M/S Alishan Complex Private Limited vs The Initiating Officer

ID: F2J-C-2388 **Court:** Rajasthan High Court - Jodhpur
Case: D.B. Civil Miscellaneous Appeal No. 1595/2026 **Date:** 2026-08-03

Rajasthan High Court - Jodhpur M/S Alishan Complex Private Limited vs The Initiating Officer on 3 August, 2026 [2026:RJ-JP:35541-DB] (1 of 58) [CMA-1595/2026] [CMA-

HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Civil Miscellaneous Appeal No. 1595/2026 CNR: RJHC010436632026 | URN: CMA / 3831U / 2026

M/s Alishan Complex Private Limited, M/s Alishan Complex Private Limited, Having Its Address At Plot No.4, Hanuwant Colony, Umaid Bhawan Road, Jodhpur.

----Appellant

Versus

The Initiating Officer, The Initiating Officer, Dcit, Benami Prohibition Unit, Jaipur, Having Its Address At Room No. 103 Na, New Central Revenue Building, Statue Circle, Jaipur

----Respondent

For Appellant(s) : Mr. Ashwani Taneja Mr. Divyansh Dubey Ms. Divya Bapna For Respondent(s) : Mr. K.K. Bissa Mr. G.S. Chouhan

HON'BLE MR. JUSTICE ARUN MONGA HON'BLE MR. JUSTICE SANDEEP SHAH INDEX

 Judgment Reportable Pronounced on : 03/08/2026 Per: Arun Monga, J. I. INTRODUCTORY:-

1. Appellant company, engaged in the business of real estate development and sale/purchase of the properties, is before us, assailing, inter alia, an order dated 01.04.2026 passed by Appellate Tribunal under Section 46 of the Prohibition of Benami Property Transactions Act, 1988 (PBPT Act for short) whereby the Tribunal affirmed the order dated 30.08.2024 passed by the Adjudicating Authority under Section 26(3) of the PBPT Act holding 79 immovable properties purchased by the appellant to be benami properties.

2. The adjudicating authority (AA- for short) vide its order dated 30.08.2024 in turn upheld the final provisional attachment order dated 28.07.2023 passed under Section 24(4)(a)(i) of the PBPT Act, 1988.

Both these orders have also been impugned herein. Vide its attachment order, the Initiating Officer (IO- for short) prima facie opined that as many as 79 immovable properties purchased by the appellant were benami properties as defined under Section 2(9) of the PBPT Act, 1988. Directions are also sought that as a consequence of quashing the orders, (Uploaded on 03/08/2026 at 04:57:43 PM) (Downloaded on 03/08/2026 at 08:24:46 PM) [2026:RJ-JP:35541-DB] (3 of 58) [CMA-1595/2026] [CMA- ibid, the provisional attachment of the properties under PBPT Act be revoked and the properties be released in favour of the appellant.

3. The lis in hand, in fact, traces its origin to a search conducted on 16.06.2022 under Section 132 of the Income-tax Act, 1961 in the case of one Maharani Group. The material emerging from that search was treated by the IO as the foundation for initiating proceedings under Section 24 of the PBPT Act against the appellant-company. Pertinently, a finding that the properties are benami may ultimately expose the properties to confiscation under Section 27 of the PBPT Act and may also attract prosecution under Section 53 of the Act, thereby giving the present proceedings a serious civil and penal complexion.

4. The appellant is a private limited company incorporated under the Companies Act, 1956, engaged in real estate development, including development of Special Economic Zones and industrial plazas, and in promoting and developing lands, buildings and townships. In the scheme of the allegations levelled by the Initiating officer under PBPT Act, it has been cast in the role of the benamidar i.e. the name-lender in whose name the

subject properties stand.

5. The alleged beneficial owner is one Shri Mahaveer Lunia, founder and principal promoter of the Maharani Group, a Jodhpur-based handicrafts business. His connection with the appellant company is that he holds approximately 8.33% in each of two intermediary holding companies, translating to an indirect interest of roughly 4.17% in the appellant. He became a director of the appellant only on 06.01.2020, a date, it will be seen, that falls after the property purchases in question.

6. The Initiating Officer, the Respondent herein, is the Deputy Commissioner of Income Tax (Benami Prohibition), Benami Prohibition Unit, Jaipur. He functions within the same departmental structure i.e. the Central Board of Direct Taxes, as the Income-Tax authorities whose assessment findings, (Uploaded in respect of at on 03/08/2026 the very 04:57:43 PM) same properties, the (Downloaded on 03/08/2026 at 08:24:46 PM) [2026:RJ-JP:35541-DB] (4 of 58) [CMA-1595/2026] [CMA- Appellant relies upon in its favour. More of it in greater details in the subsequent part at appropriate stage. II. FACTS IN CHRONOLOGICAL ORDER

7. The financial spine of the appellant's case reaches back to FY 2006- 07, by which year the company's share capital of approximately Rs. 1.00 crore and reserves of approximately Rs. 8.95 crore, shareholders' funds of roughly Rs. 10 crore in aggregate, stood recorded in its books. It is not in dispute that these figures remained substantially stable thereafter. 7.1. In FY 2016-17, the shareholding of the two intermediary holding companies changed hands and the Lunia family entered the structure. Significantly, both sides rely on the same subsequent fact for opposite purposes. 7.2 In FY 2017-18, the appellant purchased 79 immovable properties at Jodhpur for a total consideration of Rs. 11,16,06,000, each payment made through banking channels. According to the appellant, the purchases were funded by the recall and redeployment of short-term loans and advances (Rs. 10.61 crore as on 31.03.2017), a conversion of one asset class into another, not an infusion of fresh money. 7.3 On 06.01.2020, Shri Mahaveer Lunia became a director of the appellant. The chronology bears emphasis: the directorship post-dates every one of the 79 purchases. The appellant treats this as destroying the theory of beneficial ownership at the time of acquisition, whereas, the respondents treat the directorship as the securing of direct control as a future beneficiary. 7.4 On 16.06.2022, a search under Section 132 of the Income-tax Act, 1961 was conducted on the Maharani Group. From the residence of Shri Lunia were seized, inter alia, a list of the subject properties and, per the Initiating Officer, certain original registered sale deeds which were (Uploaded on 03/08/2026 at 04:57:43 PM) (Downloaded on 03/08/2026 at 08:24:46 PM) [2026:RJ-JP:35541-DB] (5 of 58) [CMA-1595/2026] [CMA- forwarded to him by the income tax officials leading to initiation of proceedings under PBPT Act. Custody of these documents at the residence of the alleged beneficial owner is one of the affirmative circumstances the Revenue asserts. Though, of course, the appellant disputes such characterisation and the inference alike. 7.5 During the search, the statement of Shri Anil Sanklecha, a Mumbai- based Chartered Accountant, was recorded under Section 132(4). In answer to Question Nos. 50 and 55, he is stated to have disclosed about routing of cash through hawala/angadia channels. However, by affidavit dated 27.06.2022, nine days after the search concluded, he retracted the statement, alleging that it had been extracted under duress in the course of some 65 hours of continuous questioning. III. THE PROCEEDINGS BELOW A. Initiating Officer

8. Based, inter alia, on the information received from income tax department, on 28.04.2023, the Initiating Officer (Deputy Commissioner of Income Tax -Benami Prohibition Unit, Jaipur), issued a show cause notice under Section 24(1) and (2) of the PBPT Act, calling for a reply by 15.05.2023. The 'reasons to believe' were recorded in paragraph 13.3 of the notice. 8.1 On 01.05.2023, before the reply period had expired, the Initiating Officer passed a provisional attachment order under Section 24(3). The prematurity of this order was the principal procedural grievance carried by the appellant to this court in an earlier foray of litigation without any success. 1 The consequence is that the procedural terrain stands substantially traversed, and the present appeal falls to be decided on the substantive framework of the Act. 1 Writ Petitions Nos. 16732/2023 (M/s Alishan Complex), 14527/2023 and 15074/2023, challenging the initiation and the provisional attachment, were dismissed by this court on 12.12.2023. The procedural challenges were rejected; the merits were expressly left open to be agitated before the Adjudicating Authority. A review petition (D.B. Review (Writ) No. 20/2024) (Uploaded was dismissed on 03/08/2026 onPM)

at 04:57:43 09.04.2024. The special leave petition arising therefrom did not alter this position. (Downloaded on 03/08/2026 at 08:24:46 PM) [2026:RJ-JP:35541-DB] (6 of 58) [CMA-1595/2026] [CMA- 8.2. Meanwhile, on 28.07.2023, a final attachment order under Section 24(4)(a)(i) was passed continuing the attachment. The said attachment order continuing the proceedings initiated under PBPT Act, reflecting the mind of the initiating officer, as to what he understood and noted, for seeking the reference before the adjudicating authority, is extracted as under:

"2. A Search & Seizure action u/s 132 of the 1.T. Act, 1961 was conducted on 16.06.2022 by the DDIT(Inv.)-1, Jodhpur in the case of Maharani Group, Jodhpur of which Shri Mahaveer Lunia is the founder and main promoter. Further, relevant documents seized during the course of the search action related to benami transactions in respect of the above group were received in this office through the office of the DGIT (inv.), Rajasthan, Jaipur. 2.1 Based on the factual matrix of the matter which stands fortified from the information and credible material shared by the Investigation wing as above, a Show Cause Notice u/s. 24(1) of the PBPT Act, 1988 was issued on 28.04.2023. The materials analyzed to form "the reasons to believe" are as follows:

I. Income-tax Returns of M/s Alishan Complex Pvt. Ltd. II. A detailed list of various immovable properties purchased in the name of M/s Alishan Complex Pvt. Ltd. found & seized (Exhibit-6 of Annexure-BS) at the residence premises of Sh. Mahveer Lunia i.e. Lalit Kunj, Opposite Hotel Mapple Abhay, Paota, Jodhpur.

III. Statement of Shri Anil Sanklecha, CA dated 17.06.2022 & 18.06.2022 recorded during the course of search.

IV. Page No. 76 to 83 of exhibit B-9, i.e., a detailed list found during the course of search in which cash transactions made between Shri Anil Sanklecha and Shri Mahaveer Lunia are recorded.

V. Bank Book/Ledger book of the company for the period of 01.04.2012 to 31.03.2022.

VI. Documents available on the database of Ministry of Corporate Affairs. VII. Statements of Shri Praveen Agarwal recorded under section 1,32(4) of the Income Tax Act, 1961 dated 10/11.02.2015, 15.02.2014 & 18.11.2014. VIII. Statements of Shri Pramod Ramdeen recorded under section 132(4) of the Income Tax Act, 1961 dated 10.11.2012. IX. Statement of Sh. Rakesh Kumar Agarwal recorded u/s 131 of the 1.T.Act, 1961 on 21.11.2014 by the Investigation wing of Kolkata.

3. Brief facts of the case leading to the issue of Show Cause Notice u/s. 24(1) of the Prohibitions of Benami Property Transactions Act, 1988 On careful perusal and examination of the seized documents, other details/documents and statements recorded during the Search Action on the Maharani Group the following facts have come to the notice: 4 Modus-operandi adopted by the Group 4.1 Maharani group is mainly engaged in the business of handicraft items viz cloths, wooden handicraft and various metal handicraft items and retails sale thereof to local as well as foreign tourist in the name

of mainly M/s Maharani Textile and Handicraft and key person is Shri Mahaveer Lunia resident of Jodhpur (Rajasthan). This business generates huge margin as the tourists pay handsome price for choice items. To reduce the profit margin and also to manage cash for requirements of the group for making further investment in purchase of lands and immovable properties, the firm debits huge bogus purchase bills managed from jewellers of Jodhpur. Payment is made to these jewellers through banking channel against the bogus purchases and cash is received back. (Uploaded on 03/08/2026 at 04:57:43 PM) (Downloaded on 03/08/2026 at 08:24:46 PM) [2026:RJ-JP:35541-DB] (7 of 58) [CMA-1595/2026] [CMA- 4.2 Apart from this, Shri Mahaveer Lunia also works as money-lender and earns unaccounted interest income also. The unaccounted cash is then utilized for making purchase of immovable properties and also to buy shell/paper companies namely (1) Alishan Complex Pvt. Ltd., (2) Swagatama Enclave Pvt. Ltd. and (3) Principal Dealers Pvt. Ltd. etc., earlier managed and controlled by the entry operators. These companies have large amount of security premium reserve in it, which is further utilized to buy immovable properties. These shell companies have been purchased by the group making investment out of the cash generated through bogus purchases. The unaccounted cash generated through bogus purchases were routed by the group through Sh. Anil Sanklecha, CA (Mumbai based and also covered u/s 132 of the 1.T. Act., 1962 with the group) for purchasing the shell companies. These facts have been verified from the documents/details found during the course of search action and the statement of Sh. Anil Sanklecha, ■A.

5. Acquisition of Kolkata based Shell Companies (Benamidars) by the Group. 5.1 On the basis of documents seized during the course of search, investigation and post search enquiries conducted in the group, the DDIT(Inv.)-1, Jodhpur has reported that the group has taken control of few Kolkata based shell companies namely (1) Alishan Complex Pvt. Ltd., (2) Swagatama Enclave Pvt. Ltd. and (3) Principal Dealers Pvt. Ltd.etc. Few of these companies have considerable accumulated share premium reserve. The assessee group has utilized these reserves for advancing loans to sister concerns and/or for purchasing immovable properties. These companies have huge reserves and loans and advances (assets). These companies were bought by the group through Sh. Anil Sanklecha and cash was paid by the group to Anil Sanklecha, who has helped the beneficial owner i.e. Shri Mahaveer Lunia to purchase these companies. (Benamidars)." 8.3 Perusal of the above reveals that the case constructed by the Initiating Officer, distilled to its essentials, runs thus: unaccounted cash of approximately Rs. 40-42 crore, generated by the Lunia family through bogus jewellery purchase bills and money-lending, was routed through hawala and angadia channels, with CA Sanklecha as conduit, into shell or paper companies formerly operated by Kolkata and Mumbai-based entry operators; those companies, already carrying large share premium reserves, then acquired the 79 properties in the appellant's name, rendering the company a benamidar and Shri Lunia the beneficial owner. B. Adjudicating Authority

9. Basis above finding/observations, a reference was thus made on 07.08.2023 by the Deputy Commissioner of Income Tax (Benami Prohibition Unit, Jaipur), the Initiating Officer under the PBPT Act, to the Adjudicating Authority under Section 24(5) i.e. The Commissioner of Income tax. (Uploaded on 03/08/2026 at 04:57:43 PM) (Downloaded on 03/08/2026 at 08:24:46 PM) [2026:RJ-JP:35541-DB] (8 of 58) [CMA-1595/2026] [CMA- 9.1 Upon notice, the appellant submitted its detailed response before the adjudicating authority, inter alia, submitting that:

"1. Alishan Complex Pvt. Ltd. (hereinafter referred to as Company or Alleged Benamidar) is a private limited company. The Company is authorized by its memorandum and articles of association to engage in business as builder, promoter and developers of lands, buildings, building sites, townships and other building. In furtherance of achieving its objects, the Company purchased various immovable properties during financial year 2017-18, details of which are given in Annexure A to impugned reference available at page no. 1-9 of relied upon documents enclosed with Impugned reference.

2. The Company during FY 2017-18 purchased the various immovable properties as described in Annexure A as aforesaid out of the funds of the company being the capital and reserves including the loans and advances given to various parties and received back during the year. The details of the properties purchased during FY 2017-18 are given in the foregoing reply/explanation of the Company. The said properties have been alleged to be Benami Properties by Ld. IO in Impugned reference before Your Honour.

3. The Company regularly files its returns of income, accounts and audited finances to Registrar of Companies (hereinafter referred to as "ROC") and income tax department which has been accepted by the ROC and income tax department.

4. The Company has always been operated and managed by the same shareholders namely Surpati Packaging Pvt Ltd., and Upward Commerce Pvt. However, in FY 2016-17, the shareholders of Surpati Packaging Pvt Ltd., and Upward Commerce Pvt changed to new shareholders and thereby the ultimate individual shareholders of the Company changed to new shareholders i.e., the Lunia family.

5: It is submitted that the shareholding pattern of Alishan Complex Private Limited is as follows:

(i) M/s: Surpati Packaging Pvt Ltd holding 49.99% shareholding

(ii) M/s Upward Commerce Pvt. Ltd holding 49.99% shareholding

6. The change in shareholding did not impact the business of the Company and there has been no substantial change in nature of business. Further, in order to achieve the objects of the Company, immovable properties were purchased by the Company on which the capital project was likely to be introduced.

7. The financial position of the company since financial year 2006-07 till 2021-

22 is given hereunder: F.Y. Share Capital Reserves (INR) Total Shareholder Funds in Rs/- 2006-07 1,00,50,000 8,95,50,000 9,96,00,000 2007-08 1,00,50,000 8,95,50,000 9,96,00,000 2008-09 1,00,50,000 9,04,66,932.28 10,05,16,932.28 2009-10 1,00,50,000 9,05,12,341.37 10,05,62,341.37 2010-11 1,00,50,000 9,05,19,898.37 10,05,69,898.37 2011-12 1,00,50,000 8,89,93,785.37 9,90,43,785.37 2012-13 1,00,50,000 8,89,94,791.52 (Uploaded on 03/08/2026 at 04:57:43 PM) 9,90,44,791.52 (Downloaded on 03/08/2026 at 08:24:46 PM) [2026:RJ-JP:35541-DB] (9 of 58) [CMA-1595/2026] [CMA- 2013-14 1,00,50,000 8,89,90,691.52 9,90,40,691.52 2014-15 1,00,50,000 8,89,92,178.37 9,90,42,178.37 2015-16 1,00,50,000 8,91,02,748.37 9,91,52,748.37 2016-17 1,00,50,000 8,90,41,745.87 9,90,91,745.87 2017-18 1,00,50,000 8,89,46,122.13 9,89,96,122.13 2018-19 1,00,50,000 8,89,23,482.00 9,89,73,482.00 2019-20 1,00,50,000 8,89,15,964.30 9,89,65,964.30 2020-21 1,00,50,000 8,89,10,209.10 9,89,60,209.10 2021-22 1,00,50,000 8,89,05,140.00 9,89,55,140.00 -x-x-x-x-x-

21. It is humbly submitted that the whole gamut of the impugned proceedings is bald allegation that the Company is a shell company and it does not have its own funds and capital to purchase the Said immovable properties, as against the fact that Company independently acquired these properties from its own funds. It is baselessly alleged by Ld. IO that consideration of purchase has been provided by Shri Mahaveer Lunia through bogus accommodation entries. Without admitting to any such allegation, it is submitted that the Company purchased the Said Immovable Properties in its own name and the source of investment for purchasing such immovable properties was the funds of was the funds of Company. Details with respect to the purchase of the Said Immovable Properties are given in the foregoing reply/ explanation of Company.

22. It is pertinent to mention here that the Assessee company is regularly filing its income tax return and balance sheet, wherein the purchases of the Said Immovable Properties were duly disclosed in the assets of the Company, and the same has been accepted by the Income Tax Department. It is submitted that the fact that the Income Tax Department has never assumed jurisdiction and thereupon initiated proceedings against the Company with respect to the alleged transactions clearly goes to show that the allegations levelled by the Ld. I.O. are absolutely baseless and devoid of any merit. It is further submitted that when the income tax department has itself not doubted the genuineness of these transactions, then the Ld. I.O., had no jurisdiction to declare the Company as shell company and accordingly it is not justified to hold Company as Benamidar of its own properties purchased from its own funds

23. Furthermore, shareholders of the Maharani Group were searched u/s 132 of the IT Act on 16.6.2022 and the same has resulted in initiation of re-assessment proceedings u/s 148 of the IT Act in case of some of the shareholders in respect of suspected undisclosed income. Those proceedings are still pending and are at only inception stage. If at all there is any undisclosed income of shareholders, the same would-be subject matter of those proceedings and the law would take its own course. However, the entire Show Cause Notice dated 28.04.2023 as well as the Impugned Order(s) dated 28.07.2023 and the Impugned Reference dated 07.08.2023 is just overwhelmed with the un-concluded suspicion of involvement of some unaccounted money, which is again self-contradictory and without evidence. In any case, that would be relevant only in the proceedings under the Income Tax Act, that too against those persons of Maharani group, to whom such unaccounted money belongs, which is yet to be determined. As stated above, there are no income tax proceedings against the Company.

24. Even otherwise, the entire allegation of the Ld. IO is yet to be ascertained in the income tax proceeding. Therefore, these proceeding under the PBPT Act, to say the least, are premature. The (Uploaded on scheme ofatlaw 03/08/2026 has been 04:57:43 PM) designed in a manner (Downloaded on 03/08/2026 at 08:24:46 PM) [2026:RJ-JP:35541-DB] (10 of 58) [CMA-1595/2026] whereby proceedings under the PBPT Act may be taken up if required, after complete investigation and adjudication under the Income Tax Act, 1961." 9.2 After going through the defense of the appellant, as well as, the material available on record, the adjudicating authority, vide its order dated 30.08.24, held as under:

"5.6 To sum up all, the financial investigation carried out by the IO results in emerging the fact that D-1 to D-3 did not have creditworthiness or wherewithal for acquiring the properties under question and it was D-4, who created a smoke screen to kept himself in disguise and was the real kin-ping of whole arrangement, where unaccounted funds were introduced by him in D-1 to D-3 through Hawala operators and also with the help of Shri Anil Sanklecha, CA and had complete control over D-1 to D-3 through mediator companies. For the sake of brevity, what constitutes Benami property and Benami transaction in the present case are specified below:

Particulars Remarks Benami Property As mentioned above in para 1.1 of this order Benami Transaction The transactions carried out by D-4 in the form of

providing consideration which was routed by Sh. Anil Sankhlecha, CA to the sellers for making purchases of the said lands/immovable properties in the names of D-1 to D-3 are "Benami Transaction" within the meaning of Section 2(9)(A) of the PBPT Act, 1988.

Benamidar (1) M/s Alishan Complex Pvt. Ltd. (D-1) (2) M/s Principle Dealer Pvt. Ltd. (D-2) (3) M/s Swagatama Enclave Pvt. Ltd (D-3) Beneficial Owners (1) Shri Mahaveer Lunia (D-4) 5.7 Further, the defendants contended that the order passed by the IO does not satisfy any of the six parameters prescribed by Hon'ble Supreme Court in the case of Valiammal V. Subraaniam, AIR 2004 SC 4187.

The Hon'ble Supreme Court in the case of Valiammal V. Subraaniam, AIR 2004 SC 4187 laid down following parameters, while examining a benami transaction:

(i) the source from which the purchase money came;

(ii) the nature and possession of the property, after the purchase;

(iii) motive, if any, for giving the transaction a benami colour;

(iv) the position of the parties and the relationship, if any, between the claimant and the alleged benamidar;

(v) the custody of the title deeds after the sale; and

(vi) the conduct of the parties concerned in dealing with the property after the sale."

The above parameters are discussed as under:

S. No. Circumstances Remarks 1 The source from which the The entire consideration for purchase of purchase money came the said lands/immovable properties in the names of D-1 to D-3 was paid by Sh.

(Uploaded on 03/08/2026 Mahaveer at 04:57:43 LuniaPM)which was routed (Downloaded on 03/08/2026 at 08:24:46 PM) [2026:RJ-JP:35541-DB] (11 of 58) [CMA-1595/2026] through Sh. Anil Sankhlecha, CA 2 The nature and possession The actual possession over the said lands of the property, after the purchased in the names of D-1 to D-3 purchase; was/is always with Sh. Mahaveer. Lunia, the beneficial owner. D-1 to D-3 are only the name lenders of the transactions for land records only. 3 Motive, if any, for giving Unaccounted cash of D-4 has been the transaction a benami introduced in D-1 to D-3, which clearly colour; shows that the tax evasion legetimising the unaccounted cash was the only motive. 4 The position of the parties Sh. Mahaveer Lunia through self and his and the relationship, if any, family members is having full control and between the claimant and management of D-1 to D-3 since F.Y. the alleged benamidar 2016-17 (from the date of transfer of shares of the company in their own names or in the name of the other companies wherein they are holding 100% share). 5 The custody of the title It is evident from the fact that during the deeds after the sale; search conducted on 16.06.2022, a detailed list of various immovable properties purchased in the name of this company was found at the residence premises of Sh. Mahveer Lunia i.e. Lalit Kunj, Opposite Hotel Mapple Abhay, Paota, Jodhpur Further, original registered sale deeds of some of the said lands/immovable properties were also found & seized from the residence of Shri Mahaveer Lunia. 6 The conduct of parties After purchasing the said concerned in dealing with lands/immovable properties in the names the property after the sale. of D-1 to D-3, Shri Mahaveer Lunia is having full possession over the said lands/immovable properties for his immediate/future benefits.

5.8 In view of above discussion, the other contentions of the defendants that the IO has not discharged the burden of proof, the case of the defendants falls under exception II of section 2(9) (A) of the PBPT Act and every cash transaction could not be treated as benami transaction hold no ground, hence rejected.

6. Order:

6.1 I, Rajendra Kumar, in view of the above findings and in exercise of the powers conferred on me by virtue of Section 7 read with Section 26 of the PBPT Act, 1988 (as amended), hereby confirm the Provisional Attachment Orders u/s 24(4) of the PBPT Act dated 28.07.2023 of the Initiating Officer thereby holding the properties specified in Para 1.1 of this order to be Benami Properties, title holder thereof i.e., D-1, D-2 & D-3 to be Benamidars, D-4 to be Beneficial Owner and further direct that the properties specified in Para 1.1 of this Order shall not be transferred or otherwise dealt with, in any manner, except with the prior permission of the undersigned. The Reference nos. R-

0271/PBPT/DLI/2023, R-0272/PBPT/DLI/2023 and R-0273/PBPT/DLI/2023 are allowed. 6.2 This is an appealable order and any party hereto, if aggrieved by this order may appeal in term of section 46 of the PBPT Act, 1988 to the Appellate Tribunal for Forfeiture of Property, 4th Floor, Lok Nayak Bhavan, Khan Market, New Delhi-110003, within 45 days from (Uploaded the date of on 03/08/2026 the Order." at 04:57:43 PM) (Downloaded on 03/08/2026 at 08:24:46 PM) [2026:RJ-JP:35541-DB] (12 of 58) [CMA-1595/2026] C. Appellate Tribunal

10. The above order passed by the adjudicating authority was challenged before the learned Appellate Tribunal under section 46 of the PBPT Act. While that appeal was pending, on 27.03.2026 the jurisdictional Assessing Officer passed the assessment order for AY 2018-19, the very year of the purchases qua the appellant, arising out of the very same search. The order records that the investment was duly recorded in the audited balance sheet, supported by registered sale deeds, made through banking channels with no cash involvement, and that the source stood satisfactorily explained; no addition was made under Section 69. This order, and its uneasy coexistence with the benami findings, constitutes the another central controversy in the appeal. The relevant portion whereof may be usefully extracted before proceeding further:

"7.1 I have carefully considered the submission of the assessee with reference to documents attached therewith.

It is observed that the assessee has made investment in purchase of immovable property during the year under consideration amounting to Rs. 11,16,06,000/-. Copies of ledger A/cs of all the parties to whom payments made against purchase of properties have been furnished. On verification, the above investment is found to be duly recorded in the audited balance sheet under fixed assets and is supported by registered sale deeds and payments made through banking channels. The amount has been duly reconciled with the bank statements and books of account and, therefore, the same cannot be treated as unexplained. The primary condition for invoking section 69 of the Act is that investment not recorded in the books of account, whereas in the present case of the assessee, the investment is fully reflected in the books of a/c and further reconciled with the bank statements and, therefore, no adverse inference is drawn. 11 Further, the assessee has submitted that reduction in loans and advances is on account of recovery or adjustment of earlier balance and, therefore, does not constitute income of the year under consideration. Confirmations of parties, their ITRs and copies of relevant ledger accounts have been furnished. Loans and advances have been received through banking channel. Thus, identity of the creditors / parties, their creditworthiness and genuineness of transactions has been established.

With regard to the increase in liabilities reflected under the head "Other Current Liabilities" amounting to Rs. 1,72,15,000/- as against Rs. 1,02,10,000/- in the preceding year, the assessee has furnished party-wise details of the liabilities (Uploaded on 03/08/2026 at 04:57:43 PM) (Downloaded on 03/08/2026 at 08:24:46 PM) [2026:RJ-JP:35541-DB] (13 of 58) [CMA-1595/2026] along with confirmations and copies of ITR acknowledgements of the concerned parties.

Details furnished have been examined carefully. It is observed that the liabilities are duly recorded, in the regular books of account and are identifiable with specific parties. The assessee has furnished confirmations and basic details establishing the identity of the creditor land, therefore, such liabilities cannot be considered non-genuine or represent unexplained income of the assessee. The assessee has further established that all transactions in the bank accounts are duly recorded in the regular books of account and are relatable to disclosed business and investment activities. The assessee reply has been examined and test check and it is noticed that the bank transactions are duly reflected in the books of account. Therefore, the assessee's reply is accepted. 1 Thus, the assessee has satisfactorily explained all the issue on which explanation with supporting documents and hence, no adverse inference is drawn and returned income of Rs. 0/- with c/f of current year's loss of Rs. 64,177/- is accepted as such.

8. Assessed u/s 147 r.w.s. 143(3) at NIL. Issue demand notice & challan. The form ITNS-150 showing calculation of tax and interest chargeable, if any, is attached herewith and forms are part of this Order. A notice of demand u/s 156 of the Income-tax Act, 1961 and challan for payment of tax, if payable, is hereby issued.

This order is being issued after obtaining approval of the Addl. Commissioner of Income Tax, Central Range, Jodhpur vide DIN no. ITBA/COM/F/17/2025- 26/1087984411(1) dated 27.03.2026."

10.1 On 01.04.2026, the learned Appellate Tribunal dismissed the appeal by an order now impugned herein, which reads as under:

"2. The case in hand was initiated after a search conducted under Section 132 of the Income Tax Act on 16.06.2022 on Maharani Group of company founded by Shri Mahaveer Lunia. The office of the 10 received information along with relevant documents from DGIT (Inv.), Rajasthan, Jaipur. Shri Mahaveer Lunia was shown to be the founder and main promoter of the Maharani Group. The group is mainly engaged in the business of handicraft items viz. clothes, wooden handicraft, various metal handicraft items, for retail sale thereof to local as well as foreign tourists. The business generated huge margin of profit as tourists pay handsome price for choice items. To reduce the profit margin and also to manage cash for the requirements of the group for making further investment in purchase of lands and immovable properties, the firm debited huge bogus purchase bills managed from jewelers of Jodhpur. Payment was made to these jewelers through banking channels against the bogus purchases and cash was received back. Apart from this, Shri Mahaveer Lunia also worked as a money-lender and earns unaccounted interest income. The unaccounted cash was utilized for making purchase of immovable properties and also to acquire shell/paper companies namely (1) M/s Alishan Complex Pvt. Ltd., (2) M/s Principal Dealers Pvt. Ltd., and (3) M/s Swagatama Enclave Pvt. Ltd., earlier managed and controlled by entry operators of Kolkata and Mumbai. Those companies were having security and premium reserves, which was utilized to buy immovable properties. These companies were acquired by the group by making investment out of the cash generated through bogus purchases.

(Uploaded The unaccounted on 03/08/2026 at 04:57:43 PM)cash generated through (Downloaded on 03/08/2026 at 08:24:46 PM) [2026:RJ-JP:35541-DB] (14 of 58) [CMA-1595/2026] bogus purchases was routed through Shri Anil Sanklecha, CA, a relative of Shri Mahaveer Lunia for purchasing the shell companies. Those companies were operated by Shri Neeraj Khemka and Shri Praveen Agarwal (dummy Director) at the time of share allotment, wherein Shri Praveen Agarwal accepted that these companies are shell companies/paper companies used by him for providing accommodation entries in lieu of cash payment.

4. The allegation was for operation of those entities from Kolkata and Mumbai with the help of Shri Anil Sanklecha, Chartered Accountant, a relative of Shri Mahaveer Lunia. He remained instrumental in facilitating the transactions where approximately Rs.40 to 42 Crores was transacted in cash through Hawala Operators (Angadias), as admitted by the witnesses in his statements The modus was to induce cash in the shell companies

(appellants no. 1 to 3) and thereupon to acquire various properties in the name of those companies and accordingly 79 properties were purchased in the name of the appellant M/s Alishan Complex Pvt. Ltd. while 50. properties in the name of the appellant M/s Principle Dealer Pvt. Ltd. and lastly 14 properties in the name of appellant M/s Swagatma Enclave Pvt. Ltd. making it in all 143 properties. The money involved therein was found to be Rs.40 Crores, Rs. 18 Crores and Rs. 17 Crores respectively in the entities named above. Finding a case of benami transaction, notice was issued to the appellants under Section 24(1) followed by notice under Section 24(3) of the Act of 1988. The provisional attachment order was caused thereupon. It was followed by adjudication by the Adjudicating Authority on a reference by IO. After hearing the parties, the Provisional Attachment Order was confirmed and aggrieved by the aforesaid, these appeals have been preferred by the appellants.

-x-x-x-x-x-

Arguments of counsel for the appellants:

20. One of the argument of the appellants is that statements of different persons recorded by the Income Tax Department, behind their back could not have been relied upon.

21. We have considered the aforesaid issue also. The statements recorded under one statute can be used in proceedings under another statute, if the provisions and purposes of the statutes align and there is no express prohibition against it.

In the case at hand, statements were recorded under section 132(4) of the Income Tax Act, 1961 and the same have been used for the proceedings under the PBPT Act. Therefore, it becomes necessary to examine whether Income Tax Act and PBPT Act can be construed together. It cannot be denied that the purpose of both the Income Tax Act and the PBPT Act is to ensure transparency and legality in financial transactions and asset holdings. The PBPT Act, like many other legal frameworks. allows for the use of statements and evidence that are relevant to the case, regardless of where or under which Act they were originally recorded. Section 60 of the PBPT Act clarifies "Applications of other laws not barred". The provisions of the Act of 1988 shall be in addition to, and not, save as hereinafter expressly provided. in derogation of any other law for the time being in force. It is evident from above that the PBPT Act empowers and enables /Authorities to use application of other laws. In view of above, the statements recorded under the Income Tax Act, 1961 could have been used for the proceedings under the PBPT Act, 1988. The appellants failed to explain as to why the statements recorded under Section 132 of the Income Tax Act could not have been relied. It is along with other material collected during the course of search and subsequently. (Uploaded on 03/08/2026 at 04:57:43 PM) (Downloaded on 03/08/2026 at 08:24:46 PM) [2026:RJ-JP:35541-DB] (15 of 58) [CMA-1595/2026]

22. It was further submitted that the statements recorded behind the back had no evidentiary value. The issue has been linked with the issue of denial of cross- examination of the witnesses.

23. We may first clarify the issue of right of cross-examination of the witnesses which is not inbuilt under the Act of 1988. The right of cross-examination depends on the nature of the proceedings. The issue aforesaid has been dealt with by Madhya Pradesh High Court in the case of Harivallabh Mohanlal Joshi Vs. Union of India in Writ Petition (C) No. 16633/2018 decided by the order dated. 13.08.2018. The judgment of the Apex Court was taken into consideration to hold that cross-examination is not an integral part of the principle of natural justice. However, it is open for the competent authority to examine the available circumstances and if deems fit, the opportunity to cross-examination can be provided, but not as a matter of right. The same view was taken by the Madras High Court in the case of M/s Marg Realities Ltd. Vs. Dy. CIT (Benami Prohibition) reported in 448 ITR 574 (Mad) (HC) to hold that there is no provision under the Act of 1988 to provide an opportunity for cross-examination.

25. Detailed finding in that regard has been recorded, thus, the impugned order has not been passed merely on the statements of the witnesses but other material to prove the case of benami transaction. At this stage, we may further refer to the retraction of the statement by Sh. Anil Sanklecha, CA, relative of Mahaveer Lunia. The retraction was made by an affidavit after expiry of the considerable period and it is not that the statement of Sh. Anil Sanklecha, CA was recorded by the Income Tax authorities under duress or coercion. Retraction for the sake of it and with the delay is not acceptable. It is otherwise a fact that the impugned order has not been passed only based on statements, rather it was with corroborative eviden the material and, therefore, rightly relied upon by the respondents. It may be that stand-alone statements indeed may lack evidentiary value, if they are not corroborated or supported by other evidence. However, if these statements are consistent with other evidence or provide essential context to understanding a transaction ■■ arrangement covered under the PBPT Act, they can carry significant weight.

26. In the case at hand, it is observed that the IO has not relied only on the statements of third persons like Sh. Anil Sanklecha, CA etc. but duly analyzed the shareholding pattern as well as current Directors in these companies and after analyzing all financials, found that Shri Mahaveer Lunia and his family members are now having full control and management of three companies since F.Y. 2016-

17. Moreover, during the search conducted on 16.06.2022, detailed list of various immovable properties purchased in names of these three companies were found at the residence premises of Shri Mahaveer Lunia. These facts show that the statements were corroborated and supported by other evidences. Therefore, the contention of the defendants that statements recorded behind their back have no evidentiary value, cannot be accepted. They could not otherwise question truthfullness of the statements. There is no provision to record statement in the presence of the benamidar or beneficial owner. x-x-x-x-x-x

34. It is noticed that Shri Anil Sanklecha, CA in response to question numbers 50, 55 in his statement recorded on oath u/s 132(4) of the 1.T Act, 1961 stated on 17.06.2022/18.06.2022 and admitted that he has received cash from Mahaveer Lunia to the tune of Rs. 40-42 crores (approx.) through Angadia (Hawala operator) in Mumbai, which was routed in the shell entities. He also stated that his servant Mr. Suresh(Uploaded Mukhiaonwas one ofat 04:57:43 03/08/2026 the Directors PM) in those companies (Downloaded on 03/08/2026 at 08:24:46 PM) [2026:RJ-JP:35541-DB] (16 of 58) [CMA-1595/2026] earlier. In order to verify the veracity of said submission, list of current and previous directors was perused from the records, wherein it is seen that Shri Suresh Mukhia was director in past. It is also noticed from material on record that one company was having two shareholders namely M/s Surpati Packaging Pvt. Ltd. and M/s Upward Commerce Pvt. Ltd, with shareholding of 49.99% each. It is also seen that Mahaveer Lunia and his family members were having 50% shareholding in both M/s Surpati Packaging Pvt. Ltd. and M/s Upward Commerce Pvt. Ltd. Similarly, M/s Shivaasha Mercantile Ltd. is having 99.98% shareholding in other companies, in which Mahaveer Lunia and his family members were having 58.24% shareholding. Likewise, M/s Mahavir Agency Pvt. Ltd. and M/s Jagdamba Dealer Pvt. Ltd. are having 49.98% each shareholding. Further, M/s Jodhana Buildmart Pvt. Ltd. and M/s Marudhar Landcon Pvt. Ltd. are having 50% each shareholding in M/s Mahavir Agency Pvt. Ltd. Mahaveer Lunia and his family members are having 100% shareholding of M/s Jodhana Buildmart Pvt. Ltd. and M/s Marudhar Landcon Pvt. Ltd. x-x-x-x-x-x

39. It was urged that when the Income Tax Department has assumed the jurisdiction and initiated proceedings against the benamidar companies with regard to the alleged transactions, then there was no reason to make allegations about benami transactions in regard to the same facts. It is more so when the Income-Tax Department made the assessment of undisclosed income thus it could not have been taken to be involved in benami transactions:

40. We find no substance in the argument, rather it has been raised based on misconceived notions. According to the appellants, element of benami transaction can rest only when unaccounted or illegal money is transacted. The said concept is incorrect because element of benami transaction may exist even if it has been transacted out of the disclosed income and source. We would illustrate it. If somebody is having disclosed income declared in the income tax, however, transferred to a third person for purchase of the property in his name, then it would be a case of benami transaction despite disclosed income being used in benami transaction. In the similar manner, even if the income tax authority has made assessment of undisclosed income after causing notice under Section 148 of the Income Tax Act or otherwise it may become legalized money but would not nullify the element of benami transaction, if exists. The facts of this case have been disclosed to show how the benami transaction has been cash out of betting and gambling but the fact remains that the appellants changed their stand regarding earning which was initially said to be out of service and thereupon through the agriculture income and disclosed in the revised income tax return. It was after the notice caused by the respondents. The IO found an element of benami transaction where the money was routed for purchase of shares, mutual funds and properties. It was transacted by beneficial owner and thereupon purchase remained in the name of benamidar's companies. The detailed fact to show how a case of benami transaction has been made has already been discussed thus it is not required to be repeated, however, element of benami transaction, if made out, would not be effected by subsequent assessment of income.

41. The next question is co-related to the last issue. The counsel for the appellants submitted that the cash transaction cannot be taken to be the basis for the benami transaction. It is nothing but admission about the involvement of cash in the transaction though with the qualification that mere involvement of cash would not make out a case of benami transaction. The proposition taken by the counsel for the appellant may be correct and we may endorse that each cash transaction may not involve a benami transaction, rather it cannot be only on an allegation to make out a case under Section 2(9)(A) of the Act of 1988. If the involvement of cash transaction results in benami transaction, it cannot be nullified only on the ground that involvement of the cash would make out a case of benami transaction. However, if no allegation is made out then even involvement of cash would not make out a case of benami transaction. It depends on the facts of the case. In the instant case, huge amount was involved which remained unaccounted and even if in the revised return, it was assessed, if the fact remained that it was used for benami transaction and, therefore, the argument is clarified with the aforesaid and in this case respondents could not satisfy route of transaction to make out a case of benami transaction.

42. The next question was that Mahaveer Lunia is not shareholder of the appellant companies. In fact, he purchased share of shareholding company and that too of limited extent. The appellant company purchased the immovable properties out of their own funds and, therefore, shareholders did not become the owner of the properties. The fact aforesaid has been raised in ignorance of the fact that the appellant company could not support the source of funds to acquire the properties though they had taken an excuse about availability of funds in the account of the company itself and, therefore, it was used for purchase of the properties. It is, however, without clarification about the generation of funds and more specifically receipt of the amount from those to whom money was advanced by the appellant companies. There is no material to show as to when money was advanced and source for advance of money to the appellant company so as to legally received it back. In the background aforesaid, receipt of the amount as a repayment of the advances was taken to be nothing, but for creation of the benami transaction where beneficial owner infused the cash which was shown to be nothing but out of repayment of the advances. The source of advance and necessary material was not found with the appellants in the proceedings conducted by the Income Tax Department as well as the respondents and otherwise if the appellant Mahaveer Lunia was holding shares only in the shareholding company, then it makes a case of benami transaction because he had infused cash amount in those companies for purchase of shares, mutual funds and properties making out a case of benami transaction under Section 2(9)(A) of the Act of 1988. The infusion of cash by Mahaveer Lunia in the shareholding companies was admitted by Shri Anil Sanklecha, CA. Thus, even the last argument raised by the counsel for the appellants cannot be accepted, rather analysis aforesaid reveals satisfaction of the ingredients of Section 2(9)(A) of the Act of 1988.

43. In the light of the discussion made above, the appeals would fail and are dismissed." IV. THE CASE OF THE APPELLANT A. Arguments on behalf of the Appellant

11. Mr. Ashwani Taneja, argued broadly on the lines of the grounds pleaded in the appeal. Basis thereof, case of the appellant is crystallized on following seven heads. 12.1 First, independent financial capacity: shareholders' funds of roughly Rs. 10 crore have been maintained consistently since FY 2006- 07, predating the Lunia family's entry by a decade. The purchases were made entirely through banking channels, funded by the repayment and redeployment of loans and advances already appearing in the books, a conversion of assets, not an infusion. On this footing, no external consideration entered the transactions at all. 12.2 Second, the twin conditions of Section 2(9)(A) are said to be unmet: the company paid from its own corpus, and it holds, possesses and enjoys the properties itself. There is, on the appellant's submission, no identified person who provided the consideration and for whose benefit the properties are held, and both limbs must be affirmatively established before the definition is attracted. 12.3 Third, shareholding is not beneficial ownership. Shri Lunia is not even a direct shareholder of the appellant; a shareholder of a holding company cannot in law be the beneficial owner of property held by the subsidiary, which is a separate juristic person, shareholders own shares, not the company's assets. Reliance is placed on Pr. CIT v. Pradeep Wig2, and, for the proposition that the corporate veil may be pierced only upon a finding of fraud, sham or facade, on Vodafone International Holdings BV v. Union of India3 and LIC v. Escorts Ltd.4. 12.4 Fourth, factual errors going to the root of the impugned order (Tribunal): (i) the learned Tribunal attributed an investment of 2 ITA 681/2025, DELHI HIGH COURT 3 (2012) 6 SCC 613 4 (1986) 1 SCC 264 Rs. 40 crore to the appellant against an actual figure of Rs. 11.16 crore, an overstatement exceeding 250%; (ii) it confused the shareholding of two distinct companies, applying the 58.24% Lunia holding in M/s Shivaasha Mercantile to the wrong entity; and (iii) it conflated one individual, holding an indirect interest of about 4.17%, with a twelve- member extended family, whereas a collective family holding cannot substitute for proof that a specific person provided the consideration. 12.5 Fifth, the burden of proof was wrongly shifted. The initial burden of establishing a benami transaction lies on the Initiating Officer, who, the appellant contends, never ascertained the exact amount of cash allegedly provided nor the benefit accrued, and the Tribunal impermissibly required the appellant to prove a negative. 12.6 Sixth, the income-tax findings were ignored, lead to two contradictory findings: under the same Act and out of the same search, the Assessing Officer accepted the source of the investment and made no addition under Section 69, yet the learned Tribunal treated the same search material as inculpatory, the Section 132(4) statements as conclusive, while dismissing the exculpatory assessment findings as irrelevant. Reliance is placed on Central Warehousing Corporation v. Adani Ports SEZ Ltd. 5 against the respondent and IT department approbating and reprobating on the same facts. The appellant thus submits that the same Department cannot

rely upon income-tax search statements and investigative material when they appear incriminatory, yet disregard the later findings of the Assessing Officer when those very findings exculpate the appellant on the source and banking trail of the same investments. 12.7 Seventh, the evidence is tainted and uncorroborated. The case rests on the retracted statement of CA Anil Sanklecha; the retraction, by affidavit of 27.06.2022, within nine days, alleging some (Uploaded on 03/08/2026 at 04:57:43 PM) 5 2022 SCC OnLine SC 1398 (Downloaded on 03/08/2026 at 08:24:46 PM) [2026:RJ-JP:35541-DB] (20 of 58) [CMA-1595/2026] 65 hours of continuous questioning, was not belated, and accords with the CBDT's own instructions dated 10.03.2003 and 18.12.2014 discouraging confessions during search. The maker of the statement was never summoned or examined in the benami proceedings, and cross-examination, though sought, was never granted. The findings, it is urged, amount to borrowed satisfaction from investigation reports without independent inquiry by the Initiating Officer. B. Further Submissions on behalf of the appellant (i) Submissions of the appellant on the Statement of Shri Anil Sanklecha

13. During the search, the statement of CA Anil Sanklecha (Mumbai) was recorded under s.132(4), Income Tax Act, on 17-18.06.2022; it was never supplied to the Appellant. 13.1 In answers to Q.50 and Q.55, Sanklecha allegedly stated he received cash of about ■40-42 crores from Shri Mahaveer Lunia via Angadia in Mumbai and passed it on to persons as directed by Lunia, his family, or agents. 13.2 Sanklecha nowhere stated the cash was used in the Appellant or for purchasing the subject properties; per extracts in the s.24(4) Provisional Attachment Order, he expressly said he had no knowledge of its ultimate utilization. 13.3 The Initiating Officer wrongly drew an adverse inference, attributing utilization of the cash to the Appellant by implication through Q.55 , unsupported by the statement's actual contents and legally unsustainable. 13.4 This statement is the primary basis of the Impugned Order dated 01.04.2026 (paras 34, 42), though self-contradictory and non- inculpatory. Sanklecha retracted it within nine days by notarized Affidavit dated 27.06.2022, stating: the search ran more than 65 hours (Uploaded on 03/08/2026 at 04:57:43 PM) (Downloaded on 03/08/2026 at 08:24:46 PM) [2026:RJ-JP:35541-DB] (21 of 58) [CMA-1595/2026] (16-19.06.2022); he and family were continuously grilled without food, rest or sleep; his statement was taken on 18.06.2022 when exhausted and confused; he signed without application of mind at the officers' dictate; he never received or gave funds to Lunia or Gautam Chopra; and the ■40-42 crore transaction was "absolutely an incorrect version." His reply dated 11.02.2023 to JDIT-1, Jodhpur, confirmed no documentary evidence was found at his premises. 13.5 The findings of the Impugned Order passed by the AA are perverse:

no evidence establishes cash payments to sellers of the impugned properties; the AA ignored relevant material, relied on inadmissible material, and its conclusion rests on conjecture without documentary evidence or money trail.

13.6 The Tribunal also merely reproduced the Respondent's allegations as established fact without independent scrutiny. The allegations rest on Income-tax Act statements never furnished completely/legibly, denied cross-examination despite requests, and never independently verified by the Initiating Officer under the Benami Act, 1988.

13.7 Several such statements were retracted by sworn affidavits, denting their evidentiary value; absent independent corroboration by the Initiating Officer (BPU), reliance on them is legally untenable.

13.8 This violates natural justice: adverse findings on third-party statements require an effective opportunity of cross-examination; its denial vitiates the proceedings, especially under so harsh a law.

13.9 Even taking Sanklecha's statement at face value (without admitting), it contains no reference to cash infusion into the Appellant or use for acquiring the properties; being uncorroborated, untested and retracted, it establishes no nexus, rendering the Respondent's case unsustainable under the Benami Act.

13.10 Tribunal wrongly discards the retraction as made "after expiry of considerable period," (Uploaded when the affidavit dated 27.06.2022 came within on 03/08/2026 at 04:57:43 PM) (Downloaded on 03/08/2026 at 08:24:46 PM) [2026:RJ-JP:35541-DB] (22 of 58) [CMA-1595/2026] nine days of the search -- a prompt retraction that could not be summarily brushed aside, given the original statement was allegedly coerced and untested by cross-examination.

(ii) Submissions of the appellant on the Findings of the Assessing Officer (Income Tax)

14. That the same Income Tax Department, the very Department under the CBDT that houses the Benami Prohibition Unit and the IO - has, through its Assessing Officer (DC, Central Circle 1, Jodhpur), conducted full-fledged scrutiny assessments of the Appellant for five assessment years (AY 2018-19 and AY 2020-21 through AY 2023-24), all consequential to the very same search and seizure operation of 16.06.2022 that gave rise to the present benami proceedings and has arrived at diametrically opposite findings on the very same questions of source of funds and genuineness of the Appellant's transactions for acquiring the subject properties. 14.1 That the Jurisdictional Assessing Officer (DC CEN CIR1, Jodhpur) passed the Assessment Order under Section 147 r.w.s. 144 of the IT Act, after obtaining prior approval of the Addl. CIT, Central Range, Jodhpur. This assessment was conducted consequential to the very same search of 16.06.2022. During the proceedings, the AO issued detailed Show Cause Notices specifically proposing addition of Rs.11,16,06,000/- as unexplained investment under Sections 68 and 69 of the IT Act, the very same properties that are the subject matter of the present benami proceedings. The Appellant filed comprehensive replies furnishing ledger accounts of all parties, bank statements, registered sale deeds, confirmations from counterparties with their ITRs and Financial Statements of the Appellant and others. The AO, after careful examination, recorded the following findings:

(i) 'The above investment is found to be duly recorded in the audited balance sheet under fixed assets and is supported by registered sale deeds and payments made through banking(Uploaded channels.onThe amount 03/08/2026 has been at 04:57:43 PM)duly reconciled with the (Downloaded on 03/08/2026 at 08:24:46 PM) [2026:RJ-JP:35541-DB] (23 of 58) [CMA-1595/2026] bank statements and books of account and, therefore, the same cannot be treated as unexplained.'

(ii) 'Loans and advances have been received through banking channel. Thus, identity of the creditors/parties, their creditworthiness and genuineness of transactions has been established.'

(iii) 'Thus, the assessee has satisfactorily explained all the issues on which explanation with supporting documents and hence, no adverse inference is drawn and returned income of Rs.0/- with c/f of current year's loss of Rs.64,177/-

is accepted as such.' 14.2 That post-search assessment was also carried out for other assessment years, in the case of the appellant. The Assessment Orders for AY 2020-21, AY 2021-22, AY 2022-23 and AY 2023-24, dated 27.02.2025, 27.02.2025, 28.02.2025 & 26.02.2025, were passed during the pendency of the appeal before the Tribunal. The AO (DC CEN CIR1, Jodhpur) passed Assessment Orders for all four years after issuing detailed notices under Section 142(1) and examining the Appellant's replies, financial statements and bank statements. In each year, the identical finding was recorded: 'Considering the reply/submission of the assessee and the details and documents available on record, the return income is accepted as such.' No addition was made in any year. 14.3 That the significance of these Assessment Orders, particularly the Assessment Order for AY 2018-2019, cannot be overstated. The Impugned Order's core finding, that the Appellant is a 'shell company' whose properties were purchased from 'unaccounted cash of Shri Mahaveer Lunia', has been directly and specifically negated by the same Department's own Assessing Officer, who after examining the very same properties, the very same bank statements, and the very same source of funds, has recorded that the investment is duly recorded, reconciled, supported by banking channels and registered sale deeds, and that the source is satisfactorily explained. These are not tangential findings; they go to the heart of the benami allegation. 14.4 That the issue regarding acquisition of the subject properties and the source of funds has already been duly examined by the Assessing (Uploaded on 03/08/2026 at 04:57:43 PM) Officer under the Income-tax Act, 1961 during the course of (Downloaded on 03/08/2026 at 08:24:46 PM) [2026:RJ-JP:35541-DB] (24 of 58) [CMA-1595/2026] assessment proceedings. The Assessing Officer had raised specific queries with respect to the acquisition of properties and their source of funds, to which the Appellant furnished detailed explanations, demonstrating that the investments were made out of repayment of loans and advances reflected in the financial statements, and that all payments were effected through regular banking channels. The corresponding sale deeds were duly registered and examined by the Assessing Officer before passing the assessment orders, without drawing any adverse inference.

(iii) Submissions of the appellant on the Contradictions in the Tribunal order

15. The Tribunal (Para 40) held that income tax assessment of undisclosed income "legalizes" the money but does not nullify the benami element. This is selective reliance: the Tribunal accepts inculpatory income tax material (statements, search material, shareholding data) but rejects exculpatory findings from the same machinery (Assessment Orders accepting the source). Such asymmetric borrowing violates consistency, fairness and judicial discipline, rendering the findings arbitrary and unsustainable. 15.1 The Tribunal ignored that the Assessing Officer had already examined the acquisition of properties and source of funds, accepted them as genuine, and recorded no adverse findings. 15.2 The Tribunal (Para 25) wrongly dismissed Shri Sanklecha's retraction as made "after a considerable period." Factually, the retraction affidavit dated 27.06.2022 came just nine days after the search ended (18.06.2022), not a considerable period. CBDT's Instruction dated 10.03.2003 and Letter dated 18.12.2014 prohibit extracting confessions during search. A retraction within nine days, detailing duress (65 hours of continuous interrogation without food or rest), deserved serious consideration. (Uploaded The PM) on 03/08/2026 at 04:57:43 authorities gathered no (Downloaded on 03/08/2026 at 08:24:46 PM) [2026:RJ-JP:35541-DB] (25 of 58) [CMA-1595/2026] corroborative evidence of benami; the IO misread the statement in isolation, ignoring unrebutted documentary evidence. Uncorroborated oral statements carry low evidentiary weight, and denial of cross- examination has led courts to delete additions as based on suspicion. Further, the Department cannot blow hot and cold: its AO accepted the source as satisfactorily explained while its Benami Unit alleged the same funds were Shri Mahaveer Lunia's unaccounted cash routed through hawala. 15.3 The Order suffers from perversity and internal contradiction. At Paras 20-26 the Tribunal admits Section 132(4) statements and search material (photocopies, without originals) into benami proceedings via Section 60 PBPT Act, yet at Para 40 dismisses the same Department's Assessment Orders accepting the source as irrelevant. Evidence from the same statutory source must be treated with parity -- if the income tax machinery can inculpate, it must equally exculpate. The Tribunal cannot approbate and reprobate the same process; this legal error vitiates the Order. 15.4 The Tribunal's finding (Para 33) that no legitimate documents disclosed the source of loans, reserve capital and share premium is squarely contradicted by the Assessment Order for AY 2018-19 dated 27.03.2026, which, after examining audited financials, bank statements, ledgers, confirmations and counterparties' ITRs , held the investments duly recorded, banked, reconciled, and the creditors' identity, creditworthiness and genuineness established. 15.5 Even Section 164 CrPC statements are not automatically admissible without proof before the Magistrate and cross-examination; statements before other authorities stand on weaker footing. 15.6 Neither copies of the statements were furnished to the Appellant nor cross-examination allowed, a clear breach of natural justice. (Uploaded on 03/08/2026 at 04:57:43 PM) (Downloaded on 03/08/2026 at 08:24:46 PM) [2026:RJ-JP:35541-DB] (26 of 58) [CMA-1595/2026] 15.7 Even where the Evidence Act does not strictly apply, no judicial, quasi-judicial or executive authority may rely on adverse statements without affording effective cross-examination. 15.8 Denial of cross-examination renders reliance on such statements illegal and the Order unsustainable. 15.9 The Order rests substantially on the retracted Section 132(4) statement of Shri Anil Sanklecha, CA, recorded behind the Appellant's back, never furnished, with no cross-examination -- contrary to Andaman Timber Industries v. CCE6, Andaman Timber Industries v. CCE, holding such denial "a serious flaw which makes the order a nullity." C. Case law cited on behalf of the appellant

16. Learned counsel for the appellant relied on plethora of judgments. Some of the relevant ones are succinctly discussed and noted here in after. 16.1 In the case of CIT v. SMC Share Brokers Ltd.7, the order of the ITAT was confirmed by the High court and the Court held that in the absence of cross examination of the witness, despite repeated requests by the assessee, the statement of the witness cannot be utilized against the assessee to arrive at an adverse conclusion against it. 16.2 In the case of Dhakeswari Cotton Mills Ltd. Vs. CIT 8 , the following propositions were laid down in the matter of utilization of adverse evidence and material collected against the assessee:

The Income Tax officer is not bound by the technical rules of evidence as contained in the Indian Evidence Act. He can act on the material which may not be considered as evidence under the Evidence Act. Although his powers are wide, the Assessing Officer must act in accordance with the principles of natural justice. This postulates that he cannot lake use of the material or evidence unless tested in cross examination.

Any conclusion which is based on surmise, suspicion and conjectures is not outcome of a fair hearing.

Any estimate of gross profit without confronting the material to the assessee is not proper. 6

(2015) 324 ELT 641 (SC) 7 (2007) 288 ITR 345 (DELHI) (Uploaded on 03/08/2026 at 04:57:43 PM) 8 (1954) 26 IT 775 (SC) (Downloaded on 03/08/2026 at 08:24:46 PM) [2026:RJ-JP:35541-DB] (27 of 58) [CMA-1595/2026] 16.3 In Sanjeev Kumar Hain9, the Assessing Officer made use of the statements recorded from some witnesses without giving an opportunity to the assessee to rebut the same. The court held that up to the stage of recording the statements, there could be no infirmity. Illegality would arise only after that when no opportunity was given to the assess to cross examine the witnesses.

16.4 In CIT vs. Indrajit Singh Suri 10 , the Assessing Officer made additions in the basis of the statements of some parties without giving an opportunity to the assessee to cross examine them. The additions were deleted. 16.5 In Strapted (India) P. Ltd. V. Dy. CIT 11 , while dealing with penalty under section 271D, it was held that the statement of one person cannot be utilized against another person unless the other person is given an opportunity to cross examine the first person. In the absence of cross examination, the evidence would remain untested and would lose its evidentiary value. The penalty was deleted. 16.6 In V. Mahes Gulabrai Joshi V. CIT12, the sale of a diamond to one "V" by the assessee was held to be bogus and the amounts introduces in the books were added to the assessee's income on the basis of statement of "V". the Tribunal held that although the burden of proof lies on the assessee in such matters, but when the assessee depended on the Assessing Officer for enforcing the attendance of "V" for cross examination, any failure in this regard would vitiate the assessment and the addition solely basing on the untested testimony of "V" could not be sustained. 16.7 The statements of third parties recorded at the back of the assessee has no evidentiary value unless the witness is cross examined 9 (2009) 310 ITR 178 (P&H) 10 (2013) 33 taxmann.com 284 (Guj.) 11 (2003) 84 ITD 320 (Mumbai) (Uploaded on 03/08/2026 at 04:57:43 PM) 12 (2005) 95 ITD 300 (Mumbai)(Downloaded on 03/08/2026 at 08:24:46 PM) [2026:RJ-JP:35541-DB] (28 of 58) [CMA-1595/2026] as held in the case of Alok Agrawal V. DCIT 13 . In this case the assessment was set aside to be reframed again. 16.8 Unilateral utilization of the contents of the statements of third parties without affording opportunity to cross examine such person is bad in law as held in the case of Hamish Engineering Industries P. Ltd. V. DCIT14. In this case the matter was remanded. 16.9 Evidence tendered by the assessee, by way of production of witness cannot be considered on merits by the CIT(A) without affording necessary opportunity to the Assessing officer to cross examine the witness. This was held in the case of CIT v. Subbu Shashank15. 16.10 In CIT Vs. Eastern Commercial Enterprise16, it was held that the approach of the Assessing Officer was legally infirm as no opportunity of cross- examination was given. The matter was remanded to the Assessing Officer. 16.11 Reference is also placed on the following Judgements:

Amitabh Bansal vs. Income Tax Officer, Ward 46(4), New Delhi 17.

Andaman Timber Industries vs. Commissioner of Central Excise18.

H.R. Mehta vs. Assistant Commissioner of Income Tax19 Kalra Glue Factory vs Sales Tax Tribunal and Ors 198720 Marg Realities Ltd. v. Dy. CIT (Benami Prohibition)21 16.12 In light of the above it is thus, submitted by learned counsel for the appellant that the statements recorded by another agency i.e., Income Tax Department during some different proceedings which were retracted by the concerned persons cannot be used out 13 (2006) 67 TTJ 109 (Delhi) 14 (2010) 120 ITD 166 (Mumbai) 15 (2010) 327 ITR 577 (Madras) 16 (1994) 210 ITR 103 (Cal) 17 175 ITD 401 18 2015 SCC OnLine SC 1051 19 (2016) 289 CTR 0561 (BOM) 20 167 ITR 498 SC (Uploaded on 03/08/2026 at 04:57:43 PM) 21 (2022) 448 ITR 649 (Mad.) (HC). (Downloaded on 03/08/2026 at 08:24:46 PM) [2026:RJ-JP:35541-DB] (29 of 58) [CMA-1595/2026] of context and the IO has selectively relied upon for framing the baseless and untrue charges. The same do not carry any credence in legal proceedings and cannot be imported blindly and also the statement being relied upon by the IO is also not forming part of the RUD. 16.13 Learned counsel would strenuously argue that it is a settled rule of evidence that unless a retracted confession is corroborated in material particulars it is not prudent to base the decision on the confessional statement alone, (A.I.R. 1953 SC 459). V. CASE OF THE RESPONDENTS A. Submissions/Arguments on behalf of the respondents

17. Based on the written submissions and per arguments of Mr. K.K.Bissa, learned counsel representing respondent, the respondents' case, briefly speaking, can be summed up under five discrete heads. 17.1 First, the limited scope of this appeal: Section 49 confines the Court to substantial questions of law. Facts stand concurrently examined by the Adjudicating Authority under Section 26(3) and by the Tribunal; dissatisfaction with findings of fact does not render an order perverse, and the appellant's grounds, properly read, are said to be an invitation to reappreciate evidence. 17.2 Second, beneficial ownership rests on control, not percentage. The case was never one of arithmetical shareholding; it rests on cumulative evidence of effective control, management, fund-routing and ultimate beneficial interest since FY 2016-17. Shri Lunia's directorship from 06.01.2020 is characterised not as an afterthought but as the securing of direct control, squarely within the statutory words 'immediate or future benefit, direct or indirect'. 17.3 Third, the income-tax proceedings are independent. The Assessing Officer examined only whether the investment was recorded (Uploaded on 03/08/2026 at 04:57:43 PM) (Downloaded on 03/08/2026 at 08:24:46 PM) [2026:RJ-JP:35541-DB] (30 of 58) [CMA-1595/2026] in the books, which is why Section 69 was never attracted, and never examined the source of the source or the question of beneficial ownership. To treat income-tax findings as binding in benami proceedings would render Section 67 of the PBPT Act nugatory; and where two statutes carry non-obstante clauses, the later enactment prevails (Bank of India v. Ketan Parekh). 17.4 Fourth, there is no absolute right of cross-examination. Cross- examination is not an inbuilt facet of natural justice under the PBPT Act, reliance is placed on Harivallabh Mohanlal Joshi v. Union of India22 and M/s Marg Realities Ltd. v. Dy. CIT (Benami Prohibition) 23 , and, in any event, the findings rest on documentary and financial evidence, not on the statements alone. 17.5 Fifth, the retraction is belated and uncorroborated and cannot displace a statement recorded on oath; and any mis-recording of shareholding figures in the common order is a clerical error, not touching the core findings, and rectifiable under Section 47. B. Further Submissions of the Respondents

18. Shri Anil Sanklecha, CA, in his Section 132(4) statements on oath dated 17-18.06.2022 (Q. Nos. 50 and 55), categorically admitted receiving approximately Rs. 40-42 Crores in cash from Shri Mahaveer Lunia through Angadia/Hawala operators in Mumbai, routed through the appellant entities, and that his servant Shri Suresh Mukhia had been a Director in those companies -- a fact independently verified from directorship records. 18.1 The assessment orders relied upon by the Appellants show the AO examined only whether the ~Rs. 11 Crore property investments (F.Y. 2017-18) were recorded in the books. On ledgers, audited balance sheets and banking-channel proof, the AO merely held Section 69 22 W.P.(C) 16633/2018, MADHYA(Uploaded PRADESH onHIGH COURT 03/08/2026 at 04:57:43 PM) 23 448 ITR 574 (Mad) (Downloaded on 03/08/2026 at 08:24:46 PM) [2026:RJ-JP:35541-DB] (31 of 58) [CMA-1595/2026] (unexplained investment) was not attracted since the investments were reflected in the books. 18.2 The AO's inquiry was thus confined to book entries -- not the issue in the benami proceedings. He neither examined the "source of source"

of funds nor rendered any finding on real beneficial ownership.

18.3 The proceedings were not founded merely on third-party statements; the IO independently examined the entire material gathered in the Section 132 search and under the PBPT Act.

18.4 The retraction plea is meritless -- the Tribunal rightly held it was made after considerable lapse of time and lacks credibility. In any event, Shri Mahaveer Lunia is the promoter of the Maharani Group, and the incriminating statements of Shri Sanklecha and others identify him as the beneficial owner who conceived and executed the benami arrangement.

18.5 The Appellants' reliance on the AO's acceptance of returned income and book-recorded investments, with no adverse inference, is misconceived and does not advance their case.

18.6 The ground ignores the material findings in the benami proceedings. The companies justified acquisitions by funds in their accounts but failed to explain the genuine source and genesis of such funds, claiming repayment of earlier advances without any evidence of when the advances were made, from what legitimate source, or on what terms.

18.7 Absent supporting material, the "repayment of advances" was rightly treated as a layering mechanism: the beneficial owner's cash projected as repayments through accommodation entities.

18.8 The AO's acceptance of book-recorded investments does not touch the crucial issues of source of source, routing of funds and beneficial ownership, which were never adjudicated in assessment. Hence (Uploaded on 03/08/2026 at 04:57:43 PM) (Downloaded on 03/08/2026 at 08:24:47

PM) [2026:RJ-JP:35541-DB] (32 of 58) [CMA-1595/2026] assessment findings cannot dilute or override the independent findings under the PBPT Act, 1988.

VI. DISCUSSION AND ANALYSIS

19. Having heard the competing arguments of learned counsel appearing for the respective parties, gist of which has been noted hereinabove and having perused the case file including grounds of appeal/ submissions filed by the respondents as well as the counter affidavit/submissions filed by the respondents, we shall now proceed to render our opinion on the issues involved herein by recording our reasons thereof, as per the discussion and analysis recorded hereinabove.

A. Issues/ Questions involved

20. Two substantial questions of law arise for our consideration, which are as below :-

a. Whether the non-indictment of an individual and or an entity under section 69 of income tax act in respect of unexplained income to purchase the same very immovable property, which is also under the scanner of section 2(9) of the PBPT Act alleging it to be benami property, shall operate as a legal bar to take any further action under PBPT Act ?

b. Whether the statements of the witnesses recorded during a search, and seizure raid committed by the revenue officials under section 132 of Income Tax Act, 1961 can be used as the basis of forming an opinion under section 2(9) of the PBPT act without examining them in the PBPT proceedings and without affording a right of cross examination to the affected party being prosecuted under PBPT act ?

(Uploaded on 03/08/2026 at 04:57:43 PM) (Downloaded on 03/08/2026 at 08:24:47 PM) [2026:RJ-JP:35541-DB] (33 of 58) [CMA-1595/2026] 20.1 In the course of consideration of the aforesaid two substantial questions, the following sub-questions also crystallise for determination.

Sub-questions (i), bear upon substantial question (a), while sub- question (ii) and (iii) have a bearing upon substantial question (b):

(i) Whether a company which purchases property in its own name, out of own corpus reflected in its books, can be held a benamidar under Section 2(9)(A)?

(ii) Whether the Tribunal was obliged to reckon with the subsequent assessment order dated 27.03.2026 for AY 2018-19, accepting the source of the very investment and whether the assessment order discloses an impermissible asymmetry in the use of the income-tax record vis a vis PBPT record ?

and (iii). Whether the impugned order records entity-specific and property-wise findings qua the appellant's 79 properties and Rs. 11.16 crore investment, or proceeds on collective figures and generic reasoning, and if the latter, with what consequence. ? B. The Statutory Framework:

Section 69 of the Income-tax Act and Section 2(9)(A) of the PBPT Act.

21. Because so much of the argument turns on the coexistence of the assessment order with the benami findings, the relationship between the two provisions is required to be looked into.

"69. Unexplained investments:

Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the [Assessing Officer], satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year."

Section 69 of the Income-tax Act is thus a deeming charging (Uploaded on 03/08/2026 at 04:57:43 PM) mechanism, triggered only by a precondition: an investment not (Downloaded on 03/08/2026 at 08:24:47 PM) [2026:RJ-JP:35541-DB] (34 of 58) [CMA-1595/2026] recorded in the books. If the trigger fires and the assessee offers no satisfactory explanation of the nature and source, the investment is deemed income. If the investment is recorded and bank-routed, the trigger never fires and the inquiry stops at the first layer of provenance. Section 69 asks: is this investment explained income? 21.1 Section 2(9)(A) of the PBPT Act, by contrast, defines a benami transaction and is concerned with real ownership, not taxability. It requires two cumulative conditions: (a) that the consideration for the property has been provided or paid by another person; and (b) that the property is held for the immediate or future benefit, direct or indirect, of that person. It asks: who is the real owner behind this name? Said sub section for ready reference is reproduced as below :-

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

(A) a transaction or an arrangement--

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

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

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

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

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

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

-x-x-x-x-x-

21.2 A cumulative reading of above two sections of Income Tax Act and the PBPT Act reveals that the decisive structural difference lies in the burden architecture. Once triggered, Section 69 casts the burden on the assessee to explain. Section 2(9)(A) places the initial burden on the Initiating Officer to establish (Uploaded onthe twin atconditions 03/08/2026 04:57:43 PM) affirmatively, with no (Downloaded on 03/08/2026 at 08:24:47 PM) [2026:RJ-JP:35541-DB] (35 of 58) [CMA-1595/2026] deeming fiction doing the work for him. A clearance under Section 69 therefore cannot mechanically become a benami clearance: the assessee cleared Section 69 by discharging a burden that fell on him, whereas under the PBPT Act the burden was never primarily his. By the same token, however, the assessment order is a fact in the record which the Initiating Officer must overcome, not a nullity he may ignore. 21.2 At this stage, section 24(1) of PBPT be seen, which is as below :-

Section 24(1) of PBPT Act:

"24. Notice and attachment of property involved in benami transaction.-- (1) Where the Initiating Officer, on the basis of material in his possession, has reason to believe that any person is a benamidar in respect of a property, he may, after recording reasons in writing, issue a notice to the person to show cause within such time as may be specified in the notice why the property should not be treated as benami property."

Perusal of Section 24(1) reveals that it is, in fact, the jurisdictional gateway of the PBPT Act, and its language carries three built-in safeguards, each of which bears directly on where the burden lies i.e. (a) : the belief must rest "on the basis of material in his possession,"

and; (b) : it must rise to "reason to believe" (not suspicion), and; (c) :

reasons must be recorded in writing before the notice is issued. Read together, these make clear that the initial and continuing burden is on the IO, not the noticee. The rule thus is that the burden of proving a transaction to be benami lies squarely on the person who asserts it, because the law presumes that the person in whose name property stands is its real owner. "Reason to believe" would mean that the belief must be that of an honest and reasonable person, based on relevant and tangible material bearing a rational and live nexus to the formation of the belief.

21.3 "Reason to believe" is a higher threshold than "reason to suspect".

No doubt, the sufficiency of reasons may not be examined by a court, in this case by us, but their existence and relevance certainly are open to judicial review. Thus, an IO cannot (Uploaded issue on 03/08/2026 noticePM) at 04:57:43 on borrowed satisfaction, (Downloaded on 03/08/2026 at 08:24:47 PM) [2026:RJ-JP:35541-DB] (36 of 58) [CMA-1595/2026] vague information, or a bare recital of the statutory language; the recorded reasons must themselves disclose the material and the nexus. A show-cause notice is not an instrument of inquiry to find material, it presupposes that the material already exists in the IO's possession. 21.4. Per the stand taken by the Department, to argue that once notice issued, it is for the noticee to demonstrate why the property is not benami may appear convincing on first blush. But, that inverts the statutory scheme. The Section 24 notice merely affords the noticee an opportunity of rebuttal; the substantive burden of establishing both limbs of Section 2(9)(A), that the consideration was provided or paid by another person and that the property is held for the immediate or future benefit of that person, remains on the IO through provisional attachment under 24(4), the reference under 24(5), and its adjudication under Section 26. 21.5. In fact, we are of the view that in proceedings under section 24 of the PBPT Act, 1988, the burden of proof operates as a shifting burden rather than a fixed one. The Initiating Officer must first possess credible and cogent material to justify issuance of the show-cause notice and any order of provisional attachment. The statutory scheme does not permit action on mere suspicion or mechanical application. Once such material is disclosed and the notice is issued, the affected party, typically the person in possession or the recorded owner, bears the burden of rebutting the allegation by explaining the source of funds, the nature of the transaction, and the bona fides of the ownership. If the party furnishes a satisfactory explanation supported by documents, the ultimate burden to establish that the transaction is benami shifts back to the revenue/Initiating Officer, who must then prove the benami character by evidence. 21.6. Once a party shows that the transaction was legitimately funded and explains the arrangement, the burden (Uploaded on 03/08/2026 at 04:57:43 rests PM) on the revenue to (Downloaded on 03/08/2026 at 08:24:47 PM) [2026:RJ-JP:35541-DB] (37 of 58) [CMA-1595/2026] prove benami, and in the absence of such proof, the attachment can not be sustained. Really speaking, the IO has ample investigative power but must still form a meaningful prima facie basis before proceeding under section 24. The broader legal principle is that benami must be proved by cogent evidence and not lightly presumed. 21.5. In the context of burden of proof, reference may be had to Hon'ble Suprme Court in Valliamal vs Subramaniam 24 relevant thereof is extracted here in below :- "13. This Court in a number of judgments has held that it is well established that burden of proving that a particular sale is benami lies on the person who alleges the transaction to be a benami. The essence of a benami transaction is the intention of the party or parties concerned and often, such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be benami of any part of the serious onus that rests on him, nor justify the acceptance of mere conjectures or surmises, as a substitute for proof. Refer to Jaydayal Poddar v. Bibi Hazra, Krishnanand Agnihotri v. State of M.P.2, Thakur Bhim Singh v. Thakur Kan Singh[3], Pratap Singh v. Sarojini Devi and Heirs of Vrajlal J. Ganatra v. Heirs of Parshottam S. Shah. It has been held in the judgments referred to above that the question whether a particular sale is a benami or not, is largely one of fact, and for determining the question no absolute formulas or acid test, uniformly applicable in all situations can be laid. After saying so, this Court spelt out the following six circumstances which can be taken as a guide to determine the nature of the transaction:

"(1) the source from which the purchase money came; (2) the nature and possession of the property, after the purchase; (3) motive, if any, for giving the transaction a benami colour;(4) the position of the parties and the relationship, if any, between the claimant and the alleged benamidar;

(5) the custody of the title deeds after the sale; and (6) the conduct of the parties concerned in dealing with the property after the sale." (Jaydayal Poddar v. Bibi Hazra, SCC p. 7, para 6)

14. The above indicia are not exhaustive and their efficacy varies according to the facts of each case. Nevertheless, the source from where the purchase money came and the motive why the property was purchased benami are by far the most important tests for determining whether the sale standing in the name of one person, is in reality for the benefit of another. We would examine the present transaction on the touchstone of the above two indicia."

(emphasis is ours) 21.6. Taking the debate further on the stand taken by the respondent i.e. the 'source of the source' inquiry pressed by the Revenue to ascertain if it is tainted. In principle, such recourse is, no doubt open to it, but it is a licence to inquire, not a licence to presume. The authority must prove that the source is tainted; it may not assume it. To reason that 'the company lacked creditworthiness, therefore the money must (Uploaded on 03/08/2026 at 04:57:43 PM) 24 (2004) 7 SCC 233 (Downloaded on 03/08/2026 at 08:24:47 PM) [2026:RJ-JP:35541-DB] (38 of 58) [CMA-1595/2026] have been the beneficiary's cash' is to reverse the statutory burden by the back door. The existence of unaccounted cash somewhere in a group is not proof that these properties were funded by that cash: a business group may genuinely generate huge cash and, separately, a company within it may genuinely hold pre-existing reserves and redeploy repaid advances into property. Both can be true at once. In the absence of a traced flow of the cash, the narrative assigned by the respondent is more of a speculation and does not fall within the meaning of "consideration" as envisaged within limb (a), as stated in para 21.1 of the preceding para of his order. 21.7 There is also a temporal dimension. Section 2(9)(A)(a) asks who 'has provided' the consideration, in the past tense, anchored to the acquisition. If the corpus that funded the purchases demonstrably existed a decade before the alleged beneficial owner came near the company, then prima facie the consideration was not provided by him; control acquired after an asset was funded is not the same as having provided the consideration for it. The respondents' answer pushes the inquiry back to the genesis of the 2006-10 capital itself, a far heavier evidentiary undertaking, and one exposed to the objection that distinct transactions across different years have been clubbed into a single reference. C. The Material Relied Upon by the Initiating Officer

22. Before we advert to address the questions, ibid, first and foremost, it is pertinent to note that the triggering point for initiation of proceedings under the PBPT Act was the search and raid conducted on the promoter family group of the appellant on 16.06.2022. The said search led to discovery of the list of the properties in questions along with some of the sale deeds. The said information led to an enquiry under the PBPT Act. The following material formed the basis of the initiating officer declaring the property as Benami (duly noted in his order dated 07.08.2023), which in turn was also relied upon by the adjudicating authority as well as the learned appellate Tribunal :-

"I. Income-tax Returns of M/s Alishan Complex Pvt. Ltd. II. A detailed list of various immovable properties purchased in the name of M/s Alishan Complex Pvt. Ltd. found & seized (Exhibit-6 of Annexure-BS) at the residence premises of Sh. Mahveer Lunia i.e. Lalit Kunj, Opposite Hotel Mapple Abhay, Paota, Jodhpur.

III. Statement of Shri Anil Sanklecha, CA dated 17.06.2022 & 18.06.2022 recorded during the course of search.

IV. Page No. 76 to 83 of exhibit B-9, i.e., a detailed list found during the course of search in which cash transactions made between Shri Anil Sanklecha and Shri Mahaveer Lunia are recorded.

V. Bank Book/Ledger book of the company for the period of 01.04.2012 to 31.03.2022.

VI. Documents available on the database of Ministry of Corporate Affairs. VII. Statements of Shri Praveen Agarwal recorded under section 132(4) of the Income Tax Act, 1961 dated 10/11.02.2015, 15.02.2014 & 18.11.2014. VIII. Statements of Shri Pramod Ramdeen recorded under section 132(4) of the Income Tax Act, 1961 dated 10.11.2012.

IX. Statement of Sh. Rakesh Kumar Agarwal recorded u/s 131 of the 1.T.Act, 1961 on 21.11.2014 by the Investigation wing of Kolkata."

22.1 From perusal of the above, it is borne out that except at serial number VI, (Documents from database of MCA viz. ROC returns etc.) rest of the material is nothing but what was provided by the income tax officials during the raid carried out by them under section 132 of the income tax act. Thus, predominantly it's the same material being relied upon by income tax authorities, and parallel by the initiating officer under the PBPT act who is also an income tax official under the income tax act and is simultaneously exercising ex officio powers as initiating officer under the PPT act. D. The Assessment Order dated 27.03.2026

23. During the pendency of the proceedings under the PBPT Act, an assessment order dated 27.03.2026 (Annexure 20) came to be passed.Perusal thereof shows that it is based upon detailed examination of the entire material. The Assessing Officer found that the earlier suspicion formed pursuant to the raid conducted under Section 132 of the Income Tax Act was misplaced. Resultantly, the appellant was given a clean chit qua the tax liability (Uploaded that was on 03/08/2026 earlier at 04:57:43 PM)suspected on the basis (Downloaded on 03/08/2026 at 08:24:47 PM) [2026:RJ-JP:35541-DB] (40 of 58) [CMA-1595/2026] of cash transactions and/or the material seized during the raid, including the very property documents that are the bone of contention in the present proceedings under the guise of being "benami". No doubt, other material was also taken into consideration by the Initiating Officer, but perusal of the order passed by the Initiating Officer, followed by the adjudicating authority and the learned Appellate Tribunal, reveals that predominantly it is the same material relied upon under the PBPT Act which was the very basis of the assessment proceedings resulting from the raid under Section 132 of the Income-Tax Act. 23.1 Though, of course, the Income-Tax Act and the PBPT Act operate in different domains, the material relied upon being the same, the evidentiary value of that material in both proceedings has a bearing on each other. 23.2 In the course of hearing, on a query put by the Court to the learned counsel for the respective parties as to whether the assessment order was ever placed on record before the competent authority under the PBPT Act or the Appellate Tribunal, it transpired that although a request had been made to keep the proceedings in abeyance pending the outcome of the assessment, no such course was adopted, and the proceedings before the Initiating Officer as well as the Adjudicating Authority continued regardless. Learned counsel for the appellant further submitted that the assessment order was in fact passed after the judgment was reserved by the learned Appellate Tribunal, and hence the Tribunal too had no occasion to take it into consideration. Having examined the contents of the show cause notice issued by the Initiating Officer as well as the orders passed by the Adjudicating Authority, followed by the appellate order of the learned Tribunal, as reproduced hereinabove in paras 8 to 10, especially the heavy reliance placed on the statement of the witness (the Chartered Accountant) recorded during the raid qua alleged cash receipts, a statement that was subsequently retracted, and in respect of which the appellant's request for cross-examination was given short shrift, it does appear that the appellant has been denied a fair opportunity to defend itself, apart from resulting in an impermissible shifting of the onus from the Initiating Officer under the PBPT Act on to the appellant. 23.3 From the importance given to the statement of the CA, it appears to be rather foundational, and not merely corroborative. The alleged benami character of the transactions rests on one factual premise, that unaccounted cash of the Lunia family was routed into these companies, and Sanklecha's Section 132(4) statement (Q. 50 and 55) is the only direct evidence of that premise anywhere in the record. Everything else the IO and Tribunal invoke, shareholding pattern, family control, the property list found in the search, the "shell company" characterisation, is circumstantial, and each of those circumstances is equally consistent with lawful corporate ownership unless the cash story is given overriding acceptance. That's why the Tribunal's own reasoning at paras 25, 26 and 34 keeps circling back to the statement and to defending its use. The Tribunal's assertion at para 26 of its order that the IO "has not relied only on the statements" is the respondents' best answer, but the test is severability: strike the statement out mentally and ask whether the remaining material can independently sustain a finding that consideration was provided by another person under s. 2(9)(A). On this record, no banking trail, cash deposit, or financial instrument linking Lunia money to the 79 purchases has been identified, so the structure seems to stand or fall with the statement. 23.4 Adverting now to consequence of denying opportunity of cross- examination. The settled position, Andaman Timber Industries being the sharpest expression, is that where statements form the basis of the order, denial of cross-examination despite request is a serious violation of natural justice that vitiates the order itself; it is not a curable irregularity. The consequence is therefore conditional: if the statement is foundational (as above), the denial goes to the root; if genuinely independent material sustains the finding, the denial may be treated as non-prejudicial. Three features aggravate the position here. First, the witness was never summoned or examined in the benami proceedings at all, the

material is wholly borrowed from another statute's proceeding and was never tested in this one. Second, the statement stands retracted within days, and the diminished evidentiary value requires corroboration of a retracted statement before acting on it, corroboration which is precisely what cross-examination might have tested and what the record allegedly lacks. Third, the Tribunal's answer that cross- examination is "not inbuilt" under the 1988 Act sits uneasily with the penal consequences the Act carries (attachment, confiscation, prosecution), which ordinarily attract full natural-justice protections regardless of whether the statute spells them out. E. The Legal Position on Untested and Retracted Statements

24. The legal position on the use of untested and retracted statements, as canvassed at the Bar, may now be noticed. Conceded position is that there has been a denial of opportunity to summon and cross-examine the witness whose statement under Section 132 of the Income-tax Act, 1961 forms the foundation of proceedings under the Prohibition of Benami Property Transactions Act, 1988 ("PBPT Act"). The entire edifice of the proceedings initiated by the Ld. Initiating Officer ("IO") rests upon the statement of one witness recorded under Section 132(4) of the Income-tax Act, 1961. The said statement has since been unequivocally retracted by its maker. Despite a specific and reasoned request by the Respondent, the IO has neither summoned the witness nor afforded any opportunity to examine or cross-examine him. (Uploaded on 03/08/2026 at 04:57:43 PM) (Downloaded on 03/08/2026 at 08:24:47 PM) [2026:RJ-JP:35541-DB] (43 of 58) [CMA-1595/2026] PROPOSITION 1:

25. Where the statement of a witness forms the basis of the order, denial of cross-examination despite request renders the order a nullity 25.1 Andaman Timber Industries v. Commissioner of Central Excise, Kolkata-II25, -- The Hon'ble Supreme Court held that where the statements of witnesses were made the basis of the impugned order, not allowing the assessee to cross-examine those witnesses, despite a specific request, is a serious flaw which makes the order a nullity, inasmuch as it amounts to violation of the principles of natural justice. The Court further held that it was not open to the adjudicating authority to unilaterally conclude that cross-examination was unnecessary; if the testimony was to be relied upon, the opportunity had to be given, and if the authority disputed the need for cross-examination, it ought not to have relied upon the statements at all. 25.2 The present case falls squarely within Andaman Timber. The Section 132 statement is not corroborative surplusage; it is the very substratum of the "reason to believe" recorded under Section 24(1) of the PBPT Act and of the reference made to the Ld. Adjudicating Authority. Remove the statement, and the proceedings have no legs to stand on. 25.3 State of Kerala v. K.T. Shaduli Grocery Dealer 26 -- In the context of sales tax assessment, the Hon'ble Supreme Court held that where the assessing authority relied upon the books and accounts of third parties to reject the assessee's returns, the right to be heard included the right to cross-examine those third parties, and denial thereof vitiated the assessment. 25.4 Lakshman Exports Ltd. v. Collector of Central Excise27-- The Hon'ble Supreme Court held that where the assessee had specifically asked for cross-examination of the persons whose statements were 25 (2016) 15 SCC 785 : (2015) 324 ELT 641 (SC) 26 (1977) 2 SCC 777 (Uploaded on 03/08/2026 at 04:57:43 PM) 27 (2005) 10 SCC 634 (Downloaded on 03/08/2026 at 08:24:47 PM) [2026:RJ-JP:35541-DB] (44 of 58) [CMA-1595/2026] relied upon, that request could not be brushed aside, and the matter was remanded for the purpose of allowing cross-examination. 25.5 Kishinchand Chellaram v. CIT 28 -- Even in income-tax proceedings, where strict rules of evidence do not apply, the Hon'ble Supreme Court held that evidence gathered behind the back of the assessee (a letter from a bank manager) could not be used against the assessee without giving the assessee an opportunity to controvert it and to cross-examine its author. The statement in the present case, recorded behind the back of the Respondent, stands on an identical footing. 25.6 Mehta Parikh & Co. v. CIT 29 -- Where the deponents of affidavits were neither called for examination nor cross-examined, the Revenue could not thereafter challenge the correctness of their statements. The converse equally applies: the Revenue cannot rely on an untested statement while shutting out the very process by which its probative value could be assessed. PROPOSITION 2:

26. A deposition acquires probative value only when tested by cross- examination. 26.1 M/s Telestar Travels Pvt. Ltd. v. Special Director of Enforcement 30 -- Even this decision, ordinarily cited against cross- examination, expressly holds that it is only when a deposition "goes through the fire of cross-examination" that a court or statutory authority is able to determine and assess its probative value; that using an untested deposition may amount to using evidence which the party has had no opportunity to question; and that such refusal may amount to violation of the rule of fair hearing. The Supreme Court sustained the denial in that case only because the statements were merely 28 (1980) 125 ITR 713 (SC) 29 (1956) 30 ITR 181 (SC) (Uploaded on 03/08/2026 at 04:57:43 PM) 30 (2013) 9 SCC 549, para 25 (Downloaded on 03/08/2026 at 08:24:47 PM) [2026:RJ-JP:35541-DB] (45 of 58) [CMA-1595/2026] corroborative of undisputed documents seized from the appellants' own premises, which were disclosed and never disputed, and hence no prejudice arose (para 28). 26.2 The distinction is decisive. In Telestar, the documentary evidence was primary and undisputed; the statements were peripheral. Here, (i) the statement is foundational, and (ii) far from being undisputed, it has been retracted by its own maker. Both conditions on which Telestar excused cross-examination are absent. Telestar, properly read, therefore supports the Respondent. 26.3 For the same reason, Vallabh Textiles v. Additional Commissioner, Central Tax GST, Delhi East31and K.L. Tripathi v. State Bank of India32 are distinguishable: those were cases where the statements merely corroborated undisputed documentary evidence (kaccha ledgers seized in search), and the request was a blanket one. Indeed, para 19 of Vallabh Textiles itself lays down that where a specific, reasoned request is made in respect of a specific witness, the Authority "has to consider the same fairly and if the need is so felt in respect of a particular person, the same ought to be permitted", and if refused, reasons must be recorded. The Respondent's request here is precisely such a specific, reasoned request directed at the sole material witness, whose credibility stands demolished by his own retraction. No reasons worth the name have been recorded for its refusal. PROPOSITION 3:

27. A retracted statement cannot be the foundation of an adverse finding without independent corroboration and without being tested 27.1 Vinod Solanki v. Union of India33-- The Hon'ble Supreme Court held that a retracted confession may be acted upon only if it is corroborated by independent and cogent evidence, and that the burden 31 2025:DHC:2559-DB (Delhi HC, 09.04.2025) 32 (1984) 1 SCC 43 (Uploaded on 03/08/2026 at 04:57:43 PM) 33 (2008) 16 SCC 537 (Downloaded on 03/08/2026 at 08:24:47 PM) [2026:RJ-JP:35541-DB] (46 of 58) [CMA-1595/2026] lies on the prosecution/department to show that the confession was voluntary. The court must bear in mind the attending circumstances including the time of retraction, the nature thereof, and the manner in which the initial statement was recorded. 27.2 K.T.M.S. Mohd. v. Union of India 34 -- Statements recorded under compulsion of statutory provisions, once retracted, require the authority to examine voluntariness and truthfulness before any reliance is placed thereon. 27.3 Pullangode Rubber Produce Co. Ltd. v. State of Kerala35-- An admission is an important piece of evidence but is not conclusive; it is open to the maker to show that it is incorrect. A fortiori, where the maker has himself retracted, the affected third party against whom the statement is deployed must have the opportunity to demonstrate its falsity, which is possible only through cross-examination. 27.4 The CBDT has itself, by Instruction F. No. 286/2/2003-IT (Inv. II) dated 10.03.2003 and Circular/letter dated 18.12.2014, deprecated reliance on confessional statements recorded during search which are not supported by credible evidence. The departmental policy itself recognizes the frailty of the very species of evidence upon which the entire proceeding here has been erected. PROPOSITION 4:

28. The PBPT Act statutorily arms the authorities with the power to summon and examine witnesses , refusal to exercise it, despite request, is an abdication of statutory duty 28.1 Section 19(1)(b) of the PBPT Act confers upon the authorities the powers of a civil court under the Code of Civil Procedure, 1908, in respect of summoning and enforcing the attendance of any person and examining him on oath. Section 26(3) obliges the Adjudicating Authority 34 (1992) 3 SCC 178 (Uploaded on 03/08/2026 at 04:57:43 PM) 35 (1973) 91 ITR 18 (SC) (Downloaded on 03/08/2026 at 08:24:47 PM) [2026:RJ-JP:35541-DB] (47 of 58) [CMA-1595/2026] to provide the parties an opportunity of being heard and to consider all relevant

materials before passing an order. 28.2 Where a specific request is made to summon the sole material witness, whose statement is both foundational and retracted, the refusal to exercise the statutory power under Section 19 is not a matter of discretion but a refusal to perform a duty cast by the statute in aid of natural justice. The standard of proof for establishing a benami transaction is settled to be strict, the burden resting on the party alleging benami: Jaydayal Poddar v. Bibi Hazra36; reiterated in the PBPT context by various Tribunals and High Courts. That strict burden cannot be discharged by an untested, retracted statement. 28.3 The gravity of consequences under the PBPT Act, attachment and confiscation of property under Section 27 and prosecution under Section 53, attracts a correspondingly higher content of natural justice. The more drastic the civil consequence, the fuller the hearing that must precede it: Swadeshi Cotton Mills v. Union of India37. PROPOSITION 5:

28.4. There is yet another dimension in the matter i.e. in those cases where jurisdiction of civil courts is barred and the adjudicatory process is as per the special statute, which is a self-contained code, it becomes all the more imperative to accord legitimate right in a given case for cross examining the witness, whose statement, particularly a retracted one, is being relied upon, as well as observe other principles of natural justice. In the case in hand, the PBPT Act is a special statute and creates a self-contained adjudicatory mechanism (Initiating Officer → Adjudicating Authority → Appellate Tribunal, with limited judicial review under writ jurisdiction) and simultaneously bars civil court jurisdiction, the constitutional and jurisprudential imperative to afford principles of natural justice, including the right to cross-examine witnesses whose 36 (1974) 1 SCC 3 37 (1981) 1 SCC 664 statements are relied upon, becomes even more compelling. The affected party is since deprived of the ordinary civil trial safeguards (full discovery, evidence testing, witness examination under the CPC/Evidence Act). In such a scenario, the quasi-judicial forum under the special statute must internalise those safeguards to satisfy Article 14 and Article 21 of the Constitution.

28.5. If we examine the statutory scheme under PBPT Act, it is borne out that Section 24 is a preliminary/investigatory stage i.e. the IO records "reasons to believe" and may provisionally attach property. At this stage cross-examination is not mandatory, as the IO only forms a prima facie opinion. Whereas, Section 26 is the adjudicatory stage i.e. the Adjudicating Authority conducts a hearing, considers evidence, and decides whether the property is benami. Here, the principles of natural justice apply in full force, including the right to cross-examine witnesses whose statements are relied upon for the adverse finding, given that there is no provision under the PBPT Act to provide an opportunity to the appellant to cross examine the witnesses at the preliminary stage under section 24. Section 26(3) requires the Adjudicating Authority to give the affected person a reasonable opportunity of being heard before passing an order of confiscation. While the PBPT Act does not explicitly mention "cross-examination," the right to a fair hearing under Section 26(3) necessarily includes the right to test adverse evidence, especially when the order relies on third-party statements (in present case recorded under Section 131/32 of the Income-tax Act during search/survey). Thus, denial of cross-examination at the Section 26 stage, where the Authority decides rights, appears to be a fatal flaw in present case in light of the retraction of the confessional statement made before third party by the witness.

SUMMATION

29. The tests laid down by the line of authority relied upon by the Department, Telestar Travels, K.L. Tripathi, and Vallabh Textiles, are conditional: cross-examination may be declined only where (i) the statement is merely corroborative of independent, undisputed material, and (ii) no prejudice is demonstrated. 29.1 In the present case: (a) the Section 132 statement is the sole foundation of the proceedings, not corroboration; (b) the statement stands retracted by its maker, destroying any claim that the material is "undisputed"; (c) the Respondent made a specific, reasoned request for summoning and cross-examination of a specific witness, satisfying even the standard in para 19 of Vallabh Textiles; (d) prejudice is manifest: a confiscatory finding is sought to be rested on evidence the Respondent has had no opportunity to test, and which its own maker disowns; (e) the statutory power to summon under Section 19 PBPT Act was available and was not exercised, without recording any tenable reasons. 29.2 The cumulative position is thus: an untested statement is weak evidence; a retracted statement is weaker still; an untested and retracted statement, standing alone, is no evidence at all in the eyes of law for sustaining a finding as grave as that of a benami transaction, which carries confiscatory and penal consequences. 29.3 Consequently, the reliance upon the said statement without cross- examination vitiates the proceedings, and the impugned order passed by Adjudicating Authority deserves to be set aside and the third party statement of the witness namely Sh. Anil Sanklecha deserves to be eschewed from consideration, without affording the Appellant an opportunity of cross-examination.

 F. Overlapping and Contradictory Findings :

By the Initiating Officer (BPU) and the Assessing Officer (Income Tax)

30. A comparison of the overlapping findings returned by the Initiating Officer (BPU) and the Assessing Officer under the Income Tax Act reveals that both of them have relied upon same material and same set of facts. The apparent contradictions :

30.1 It so appears that the Initiating Officer, BPU/ Respondent passed the order in a rather hurried manner. Whereas the Assessing Officer under the Income Tax Act, 1961 who has a primary jurisdiction to verify the genuineness and source of transaction of acquisition of properties made detailed examination during assessment proceedings found that the sources are genuine. The Assessment Order dated 27.03.2026 passed by the Assessing Officer Assessment Order, which has been passed on the basis of the very same material and financial records already forming part of the record before both the Respondent authorities and the Income Tax Department. The said Assessment Order has substantial relevance in the present proceedings, in as much as it contains specific findings regarding the genuineness of the transactions, source of funds, and banking trail pertaining to the acquisition of the subject properties. Accordingly, we feel that the matter warrants fresh consideration by the Ld. Initiating Officer/Respondent in light of the aforesaid subsequent findings recorded by the competent Income Tax Authority on the same set of facts and material.

30.2 Pertinently, the Initiating Officer, BPU / Respondent does not hold primary jurisdiction to hold findings with regards of sources and genuineness of acquisition of subject properties. Therefore, he cannot blindly disregard and contradict the order of the primary jurisdictional authority i.e. Assessing Officer nor can he ignore the Assessment Order for AY 2018-19 dated 27.03.2026 as well as entire material in his possession including factual and legal pleadings as maybe raised during the proceedings in the light of findings recorded by the Income Tax Department.

30.3 As regards the invocation of Section 67 and of the non-obstante principle, while correct so far as it goes, answers a question the appellant is not asking. The appellant does not contend that the Income-tax Act overrides the PBPT Act; it advances an evidentiary-consistency argument, that the same Department, on the same material, ought not to reach opposite factual conclusions unless the difference is explained by the different statutory question each authority was answering. Non-obstante priority resolves a conflict of legal operation; it does not resolve factual incoherence. The respondents' stronger answer is the different-question point: the Assessing Officer examined recording in the books; the Initiating Officer examined the genesis of the recorded source, and if that distinction holds on the record, both findings can stand without embarrassment. 30.4 Prima facie, from the perusal of the entire Attachment Order u/s 24(4)(a)(i) dated 28.07.2023 (Annexure-3), no independent material has been brought on record to establish the essential ingredients of a benami transaction, namely the source of consideration, beneficial ownership, or existence of any real beneficiary behind the subject properties. That the mandatory twin conditions stipulated under section 2(9)(A) of PBPT Act, 1988 has not been shown to be fulfil at all in the present proceedings. 30.5 We are thus of the view that it would not be legally permissible for the Respondents to adopt a contrary position based on the same facts and premises of the case, unless the same is corroborated and supplemented with concrete objective facts.

 G. The Cumulative Infirmities

31. On a cumulative reading of Show cause notice dated 28.04.2023, order dated 28.07.2023 passed Initiating Officer, order dated 30.08.2024 passed by Adjudicating Authority and order dated 01.04.2026 passed by Appellate Tribunal, in light of the subsequent assessment order dated 27.03.2026, three infirmities emerge which, in our considered opinion, go to the root of the fact, finding exercise undertaken by the Initiating Officer and affirmed by the Adjudicating Authority and the Tribunal, and which warrant interference. 31.1 First, the finding that the consideration for the properties was "routed through Sh. Anil Sankhlecha, CA", which forms the very foundation of parameters (i), (iii) and, indirectly, (v) of the six-fold test laid down in Valliammal v. Subramaniam 38 , as applied by the Adjudicating Authority at para 5.7 of its order (para 9.2 above), and again relied upon by the Tribunal at para 42 of its order (para 10 above), rests substantially on the statement of Sh. Anil Sanklecha recorded during the search on 17/18.06.2022 (Item III, para 3 above). It is not in dispute that this statement was subsequently retracted, and that the appellant's request to cross-examine Sh. Sanklecha was declined at the stage of adjudication. It is well settled that where an adverse finding is founded substantially on the statement of a witness, the denial of an opportunity to cross-examine that witness, more so where the statement stands retracted, constitutes a serious infirmity going to the root of the matter and renders the resultant finding vulnerable, being in breach of the principles of natural justice. (See M/s Andaman Timber Industries v. Commissioner of Central Excise, Kolkata-II 39 , Supreme Court of India, decided on 02.09.2015, where it was held that failure to allow cross-examination of witnesses whose statements are relied upon to pass an adverse order is a serious flaw rendering the 38 (2004) 7 SCC 233 : AIR 2004 SC 4187 (Supreme (Uploaded Court of on 03/08/2026 atIndia) 04:57:43 PM) 39 (2016) 15 SCC 785 (Downloaded on 03/08/2026 at 08:24:47 PM) [2026:RJ-JP:35541-DB] (53 of 58) [CMA-1595/2026] order a nullity). Evidence relied upon to the extent of documentary may not require cross but oral statements which seems to have weighted on the mind of Appellate Authority and Appellate Tribunal. This infirmity has not been cured at any stage, neither before the Adjudicating Authority nor before the Tribunal, and, in our view, cannot be cured for the first time before this Court either, since it necessarily requires a fresh exercise of fact-finding at first instance. 31.2 Second, the assessment order dated 27.03.2026, even though it does not by itself conclude the question of benami ownership, a question which, as the Tribunal correctly observed at para 40 (para 7 above), is not automatically resolved either way by the fate of income, tax proceedings, nevertheless examines, on the very same set of facts and seized material, the identical investment of Rs. 11,16,06,000/- in immovable property, the identical reduction in loans and advances treated by the Tribunal at para 42 as a device for infusing unaccounted cash, and the identical bank transactions, and records a specific, reasoned finding that all of these stand duly reconciled with the books of account and bank statements and are not unexplained. This is precisely the factual premise, unexplained source of funds routed as repayment of advances, on which para 42 of the Tribunal's order proceeds. Since this assessment order was neither placed before the Adjudicating Authority nor before the Tribunal, its bearing on the finding of benami transaction has never been examined by any authority under the PBPT Act. Being a subsequent development going to the very foundation of the finding under challenge, it is a matter that must be considered in the first instance by the fact-finding authority, namely the Initiating Officer, and not for the first time in appeal or in these proceedings. 31.3 Third, the appellant's specific defence, i.e., that its reserves, as reflected in the financial statements for financial years 2006-07 to 2021-22 , remained materially static at approximately Rs. 8.89 to 9.05 crore throughout this period, including in the years preceding the Lunia family's acquisition of shareholding control in FY 2016-17, and that the properties were purchased in FY 2017-18 out of the company's own capital, reserves and recycled loans and advances, has not been specifically dealt with at any stage. The Adjudicating Authority's finding that D-1 to D-3 "did not have creditworthiness or wherewithal" (para 5.6) and the Tribunal's finding that the appellant "could not support the source of funds" (para 42) do not engage with this specific chronological point: namely, that the bulk of the reserves said to fund the purchase had already existed for roughly a decade before Sh. Mahaveer Lunia's family had any shareholding interest in the company at all. Under Section 24 of the PBPT Act, it is for the Initiating Officer to record "reasons to believe" on credible material, and once the noticee furnishes a specific, document-backed explanation of source, that explanation must be specifically examined and either accepted or rejected with reasons, it cannot simply be treated as discharged by requiring the noticee to additionally establish the ultimate origin, years earlier, of monies since repaid and reflected in audited accounts accepted year after year by the Registrar of Companies and the Income Tax Department (para 5, points 3 and 22 above).

VII FINDINGS

32. To sum up, the cumulative discussion leads us to the following findings :

(i) There is no absolute immunity to a company from being a benamidar merely because it is a corporate entity, provided, the relevant conditions under the PBPT Act read with parameters laid down in Valliamal (supra) are met;

(ii) In the case in hand, the finding of benami transaction

rests substantially(Uploaded on theonstatement of Sh.PM) 03/08/2026 at 04:57:43 Anil Sanklecha, CA, (Downloaded on 03/08/2026 at 08:24:47 PM) [2026:RJ-JP:35541-DB] (55 of 58) [CMA-1595/2026]

which was retracted and never subjected to cross-examination despite request. It is held to be in breach of the principles of natural justice;

(iii) The assessment order dated 27.03.2026, which examines and accepts as explained, the very investment and fund-flow has been treated as unexplained under the impugned orders, though it was never placed before or considered by any authority under the PBPT Act, but it requires to be taken into account, whatever be its evidentiary worth found to be once it is gone into.

(iv) The appellant-company's specific, document-backed explanation regarding the exact year/month and source of its reserves (predating the change in shareholding by nearly a decade) has not been specifically examined and dealt with by reasoned findings at any stage.

VIII. ANSWERS TO THE QUESTIONS OF LAW

33. In light of the above findings in preceding para, the sub-questions of law i.e. (i) and (ii) are answered in the negative but the question no. (iii) is answered in affirmative. 33.1 Adverting now to the substantial question of law, as an upshot of the foregoing discussion and analysis of the position of law, we hold that the PBPT Act operates independently of the outcome under the Income-tax Act, the two enactments occupying distinct domains. The "source of the source" is examinable in benami proceedings, and a clearance under Section 69 of the Income-tax Act does not, of itself, foreclose a finding of benami. At the same time, findings returned under Section 69, though not conclusive, carry evidentiary value in proceedings under the PBPT Act and are required to be considered. 33.2 Proceedings under the PBPT Act are not per se barred merely because no addition was made under Section 69, since the two enactments operate in distinct though overlapping spheres. However, findings of the adjudicating authority resting foundationally on a confessional statement of a witness, later retracted, and made in third- party proceedings, without affording an opportunity of cross- examination in the PBPT proceedings, do not advance the case of the revenue. The substantial questions of law are answered accordingly: i.e. answer to the question (a) is in the affirmative and question (b) is in the negative.

IX. CONCLUSION / ORDER

34. As an upshot, we are of the view that the proper course is to remand the matter to the Initiating Officer, the authority statutorily entrusted the functions under Section 24 of the PBPT Act for recording the "reasons to believe" and conducting the necessary inquiry in the first instance, for a fresh and reasoned determination in accordance with law.

35. In view of the foregoing, we pass the following order:

(a) The order dated 01.04.2026 passed by the learned Appellate Tribunal under Section 46 of the PBPT Act, 1988, and the order dated 30.08.2024 passed by the Adjudicating Authority and consequently the final attachment order dated 28.07.2023 are set aside with a direction to the Initiating officer (IO) to proceed afresh .

(b) The matter is thus remanded to the Initiating officer (BPU) at the stage of passing of provisional attachment order dated 01.05.2023 under section 24(3) of the PBPT Act.

 (c) The IO shall proceed further to either continue or revoke the provisional attachment under section 24(4)/(5) of the PBPT Act in accordance with law. (d) The IO, before passing a fresh order shall:

(i) take the assessment order dated 27.03.2026 on record and specifically deal with its bearing, if any, on the question of benami transaction;

(ii) specifically consider and record reasons on the appellant-company's explanation regarding the source and vintage of its reserves and the recycling of loans and advances;

and (iii) afford a reasonable opportunity of hearing to the appellant-company before passing a fresh, reasoned order under Section 24(4)/(5) of the PBPT Act.

(e) The fresh order shall be passed as per the statutory period provided under section 24 of the PBPT Act with effect from the date instant order is uploaded on the website of this court. (f) All contentions of both parties are kept open and nothing stated in the orders now set aside, shall be treated as an expression of opinion on the merits of determination to be made by IO, by passing proposed fresh order, either way. (g) Should the IO, after reconsideration, pass a fresh order under section 24(5) of the PBPT Act and refer the matter to the adjudicating authority, in that event, the adjudicating authority shall afford the appellant-company an opportunity to cross- examine Sh. Anil Sanklecha, CA, if the respondent wishes to rely upon his statement made in third party proceedings under the Income Tax Act, 1961, provided the appellant-company also wishes to rely on the retraction of his statement;

(h) The instant appeal stands disposed of in the above terms. Any pending application also stands disposed of. No order as to costs.

36. In the parting, it is made clear that, pending passing of the fresh order, either way by the IO, the provisional attachment of the properties shall continue to operate, in order to protect the interest of the Revenue, but this is without expressing any final opinion on the merits of the controversy i.e. whether the properties are benami or not, which decision is kept open for determination in accordance with law. (SANDEEP SHAH),J (ARUN MONGA),J

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