset, if and only if, a) there is any income from a source outside India which has not been disclosed in the return of income and b) where there is income as mentioned in point a) above but no return has been furnished and c) Value of undisclosed asset located outside India.

47. That the first condition, viz. income from a source located outside India not disclosed in return, is not met in the case as there is no income of the Appellant which has not been disclosed to tax in India and nor is there any allegation to that effect.

Without prejudice, there must be cogent, tangible material showing the income earned abroad and not disclosed to tax in India. Unless, shown to exist, there can be no liability which can be imposed on the Appellant.

48. Coming to the second condition, it stipulates where no return is furnished, which is not the case, the Appellant is a regular tax filer and has also disclosed the bank account held by him in fiduciary capacity and other details of the foreign asset of the company, in his return. Thus, making the second condition also inapplicable.

49. The third condition is the value of 'undisclosed asset located outside India'. In order to examine this issue, it is crucial to ascertain whether the conditions of section 2(11) of the Act - undisclosed asset located outside India', which is reproduced as under:

(11) "undisclosed asset located outside India" means an asset (including financial interest in any entity) located outside India, held by the assessee in his name or in respect of which he is a beneficial

owner, and he has no explanation about the source of investment in such asset or the explanation given by him is in the opinion of the Assessing Officer unsatisfactory;

From the above, it can be seen that there is 'undisclosed asset located outside India' where a foreign asset has been held by a person or where he is a beneficial owner and no satisfactory explanation is offered.

Whereas, in the instant case, the assets belonged to the company, and the Appellant did not contribute, withdraw and/or benefit from any of the assets. Furthermore, there is no asset, held by the Appellant in his individual / personal capacity. Therefore, no addition can be made in such circumstances. Further that the Appellant cannot be made to prove the negative, as has been held in a number of judgments, some of which are as under:

- K.P. Varghese Vs. ITO, [1981] 7 Taxman 13/131 ITR 587 (SC)
- Interworld Shipping Agency LLP Vs. DCIT, [2021] 189 ITD 213 (Mumbai - Trib.)
- Mayank Desai Vs. ACIT, (2006) 9 SOT 4
- Narendra Mafatlal Mehta Vs. Income-Tax Officer, (1997) 59 TTJ 175

50. Therefore, in such circumstances of the present case, none of the conditions are met, due to which there is no Scope of Undisclosed Foreign Income & Asset and therefore, no taxability can be levelled in the hands of the Appellant."

18. In addition to the above written submission the ld. AR of the assessee appraise that the assessee is an Individual having 84 years of his age. He is regular tax payer and for A. Y. 2016-17 & 2017-18 he was appreciated by the Department. Relevant certificate of appreciation placed on record [Assessee's paper books (APB)-216&217]. The ld. AR of the assessee stated that what is going on this country what a mental harrsment and troma given by the department by iniating the action and thereby making huge addition of Rs. 146 Cr. without appreciating the facts of the case.

19. The ld. CIT(A) has reduced to it by 23 Cr but while doing so the lower authorities failed to appreciate that the company M/s. Agrasen Polymers FZE is a separate legal entity and that all the funds and investment belonging to the company cannot be considered for the proceeding under the Act. This issue has not been addressed by the ld. AO and ld. CIT(A) and as already evidence from the evidence adduced before the assessing officer, he failed to appreciate the legal entity concept and illegally taxed the assets of that separate legal entity. The ld. AR of the assessee to support his view on facts relied upon the audit reports and thereby demonstrated that the assets and liability are separately recorded by the that legal entity and since the same is already disclosed in that entity the same cannot be added in the case of the assessee. To substantiate this view, he has relied upon the decision in the case various case law where in the view is taken that;

a) Shareholder has no direct relationship with land as the same belongs only to the company, nor its shareholders, nor directors. [Mrs. Bacha F. Guzdar Vs. CIT (SC) 27 ITR 001]

b) The shareholder does not own and cannot claim any portion of the property held by the company of which he is a shareholder.[Bacha F. Guzdar Vs. CIT 27 ITR 1 SC]

c) Salmon Vs. Salmon & Co. Ltd.(1897), the company was a different legal person from the shareholders, and thus Mr. Salomon, as shareholder and creditor, was totally separate in law from the company A Salomon & Co. Ltd.

d) Lee Vs. Vee's Air Farming Ltd. (1961) Mr. Lee and the company he had formed were separate entities, and it was possible for Mr. Lee to be employed by Lee's Air Farming.

e) State Trading Corporation of India Ltd. (1962)(SC) 1811- Once a company or corporation is formed, the business which is carried on by the such company or corporation is the business of that company or corporation and is not the business of the citizens who get the company or corporation incorporated and the rights of the incorporated body must be judged on that footing and cannot be judged on the assumption that they are the rights attributed to the business of individual citizens.

20. The ld. AR of the assessee further submitted that for all the purposes of the assessment, a company is treated to be a separate `person' within the meaning of section 2(31) read with 2(17) of the Income Tax Act. In the present case, Company invested its own money and resources in UAE to earn dividends, interest, gains which cannot be taxed in the hands of the assessee in any manner and the liability casted upon the assessee is not in consonance with the BMA. Not only that in the search there is no evidence that any funds belonged to and / or pertained to the assessee in his individual capacity remained to taxed in India and therefore, any amount of liability on the assessee is unconstitutional and illegal.

21. The ld. AR of the assessee relying on the circular no. 08/2017 issued by the CBDT submitted that the place of effective Management(POEM) shall not apply to a company having turnover or gross receipts of Rs. 50 crore or less in a financial year and therefore, in no manner it can be charged in the present case.

22. The information related the case came to the notice of the ld. AO only when the search took place so taxability can only be made for the A. Y. 2019-20. Based on these facts, the relevant disclosure was made in the year in the original return of income filed for A. Y. 2018-19 and 2019-20. Therefore, even the case of non-disclosure cannot be made out against the assessee for that he has relied upon the return of income filed at APB 542 to 543 & 606-640. He further stated that even coming to be aware of the legal compliances, for disclosure he revised the previous return for A. Y. 2017-18 and made due disclosure about the financial interest in overseas company. Relying on the judgement of the coordinate bench of ITAT

Mumbai bench in the case of ACIT Vs. Leena Gandhi Tiwari 96 ITR 384 the bench has taken a view that

> *Where assessee was a signatory in a foreign bank account owned by her mother and she failed to disclose same while filing her income-tax return, however disclosure was made while filing return under section 153A, since such non-disclosure of a foreign asset was a bona fide mistake, penalty could not be imposed under section 43 of Black Money Act.*

Based on that set of facts he has submitted that since, the disclosure already made no addition can be made in the hands of the assessee in respect of the assets of the separate legal entity M/s. Agrasen Polymers FZE. Since the assessee has already adopted and considered the disclosure of his financial assets in return of income, therefore, revenue can very well charge the income when the assessee liquidate these investments and tax the assessee. Therefore, in the light of these facts and considering the fact that the assessee has made disclosure so as to comply the provision of Black Money Act.

23. The ld. AR of the assessee also submitted that the lower authorities have erred in holding that the assessee is a beneficial owner of the alleged undisclosed assets and the income therefrom, of an independent non resident foreign company M/s. Agrasen Polymers FZE. He has submitted that there is no income of the assessee remained untaxed. The assessee has not made any investment, not withdrawn any money and not derived any benefit from the said entity there remains no taxability of any sum in the hands of the assessee. To support this view, he has relied on the decision of the coordinate bench of Delhi in the case of ACIT Vs. Jatinder Mehra 190 ITD 611(Delhi-Trib), wherein the bench has taken view which is relied upon is reiterated here in below;

> To identify a beneficial owner of an asset, said person should have nexus, direct or indirect to source of asset and he must have provided funds for said asset; mere account opening form of an overseas bank account where assessee was mentioned as beneficial owner of account, mentioning details of his passport as an identification document, did not necessarily, in absence of any other corroborative evidence of beneficial ownership of assessee over asset, lead to taxability in hands of assessee under Black Money Act.

24. The term beneficial owner is not defined in BMA but is defined in Explanation 4 to section 139(1) of the Income Tax Act.

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

He has submitted that based on that provision since the foreign company has invested out of own funds and the assessee has not provided any consideration, he is out of the ambit of the beneficial owner definition. For this he relied on the submission made before ld. CIT(A) (APB-889 to 894) and thus he submitted that the addition based on that wrong understanding of the provision of the law deserves to be annulled.

25. As regards the dividend of Rs. 2,34,26,056/- the ld. AR of the assessee submitted that income pertains to the company related to the investment made by the company and it cannot be taxed in the hands of the assessee in the absence of the finding that the same is received by the assessee. The lower authorities have not recorded their findings qua this issue. The ld. AR of the assessee submitted that all the investment made by that M/s. Agrasen Polymers FZE are duly disclosed in the financial statement and relevant records placed on record (APB 296, 435-436, 600-601, 722-723, 885-888) and does not belong or benefit the assessee and therefore,

that income is not in the nature of income of the assessee and is not an asset belonging to or pertaining to the assessee.

26. The ld. AR of the assessee further submitted that the ld. AO erred in adding a sum of Rs. 16,76,574/- being the amount of interest earned by the non resident company and that interest earned by that company cannot be taxed in the hands of the assessee. He further submitted that the ld. CIT(A) has not recorded his findings qua this issue in her order. To drive this contention the ld. AR of the assessee relied upon the financial statement as at 2017 & 2018 (APB 601 & 723). Based on this evidence the ld. AR of the assessee submitted that addition to that extent required to quashed.

27. As regards the deposit of cash of Rs. 1,42,67,290/- the ld. AR of the assessee submitted the amount of credit which has already been considered and from that the amount has been withdrawn and the same cash being not utilized deposited back into the bank account not required to be taxed again as it will tantamount to a double addition of the same amount. The ld. AR of the assessee to support this contention relied upon the Annexure 10 provided to the ld. CIT(A) at page 755 of his paper book. He further submitted that the deposit / withdrawals pertain and belong to the company and not to the assessee and therefore, adding the same is illegal and unjust.

28. A sum of Rs. 12,54,600/- added pertains to repayment of the loan given to staff by the company alone and is not in the nature of income and further this amount is in relation to a separate legal entity. This issue is addressed by the AO in his remand report (APB 875) and reply to the remand report (APB881). The ld.

CIT(A) has confirmed the addition. If this is not allowed it will be double addition of the same amount.

29. As regards the liability appearing in the account of M/s. Agrasen Polymers FZE he submitted that the ld AO has added a sum of Rs. 136,73,10,855/-, a sum of Rs. 19,68,01,923/- consist of the liability to third party. While deleting the double addition the ld. CIT(A) has not given finding to this aspect. The relevant remark of the assessee already submitted to ld. CIT(A) (APB 882) but the same is not taken into consideration. The liability recoded in the books is neither income nor assets and therefore, sustaining addition is out of the purview of the BMA. The ld. AR of the assessee further relied upon the financial statement (APB 290 & 297). He further submitted that even the loans are repaid also and is appearing the balance sheet also. Based on this evidence he has submitted that the addition of Rs. 19,68,01,923/- is wholly illegal and liable to quashed.

30. As regards the ground no. 12 raised by the assessee the ld. AR of the assessee submitted that the fact of the case have been incorrectly interpreted and wrongly portrayed. The statement of the assessee misinterpreted as the transactions were between foreign companies and the companies in which the assessee acting as fiduciary capacity. The assessee has not received any income on this count. The ld. AR of the assessee submitted that in the search no evidence of having been received the commission by the assessee is found to be received but it is only of the company. To drive home to this contention the ld. AR of the assessee relied upon the judgment in the case of CIT Vs. Harjeev Aggarwal 29 DLT 33, CIT Vs. Naresh Kumar Agarwal ITTA No. 112 of 2003 and B. R. Associates Private

Limited (ITAT – Delhi). Based on these he submitted that no reliance can be placed on such statement without any corroborative evidence.

31. To support the ground no. 1 & 13 the ld. AR of the assessee submitted that there is no income earned by the assessee which has been omitted to be disclosed in the return, nor is there any 'undisclosed asset located outside India' which can be taxed in the hands of the assessee, therefore, the liability ascribed is wholly without jurisdiction as there exists no 'Scope of total undisclosed foreign income and asset' in the hands of the assessee as per section 4 of the Act. He has further discussed the condition mentioned in that section so as make charge on the assessee.

32. Finally, the ld. AR of the assessee submitted that the asset in question belonged to the company and the assessee did not contribute, withdraw and / or benefit from any of the assets and in such circumstances no addition can be made in the case of the assessee.

33. On the other hand, the ld. D/R relied on the orders of the revenue authorities and further submitted that the assessee is high profile tax payer and is well served with the professional advisors. He has in his original return has categorically stated that he did not hold, as beneficiary or otherwise, any asset (including financial interest in any entity) located outside India, and also that he did not have signing authority in any account located outside India. The ld. DR relying the on specific questions and answer to be filed in the ITR demonstrated that the declarations given by the assessee is completely wrong and misleading. In the proceeding initiated on 07.07.2018 the assessee has not given the pass word of his Mcbook and email account. Not only that in the search proceedings he has not voluntarily disclosed his

financial interest in any concern and has not disclosed the fact of an entity having 100 % stake. Even he is regular tax payer his behavior was negative in the search and in the assessment proceedings. Being a regular tax payer, he must know the requirement of taxing statue and has not disclosed the financial interest in overseas entity. The source of this investment as clarified in a statement is the commission income that the assessee earned and parked in this entity. The assessee is a resident Indian for the purpose of taxation. The assessee had tried to submit the details as per his own will and did not provide the requisite details to explain the source of funds in these bank accounts maintained by the assessee. The assessee also failed to demonstrate as to which type of the business that M/s. Agrasen Polymers FZE is doing and in the absence of this information there is no substance on the statement of the assessee that the company is mere a paper company. The details of the credit and source of investment made is not clearly established not only that the primary details for incorporating the company is not shared with the ld. AO as indicated by the AO at page 46 (item No 1 to 9) . Thus, in the absence of the primary details that the company ever engaged in performing any actual business or fund generating activities cannot be believed. Thus, there is no reason to disbelieve the admission of the assessee in the statement that M/s. Agrasen Polymers FZE is nothing but a paper / Shell Company. The assessee has also stated that he had supplied masterbatch to clients in UAE/Turkey and in order to maintain good relationship and in order to maintain continuity of goods to these clients and credited money/commission in his UAE based bank account. Thus, it is clear that the assessee has received the commission income from the foreign source and parked that income in the company named M/s. Agrasen Polymers FZE. The stake in this

company is 100 % as it is evident from the audit report, bank account opening form and he being the signatory to the account. This evidence clearly establish that the assessee is the beneficial owner of the income and asset of that company. In the course of the search the assessee has not co-operated to the revenue. As the revenue has credible information based on that the search was conducted and various incriminating material found suggesting the foreign asset and income. When these details found from the Mcbook and email account of the assessee has confirmed that he has income which is parked outside India and is very well invested outside and based on this fact he is very well covered under the provision of BMA. The fact that in that company the assessee is holding 100 % stake and it proves beyond doubt that the assessee holding these assets outside India. This information he has not disclosed in the return of income filed by him and has only filed the information by revising the return for the first time in A. Y. 2017-18. The initial investment to acquire the stake in the entity is not routed through any banking channel and the assessee failed to answer the source of the initial investment made. Not only that in the assessment proceeding the assessee has not clarified many information even though the sufficient opportunity were provided. The information which the assessee has to submit has been sourced with foreign jurisdiction through FTTR, CBDT. The ld. AO thus recorded his finding that the intention of the assessee, right from the initiation of search till the assessment proceeding ends, never provided the correct state of affairs in a transparent and fair manner. Based on these set of the arguments the ld. DR supported the order of the lower authorities.

