



सत्यमेव जयते

भारतसरकार
GOVERNMENT OF INDIA
वित्तमंत्रालय, राजस्वविभाग
MINISTRY OF FINANCE, DEPARTMENT OF REVENUE
कार्यालयसक्षमप्राधिकारीवप्रशासक
OFFICE OF THE COMPETENT AUTHORITY & ADMINISTRATOR
तस्करएवंविदेशीमुद्राछलसाधक (सम्पत्तिसम्पहरण) अधिनियम, 1976
एवंस्वापकऔषधिवमनः प्रभावीपदार्थअधिनियम, 1985 एवं
SMUGGLERS AND FOREIGN EXCHANGE MANIPULATORS (FORFEITURE OF PROPERTY) ACT, 1976 AND
NARCOTIC DRUGS & PSYCHOTROPIC SUBSTANCES ACT, 1985 &
न्यायनिर्णायकप्राधिकारी
ADJUDICATING AUTHORITY
बेनामीसंपत्तिसंव्यवहारनिषेधअधिनियम, 1988
PROHIBITION OF BENAMI PROPERTY TRANSACTIONS ACT, 1988
'बी' विंग, नवीमंजिल, लोकनायकभवन, खानमार्केट, नईदिल्ली - 110003
'B' WING, 9TH FLOOR, LOK NAYAK BHAWAN, KHAN MARKET, NEW DELHI - 110003
Email : ca-delhi@gov.in, cadelhi.05@gmail.com, TEL/FAX : 011-24616379

Reference No. 0188/PBPT/DLI/2022

Dated: 28.06.2023

**ORDER U/S 26(3) OF PROHIBITION OF BENAMI PROPERTY
TRANSACTIONS ACT, 1988**

Initiating Officer Deputy Commissioner of Income Tax (DCIT), (BPU-1 New Delhi) Room No. 225, 2nd Floor, C-Block, SPM Civic Centre, New Delhi-110002.		
Versus		
Shri Yogendra Raj Uttamraj Singhvi, Address: 103 Devsagar Building, Dalagiya Street, Mahidharpura, Surat, Gujarat	Benamidar	D.1
Bhairav Gems Pvt. Ltd. Address: B/246, 2nd Floor, Diamond Village-B, H. No. 6/1913, 1952 To 1954, Jadakhadi Dalgiya Sehri Mahindharpure, Surat, Gujarat-395003.	Benamidar	D.2
Garima Exports, Address: MB-11, 2nd Floor, Floxchambers, MP Marg, Opera House, Mumbai-400004	Benamidar	D.3
Gurudev Corporation, Address: B/246, 2nd Floor, Diamond Village-B, Dalgiya Sehri Mahindharpure, Surat, Gujarat.	Benamidar	D.4
Yogi Diam, Address: 12, Shakti Chambers, Raghunathpura, Main Road Surat, Gujarat-395003.	Benamidar	D.5
Khushboo Diamonds Pvt. Ltd., Address: 6/1946-B, Off-103,1st Floor, Dalagiya Street, Mahidharpura, Surat, Gujarat-395003.	Benamidar	D.6
Manmohan Exports Pvt. Ltd., Address: 219, World Diamond Centre, Hathfaliya, Mahidharpura, Surat, Gujarat-395003	Benamidar	D.7
Chintamani Exports, Address: 15 UGF Diamond World Tower-B, Behind Princess Plaza, Varcha Road, Surat, Gujarat-395006.	Benamidar	D.8
Shrenik Diamond Pvt. Ltd., Address: 15 UGF Diamond World Tower-B, Behind Princess Plaza, Varcha Road, Surat, Gujarat-395006.	Benamidar	D.9
Uttam Gems Pvt. Ltd., Address:15 UGF Diamond World Tower-B,	Benamidar	D.10

Behind Princess Plaza, Varcha Road, Surat, Gujarat-395006.			
Shri Navneet Chaurasia, Address: 575 First Floor, Double Storey Flats, New Rajinder Nagar, New Delhi 110060.		Beneficial Owner	D.11
Adjudicating Authority		Surabhi Sharma	
Last Date of Hearing		23.06.2023	
Appearance For Initiating Officer		Adv. Kanhaiya Singhal	
Appearance For Defendants		CA. K.K. Jhunjhunwala, D-1 to D-10 & Adv. Rahul Kaul, For D-11	

The Initiating Officer (IO), Benami Prohibition Unit-1, New Delhi, had made a Reference dated 08.06.2022 under section 24(5) of the Prohibition of Benami Property Transactions Act 1988 (As amended) (hereinafter referred to as the Act or PBPT Act) to the Adjudicating Authority under the PBPT Act, Delhi along with a Provisional Attachment Order (PAO) dated 28.05.2022 passed under section 24(4)(b)(i) as approved by the Approving Authority. The aforesaid Reference was numbered as R-0188/PBPT/DLI/2022 wherein Shri Yogendra Raj Uttamraj Singhvi (D-1), Bhairav Gems Pvt. Ltd. (D-2), Garima Exports (D-3), Gurudev Corporation, (D-4), Yogi Diam (D-5), Khushboo Diamonds Pvt. Ltd. (D-6), Manmohan Exports Pvt. Ltd. (D-7), Chintamani Exports (D-8), Shrenik Diamond Pvt. Ltd. (D-9), Uttam Gems Pvt. Ltd. (D-10) have been made Benamidars u/s 2(10) of the amended PBPT Act and Shri Navneet Chaurasia(D-11) has been made Beneficial Owner u/s 2(12) of the amended PBPT Act by the IO. The hard copies of the said Reference were received on 10.06.2022.

1.1. In the said Provisional Attachment Order, the Initiating Officer has provisionally attached the following immovable and movable properties and sought confirmation of the same from the Adjudicating Authority under the PBPT Act;

SCHEDULE - I (NAVNEET CHAURASIA)											
A	1	Details of Immovable asset			AY 2017-18	AY 2018-19	AY 2019-20	AY 2020-21	AY 2021-22	Traces of Assets attributed to alleged sales of diamonds and being attached u/s 24(4)(b)(i) includes as below	Details of property being attached u/s 24(4)(b)(i) of the PBPT Act, 1988 includes
		1			2	3	4	5	6	7	8
	(a)	Land			10244700	10244700	10244700	8167700	8167700	0	Net Investment in the immovable property made post AY 2017-18
	(b)	Building			871774254	896901595	896901595	896901595	910114777	38340523	
	2	Details of movable asset									
		Sl. No.	Description								

(a)	Jewellery, bullion etc.	494921596	381178056	292104459	249987852	216653889	0	NA
(b)	Archaeological collection, drawings, painting, sculpture or any work of art.	0	0	0	0	0	0	NA
(c)	vehicles, yachts, boats and aircrafts this.	0	0	0	0	0	0	NA
(d)	Financial asset.						0	NA
i.	Bank (including all deposits.)	6878134	53480733	53170540	140602785	231968175	79404541	The bank account being attached <i>includes</i> following Saving A/c : 1. Account No. 30800205000 0160 held with Union Bank of India having balance of Rs.1,51,38,826/- to be provisionally attached to the extent of Rs. 1,28,77,278/-. 2. Account No. 14415300022 63 held with HDFC Bank having balance of Rs. 11,84,116/-.
ii.	Shares and securities.	112378023	644332058	1174328249	1193429509	1210743606	1098365583	Net Investment made in share and securities post AY 2017-18
iii.	Insurances policies.	17889918	19261382	20632846	21776300	22826399	0	NA
iv.	loans and advances given.	755108692	1068686182	981012500	1092687500	1161991431	406882739	Net Loan and Advances given post AY 2017-18
v.	Cash in hand.	520310	140256	470067	504867	1019642	0	As given in column 7
vi.	Investment in Mutual fund Kotak L&T FFGR Motilal UTI Mirae Axis Nippon EDELWE SIS						554137161	Net Investment made post AY 2017-18
vii.	Investment in Partnership	180153448	612372293	1061421766	1441139410	1652189221	1472035773	Net Investment made in partnership post AY 2017-18
3	Total	2449869075	3686597255	4490286722	5045197518	5415674840		
	Total Investment						3649166320	
B	Liability in relation to Assets at A	97355190	2426732	5500000	20000000	20000000	0	
							Total Value of benami Property to be	3649166320

										provisionally attached	
										Value of benami proceed available for attachment	3649166320

2. History of the case:

The brief facts of the case as per the I.O., are reproduced herein below (in italics):

“2 The aforesaid proceedings are being carried out by the undersigned under the corresponding statutory provisions of the Prohibition of Benami Property Transactions Act, 1988 (The Act, for short).

Before proceeding further, the statutory definitions of the material terms applicable to the instant proceedings as accorded under the scheme of The Act are extracted below for the sake of your convenience and ready reference-

<i>Terms</i>	<i>Definitions</i>	<i>Relevant sections of The Act</i>
<i>Benami property</i>	<i>“—means any property which is the subject matter of a benami transactions and also includes proceeds from such property.”</i>	<i>2(8)</i>
<i>Benamidar</i>	<i>“—means a person or a fictitious person, as the case may be, in whose name the benami property is transferred or held and includes a person who lends his name”</i>	<i>2(10)</i>
<i>Beneficial owner</i>	<i>“---means a person, whether his identity is known or not, for whose benefit the benami property is held by a benamidari”</i>	<i>2(12)</i>
<i>Property</i>	<i>“---means assets of any kind, whether movable or immovable, tangible or intangible, corporeal or incorporeal and includes any right or interest or legal documents or instruments evidencing title to or interest in the property and where the property is capable of conversion into some other form, then the property in the converted form and also includes the proceeds from the property;”</i>	<i>2(26)</i>
<i>Transfer</i>	<i>“ –includes sale, purchase, or any other form of transfer of right, title, possession or lien;”</i>	<i>2(29)</i>

3. Sh. Navneet Chaurasia S/o Sh. Ram Nath Chaurasia, having Aadhar Number 382138591461, the beneficial owner herein belongs to Kamla Pasand group (the Group, henceforth) of entities, engaged in multiple activities such as real estate, hospitality, Ayurveda etc. through various entities. Initially, the group started its business from the trading and manufacturing of various tobacco based products including pan masala, Guthka etc. from a modest premises being 28/114, Pheelkhana, Kanpur. These products attract very high rates of taxes including CGST/SGST/IGST, being tobacco based and injurious to human health. The manufacturer of such products is statutorily liable to forewarn the consumers of the potential health hazards. The Group is the registered trademark owner of its various brands under the relevant provisions of the Trademark Act, 1999 through their family entity M/s Kamla Kant and Company, LLP, 28/114, PheelKhana, Kanpur in respect of its fast selling tobacco based products. At present the Group manufactures and sells its products throughout the length and breadth of country through various

corporate entities, charging specified percentage on their sell. Some of these entities are tabulated below on illustrative basis-

S No	Names	Registered Addresses	Capital	
			Authorised	Paid up
1	K P Pan Fragrances Ltd	Flat No A-2/13, Shivani Apartment Opp Barkatullah University Mandideep Road, Bhopal	5,00,000/-	5,00,000/
2	K Pan Fragrance P Ltd	286, Main Road Mandawali Delhi	1,00,000/	1,00,000/
3	K Y Tobacco Works P Ltd	C-42-A/2, UGF, PRO No C-42, Main Road, Kanti Nagar, Delhi	5,00,000/	2,00,000/
4	Kaizen Pan Product P Ltd	Plot no 792, Sector -69, IMT, Faridabad	10,00,000/	1,00,000/
5	Kay Flavours P Ltd	B-2, Amausi Industrial Area Lucknow	5,00,000/	1,00,000/
6	Kay Pan Sugandh P Ltd	B/204, DewanBhawan DewanBhawanOpp Union Bank Manekpur, Vasai (West) Thane, Maharashtra	1,00,000/	1,00,000/
7	Kay Pan Masala P Ltd	229/28, C-1, Gali no.3 Railway Colony Mandawali, Delhi	10,00,000/	1,00,000/

4. Disclosed income of the beneficial owner during the last 10 years from different sources is tabulated below-

Heads of income	AYs				
	2020-21	2019-20	2018-19	2017-18	Total
Salaries	550000	560000	600000	600000	
Commission					
LTCG	575582002	961938930	1432534464	----	2,97,00,55,396
Other sources	14389848	8196199	35158784	6225671	
Business and profession			43218636	2402945	
Exempt income	86383206	39450245	52840142	60340914	
Income chargeable at special rates	14345778	1516366			
Income from house property	64556892	53179654	73968242	109134457	
Returned income	669424520	1025391149	1585480126	118363073	
Agriculture Income	19800	43982	46800	0	

5- Its perusal reveal that the beneficial owner has claimed to have derived the sum of Rs.2,97,00,55,396/-as income from Long Term Capital Gains, exigible to Income-tax as special rates. The information on record reveal that it is claimed to have been derived from the sale of cut and polished diamonds in the corresponding financial years.

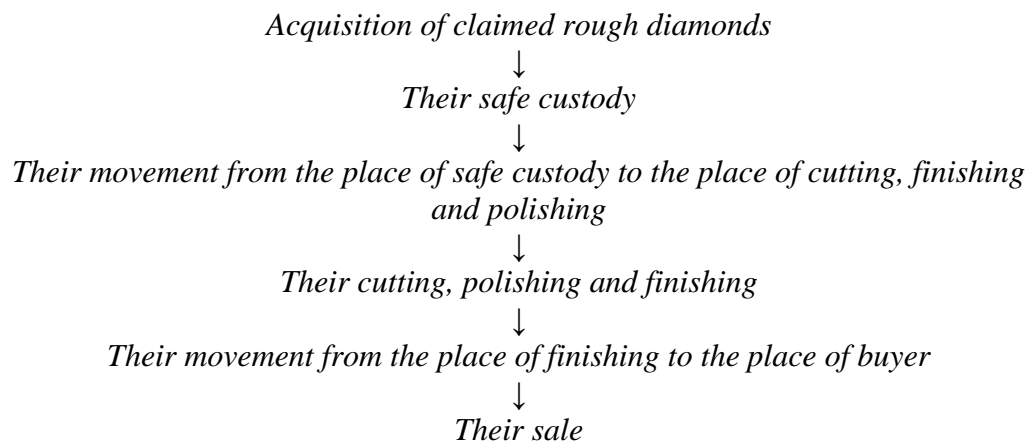
6- A search and seizure operation was carried out by the Special Investigation Branch of the Commercial Taxes Department, Government of UP during 19-7-2019 to 25-7-2019 in various premises belonging to the Group, finding therein that the Group is engaged in large scale tax evasion resorting to carrying out its business operation through benami corporate entities including M/s K Pan Fragrance P Ltd, specified at serial no. 2 in the table supra. These categorical findings are recorded by the Dy. Commissioner, (SIB), Commercial Taxes, UP in his report from page number 9 onwards under the heading Benami nature of the company, dummy directors and its financial profile. These allegations are further elaborated in the concluding paragraph of the report at page number 43. Its copy is enclosed herewith as Annexure A, containing pages 1 to 45 and forms part of this Show-cause Notice.

