

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM

आयकर अपील सं. / ITA No: 428/RPR/2024

(निर्धारण वर्ष Assessment Year: 2011-12)

Prem Singh Saluja, Maruti Solitaire, Block B-401, Ward No. 31, Kachna Road, Shri Ram Nagar, Shankar Nagar, Raipur-492007, C.G.	v s	Income Tax Officer, Ward- 2, Raigarh, C.G.-496001
PAN: AUWPS9219D		
(अपीलार्थी/Appellant)	.	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Sunil Kumar Agrawal & Vimal Kumar Agrawal, CAs
राजस्व की ओर से /Revenue by	:	Smt. Anubhaa Tah Goel, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	08.01.2025
घोषणा की तारीख /Date of Pronouncement	:	29.01.2025

आदेश / ORDER

Per Arun Khodpia, AM:

The aforesaid appeal is filed by the assessee against the order of Commissioner of Income Tax (Appeals), NFAC, Delhi, [in short "Ld. CIT(A)"], u/s 250 of the Income Tax Act, 1961 (in short "The Act"), for the Assessment Year 2011-12 dated 30.07.2024, which in turn arises from the order of Income Tax Officer, Ward-2, Raigarh, (Assessing Officer, in short "Ld. AO"), u/s 143(3) r.w.s. 147 of the Act, dated 29.12.2018.

2. The grounds of appeal raised by the assessee are as under:

1. On the facts and circumstances of the case and in law, reasons recorded without having any tangible material for escaped income of Rs.51,53,100/- based on the basis of unverified information received from ACIT, (Benami Prohibition) Raipur (C.G.) which is incorrect & on erroneous footing; without application of mind by the Ld. AO on borrowed satisfaction; merely on presumption & surmises; more so, addition has been made of 51,53,100/-; reopening u/s148/147 is invalid & is liable to be quashed.
2. On the facts and circumstances of the case and in law, approval granted by Ld. PCIT u/s 151(1) in most mechanical & routine manner without application of mind on the wrong reasons recorded for Rs.51,53,100/-, which is not valid; in absence of a valid approval as mandated by law u/s151(1), reopening u/s 147/148 is invalid, bad in law and is liable to be quashed.
3. That the appeal order passed u/s 250 dated 30/07/2024 of the Income-tax Act, 1961 is bad in law and deserved to be quashed.
4. The appellant craves leave to add, amend, or alter either any of the ground or grounds of appeal either before or at the time of appeal.

3. The aforesaid grounds No. 1 & 2 are revised by the assessee vide application dated 18.11.2024, the same is culled out as under:

Revised Gr.No.1

"On the facts and circumstances of the case and in law, CIT(A) has erred in sustaining addition of Rs.51,53,100 made u/s 69 on unexplained investment made by assessee on alleged purchase of land in the name of Bhanu Pratap Singh; in absence of any evidence/ material brought on record by the AO/CIT(A) that alleged payment has been made by the assessee to the sellers of lands; addition of Rs.51,53,100 merely on presumption & surmises is not sustainable in the eyes of law, is liable to be deleted."

Revised Gr.No.2

"On the facts and circumstances of the case and in law, CIT(A) has erred in sustaining addition of Rs.51,53,100 made u/s69 on unexplained investment; only on the basis of third party statement recorded on 20-2-18 & 26-2-18 in a separate

proceedings of Benami Act, without even cross examined the alleged witnesses/ persons when such statements are relied on/ used by the AO against the assessee for making addition of unexplained investment; when the assessee had clearly denied for that on statement recorded on 6-3-18 in Benami Act proceedings; impugned addition is invalid, bad in law & is liable to be deleted; relied on Andaman Timber Industries (2015) (SC)."

4. Assessee also raised certain additional grounds vide application dated 06.12.2024 submitted on 09.12.2024, the same is culled out as under:

Addl.Gr.No.1

"On the facts and circumstances of the case and in law, notice issued u/s 148 dt.29-3-18 by the AO i.e., ITO-2, Raigarh for reopening the case for AY11-12 is invalid as it is prior to the approval granted u/s151(1) dt.31-3-18 by the PCIT, Bilaspur; in absence of prior approval u/s151(1) from the PCIT u/s151(1) which is sine qua non/pre-requisite/ mandatory for a valid reopening u/s148/147, notice issued u/s 148 dt.29-3-18 for AY 11-12 would be void-ab-initio, invalid, bad in law, non-est & would be liable to be quashed."