34. We have carefully considered the rival contentions and perused the material placed on record and the orders of the lower authorities as well as the several judicial precedents relied upon before us. From the record, we noticed that the assessee is an Individual and is engaged in the business of manufacturing and trading of master batch, polymers etc. and for the assessment year under consideration, return of income under section 139(1) of the I.T. Act, 1961 was filed by the assessee for the assessment year 2019-20 on 23.08.2019 declaring total income of Rs. 1,20,17,790/-. As per the revenue, the credible intelligence was received in the month of May, 2018 that the assessee had interests in financial assets held outside India, and also that he is signatory in financial assets held by him outside India. On verification of record, it was seen that the assessee had filed his Indian Income Tax Return u/s 139(1) for the AY 2016-17 and AY 2017-18 in which the assessee had categorically stated that he did not hold, as beneficiary or otherwise, any asset (including financial interest in any entity) located outside India, and also that he did not have signing authority in any account located outside India.

34.1. Thereafter, a search and seizure action u/s 132 of IT Act was conducted on 09.07.2018 by the Income-tax Department on the residential premises of the appellant. During the course of search, evidences in the form of excel files were recovered from the e-mail account and personal Macbook of the assessee. The print out of these excel sheets were seized as Exhibit Nos. 13 & 14. These excel files had details of UAE based bank accounts held in the name of M/s. Agrasen Polymers FZE. In addition, the excel files also contains details of foreign based investment products such as mutual funds, bonds etc. held by the said firm.

34.2 The excel files reproduced by the AO in the body of the assessment order contain the details of UAE based bank accounts and investment products located in various countries around the world such as Sri Lanka, Peru, Germany, Isle of Man etc. In these excel files, the assessee had maintained a meticulous and detailed account of all the transactions entered into by that firm in his foreign based bank accounts and investment products. The AO observed that these excel files clearly prove that the assessee making all the decisions relating to this firm's foreign bank accounts and investment products and therefore, the assessee was fully aware that he was holding foreign based financial assets and that he is also the signing authority in such accounts. The AO noted that in order to evade payment of taxes on these undisclosed assets, the assessee willfully submitted false Income Tax Returns repeatedly for consecutive years, in which he had falsely verified that he does not own any foreign assets.

34.3 Therefore, considering these facts the AO observed that the assessee had held multiple foreign based financial assets at different points of time and that he had earned huge incomes from these assets and with a clear intention to evade tax, the assessee did not willfully disclose details of his foreign asset in his income-tax returns. Therefore, on the basis of these facts, the AO concluded the assessment proceedings in the case of the appellant by passing the assessment order dated 31.03.2021 under section 10(3) of the Black Money (Undisclosed Foreign Income & Assets) & Imposition of Tax Act, 2015 by assessing the income at Rs. 146,42,44,881/- on account of alleged undisclosed credits in foreign bank accounts and investments outside India.

34.4 Aggrieved by the said order, assessee preferred an appeal before ld. CIT (A) and the ld. CIT (A) during the course of appeal proceedings considered the evidences submitted by the assessee. He also called for the remand report to have the comments on the submission of the assessee by AO. On the basis of remand report, the ld. CIT (A) deleted the substantial additions by holding that on verification of the bank accounts statements of the appellant it had categorically admitted that the amount of Rs. 103.64 crores were purely a double addition made in the hands of the appellant due to inter-bank transfers, redemptions of FDRs and investments, therefore, the addition of Rs. 103.64 crores were not found to be sustainable and accordingly deleted.

34.5 Apart from this, the ld. CIT (A) also found the contention of the appellant as correct as on verification it was found that amount of Rs. 9,01,93,937/- was leveraged facility provided by the bank and even in the remand report it was specifically confirmed that account no. AE550271031591850542039 was internal suspense account of the bank. It was used by the bank for their operation and internal investments and the said account does not belong to the appellant. Therefore, addition of Rs. 9,01,93,937/- was also directed to be deleted. The ld. CIT (A) also found that the amount of Rs. 32,49,375/- was a contra entry and thus also deleted the said amount of Rs. 32,49,375/-.

34.6. Apart from this, an addition of Rs. 9,69,34,026/- made by the AO on account of income earned on investment in OMI was also deleted by ld. CIT (A) by holding that no notional gain was ever credited in the bank account of the assessee. Therefore, the said addition was not found to sustainable and in this way out of Rs.

146,42,44,881/-, substantial additions were deleted by ld. CIT (A) and on the remaining additions, the assessee has preferred the present appeal.

34.7. At the outset, we noticed that additions in the present case were made under the provisions of Black Money (Undisclosed Foreign Income & Assets) & Imposition of Tax Act, 2015, by holding that assessee has earned income on account of undisclosed credits in the foreign bank accounts and investments made by the assessee outside India. In this regard it has been specifically pleaded by the assessee that the alleged information, admittedly came to the notice of the AO during the course of search proceedings conducted somewhere in the month of July, 2018 i.e. during the financial year 2018-19 which is relevant to assessment year 2019-20. Therefore, taxability, if any, can only be made for the year under consideration i.e. assessment year 2019-20. In this regard it has categorically been submitted by the assessee that assessee had made due disclosure in his original return filed under section 139(1) of the I.T. Act, 1961 for the assessment years 2018-19 and 2019-20 regarding having financial interest (in a fiduciary capacity) and a signatory for and on behalf of the company i.e. M/s. Agrasen Polymers FZE. Therefore, by no stretch of imagination the case of the assessee fall in the category of "Non disclosure made by the assessee". In this regard our attention is drawn to paper book pages 542-543 which are copies of return filed by the assessee for the assessment year 2018-19 whereby due disclosure regarding financial interest and details of signature authority has categorically been made by the assessee. Apart from this, at paper book page 605 there is a copy of ITR acknowledgement filed under section 139(1) of the IT Act on or before the due date for A.Y. 2019-20.

Proceeding further, our attention was also drawn to paper book pages 606-640 which are the copies of ITR Form filed by the appellant assessee for the assessment year 2019-20 whereby in schedule FA, more particularly at paper book pages 628 & 629-630, due disclosure has been made by the appellant assessee in his return. Thus, in this way according to ld. A/R, no tax liability or penalty can be imposed on the appellant as the entire edifice of the case, built solely on suspicion and surmises, deserves to be quashed and no amount can be taxed in the hands of the appellant assessee.

34.8. After having gone through the documents as pointed to us which are mentioned in detail above, we find that assessee had made due disclosure of all his financial interest in a fiduciary capacity and as a signatory authority of a foreign bank account for and on behalf of the company while filing of returns of income for the assessment years 2018-19 and 2019-20 wherein in schedule FA, due disclosure has been made by the appellant in his return. Even in case the revenue has taken a specific stand that there was non disclosure on the part of the assessee in filing return for the assessment years 2017-18 & 2018-19, which in our view, is not sustainable in view of the fact that detailed documents have already been placed on record to substantiate that assessee had made due disclosure in assessment year 2018-19 and 2019-20. Even otherwise, as per assessee, after coming to aware of legal compliances i.e. requirement of disclosures, even amended/revised his previous returns for assessment year 2017-18 as well and also made due disclosure about the bank accounts which he is a signatory on behalf of the company and his financial interest in that company. In this regard our attention was drawn specifically to

paper book page 303 which is a copy of ITR acknowledgment filed under section 139(5) for assessment year 2017-18 and also at paper book pages 304-329 which is a copy of ITR Form filed by the appellant for the assessment year 2017-18, whereby in schedule FA (pg. 326 & 327) due disclosure has been made by the appellant in his return.

34.9. Now proceeding further, our attention was also drawn on paper book pages 376-377 which is a copy of revised return filed for the assessment year 2017-18 whereby due disclosure regarding the financial interest and details of signatory to the foreign bank account had been made by the appellant. Apart from this, appellant assessee had also filed copy of chart of dates of return filed original as well as revised which are at paper book page 844. After analyzing and scrutinizing all the events, disclosures and evidences in the form of documents, which are placed in paper book, we find that assessee had made due disclosure in his respective returns more particularly the original return for assessment years 2019-20 and 18-19 have been filed within due dates. So far as with regard to assessment year 2017-18 is concerned, the same has stood amended/revised by the assessee and revenue has not controverted these facts supported by evidences. Thus in our view it is not a case of non-disclosure and even otherwise, as per the decision of Coordinate Bench of the Tribunal, Mumbai in the case of ACIT vs. Leena Gandhi Tiwari, (2022) 96 ITR (T) 384, it has been categorically held that Where assessee was a signatory in a foreign bank account owned by her mother and she failed to disclose same while filing her income-tax return, however disclosure was made while filing return under section 153A, therefore it was held that since such non-disclosure of a foreign asset

was a bona fide mistake, penalty could not be imposed under section 43 of Black Money Act.

34.10. More particularly, in the present case, the additions of transactions in the hands of the appellant which solely belong to the non-resident foreign company i.e. M/s. Agrasen Polymers FZE, cannot be added in the hands of the appellant. Since as per the facts as discussed above, the assessee has disclosed his financial interest in the said company as signatory of the various bank accounts held by that entity, therefore, the burden of proof is on the department to bring the case within the ambit of Black Money (Undisclosed Foreign Income & Assets) & Imposition of Tax Act, 2015.

35. Based on these facts, now we discuss and adjudicate the appeal of the assessee ground-wise as under :

36. As submitted by the ld. A/R of the assessee that Ground nos. 1, 8, 11, 15 & 16 are general and incidental to the other grounds raised in this appeal and be read in conjunction with the other grounds raised. Based on these averments of the assessee we considered these grounds as general in nature and do not require our adjudication as the same are incidental to the other grounds as submitted by the ld. A/R of the assessee, therefore, same are treated as theoretical.

37. At the time of filling the written submission and while dealing with this appeal before us the ld. AR of the assessee has preferred to raise the ground no 9 to be dealt prior to the other grounds so raised. Thus, we deal with the ground no. 9 first.

GROUND NO. 9 – THAT THE LD. CIT(A) ERRED IN NOT RECOGNIZING THAT THE COMPANY VIZ. AGRASEN POLYMERS FZE HAS SEPARATE LEGAL ENTITY AND THAT ALL THE FUNDS / INVESTMENTS ETC. BELONGED TO THE COMPANY ALONE. THEREFORE, THE TAXABILITY LEVIED IN THE HANDS OF THE APPELANTS IS WHOLLY UNJUST, ILLEGAL AND LIABLE TO BE QUASHED OUTRIGHTLY

38. The ld. AR of the assessee submitted that the ld. AO as well as ld. CIT(A) has erred in not recognizing that the company M/s. Agrasen Polymers FZE [here in after referred as company] is a separate legal entity. He has also submitted that all the funds / investment belonging to the company only and therefore, fastening the liability on the assessee ignoring this fact is just, illegal and the order passed ignoring this fact is required to annulled at this stage and no cognizance of the other finding be taken by the revenue. The revenue has not decided this important ground and has not addressed this issue as raised by the assessee while passing the order against it. As it is not disputed by the parties that the investment or the assets found during the course of the search is belonging to the company and not to the assessee. The entity has undeniably a separate legal entity, having an independent identity, capable of holding assets in its own name for the furtherance of its own objectives and purposes. The company owns separate bank accounts, holds investment and also has separate Board of Directors and also gets their separate set of books of account audited and complied the law of the country where the same is incorporated. Therefore, taxing the assets of that company in his individual capacity is wholly illegal and unsustainable, by any stretch of imagination. The company has disclosed the transactions / bank accounts in its Audited Financial Statements, submitted to the Authorities of the Free Trade Zone of Ras Al Khaimah (APB289-299), director report at APB 288, independent auditor report at page (APB 289) for

2015-16 and so on for the subsequent year. He has argued that the concept of a separate legal entity has been a time old principle, which rather forms the backbone of legal jurisprudence. For that he relied on following principles that has been established and are required to be followed for judicial consistency;

a) Shareholder has no direct relationship with land as the same belongs only to the company, nor its shareholders, nor directors. [Mrs. Bacha F. Guzdar Vs. CIT (SC) 27 ITR 001]

b) The shareholder does not own and cannot claim any portion of the property held by the company of which he is a shareholder.[Bacha F. Guzdar Vs. CIT 27 ITR 1 SC]

c) Salmon Vs. Salmon & Co. Ltd.(1897), the company was a different legal person from the shareholders, and thus Mr. Salomon, as shareholder and creditor, was totally separate in law from the company A Salomon & Co. Ltd.

d) Lee Vs. Vee's Air Farming Ltd. (1961) Mr. Lee and the company he had formed were separate entities, and it was possible for Mr. Lee to be employed by Lee's Air Farming.

e) State Trading Corporation of India Ltd. (1962)(SC) 1811- Once a company or corporation is formed, the business which is carried on by the such company or corporation is the business of that company or corporation and is not the business of the citizens who get the company or corporation incorporated and the rights of the incorporated body must be judged on that footing and cannot be judged on the assumption that they are the rights attributed to the business of individual citizens.

38.1. The ld. AR of the assessee further relying on the definition given in the Income Tax Act, 1961 and for all purposes of the assessment, a company is treated to be a separate 'person' within the meaning of section 2(31) read with 2(17) of the Income Tax Act. In the case of assessee, company invested its own money and resources in the UAE to earn dividends, interest, gains, which cannot be taxed in the hands of the assessee in any manner. The taxability thereof in the hands of the assessee is not in consonance with the Black Money (Undisclosed Foreign Income

and Asset) & Imposition of Tax Act, 2015. **More so when, there is no iota of evidence that any funds belonged to and/or pertained to the assessee in his individual capacity. Nor is there any evidence to show that any income of the assessee was taken abroad, or earned in his individual name and was omitted to be taxed in India.** Therefore, the taxability of any amount in the hands of the assessee will be unconstitutional as without bringing any evidence so as to prove that the assessee has directly, or indirectly earned any income. In the search, revenue has not found any material in digital or in a seized material which suggest that there is an income accrued or arise to the assessee in his individual capacity. He also submitted that the comparison in the present case, is that of a non-resident foreign company and not an Indian company. The said vital fact has been accepted and never been disputed by the Ld. AO in the Assessment Order dated 31.03.2021 and/or in the Remand Report dated 13.07.2022. He has further submitted that the Place of Effective Management (POEM) of the said foreign company is also situated outside India because of which, the company is a non-resident in India within the meaning of section 6 of the income tax act and none of the assets were liable to be taxed in India [Reliance was made to the CBDT circular dated 23.02.2017 bearing Circular No. 08/2017]. Based on these clarifications by Board that in no view of the manner can taxability arise in the present case even on POEM and that the entire edifice of the case is wholly unjust and illegal.

