HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved On: 6th of September, 2022.
Announced On: 16th of September, 2022.

i.	WP (C) No. 594/2021 — Tabasum Mir	v. Union of India & Ors.
ii.	WP (C) No. 596/2021 — Amir Mir	v. Union of India & Ors.
iii.	WP (C) No. 597/2021 — Abdul Rashid Mir & Ors.	v. Union of India & Ors.
iv.	WP (C) No. 802/2021 — Tabasum Mir	v. Union of India & Ors.
v.	WP (C) No. 803/2021 — Abdul Rashid Mir & Ors.	v. Union of India & Ors.
vi.	WP (C) No. 806/2022 — Amir Mir	v. Union of India & Ors.

… Petitioner(s)

Through:
Mr P. Chidambaram, Senior Advocate with
Mr Shariq J. Reyaz & Ms Rinky Jawsuja, Advocates; and
Mr A. H. Naik, Senior Advocate with
Mr Zia Ahmad Shah, Advocate.

… Respondent(s)

Through:
Mr Tahir Majid Shamsi, DSGI with
Ms Nazima Yaqoob, Advocate for R-1; and

Mr Areeb Javed Kawoosa, Advocate with
Mr Aatir Javed Kawoosa, Advocate for R-2 & 3.

CORAM:

Hon'ble Mr Justice Ali Mohammad Magrey, Judge
Hon'ble Mr Justice Mohd. Akram Chowdhary, Judge

(JUDGMENT)

Magrey-J:

i. Common questions of fact and the law:

01. Since common questions of fact and the law are involved in all these connected six Petitions, therefore, same, after having been heard together, are being decided by this common order.

ii. Nature of Challenge thrown:

02. In the first 03 Writ Petitions, being WP (C) Nos. 594/2021; 596/2021; and 597/2021, the Petitioners have assailed the validity of the notices dated 6th of July, 2018 issued by the Respondents under Section 10 (1) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (for short 'the Act of 2015') as also show cause notices dated 18th of March, 2021. Thereafter, by medium of Writ Petitions bearing WP (C) Nos. 802/2021; 803/2021 and 806/2021, the Petitioners have challenged the penalty notices dated 29th of March, 2021, assessment orders dated 31st of March, 2021 and demand notices dated 31st of March, 2021.

iii. Genesis of the present litigation:

03. One Abdul Rashid Mir had three children, namely, Late Mujeeb Mir; Late Sabeha Mir; and Tabasum Mir. Late Mujeeb Mir is stated to have been a citizen of India who, however, primarily lived outside India since his childhood and his primary place of residence was at Bangkok, Thailand. The said Mujeeb Mir is claimed to be a Non-Resident Indian for the purpose of Income Tax Act, 1961 (hereinafter referred to as 'the Act of 1961') since 1990. On 22nd of March, 2002, without the knowledge to the Petitioners, the said Late Mujeeb Mir issued letter of instructions to M/s Trumax Nominees Limited for establishment of trust to be called the 'Mondale Irrevocable Discretionary Trust'. On 8th of October, 2002, without the knowledge of the Petitioners, the said Mujeeb Mir settled 'Mondale Irrevocable Discretionary

Trust' with Trumax Company Limited, a Company incorporated under the Laws of Isle of Man to act as Trustees for the Trust. On 8th of October, 2002, without the knowledge of the Petitioners, the said Mujeeb Mir subscribed to the entire share capital of the Company Mondale SA that was incorporated under the laws of Republic of Panama and transferred the said shares to 'Mondale Discretionary Trust'. On 9th of October, 2002, without the knowledge of the Petitioners, the said Mujeeb Mir excluded the erstwhile beneficiaries (a Wildlife Sanctuary) and made his siblings, namely, Tabasum Mir (Sister); Ms Sabeha Mir (Sister); and his first cousin brother-Amir Mir as the beneficiaries of 'Mondale Discretionary Trust'. On 31st of January, 2005, the said Mujeeb Mir passed away and his father-Abdul Rashid Mir was appointed as the Manager of the Estate of his deceased son pursuant to orders passed by the Courts in Thailand. On 11th of September, 2007, a deed of appointment and indemnity was entered between Trumax Company Limited (Trustees) and Abdul Rashid Mir representing the beneficiaries. Through Abdul Rashid Mir, the Petitioners learnt that there were three beneficiaries. The deed, *inter alia*, stated that 'the Trustee hereby irrevocably appoints to the Beneficiaries in equal shares absolutely the appointed fund for their own absolute use and benefit freed and discharged from all the trusts of the Trust'. On 2nd of January, 2008, the Stabitrust Fiduciaries Limited were appointed as Trustee of the Mondale Trust as successor Trustee to Trumax. On 18th of January, 2010, beneficial interest in bank account of Mondale S. A. operating with Banque Baring Brothers Sturdza SA, Geneva was transferred to the

beneficiaries of the trust. On 4th of March, 2010, the Petitioners wrote to the Reserve Bank of India and disclosed the creation of Mondale Discretionary Trust by Late Mujeeb Mir and apprised them about the inheritance on account of his demise. Furthermore, permission was sought under Section 6(5) of the Foreign Exchange Management Act, 1999 to hold securities in a foreign company (Mondale SA) and consequent beneficial interest in a foreign bank account. On 5th of April, 2010, the Reserve Bank of India replied to the letter of one of the Petitioners and referred to Master Circular No. 01/2009-10 which, *inter alia*, provided that a general permission has been granted to resident of India to hold foreign securities and to acquire shares by way of inheritance from a person resident out of India. On 28th of January, 2011, the balance lying with the foreign bank account (1/3rd share) was declared in the Wealth Tax Return for the Accounting Year (AY) 2010-11 and Accounting Year (AY) 2011-12 of the Petitioners. On 4th of July, 2011, Rs. 5,92,64,869/, being 1/3rd share of each of the Petitioner, was remitted from the bank account of Mondale SA to India. On 6th of July, 2011, the Jammu and Kashmir Bank Limited issued certificate of Foreign Inward Remittance specifying the remittance of money on account of the dissolution of the trust and 1/3rd of inheritance. In April, 2016, the Panama Paper Leaks Article was published in Indian Express newspaper giving names of various individuals reportedly having foreign assets. Thereafter, income tax proceedings under Section 131 (1-A) of the Act of 1961 initiated against the Petitioners seeking details of foreign assets. Information as called for was provided by the Petitioners. On

6th of July, 2018, notice under Section 10(1) of the Act was issued to the Petitioners seeking various details. On 2nd of August, 2018, the Petitioners submitted information in response to the documents called for by the authorities which, *inter alia*, included information about receipt of money from the trust settled by Late Mujeeb Mir. On 29th of March, 2019, notice under Section 148 of the Act of 1961 was issued to the Petitioners for reopening of assessment for Account Year (AY) 2012-13. On 19th of April, 2019, the Petitioners sought reasons for reopening of the assessment. On 7th of September, 2019, no response was received by the Petitioners, however, fresh letter was issued seeking further documents. On 18th of October, 2019, the Petitioners filed response to the above and again sought reasons for reopening of assessment. On 20th of November, 2019, notice under Section 10(2) of the Act was issued to the Petitioners asking to produce all relevant documents. The Petitioners sought two adjournments. On 16th of October, 2020, copies of wealth tax returns submitted by the Petitioners for Accounting Year (AY) 2010-11 as directed by the Deputy Director of Income Tax (Investigation), Srinagar. Thereafter, notice for personal deposition of the Petitioners issued by the Deputy Director of Income Tax (Investigation), Srinagar under Section 8 of the Act of 2015. On 9th of February, 2021, additional details as called for by the Deputy Director of Income Tax (Investigation), Srinagar were submitted by the Petitioners. On 22nd of February, 2022, the Petitioners filed a detailed reply to the notice under Section 10(1) of the Act dated 6th of July, 2018. On 3rd of March, 2021,

clarification submitted by the Petitioner to Deputy Director of Income Tax (Investigation), Srinagar that the reply to RBI application received only for Mr Amir Mir and, on follow-up with RBI, they were informed that same guidelines apply to other applicants/ Petitioners. On 18th of March, 2021, show cause notice was issued to the Petitioners by the Deputy Director of Income Tax (Investigation) pursuant to filing of the reply dated 23rd of February, 2021. The Petitioners filed three separate Writ Petitions bearing WP (C) Nos. 594/2021; 596/2021; and 597/2021 before this Court challenging the notices issued under Section 10(1) of the Act dated 6th of July, 2018 as also the show cause notices dated 18th of March, 2021. On 29th of March, 2021, this Court passed order directing the Respondents to go ahead with the assessment, but not to proceed with prosecution and penalty proceedings. On 29th of March, 2021, the Petitioners received three notices each dated 29th of March, 2021 under Section 46 read with Sections 41, 42 and 43 of the Act of 2015, respectively, for imposition for penalty. On 31st of March, 2021, vide the assessment Orders dated 31st of March, 2021, the Petitioners were assessed to tax under Section 10 of the Act of 2015 and the total value of undisclosed foreign assets was determined and total tax, accordingly, computed to be paid on account of said undisclosed foreign assets. On 31st of March, 2021, demand notice dated 31st of March, 2021 was issued directing the Petitioners to pay the tax determined within a period of 30 days. Thereafter, penalty notices dated 29th of March, 2021, the assessment orders dated 31st of March, 2021

and demand notices dated 31st of March, 2021 were challenged by the Petitioners through WP (C) Nos. 802/2021; 803/2021 and 806/2021.

iv. Details of the Writ Petitions:

04. In WP (C) No. 594/2021, the Petitioner, namely, Tabasum Mir, has contended that she is a beneficiary of a Trust which was created and established abroad. The Petitioner brought benefit/money of her share in the country upon permission granted by the Reserve Bank of India. In the meantime, Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (hereinafter referred to as "the Act of 2015") has been enforced with effect from 1st of April 2015 or 1st of July 2015. In view of the said Act, a notice under Section 10(1) and thereafter under Section 10(2) were issued requiring certain information from the Petitioner. The said notice was duly replied by the Petitioner, but till date, no order of assessment as contemplated under Section 10 has been passed against the Petitioner. At the same time, a further show cause notice dated 18th of March 2021 has been issued requiring the Petitioner to show cause why in respect of some of the assets, the Petitioner should not be taxed under the Act and penalties and prosecution be launched against her. It is averred that the aforesaid show cause notice is neither a notice issued under Section 10 nor a notice under any other provisions of the Act and, as such, is without jurisdiction. The Petitioner cannot be prosecuted and saddled with penalties without there being the assessment order passed under Section 10.

05. In WP (C) No. 596/2021, the Petitioner, namely, Amir Mir, has contended that the Petitioner is a beneficiary of a Trust which was created and established abroad. The Petitioner brought benefit/money of his share in the country upon permission granted by the Reserve Bank of India. In the meantime, the Act of 2015 has been enforced with effect from 1st of April 2015 or 1st of July 2015. In view of the said Act, a notice under Section 10(1) and thereafter under Section 10(2) were issued requiring certain information from the Petitioner. The said notice was duly replied by the Petitioner, but till date, no order of assessment as contemplated under Section 10 has been passed against the Petitioner. At the same time, a further show cause notice dated 18th of March 2021 has been issued requiring the Petitioner to show cause why in respect of some of the assets, the Petitioner should not be taxed under the Act and penalties and prosecution be launched against her. It is averred that the aforesaid show cause notice is neither a notice issued under Section 10 nor a notice under any other provisions of the Act and, as such, is without jurisdiction. The Petitioner cannot be prosecuted and saddled with penalties without there being the assessment order passed under Section 10.

06. In WP (C) No. 597/2021, the Petitioners, Abdul Rashid Mir & Ors., contend that their predecessor-in-interest- Ms. Sabeha Mir, is a beneficiary of a Trust which was created and established abroad. The Petitioners brought benefit/money of their share in the country upon permission granted by the Reserve Bank of India. In the meantime, the Act of

2015 has been enforced with effect from 1st of April 2015 or 1st of July 2015. In view of the said Act, a notice under Section 10(1) and thereafter under Section 10(2) were issued requiring certain information from the predecessor-in-interest of the Petitioners. The said notice was duly replied by the Petitioners, but till date, no order of assessment as contemplated under Section 10 has been passed against the predecessor- in-interest of the Petitioners or the Petitioners. At the same time, a further show cause notice dated 18th of March 2021 has been issued requiring the Petitioners to show cause why in respect of some of the assets, the predecessor-in-interest of the Petitioners should not be taxed under the Act and penalties and prosecution be launched against her. It is averred that the aforesaid show cause notice is neither a notice issued under Section 10 nor a notice under any other provisions of the Act and, as such, is without jurisdiction. The Petitioners cannot be prosecuted and saddled with penalties without there being the assessment order passed under Section 10.

07. When the aforesaid three Petitions came up for consideration before this Court on 29th of March, 2021, the Court, while issuing notice to the other side, in terms of separate orders, directed the assessing authority to proceed and pass an order of assessment pursuant to the show cause notices dated 6th of July, 2018, 25th of July, 2018 and 20th of November, 2019, but not prosecute and impose any penalty upon the petitioners on the basis of the impugned show cause notice dated 18th of March 2021. Thereafter, it seems

that pursuant to the aforesaid order passed by this Court, the assessing authority appears to have proceeded ahead and passed the assessment order as well as the notice of imposing penalty upon the Petitioners.

08. Faced with the above position, the Petitioner, namely, Tabasum Mir, has filed another Writ Petition bearing WP (C) No. 802/2021, wherein she has challenged the proceedings initiated against her by the Respondent-assessing authority in terms of the provisions of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (hereinafter referred to as 'the Act of 2015'), including the impugned assessment Order dated 31st of March, 2021 and impugned notice of demand dated 29th of March, 2021, as being without jurisdiction, thus *void-ab-initio* and *non-est* in law. It is stated that the brother of the Petitioner-Mujeeb Mir, a Non-Resident Indian (NRI), was a trustee of the financial assets of a Company located outside India who died on 31st of January, 2005, whereafter the father of the Petitioner was appointed as the Manager of the Estate of his deceased son and, after discovering the factum of existence of the discretionary trust, the same was dissolved by the trustees thereof by exercising their discretion with the main corpus of the said discretionary trust dissolved on 11th of September, 2009. Accordingly, as stated, the shareholding of the trust was transferred equally in favour of the beneficiaries concerned, including the sister of the Petitioner. Thereafter, the sister of the Petitioner, namely, Sabeha Mir, brought the fact of creation of the Trust by her brother,

Late Mujeeb Mir, into the notice of the Reserve Bank of India, thereby apprising it about the inheritance on account of demise of her brother and sought permission under Section 6(5) of the Foreign Exchange Management Act, 1999 to hold securities in a foreign company and consequent beneficial interest in a foreign bank account owned by the said foreign company. The Petitioner has proceeded to state that, thereafter, in the year 2015, the Parliament, promulgated the Act of 2015, which came into force on 1st of April, 2016. The said Act is claimed to have been enacted to address the mischief of such undisclosed assets and undisclosed foreign income and assets located outside India that were acquired using income that, even though chargeable to Tax under the Income Tax Act, was not so offered to tax in India, but was illegally routed out of India and was used in creation of said undisclosed assets. Besides, the Act is also stated to have provided for penalty and prosecution in relation to the said undisclosed foreign assets and income and a window of opportunity to residents who held undisclosed foreign assets abroad to declare the same with the authorities in India so as to prevent them from any penalties and prosecutions under the Act. In order to clarify the scope, application, mechanism and intendment of the Act, the Ministry of Finance, through the Department of Revenue and the Central Board of Direct Taxes (CBDT), issued a circular dated 6th of July, 2015, which, as stated, provides for inapplicability of the Act of 2015 to the assets that were created by Non-Resident Indians out of income generated abroad which was not chargeable to tax in India. Notwithstanding this position, the Respondents are

stated to have initiated the process of assessing the tax from the Petitioner as being the legal beneficiary of the foreign assets culminating in the assessment order dated 31st of March, 2021 as well as penalty/ prosecution notice dated 29th of March, 2021.

