

**APPELLATE TRIBUNAL, PROHIBITION OF BENAMI PROPERTY  
TRANSACTIONS ACT AT NEW DELHI**

**Date of decision :11.09.2019**

**1. FPA-PBPT-464/MUM/2019**

M/s. Ace Infracity Developers Pvt. Ltd. ... Appellant

Versus

The Initiating Officer,  
DCIT, BPU-1 Circle, Mumbai ... Respondent

## 2. FPA-PBPT-470/MUM/2019

M/s. Ace Infracity Developers Pvt. Ltd. ... Appellant

Versus

The Initiating Officer,  
DCIT, BPU-1 Circle, Mumbai ... Respondent

### 3. FPA-PBPT-724/MUM/2019

M/s. Ace Infracity Developers Pvt. Ltd. ... Appellant

Versus

The Initiating Officer,  
DCIT, BPU-1 Circle, Mumbai ... Respondent

#### 4. FPA-PBPT-722/MUM/2019

M/s. StarcityBuildcon Pvt. Ltd. ... Appellant

Versus

The Initiating Officer,  
DCIT, BPU-1 Circle, Mumbai ... Respondent

**5. FPA-PBPT-723/MUM/2019**

M/s. Star Land Craft Pvt. Ltd. ... Appellant

Versus

The Initiating Officer,  
DCIT, BPU-1 Circle, Mumbai ... Respondent

**Advocates/Authorized Representatives who appeared**

For the Appellants : Mr.AshwaniTaneja, Advocate  
Mr. Rahul Rai, Advocate

For the Respondent : Mr. Manmeet Singh Arora, S.P.P.

## **CORAM**

**JUSTICE MANMOHAN SINGH** : **CHAIRMAN**  
**SHRI G. C. MISHRA** : **MEMBER**

## **JUDGEMENT**

**FPA-PBPT-464/MUM/2019, FPA-PBPT-470/MUM/2019, FPA-PBPT-722/MUM/2019, FPA-PBPT-723/MUM/2019 & FPA-PBPT-724/MUM/2019**

1. By this order, we propose to decide the above mentioned appeals which have been preferred by the appellants against the common orders dated 28<sup>th</sup> February, 2019 passed by Ld. Adjudicating Authority, PBPT, under Section 26 (3) of the Prohibition of Benami Property Transactions (hereinafter referred to as "PBPT") Act, 1988 (the Act) in the matter of reference number R-446/2018.

### **2. THE BRIEF FACTS OF THE CASE OF RESPONDENT:-**

A. It is the case of the Respondent that it had received information from ADIT (Inv.), Unit 2(2), Mumbai vide letter No. ADIT(Inv.)/Unit-2(2)/Benami Property/2017-18 dated 27.10.2017 that M/s. Divine Spirit Infra Projects Private Limited (hereinafter referred to as "M/s. DSIPL") in Financial Year 2015-16, has made investments in real estate projects of four entities namely:-

- i. M/s. Star Landcraft Pvt. Ltd.,
- ii. M/s. Crest Promoters Pvt. Ltd.,
- iii. M/s. Ace Infracity Developers Pvt. Ltd. and
- iv. M/s. Starcity Buildcon Pvt. Ltd.,

and payment of Rs.43,79,29,306/- has been made by M/s. DSIPL till 28.07.2017 in respect of these investments. On enquiry, it was established that all the four entities are having common shareholders/directors/management and they are part of ACE group of companies.

B. It is alleged that M/s. DSIPL have invested in the real estate projects/properties situated at Noida/Greater Noida region, the details of which are mentioned below:

<b>Sr. No.</b>	<b>Description of the properties</b>	<b>Beneficiary</b>	<b>Value of illicit investment</b>
1.	Flat no. 5052, 5053, 5054, 5061, 5062, 5063, 5064, 5071, 5072 and 5073 (total saleable area of 16750 sq. feet) in Tower-5 of “Ace Golfshire” residential project at group housing plot no. SC-01/A-5, Sector – 150 Noida UP (As per Space Purchase Agreement dated 24.03.2016)	M/s. Ace Infracity Developers Pvt. Ltd. having registered address at B-47 Surya Nagar, Ghaziabad, UP - 201010	3,76,55,000
2.	Residential space admeasuring 30000 Sq. Ft. in Housing project namely “Ace Platinum” on a piece of land situated at Plot No. GH-12/1 Zeeta-1, Greater Noida, UP (As per Space Purchase Agreement dated 25.11.2015)	M/s. StarcityBuildconPvt. Ltd. having head office at D-35, AnandVihar, Delhi - 110092	8,08,00,000
3.	Residential space admeasuring 50000 Sq. Ft. in project situated at Sports City Plot No. SC-02/G, Sector-150, Noida, UP (As per Space Purchase Agreement dated 15.02.2016)	M/s. Crest Promoters Pvt. Ltd. having registered office at D-35, AnandVihar, Delhi - 110092	6,06,00,000
4.	Residential space admeasuring 110000 Sq. Ft. in Tower – I of Housing project namely “Ace Aspire” on a piece of land situated at Plot No. GH-2A Sector – Techzone IV, Greater Noida (W), UP (As per Space Purchase Agreement dated 21.09.2015)	M/s. Star LandcraftPvt. Ltd. having head office at Plot No. GH-2A Sector – Techzone IV, Greater Noida (W), UP.	25,88,74,306

C. It is revealed from the record that M/s. DSIPL has been regularly filing return of income since Assessment Year 2009-10 under PAN: AADCD0018R having address at “Plot No.7, Krishnalal Road, Malhotra House, off Saki Vihar Road, Andheri (East), Mumbai, Maharastra, PIN- 400072”.

D. Discreet enquiries were made with regards to business activities of M/s. DSIPL and it was found that no such entity named M/s. DSIPL was operating from the aforesaid address and had never existed at nor ever operated from the said address.

E. The examination of bank statement of bank account number 915020026119534 of M/s. DSIPL with Axis Bank reflected that its investments into the projects of ACE group of companies were sourced from sums of money received from several companies which are having characteristics of shell companies.

F. Further, the profiling of these creditor companies (from which M/s. DSIPL has received funds) revealed that all of them are in the nature of “shell companies” with no genuine business activity, nominal/low paid up capital, high share premium/unsecured loans/ comparatively high trade payable v/s turnover, nil or low turnover as well as nil/meagre return of income and large credits in bank account immediately followed by debits of equivalent amount. The source of investment by these creditor companies is through high security premium or unsecured loans or trade payable. In order to determine the credit worthiness of the creditor companies’ financial statements including bank statements of these companies were enquired into. Perusal of the bank statements revealed that the source of credits in their bank accounts was from a complex web of entities all of which are in the nature of shell entities with no business activity. Detail of major part of money received by M/s. DSIPL from such few companies during F.Y. 2015-16 which has been used to make investments in the projects of the above mentioned four companies of the ACE group of companies is as under:

<b>Name of the Company</b>	<b>Amount advanced to M/s. DSIPL (in Rs.)</b>
TACTFULL INVESTMENTS LIMITED	154650000
VIKRUTI VINIMAY PRIVATE LIMITED	97900000
CENTRON INFRA PROJECTS PRIVATE LIMITED	64430000
SANSKAR SHARE TRADERS PRIVATE LIMITED	45770000
SURYA MEDI TECH LIMITED	21400000

VIEWLINE DISTRIBUTORS PRIVATE LIMITED	16200000
SALONA BARTER PRIVATE LIMITED	15300000
APPEAL AGENCIES PRIVATE LIMITED	14100000
<b>Total</b>	<b>42,97,50,000/-</b>

G. Apart from the above entities which have been advanced major part of the funds to M/s. DSIPL, following are the companies which have also advanced a substantial amount to M/s. DSIPL:

- i. Sarnimal Investment Limited
- ii. Jai Ambe Foils Limited
- iii. Brahma Share Traders Private Limited
- iv. Mahadev Securities Private Limited
- v. Nu-Ruchi Barter Pvt. Ltd.
- vi. Salora Capital Limited
- vii. Shridhar Financial Services Limited
- viii. ShriHaridas Securities and Credits Private Limited
- ix. Abhinav Leasing and Finance Limited
- x. Blooms Texent Private Limited
- xi. Svam Software Limited
- xii. Grk Finance Company Pvt. Ltd.
- xiii. GoodfaithDealcomm Private Limited.

H. Enquiries into the financial affairs of the companies have yielded that all of them are in the nature of “shell entities” with no genuine business activity, nominal/low paid up capital, high share premium/unsecured loans/ comparatively high trade payable v/s turnover, nil or low turnover as well as nil/meagre return of income and large credits in bank account immediately followed by debits of equivalent amount. The source of investment by these creditor companies is through high security premium or unsecured loans or trade payable.

I. It is also seen from the material on record that M/s. Salona Barter Private Limited, 21/3 Jatindra Mohan Avenue, Kolkata, West Bengal, PIN – 700006 and M/s. Appeal Agencies Private Limited, 21/3 Jatindra Mohan Avenue, Kolkata, West Bengal, PIN – 700006; are two companies which have been identified to be associated with one Mr. Devesh Upadhaya, son of late Shrikant Upadhaya, residing at Salasar Garden, 91/36, Amlanshu Sen Road, 'A' Block, 2<sup>nd</sup> Floor, Flat No.28, Kolkata – 700048. Mr. Devesh Upadhaya in his various statements dated 24.01.2014, 30.12.2014, 01.05.2015 and 02.03.2015 recorded under Section 131 of I.T. Act, 1961 has categorically admitted that he incorporated/ran several entities/companies for the purpose of providing accommodation entries to various beneficiaries in the form of unsecured loan, share capital, bogus sale of shares, etc.

3. It is contended by the Respondent that the creditor entities of M/s. DSIPL which has advanced funds to M/s. DSIPL, have no genuine funds of their own available with them. These companies are merely shell entities and have been used as conduit to route back unexplained funds of Ace group of companies into M/s. DSIPL which in turn invested these funds into projects of four companies of the Ace group.

4. Based on the above facts, the Respondent has come to a conclusion that M/s. DSIPL is a "Benamidar" and the appellants as "Beneficiaries".

**CASE OF THE APPELLANT:-**

5. On the other hand, the Appellants have attacked the order passed by the Initiating Officer on several grounds including the ground that the Initiating Officer has no territorial jurisdiction to investigate the matter. It is the case of the Appellants that the Respondent i.e. Initiating Officer, Deputy Commissioner of Income Tax, (BPU-1), Mumbai, had illegally assumed jurisdiction in the matter. In this regard the Appellants have relied on the Standard Operating

Procedure, issued by the Central Board of Direct Taxes (CBDT). The Standard Operating Procedure (SOP) has been issued vide F. No. 414/63/2016-IT (Inv.-I) dated 10.08.2017. The Appellants have also relied on the notification dated 18<sup>th</sup> May, 2017 issued by Ministry of Finance, Department of Revenue, CBDT, wherein the territorial areas have been defined.

6. It is the contention of the Appellants that:

- a) Benami Property is situated in Uttar Pradesh (Noida, Greater Noida, Ghaziabad) and undisputedly not located in Mumbai jurisdiction.
- b) Benamidar (M/s. Divine Spirits Infra Properties Pvt. Ltd.): Registered office of the Benamidar is at B-47, Surya Nagar, Ghaziabad, Uttar Pradesh since 20<sup>th</sup> April, 2017 till the time of its merger/dissolution.
- c) Beneficial Owner(s) namely: All the 4 alleged Beneficial Owners also admittedly, namely M/s. Ace Infracity Developers Pvt. Ltd., M/s. StarcityBuildcon Pvt. Ltd., M/s. Crest Promoters Pvt. Ltd. and M/s. Star Landcraft Pvt. Ltd., are corporate entities having Registered Office in Uttar Pradesh.

7. It is the also the contention of the Appellants that none of the impugned transactions took place in Mumbai and even the Bank accounts from which transactions have been made are not in Mumbai.

8. The notice issued under Section 24(1), orders passed under Section 24(3), 24(4) and making reference under Section 24(5) did not have any jurisdiction to initiate any proceedings against the erstwhile company and all the actions taken by the Respondent are void, non-est and Coram Non-Judice.

That the Respondent had setup camp office at NOIDA for carrying out enquiries, by the Respondent, which is beyond the provision of law and further indicates the mala-fide of the Respondent in assuming jurisdiction when there was none.

That the very fact that Respondent had setup its camp office at NOIDA for this case, established the fact that the Respondent was also quite aware and conscious of the fact that affairs of the erstwhile company were not in Mumbai, but nonetheless he continued with the proceedings initiated beyond jurisdiction and illegally.

9. The Respondent has relied on the judgment of Hon'ble Supreme Court passed in Civil Appeal No. 6575 of 2018 in the matter of "*Chandrabhai K. Bhoir and Ors. Vs. Krishna Arjun Bhoir & Ors*".

The Respondent has also taken several other legal and factual issues to challenge the impugned order and the reference.

#### **ANALYSIS & DISCUSSION:-**

10. We have gone through the material available on record and also heard the learned counsels for both the parties. The Appellants have raised several factual and legal issues while assailing the impugned order as well as the reference. If this Tribunal is holding that the Initiating Officer/Respondent had no jurisdiction to investigate/refer the matter to the Adjudicating Authority then there is no need of examining other issues. Therefore, we have taken up the issue of jurisdiction of the Initiating Officer to initiate the investigation as well as referring the matter to the Adjudicating Authority.

11. The Central Board of Direct Taxes (CBDT) issued notification in S.O. 1621(E) dated 18.05.2017 in exercise of Powers conferred under sub-section (2) of Section 28 read with Section 59 of Prohibition of Benami Property Transactions Act, 1988, wherein the territorial jurisdiction of Joint Commissioner of Income-Tax/Additional Commissioner of Income-Tax (Benami Prohibition), Unit-1, Mumbai has been defined. According to the said notification, these authorities are having territorial jurisdiction in the areas within the limits of the Municipal Corporation of Greater Mumbai and Navi Mumbai. Whereas, Ghaziabad, Uttar Pradesh is coming within the jurisdiction



of the Joint Commissioner of Income-Tax/Additional Commissioner of Income-Tax (Benami Prohibition), Kanpur.

12. The properties in question are undisputedly situated in Ghaziabad. The Inspecting Officer received information from ADIT (Inv.), Unit-2(2), Mumbai vide ADIT (Inv.)/Unit-2(2)/Benami property/2017-18 dated 27.10.2017. This means the I.O. has registered the case under the PBPT Act, either on 27.10.2017 or subsequent thereto. Thereafter Show Cause Notice issued on 31.10.2017. It is on record that at this point of time the address of the Benamidar i.e. M/s. DSIPL was at Ghaziabad which is coming under the jurisdiction Joint Commissioner of Income-Tax/Additional Commissioner of Income-Tax, (Benami Prohibition), Kanpur. It is undisputed that the properties are situated in Noida, Greater Noida, in the District of Ghaziabad within the jurisdiction of the same authority.

13. In their written submissions the Respondent tried to justify the jurisdiction of the I.O., Mumbai by stating that the office of M/s. DSIPL was located in Mumbai during the time when space purchase agreements were signed for purchase of the flats i.e. during the Financial Year 2015-16. Only in the F.Y. 2016-17 M/s. DSIPL changed its address to Ghaziabad.

It is also the case of the Respondent that the proceedings in the case have been initiated after the enquiry and reference received from the office of the ADIT (Inv.), Unit-2(2), Mumbai. During the course of enquiry under PBPT Act, 1988 the Show Cause Notice and notices have been issued to the parties including the Benamidar and Beneficial Owners and in response to this they have filed details time to time. On perusal of the case records, it is found that M/s. DSIPL has not raised any specific objection regarding jurisdiction of the case during the entire proceedings. It is only after the reference under Section 24(5) of the PBPT Act, 1988 was filed before the Adjudicating Authority, that the Defendant has taken a belated plea that its address has been changed

to Ghaziabad in April 2017 and hence the I.O. has no jurisdiction in this case, which is factually incorrect.

14. Having considered the aforesaid submissions of the Appellants on the jurisdiction issue, we would like to refer to the Standard Operating Procedure (SOP) which has been issued by the Investigation Division of CBDT in F. No. 414/63/2016-IT (Inv.I) dated 10.08.2017. This SOP was issued prior to the issue of Show Cause Notice under Section 24(1) of the PBPT Act, 1988. In the said SOP at Para No.4 the jurisdiction of I.O., Approving Authority and Administrator has been defined. The same is reproduced below:

**“4. Jurisdiction of the IO, Approving Authority and Administrator:** Section 3(1) of Prohibition of Benami Property Transactions Act, 1988 states that no person shall enter into any benami transaction. The scheme of the Act revolves around consequences of violation of this section. It is, therefore, appropriate that the jurisdiction is assumed by a BPU when any of the 3 limbs viz. benami transaction/property, benamidar or beneficial owner falls under its assigned territorial jurisdiction.

*In cases where the benami property/transaction, beneficial owner and/or benamidar are located in territorial jurisdictions of different BPUs, the BPU from which the first show cause notice u/s 24 of Prohibition of Benami Property Transactions Act has been issued shall assume jurisdiction over the case and shall intimate the other BPUs concerned regarding assumption of jurisdiction in that particular case involving benami property/transaction, benamidar and beneficial owner. Each benami transaction/property may be considered as a separate case. The BPU assuming jurisdiction in such a case shall ensure that the fact of assuming jurisdiction by it is brought to the notice of other BPUs concerned with a view to avoid multiple show cause notices/actions by other BPUs concerned in such a case.”*

15. From the above it is clear that the I.O. had no territorial jurisdiction to issue the Show Cause Notice to any of the parties. The Competent Authority is the I.O. under the JCIT/Additional CIT, BPU Unit, Kanpur as per the areas defined under the said notification of CBDT. In the present case none of the criteria prescribed in Para 4 of the SOP is fulfilling. The Ld. Adjudicating Authority appears to have not considered this in proper prospective and hence passed the impugned order. In view of the aforesaid two documents and on the basis of foregoing reasons stated above, we are of the considered view that the I.O., Mumbai ought not to have issued show cause notice and taken up enquiry/investigation in the matter. He has committed the illegality as a result

of which subsequent actions in the matter on his part is non-est in the eye of law. Hence, the appeals are allowed on the aforesaid grounds.

16. It is clarified that we have not decided the appeals either on merit or on any other issues except the “territorial jurisdictional authority of Initiating Officer” issuing show cause notice and subsequent actions on the basis of said notices. Accordingly, the impugned order is set aside. **The Competent Initiating Officer, having jurisdiction, is at liberty to initiate appropriate proceedings in accordance with law.**

No cost.

**(Justice Manmohan Singh)**  
**Chairman**

**(G. C. Mishra)**  
**Member**

**New Delhi,**  
**11<sup>th</sup> September, 2019**  
'AS'