

**| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"E" BENCH, MUMBAI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER**  
**[AS THIRD MEMBER]**

**B.M.A. No. 4/Mum/2022**  
**Assessment Year: 2016-17**

<b>Captain Vilas Waman Katre</b> 7th Floor, Anurag Business Centre 410/411, Waman Tukaram Patil Marg Chembur Mumbai - 400071 <b>[PAN: AAEPK5492L]</b>	Vs	<b>Additional Commissioner of Income tax, Central Range-7, Mumbai</b>
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>

Assessee by :	Ms. Fereshte Sethna a/w Shri Mrunal Parekh, A/Rs
Revenue by :	Shri Biswanath Das, CIT, D/R

सुनवाई की तारीख/**Date of Hearing** : 04/10/2024

घोषणा की तारीख/**Date of Pronouncement** : 08/10/2024

**आदेश/ORDER**

**PER NARENDRA KUMAR BILLAIYA, AM:**

Due to difference in opinion between the Ld. Members constituting the Division Bench which heard the appeal, the Hon'ble President, ITAT has referred the following questions of difference proposed by the Ld. Members for the decision of the Third Member.

2. The question referred by the Ld. Accountant Member are as under:-

*"1. Whether the finding recorded by the Income Tax Appellate Tribunal in Income Tax Proceedings be binding on the Tribunal in MBA Proceedings when the lower authorities under BMA itself relied only on their respective orders passed under Income Tax Proceedings?*

*2. Whether the assessee is obliged to make any disclosure of his assets/income held overseas in any capacity whatsoever during the relevant Assessment Years 2008-09 to 2012-13 in the Income Tax Return Forms when there was no specific column in the ITR to that effect?*

3. The question proposed by the Ld. Judicial Member are as under:-

“1. Whether, the finding in Income Tax Appeal (in ITA Nos. 6720 to 6723/Mum/2018 vide order dated 03.01.2022 relating to A. Ys. 2008-09 to 2011-12) could have a bearing on the finding in BMA proceeding, when both being two different statutes?

2. Whether in the absence of any documentary evidence produced by the assessee can it be held that the alleged oral trust be valid and even otherwise can the assessee contend that he is not the beneficial owner of the said trust?

3. Whether the undisclosed income/asset which is disposed off before the enactment of the BMA would be a bar on the Id. A.O. to assume jurisdiction u/s.10 of the BMA?

4. In the absence of any documentary evidence could it be held that the assessee has discharged his onus even when he has not explained the source of money deposited in the account of the Trust vehicle, in which he is the sole authorized signatory and the trustee of the said trust ?

5. Whether the applicability of case laws relied upon by the assessee, none of which pertains to an oral trust be applicable in the assessee's case for discharging his liability under the Act?

6. Whether the undisclosed income/asset which was not declared during the relevant assessment year and which was disposed of before the enactment of BMA ought to have been disclosed by the assessee in the one time opportunity provided by the central government as per section 59 of the Act to make declaration in respect of such undisclosed asset/income, failing which the same is deemed to have been acquired in the year in which notice u/s. 10 of the Act has been issued by the Id. A.O.?”

4. Having gone through the respective orders of the Ld. Members as well as the questions proposed, I am of the view that only one core issue arises for consideration, which is as follows:-

**“Whether the findings recorded by the ITAT in Income Tax Proceedings be binding on the Tribunal in Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (in short “BMA”).”**

5. Since the other questions raised by the Ld. Judicial Member {Ld. JM}, have not been addressed by the Ld. Accountant Member {Ld. AM}, in his

order, therefore, I am of the considered opinion that there is no question of any dissent between the Ld. Members.

6. Before I proceed to decide the core issue, it is necessary to deal with the relevant facts. The assessee is a resident engaged in the business of shipping and logistics. Based on the information received from the Singapore Tax Authorities, the assessee had beneficial interest in an off-shore entity, namely, M/s. Eagle Ridge Services Limited (ERSL), which was incorporated on 09/09/2005 as an international business company in the British Virgin Island. This corporate had a bank account no. 8044349 with Deutsche Bank, Singapore, where total credits and portfolio investments during AY 2008-09 to 2012-13, were USD 3,13,37,192.3 (approximately INR 2,00,55,80,307/-). As per document collected from Singapore Tax Authorities (STA), named Establishment of Beneficial Owner Identity - for Private Investment Corporation of Deutsche Bank relating to account number 8044349 in the said form, the assessee has declared himself as the beneficial owner of ERSL as well as its account 8044349. It is also observed from another document received from STA, namely, Resolution of ERSL dated 10/10/2007 that the assessee was made the sole authorized signatory for the alleged bank account no. 8044349 for unlimited amount. Another Board Resolution of ERSL dated 09/03/2006, which was submitted to Deutsche Bank, Singapore, has assessee's name as sole authorized signatory. His specimen signature has also appeared in the document and authenticated by ERSL. Moreover, this resolution has been duly entered in the Minute book and signed by the Chairman.

6.1. On the above facts, the authorities below took a stand that the assessee is treated as owner of the assets of the said bank account in Deutsche Bank, Singapore and income arising from there. According to the lower authorities, the onus is on the assessee to demonstrate the extent of such assets which can be explained as having been acquired through funds which have been disclosed to the Department. In absence of such evidence, the entire value of such assets is liable to be treated as income of the owner of the assets under BMA.

7. The Ld. AM was of the firm belief that the additions made under the Income Tax Act and BMA, are almost the same and since the Co-ordinate Bench in Income Tax proceedings passed an order dated 03/01/2022, wherein the Bench considered the facts of the present case and decided the issue in favour of the assessee and since the Ld. AM was also of the view that information relied upon by the AO for initiating the proceedings under the BMA are similar to the Income Tax Act proceedings, the basic facts are unchanged in the proceedings initiated under BMA, the Ld. AM took a view that ITAT cannot take different view under different proceedings after evaluation of the same facts on record and following the order of the Co-ordinate Bench, held that the decision awarded in the Income Tax proceedings has to be applied in the present proceedings and decided the issues in favour of the assessee.

7.1. The entire decision of the Ld. AM revolves around the following findings given by the Co-ordinate Bench in the Income tax assessment proceedings:-

*"The Coordinate Bench in the case of Yashovardhan Birla v. CIT(A) in ITA No. 1/Mum/2021 dated 3.9.2021 has held as under: -*

*"41 We note that the Hon'ble Supreme Court in the case of Suzuki Parasram puria Suitings Ltd. (supra) has held that the assessee cannot take shifting stand under different proceedings and such stand was liable to be rejected on the touch stone of the legal maxim of approbate and reprobate. In the present case, we note that the Revenue as well as ITAT cannot take shifting stands under different proceedings, when after evaluation of the same facts the ITAT had taken a decision in favour of the assessee that these assets do not belong to the assessee. Now we at the ITAT cannot take a contrary view by shifting the stand that ITAT'S own findings and decision has no precedential value. This being so, the denial of liability by the assessee under Black Money Act under the jurisdictional challenge duly succeeds in view of the above said ITAT order in Wealth Tax proceedings."*

7.2. The Co-ordinate Bench in the case of *Yashovardha Birla (supra)*, has drawn support from the decisions of the Hon'ble Supreme Court in the case of *Suzuki Parasrampururia Suitings (P.) Ltd. [2018] 99 taxmann.com 29 (SC)*. In my understanding of the law, a judgment should be understood in the context in which it is delivered and the Hon'ble Supreme Court delivered the judgment in the case of *Suzuki Parasrampururia Suitings (P.) Ltd. (supra)* in the following context:-

*"10. The appellant initially took a conscious and considered stand before the Company Judge, staking a claim for being substituted as a secured creditor under the SARFAESI Act consequent to the assignment of debt to it by the IFCI. That the claim was not simply with regard to assignment of an actionable claim under Section 130 of the T.P. Act is evident from its own pleadings and the pursis filed by the IFCI before the Debt Recovery Tribunal. No material has been placed before us with regard to the orders that may have been passed by the Tribunal on such application. After the claim of the appellant of being a secured creditor was rejected by the Company Judge, and the appellant realised the unsustainability of its claim in the law, it made a complete volte face from its earlier stand and surprisingly, contrary to its own pleadings, now contended that it had never sought the status of a secured creditor under the SARFAESI Act.*

*11. The contention of the appellant that it had never sought substitution as a secured creditor under the SARFAESI Act is additionally belied from the recitals contained in the order dated 07.09.2015. Time and again this court has held that the recitals in the order sheet with regard to what transpired before the High Court are sacrosanct. The*

*learned Single Judge, in the review jurisdiction, has reiterated that the arguments addressed before him in Company Application No. 248 of 2014 were made specifically under the SARFAESI Act observing as follows:*

*"It is also required to be noted that learned advocate for the applicant in the said application, at the time of arguments, submitted that the applicant be substituted as secured creditor and given the benefit under the SARFAESI Act and therefore, learned advocate Mr. Rao appearing for the Bank of Baroda submitted in detail, after relying upon the provisions contained in SARFAESI Act, that the applicant cannot be substituted as secured creditor and permitted to proceed under the provisions of SARFAESI Act."*

12. *A litigant can take different stands at different times but cannot take contradictory stands in the same case.*

*A party cannot be permitted to approbate and reprobate on the same facts and take inconsistent shifting stands. The untenability of an inconsistent stand in the same case was considered in Amar Singh v. Union of India [2011] 7 SCC 69, observing as follows:*

*"50. This Court wants to make it clear that an action at law is not a game of chess. A litigant who comes to Court and invokes its writ jurisdiction must come with clean hands. He cannot prevaricate and take inconsistent positions."*

13. *A similar view was taken in Joint Action Committee of Air Line Pilots' Assn. of India v. DG of Civil Aviation [2011] 5 SCC 435, observing:*

*"12. The doctrine of election is based on the rule of estoppels-the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppels in pais (or equitable estoppel), which is a rule in equity..... Taking inconsistent pleas by a party makes its conduct far from satisfactory. Further, the parties should not blow hot and cold by taking inconsistent stands and prolong proceedings unnecessarily."*

7.3. Considering the above context considered by the Hon'ble Supreme Court, I fail to understand how that is relevant in the present proceedings.

8. The Ld. JM, was of the opinion that though the Tribunal has discharged the assessee from its liability in the Income Tax proceedings, the same will not have a binding effect on the BMA proceedings and went on to decide the appeal under BMA.

9. Insofar as, the merits of the issues are concerned, the Ld. AM has not touched upon those issues and, therefore, as mentioned elsewhere, there is no question of any dissent between the Ld. Members.

10. Before me, the Id. Representatives relying upon the respective orders in favour of each, have fairly conceded that the core issue that needs adjudication is whether the decision of the Co-ordinate Bench in Income Tax proceedings is binding upon the Division Bench in BMA proceedings.

11. While enacting the BMA the introduction to the Act reads as under:-

*“ An act to make provisions to deal with the problem of Black money that is undisclosed foreign income and assets, the procedure for dealing with such income and assets and to provide for imposition of tax on any undisclosed foreign income and asset held outside India and for matters connected therewith or incidental thereto.”*

11.1. In the Statement of Objects and Reasons, it has been provided that:-

*“4. The new legislation will apply to all persons resident in India and holding undisclosed foreign income and assets. A limited window is proposed to persons who have any undisclosed foreign assets. Such persons may file a declaration before the specified tax authority within a specified period, followed by payment of tax at the rate of 30 per cent. and an equal amount by way of penalty. Exemptions, deductions, set off and carried forward losses, etc., shall also be not allowed under the new legislation.*

*Upon fulfilling these conditions, a person shall not be prosecuted under the Bill and the declaration made by him will not be used as evidence against him under the Wealth-tax Act, the Foreign Exchange Management Act (FEMA), the Companies Act or the Customs Act. Wealth-tax shall not be payable on any asset so disclosed. It is merely an opportunity for persons to become tax compliant before the stringent provisions of the new legislation come into force.*

*5. The Undisclosed Foreign Income and Assets (Imposition of Tax) Act, 2015, inter alia, provides for the following, namely: –*

*(i) Concealment of income in relation to a foreign asset will attract penalty equal to three times the amount of tax (i.e., 90 per cent. of the undisclosed income or the value of the undisclosed asset). Failure to furnish return of income by person holding foreign asset, failure to disclose the foreign asset in the return or furnishing of inaccurate particulars of such asset shall attract a penalty of Rs. 10 lakh.*

*(ii) The Bill provides for criminal liability with enhanced punishment. Wilful attempt to evade tax in relation to a foreign income will be punished with rigorous imprisonment from three years to ten years and with fine. Failure to furnish a return of income though holding a foreign asset, failure to disclose the foreign asset or furnishing of inaccurate particulars of the foreign asset will be punishable with rigorous imprisonment for a term of six months to seven years. The provisions will also apply to banks and financial*

*institutions aiding in concealment of foreign income or assets of resident Indians or falsification of documents.*

*(iii) Second and subsequent offence will be punishable with rigorous imprisonment for a term of three years to ten years and with fine of Rs. 1 crore to Rs. 25 lakh. In prosecution proceedings, the wilful nature of the default shall be presumed and it shall be for the accused to prove the absence of the guilty state of mind.*

*(iv) To facilitate enquiry and investigation, authorities under the Act have been vested with the powers of discovery and inspection, issue of commissions, issue of summonses, enforcement of attendance, production of evidence, impounding of books of account and documents.*

*(v) The Central Government has been empowered to enter into agreements with other countries, specified territories and associations outside India inter alia for exchange of information, recovery of tax and avoidance of double taxation.*

*(vi) Safeguards to prevent misuse have been embedded in the Bill. It will be mandatory to issue notices and grant of opportunity of being heard, record reasons for various actions and pass written orders. Appeal to the Income-tax Appellate Tribunal, and to the jurisdictional High Court and the Supreme Court on substantial questions of law have been provided for.*

*(vii) Persons holding foreign accounts with minor balances which may not have been reported out of oversight or ignorance have been protected from criminal consequences.*

*(viii) The Bill also proposes to amend Prevention of Money Laundering Act (PMLA), 2002 to include offence of tax evasion under the proposed legislation as a scheduled offence under PMLA.*

*6. The enactment of the proposed new Bill will enable the Central Government to tax undisclosed foreign income assets acquired from such undisclosed foreign income, and punish the persons indulging in illegitimate means of generating money causing loss to the revenue. It will also prevent such illegitimate income and assets kept outside the country from being utilised in ways which are detrimental to India's social, economic and strategic interests and its national security."*

12. Since the title and preamble form part of the context of the enactment of the Act, the same should play an important role in the interpretation of the provisions of the Act.

12.1. Further, one cannot now be oblivious of the fact that the preamble and statement of objects and reasons has a clear statement of intention of targeting undisclosed foreign income/assets acquired from undisclosed foreign income and punish the persons indulging in illegitimate means of generating money and causing loss to the Revenue.



12.2. Section 4 of the Act contains provisions for the scope of undisclosed foreign income and asset and the same reads as under:-

***“4. Scope of total undisclosed foreign income and asset. –***

*(1) Subject to the provisions of this Act, the total undisclosed foreign income and asset of any previous year of an assessee shall be, –*

*(a) the income from a source located outside India, which has not been disclosed in the return of income furnished within the time specified in Explanation 2 to sub-section (1) or under sub-section (4) or sub-section (5) of section 139 of the Income-tax Act;*

*(b) the income, from a source located outside India, in respect of which a return is required to be furnished under section 139 of the Income-tax Act but no return of income has been furnished within the time specified in Explanation 2 to sub-section (1) or under sub-section (4) or sub-section (5) of section 139 of the said Act; and*

*(c) the value of an undisclosed asset located outside India.*

*(2) Notwithstanding anything contained in sub-section (1), any variation made in the income from a source outside India in the assessment or reassessment of the total income of any previous year, of the assessee under the Income-tax Act in accordance with the provisions of section 29 to section 43C or section 57 to section 59 or section 92C of the said Act, shall not be included in the total undisclosed foreign income.*

*(3) The income included in the total undisclosed foreign income and asset under this Act shall not form part of the total income under the Income-tax Act.*

*This clause deals with the scope of total undisclosed foreign income and asset. It provides that the total undisclosed foreign income and asset of any previous year of an assessee shall be,-*

*(a) the income from a source located outside India, which has not been disclosed in the return of income furnished under sub-section (1) or sub-section (4) or subsection*

*(5) of section 139 of the Income-tax Act;*

*(b) the income, from a source located outside India in respect of which a return is required to be furnished under section 139 of the Income-tax Act but no return of income has been furnished under sub-section (1) or sub-section (4) or subsection (5) of section 139 of the Income-tax Act;*

*(c) the value of any undisclosed asset located outside India.*

*It further provides that any variation made in the income from a source outside India in the assessment or reassessment of the total income of any previous year, of the assessee under the Income-tax Act in accordance with the provisions of section 29 to section 43-C or section 57 to section 59 or section 92-C of the said Act shall not be included in the total undisclosed foreign income.*

*It also provides that the income included in the total undisclosed foreign income and asset under this Act shall not from part of the total income under the Income-tax Act.  
(Notes on Clauses)."*

13. The scope of total income as provided in Section 5 of the Income Tax Act, reads as under:-

***"5. Scope of total income.***

***(1)*** Subject to the provisions of this Act, the total income of any previous year of a person who is a resident includes all income from whatever source derived which-

***(a)*** is received or is deemed to be received in India in such year by or on behalf of such person; or

***(b)*** accrues or arises or is deemed to accrue or arise to him in India during such year; or

***(c)*** accrues or arises to him outside India during such year:

*Provided that, in the case of a person not ordinarily resident in India within the meaning of sub-section (6) of section 6, the income which accrues or arises to him outside India shall not be so included unless it is derived from a business controlled in or a profession set up in India.*

***(2)*** Subject to the provisions of this Act, the total income of any previous year of a person who is a non-resident includes all income from whatever source derived which-

***(a)*** is received or is deemed to be received in India in such year by or on behalf of such person; or

***(b)*** accrues or arises or is deemed to accrue or arise to him in India during such year.

*Explanation 1. - Income accruing or arising outside India shall not be deemed to be received in India within the meaning of this section by reason only of the fact that it is taken into account in a balance sheet prepared in India.*

*Explanation 2. - For the removal of doubts, it is hereby declared that income which has been included in the total income of a person on the basis that it has accrued or arisen or is deemed to have accrued or arisen to him shall not again be so included on the basis that it is received or deemed to be received by him in India."*

13.1. Whereas the scope of total income under the Income Tax Act includes all income from whatever source derived unless specifically exempt from tax or not included in total taxable income whereas under the BMA only undisclosed asset located outside India and undisclosed foreign income and assets are considered.

14. It would be pertinent to refer to Clause (3) of Section 4 of the BMA, which reads as under:-

“(3)The income included in the total undisclosed foreign income and asset under this Act shall not form part of the total income under the Income-tax Act.”

14.1. Thus, any addition made as undisclosed foreign income and asset under the BMA, shall not be repeated under the Income Tax Act but there is no corresponding provision under the Income tax Act, which means that addition/s made under the Income tax Act have no bearing under the BMA.

15. The second most important feature in respect of the scope of total income is that under both the Acts, the provisions start with *“Subject to the provisions of this Act....”* and there is no non-obstante clause. Therefore, the scope of total income under the Income tax Act is only for the purpose of that Act.

16. Section 2(11) of the BMA, defines Undisclosed assets located outside India and Section 2(12) of the BMA defines Undisclosed foreign income and asset and the same read as under:-

(11) *“undisclosed asset located outside India” means an asset (including financial interest in any entity) located outside India, held by the assessee in his name or in respect of which he is a beneficial owner, and he has no explanation about the source of investment in such asset or the explanation given by him is in the opinion of the Assessing Officer unsatisfactory;*

12) *“undisclosed foreign income and asset” means the total amount of undisclosed income of an assessee from a source located outside India and the value of an undisclosed asset located outside India, referred to in section 4, and computed in the manner laid down in section 5;*

16.1. Entire BMA revolves around taxing these two income whereas under the Income Tax Act, all income are taxable unless specifically exempt from tax or not included in taxable income.

17. Section 59 of the BMA provides for declaration of undisclosed foreign asset as under:-

***“59. Declaration of undisclosed foreign asset. –***

*Subject to the provisions of this Chapter, any person may make, on or after the date of commencement of this Act but on or before a date to be notified by the Central Government in the Official Gazette, a declaration in respect of any undisclosed asset located outside India and acquired from income chargeable to tax under the Income-tax Act for any assessment year prior to the assessment year beginning on 1st day of April, 2016 –*

*(a) for which he has failed to furnish a return under section 139 of the Income-tax Act;*

*(b) which he has failed to disclose in a return of income furnished by him under the Income-tax Act before the date of commencement of this Act;*

*(c) which has escaped assessment by reason of the omission or failure on the part of such person to make a return under the Income-tax Act or to disclose fully and truly all material facts necessary for the assessment or otherwise.”*

17.1. This Section has given an opportunity to declare undisclosed foreign asset on or after the commencement of this Act but on or before a date to be notified by the Central Government in the official gazette to make a declaration in respect of any undisclosed asset located outside India and acquired from income chargeable to tax under the Income tax Act for any assessment year prior to the assessment year beginning on 01/04/2016, which has escaped assessment by reason of the omission or failure on the part of such person to make a return under the Income-tax Act or to disclose fully and truly all material facts necessary for the assessment or otherwise.

17.2. If a declaration is made, then the amount of undisclosed investment in the asset located outside India, declared in accordance with Section 59 of the Act shall not be included in the total income of the declarant for any assessment year under the Income Tax Act, if the declarant makes the payment of taxes.

17.2.1. It has been specifically provided u/s 65 of the BMA that, the declarant shall not be entitled, in respect of undisclosed asset located outside India declared or any amount of tax paid thereon, to reopen any assessment or reassessment made under the Income-tax Act or the Wealth-tax Act or claim any set-off or relief in any appeal, reference or other proceeding in relation to any such assessment or reassessment.

18. Thus, it is only under the BMA that such provisions have been provided whereas no such corresponding provisions are provided under the Income tax Act. This also goes to show that the proceedings under both the Act are clearly distinguishable and moreover, the proceedings under the Income tax Act, have no binding effect on the proceedings under the BMA inasmuch as the scope of income is totally different under both the Acts.

19. Section 70 of the BMA is produced as under:-

*70. Applicability of certain provisions of Income-tax Act and of Chapter V of Wealth-tax Act.— The provisions of Chapter XV of the Income-tax Act relating to liability in special cases and of section 189 of that Act or of Chapter V of the Wealth-tax Act, 1957 (27 of 1957) relating to liability to assessment in special cases shall, so far as may be, apply in relation to proceedings under this Chapter as they apply in relation to proceedings under the Income-tax Act or, as the case may be, the Wealth-tax Act."*

19.1. Thus, wherever the legislators thought of providing specific provisions, it has been provided but no such corresponding provisions are

provided under the Income Tax Act, which again go to show that the proceedings under Income Tax Act and BMA cannot be equated.

20. Considering the scope of income *vis-à-vis* the proceedings under both the Act, I am of the considered view that having different scope of income, the findings given under the Income Tax proceedings may have a guiding force but certainly not a binding force under the BMA proceedings and, therefore I am of the view that the Ld. AM grossly erred in following blindly the findings given by the Co-ordinate bench in the Income Tax proceedings.

20.1. Moreover, under the Income tax proceedings, additions were made u/s 68 & 69 of the Act and both the provisions are deeming provisions. Under section 68, assessee is only required to establish the identity, creditworthiness and genuineness of the transactions and capacity of the lender and now also the source of the source of these are required to be proved *prima facie*. Similarly, u/s 69 of the Act, the assessee has to show that the investments are recorded in the books of accounts and offer explanation about the nature and source of the investments. Whereas under BMA, Section 2(11) provides that "*undisclosed asset located outside India*" means an asset (including financial interest in any entity) located outside India, held by the assessee in his name or in respect of which he is a beneficial owner, and he has no explanation about the source of investment in such asset or the explanation given by him is in the opinion of the Assessing Officer unsatisfactory; & Section 2(12) provides that "*undisclosed foreign income and asset*" means the total amount of undisclosed income of an assessee from a source located outside India and the value of an undisclosed asset located outside India,

referred to in section 4, and computed in the manner laid down in section 5.”, and it can be seen that none of the above is a deeming provisions and have different implications than Section 68 & 69 of the Act. Therefore, I am of the considered view that Ld. AM should have decided the quarrel within the four walls of BMA.

20.2. As mentioned elsewhere, since the Ld. AM has not given any finding in respect of the other issues, decided by the Ld. JM, there is no question of any dissent and, therefore, the decision of the Ld. JM shall prevail.

21. The second question which needs to be addressed raised by the Ld. AM is whether the assessee is obliged to make any disclosure of his assets/income held overseas in any capacity whatsoever during the relevant Assessment years 2008-09 to 2012-13 in the Income Tax Return Forms where there was no specific column in the ITR to that effect. The answer lies in Section 59 of the BMA, which is reproduced below at the cost of repetition:-

**“59. Declaration of undisclosed foreign asset. –**

*Subject to the provisions of this Chapter, any person may make, on or after the date of commencement of this Act but on or before a date to be notified by the Central Government in the Official Gazette, a declaration in respect of any undisclosed asset located outside India and acquired from income chargeable to tax under the Income-tax Act for any assessment year prior to the assessment year beginning on 1st day of April, 2016 –*

- (a) for which he has failed to furnish a return under section 139 of the Income-tax Act;*
- (b) which he has failed to disclose in a return of income furnished by him under the Income-tax Act before the date of commencement of this Act;*
- (c) which has escaped assessment by reason of the omission or failure on the part of such person to make a return under the Income-tax Act or to disclose fully and truly all material facts necessary for the assessment or otherwise.”*

22. The declaration has to be made after the date of commencement of BMA on or before a date notified by the Central Government which is effective from 01/04/2016 and after the date of notification, the assessee can declare undisclosed foreign assets and not necessarily in the return of income for AYs 2008-09 to 2012-13. Therefore, the answer to the question posed by the Ld. AM is **YES**.

23. To sum up, the answers to the questions framed before me for adjudication are as under:-

*“1. Whether the finding recorded by the Income Tax Appellate Tribunal in Income Tax Proceedings be binding on the Tribunal in MBA Proceedings when the lower authorities under BMA itself relied only on their respective orders passed under Income Tax Proceedings?*

**Answer: NO.**

*2. Whether the assessee is obliged to make any disclosure of his assets/income held overseas in any capacity whatsoever during the relevant Assessment Years 2008-09 to 2012-13 in the Income Tax Return Forms when there was no specific column in the ITR to that effect?*

**Answer: YES.**

24. My decision along with records be sent to the concerned Bench for passing the confirmatory order in accordance with law.

**Order pronounced in the Court on 8<sup>th</sup> October, 2024 at Mumbai.**

*Sd/-*

**(NARENDRA KUMAR BILLAIYA)  
ACCOUNTANT MEMBER**

Mumbai, Dated 08/10/2024

*\*S.S.P.*



17

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

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Assistant Registrar  
आयकर अपीलीय अधिकरण  
ITAT, Mumbai