09. Likewise, the Petitioner, namely, Abdul Rashid Mir, too filed another Writ Petition bearing WP (C) No. 803/2021, wherein he has challenged the proceedings initiated against him by the Respondent-assessing authority in terms of the provisions of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (hereinafter referred to as 'the Act of 2015'), including the impugned assessment order dated 31st of March, 2021 and impugned notice of demand dated 29th of March, 2021, as being without jurisdiction, thus *void-ab-initio* and *non-est* in law. It is stated that the son of the Petitioner-Mujeeb Mir, a Non-Resident Indian (NRI), was a trustee of the financial assets of a Company located outside India, who died on 31st of January, 2005, whereafter the petitioner was appointed as the Manager of the Estate of his deceased son and, after discovering the factum of existence of the discretionary trust, the same was dissolved by the trustees thereof by exercising their discretion with the main corpus of the said discretionary trust dissolved on 11th of September, 2009. Accordingly, as stated, the shareholding of the trust was transferred equally in favour of the beneficiaries concerned, including the daughter of the petitioner. Thereafter, the daughter of the Petitioner, namely, Sabeha Mir, brought the fact of

creation of the Trust by her brother, Late Mujeeb Mir, into the notice of the Reserve Bank of India, thereby apprising it about the inheritance on account of demise of her brother and sought permission under Section 6(5) of the Foreign Exchange Management Act, 1999 to hold securities in a foreign company and consequent beneficial interest in a foreign bank account owned by the said foreign company. The Petitioner has proceeded to state that, thereafter, in the year 2015, the Parliament, promulgated the Act of 2015, which came into force on 1st of April, 2016. The said Act is claimed to have been enacted to address the mischief of such undisclosed assets and undisclosed foreign income and assets located outside India that were acquired using income that, even though chargeable to Tax under the Income Tax Act, was not so offered to tax in India, but was illegally routed out of India and was used in creation of said undisclosed assets. Besides, the Act is also stated to have provided for penalty and prosecution in relation to the said undisclosed foreign assets and income and a window of opportunity to residents who held undisclosed foreign assets abroad to declare the same with the authorities in India so as to prevent them from any penalties and prosecutions under the Act. In order to clarify the scope, application, mechanism and intendment of the Act, the Ministry of Finance, through the Department of Revenue and the Central Board of Direct Taxes (CBDT), issued a circular dated 6th of July, 2015, which, as stated, provides for inapplicability of the Act of 2015 to the assets that were created by Non-Resident Indians out of income generated abroad which was not chargeable

to tax in India. Notwithstanding this position, the Respondents are stated to have initiated the process of assessing the tax from the Petitioner as being the legal beneficiary of the foreign assets culminating in the assessment order dated 31st of March, 2021 as well as penalty/ prosecution notice dated 29th of March, 2021.

10. Similarly, the Petitioner, namely, Amir Mir, has also filed another Writ Petition bearing WP (C) No. 806/2021, challenging the proceedings initiated against him by the Respondent-assessing authority in terms of the provisions of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (hereinafter referred to as 'the Act of 2015'), including the impugned assessment order dated 31st of March, 2021 and impugned notice of demand dated 29th of March, 2021, as being without jurisdiction, thus *void-ab-initio* and *non-est* in law. It is stated that the first cousin brother of the Petitioner-Mujeeb Mir, a Non-Resident Indian (NRI), was a trustee of the financial assets of a Company located outside India, who died on 31st of January, 2005, whereafter the uncle of the petitioner was appointed as the Manager of the Estate of his deceased son and, after discovering the factum of existence of the discretionary trust, the same was dissolved by the trustees thereof by exercising their discretion with the main corpus of the said discretionary trust dissolved on 11th of September, 2009. Accordingly, as stated, the shareholding of the trust was transferred equally in favour of the beneficiaries concerned, including the sister of the petitioner.

Thereafter, the first cousin brother of the Petitioner, namely, Sabeha Mir, brought the fact of creation of the Trust by her brother, Late Mujeeb Mir, into the notice of the Reserve Bank of India, thereby apprising it about the inheritance on account of demise of her brother and sought permission under Section 6(5) of the Foreign Exchange Management Act, 1999 to hold securities in a foreign company and consequent beneficial interest in a foreign bank account owned by the said foreign company. The petitioner has proceeded to state that, thereafter, in the year 2015, the Parliament, promulgated the Act of 2015, which came into force on 1st of April, 2016. The said Act is claimed to have been enacted to address the mischief of such undisclosed assets and undisclosed foreign income and assets located outside India that were acquired using income that, even though chargeable to Tax under the Income Tax Act, was not so offered to tax in India, but was illegally routed out of India and was used in creation of said undisclosed assets. Besides, the Act is also stated to have provided for penalty and prosecution in relation to the said undisclosed foreign assets and income and a window of opportunity to residents who held undisclosed foreign assets abroad to declare the same with the authorities in India so as to prevent them from any penalties and prosecutions under the Act. In order to clarify the scope, application, mechanism and intendment of the Act, the Ministry of Finance, through the Department of Revenue and the Central Board of Direct Taxes (CBDT), issued a circular dated 6th of July, 2015, which, as stated, provides for inapplicability of the Act of 2015 to the assets that were created by Non-

Resident Indians out of income generated abroad which was not chargeable to tax in India. Notwithstanding this position, the Respondents are stated to have initiated the process of assessing the tax from the Petitioner as being the legal beneficiary of the foreign assets culminating in the assessment order dated 31st of March, 2021 as well as penalty/ prosecution notice dated 29th of March, 2021.

v. Arguments of the parties:

11. Mr P. Chidambaram, the learned Senior Counsel, appearing on behalf of the Petitioners in all these connected Petitions, submitted that the action initiated by the Respondent-assessing authority is without jurisdiction inasmuch as the provisions of the Act of 2015, under the shade and cover of which the entire action has been initiated, are not applicable to the asset subject matter of the case in hand, being the asset that was created by a Non-Resident Indian out of income generated abroad which was not chargeable to tax in India.

12. It is contended that all the relevant Sections of the Income Tax Act as well as the Act of 2015 have to be read conjointly and that it is only when there is taxable income in India which has evaded tax and has been used to acquire an asset abroad that the Act of 2015 would apply.

13. The learned Senior Counsel has proceeded to state that as per the statement of Objects and Reasons, the Act of 2015 will apply to a person

residing in India holding any undisclosed foreign asset on 1st of July, 2015 and, in the instant case, the Petitioners did not have/ hold any foreign undisclosed asset on the coming into force of the Act and that an asset that has been extinguished long before can never be termed as a foreign asset.

14. The next submission of the learned Senior Counsel is that, as per the Act of 2015, the previous year means a year immediately preceding the assessment year and, therefore, with respect to the assessment year of 2016-17, the previous year would be 2015-16 year and the assessing authority, thus cannot go behind or beyond the year 2015-16.

15. It is also pleaded that here asset is no longer in existence after the year 2012-13. The Petitioners became beneficiaries in year 2002 which fact was unknown to the Petitioners till the year 2007 and it is only in the year 2010 that the Petitioners became owner and, accordingly, they brought back the bank account to India on 6th of July, 2011, whereafter they included it in the wealth tax return for the relevant year, as such, the asset does not, in any way, come within the tentacles of the Act of 2015.

16. It is averred that the Statute cannot be applied in an absurd manner with respect to an inheritance when the same only applies to a foreign undisclosed asset and not on inheritance. The action of the Respondents is hit

by Article 20 because the Respondents cannot impose penalty upon the Petitioners for something which was not the law on the said date.

17. It is submitted that there is no scope for the Respondent-assessing authority to issue the impugned order of assessment without taking into consideration the Objections so submitted before it by the Petitioners *qua* the issue of jurisdiction.

18. It is further submitted that there are no foreign assets existing out of which the income has been derived in India and not disclosed to the concerned authorities, thereby making the same taxable in India.

19. The learned Senior Counsel, while inviting the attention of the Court to the preamble of the Act of 2015 which envisages the Act to make provisions to deal with the problem of the black money that is undisclosed foreign income and assets, the procedure for dealing with such income and assets and to provide for imposition of tax on any undisclosed foreign income and asset held outside India and for matters connected therewith or incidental thereto, pleaded that it is only in case of non-disclosure of assets created out of income, though liable to be taxed but not offered to be taxed in India, that attracts the applicability of the Act and it is only in such an eventuality that the authorities get jurisdiction in the matter under the Act of 2015.

20. It is also submitted that the Petitioners, in the peculiar facts and circumstances of the case, are seeking a declaration from this Court *qua* non-applicability of the provisions of the Act retrospectively, consequently rendering the entire proceedings initiated against the Petitioners, including the impugned assessment order as well as the penalty notice as *non-est* in law.

21. The learned Senior Counsel has supported his case with the following Judgments:

i. 1980 (1) SCC 370 Para 10;

ii. (1986) Suppl. SCC 110 Para 9;

iii. (1991) 4 Supreme Court Cases 699;

iv. (2013) 7 Supreme Court Cases 629;

v. AIR 1961 SC 372;

vi. (1998) 8 Supreme Court Cases 1;

vii. (2021) 6 Supreme Court Cases 771;

viii. (1973) 1 Supreme Court Cases 633;

ix. (2007) 1 Supreme Court Cases 732; and

x. (1973) 3 Supreme Court Cases 133.

22. Mr Areeb J. Kawoosa, the learned Counsel appearing on behalf of the Respondent Nos. 2 and 3, submitted that the Writ Petitions filed by the Petitioners under Article 226 of the Constitution are not maintainable in the light of the existence of alternate remedy of appeal under the Statute available

to the Petitioners pursuant to Sections 15 to 21 of the Act of 2015. It is contended that the Petitioners being the beneficial owners of the assets appearing in the Balance Sheet of the Mondale Discretionary Trust and failure to disclose the interest in Mondale Discretionary Trust, which are nothing but undisclosed asset located outside India as per the provisions of Section 2(11) of the Act of 2015, as such proceedings were initiated against the Petitioners. It is further submitted that although the Petitioners had full knowledge of being the beneficial owners of the assets of the Trust from the financial year 2006-07, but they did not disclose it in front of any income Tax authority. It is also submitted that the Petitioners have not even provided any details regarding the source of funds in the Mondale SA and the Trust. Mr Areeb further pleaded that the Petitioners, being the beneficiaries of the Trust and having received huge amount from the Trust, had not declared the same in their Income Tax Returns, as such, it was held in the assessment order that the case is fully covered under the Act of 2015 and that the Petitioners, having beneficial interest, was brought to tax under the provisions of the Act of 2015. It is also averred that it was only in pursuance of the directions passed by this Court in terms of Order dated 29th of March, 2021 in the earlier Writ Petition filed by the Petitioner bearing WP (C) No. 594 of 2021 that the answering Respondent completed the assessment proceedings and passed the assessment order on 31st of March, 2021. It is also the case of the Respondent Nos. 2 to 3 that during the course of investigation, the Petitioners have not provided any details regarding even the source of the funds in the Mondale SA and the Trust

and, in fact, having been a beneficiary of the Trust and having received a huge amount from the Trust, which has not been declared/ disclosed in the ITR, the instant case is fully covered by the provisions of the Act of 2015 and the beneficial interest of the Petitioners is liable to be brought under the purview of the Act of 2015. It is also pleaded that the Petitioners, being exempted from paying any wealth tax in the relevant year, have filed the wealth tax return, but since income tax was to be paid by the Petitioners on the said foreign undisclosed assets, they, deliberately with an intent to evade the tax liability, have not disclosed the same in the relevant Income Tax Return. It is further submitted that the contention of the Petitioners that the receipt of foreign remittances/ receipts had been brought to the notice of the Reserve Bank of India does not hold much water inasmuch as the Petitioners have not been able to explain the nature of the business either of Mondale SA or of the Mondale Discretionary Trust. The Petitioners have not been able to provide the details of investment in these entities and have not paid any tax on the receipt, therefore, the Petitioners have been the beneficial owners of the Trust as emerges from the facts of the case. It is contended that the beneficiary in respect of an asset means an individual who derives benefit from the asset during the previous year and consideration for such asset has been provided by any person other than such beneficiary and, therefore, the Petitioners, in the instant case, are the beneficial owners and thus liable to pay tax.

23. The case law referred to and relied upon by the learned Counsel for Respondent Nos. 2 to 3, in support of the above arguments, is detailed out hereinbelow:

i. (2019) 10 Supreme Court Cases 108;

ii. (1999) 2 Supreme Court Cases 77;

iii. (2014) 6 Supreme Court Cases 444;

iv. (2014) 1 SCC 603;

v. WP No. 568 of 2018 (Calcutta High Court); and

vi. (2020) 268 TAXMAN 299.

24. Mr Tahir Majid Shamsi, the learned Deputy Solicitor General of India (DSGI), appearing on behalf of Respondent No.1, while supporting the arguments advanced by the learned Counsel representing the Respondent Nos. 2 and 3, submitted that since the Petitioners did not comply with the mandate of Section 59 of the Act, so they cannot claim exemption under Section 72 of the Act of 2015. It is contended that as the Petitioners did not file the ITR with regard to the income subject matter of assessment, therefore, the Act of 2015 clearly applied to their case.

25. In rebuttal, Mr Chidambaram, the learned Senior Counsel, with great eloquence, argued that the basic facts pleaded in the Writ Petitions have not been denied by the Respondents. It is submitted that there is no allegation or finding in the impugned show cause notice or in the assessment order dated

31st of March, 2021 that the purported undisclosed foreign asset was acquired from income chargeable to tax under the Income Tax Act, 1961 and that there is no denial of the fact that Mr Mujeeb Mir was always a Non-Resident Indian and had income outside India not liable to tax under the Act of 1961 and had acquired the foreign asset out of such income. It is reiterated that as the foreign asset was acquired out of income not taxable in India, as such the Act of 2015 will not apply, thereby rendering the entire proceedings initiated against the Petitioners without jurisdiction. While inviting the attention of the Court to the Statement of Reasons, the learned Senior Counsel pleaded that the word 'holding' clearly indicates the intention of the legislation. It is argued that in Section 2 (11) of the Act of 2015, the word 'located' and the word 'held' must, in the context of all the provisions of the Act, be read as located on the date of commencement of this Act and held on the date of the commencement of this Act and, since no undisclosed foreign asset was located outside India on 1st of April, 2016 nor such asset was held by the Petitioners on 1st of April, 2016. It is also the case of the Petitioners that the Respondent No.3, while initiating the proceedings against the Petitioners, has not kept in mind the distinction between the terms 'beneficial owner' and 'beneficiary' as defined in Explanation 4 and Explanation 5 to Section 139(1) of the Act of 1961, respectively. The undisputed factual position is that each of the Petitioners was a beneficiary in 2002 (unknown to the Petitioners); remained a beneficiary in 2007 (known to the Petitioners); and remained a beneficiary until 2010 when the bank account was transferred to the three beneficiaries.

Upon such transfer, the Petitioners became joint owners of the Bank account. There is no question of any of the Petitioners being a beneficial owner, at any time, because it is not the case of the Respondent No.3 that any of the Petitioners provided consideration for the assets acquired by Mr Mujeeb Mir. In sum, the Petitioners were beneficiaries and, upon distribution became owners of 1/3 share each. It is next contended that the manner in which the Respondent No.3 has calculated the value of alleged undisclosed foreign asset is manifestly absurd and arbitrary. Undisputedly, there was only one bank account, that bank account had a certain balance on 31st of December, 2003, there was a slight reduction in the balance of the bank account as on 30th of June, 2005 and there was increase in the balance of the bank account as on 30th of June, 2011. The balance in the bank account as on 30th of June, 2011 was transferred to India on 4th of July, 2011, hence, that is the only relevant value of the Bank Account. However, the Respondent No.3 has added the bank balance as on 31st of December, 2003, 30th of June, 2005 and 30th of June, 2011 and arrived at an astronomical number which is manifestly absurd. It is also urged that the Petitioners have repeatedly explained the source of the money out of which the shares and the bank account were acquired by Mr Mujeeb Mir, namely, the income earned by the Non-Resident Mr Mujeeb Mir which was not taxable in India. Since, the Petitioners have no knowledge of the business of Mr Mujeeb Mir or the fact that he had acquired shares and a bank account, the Petitioners stated that the source of the alleged undisclosed foreign asset was the income earned by Mr Mujeeb Mir when he was a Non-

Resident. However, at internal Page 33 of the impugned assessment order dated 31st of March, 2021, the Respondent No.3 has said that the Petitioners have not explained the source of the source. This is contrary to the settled law. When a person is called upon to explain the source of funds, he is not obliged to explain the source of the source of the funds.

26. We have heard the learned appearing Counsel for the parties, perused the pleadings on record and have considered the matter.

vi. Discussion and Analysis:

27. Before going into the merits of the case, it shall be advantageous to have a glance at the genesis of the Act of 2015. Stashing away of black money abroad by some people with the intent to evade taxes has been a matter of deep concern to the nation. Black Money is a common expression used in reference to tax-evaded income. Evasion of tax robs the nation of critical resources necessary to undertake programs for social inclusion and economic development. It also puts a disproportionate burden on the honest taxpayers as they have to bear the brunt of higher taxes to make up for the revenue leakage caused by evasion. The money stashed away abroad by evading tax could also be used in ways which could threaten the National Security. Recognising the limitations of the existing legislation, a new legislation (the Act of 2015) was proposed to deal with undisclosed assets and income stashed away abroad. Hon'ble the Supreme Court has also expressed concern over this

issue. The Special Investigation Team constituted by the Central Government to implement the decisions of Hon'ble the Supreme Court has also expressed the views that measures may be taken to curb the menace of black money. Internationally, a new regime for automatic exchange of financial information is fast taking shape and India is a leading force in this effort. The new legislation has been enacted to apply to all persons resident in India and holding undisclosed foreign income and assets. A limited window is proposed to persons who have any undisclosed foreign assets. Such persons may file a declaration before the specified tax authority within a specified period, followed by payment of tax at the rate of 30 per cent and an equal amount by way of penalty. Exemptions, deductions, set-off and carried forward losses etc. shall also be not allowed under the new legislation. Upon fulfilling these conditions, a person shall not be prosecuted under the Bill and the declaration made by him will not be used as evidence against him under the Wealth Tax Act, the Foreign Exchange Management Act (FEMA), the Companies Act or the Customs Act. Wealth Tax shall not be payable on any asset so disclosed. It is merely an opportunity for persons to become tax complaint before the stringent provisions of the new legislation come into force. This legislation desires to make provisions to deal with the problem of the Black money that is undisclosed foreign income and assets, the procedure for dealing with such income and assets and to provide for imposition of tax on any undisclosed foreign income and asset held outside India and for matters connected

therewith or incidental thereto. This Act was enacted on 26th of May, 2015 and was ordained to come into force on the 1st day of July, 2015.

28. Having gone through the definition and the object of the Act of 2015, the first and foremost issue that is required to be considered by this Court relates to the preliminary objection raised by the Counsel for the Respondent Nos. 2 and 3 *vis-à-vis* the maintainability of the instant Petitions before this Court in view of the alternate/ statutory remedy of appeal being available to the Petitioners before the Commissioner (Appeals) in terms of Section 15 of the Act of 2015 itself.

29. Learned Counsel for Respondent Nos. 2 and 3 has laid much emphasis on the fact that the Writ Petitions are not maintainable before this Court on the ground that the Petitioners were having the statutory remedy of appeal before the Commissioner (Appeals) in terms of Section 15 of the Act of 2015. In view of this preliminary objection with reference to the maintainability of these Writ Petitions against the proceedings initiated by the Respondents under the Act of 2015 as also seeking quashing of impugned notices, we propose to first deal with this issue inasmuch as in the event, the maintainability issue is decided in favour of the Respondents, then there shall be no need to go into the arguments of the parties *qua* merits of their claim, although we have recorded the submissions of the parties on merits as well hereinabove.

30. In this behalf, it is the case of the Respondent Nos. 2 and 3 that the provisions of the Act of 2015 make it clear beyond any shadow of doubt that the assessment orders which have been impugned in these Writ Petitions or any other proceedings, including the show cause notices, penalty notices and demand notices, are assailable in appeal before the authority prescribed under the Act of 2015 itself. It is submitted that further appeal lies on substantial question of law to the High Court from every order passed in appeal by the Appellate authority and, as such, in view of the scheme of law *qua* availability of efficacious remedy, these Petitions are not maintainable before this Court. It is contended that, as per settled position of law, when the statute provides for mechanism for redressal of grievances, a Writ Petition cannot be entertained ignoring the statutory dispensation. Reference, in this regard, is made to the law laid down by Hon'ble the Supreme Court in the following cases:

i.) '(2020) 268 TAXMAN 299 SC titled Genpact India Private Limited v. Deputy Commissioner of Income Tax & Ors.'-Paragraph Nos. 7, 11, 13, 14, 15, 16 & 17, which are reproduced hereunder:

> "7. Two issues arise for consideration, one regarding availability of appellate remedy and the other concerning refusal to exercise Jurisdiction under Article 226 because of availability of an alternate efficacious remedy. In essence, the matter revolves around the question whether there is in fact an appellate remedy available, in case any determination is made under Section 115QA of the Act that the Company is liable to pay "additional income tax at the rate of 20% on the distributed income". For the purpose of considering whether there is any such appellate remedy, we must note the concerned Sections in the Act dealing with appellate remedy and provisions touching upon exercise of such right of appeal. Sections 246(1) and 246A(1) being relevant for the present purposes are extracted hereunder:-

‘246. Appealable orders - (1) Subject to the provisions of sub-section (2), any assessee aggrieved by any of the following orders of an Assessing Officer other than the Joint Commissioner may appeal to the Deputy Commissioner (Appeals) before the 1st day of June, 2000 against such order–

(a) an order against the assessee, where the assessee denies his liability to be assessed under this Act, or an intimation under sub-section (1) or sub- section (IB) of section 143, where the assessee objects to the making of adjustments, or any order of assessment under sub-section (3) of section 143 or section 144, where the assesse objects to the amount of income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed;

(b) an order of assessment, reassessment or recomputation under section 147 or section 150;

(c) an order under section 154 or section 155 having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assesssee under either of the said sections;

(d) an order made under section 163 treating the assessee as the agent of a non-resident;

(e) an order under sub-section (2) or sub-section (3) of section 170;

(f) an order under section 171;

(g) any order under clause (b) of sub-section (1) or under sub-section (2) or sub-section (3) or sub- section (5) of section 185 in respect of any assessment for the assessment year commencing on or before the 1st day of April, 1992;

(h) any order cancelling the registration of a firm under sub-section (1) or under sub-section (2) of section 186 in respect of any assessment for the assessment year commencing on or before the 1st day of April, 1992;

(i) an order under section 201;

(j) an order under section 216 in respect of any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year;

(k) an order under section 237;

(l) an order imposing a penalty under-

(i) section 221, or

(ii) section 271, section 271A, section 271B, section 272A, section 272AA or section 272BB;

(iii) section 272, section 272B or section 273, as they stood immediately before the 1st day of April, 1989, in respect of any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment years.

246A. Appealable orders before Commissioner (Appeals).– (1) Any assessee or any deductor or any collector aggrieved by any of the following orders (whether made before or after the appointed day) may appeal to the Commissioner (Appeals) against–

(a) an order passed by a Joint Commissioner under clause (ii) of sub-section (3) of section 115VP or an order against the assessee where the assessee denies his liability to be assessed under this Act or an intimation under sub-section (1) or sub-section (1B) of section 143 or sub-section (1) of section 200A or sub-section (1) of section 206CB, where the assessee or the deductor or the collector objects to the making of adjustments, or any order of assessment under sub-section (3) of section 143 except an order passed in pursuance of directions of the Dispute Resolution Panel or an order referred to in sub-section (12) of section 144BA or section 144, to the income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed;

(aa)an order of assessment under sub-section (3) of section 115WE or section 115WF, where the assessee, being an employer objects to the value of fringe benefits assessed;

(ab)an order of assessment or reassessment under section 115WG;

(b) an order of assessment, reassessment or recomputation under section 147 except an order passed in pursuance of directions of the Dispute Resolution Panel or an order referred to in sub- section (12) of section 144BA or section 150;

(ba) an order of assessment or reassessment under section 153A except an order passed in pursuance of directions of the Dispute Resolution Panel or an order referred to in sub-section (12) of section 144BA;

(bb)an order of assessment or reassessment under sub-section (3) of section 92CD;

(c) an order made under section 154 or section 155 having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assessee under either of the said sections except of an order referred to in sub- section (12) of section 144BA;

(d) an order made under section 163 treating the assessee as the agent of a non-resident;

(e) an order made under sub-section (2) or sub-section (3) of section 170;

(f) an order made under section 171;

(g) an order made under clause (b) of sub-section (1) or under sub-section (2) or sub-section (3) or sub- section (5) of section 185 in respect of an assessment for the assessment year commencing on or before the 1st day of April, 1992;

(h) an order cancelling the registration of a firm under sub-section (1) or under sub-section (2) of section 186 in respect of any assessment for the assessment year commencing on or before the 1st day of April, 1992, or any earlier assessment year;

(ha) an order made under Section 201;

(hb) an order made under sub-section (6A) of section 206c;

(i) an order made under Section 237;

(j) an order imposing a penalty under–

(A) Section 221; or

(B) Section 271, Section 271A, 271AAA, 271AAB, Section 271F, Section 271FB, Section 272AA or Section 272BB;

(C) Section 272, Section 272b or Section 273, as they stood immediately before the 1st day of April, 1989, in respect of any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment years;

(ja) an order of imposing or enhancing penalty under sub-section (1A) of Section 275;

(k) an order of assessment made by an Assessing Officer under clause (c) of Section 158BC, in respect of search initiated under Section 132 or books of account, other

documents or any assets requisitioned under section 132A on or after the 1st day of January, 1997;

(l) an order imposing a penalty under sub-section (2) of Section 158BFA;

(m) an order imposing a penalty under Section 271B or Section 271BB;

(n) an order made by a Deputy Commissioner imposing a penalty under Section 271C, Section 271CA, Section 271D or Section 271E;

(o) an order made by Deputy Commissioner or a Deputy Director imposing a penalty under Section 272A;

(p) an order made by a Deputy Commissioner imposing a penalty under Section 272AA;

(q) an order imposing a penalty under Chapter XXI;

(r) an order made by an Assessing Officer other than a Deputy Commissioner under the provisions of this Act in the case of such person or class of persons, as the Board may, having regard to the nature of the cases, the complexities involved and other relevant considerations direct.

Explanation– For the purposes of this sub-section, where on or after the 1st day of October, 1998, the post of Deputy Commissioner has been redesignated as Joint Commissioner and the post of Deputy Director has been redesignated as joint Director, the references in this sub-section for "Deputy Commissioner" and "Deputy Director" shall be substituted by "Joint Commissioner" and "Joint Director" respectively.'

…

11. We may now consider kinds of orders or situations that are referred to in Section 246(1)(a) of the Act, which are: -

(i) An order against the assessee, where the assessee denies his liability to be assessed under this Act, or

(ii) An intimation under sub-section (1) or sub-section (1B) of Section 143 where the assessee objects to the making of adjustments, or

(iii) Any order of assessment under sub-section (3) of Section 143 or Section 144, where the assessee objects:-

to the amount of income assessed, or

to the amount of tax determined,

or to the amount of loss computed, or

to the status under which he is assessed.

The contingencies detailed in (ii) and (iii) hereinabove arise out of assessment proceedings under Section 143 or Section 144 of the Act but the first contingency is a standalone postulate and is not dependant purely on the assessment proceedings either under Section 143 or Section 144 of the Act. The expression "denies his liability to be assessed" as held by this Court in Kanpur Coal Syndicate1 is quite comprehensive to take within its fold every case where the assessee denies his liability to be assessed under the Act.

…

13. If the submission of the appellant is accepted and the concerned expression as stated hereinabove in Section 246(1)(a) or in Section 246A(1)(a) is to be considered as relatable to the liability of an assessee to be assessed under Section 143(3) as contended, there would be no appellate remedy in case of any determination under Section 115QA. The issues may arise not just confined to the question whether the company is liable at all but may also relate to other facets including the extent of liability and also with regard to computation. If the submission is accepted, every time the dispute will be required to be taken up in proceedings such as a petition under Article 226 of the Constitution, which normally would not be entertained in case of any disputed questions of fact or concerning factual aspects of the matter. The assessee may thus, not only lose a remedy of having the matter considered on factual facets of the matter but would also stand deprived of regular channels of challenges available to it under the hierarchy of fora available under the Act.

14. We, therefore, reject the submissions advanced by the appellant and hold that an appeal would be maintainable against the determination of liability under Section 115QA of the Act.

15. We now turn to the question whether the High Court was justified in refusing to entertain the writ petition because of availability of adequate appellate remedy. The law on the point is very clear and was summarised in Commissioner of Income Tax and others v. Chhabil Dass Agarwal2 as under:-

> '11. Before discussing the fact proposition, we would notice the principle of law as laid down by this Court. It is settled law that non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of the High Court to grant relief under Article 226 despite the existence of an alternative remedy. However, the High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same unless he has made out

an exceptional case warranting such interference or there exist sufficient grounds to invoke the extraordinary jurisdiction under Article 226.

12. The Constitution Benches of this Court in K.S. Rashid and Son v. Income Tax Investigation Commission7, Sangram Singh v. Election Tribunal8, Union of India v. T.R. Varma9, State of U.P. v. Mohd. Nooh3 and K.S. Venkataraman and Co. (P) Ltd. v. State of Madras10 have held that though Article 226 confers very wide powers in the matter of issuing writs on the High Court, the remedy of writ is absolutely discretionary in character. If the High Court is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere, it can refuse to exercise its jurisdiction. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of the principles of natural justice or the procedure required for decision has not been adopted.

…

15. Thus, while it can be said that this Court has recognized some exceptions to the rule of alternative remedy i.e. where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case22, Titaghur Paper Mills case4 and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.'

Recently, in Authorised Officer, State Bank of Travancore & Anr. v. Mathew K.C. MANU/SC/0054/2018: (2018) 3 SCC 85, the principles laid down in Chhabil Dass Agarwal MANU/SC/0802/2013: (2014) 1 SCC 603 were reiterated as under:

'The discretionary jurisdiction under Article 226 is not absolute but has to be exercised judiciously in the given facts of a case and in accordance with law. The normal rule is that a writ petition under Article 226 of the Constitution ought not to be entertained if alternate statutory remedies are available, except in cases falling within the well-defined exceptions as observed in CIT v. Chhabil Dass Agarwal 2 …'

16. We do not, therefore, find any infirmity in the approach adopted by the High Court in refusing to entertain the Writ Petition. The submission that once the threshold was crossed despite the preliminary objection being raised, the High Court ought not to have considered the issue regarding alternate remedy, may not be correct. The first order dated 25.01.2017 passed by the High Court did record the preliminary objection but was prima facie of the view that the transactions defined in Section 115QA were initially confined only to those covered by Section 77A of the Companies Act. Therefore, without rejecting the preliminary objection, notice was issued in the matter. The subsequent order undoubtedly made the earlier interim order absolute. However, the preliminary objection having not been dealt with and disposed of, the matter was still at large.

In State of U.P. v. U.P. Rajya Khanij Vikas Nigam Sangharsh Samiti and others, MANU/SC/7603/2008: (2008) 12 SCC 675, this Court dealt with an issue whether after admission, the Writ Petition could not be dismissed on the ground of alternate remedy. The submission was considered by this Court as under:

> '38. With respect to the learned Judge, it is neither the legal position nor such a proposition has been laid down in Suresh Chandra Tewari that once a petition is admitted, it cannot be dismissed on the ground of alternative remedy. It is no doubt correct that in the headnote of All India Reporter (p. 331), it is stated that "petition cannot be rejected on the ground of availability of alternative remedy of filing appeal". But it has not been so held in the actual decision of the Court. The relevant para 2 of the decision reads thus: (Suresh Chandra Tewari case, AIR p. 331)'
>
> '2. At the time of hearing of this petition a threshold question, as to its maintainability was raised on the ground that the impugned order was an appealable one and, therefore, before approaching this Court the petitioner should have approached the appellate authority. Though there is much substance in the above contention, we do not feel inclined to reject this petition on the ground of alternative remedy having regard to the fact that the petition has been entertained and an interim order passed.'

Even otherwise, the learned Judge was not right in law. True it is that issuance of rule nisi or passing of interim orders is a relevant consideration for not dismissing a petition if it appears to the High Court that the matter could be decided by a writ court. It has been so held even by this Court in several cases that even if alternative remedy is available, it cannot be held that a writ petition is not maintainable. In our judgment, however, it cannot be laid down as a proposition of law that once a petition is admitted, it could never be dismissed on the ground of alternative remedy. If such bald contention is upheld, even this Court cannot order dismissal of a writ petition which ought not to have been entertained by the High Court under Article 226 of the Constitution in view of availability of alternative and equally efficacious remedy to the aggrieved party, once the High Court

has entertained a writ petition albeit wrongly and granted the relief to the petitioner.

17. We do not, therefore, find any error in the approach of and conclusion arrived at by the High Court. It is relevant to mention that the concessions given on behalf of the Revenue as recorded in the directions issued by the High Court also take care of matters of prejudice, if any. Consequently, the appellant, as a matter of fact, will have a fuller, adequate and efficacious remedy by way of appeal before the appellate authority."

ii.) '(2014) 1 SCC 603 titled Commissioner of Income Tax & Ors. v. Chhabil Dass Agarwal'-Paragraph Nos. 11, 16 & 17, which read as under:

"11. Before discussing the fact proposition, we would notice the principle of law as laid down by this Court. It is settled law that non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of the High Court to grant relief under Article 226 despite the existence of an alternative remedy. However, the High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same unless he has made out an exceptional case warranting such interference or there exist sufficient grounds to invoke the extraordinary jurisdiction under Article 226.

…

16. In the instant case, the Act provides complete machinery for the assessment/re-assessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the assessee could not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of Income Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In Ram and Shyam Co. vs. State of Haryana, (1985) 3 SCC 267 this Court has noticed that if an appeal is from "Caesar to Caesar's wife" the existence of alternative remedy would be a mirage and an exercise in futility.

17. In the instant case, neither has the assessee-writ petitioner described the available alternate remedy under the Act as ineffectual and non-efficacious while invoking the writ jurisdiction of the High Court nor has the High Court ascribed cogent and satisfactory reasons to have

> exercised its jurisdiction in the facts of instant case. In light of the same, we are of the considered opinion that the writ court ought not to have entertained the writ petition filed by the assessee, wherein he has only questioned the correctness or otherwise of the notices issued under Section 148 of the Act, the reassessment orders passed and the consequential demand notices issued thereon."

31. Per contra, the argument of the learned Senior Counsel for the Petitioners, in this connection, is that the Petitioners deny their liability to be assessed under the Act of 2015 as the foreign asset does not come within the contours of the income to be charged to tax. Mr Chidambaram has argued that from the contents of the impugned assessment orders and the notices of demand, it is quite clear that the cases of the present Petitioners do not come within the import and purport of the provisions of the Act of 2015, inasmuch as, there is no allegation or finding therein that the purported undisclosed foreign asset was acquired from income chargeable to tax under the Act of 1961. It is urged that there is no denial of the pleading that the Late Mujeeb Mir was always a Non-Resident Indian, had income outside India not liable to tax under the Act of 1961 and had acquired the foreign asset (shares and bank account) out of such income. It is submitted that, as the foreign asset was acquired out of income not taxable in India, the Act of 2015 will not apply and, thus the Respondent No.3 had no jurisdiction to initiate proceedings against the Petitioners under the provisions of the Act of 2015. The learned Senior Counsel has also pleaded that the construction and interpretation of a statute is within the exclusive jurisdiction of a Court and that the provisions of Statement of Objections and Reasons and Sections 2(2)(a), Section 2(11),

Section 2(15), Section 3, Section 4, Section 59 and Section 60 have to be read together in order to appreciate the scope and extent of the Act of 2015 which, if so read, make it apparent that the undisclosed foreign asset contemplated under the Act is an asset located outside India and acquired from income chargeable to tax under the Act of 1961. It is, in this regard, submitted that in the present case no undisclosed foreign asset was located outside India on 1st of April, 2016 nor such asset was held by the Petitioners on 1st of April, 2016. Reference, in support of these arguments, is made to the law laid down by Hon'ble the Supreme Court in the following cases:

i.) '(1991) 4 SCC 699-Sub-Committee on Judicial Accountability v. Union of India & Ors.'-Paragraph No.121, which is reproduced hereinbelow:

> "121. On the first point there is and should be no difficulty. The interpretation of the law declared by this court that a motion under section 3(2) of the Judges (inquiry) Act, 1968, does not lapse upon the dissolution of the House is a binding declaration. No argument based on an assumption that the House would act in violation of the law need be entertained. If the law is that the motion does not lapse, it is erroneous to assume that the Houses of Parliament would act in violation of the law. The interpretation of the law is within the exclusive power of the courts."

ii. '(2013) 7 SCC 629-Manga alias Man Singh v. State of Uttarakhand'-Paragraph Nos. 40, 41 and 42, which read thus:

> "40. With that we come to the main question as to the interpretation to be given to Section 141 'third', read along with Section 149, IPC. In the forefront, we wish to highlight the extent of power of this Court in the matter of interpretation of words in the provision of a statute. In this context, at the outset, we wish to quote the words of Justice G.P. Singh in the celebrated book on 'Principles of Statutory Interpretation', where the learned author in

Chapter II under the caption 'Guiding Rules' in sub- para 1(d) stated as under, under the caption 'Departure from rule':-

'(d) Departure from the rule

In discharging its interpretative function, the Court can correct obvious drafting errors and so in suitable cases "the court will add words, or omit words or substitute words". But "before interpreting a statute in this way the Court must be abundantly sure of three matters: (1) the intended purpose of the statute or provision in question, (2) that by inadvertence the draftsman and Parliament failed to give effect to that purpose in the provision in question; and (3) the substance of the provision Parliament would have made, although not necessarily the precise words Parliament would have used, had the error in the Bill been noticed." Sometimes even when these conditions are satisfied, the court may find itself inhibited from interpreting the statutory provision in accordance with underlying intention of Parliament, e.g. when the alteration in language is too far reaching or too big or when the subject matter calls for strict interpretation such as a penal provision.'

41. In the decision of this Court reported in Surjit Singh Kalra v. Union of India and another - 1991 (2) SCC 87, while laying down the principle of purposive construction to be adopted by Courts, it has been held as under in paragraph 19:

> '19. True it is not permissible to read words in a statute which are not there, but "where the alternative lies between either supplying by implication words which appear to have been accidentally omitted, or adopting a construction which deprives certain existing words of all meaning, it is permissible to supply the words" (Craies Statute Law, 7th edn., p. 109). Similar are the observations in Hameedia Hardware Stores v. B. Mohan Lal Sowcar where it was observed that the court construing a provision should not easily read into it words which have not been expressly enacted but having regard to the context in which a provision appears and the object of the statute in which the said provision is enacted the court should construe it in a harmonious way to make it meaningful. An attempt must always be made so to reconcile the relevant provisions as to advance the remedy intended by the statute. (See: Sirajul Haq Khan v. Sunni Central Board of Waqf.)'

42. The principle statute in Maxwell's Interpretation of Statutes under the Chapter "Exceptional Construction" is also relevant, which was applied in one of the judgments of this Court reported in Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd, 2008 (4) SCC 755. The said principle has been extracted in para 53 of the said judgment, which reads as under:-

> '53. In the chapter on "Exceptional Construction" in his book on Interpretation of Statutes, Maxwell writes:

> WHERE the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, by altering their collocation, by rejecting them altogether, or by interpolating other words, under the influence, no doubt, of an irresistible conviction that the legislature could not possibly have intended what its words signify, and that the modifications thus made are mere corrections of careless language and really give the true meaning.' "

32. Having noted the above arguments of the parties *qua* the issue of maintainability of the present Petitions before this Court, let us now first note the concerned sections in the Act of 2015 dealing with the appellate remedy and provisions touching upon exercise of such right of appeal. Sections 15 and 17 of the Act, being relevant in this behalf, are extracted hereunder:

> **"15. Appeals to the Commissioner (Appeals)**— (1) Any person,— (a) objecting to the amount of tax on undisclosed foreign income and asset for which he is assessed by the Assessing Officer; or (b) denying his liability to be assessed under this Act; or (c) objecting to any penalty imposed by the Assessing Officer; or (d) objecting to an order of rectification having the effect of enhancing the assessment or reducing the refund; or (e) objecting to an order refusing to allow the claim made by the assesse for a rectification under Section 12, may appeal to the Commissioner (Appeals).
>
> (2) Every appeal shall be filed in such form and verified in such manner and be accompanied by a fee as may be prescribed.
> (3) An appeal shall be presented within a period of thirty days from—
>
> a. The date of service of the notice of demand relating to the assessment or penalty; or
>
> b. The date on which the intimation of the order sought to be appealed against is served in any other case.

(4) The Commissioner (Appeals) may admit an appeal after the expiration of the period referred to in sub-section (3)—

a. If he is satisfied that the appellant had sufficient cause for not presenting it within that period; and

b. The delay in preferring the appeal does not exceed a period of one year.

(5) The Commissioner (Appeals) shall hear and determine the appeal and, subject to the provisions of this Act, pass such orders as he thinks fit and such orders may include an order enhancing the assessment or penalty;

Provided that an order enhancing the assessment or penalty shall not be made unless the assesse has been given a reasonable opportunity of being heard.

17. Powers of Commissioner (Appeals)— (1) In disposing of an appeal, the Commissioner (Appeals) shall have the following powers, namely—

a. In an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment;

b. In an appeal against an order imposing a penalty, he may confirm or cancel or vary such order either to enhance or reduce the penalty;

c. In any other case, he may determine the issues arising in the appeal and pass such orders thereon, as he thinks fit.

(2) The Commissioner (Appeals) may consider and decide any matter which was not considered by the Assessing Officer.

(3) The Commissioner (Appeals) shall not enhance an assessment or a penalty unless the appellant has been given an opportunity of being heard.

(4) In disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before him by the appellant."

Section 15 (1) (b) and (c) clearly stipulate that any person denying his liability to be assessed under the Act of 2015 or objecting to any penalty imposed by the Assessing Officer may appeal to the Commissioner of Appeals. Furthermore, Section 17 (1), which deals with the powers of the

Commissioner of Appeals, envisages that the Commissioner of Appeals has the power in an appeal against an order of assessment to confirm, reduce, enhance or annul the assessment, besides he may also consider and decide any matter which was not considered by the Assessing Officer. In the case in hand, admittedly, the Petitioners deny their liability to be assessed under the Act of 2015 with reference to the foreign asset having been acquired by them out of income not taxable in India. The Petitioners, in their pleadings before this Court, have not only averred that they not liable to be assessed under the Act of 2015, but they have also questioned the various factual aspects of the matter *qua* computation of the income and tax payable by the Assessing Officer. If these submissions of the Petitioners are accepted by this Court while exercising powers under Article 226 of the Constitution, every time the factual aspects/ disputes will be required to be taken up in proceedings such as a Petition filed under Article 226 of the Constitution which normally would not be entertained in case of any questions of fact. The assesse may thus, not only lose a remedy of having the matter considered on factual facets of the matter, but would also stand deprived of regular channels of challenges available to it under the hierarchy of fora available under the scheme of the Act. The discretionary jurisdiction under Article 226 is not absolute but has to be exercised judiciously in the given facts and circumstances of a particular case and in tune with the mandate of law. True it is that the Courts have recognized some exceptions to the rule of alternate remedy, i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in

question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition of law that the High Court will not entertain a Petition under Article 226 of the Constitution if an effective alternate remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. In that context, when a statutory forum is created by law for redressal of grievances, a Writ Petition cannot be entertained ignoring the statutory dispensation. We are fortified in taking this view by the law laid down by Hon'ble the Supreme Court in case reported as **'(2020) 268 TAXMAN 299 (SC)'** titled '**Genpact India Private Limited v. Deputy Commissioner of Income Tax and Ors**.', as referred to and relied upon by the learned Counsel representing the Respondent Nos. 2 and 3.

33. Apart from the above perspective, the Act of 2015 provides complete machinery for the person aggrieved of any action taken by the Assessing Officer and the said person could not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had the adequate remedy open to him by way of an appeal to the Commissioner of Appeals. The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In the present case, neither have the Petitioners described the available

alternate remedy under the Act of 2015 as ineffectual and non-efficacious while invoking the Writ jurisdiction of this Court nor have they ascribed cogent and satisfactory reasons before the Court so as to enable it to exercise jurisdiction under Article 226 of the Constitution in tune with the facts and circumstances of the case. All the contentions of the Petitioners, as raised in these Petitions, including the issue of jurisdiction, applicability or otherwise of the act, can very conveniently be dealt with by the Appellate Authority in tune with the mandate of Sections 15 and 17 of the Act of 2015. Reference, in this behalf, can be had to the law laid down by the Hon'ble Apex Court in case titled **'Commissioner of Income Tax & Ors. v. Chhabil Dass Agarwal'** reported as '**(2014) 1 SCC 603'**, as cited by the learned Counsel representing the Respondent Nos. 2 and 3.

34. At this point, we must note that the view taken by the Hon'ble Supreme Court in the cases reference whereof is made by the learned Senior Counsel for the Petitioners is distinguishable, both on facts as well as law, as such, not applicable to the facts and circumstances of the present case.

vii. Conclusion:

35. For all that has been said and discussed hereinabove, we declare that these Writ Petitions are not maintainable before this Court in view of the efficacious and statutory remedy of appeal being available to the Petitioners in terms of the mandate of Sections 15 and 17 of the Act of 2015.

Accordingly, the preliminary objection raised by the Respondents with regard to the maintainability of these Petitions before this Court sustains, as a sequel thereto, all these Petitions shall stand **dismissed**. This shall also dispose of any pending miscellaneous application(s) accordingly.

36. We, however, having regard to the fact that the Petitioners have been *bonafidely* pursuing their claim before this Court by filing these Writ Petitions under Article 226 of the Constitution at the relevant point of time and, admittedly, the decision in these Writ Petitions has consumed more than one year, grant liberty to the Petitioners to avail the aforesaid statutory remedy of appeal against the proceedings initiated against them by the Respondent No.3, including the show cause notices, assessment orders, penalty notices, demand notices, within one month from the date of announcement of this Judgment. In the event any such appeal/s is/ are filed before the appellate authority within the time so granted by this Court in accordance with the mandate of the Act of 2015, the appellate authority shall consider the same only on merits without making any reference to the period of limitation and, till then, no punitive action shall be taken against the Petitioners. We also make it clear that the appellate authority shall not get influenced by any observation made by this Court while deciding these Writ Petitions. All the contentions of the parties, on merits, are left open to be gone into and decided by the appellate authority as per law.

37. Registry to place a copy of this Judgment on each connected file.

(Mohd. Akram Chowdhary)
Judge

(Ali Mohammad Magrey)
Judge

SRINAGAR
September 16th, 2022
"TAHIR"

i. Whether the Judgment is reportable? Yes/ No.
ii. Whether the Judgment is speaking? Yes/ No.