7- A further, a search and seizure operation was also carried out by the Investigation Wing of the Income-tax Department, Delhi on 15-1-2020 on different premises of the Group, covering inter alia, the farmhouse/residence of the benamidar, Yogendra Raj Uttam Raj Singhvi also. Several incriminating evidences, including physical documents as well as digital data were also found, seized and inventorised. During the course of search proceedings, several evidences were found that the family members of the Group are bringing their undisclosed income into their books by using benamidar(s) using him/them as conduit(s) in the form of bogus sale of diamonds. Most of the family members of the Group have shown LTCG exceeding Rs 2,000/ crores in their respective ITRs from A.Y.2017-18 onwards on sale of alleged diamonds paying Income-tax tax at special rates of 20%. The evidences gathered during the search and seizure action revealed that the claimed LTCG is their benami property re-routed in their hands using the benamidaras conduit, which was duly admitted by him in his statement on oath recorded by the AO during the course of search and seizure operation. These family members of the Group include-

- I. Sh. MayankChuarasia
- II. Sh. NavneetChaurasia
- III. Sh. Anand Kumar Chaurasia
- IV. Sh. Rajiv Chaurasia
- V. Sh. Vijay AnandChaurasia
- VI. Sh. ShashikantChaurasia
- VII. Ms.DiptiChaurasia
- VIII. Ms.Vibha Arya Chaurasia

7.1 Statement recorded by the AOs during the course of search and seizure operations of the beneficial owner, benamidarand Sri Kamla Kant Chaurasia were contradictory corroborating the finding that the beneficial owner has re-routed his benami property in its hands in the grab of legitimate income, paying Income-tax thereupon at special rates.

7.2 It is pertinent to mention here that the sum of Rs.2,97,00,55,396/-representing claimed alleged LTCG in different FYs corresponding to specified AYs, was the result of the following events only -



7.3 Copies of the statements of the following persons, contradictory to each other highlighting that the claimed LTCG simply represent benami property of the beneficial owner are attached herewith as Annexure B, C, and D specified below-

<i>S No</i>	<i>Names of the persons S/shri</i>	<i>Relevance</i>	<i>Annexure</i>
1	<i>Navneet Chaurasia</i>	<i>Beneficial owner</i>	<i>B</i>
2	<i>Kamla Kant Chaurasia (KKC)</i>	<i>Contradicts the claim of the beneficial owner that KKC was instrumental in deriving income from sale of diamonds</i>	<i>C</i>
3	<i>Yogendra Raj Uttam Raj Singhvi</i>	<i>Confirms the fact that the beneficial owner has re-routed his benami property using him as conduit</i>	<i>D</i>

8. *The Income-tax Act, 1961 is an Act of the Union Legislature, containing a well laid out scheme for its enforcement. Its administration is entrusted to specified Income-tax Authorities, duly defined in its Chapter XIII titled INCOME-TAX AUTHORITIES. Its part A provides for their appointment and control. An Inspector of Income-tax is also statutorily defined to be an Income-tax Authority. The relevant extract is reproduced below verbatim for the sake of convenience-*

**“CHAPTER XIII
INCOME-TAX AUTHORITIES
A.- Appointment and control**

Income-tax authorities.

There shall be the following classes of income-tax authorities for the purposes of this Act, namely:-

- (a) the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963(54 of 1963)*
[(aa) Principal Directors General of Income-tax or Principal Chief Commissioners of Income-tax,]
- (b) Directors-General of Income-tax or Chief Commissioners of Income-tax,*
[(ba) Principal Directors of Income-tax or Principal Commissioners of Income- tax,]
- (c) Directors of Income-tax or Commissioners of Income-tax or Commissioners of Income-tax(Appeals),*
- (cc) Additional Directors of Income-tax or Additional Commissioners of Income-tax or Additional Commissioners of Income-tax(Appeals),]*

- [cca) Joint Directors of Income-tax or Joint Commissioner of Income-tax,]
 (d) Deputy Directors of Income-tax or Deputy Commissioners of Income-tax or Deputy commissioners of Income-tax(Appeals),
 (e) Assistant Directors of Income-tax or Assistant Commissioners of Income –tax,
 (f) Income-tax Officers,
 (g) Tax Recovery Officers,
 (h) Inspectors of Income-tax.”

8.1 During the course of assessment proceedings before the designated Assessing Officer, Mr Dhirender, Inspector of Income-tax was deputed by him to verify the correctness of the addresses and other detail through whom the beneficial owner has claimed to have derived income from alleged sale of diamonds. His categorical findings in respect of the following claimed entities used as conduit by the beneficial owner, controverting the claimed genuineness of the claim of the beneficial owner are attached herewith as Annexure E (Pages 1 to 13) and forms part of this Show Cause Notice-

Entity(ies) reported by the Income-tax Inspector after their physical verification	Page numbers	
	From	To
1- Chintamani Exports	1	2
2- Shrenik Diamonds P Ltd		
3- Uttam Gems P Ltd		
4- Niti Impex	3	-
5- BinaImpex		
6- Yogi Dam	4	-
7- Nine Star Impex	5	6
8- Ronak Gems P Ltd	7	-
9- Aarushi Gems	8	9
10- Misty Enterprises	10	-
11- Bhagat Trading	11	-
12- Gurudev Corporation and Bhairav Gems P Ltd	12	13

9. Clause (9) of section 2 of the Act defines benami transactions under its sub-clauses (A) to (D). Its sub-clause (A) is

9.1 The undersigned is, therefore, fairly convinced that introducing the sum of Rs 2,97,00,55,396/-as bogus LTCG constitutes the benami transaction within the meaning of s 2(9) of the Act wherein the property, representing bogus sale proceeds of diamonds belonging to the beneficial owner was held by the benamidar using several other benamidars as conduits, the consideration having been provided to them by him, for the immediate direct benefit of the beneficial owner in further acquisition of various movable and immovable properties.

9.2 Without prejudice to the prima facie findings recorded in para 9.1 above, it is also clarified that other clauses being (B), (C) and (D) of sub-section (9) of section 2 of the Act are also attracted to the facts of the case in hand, duly recorded by a Statutory Authority under the Income-tax Act, 1961 during the course of his physical verification of the benamidars elaborated in paragraph 8.1 supra.”

2.1. The above facts pertaining to the investigation conducted in respect of alleged benami properties of Shri Navneet Chaurasia acquired through Shri Yogendra Raj Uttamraj Singhvi in the name of Bhairav Gems Pvt. Ltd., Garima Exports, Gurudev

Corporation, Yogi Diam, Khushboo Diamonds Pvt. Ltd., Manmohan Exports Pvt. Ltd., Chintamani Exports, Shrenik Diamond Pvt. Ltd. & Uttam Gems Pvt. Ltd. were analyzed by the IO who found prima-facie Benami transactions vide the provisions of PBPT Act, 1988. On the basis of enquiries and reasons to believe that Shri Yogendra Raj Uttamraj Singhvi, Bhairav Gems Pvt. Ltd., Garima Exports, Gurudev Corporation, Yogi Diam, Khushboo Diamonds Pvt. Ltd., Manmohan Exports Pvt. Ltd., Chintamani Exports, Shrenik Diamond Pvt. Ltd. & Uttam Gems Pvt. Ltd. are Benamidars in respect of the aforesaid alleged Benami properties, the I.O., issued show cause notices on 28.02.2022 within the specified time to the Benamidars, under section 24(1) and to the Beneficial Owner u/s 24(2) of 'the Act' to show cause as to why the said properties be not treated as Benami properties and appropriate action be taken under the relevant provisions of the PBPT Act.

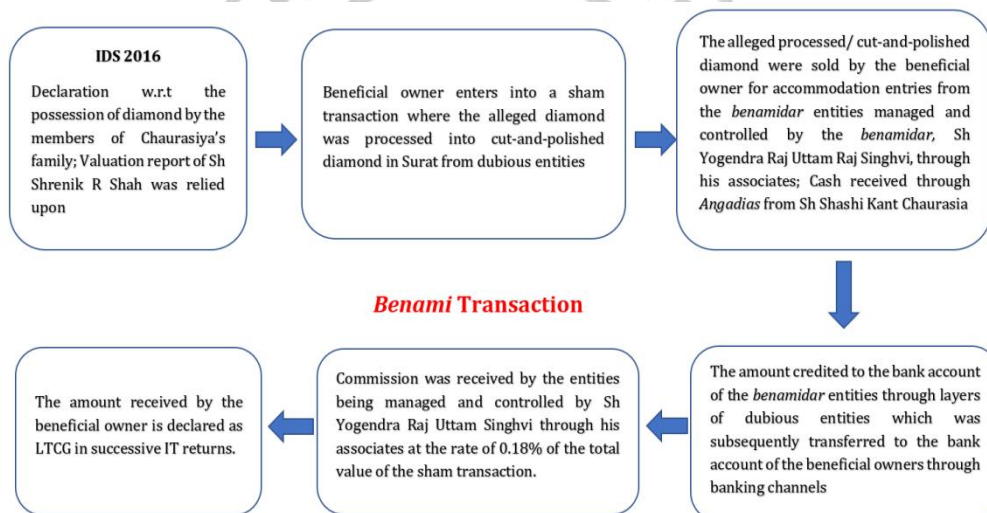
2.2. Subsequent to the aforementioned Show cause notices, replies were filed by the alleged Benamidars and Beneficial Owner. On the basis of the enquiry/investigation made in the case and replies filed by the Benamidars and the Beneficial Owner, the I.O. of the case arrived at following Conclusions:-

“Conclusions:

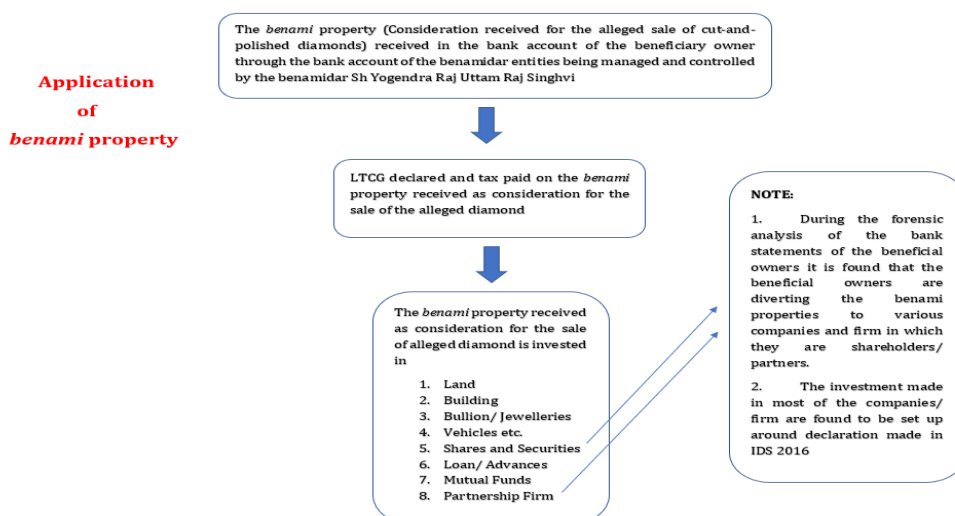
47. *Based on the preliminary information, subsequent verifications and inquiries, above discussions in line with analyzing the circumstantial evidence and test of human probability; and considering the replies filed by the Benamidars and the beneficial owners and their rebuttal, it is hereby evident that the beneficial owner, Sh. Navneet Chaurasia, has routed his unaccounted monies in the garb of sales of the alleged diamond through benamidar, Sh Yogendra Raj Singhvi, and entities being managed and controlled by him. The beneficial owner has declared a rough diamond of 11499.79 carat, worth Rs. 48,85,60,150/- in IDS 2016. These rough diamonds were allegedly processed and 2517.50 carat of cut-and-polished diamonds were extracted and sold during the AYs 2017-18 to 2021-22 for Rs.3,64,91,66,320/- thereby incurring a windfall gain at the rate of 647 % (approximately). During the search conducted on Kamla Pasand Group, the assessment proceeding before the Central AO (in the case of Sh Sashi Kant Chauarsiaya and ShAnand Kumar Chaurasia) and during the benami proceeding none of the parties integral to the transaction of alleged sale of diamonds have furnished any cogent documentary evidence that could reasonably establish that either rough diamonds was processed and that cut-and-polished diamonds existed/ exists. Further, it is pertinent to mention that during the post search investigation, proceeding before the central AO or the benami proceeding before the undersigned none of the parties integral to the transaction of alleged sale of diamonds has complied to the summons issued for personal deposition, thereby, ensuring that nothing is brought on record that could unmask the real nature of the transaction.*

48. *The benami transaction of declaring LTCG on consideration received for the sale of the alleged cut-and-polished diamond was conceived to convert the unaccounted monies of the beneficial owner into accounted monies by layering through multiple dubious entities. For giving the sham transaction a genuine appearance, the beneficial owner has devised an arrangement in due*

connivance with the benamidar, Sh Yogendra Raj Uttam Raj Singhvi. As per the arrangement, the unaccounted monies of the beneficial owner were routed through the benamidar entities as a consideration for the sale of the alleged diamonds. It is a matter of record that the 08 beneficial owners have given contradictory versions of source of acquisition of the diamonds. Sh. Mayank Chaurasia, Sh. Vijay Anand Chaurasia and Sh Anand Kumar Chaurasia have stated in their statements that they have acquired the diamond from their parents as ancestral property. However, Sh. Rajiv Chaurasia has stated that the source of the rough diamond is the purchase of the diamonds by Sh Shashikant Chaurasia. Thus, the source of the diamond remains a mystery which was never established by any of the beneficial owners either during the proceeding under the Income-tax Act, 1961 or The Prohibition of Benami Property Transactions Act, 1988. The corresponding sales, hence, are not genuine and the entire arrangement was a way to introduce unaccounted monies through the conduit of the benamidar entities managed and controlled by Sh Yogendra Raj Uttam Raj Singhvi. In his statement recorded on oath, the benamidar and his associates, Sh Nemichand Kawadia, have admitted on oath during the search that the accommodation entry was given to the beneficial owners for the commission at the rate of 0.18%. For the commission, the benamidar & the benamidar entities have acted as a conduit while holding and letting the consideration of the sales of the alleged diamond pass through their bank accounts for the benefit of the beneficial owner. The benami transaction is shown graphically below:-



The benami property received as a consequent of pre-planned scheme, as discussed above, was invested in different avenues as a part of the scheme. The utilisation of benami property since its acquisition is shown graphically below:-



49. As apparent from above the beneficial owner has made huge investment in different avenues using the consideration he/she has amassed from the alleged sale of the cut-and-polished diamond. As it has already been discussed in detail in Part D and Part E of the order the clinching evidence that was gathered during the search operation and the benami proceeding regarding the sham transaction that establishes that there was no processing of the rough diamond and consequent sale of the cut-and-polished diamonds by the beneficial owners on which LTCG was declared. Thereby, going by the corollary, there was no rough diamond as declared in the IDS 2016 by the beneficial owners. The entire benami arrangement was conceived during FY 2016-17 at the onset of the IDS 2016. The declaration of the rough diamond was made by the beneficial owners to legalize the unaccounted monies. As per the well-thought scheme, the rough diamonds were declared in IDS 2016 and sold at an exorbitantly high price as cut-and-polished diamonds. The alleged consideration, therefore, was used as a means to legalize its ill-gotten monies through the conduits of benamidars. It is pertinent to mention that huge investments are made in the shares/ securities and partnerships firm which came into existence around the IDS 2016. As on date, the beneficial owner has an investment in the following entities:-

