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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

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ITA 150/2022

JT. COMMISSIONER FOR INCOME TAX CENTRAL

RANGE-S

..... Appellant

Through: Mr. Shlok Chandra, Sr.SC with  
Ms.Madhavi Shukla, Jr.SC,  
Ms.Priya Sarkar, Jr.SC and  
Mr.Ujjwal Jain, Adv.

versus

SHRI JATINDER MEHRA

..... Respondent

Through: Mr. Ajay Vohra, Sr. Adv with  
Ms. Sayaree Basu Mallik and  
Mr. Abhinabh Garg, Adv.

**CORAM:**

**HON'BLE MR. JUSTICE YASHWANT VARMA**

**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR**

**KAURAV**

**ORDER**

**07.02.2024**

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1. Having heard Mr. Chandra, learned counsel appearing for the appellant and Mr. Vohra, learned senior counsel who appears for the respondent-assessee, we note that the facts do not appear to be in much dispute and stand succinctly captured in the following paragraph of the order of the Income Tax Appellate Tribunal ["ITAT"]:-

“16. We have carefully considered rival contentions and perused orders of lower authorities. Controversy in this case is that, based on the facts of the case of the Assessee and the allegations of the Ld. A.O., sole issue under appeal is regarding the Account Opening form of the Foreign Account A/c No. 806694 maintained in the “Clariden Leu Ltd. Bank” (Presently Credit Suisse) belonging to 'Watergate Advisors Ltd.' (WAL), a foreign company incorporated in the British Virgin Islands (BVI). Undisputedly sole Director and Shareholder of that company is Shri Rajneesh Mehra, being the NRI son of the Assessee. It is also a fact that assessee is named as the “beneficial owner” and the passport details of the Assessee was mentioned in account opening form of that account. It was on this sole allegation Therefore, ld AO held at para 7.2, page 12 of his



Order that the Assessee could not disprove that the name of the Assessee was reflected in the column of beneficiary owner of the account and could not prove that his son, Shri Rajneesh Mehra was the sole owner of the account. Hence, Id. A.O. held that the Assessee was the only beneficiary of the account, and by not disclosing such foreign asset in his Income Tax Return, assessee is covered by the Provision of The Black Money Act, 2015. So total credits as appearing in bank account no. 806694 maintained in the "Clariden Leu Ltd. Bank" (Presently Credit Suisse) belonging to "Watergate Advisors Ltd." (WAL), being USD 8,34,025.32 amounting to Rs. 5,66,47,000 (1 USD = 67.92 @rate as on Dec 2016) was held to be the Black Money of the Assessee and order was passed. The learned CIT - A deleted the addition holding that the assessee is not the beneficial owner of the bank account and further the source of the fund in that bank account is emanating from Rajvin Limited trust in which the business receipts are credited belonging to the business dealings of son of the assessee Mr. Rajneesh Mehra. The bank account of Rajvin Ltd is also opened by the son of the assessee; the assessee has not provided any contribution/investment in the bank account of the Rajvin Ltd or Watergate advisors Ltd. He also considered the remand report of the learned assessing officer as well as the memorandum of family understanding, affidavits of the son of the assessee, information of two different parties. Therefore, the addition came to be deleted."

2. Before us it is not disputed that the name of the assessee was reflected in the column of 'beneficial owner' in the account opening form. It is in the aforesaid context that we would have to consider whether the provisions of Sections 3 and 4 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, ["**BMA**"] would apply.

3. Mr. Vohra, learned senior counsel appearing for the assessee has drawn our attention to the Fourth Proviso as well as Explanation Four appended to Section 139 of the Income Tax Act, 1961 ["**Act**"] to contend that the expression 'beneficial owner' as appearing in the BMA should be accorded a meaning in light thereof. Prima facie we find ourselves unable to sustain that submission being of the view that the said expression would principally have to be construed in



accordance with how the BMA bids us to do.

4. We consequently admit this appeal on the following question of law:

(a) Whether in the facts and circumstances of this case as well as in law, ITAT is justified in deleting the additions made by Assessing Officer of Rs.5,66,47,000/- on account of Undisclosed Foreign Asset?

5. Let the appeal be called again on 06.05.2024.

**YASHWANT VARMA, J.**

**PURUSHAINDRA KUMAR KAURAV, J.**  
**FEBRUARY 07, 2024/MJ**