IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2022

CORAM :

**THE HONOURABLE MR. JUSTICE R. MAHADEVAN**
and
**THE HONOURABLE MR.JUSTICE J. SATHYA NARAYANA PRASAD**

Writ Appeal No. 1174 of 2022
and
C.M.P.No.7405 of 2022

V.S.J.Dinakaran .. Appellant

Versus

1.The Deputy Commissioner of Income Tax (Benami Prohibition)
Room No.104, 1st Floor
Income Tax Investigation Wing Building
No.46, M.G.Road, Nungambakkam
Chennai – 600 034

2.The Adjudicating Authority
Under the Prohibition of Benami Property Transactions Act, 1989
Room No.26, 4th Floor
Jeevan Deep Building, Parliament Street
New Delhi .. Respondents

Writ Appeal filed under Clause 15 of the Letters Patent to set aside the common order dated 25.10.2021 passed in W.P. No. 8540 of 2020.

For Appellant : M/s.Vandana Vyas

For Respondents : Mrs. Sheela
Special Public Prosecutor (Income Tax)

**JUDGMENT**

R. MAHADEVAN, J.

We have heard the learned counsel appearing for both sides and also perused the materials available on record.

2.This writ appeal arises from a common order dated 25.10.2021 passed by the learned Judge in W.P.No.8540 of 2020.

3.The appellant has preferred the aforesaid writ petition to issue a writ of certiorari to call for the records from the file of the first respondent pertaining to the Order No.23/DCIT(BP)/2019-20 dated 23.01.2020 passed under section 24(4) of the Prohibition of Benami Property Transactions Act, 1988 (in short, "the Act") and quash the same.

4.According to the appellant, he is involved in the business of money lending, chit fund and trading of old boxes and waste paper, besides made investments in Petrol Bunk, automobile trading company. While so, during the month of November, 2017, a search was conducted in his premises consequent to the search in the case of Mrs.V.K.Sasikala. During the course of the same, various documents were impounded and sworn statements were recorded. Subsequently, the appellant received notices under section 153C of the Act,

for the assessment years 2012-13 to 2017-18, based on the material seized from the office of M/s.Ganga Foundations Pvt. Ltd, alleging that the appellant had received a sum of Rs.18 crores towards his share in the Spectrum Mall located at Perambur, Chennai.

5.The appellant further averred that while so, he received a show cause notice under section 24(1) of the Act on 01.11.2019 from the office of the first respondent as if he is a binamidar for the identified beneficial owner viz., Mrs.V.K.Sasikala with respect to his share in the Spectrum Mall and he was called upon to reply on or before 20.11.2019 as to why the same should not be held to be a benami property. Upon receipt of the same, the appellant was not able to file his reply, as the first respondent did not supply any of the relied upon documents. In the mean while, the application filed under section 245D(1) of the Act, before the Income Tax Settlement Commission for the assessment years 2009-10 to 2018-19, was dismissed by order dated 31.12.2019 on the premise that there is non-disclosure of true and full income and the assessment proceedings for the said assessment years, are pending before the assessing officer. In such circumstances, the appellant was served with an order dated 23.01.2020 under section 24(4) of the Act, through which, the first respondent has ordered for continuance of the provisional attachment

till the order of the Adjudicating Authority is passed under section 26(3) of the Act. Challenging the same, the appellant preferred WP.No.8540 of 2020, which was dismissed by the learned Judge, along with connected writ petitions, vide order dated 25.10.2021. Therefore, the appellant is before this court with this appeal.

6.1. The prime contention of the learned counsel for the appellant is that the appellant was not at all involved in the alleged transaction, which the first respondent is treating as benami transaction. According to the learned counsel, the Spectrum Mall was a joint venture between M/s.Ganga Foundations Pvt. Ltd (company) and two other land owners viz., D.V.Balaji and I.Shanmugadurai; the appellant purchased undivided shares of 4554 sq.ft and 6581 sq.ft. from the said I.Shanmugadurai through registered sale deeds bearing Doc.No.3140 of 2011 dated 27.06.2011 and Doc.No.245 of 2012 dated 30.01.2012 respectively; the appellant also purchased a shop in the said Mall from the company on 18.06.2012 through a sale deed bearing Doc.No.1817 of 2012. Owing to the business contingencies, the appellant has mortgaged the said properties altogether with Bank of India during 2014 and has been paying interest till date.

6.2. Adding further, the learned counsel for the appellant submitted

that the first respondent, who initiated the impugned proceedings against the appellant, was not in possession of the Memorandum of Understanding, which has given the reasons to believe that the transaction is benami in nature; and he was only in possession of the photocopies of title deeds mortgaged with the bank and the sworn statement recorded by various persons, which could not be treated as material evidence. Further, the appellant was not provided with the entire documents that have been relied on by the first respondent for initiating the proceedings and he was not given an opportunity of cross examination of the witnesses before passing the order under section 24(4) of the Act. Thus, the first respondent has acted totally against the provisions of law and the principles of natural justice. However, the learned Judge erred in holding that the process and procedure as envisaged for provisional attachment under section 24 is of a narrower compass, when compared with the process of adjudication to follow thereafter.

6.3. The learned counsel for the appellant also submitted that as per section 24(4)(a)(ii), the first respondent is also empowered to revoke the entire proceedings initiated under section 24 of the Act, if the appellant is able to satisfy that the transaction is not benami in nature. However, the first respondent has conducted the proceedings in an arbitrary manner, without following due process of law. The learned Judge also failed to take note of the

same and erred in dismissing the writ petition filed by the appellant. Therefore, the learned counsel sought to allow this writ appeal by setting aside the order of the learned Judge.

7.On the contrary, the learned Special Public Prosecutor (Income-tax) appearing for the respondents, reiterating the contentions that were placed before the writ court, submitted that there are corroborative evidences in the form of printouts of photo images from the mobile phone of Smt.Krishnapriya, copy of loose sheet written in Tamil found in the residence of Shri Vivek Jayaraman and the copy of the sworn statements recorded from Advocate Shri S.Senthil, Shri S.Senthil Kumar, Managing Director of M/s.Ganga Foundations Pvt. Ltd, Shri C.Chittibabu, Chairman of the appellant company and the copies of the sale deeds pertaining to the appellant during the search on the beneficial owner. Further, in the sworn statement, the Chairman and the Managing Director of M/s.GFPL stated that there was a memorandum of understanding which has been signed, but no copy of the same was provided to them. That apart, a reference for the receipt of sum of Rs.18 crores by the appellant was in multiple sworn statements; and the property has not been transferred in the name of the beneficial owner, who has provided the consideration. Thus, the first respondent was satisfied that there was

*prima facie* material available to show that the appellant is a benamidar and hence, the non-existence of the MOU will not vitiate the proceedings. Adding further, the learned counsel submitted that after proper application of mind and having 'reasons to believe', the first respondent has passed the order under section 24(4) of the Act on 23.01.2020 and therefore, the same was rightly upheld by the learned Judge in the writ proceedings. The learned counsel also submitted that the first respondent, who armed with the sufficient materials to proceed against the appellant, has initiated the impugned proceedings as per law, after providing sufficient opportunities to the appellant to file his objections, in adherence to the principles of natural justice; and as such, the order of the learned Judge directing the respondents to continue the proceedings while dismissing the writ petition, does not call for any interference by this court.

8.Before proceeding further, it is but necessary to refer to the provisions of law for effective adjudication. The Benami Transactions (Prohibition) Act, 1988, was enacted to prohibit benami transactions and the right to recover property held benami. The said Act makes it clear that all the properties held benami shall be subject to acquisition by such authority in such manner and after following such procedure as may be prescribed; and no amount shall be

payable for the acquisition of any property held benami. It also provides a mechanism and procedure for confiscation of property held benami. Section 24 deals with notice and attachment of property involved in benami transaction, which reads as follows:

> *"**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.*
>
> *(2)Where a notice under sub-section(1) specifies any property as being held by a benamidar referred to in that sub-section, a copy of the notice shall also be issued to the beneficial owner if his identity is known.*
>
> *(3)Where the Initiating Officer is of the opinion that the person in possession of the property held benami may alienate the property during the period specified in the notice, he may, with the previous approval of the Approving Authority, by order in writing, attach provisionally the property in the manner as may be prescribed, for a period not exceeding ninety days from the last day of the month in which the notice under sub-section (1) is issued.*
>
> *(4)The Initiating Officer, after making such inquires and calling for such reports or evidence as he deems fit and taking into account all relevant materials, shall, within a period of ninety days from the last day of the month in which the notice under sub-section (1) is issued -*
>
> *(a)where the provisional attachment has been made under sub-section (3)-*
>
> *(i)pass an order continuing the provisional attachment of the property with the prior approval of the Approving Authority, till the passing of the order by the Adjudicating Authority under sub-section (3) of section 26; or*
>
> *(ii)revoke the provisional attachment of the property with the prior approval of the Approving Authority;*
>
> *(b)where provisional attachment has not been made under sub-section (3)-*
>
> *(i)pass an order provisionally attaching the property with the prior approval of the Approving Authority, till the passing of the order by the Adjudicating Authority under sub-section (3) of section 26; or*
>
> *(ii)decide not to attach the property as specified in the notice, with the prior approval of the Approving Authority.*
>
> *[Explanation.- For the purposes of this section, in computing the period of limitation, the period during which the proceeding is stayed by*

*an order or injunction of any Court shall be excluded:*

*Provided that where immediately after the exclusion of the aforesaid period, the period of limitation referred to in sub-section (4) available to the Initiating Officer for passing order of attachment is less than thirty days, such remaining period shall be deemed to be extended to thirty days:*

*Provided further that where immediately after the exclusion of the aforesaid period, the period of limitation referred to in sub-section (5) available to the Initiating Officer to refer the order of attachment to Adjudicating Authority is less than seven days, such remaining period shall be deemed to be extended to seven days.]*

*(5)Where the Initiating Officer passes an order continuing the provisional attachment of the property under sub-clause (i) of clause (a) of sub-section (4) or passes an order provisionally attaching the property under sub-clause (i) of clause (b) of that sub-section, he shall, within fifteen days from the date of the attachment, draw up a statement of the case and refer it to the Adjudicating Authority.*

A reading of the aforesaid provision would show that as per section 24(1), when the Initiating Officer based on the materials 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 as to why the property should not be treated as benami property. Sub section (3) to section 24 states that the Initiating Officer, who is of the opinion that the person in possession of the property held behami, may alienate the property during the period specified in the notice, may, with the previous approval of the Approving Authority, by order in writing, attach the property provisionally, for a period of 90 days from the last day of the month in which the notice under section 24(1) is issued. According to section 24(4)(a)(i), the Initiating Officer, after conducting enquiry and calling for reports / evidence and taking into account all the relevant materials, shall pass an order

continuing the provisional attachment of the property till the passing of the order by the Adjudicating Authority under sub section (3) of section 26. Under section 24(4)(a)(ii), the Initiating Officer may revoke the provisional attachment of the property with the prior approval of the Approving Authority. Section 24(5) requires the Initiating Officer, who passes an order continuing the provisional attachment of the property under section 24(4)(a)(i), to draw up a statement of the case and refer it to the Adjudicating Authority, within fifteen days from the date of the attachment.

9.As noticed earlier, the appellant in the writ proceedings, questioned the action of the first respondent under section 24(4)(a)(i) of the Act, in ordering continuance of the attachment made under section 24(3) till the final order under section 26(3) is passed by the Adjudicating Authority. For easy understanding, paragraph 8 of the order passed by the first respondent which was impugned in the writ petition, is extracted below:

> *"8.Conclusion:*
>
> *8.1 As discussed above in the above paragraphs, it can be concluded that the transaction is indeed benami in nature and fulfils the definition as provided in the clause A of section 2(9) of the Prohibition of Benami Property Transactions Act, 1988 and Shri V.S.J.Dinakaran is a Benamidar, as he is holding the property i.e. Share in the property Spectrum mall, Perambur, Chennai (even after receiving an amount of Rs.130 crore in total towards the sale of the Spectrum Mall) for the benefit of Smt.V.K.Sasikala and Smt.V.K.Sasikala, who had paid the consideration of a total of Rs.130 crores for purchase of the above mentioned property, is the Beneficial Owner and the property in the instant case, i.e. proportionate*

*share of Shri V.S.J.Dinakaran in the Spectrum mall, Perambur, Chennai is Benami Property.*

*8.2 Considering the facts and circumstanes discussed above, it is ordered that the attachment made under section 24(3) is hereby continued under section 24(4)(a)(i) of the Prohibition of Benami Property Transactions Act, 1988 and the attachment be continued till the Final Order under section 26(3) of the Prohibition of Benami Property Transactions Act, 1988 is passed by the Adjudicating Authority.*

*This order is issued with the prior approval of the Approving Authority as per the provisions of section 24(4) of the Prohibition of Benami Property Transactions Act, 1988."*

10.Upon considering the rival submissions and the decisions relied on by the parties, the learned Judge has dismissed the writ petition filed by the appellant, along with other connected cases, by the common order dated 25.10.2021 with the following observations:

*"65.The nature of the transactions in question have to be established by the petitioner before the authorities upon the respondents discharging the initial burden cast upon them to furnish the primary evidences available with them to the effect that the property is benami in nature. This is a rebuttable presumption and the effectiveness of the rebuttal will depend on the evidences furnished by the noticees to the authorities.*

*66.In my considered view, therefore, the enquiry contemplated at the stage of initial investigation is only preliminary, based upon prima facie reasons and conclusions. A detailed verification of the evidences as regards whether the transactions were benami or otherwise can, and must only be undertaken in the course of adjudication and not at the stage of preliminary enquiry.*

*67.....*

*68.The thrust of the petitioner's case is the alleged insufficiency of materials as well as the fact that the evidences gathered are unreliable. However, and at the risk of repetition, the enquiry conducted under section 24 is only a preliminary enquiry and the use of the phrase 'reason to believe' only indicates a prima facie satisfaction that all was not well as regards a particular transaction. In the present case, the trajectory of events as has been noticed by me in the preceding paragraphs of this order do not lead to the conclusion that the respondents had no reasons at all to justify the invocation of section 24.*

*69.Yet another ground taken by the petitioners is as regards the denial of opportunity to cross examine the parties at the stage of investigation. As regards this, the respondents deny that such opportunity was sought for by all petitioners. In any event, they reiterate that opportunity for cross examination will be granted, as apporpriate, in the course of adjudication proceedings.*

*70....*

*71....*

*72....*

*73.Thus, the process and procedure as envisaged for provisional attachment under section 24 is of a narrower compass when compared with the process of adjudication to follow thereafter. That apart, not all the petitioners before me appear to have sought an opportunity to cross examine witnesses. It would thus suffice to state that it is open to the petitioners to make such request for cross-examination once they have been supplied with the relied upon documents at the time of adjudication, and such request, if and when made, will be considered by the respondents in accordance with law.*

*74.The argument that it is only when full consideration is paid, that enquiry under PBPT Act may be commenced, is left open to be decided in the course of adjudication. On the aspect of demonetization, there is no question that currency notes of the value of Rs.500/- and Rs.1000/-, once demonetized, do not constitute legal tender and it is a plausible argument to state that 'consideration' must comprise of legal tender alone.*

*75.However, the mode of payment employed as between the parties and the actual amount transacted are pure questions of fact that are best left for verification and determination by the authorities concerned. This question is also left open for decision in the course of adjudication by the authorities.*

*76.The challenge to the impugned orders under section 24(4) fails and the respondents are directed to proceed in line with sections 25 and 26 forthwith. All writ petitions are dismissed. ...*

*77.The respondents will continue with adjudication under section 25 and complete proceedings in light with the mandate of that section. Notices under section 26 of the PBPT Act will be issued within a period of 30 days from date of issue of these orders accompanied with all material that the respondents rely on and proceedings under section 26 shall be conducted scrupulously in line with the mandate thereof.*

*78.The petitioners shall be affored full opportunity to put forth all contentions before the adjudicating authority who shall take note of the same and pass speaking orders in accordance with law. ...”*

11.As already stated, the grievance of the appellant is that the first respondent did not furnish the entire documents relied on by them, nor provide

any opportunity to the appellant to cross examine the persons whose statements have been referred to in the impugned proceedings and as such, the order passed under section 24(4) of the Act, which was impugned in the writ petition, is arbitrary, illegal and violative of the principles of natural justice. Whereas, it is the specific stand of the respondents that they have supplied the required documents to the appellant and that, there is no provision for providing an opportunity to cross examine the witnesses from whom they have collected the information regarding benami property, at the preliminary stage and therefore, the question of violation of the principles of natural justice does not arise herein.

12.Concededly, in the notice dated 01.11.2019 issued under section 24(1) of the Act, the first respondent has set out the reasons for forming an opinion that the appellant is a benamidar in respect of the property in question; and the appellant was called upon to show cause as to why the property should not be treated as benami property, on or before 20.11.2019. Despite the receipt of the same, the appellant did not file his reply to the said notice under section 24(1) by giving plausible explanation, but he complained that there is no fair play on the part of the respondent authorities, while passing order under section 24(4) of the Act.

13.It is to be pointed out that the applicability of the principles of natural justice and fair play, depends on the facts and circumstances of each case and is subjected to statutory provisions; and that, the proceedings under section 24 only require a recording of *prima facie* opinion as to the benami nature of the transaction. It is an admitted case that the appellant failed to submit his reply to the notice issued under section 24(1). As such, the first respondent, after making enquiry and calling for reports or evidence and taking into account all the relevant materials, has, with the prior approval of the Approving Authority, passed the order under section 24(4), continuing the provisional attachment of the property till the passing of the order by the Adjudicating Authority under section 26(3), which is purely provisional in nature. That apart, the provisions of law mandate the respondent authorities to furnish such documents, particulars or evidence and provide an opportunity of being heard to the appellant only at the stage of adjudication proceedings; and there is no provision under the Act to provide an opportunity to the appellant to cross examine the witnesses at the preliminary stage. In this connection, a reliance was placed on the findings of the first respondent in the order impugned in the writ petition and the same are quoted below for ready reference:

> "*It is to be noted that the Initiating Officer under the Prohibition of Benami Property Transactions Act, 1988, was not conferred upon any such authority to grant an opportunity for cross-examination of any person. Further, the Beneficial Owner seeks cross examiation without mentioning the points on which the cross-examination was to be held, which is beating around the bush.*
>
> *It is placed on record that the entire proceedings have been initiated based on the evidences collected and sufficient opportunities have been given to the Beneficial Owner and Benamidar to offer their objections on those evidences. In addition to the above, the current proceedings under the PBPT Act is time bound one. The peculiar situation is that the Beneficial Owner is in Central Prison, Bengaluru.*"

14.At this juncture, it will be useful to refer to the following decisions, in which, it was categorically held that "*the exercise of cross-examination commences only after the proceedings for adjudication have commenced*"; and *"a writ petition should not be entertained against a mere show cause notice"*.

(i) The Hon'ble Supreme Court in ***K.L. Tripathi v. State Bank of India and Ors. [AIR 1984 SC 273]***, has observed as follows:

> *"42. It is true that all actions against a party which involve penal or adverse consequences must be in accordance with the principles of natural justice but whether any particular principle of natural justice would be applicable to a particular situation or the question whether there has been any infraction of the application of that principle, has to be judged, in the light of facts and circumstances of each particular case. The basic requirement is that there must be fair play in action and the decision must be arrived at in a just and objective manner with regard to the relevance of the materials and reasons. We must reiterate again that the rules of natural justice are flexible and cannot be put on any rigid formula. In order to sustain a complaint of violation of principles of natural justice on the ground of absence of opportunity of crossexamination, it has to be established that prejudice has been caused to the appellant by the procedure followed. See in this connection the observations of this Court in the case of Jankinath Sarangi v. State of Orissa. MANU/SC/0502/1969 : (1970) ILLJ 356 SC Hidayatullah, C J.", observed there at page 394 of the report "there is no doubt that if the principles of natural justice are violated and there is a gross case this*

*Court would interfere by striking down the order of dismissal; but there are cases and cases. We have to look to what actual prejudice has been caused to a person by the supposed denial to him of a particular right." Judged by this principle, in the background of the facts and circumstances mentioned before, we are of the opinion that there has been no real prejudice caused by infraction of any particular rule of natural justice of which appellant before us complained in this case. See in this connection observations of this Court in the case of Union of India and Anr. v. P.K. Roy and Ors. MANU/SC/0049/1967 : (1970) ILLJ 633 SC where this Court reiterated that "the doctrine of natural justice cannot be imprisoned within the strait-jacket of a rigid formula and its application depends upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and Ors. relevant circumstances disclosed in a particular case". See also in this connection the observations of Hidayatullah, C.J., in the case of Channabasappa Basappa Happali v. State of Mysore. MANU/SC/0476/1970 : [1971] 2 SCR 645 In our opinion, in the background of facts and circumstances of this case, the nature of investigation conducted in which the appellant was associated, there has been no infraction of that principle. In the premises, for the reasons aforesaid, there has been in the facts and circumstances of the case, no infraction of any principle of natural justice by the absence of a formal opportunity of cross-examination Neither cross-examination nor the opportunity to lead evidence by the delinquent is an integral part of all quasi judicial adjudications."*

(ii) In an order dated 29.11.2010 passed in Special Appeal No.741 of 2010 (MANU/UP/2113/2010) in the case of ***Commissioner of Central Excise v. Parmarth Iron Pvt Ltd***, it was observed by the Allahabad High Court as follows:

*"15.The question, however, before us is, does the Respondent have a right to call upon the Appellants to make available the witnesses for cross-examination even before they being examined or their statements relied upon by the Department in proceedings in adjudication....*
*Is, therefore, an Assessee entitled to cross examine the witnesses at the stage of filing a reply to the show cause notice? A show cause notice is issued on the basis of uncontested material available before the Assessing Authority, who based thereon, has arrived at a prima facie finding whether a show cause notice ought to be issued or not. The material, thus, which has to be considered is, untested and uncorroborated. A party is called upon to reply to the said show cause notice in order to enable the Revenue*

*to know the stand of the Assessee, in the context of the material produced as to whether the proceedings should be further proceeded with. It is an opportunity to the party being proceeded against to disclose any material that the party may have to rebut the prima facie opinion. Even if, the Assessee fails to reply to the show cause notice, that does not amount to an 'admission' of the contents of the show cause notice in the absence of any statutory provision and it is always open to an Assessee ot cross-examine the witnesses whose statements are relied upon or sought to be examined on behalf of the Revenue.*

*At the stage of show cause notice, there is no adjudication. It is only a step in the process of adjudication. The show cause notice by itself is not an order of assessment. The order of assessment will be passed only after considering the evidence and the material, which is placed before the quasi judicial authority/ Tribunal. Therefore, as the show cause notice is based on prima facie material and constitutes a prima facie opinion, that does not result into an order of adjudication. The question, therefore, of an Assessee being entitled to cross-examination, even before the adjudication has commenced, in our opinion, surely would not arise. It is only after the adjudication proceedings have commenced pursuant to the show cause notice and if the Revenue seeks to rely upon the statements or documents, then the principles of natural justice would require in the absence of any statutory provision, that the person whose statement was recorded is made available for cross-examination to test the veracity of the statement.*

*16.We, therefore, have no hesitation in holding, that there is no requirement in the Act or Rules, nor do the principles of natural justice and fair play require that the witnesses whose statements were recorded and relied upon to issue the show cause notice, are liable to be examined at that stage. If the Revenue choose not to examine any witnesses in adjudication, their statements cannot be considered as evidence. However, if the Revenue choose to rely on the statements, then in that event, the persons whose statements are relied upon have to be made available for cross-examination for the evidence or statement to be considered.*

*17.We are, therefore, clearly of the opinion that there is no right, procedurally or substantively or in compliance with natural justice and fair play, to make available the witnesses whose statements were recorded for cross examination before the reply to the show cause notice is filed and before adjudication commences. The exercise of cross-examination commences only after the proceedings for adjudication have commenced."*

(iii) In ***Century NF Castings v. Union of India [2011 SCC Online P&H 17614 : (2011) 269 ELT 221]***, it was held by the Punjab and Haryana High Court as follows:

*"6.We are unable to accept the submission. No doubt cross-examination is a valuable right, the effect of not permitting the cross examination depends upon the facts and circumstances of each case. At this interim stage when decision on merits is yet to be taken, we do not find any ground to adjudicate upon the question whether absence of cross examination will affect the case of the petitioner. Question can be examined at appropriate stage by the concerned authorities and by this court, if necessary."*

(iv) In ***Arun Kumar Mishra v. Union of India [2014 SCC Online Del 493]***, it was held by the Delhi High Court as follows:

*"13.We are unable to agree. The Adjudicating Authority is currently seized of and in seisin of the complaints. We, at this stage, do not know as to which way the order of the Adjudicating Authority will go. It cannot also be said at this stage whether the Adjudicating Authority even if deciding against the appellants will rely upon the material before it qua which the appellants claim a right of cross-examination. All this can be known only when the Adjudicating Authority passes an order and qua which if the appellants are aggrieved, the appellants shall have their statutory remedy. Any interference by us at this stage in the proceedings of which the Adjudicating Authority is seized is thus uncalled for and would result in a situation which the Supreme Court has warned the High Courts to avoid. Reference may also be made to* ***Union of India v. Kunisetty Satyanarayana AIR 2007 SC 906*** *reiterating that the reason why ordinarily a writ petition should not be entertained against a mere show cause notice is that at that stage the writ petition may be held to be premature - a mere show cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so and it is quite possible that after considering the reply to the show cause notice or after holding an enquiry, the authority concerned may drop the proceedings. It was further held that a writ lies only when some right is infringed and a mere show cause notice does not infringe the right of any one and it is only when a final order adversely affecting the party is passed, that the said party can be said to be having any grievance. The Supreme Court held that the writ jurisdiction being discretionary, should not ordinarily be exercised by quashing a show cause notice.*

*(Emphasis supplied)*

(v) An order dated 03.08.2017 passed by the learned Single Judge of the Madhya Pradesh High Court in WP.No.10280 of 2017 in the case of

***Kailash Assudani v. CIT,*** wherein, the challange was to the order passed by the Initiating Officer under section 24(4) of the Prohibition of Benami Property Transaction Act, 1988 and the same was rejected. The relevant portion of the order, reads as follows:

> *"6....In my view, the principles of natural justice are codified in terms of sub section (6) of section 26 of the Act. The impugned order is subject to judicial review before the adjudicating authority. The order passed by the adjudicating authority can be assailed before the appellate tribunal constituted under section 31 of the Act. The order of the appellate tribunal can also be called in question by preferring appeal to the High Court within a period of 60 days. A microscopic reading of provisions make it clear that principles of natural justice are reduced in writing in the shape of amendment in the said Act. The amended provisions contains a complete code in itself.*
>
> *7.In this backdrop, it is to be seen whether at this stage any interference is warranted by this court. In C.B.Gautam the order of compulsory purchase under section 269-UD(1) of Income Tax Act was served on the petitioner without issuing any show cause notice and without giving any opportunity to him. The Apex Court in teh aforesaid factual back drop interfered in the matter. In the said case, neither show cause notice was given nor reasons were assigned in the impugned compulsory purchase order. In the present case show cause notice has been issued, opportunity has been given to the petitioner. The order impugned is provisional/tentative in nature. It is subject to judicial review by adjudicating authority. If order of adjudicating authority goes against the petitioner, the further forums of judicial review of the said order is available to the petitioner before the appellate tribunal and then before this court. Hence, against the tentative/provisional order, no interference is warranted by this court at this stage. As per the scheme of the Act, the petitioner can raise all possible grounds before the adjudicating authority. The adjudicating authority is best suited and statutorily obliged to consider all relevant aspects. Thus, at this stage no case is made out for interference. Moreso, when adjudicating authority has already fixed the hearing on 23.08.2017. Resultantly, the petition is dismissed."*
>
> *(Emphasis supplied)*

The aforesaid order got a stamp of approval by the Division Bench in WA.No.704 of 2017 decided on 16.08.2017 and the finding of the same would run thus:

*"We do not find any merit in the present appeal. It is the Adjudicating Authority who is to decide the question of Benami nature of the property. The proceedings under section 24 of the Act contemplates the issuance of show cause notice as to why the property specified in the notice should not be treated as Benami property. However, the substantive order of treating the property has Benami is required to be passed by Adjudicating Authority under section 26 of the Act only. Therefore, the appellant is at liberty to take all such plea of law and facts as may be available to the appellant before the Adjudicating Authority. The Adjudicating Authority shall decide the Benami nature of the property in accordance with law."*

*(Emphasis supplied)*

15.In the given factual backdrop and applying the legal proposition as enunciated in the earlier paragraph, we are of the opinion that in the absence of any provision of law as well as the compelling circumstances warranting the respondent authorities to provide an opportunity of cross examination of witnesses, whose statements have been relied on by the respondent authorities to the appellant at the stage of section 24 proceedings, the plea raised by the appellant in this regard, cannot be countenanced. Therefore, we do not find any error in the order passed by the first respondent, as an interim measure, continuing the provisional attachment order of the property till the passing of the order under section 26(3) by the adjudicating authority. The learned Judge has also rightly affirmed the same and directed the respondent authorities to proceed further in accordance with law. Thus, the appellant has not made out any case to interfere with the order impugned herein as well as the order impunged in the writ petition at this stage.

16.In fine, the writ appeal stands dismissed. The contentions raised on the side of the appellant on merits of the case, are left open for adjudication before the authority concerned. No costs. Consequently, connected miscellaneous petition is closed.

**[R.M.D.,J.]** **[J.S.N.P.,J.]**
30.06.2022

dhk
Index : Yes/No
Internet: Yes/No

To
1.The Deputy Commissioner of Income Tax (Benami Prohibition)
Room No.104, 1st Floor
Income Tax Investigation Wing Building
No.46, M.G.Road, Nungambakkam
Chennai – 600 034

2.The Adjudicating Authority
(Under the Prohibition of Benami Property Transactions Act, 1989)
Room No.26, 4th Floor
Jeevan Deep Building, Parliament Street, New Delhi

**R. MAHADEVAN, J.**
and
**J. SATHYA NARAYANA PRASAD, J.**

dhk/rk

W.A.No.1174 of 2022

30.06.2022