ITR-3		INDIAN INCOME TAX RETURN (For individuals and HUFs having income from profits and gains of business or profession) (Please see Rule 12 of the Income-tax Rules, 1962) (Please refer instructions)				Assessment Year 2021 - 22	
Information regarding partnership firms in which you are partner anytime during the previous year							
Number of firms in which you are partner							
Sl No	Name of Firm	PAN of Firm	Whether the firm is liable for audit? (Yes/No)	Whether section 92E is applicable to firm? (Yes/ No)	Percentage Share in the profit of the firm	Amount of share in the profit i	Capital balance on 31st March in the firm ii
1	K.P POUCHES	AAGFK1345N	N	N	25	-354	6,12,811
2	SUDAMA FRAGRANCES	ABNFS1639K	Y	N	33.33	6,83,29,820	32,40,95,276
3	COMEX INTERNATIONAL	AAGFC4732P	N	N	16.67	-48,627	3,00,747
4	K K PROJECTS	AAKFK5057B	Y	N	10	-1,37,65,671	1,30,82,68,313
5	CHAURISHI GLOBAL LLP	AAIFC6781E	N	N	50	14,92,075	17,72,562
6	CHAURISHI HERBAL LLP	AAIFC4902F	N	N	50	7,643	1,56,899
7	CHAURISHI PROJECTS LLP	AAIFC5541L	N	N	50	10,770	83,514
8	KP VENTURES LLP	AAMFK7774K	N	N	50	3,39,141	9,70,725
9	DR REALBUILD LLP	AAMFD2159H	N	N	20	4,69,541	17,07,116
10	OSTRICH REALTORS LLP	AAEFO7897F	N	N	20	1,02,314	6,43,594
11	PERFECT IT SEZ LLP	AASFP4133D	N	N	20	-3,614	-2,92,186
12	V N REALBUILD LLP	AANFV6692G	N	N	20	4,524	3,16,439
13	VERBENA BUILDWELL LLP	AANFV6693H	N	N	15	3,737	1,64,951
14	X-NINE INFOTECH LLP	AAAFX2174J	N	N	20	18,96,995	1,63,88,342
15	MAJESTIC AGRO FARMS LLP	AACFM3543R	N	N	0	90	105
16	PURE AGRICARE LLP	AAVFP0062G	N	N	0.01	1	13
Total						5,88,38,385	1,65,51,89,221

50. It is pertinent to reiterate that during the independent investigation conducted by this office, it was found that the affidavit that was relied upon while filing retraction by the benamidar, Sh Yogendra Raj Uttam Raj Singhvi before the DDIT, Unit 7(3), New Delhi was forged. Both the beneficial owner and the benamidars have relied upon the forged affidavit while claiming that the statement of the benamidar recorded on oath does not hold any sanctity. It was also found during the proceeding that the declaration of the beneficial owner in the IDS 2016 w.r.t. the valuation of diamond for the AY other than AY 2017-18 is false. Field verification has further revealed that none of the benamidar entities is operational at the address as mentioned in the purchase confirmation order. It was also found that the entities which have allegedly done job work for processing the diamond have their turnover attributed to the beneficial owners only and are not functional. Analysis of the evidence gathered during the search and considering the non-complying conduct of the beneficial owners and the benamidars, it is apparent that the

benami transaction was an outcome of pre-planned scheme to legalize the unaccounted monies of the beneficial owner.

51. *Given the above it is apparent that the beneficial owner has routed his unaccounted monies through Sh Yogendra Raj Uttam Raj Singhvi and the benamidar entities. It has sufficiently been established through facts in hand, statements of relevant parties, and investigation done in the matter that the beneficial owner is involved in benami transactions for the ultimate motive of acquiring the Benami properties (consideration for the sales of the alleged diamond), through the Benamidar and the benamidar entities. During the proceeding, the entire benami transactions are proven to be arranged. Therefore, this is a fit case for passing an order u/s 24(4)(b)(i) for the benami transaction covered u/s 2(9)(A) of The Prohibition of Benami Property Transaction Act, 1988.*

52. *The definition of Benami transaction is defined u/s 2 of the original Act as:*

“Benami transaction means any transaction in which property is transferred to one person for a consideration paid or provided by another person”

53. *Section 2(8) of the PBPT Act, 1988 defines Benami property as:*

"Benami property" means any property which is the subject matter of a Benami transaction and also includes the proceeds from such property.

54. *As per section 2(10) of Prohibition of Benami Property Transaction (PBPT) Act, 1988 (reproduced as under), "Benamidar" is defined as-*

"Benamidar" means a person or a fictitious person, as the case may be, in whose name the Benami property is transferred or held and includes a person who lends his name;

55. *As per section 2(12) of Prohibition of Benami Property Transaction (PBPT) Act, 1988 (reproduced as under), "Beneficial Owner" is defined as-*

"Beneficial owner" means a person, whether his identity is known or not, for whose benefit the Benami property is held by a benamidar;

56. *Further, Benami transaction is defined u/s 2(9)(A) of Prohibition of Benami Property Transaction (PBPT) Act, 1988 as:*

(A) a transaction or an arrangement—

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

(b) the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration, except when the property is held by—

(i)....., (ii)....., (iii)....., (iv)..... or

57. *Keeping in view the definition of the benami property, benamidar, Benami transaction, Benamidar and Beneficial owner as per section 2 of the original Act and Section 2(8), 2(9)(A), 2(10) and 2(12) of the amended PBPT Act, 1988 and the discussion held in previous paragraphs the pertinent details of the case is summarised as under:*

<i>Benamidars within the meaning of section 2(10) of the Act</i>	1. Sh. YOGENDRA RAJ UTTAMRAJ SINGHVI PAN: (ANJPS9745G) Address: 103 Devsagar Building, Dalagiya Street Mahidharpura, Surat 395003, Gujarat
	2. BHAIKAV GEMS PVT LTD (AAGCB3540D) Address: B/246, 2nd floor, diamond village-b, h no. 6/1913, 1952 to 1954 jadakhadidalgiyasehrimahindharpure, surat, Gujarat-395003
	3. GARIMA EXPORTS (APYPD8714K) Address: MB-11, 2ND Floor, Floxchambers MP Marg, Opera House, Mumbai-400004
	4. GURUDEV CORPORATION (ABHPR3948J) Address: B/246, 2ND Floor, Diamond Village-B, DalgiyaSehriMahindharpure, Surat, Gujarat
	5. YOGI DIAM (AGXPR5614A) Address: 12, SHAKTI CHAMBERS RAGHUNATHPURA, MAIN ROAD SURAT, GUJARAT-395003
	6. KHUSHBOO DIAMONDS PVT LTD (AADCK1753G) Address: 6/1946-B, OFF-103, 1ST Floor, Dalagiya Street, Mahidharpura, Surat, Gujarat, 395003
	7. MANMOHAN EXPORTS PVT LTD (AAGCM0220R) Address: 219, World Diamond Center, Hathfaliya, Mahidharpura, Surat, Gujarat, 395003
	8. CHINTAMANI EXPORTS (BATPS4152H) Address: 15 UGF Diamond World Tower-B, Behind Princess Plaza, Varcha Road, Surat, Gujarat-395006
	9. SHRENIK DIAMOND VPT LTD (AATCS0646L) Address: 15 UGF Diamond World Tower-B, Behind Princess Plaza, Varcha Road, Surat, Gujarat-395006
	10. UTTAM GEMS PVT LTD (AABCU5679H) Address: 15 UGF Diamond World Tower-B, Behind Princess Plaza, Varcha Road, Surat, Gujarat-395006
<i>Beneficial owners within the meaning of section 2(12) of the Act</i>	Sh. NAVNEET CHAURASIA (AAEPC7666E) Address: 575 First Floor, Double Storey Flats, New Rajinder Nagar New Delhi 110060.
<i>Benami Property within the meaning of Section 2(8)</i>	Consideration received for the alleged sale of diamonds

58. In this case as the Benami property has been converted into different forms through investment by the beneficial owners, the consequent proceeds, therefore, from the benami property is hereby being provisionally attached u/s 24(4)(b)(i) till the passing of the order by the Competent Authority u/s 26(3) of the Act. The requisite approval in this regard is received from the Approving Authority, BPU-1, New Delhi vide letter dated 27.05.2022. In the light of the direction received from the approving authority the provision of section 57 of the Act is specifically being brought to the knowledge of the beneficial owners and the benamidars as a part of this order. The section reads as below:-

59. Certain transfers to be null and void.—Notwithstanding anything contained in the Transfer of the Property Act, 1882 (4 of 1882) or any other law for the time being in force, where, after the issue of a notice under section

24, any property referred to in the said notice is transferred by any mode whatsoever, the transfer shall, for the purposes of the proceedings under this Act, be ignored and if the property is subsequently confiscated by the Central Government under section 27, then, the transfer of the property shall be deemed to be null and void.”

2.3. In view of aforesaid facts of the case & the findings arrived at by the IO of the case, the IO after taking the prior approval of the Approving authority as required u/s 24(4) of the Act on 27.05.2022 passed the Provisional Attachment Order u/s 24(4) on 28.05.2022, holding the aforesaid properties as Benami Property u/s 2(8) of the amended PBPT Act.

3 Proceedings u/s 26 of the PBPT Act, 1988:

In this matter, the PAO was passed on 28.05.2022 and referred to the Adjudicating Authority vide Reference u/s 24(5) of the PBPT Act, 1988 dated 08.06.2022 which was received on 10.06.2022. Accordingly, the time to pass a final order by the Adjudicating Authority as per section 26 (7) of PBPT Act was expiring on 30.06.2023.

3.1 Upon receipt of the above reference of the I.O., notices u/s 26(1) of the PBPT Act, 1988 dated 22.06.2022 were issued to Defendants to furnish such documents, particulars or evidences as is considered necessary to prove their claim that the properties so held by them are not BENAMI property under the Act and are not covered by/involved in the benami transactions within the meaning of section 2(9) of the Act and further to explain as to why all or any of such properties should not be declared to be BENAMI property involved in benami transactions under the Act and why the Provisional Attachment Order should not be confirmed. Further, in the said notices, Defendants were directed to appear before the Bench of the Adjudicating Authority under The Prohibition of Benami Property Transactions Act, 1988, either in person or through Authorised Representative on various dates and finally heard on 23.06.2023. The Counsels for I.O and Defendants argued their case at length during the proceedings and reiterated the contents of their written submissions. I have carefully gone through the case records and considered their arguments raised during the hearing.

3.2. The defendants have filed detailed replies in the matter; however, during the proceedings they have filed short synopsis in Reference R-0187/PBPT/DLI/2022 which covers all the points/contentions raised vide detailed replies. The detailed replies filed by the defendants have been examined and duly considered by this Authority and the same are not reproduced for the sake of brevity; however, it is requested by the counsel for defendants that since the facts of the case are same, the short replies filed by them in

reference R-0187/PBPT/DLI/2022 may be considered in other group cases also. The short submissions filed by the defendants have been discussed as under:

3.2.1. Defendant D-1, vide his reply has submitted the following:-

1. *“No notice u/s. 24(1) of PBPT Act was ever duly issued by the Ld. IO to the Benamidar-1 / Defendant-1 holding him as Benamidar, which is an apparent violation of law. The forwarding of photocopy of notice u/s. 24(1) issued by the Ld. IO to Beneficial owner can not be treated as issue of notice u/s. 24(1) to the Benamidar – 1/BD-1*
2. *There was no financial transaction between the BD1 and the beneficial owners, whatsoever. In view of the same there is no question of any financial property transaction between the BD1 and the beneficial owners resulting into any Benami Property held by the BD1 on behalf of the Beneficial Owners.*
3. *Without prejudice to the fact that the BD-1 has no financial transaction with the alleged BOs, the inference drawn by the Ld. IO to hold that the Benami property Transaction itself being the Benami Property is not tenable, which interpretation is in direct contravention of the Provisions of PBPT Act,*
4. *Even otherwise, the Benami Properties have not been identified by the Ld. IO in schedule-I attached to order u/s. 24(4)(b)(i) mentioning the gross amounts under various heads without identifying the individual Benami Property, the Provisional Attachment in the floating manner is illegal and deserves to be revoked.*
5. *The Ld. IO was not justified to rely upon the order of Hon’ble Adjudicating Authority in the case of “Ultimate Creations” without confronting the same to the BD1 during proceedings under PBPT Act. Also, the facts of the case of Ultimate Creations are entirely different and hence any reliance on the said case should be ignored from consideration*
6. *There has never been any involvement of the BD1 in the act or transaction of sale / purchase of diamond by the BO’s*
7. *No funds have ever been routed through any of the bank account of BD1*
8. *BD1 has never ever held any property for or on behalf of any of the BO’s*
9. *No corroborative material against BD1 being involved with the transaction of sale of diamonds was found during the search and seizure, except the statement recorded of BD1 under coercion. The same was later retracted within reasonable time, giving cogent reasons.*
10. *The moot question is the validity of the retraction affidavit, to this BD1 had submitted before the Ld. IO that he completely abide with the contents of his retraction affidavit and that the issue of Notary Public’s denial or acceptance of the said affidavits is totally immaterial and untenable.”*

3.2.2. Defendants D-2 to D-10, vide their common reply has submitted the following:-

1. *“The alleged Banamidars (No. 2 to 11) are the most genuine business entities. They are in the business of trading, Importing and exporting of*

Rough and Polished diamonds for more than 15 years. It is not the case as if they have opened their firms / companies in the last 3 – 4 years to accommodate the Beneficial owners.

All these alleged Benamidars (No. 2 to 11) in the last 15 years cumulatively had imports of diamonds more than Rs. 12000 + crores, Exports of diamonds Rs. 1400 + crores, These alleged Benamidars (No. 2 to 11) in the last 15 years cumulatively had paid to government total custom duty Rs. 34 + crores , Total VAT Rs. 31 + Crores and total GST Rs. 30 + Crores.

Above all, out of total 10 alleged Benamidars, 4 Benamidars have been awarded “ONE STAR EXPORT HOUSE” by Government of India based on their performance.

