

APPELLATE TRIBUNAL FOR SAFEMA, FEMA, PMLA, NDPS, PBPT Act AT NEW DELHI

Date of decision : 17thOctober, 2018

- 1. FPA/PBPT/16/CHN/2018**
V Rajinikanth Appellant
- 2. FPA/PBPT/17/CHN/2018**
G. Jothi Priya Appellant
- 3. FPA/PBPT/18/CHN/2018**
K Jawahar Rani Appellant
- 4. FPA/PBPT/19/CHN/2018**
P Deepa Appellant
- 5. FPA/PBPT/20/CHN/2018**
S Aghalya Appellant
- 6. FPA/PBPT/21/CHN/2018**
S Karthick Appellant
- 7. FPA/PBPT/22/CHN/2018**
Jayasreerishnan Appellant
- 8. FPA/PBPT/23/CHN/2018**
G Lathaselvi Appellant
- 9. FPA/PBPT/25/CHN/2018**
V Vijayan Appellant
- 10. FPA/PBPT/27/CHN/2018**
T Prabhuram Appellant
- 11. FPA/PBPT/29/CHN/2018**
S Sathish Kumar Appellant
- 12. FPA/PBPT/33/CHN/2018**
D Arivukkodi Appellant

- 13. FPA/PBPT/34/CHN/2018**
C N Gnanaprakasam Appellant
- 14. FPA/PBPT/35/CHN/2018**
G Jyosthana Appellant
- 15. FPA/PBPT/36/CHN/2018**
J Sivapriya Appellant
- 16. FPA/PBPT/37/CHN/2018**
S Manigandan Appellant
- 17. FPA/PBPT/38/CHN/2018**
D Sankaran Appellant
- 18. FPA/PBPT/39/CHN/2018**
I Cephas Appellant
- 19. FPA/PBPT/45/CHN/2018**
M Methini Appellant
- 20. FPA/PBPT/46/CHN/2018**
D Kousalya Appellant
- 21. FPA/PBPT/47/CHN/2018**
P. Thilaga Appellant
- 22. FPA/PBPT/48/CHN/2018**
G Dhivya Appellant
- 23. FPA/PBPT/49/CHN/2018**
M Nivethitha Devi Appellant
- 24. FPA/PBPT/50/CHN/2018**
M Ramesh Babu Appellant
- 25. FPA/PBPT/54/CHN/2018**
C Bhaskaran Appellant

26. FPA/PBPT/57/CHN/2018

V N Nandhini Devi Appellant

27. FPA/PBPT/61/CHN/2018

R Sivakumar Appellant

28. FPA/PBPT/64/CHN/2018

V Murali Appellant

Vs.

Sh. K. Visakh
Dy Commissioner of Income Tax
Chennai --- Respondent

Advocates/Authorized Representatives who appeared

For the Appellants : Sh. Anirudh Bakhru and Sh. Sudhir
Chandra, Advocates

For the Respondent : Sh. Anish Dhingra, SPP for
Initiating Officer (Respondent)

CORAM

JUSTICE MANMOHAN SINGH : CHAIRMAN

JUDGEMENT

FPA/PBPT/16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 29, 33, 34, 35,36, 37, 38, 39, 45, 46, 47, 48, 49, 50, 54, 57, 61 & 64/CHN/2018

1. By this Order, I propose to decide the above-mentioned 28 appeals filed by the appellants under Section 46 of the Prohibition of Benami Property Transactions Act,1988 against the Order dated 27.03.2018 passed by the Adjudicating Authority, New Delhi.

2. The facts in all the appeals are common so as the impugned order, except the names of the appellants, quantum of advance salary paid in cash to the appellants and the dates of return of amount back are different. The

chart of the same having full details of 28 appeals would be reproduced in the later part of my order. The relevant facts taken from appeal no. 16/2018, are given below:-

- i) The appellant is employed as a Professor in St. Joseph's College of Engineering since 2006 and is drawing salary of Rs. 1,19,592 p.m. The said college is run by St. Joseph Institute of Science and Technology Trust (in short "Trust"), whose Chairman is Shri B. Babu Manoharan. The appellant is filing his Income tax returns regularly, who has a bank account No. 707050607 with Indian Bank, Chennai.
- ii) The Appellant on 17/11/2016 had received an amount of Rupees 50,000/- as salary advance from the Trust, through Dr. R. Sivakumar, Head of his Department.
- iii) On 17/11/2016, a search action u/s 132 of the Income Tax Act, 1961 was conducted on the Trust.
- iv) On 23/11/2016, upon the insistence of Income Tax Authorities, this entire amount of Rs 50,000/- was returned back to the Trust through the same Head of Department by the appellant.
- v) During the course of search, sworn statement of the Appellant was recorded on 28/11/2016 by the Income Tax Authorities. The Appellant in his statement deposed the above-mentioned facts regarding the receipt of Rs 50,000/- as salary advance and its subsequent return to the Management upon the insistence of Income Tax Authorities. No search was ever conducted upon the appellant or his residence by any department under the Income Tax Act.

3. The Appellant received a show cause notice dated 14/12/2016 from the Initiating Officer (IO), but the said show cause notice was not accompanied with any relied upon documents.

The show cause mentions as under:

“The list of persons to whom the said cash of Rs.8.18 crores was distributed contains your name Shri/ Smt. Shri K Rajinikanth which shows that you have received the cash amount of Rs.50,000/-.

You also under sworn statement taken on 28/11/2016 has stated that you have received the cash amount of Rs50, 000/-. This clearly establishes the fact that you have held the cash amount and also lent your name.”

4. It is the case of the appellant that show cause was contrary to the factual position. It was clearly pointed out by the Appellant in his sworn statement that the amount of Rs 50,000/-was received by him as salary advance on 17/11/2016 and the entire amount was returned to the Management upon the insistence of the Income Tax Authorities on 23/11/2016.

5. In answer to question No. 05 of his statement, the Appellant stated as under:

“I have received the cash amount of Rs.50, 000/-from the Head of the Department on 17/11/2016(Rs.500 notes). I have returned this amount to the H.O.D. Dr. R. Sivakumar on 23/11/2016.”

6. In his reply dated 09/02/2017to the show cause notice, the Appellant again reiterated that the amount of Rs 50,000/-was received by him as salary advance on 17/11/2016 and that he has returned the entire amount to the Management on 23/11/2016 upon the insistence of Income tax Authorities.

7. The Provisional Attachment Orderdated 25/01/2017, reads as under:

“The sum of Rs.50,000/- is due from the Benamidhar, Thiru.V. Rajinikanth on account of Benami transactions (Prohibitions) Amendment Act, 2016. The savings bank account held by the Benamidhar in your branch is SB A/c No. 707050607. You are hereby required u/s 24(3) of the Benami Transactions (Prohibitions) Amendment Act, 2016 to pay to provisionally attach any amount due from you to or held by you or.....”

8. I have heard the learned counsel of both parties in details. The appellant has also filed the written-submissions.

9. It is not disputed by the learned counsel for the respondent that these 28 appeals who had allegedly received the advance salary, have returned back the entire amount to the management within 10 days. The detailed chart is also provided by the learned counsel of the appellant during the course of hearing of the appeal. The factual position in the chart is not denied by the counsel for the respondent.The same is reproduced here below:-

S. N.	Tribunal's Reference/ Appellant's Name	Employment details			Salary Advance taken		Salary advance returned back		Property held Benami by the IO	Bank Balance on 25.01.17 (Date of attachment) comprising past salary savings
		Post	Since Year	Salary PM(Rs.)	Amount Rs.	Date	Amount Rs.	Date		
1.	PB 16/2018 V. Rajinikanth	Prof.	2006	1,19,592	50,000	17.11.06	50,000	23.11.06	50,000	28,820
2.	PB 17/2018 G Jothipriya	Asstt. Prof.	2015	50,760	1,00,000	15.11.06	1,00,000	25.11.16	1,00,000	192
3.	PB 18/2018 K. Jawahar Rani	Prof.	2001	1,25,467	75,000	17.11.16	75,000	24.11.16	75,000	1,807
4.	PB 19/2018 P Deepa	Prof.	1997	96,961	1,00,000	15.11.16	1,00,000	26.11.16	1,00,000	768
5.	PB 20/2018 S. Aghalya	Asstt. Prof.	1998	98,794	1,00,000	16.11.16	1,00,000	25.11.16	1,00,000	147,372
6.	PB 21/2018 S .Karthick	Asstt. Prof.	2015	50,760	1,00,000	14.11.16	1,00,000	23.11.15	1,00,000	953
7.	PB 22/2018 Jayasree-krishnan	Prof.	1996	1,31,718	75,000	17.11.16	75,000	19.11.06	75,000	2,976

8.	PB 23/2018 G Lathaselvi	Prof.	1996	92,010	50,000	15.11.16	50,000	19.11.16	50,000	1,149
9.	PB 25/2018 V Vijayan	Prof.	2006	1,19,592	1,00,000	15.11.16	1,00,000	26.11.06	1,00,000	24,443
10	PB 27/2018 T Prabhuram	Asso- ciate Prof.	2011	78,072	1,00,000	16.11.16	1,00,000	22.11.16	1,00,000	3,480
11	PB 29/2018 S Satish Kumar	Physi- other- apist	2001	32,522	2,00,000	15.11.16	2,00,000	19.11.16 (Rs 1 lakh) and 24.11.16 (Rs. 1 lakh)	2,00,000	694
12	PB 3/2018 D. Arivukodi	Asso- ciate Prof.	2013	57,505	1,00,000	15.11.16	1,00,000	23.11.16	1,00,000	72,438
13	PB 34/2018 CN Gnanaprak asam	Asso- ciate Prof.	2007	78,072	1,00,000	15.11.16	1,00,000	26.11.16	1,00,000	2,345
14	PB 35/2018 G Jyosthana	Asstt Prof.	2015	50,760	1,00,000	15.11.16	1,00,000	22.11.16	1,00,000	262
15	PB 36/2018 J Sivapriya	Asso- ciate Prof.	2011	80,441	2,00,000	15.11.16	2,00,000	22.11.16	2,00,000	28,424
16	PB 37/2018 S Mani- gandan	Asso- ciate Prof.	2013	59,902	1,00,000	16.11.16	1,00,000	24.11.16	1,00,000	82,599
17	PB 38/2018 D Sankaran	Asso- ciate Prof.	1997	50,760	1,00,000	15.11.16	1,00,000	24.11.16	1,00,000	736
18	PB 39/2018 I Cephas	Asstt. Prof.	2013	50,760	1,00,000	14.11.16	1,00,000	23.11.16	1,00,000	6,654
19	PB 45/2018 M Methini	Asstt. Prof.	2013	50,760	1,00,000	15.11.16	1,00,000	24.11.16	1,00,000	34,482
20	PB 46/2018 D Kousalya	Asstt. Prof.	2015	50,760	1,00,000	14.11.16	1,00,000	24.11.16	1,00,000	337
21	PB 47/2018 P Thilaga	Asstt. Prof.	2015	50,760	1,00,000	17.11.16	1,00,000	23.11.16	1,00,000	6,197
22	PB 48/2018 G Dhivya	Asstt. Prof.	2015	22,000	50,000	17.11.16	50,000	24.11.16	50,000	1,769
23	PB 49/2018 M Nivethitha Devi	Asstt. Prof.	2010	53,886	1,00,000	17.11.16	1,00,000	26.11.16	1,00,000	1,676
24	PB 50/2018 M Ramesh Babu	Prof.	2003	1,22,482	1,00,000	15.11.16	1,00,000	22.11.16	1,00,000	3,845
25	PB 54/2018 C Bhaskaran	Prof.	1996	1,19,592	3,00,000	14.11.16	3,00,000	19.11.16	3,00,000	236
26	PB 57/2018 VN Nandhini Devi	Asstt. Prof.	1995	1,34,984	1,00,000	17.11.16	1,00,000	19.11.16	1,00,000	85,758
27	PB 61/2018 R Sivakumar	Prof.	2001	1,25,467	1,00,000	17.11.16	1,00,000	19.11.16	1,00,000	1,54,826

28	PB 64/2018 V Murali	Acco- untsO ffi- cer	2003	23,699	2,00,000	14.11.16	2,00,000	22.11.16	2,00,000	45,415
				Total	31,00,000	Total	31,00,000	Total	31,00,000	

10. Actually, 49 appellants who are the employees, filed the appeals. The final orders in remaining appeals would be passed in due course.

11. The disbursed amounts can then be divided into 5 cases:

- a. In 28 cases (Number **PB 16 to 23, 25, 27, 29, 33 to 39, 45 to 50, 54, 57, 61 and 64**), the entire salary advanced was returned back to the management of the trusts within 10 days.
- b. In 3 cases (Number **PB 28, 40 and 51**), part of the salary advance was consumed and part was returned back.
- c. In 7 cases (Number **PB 30, 31, 53, 55, 59, 60 and 63**), the entire salary advance was consumed.
- d. In 9 cases (Number **PB 26, 32, 41 to 44, 52, 56 and 62**), the salary advance was partly consumed, partly deposited in the bank from where withdrawn and consumed.
- e. In 2 cases (Number **PB 15 and 24**), the Appellants were mere carriers of money for further disbursal.

12. The 28 appeals are filed by the appellants as per heading (a).

13. The factual position is not denied by the respondent that St. Joseph College of engineering and St. Joseph institute of technology are two colleges run by two trusts. Mr Babu Manoharan is the Chairman of both, the trusts and the engineering colleges.

14. The Initiating Officer by virtue of his order dated 13.03.2017 u/s 24(4)(a)(i) of the Act has held the chairman to be the beneficial owner and 49 employees of these colleges as benamidars thereafter attaching the salary

bank accounts of these employees up to the value of the alleged “*benami*” property.

15. The adjudicating authority by virtue of its order dated 27.03.2018 u/s 26 (3) of the Act confirmed the aforesaid order.

16. A search action by the Income Tax Department commenced on 17.11.2016. During the course of this search, from the office computer of the accountant, details of disbursement of amounts to various Department Heads for further disbursements were found.

17. The statement of the Chairman was recorded during the course of search wherein he stated that salary advance was given to employees of two colleges as salary advance for their personal purposes. This was given only to interested employees, who gave their consent for the same. The employees in their statements also agreed to having received such money. He also said that he would pay tax on the entire amount mentioned in the list of disbursement, as income of the trusts. The trust accordingly honored the Chairman’s commitment and paid taxes on income of Rs 8.18 Crores, availing the scheme of PMGKY. In the present lot or total 49 appeals, no appeal is with regard to Chairman.

18. As far as the above mentioned 28 appellants are concerned, the argument of Mr. Anirudh Bakhru, learned counsel appearing on behalf of the appellants is that there is no jurisdiction to attach a legitimate property in lieu of “*benami*” property like the provisions of Section 2(u) of the PMLA, 2002 “the value of any such property”. The said expressed provision in the definition is absent from this Act. The nature of this Act mandates pertaining to property centric, the attachment can only be qua the “*benami*” property and not any property in lieu of value of any property. In the present case, all the appellants have already returned the amount to the

employers. They have not kept any amount. They were not aware about the consequences. The advance salary was taken due to bonafide manner.

19. In the present case, the property, i.e. the money involved in the transaction is mostly with the Income Tax Authorities. The Respondents have admitted that they have attached the value of the amount held as benami property which is impermissible under the Act. The said attachment would amount to double attachment which is an illegal usurpation of property. Such provisions of value thereof are not available in the Benami Act.

20. The learned counsel for the respondent has not denied the facts that the attachment of the amount was effected in the value of the such property and the said expression value of any such property is not mentioned in Section 2(u) of the Act as compared to Section 2(u) of the Prevention of Money Laundering Act, 2002. The provision of Section 2(u) of PMLA reads as under:-

“2(u) ‘proceeds of crime’ means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property [for where such property is taken or held outside the country, then the property equivalent in value held within the country]”

21. The definition of Section 2(5), 2(9) and 2(10) of the Benami Act is read as under:

2(5) “attachment “ *means the prohibition of transfer, conversion, disposition or movement of property, by an order issued under this Act;*

2(9) “benami transaction” *means, -*

(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) a Karta, or a member of a Hindu undivided family, as the case may be, and the property is held for his benefit or benefit of other members in the family and the consideration for such property has been provided or paid out of the known sources of the Hindu undivided family;

(ii) a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner, director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1996 (22 of 1996) and any other person as may be notified by the Central Government for this purpose;

(iii) any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual;

(iv) any person in the name of his brother or sister or lineal ascendant or descendant, where the names of brother or sister or lineal ascendant or descendant and the individual appear as joint-owners in any document, and the consideration for such property has been provided or paid out of the known sources of the individual; or

(B) a transaction or an arrangement in respect of a property carried out or made in a fictitious name; or

(C) a transaction or an arrangement in respect of a property where the owner of the property is not aware of, or, denies knowledge of, such ownership;

(D) a transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious;

Explanation.—For the removal of doubts, it is hereby declared that benami transaction shall not include any transaction involving the allowing of possession of any property to be taken or retained in part performance of a contract referred to in section 53-A of the Transfer of Property Act, 1882 (4 of 1882), if, under any law for the time being in force,—

(i) consideration for such property has been provided by the person to whom possession of property has been allowed but the person who has granted possession thereof continues to hold ownership of such property;

(ii) stamp duty on such transaction or arrangement has been paid; and

(iii) the contract has been registered.

2(10) "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;

22. Thus, every cash transaction cannot be termed as a "benami" transaction. As per section 2(9) A of the Act, the following twin conditions need to be satisfied- 1) the property being held by a person who has not provided the consideration, 2) the property is held by that person for the immediate or future benefit, direct or indirect of the person who has provided the said consideration.

23. Thus, every transaction where cash is paid to person in lieu of a future promise cannot be a “*benami*” transaction as there is no lending of name. There can be no “*benami*” transaction if the future benefit is due from the person who is also the holder of property.

24. Using a juxtaposition in the definition as per 2 (9) A, “where the money is transferred to, or is held by, a lecturer, and the consideration for such money has been provided, or paid by, another person”; In the present case, all the appellants have never held the movable property or the same was registered in their respective banks.

25. The attachment in the present appeals are not effected under the PMLA, 2002, though the members of Adjudicating Authority, PMLA, 2002 are also now dealing with the cases under the Benami Act, but majority of the cases are being decided by these members under the PML Act, 2002. It is an expert authority as claimed. The provision of Section 2(u) of PMLA is not applicable.

26. It was rightly argued by Shri Anirudh Bakhru, learned counsel for the appellant that once the entire salary advance was returned back to the Trust, the question of Appellant depositing any amount out of it in his bank account did not arise. Therefore, there was no benami property lying in the Bank account of the Appellant which has been attached.

27. There is no denial on behalf of respondent that no such amount was ever deposited in the bank, the IO went ahead and issued a Provisional Attachment order under sub-section (3) of section 24 of the Act for provisionally attaching the aforesaid Indian bank account of the Appellant by completely disregarding the facts recorded in the sworn statement of the Appellant and his reply to the show cause notice.

28. The appellant placed on record before the Adjudicating Authority the statement of his Indian Bank account from November 2016 to March 2017 which completely nullifies the assumption of the I.O that Rs. 50,000/- of cash was deposited in the said account and is lying there. In the present appeals, ever otherwise, the appellants have not hold any benami property nor the same was registered. They cannot be called as Benamidar. The money has already been returned and the case was dealt under the Benami Law. Thus, none of the clauses of Section-2 would be applicable to the appellant. Section 24 was wrongly invoked in the facts of the appeals filed by 28 appellants.

29. Even the appellant in his reply dated 09/02/2017 to the Provisional Attachment order reiterated the factual position as aforesaid and requested the IO to withdraw the Provisional Attachment order. The IO completely ignoring the replies given to him from time to time by the Appellant, passed the Attachment order dated 13/3/2017 under section 24(4)(a)(i) of the Act continuing the provisional attachment of the property already made under sub-section (3) of section 24 of the Act which is packed with factual inaccuracies.

30. Para 6 of IO's order reproduces a part of the Appellant's statement as under:

"I have received the cash amount of Rs. 50,000/- from the Head of the Department on 17/11/2016 (Rs. 500 notes). I have returned this amount to the H.O.D. Dr. R. Sivakumar on 23/11/2016."

However, in Para 4 of the IO's order, he writes as under:

"In response to the notice, the Benamidar had filed a reply, stating that the sum received by cash from through Shri Babu Manoharan, (beneficial owner) are his salary advance. His reply is not acceptable, because in the sworn statement recorded before the Assistant/Deputy Director of Income tax (Inv), during the course of the search, it has been stated by him that he has received the said amount as loan".

31. On the face of record that the IO has given a false finding that the statement before DDIT (Inv) and the submissions made before Initiating Authority are contradictory. Hence their reply in response to the show cause notice issued is only an afterthought.

32. The IO has not even cared to put on record as to where exactly in his opinion is the alleged contradiction and which portion of reply is an afterthought. .

33. The IO, without application of his mind, has held as under:

“This shows that ThiruBabu Manoharan has forced his employees to distribute, deposit and retain his own money in demonetized currency in the guise of loan received, which has to be repaid after some time in new currency as per his convenience.”

34. The order passed by the IO under sub-section (4) of section 24 of the Act dated 13-03-2017 is illegal as it relates to a property, which does not exist at all.

35. Even the Adjudicating Authority has not considered the reply filed by the appellant properly. It appears that hearing officers have applied the provision of Section 2(u) of PMLA, 2002 once the property was attached in value thereof.

36. The impugned order is unsustainable as it punishes the appellants for wanting to defeat the purpose of demonetization, which has no direct nexus with the Act and is beyond the purview of the Act.

37. The impugned order assumes that the object of the disbursement was to bring undisclosed amount into circulation by depositing into 3rd person accounts, who did not own the money legitimately. There is no material on record about any 3rd persons accounts. Furthermore, there is no material on record to show that the lecturers owned the money illegitimately.

38. The impugned order is also contrary to record with respect to the findings that the sworn statements, which were recorded, were withdrawn and that the advance was beyond the paying capacity of the lecturers and staff.

39. The Benami Act is a Special Act. All the provisions are very stringent provisions. Once the appeals are dismissed by this Tribunal (and its order is became final in higher court), the criminal prosecutions have to be initiated against the parties. It is also settled law that once the provisions of Special Law are clearly worded, the question of importing any expression or omitting any part of the provision does not arise. The same have to be read as it is. The simple meaning is to be given. The question of any perception and personal notion does not arise. In the Benami Act, there is no specific provision which mandates that any movable or immovable property cannot be

attached in value of such property unlike in Section 2(u) of PMLA, 2002, which is other Special Act. Any provision of PMLA, 2002 cannot be invoked in the Benami Act. The members of Adjudicating Authority have failed to appreciate the same law while passing the impugned order. In the present case, the amount was not held by the appellants, it was an advance salary received from the employer. It was an oral contract between the employee and employers. It is not the case of respondent, the appellants were involved in any link and nexus in the crime or they have hatched any conspiracy or arrangement between the employee and employers.

40. It is imperative that the investigating officer must form a reason to believe based on application of mind and appreciation of the material on record (*ACIT v. Dhariya Construction Co.*(2010)328 ITR 515&*CIT v. Kelvinator India Ltd* (2010) 320 ITR 561).

41. The only material present with the initiating officer were sworn statements. These statements only disclose a receipt of cash. This is insufficient to construe the existence of a “*benami*” transaction.

42. These statements would show that the money in question was no longer with the college staff and was either returned or spent and could not have been attached.

43. The Notice would show that it is mechanical in nature and only talks about receipt of cash. In fact all notices are identical except for the amount mentioned in paragraph 5 therein. It shows a lack of application of mind, thus making the jurisdiction assumed under section 24 is invalid.

44. The facts of the present case are clear that the property was never held by the appellants. The amount received by them have returned. Even the question of any arrangement in the present case does not arise as the appellants have received only advance salary from the employer under oral contract at the asking of the respondent, the same was immediately returned. The said factual position has not been denied by the respondent. This is also not a case where the person providing the consideration was not traceable or fictitious. The admitted position is that the management/employer was very much traceable, his statement was recorded, the money returned by the appellants was dealt by the department.

45. The Respondent could not have formed an opinion that the Appellant would alienate property knowing that the money is with the Income Tax Authorities.

46. The existence of the “*benami*” transaction has to be proved by the authorities i.e. the person who alleges the transaction (*Sitaram Agarwal v. Subrata Chandra, (2008) 7 S.C.C. 716*). The authorities have failed to discharge the burden of proof. The authority has purely gone on the premise

that cash is transferred from one person to another, with an object to defeat ,demonetization. This is insufficient to establish a “*benami*” transaction.

47. Under these circumstances, the impugned order in all 28 appeals are set-aside. The attached properties are released forthwith. The appeal and pending application are disposed of.

48. No costs.

**(Justice Manmohan Singh)
Chairman**

**New Delhi,
17thOct., 2018.
'skb'**