

**BLACK MONEY ACT – RESTRICTION ON SIMULTANEOUS PROCEEDING**  
**UNDER IT ACT AND BML ACT**

The Income Tax Appellate Tribunal (ITAT), Mumbai bench, in its order has examined the definition of ‘undisclosed asset’ in the Black Money (Undisclosed Foreign Income and Assets) and Impositions of Tax Act (**BML Act**) and held that the assets which constitute part of income tax proceedings and have been assessed in such proceedings, then such assets/income shall excluded under the definition of ‘undisclosed income’. The learned Tribunal also held that the doctrine of double prejudice will rescue such assessee who have been subjected to simultaneous proceedings for same assets/income under the two legislations, i.e. Income Tax Act and BML Act.

The judgment was delivered in an appeal preferred against the order of CIT (Appeal) in the case titled as *Yashovardhan Birla v. CIT (A)*<sup>1</sup>, wherein the learned Tribunal allowed the appeal primarily on account of the statutory bar in simultaneous proceedings under the IT Act (wealth tax assessment) and BML Act and also, violation of principles of natural justice, as duly supported by the Hon’ble Supreme Court in *Andaman Timber Industries v. CCE*<sup>2</sup>, as the CIT (A) overlooked the submissions of the present appellant. Further the Tribunal observed that the CIT (A) erred in ignoring the findings of ITAT’s earlier judgement with regard to the same assets and the bank account, under the Wealth Tax Assessment proceedings, wherein it was held that the trust in question was set up the relative and the assessee is not the sole beneficiary of the trust nor the substantial owners of the assets, reliance was placed on the decision of the Hon’ble Supreme Court in *CIT v. Estate of HMM Vikramsinhji of Gondal*<sup>3</sup>. Also, the offshore bank accounts are not of the assessee, even though for the purposes of anti-money laundering he has been declared as beneficial owner. Thereby shifting from the judgment of the earlier observations of the learned Tribunal as it would violated the principle of approbate and reprobate, as held in

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<sup>1</sup> SA No. 61/Mum/2021.

<sup>2</sup> (2016) 15 SCC 785.

<sup>3</sup> (2015) 5 SCC 666.

case of *Suzuki Parasrampuriah Suitings Ltd. v. Official Liquidator of Mahendra Petrochemical Ltd.*<sup>4</sup>. In light of the above reasoning, the appeal was allowed.

The decision of the learned ITAT shall be a rescue to assesseees who have been subject to multiple proceedings under the two aforesaid legislations for the same assets/income, causing violation of doctrine of double prejudice.

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<sup>4</sup> (2018) 10 SCC 707.

<sup>5</sup> Majesty legal is law firm, established in 2013 and aim of the present article is to provide recent legal development. The opinions presented in the article are personal in nature and not to be deemed as legal advice.