Validity of SCN issued u/s. 24(1)

2. *The Ld. IO issued SCN u/s. 24(1) of the PBPT, Act to the BD2 to BD11 on 19.05.2022 and passed final order dated 28.05.2022 branding the defendants as alleged benamidars, Despite the fact that there is absolutely no factual matrix or evidences available with The Ld. IO which could lead to such conclusion, the fact that the Ld. IO passed the order merely in a matter of 9 days from issuance of the said SCN shows the biased and Prejudicial approach, the order was passed in a mechanical manner and under complete disregard to the submissions filed by the said alleged BD's. these facts clearly shows that principles of natural justice had been completely ignored and rendering the entire proceedings void ab-initio.*

Other Arguments

3. *There were no Benami Property Transactions between the Benamidar (BD-2 to BD-11) and the Beneficial owners and on the other hand the transactions were in respect of purchase of diamonds by the said alleged Benamidars from Beneficial Owners duly supported with evidences and duly recorded in the Books of Accounts, GST returns, Bank Accounts, Income Tax Returns, Balance Sheet etc.*
4. *The Ld. IO was not legally justified to hold that the Benami Property Transaction itself being the Benami Property, which interpretation is in direct contravention of the Provisions of PBPT Act.*
5. *Even otherwise, the Benami Properties have not been identified by the Ld. IO in schedule-I attached to order u/s. 24(4)(b)(i) mentioning the gross amounts under various heads without identifying the individual Benami Property, the Provisional Attachment in the floating manner is illegal.*

No money Trails identified

6. *No money trail, whatsoever, identified by the Ld. IO to prove the deposit of any alleged Cash in the account of alleged Benamidars(BD-1 to BD11). Your honour shall appreciate the fact that in this case extensive investigation was done at the time of Search Proceedings, Post Search proceedings, during BPU proceedings and during assessment proceedings. Even after this extensive investigation by the department no cash/money trail was brought on record which is the main allegation of the Ld. IO. This clearly proves that the entire story of alleged bogus sales of diamond is concatenated one and there is no iota of truth in the allegations made by the Ld. IO in the impugned order.*

7. Order of Ultimate Creations relied Upon – Not applicable to this case

The orders of Adjudicating Authority in the case of Ultimate Creation have been relied upon but the facts of these cases are different as will be evident from the following :-

- i. There is no evidence that any amount received by the alleged Benamidars on behalf of Beneficial Owners is deposited in their bank Account.*
 - ii. There were no deposits in cash in the bank account of Benamodars.*
 - iii. In ultimate creation, the Benamidar had made a statement before the IT Authorities, as well as, before Benami Property unit that these transactions were bogus and the amounts were given by the Beneficial Owners to be deposited on their behalf and remitted back to Beneficial Owners, in this case, there is no such admission.*
 - iv. In this case the transaction of purchase and sales were duly confirmed by both the parties (alleged Benamidar 2 to 11 and all the BO's) and there was no admission or submission of any adverse nature.*
 - v. No money trail has been brought on record to show that the amounts were remitted by the Beneficial Owner to the Benamidar for deposit in their bank account.*
 - vi. These orders were not confronted to the Benamidar during the proceedings, hence could not be relied upon.*
- 8. It is pertinent to note that the Ld. IO attached photograph of BD2 to BD11's premises in the order dated 28.05.2022 which only proves that BD2 to BD 11's business entities exist in the address provided by the BD2 to BD11 as their business address, moreover, the time of the day or night when the inspector visited the offices in not known to said BD's and therefore exact reasons for the closure of the office of BD's at that particulars hour of the day / night cannot be commented upon.*

Benami Transactions v/s Sham Transactions

- 9. It is alleged that entire transactions of the sale of diamonds were **sham transactions** to convert the unaccounted monies of the 8 beneficial owners into accounted money- The ld. IO admits that the entire transaction resulted into change of colour of own property by the alleged beneficial owners from unaccounted monies to accounted money. Additionally, When the Ld. IO is alleging any transaction as 'Sham', how can that transaction be treated as part of the benami transaction, the benami transaction is actual genuine transaction which result into creation of some property. Only issue which the benami law deals is the question that whether consideration for some property held or transferred in name of any person has been paid by some other person and the owner of this property is only a name lender (Benamidar).*

Supreme Court Ruling

- 10. The Hon'ble Supreme Court of India on July 14, 2021 A2 Z Infraservices Ltd. V/s Quippo Infrastructure Ltd. (Now Known As Viom Infra Ventures Ltd.) SLP (C) No. 8636/2021 [1] discussed the question of evidentiary value of WhatsApp chats/conversations. A bench of Hon'ble*

Mr. Chief Justice N V Ramana and Hon'ble Mr. Justice A S Bopanna and Hon'ble Mr. Justice Hrishikesh Roy said,

“What is the evidential value of WhatsApp messages these days? Anything can be created and deleted on social media these days. We don't attach any value to the WhatsApp messages.”

It is therefore submitted that whatsapp chat are not per-se any evidence and making any allegation and proposing any action on that basis is not correct in the eyes of law.”

3.2.3. Defendant D-11, vide his reply has submitted the following:-

1. Existence of rough uncut diamonds. The declaration under IDS 2016

The initiating officer has proceeded with the assumption that the rough, uncut / unpolished diamonds, which were the subject matter of the declaration under IDS 2016, filed by the answering defendant, did not actually exist and the declaration was false and obtained through misrepresentation. In arriving at this view, the initiating officer has relied upon the view expressed by the assessing officer under the Income Tax Act, in the assessment order passed in the case of the answering defendant. The assessment order mentions that the assessee (answering defendant) planned a scheme during IDS 2016, wherein non-existent assets would be created in the books so that such assets could be sold at exorbitant prices in future so as to channel, his unaccounted income.

The said diamonds were inherited by the answering defendant as unaccounted assets, they were declared in IDS-2016 and due taxes were paid, subsequently Form-4 was issued. The said declaration is valid and has attained finality thus, the source of the rough diamonds is proven beyond doubt. In fact, as per the IDS-2016 scheme, once the declaration attains finality, no question/enquiry regarding the said declaration can be made. The assessing officer being an authority subordinate to the Pr CIT, cannot sit in judgement over the satisfaction of the PrCIT, and / or ignore the certificate issued by him.

2. Regarding issues pertaining to Valuation Report and Valuer Sh. Shrenik R. Shah-

The valuation of rough diamonds was done for the purposes of IDS-2016 by Mumbai based valuer Sh. Shrenik R. Shah. The IO has cast aspersions regarding veracity of the valuation report citing that the valuer in his statement had stated that he had not done valuation of the said diamonds in year 1994. It is submitted that the appellant had never claimed that valuation of the said diamonds was done in 1994, it is reiterated that the valuation of the said diamonds was done in FY 2016-17 only for the purposes of IDS-2016, a projection of its value in 1994 was mentioned in the valuation report (this is done because the said diamonds were inherited by the subject in 1994). Further, the reference to proceedings against Shrenik Shah in case of an unrelated matter, is uncalled for, and appears to have been inserted with an intention to create bias, since that matter has nothing to do with the answering defendant. It is submitted that all payments towards obtaining such services were made through banking channels and all the relevant documents supporting veracity and genuineness of the said transaction are part of books of account and have been duly submitted.

3. The transactions of cutting and polishing of diamonds-

Subsequent to the declaration of rough diamonds in IDS-2016, the said diamonds were cut and polished by utilizing services of parties based in Surat. In the impugned order, the IO has raised doubts regarding the genuineness of the said transactions on the ground that financial credibility of these parties is doubtful; that the physical verification of their premises led to finding that they were either not present at their given address or they are doing insignificant business. Also, during the argument stage, the Ld. Departmental Representative argued that turnover of these parties went up when the appellant had done business with them compared to other years when the appellant had not done any business with them. It is submitted that the cutting and polishing of diamonds is a very unorganized industry, the appellant is not in a position to comment on the skewedness/change in turnover of these parties. The appellant has made payments through the banking channels against the services obtained from these parties, all these payments are part of regular books of accounts and their veracity/correctness has never been doubted at any stage of the proceedings which culminated into the impugned order. The appellant has submitted all the relevant material supporting the genuineness of the said transactions in its submissions during the course of the impugned proceedings. It is further informed that a search and seizure action under the IT Act has been done in case of appellant and its family members, where no evidence/material in any form has been found which could even remotely indicate that the said transactions were non-genuine. Further, it has been reliably learnt that independent verification enquiries had been made to these parties regarding the said transactions, these parties had confirmed that they have undertaken these transactions with the appellant and had also submitted all the relevant material supporting the veracity and genuineness of these transactions. As far as issue of closure of premises ascertained in course of physical verification of their premises is concerned, it only proves that these parties existed at the given addresses and closure of their businesses during the time of physical verification is purely coincidental. However, no negative inference can be drawn on the basis of this assertion, more so when all the relevant material had been duly submitted supporting the veracity and genuineness of the said transactions.

4. The sale of cut and polished diamonds-

The cut and polished diamonds were sold by the answering defendant and his family members to various parties based in Surat and Mumbai starting from FY 2016-17 onwards. The entire sale consideration has been received in bank accounts of the answering defendant and his family members, the taxes due have been duly paid in form of LTCG arising out of the said transactions. The IO has raised doubts regarding the genuineness of the said transactions on the ground that financial credibility of these parties is doubtful; that the physical verification of their premises led to finding that they are either not present at their given address or they are doing insignificant business. It is submitted that the sale parties to whom diamonds were sold by the answering defendant are engaged in the business of trading of diamonds from last many years, few of them are registered export houses, they also have submitted relevant documents to show the substantial volume of business done by them over last many years. Further, it is submitted that all the sale transactions done by the answering defendant and his family members are duly supported by all the relevant material, which form part of regular books of accounts. All such necessary material supporting genuineness and veracity of the said

transactions have been submitted by the answering defendant in the impugned proceedings. Also, all the sale parties had confirmed the said transactions and had supplied relevant material supporting the veracity of the said transactions. It is informed that the correctness of the said documents/evidences has never been doubted. Also, just to inform it is submitted that during the course of search conducted in case of answering defendant and his family members no material in any form was found which pointed towards non-genuineness of the said transactions. As far as issues raked up by the IO regarding physical verification of the business premises of these parties, it is submitted that the findings are purely hypothetical and hold no currency, more so when all the relevant material has been duly submitted supporting the veracity and genuineness of the said transactions.

5. Issues regarding retraction affidavit of Sh. Yogendra Raj Singhvi

It is clarified that the answering defendant and his family members have no financial transaction with the said person. With regard, to the contention of the IO questioning the genuineness of the retraction affidavit (against his statement recorded during the IT proceedings) filed by Sh. Singhvi, on the grounds that notary public had given a statement that no such affidavit was notarized by him and that no entry in this record has been made in notary's register, it is submitted that Sh. Singhvi had duly submitted that he completely abides by the content of the said retraction affidavit. Further, a letter was also written by the answering defendant seeking his comments regarding the same, to which he submitted in detail regarding the circumstances under which his statement was recorded (for which he filed retraction), he also confirmed the contents of the said affidavit and had mentioned that he is willing to testify before any forum in this regard. In light of the above, this issue raised in the impugned order holds no currency and should be completely excluded from consideration.

6. The applicability of S. 2(9)(A) of the Act and Benami Property identified-

It is submitted that to initiate action under the PBPT Act 1988, the IO has to identify the Benami Transaction and consequentially the subject matter property of such transaction, which then becomes the benami property. The initiating officer has been unable to specifically identify the benami transaction or the benami property. On the specific directions of the Hon Adj Auth, the initiating officer was asked to clearly identify the benami property. In the rejoinders filed, he stated that funds received in the bank accounts of the answering defendant and his family members on sale of diamonds is benami property. It is unfathomable as to how the funds deposited in his bank account can qualify as benami property of the answering defendant.

In the impugned order, the transaction has been alleged to be violative of the provisions of section 2(9)(A). The said section has two limbs viz;

- i) The Benamidar should hold the property for the immediate or future benefit of the beneficial owner*
- ii) The consideration should be provided by the Beneficial Owner.*

The initiating officer has failed to show how consideration for the sale / purchase of diamonds has been provided by the answering defendant, the alleged beneficial owner. The allegation that cash has been provided by the beneficial owner to the parties who purchased the diamonds, through Yogendra Raj Singhvi, is not backed by any evidence. While it is alleged

that thousands of crores of rupees have been transferred to the parties purchasing diamonds, no evidence of deposit of even one rupee has been made available. It is beyond comprehension as to how around 3000 crores of cash was converted into bank balances, without any evidence of such cash deposit into bank accounts. For the provisions of section 2(9)(A), to apply, the initiating officer has to show that the consideration for the benami transaction has been provided by the alleged beneficial owner. Not one rupee has travelled from the answering defendant to the bank accounts of the alleged benamidars. Further, the investigations carried out by the initiating officer itself shows that money has been received in the bank accounts of the benamidars, from other entities engaged in diamond trading business, and such transactions are unrelated to the answering defendant. The underlying assumption of the initiating officer is that cash has been transferred by the answering defendant and others and such cash is the consideration for the bank balance in the accounts of the benamidars. However, as stated above, it is for the initiating officer to show where and when, the cash was introduced in the banking system and how it has travelled into the accounts of the benamidars. No such evidence of cash has been brought forward and no evidence is forthcoming. Mere speculation cannot take place of material evidence. Thus, no case of benami transaction is made out.

7. Traces of Benami Property identified in the impugned order

In the impugned order the subject matter of entire investigation viz. the benami property could not be identified by the IO at all. The IO in his order has concluded that traces of alleged benami property has been identified and remaining part of the so called benami property is being identified. The entire edifice of the benami proceedings rests on the identification of the benami transaction and the benami property. There cannot be any scenario wherein it can be claimed that only traces of certain property could have been identified, more so when the subject benami property is claimed to be deposits in the bank account of the answering defendant. The non-identification of the benami property in whole makes it evident that there is absolutely no ground which was available with the IO which calls for action under the provisions of the PBPT Act and thus the entire proceedings become null and void.

8. Hypothetical Argument

Without prejudice to our contentions as above, let's for a moment accept all allegations of the initiating officer at face value. What inference can be drawn from these allegations? The only inference, that can be drawn is that the answering defendant has handed over cash for cheques of like amount. It can only be presumed that the answering defendant has given cash to the benamidars and received cheques from them at the same time. At the moment of handing over the cash, the answering defendant received the cheques, thereby, the benamidars became legal and beneficial owners of the cash and the answering defendant became the legal and beneficial owner of the amount represented by the cheques. This is a simple exchange transaction, and does not fall within the definition of a benami transaction.

9. Order relied upon by the defendant

The initiating officer has relied upon the order of Hon'ble Adjudicating Authority in case of one 'Ultimate Creations'. It is submitted that the factual matrix of the case of the appellant is entirely different from the case of 'Ultimate Creations'. In the case of the 'Ultimate Creations', the

unaccounted cash of the said entity was deposited in the bank account of the alleged benamidar, who then claimed ownership of the said funds. Later on, the alleged benamidar transferred the funds in bank account of the entity 'Ultimate Creations'. It becomes clear from the above that cash was deposited in case of 'Ultimate Creations', however, no such finding could be highlighted by the IO in case of the answering defendant and his family members. In view of this fact also, it is evident that the IO has failed to appreciate the correct factual matrix of the case of the answering defendant and wrongly attributed inapplicable facts thereby drawing negative inference. Thus, the entire order suffers from not only legal but factual infirmity as well and hence the impugned order should not be confirmed."

