

Yash Birla wins first round for 8400 crores demand

In one of the first high-profile cases under the new Black Money law, Yashovardhan Birla has won the first round in his tussle with the Income tax (I-T) department.

The money at stake was Rs. 8,400 crores – comprising Rs. 2,400 crores tax demand and Rs. 6,000 crores penalty – computed from peak balances in multiple offshore accounts of MNC banks like HSBC, Credit Suisse and Barclays. The funds belong to an overseas trust that was set up years ago by Birla's maternal uncle Pratap Malpani who died in 1990. Birla is a beneficiary of the trust.

The IT Appellate Tribunal (ITAT), a quasi-judicial body, on Monday upheld Birla's appeal against the decision of the Commissioner of IT (Appeals). CIT (Appeals), with which lies the first level of appeals in tax administration, had endorsed the notice that the IT department had slapped on Birla in 2016.

What drove the ruling in Birla's favor was an earlier tribunal decision that shot down a demand for wealth tax on the same overseas assets. Monday's ruling would have a bearing on other cases relating to inheritance under the harsh Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act which came into force on April 1, 2016.

In upholding Birla's appeal, the ITAT referred to the following facts:

In the wealth tax proceedings, the tribunal had then said Birla was nominated as one of the several beneficiaries of an offshore irrevocable discretionary trust and was not a contributor to the trust structure; that Birla was not a 'substantial owner' of the assets held through the trust and other offshore entities.

Bank accounts in foreign jurisdictions pertaining to offshore entities could not be treated as bank accounts of Birla even though for antimoney laundering purposes he had been declared as 'beneficial owner'.

Birla did not respond to calls and text messages from ET. He was represented before ITAT by Fereshte Sethna, senior partner DMD Advocates; Mithil Chokshi and Priyank Ghia of Chokshi & Chokshi; and Chirag Naik and Munir Merchant of MZM Legal.

According to the ITAT ruling, the "definition of undisclosed asset in the back money act clearly provides that assets created out of income assessed in income tax already shall be excluded. Hence, when the revenue has already assessed these assets under income tax proceeding up to previous Assessment Year and for current assessment year time for filing the return has not expired, assesses plea that the issue of notice is premature is tenable and accordingly we accept the same."

The case pertained to assessment year 2016-17.

According to the I-T department, a former Barclays Singapore employee Nita Shivdasani had assisted Birla in opening some of the offshore accounts while she was with the bank. Deleted emails recovered from her laptop allegedly revealed Birla's control over bank accounts. On the issue of a person being named as 'beneficial owner' of a Swiss bank account, the tribunal pointed out," the Assessing Officer has referred to the names of certain bank accounts and Form-A obtained from banks for establishment of beneficial owner's identity.

Now in this regard it is the contention of learned Counsel of the assessee that declaration of beneficial owner in form A is made for distinct purposes under the Swiss anti money laundering Act. In the submission above it has already been noted that in the aid of Swiss Anti Money Laundering Act, the Swiss Bankers Association has issued a Code of Conduct for Swiss Banks with regard to the exercise of due diligence (CDB Guidelines), wherein model form A is prescribed for the declaration of identity of the beneficial owners. However, as clarified by the Swiss Federal Tax Administration, vide its letter dated 30.6.2015 it does not have application for matters of taxation."