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IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'F' : NEW DELHI

BEFORE SHRI R.P.TOLANI, JM AND SHRI B.C.MEENA, AM

ITA Nos.699/Del/2010, 700/Del/2010 & 701/Del/2010  
Assessment Years : 2001-02, 2003-04 & 2004-05

Shri Ram Narain Bansal,  
House No.160/7,  
Ward No.10,  
Ram Dass Colony,  
Charkhi Dadri,  
Distt. Bhiwani,  
Haryana – 127 306.  
PAN : AAGPN1452P.  
(Appellant)

Vs. Income Tax Officer,  
Ward-2,  
Bhiwani.  
  
(Respondent)

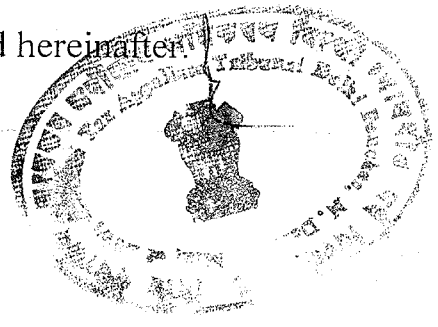
Appellant by : Shri Ved Jain, Smt.Rano Jain &  
Shri V.Mohan, CAs.  
Respondent by : Shri Sudesh Garg, CIT-DR &  
Smt.Pratima Kaushik, Sr.DR.

**ORDER**

**PER R.P.TOLANI, JM :**

These are three appeals by the assessee for the AY 2001-02, 2003-04 & 2004-05, against the orders of CIT(Appeals), Rohtak.

2. Various grounds are raised challenging action or reopening of assessments and additions made to income on the basis of working out peak of investment and estimation of profits. Relevant portions of AO's working the peak and estimating the profits are reproduced hereinafter.

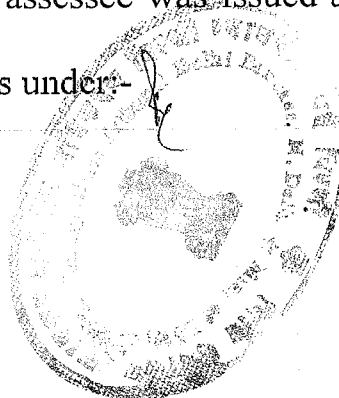


2.1. Ld counsel for the assessee at the time of hearing did not press the grounds relating to the reopening of the assessments, which are dismissed accordingly. Consequently we are left with the following effective grounds:

- i. Whether AO is justified in treating the assessee as Benami owner of the various business entities engaged in the purchase of mustard seeds from NAFED, and its sale as alleged.
- ii. Calculation of peak investment in Benami concern and profits from Benami operations of mustard seeds.

3. Brief facts are that notices under Section 148 were issued on the assessee on the basis of an information received from ADIT, Faridabad that in the areas around Charkhi Dadri, Rewari and Narnaul, some concerns were being operated by the poor persons having no means to carry out such business. These concerns were in fact benami concerns of the assessee Ram Narain Bansal (RNB).

4. These front concerns purchased mustard seeds from NAFED through banking channels. Thus, the bank accounts contained huge deposits and transactions. In the ADIT's communication, it was further alleged that these benami concerns did not file any return of income. It was alleged that the assessee got signed all the papers relating to sales tax and bank from the dummy proprietors of these concerns and on substantive basis, these transactions belonged to the assessee and were to be assessed in his hands. On the basis of these reasons, the assessee was issued above notices. The reasons recorded are summarized as under:-



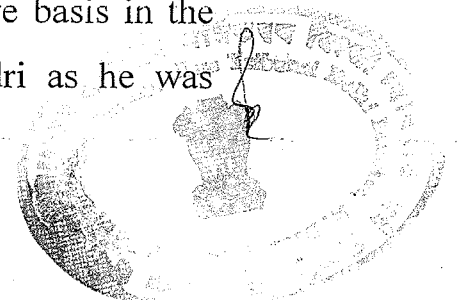
“Sh.Ram Narain Bansal S/o Sh.Mange Ram, Behind Appejay College, Charkhi Dadri, Bhiwani A.Y. 2001-02.

The AD(Inv.) Faridabad vide his letter No. ADIT(Inv.)/FBD/2003-04/1195 dated 20-01-2004, has intimated that many benami/bogus concerns (detailed as under) were floated by Sh.Ram Narain Bansal S/o Sh.Mange Ram of Charkhi Dadri whose proprietors were the poor persons to whom a small amount of salary was paid by Sh.Ram Narain Bansal. The so alleged concerns have made purchases of mustard seed from NAFED and there are also huge deposits in their bank account. These concerns had not filed income tax returns.

| Sr.No. | Name of the concerns                                       | Purchases | Deposits (000) | Name of the bank/account No.         | Period in which deposited |
|--------|--|-----------|----------------|--------------------------------------|---------------------------|
| 1      | M/s Om Trading Company, Rewari, Prop. Sh. Chhaju Ram       | --        | 21869          | Rewari Central Coop Bank, Rewari/463 | 09-12-00 to 31-03-01      |
| 2      | M/s Om Trading Company, Ganj Bazar, Rewari Prop. Raj Kumar | --        | 352            | SBOP, Narnaul/60348                  | 31-01-01 to 09-03-01      |

Total 22221

Sh. R.N. Bansal got signed all the papers relating to sales tax and banks from the proprietors of aforesaid concerns. The assessment is required to be made on substantive basis in the hands of Sh.Ram Narain Bansal, Charkhi Dadri as he was

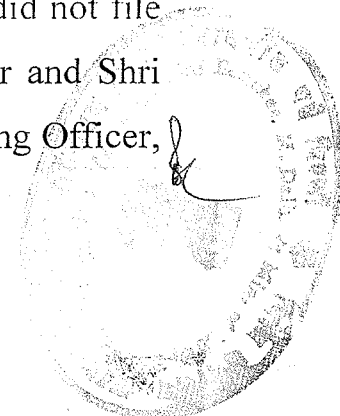


looking after all the business activities of the so called benami/bogus concerns from the back door.

The deposit of Rs.22221.(000) was made by Sh. R.N. Bansal in the accounts of different benami/bogus concerns as stated above, which is unexplained. I have therefore, reasons to believe that income of Rs.22221(000) and any other income which may come to the notice subsequently in the course of the assessment proceedings, has escaped assessment under section 147.

Necessary approval may kindly be accorded to issue the notice under section 148 read with section 147 of the Income-tax Act, 1961 for the assessment year 2001-02.”

5. Similar reasons were recorded for AYs 2003-04 & 2004-05 giving the name of relevant dummy concerns. It is observed by Assessing Officer that after various reminders, the assessee filed returns of income on 22.4.2008. During the course of assessment, the assessee on 18.11.2008 filed objections on the reasons recorded and requested to drop proceedings on the ground that Assessing Officer has not recorded proper belief for issuing such notice. The objection was rejected. Assessing Officer issued summons to various persons claimed to be ostensible proprietors holding these bank accounts. According to the Assessing Officer, S/Shri Puran Chand, Dharmender, Bhup Singh, Purshotam and Raj Kumar stated that the entire business of benami was owned by the assessee and they were only his workers. The assessee throughout the proceedings took a clear stand that he had no concern whatsoever with these concerns or these persons and, therefore, did not file any application in rebuttal to statements of Shri Ramesh Kumar and Shri Sanjay Kumar recorded on 22.12.2008. According to the Assessing Officer,



the assessee took only stand that he held no benami concerns, was not very cooperative and the assessment for AY 2002-03 was framed earlier.

6. Out of 15 alleged dummy persons, 7 attended before AO and their statements were recorded. Six of them stated that this business was not carried by them, assessee was the real owner who used to get some blank papers signed from them. Remaining one Shri Sanjay stated that one Purshottam was the benami owner and not assessee.