3.3. The Initiating Officer has rebutted all the claims made by the Defendants and submitted that it is a proven case of introducing unaccounted income in the garb of long-term capital gains using *benamidars* as a conduit, in the garb of sale of diamonds claimed to have been disclosed in the Income Declaration Scheme-2016 which is found bogus by the Assessing Officer under the Income-tax Act, 1961, as well as by the IO while carrying out independent inquiries during the course of enquiries under the PBPT Act. The Beneficial owner mis-utilised the IDS Scheme wherein he declared the investment in 11499.79 carats of rough diamonds on 13.09.2016 which was accepted by the concerned PCIT, however, the same is in itself not the only part of benami transaction. The benami transaction in the present case has to be considered as a whole. The declaration of rough diamonds was only part of the conspiracy as there was actually no rough diamonds. No actual ownership of said rough diamonds was in existence. It is only, in furtherance of their conspiracy to declare the rough diamonds in the eyes of the revenue authorities, created bogus sale evidence to show that these alleged rough diamonds were sold at exorbitantly high price within a period of FY 2016-17 to 20-21. The actual benami transaction was not only the false declaration of rough diamonds but it extended up to false sell of the said rough diamonds to bring the ill gotten/not declared huge money in the garb of sale of rough diamonds which was utilized to procure the other assets and accordingly been attached as proceeds of benami property.

3.3.1. It is also pointed out by the IO that at no stage of the proceedings either the Beneficial Owners or the Benamidars have proved the existence of the rough or cut-and-polished diamonds. Infact, no actual purchase of the diamonds has ever taken place from the members of the Chaurasiya family. The entire transaction of the alleged sale of diamond was a sham to convert the unaccounted money of the 08 Beneficial Owner's into accounted money. The field verification in Mumbai and Surat squarely establishes that the Benamidar entities have bought alleged diamond from the 08 Beneficial Owners who are not doing any genuine business. These are only paper entities with no real/actual business.

3.3.2. In view of above, The Initiating Officer concluded his submission by stating that *Benami* transactions in this case are Long-Term Capital Gains from the sale of alleged diamonds wherein the *benami* property represents the bogus sale proceeds of diamonds allegedly belonging to the beneficial owner. The sale of alleged diamonds was held by Sh Yogendra Raj Uttam Raj Singhvi through entities being managed and controlled by him through his subordinates and associates. The *benami* properties were subsequently transferred to the beneficial owners through their bank accounts. By way of entering into the said *benami* transactions, the subject properties, being the *benami* properties representing the *proceeds* have been held by the *benamidars* as conduits for the future benefits of the beneficial owner. Thus, he held that these transactions are found to be squarely covered by the statutory definition of the term '*benami* transaction' accorded under section 2(9)(A) of the Act.

Discussions and Findings:

4. I have carefully gone through the Reference of the Initiating Officer, the case records, the written submissions of the Defendants and Rejoinders filed by the Initiating Officer. I have also considered the arguments raised during the hearings by the counsels of the Defendants and the Initiating Officer.

4.1. The undisputed facts in this case are that the Special Investigation Branch of Commercial Taxes Department, Uttar Pradesh from 19/07/2019 to 25/07/2019 conducted a search and seizure operation on various premises of K Pan Fragrance P Ltd., a franchisee of the KP Group. Based on various clinching evidence found from the searched premises it was reported to the DDIT (Inv), Unit 7(3), Delhi that Kamla Pasand Group engaged in manufacturing various tobacco products using benami entities and dummy directors fully controlled by it. It was reported that the recovery of the corresponding taxes is to be affected from M/s Kamla Kant and Co. LLP and its franchisee jointly and severally, in view of the Benami nature of transaction. Based on the search and seizure action, an appraisal was prepared by the Investigation Wing, Unit 7(3) Delhi and the present case was referred to the Assessing Officer, Central Circle-27, Delhi. Based on his findings the Assessing Officer vide order u/s-153A of the Income-Tax Act,1961 dated 30.09.2021, concluded that the declaration made by the beneficial owner under the Income Declaration Scheme, 2016 was not valid declaration, consequently made a total addition of Rs. 3,26,51,63,420/- in the case of Sh. Anand Kumar Chaurasiya for AY 2017-18 to 2020-21 and of Rs. 3,23,30,50,550/- in the case of Sh. Shashikant Chaurasiya for AY 2018-19 to 2020-21 treating the consideration received in lieu of the sale of the bogus diamond as unexplained cash credit u/s-68 of the Income Tax Act, 1961.

4.2. Consequently, it was observed by the Initiating Officer that the beneficial owner, Shri Navneet Chaurasia, has routed his unaccounted money in the garb of sales of the alleged diamond through Benamidar, Sh. Yogendra Raj Singhvi, and entities being managed and controlled by him. The rough diamond of 11499.79 carat, worth Rs. 48,85,60,150/- in IDS 2016. These rough diamonds were allegedly processed and 2517.50 carat of cut-and-polished diamonds were extracted and sold during the AYs 2017-18 to 2021-22 for Rs.3,64,91,66,320/- thereby incurring a windfall gain at the rate of 647 % (approximately). It is also seen from the records that during the search conducted on Kamla Pasand Group, the assessment proceeding before the Central AO and during the benami proceeding, none of the parties integral to the transaction of alleged sale of diamonds have furnished any cogent documentary evidence that could reasonably establish that either rough diamond was processed and that cut and polished diamonds exists. Thus it was found by the Initiating Officer that it is a proven case of introducing unaccounted income in the garb of long-term gains using Benamidar as a conduit, in the garb of sale of diamonds claimed to have been disclosed in the Income Declaration Scheme-2016 which is found bogus by the Assessing Officer under the course of instant proceedings.

4.3. This is a case where the Initiating Officer has found that the benami transaction of declaring Long Term Capital Gain on consideration received for the sale of the alleged cut-and polished diamond was conceived to convert the unaccounted money of the beneficial owner into accounted money by layering through multiple dubious entities. For giving the sham transaction a genuine appearance, the beneficial owner has devised an arrangement in due connivance with the Benamidar, Sh. Yogendra Raj Singhvi who was managing and controlling the entities arrayed as benamidars in the case. As per the arrangement, the unaccounted money of the beneficial owner was routed through the Benamidar entities as a consideration for the sale of the alleged diamonds. It is a matter of interest that different beneficial owners in the connected group case, though belong to the same family, have given contradictory versions of sources of acquisition of the diamonds. The source of the rough diamond remains a mystery which was never established by any of the beneficial owners. The beneficial owner has made huge investment in different avenues using the consideration and has amassed from the alleged sale of the cut-and-polished diamond. This is the case of the Initiating Officer in brief.

5. The defendants have raised a number of objections in their replies as reiterated during the hearing. The D1, D-2 to D10 and D-11 have given separate replies and all of them are considered. Most of the contentions are in general nature and common for all. Each point raised by the different defendants are discussed collectively in the succeeding paragraphs.

5.1. The defendants have questioned the initiation of proceedings and the reasons to believe to issue the show cause notice. I agree with the stand of the Initiating Officer that he had reasons to believe to initiate the proceedings in this case such as several incriminating evidences, including physical documents as well as digital data were found and seized. The transaction considered as benami wherein the property held by the Benamidar using several other Benamidars as conduits. The long-term capital gains are treated as unexplained credit of the beneficial owner, having been introduced using Benamidar as a conduit. The IDS 2016 was a colourable device to give effect to the scheme of the assessee to legalize its ill-gotten money. As per the scheme the Beneficial Owner created a non-existing asset in the form of raw diamonds in his books of accounts so that the same can be sold at the exorbitantly higher prices in future and he can infuse his unaccounted income through this channel. Notice U/s 24(1) of the Prohibition of Benami Property Transactions Act, 1988 was issued “after recording reasons in writing”. The IO has conducted the impugned proceedings under the PBPT Act based on various facts and findings. Further, it was found during the search and seizure operation that Kamla Pasand Group is engaged in large tax evasion resorting to carrying out its business operation through benami entities and dummy directors fully controlled by it. Several pieces of incriminating evidence, including physical documents and digital data, were also discovered, and seized. The entire impugned proceedings right from the issuance of the alleged Show Cause Notice is based on the material facts which have already been placed on the record.

5.2. Another contention is that the Initiating Officer has wrongly relied upon the order of the Adjudicating Authority in the case of **Ultimate Creation**. It is seen from the provisional attachment order that the Initiating Officer has mentioned that in similar cases of introducing unaccounted income by M/s Ultimate Creations in the disguise of bogus sale of gold in its books through bank transfers using several *benamidars* as purchasers, the Provisional Attachment Orders (PAOs) made by the Initiating Officer u/s 24(4) of the Act, treating the entire receipts as *benami* property, have duly been confirmed by the Adjudicating Authority u/s 26(3) of the Act in Reference Numbers 14/2017 to 23/2017 and 1127/2018 and 1128/2018. All these transactions are categorically found to be *benami* transactions within the meaning of section 2(9)(A) of the Act by the Adjudicating Authority. It was categorically held in these orders that the credits in beneficial owner’s bank accounts in the disguise of bogus sale as are the *benami* property and its consideration is the amount provided by the beneficial owner to the *benamidars*, representing these bank credits.

5.2.1. The Defendants have distinguished the order of Adjudicating Authority in the case of **Ultimate Creation** as relied upon by the IO, primarily on the ground that in the said

case, the Benamidar had made a statement before the IT Authorities, as well as, before the Benami Property unit that these transactions were bogus and the amounts were given by the Beneficial Owner to be deposited on their behalf and remitted back to Beneficial Owner; whereas in this case, there is no such admission. I find that in present case, during search and seizure operations, Shri Yogendra Raj Sanghvi (D-1) has admitted that he rendered his services against receiving 0.18% commission in routing unaccounted cash of the Group through various dummy entities controlled by him. Later, he has retracted his statement by filing a retraction affidavit, which is found to be non-genuine. In any case, the Income Tax Authorities have already upheld the sale transactions to be bogus in nature, and there is no reason to divert from their findings in the matter. I do not find any infirmity with the reliance placed by the Initiating Officer in a decided case with similar set of facts.

5.3. As regards the averment that the benamidars are genuine business entities, it must be appreciated that the Initiating Officer has sufficiently narrated that these are shell entities making book entries without indulging into the real business. The accommodation entries are managed by the entry provider defendant No 1 and the bogus transactions are entered as a part of the modus operandi and hence this stand cannot be accepted. In this connection their averment that the officers of the department found their offices locked because they might have visited their premises during night time is mere argument for the sake of argument and does not deserve any comment.

5.4. As regards the contention that the money trail was not established and properties were not correctly identified by the Initiating Officer while issuing the Show Cause Notice under section 24(1), I must agree with the Initiating Officer that money trail in the alleged Benami Property assets was identified by the I.O. and was based on circumstantial evidence and test of human probability. It was found that none of the benamidars was carrying out any business activities at the address as mentioned in the purchase confirmation order/job work/ inspection memo submitted by the beneficiary owner during the preliminary enquiry conducted u/s-23 of the PBPT Act, 1988. The funds routed through the said entities were pumped into the books of accounts of the beneficial owner under the guise of capital gain which was then parked in the various properties as per balance sheet. The Initiating Officer has taken the possible efforts to initiate the proceedings at the earliest to protect the national interest and to conclude it within the statutory time frame. The properties reflected in the balance sheet are identifiable and further action can be taken in due course.

5.5. They have further contented that the Hon'ble Supreme Court of India in A2 Z Infraservices Ltd. V/s Quippo Infrastructure Ltd. discussed the question of evidentiary

value of WhatsApp chats/conversations and observed that “What is the evidential *value of WhatsApp messages these days? Anything can be created and deleted on social media these days. We don't attach any value to the WhatsApp messages.*”. In this connection it must be appreciated that the evidentiary value of electronic documents are dealt with under the various provisions of the Information Technology Act and the acceptability or otherwise will largely depend on the nature of the case and the facts therein. In the present case by the Initiating Officer, the case is not solely based on any whatsapp chat, but such evidences are used as supplementary evidences only and as such the citation given above cannot be relied upon in the present case.

5.6. Another allegation is that the defendants were denied natural justice. The Initiating officer has stated that the said allegations are false and denied that no reasonable opportunity was given to the Petitioner to rebut the allegations and is against the Principles of Natural Justice. The impugned order was passed within the purview of Principle of Natural Justice. The Rule simply implies that a person must be given an opportunity to defend himself/herself and the principle is a ‘sine qua non’ of every civilized society. The proceedings have been conducted after following the due process of law and after conducting a proper and fair investigation/ inquiry. The Beneficial owner in the present case has been given several opportunities by the Initiating Officer. The benamidars were also served notice, opportunity was not denied to them also. The D-1 to D-10 have questioned the validity of Notices issued to them by the IO. They have pointed out that no notice u/s 24(1) of PBPT Act was issued by the IO to them holding as Benamidar, which is an apparent violation of law. According to them, forwarding of photocopy of notice u/s 24(1) issued to Beneficial Owner cannot be treated as issue of notice u/s 24(1) to the Benamidar. I find that the copy of SCN dated 28.02.2022 issued to Beneficial Owner (D-11) was simultaneously sent to the D-1 as Benamidar by Speed Post and delivered to him shortly thereafter in normal course. The D-2 to D-10 were however inducted as Benamidar at a later stage after conducting independent enquiries of their role in the execution of the benami transactions with the beneficial owners; and accordingly, a SCN dated 19.05.2022 was sent to them, especially asking as to why they should not be treated as benamidar. In response, all of them (i.e. D-2 to D-10) gave identical replies, *inter-alia* questioning as to how they are being treated as Benamidar without issuance of notice u/s 24(1) in their name. Since the SCNs were issued and they have responded to it, there is no scope for further allegations like non service etc.

5.7. There is another averment that the transactions involved are not covered by the benami Act. I agree with the Initiating Officer that the entire transaction falls within the ambit of Benami Property. The Beneficial Owner is involved in the benami transactions for acquiring the benami properties. The IO was already in possession of the appraisal

report received from the Income Tax Department that the Beneficial Owner has prima facie entered into a Benami Transaction using Benamidar as conduits. The IO has correctly initiated the proceeding under the PBPT Act on the basis of further investigation based on reason to believe and material in possession. He has already conducted the investigation within the well settled procedure under the PBPT Act and passed the order within the jurisdiction considering the Principle of Natural justice.

5.7.1. The Benamidars have contended that the IO simply proceeded on borrowed satisfaction of the report of Income Tax Investigation Wing and Commercial Taxes Department. I find that apart from the Income-tax department's finding that such transactions in diamonds were non-genuine, the IO on his part has also provided sufficient opportunity to the Defendants to prove the genuineness of their alleged transactions, but there appears to be no concrete documentary evidences submitted by them. It appears that the IO has performed his duties well in making various enquiries which were within his control, and in bringing his detailed findings in his order. Having held the transactions of sale of cut-and-polished diamonds by Beneficial Owner (D-11) to the Benamidar entities (D-2 to D-10) controlled by Shri Yogendra Raj Singhvi (D-1) to be bogus; now it is required to be examined whether elements of Benami Transaction are present in the given set of transactions. The IO has invoked the provisions of Section 2(9)(A) of the PBPT Act in present case. I note that for applicability of Section 2(9)(A) of PBPT Act, two conditions are required to be simultaneously satisfied, i.e.

- (a) *where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and*
- (b) *the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration.*

5.7.2. In present case, since the Sales of cut-and-polished Diamonds made by Shri Navneet Chaurasia to Shri Yogendra Raj Sanghvi & his entities are held to be bogus; as a natural corollary, there would be no supply of goods, and hence no genuine consideration would be paid therefore, i.e. cash payment must have made against the receipt of consideration through banking mode. Apply the conditions of Section 2(9)(A) of PBPT Act to such transaction,-

- The "property" is the bank balances of D-1 to D-10 (in converted form from the cash paid to them by D-11), soon before re-transfer to D-11.
- Such property is transferred to them by D-11, and held by them till it is retransferred to D-11.
- Consideration for such property (i.e. bank balances of D-2 to D-10) has been provided by D-11 (i.e. in the form of cash).

- The property (i.e. bank balance of D-2 to D-10) was held for the immediate direct benefit of D-11, as supposed to be retransferred immediately to D-11.

5.7.3. Hence, the above transaction of cash payment against bogus sale fits into the definition of Section 2(9)(A), subject to that in present case, the property is presently held not by D-2 to D-10 (Benamidars) but by D-11 (Beneficial Owner). Here, the moot question is whether it is compulsory that the property should be still held by Benamidars only, or whether it can be held as benami even after being retransferred to Beneficial Owner. In this regard, the Section 6 of PBPT Act states that, -

Section 6 : Prohibition on re-transfer of property by benamidar

6. (1) No person, being a benamidar shall re-transfer the benami property held by him to the beneficial owner or any other person acting on his behalf.

(2) Where any property is re-transferred in contravention of the provisions of sub-section (1), the transaction of such property shall be deemed to be null and void.

(3) The provisions of sub-sections (1) and (2) shall not apply to a transfer made in accordance with the provisions of section 190 of the Finance Act, 2016."

5.7.4. A reference to above provisions make it clear that the law prohibits the benamidar to re-transfer the benami property held by him to beneficial owner; and even if he re-transfers the property, such transaction shall be deemed to be null and void. The only exception to this is a transfer made in accordance with the provisions of section 190 of the Finance Act, 2016, i.e. where the beneficial owner has made a declaration of the benami property under the Income Declaration Scheme, 2016. In present case, the benami transaction is the payment of Cash against Bogus Sale of cut-and-polished Diamonds to D-1 to D-10, which has taken place post the Income Declaration Scheme, 2016 was over; hence the above exception is not applicable. In nutshell, it doesn't make any difference that the Benamidars (D-1 to D-10) have already re-transferred the property to Beneficial Owner (D-11) in present case, and hence the transaction of payment of cash to D-1 to D-10 can still be held to be a benami transaction. Such benami property would be liable to be attached, as presently lying in hands of D-11. Hence, the action of IO in invoking the provisions of Section 2(9)(A) of PBPT Act seems justifiable.

5.7.5. I find that the Benamidars (D-1 to D-10) are not denying the fact that during proceedings before the IO, they were asked to show cause as to why they should not be treated as Benamidar. Such notices were duly delivered at their respective addresses, and they have also responded to the same in whatsoever manner. In my opinion, this is sufficient compliance to the requirement of Section 24 and/ or Section 25 of the PBPT

Act. The requirement of Section 24 to “*issue a notice to the person to show cause*” does not specify any particular format of the notice, and it is enough that the intended message is communicated to the concerned party, which fact is not disputed in present case. Further, the Section 25 specifies the manner of service of notice, i.e. to whom it should be addressed in case of individual/ company/ any other person etc., which has nothing to do with the contents of the notice. Hence, in present case, the lawful proceedings cannot be held to be invalid on mere technicalities as pointed out by D-1 to D-10.

5.8. As regards the contention of the defendants that the statement relied upon by the Initiating Officer cannot be relied upon as the same were retracted subsequently. In this connection it must be appreciated that while a statement given subject to force and the contents are contrary to facts on record and against primary evidences, then the retraction of such statements make sense and the law has been provided for such retraction in the interest of justice. But if the retraction is made as a result of afterthought and with a malafide intention to fabricate the given case, such retraction need not be considered by the authorities. Further, in the given case it has been substantiated by the Initiating Officer that the retraction affidavit made by the deponent is a forged document and is planted to nullify the effect of the statements recorded on oath by the Dy. Director of Income Tax (Inv.). The retraction statement made by way of an affidavit was neither verified nor notarized by the Notary Public. Further, making an incorrect or false affidavit is criminal offence. The entire proceeding under PBPT Act is based on proper investigation and evidence.

5.9. Though claimed by the defendants, the present case is not covered by the decision of Hon’ble Supreme Court in the case of **Union of India vs. Ganpati Dealcom Pvt. Ltd. (2022) 141 taxmann.com 389 (SC)**. Here, it is case where the beneficial owners misutilised the IDS Scheme wherein they declared the investment in huge quantity of rough diamonds prior to the amendment of the PBPT Act. The declaration of rough diamonds was only part of the conspiracy as there was actually no rough diamonds. No actual ownership of the said rough diamonds was in existence. It is only, in furtherance of their conspiracy to declared the rough diamonds in the eyes of revenue authorities, created bogus sale evidence to show that these alleged rough diamonds were sold at exorbitantly high price within a period of FY 2016-17 to 20-21. The actual benami transaction was not the false declaration of rough diamonds but it is the purported sale of the said rough diamonds through benamidars to bring the ill gotten/not declared huge money in the garb of sale of rough diamonds which was utilised to procure other assets and accordingly been attached as proceeds of benami property. The defendants, relying upon the ruling of Hon’ble Supreme Court in the said case has contended that the provisions of PBPT Act,

1988, as amended by the Benami Transactions (Prohibition) Amendment Act, 2016 are not applicable in present case since the alleged benami transaction originated at the onset of IDS 2016 from the Declaration, with respect to acquisition/ possession of diamonds. I do not find merit in said contention since the holding of alleged rough diamonds before the above amendment act is *per se* not considered to be benami transaction; rather the transaction of cash payment against subsequent bogus sale of cut-and-polished diamonds is hereby considered to be a benami transaction which event has occurred after 01.11.2016, being the date on which above amendment act came into existence. Therefore, the benefit of Hon'ble Supreme Court judgment does not extend to the defendants herein.

5.10 The central issue in the case is declaration of non existing asset under disclosure scheme, with a malafide intention of claiming huge fake and sham capital gain at a later date. Though it has been claimed that the BOs were holding rough diamonds amounting to substantial quantity, there was no evidence to prove the authenticity of the claim. While it is their claim that they had disclosed it to the IT in the declaration scheme, the Initiating Officer has correctly defended that the protection under the scheme is not applicable for illegal funds and fake declarations. In this case the Assessing Officer has not accepted any declared capital gain and added the same to the regular income of the respective year as it was a fake declaration. In addition it is admitted during the hearing that the entities under KP group were searched on previous occasions also, mainly during 2003 and 2008. But no such holding of the claimed diamonds or any incriminating document indicating existence of such diamond were found from any entity or individual. There is no record of purchase of the said diamonds at any time. In case the diamonds were received through inheritance, there is no record available to show the ratio and mode of partition between the present holders. In the case of the properties valued at multi crores of rupees, in the absence of a will, it is not likely that the same will be distributed in different quantities without executing a proper deed of settlement. Thus as far as this point remains as settled in favour of the Initiating Officer it is clear that the diamonds were never in existence in the ownership or possession of the beneficial owner; there was no actual sale of diamond; the purported sale entries are mere accommodation entries made with the help of the Defendant-1 through D2 to D-10; the purported sale proceeds thus received was pumped into the books which in turn invested in various properties. The main motive behind this modus operandi was to launder the huge funds accumulated through tax evasion in the business of tobacco products which carry heavy tax.

5.11. In addition, the Initiating Officer has rightly observed that the claimed purchasers of the cut and finished diamonds were of no real means and genuine business, but they were mere accommodation entry providers who have in fact transferred the BO's own

funds to them through their accounts. The vast variation in price and claimed appreciation is not acceptable to any prudent mind. Further Yogendra Raj Singhvi has admitted in his statement that he is an accommodation entry provider and all the alleged purchasers of the diamond are in fact the shell companies and entities being controlled by him.

5.12. It is a fact that there are some alleged infirmities with the proceedings by the Initiating Officer. But the said infirmities are not sufficient for setting aside the proceedings as a whole. The adjudication under section 26 is a continuation of the proceedings initiated by the Initiating Officer and the AA can rectify the lapses and proceed towards a logical conclusion of the proceedings. The fact of non inclusion of the names of the benamidars in the notice is not significant as far as the notice has subsequently served to all of them. The facts whether it was originally addressed to the BDs or not is not of much importance when the facts are examined in totality. The BDs were given opportunity before the IO and before the AA and there is no denial of natural justice to any of them.

5.13. Similarly as regards the lacunae in identification of the properties also, it must be noticed that the proceedings under section 26 is in continuation of the proceedings before the Initiating Officer. The section 26(5) gives express authority to the Adjudicating Authority to add or delete any property and there is no harm in mentioning the correct description of the properties in the order u/s 26 which could not be done due to the time constraint before the present Authority. Assets should be correctly listed and proceeded at the time of further action under section 27.

5.14. Thus the proceedings cannot be given a let go merely on technical grounds. This has to be handled with the purpose of enactment and the gravity of the offence against the national economy in mind. Special enactments are passed by the Parliament with specific objectives and the ultimate aim in public interest is to attain these objectives. The Parliament has amended the PBPT 1988 in 2016 with an intention to deprive the holders of the unaccounted and black money through the benamidars by entering into benami transactions, from enjoying the benefit reaped out of the illegal activities and thereby hindering them further in indulging into such activities which have severe impact on the national economy etc. Under such situation, considering the intention of the legislature, even if the proceedings were initiated and pursued in good faith with a few technical lacunae with the limited resources and manpower of the authorities who is simultaneously handling different cases under different enactments, the authorities are sometimes compelled to take necessary action to initiate proceedings at the earliest possible time with the available information. Further, considering the involvement of the Beneficial Owner and related entities in the anti national activity of tax evasion and money

laundering by huge production and marketing of tobacco products without paying the taxes which has far reaching impact on the national economy and their continuous involvement since many years as evident from records, in such activities it is necessary that the fruits of such activities are taken away at the earliest possible time.

5.15. On the other hand, during the adjudication process the beneficial owner was very specifically asked whether he or his ancestors had filed their wealth tax return at any point of time wherein the possession and ownership of the high value diamonds are shown. Further, they were asked to furnish some evidences which throws light on their possession, storage, safe custody, security, transport, arrangements for cutting and polishing etc. But in spite of granting time till final hearing no such evidence prior to the IDS was produced to show the existence of the said valuables before making the declaration/disclosure under the IDS. Here what is pertinent to note is that the said valuables were declared or appeared on any document for the first time when it was declared under the IDS. It was specifically asked why he chose to declare the said asset under IDS at a higher tax rate when he was in a position to declare the same in the wealth tax on inheritance at mere 1% tax. However no reply was forthcoming. It shows that the asset declared under IDS-2016 was part of a larger conspiracy to bring into books the bogus entry of Rough Diamonds, which he thought would not be questionable; and based on it, a much bigger chunk of black money could be brought into books just by paying 20% capital gain tax thereon. The purpose of introducing the IDS by the government was to bring the undisclosed income and wealth to the tax regime. There was no intention of the parliament to facilitate the fake declaration and money laundering in the guise of declaration. The modus operandi of the beneficial owner by declaring non existing valuables for the sake of claiming capital gains at a later stage and thus to pump the evaded tax into his own account in disguise was never the intention of the legislation while launching the IDS.

5.16. Further, during the hearing the beneficial owner was asked how would he justify the astronomical gains of 647% on conversion from Rough Diamonds to Cut & Polished Diamonds, and sale thereof. He was also asked to give examples of similar gains in other real life transactions. It is found that the entities which had purportedly done job work for processing of Rough Diamonds into Cut & Polished diamonds, have their turnover attributed to beneficial owners only and are not functional. The credentials of the processing persons and the paying capacity of the purported buyers were also requisitioned to be clarified during the hearing. But he (advocate) was unable to furnish any satisfactory reply to the questions and in spite of granting time till 23/06/2023 no explanation was filed. Thus it is sufficient to conclude that the transactions are not genuine, and are entered into merely to convert the black money into white. It is a fact

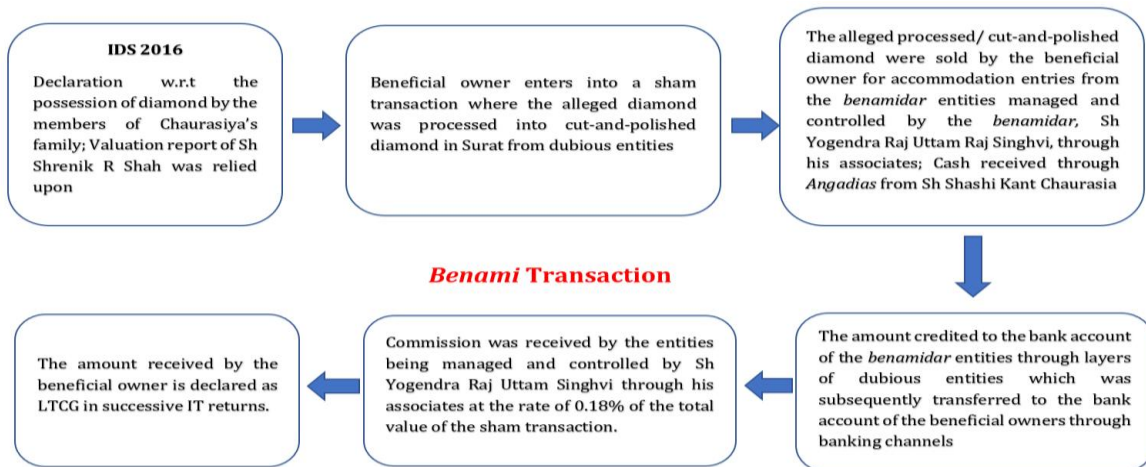
that the Pan Masala attracts indirect taxes at very high rates. This is the real reason for generation of large-scale black money in the business.

5.17. Hence all the legal averments raised by the defendants stand settled and now we need to examine the merits of the case in detail. Based on action of the Commercial Tax Department, UP, the Investigation Unit (IT) 7(3), Delhi carried out search and seizure operation u/s 132 of the Income-tax Act, 1961 on 15.01.2020 on various premises of Kamla Pasand Group and it was emerged that the Group had introduced huge amount in its individual member's hands in different Assessment Years in the garb of bogus sale of diamonds through one Yogendra Raj Singhvi who is an entry provider and a small diamond trader based at Mumbai and Surat. During search and seizure operation, Shri Yogendra Raj Singhvi had admitted that he rendered his services of providing bogus entries of sale of diamonds to the group only as a conduit against receiving 0.18% commission in routing unaccounted cash of the Group through various dummy entities controlled by him. Based on the search and seizure action, the present case was referred to the Assessing Officer, Central Circle-27, Delhi who vide his order dated 30.09.2021 passed u/s 153A of the Income-tax Act, 1961 concluded that the declaration made by the beneficial owner under the Income Declaration Scheme, 2016 was not a valid declaration and consequently made a total addition of Rs. 3,26,51,63,420/- in the case of Shri Anand Kumar Chaurasia for AYs 2017-18 to AY 2020-21 and of Rs. 3,23,30,50,550/- in the case of Shri Shashikant Chaurasia for the AYs 2018-19 to AY 2020-21 treating the consideration received in lieu of the sale of the bogus diamond as unexplained cash credit u/s 68 of the Income-tax Act, 1961. This unearthed the benami activities of the family members in an organised syndicate with a malafide intention of pumping unaccounted black money into the books through benami transactions.

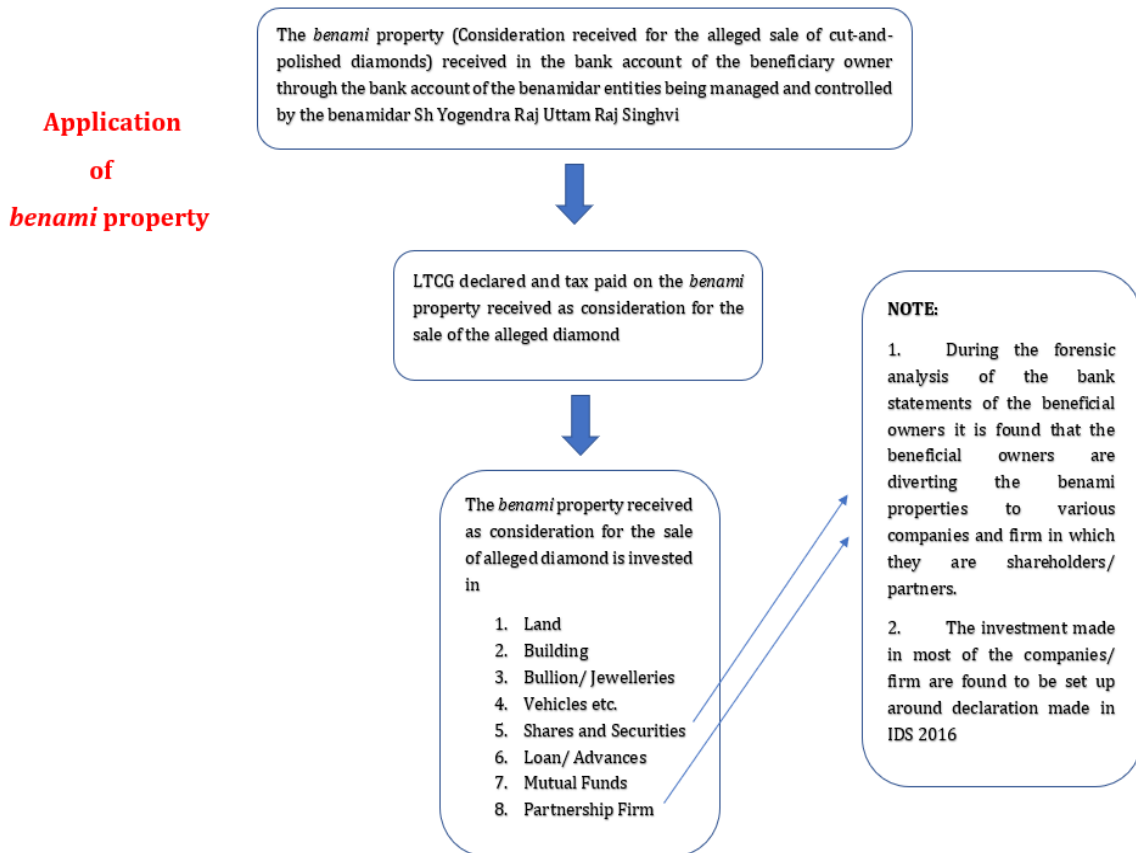
5.18. Based upon the above facts, the Initiating Officer prima-facie found the transactions entered into by the alleged benamidars and beneficial owner as Benami transactions vide the provisions of PBPT Act, 1988. Subsequently, after taking approval u/s 23 of the PBPT Act, further enquiries were conducted by the IO and on the basis of enquiries and reasons, the IO issued show cause notices on 28.02.2022 & 19.05.2022 within the specified time to the Benamidars, under section 24(1) and to the Beneficial Owner u/s 24(2) of the Act to show cause as to why the said properties be not treated as Benami properties and appropriate action be taken under the relevant provisions of the PBPT Act. In response to the show cause notices, replies were filed by the defendants before the IO, who after considering the replies filed by the Benamidars and the Beneficial Owner concluded that the beneficial owner, Shri Navneet Chaurasia had routed his unaccounted monies in the garb of sales of the alleged diamond through benamidar, Shri Yogendra Raj Singhvi, and entities being managed and controlled by him. The

beneficial owner had declared rough diamond of 11499.79 carat, worth Rs. 48,85,60,150/- in IDS 2016. These rough diamonds were allegedly processed and 2517.50 carat of cut-and-polished diamonds were extracted and sold during the AYs 2017-18 to 2021-22 for Rs.3,64,91,66,320/- thereby incurring a windfall gain at the rate of 647 % (approximately). Further, the IO stated that none of the parties involved in the transaction of alleged sale of diamonds (i.e. cutting and polishing as well as sale parties) furnished any cogent documentary evidence that could reasonably establish that either rough diamonds were processed and that cut-and-polished diamonds existed.

5.18.1 Further, the benami transactions as shown by the IO in the PAO are as under:



5.18.2. The IO has further graphically shown the utilization of the above benami property since its acquisition as under:-



5.18.3 As per Initiating Officer, the beneficial owner has made huge investment in different assets using the alleged sale consideration which the Beneficial Owner amassed from the alleged sale of the cut-and-polished diamonds. Further, during the independent investigation conducted by the IO, he found that the affidavit which was relied upon while filing retraction by the benamidar, Shri Yogendra Raj Singhvi before the DDIT, Unit 7(3), New Delhi was forged. It was also found during the proceedings that the declaration of the beneficial owner in the IDS 2016 w.r.t. the valuation of diamond was false. Field verification has further revealed that none of the benamidar entities is operational at the address as mentioned in the purchase confirmation order. It was also found that the entities which have allegedly done job work for processing the diamonds have their turnover attributed to the beneficial owners only and are not functional. In view of above facts, the IO concluded that the beneficial owner has routed his/ her unaccounted monies through Shri Yogendra Raj Singhvi and the benamidar entities and the transactions entered into by them are benami transactions which are covered u/s 2(9)(A) of the PBPT Act, 1988.

5.19. The Defendants, contradicting the above finding of the Initiating Officer, have filed reply in the case and the IO has filed his rejoinders to the replies of the Defendants, which are discussed in Para 3 of this Order.

5.20. Let's first examine the claim of Defendants about the nature of transactions between them. The D-1 claimed that there was no financial transaction between him and the Beneficial Owner (D-11). The D-2 to D-10 have claimed that there were no benami property transactions between them and the Beneficial Owner (D-11), as the transactions were in respect of purchase of diamonds by them from Beneficial Owner duly recorded in Books of Account, GST Returns, Bank Accounts, Income Tax Returns, Balance Sheet, etc. The Beneficial Owner has stated that he/ she declared rough diamonds in IDS, after due verification done by the Government certified Valuer, further got it cut and polished and later sold to various parties. On the other hand, the IO has stated that the Beneficial Owner rotated his/ her unaccounted funds through layering in the garb of consideration of alleged sale of the diamonds through the Benamidar entities; and that at no stage of the proceedings, either the Beneficial Owners or the Benamidars have proved the existence of the rough or cut-and-polished diamonds.

5.21. I find that the IO in Order u/s 24(4) has given his extensive findings on the existence of alleged rough diamonds declared in IDS-2016, conversion to cut-and-polished diamonds, and sale of cut-and-polished diamonds by eight Chaurasia family members, who are treated as beneficial owner in separate benami proceedings instituted against each of them. It is on records that the said Chaurasia family members have

declared huge long term capital gains offered to tax @ 20% on sale of cut-and-polished diamonds, thereby making windfall gains as tabulated below:

(Amount in Rs.)

Benami Case No.	Name of Chaurasia family member, treated as Beneficial Owner in respective benami case	Valuation of Rough Diamonds declared under IDS-2016	Sale of cut-and-polished diamonds	LTCG generated	%age of Windfall Gains
R-0187	Shashi Kant Chaurasia	49,42,79,680	358,95,00,731	309,52,21,051	626%
R-0188	Navneet Chaurasia	48,85,60,150	364,91,66,320	316,06,06,170	647%
R-0189	Vijay Anand Chaurasia	39,54,60,620	3,77,02,16,884	337,47,56,264	853%
R-0190	Ms. Vibha Arya Chaurasia	25,04,44,060	78,13,66,000	53,09,21,940	212%
R-0191	Mayank Chaurasia	39,56,38,036	4,17,50,22,240	377,93,84,204	955%
R-0192	Smt. Dipti Chaurasia	25,20,87,850	154,67,31,400	129,46,43,550	514%
R-0193	Anand Kumar Chaurasia	49,95,35,240	369,13,83,170	319,18,47,930	639%
R-0194	Rajiv Chaurasia	40,40,02,600	427,15,83,250	386,75,80,650	957%

5.22. The IO has contended that the rough/ cut-and-polished diamonds did not exist at all, and the sale transactions generating above windfall gains are bogus. The major evidences produced by IO in this regard are analysed hereunder:

- (i) The Chaurasia family members claims to have acquired the rough diamonds in inheritance. However, Shri Kamlakant Chaurasia (father of Shri Shashi Kant Chaurasia & Shri Navneet Chaurasia) in his statement recorded on 16.01.2020 during search & seizure operations stated that his father Shri Ram Nath Chaurasia did not pass on any valuable diamond or jewellery or gem stones to him, and he did not give any such diamonds to his sons.
- (ii) Shri Navneet Chaurasia, in his statement on oath stated that he did not have documentary evidence prior to declaration of gold and diamonds in IDS by him and family members. He further avoided to give any details, and most of them stated that it is in knowledge of Shri Shashi Kant Chaurasia.

- (iii) Hence, at one hand, the inheritance of rough diamonds is denied by the father himself; on the other hand, the son has also not provided any positive evidence to prove the existence of such rough diamonds, or the converted cut-and-polished diamonds. This inconsistency in their statements itself is glaring enough to suspect that there is something fishy in the claimed inheritance of rough diamonds. In addition, the IO has pointed out some other inconsistencies in their statements. When summons were issued by IO to the Chaurasia family members to confront them with the discrepancies in their statement and to provide an explanation, they didn't comply to such summons.
- (iv) After declaration of rough diamonds under IDS-2016, the Chaurasia family members claim to have converted the same into cut-and-polished diamonds through job work by some Surat based parties. The IO has brought on record that the income profile of such parties don't justify that they are well known in the business, rather they are merely small players. The IO found that there was multi-fold increase in their turnover in those AYs during which job work was allegedly done by the beneficial owner. The statement of one such job worker Shri Nikunj Kahar (Prop. Misty Enterprises, Surat) was also recorded on 14.05.2022 by the IO, wherein he stated that his father Late Shri Naveen Bhai Kahar used to see the work of this firm, and that to the best of his knowledge, his father was not having a machine for the processing of diamonds and that his father used to get work done by third parties. Further, field verification by Inspector posted by IO revealed that the financial condition of the family of Late Shri Naveen Bhai Kahar was not good, hence it is difficult to fathom as to why someone would handover rough diamonds worth crores to an entity which doesn't have any means to process the diamonds.
- (v) The purported cut-and-polished diamonds are then sold to various entities (benamidar), which are found to be paper entities having no operations. The Inspectors posted with the office of IO have visited the address of benamidar entities, who reported that none of the purchasers were found to do any active business at the address as disclosed in the purchase confirmation order submitted by the beneficial owner.
- (vi) The benamidar entities are controlled by Shri Yogendra Raj Singhvi (D-1), who is also made a benamidar. While Shri Yogendra Raj Singhvi, in his submissions during present proceedings, has denied his role in any benami transactions, the following evidences prove that all the benamidar entities

are controlled by a common person, i.e. Mr. Yogendra Raj Singhvi, who used these entities to make bogus purchases of cut-and-polished diamonds from Chaurasia family members:

- The purchase confirmation orders issued by various benamidar entities are exact replicas of each other when it comes to font, font size, spacing, the way the content of the purchase confirmation has been organized, the gaps in between the alphabets of PAN etc. It is strange that although the benamidar entities are allegedly different entities being managed by a different set of people, the way the purchase confirmations of allegedly different entities match, cannot be a mere coincidence.
- The rates charged by some of the benamidar entities to various Chaurasia family members are identical, which defies logic that the rates would have negotiated by these entities independent of each other.
- The Chaurasia family members sold cut-and-polished diamonds to benamidar entities at significantly higher rates than the diamonds shown to have purchased by these entities from other parties. The difference in rates is so glaring that as against the purchase rate from other parties being in the range of Rs. 30000 – 70000 per carat (which is a realistic rate), the purchases rate from Chaurasia family members is in range of Rs. 9 lakhs to 15 lakhs per carat in most of the cases, which is unimaginable.
- Shri Yogendra Raj Singhvi, in his statement recorded on 27.01.2020 during search and seizure operations, has categorically admitted that the 9 entities (D-2 to D-10) did not have genuine transactions of diamond purchase from Shashi Kant Chaurasia and family members. When asked to explain, he stated that all these transactions were in nature of “entry” for sale without actual purchase of diamonds. He stated that in lieu of money received from Shashi Kant Chaurasia & family members, he had issued bogus bills from his entities for diamond purchase and paid money in their bank accounts against such bills. He admitted that this work was done on commission basis for commission @ 0.18%. Further, he has explained modus operandi of the bogus sale transactions stating that, *“All these transactions are of bogus purchase of diamonds. None of our entities has ever purchased any diamond from Shashikant Chaurasia and any member of his family, and the sale entry is given to him on commission basis. First, we get the money in cash though*

angadiyas, which is used by us in cash purchase of diamonds. Later, the diamonds are sold to various parties, and on the basis of the instructions of Shashikant Chaurasia, the money is transferred to the account of his or his family members. [as translated from Hindi to English]” This statement of D-1 depicts that he controls such entities, to route bogus transactions through such entities on commission basis.

- The IO has further discussed the Retraction Affidavit of Shri Yogendra Raj Singhvi (D-1), as notarized on 04.02.2020 by Shri Vinod Kumar Dixit, Notary Public. The IO issued summon u/s 19 of PBPT Act dated 18.04.2022 to D-1 to appear in person and also to produce the original retraction affidavit claimed to have been attested and notarized by Shri Vinod Kumar Dixit and also to record his statement on oath w.r.t. his role in impugned benami transactions. In response, the D-1 objected to the proceedings instead of proving the genuineness of his claimed retraction affidavit by producing it in original for requisite verifications and also evaded recording of his statement on oath u/s 19 of the Act. The IO further preferred to verify the authenticity of alleged retraction affidavit by making independent enquiries from the notary public Shri Vinod Kumar Dixit, and found that no entry in the name of D-1 as on 04.02.2020 was found in the prescribed register maintained by him. The statement of Shri Vinod Kumar Dixit was also recorded on oath on 30.04.2022, wherein he stated that the signature on the affidavit was not his. Further, the signature on affidavit and the signature shown in his Advocate ID card and Certificate of Practice were found to be different. Hence, the IO concluded that the said affidavit was forged. In my opinion, the IO has taken reasonable steps to enquire about the genuineness of alleged retraction affidavit, and the evidences on record do not prove it to be genuine. In such case, the admission made by D-1 in his statement recorded on 27.01.2020 would prevail, wherein it is admitted that the alleged transactions of diamond purchase by his entities from Shashi Kant Chaurasia and family members, were merely entry in lieu of commission.
- The statement recorded of Shri Yogendra Raj Singhvi seems further corroborated with the statement recorded on 03.03.2020 of Shri Nemichand Kawadia, Director in D-6 & D-9 entities. In the said statement, he stated that the transactions with Shri Shashikant Chaurasia and his family members were non-genuine transactions, whereby

diamond sale entry is given to them in lieu of cash, for which commission has been charged, and further that the complete details of such transactions is known to Shri Yogendra Raj Singhvi. Further, he confirmed cash receipts through angadiyas, which was being confirmed with Shashi Kant Chaurasia, and at his instructions, the invoices were raised in his and his family member's name; and thereafter, as and when the money received in bank, it was paid to Shashi Kant Chaurasia & family members. Later, Shri Kawadia filed retraction letter on 15.02.2021, i.e. after almost one year from the date on which his statement was recorded on oath, which is considered to be an afterthought.