38.2. It is pertinent to note that the company, viz. Agrasen Polymers FZE has also disclosed the transactions/bank accounts in its Audited Financial Statements, submitted to the Authorities of the Free Trade Zone of Ras Al Khaimah as under :

AY 2015 – 16 (01.01.2015 – 31.12.2015)

PB 286-299	Copy of Auditors Report, Director's Report & the Financial Statements of M/s Agrasen Polymers FZE audited & approved by M/s Ramesh Ramu & Audit Associates, UAE on 07.04.2016 which was even submitted to the authorities of the Free Trade Zone of Ras Al Khaimah.
PB 288	is the copy of the Director's Report prepared by the directors of the company.
PB 289	is the independent Auditor's Report prepared by M/s Ramesh Ramu & Audit Associates, UAE on 07.04.2016
PB 290	is the copy of the Statement of Financial Position of M/s Agrasen Polymers FZE akin to a Balance Sheet.
PB 291	is the copy of the Statement of Comprehensive Income audited & approved by the Auditors Ramesh Ramu & Audit Associates on 07.04.2016 whereby the Net Revenue, Expenses, Net Income/Loss is duly mentioned.
PB 294	is the copy of notes to Financial Statements of M/s Agrasen Polymers FZE where at point 1 (b), the factum of the company being duly registered and undertaking activities of trading Plastic and Nylon raw materials and also the fact that the company has invested its own resources to earn dividend/interest/gains has duly been mentioned.
PB 296	is the copy of the Notes to Financial Statements whereby at point no. 4, Investments to the tune of AED 7,457,719 made by the Company are mentioned.
PB 297	Copy of the Notes to Financial Statements for year ending 31st December 2015 whereby at point number 6, the bank accounts held by the company in its own name and also that of the two bank accounts held by the manager (Appellant) maintained for making investment and to take benefit of Leverage from banks.
PB 297 & 298	is the copy of the Notes to Financial Statements of M/s Agrasen Polymers FZE whereby at point no. 8 (PB 297) & point 12 (PB 298), the Financial Liabilities – in the form of Trade and Other Payables to the tune of 9,976,302/-

(18.6 Cr INR) is duly mentioned to be belonging to the company.

AY 2016 – 17 (01.01.2016 -31.12.2016)

PB 422-438	Copy of Auditors Report, Director's Report & the Financial Statements of M/s Agrasen Polymers FZE audited & approved by M/s Ramesh Ramu & Audit Associates, UAE on 10.04.2017 which was even submitted to the authorities of the Free Trade Zone of Ras Al Khaimah
PB 425	is the copy of the Director's Report prepared by the directors of the company.
PB 426-428	is the independent Auditor's Report prepared by M/s Ramesh Ramu & Audit Associates, UAE on 10.04.2017.
PB 429	is the copy of Statement of Financial Position of M/s Agrasen Polymers FZE akin to a Balance Sheet.
PB 430	is the Copy of the Statement of Comprehensive Income audited by the Auditors M/s Ramesh Ramu & Audit Associates on 10.04.2017 whereby the Net Revenue, Expenses, Net Income/Loss is duly mentioned.
PB 433	is the copy of notes to Financial Statements of M/s Agrasen Polymers FZE where at point 1 (b), the factum of the company being duly registered and undertaking activities of trading Plastic and Nylon raw materials and also the fact that the company has invested its own resources to earn dividend/interest/gains has duly been mentioned.
PB 435	is the copy of the Notes to Financial Statements whereby at point no. 4, Investments to the tune of AED 8,233,239/- made by the Company are mentioned.
PB 436	Copy of the Notes to Financial Statements for year ending 31st December 2016 whereby at point number 6, the bank accounts held by the company in its own name and also that of the two bank accounts held by the manager (Appellant) maintained for making investment and to take benefit of Leverage from banks, in fiduciary capacity on behalf of the company.
PB 436 & 437	is the copy of the Notes to Financial Statements of M/s Agrasen Polymers FZE whereby at point no. 8 (PB 436) &

point 12 (PB 437), the Financial Liabilities – in the form of Trade and Other Payables to the tune of 9,579,750/- is duly mentioned to be belonging to the company.

AY 2017 – 18 (01.01.2017 -31.12.2017)

PB 588-603	Copy of Auditors Report, Director's Report & the Financial Statements of M/s Agrasen Polymers FZE audited & approved by M/s Ramesh Ramu & Audit Associates, UAE on 13.05.2018 which was even submitted to the authorities of the Free Trade Zone of Ras Al Khaimah
PB 591	is the copy of the Director's Report prepared by the directors of the company.
PB592-593	is the independent Auditor's Report prepared by M/s Ramesh Ramu & Audit Associates, UAE on 13.05.2018.
PB 594	is the copy of Statement of Financial Position of M/s Agrasen Polymers FZE akin to a Balance Sheet.
PB 595	is the Copy of the Statement of Comprehensive Income audited by the Auditors M/s Ramesh Ramu & Audit Associates on 13.05.2018 whereby the Net Revenue, Expenses, Net Income/Loss is duly mentioned.
PB 598	is the copy of notes to Financial Statements of M/s Agrasen Polymers FZE where at point 1 (b), the factum of the company being duly registered and undertaking activities of trading Plastic and Nylon raw materials and also the fact that the company has invested its own resources to earn dividend/interest/gains has duly been mentioned.
PB 600	is the copy of the Notes to Financial Statements whereby at point no. 4, Investments to the tune of AED 5,530,785/- made by the Company are mentioned.
PB 601	Copy of the Notes to Financial Statements for year ending 31st December 2017 whereby at point number 6, the bank accounts held by the company in its own name and also that of the two bank accounts held by the manager (Appellant) maintained for making investment and to take benefit of Leverage from banks, in fiduciary capacity on behalf of the company.

PB 601 & 602 is the copy of the Notes to Financial Statements of M/s Agrasen Polymers FZE whereby at point no. 8 (PB 601) & point 12 (PB 602), the Financial Liabilities – in the form of Trade and Other Payables to the tune of 9,840,450/- is duly mentioned to be belonging to the company.

AY 2018 – 19 (01.01.2018 -31.12.2018)

PB 710-725 Copy of Auditors Report, Director's Report & the Financial Statements of M/s Agrasen Polymers FZE audited & approved by M/s Ramesh Ramu & Audit Associates, UAE on 22.01.2019 which was even submitted to the authorities of the Free Trade Zone of Ras Al Khaimah

PB 713 is the copy of the Director's Report prepared by the directors of the company.

PB 714-715 is the independent Auditor's Report prepared by M/s Ramesh Ramu & Audit Associates, UAE on 22.01.2019.

PB 716 is the copy of Statement of Financial Position of M/s Agrasen Polymers FZE akin to a Balance Sheet.

PB 717 is the Copy of the Statement of Comprehensive Income audited by the Auditors M/s Ramesh Ramu & Audit Associates on 22.01.2019 whereby the Net Revenue, Expenses, Net Income/Loss is duly mentioned.

PB 720 is the copy of notes to Financial Statements of M/s Agrasen Polymers FZE where at point 1 (b), the factum of the company being duly registered and undertaking activities of trading Plastic and Nylon raw materials and also the fact that the company has invested its own resources to earn dividend/interest/gains has duly been mentioned.

PB 722 is the copy of the Notes to Financial Statements whereby at point no. 4, Investments to the tune of AED 3,195,075/- made by the Company are mentioned.

PB 723 Copy of the Notes to Financial Statements for year ending 31st December 2018 whereby at point number 6, the bank accounts held by the company in its own name and also that of the two bank accounts held by the manager (Appellant) maintained for making investment and to take benefit of Leverage from banks, in fiduciary capacity on behalf of the company.

PB 723 & 724	is the copy of the Notes to Financial Statements of M/s Agrasen Polymers FZE whereby at point no. 8 (PB 723) & point 12 (PB 724), the Financial Liabilities – in the form of Trade and Other Payables to the tune of 3,358,200/- is duly mentioned to be belonging to the company.

38.3. The ld. A/R argued that the concept of a separate legal entity has been a time old principle, which rather forms the backbone of legal jurisprudence. For ready reference reliance is placed on the following judicial precedents as under:

MRS. BACHA F. GUZDAR vs. CIT SUPREME COURT OF INDIA (1955) 27 ITR 0001
Agricultural income—Dividend from tea companies—Assessee, a shareholder in a company engaged in manufacture of tea whose income was exempt to the extent of 60 per cent, receiving dividends from such company—Dividends arose to the shareholder due to investment in the company—Shareholder has no direct relationship with land as the same belongs only to the company, nor to its shareholders, nor directors

BHARAT HARI SINGHANIA & ORS. ETC. vs. COMMISSIONER OF WEALTH TAX & ORSSUPREME COURT OF INDIA (1994) 207 ITR 0001

Held : Wealth being assessed is that of the shareholder and not of the company. The company may own agricultural assets and if company were to be liable to wealth tax, the said assets may be excludible in its hands. But that has no relevance to the case of a shareholder. The shareholder does not own and cannot claim any portion of the property held by the company of which he is a shareholder. The company is an independent juristic entity. An assessee holding shares in a company whose assets comprise wholly or partly of agricultural land, is not entitled to exclude such shares from his wealth.—Bacha F. Guzdar vs. CIT (1955) 27 ITR 1 (SC) : 1955 (1) SCR 876

SALOMON V SALOMON & CO LTD (1897)
Mr. Salomon had a boot manufacturing business which he decided to incorporate into a private limited company. He sold his business to the newly formed company, A Salomon & Co Ltd, and took his payment by shares and a debenture or debt of £10,000. Mr Salomon owned 20,000 £1 shares, and his wife and five children owned one share each. Some years later the company went into liquidation, and Mr Salomon claimed to be entitled to be paid first as a secured debenture holder. The liquidator and the other creditors objected to this, claiming that it was

unfair for the person who formed and ran the company to get paid first. However, the House of Lords held that the company was a different legal person from the shareholders, and thus Mr Salomon, as a shareholder and creditor, was totally separate in law from the company A Salomon & Co Ltd. The result was that Mr Salomon was entitled to be repaid the debt as the first secured creditor.
In this case, Mr Salomon was the major shareholder, a director, an employee and a creditor of the company he created. It is quite common in Ireland for one person to have such a variety of roles and still be a different legal entity from the company.

LEE V LEE`S AIR FARMING LTD (1961)
In this case, Mr. Lee formed his crop spraying business into a limited company in which he was director, shareholder and employee. When he was killed in a flying accident, his widow sought social welfare compensation from the State, arguing that Mr. Lee was a workman under the law. The State argued that Mr. Lee was self-employed and thus not covered by the legislation. The court held that Mr. Lee and the company he had formed were separate entities, and it was possible for Mr. Lee to be employed by Lee`s Air Farming.

STATE TRADING CORPORATION OF INDIA LTD. AIR (1963) SC 1811
It was held that as soon as citizens form a company, the rights guaranteed to them by article 19(1)c has been exercised and no restraint has been placed on the right and no infringement of that right is made. Once a company or corporation is formed, the business which is carried on by the such company or corporation is the business of that company or corporation and is not the business of the citizens who get the company or corporation incorporated and the rights of the incorporated body must be judged on that footing and cannot be judged on the assumption that they are the rights attributed to the business of individual citizens.

38.4. Even as per the Income Tax Act, 1961 and for all purposes of the assessment, a company is treated to be a separate 'person' within the meaning of section 2(31) read with 2(17) of the Income Tax Act. In the present case, Company invested its own money and resources in the UAE to earn dividends, interest, gains, which cannot be taxed in the hands of the Appellant in any manner. The taxability thereof in the hands of the Appellant is not in consonance with the Black Money (Undisclosed Foreign Income and Asset) & Imposition of Tax Act, 2015. More so

when, there is no iota of evidence that any funds belonged to and/or pertained to the Appellant in his individual capacity found during the search except the statement of the assessee. Nor is there any evidence to show that any income of the Appellant was taken abroad and was omitted to be taxed in India. Therefore, the taxability of any amount in the hands of the Appellant will be unconstitutional and hence illegal.

38.5. **The ld. A/R further submitted that this is not just a company, even a partnership firm has a separate legal entity.** In light of the same, reliance is placed on the judgment of the Hon'ble Delhi High Court in CIT vs. Nagpur Golden Transport Co., [1998] 233 ITR 389 (Delhi) has held as under:

> *Whether while framing an order of assessment under provisions of Act, firm and its partners are to be treated as two separate legal entities and payment of interest to a firm cannot be treated in tax law as payment of interest to its partners - Held, yes - Whether, Therefore, payment of interest by assessee firm to another firm could not be treated as payment of interest to partners of that firm within meaning of section 40(b) even though partners in two firms were common - Held, yes*

38.6. Without prejudice to the above, the comparison in the present case is that of a non-resident foreign company and not an Indian company. The said vital fact has been accepted and never been disputed by the Ld. AO in the Assessment Order dated 31.03.2021 and/or in the Remand Report dated 13.07.2022.

38.7. We further note that the place of Effective Management of the said foreign company M/s. Agrasen Polymers FZE is also situated outside India because of which, the company is a non-resident in India within the meaning of section 6 of the income tax act and none of the assets were liable to be taxed in India. Reference

has been made to the CBDT circular dated 23.02.2017 bearing Circular No. 08/2017. Therefore, in no view of the manner taxability arise in the present case proving that the entire edifice of the case is wholly unjust and illegal.

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

GROUND NO. 14 – THE ASSESSEE MADE DUE DISCLOSURES AS ALLOWABLE IN LAW, THAT TOO PRIOR TO THE ISSUANCE OF NOTICES UNDER THE BLACK MONEY (UFIA) & IMPOSITION OF TAX ACT, 2015, PROVING THAT THE ENTIRE CASE IS BASED ON A PRE-CONCEIVED NOTION.

39. At the outset, the ld. A/R drawn our attention to the fact that the alleged information admittedly came to the notice of the AO during the course of search proceedings conducted in July, 2018 i.e. during FY 2018-19 relevant to AY 2019-20, therefore, taxability, if any can only be made for the year under consideration i.e. AY 2019-20. The ld. A/R of the assessee further contended that the assessee has made due disclosure as permitted in law prior to the issuance of notice under the B.M. Act, 2015 and no proceeding can be made under this Act. The assessee submitted that original return filed under section 139(1) of the I.T. Act, 1961 for the assessment years 2018-19 and 2019-20 wherein the disclosure of financial interest (in a fiduciary capacity) and details relating to authority to a bank account on behalf of the company was made. Therefore, even the case of non-disclosure cannot be made out

against the Appellant. In support of disclosure, the ld. A/R furnished the following documents :

PB 542 - 543	is the copy of the return filed by A.Y. 2018 – 19 whereby due disclosures regarding the Financial Interest & Signing Authority had been made by the Appellant.
PB 605	is the copy of the ITR Acknowledgement of the ITR filed u/s 139(1), viz. on or before due date.
PB 606 – 640	is the copy of the ITR Form filed by the Appellant for A.Y. 2019 – 20, whereby in schedule FA (Pg. 628 & 629-630), due disclosure has been made by the Appellant in his return.

The ld. A/R thus submitted that no tax liability, let alone even penalty, can be imposed on the appellant as the entire edifice of the case, built solely on suspicion and surmises, deserves to be quashed and no amount can be taxed in the hands of the appellant, as the same in no manner, can be called as the income of the Appellant.

39.1. The ld. A/R further submitted that any incorrect allegation on the part of the Department with respect to Non-Disclosure in the return for the A.Y. 2017 – 18 to 2018 –19 is unjustifiable as the Appellant, after coming to be aware of the liability of legal compliances, i.e., requirement of disclosures, even amended / revised his previous returns for A.Y. 2017 – 18 and made due disclosures about the bank accounts which he held on behalf of the company and also the financial interest in the company. In support, assessee furnished the relevant documents as under :

PB 303	is the copy of the ITR Acknowledgement of the ITR filed u/s 139(5) for AY 2017-18.

PB 304-329	is the copy of the ITR Form filed by the Appellant for A.Y. 2017-18, whereby in schedule FA (Pg. 326, & 327), due disclosure has been made by the Appellant in his return.
PB 376 – 377	is the copy of the revised return filed for A.Y. 2017 – 18 whereby due disclosures regarding the Financial Interest & Signing Authority had been made by the Appellant.
PB 844	is the copy of chart of dates of return filed original and revised.

The ld. A/R submitted that even if the Appellant wouldn't have taken above-mentioned steps, even then penalty / assessment / addition in the hands of the Appellant cannot be made solely because of mere non-disclosure. In this regard reliance is placed on the order of the ITAT Mumbai in the case of ACIT vs. Leena Gandhi Tiwari (2022) 96 ITR(T) 384 (Mumbai-Trib)[29.03.2022] as under:

> *"**4.** We have heard the learned Departmental Representative, perused the material on record, as also the case records, and duly considered facts of the case in the light of the applicable legal position. We have noted that the notice of hearing was duly served upon the assessee but rather than appearing before us, she has forwarded the said notice, vide her letter dated 3rd March 2022, to the Assessing Officer with a request to withdraw the appeal before us. Be that as it may, we are satisfied that the adjudication on this appeal requires us to primarily deal with a couple of short points of law and an objective perception about what constitutes bona fide conduct of the assessee, within a narrow compass of the undisputed facts, and that it is a fit case for disposal on the basis of material on record and ex-parte qua the assessee.*
>
> ***5.** As we look at the scheme of the BMA and the ITA, in conjunction with the binding judicial precedents from Hon'ble jurisdictional High Court, one of the possible analysis could possibly be as follows, and while we undertake this analysis of the legal position, we must also bear in mind the fact right now we are dealing with the validity of penalty under section 43 of the BMA, and this section comes into play*

only when a resident, other than not ordinarily resident in India under section 6(6), filing an income tax return under section 139(1), (4) or (5) of the Income-tax Act, 1961 [hereinafter referred to as the 'ITA'], "fails to furnish any information or furnishes inaccurate particulars in such return relating to any asset (including financial interest in any entity) located outside India, held by him as a beneficial owner or otherwise, or in respect of which he was a beneficiary, or relating to any income from a source located outside India, at any time during such previous year". It is also important to note that section 4 r.w.s. 2 (11) of the BMA, dealing with chargeability of undisclosed foreign asset, defines an undisclosed foreign asset 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 beneficial owner, and he has no explanation about the source of such investment in such asset or the explanation given by him is, in the opinion of the Assessing Office, not satisfactory" The definition of an undisclosed foreign asset, under the BMA, is thus not dependent on the disclosure made, or not made, in the income tax return. So far as disclosure of an undisclosed foreign asset in the income return is concerned, it is relevant only for the purpose of penalty under section 43 and for no other purpose in the BMA. The position so far as undisclosed foreign income is concerned, the position is quite different inasmuch the definition of undisclosed foreign income is concerned, it is materially different- as provided under section 4(1)(a) and (b) of the BMA, but then right now we are not concerned with that aspect of the matter. The observations that we make in this order here, therefore, may not have any bearings, in view of the peculiarities of that definition of the 'undisclosed foreign income, particularly with reference to 'filing' of the return within the statutory time frame provided under the ITA and for a variety of reasons that we need not elaborate at this stage. Suffice to say that, in the present case, we are concerned with the non-disclosure of an undisclosed foreign asset, i.e. a foreign bank account, in the income tax return filed under section 139(1), and our observations, even with respect to discussions on possibility of one possible approach to the issue before us, hereinabove must essentially be viewed in that limited context. Coming to the provisions of section 43 of the BMA, quite clearly trigger for penalty under section 43 thus is the non-disclosure of a foreign asset, held as a beneficial owner or otherwise, or non-disclosure of a foreign income in the income tax return filed under section 139(1),(4) or (5), and this penalty is an additional consequence, in addition to the consequences set out in the

ITA in respect of such a lapse. The BMA has come into force on 1st April 2016. As far as the question of non-disclosure after the commencement of the BMA is concerned, thus, the first assessment year in question is the assessment year 2017-18, i.e. the assessment year before us. It is also important to bear in mind the fact that the assessee was subjected to a search and seizure operation on 15th September 2017 and consequently the assessee had to file the income tax returns under section 153A for the assessment year 2017-18 on 21st April 2018. As to what happens as a result of such an exercise, we may gainfully refer to Hon'ble jurisdictional High Court's judgment in the case of Pr. CIT v. JSW Steel Ltd. [2020] 115 taxmann.com 165/270 Taxman 201/422 ITR 71 (Bom.) wherein Their Lordships noted, inter alia, that "section 153-A(1) provides that where a person is subjected to a search under section 132 or his books of account, etc. are requisitioned under section 132A after 31-5-2003, the assessing officer is mandated to issue notice to such person to furnish return of income in respect of each assessment year falling within six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made. Such returns of income shall be treated to be returns of income furnished under section 139. Once returns are furnished, income is to be assessed or re-assessed for the six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made. Thus, once section 153-A(1) is invoked, assessment for 6 assessment years immediately preceding the assessment year in which search is conducted or requisition is made becomes open to assessment or re-assessment. Two aspects are crucial here. One is use of the expression "notwithstanding" in sub-section (1); and secondly that returns of income filed pursuant to notice under section 153-A (1)(a) would be construed to be returns under section 139. The use of non obstante clause in sub-section (1) of section 153-A i.e., use of the expression "notwithstanding" is indicative of the legislative intent that provisions of section 153-A(1) would have overriding effect over the provisions contained in sections 139, 147, 148, 149, 151 and 153". It was in this backdrop that Their Lordships of Hon'ble jurisdictional High Court held that "the original return which had been filed loses its originality and the subsequent return filed under section 153A of the said Act (which is in consequence to the search action under section 132) takes the place of the original return. In such a case, the return of income filed under section 153A(1) of the said Act, would be construed to be one filed under section 139(1) of

the Act and the provisions of the said Act shall apply to the same accordingly". Viewed thus, it could possibly be said that the income tax return filed on 21st April 2018 under section 153A is the income tax return that obliterates the original income tax return filed under section 139(1), and it is that return that is now required to be treated as income tax return filed under section 139(1). In the present case also, it is the income tax return filed under section 153A on 21st April 2018 which is the income tax return acted upon by the Assessing Officer, and the assessment thereon has been finalized under section 153A r.w.s. 143(3) vide assessment order dated 29th March 2019. It is an admitted position that in the income tax return filed by the assessee under section 153A, the disclosure about the said foreign bank account was duly made- as noted by the Assessing Officer in the impugned order itself, and this income tax return alone has only been acted upon. Viewed thus, when it comes to examining any failure on the part of the assessee in not disclosing a foreign bank account for the assessment year 2017-18, i.e. the assessment year before us, it can indeed be said that what is to be seen is the return filed under section 153A and it is that return which, to borrow the words of Hon'ble jurisdictional High Court, is to be "construed as one filed under section 139(1) of the Act and the provisions of the said Act (Income-tax Act, 1961) will apply to the same accordingly". Essentially, therefore, it can indeed be said that non-disclosure of the foreign asset in the original return filed under section 139, even if that be so, cannot be put against the assessee, particularly when the said disclosure was admittedly made in the return filed under section 153A. As a corollary to the above position, the non-disclosure of the foreign bank account in the original return filed under section 139, for the assessment year 2017-18, may not be viewed as reason enough for the imposition of a penalty under section 43 of the BMA, because that original return filed under section 139(1) stands substituted by the subsequent income tax return filed under section 153A for the same year. It cannot thus be said that even after making necessary disclosure in the income tax return filed under section 153A for the assessment year 2017-18, the assessee can be visited with penal consequences for not making that disclosure in the income tax return filed under section 139(1) because, in the considered view of the Hon'ble jurisdictional High Court, the return subsequently filed for the same assessment year under section 153A is to be "construed as one filed under section 139(1) of the Act and the provisions of the said Act (Income-tax Act, 1961) will apply to the same accordingly" On a conceptual note, there can be situations in

which the opportunity to file the return under section 153A can indeed work to the advantage of the assessee, as apparently in this case, and even fresh claims may be made which have, as in the case of JSW Ltd (supra), meeting the judicial approval. Whatever be the consequence of this legal position, such conceptual notions, cannot negate the binding effect of the law laid down by the Hon'ble jurisdictional High Court. We may, however, add that the present discussion hereinbefore is in the light of the applicability of section 43 of the BMA, and the observations made by us must be construed only in this limited context. As regards such a non-disclosure for the earlier assessment years, which is what the learned Assessing Officer has harped upon vehemently in the impugned order, those were the assessment years that pertain to the period prior to the BMA coming into force, and, nothing, therefore, turns on those lapses, even if any, so far as the application of the provisions of section 43 of the BMA is concerned. We have also taken note of the fact that the learned Assessing Officer' has defended the imposition of penalty under section 43 of the BMA, on the ground that the bank account in question was in existence till 9th February 2017, i.e. well after the BMA coming into play. However, what the Assessing Officer overlooks is that the impugned penalty is not for income representing the undisclosed foreign asset but simply and only for the non-disclosure of the foreign asset in question. In view of these discussions, we are of the considered view that for the short technical reason set out above, the impugned penalty imposed on the assessee under section 43 of the BMA does not stand the test of judicial scrutiny. We, therefore, support the conclusions arrived at by the learned CIT(A). His reaching this conclusion may have been fortuitous, and for altogether different reasons-, what really matters is that he reached the right conclusion, and we, therefore, must uphold the conclusions arrived at by the learned CIT(A).

6. *There are, however, many other reasons as well for holding that it was not a fit case for the imposition of penalty under section 43, and, for the sake of completeness, we must set out these reasons as well.*

7. *It is only elementary that a mere non-disclosure of a foreign asset in the income tax return, by itself, is not a valid reason for a penalty under the BMA. While disclosure of all foreign assets is mandatorily required to be made in an income tax return, the penalty under section 43 of BMA comes into play only when the aggregate value of these assets exceeds Rs. 5,00,000. Clearly, therefore, even statutorily, it is not a simple cause and effect relationship between non-disclosure of*

an undisclosed foreign asset in the income tax return, and penalty under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. The unambiguous intent of the legislature thus is to exclude trivial cases of lases which can be attributed to a reasonable cause. It is also to be noted that Section 43 provides that the Assessing Officer "may" impose the penalty, and the use of the expression "may" signifies that the penalty is not to be imposed in all cases of lapses and that there is no cause and effect relationship simpliciter between the lapse and the penalty. As to what should be the considerations for the exercise of this inherent discretion by the Assessing Officer, we find some guidance from Hon'ble Supreme Court's judgment in the case of Hindustan Steel (supra), which, inter alia, observes that "……..penalty will not ordinarily be imposed unless the party obliged, either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. The penalty will not also be imposed merely because it is lawful to do so. Whether a penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose a penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute". Essentially, therefore, the overall conduct of the assessee, and materiality of the lapse as also its being in the nature of a technical or venial breach of law, is the most critical factor so far as taking a call on the question of whether or not a penalty should be imposed for the assessee's failure to discharge a statutory obligation. The imposition of penalty under section 43 is surely at the discretion of the Assessing Officer, but the manner in which this discretion is to be exercised has to meet the well-settled tests of judicious conduct by even quasi-judicial authorities.

8. *Let us, in the light of the above legal position, examine the facts of this case. As we proceed to examine the case of the Assessing Officer, we must also bear in mind the fact that the assessee is a high net worth individual (HNI), with aggregate payment of taxes around Rs. 2,350.66 crores in the last seven years by her, her husband and the private limited company she chairs- as noted by the Assessing Officer himself at page 8 of the impugned penalty order, and, when seen in*

the light of this financial position, the amount held in the alleged undisclosed foreign bank account is a small, if not trivial, amount of UK £ 2,34,710, and that it is not, by any stretch of logic or imagination, a case of siphoning unaccounted wealth in India to the undisclosed bank accounts abroad. It is also important to bear in mind the fact that there is a categorical finding by the first appellate authority that even though the assessed may have been technically a signatory of the undisclosed foreign bank account, her and her husband's conduct all along has unequivocally established complete detachment with the said asset so far as any personal interest is concerned- a typical hallmark of someone holding an asset in a fiduciary capacity and in trust. When the beneficial owner of the said bank account, i.e. her late mother, passed away, she and her husband simply donated money to a well-known charity of global repute, as was the wish of the departed soul. All the thirty years that she was the technical owner of this legacy left behind by her father, which was for the benefit of her mother, she simply did not touch the money- did not take a penny or add a penny. It is a somewhat rare situation with touching reverence, almost to a fault, to the wish of the assessee's late father that the money was kept intact for the benefit of the assessee's mother, which mother never used, and then donated it, within weeks of her mother's death, to a charity of her late mothers choice, and a charity which has earned the prestigious Noble Peace Prize in 1999 for its humanitarian work. The degree of reverence for the feelings of the parents, as unambiguously shown by the mother, is undisputed. With this kind of detachment, and truly dealing with this as trust money in letter and in spirit, her belief that she was not required to disclose it as 'her' bank account, cannot be said to be lacking bona fides. While the amount held in the said account is donated to the charity, the entire tax liabilities in respect of the same have been paid by the legal representative of Dr Pramila Gandhi, and the matter has attained finality as such. It is also important to bear in mind the fact that the uncontroverted stand of the assessee is that the assessee, as also her husband, were signatories because Dr Pramila Gandhi was having health issues and was not in a position to travel. It was more of being a signatory for the operation of the bank account, rather than holding the bank account even in a fiduciary capacity, and, as such, the assessee's belief that she was not required to disclose this bank account cannot be said to be lacking bona fides. Whether this belief was correct or incorrect, for the present purpose of adjudicating on the penalty, is wholly irrelevant, as we are only concerned with bona fides of the plea of the assessed at this

stage. The reason is simple. The scheme of penalty is of such a that essentially it does not cover the cases in which the lapses have occurred on account of good and sufficient reasons. A lapse per se cannot be reason enough to punish anyone, and the controversy, if at all, is about as to who has the onus of demonstrating the bona fides of such cases- the assessee or the revenue authorities, but once there is a clear finding of bona fides in conduct, irrespective of whether such conduct is lawful or not, the penalty is not impossible- unless, of course, the penalty is statutorily simply an automatic consequence, in cause and effect relationship. That's certainly not the case here. The very fact that the Assessing Officer has the discretion to impose a penalty puts him under a corresponding obligation to exercise the said discretion with proper regard to the facts and circumstances of the case in a holistic manner and in totality. The total amount involved in the undisclosed foreign account is UK £ 2,34,710 (equivalent to Rs. 2,16,58,946 at the relevant point of time of assessing the said amount), which is relatively small considering the tax exposure of the assessee, as discussed earlier. The money in the said account did not belong to the assessee, was never used by the assessee and is part of the legacy left behind by her father in 1986- and this position is duly accepted by the revenue authorities. Not a rupee out of that bank account is held to be belonging to the assessee, and the entire money has been brought to tax in the hands of the assessee's late mother. Even before the bank account was detected by the revenue authorities, the entire balance in the said account, as per instruction of the assessee's late mother, has been donated to a bona fide charity of the global repute. In these circumstances, the plea that such a lapse of non-disclosure, even if that be so, is only an inadvertent mistake, and that conscious non-disclosure or any mens rea in the non-disclosure is completely contrary to human probabilities, does merit acceptance. No reasonable person would consciously or deliberately withhold disclosure about this foreign bank account, for an ulterior motive, from the tax authorities, and, in any case, admittedly the money does not belong to the assessee- as is the position accepted by the Assessing Officer himself. Viewed thus, on merits of assessee's conduct, it was not a fit case for the imposition of impugned penalty. It is also not a case of siphoning of unaccounted Indian wealth to the undisclosed foreign bank accounts, prevention of which was the noble cause for which the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 was enacted immediately upon the present Government coming to the power. Such well-intended stringent

legislation as the BMA, enacted for the larger causes of public good and to check tax evaders, cannot be so interpreted as to cause undue hardship to the citizenry for such harmless technical or venial breaches of the law. Francis Bacon, in his classic essay 'Of Judicature' (The Works of Francis Bacon, Volume 1 (1984), has said that "Judges must beware of hard constructions, and strained inferences, for there is no worse torture than the torture of laws: especially in case of laws penal, they ought to have care that that which was meant for terror be not turned into rigour". Viewed in the light of these discussions, in our considered view, it was not a fit case for invoking the penal provisions under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, even if it was lawful for the Assessing Officer to do so. In view of these twin reasons also, the conclusions arrived at by the learned CIT(A) cannot be faulted. As we hold so, we may add that there are consequences for the lack of appropriate disclosure in the income tax return, and these consequences are provided under the Income-tax Act, 1961, and our observations hereinabove must not come in the way of those proceedings under the Income-tax Act, 1961.

9. *The need to implement BMA in a strict manner, as learned Commissioner (DR) pleads for, can hardly be overemphasised. What it essentially means is that whenever any unaccounted income or undisclosed asset abroad is found, stern action, in accordance with the law, must be taken. Just as much as we must ensure that a guilty person does not go unpunished, we must also ensure that such tough laws, as the BMA is, do not inconvenience genuine people not falling in the category which is sought to be checked by the BMA. In the 2015 Union Budget speech, the then Hon'ble Finance Minister had said that "Tracking down and bringing back the wealth which legitimately belongs to the country is our abiding commitment to the country. Recognising the limitations under the existing legislation, we have taken a considered decision to enact a comprehensive new law on black money to specifically deal with such money stashed away abroad" That is the background in which the BMA was introduced, and that is the backdrop in which harsh penalties and prosecutions are contemplated under the BMA. To put a question to ourselves, can these provisions be invoked in the cases which more of bona fide mistakes, or, at worse, harmless carelessness. The answer is emphatically in the negative. The case before us is of, at best, inheritance of a bank account which the assessee's father opened forty*

years ago, and the assessee's father, as records indicate, was from a well-placed business family, with business interests abroad. The amount in the bank account, considering the status of the persons involved, is a very small amount of money. The person who inherited the said money or the persons who were signatories to the bank account, did not put that money to any use so much so that ultimately that money was donated to a charity of global repute. The assessee and her husband were signatories to the said bank account because, as is the uncontroverted stand of the assessee, the actual owner, late Dr Pramila Gandhi had health issues and she was not in a position to travel to Zurich when formalities in respect pf the account inherited by her were to be completed. The subsequent developments spanning over several decades unambiguously corroborate this stand of the assessee. When we objectively see all these factors in totality, the inescapable impression is that the assessee is certainly not from the category of persons who were sought to be checked by this piece of legislation. To use it in a case in which a person has not reported a bank account, which is a lawful inheritance from her father and which contains a small amount that is eventually donated by her to a medical charity of global repute, will surely be inappropriate- more so when the assessee has an explanation which the Assessing Officer himself has accepted. The path of idol worshipping the law, even at the cost of sacrificing the unambiguous intent of the law, cannot take us to the goal of protecting the majesty of law in letter and in spirit- something that every judicial officer must strive for. The well-intended harsh laws meant for checking the economic offenders, stashing their ill-gotten monies abroad, must not be invoked for punishing a venial breach of the law by a bona fide businessperson. Undoubtedly, the Assessing Officer has discretion in the matter, and that is what, as we have noted earlier as well, the use of the expression 'may' in Section 43 suggests. When the exercise of a statutory power is not warranted or justified on a well-considered appreciation of the facts of the case on which a reasonable conclusion would be that the lapse is bona fide and devoid of any ulterior motives, a public authority must not exercise that power just because it would be lawful for the said authority to exercise the same. That's why human discretion is involved in the exercise of such powers, and this discretion is to be exercised having regard to the facts of each case in a fair, objective and judicious manner and without losing sight of the bigger picture about the related state of affairs and the scheme of relevant legislation. Unless there are sufficient prima facie reasons to at least doubt bona fides well demonstrated by the

assessee, an assessee cannot be visited with penal consequences. The bona fides actions of the taxpayers must, therefore, be excluded from the application of provisions of such stringent legislation as the BMA. In this light, and keeping in mind the object of the BMA, we do not subscribe to the learned Departmental Representative's perception that in the name of strict implementation of the BMA, a penalty for non-disclosure of the bank account in question will be justified under the stringent provisions of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. This is, of course, without any prejudice to whatever consequence may follow under the provisions of the Income-tax Act, 1961, the legislation under which the lapse of non-disclosure, even if that be so, occurred.

10. *In view of the detailed reasons set out above, we approve the conclusions arrived at by the learned CIT(A) and decline to interfere in the matter. As we have reached the same conclusions on the basis of different reasons, we see no need to deal with the correctness of the path traversed by the learned CIT(A). As we part with the matter, we may take note of the useful flow of intelligence inputs, under the automatic exchange of information framework, about undisclosed assets abroad, and express satisfaction with the fact that the good work being done by the Government in this regard is yielding tangible results. Whereas the information obtained in this case clearly did not pertain to the kind of cases the tax administration is focussing to unearth, the fact remains that there is considerable progress in that direction- something which certainly seemed too optimistic a goal in not too distant a past."*

39.2. We have considered the submissions of the ld. A/R supporting that due disclosure has been made by the assessee in the ITR filed, by furnishing the documents regarding financial interest (in fiduciary capacity) and signing authority. Taking into consideration the above position, we are of the view that the additions of transactions in the hands of the appellant which solely belong to the non-resident foreign company cannot be added in the hands of the Appellant. This ground No. 14 of the assessee is allowed.

GROUND NO. 10 – THE LD. ASSESSING OFFICER AND THE LD.CIT(A) ERRED IN HOLDING THE APPELLANT TO BE A BENEFICIAL OWNER OF THE ALLEGED UNDISCLOSED ASSETS AND THE INCOME THEREFROM, WHICH SOLELY AND INDEPNDENTLY BELONGS ONLY TO THE NON-RESIDENT FOREIGN COMPANY, M/S AGRASEN POLYMERS FZE.

40. In respect of this ground, the ld. A/R of the assessee submitted that AO as well as the ld. CIT (A) without considering the basic tenets/provisions of law, erroneously held the assessee appellant to be the 'beneficial owner' qua the assets of the non-resident foreign company M/s. Agrasen Polymers FZE. The ld. A/R submitted that the Appellant has been illegally deemed to be the beneficial owner of the assets of the company, viz. M/s Agrasen Polymers FZE. There is no evidence of investment, withdrawal or any benefit derived by the assessee, there remain no taxability of any sum in the hands of the assessee. In this regard, the ld. A/R placed reliance on the order of ITAT Delhi Benches in the case of ACIT vs. Jatinder Mehra (2021) 190 ITD 611 (Delhi Trib.) rendered in the context of 'beneficial ownership under the Black Money Act, wherein it was held that :

> *To identify a beneficial owner of an asset, said person should have nexus, direct or indirect to source of asset and he must have provided funds for said asset; mere account opening form of an overseas bank account where assessee was mentioned as beneficial owner of account, mentioning details of his passport as an identification document, did not necessarily, in absence of any other corroborative evidence of beneficial ownership of assessee over asset, lead to taxability in hands of assessee under Black Money Act.*

The ld. A/R submitted that the appellant has been subjected to tax in respect of the bank account of the Foreign Company by treating him to be the 'beneficial owner'. He further submitted that the term "beneficial owner" is not defined in the Black Money Act but is defined in Explanation 4 to Section 139(1) of the IT Act, 1961. On

perusal of the definition of the term "Beneficial owner", it is evident that a beneficial owner in respect of an asset would be a person who provides consideration for the asset for the immediate or future benefit of himself or any other person. Thus, it is relevant to understand the meaning of term 'beneficial owner' by making reference to Income Tax Act, 1961, wherein the said term has been defined in Explanation to Section 139(1) of the Income Tax Act, 1961.

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

That in the present case, the assets, i.e., the foreign bank accounts and foreign investments, were solely the assets of the foreign company and consideration for the said assets, i.e., the money flew from the bank account of the Foreign Company itself. The Foreign company deposited or made investments out of its own funds in the bank accounts in question. Before us, revenue does not bring any evidences expressly showing that the assessee has provided directly or indirectly, any consideration for the assets of the company. **In fact revenue has not doubted the contention of the assessee that even the initial investment is not sourced by the assessee.** Thus, the Appellant clearly does not fall in the ambit of the term "beneficial owner" as he is not the provider of the consideration of the asset. Hence, the allegation of the Ld. Assessing Officer confirmed by the Ld. CIT(A) that the Appellant is the" beneficial owner" of the assets of the Foreign Company is misconceived, against the law and deserves to be annulled. The ld. A/R placed reliance on the order of the ITAT Ahmedabad Benches in the case of ITO vs. Electro

Ferro Alloys Ltd. (2012) 25 taxmann.com 458 (Ahd. Trib.) wherein it has been held as under :

> "5. 2. On consideration of the facts of the appellant's case it is noticed that the motor car was purchased, though in the name of the appellant's director, it was purchased out of the funds of the appellant-company and it is also not in dispute that the motor car was purchased for the purpose of business of the appellant. Thus the motor car being, business asset of the appellant and purchased for the purpose of business and used as such by the appellant, in view of the decision in the case of Mysore Minerals Ltd. [1999] 239 ITR 775 (SC) referred to above and other decisions cited by the learned authorised representative, I hold that the disallowance made by the Assessing Officer on this ground is not justified and hence the same is directed to be deleted.

The ld. A/R further stated that there were three directors in the Foreign Company viz. M/s Agrasen Polymers FZE. The company is established in the Free Trade Zone in UAE and two directors, who are locals, stay in Dubai. The appellant was one of the Directors and the signatory of bank account for and on behalf of the Company, and cannot be termed as a beneficiary as no amount has been received by the Appellant from the company in the form of remuneration or commission or profit or dividend in any manner and neither is there any evidence suggesting the same, in the absence of which, the additions made in the hands of the appellant by holding him to be a beneficial owner, is just, illegal, notional and not grounded on actual facts and/or law. Thus the ld. A/R submitted that the assessee appellant has been wrongly held to be the 'Beneficial Owner' without there being any iota of evidence to justify any benefit or even any contribution made by the Appellant. We have on this issue elaborately heard both the parties and contentions so raised by them. As we have already held in Ground No. 9 that the company M/s. Agrasen Polymers FZE

based at UAE is a separate legal entity and all the funds/investments etc. belong to the company and no tax liability can be fastened on the assessee, therefore, taking a consistent view of the matter, we are of the view that assessee appellant clearly does not fall in the ambit of the term 'beneficial owner' as he is not the provider of the consideration of the asset. Thus we allow this ground No. 10 of the assessee.

GROUND NO. 3 – DIVIDEND OF RS. 2,34,26,056/- PERTAINS TO THE COMPANY AND DOES NOT BELONG OR BENEFIT THE APPELLANT THEREFORE CANNOT BE TAXED IN THE HANDS OF THE APPELLANT

41. As regards this ground, the ld. A/R of the assessee submitted that out of total credit taxed, a sum of Rs. 2,34,26,056/- pertains to the company. The AO and the ld. CIT (A) has not given specific finding even though the proof related to the dividend earned placed on record. The ld. A/R submitted that the non-resident foreign company viz. M/s. Agrasen Polymers FZE had made investments which are duly disclosed in its financial statements as under :-

PB 296	is the copy of the Financial Statement of M/s Agrasen Polymers FZE for the period ending on 31st December 2015 audited & approved M/s Ramesh Ramu & Audit Associates, wherein the investments have duly been disclosed.
PB 435-436	is the copy of the Financial Statement of M/s Agrasen Polymers FZE for the period ending on 31st December 2016 audited & approved by M/s Ramesh Ramu & Audit Associates, wherein the investments have been disclosed and dividends received thereon have also been disclosed.
PB 600-601	is the copy of the Financial Statement of M/s Agrasen Polymers FZE for the period ending on 31st December 2017 audited & approved by M/s Ramesh Ramu & Audit Associates, wherein the investments have been disclosed and dividends received thereon have also been disclosed.

PB 722-723 is the copy of the Financial Statement of M/s Agrasen Polymers FZE for the period ending on 31st December 2018 audited & approved by M/s Ramesh Ramu & Audit Associates, wherein the investments have been disclosed and dividends received thereon have also been disclosed.

PB 885-888 is the copy of the Reply dated 08.08.2022 filed before the Ld. CIT(A) whereby the Appellant duly explained the transactions of credits in the bank accounts of the non-resident foreign company.

The ld. A/R further submitted that from the investments made by the non-resident company viz. M/s Agrasen Polymers FZE, it had earned dividend income of Rs. 2.34 crores during F.Y. 2016 – 17 to 2018 – 19 which has incorrectly been added as the income of the appellant, whereas, the investments and the benefits therefrom, solely pertain to the Company. It is pertinent to note that not even an iota of any amount from the above-said amount has ever been received by the assessee, nor is there any such allegation made by the AO in the Assessment Order dated 31.03.2021 nor in the Remand Report dated 13.07.2022, nor the Ld. CIT(A) brought out any adverse evidence in this regard on record. Therefore, taxing the same, in the hands of the appellant is wholly incorrect and illegal, as the same is not in the nature of income of the assessee and is not an asset belonging or pertaining to the assessee.

