आयकर अपीलीय अधिकरण
कोलकाता 'बी' पीठ, कोलकाता में
IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'B' BENCH, KOLKATA

डॉ. मनीष बोरड, लेखा सदस्य
एवं
श्री संजय शर्मा, न्यायिक सदस्य
के समक्ष
Before
DR. MANISH BORAD, ACCOUNTANT MEMBER
&
SONJOY SARMA, JUDICIAL MEMBER

B.M.A. No.: 3/KOL/2022
Assessment Year: 2020-2021

Sri Srinjoy Bose.....Appellant
[PAN: ADDPB 4680 M]

Vs.

A.D.I.T. (Inv.)-3(4), Kolkata.....Respondent

Appearances by:

Sh. Soumitra Choudhury, Adv., appeared on behalf of the Assessee.

Sh. P.P. Barman, Addl. CIT, appeared on behalf of the Revenue.

Date of concluding the hearing : December 6th, 2022
Date of pronouncing the order : February 02nd, 2023

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2020-2021 is directed against the order passed u/s 17 of the Black Money (UFIA) and Imposition of Tax Act, 2015 (in short the "Black Money Act") by ld. Commissioner of Income-tax (Appeals)-20, Kolkata [in short ld. "CIT(A)"] dated

12.05.2022 which is arising out of the assessment order framed u/s 10(3) of the Black Money Act, 2015 dated 17.02.2021.

2. The assessee is in appeal before this Tribunal raising the following grounds:

> *"1. For that on the facts of the case, the order passed by the Ld. C.I.T.(A) on 12.05.2022 is completely arbitrary, unjustified and illegal.*
>
> *2. For that on the facts of the case, the impugned order is at best capable of being classified as a case of mere change of opinion, hence, the assessment is bad in law should be quashed.*
>
> *3. For that on the facts and circumstances of the case, the Ld. C.I.T.(A) was wrong in dittoing the order of the A.O. and confirming the amount of Rs.1,08,01,726/- is being computed as undisclosed foreign asset as per the Provisions of the Black Money (Undisclosed Foreign Income and Assets] and Imposition of Tax Act,2015 and the same is being assessed u/s. 10(3) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act,2015 which is completely arbitrary, unjustified and illegal.*
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> *4. For that on the facts of the case, the Ld. CIT(A) ought to have considered that the assessee had discharged its onus by furnishing all the relevant documents in connection with the insurance premium paid and also proved the identity as NR1 during his stay in Dubai for the year 2000 & 2001, creditworthiness of Standard Life Assurance Company & Scottish Provident International and genuineness of transactions, thus his action is completely arbitrary, unjustified and illegal.*
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> *5. For that on the facts of the case, the Ld. CIT(A) was wrong in not considering the facts that payment made as insurance premium for a term insurance is neither asset, nor investment, but Ld. CIT(A) mentioned his order that the assessee has not declared these foreign assets either in return of income or as per the opportunity provided by chapter-VI of BMA,2015 and liable to be taxed for the value of undeclared foreign investments, which is completely erroneous, perverse and illegal and should be quashed.*
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> *6. For that on the facts of the case, the A.O. was wrong in not considering the facts that the assessee is entitled for deduction u/s. 10(10D) of the I.T. Act on the maturity of insurance policies sum*

received, treated the same as Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act,2015 which is confirmed by the Ld. CIT(A) and the assessee has paid tax of Rs.39,00,000/- to buy peace against the insured matured value, should be refunded to the assessee.

7. For that on the facts of the case, the A.O. was wrong in charging interest u/s. 40 at Rs.5,52,508/-, u/s. 234A at Rs.32,405/-, u/s. 234B at Rs.3,56,457/- and u/s. 234C at Rs.1,63,646/- are mechanically wrong and illegal.

8. For that the appellant reserves the right to adduce any further ground or grounds, if necessary, at or before the hearing of the appeal."

3. Brief facts of the case as culled out from the records are that the assessee is a non-resident Indian. During FY 2000-01 & 2001-02 assessee was a non-resident Indian working at Dubai, United Arab Emirates. During the period when the assessee was enjoying non-resident status, he took two life insurance policies, one from Standard Life Assurance Company on 04.12.2000 and the other from Scottish Provident International Life Assurance Ltd. on 14.12.2000. Premium for first two years paid by the assessee from his income earned in Dubai as a non-resident Indian. Thereafter, assessee returned back to India. Premium on the above referred life insurance policies was subsequently paid by assessee's father who is also a non-resident Indian and the source of the subsequent premiums paid by the assessee's father was from the income earned outside India as a non-resident Indian. After payment of policies for certain periods, it was discontinued and thereafter, during the period 2018-19 the assessee lodged claim to get the surrender value of its policies. Against the total investment made by the assessee as well as his father, after certain deduction a reduced amount received in assessee's bank account in India

through his father which is duly offered in the income tax return filed by the assessee and due taxes paid thereon. Based on this information about the income from foreign sources, ld. AO carried out proceedings u/s 10 of the Black Money Act, 2015. Ld. AO noted that the assessee has failed to declare the alleged foreign assets i.e. investment in life insurance policies in his income tax return. Summons u/s 131 of the Act issued to the assessee on 13.11.2018 to furnish necessary information. Various submissions were filed by the assessee stating the facts of the case, details of investments made in the insurance policies, reasons for discontinuation of the policy, communications from the insurance companies for lodging the claim to take the surrender value of the policy, details of payment made by the assessee during the period when he was non-resident Indian and the other payments made by his father who is a also non-resident Indian. Further, it was submitted by the assessee that the premium on these two policies were paid only during the period 2002-2010 and thereafter, it was discontinued and he was in a *bona fide* belief that the insurance companies will forfeit the amount for non-payment of subsequent premiums and for this reason, information of the old investments were not given in the income tax return and only during the year 2018, on receiving the communication from the insurance companies, necessary formalities were carried out to get the surrender value of Life Insurance Policies and finally after certain deductions the balance value of the investment was received in the account of the assessee's father who was assigned the said policies and thereafter, the amount received in assessee’s account in India and though it was refund of investment made in life insurance policy

but still the same is offered to tax in the income tax return for AY 2019-20 and tax of Rs. 39,00,000/- paid thereon.

4. But, ld. AO was not convinced with these submissions and came to a conclusion that that the assessee was well-aware of the investment which amounted to US$ 157713.37 and the assessee failed to disclose these assets in the income tax return and nor gave any details in the window given by the government regarding undisclosed foreign income and assets and therefore, since the information was received during FY 2019-20, reference rate of US$ as on 01.04.2019 is applied and undisclosed foreign income and assets assessed u/s 10(3) of the Black Money Act, 2015 at Rs. 1,08,01,726/-. To arrive at the said addition the relevant extracts of the observation of ld. AO are reproduced below:

> *"11. The submission of the assessee has been perused. The assessee in his submission in response to SCN has not denied the facts that he is the beneficial owner of foreign assets and income. The assessee has also accepted that he had made investment in two foreign insurance policies in respect of Standard Life Assurance Company, Bermuda and Scottish Provident International, Isle of Man. The assessee also accepted that till F.Y. 2017-18, both the insurance policies were in his name and only during F.Y. 2018-19. he had surrendered the same.*
>
> *12. The assessee in his submission stated that insurance maturity value is exempted income u/s. 10(10D) of the Income Tax Act. 1961 whether insured in India or abroad and cited various case laws in this regard. The matter of examination in this case is not the tax liability of surrendered value of the insurance policies. In the instant case, the matter has been examined under the provisions of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act. 2015. The core issue is that the assessee had made foreign investment through insurance policies which he failed to disclose the same in his ITRs. The assessee was the insured person and the owner of the policies and accordingly, during the period when he was resident in India, he should disclose the same in the respective*

schedule of his ITRs. Moreover, the case laws referred by the assessee is relating to Income Tax Act, 1961 and not related to the core issue of the case, hence, the same is respectfully distinguished from the facts of the case of the assessee.

13. The contention of the assessee that he had not made investment in foreign policies after returning to India have been carefully considered and not found acceptable on the basis of above detailed analysis and available evidences. The documents/evidences as received from the foreign jurisdictions have dearly stated that the assessee had made investment in foreign Insurance policies and he was the insured person and owner of the foreign insurance policies. The assessee after becoming Resident in India had made total premium payments of $68,649.37(A) & US$ 89,064 (B) in respect of the Policy Nos. B00007108 and MO21001210 (1 to 10 inclusive) respectively, which he failed to disclose the same either in the respective schedule of his Income Tax Returns or during one-time compliance window provided under Chapter VI of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax, 2015. The assessee's submission is therefore not acceptable to that extent. Hence, the total undisclosed foreign investment in respect of both the policies works out to USS 157713.37 (A + B).

14. As per Rule 4 of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015, Reference rate of the Reserve Bank of India for the conversion of foreign currencies into Indian currency on the date of valuation is taken as below:

Currency	*Reference rate as on 01.04.2019 as per RBI*
USD	*68.4896*

Therefore, the fair market value of the undisclosed foreign assets/investment has been calculated as below which will be assessable under the provisions of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015:

Currency	*Total investment*	*Reference rate as on 01.04.2019 as per RBI @*	*Amount in Rs.*
USD	*157713.37*	*68.4896*	*1.08,01,725.63*

Hence, the amount of Rs. 1,08,01,726/- is being computed as undisclosed foreign asset and income of the assessee for the A.Y. 2020-21 as per the provisions of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act. 2015 and the same is being assessed under section 10(3) of the Black Money

(Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (taxable at the rate of 30% as provided u/s 3 of the said Act) pertaining to AV 2020-21.

Penalty proceedings u/s. 41 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 read with Section 46 of the said Act is being initiated separately in respect of undisclosed foreign income and asset

15. In view of the above discussion and after considering all the facts, replies submitted by the assessee and after deliberation on the various issues, the total undisclosed foreign income & asset of the assessee is computed as below:

	Amount (Rs.)
Undisclosed foreign income & asset [as discussed above]	*1,08,01,726*
Tax payable @ 30% as per Section 3 of the said Act	*32,40,518*
Add: Interest u/s 40 of the Black Money Act Rs.5,52,508/-	*5,52,508*
Interest u/s.234A of the Income Tax Act:	*Rs.32,405/-*
Interest u/s.234B of the Income Tax Act:	*Rs.3,56,457/-*
Interest u/s.234C of the Income Tax Act:	*Rs.1,63,646/-*
Total Tax payable in the light of Rule 12 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015	*Rs.37,93,026/-*
Assessed u/s 10(3) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015."	

5. Aggrieved, the assessee preferred appeal before ld. CIT(A) and again reiterated the submissions as were made before ld. AO but failed to get any relief as ld. CIT(A) was of the firm view that the assessee was aware of the investments made in foreign but neither he disclosed those assets in the income tax return nor availed the opportunity to declare these foreign assets when one time compliance window was provided under Chapter VI of Black Money

Act, 2015. Relevant extract of the observation of ld. CIT(A) confirming the action of ld. AO of assessing undisclosed foreign income and assets at Rs. 1,08,01,726/- under the Black Money (UFIA) And Imposition of Tax Act, 2015 is reproduced below:

> *"4.3(a) I have carefully considered the facts of the case and submission of the appellant. Perusal of the assessment order and appellant's submission reveals that Shri Srinjoy Bose had subscribed to two Life Insurance Policies in Dubai where he was an NRI during the calendar years 2000 and 2001. In 2002, he returned back to India. When Shri Srinjoy Bose was an NRI, he paid initial insurance premium for two years from his own income and when he returned back to India his father continued paying the premium till 2010. Shri Swapan Sadhan Bose, father of the appellant, paid the premium from the Bank A/c. of M/s. S.S. Global FZE, the business concern managed by Shri Swapan Sadhan Bose. The two policies were in the name of the appellant, Shri Srinjoy Bose, during the period from 04-12-2000 to 04-12-2017 and w.e.f. 05-12-2017 name of his father was substituted in place of the name of the appellant, as desired by the appellant. Request for surrender of these two policies was made in October, 2018.*
>
> *(b) In his submission, appellant has emphasized that he has not violated any law regarding non-declaration of foreign assets in his name. Appellant submits that Term Life Insurance policies are not assets. Therefore, first let us have a look at the nature of the policies which were subscribed by the appellant. Perusal of the documents relating to M/s. Standard Life Assurance Company shows that appellant had subscribed for Perspecta Single Life Policy that gives insurance cover of US dollar 10,00,000, at annual premium of dollar 8,781.18. This policy had an option for surrender after paying some amount as surrender charges. However, 8th year onwards there were no surrender charges. Applicant had to choose its own investment funds from a basket of Investment funds suggested by Insurer for the amounts deposited in the name of insurance premium. There is a clause regarding monthly deduction by Fund Manager from the amount deposited by the policy holder. It says that each month the Fund Manager will calculate the total monthly deduction to pay for administrative expenses incurred by the Fund Manager and the cost of the insurance of the policy holder.*

Perusal of the papers relating to the M/s. Scottish Provident International Life Assurance Ltd. shows that assessee had opted for Momentum Single Life Policy for the period of 20 years. For this policy, appellant had to pay US dollar 989.60 every year as regular contribution amount and US dollar 1039.08 as Regular Contribution Investment Element. For these policies life insurance covered was for US dollar 1,00,000. It appears that Shri Srinjoy Bose had purchased 10 such policies. Thus, total annual premium payable was US$ 9896. First payment date was 14-12-2000 and last payment date for the policy was 14-12-2019.

(c) Appellant has raised objection whether the premium paid by the appellant comes under the definition of assets. The word 'assets' includes property of every description whether it is movable or immovable property. Further, property also has very wider meaning in its real sense. It not only includes money and other tangible things of value but also includes any intangible things considered as a source of income or wealth. There are no definite definition of the term property in Transfer of Property Act, 1882 but it has been defined differently in different acts. Section 2(11) of Sale of goods Act, 1930 gives some definition of property whereas section 2(c) of the Benami Transactions (Prohibition) Act, 1988) defines property as: "Property' means property of any kind, whether movable or immovable, tangible or intangible and includes any right or interest in such property."

Thus, it is apparent that property has a very wider meaning and consequently, the term assets also has a very wider meaning. In common parlance an asset is something which the owner expects will have some value in the future. The value of the assets purchased may appreciate in future, like that of land etc., or it may diminish due to wear and tear, like that for car etc. But one thing is certain that the owner is entitled to get some value in future when he transfers that asset to some other person. Here in the present case the nature of the policies subscribed by the assessee and the terms & condition associated with those policies show that assessee had basically opted for Investment Plan which also offered Life Insurance cover. Amount collected as annual premium was invested with different professionally managed funds and only a part of the premium was towards Life Insurance cover. At the time of opting for these policies, appellant was aware that he will get back his investment along with interest etc. at the end of the term of the policies, which was for 20 years. This could also be redeemed any time, as per 'Surrender Policy' of the Funds. Perusal of the terms & conditions of the two policies

clearly indicate that assessee was opting for investment funds of his choice from a basket of names suggested by the policy provider. Apart from assuring handsome return on assessee's investment, these policy providers also covered for his Life Insurance. These policies speak about the surrender charges when the subscriber does not want to continue paying the premium. In that case, in the initial years, he has to pay steep penal charges but 8th year onwards there are no penal charges and he may opt out of paying the annual premium but he is still entitled to get back his investment made till that time. This is what has happened in assessee's case. For initial two years assessee has paid the premium and after that he has come back to India. Thereafter, assessee's father has continued paying the premium for the next 8 years. Assessee was well aware of the investments made with the foreign investment funds. W.e.f. 05-12-2017, assessee transferred these policies in the name of his father but assessee can not escape the fact that he was the beneficial owner of these foreign assets. Surrender request in respect of these policies was sent in October, 2018. Under the circumstances, assessee should have declared these assets while filing his Return of income from A.Y. 2012-13 onwards or under one time window provided as per Chapter-VI of BMA, 2015.

(d) Appellant further submits that after he came back to India, his father continued paying the premium without his knowledge. However, this does not seem logical. In the first place, assessee was aware right from the beginning that he had opted for the Investment Plan (with Life Insurance cover) with foreign funds. Secondly, his father continued paying premium from his business concern, namely, M/s. S.S. Global FZE. Assessee was also getting some income from the same concern for some services rendered and this income was declared in his return of income. He claims that his father paid Insurance premium from the same business concern which may be considered as gift to son. However, the documents reveal that M/s. S.S. Global FZE is a company in which there are other share holders, other than the family members. Thus, payments from such business concern for the personal benefit of one of the Directors would not be permitted. There is also the possibility that the premium paid was nothing but part of consideration for the services rendered by the appellant to the company, M/s. S.S. Global FZE, as he had regularly been showing receipt of income from such party for some services rendered. In any case, it is not acceptable that his father continued paying the premium without appellant's knowledge. Even if he did so,

legally applicant was the owner of the policies and he could not escape responsibility for the investment in those policies.

(e) In view of the above discussion, it is apparent that right from day one assessee was aware that he has opted for an Investment Plan which also offers Life Insurance benefits or vice-a-versa. In either case a part of the payments made, initially by the appellant and later by his father, was in the nature of investment for a period of 20 years with expectation of handsome return on these investments. Although assessee denies any knowledge of this Investment Plan being continued by his father but it is hard to believe assessee's contention. In December, 2017, assessee has conveyed these policies to his father and in October, 2018 these policies were surrendered to get back the invested amount along with the accrued returns till that date. These investments are definitely in the nature of assets and in the name of the appellant. Hence, as per law appellant was required to mention about it in the return of income filed since assessment year 2012-13. Assessee also had another opportunity to declare this foreign asset when one time compliance window was provided under chapter-VI of BMA, 2015. As assessee has not declared these foreign assets either in his return of income or as per the opportunity provided by chapter-VI of BMA, 2015. He is liable to be taxed for the value of undeclared foreign Investments, as per the Black Money Act, 2015.

In view of the above discussion, the assessment of Undisclosed Foreign Income and Assets by A.O. at Rs.1,08,01,726/- under the Black Money (UFIA) and Imposition of Tax Act, 2015, is confirmed."

6. Aggrieved, the assessee is now in appeal before this Tribunal. Ld. Counsel for the assessee has filed a paper book containing 454 pages containing following details:

"1. Details of days spent in Abroad for the assessment years 2001-02 & 2002-03.

2. Passport (No. A8745789) of Srinjoy Bose.

3. Salary Certificate from SS GLOBAL FZE, Dubai, UAE

4. Standard Life Assurance Policy certificate [B0007108] & Scottish Provident International [M021001210]

5. Details of SS Global Fze from whose bank account the payment for the term insurance policies was made.

6. Payment details of Insurance Policies paid by Swapan Sadhan Basu (Father) & payment confirmation

7. Letter to A.O. from Swapan Sadhan Basu (Father) regarding payment of Premium.

8. Return Acknowledgement, computation of total income & tax, Balance sheet & profit & Loss a/c. for the assessment year 2001-02 to 2006-07. 9. Return Acknowledgement, Hard copy of return, computation of total income & tax, Balance sheet & profit & Loss a/c. for the assessment year 2007-08 to 2017-18.

10. Return Acknowledgement, Hard copy of return, computation of total income & tax, Balance sheet & profit & Loss a/c. for the assessment year 2018-09 to 2020-21."

7. Further, ld. Counsel for the assessee reiterated the submissions made before the lower authorities and also referred to the following written submissions placed on record:

"1. Section 2(11) of the Black Money Act provides-

(a) taxability of an unexplained foreign asset; and

(b) Undisclosed foreign Income from such unexplained foreign assets or otherwise.

2. Kind attention of the Hon'ble Bench is drawn to Para -102 of the Budget 2015-16 speech of the then Hon'ble FM Shri Arun Jaitley dated 28.02.2015 -

Tracking down and bringing back the wealth which legitimately belongs to the country is our abiding commitment to the country. Recognizing the limitations under the existing legislations, we have taken a considered decision to enact a comprehensive new law on black money to specifically deal with such money stashed away abroad. To this end, I propose to introduce a bill in the current session of the parliament.

3. It is crystal clear that the intent of legislation of The Black Money Act (in short 'BMA,2015') is to tax on Indian money which was illegally channelled and parked outside India without paying legitimate revenue to the Govt. The Act is therefore, extended to tax on all foreign assets acquired by such stashed out money and also any foreign

income derived from such assets not declared in ITR by a resident assessee.

4. In the case of Srinidhi Karti Chidambaram Vs. PCIT in WA No. 1125 Of 2018 the Hon'ble Madras HC (order dated 02.11.2018) has held in Para 123 that -

"Analysis of section 2(11) and 2(12) of the B M Act would show that section 2(11) applies when assessee has undisclosed foreign asset, from a source of income within the country.

5. In the present case in hand, it is an, admitted and accepted by authorities below, fact that entire premium amount was paid from legal source outside India. Not a single Indian rupee, legally or illegally, was utilized for premium payment. There is no immediate or even a proximate nexus of such paid premium with any Indian money or any Indian source of money. Thus, the BMA is not applicable in this case.

6. Circular No. 12 of 2015, dated 02.07.2015

[Explanatory notes on provisions relating to tax compliance for undisclosed foreign income and assets as provided in chapter VI of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015]

INTRODUCTION

THE BLACK MONEY (UNDISCLOSED FOREIGN INCOME AND ASSETS) AND IMPOSITION OF TAX ACT,2015 (referred to here as 'the Act') as passed by the Parliament received the assent of the President on the 26th May 2015. The Act contains provisions to deal with the menace of black money stashed away abroad. It, inter alia, levies tax on undisclosed assets held abroad by a person who is a resident in India at the rate 30 per cent of the value of such assets, provides for a penalty equal to 90 per cent of the value of such asset, and also provides for rigorous imprisonment of three to ten years for wilful attempt to evade tax in relation to a undisclosed foreign income or asset.

7. Circular No, 13 of 2015, dated 06.07.2015

Question No. 17: A person has some undisclosed foreign assets. If he declares those assets in the Income -tax Return for assessment year 2015-16 or say 2014-15 (in belated return) then should he need to

declare those assets in the voluntary tax compliance under chapter VI of the Act?

Answer: As per the Act, the undisclosed foreign asset means an asset which is unaccounted/the source of investment in such asset is not fully explainable. Since an asset reported in Schedule FA does not form part of computation of total income in the Income tax return and consequently does not get taxed, mere reporting of a foreign asset in Schedule FA of the Return does not mean that the source of investment in the asset has been explained. The foreign asset is liable to the taxed under the Act (whether reported in the return or not) if the source of investment in such asset is unexplained. Therefore, declaration should be made under chapter VI of the Act in respect of all those foreign assets which are unaccounted/the source of investment in such asset is not fully explainable.

8. As per section 2(2) of the BMA, the Act is not applicable to non-residents. Later, vide Finance Act, 2019 the definition of 'Assessee' has been amended retrospectively from the date of applicability of BMA (i.e., 1 July 2015) to include individuals/ entities that were residents when undisclosed offshore incomes were earned/ undisclosed offshore assets were acquired even if later such individuals/ entities become non-resident.

9. In the present case in hand -

(a) First two premium was paid by the Appellant when he was non-resident and therefore, always remained outside the scope of BMA. The AO has rightly excluded the said amounts,

(b) Rest of the premium amount was paid by Shri Swapan Sadhan Bose, father of the Appellant / M/s S.S. Global Fze wherein appellant's father was the sole beneficiary and Sri Swapan Sadhan Bose is all along, non-resident, even till date he is non-resident. But the AO has held, and Ld. CIT(A) has confirmed too that payments made by such non-resident individual from his proprietorship concern named M/s S.S. Global Fze are assets within the scope of BMA when they themselves have accepted the fact that such foreign entities were non-resident on the date of premium payments.

(c) Thus, considering the payees of the premium itself, the premium amount is not chargeable to BMA as the amounts were paid by non-resident entities and those payees are not falling the amended provision of section 2(2) of the BMA.

10. An amount of USD 157713.37 [equivalent to INR 1,08,01,725/-] being the amount of premium paid by 2 offshore entities has been assessed u/s 10(3) of the BMA and confirmed by the Ld. CIT(A) on the solo ground that the asset was not disclosed in Schedule FA of the ITR.

10(a) It is reiterated once again that the money USD 157713.37 paid by non-residents was never an Indian money and therefore, remained, all along, outside the scope of BMA. It was assessee's understanding, honest and bonafide belief that as the money is not falling under the ambit of BMA, there is no scope to declare the same in Schedule- FA of the ITR.

10(b) However, any financial interest in any foreign entity is foreign asset as per BMA. In this case, it is an admitted fact that the policy was discontinued and appellant had no actionable claim to paid premium. He had no idea whether the insurance companies will return the paid premium amount or not in future. His right to receive back the money was never crystalized at any point of time up to F.Y. 2017-18. It was in the F.Y. 2018-19, the insurance companies wanted to pay back only a part of total premium and Appellant has sent his surrender request in October 2018, his actionable claim has been triggered. He assigned his right to his father. Later, he received equivalent INR of USD 85624.29 and receivable USD 55355.99 from his father through banking channel. Moreover, he has honestly offered both the amount so received/receivable as income in A.Y. 2019-20 and paid tax of Rs. 39.00 lakh thereon despite having a bonafide belief that the money so received/ receivable was not falling within the 'Scope of total income' u/s 5(l)(c) of the I.T.Act, 1961.

10(c) As per Section 5(1)(c) income accrues or arises outside India to a resident is chargeable in India. In the instant case, no income ever accrues or arises in any manner in the hand of the resident appellant. In respect of policy No. M021001210, total premium paid USD 99016.61 (Appellant paid USD 19792 when he was non-resident and his Non-resident father paid USD 79,224.61. However, the AO calculated a figure of USD 108856). Against the said payment, insurance company refunded USD 85624. In respect of policy No. B00007108, total premium paid USD 85635.37 (Appellant paid USD 16986 when he was non-resident and his Non-resident father paid USD 68649.37). However, Against the said payment, insurance company refunded USD 55355.99. Thus, there was no element of profit/gain in the refunded money which can, in any stretch of

imagination, be held as income accrued/arose to the appellant outside India.

11. Ld. CIT (A), after a detail discussion on 'what is a property' in para 4.3.c/page4 & 5 of the appellate order, has held that it was an asset of the assessee. He has further stated in para 4.3.d/page-5 that payment by a business concern for the benefit of one of the directors would not be permitted. In the very next line, he has stated that there is also the possibility that the premium paid was nothing but part of consideration for the services rendered by the appellant to the company and finally concluded in para 4.3.e/page-6 that these investments are definitely in the nature of assets and in the name of the appellant.

10(a). Ld. CIT(A) has absolutely misguided himself in deciding the issue. Appellant was not the owner of the insurance policy but he is the beneficiary of the policy. In other words, he had the beneficial interest on the policy to the extent of premium paid by himself as non-resident. Further, payment by a foreign company (M/s S.S.Global FZE) to its director Shri Swapan Sadhan Bose being father of the Appellant (a non-resident) for the purpose whatsoever, is governed by the law of said foreign country and such consideration is extremely extraneous to the fact of the present case. Above all, appellant provided services to the said foreign company and received due service charges which he regularly and properly reflected in his ITR in each year and the Department never detected that he received something extra. Ld. CIT(A)'s statement in this regard is purely an assumption or presumption when he himself has used the word "Possibility".

10(b) [2021] 128 taxmann.com 152 (Delhi - Trib.)

IN THE ITAT DELHI BENCH 'C'

Additional Commissioner of Income-tax, Range 70, New Delhi v. Jatinder Mehra

INCOME TAX/BLACK MONEY ACT: To identify a beneficial owner of an asset, said person should have nexus, direct or indirect to source of asset and he must have provided funds for said asset; mere account opening form of an overseas bank account where assessee was mentioned as beneficial owner of account, mentioning details of his passport as an identification document, did not necessarily, in absence of any other corroborative evidence of beneficial ownership

of assessee over asset, lead to taxability in hands of assessee under Black Money Act

In the present case, admittedly premium was paid by two non-resident foreign entities from their own sources and he didn't have any nexus, direct or indirect to such payments and therefore, he cannot be the beneficial owner of such payment.

10(c). In the aforesaid judgment, beneficial ownership has been dealt with in the following manner:-

As stated earlier the Black Money Act, 2015 does not define the term 'beneficial ownership' and the Income-tax Act, 1961 Explanation 4 to section 139(1) defines the same. However, it is not necessary that to examine the provisions of the Black Money Act only the definition provided under the Income-tax Act is required to be seen. According to provisions of section 84 of the Black Money Act, only certain provisions of the Income-tax Act are made applicable to the Black Money Act. This section does not include the provisions of section 139(1) of the Income-tax Act. Therefore, the beneficial ownership is required to be understood with respect to its dictionary meaning and also other provisions of other statute also keeping in mind the nature of the object and purposes of the Black Money Act. [Para 25]

The beneficial ownership concept is also dealt with extensively in the corporate laws such as the Companies Act and various circulars issued by SEBI. The Companies Act, 2013 prescribes maintenance of a register of beneficial ownership. Section 90(1) of the Companies Act, 2013 states that every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of not less than twenty-five per cent or such other percentage as may be prescribed, in shares of a company or the right to exercise, or the actual exercising of significant influence or control as defined in clause (27) of section 2, over the company (significant beneficial owner), shall make a declaration to the company, specifying the nature of his interest and other particulars, in such manner and within such period of acquisition of the beneficial interest or rights and any change thereof, as may be prescribed. [Para 28]

Testing the present case on the parameters laid down by the Companies Act it is apparent that there is no any arrangement, contract etc. between M/s S.S.Global FZE or its director Shri Swapan Sadhan Bose being father of appellant with the assessee regarding

payment of premium. There is no demonstration by the revenue that assessee exercises any control as a shareholder of M/s S.S.Global FZE over that company. There is no evidence that assessee has received any interest therefrom over and above the income earned from the company for providing services. It is not also demonstrated that assessee exercises any control to appoint directors or control the management or policy decision of that company. Thus, the test of beneficial ownership as per the criteria laid down under the Companies Act, 2013 does not satisfy that assessee is a beneficial owner of the premium paid by the foreign entities M/s S.S.Global FZE or Shri Swapan Sadhan Bose. It is more so because of the fact that he has assigned the whole surrender value including his own share to his father and insurance companies paid accordingly. At one point of time, money was returned back to the foreign entities. Thereafter, Appellant received as gift from his father. S.S.Global FZE which were not at all controverted by the Assessing Officer as well as the Ld. CIT(A). In view of this it may kindly be held that the Commissioner (Appeals) was incorrect in confirming the addition in the hands of the assessee.

Considering the above facts and following the judgement, the Ld. CIT-(A) has erred in law and on facts in assuming his section and the appeal should be allowed."

8. In the concluding remarks, ld. Counsel for the assessee stated that the source of investment towards the premium paid for the two insurance policies is from the income earned by the assessee in the capacity of non-resident Indian for the first two years and the remaining amount of premium has been paid by the assessee's father from his declared source of income as a non-resident Indian in UAE. Further, he submitted that the provisions of Black Money Act, 2015 cannot be invoked in the case of the assessee as no income earned in India has been applied for the investment in foreign assets and as regards not disclosing the said investments in the income tax return it was stated that the assessee was under a *bona fide* belief that since the premium on insurance policies was discontinued after 2010, it will not fetch

any income and the investments made must have been forfeited because remaining premiums were not paid and it was only during the period 2017-18 that is much after the date of closure of the window available for disclosure under Black Money Act, 2015 that the assessee came to know that he has still a chance to recover the surrender value of the investments made in the past and therefore, the assessee should not be considered as an assessee in default for not disclosing the information in the income tax return.

9. On the other hand, ld. D/R vehemently argued supporting the detailed finding of ld. CIT(A) as well as the observation made by ld. AO, the relevant extract of which already stands reproduced above in the preceding paras. Ld. D/R also submitted that the assessee ought to have furnished the information in the income tax return or should have at least opted to disclose the said investment in foreign assets in the one time window provided under Chapter VI of Black Money Act, 2015.

10. We have heard rival contentions and perused the records placed before us. In ground no. 1 to 5 the sole grievance of the assessee is that ld. CIT(A) erred in confirming the action of ld. AO of making the addition towards undisclosed foreign assets at Rs. 1,08,01,726/- under the provisions of Black Money (UFIA) And Imposition of Tax Act, 2015 for the alleged investment in life insurance policies in the name of the assessee. Before moving further, we would like to recapitulate the facts of the case which are that the assessee was a non-resident Indian during the FY 2000-01 & 2001-02. During his stay outside India at UAE he took two insurance policies, one from Standard Life Assurance

Company; Policy No. B00007108 commenced on 04.12.2000 and the second from Scottish Provident International Life Assurance Ltd.; Policy No. M021001210 commenced on 14.12.2000. Assessee's father Mr. Swapan Sadhan Bose is also a non-resident Indian and was living in UAE much before the assessee became non-resident Indian and as stated by the ld. Counsel for the assessee, assessee's father is still a non-resident Indian and also runs a business concern in the name of M/s. S.S. Global FZE. The first two premiums of two insurance policies were paid by the assessee during his stay in UAE as non-resident Indian but thereafter, he returned back to India to carry on his business activities. From 2002 to 2010 the premiums on the two insurance policies were paid by assessee's father from his individual source/from M/s. S.S. Global FZE. Though the policy was for a period of 21 years but since the assessee made up his mind not to return to UAE, his father discontinued the payment of premium. Since the terms of the policies were not followed and premiums were not paid, the assessee had a firm belief that the premium so paid will be forfeited by the insurance companies and the assessee will not receive anything against the investments made. It was only during the year 2018 that the assessee received an information that he still can claim the surrender value of the two insurance policies. Thus, in the year 2018 surrender documents were signed by the assessee to claim the money. The assessee assigned the policy in the name of his father who received the surrender value from the insurance companies and it was subsequently remitted to India in the assessee's bank account during FY 2018-19. And the amount so received was offered to tax by the assessee in the

income tax return for AY 2019-20 and tax of Rs. 39,00,000/- was paid thereon. It also remains an undisputed fact that against the premium of US$ 99016.61 paid for the insurance policy of Scottish Provident International Life Assurance Ltd.; Policy No. M021001210, the assessee was refunded only US$ 85624 (i.e. after deduction of US$ 13392.61). Similarly, with regard to policy of Standard Life Assurance Company; Policy No. B0007108 against the investment of US$ 85635.37, the assessee received refund of US$ 55355.99 (i.e. after deduction of US$ 30279.38). Thus, the assessee did not receive any income on the investments made, but only received the reduced value of investment made in the insurance policies.

11. Now, we need to examine that whether the alleged investment in insurance policies comes under the category of undisclosed foreign income and assets as per Section 2(11) & 2(12) of the Black Money Act, 2015. For better perusal, we reproduce the same as under:

> *"Section 2(11) of BMA, 2015: "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) of BMA, 2015: "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."*

12. Further, we find it relevant to go through one of the questions in questionnaires issued by CBDT vide Circular No. 13 of 2015 dated 06.07.2015:

> *"Question No. 17: A person has some undisclosed foreign assets. If he declares those assets in the Income -tax Return for assessment year 2015-16 or say 2014- 15 (in belated return) then should he need to declare those assets in the voluntary tax compliance under chapter VI of the Act?*
>
> *Answer: As per the Act, the undisclosed foreign asset means an asset which is unaccounted/the source of investment in such asset is not fully explainable. Since an asset reported in Schedule FA does not form part of computation of total income in the Income tax return and consequently does not get taxed, mere reporting of a foreign asset in Schedule FA of the Return does not mean that the source of investment in the asset has been explained. The foreign asset is liable to the taxed under the Act (whether reported in the return or not) if the source of investment in such asset is unexplained. Therefore, declaration should be made under chapter VI of the Act in respect of all those foreign assets which are unaccounted/the source of investment in such asset is not fully explainable."*

13. Now, in light of the provisions of Section 2(11) & 2(12) of the Black Money Act, 2015 first we notice that in the instant case the issue is only with regard to the alleged undisclosed foreign asset i.e. the investment in the insurance policy and there is no issue of undisclosed foreign income because the assessee only received the reduced amount of investment. So, we will just focus on the issue that as to whether the alleged foreign asset is an undisclosed asset located outside India. Provision of Section 2(11) of the Black Money Act, 2015 provides for the definition of undisclosed asset located outside India as stated above, and in our humble understanding, following two conditions need to be fulfilled by the Revenue authorities to bring a particular foreign asset under the category of undisclosed asset located outside India held by the assessee in

his name or in respect of which he is a beneficial owner. The first condition is that such asset is not disclosed by the assessee in the return of income or any other place of disclosure as provided under the Black Money Act, 2015 and secondly, the assessee is unable to offer any explanation about the source of investment in such asset or the explanation given by him is unsatisfactory in the opinion of ld. AO.

14. Now, so far as explanation about the source of alleged investment, in the case under consideration is concerned, we find that the assessee has successfully explained the source of investment which is undoubtedly from the income earned outside India, part of which was paid by the assessee in the capacity of a non-resident Indian and the remaining part being paid by assessee's father who is also a non-resident Indian from his sources of income/asset located outside India. There is no iota of evidence bring forth by the Revenue authorities which could indicate that any element of the alleged investment in foreign asset is from so-called black money earned in India. Complete details of the bank account along with date of payment of the premium of the insurance policy supports this fact that the assessee has successfully explained the source of investment in the alleged foreign asset in the form of investment in insurance policy.

15. Now as far as the other limb of Section 2(11) of Black Money Act, 2015 is concerned about the disclosure of the said asset, we find that the premium payment to the two life insurance policies was discontinued from 2010 onwards. These policies commenced in the year 2000 and they were for a period of 21 years. In the

middle of the term of the policy, the premium payment was discontinued. As stated by ld. Counsel for the assessee, the assessee was of *bona fide* belief that the policies have been discontinued and the amount so invested have been forfeited. It was only during the FY 2018-19 that the assessee came across the information of being eligible to lodge the claim for refund of surrender value which was followed by the necessary process and the surrender value was finally received in the bank account of the assessee held in India. Further, the assessee duly disclosed the amount so received in his income tax return and paid the taxes to the tune of Rs. 39,00,000/- thereon and based on such disclosure by the assessee, the alleged proceedings were carried out under Black Money Act, 2015. So, this fact also remains uncontroverted that the value of the alleged investments received by the assessee in India has already been subjected to Income tax and taxing the same amount under the Black Money Act, 2015 will tantamount to double taxation.

16. Under these given facts and circumstances of the case, we are of the considered view that since the necessary condition to hold a particular foreign asset as undisclosed foreign asset located outside India as provided u/s 2(11) of Black Money Act, 2015 remained to be fulfilled, ld. AO was not justified in invoking the provisions of Black Money (UFIA) And Imposition of Tax Act, 2015 to make an addition in the hands of the assessee at Rs. 1,08,01,726/-. We, thus, reverse the finding of ld. CIT(A) and delete the addition made in the hands of the assessee and allow ground nos. 1 to 5 raised by the assessee in the instant appeal.

17. As regards ground no. 6, ld. Counsel for the assessee requested for not pressing this ground. We, therefore, dismiss ground no. 6 as not pressed.

18. Other grounds are general in nature which need no adjudication.

19. In the result, appeal filed by the assessee is partly allowed.

Kolkata, the 02nd February, 2023

Sd/-	*Sd/-*
[Sonjoy Sarma]	[Manish Borad]
Judicial Member	Accountant Member

Dated: 02.02.2023

Bidhan (P.S.)

Copy of the order forwarded to:

1. ***Sri Srinjoy Bose, 52/3, Ballygunge Circular Road, Kolkata-700 019.***
2. ***A.D.I.T. (Inv.)-3(4), Kolkata.***
3. CIT(A)-20, Kolkata.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata