

## **APPELLATE TRIBUNAL UNDER SAFEMA AT NEW DELHI**

MP-PBPT-274/DLI/2024 MP-PBPT-272/DLI/2024 FPA-PBPT-81/DLI/2024 Anand Kumar Chaurasia	...	Appellant
MP-PBPT-277/DLI/2024 MP-PBPT-275/DLI/2024 FPA-PBPT-82/DLI/2024 Shashi Kant Chaurasia	...	Appellant
MP-PBPT-280/DLI/2024 MP-PBPT-278/DLI/2024 FPA-PBPT-83/DLI/2024 Dipti Chaurasia	...	Appellant
MP-PBPT-283/DLI/2024 MP-PBPT-281/DLI/2024 FPA-PBPT-84/DLI/2024 Vijay Anand Chaurasia	...	Appellant
MP-PBPT-286/DLI/2024 MP-PBPT-284/DLI/2024 FPA-PBPT-85/DLI/2024 Rajiv Chaurasia	...	Appellant
MP-PBPT-289/DLI/2024 MP-PBPT-287/DLI/2024 FPA-PBPT-86/DLI/2024 Vibha Arya Chaurasia	...	Appellant
MP-PBPT-292/DLI/2024 MP-PBPT-290/DLI/2024 FPA-PBPT-87/DLI/2024 Mayank Chaurasia	...	Appellant
MP-PBPT-310/DLI/2024 MP-PBPT-308/DLI/2024 FPA-PBPT-94/DLI/2024 Navneet Chaurasia	...	Appellant
MP-PBPT-312/DLI/2024 FPA-PBPT-95/DLI/2024 Shri Yogendra Raj Uttamraj Singhvi	...	Appellant
MP-PBPT-314/DLI/2024 FPA-PBPT-96/DLI/2024 ShriYogendraRajUttamrajSinghvi	...	Appellant
MP-PBPT-316/DLI/2024 FPA-PBPT-97/DLI/2024 ShriYogendraRajUttamrajSinghvi	...	Appellant

MP-PBPT-318/DLI/2024 FPA-PBPT-98/DLI/2024 ShriYogendraRajUttamrajSinghvi	...	Appellant
MP-PBPT-320/DLI/2024 FPA-PBPT-99/DLI/2024 ShriYogendraRajUttamrajSinghvi	...	Appellant
MP-PBPT-322/DLI/2024 FPA-PBPT-100/DLI/2024 ShriYogendraRajUttamrajSinghvi	...	Appellant
MP-PBPT-324/DLI/2024 FPA-PBPT-101/DLI/2024 ShriYogendraRajUttamrajSinghvi	...	Appellant
MP-PBPT-326/DLI/2024 FPA-PBPT-102/DLI/2024 ShriYogendraRajUttamrajSinghvi	...	Appellant
MP-PBPT-358/DLI/2024 FPA-PBPT-117/DLI/2024 YogiDiam	...	Appellant
MP-PBPT-360/DLI/2024 FPA-PBPT-118/DLI/2024 YogiDiam	...	Appellant
MP-PBPT-362/DLI/2024 FPA-PBPT-119/DLI/2024 YogiDiam	...	Appellant
MP-PBPT-364/DLI/2024 FPA-PBPT-120/DLI/2024 YogiDiam	...	Appellant
MP-PBPT-366/DLI/2024 FPA-PBPT-121/DLI/2024 YogiDiam	...	Appellant
MP-PBPT-368/DLI/2024 FPA-PBPT-122/DLI/2024 YogiDiam	...	Appellant
MP-PBPT-370/DLI/2024 FPA-PBPT-123/DLI/2024 YogiDiam	...	Appellant
MP-PBPT-372/DLI/2024 FPA-PBPT-124/DLI/2024 YogiDiam	...	Appellant

MP-PBPT-374/DLI/2024 FPA-PBPT-125/DLI/2024 M/sGarimaExport	...	Appellant
MP-PBPT-376/DLI/2024 FPA-PBPT-126/DLI/2024 M/sGarimaExport	...	Appellant
MP-PBPT-378/DLI/2024 FPA-PBPT-127/DLI/2024 M/sGarimaExport	...	Appellant
MP-PBPT-380/DLI/2024 FPA-PBPT-128/DLI/2024 M/sGarimaExport	...	Appellant
MP-PBPT-382/DLI/2024 FPA-PBPT-129/DLI/2024 M/sGarimaExport	...	Appellant
MP-PBPT-384/DLI/2024 FPA-PBPT-130/DLI/2024 M/sGarimaExport	...	Appellant
MP-PBPT-386/DLI/2024 FPA-PBPT-131/DLI/2024 M/sGarimaExport	...	Appellant
MP-PBPT-388/DLI/2024 FPA-PBPT-132/DLI/2024 M/sGarimaExport	...	Appellant
MP-PBPT-390/DLI/2024 FPA-PBPT-133/DLI/2024 M/sGurudevCorporation	...	Appellant
MP-PBPT-392/DLI/2024 FPA-PBPT-134/DLI/2024 M/sGurudevCorporation	...	Appellant
MP-PBPT-394/DLI/2024 FPA-PBPT-135/DLI/2024 M/sGurudevCorporation	...	Appellant
MP-PBPT-396/DLI/2024 FPA-PBPT-136/DLI/2024 M/sGurudevCorporation	...	Appellant

MP-PBPT-398/DLI/2024 FPA-PBPT-137/DLI/2024 M/sGurudevCorporation	...	Appellant
MP-PBPT-400/DLI/2024 FPA-PBPT-138/DLI/2024 M/sGurudevCorporation	...	Appellant
MP-PBPT-402/DLI/2024 FPA-PBPT-139/DLI/2024 M/sGurudevCorporation	...	Appellant
MP-PBPT-404/DLI/2024 FPA-PBPT-140/DLI/2024 M/sGurudevCorporation	...	Appellant
MP-PBPT-406/DLI/2024 FPA-PBPT-141/DLI/2024 M/s Khushoo Diamond Pvt Ltd.	...	Appellant
MP-PBPT-408/DLI/2024 FPA-PBPT-142/DLI/2024 M/s Khushoo Diamond Pvt Ltd	...	Appellant
MP-PBPT-410/DLI/2024 FPA-PBPT-143/DLI/2024 M/s Khushoo Diamond Pvt Ltd	...	Appellant
MP-PBPT-412/DLI/2024 FPA-PBPT-144/DLI/2024 M/s Khushoo Diamond Pvt Ltd	...	Appellant
MP-PBPT-414/DLI/2024 FPA-PBPT-145/DLI/2024 M/s Khushoo Diamond Pvt Ltd	...	Appellant
MP-PBPT-416/DLI/2024 FPA-PBPT-146/DLI/2024 M/s Khushoo Diamond Pvt Ltd	...	Appellant
MP-PBPT-418/DLI/2024 FPA-PBPT-147/DLI/2024 M/s Khushoo Diamond Pvt Ltd	...	Appellant
MP-PBPT-420/DLI/2024 FPA-PBPT-148/DLI/2024 M/s Khushoo Diamond Pvt Ltd	...	Appellant
MP-PBPT-422/DLI/2024 FPA-PBPT-149/DLI/2024 M/sChintamaniExport	...	Appellant

MP-PBPT-424/DLI/2024 FPA-PBPT-150/DLI/2024 M/sChintamaniExport	...	Appellant
MP-PBPT-426/DLI/2024 FPA-PBPT-151/DLI/2024 M/sChintamaniExport	...	Appellant
MP-PBPT-428/DLI/2024 FPA-PBPT-152/DLI/2024 M/sChintamaniExport	...	Appellant
MP-PBPT-430/DLI/2024 FPA-PBPT-153/DLI/2024 M/sChintamaniExport	...	Appellant
MP-PBPT-432/DLI/2024 FPA-PBPT-154/DLI/2024 M/sChintamaniExport	...	Appellant
MP-PBPT-434/DLI/2024 FPA-PBPT-155/DLI/2024 M/sChintamaniExport	...	Appellant
MP-PBPT-436/DLI/2024 FPA-PBPT-156/DLI/2024 M/sChintamaniExport	...	Appellant
MP-PBPT-438/DLI/2024 FPA-PBPT-157/DLI/2024 M/sUttamGemsPvt.Ltd.	...	Appellant
MP-PBPT-440/DLI/2024 FPA-PBPT-158/DLI/2024 M/sUttamGemsPvt.Ltd.	...	Appellant
MP-PBPT-442/DLI/2024 FPA-PBPT-159/DLI/2024 M/sUttamGemsPvt.Ltd.	...	Appellant
MP-PBPT-444/DLI/2024 FPA-PBPT-160/DLI/2024 M/sUttamGemsPvt.Ltd.	...	Appellant
MP-PBPT-446/DLI/2024 FPA-PBPT-161/DLI/2024 M/sUttamGemsPvt.Ltd.	...	Appellant
MP-PBPT-448/DLI/2024 FPA-PBPT-162/DLI/2024 M/sUttamGemsPvt.Ltd.	...	Appellant

MP-PBPT-450/DLI/2024 FPA-PBPT-163/DLI/2024 M/sUttamGemsPvt.Ltd.	...	Appellant
MP-PBPT-452/DLI/2024 FPA-PBPT-164/DLI/2024 M/s Uttam Gems Pvt. Ltd.	...	Appellant
MP-PBPT-454/DLI/2024 FPA-PBPT-165/DLI/2024 M/sManmohanExportPvt. Ltd.	...	Appellant
MP-PBPT-456/DLI/2024 FPA-PBPT-166/DLI/2024 M/sManmohanExportPvt. Ltd.	...	Appellant
MP-PBPT-458/DLI/2024 FPA-PBPT-167/DLI/2024 M/sManmohanExportPvt. Ltd.	...	Appellant
MP-PBPT-460/DLI/2024 FPA-PBPT-168/DLI/2024 M/sManmohanExportPvt. Ltd.	...	Appellant
MP-PBPT-462/DLI/2024 FPA-PBPT-169/DLI/2024 M/sManmohanExportPvt. Ltd.	...	Appellant
MP-PBPT-464/DLI/2024 FPA-PBPT-170/DLI/2024 M/sManmohanExportPvt.	...	Appellant
MP-PBPT-466/DLI/2024 FPA-PBPT-171/DLI/2024 M/sManmohanExportPvt.	...	Appellant
MP-PBPT-468/DLI/2024 FPA-PBPT-172/DLI/2024 M/sManmohanExportPvt.	...	Appellant
MP-PBPT-470/DLI/2024 FPA-PBPT-173/DLI/2024 M/sShrenikDiamondPvt.Ltd.	...	Appellant
MP-PBPT-472/DLI/2024 FPA-PBPT-174/DLI/2024 M/sShrenikDiamondPvt.Ltd.	...	Appellant
MP-PBPT-474/DLI/2024 FPA-PBPT-175/DLI/2024 M/sShrenikDiamondPvt.Ltd.	...	Appellant

MP-PBPT-476/DLI/2024 FPA-PBPT-176/DLI/2024 M/sShrenikDiamondPvt.Ltd.	...	Appellant
MP-PBPT-478/DLI/2024 FPA-PBPT-177/DLI/2024 M/sShrenikDiamondPvt.Ltd.	...	Appellant
MP-PBPT-480/DLI/2024 FPA-PBPT-178/DLI/2024 M/sShrenikDiamondPvt.Ltd.	...	Appellant
MP-PBPT-482/DLI/2024 FPA-PBPT-179/DLI/2024 M/sShrenikDiamondPvt.Ltd.	...	Appellant
MP-PBPT-484/DLI/2024 FPA-PBPT-180/DLI/2024 M/sShrenikDiamondPvt.Ltd.	...	Appellant
MP-PBPT-486/DLI/2024 FPA-PBPT-181/DLI/2024 M/sBhairavGemsPvt.Ltd.	...	Appellant
MP-PBPT-488/DLI/2024 FPA-PBPT-182/DLI/2024 M/sBhairavGemsPvt.Ltd.	...	Appellant
MP-PBPT-490/DLI/2024 FPA-PBPT-183/DLI/2024 M/sBhairavGemsPvt.Ltd.	...	Appellant
MP-PBPT-492/DLI/2024 FPA-PBPT-184/DLI/2024 M/sBhairavGemsPvt.Ltd.	...	Appellant
MP-PBPT-494/DLI/2024 FPA-PBPT-185/DLI/2024 M/sBhairavGemsPvt.Ltd.	...	Appellant
MP-PBPT-496/DLI/2024 FPA-PBPT-186/DLI/2024 M/sBhairavGemsPvt.Ltd.	...	Appellant
MP-PBPT-498/DLI/2024 FPA-PBPT-187/DLI/2024 M/sBhairavGemsPvt.Ltd.	...	Appellant
MP-PBPT-500/DLI/2024 FPA-PBPT-188/DLI/2024 M/sBhairavGemsPvt.Ltd.	...	Appellant

MP-PBPT-502/DLI/2024  
FPA-PBPT-189/DLI/2024  
M/s Glossy Gems Pvt. Ltd. ... Appellant

MP-PBPT-504/DLI/2024  
FPA-PBPT-190/DLI/2024  
M/s Glossy Gems Pvt. Ltd. ... Appellant

MP-PBPT-506/DLI/2024  
FPA-PBPT-191/DLI/2024  
M/s Glossy Gems Pvt. Ltd. ... Appellant

Versus

The Initiating Officer,  
DCIT (BPU), Delhi ... Respondents

**Advocates / Authorized Representatives who appeared**

For the Appellant(s) : Mr. S. Ganesh, Sr. Advocate  
Mr. Rohit Jain, Advocate  
Mr. Saksham Singhal,  
Advocate  
Mr. Nikunj Maheshwari,  
Advocate  
Mr. Abhijeet Varshney  
Mr. Sumit Kumar Sharma  
Mr. Deepak Agrawal  
Mr. Arun Kumar Aggarwal  
Mr. Subham Aggarwal  
Ms. Priyanka Raj  
Mr. Rajat Bhardwaj  
Mr. Kaustubh Khanna

For the Respondent(s) : Mr. Kanhaiya Singhal

**CORAM**

**JUSTICE MUNISHWAR NATH BHANDARI : CHAIRMAN**  
**MR. V. ANANDARAJAN : MEMBER**

**ORDER**  
**14.01.2025**

By the batch of appeals, a challenge has been made to the order dated 28.06.2023 passed by the Adjudicating Authority confirming the attachment and references against

the beneficial owners and the benamidars. The detail of the references and beneficial owner is given as under: -

Reference No.	Name	Appeal No.
R-187	Shashi Kant Chaurasia	82/2024
R-188	Navneet Chaurasia	94/2024
R-189	Vijay Anand Chaurasia	84/2024
R-190	Vibha Arya Chaurasia	86/2024
R-191	Mayank Chaurasia	87/2024
R-192	Dipti Chaurasia	83/2024
R-193	Anand Kumar Chaurasia	81/2024
R-194	Rajiv Chaurasia	85/2024

The benamidars in all the above references are common.

The appellant Counsel prayed for taking case of Shri Shashi Kant Chaurasia as lead case for the reason that all the appeals involve common facts and legal issues. The prayer was not opposed by the Counsel for the respondent.

In light of the prayer made by the Counsels for the parties, we are taking the case of Shri Shashi Kant Chaurasia (Beneficial Owner) to be lead case to deal with the fact and legal issues for which brief facts are as under:-

**Brief facts of the case:**

**2.** The Ld. Counsel for the appellants submitted that Government of India brought Income Declaration Scheme, 2016. In pursuance to it, the appellant- Shri Shashi Kant Chaurasia declared 12,857.07 carats of rough diamonds at

the value of Rs.49,42,79,680 as on 01.06.2016 being 'undisclosed income' received by way of gift / inheritance and are held since 1994. The declaration was made through an application under Section 183 of the Finance Act, 2016 being the Income Declaration Scheme, 2016. The declaration was acknowledged and accepted by the Principal Commissioner of Income-tax, New Delhi vide certificate dated 07.10.2017 issued on Form No. 4. The appellant, Shri Shashi Kant Chaurasia paid the tax and surcharge apart from the penalty @ 45% on the undisclosed income. He accordingly made the payment of Rs.22,24,25,856 in terms of Sections 184-185 of the Finance Act, 2016.

**2.1** The said rough diamonds held by the appellant were subsequently processed (cutting, polishing etc.) through four job-workers in Surat and thereupon the appellant sold cut-and-polished diamonds during financial years from 2018-19 to 2021-22 to different persons/ firms and received a sum of Rs.360,25,10,100 on which tax of Rs.82,89,85,671/-was paid. The sale of the diamonds during the assessment years referred to above resulted in taxable capital gains which was duly offered by the appellant during the relevant assessment years.

**2.2** A search operation was carried out by the Investigating Wing of Income-tax Department, Delhi on 15.01.2020 at various premises of 'KamlaPasand Group'. During the course of the search operation, statement of the appellant and his family members were recorded under Section 132(4) of the Income-tax Act. Search was then continued and it was carried out even at the residence of Yogendra Raj Singhvi.

**2.3** Subsequent thereto, a notice dated 27.01.2020 was issued to the appellant under Section 23 of the Prohibition of Benami Property Transaction Act, 1988 (in short "**the Act of 1988**") directing him to provide certain details. In response to it, the appellant submitted reply to notice on 23.02.2022. The appellant thereupon received a show cause notice under section 24(1) of the Act of 1988 alleging that the appellant, Shri Shashi Kant Chaurasia was the beneficial owner for a sum of Rs.295,86,55,231/- representing bogus long term capital gains in the form of sale proceeds on diamonds resulting in benami transaction within the meaning of Section 2(9) of the Act of 1988. The appellant filed reply to the show cause notice though Section 24(1) of the Act of 1988 provides for notice to benamidar and not to a beneficial owner. The allegation against the appellant was for deposit of cash in the bank account of

benamidar and thereupon received it towards bogus sale of diamonds and thereby the appellant was treated to be beneficial owner.

**2.4** The Ld. Counsel for the appellant submitted that Initiating Officer attached the properties of the appellant without showing it to be benami property under the Act of 1988 or proceeds out of benami transaction. In fact, the respondent failed to prove transfer of cash amount by the appellant Shri Shashi Kant Chaurasia in the account of benamidar. In fact, no cash was deposited in the account of benamidar who alleged to have transferred the said amount to the appellant on sale of diamonds. It is, further, submitted that notice under section 24(1) of the Act of 1988 was issued to the beneficial owner in ignorance of the provision aforesaid. Section 24(1) of the Act of 1988 provides for notice to the benamidar and a copy of notice to the beneficial owner. The respondent did not issue notice under section 24(1) to benamidar rather copy of the notice was given to them contrary to Section 24(1) of the Act of 1988 and while sending the reference to the Adjudicating Authority, names of nine other benamidars were inserted for the first time without a notice to them under section 24(1) of the Act of 1988. Thus, an illegal order was passed by the

Initiating Officer while sending reference to the Adjudicating Authority.

**2.5** The other argument raised by the appellant was in reference to the attachment of the property. What can be attached is the benami property and not any other property in lieu thereof. In the instant case, properties of the appellant has been attached without showing it to be the benami property arising out of benami transaction or using the proceeds to acquire the property. None of the ingredients of “benami property”, as defined, has been set out to attach the properties.

**2.6** It is also submitted that there exist no benami transaction as provided under section 2(9) of the amending Act of 2016. The ingredients of the provision have not been satisfied. There is no proof of transfer of consideration by the beneficial owner. The prayer was made to set-aside the impugned order.

**3.** The arguments raised by the Senior Counsel in the leading case of Shri Shashi Kant Chaurasia were adopted by other beneficial owners and the benamidars.

**4.** The appeal was seriously contested by the Counsel for the respondent. It is submitted that the appellant, Shri Shashi Kant Chaurasia was rightly taken as beneficial owner along with other beneficial owners similarly situated. They were found involved in taking undue benefit of long-term capital gains and for that the beneficial owner transmitted cash to the benamidars and thereupon using the banking channel, it was received back in their bank account in the name of alleged sale of diamonds. The fact aforesaid was fortified from the statement of Mr. Yogendra Raj Singhvi under Section 132 of the Income-tax Act, 1961. He admitted that he received commission of 0.18% to transfer the cash amount after using the banking channel. It was used towards payment on alleged sale of the diamonds on huge profit turned out to be the capital gain. The statement of Mr. Yogendra Raj Singhvi was sufficient to make out a case against the appellant and accordingly they were served with notice under section 24(1) of the Act of 1988.

**5.** The Counsel for the respondent, however, could not clarify as to why notice under section 24(1) of the Act of 1988 was served to the beneficial owner with a copy to the benamidars whereas provision provides for a notice to the benamidar with a copy to the beneficial owner. In the

instant case, the notice under section 24(1) of the Act of 1988 was not given to the benamidar, rather, a copy was given to them while notice was served to the beneficial owner who was otherwise to be provided with a copy of the notice. The Counsel for the respondent made a reference of Section 63 of the Act of 1988 to defend the issue.

6. The Ld. Counsel, further, submitted that the deposit of the amount in cash in the bank accounts of the benamidars got proved in light of the statement of Shri Yogendra Raj Uttam Raj Singhvi and otherwise transmission of the amount was through “Angadiya”. The “Angadiyas” were used to transfer unaccounted money in the account of benamidars which got proved from the PDF document in the draft mails named as “Angadiya Slip” and found on analysis that the amount on the left side was written as receipts and on the right side as payment. The “Angadiya Slip” was used to transfer the cash by beneficial owner to the bank accounts of the benamidars.

7. It was further submitted that properties falling in the definition “benami property” alone have been attached.

**Findings of the Tribunal:**

8. In the light of the above rival submissions, we would record our findings as under:

8.1 The first issue raised by the appellant to challenge the impugned order is in reference to Section 24(1) of the Act of 1988. The said provision is quoted hereunder for ready reference:

**24. Notice and attachment of property involved in benami transaction.**—(1) *Where the Initiating Officer, on the basis of material in his possession, has reason to believe that any person is a benamidar in respect of a property, he may, after recording reasons in writing, issue a notice to the person to show cause within such time as may be specified in the notice why the property should not be treated as benami property.*

*(2) Where a notice under sub-section (1) specifies any property as being held by a benamidar referred to in that sub-section, a copy of the notice shall also be issued to the beneficial owner if his identity is known.*

*(3) Where the Initiating Officer is of the opinion that the person in possession of the property held benami may alienate the property during the period specified in the notice, he may, with the previous approval of the Approving Authority, by order in writing, attach provisionally the property in the manner as may be prescribed, for a period not exceeding ninety days from the date of issue of notice under sub-section (1).*

*(4) The Initiating Officer, after making such inquiries and calling for such reports or evidence as he deems fit and taking into account all relevant materials, shall, within a period of ninety days from the date of issue of notice under sub-section (1),—*

*(a) where the provisional attachment has been made under sub-section (3),—*

*(i) pass an order continuing the provisional attachment of the property with the prior approval of the Approving Authority, till the passing of the order by the Adjudicating Authority under sub-section (3) of section 26; or*

*(ii) revoke the provisional attachment of the property with the prior approval of the Approving Authority;*

*(b) where provisional attachment has not been made under sub-section (3),—*

*(i) pass an order provisionally attaching the property with the prior approval of the Approving Authority, till the passing of the order by the Adjudicating Authority under sub-section (3) of section 26; or*

*(ii) decide not to attach the property as specified in the notice, with the prior approval of the Approving Authority.*

*(5) Where the Initiating Officer passes an order continuing the provisional attachment of the property under sub-clause (i) of clause (a) of sub-section (4) or passes an order provisionally attaching the property under sub-clause (i) of clause (b) of that sub-section, he shall, within fifteen days from the date of the attachment, draw up a statement of the case and refer it to the Adjudicating Authority.*

The perusal of the provisions aforesaid shows that show cause notice is to be given to the benamidar with a copy to the beneficial owner. In the instant case, notice under section 24(1) was sent to the beneficial owner, as would be revealed from the perusal of the notice on record because it was addressed to Shri Shashi Kant Chaurasia in the lead appeal. The copy of the said notice was sent to the benamidar Shri Yogendra Raj Uttam Raj Singhvi. Thereby the mandate of section 24(1) has been violated and further while making the reference by the Initiating Officer to the Adjudicating Authority, nine other entities were shown to be benamidars though they were never served

with a show cause notice under section 24(1) of the Act of 1988. Thereby, reference under section 24(4) of the Act of 1988 by Initiating Officer has also been questioned. Name of the entities who were not served with the notice under section 24(1) of the Act of 1988 are as under:

1. BHAIKAV GEMS PVT. LTD. (AAGCB3540D)  
Address: B/246, 2<sup>nd</sup> floor, diamond village-b, h no. 6/1913, 1952 to 1954jadakhadidalgiyasehrimahindharpure, surat, Gujarat-395003.
2. GARIMA EXPORTS (APYPD8714K)  
Address: MB-11, 2<sup>ND</sup> Floor, Floxchambers MP Marg, Opera House, Mumbai-400004
3. GURUDEV CORPORATION (ABHPR3948J)  
Address: B/246, 2<sup>ND</sup> Floor, Diamond Village-B, DalgiyaSehriMahindharpure, Surat, Gujarat
4. YOGI DIAM (AGXPR5614A)  
Address: 12, SHAKTI CHAMBERS RAGHUNASTHPURA, MAIN ROAD SURAT, GUJARAT-395003
6. KHUSHBOO DIAMONDS PVT. LTD (AADCK1753G)  
Address: 6/1946-B, OFF-103,1<sup>ST</sup> Floor, Dalagiya Street, Mahindharpura, 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

8.2 The respondent has made a reference of Section 63 of the Act of 1988 to substantiate his argument. Section 63 of the Act of 1988 is quoted hereunder: -

*63. Notice, etc., not to be invalid on certain grounds.— No notice, summons, order, document or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid, or shall be deemed to be invalid merely by reason of any mistake, defect or omission in the notice, summons, order, document or other proceeding if the notice, summons, order, document or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.*

The provision aforesaid provides that the notice etc. shall not to be invalid merely for the reason of any mistake, defect or omission in the notice, summons, order, document or other proceeding if the notice, summons, order etc. in substance and effect are in conformity with or according to the intent and purpose of this Act. In the instant case, the only omission is in sending a notice under Section 24(1) of the Act of 1988 to the beneficial owner instead of copy. The notice under Section 24(1) of the Act of 1988 is to be sent to the benamidar with a copy to the beneficial owner. The omission in sending the notice is saved by Section 63 of the

Act of 1988. It is for reason that in essence the notice under Section 24(1) of the Act of 1988 is to be given to the beneficial owner as well as benamidar. The notice remains the same so as a substance other than by omission it was marked to the beneficial owner with a copy to the benamidar. Both the beneficial owner and benamidar replied to the notice without any difference in the contents and allegations therein. The appellants have failed to show any prejudice on account of notice under Section 24(1) of the Act of 1988 to beneficial owner with a copy to the benamidar, rather, both of them contested the notice before the Adjudicating Authority on merit. Thus, the first ground raised by the appellant is not made out.

8.3 The other issue raised by the appellant is as regards the addition of the benamidar at the time of sending reference to the Adjudicating Authority. The name of those benamidars has been given in the lead case. They were not served notice under section 24(1) of the Act of 1988 and in fact hearing was not given to them before the attachment and reference. The default of the respondent is not curable and cannot be saved by Section 63 of the Act of 1988. It is a case where notice under section 24(1) of the Act of 1988 was not sent to the benamidars added for first time while

sending the reference. It cannot be considered to be an omission or mistake as notice was not given but rather the provisions of the Act of 1988 have been violated. There is even violation of principles of natural justice. Thus, the order passed against the benamidars who were added in the reference order is not sustainable in the eyes of law.

8.4 The appellant further submitted that there is no material on record to show that cash was transferred by the beneficial owner in the bank account of the benamidar for receiving it back in their bank accounts.

8.5 The Counsel for the appellant made a reference of involvement of “Angadiya” for transfer of cash to the bank account of the benamidars. “Angadiya Slip” has also been placed on record but the respondent has failed to produce the bank statement of the benamidars to prove cash deposit in their account at any point of time. It may be even through “Angadiyas”. In absence of it, we are unable to accept the argument of the respondent that the amount was transmitted through “Angadiya”. The reference of the statement of Shri Yogendra Raj Uttam Raj Singhvi was given who submitted that cash was transferred through him. He retracted his statement. The retracted statement has not been corroborated by the bank statement of the benamidar

to show deposit of cash in the bank account matching to the amount. In view of the above, we do not find that respondent could prove the case and otherwise, Shri Yogendra Raj Uttam Raj Singhvi retracted from his statement for transmission of cash on a commission of 0.18%. The statement was said to have been recorded under duress while there was marriage in the family. It was retracted immediately thereupon. The retracted statement can be relied but should be corroborated by other evidence which is missing here. Thus, we find that cash transaction in the hands of the beneficial owner for putting it in the bank account of the benamidar could not be proved.

8.6 The Ld. Counsel for the appellant made a specific reference to benami transaction defined under Section 2(9)(A) of the Act of 1988 as amended by the Amended Act of 2016. It was submitted that to make out a case of benami transaction, property is to be transferred or is to be held by a person for which consideration is provided by another person and property is held for immediate or future benefit of the person who has provided the consideration. It was submitted that no evidence has been brought on record to show transfer of consideration by the appellant beneficial owner because even if the cash is also taken to be a

property, its transfer has not been proved. We find that in absence of transfer of the consideration by the beneficial owner, it would not fall in the definition of “benami transaction”. In this case, respondent has failed to prove a benami transaction.

**9.** The fact of the case is to be analyzed even in reference to the Income Declaration Scheme, 2016 under which the appellants’ beneficial owner applied under Section 183 of the Finance Act, 2016 having Income Declaration Scheme, 2016. The declaration was acknowledged and accepted by the Principal Commissioner of Income-tax, New Delhi. A certificate was issued on 07.10.2017 on Form-4. The appellant beneficial owners paid the tax. It is after cutting and polishing of diamonds sold to the benamidars. The respondent has alleged it to be a fictitious declaration of diamonds under the Scheme of 2016. It is without any basis because once certificate was issued by the Principal Commissioner of Income-tax, New Delhi on declaration, there was no reason for the respondent to doubt genuineness of a declaration and to proceed on alleged perception of a fictitious declaration. The view of the respondent is erroneous and cannot be accepted.

**10.** The other aspect raised by the appellant is regarding attachment of the properties said to be not falling under the definition “Benami Property” under the Act of 1988. It is alleged that what can be attached is the benami property and not the other property unless to be shown to be out of proceeds of benami transaction. In the instant case, the respondents have failed to show and disclose that what has been attached is the benami property as per the definition given under the Act of 1988. In view of the aforesaid, the attachment of the properties cannot be endorsed and therefore also impugned order deserves to be set aside.

**11.** In the light of the discussion aforesaid made above, we find a cause in favour of the appellants and accordingly impugned order is set-aside and appeals are allowed with the aforesaid.

**(Justice MunishwarNath Bhandari)**  
**Chairman**

**(V. Anandarajan)**  
**Member**

**NEW DELHI**  
**14<sup>th</sup> January, 2025**  
**‘MB’**