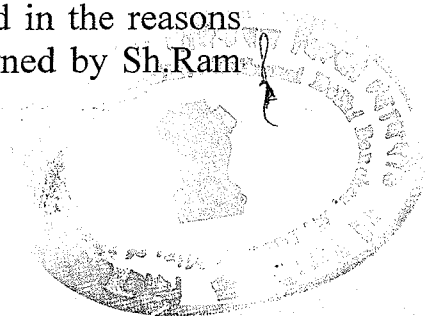
7. AO was of the view that Assessee was the Benami owner of these concerns and called on the assessee to "produce the accounts of these concerns". Assessee replied that since it is not the owner of these concerns there was no question of his producing the accounts as he had no connection with these operations.

8. AO on the basis of seven statements and ADIT reports held that the assessee was the actual owner of these benami entities and their transactions; peak investments and estimated profits were worked out and additions were made accordingly.

9. The Assessing Officer made these additions in respective years by following observations:-

(i) AY 2001-02 :-

"From the above discussion it is concluded that the firms discussed above and their bank a/cs mentioned in the reasons recorded and discussed in above order are owned by Sh. Ram

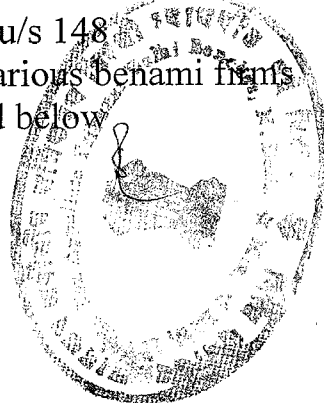


Narain Bansal. Various opportunities were given to him to explain the entries in these bank a/cs but he never availed the opportunity and stuck to single argument that he has no concern with these firms. The books of a/cs as required were not produced. The copies of statements of various persons recorded during the assessment proceedings were given to him for re-buttal. Though the a/c Numbers, name of the bank, total deposits and the name of firm was mentioned in the reasons given to him, the assessee was asked vide order sheet entry dated 23-12-2008 whether he wants detailed copies of bank a/cs of these concerns to file re-buttal. The assessee denied on the ground that there is no need as it does not relate to him. But from the above discussion it is ample clear that the owner of these concerns and bank a/cs of these concerns is Sh. Ram Narain Bansal.

As discussed earlier in this order the period of these firms and their bank a/cs are spread over the periods covered for assessment year 2001-02 to 2004-05. The issues contained therein was necessary to be discussed in entirety to draw the conclusion and if the assessment years have been discussed in isolation, true pictures would not have emerged. Now the quantum of income is to be determined. Huge deposit are made in these bank a/cs which are nothing but the sale/purchases of the goods. The total deposits in the bank a/cs can be nothing but the sale proceeds or investment of the firm. In absence of any explanation from the assessee the total deposits in the bank a/cs are taken as total turnover and the net profit earned from these business transaction is taken reasonably at one percent of this turnover, (as also taken in earlier assessment year 2002-03) and the peak amount in the bank a/c is taken as investment for the business. Total income of these benami concerns, as also mentioned in the reasons recorded, held to be owned by Sh. Ram Narain Bansal, in respect of this particular assessment year is calculated below:-

Income as per Income-tax return filed in  
response to notice u/s 148  
Add : Income of various benami firms  
as calculated below

67,092/-



|  |              |
|--|--------------|
| M/s Om Trading Company,<br>Peak amount of investment as per bank<br>a/c No.463 of CCB, Rewari. | 12,00,288/-  |
| Total turnover at Rs.21869000/-<br>Profit taken at 1%  | 2,18,690/-   |
| Peak amount of investment as per bank<br>a/c No.60348 of SBOP, Narnaul.                        | 2,45,882/-   |
| Total turnover at Rs.3,52,000/-<br>Profit taken at 1%  | 3,520/-      |
| Total Income   | 17,35,472/-. |

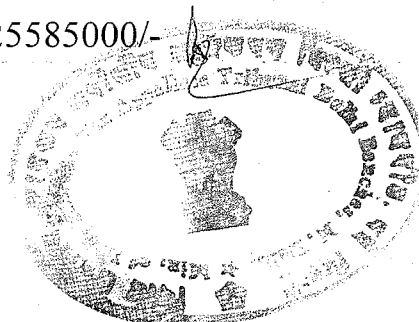
(ii) **AY 2003-04 :-**

Income as per Income-tax return filed  
In response to notice u/s 148

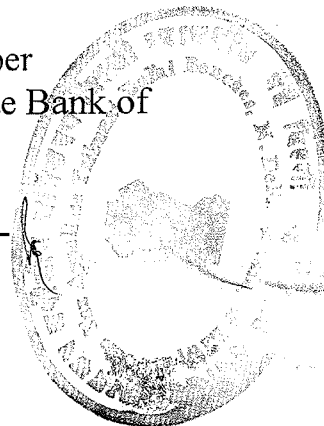
1,20,600/-

Add : Income of various benami firms as  
calculated below.

|   |             |
|---|-------------|
| 1. M/s Om Trading Company<br>Peak amount of investment as<br>per bank a/c No.60043 of SBOP, Charkhi Dadri | 2,01,000/-  |
| Total turnover at Rs.2,00,000/-<br>Profit taken at 1%   | 2,000/-     |
| Peak amount of investment as per<br>bank a/c No.383 of SB, Indore Rewari                                  | 25,51,000/- |
| Total turnover at Rs.3,92,25000/-<br>Profit taken at 1%   | 3,92,250/-  |
| Peak amount of investment as<br>Per bank a/c No.491 of CCB, Rewari  | 18,95,000/- |
| Total turnover at Rs.25585000/-   |             |

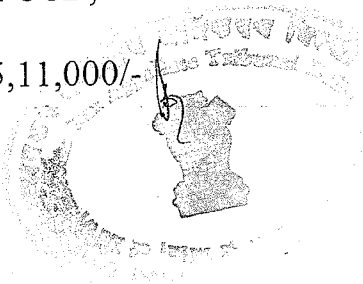


|  |             |
|--|-------------|
| Profit taken at 1%   | 2,55,850/-  |
| Peak amount of investment as per<br>Bank a/c No.380 of SBI, Indore<br>Rewari.                                | 16,55,738/- |
| Total turnover at Rs.2,12,85,127/-<br>Profit taken at 1%   | 2,12,851/-  |
| 2. M/s Bansal Brothers,<br>Peak amount of investment as<br>per bank a/c No.60418 of SBOP, Narnaul.           | 7,02,506/-  |
| Total turnover at Rs.5005707/-<br>Profit taken at 1%   | 50,057/-    |
| Peak amount of investment as per<br>Bank a/c No.433 of SBI, Indore, Rewari.                                  | 11,40,000/- |
| Total turnover at Rs.17804000/-<br>Profit taken at 1%  | 1,78,040/-  |
| 3. M/s Seema Trading Company<br>Dass Peak amount of investment as<br>Per bank a/c No.60405 of SBOP, Narnaul. | 61,71,980/- |
| Total turnover at Rs.162511723/-<br>Profit taken at 1%   | 16,25,117/- |
| Peak amount of investment as<br>Per Bank a/c No.60443 of SBOP, Narnaul.                                      | 2,72,751/-  |
| Total turnover at Rs.472751/-<br>Profit taken at 1%  | 4,727/-     |
| Peak amount of investment as per<br>Bank a/c NO.308 & 444 of State Bank of<br>Indore, Rewari.                | 20,60,204/- |
| Total turnover at Rs.71273043/-  |             |

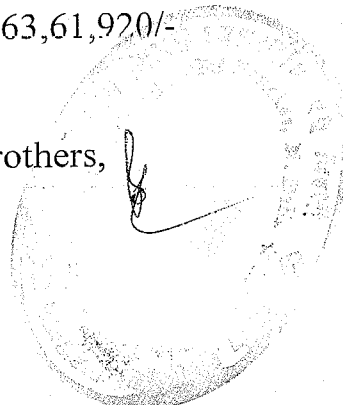




|  |             |
|--|-------------|
| Profit taken at 1%   | 7,12,730/-  |
| 4. M/s Prem & Company  |             |
| Peak amount of investment as<br>Per bank a/c No.9283 of SBOP, Narnaul.               | 30,53,806/- |
| Total turnover at Rs.54,78000/-<br>Profit taken at 1%                                | 54,780/-    |
| 5. M/s Budh Mal & Sons   |             |
| Peak amount of investment as<br>Per bank a/c No.60450 of SBOP, Narnaul.              | 7,42,568/-  |
| Total turnover at Rs.3034440<br>Profit taken at 1%                                   | 30,344/-    |
| Peak amount of investment as<br>Per bank a/c No.499 of CCB, Rewari.                  | 32,83,552/- |
| Total turnover at Rs.61567033/-<br>Profit taken at 1%                                | 6,15,670/-  |
| Peak amount of investment as<br>Per bank a/c No.343 of State Bank, Indore<br>Rewari. | 17,44,482/- |
| Total turnover at Rs.34483201/-<br>Profit taken at 1%                                | 3,44,832/-  |
| Peak amount of investment as<br>Per bank a/c No.60392 of SBOP, Narnaul.              | 50,87,732/- |
| Total turnover at Rs.91810013/-<br>Profit taken at 1%                                | 9,18,100/-  |
| 6. M/s S.K. Trading Company  |             |
| Peak amount of investment as<br>Per bank a/c No.512 of CCB, Rewari.                  | 8,00,850/-  |
| Total turnover at Rs.85,11,000/-   |             |



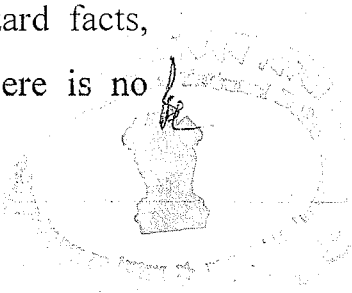
|  |               |
|--|---------------|
| Profit taken at 1%   | 85,110/-      |
| Peak amount of investment as<br>Per bank a/c No.603 (old) & New No.60377 of SBOP,<br>Narnaul.                            | 8,61,909/-    |
| Total turnover at Rs.3969994/-<br>Profit taken at 1%   | 39,699/-      |
| 7. M/s Sunny Enterprises<br>Peak amount of investment as<br>Per bank a/c No.382 of State Bank<br>Indore, Rewari.         | 25,51,050/-   |
| Total turnover at Rs.35397000/-<br>Profit taken at 1%  | 3,53,970/-    |
| 8. M/s Rajiv Trading Company<br>Being the investment made in<br>purchase of mustard seeds<br>amounting to Rs.12,55,860/- | 12,55,860/-   |
| Total Income   | 4,20,28,715/- |
| (iii) <u>AY 2004-05</u> :-   |               |
| Income as per Income-tax return filed in<br>response to notice u/s 148   | 48,820/-      |
| Add : income of various benami firms<br>as calculated below  |               |
| 1. M/s Om Trading Company,<br>Peak amount of investment as<br>per bank a/c No.383 of State Bank of<br>Indore, Rewari.    | 18,01,165/-   |
| Total turnover at Rs.63,61,920/-<br>Profit taken at 1%   | 63,619/-      |
| 2. M/s Bansal Brothers,  |               |



|   |                 |
|---|-----------------|
| Peak amount of investment as<br>Per bank a/c No.433 of SBI, Indore, Rewari.                                 | 10,48,870/-     |
| <br>Total turnover at Rs.95,93,000/-<br>Profit taken at 1%  | <br>95,930/-    |
| <br>3. M/s Sunny Enterprises,<br>Peak amount of investment as<br>Per bank a/c No.382 of SBI, Indore, Rewari | <br>18,00,660/- |
| <br>Total turnover at Rs.63,50,000/-<br>Profit taken at 1%  | <br>63,500/-    |
| <br>Total Income  | <br>49,22,564/- |

10. Aggrieved, assessee preferred first appeals where learned CIT(A) upheld these additions. Aggrieved, assessee is in appeals before us.

11. Learned counsel for the assessee contends that the entire additions are based on surmises and conjectures and misconception of the entire facts. As per ADI reports in Charkhi Dadra, Rewari and Narnaul area mustard seeds were purchased from NAFED in bogus names, NAFED as a matter of rules sold these mustered only through advance bank drafts. Thus, the purchase of mustard seeds from NAFED is through banking channels only. If the department alleged any systematic Benami business and desired to unearth it, logical enquiries should have been carried out from all sources. For conducting such widespread operations, the benami operator needed to possess a complete wherewithal and system of command and control over benami entities and operations. The Assessing Officer without carrying out logical enquires held the assessee as benami owner on haphazard facts, unsubstantiated statements and unbelievable presumptions. There is no



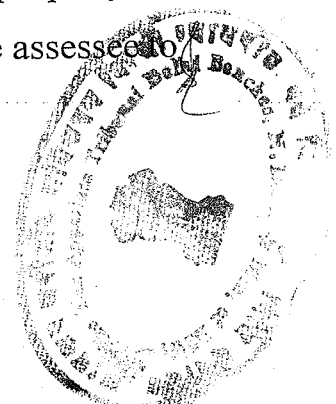
cogent material on record to attribute such systematic operations to assessee.

12. It is a trite law that the charge of benami has to be proved by the Department and such burden of proof entirely lies on it. Reliance is placed on the decision of Hon'ble Calcutta High Court in the case of Usha Bhar Vs. Sanat Kumar – 135 Taxman 526 (Cal), which laid down various tests in this behalf:-

- (i) There must be the cogent and sufficient evidence to conclude that the apparent is not real.
- (ii) The burden lies on the person asserting to prove so i.e. department.
- (iii) Such burden has to be strictly discharged by department through legal evidence of definite character.
- (iv) Such evidence should either prove directly the fact of Benami or establish circumstances unerringly.
- (v) The intentions of Benami and ostensible owner is to be demonstrated by the department from the material available on record.
- (vi) The allegation of Benami ownership can not be sought to be proved by mere conjecture or surmise as substitute for proof.
- (vii) The Court cannot decide on the basis of suspicion. It has to ascertain the issue as established by evidence.

13. In this backdrop, it was imperative for AO that :-

- (i) Entire is verified and facts are ascertained properly to appreciate whether proper material exists against the assessee.



suggest that systematic business transactions were carried out by assessee over a period of 5 years.

- (ii) Whether there is any prima-facie substance in allegations. In case of prima-facie substance, whether enough material has been brought on record to substantiate such allegations.
- (iii) Whether sufficient material has been brought on record to prove the allegation of the Department that assessee in fact is the benami owner of these concerns.
- (iv) To appreciate that no search and seizure operations were carried out against assessee and no document has been recovered from assessee's possession.

14. The assessee during the course of entire proceedings consistently maintained that he was not involved with these Benami concerns and somebody else was involved. The police investigations have implicated other persons also which the subsequent arguments will unfold, as the sales tax authorities and other government departments also unearthed these operations. Income tax department wanted one scapegoat to pin the entire blame on him to bring the complaints to an end. Unfortunately, assessee has been caught in this tangle and all these huge additions have been made without proper justification.

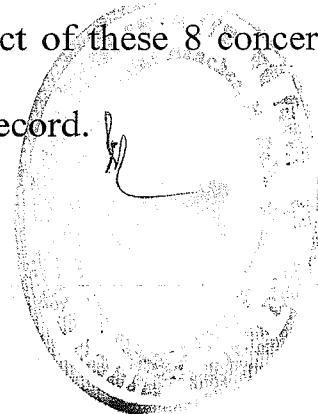
15. A.O. formally issued a show cause notice making allegation about the benami concerns. The assessee in response thereto made categorical denial.

The A.O. has referred to some statements recorded by him which were



provided to the assessee on 19<sup>th</sup> December, 2008. It was submitted that the statement of only five persons viz. Shri Puran Chand, Shri Dharmender, Shri Bhup Singh, Shri Pushkar and Shri Raj Kumar were recorded on 4<sup>th</sup> December, 2008 and that too at the back of the assessee. Copies of these statements were provided to the assessee on 19<sup>th</sup> December, 2008 and the assessee again reiterated that he is not the owner of these concerns. The A.O. meanwhile recorded the statement of two more persons viz., Shri Ramesh Kumar and Shri Sanjay Kumar for which denial was also filed by the assessee.

16. It was explained that all these statements have been recorded by asking leading questions. The AO in the these assessment years held assessee to be the benami owner of 15 concerns whereas the statements of only 7 persons are recorded out of which one person has categorically deposed to the effect that Shri Purshottam and not the assessee was the Benami owner. Despite there being no other corroborative material or evidence nor any statements in respect of the other 8 persons the A.O. has held the assessee to be the benami owner of entire business including these 8 concerns also. No addition can be made in respect of these 8 concerns as there are neither statements nor other material on record.



17. As regards the statements of 7 persons, there is no other material whatsoever to support the allegations of benami except self contradictory and sketchy statements. While relying on 6 statements AO has failed to consider the various crucial issues which arises from these statements.

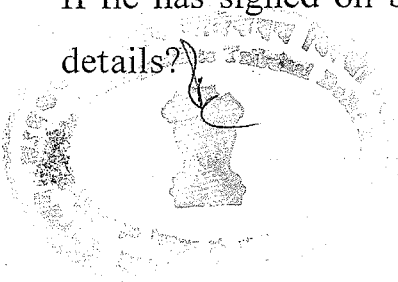
1. Mr. Ram Kumar (Statement at Pg. 30-33 of Paper Book A.Y. 2001-02) has confirmed doing own retail business for last six years and also have done independent supply business earlier. Alleges to have worked for only 7-8 months for Mr. R.N. Bansal. On Pg.31 – He states that only one servant namely Mr Subhashwas working with Mr. R.N. Bansal meaning thereby there were no employees other than Mr. Subhash with Mr. R.N. Bansal. On Pg. 33, Mr. Ram Kumar doubts about money in bank being that of Mr. R.N. Bansal.

2. Mr. Purshottam Sharma (Statement at Pg.27-29 of Paper Book A.Y. 2001-02) States that witness was provided by brother of Mr. R.N. Bansal on sales tax. No effort was made to find out the credentials of M/s Shiv Shankar & Co. owned by brother of Mr. R.N. Bansal.

No question asked from assessee's brother, whether he has signed at the behest of Mr. R.N. Bansal. If not whose behest he had signed.

Pg.28 –He states having worked for only 4 months and then 6-7 months in the firm of which he is the proprietor. No co-relation is explained by AO between the period of operations of so alleged bank a/c with the period of his alleged employments.

On Pg. 28, he has stated details of all bank a/cs i.e. name, branch, etc. If he has signed on blank paper, how does he knows all these bank details?



Pg. 29 – The reasons for signing blank papers was his regard for assessee as an elder brother. No pecuniary benefit or quid pro quo explained.

3. Mr. Puran Chand( Statement on Pg. 18, Pg. 20 of Paper Book A.Y. 2001-02)

He worked for V.K. Traders. He started his own business as well.

Neither Bank a/c No., nor Bank name stated.

No effort made by AO to co-relate stated period of service with alleged operation of bank a/c.

No allegation of benami against this Mr. Ram Narain Bansal made in statement.

4. Mr. Dharmender ( statement on Pg. 21 of Paper Book A.Y. 2001-02) – stated -

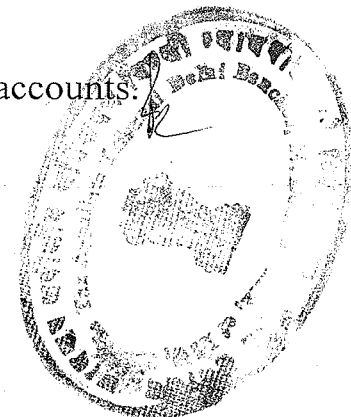
- Working as driver for last 1-1/2 years with an Advocate & earlier as casual driver.

- Worked earlier for 1-1/2-2 years with Mr. R.N. Bansal -

- No effort made by AO to co-relate the period of benami relationship and bank a/c – No question asked which vehicle he operated and what was the nature of his job. Whether he was driving a passenger vehicle or goods carrier(truck, etc.). No question asked about the nature of business of Mr. Ram Narain Bansal. Statement recorded in the presence of the employees of Mr. Kuldeep Joshi, which indicates some body's influence.

- No allegation in the statement that these firms are benami of Ram Narain Bansal.

- On Pg. 22 he shows ignorance of these bank accounts.





5. Mr. Bhup Singh( Statement on Pg. 24 of Paper Book A.Y. 2001-02)

-No effort made to co-relate the period as driver.

-It is important to note that this period is the same taken by AO as that of Mr. Dharmender, meaning thereby that Mr. R.N. Bansal was having many drivers at the same point of time.

-No question asked as to who were other drivers or associated persons. No question asked which vehicle he was driving? Who owned the vehicle?

- He stated to be getting Rs.1000/- as salary. Period served is alleged to be 10-11 months. No relation between the period of operation of bank a/c and this salary.

6. Mr. Sanjay Kumar( Statement on Pg. 34-38 of Paper Book A.Y. 2001-02)

-Clearly states that Mr. Purshottam is the actually benami owner of his business. No allegation against the assessee in this behalf.

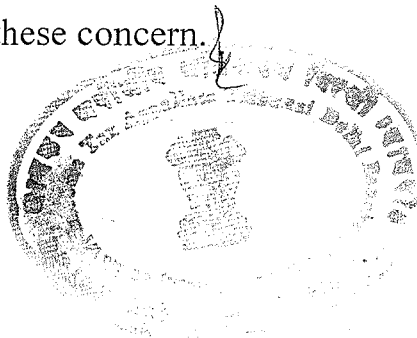
- No effort made by AO to cross-verify this statement from Purshottam or to initiate benami enquiries against Purshottam also.

- He categorically denied Ram Narain Bansal's name.

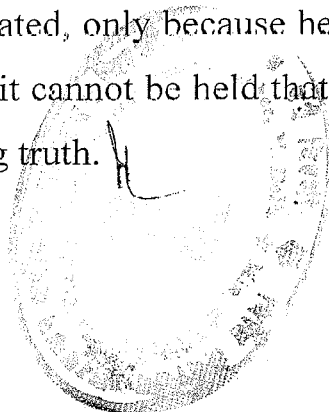
7. Assessee explained the truth that he has nothing to say except that the so called benami concerns do not relate to him.

-When a person does not know about these concerns how can he say any other thing about them?

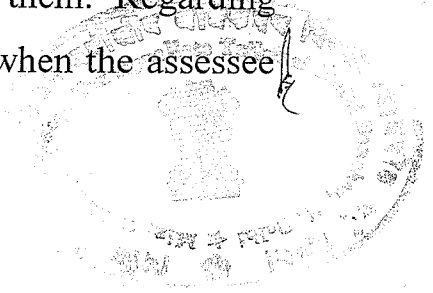
- AO has sustained the additions by holding that 'statements of various persons and also from the spot inquiry, information supplied by some other persons at the addresses of these concern.



- There is no reference or reliance on such other persons, what was the outcome of spot enquiries and what was the other information – all these things were neither in the presence of the assessee nor were confronted to him.
- AO has tried to rely on some conclusion derived by him in A.Y. 2002-03 – Each year being distinct with different concern, these findings cannot be applied to 2003-04 and 04-05 without corroboration.
- AO went on insisting that the assessee should produce those persons – once the assessee had denied then how can he be expected to produce them. Adverse inference has been drawn on assessee's request to AO for issuing summons and calling them?
- AO has relied on the statements recorded in earlier year – they are not relevant for these years.
- The Vyopar Mandal's President statement has been relied that no concerns of benami names existed at the addresses. He very well, could have been called on for assistance in finding the actual persons, their right addresses. AO has failed to undertake as to what logical inquiries actually floated the said concern.
- AO has discussed the statement of one Sh. Ramesh Kumar S/o Sh. Rattan Lal, Charkhi Dadri, recorded at assessee's back and has not confronted. In that case adverse inference can be drawn merely on the fact of his just being a relative, on such statement.
- Statement of Sh. Puran Chand S/o Sh. Ishwar Dass, Charkhi Dadri stated that he worked for one year 6 months to 2 years; no specific period was stated, only because he is poor and claims to be unaware of certain facts, it cannot be held that untold facts are against assessee and he is speaking truth.



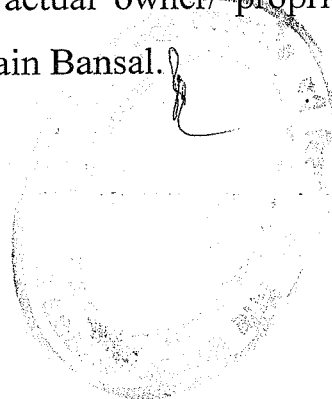
- Statement of Sh. Purshottam Sharma S/o Sh. Manohar Lal has been relied. The claim that the office of Om Trading Company was at the residence of the assessee is totally based on conjecture and surmises. The address is stated to be 'Behind A.P.J. College', no house no., road, lane no. etc. is mentioned. A.P.J. College is a very populated area of small town.
- Statement of Sh. Dharmender S/o Sh. Hari Ram has been discussed. He claims to be a driver, no efforts were made to establish this fact by asking his license. The mention of his signing documents under the influence of liquor are pure surmises. AO cannot draw a positive inference on the basis of silly reasons of an illiterate person's statement that none other than the assessee be the owner of said concern.
- Statement of Sh. Sanjay Kumar S/o Sh. Om Prakash gives two contrary statements. AO has used the one against the assessee and ignored the part which favours the assessee. A.O. himself observes that he has changed his statement only 'to save' the assessee.
- Investigations done by ADI have been used against him without confronting to the assessee.
- When another person confirms Sanjay Kumar's statement that Rajiv Trading Co. & Bansal Bros. are owned by one 'Purshottam' and not the assessee, is conveniently ignored by AO as unreliable, only because it is in favour of the revenue. It clearly demonstrates the fact that AO willy-nilly wanted to hold the assessee as benamidar of these concerns.
- AO repeatedly alleged that the assessee has not been able to explain the alleged benami bank accounts. When the accounts do not belong to the assessee, how can be expected to explain them. Regarding production of Benami concerns' books of accounts, when the assessee



does not own such Benami businesses or concern, how can he produce these books, which do not exist. If this allegation was to be proved by necessary material to support the claim of existence of books should have been brought on record.

17.1. The learned AR further submitted that it is important to appreciate that

- i. Statement of Mr. Ram Narain Bansal was neither insisted nor recorded by ADI or the A.O. at any stage of proceedings.
- ii. The A.O. never confronted the assessee with his interpretation of benami what is propositions for the assessment.
- iii. At no stage A.O. asked as to why assessee should not be treated as benami owner of all concerns. No such allegation was made during the assessment proceedings, the addition surfaced only when the assessment order was received.
- iv. A.O. insisted for production of books of accounts of benami concerns, which according to assessee never existed, there was no reason for A.O. to draw adverse inference for non production of such books and make additions assuming assessee was deliberately not producing them.
- v. A.O. never asked alleged dummy persons during the course of the statements to produce further information to support of their deposition that assessee was benami owner.
- vi. A.O. never confronted them contrary statements of Mr. Sanjay, Proprietor, Rajeev Trading Co. and Mr. Om Prakash whereby they deposed that Purshotham was the actual owner/ proprietor behind all these concerns and not Mr. Ram Narain Bansal.



vii. A.O. had two contradictory statements of Mr. Sanjay, one before the ADI and another before himself. He conveniently ignored the subsequent statement recorded before him and relied on the one before ADI. Thus he had no confidence on his enquires.

viii. AO should have impartially cross verified and corroborated these statements and in all fairness should have summoned alleged Mr. Purshotham to verify the statement of Shri Sanjay. It demonstrates that revenue was not keen in fair and logical enquiry.

ix. Statements have been recorded by asking leading questions about assessee only and their accepted version without further corroboration or verification.

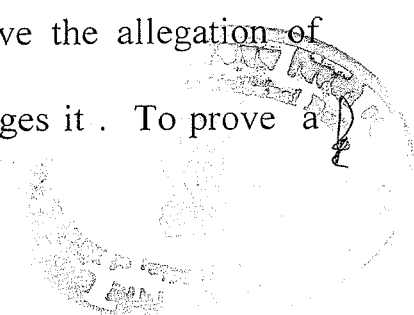
x. These statements create only some suspicion and without further corroboration they are not sufficient to discharge the onus cast upon the department. Without sufficient and reasonable material assessee cannot be assumed to be benami owner of such huge operations over a period of 5 years.

xi. The allegation of being benami owner is a serious nature and it cannot be held to be proved merely by surmises and conjectures.

xii. Each refers to some short period of employment with the assessee. No efforts have been made by the A.O. to ascertain the actual period and co-relate it with the benami operations.

xii. AO has made a casual reference to the chain of alleged bank accounts without any logic or material which amount only to surmises and conjectures.

18. The learned AR has further stated that to prove the allegation of benami and the entire onus is on the persons who alleges it. To prove a

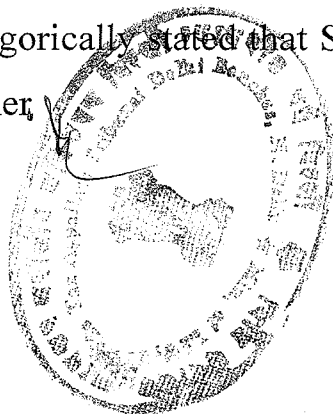


person as 'Benami', various courts have enunciated in many of the cases laying down such tests which need to be applied to hold a transaction to be a benami.

19. Reliance is placed on the principles laid down by the Hon'ble Calcutta High Court in the case of Usha Bhar vs Sanat Kumar 135 Taxman 526 (Cal) for burden of proof on department to bring home the charge of benami against assessee.

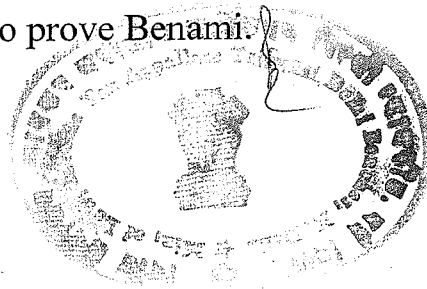
20. The main contentions of the AR are to the effect that:

- (i) merely on the basis of sketchy oral statements, assessee cannot be held to be the benami owner.
- (ii) No supporting evidence has been brought on record to corroborate the allegations of benami.
- (iii) The A.O. had bank accounts of the alleged benami concerns, containing various debit and credit entries. There is no effort to find out and link any such entries with the account or sources relatable to the assessee's finances.
- (iv) Neither inquiry has been carried out from NAFED or market/customers that assessee was dealing with them on behalf of Benami concerns.
- (v) Additions have been made in respect of 15 concerns whereas only 7 statements are recorded by the A.O; out of which one person has categorically stated that Shri Purshottam and not assessee is benami owner,



- (vi) The statements refer to meager salaries, confused facts, lack of any direct evidence except casual and non specific mention of assessee.
- (vii) These deponents have been assumed to be angels knowing nothing about the realities of life. They have posed to be obeying like robots and indulging in huge transactions without rhyme and reason.
- (viii) The statements lack credence and a charge of benami is sought to be proved on this basis without filling the huge gaps, inconsistencies and contradictions, in stated facts.

21. Alleged purchases of mustard seeds, spread over a period of five years from a Govt. agency NAFED will call for various transactions in the market; transportation, loading and unloading of seeds; requirement of storage godowns; employment of supervisory and marketing staff; maintenance of accounts and coordination of various entities which are alleged to be nearly 15; opening & operating bank accounts; issuing cheques and various deposits in the banks; goods cannot be sold on cash only consequently record of outstanding trade debit balances and their periodical recoveries; sales Tax registrations of these entities, monthly returns, payment of sales tax and their assessments; filing of declarations. There is neither answer to any such question nor consideration of these vital aspects which are necessary to prove Benami.



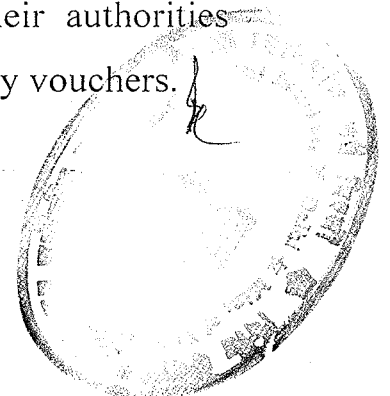
22. AO has admitted that 7 persons who were summoned are illiterate persons working as drivers or deckhand and had no idea as to what they were doing. Which clearly means that they could not have-

- i. Operated the bank account, filled cheques, pay in slips, checked balances and position of clearance of cheques in the respective banks.
- ii. could not have transacted with Govt. officers of NAFED in facilitating the purchase of mustard seed, they do not even claim the same either.
- iii. They did not help in any marketing activities, transportation, loading, unloading etc.
- iv. Except claiming themselves to be illiterate, indigent and unassuming persons the incoherent statements are to the effect that they are some how friends of assessee relatives and they were signing whatever assessee asked like - blank papers, some forms etc. Some body else went to introduce them for opening of bank a/c who was friends or relative of assessee. These statements prove nothing on remote human logic looking at the entire business.

23. The entire basis of investigation should have been to find out all correct and material facts instead except these shaky statements no other investigation was carried out.

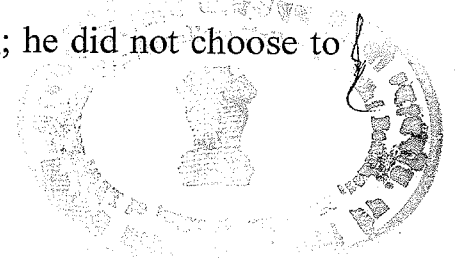
24. The important missing issues from AO's investigations are:

- i. No enquiry from NAFED authorities were carried out as to actual purchaser of mustard seeds; who appeared before their authorities entered godowns, counted the goods and signed delivery vouchers.





- ii. Transport agents, labour agencies for loadings/unloading from time to time, transportation of goods, payment of labour, freight charges, cash/credit purchases and payers of transportation charges, names of consignor- consignees etc.
- ii. No identification of mustered seeds purchaser was ever made out from market. This involved parallel unaccounted purchase transactions by third parties; in transactions of tens of crores not a single purchaser of mustered seeds could be identified from market by AO record statement, collect some more evidence, ask for the identity of seller ,delivered the goods or collected payments on behalf of assessee.
- iii. No enquiry from Banks have been carried out as to who actually operated or owned these accounts; who checked the balances periodically, collected relevant information and represented on their behalf.
- iv. No enquiry has been made from Sales Tax authorities to verify who got entities registered, collected declarations, filed returns, paid taxes, attended assessment proceedings etc.
25. Ld AO has not inquired any aspect of enquiry or investigation, which could have unearthed these operations in logical manner. Except 7 gullible persons statements, which raise more questions than the answers, no material has been brought on record. 6 sketchy and inconclusive statements are projected as the sole basis to hold the assessee as Benami owner of 15 concerns for their voluminous transactions spreading over about 5 years. The adverse inferences are - assessee was not cooperating; he did not choose to



cross examine the 6 witnesses; and no books of Benami concerns were produced.

26. It is vehemently argued that the this episode became a night mare for the assessee, as apart from Income Tax proceedings, Police & Sales Tax department also started chasing some persons including assessee and he had to cope up with various agencies which caused various delays. AO has not relied on any other departments enquiries; as a matter of fact, nothing so far has been done by other departments against assessee. Since assessee had nothing to do with Benami concerns, he emphatically denied it, consequently no purpose could have been served by cross examining 6 witnesses. The statements were confusing, cross examination would have compounded the confusion. Since assessee is not a Benami owner there was no question of assessee possessing any account or producing them before AO.

27. The sketchy statements of 6 witnesses may raise some suspicion but in the absence of any corroborative material, assessee can not be held to Benami owner of 15 concerns.

28. In the light of various tests laid down by judicial pronouncements, not a single test has been met by the AO. Neither a single supplier or customer has been found nor any bank officer has alleged that assessee was a benami

owner. AO has not been able to link a single bank transactions with the assessee's bank a/c, assets or affairs. Nothing is on record to support that assessee was actual beneficiary and has withdrawn any money from the Benami bank accounts. No material is on record that cheques were written by assessee or deposited by him. Entire onus which is on the AO to prove the allegations of the benami remain uncomplished. Thus, additions have no legs to stand.

29. Ld counsel relied on following case laws:

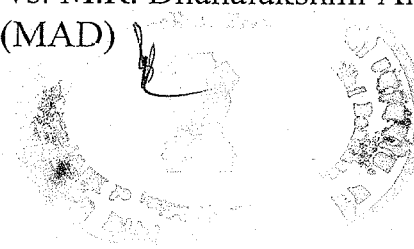
- Prakash Narain vs. (1982) 134 ITR 364 (ALL)

“(ii) One of the important criteria for deciding the controversy about benami is the motive for the benami purchase. In the instant case, no motive has been suggested why the assessee desired to purchase the three properties in dispute in the benami name of his father-in-law and wife and in the joint names of his father-in-law and his wife.”

- Rakesh R. Purohit Vs. ACIT (2008) 14 DTR (Jp) (Trib) 414

“In the absence of any corroborative evidence on record to prove that the business concerns belonging to the alleged benamidars were funded, managed or controlled by the assessee or his associates or that they are the beneficial owners of these concerns, assessee and his partners cannot be held to be involved in any manner in the business of these persons and, therefore, addition could not be made in the hands of the assessee and his partners in respect of alleged commission income of those concerns.”

- ITO vs. M.R. Dhanalakshmi Ammal & Ors. (1978) 112 ITR 413 (MAD)



“... in every benami transaction the intention of the parties is, the essence, that is to say, the true test to determine whether the transaction is benami as such or whether it was meant to be colourable; if colourable, the transaction is benami, otherwise, the transaction is not benami, and that this issue cannot be displaced by mere conjecture or suspicion as to the various circumstances surrounding the transaction since the very object of a benami transaction is secrecy

30. Learned DR on the other hand vehemently argues that:

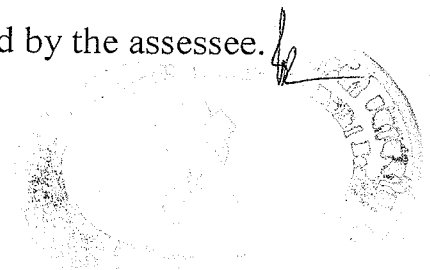
i. In case of Benami transaction though burden of proof is on revenue, the same is not in the nature of cast iron proof. In income tax proceedings surrounding circumstances, human conduct and preponderance of probabilities are to be considered. Reliance is placed on Hon'ble Supreme Court judgment in the case of Sumati Dayal 214 ITR 801 for this proposition. While ascertaining the discharge of burden by revenue, these concepts are to be considered. AO while holding the assessee as Benami owner of the alleged transaction has gathered sufficient evidence and by applying these facts and came to proper conclusion that assessee in fact was the actual owner of these transactions.

ii. AO summoned various persons and following of them stated that the they had nothing with these concerns, brief contents of the statement are as under:

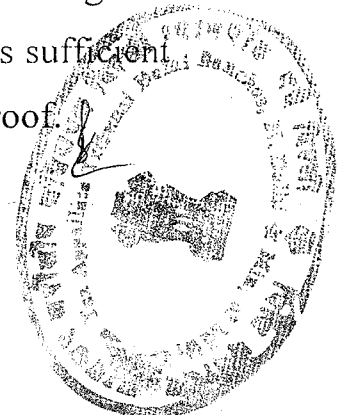
(i) Shri Ramesh Kumar S/o Shri Rattan Lal, Charkhi Dadri claimed that the assessee is grandson of his maternal uncle and opened the firm M/s Seema Trading Company in his name and some commission was given to Ramesh Kumar. He claimed that he did not know anything about the business being

conducted in Seema Trading Company and another account was opened in the name of Shri Ghanshyam S/o Shri Ram Avtar as SBOP, Narnaul and somewhere Shri Satbir has been shown as its proprietor. Shri Ramesh Kumar denied to have known these persons and again made a statement that Shri Ram Narain Bansal put his name as proprietor of Prem & Company in SBOP, Narnaul. He stated that no money was deposited by him in his bank account.

- (ii) Shri Puran Chand S/o Shri Ishwar Dass, Charkhi Dadri – He worked for one and half years to two years on a salary of `3500 to 4000 per month and claims that the assessee obtained his signatures and he was poor and all facts were known to the assessee. It was claimed that he looked after the assessee's business of oil cake and cotton seeds.
- (iii) Shri Purshotam Sharma S/o Shri Manohar Lal – He stated that assessee's younger brother was his friend. The assessee opened an account in the name of Om Trading Company and obtained sales tax registration. He did not know where from the money was deposited in SBOP Narnaul, SBOP, Charkhi Dadri, CCB, Rewari and State Bank of Indore, Rewari. He also claimed that assessee opened bank account in the name of different persons showing them as proprietor of Om Trading Company like Dharmender (Driver) and Shri Ram Dass.
- (iv) Statement of Shri Raj Kumar S/o Shri Om Parkash – He was working at a place where assessee's brother used to take care of the business and he has no connection with Om Trading Company. Some papers were got signed by the assessee.



- (v) Statement of Shri Dharmender S/o Shri Hari Ram – He stated to have worked with the assessee as a driver at a salary of `2,000/- per month. He has no connection with Budh Mal & Sons, Charkhi Dadri and has not signed as introducer in the capacity of proprietor of Vikash Trading Company.
- (vi) Statement of Shri Bhup Singh S/o Shri Tara Chand, Charkhi Dadri – He also stated to be working as a driver in the past at a salary of `2,000/- per month and that the assessee got his signatures from him and he was the actual owner.
- (vii) Statement of Shri Sanjay Kumar S/o Shri Om Parkash, Gandhi Nagar, Charkhi Dadri – He claimed before ADI earlier that Rajiv Trading Company was opened in the name of Shri Purshotam and the business belonged to Ram Narain Bansal i.e. the assessee. However, in a statement before AO in AY 2002-03, he claimed that the business of Rajiv Trading Company belonged to Shri Purshotam and not assessee. The Assessing Officer rightly held that Shri Sanjay Kumar had changed his statement to help the assessee, therefore, it was held that Rajiv Trading Company was a benami concern of the assessee. According to the Assessing Officer, assessee purchased mustard seeds using its funds for preparing drafts and giving to NAFED in the name of Rajiv Trading Company.
- (viii) The statements were provided to assessee who did not chose to cross examine these witnesses. AO was justified in holding that these were the Benami concerns of assessee. There is sufficient material on record which discharges the burden of proof.

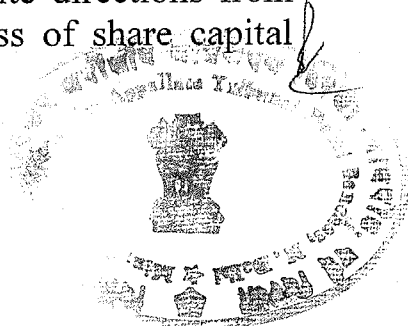


- (ix) AO has adopted a reasonable view of the matter by working out the peak of money involved in such transactions and applying the profit thereon.
- (x) It is not obligatory on AO to supply each and every material to assessee as he is in the know of the things. Assessee did not opt to cross examine above witnesses and was seeking frequent adjournments. In these circumstances AO has to apply his judgment and frame the assessment. He has not taken an arbitrary view in the matter of assessee.
- (xi) In case of such Benami transactions it is impossible to find demonstrative proof of facts and the issues are to be decided on the basis of surrounding circumstances, human conduct and preponderance of probabilities. Orders and findings of AO and CIT(A) are relied on. If further inquiries are deemed necessary, in the case of 8 persons whose statements are not recorded, the matter may be set aside back to the file of AO in this behalf.

31. Ld counsel for the assessee in rejoinder contends that there is no justification in the ld DRs plea that in case of remaining 8 persons whose statements are not recorded the matter may be set aside to AO to call this purpose. It amounts to giving the AO a new inning, as it is, considerable time was taken by AO for completion of assessments. Reliance is placed on

- ACIT Vs. Anima Investment Ltd. (2000) 73 ITD 125 (DEL) (T.M)

AO having decided not to make enquiries from majority of the shareholders of the assessee-company despite directions from CIT to make enquiries into the genuineness of share capital



raised through public issue, matter cannot be restored back to AO to make up his earlier deficient work; CIT was justified in deleting addition under s. 68.”

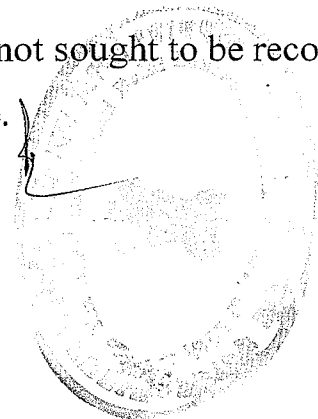
- Raj Kumar Jain vs. ACIT 50 ITD 1 (TM)

“Under the IT authorities stipulated under the IT Act, the Tribunal is not one of them. It is purely an appellate authority. Therefore, the object of the appeal before the Tribunal is whether the addition or disallowance sustained was in accordance with law and supported by material. If there is no sufficient material, the addition must be deleted. The Tribunal cannot order further enquiry with a view to sustain the addition. This will amount to taking sides with the parties which is not the function of a judicial authority like the Tribunal.”

- CIT Vs. Harikishan Jethalal Patel (1987) 168 ITR 472 (GUJ)

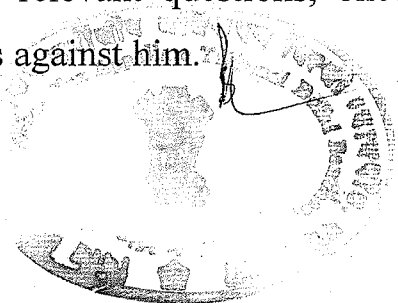
“It is not the case of the Revenue that it has come into possession of fresh facts which cast a doubt on the genuineness of the firm and/or the transaction. The Revenue wants to take a shot in the dark hoping that it may on remand be able to dig out fresh facts which may cast doubt on the genuineness of the firm and/or the transaction. It is merely a possibility and that too not supported by an iota of material. The Revenue desires to enter upon a mere fishing inquiry hoping that in the course of the inquiry some material may fall into its hands which, may throw a doubt on the genuineness of the firm and/or the transaction. We are afraid that such a fishing inquiry which would cause considerable harassment, hardship and expenditure to the assessee cannot be permitted on the mere possibility or hope that some facts may emerge which may cast a doubt on the genuineness of the firm and/or the transaction. We are, therefore, of the view that such a finishing inquiry ought not to be allowed.”

(a) Statement of Mr. Ram Narain Bansal not sought to be recorded by ADI or the Assessing Officer at any stage.





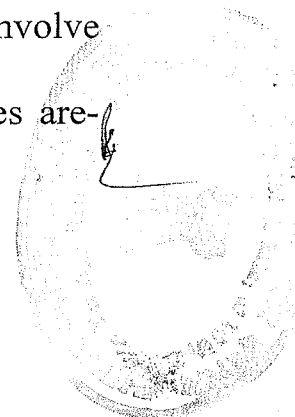
- (b) The Assessing Officer never confronted the assessee with his interpretation of Benami and what he proposed for the assessment.
- (i) At no stage A.O. asked the assessee that why he should not be treated as benami of these persons. No allegation was made during the assessment proceedings, it came to notice only when the assessment order was received.
- (ii) Assessee already stated that he had nothing to do with these Benami concerns. There was no reason for A.O. to insist for books of accounts of these benami concerns from assessee.
- (iii) During the course of statements, AO. did not ask these persons further question or information to support their contention that Ram Narain Bansal was actual owner.
- (iv) A.O. never confronted these witnesses about contrary statements of Mr. Sanjay, Proprietor, Rajeev Trading Co. and Mr. Om Prakash that one Purshottam was the Benami owner and the person behind all these concerns and not Mr. Ram Narain Bansal.
- (v) A.O. having to two contradictory statements of Mr. Sanjay, one before the ADI and another before himself. Without further question he simply discarded his the statement recorded before him only and relied on the one recorded by ADI. Thus AO did not have faith in his own investigation.
- (vi) A.O., in order to find truth, has to act impartially, these statements called for further corroboration and not to discard the same. He should have called Mr. Purshottam as witness and asked relevant questions, once Mr. Sanjay had made allegations against him.



- (vii) A.O. has interpreted these statements as conclusive evidence which have been recorded by asking leading questions without any corroboration and without any strict proof.
- (viii) A.O. never examined the issue with fact finding mind as is evident from these statements. Leading questions about Mr. Ram Narain Bansal were asked without further corroboration.
- (ix) Revenue does not have adequate material to meet its obligation that Ram Narain Bansal is the benami owner of these concerns.
- (x) No surrounding circumstances, human conduct or preponderance of probabilities have been proved on the basis of any investigation except 6 unreliable statements.

32. We have heard the rival submission and perused the case record. Facts have been narrated in details above. The parameters for making assessments in the cases of Benami allegations are by now settled. Hon'ble Calcutta High court in the case of Usha Bhar (supra) has laid down some important aspects in this regard.

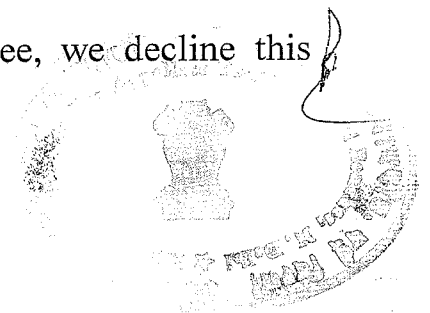
33. It clearly emerges from the facts that AO while carrying out enquiries or investigations has not collected adequate material, evidence to ascertain the alleged Benami transactions which are claimed to be voluminous, spreading to nearly 5 years and as rightly pointed out by ld counsels involve various agencies, record and human efforts. These material agencies are-



NAFED department, record and staff, Transporters, Labour agencies, Bank staff, Purchasers of Mustard seed, Sales Tax authorities etc. No effort has been made from any of these departments which would have immensely helped the AO in investigation.

34. The Benami charge is only 7 statements out of which one denies assessee being a Benami owner. Thus there are neither statements on record in respect of remaining 8 persons, nor further evidence collected by AO by investigations or enquiries on any other material aspect. Ld DR contends that looking at the nature of transaction it should be held that these 8 persons would have any way deposed against assessee, like 6 other witnesses, therefore the AOs additions may be upheld in view of Hon'ble Supreme Court judgment in the case of Sumati Dayal (supra), or in alternate, matter may be set aside back to AO for fresh examinations.

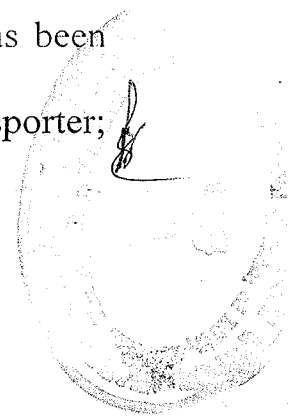
35. We are unable to agree to the revenue's proposition about set aside. This will amount to giving AO fresh innings for inquiry without any lawful justification, after a period of ten years, which is against principles of justice. AO was not prevented to carry out further investigations. In these facts and respectfully following case laws, relied on by assessee, we decline this request.



36. The only material evidence relied on by AO being these statements, additions in respect of 8 persons whose statements are not recorded, can not be upheld. Sumati Dayal decisions lays down human conduct, surrounding circumstances and preponderance of probabilities on this basis of material available on record. It does not mandate to apply them when no record exists at all like in respect of these 8 persons. They were AOs witnesses and he was not prevented by any reasons to summon them. Similarly out of 7 it is claimed that 1 witnessed denied assessee's role as Benami owner. It is pleaded by Id DR that he tried to protect assessee. Id counsel contends that converse may also be true that 6 witnesses may have tried to wrongly implicate the assessee.

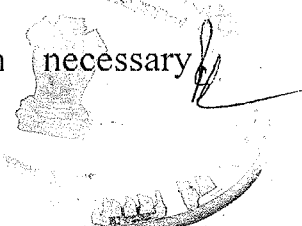
37. In these circumstances, what remains on record are 6 statements alleging assessee sans the corroborating evidence. On facts we have to decide whether these 6 statements constitute sufficient material to hold the assessee as Benami owner thus liable for these additions which are called in question.

38. It is trite proposition that the burden of proof is on the revenue to bring home the charge of Benami ownership against any persons. Looking at the material and facts on record, no further evidence or material has been brought on record by the revenue in respect of NAFED record; Transporter;



purchasers of mustard seed; Staff of various banks; Sales tax authorities, market inquires. Mere 6 statements, which are shaky, leading to no conclusive ascertainment of any fact can not be solely applied against assessee without any corroborative material. The same could have been collected by AO from various sources and agencies as mentioned above. These 6 statements at best only create a suspicion that assessee was obtaining some blank papers or some forms and cannot be decisive of benami on preponderance of probabilities. The statements are replete with inconsistencies about the salary, vocation, no of vehicles possessed by assessee (it is claimed by assessee that he does not own a car). These inconsistencies could have been further filled in by proper corroborative evidence, enquiries and investigation by revenue authorities.

39. In consideration of entire material available from record, facts, circumstances and rival submissions we are of the view that allegation of Benami has not been proved by the revenue against assessee on cogent material or evidence. No correlation of human conduct, preponderance of probabilities and human conduct with material available on record has been established. 6 shaky statements against assessee on their own do not constitute material enough to prove that assessee was Benami owner of these concerns. No adequate & cogent material is on record from necessary



agencies which are mentioned above. In absence of such material evidence or enquiries these statements can not be held to proving the fact or charge that assessee is a Benami owner of alleged concerns. Therefore, all the additions of peak investment and estimated profits from these alleged Benami concerns are deleted.

40. In the result assessee's appeals are allowed

Decision pronounced in the open Court on 31<sup>st</sup> January, 2012.

*Sd/-*

(B.C. MEENA)  
ACCOUNTANT MEMBER

*Sd/-*

(R.P. TOLANI)  
JUDICIAL MEMBER

Dated : 31.01.2012

MP

Copy forwarded to: -

1. Appellant *By Hand*
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

*[Signature]*  
Assistant Registrar

आयकर अपील निकाश  
Income Tax Appellate Tribunal  
नई दिल्ली/ New Delhi