- The IO has reproduced some Whatsapp chat in his order, which reveals that Shri Yogendra Raj Singhvi controls various entities (benamidar) created in name of his employees and associates, which are used by him for layering and routing of funds for various parties.
- In my opinion, the aforesaid evidences brought on records by the IO proves that:
 - The rough diamonds declared by Chaurasia family members in IDS-2016 did not exist at all;
 - The transactions of the conversion of rough diamonds to cut-and-polished diamonds and their subsequent sale to benamidar entities at windfall gains, are bogus in nature; and
 - Shri Yogendra Raj Singhvi has been actively controlling the affairs of such benamidar entities.

5.23. The next question arises as to what could be the possible intention of the Chaurasia family members in making declaration of Rough Diamonds under IDS-2016, and whether the enquiries conducted in relation to the rough diamonds declared under it are tenable. The same is discussed below:

- (i) The IDS-2016 scheme provided an opportunity to citizens who had not paid full taxes in the past to come forward and declare the undisclosed income and pay tax, surcharge and penalty totaling in all to 45% of such undisclosed income declared.
- (ii) Indeed, the Chaurasia family members would have paid 45% on the value of rough diamonds declared, but the real intention seems not limited to

enjoying the remaining 55% of such declared value of rough diamonds. Their larger intention seems to be to use such declared rough diamonds as conduit to bring much bigger chunk of undisclosed income into books by showing its conversion to cut-and-polished diamonds and thereafter by generating bogus long term capital gains on sale of such cut-and-polished diamonds. If their intention would have been sacrosanct, they would have declared the whole undisclosed income under IDS – 2016, instead of resorting to the dubious transactions thereafter based on such declaration made. The ostensible purpose seems to save tax outgo, as the undisclosed income brought into books in form of long-term capital would attract tax @20% only, as against @45% if declared under IDS-2016. The tax evasion in such conspiracy is estimated to be as much as Rs. 500 crores [*i.e.* 2000 crores * (45% - 25%)] approx. combined for all Chaurasia family members.

- (iii) The source of generation of such large-scale black money in hands of Chaurasia family members is not beyond sight. They are engaged in manufacture and sale of Kamla Pasand Pan Masala/Gutkha, and also managing various entities and franchises who use their brand name, and it transpires from internet search that such items carry high rate of GST @28%, plus GST Compensation Cess of 135% or even more. It means that the indirect taxes on such items much exceeds even their manufacturing cost, which might be tempting them to sell goods out of books leading to generation of huge black money.
- (iv) The Beneficial Owner has referred to the sovereign commitments and assurances given by the Government of India in regard to IDS-2016 to the effect that no enquiry would be made by the Income-tax Department in respect of sources of undisclosed income or investment in moveable or immovable property declared in a valid declaration made in accordance with the provisions of the Scheme. A close look at the wording of above shows that the sovereign commitment/ assurance could be considered as to the source of undisclosed investment (in rough diamonds); whereas in present case, the very existence of such disclosed rough diamonds is questioned, which has its ramifications on the subsequent purported conversion to cut-and-polished diamonds and sale thereof at astronomical prices to generate windfall bogus long term capital gains. It was their duty to produce evidences to prove that the rough diamonds really existed, in which case the source thereof would not have been questionable. However, since the existence of such rough diamonds remains unproved, hence they cannot take

shelter of such sovereign guarantee/ assurance to prove the existence of a non-existent item.

- (v) The Assessing Officer, Central Circle-27, Delhi vide his order dated 30.09.2021 u/s 153A of the Income Tax Act, 1961 has already concluded that the declaration made by the beneficial owner under the Income Declaration Scheme, 2016 was not a valid declaration and consequently made additions in the case of Shri Anand Kumar Chaurasia and Shri Shashikant Chaurasia, treating the consideration received in lieu of the sale of the bogus diamonds as unexplained cash credit u/s 68 of the Income-Tax Act, 1961. I find the nature of transactions to be identical in the case of all family members of Chaurasia family. Without prejudice, once the declaration under IDS-2016 has been held to be invalid by an order by the Income-tax authorities, such declaration would no longer exist, and hence this authority under the powers granted under Section 26(3) of PBPT Act has to proceed on such basis only.

5.24. The Defendants have contended that there is no evidence of deposit of even one rupee in the bank account. I understand that an essential element of bogus sale transactions is that on paper, the sale bills are raised and payment is received through banking mode against such bills; however, there is no actual delivery of goods, and cash is paid to the buyer which is routed to his bank account for onward payment to the seller. Normally, such cash received by the buyer is not directly deposited in his bank account, but routed through other accommodation entry providers, so as to escape from the eyes of regulatory authorities. The D-1 has already explained the modus operandi of receipt of cash from Chaurasia family members through angadiyas, which was used in cash purchase of diamonds; and later, the diamonds are sold to various parties to get bank balance which was in-turn paid to Chaurasia family members.

5.25. The Defendants D-2 to D-10 have questioned that when the IO is alleging any transaction as 'Sham', how can that transaction be treated as part of the benami transaction, as the benami transaction is actual genuine transaction which result into creation of some property. They have further stated that only issue which the benami law deals is the question that whether consideration for some property held or transferred in name of any person has been paid by some other person and the owner of this property is only a name lender (benamidar). These contentions of said defendants are not valid. In this case, the benami transaction is not the Bogus Sale *per se* of cut-and-polished diamonds, but the Cash paid by D-11 against such bogus sales. Such cash is then converted to Bank balance by D-1 to D-10, and hence they become the owner of such

converted benami property (i.e. the bank balance), though they are only name lenders and not de-facto owners of such property.

5.26. The Beneficial Owner (D-11) has stated in his without prejudice submissions that the only inference that can be drawn from the allegations of the IO is that he has handed over cash for cheques of like amount, which is a simple exchange transaction, and does not fall within the definition of a benami transaction. This cannot be accepted, due to the provisions of Section 6 of PBPT Act as already discussed above, whereby the transaction of re-transfer of the property shall be deemed to be null and void for the purpose.

5.27. In present case, the total bogus sales during the period AY 2017-18 to 2021-22 is stated to be Rs. 3,58,95,00,731/-, against which equivalent amount (subject to payment of commission) would have paid in cash and payments received in banking mode, hence this is considered as the total value of benami property to be provisionally attached. Further, since the bank balances would have re-transferred to D-11 and utilized in acquiring various properties, then such properties in converted form are liable for attachment. The IO has so far identified benami properties available for attachment at Rs. 1,20,26,35,164/-, and accordingly to him, the balance shortfall of Rs. 2,38,68,65,567/- is yet to be identified and provisionally attached subsequently. The D-11 has objected that there cannot be any scenario wherein only traces of certain property could have been identified, more so when the subject benami property is claimed to be deposits in the bank account of the defendant. I, however, do not find any fault in above approach of the IO, since it may not be feasible to make one-to-one co-relation between the receipt in bank account of D-11 and the acquisition of specific properties against such receipts.

5.28. It is apparent from above discussion that:-

- (i) The sale of cut-and-polished diamonds by D-11 is bogus, who has paid cash to D-2 to D-10 entities as controlled by D-1, for getting payment by banking mode against such bogus sales.
- (ii) The transaction of cash payment made by D-11 is the “Benami Transaction”, within the meaning of Section 2(9)(A) of the PBPT Act.
- (iii) The bank balances of D-2 to D-10 entities (as converted from the cash received from D-11), is the “benami property”, within the meaning of Section 2(8) of PBPT Act.
- (iv) D-1 to D-10 are “benamidar” within the meaning of Section 2(10) of PBPT Act, and D-11 is the “beneficial owner” within the meaning of Section 2(12) of PBPT Act.

5.29. Thus it is ample clear that the money held by the beneficial owners were routed to the benamidars through the accommodation entry provider Shri Yogendra Raj

Uttamraj Singhvi and the benamidars have transferred the said amounts to the Beneficial Owner through banking channels under the pretext of sale of diamonds, in violation of section 6 of the PBPT Act. The Beneficial Owner injected the laundered black money into the mainstream under the guise of capital gains which in turn were invested in properties. Thus, it is clear that the conditions as laid down in Section 2(9)(A) of the PBPT Act' 1988 are clearly satisfied. For the sake of brevity, what constitutes Benami property and Benami transaction in the present case are specified below:

Particulars	Remarks
Benami Property	The funds arrived in the accounts of the Benamidar companies and entities. The said funds were then transferred to the BOs in violation of section 6 and further invested in properties, which are the converted form of benami properties.
Benami Transaction	Transaction of transferring the funds into the accounts of the BDs through accommodation entry providers.
Benamidar	The Companies and entities as per the impugned order
Beneficial Owner	As alleged in the orders u/s 24(4)
Abetter	The Defendant No 1 as facilitated accommodation entries and fund transfer

From the above it is also clear that the litmus test conditions as laid down by the Hon'ble Supreme Court in the case of *Smt P Leelavathi v. Shankarnarayana Rao [2014] 104 Tamann. Com 153/263 Taxman 105* for deciding whether a particular transaction is a Benami transaction are also satisfied:

Conditions	Remarks
The Source from which the purchase money has come	The consideration has come from the beneficial owners
The nature and possession of the property after the purchase	The benami property simplicitor viz. Money induced to BDs were with BDs, but for the future benefit of the BOs.
Motive, if any, for giving the transaction a benami color	Motive is routing of unaccounted money into the regular books of account and tax evasion
The position of the parties and the relationship, if any, between the claimant and the alleged benamidar	The benamidar companies were merely providing accommodation entries for routing the unaccounted money of the BOs back to the BOs under the guise of sale of diamond.
The custody of title deeds after the sale	The custody of the money lies with the beneficial owner after violation of section 6.
The conduct of the parties concerned in dealing with the property after the sale	The benami property viz money has been utilised by the beneficial owner for purchasing properties for their own use.

5.30 Now, before parting with the order it is necessary to examine the entire episode from another angle also. The Section 53 of the PBPT Act says:

[53. Penalty for benami transaction.--(1) Where any person enters into a benami transaction in order to defeat the provisions of any law or to avoid payment of statutory dues or to avoid payment to creditors, the beneficial owner, benamidar and any other person who abets or induces any person to enter into the benami transaction, shall be guilty of the offence of benami transaction.

(2) Whoever is found guilty of the offence of benami transaction referred to in sub-section (1) shall be punishable with rigorous imprisonment for a term which shall not be less than one year, but which may extend to seven years and shall also be liable to fine which may extend to twenty-five per cent. of the fair market value of the property.]

In the instant case, we are handling eight identical cases and each one is having a person from the Chaurasia family as a beneficial owner and managing the benami transaction through the D-1. It must be noted that the benami transactions running into crores of rupees under sham dealings were being managed by each member in the group as a common syndicate towards the furtherance of the common objective of laundering the money raised through tax evasion. Each one of them has helped each other and abetted in the transaction of one another and contributed to the crime in each case. Therefore, the beneficial owner in each case, the Defendant -1 in each case and the partners/Directors of the benamidar firms are also liable to be proceeded against under section 53 of the PBPT Act for abatement also in addition to the offence of being beneficial owners and benamidars.

6. Decision:

I, Surabhi Sharma, in view of the findings above and in exercise of the powers conferred on me by virtue of Section 7 read with Section 26 of the PBPT Act, 1988 (as amended), hereby confirm the Provisional Attachment Order u/s 24(4) of the PBPT Act dated 28.05.2022 of the Initiating Officer thereby holding the properties specified above to be Benami Properties with the Benamidars and Beneficial Owner as declared by the Initiating Officer, and further direct that the said properties shall not be transferred or otherwise dealt with, in any manner, except with the prior permission of the undersigned.

6.1 This is an appealable order and any party hereto if aggrieved by this order may appeal to the Appellate Tribunal, 4th Floor, Lok Nayak Bhavan, Khan Market, New Delhi-110 003, within 45 days of the date of receipt this Order.

SIGNED ON THIS 28th DAY OF JUNE, 2023.

Sd/-
(SURABHI SHARMA)
ADJUDICATING AUTHORITY,
PBPTA, NEW DELHI

Copy to:

1. The Initiating Officer/Deputy Commissioner of Income Tax (DCIT), (BPU-1 New Delhi), Room No. 225, 2nd Floor, C-Block, SPM Civic Centre, New Delhi-110002.
2. Shri Yogendra Raj Uttamraj Singhvi, Address: 103 Devsagar Building, Dalagiya Street, Mahidharpura, Surat, Gujarat-395003.
3. Bhairav Gems Pvt. Ltd., Address: B/246, 2nd Floor, Diamond Village-B, H. No. 6/1913, 1952 To 1954, Jadakhadi Dalgiya Sehri Mahindharpure, Surat, Gujarat-395003.
4. Garima Exports, Address: MB-11, 2nd Floor, Floxchambers, MP Marg, Opera House, Mumbai-400004.
5. Gurudev Corporation, Address: B/246, 2nd Floor, Diamond Village-B, DalgiyaSehriMahindharpure, Surat, Gujarat.
6. Yogi Diam, Address: 12, Shakti Chambers, Raghunathpura, Main Road Surat, Gujarat-395003.
7. Khushboo Diamonds Pvt. Ltd., Address: 6/1946-B, Off-103,1st Floor, Dalagiya Street, Mahidharpura, Surat, Gujarat-395003.
8. Manmohan Exports Pvt. Ltd., Address: 219, World Diamond Center, Hathfaliya, Mahidharpura, Surat, Gujarat-395003.
9. Chintamani Exports, Address: 15 UGF Diamond World Tower-B, Behind Princess Plaza, Varcha Road, Surat, Gujarat-395006.
10. Shrenik Diamond Pvt. Ltd., Address: 15 UGF Diamond World Tower-B, Behind Princess Plaza, Varcha Road, Surat, Gujarat-395006.
11. Uttam Gems Pvt. Ltd., Address:15 UGF Diamond World Tower-B, Behind Princess Plaza, Varcha Road, Surat, Gujarat-395006.
12. Shri Navneet Chaurasia, Address: 575 First Floor, Double Storey Flats, New Rajinder Nagar, New Delhi 110060.

(SURABHI SHARMA)
ADJUDICATING AUTHORITY,
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