Addl.Gr.No.2

"On the facts and circumstances of the case and in law, approval granted u/s151(1) by the PCIT is invalid; it is without application of mind as the PCIT has not cared the mistake committed by the AO in the „Proposal Form" put up before him for seeking sanction that in Sl.No.7, section applicable is mentioned 147(a) which had been omitted from the Statue wef.1-4-89; non-pointing out the mistake of the AO in the „Proposal Form" is non application of mind by the PCIT and it is not curable u/s 292B; non application of mind by the POT while granting such mechanical approval on his part; in absence of a valid approval as mandated by law u/s151, reopening u/s148/147 would be invalid and would be liable to be quashed; relied on Kalpana Shantilal Haria(2017) (Born HC);

5. The brief facts of the case are that the assessee is an individual, engaged in the business of Transporting. As per information in possession of the Assessing Officer, being received from ACIT (Benami Prohibition), Raipur, C.G., it is revealed that the assessee had purchased immovable property valued at Rs.51,88,101/- (Fair Market Value at Rs. 79,44,000/-) in FY 2010-11 at Kunkuni Village, Tahsil Kharsia, Distt. Raigarh in the name of Shri Bhanupratap Singh, S/o Shri Gajendra Singh, Vill- Faraswani, Tehsil- Dhabhra, Distt- Janjgir Champa. This information is brought to the notice of department by Shri Manish Kumar Bansal, as per his deposition recorded u/s 19(1) of the the Prohibition of Benami Property Transaction Act 1988 (PBPT Act) on 26.02.2018, who confirmed that Shri Prem Singh Saluja (the assessee) has purchased land in the name of Shri Bhanupratap Singh and the payment thereof has been made in cash to the sellers. It is further noted by the Ld. AO, that the assessee had not filed his return of income for the relevant year, hence the source of such investment in the form of improvable property remained undisclosed. Based on such reasons to believe, the reopening assessment proceedings are initiated by the Ld. AO by issuance of notice u/s 148 of the Act. In response to such notice, assessee filed a return of income on 23.05.2018, declaring total income of Rs.1,55,790/-. In due course, statutory notices, u/s 143(2) and 142(1) are issued along with questionnaire through electronic mode i.e., email under ITBA portal. In compliance, submissions are

furnished by the assessee manually through his Authorized Representative, which were placed on record by the Ld. AO.

6. After discussions and deliberations, it was held that Shri Bhanupratap Singh S/o Shri Gajendra Singh is not the real owner but only benamidar of Shri Premsingh Saluja and therefore, a protective assessment is being made in the case of Shri Bhanupratap Singh by ITO, Janjgir-Champa (CG), and substantive assessment is being framed in the case of the assessee.

7. Ld. AO, further noted that the contention of assessee that he had not purchased such property in the name of Bhanupratap Singh, is devoid of any evidential proof, thus, cannot be accepted, as the statement of Shri Bhanupratap Singh u/s 19(1) of PBPT Act, 1988 was recorded on 20.02.2018, and his statement clearly stated that land was purchased by Shri Premsingh Saluja, S/o Shri Inder Singh Saluja (the assessee), resident Kharsia and the payment was made by the assessee through Manish Kumar Bansal (the broker). Mr. Bhanupratap Singh had just signed registry papers as per instructions of Shri Premsingh Saluja and Shri Manish Kumar Bansal.

8. In light of the aforesaid facts, notice u/s 142(1) dated 03.02.2016 was issued to the assessee to riposte certain queries *qua* the aforesaid

transactions, in response, assessee furnished the reply claiming that he had neither purchased any land property in the name of Shri Bhanupratap Singh, nor did he ever visit to the office of Registrar for registration of such property. Ld. AO considered the submissions of assessee but treated the same as falls in absence of any credible evidence. Ld. AO, further added that the statement of other sellers is also testimonial to the fact that it was Shri Premsingh Saluja, who was instrumental in the transaction and had actually paid the money. It is noted that Smt. Suvano Bai W/o Anjor Singh Aghariya, Rajghata, Kharsia in her statement before Benami Authority clearly stated that the assessee had contacted her for purchasing of her land. It is also stressed that neither Shri Bhanupratap Singh nor Shri Premsingh Saluja had retracted from the statements given before the Benami Authorities, therefore, it was the onus on Shri Premsingh Saluja to prove that he had not made the cash payment, however he failed to substantiate his claim and took the shelter behind Shri Gajendra Singh- the person already died. Ld. AO further interpreted the situation in terms of human probabilities, genuineness of the transaction and labelled the transaction as colourable device used by the assessee for evasion of taxes. Finally, Ld. AO concluded the assessment with the following observations:

10. In view of above discussion, it is proved that written submission of the assessee lacks any credible evidence and is just an attempt of after-thought and fabrication

lacking any sound footing. Therefore, I am of the firm opinion that the aforesaid land properties valued at Rs.51,53,100/- were purchased by the assessee during the relevant financial year. In view of the facts and circumstances of the case and in light of the aforesaid discussion, Rs.51,53,100 is added back to the return of income of the assessee as unexplained investment u/s 69 of the Act, the source of the same being held as unaccounted income from undisclosed sources of the assessee. The penalty proceedings U/s 271(1)(c) of the Act are initiated separately for furnishing (the inaccurate particulars of his income. [Addition: Rs.51,53,100]

11. *Further, despite the fact that the assessee was having taxable income, he had not filed the return of income before the end of the relevant assessment year. Therefore, the failure is on the part of the assessee to furnish such return before the end of the relevant assessment year, penalty proceedings u/s 271 F of the Act are also initiated separately.*

Subject to the above discussion, total income of the assessee is computed as under:-

<i>Income as shown in the Return of Income</i>	<i>Rs. 1,55,790/-</i>
<i>Addition as discussed above</i>	<i>Rs. 51,53,100/-</i>
<i>Total Income assessed</i>	<i>Rs. 53,08,890/-</i>
<i>Total Income assessed and rounded off</i>	<i>Rs. 53,08,890/-</i>

9. Aggrieved with the aforesaid additions by the Ld. AO, assessee preferred an appeal before the Ld. CIT(A), however, with no success, the

appeal of the assessee has been dismissed by the Ld. CIT(A) with the following observations:

7. **DECISION:-** The Statement of Facts, Grounds of appeal and the material on record have been considered.
- 7.1 If the appellant claims that he is eligible for any claim he should have furnished supporting documents. The appellate proceedings are first line of remedy to those who think that the injustice has been done by the AO. However, the appellant failed to avail the same by non-complying. From the assessment order, it is evident that there was non-compliance of notices before the AO as well and therefore, the AO had to pass the order. During the appellate proceedings also, the appellant has not availed of the opportunities given. Therefore, it is assumed that the appellant is not interested in pursuing his own appeal. Moreover, the appellant failed to bring on records any facts or documents which can explain how the order of the AO is erroneous.
- 7.2 In the case of Anil Goel Vs CIT, [2008] 306 ITR 212 (Punjab & Haryana), the Hon'ble High Court held as under:

"4. It is thus obvious on the plain language of section 250 of the Act that date and place of hearing was duly fixed. The assessee was also given notice along with notice to the Assessing Officer. The assessee had ample opportunity to make his submissions by appearing in person or through authorised representative. Despite fixing the case for seventeen hearings, no one had put in appearance nor any justifiable reason for adjournment was given.

5. The Tribunal also found that non-recording of reasons in support of order passed by CIT(A) would not amount to committing any illegality because the CIT(A) has adopted the reasoning advanced by the Assessing Officer and has upheld his order. The judgment of this Court, in the case of Popular Engineering Co. v. ITAT [2001] 248 ITR 577, has been rightly relied upon wherein it has been observed that

elaborate reasons need not be recorded by the CIT(A) as has been done by the Assessing Officer. The reasons are required to be clear and explicit indicating that the authority has considered the issue in controversy. If the appellate/revisional authority has to affirm such an order it is not required to give separate reasons which may be required in case the order is to be reversed by the appellate/revisional authority."

- 7.3 However, the facts on available on the record merit of the case have been considered. During the appellate proceedings, the appellant has not filed any written submission. In absence of the written submission and evidence, it remained to be explained as to how the AO's order is erroneous. In the instant case it was established by the ACIT(Benami Prohibition), Raipur (CG) that the appellant had purchased immovable property in the name of Shri Bhanupratap Singh, who is a benamidar. It was established that benamidar did not had the wherewithal to make such transaction as in his statement he admitted that he was receiving meager amounts ranging from 200 to 2000 time to time from the appellant and signed registry documents on his behalf when called upon by the appellant. The benamidar Shri Bhanupratap Singh admitted that the property belonged to Shri Prem Singh Saluja, the appellant. The broker, Shri Manish Kumar Bansal, in this statement u/s 19(1) of the Prohibition of Benami Property Transaction Act(PBPT) recorded on 26.02.2018 confirmed that Shri Prem Singh Saluja has purchased the land in the name of Shir Bhanupratap Singh. The seller, Smt Suvano Bai, w/o Anjor Singh Aghariya, submitted that it was Shri Prem Singh Saluja, the appellant who had contacted her for purchase of land. Therefore, it was quite evident that the appellant is the real owner of the property considering the test of preponderance of human probability as mandated by the Hon'ble Supreme Court in Sumati Dayal (214 ITR 801) and Durga Prasad More (82 ITR 540(SC)). Further, the appellant in spite of giving ample opportunity failed to submit any document or the action/order u/s 24(3) or 24(4) of the PBPT Act or the fate of that order in further judicial proceedings. In the instant case, the appellant had opted for Vivad Se Vishwas Scheme, 2020 by filing application in Form 1 & 2 on 27.02.2021. Thereafter, the CIT issued Form 3 determining tax payable as per the scheme on 07.05.2021. However, the appellant has not submitted whether he had paid taxes thereon in spite of issuing specific request to submit Form 4 & Form 5 vide this office hearing notices. Online attempts in ITBA module/database were made to ascertain whether Form 4 was submitted by the appellant and also whether Form 5 was issued by the concerned PCIT?

However no such Form 4 & 5 could be located and it appears that neither the appellant submitted Form 4 with the proof of payment of taxes nor the Form 5 was issued. Hence this appeal is treated as normal appeal. It is pertinent to note here by filing Form 1 & 2, the appellant accepted the fact that the ownership of the land is with him, otherwise he would not have filed Form 1 & 2 to settle dispute. These forms were filed by the appellant on his own volition can be construed as admission of ownership. Considering these facts and in absence of any evidence or document, the investment made by the appellant of Rs. 51,53,100/- remained unexplained from the income declared by the appellant in his ITR.

7.4 Accordingly, I agree with the findings given by the AO and confirm the addition made by the AO. The Ground Nos. 1 to 4 are hereby **dismissed**.

10. Disappointed with the aforesaid order of Ld. CIT(A), assessee carried the matter before us, which is under consideration in the present case.

11. At the outset, Ld. AR requested to withdraw the additional ground no. 2 of the present appeal by endorsing to that effect, signed with a remark "not pressed". Accordingly, **additional ground no. 2** of the present appeal stands **dismissed as not pressed**.

12. Regarding **additional ground no. 1**, it was the submission of Ld. AR that the approval u/s 151 was granted by the Sanctioning Authority i.e., Pr. CIT, Bilaspur on 31.03.2018, whereas the notice u/s 148 was issued prior to the date of sanctioning on 29.03.2018, having mention that "*the notice is being*

issued after obtaining the necessary satisfaction of the Pr. CIT, Bilaspur". It was the submission that from the date of events *qua* the approval u/s 151 dated 31.03.2018 and issuance of notice u/s 148 dated 29.03.2018, it is clearly emanating that the notice u/s 148 was issued before the approval is granted by the sanctioning authority.

13. In rebuttal to the aforesaid contention of the assessee, Smt. Anubhaa Tah Goel, Ld. Sr. DR representing the revenue have submitted a report of Ld. AO, stating that approval on the basis on which the notice u/s 148 was issued was granted by the Pr. CIT on 29.03.2018 through ITBA Portal, thus, the same was communicated to the Ld. AO on the same date. However, the written manual communication was sent to Ld. AO on 31.03.2018 by the office of Ld. Pr. CIT. It is further submitted that from the order sheet entries, copy of order sheet placed before us, it is ostensible that the information about approval was received by the Ld. AO on 29.03.2018, wherein it is recorded by the Ld. AO that "*The case has been selected manually for scrutiny after taking approval of Hon'ble Pr. CIT, Bilaspur u/s 147 of the I T Act and consequently a notice u/s 148 of the I T Act 1961 is issued upon the assessee*". The copy of report submitted by the Ld. AO, is extracted as under:

भारत सरकार Govt. of India

वित्त मंत्रालय: राजस्व विभाग : Ministry of Finance: Department of Revenue

कार्यालय आयकर अधिकारी-1 : OFFICE OF THE INCOME-TAX OFFICER-1

आयकर भवन, चक्रधरनगर, रायगढ़ (छ.ग.) : Aayakar Bhawan, Chakradharnagar, Raigarh(C.G.)

फोन (Phone) : 07762-222893, ई-मेल (E-mail) : raigarh.ito1@incometax.gov.in

F.No.ITO-1/RGH/ITAT/2024-25/

Date: 07/01/2025

To,

The Addl. Commissioner of Income Tax,
ITAT-DR, Raipur (C.G.)

Madam,

Sub:- Submission of report in the case of Prem Singh Saluja, PAN: AUWPS9219D for A.Y.2011-12 - regarding.

Kindly refer to the above mentioned subject. The detailed report is submitted as under for kind perusal and consideration.

In the instant case, an information has been received from Assistant Commissioner of Income Tax (Benami Prohibition), Raipur that the assessee had purchased immovable property valued at 51,88,101/- (FMV Rs. 79,44,000/-) during the F.Y. 2010-11 at Kunkuni village, Tahsil - Kharsia Distt Raigarh in the name of Shri Bhanupratap Singh, S/o Shri Gajendra, Vill-Faraswani, Tehsil-Dhabhra, Distt-Janggir Champa. Shri Manish Kumar Bansal, in his deposition recorded u/s 19(1) of the PBPT Act on 26.02.2018, has confirmed that Shri Preamsingh Saluja has purchased land in the name of Shri Bhanupratap Singh and the payment thereof has been made in cash to the sellers through him. Since the assessee had not filed his return of income and hence the source of such investment in the form of immovable property remained undisclosed. Hence, the AO had the reason to believe that the immovable property transaction of Rs. 51,88,101/- was deemed to have been made out of unexplained income of the assessee, the source of which has not been disclosed.

On the basis of above information, the then Assessing Officer (AO) has recorded the reasons for initiating proceeding u/s 148 of the Income Tax Act, 1961 and submitted to the competent authority through Range Head through ITBA Portal. On the basis of reasons recorded by the AO, the Range Head recommended for approval with remark as "On the basis of reasons recorded by the AO, it is a fit case for action u/s 147 of the Income tax Act. Accordingly recommended for approval" and submitted the proposal to the Pr.CIT, Bilaspur on 24/03/2018. Subsequently, the Pr.CIT approved the proposal on 29/03/2018 through ITBA Portal with approval remark "Information is received from ACIT(Benami Prohibition Unit), Raipur regarding the assessee's investment in land. The assessee has not filed return of income. For taxing assessee's unexplained investment, reopening of assessment is approved". On the basis of approval accorded by the Pr.CIT on 29/03/2018, notice u/s 148 of the I.T. Act, 1961 was issued on 29/03/2018. Thus, notice u/s 148 of the Act was issued after the approval has been granted by the Pr. CIT, Bilaspur under section 151 of the Income Tax Act, 1961 on 29/03/2018. The notice issued u/s 148 of the I.T. Act, 1961 dated 29/03/2018 clearly mentioned that "This notice is being issued after obtaining the necessary satisfaction of the Pr.CIT, Bilaspur".


Reason recorder by the then AO, recommendation remarks of the Range Head and approval remarks of the Pr.CIT, extracted from the ITBA – Assessment module is submitted for kind perusal and kind ready reference.

On the basis of above facts, assessment proceeding initiated u/s 147 of the Income Tax Act, 1961 is as per the provision of Income Tax Act. The plea challenging validity of the jurisdiction assumed by the AO for initiating proceeding u/s 147 of the Act taken by the assessee during the appellate proceeding before the Hon'ble ITAT, Raipur may kindly be presented before the Hon'ble ITAT, Raipur with the above facts. In addition the Hon'ble ITAT, Raipur may kindly be requested to not consider the plea of the applicant and requested to pass the order in favour of Revenue.


Report is submitted for perusal and kind consideration.

Encl.: As above

Yours faithfully,


(Sunil Kumar Singh)
Income Tax Officer-1,
Raigarh (C.G.)

Copy to the Addl. Commissioner of Income Tax, Range-1, Bilaspur for kind information.


Income Tax Officer-1,
Raigarh (C.G.)

14. Based on aforesaid submissions, it was the prayer by Ld. Sr. DR that the approval u/s 151 was granted on ITBA Portal prior to issuance of notice u/s 148, therefore, the contention raised by the Ld. AR has no substance, consequently, the same is liable to be rejected.

15. We have considered the rival submissions, perused the material available on record *inter alia* copies of notice u/s 148, letter dated 31.03.2018 by the office of Pr. CIT, approval u/s 151 and copy of order sheet. Evidently, the

notice u/s 148 was issued, as per order sheet entry dated 29.03.2018. Ld. AO has received approval from Ld. Pr. CIT on the ITBA Portal on 29.03.2018, however, the manual communication through letter was forwarded to the Ld. AO by the office of Ld. Pr. PCIT on 31.03.2018 enclosing therewith copy of approval u/s 151, wherein Ld. Pr. CIT has granted the approval under his hand written satisfaction without any date, therefore, it can be inferred that the date of approval was 29.03.2018, which was on the ITBA portal of the department, therefore, the Ld. AO was well informed on 29.03.2018 itself to issue the notice u/s 148. In view of such facts on record, we found substance in the submission of the Ld. Sr. DR that the notice u/s 148 was issued under proper compliance of the pre-requisite conditions to obtain approval u/s 151 as per mandate of law, therefore, the contention raised by the Id. AR that the approval u/s 151 was granted after issuance of notice u/s 148 is found to be misplaced, bereft of merits / substance, accordingly, the same does not qualified to be subscribed to. In result, **additional ground no. 1** of the present appeal raised by the assessee, **stands dismissed.**

16. On merits, Ld. AR representing the assessee submitted that the matter was adjudicated u/s 26(3) of the PBPT Act, 1988, wherein an order was passed u/s 26(3) of the PBPT Act vide order Ref. No. R-888/2018 dated 20.06.2019, copy of the same is placed before us at page no. 20 to 82 of the APB, wherein

it is categorically held that Adjudicating Authority u/s 72 of the Prohibition of Benami Property Transaction Act, 1988 that the property is benami property and the relevant transaction is to be characterized as benami transaction u/s 2(9)(a) of the PBPT Act, 1988. The observations of Adjudicating Authority in the aforesaid order, are culled out as under:

5. Based on the submissions made by both initiating Officer and defendants including benamidar and beneficial owner it is very well established from the investigation that beneficiary Sh. Prem Singh Saluja has purchased impugned land in the name of benamidar Sh. Bhanu Pratap Singh and made cash payment for the purchase consideration through broker Mr. Manish Bansal. it is also very well established that Mr. Bhanu Pratap Singh is a man of ordinary economic status and does not have capacity to buy such large land at a very high price. Therefore, it is a clear case of Mr. Prem Singh Saluja purchasing land for his benefit in the name of Mr. Bhanu Pratap Singh. Some of the land has been transferred to beneficiary no. 2 M/s Bhatia Energy and Minerals Pvt. Ltd. Therefore, the transaction of acquiring impugned land in the name of benamidar by the beneficial owner no. 1 by paying cash consideration to the seller is a benami transaction u/s 2(9)(a) of PBPT Act. With the transaction being held benami, Mr. Bhanu Pratap Singh is benamidar and Mr. Prem Singh Saluja and M/S Bhatia Energy and Minerals Pvt. Ltd. are the beneficial owner. Accordingly it is held that the impugned property is benami property and the relevant transaction of acquiring it is benamy transaction u/s 2(9)(A) of the Act.

6. We have gone through the reference u/s 24(5) by initiating Officer, submissions of defendants before the IO and the material on record and hold

that properties attached under this reference, are benami properties which are subject matter of benami transactions. Provisional Attachment Order under this reference is hereby confirmed. Hence reference is allowed.

7. PAO is confirmed accordingly.

17. In continuation to the aforesaid facts, Ld. AR further submitted that after the order of adjudicating authority under PBPT Act, 1988 dated 20.06.2019, assessee had preferred an appeal before the Hon'ble Appellate Tribunal for Prevention of Money Laundering, New Delhi (in short "ATPML"), vide appeal no. FPA-PBPT/1042/2020/218 filed on 20.01.2020, and the matter is pending for the consideration of Hon'ble ATPML at Delhi, therefore, the issue may be decided on after the findings of Hon'ble ATPML in the matter. Ld. AR further submitted that as per order of adjudicating authority dated 26.06.2019, the transaction has been held as benami transaction in the name of Benamidar Mr. Bhanupratap Singh for the benefit of beneficiaries Mr. Prem Singh and M/s Bhatia Energy and Minerals Pvt. Ltd. In view of such order, assessee Mr. Prem Singh Saluja only cannot be held to be the assessee in default for the purpose of additions under the Income Tax Act, on this count also the matter needs to be kept in abeyance till the final verdict of Hon'ble ATPML is pronounced. With such submissions, it was the prayer by the Ld. AR that as the subject transaction of land purchase is still under the consideration of

Hon'ble ATPML, therefore, at this stage no additions should be sustained in the hands of assessee Shri Preamsingh Saluja.

18. Per contra, Ld. Sr. DR submitted that before Ld. CIT(A) it is revealed that the assessee had opted for VSVT, though have not completed the compliance under VSVT, this shows that the assessee was involved in the impugned transaction of land, therefore, the decision of Ld. CIT(A) was well thought of and deserves to be upheld.

19. We have considered the rival contentions, perused the material available on record *inter alia* the orders of revenue authorities, order u/s 26(3) by adjudicating authority u/s 71 of PBPT Act, 1988 Act dated 20.06.2019 and appeal memo filed before the ATPML, Delhi dated 29.01.2020. On a perusal of the decision of Ld. CIT(A), wherein it is held that in absence of any evidence or document, the investment made by the appellant of Rs. 51,53,100/- remain unexplained from the income declared by the appellant in its ITR. Accordingly, the additions made by the Ld. AO has been confirmed. Further, Ld. CIT(A) had observed that the assessee in the present had opted for Vivad Se Vishwas Scheme, 2020 by filing application in Form no. 1 & 2 on 27.02.2024, against which the Ld. CIT(A) had issued Form 3 determining the tax payable as per

scheme on 07.05.2021, however, the taxes computed in Form 3 are not paid by the assessee.

20. On a thoughtful consideration of the totality of facts and circumstances of the present case, findings in the decision dated 20.06.2019 by Adjudicating Authority under PBPT Act, 1988, which has further been challenged by the assessee along with Mr. Bhanupratap Singh S/o Late Shri Gajendra Singh (The alleged Benamidar), Shri Premsingh Saluja (assessee in present case) and M/s Bhatia Energy and Minerals Pvt. Ltd. (considered a beneficial owner in the aforesaid benami transaction in the order of adjudicating authority, PBPT vide order dated 20.06.2019), we are of the considered view that the issue *qua* the subject benami transaction, which is the foundation causing forming of reason to believe by the Ld. AO for reopening of assessment u/s 147 in the assessee's case for AY 2011-12, has now been placed at a different footing, as at initial stage Shri Premsingh Saluja (the assessee) was only the beneficiary of the impugned transaction of purchase of immovable property as per information received from ACIT, (Benami Prohibition, Raipur, C.G.), however, after the order of adjudicating authority, PBPT, Zone Raipur dated 20.06.2019, though the transaction is held as "Benami" as per provisions of u/s 2(9)(a) of the PBPT Act, Mr. Bhanupratap Singh is Benamidar and Mr. Premsingh Saluja (assessee) along with M/s Bhatia Energy and Minerals Pvt.

Ltd are held as beneficial owners. Such verdict by the adjudicating authority, PBPT, Zone Raipur exhibits that the assessee in present case i.e., Mr. Premsingh Saluja is not the only beneficial owner, whereas M/s Bhatia Energy and Minerals Pvt. Ltd is also a beneficial owner in the impugned benami transaction. Considering the decision of adjudicating authority PBPT, the entire addition of the transaction for Rs.51,53,100/- cannot be made in the hands of assessee, treating the same as unexplained investment u/s 69 of the Act, the same needs to be allocated between the joint beneficial owners, as emerging from the order under PBPT Act, dated 20.06.2019. It would be pertinent to note that since (i) the assessee along with (ii) the Benamidar Mr. Bhanupratap Singh and (iii) the other beneficial owner M/s Bhatia Energy and Minerals Pvt. Ltd, as joint appellant had filed an appeal challenging the decision of adjudicating authority, PBPT dated 20.06.2019, before the ATPML, New Delhi and Shri Dharam Singh Meena, IRS, Initiating Officer, ACIT, Raipur, (C.G.), is the respondent in the said appeal, which is pending for adjudication, therefore, it would be premature to decide the issue at this juncture, whereas, it would be appropriate to restore the matter back to the file of Ld. AO with the direction to adjudicate the case of assessee afresh, taking into cognizance the orders of authorities under PBPT Act, 1988.

21. The contention of revenue that the assessee had applied for VSVS-2020 cannot be used against the assessee as the assessee had initiated to opt under the said scheme but have not completed the compliances for the reasons best known to him, be that as it may, the VSVS-2020 was for settling the direct tax issues in litigation at the option of assessee, which may be or may not contains the substance to be concluded in favour or against the assessee, therefore, it cannot be conclusively considered as admission of the assessee.

22. Further, since the issue involved *qua* benami transaction was under adjudication before the authorities under PBPT Act, wherein at the stage of Zonal Adjudicating Authority, the basis of reopening that the assessee alone is the beneficial owner of the benami transaction has been transformed by holding that there are two beneficial owners including the assessee. In any case the matter needs to be restored to the file of Ld. AO to examine and give effect to the orders of PBPT Authorities, so as to arrive at the quantum of addition in the hands of respective beneficial owners. Under such facts and circumstances, in the interest of justice, we refrain ourselves to offer any opinion about the impugned benami transaction and the beneficial owners, as the matter is under sub-judice before the Hon'ble ATPML, New Delhi, consequently, we set aside the order of Ld. CIT(A) and restore the case back

to the file of Ld. AO for fresh adjudication, as per the directions of PBPT Authorities, in the present case.

23. Needless to say, reasonable opportunity of being heard shall be provided to the assessee, in accordance with law.

24. In result, without adverting to the sole controversy raised by the assessee vide ground no. 1 to 4 *inter alia* revised ground no. 1 & 2 of the present appeal, the matter is set aside to the file of Ld. AO for fresh adjudication in terms of our aforesaid observations.

25. In result, the appeal in **ITA No. 428/RPR/2024** filed by the assessee in present case is partly allowed for statistical purposes.

Order pronounced in the open court on 29/01/2025.

Sd/-

(RAVISH SOOD)

न्यायिक सदस्य / JUDICIAL MEMBER

रायपुर/Raipur; दिनांक Dated 29/01/2025

Vaibhav Shrivastav

Sd/-

(ARUN KHODPIA)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant- Prem Singh Saluja
2. प्रत्यर्थी / The Respondent- ITO, Ward-2, Raigarh

3. The Pr. CIT, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
5. गार्ड फाईल / Guard file.

// सत्यापित प्रति True copy //

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur