INTRODUCTION TO
Prohibition of Benami Property
Transaction Act 1988

AMENDMENTS IN 2016

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All India Law – 72 section

Received assent of the President on the 10-8-2016

Notification that Act will come into Force from 1-11-2016

Authorities/Tribunal as under PMLA appointed on 1-11-16
The Prohibition of Benami Property Transactions Rules, 2016 come into force on 1-11-16
HISTORY
Earlier 1988 Benami Transaction
Prohibition Act – 9 Sections
No Rules for 28 years
Implementation, acquisition procedures not strong
Not one case in 28 yrs
AMENDMENT IN 2016

Why amendment after 28 years &
Why not new Act ??

Article 20 of Constitution – penal provision cannot be retrospective

No acquisition now ...but even no penal action could be taken - Hence
AMENDMENT IN 2016

If new Law would have been enacted in 2016 & Old Law repealed then all Benami violations in last 28 years would have been condoned

Hence only amendments done
Sec.3 - Prohibition,
Sec.5 - Confiscation &
Sec.8 – Adj Auth from 1-11-16
Rest all sections applicable from 19-5-1988
Corruption – Heavy Taxes/Compliance – Crime Lead to Black Money
Lead to Money Laundering And to Benami Transactions
DOES IT CLASH WITH PMLA

Money Laundering - Proceeds of crime arising from Scheduled offences of about 29 laws & Benami Act is not only related to property from proceeds of crime

Both will work in tandem
Offence of Money Laundering

Whosoever directly or indirectly attempts to indulge in OR knowingly assists OR knowingly is a party OR is actually involved in any Process OR activity connected with the Proceedings of crime AND projecting it as Untainted property, shall be guilty of Money laundering
Money laundering is carried out in 3 stages:
- Placement
- Layering
- Integration

Money laundering is in fact a new kind of Benami Transaction.
Benami Act not applicable to Jammu & Kashmir
Govt can exempt Charitable/religious trust from Benami Act u/s 58
Sec. 3

NO PERSON SHALL ENTER INTO BENAMI TRANSACTION ….ELSE OLD OFFENCES (19-5-88 TO 1-11-16) - JAIL UPTO 3 YRS OR FINE AFTER 1-11-16 – JAIL FROM 1 TO 7 YRS & FINE UPTO 25% OF FMV Sec 53
Sec. 3(1) – No person shall enter into any benami transaction
Sec. 3(2) – Whoever enters into any benami transaction shall be punishable for max 3 yrs or with fine or both any benami transaction
Sec. 3(3) rws 63 – Whoever enters into any benami transaction after 1-11-16 shall be punishable for min 1 to max 7 yrs & fine
Sec.4
REAL OWNER OR ON HIS BEHALF ANYONE, CANNOT FILE SUIT OR ANY ACTION / CLAIM AGAINST BENAMIDAR OR ANY OTHER PERSON, NOR CLAIM ANY DEFENCE
Sec. 5

ANY PROPERTY BEING SUBJECT MATTER OF BENAMI TRANSACTION WILL BE CONFISCATED BY GOVT NO COMPENSATION
Sec.6

BENAMIDAR CANNOT RE-TRANSFER PROPERTY BACK TO REAL OWNER OR ON HIS BEHALF TO ANYONE
Property means assets of any kind whether movable or immovable, tangible or intangible, corporeal or incorporeal and includes any right or interest or legal documents or instruments evidencing title to or interest in the property & where the property is capable of conversion into some other form, then the property in the converted form & also includes the proceeds from the property.
BENAMIDAR Sec. 2(10)
Means any a Person or Fictitious person in whose name the property is transferred or held & includes a person who lends his name
BENAMI PROPERTY Sec. 2(8)
Means any Property which is the subject matter of a Benami Transaction & includes proceeds from such a property
TRANSFER Sec. 2(29)

Includes Sale, Purchase, or any other form of transfer of right, title, possession or lien – Valuation not relevant
Sec 2(9)(A) - Benami Transaction means a transaction or an arrangement where a property is transferred to or is held by, a person AND the consideration for such property has been provided/paid by, another person AND the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration.
FOLLOWING NOT A BENAMI TRANSACTION

Property held by a Karta or a member of a HUF & the property is held for his benefit or the benefit of other members in the family & the consideration for such property has been provided or paid out of the known sources of income of the HUF;

Property held by a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner, director of a company, a depository or a participant and any other person as may be notified by the Central Government for this purpose
FOLLOWING NOT A BENAMI TRANSACTION

Property held by an Individual in the name of his spouse or in the name of his child & the consideration for such property has been provided/paid out of the known sources of income of the Individual
FOLLOWING NOT A BENAMI TRANSACTION
Property held by any person in the name of his brother or sister or lineal ascendant or descendant, where the names of brother or sister or lineal ascendant or descendant and the individual **appear as joint-owners in any document** & the consideration for such property has been provided or paid out of the **known sources of income of the individual**
FOLLOWING NOT A BENAMI TRANSACTION

Any transaction under Sec 53A of Transfer of Property Act 1882 if:
Consideration given by buyer though possession still by seller
Stamp duty & Registration done
ANALYSIS OF POA DEALS - 53A

Mr. A buys property from Mr. B (owner) such that A takes POA from B and pays B consideration. Physical possession with A but property still in name of B.

Sec 53A of TOP Act 1882
Benami Transaction

(B). A transaction or an arrangement in respect of a property carried out or made in a fictitious name

(C). A transaction or an arrangement in respect of a property where the owner of the property is not aware of, or, denies knowledge of such ownership

(D). A transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious
Sec. 106 – When any fact is especially in the knowledge of any person, the burden of proving that fact is upon him.

Sec. 107 - When the question is whether a man is alive or dead and it is shown that he was alive within 30 years, the burden of proving that he is dead is on the person who affirms it.

Sec. 108 – Provided that when the question is whether a man is alive or dead and it is proved that he has not been heard of for 7 years by those near to him, the burden of proving that he is alive is shifted on the person who affirms it.
POWER OF ATTORNEY

&

BENAMI TRANSACTIONS
X giving Rs.2 lacs cash to B to deposit in B's a/c so as to return it back later to X

X buying a car with his money, in the name of his cousin brother, but for X's use
X buying a flat in the name of his Nana, Mama, chacha, with his (X's) funds - & sons wife

X investing in IPO with his funds, but in name of his brother and shares come to sole demat a/c of brother
Mrs. X states in search u/s 132 that she does not know about any Residential flat (or some assets) in her name

Memory issues
Mr. X issues a cheque directly from his a/c to buy something in name of Mr. Y. Will it be benami??
Intention of the person paying the consideration is extremely vital to determine Benami effects
Bank issues cheque directly to seller of house, as home loan for Mr. X in who's name house is bought. Is it benami??
Initiating Officer – ACIT/DCIT
Approving Authority – JCIT
Adjudicating Authority – CIT & Joint Secretary to Govt of India – Benches – As per PMLA 1-11-16
Administrator – TRO from 1-11-16
Appellate Tribunal - PMLA Benches
The Authorities shall have all the powers vested in a civil court under CPC (Code of Civil Procedure) while trying a suit with respect to discovery and inspection, Enforcing the attendance of any person, For examination under oath, compelling Production of books of accounts/documents, issuing commission, receiving Evidences on affidavits & for any other Prescribed matters.
Sec. 23 - IO has, after obtaining approval of Approving Authority JCIT, power to conduct any inquiry or investigation regarding any person, place, document, property, in respect of any relevant matters under this Act
Sec. 24 - Initiating Officer ACIT/DCIT, on the basis of material in his possession, has reason to believe that any person is a benamidar in respect of a property, he may, after recording reasons in writing, issue/serve a SCN to the person why the property should not be treated as benami property. Notice also to Beneficial owner if known
Sec. 24 - IO can **provisionally** attach with permission of Approving Authority JCIT - Else after inquiries & in 90 days of notice either **continue** attachment or release.

Then IO refers case to Adjudication Authority in 15 days from **continuation** of attachment
Sec. 26 - Notice issued by Adj Auth AA in 30 days of reference by IO
-to a benamidar,
-to a beneficial owner,
-any interested party
-any person who made a claim in respect of the property – Reply to be given in 30 days
Endeavour - Notice to be served on all persons holding the property
Adj Authority will issue notice, give opportunity, appreciate evidence, hear all concerned & then pass orders u/s 26(3) treating it as Benami property or Not. Such order will be passed in 1 year. Any new property can be pulled up. AA can strike out names.
Adj Authority will pass order u/s 26(3) confiscating or releasing property – For confiscation procedure prescribed – Rule 6 Management with Administrator TRO-1 – Take possession in 7 days Title goes to Govt free from encumbrances
Sec. 27(2) - Nothing contained herein will apply to a property held or acquired by a person from the benamidar for adequate consideration, prior to the issue of notice by IO u/s 24 without buyer having knowledge of the benami transaction – Read Sec 57
Any right of any third person created in such property with a view to defeat the purposes of this Act shall be null and void.

Administrator (TRO) then takes possession of the property unless appeal to Tribunal filed.
Appellate Tribunal - Sec 30-48
Not bound by CPC but powers of CPC – Natural Justice – Evidence on Affidavits – Review of decisions (Sec.113 of CPC)
Aggrieved person or IO can file appeal in 45 days of AA order
Appellate Tribunal

Chairperson

2 members -

Judicial Member

Administrative Member
Sec 48 - Authorised Representatives to appear before tribunal includes; any employee, banker, person who has passed any accountancy examination recognised in this behalf by the CBDT or any Practising Advocate or as prescribed
Sec. 49 - Appeal to the High Court - within 60 days, Qts of law

Sec. 50 - Special Court for offences – Cr PC applies
Prosecution – CBDT permission

Sec. 55
Sec. 53 – Prosecution on Benami transaction ONLY if defeating any law, or avoid payment of Statutory dues or payment to creditors. Benamidadar, owner, abets inducing Min 1 yr to 7 yrs + Fine upto 25% FMV
Sec. 54 – Giving false info or false docs.
Min not less 6 months to 5 yrs
+ Fine uptil 10% FMV
Nothing in the act can render any Person liable to punishment if he proves that the contravention Took place without his knowledge.

Notwithstanding anything in the Code of Criminal Procedure, 1973 an Offence under this Act shall be Non-cognizable (Sec. 61)
Sec. 45
No Civil Court shall have jurisdiction in matters concerning authorities & no injunction by such courts
Sec. 58 The Central Government may, by notification, exempt any property relating to charitable or religious trusts from the operation of this Act - NONE
CS may evidently find this to be a good area of practice
The Provision of Benami Act is in addition to and not in derogation to other laws. This Act shall have effect notwithstanding anything inconsistent in any other laws Proceedings to continue or to be intiated against legal heirs (No Jail)
Benami transaction is different from fraudulent transaction because in the case of Benami transaction there is no transaction at all, but in the case of the fraudulent transaction there is transaction but that is a result of a conspiracy.
GAAR ( > 3 crs Tax effect )

The CBDT has issued Notification dated 22-6-16 to clarify the law on the retrospective applicability of the anti-avoidance GAAR rule. The Notification provides that GAAR will not apply to income earned/received by any person from transfer of investments made before 1st April 2017. Earlier, this date was 30-8-2010.

Rule 10U(2) also has been amended to provide that GAAR will apply to any arrangement, irrespective of date, if tax benefit is obtained on or after 1st April 2017. Earlier, this date was 1st April 2015.
Thank You

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