

APPELLATE TRIBUNAL UNDER SAFEMA AT NEW DELHI

FPA-PBPT-360/CHD/2019

Shivam Enterprises

... Appellant

Versus

The Assistant Commissioner of Income Tax
& Initiating Officer, (Benami Prohibition) Unit
Chandigarh

... Respondent

Advocates/Authorized Representatives who appeared

For the Appellant : Mr. Vijay Pal Dalmia, Adv.
Mr. Aditya Dhar, Adv.
Mr. Ankush Mangal, Adv.

For the Respondent : Mr. Manmeet S. Arora, SPP

CORAM

SHRI G.C. MISHRA : MEMBER
SHRI BALESH KUMAR : MEMBER

FINAL ORDER
24.07.2025

The present appeal is preferred u/s 46 of the Prohibition of Benami Property Transaction Act, 1988 (PBPTA) by the Appellant M/s Shivam Enterprises, Beneficial Owner (BO) against the Order passed by the Ld. Adjudicating Authority (AA) in Reference Nos. R-408/2018 dated 28.01.2019 wherein the attachment of the following movable properties of the Appellant are confirmed:

- i. Cash deposited in the account of Sh. Amit Kumar Verma (Fictitious Benamidar) to the extent of Rs. 40,65,500/- plus cash in hand of Rs. 13,000/- paid by Sh. Ashwini Kumar Kapoor (Benamidar herein).
 - ii. Assets in Balance Sheet of Beneficial owner to the extent of Rs. 40,78,500/- including Bank Accounts (whichever could be traced out)
- 2.** The impugned order reveals that a reference was received from Deputy Director of Income Tax (DDIT, Inv.) Parwanoo.

Documents related to enquiries conducted regarding deposit of demonetized currency in a bank account and its subsequent transfer to bank accounts of 4 Beneficiaries [namely, M/s Shree Nath Jee Electronics, M/s Superior Technology (Partnership firm of Sh. Ashwini Kumar Kapoor), M/s MJ Gold Pvt. Ltd. and M/s Shivam Enterprises] were forwarded to Initiating Officer, Benami Prohibition Unit Chandigarh (IO). The present appeal deals with M/s Shivam Enterprises only.

3. Subsequently, a survey Operation u/s 133A of Income Tax Act had been conducted at the business premises of one Sh. Ashwani Kumar Kapoor. Information in this case, provided by the DDIT (Inv.), Parwanoo vide report dated 19-05-2017, was that Rs. 2,45,25,000/- cash was deposited in a bank account with PNB, Parwanoo [major portion had been deposited during the period 08-11-2016 to 30-12-2016 when currency notes Rs. 500/- and Rs. 1,000/-denomination were de-monetized and some portion of this amount was discovered to have been deposited in the calendar year 2012] which was in the name of M/s Rishi Hardware. The Proprietor of M/s Rishi Hardware was stated to be one Sh. Amit Kumar Verma. All the cash in this bank account (during demonetization period) was deposited by one Sh. Manish Bagga who was the employee of Sh. Ashwani Kumar Kapoor. Sh. Manish Bagga admitted in his statement that he had neither seen nor met anyone named Sh. Amit Kumar Verma and that it was Sh. Ashwani Kumar Kapoor who had handed over the cash to him with the instructions that the said cash should be deposited in the account of M/s Rishi Hardware with PNB, Parwanoo Branch. After investigations it was revealed that the individual solely responsible for the Benami cash transactions in the bank account of M/s Rishi

Hardware is Sh. Ashwani Kumar Kapoor. It is further alleged that there exists no such person named Sh. Amit Kumar Verma who is running or was ever running a Proprietorship Firm named M/s Rishi Hardware and was operating Bank Account No. 2912005500000198 in PNB, Parwanoo Branch.

4. It also appears from the record that the said bank account was opened in a clandestine manner by using the photograph of some unknown person, the Income Tax PAN of yet another person, the address proof of yet some another entity and the signatures were that of Sh. Ashwani Kumar Kapoor (in a bit different manner than his usual signatures). At the address which was mentioned in the account opening form no such person named Sh. Amit Kumar Verma could be traced out. The address is "Old Kasauli Road, Near Bus Stand, Sector - 1, Parwanoo, Himachal Pradesh - 173220". The other person whose PAN is CHMPK3178G is named Sh. Amit Kumar Verma and this PAN has been used as one of KYC documents for opening the bank account. This individual who is a resident of Indra Nagar, Urai, District Jalaun, Uttar Pradesh has claimed that he never opened any bank account in Parwanoo and also that he has never even visited Himachal Pradesh. His signatures too are markedly different from the specimen signatures in the Bank Account and that only the copy of PAN Card which is there in the bank records is a copy of the PAN Card of Sh. Amit Kumar Verma with signatures and photographs having been changed through forgery and that initially, the Notices u/s 24(1) of PBPT Act, 1988 were sent to this Sh. Amit Kumar Verma in his capacity as Benamidar but he did not receive the envelopes containing the Notices and also did not give any reply. It was also confirmed later on by Sh. Ashwani Kumar Kapoor that the Sh. Amit

Kumar Verma whom he knew and with whom he did business was the one whose photograph was there in the bank records. Since, Sh. Amit Kumar Verma who was resident of Indra Nagar, Urai, District Jalaun, Uttar Pradesh and is different from the individual whose photograph was present in bank records from which it is clear that Sh. Amit Kumar Verma residing in Uttar Pradesh had no connection at all with the said bank account number 2912005500000198 in PNB, Parwanoo Branch. Thus, the matter was not followed up further with him in capacity of a Benamidar and it was concluded that the real Benamidar is Sh. Ashwani Kumar Kapoor instead of Sh. Amit Kumar Verma (the person resident of Uttar Pradesh).

5. On the basis of the above, the IO filed that Reference no. 408/2018 before the Ld. AA for confirmation of the attachment. The Ld. AA, after hearing both sides and taking into consideration the relevant material placed before it, held that the subject property under the reference is a Benami Property and confirmed the attachment order dated 22.12.2017 passed u/s 24(4)(a)(i) and 24(4)(b)(i) by the IO.

Submissions of the Appellant:

6. The Ld. Counsel for the Appellant, *inter-alia*, argued that the present transaction does not fall within the category of a benami transaction as there have to be three parties, one of which may be a fictitious party and that to constitute a benami transaction, the property has to be transferred to or held by a person and the consideration for such property has to be provided or paid by another person and that further to fall under the definition of benami transaction, the said property has to be held for the immediate or future benefit, direct or indirect, of the person who

has provided the consideration whereas in the present case, presuming though not admitting, the allegation itself shows that there was no benami transaction as the alleged cash money had been allegedly deposited in a bank account by/on behalf of the Appellant and the same was again reverted to the beneficiary's bank account i.e. the Appellant's bank account. There is no benami property in the hands of a third party. In this regard the Appellant has cited VN Nandhini Devi v. Sh. K. Visakh, Dy. Commissioner of Income Tax, Chennai, FPA/PBPT/57/CHN/2018.

7. It was further argued that the Ld. AA has failed to appreciate that there is a difference between an income tax violation and a violation under the PBPTA. All income tax violations are not benami transactions.

8. The Ld. Counsel for the Appellant also argued that the Ld. AA failed to appreciate that the actual sale transaction took place before demonetization i.e. 8th November, 2016 and that the Ld. AA failed to appreciate that the burden of checking the genuineness of the bank account cannot be shifted to the Appellant or any trader and that it is the failure of the bank and the banking system, if the alleged fictitious account was opened in the year 2012 or re-activated during the period of demonetization in 2016.

9. It was also the contention of the Appellant that Mr. Manish Bagga has shown no connection with the Appellant and that the IO has brought no evidence to show that cash was deposited by or on behalf of the Appellant in the bank account of M/s Rishi Hardware.

10. Moreover, Appellant had submitted the copies of invoices issued upon M/s Rishi Hardware, the ledger accounts and bank

statements to justify the genuineness of the transactions undertaken with M/s Rishi Hardware; and these documents have not been properly considered.

11. The Appellant also contended that it was not involved in any illegal transaction and that the Appellant got the money for the goods loaded on the transport vehicle belonging to Mr. Aswhini Kumar Kapoor and once they were loaded, the Appellant was no longer responsible and that the Appellant had received the consideration from the bank account of M/s. Rishi Hardware for which goods were loaded on the transport vehicle belonging to Mr. Aswhini Kumar Kapoor and that the Appellant was not obliged to know whether the actual delivery has been taken by M/s. Rishi Hardware or Sh. Ashwini Kumar Kapoor. The reference in this regard may please be made to the judgment of Hari Krishna Kanoi Vs. Appropriate Authority & Ors., [1993]71TAXMAN413(Cal).

12. It was also contended that the Ld. AA failed to look into the intention of the Appellant. In this regard the Appellant has cited Binapaani Paul vs. Pratima Ghosh Ors. In Appeal (Civil) 8098 of 2004, First ITO vs. MR Dhanalakshmi Ammal 1978 ITR413 passed by Hon'ble High Court of Madras and Jaidayal Poddar vs. Bibi Hazra AIR (1974) SC 171 passed by the Hon'ble Supreme Court of India.

13. On the basis of the above, the Appellant has prayed for allowing the appeal.

Submission of the Respondent:

14. The following arguments emanate from the note dated 19.03.2025 submitted by the respondent:

- a. Since 2012, Sh. Ashwani Kapoor has been using the bank account of M/s Rishi Hardware for providing "accommodation entries" to willing parties. The account statement analysis depicted some of them as MJ Gold Pvt. Ltd, Superior Technologies, Sree Nath Jee Electronics and M/s Shivam Enterprises. The account was opened on 15.02.2012 and Rs. 2,45,25,000/- cash was deposited in a bank account with PNB, Parwanoo [major portion had been deposited during the period 08-11-2016 to 30-12-2016 when currency notes Rs. 500/- and Rs. 1,000/- denomination were de-monetized and some portion of this amount was discovered to have been deposited in the calendar year 2012]
- b. Further analysis depicted that the similar pattern was undertaken in 2012 and in 2016 where the amount in cash was deposited in the account of M/s Rishi Hardware and on the same day the amount deposited was withdrawn by cheque.
- c. The analysis of the statement also depicted that the account of M/s Rishi Hardware, which had become non-operational from 2012 onwards till November 2016 when it was again activated on 16-11-2016 with the sole aim of again providing "accommodation entries" to parties who approached Sh. Ashwani Kapoor after announcement of demonetization of old currency notes on 08-11-2016. Sh. Ashwani Kapoor could not explain why there was such a long gap when no business was done with M/s Rishi Hardware and how was it that suddenly business was again done with M/s Rishi Hardware only during the two months [during November 2016 and December 2016 only] and not in earlier part of F.Y.

2016-17 and not in later period. Thus, it is evidently clear that Sh. Ashwani Kumar Kapoor is using the name of M/s Rishi Hardware for providing accommodation entries through bogus transactions and also using the bank account of M/s Rishi Hardware for converting unaccounted cash [into cheque payments] of his own Partnership Firms and also of other third-party business entities (in lieu of commission from the third parties).

- d. It is submitted that on the analysis of the invoices made on various dates it is reflected that the invoices are fabricated and the transactions are bogus.
- e. Enquiries from the Income Tax database were conducted and it was seen that no Return of Income has ever been filed by M/s Rishi Hardware. Further, Sh. Ashwani Kapoor was not knowing the location and address from which the so-called M/s Rishi Hardware had been conducting business (if in reality it was doing any business) from 2012 onwards till 2017. Hence M/s Rishi Hardware is a fictitious entity.
- f. All the transactions done through the accounts of M/s Rishi Hardware, a fictitious entity, are held to be benami in nature and because the cash belonging to the respective Beneficial Owners was deposited in this account and then transferred back through cheque to the respective Beneficial Owners, in the guise of sales consideration [the sales actually never having taken place], the transactions fall within the definition of "Benami Property Transaction" [the consideration for the cheques having been paid by the Beneficial Owners themselves.

15. On the aforesaid grounds, the Respondent prayed for the dismissal of the appeal.

Analysis and findings:

16. We have heard the argument and perused the material on record.

17. Section 2(9) of the PBPTA deals with the definition of Benami transactions which is reproduced as below:

"2 (9)"benami transaction" means,-

(A)a transaction or an arrangement-

(a)where a property is transferred to, or is held by, a person, and the consideration for such property has been provided, or paid by, another person; and

(b)the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration, except when the property is held by—

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

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

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

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

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

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

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

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

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

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

(iii) the contract has been registered.”

18. According to the aforesaid definition, the Benami transactions may be a transaction or an arrangement. The material made available to us goes to show that there were accommodation entries provided by M/s Rishi Hardware for routing the alleged unaccounted money during the period of demonetization. It has come on record by way of statement of Sh. Manish Bagga (employee of Sh. Ashwini Kumar Kapoor) that he (Manish Bagga) filled up the pay-in-slips for deposit of the respective cheques. Manish Bagga admitted in his statement that he had never either seen or met anyone named Sh. Amit Kumar Verma and that it was Sh. Ashwani Kumar Kapoor who had handed over the cash to him with the instructions that the said cash should be deposited in the account of M/s Rishi Hardware with PNB, Parwanoo Branch. Sh. Manish Bagga clearly stated that he did not know any Sh. Amit Kumar Verma and that he deposited cash in that account of Sh. Amit Kumar Verma on the directions of Sh. Ashwani Kumar Kapoor. The Appellant also contended that there is no Benami Transaction as the amount was reverted to the Appellant. However, this circular movement of money represents a classic case of ‘Accommodation Entry’. The cash was deposited into the bank account of M/s Rishi Hardware which is a fictitious entity. After

the cash was deposited, cheques were issued from M/s Rishi Hardware's account to M/s Shivam Enterprises which M/s Shivam Enterprises falsely claimed was the consideration for the sale of goods.

19. The aforesaid facts and evidence go to show that some arrangements were provided to the Beneficial Owner i.e. M/s Shivam Enterprises on the directions of the Benamidars, Sh. Ashwini Kumar Kapoor and Sh. Amit Kumar Verma, (non-existent proprietor M/s Rishi Hardware), through bank account of M/s Rishi Hardware. Therefore, it is held that the transactions alleged against the Appellant are covered by the definition of Benami transactions as defined u/s Section 2(9) of the PBPTA. Otherwise also, the claim of the Appellant that the requirements of Benami Transaction under section 2(9)(A) of the PBPTA are not met cannot be accepted as:

Section 2(9)(A) requires that-

- i. There has to be a property held by one person.
- ii. Consideration provided by another person.
- iii. Property held for the immediate or future benefit of the person providing consideration.

20. In the present case, the bank account i.e. PNB A/c No. 2912005500000198 was opened in the name of M/s Rishi Hardware, fulfilling the requirement that there has to be a property held by a person who is someone other than the real owner, which in this case was held by M/s Rishi Hardware.

21. Secondly, the definition requires that the consideration must be provided by another person i.e. the Beneficial Owner. This requirement is fulfilled as the cash provided by M/s Shivam Enterprises was deposited by Sh. Manish Bagga on the

instruction of Sh. Ashwani Kumar Kapoor in the bank account of M/s Rishi Hardware.

22. Thirdly, the definition requires that the property should be held for the immediate or future benefit of the person providing the consideration. In the present case, after the cash was deposited in the name of M/s Rishi Hardware, it was promptly withdrawn through cheques. The Appellant claimed that this was payment for goods sold, however, the evidence stands on the contrary as there is no actual delivery of goods. Moreover, there is no person named Sh. Amit Kumar Verma who is the supposed proprietor of M/s Rishi Hardware and the KYC documents were forged.

23. That the evidence available on record goes to show that the bank account in the name of M/s Rishi Hardware is Benami account in the name of non-existent person. There is also no income tax database and no ITRs ever filed on behalf of M/s Rishi Hardware.

24. It also appears from the record that the claim of the Appellant that the electronic goods were sold by the Appellant to M/s Rishi Hardware is backed by fabricated documents to justify receipt of amount in their account. The bank account of M/s Rishi Hardware was actually operated by Sh. Ashwani Kumar Kapoor himself and all the cash in this bank account was deposited by Sh. Manish Bagga who is employee of Sh. Ashwani Kumar Kapoor. This fact is corroborated by the pay in slips filled up in handwriting of Sh. Manish Bagga as well as his statement that cheques for transferring the amounts were handed over to him along with the cash by Sh. Ashwani Kumar Kapoor only.

25. It is also seen from the record that the PAN which has been allotted by Income Tax Department is for a different person than the person whose photograph is in the bank records.

26. It was admitted by Sh. Ashwini Kumar Kapoor that Sh. Manish Bagga was his employee and, on his direction, Mr. Bagga deposited the cash in the bank account of M/s Rishi Hardware. The fact of depositing the cash by Mr. Manish Bagga on the direction of Sh. Ashwini Kumar Kapoor has been corroborated by the statement of Sh. Bagga.

27. The claim of the Appellant about the sale of electronics goods to M/s Rishi Hardware in October, 2016 is not believable because the documents on which the Appellant has relied upon appears to be fake and forged with an intention to provide justification for the said sale of goods. This is a deviation from the trade practices of M/s Shivam Enterprises as on previous occasion in the year 2012, payments were made to the Appellant M/s Shivam Enterprises in advance before the sale of goods. Moreover, M/s Rishi Hardware had become non-operational from 2012 onwards till then. Neither the Appellant nor Sh. Ashwini Kumar Kapoor could explain why there was such a long gap when no business was done with M/s Rishi Hardware. It is puzzling that how suddenly business was again done with M/s Rishi Hardware and that too for only the two months i.e. November 2016 and December 2016.

28. The contention of the Appellant is that in the present case there is no violation under the PBPTA and the only contravention relates to the provisions of the Income Tax Act. He further contended that the Ld. AA failed to appreciate this. It is not disputed that the two statutes operate in distinct legal

domains i.e. the Income Tax Act governs the assessment and collection of taxes, while the PBPTA addresses the identification and prohibition of benami transactions. However, a violation under one of the Acts does not automatically exclude the application of the other, where the facts and the circumstances of the case so warrant.

29. The contention of the Appellant that the burden of checking the genuineness of the bank account cannot be shifted to the Appellant or any trader and that it is the failure of the bank and the banking system, cannot be accepted because the issue in the present case relates to a benami transaction and evidence on record goes to show that Appellant knowingly participated in a sham transaction with a non-existent entity. The cash was deposited by Sh. Bagga, employee of Mr. Kapoor, and cheques were issued to the Appellant in a highly coordinated manner. The Appellant benefitted directly from the fictitious account—thus it cannot escape liability by blaming the bank.

30. The contention of the Appellant that there is no connection between Mr. Manish Bagga (who deposited the cash) and the Appellant also cannot be accepted because it is immaterial whether the Appellant knew Mr. Bagga or not. What is material is the fact that Mr. Bagga was acting on behalf of Mr. Kapoor, who operated the fictitious account. The Appellant received funds from this fictitious account. The circulation of cash from the account of M/s Rishi Hardware to the Appellant by issuing cheques demonstrates the Appellant's role as a Beneficial Owner.

31. The contention of the Appellant that once the goods were loaded on the transport vehicle of Mr. Kapoor, the Appellant was no longer responsible and that it received money from the account of M/s Rishi Hardware for goods sold cannot be accepted as the Appellant failed to produce any document to indicate that there was an actual sale that took place and that keeping in view the circumstances under which the money was routed goes to show that this contention of the Appellant has no relevancy, hence rejected.

32. The Appellant also contended that the actual sale transaction took place prior to demonetization, and the Ld. AA failed to appreciate this. This contention cannot be accepted prima facie on the ground that even if for the sake of argument, it is accepted that some sale transactions took place prior to demonetization, the Appellant failed to substantiate as to how it took more than four years to get the payments for those transactions without citing any reasons and producing any corresponding document between the Appellant and M/s Rishi Hardware demanding payments.

33. It also appears that the Benamidar namely Sh. Ashwani Kumar Kapoor has not challenged the order passed by the Ld. AA.

34. The Appellant has relied upon the following judgements in support of its contention: -

a) V N Nandhini Devi v. Sh. K. Visakh, Dy. Commissioner of Income Tax, Chennai, FPA-PBPT-57/CHN/2018.

35. This judgement is not applicable to the present fact and circumstances of this case because the evidence as available in

the record goes to show that there were accommodation entries without sale/transfer of goods. We have also discussed above that Section 2(9) of PBPTA which deals with the definition of Benami Transactions is satisfied and the transactions/arrangements have been made in the present case by the Beneficial owner M/s Shivam Enterprises in collusion with the Benamidar namely Sh. Ashwani Kumar Kapoor in other words the respondent authority has discharged their burden of proving that the definition of Benami Transactions under the aforesaid Act.

b) Hari Krishna Kanoi vs. Appropriate Authority & Ors., [1993]71TAXMAN413 (Cal).

36. The aforesaid judgment is not applicable due to fact that the present investigation is under the PBPTA whereas the Appellant has referred to the judgment which deals with Indian Contract Act, 1872. Further, the facts and circumstances are also different.

- a. Binapaani Paul vs. Pratima Ghosh Ors. In Appeal (Civil) 8098 of 2004.
- b. First ITO vs. MR Dhanalakshmi Ammal 1978 ITR413 passed by Hon'ble High Court of Madras and.
- c. Jaidayal Poddar vs. Bibi Hazra AIR (1974) SC 171.

37. These judgments are also not applicable to the present fact and circumstances of this case because of the fact and the circumstances and the evidence go to show that the Appellant with the help of the Benamidar had clear intention to violate the provisions of PBPTA.

38. It is seen from the record that the Initiating Officer in his reference and the Ld. AA in the impugned order have clearly set out their respective reasons to believe as to why the transactions/arrangements have been held as Benami Transactions as required under Section 2(9) of PBPTA. Therefore, it is held that the judgements relied upon by the Appellant on the question that there is no 'reasons to believe,' are of no help to the Appellant.

39. Neither of the parties, during the course of entire proceedings have brought to our knowledge that Sh. Aswini Kumar Kapoor, the Benamidar herein, has preferred any appeal against the impugned order.

40. On the basis of the above analysis and findings, we are of the view that the Ld. AA rightly held the aforementioned property as Benami Property, M/s Shivam Enterprises as the Beneficial Owner and Sh. Ashwini Kumar Kapoor as the Benamidar.

Hence, the Appeal is Dismissed.

Order is pronounced in open Court.

(Balesh Kumar)
Member

(G. C. Mishra)
Member

New Delhi,
24th July, 2025.
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