41.1. On this issue, as we have already decided ground nos. 9 & 10 that the non-resident company is a separate legal entity and the non-resident company owns these assets and investments beneficially, therefore, we are of the view that the dividend of Rs. 2,34,26,056/- pertained to the non-resident company, cannot be taxed in the hands of the assessee. This ground No. 3 of the assessee is allowed.

GROUND NO. 4 – THE AMOUNT OF RS. 16,76,574/- PERTAINS TO THE INTEREST EARNED BY THE NON-RESIDENT COMPANY ALONE AND CANNOT BE TAXED IN THE HANDS OF THE APPELLANT

42. The ld. A/R of the assessee submitted that this amount formed part of total credits. The AO and the ld. CIT (A) has not given specific finding in this regard. The ld. A/R submitted that the interest earned from the bank has been credited in the bank account held by the non-resident company or on behalf of the company, can only be income of the company. The ld. A/R submitted that the non-resident foreign company viz. M/s. Agrasen Polymers FZE had earned the interest and the same has been duly disclosed in its financial statements as under :-

PB 436	is the copy of the Financial Statement of M/s Agrasen Polymers FZE for the period ending on 31st December 2016 audited & approved by M/s Ramesh Ramu & Audit Associates, wherein the interest income has been disclosed.
PB 601	is the copy of the Financial Statement of M/s Agrasen Polymers FZE for the period ending on 31st December 2017 audited & approved by M/s Ramesh Ramu & Audit Associates, wherein the interest income has been disclosed.
PB 723	is the copy of the Financial Statement of M/s Agrasen Polymers FZE for the period ending on 31st December 2018 audited & approved by M/s Ramesh Ramu & Audit Associates, wherein the interest income has been disclosed.
PB 773	is the copy of Annexure 8 of Reply dated 12.07.2022 filed before the Ld. CIT(A) wherein the details of the Interest Received by M/s Agrasen Polymers FZE was categorically provided. (Also see PB 755)
PB 883	is the copy of the Reply to the Remand Report filed before the Ld. CIT(A).

42.1. We have already adjudicated similar issue in ground no. 3, supra, therefore, based on the finding given by us in ground no. 3, supra, we hold that interest of Rs.

16,76,574/- pertains to the non-resident company and the same cannot be taxed in the hands of assessee appellant. The ground No. 4 of the assessee is allowed.

GROUND NO.5 – THE ADDITION OF RS. 1,42,67,290/- IS ILLEGAL AS THE SAME WERE MERE DEPOSITS MADE OUT OF THE WITHDRAWLS FROM THE BANK ACCOUNTS AND THEREFORE CANNOT BE ADDED AGAIN

43. In ground no. 5 the ld. A/R of the assessee submitted that addition of Rs. 1,42,67,290/- being the amount of deposit were sourced from the bank account and therefore, cannot be added again as an income or an asset. To support this ground the ld. A/R of the assessee submitted that as the ld. AO has taxed the total credits once and crediting the amount out of the withdrawal so made to meet the day to day expenditure will render the double addition on the same amount. To support this contention the ld. AR of the assessee relied upon the APB 775 being the Annexure 10 wherein the details of the cash deposits out of withdrawal after meeting expenses of the firm were categorically provided. He has also relied upon the chart extracted from the bank statement submitted in the remand proceedings. The relevant evidences in support of assessee's claim are placed on record as under :

PB 775	is the copy of Annexure 10 of Reply dated 12.07.2022 filed before the Ld. CIT(A) wherein the details of the cash deposits out of withdrawals after meeting expense of M/s Agrasen Polymers FZE was categorically provided. (See PB 755)
Pg. …..	Synopsis is the Reconciliation chart extracted from the bank statement is being provided here for the sake of convenience

The ld. AR of the assessee also submitted that the deposits and withdrawals pertain and belong to the company, M/s Agrasen Polymers FZE and not to the assessee even on that count the addition is not sustainable.

43.1. The contention of the assessee on this issue is examined by us. In Annexure 10 at page 775 the assessee submitted summary of cash deposits out of cash withdrawal after meeting the expenses. The assessee tried to reconcile the same with the total withdrawal versus the cash deposit. In this regard, the assessee has also furnished Synopsis of Reconciliation Chart extracted from the bank statement in support of its claim. These factual facts have not been controverted by revenue by placing any submission on the issue. Thus taking into consideration the facts and circumstances of the case and the corroborative evidences furnished by the assessee, we are of the view that the addition of Rs. 1,42,67,290/- cannot be sustained as it will tantamount to double addition. The ground No. 5 of the assessee is allowed.

GROUND NO. 6 – RS. 12,54,600/- PERTAINS TO REPAYMENT OF LOAN BY STAFF TO THE COMPANY ALONE AND IS NOT IN THE NATURE OF INCOME AND IN ANY MANNER, THE SAID AMOUNT HAS BEEN CONSIDERED AS ALL CREDITS HAVE BEEN CONSDIERED. THEREFORE, THE ADDITION OF THE SAID AMOUNT IS ILLEGAL AS THE SAME IS NOT IN THE NATURE OF INCOME AND ALSO AMOUNTS TO DOUBLE ADDITION, THEREFORE, ILLEGAL.

44. Regarding this ground, the ld. A/R of the assessee submitted that the amount of Rs. 12,54,600/- pertains to repayment of loan by the staff of the non-resident company and formed a part of the total credits. The AO discussed this issue in the remand report and the assessee filed reply thereto which is placed at PB 881. The

assessee has also explained the matter by furnishing reply dated 12.07.2022 as under :-

PB 776	is the copy of Annexure 11 of Reply dated 12.07.2022 filed before the Ld. CIT(A) wherein the details of the staff loan repaid to the non-resident company viz. M/s Agrasen Polymers FZE alone was categorically provided.

The ld. A/R, without prejudice, submitted that the said amount pertains to repayment of loan by the staff to the non-resident company viz. M/s Agrasen Polymers FZE has already been considered, therefore, again making the addition of this amount will tantamount to double addition. The repayment of loan is not in the nature of income. Let alone that of the Appellant, who is only a director in the non-resident company, M/s Agrasen Polymers FZE gave the loan and received the repayment thereof.

44.1. In the totality of facts and circumstances of the case and the explanation furnished, we are of the view that the addition made deserves to be deleted. The ground No. 6 of the assessee is allowed.

GROUND NO. 2 & 13 – CREDITS OF RS. 19,68,01,923/- APPEARING IN THE ACCOUNT BELONGS TO THE COMPANY, M/S AGRASEN POLYMERS FZE, AND NOT TO THE APPELLANT, AND THAT TOO IN THE NATURE OF A LIABILITY AND THEREFORE NOT LIABLE TO BE TAXED IN HIS HANDS OF THE APPELLANT.

45. The ld. AR of the assessee in ground no. 2 & 13 submitted that the loans and liability cannot be taxed in the hands of the assessee, as the liability is already reflected in the accounts of the non-resident company M/s. Agrasen Polimers FZE and it amounts to Rs. 19,68,01,923/-. As this amount forms part of total credit of Rs. 136,73,10,855/- same is not expressly discussed by the ld. AO and even the ld.

CIT(A) has also not recorded his findings qua this issue. The ld. AR of the assessee submitted that at the time of opening the bank account of the non-resident foreign company viz. M/s. Agrasen Polymers FZE Rs. 18,56,28,608/- [AED 10487493 at APB 236-237] were credited to account no. ending with 2010 and Rs. 1,11,73,315/- [AED 4,99,460/- + 77,123/- APB 496] were transferred in the account number ending with 2026 in the year 2017. The ld. AR of the assessee further submitted that the company has taken some loan from their own sources, which was credited in the bank account of the company. The same was informed to the ld. CIT(A) which is evident from the report at APB 882 and there is no finding of the ld. CIT(A) on this issue. He further submitted that liability is out of the purview of the Black Money Act, 2015 proceedings and since the same is duly found recorded in the books of the firm the same is required to be excluded as loan cannot be classified as an asset or income. For this contention the ld. AR of the assessee relied upon the audited Balance Sheets of the non-resident foreign company viz. M/s. Agrasen Polymers FZE, that the liability in the nature of loan is duly reflected in the payables side of the Balance Sheet and, therefore, cannot be added as an asset of the assessee. In this regard, the ld. A/R placed on record the following details :-

PB 236-237 & 496	are the copies of the respective Bank Statement reflecting the amount of funds being received in the bank account of the company.
PB 290, 297	are the copy of the balance sheet which clearly reflects the amount of loan taken by the non-resident foreign company.
PB 771 - 755	is the copy of Annexure 6 submitted to the Ld. CIT(A) along with the reply dated 12.07.2022, which clearly demonstrates the amount of loan received by the non-resident Foreign Company.

He further submitted that the major portion of loan returned and it remains only Rs. 6.70 cr as at 2018 as per the balance sheet as under :-

PB 724 — is the copy of the Notes to Accounts forming part of the Audited Financials of M/s Agrasen Polymers FZE, whereby Trade and other Payables have reduced to 3,358,200 Dirhams (equivalent to Approx. 6.5 Cr)

PB 801&802 — are the Copies of Bank Statement of account no. ending with 2026, whereby amount of loan was returned (AED 8,25,000/- PB 801, AED 6,50,000/-, AED 600,000/-, AED 500,000/-, AED 750,000/-, AED 1,550,000/- & AED 1,150,000/- (PB 802)) by the non-resident Foreign Company viz. M/s Agrasen Polymers FZE.

He has also summarized the details of the chart for repayment.

Sr. No.	Date	Cheque No.	Amount	Currency	Reference of PB
1.	12.09.2018	175294	8,25,000	AED	801
2.	07.08.2018	175288	6,50,000		802
3.	07.08.2018	175287	6,00,000		802
4.	07.08.2018	175289	5,00,000		802
5.	08.08.2018	175290	750,000		802
6.	29.08.2018	175291	1,550,000		802
7.	05.09.2018	175292	1,150,000		802
TOTAL			6,025,000		

Thus, this amount, firstly and undisputedly was a loan (liability), which was taken by the non-resident foreign company and has been repaid back by the company alone. This unequivocally proves that the same did not belong or even pertain to the Appellant. It clearly belonged to the company and that too as a liability, therefore, by no stretch of imagination can be taxed in the hands of the Appellant. Secondly, even if it is presumed to be belonging to the Appellant, even then, it is a loan, viz. falling in the nature of a 'liability' and not 'income' or asset, in any manner.

Therefore, the addition of Rs. 19,68,01,923/- is wholly illegal and liable to be quashed.

45.1. We have elaborately heard the parties on the issue and have persuaded the orders of the lower authorities and details filed in response to this by the assessee in his paper book. We note that the assessee submitted detailed evidences in support of his claim that credits of Rs. 19,68,01,923/- appearing in the accounts belong to non-resident company M/s. Agrasen Polymers FZE and not to the assessee and that too in the nature of a liability. This is a loan standing in the name of the non-resident company and a major portion of the loan has been repaid by the non-resident company M/s. Agrasen Polymers FZE. Thus it proves that the loans were taken by the non-resident company and not relatable to the assessee. In these circumstances, we are of the view that the addition made in the hands of the assessee appellant is uncalled for. We delete the addition in the hands of the assessee. These ground Nos. 2 & 13 of the assessee are allowed.

GROUND NO. 12 – UNDER THE FACTS AND THE CIRCUMSTANCES OF THE CASE AND IN LAW, THE LD. CIT(A) HAS GROSSLY ERRED IN ALLEGING THAT THE APPELLANT ADMITTED HAVING RECEIVED COMMISSION INCOME FROM COMPANIES/ PERSONS OF UAE AND TURKEY DIRECTLY IN HIS UAE-BASED BANK ACCOUNTS WITHOUT APPRECIATING THE CORRECT FACTS ON RECORD.

46. In this regard, the ld. A/R stated that facts of the case have been incorrectly interpreted and wrongly portrayed. The assessee has not agreed that the assessee received any commission directly in M/s. Agrasen Polymers FZE which is incorrect and unjust. Relying on the statement he submitted that the assessee has stated that commission / incentive was paid by the Turkish Companies to maintain continuity.

The statement has been misinterpreted as the transactions were between foreign companies and companies in which the assessee was acting as Fiduciary capacity. No such amount was received by the assessee on his personal account. He further submitted that in the search no document / record or notings found to show as to receipt of commission by the assessee in his personal capacity. The ld. A/R placed reliance on the following case laws :-

> CIT Vs. Harjeev Aggarwal 229 DLT 33, wherein it has been held as under :-
>
> "*Statement recorded during the course of search, on a standalone basis, without any reference to material found/discovered during the search would not empower the AO to make block assessment merely because of any admission made by Assessee during the search operation.*"
>
> CIT vs. Naresh Kumar Agarwal in ITTA No. 112 of 2003 dated 09.09.2014 wherein it has been held as under :-
>
> "*……The circumstances under which a statement is recorded from an assessee, in the course of search and seizure, are not difficult to imagine. He is virtually put under pressure and is denied of access to external advice or opportunity to think independently. A battalion of officers, who hardly feel any limits on their power, pounce upon the assessee, as though he is a hardcore criminal. The nature of steps, taken during the course of search are sometimes frightening. Locks are broken, seats of sofas are mercilessly cut and opened. Every possible item is forcibly dissected. Even the pillows are not spared and their acts are backed by the powers of an investigating officer under Section 94 of Cr.P.C by operation of sub-section (13) of Section 132 of the Act. The objective may be genuine, and the exercise may be legal. However, the freedom of a citizen that transcends, even the Constitution cannot be treated as non- existent……*
>
> *……..This, in turn, is referable to a time-tested right of an individual which is recognised under Article 20(3)of the Constitution of India which mandates no person, accused of any offence, shall be compelled to be a witness against himself. The citing of a statement of an individual as the only evidence, in the penal proceedings initiated against him, is never treated as part of a developed and mature legal system. Section 31 of the Evidence Act, 1872 also assumes significance in this regard. It reads: Admissions not conclusive proof, but, may*

estop:Admissions are not conclusive proof of the matters admitted, but they may operate as estoppels under the provisions hereinafter contained……"

B. R. Associates Pvt Ltd. Vs. ACIT (ITAT Delhi).

"*In absence of adverse material found during search, no addition could be made merely on the basis of statement recorded under section 132(4) of Income Tax Act, 1961 which did not constitute conclusive evidence and having been given under pressure was immediately retracted. Additions made u/s 153A of the Act, in the absence of incriminating material found as a result of search is outside the scope of section 153A of the Act."*

The sum and substance of these judgement are that no addition can be made merely on the basis of statement recorded under section 132(4) which did not constitute conclusive evidence and having been given under pressure. Based on these decisions he submitted that the addition made relying on the statement cannot survive and required to be deleted.

46.1. We have perused the detailed submissions along with supporting documents and also gone through the case laws cited herein above. We find that no contrary evidence has been placed on record showing that the non-resident foreign company M/s. Agrasen Polymers FZE has received any commission, let alone the appellant in his personal capacity. Therefore, in the facts and circumstances of the case and following case laws cited supra, we allow this ground No. 12 of the assessee.

GROUND NO. 7 : UNDER THE FACTS AND CIRCUMSTANCES OF THE CASE AND IN LAW, THE LD. CIT (A) AND LD. AO HAVE FAILED TO CONSIDER THE TRANSFER OF FUNDS FROM THE BANK ACCOUNTS OF THE FOREIGN COMPANY TO THE APPELLANT AND VICE-VERSA, WHICH CLEARLY ESTABLISHES THAT THE MONEY IN FOREIGN BANK ACCOUNTS AND INVESTMENTS (FOREIGN ASSETS) WERE OWNED BY THE FOREIGN COMPANY.

47. As regards ground no. 7, the ld. A/R of the assesses has not submitted any written submission but relying on the submissions made before the lower authorities submitted that once the ld. CIT(A) has accepted the inter transfer of money itself establish the money of the firm and not of the assessee, the addition sustained by the ld. CIT(A) is required to be deleted based on those arguments. Considering our decision in respect of ground no. 9, supra, we allow the ground of the assessee in terms of our observation made in ground no. 9, the ground no. 7 is allowed.

48. Accordingly, we have disposed off all the 16 grounds of the assessee and in terms of these observations the appeal of assessee in BMA 01/JP/2022 stands allowed.

49. Coming to the appeal of the revenue, in BMA No. 02/JP/2022, the revenue has taken following grounds of the appeal:

> 1. The learned CIT Appeal has erred in law and on facts in granting relief to the taxpayer.
>
> 2. The learned CIT Appeal has erred in law and on facts in granting relief to the taxpayer –
>
> (i) by scaling down the addition of Rupees 136.73 crores by Rupees 103.64 crores
>
> (ii) by deleting the addition of Rupees 9,01,93,937/- as double addition
>
> (iii) by deleting the addition of Rs 32,49,375/- holding the same to be contra entry
>
> (iv) by deleting the addition amounting to Rs 9,69,34,026/- as leverage facility.
>
> 3. The learned CIT Appeal has erred in granting relief to the taxpayer by admitting additional evidence, even though the additional evidence could not have been admitted as per stipulations laid down under Rule 46A of the Income Tax Rules 1962. Further, since the additional evidence itself was not to be admitted, and has been incorrectly admitted, relief (even otherwise contested by revenue), could not have been available to the assessee.

4. The learned CIT appeal has erred in law in not exercising powers granted to her within the meaning of provisions of section 17(1)(c) of BMA(UFIA) and Imposition of tax Act, 2015 whereby the learned Commissioner of Income Tax Appeal was mandated to do inquiries herself or to get carried out further inquiries. Instead of doing the same, the learned CIT appeal chose to grant relief to the taxpayer.

5. The Appellant craves leave or reserves the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal."

50. The learned Senior D/R vehemently supported the order of the learned assessing officer and submitted that;

a) The assessee has not disclosed any information before the revenue-initiated search action against the assessee. In the return of income there is no disclosure about the financial interest of the assessee

b) The assessee has not co-operated to the revenue in the search and has not disclosed the password of email account and his Mcbook.

c) The assessee during the course of statement recorded during the course of search not disclosing the fact that he is having the foreign bank account and assets for which he is having 100 % stake.

d) The assessee has admitted that M/s. Agrasen Polymers FZE is nothing but a mere paper company.

e) The assessee except the bank account no other information such as nature of credit, name of payee and source of credit not disclosed.

f) The assessee has already submitted that he has earned the commission income and addition is based on the cogent evidence found during the search.

g) As regards the contention of the assessee that he has availed the leverage facility is not disclosed in the search and the assessment proceeding and thus, the contention of the assessee is nothing but an afterthought.

h) Definition of undisclosed asset located outside India as per Section 2 (11) of Black Money (Undisclosed Foreign Income And Assets) And Imposition Of Tax Act, 2015 means any asset, which is including a 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 such investment or the explanation given by him is not satisfactory, in the opinion of the assessing officer, then such income is required to be taxed according to the provisions of the law. Therefore, the assessee is the beneficial owner of the firm M/s. Agrasen Polymers FZE where is he owns 100 % stake in the company the learned assessing officer has correctly charged the above sum to the tax in accordance with the provisions of the BMA.

i) Since, the ld. CIT(A) has given the relief without obtaining the details of the credit entry in the bank account, the order of the assessing officer should be sustained and that of the order of the ld. CIT(A) be set aside.

Based on the above observations, the ld. D/R fervidly claimed that the order of the assessing officer should sustain.

51. Against the grounds taken by the revenue, the ld. A/R of the assessee filed his written submission objecting to the appeal of the revenue and the grounds raised therein. The relevant written submission of the assessee is reiterated here in below:

"A. Sh. K.D. Agrawal (hereinafter referred to as the "Appellant") is a senior citizen, aged 84 years and is presently enjoying a retired life. He is a regular taxpayer and has been awarded in past certificates of Appreciation from the Income Tax Department.

PB 216 – 217 are the copies of Certificate of Appreciation issued by the Income Tax Department for A.Y. 2016 – 17 & 2017 – 18.

B. In the earlier years, viz. 2015, the Appellant along with a group of persons came together and incorporated a company in the Free Trade Zone of Ras-Al-Khaimah (UAE) – Agrasen Polymers FZE, in order to deal in master batches / polymers.

C. However, after a while, prices of the masterbatches in Indian markets became more competitive than UAE and because of this, the foreign company, M/s Agrasen Polymers FZE could not continue its business in UAE. Accordingly, it started to invest its funds in some investment products in UAE.

D. That however, it is pertinent to mention, at the very outset that all the assets belong to the company and the Respondent-assessee does not own any foreign asset in his individual capacity and neither has any personal undisclosed foreign income and assets, in his individual capacity, nor is a beneficial owner of the assets of the company. Therefore, the taxability in the hands of the Appellant is wholly illegal and unjust.

E. A Search action was conducted at the premises of Sh. K.D. Agrawal in July 2018 (F.Y. 2018 – 19) whereby certain documents concerning the banking transactions of the foreign company, viz. M/s Agrasen Polymers FZE were found.

F. Based on the search, a high-pitched addition to the tune of Rs. 146,42,44,881/- pertaining to the transactions undertaken by the foreign company from A.Y. 2016 – 17 to 2018-19 & even A.Y. 2019 – 20 were added in the hands of the Appellant on SUBSTANTIVE BASIS, vide Assessment Order dated 31.03.2021, passed u/s 10(3) of the Black Money (Undisclosed Foreign Income & Assets) & Imposition of Tax Act, 2015 (hereinafter referred to as the "Black Money Act" or "The Act").

G. Aggrieved by the illegal action, an Appeal was filed before the Ld. CIT(A) whereby the claims of the Appellant were substantially accepted, however, additions to the tune of Rs. 23,74,26,443/- were sustained.

H. For ready reference, the breakup of the additions so made, and the corresponding decision of the Ld. CIT(A) is tabulated as under:

Sr. No.	Particulars		Addition made by AO	Additions sustained by the CIT(A)	Amount Deleted by the CIT(A)
1.	Addition made on account of the credits in the following Bank Accounts of M/s Agrasen Polymers FZE and the accounts held by the Appellant in fiduciary capacity for the company during F.Y. 2015 – 16 and F.Y. 2018 – 19		INR 136,73,10,8555	INR 23,74,26,4433	INR 1,12,98,84,4122
	AE470271226001850542017	Appellant – Fiduciary Capacity			
	AE410271226001850542028	Appellant – Fiduciary Capacity			
	AE920271161201822102010	Company			
	AE610271161371822102026	Company			
	AE060276031498079255014	Appellant – Fiduciary Capacity			
	AE550271031591850542039	Belongs neither to the company, nor to the Appellant in fiduciary / individual capacity			
2.	Income Allegedly earned on Investments in OMI		INR 9,69,34,026	-	INR 9,69,34,026
	TOTAL		**INR 146,42,44,881**	**INR 23,74,26,443**	**INR 1,22,68,18,438**

1. Aggrieved by the rightful deletion of Rs. 112,98,84,412/- & Rs, 9,69,34,026/-, the department has preferred this present appeal and has raised grounds which are not tenable under law, the rationale for which is elaborated as under:

GROUND WISE SUBMISSIONS:

GROUND NO.1 & 2 – THE LD. CIT(A) HAS ERRED IN LAW AND ON FACTS IN GRANTING RELIEF TO THE TUNE OF RS. 1,22,68,18,438/- TO THE RESPONDENT – ASSESSEE

1. That the said ground raised by the Department is not tenable as the Ld. CIT(A) had rightly granted the relief, which was granted on Four counts:

1.1. Double Additions of amounts aggregating to Rs. 103.64 Crores on account of inter-bank transfers, redemption of FDRs and investments.

1.1.1. That the said issue has not expressly been discussed by the Ld. Assessing Officer, however, forms a part of the addition of the total credits made in the bank account. (Pg. 72 of the Assessment Order). Thereafter, the Ld. CIT(A) after appreciating complete facts on record, duly backed by evidence deleted the addition on account of the same being added doubly, which is evident from Para 6.2 (xv – xvii) at Page 39 of the Ld. CIT(A) Order.

1.1.2. That the amount of Rs. 103.64 were amounts added doubly and can be broken down as under:

- Rs. 69.29 Crores Inter-bank transfers
- Rs. 30.87 Crores Investments Matured
- Rs. 3.45 Crores FDRs Maturity Amounts

Rs. 103.64 Crores

PB 869 – 875 is the copy of the Remand Report dated 13.07.2022, wherein it is mentioned that the Ld. Assessing Officer has verified the facts of the case and double additions have been made (PB 870-871).

PB 876 – 884 is the copy of the reply dated 18.07.2022, filed by the assessee before the ld. CIT(A) wherein the assessee has prayed that since the LD. Assessing Officer has verified the facts of the case and double additions have been made, such addition may kindly be deleted. (PB 878).

1.1.3. It is to be noted that the Ld. Assessing Officer preferring his appeal, himself had admitted, after due verification, that the said amount have been added doubly, which is evident from the remand report (PB 871). Therefore, the Ld. Assessing Officer / the Income Tax Department cannot blow-hot and cold at the same time.

1.1.4. Further, it is submitted that due evidences were submitted before the Ld. Assessing Officer as well as the Ld. CIT(A) and only thereafter the relief was granted.

PB 97-160 Is the copy of reply dated 08.04.2021, whereby due explanation was given regarding the double additions (156-160)

PB 767-770 Is the reconciled chart which shows a bird eye view of the double additions.

Therefore, there remains no justifiable, legal basis to delete the rightful relief granted by the Ld. CIT(A).

1.2. Rs. 9,01,93,937/- IS A NOTIONAL ADDITION AS NO SUCH AMOUNT EXISTED.

1.2.1. That the said addition has not been discussed by the Ld. Assessing Officer in his order and has been made a part of the total credits in the bank account no. ending with 2039, whereas the said bank account no. ending with 2039 admittedly does not even belong either to the non-resident company, nor to the Respondent – assessee. which is an internal bank account of the FAB Bank. Secondly, it is an admitted fact (PB 873 – 874 – Remand Report) of the Ld. Assessing Officer that the total amount credited in the abovementioned bank account is NIL, therefore, there stands no basis to make any addition, whatsoever.

PB 869 – 875 is the copy of the Remand Report dated 13.07.2022, wherein it is mentioned that the Ld. AO has verified the facts and that the FAB bank account no. ending with 2039 is an internal investment suspense account of the bank and which is used by the operations & credit teams of the bank. (PB 873 - 874).

PB 876 - 884 is the copy of the reply dated 18.07.2022, filed by the assessee before the ld. CIT(A) wherein the assessee has prayed that since the LD. AO has verified the facts and that the FAB bank account no. ending with 2039 is an internal investment suspense account of the bank and which is used by the operations & credit teams of the bank, such addition may kindly be deleted. (PB 880).

PB 829 is the copy of the email dated 03.06.2022 from the Director of the FAB Bank whereby it has been

confirmed that *"the Bank account No. ending with 2039 is an internal investment suspense account, which is used by the bank's operations and credit teams……. The customer doesn't have access to this account, nor can the customer see it under their list of accounts"*

PB 410 — Is the copy of the Show Cause Notice dated 07.03.2019 issued by the Ld. AO whereby he himself has recorded that NIL amount is credited / exists in the bank account 2039.

PB 873 – 874 — is the copy of the remand report dated 13.07.2022 whereby the Ld. AO again had acknowledged that the bank account is an internal bank account of the Bank and does not belong to the Respondent – Assessee

Therefore, the addition was rightfully deleted by the Ld. CIT(A) (Para 6.2 (xviii – xix) Page 39 – 40 of the Appellate Order) and it is prayed that the deletion of the said amount be upheld.

1.3. Rs. 32,49,375/- IS A CONTRA ENTRY ANY ADDITION THEREOF WOULD TANTAMOUNT TO A DOUBLE ADDITION WHICH IS WHOLLY ILLEGAL

1.3.1. That a telex transfer of USD 50000 was made on 18.05.2016 from bank account no. ending with 2028. However, due to some banking issue the same got cancelled and USD 49975 were credited in the account on the same date. It is similar to our banking transaction when the cheque gets bounced and the amount debited gets credited again in the account. It was similar transaction wherein there were both debit and credit entries and no new amount was credited. This again transaction was again done on 24/05/2016 wherein 50000 USD were transferred through telex. We therefore state that the amount of USD 49975 equaling to Rs. 32,46,375/- is the amount credited due to a contra entry, which had already been taken into account. Thus, adding the same amounts to Double Addition.

1.3.2. The Ld. Assessing Officer while making the addition had added this contra entry which is incorrect as the original credits has already been added and the cancellation of telex amount, resulting into refund of Rs. 32,49,375/- could not have been added again as the same would result in double addition, as has been rightly recognized by the Ld. CIT(A) in his findings (Para 6.2 (xx – xxi at Page 40 – 41 of the Appellate Order). Therefore, it is prayed that the deletion of such a contra entry (double addition of an amount already considered) be sustained.

PB 869 – 875 is the copy of the Remand Report dated 13.07.2022, wherein it is mentioned that the Ld. AO has stated that on verification of bank account, it transpires that no new amount has been credited in the bank account. (PB 874).

PB 876 - 884 is the copy of the reply dated 18.07.2022, filed by the assessee before the ld. CIT(A) wherein the assessee has prayed that since the Ld. AO has stated that on verification of bank account, it transpires that no new amount has been credited in the bank account, such addition may kindly be deleted. (PB 880).

1.4. Rs. 9,69,34,026/- CONSISTS OF NOTIONAL GAINS AND LEVERAGE FACILITY GRANTED BY THE BANK WHICH CANNOT BE CALLED INCOME; THEREFORE, THE DELETION DESERVES TO BE UPHELD

1.4.1. It is submitted that an amount of USD 14,90,834 amounting to Rs. 9,69,34,026/- had been added by the Ld. AO (Para 6 at Page 72 – 76 of the Order) on account of investment product in Old Mutual International bearing Policy No. MCB 930385. The said amount has been deleted by the Ld. CIT(A) (Para 7.2 (iv – viii) at Page 53 – 54 of the Appellate Order).

1.4.2. It is pertinent to note that this amount of USD 14,90,834 consists of two components:

a) The amount of Notional Gain USD 6,20,834

b) The leverage facility provided by the FAB Bank (2039) comprising to USD 8,70,000

1.4.3. With respect to the notional gain, it is submitted that this amount, firstly, it is only a notional gain and belongs to a non-resident company which also has not accrued, let alone received by the company. Therefore, cannot be added either in the hands of the company, let alone in the hands of the Respondent – Assessee.

1.4.4. Secondly, with respect to the leverage facility, it is submitted that the same is a leverage facility provided by the bank, which would be taken back, after the maturity of the amount.

PB 386 is the confirmation dated 03.06.2022 offered by the director of the FAB Bank that the said bank account no. ending with 20239 was an internal suspense account of the bank.

PB 869 – 875	is the copy of the Remand Report dated 13.07.2022, wherein it is mentioned that the Ld. AO has verified the facts and that the FAB bank account no. ending with 2039 is an internal investment suspense account of the bank and which is used by the operations & credit teams of the bank. (PB 871 - 872).
PB 876 - 884	is the copy of the reply dated 18.07.2022, filed by the assessee before the ld. CIT(A) wherein the assessee has prayed that since the LD. AO has verified the facts and that the FAB bank account no. ending with 2039 is an internal investment suspense account of the bank and which is used by the operations & credit teams of the bank, such addition may kindly be deleted. (PB 878 & 879).

In light of the submissions made above, it is prayed that the Departmental appeals be dismissed, and the order of the Ld. CIT(A) be upheld."

52. The ld. A/R of the assessee in addition to the above written submission submitted that the assessee has only submitted the chart and reconciliation based on the information already on record. The ld. CIT(A) has based on that chart and reconciliation given it for verification in the proceeding before the ld. CIT(A) and he in turn send it to AO. The learned AO after verifying the contentions reported the facts only and thus, there is no additional evidence submitted by the assessee. He has further submitted that based on the evidence submitted the firm M/s. Agrasen Polymers FZE is not a paper company as alleged by the revenue. As regards the objections to the remand report by the ld. AO and thereby the ld. DR the ld. AR of the assessee relying on the finding of the ld. CIT(A) recorded at page 39 para 6.2 (xv) to (xvii) wherein the ld. CIT(A) considering the fact allowed the submission of the assessee along with the presentation based on chart and reconciliation.

Therefore, now revenue cannot object the decision of the ld. CIT(A) which is rendered after giving an opportunity of hearing to the learned assessing officer and his comments were well taken while passing the order by the learned CIT(A).

53. We have heard both the parties and considered their rival contentions and perused the orders of the lower authorities. The ground no. 1 & 5 raised by the revenue are general in nature and does not require any adjudication on the issue.

54. The ground no. 3 raised by the revenue is against the admission of the additional evidence by the ld. CIT(A). The learned CIT(A) has recorded his finding and the same is reiterated here in below:

> (xvi) The AO in the remand proceedings has perused the copies of Bank accounts by the assessee and has admitted that the amount lying in one bank account has been transferred to the other bank account and has categorically admitted that the contention of the assessee appears to be correct with regard to double addition as verified above.
>
> (xvil) Thus on perusal of the remand report of the AO wherein, on verification of the bank account statements of the appellant, he has categorically admitted that the amount of Rs. 103.64 Crores is purely a double addition made in the hands of the appellant due to inter-bank transfers, redemptions of FDRs and investments, therefore the addition of Rs. 103.64 Crores is not sustainable and is accordingly deleted.

The ld. Senior DR did not file any submission converting the contention that the evidence filed by the ld. AR of the assessee are nothing but a mere a reconciliation and a chart explaining the contentions about the transfer entry between inter bank account, maturity / redemption of the investment/ FDRs. These evidences were mere representation of the evidences already on record the objection taken by the ld. AO in the remand report is of technical and not commented about the evidences that which are the additional evidences and why the same cannot be considered.

Basically, he has not controverted the evidences submitted in the form of the chart and a reconciliation statement. The objections of the ld. AO to these evidences are thus general in nature and we do not find any error or mistake of the ld. CIT(A) in accepting and in fact considering the principles of natural justices these evidences are important on the contentions so raised and revenue has not objected to these chart and reconciliation so submitted by the assessee in the appellate proceeding before CIT(A) and therefore, we do not see any merits in this ground of appeal taken by the revenue and in terms of these observations the ground no. 3 raised by the revenue is dismissed.

55. The ground no. 4 raised by the revenue is that the power granted to ld. CIT(A) is in accordance with the provision of section 17(1)(c) of BMA(UFIA) whereby the ld. CIT(A) was mandated to do inquiries herself or to get carried out further inquiries. Instead of doing the same the ld. CIT(A) choose to grant relief to the taxpayer. In this regard the bench has noted the ld. CIT(A) has granted the relief to the extent of Rs.103,64,41,100/- after considering the submission of the assessee and thereby seeking comments of the ld. AO and is supported by the remand report submitted by the ld. AO. The relief granted is after considering the fact that duplicate additions were made on account of interbank transfer, investment matured and maturity value of FDRs. The relevant finding of the ld. CIT(A) is reiterated here in below:

> (xiii) I have considered the facts of the case and it is observed that the appellant himself in his sworn statement recorded u/s 132(4) of the Act has neither disclosed voluntarily any of the foreign asset or income nor declared the same in his return of income for any of the year. It was only after the

search team extracted the details of foreign assets and bank accounts from the e-mail and personal Macbook of the assessee, that he accepted to be in the possession of the same. Further it is observed from the statement that M/s Agrasen Polymers FZE was established with a view to take advantage of fuel prices in UAE, but it became non-operational due to hike in the oil prices in UAE. Further it is observed from the bank account of the aforesaid company that there was a nominal amount therein. Thus it is evident that M/s Agrasen Polymers FZE remained as a mere paper company and had not carried out any actual business activity. I also find that the appellant has made various investments in bonds, mutual funds etc. issued by the Governments of Peru, Sri Lanka & agencies such as Allianz Global for which he has stated on oath that all these investments have been liquidated and the proceeds have been credited to account no. AE2028. It is also observed that the source of funds for making investments in various bonds/mutual funds etc. are out of the commissions/incentives which were directly received by the assessee in his undisclosed UAE Bank Accounts from his domestic company M/s Shreya's India Pvt. Ltd. of which, he is a Director. The contrary stand taken by the appellant during the course of assessment proceedings that the amounts invested in the mutual fund at various countries didn't belong to the assessee but the same is related to M/s Agrasen Polymers FZE is not found acceptable in view of the fact that complete details of aforesaid company were neither submitted by the appellant during the assessment proceedings nor before me by contending the same to be a separate legal entity. The fact remains that the appellant has clearly admitted during the course of search proceedings that M/s Agrasen Polymers FZE had remained to be a mere paper company without conducting any actual business. It is observed that the appellant has not been able to explain the source of funds lying in his own bank account or in the bank account of the company either before the AO or before me in the appellate proceedings. I find that the appellant has failed to provide any material evidence for corroborating his contention that the funds lying in the foreign bank accounts of M/s Agrasen Polymers FZE are disclosed and accounted one. Infact the appellant has failed to provide any evidence that M/s Agrasen Polymers FZE was ever engaged in performing any actual business or fund generating activities. It is evident that the appellant had income in the nature of commission /incentive as well as proceeds from foreign investment from sources located outside of India and he was the beneficial owner and sole signatory in the company M/s Agrasen Polymers FZE.

(xiv) In view of the above facts, the contention of the appellant that the investments made belongs to the foreign company only and any income arising therefrom will be taxable in the hands of the said company is for from truth since as per the definition of undisclosed assets located outside India under the Black Money Act, 2015, it is observed that it is an undisputed fact that the assessee is the beneficial owner and the sole signatory in the company M/s Agrasen Polymers FZE and therefore the assessee is statutorily bound to not only disclose the complete details of the aforesaid company in

his return of income but is also mandatorily bound to provide the source of investment made in the said company during the course of assessment proceedings to the full satisfaction of the Assessing Officer which the appellant has failed to do.

(xv) However, as regards the contention of the appellant that out of total addition of Rs. 136.73 Crores, a sum of Rs. 103.64 Crores represents the amount which is added twice as the same amount represents inter-transfer of funds from one bank account to another, a remand report in this regard was called from the Assessing Officer. The Assessing Officer as per his remand report dated 13.07.2022, as reproduced supra, has submitted that as per the assessee, out of an addition of Rs. 103.64 Crores, Rs. 69.29 Crores is inter-bank transfers, Rs. 30,87 Crores are investments matured and Rs 3.45 Crores is maturity amount of FDRs and that all these additions are double additions as the same funds were rotated and addition in respect of the initial amount from which such investments were made has already been added by the AO. The present AO further submitted that the assessee has filed copies of statements of the Bank accounts and a chart showing the credits stated to have been taken twice by the AO and that the explanation furnished by the assessee has not been considered by the AO at the time of assessment.

(xvi) The AO in the remand proceedings has perused the copies of Bank accounts by the assessee and has admitted that the amount lying in one bank account has been transferred to the other bank account and has categorically admitted that the contention of the assessee appears to be correct with regard to double addition as verified above.

(xvil) Thus on perusal of the remand report of the AO wherein, on verification of the bank account statements of the appellant, he has categorically admitted that the amount of Rs. 103.64 Crores is purely a double addition made in the hands of the appellant due to inter-bank transfers, redemptions of FDRs and investments, therefore the addition of Rs. 103.64 Crores is not sustainable and is accordingly deleted.

Addition of Rs. 9,01,93,937/-

The ld. CIT(A) has also granted relief of Rs. 9,01,93,937/- being the amount of leverage granted by the bank. The relevant finding of the ld. CIT(A) on this issue is reiterated here in below :

> "(xix) I have considered the submissions of the appellant, copy of remand report proceedings as well as the rejoinder comments to the report furnished by the Ld. AR of the appellant. I find that the contention of the appellant is correct as the amount of Rs. 9,01,93,937/- is the leverage facility provided by the bank. The same has also been confirmed in the email sent by the bank. Further the AO in the remand report has also confirmed that AE550271031591850542039 is an internal suspense account which is used by bank for their operation and internal investments and the said account does not belong to the appellant. In view of the above facts, the addition of Rs. 9,01,93,937/- made by the AO is not justified and I, therefore, delete the addition of Rs. 9,01,93,937/- so made by the AO.

Contra entry of Rs. 32,49,375/-

The ld. CIT(A) has also granted a relief of Rs. 32,49,375/- being the contra entry made at the instance of the bank and the same is deleted in the same bank statement. Based on the remand report submitted by the AO the ld. CIT(A) deleted that addition. The relevant findings of the ld. CIT(A) is reiterated here in below :

> "(xxi) In the remand proceedings, the AO has considered the argument of the Ld. AR of the appellant and on verification of bank account, it is noticed by him that this was only a contra entry and the amount of US$ 50000 is debited and USD 49975/- is credited in the Bank account No. 2028 on the same date, i.e. 18/5/2016 due to cancellation of telex and no new amount has been credited in the bank account. I have considered the submissions of the appellant, copy of remand report as well as the rejoinder comments of the Ld. AR and I find the contention of the appellant to be correct as the amount of USD 49975/- (Rs. 32,49,375) is a contra entry. It was a transfer made on 18/05/2016 which did not materialize and therefore was again credited in the bank account. It is just like when a cheque deposited is cancelled or bounced. Further the AO in the remand report has also confirmed about this transaction. In view of the above facts, the addition of Rs. 32,49,375/- made by the AO is not justified and I, therefore, delete the addition of Rs. 32,49,375/- so made by the AO.

Addition of Rs. 9,69,34,026/-

The ld. CIT(A) has also granted a relief of Rs. 9,69,34,026/- being the leverage facility provided by the bank. The ld. CIT (A) deleted the addition by giving the relevant finding in para 7.2 (vii) of her order as under :

> (vii) I find that AO was not correct in making the addition of Rs. 9,69,34,026/- as this amount has two components i.e. one of leverage facility provided by the bank and second of notional gain on those investments as on 01.04.2019 which cannot be added as the appellant has not made those investments from his bank account. Amount of leverage facility provided by the bank of USD 8,70,000/- has not been done by the appellant but the same has been done by the bank which has been confirmed in the Email written by the bank. Similarly notional gain of USD 620834/- cannot be added in the hands of the appellant as this is not actual gain received by the appellant but it is the increased value of investments as on 01.04.2021. Such notional gain has not been credited in the bank account of the appellant therefore no such addition can be made on assumption basis. The AO in the remand report also has clearly mentioned that it is the leverage facility provided by FAB bank and also it is notional gain on investments of USD. I, therefore, find that the addition of Rs. 9,69,34,026/- is not sustainable and is accordingly deleted. The grounds of appeal no. 5 & 4 are accordingly treated as allowed."

We find no infirmity in the findings of the ld. CIT (A), we thus dismiss Ground no 4 of the revenue.

56. Now we take up ground No. 2 of the revenue's appeal the granting relief of the following amount granted by the ld. CIT(A) :

(i) by scaling down the addition of Rupees 136.73 crores by Rupees 103.64 crores

(ii) by deleting the addition of Rupees 9,01,93,937/- as double addition

(iii) by deleting the addition of Rs 32,49,375/- holding the same to be contra entry.

(iv) by deleting the addition amounting to Rs 9,69,34,026/- as leverage facility.

57. We have already adjudicated the above matter while dealing with ground no. 4 above. We have agreed with the findings of the ld. CIT (A) and accordingly sustained the relief granted by the ld. CIT (A) by deleting the additions of above

referred amount. Accordingly, ground no. 2 of the revenue's appeal is also dismissed.

58. In terms of these observations the appeal of the revenue in BMA No. 02, 03, 04 & 05/JP/2022 stand dismissed. The appeal of the assessee in BMA No. 01/JP/2022 stands allowed in terms of these observations. These appeals are accordingly disposed off.

Order pronounced in the open court on 13/04/2023.

Sd/-	Sd/-
(राठौड कमलेश जयंतभाई)	(संदीप गोसाई)
(Rathod Kamlesh Jayantbhai)	(Sandeep Gosain)
लेखा सदस्य/Accountant Member	न्यायिक सदस्य/Judicial Member

जयपुर/Jaipur

दिनांक/Dated:- 13/04/2023

Das/

आदेश की प्रतिलिपि अग्रेशित/Copy of the order forwarded to:

1. अपीलार्थी/The Appellant- Shri Krishna Das Agarwal, Jaipur
2. प्रत्यर्थी/ The Respondent- DDIT/ADIT(Inv.), Alwar & Addl. CIT, Central Range, Jaipur
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त/ CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur.
6. गार्ड फाईल/ Guard File {BMA Nos. 1 to 5/JP/2022}

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar