

# PROHIBITION OF BENAMI PROPERTY TRANSACTION ACT, 1988

As amended by Benami Transactions  
(Prohibition) Amendment Act, 2016

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**The provisions of the Amendment Act has come into force on **1st November, 2016**. After coming into effect of the Amendment Act, the existing Benami Transactions (Prohibition) Act, 1988 has been renamed as Prohibition of Benami Property Transactions Act, 1988 (PBPT Act).**

# HISTORY

**EARLIER 1988 BENAMI TRANSACTION PROHIBITION ACT – 9**

**SECTIONS**

**NO RULES FOR 28 YEARS**

**IMPLEMENTATION, ACQUISITION PROCEDURES NOT**

**STRONG**

# AMENDMENT IN 2016

## Why amendment after 28 years & why not new act ??

- Article 20 of Constitution – penal provision can't be retrospective
- If new law would have been enacted in 2016 & old law repealed, then all benami violations in last 28 years would have been condoned.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.

# DOES IT CLASH WITH PMLA, 2002?

- 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.

# PURPOSE OF THE ACT

- To prohibit benami transactions and the right to recover property held benami and for matters connected therewith or incidental thereto.
- Curtail black money transactions & money laundering.
- Check on corruption and unaccounted wealth.

# Benami Property Transactions Act

# Now in Action

effective from 1<sup>st</sup> November, 2016



## Do not enter into Benami Transactions

### Salient features of the PROHIBITION of BENAMI PROPERTY TRANSACTIONS ACT, 1988:

- The Prohibition of Benami Property Transactions Act, 1988 (Benami Act) came into effect from 01.11.2016.
- Benamidar (in whose name benami property is standing), beneficiary (who actually paid consideration) and persons who abet and induce benami transactions are prosecutable and may face Rigorous Imprisonment up to 7 years besides being liable to pay fine upto 25% of fair market value of benami property.
- Persons who furnish false information to authorities under the Benami Act are prosecutable and may be imprisoned up to 5 years besides being liable to pay fine up to 10% of fair market value of benami property.
- Benami property may be attached and confiscated by the Government.
- These actions are in addition to actions under other laws such as Income-tax Act, 1961.

**Black money is a crime against humanity.**  
**We urge every conscientious citizen to help the Government in eradicating it**

# IMPORTANT DEFINITIONS :

- **BENAMI PROPERTY**: any property which is the subject matter of a benami transaction and also includes the proceeds from such property. [(sec-2(8))]
- **BENAMIDAR**: a person or a fictitious person, as the case may be, in whose name the benami property is transferred or held and includes a person who lends his name. [(sec-2(10))]
- **BENEFICIAL OWNER**: a person, whether his identity is known or not, for whose benefit the benami property is held by a benamidar. He is the person who receives the income for his own use and enjoyment and assumes the risk and control, i.e., the person who enjoys and assumes all attributes of ownership and exercise complete discretion over the disposition of the income. [(sec-2(12))]



# IMPORTANT DEFINITIONS....

- **FIDUCIARY**: The term 'fiduciary' refers to a person having a duty to act for the benefit of another, showing good faith and condour, where such other person resposes trust and special confidence in the person owing or discharging the duty. The term 'fiduciary relationship' is used to describe a situation or transaction where one person (beneficiary) places complete confidence in another person (fiduciary) in regard to his affairs, business or transaction/s. The term also refers to a person who holds a thing in trust for another (beneficiary). The fiduciary is expected to act in confidence and for the benefit and advantage of the beneficiary, and use good faith and fairness in dealing with the beneficiary or the things belonging to the beneficiary. [Central Board of Secondary Education vs Aditya Bandopadhyay & Ors (2011) 8 SCC 497 (SC)]

# IMPORTANT DEFINITIONS....

- **KNOWN SOURCE**: Exception is available if the property held the consideration is provided or paid out of the known sources of the individual. Source means originating cause.
- **CONSIDERATION**: Consideration means something in lieu of or exchange of. Consideration for property must flow from the other person than the ostensible owner. The consideration need not be in cash.

# IMPORTANT DEFINITIONS....

- **BENEFIT**: Another requisite of benami transaction is where the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration. Benefit means any advantage, gain or improvement in condition.
- **FAIR MARKET VALUE**: the price that the property would ordinarily fetch on sale in the open market on the date of the transaction; and where the price is not ascertainable, such price as may be determined in accordance with such manner as may be prescribed. (See Rule-3)

# DETERMINATION OF PRICE IN CERTAIN CASES (RULE- 3)

For the purposes of section 2(16)(ii) of the Act, the price shall be determined in the following manner, namely:—

- the price of unquoted equity shares shall be the higher of,—
  - its cost of acquisition;
  - the fair market value of such equity shares determined, on the date of transaction, by a merchant banker or an accountant as per the Discounted Free Cash Flow method; and
  - the value, on the date of transaction, of such equity shares as determined in the following manner, namely:—
- The fair market value of unquoted equity shares =  $(A+B - L) \times (PV)/(PE)$ .

# DETERMINATION OF PRICE IN CERTAIN CASES.... CONTD...

- **A**= book value of all the assets (other than bullion, jewellery, precious stone, artistic work, shares, securities and immovable property) as reduced by,- (i) any amount of income-tax paid, if any, less the amount of income-tax refund claimed, if any, and (ii) any amount shown as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;
- **B**= the price that the bullion, jewellery, precious stone, artistic work, shares, securities and immovable property would ordinarily fetch on sale in the open market on the date of transaction;
- **L**= book value of liabilities, but not including the following amounts, namely:—
  - the paid-up capital in respect of equity shares;
  - the amount set apart for payment of dividends on preference shares and equity shares;
  - reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;

## DETERMINATION OF PRICE IN CERTAIN CASES....

- any amount representing provision for taxation, other than amount of income-tax paid, if any, less the amount of income-tax claimed as refund, if any, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;
- any amount representing provisions made for meeting liabilities, other than ascertained liabilities;
- any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;
- **PE** = total amount of paid up equity share capital as shown in the balance-sheet;
- **PV** = the paid up value of such equity shares;

# MEANING OF PROPERTY [SEC- 2(26)]

- Assets of any kind, whether movable or immovable, tangible or intangible, corporeal or incorporeal and to include any right or interest or legal documents or instruments evidencing title to or interest in the property and where the property is capable of conversion into some other form, then the property in the converted form and also includes the proceeds from the property.

# MEANING OF PROPERTY....

The Supreme Court in *Jilubhai Nanbhai Khachar vs State of Gujarat*, AIR 1995 SC 142 held:

“Property in legal sense means an aggregate of rights which are guaranteed and protected by law. It extends to every species of valuable right and interest, more particularly, ownership and exclusive right to a thing, the right to dispose of the thing in every legal way, to possess it, to use it and to exclude every one else from interfering with it. The dominion or indefinite right of use or disposition which one may lawfully exercise over particular things or subjects is called property.”



# MEANING OF BENAMI TRANSACTION [SEC- 2(9)]

- A transaction or an arrangement in respect of a property carried out or made in a fictitious name
- 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
- A transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious
- 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 or 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 THE BENAMI TRANSACTIONS:

- 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 THE BENAMI TRANSACTIONS....

- 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.
- 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 descendent 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
- Any transaction under Sec 53A of Transfer of Property Act 1882 if consideration for such property has been provided by the person to whom possession of property has been allowed but the person who has granted possession thereof continues to hold ownership of such property; stamp duty on such transaction or arrangement has been paid; and the contract has been registered.

# SHORT TITLE, EXTENT AND COMMENCEMENT (SEC- 1)

- This Act may be called the Prohibition of Benami Property Transactions Act, 1988
- It extends to the whole of India except the State of Jammu and Kashmir.
- The provisions of **sections 3, 5 and 8** shall come into force on 01.11.2016 and the remaining provisions of this Act shall be deemed to have come into force on 19.05.1988.

# PROHIBITION OF BENAMI TRANSACTIONS (SEC- 3)

- No person shall enter into any benami transaction. [Sec- 3(1)]
- Whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both. [Sec- 3(2)]
- Whoever enters into any benami transaction on and after the date of commencement of the Benami Transactions (Prohibition) Amendment Act, 2016, shall, notwithstanding anything contained in sub-section (2), be punishable in accordance with the provisions contained in **Chapter VII [Offences & Prosecution]**

# PROHIBITION OF BENAMI TRANSACTIONS ....

The Supreme Court in *R.Rajagopal Reddy vs Padmini Chandrasekharan (1995) 2 SCC 630* observed:

“On the express language of Section 3, the Act cannot be said to be declaratory but in substance it is prohibitory in nature and seeks to destroy the rights of the real owner qua properties held benami.”

# PROHIBITION OF RIGHT TO RECOVER PROPERTY HELD BENAMI (SEC- 4)

- No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.
- No defence based on any right in respect of any property held benami, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.

# **PROPERTY HELD BENAMI LIABLE TO CONFISCATION (SEC- 5)**

- Any property, which is subject matter of benami transaction, shall be liable to be confiscated by the Central Government.

# **COMPOSITION OF AUTHORITY (SEC- 8)**

- An Adjudicating Authority shall consist of a Chairperson and at least two other Members.



# PROHIBITION ON RE-TRANSFER OF PROPERTY BY BENAMIDAR (SEC- 6)

- No person, being a benamidar shall re-transfer the benami property held by him to the beneficial owner or any other person acting on his behalf.
- Where any property is re-transferred in contravention of the provisions of sub-section (1), the transaction of such property shall be deemed to be null and void.
- The provisions of sub-sections (1) and (2) shall not apply to a transfer made in accordance with the provisions of section 190 of the Finance Act, 2016.

# ADJUDICATING AUTHORITIES

- The Central Government shall, by notification, appoint one or more Adjudicating Authorities to exercise jurisdiction, powers and authority conferred by or under this Act. (Sec- 7)
- The Central Government appoints the senior most Member as the Chairperson or a Member of the Adjudicating Authority, who has been a member of the Indian Revenue Service and has held the post of CIT or equivalent post in that Service; or has been a member of the Indian Legal Service and has held the post of Joint Secretary or equivalent post in that Service. (Sec- 9)
- The jurisdiction of the adjudicating authority may be exercised by benches, which is be constituted by the chairperson of the adjudicating authority with two members. (Sec-10)

# ADJUDICATING AUTHORITIES....

- The Adjudicating Authority shall have powers to regulate its own procedure. (Sec- 11)
- The Chairperson and Members of the Adjudicating Authority shall hold office for a period of 5 years from the date on which they enter upon their office, or until they attain the age of 62 years, whichever is earlier and shall not be eligible for reappointment. (Sec- 12)
- The salary and allowances payable to, and the other terms and conditions of service of the Chairperson and other Members of the Adjudicating Authority shall be such as may be prescribed. [Sec- 13(1)]
- Any vacancy caused to the office of the Chairperson or any other Member shall be filled up within a period of 3 months from the date on which such vacancy occurs. [Sec- 13(2)]

# ADJUDICATING AUTHORITIES....

- The Central Government may remove the chairperson or other members of the Adjudicating Authority if he has been adjudged as an insolvent; or has been convicted of an offence, involving moral turpitude; or has become physically or mentally incapable of acting as a Member; or has acquired such financial or other interest as is likely to affect prejudicially his functions; or has abused his position as to render his continuance in office, is prejudicial to the public interest. Opportunity of being heard must be provided. (Sec- 14)
- In case of any vacancy in the office of the Chairperson due to his death, resignation or otherwise, the senior most Member shall act as the Chairperson of the Adjudicating Authority until the date on which a new Chairperson, appointed and enters upon his office. In case the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the senior most Member shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties. (Sec-15)

## ADJUDICATING AUTHORITIES....

- The act or proceeding of the Adjudicating Authority shall not be invalid due to any vacancy in, or any defect in the constitution of the Authority or in the appointment of a person acting as a Member of the Authority; or any irregularity in the procedure of the Authority not affecting the merits of the case. (Sec-16)
- The Central Government shall provide each Adjudicating Authority with officers and employees, who shall discharge their functions under the general superintendence of the Chairperson of the Adjudicating Authority. (Sec-17)

# AUTHORITIES AND JURISDICTION (SEC- 18)

- The following shall be the authorities for the purposes of this Act, namely:—
  - The initiating officer
  - The approving authority
  - The administrator
  - The adjudicating authority.
- The authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, assigned, as the case may be, to it under this Act or in accordance with such rules as may be prescribed.

# POWERS OF AUTHORITIES (SEC- 19)

- The authorities shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of the following matters: [Sec- 19(1)]
  - discovery and inspection;
  - enforcing the attendance of any person, including any official of a banking company or a public financial institution or any other intermediary or reporting entity, and examining him on oath;
  - compelling the production of books of account and other documents;
  - issuing commissions;
  - receiving evidence on affidavits; and
  - any other matter which may be prescribed.

# POWERS OF AUTHORITIES....

- All the persons summoned under sub-section (1) shall be bound to attend in person or through authorised agents, as any authority under this Act may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required. [Sec- 19(2)]
- Every proceeding under sub-section (1) or sub-section (2) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code. [Sec- 19(3)]



# POWERS OF AUTHORITIES....

- Any authority under this act may requisition the service of any police officer or of any officer of the Central Government or State Government or of both to assist him for all or any of the purposes specified in sub-section (1), and it shall be the duty of every such officer to comply with the requisition or direction.

[Sec- 19(4)]

- For the purposes of this section, "reporting entity" means any intermediary or any authority or of the Central or the State Government or any other person as may be notified in this behalf. [Sec- 19(5)]

# **CERTAIN OFFICERS TO ASSIST IN INQUIRY, ETC. (SEC- 20)**

The following officers shall assist the authorities in the enforcement of this Act:

- Income-tax authorities appointed u/s 117(1) of the Income-Tax Act, 1961;
- Officers of the customs and central excise departments;
- Officers appointed u/s 5(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985;
- Officers of the stock exchange recognised u/s 4 of the Securities Contracts (Regulation) Act, 1956;
- Officers of the reserve bank of India constituted u/s 3(1) of the Reserve Bank of India Act, 1934;
- Police;

# CERTAIN OFFICERS TO ASSIST IN INQUIRY, ETC....

CONTD...

- Officers of enforcement appointed u/s 36(1) of the Foreign Exchange Management Act, 1999;
- Officers of the securities and exchange board of India established u/s 3 of the Securities and Exchange Board of India Act, 1992;
- Officers of any other body corporate constituted or established under a Central or a State Act; and
- Such other officers of the Central Government, State Government, local authorities or banking companies as the Central Government may, by notification, specify, in this behalf.

# POWER TO CALL FOR INFORMATION (SEC- 21)

- The Initiating Officer or the Approving Authority or the Adjudicating Authority shall have power to require any officer of the Central Government or State Government or a local body or any person or officer who is responsible for registering and maintaining books of account or other documents containing a record of any transaction relating to any property or any other person to furnish any information in relation to any person, point or matter as in his opinion shall be useful for or relevant.
- Every officer or person referred above shall furnish such information to any authority under this act in such form and manner as may be prescribed. (See Rule -4)

# FURNISHING OF INFORMATION (RULE- 4)

For the purpose of sec- 21(2), the Income-Tax Authority referred to in sec- 285BA(1) of Income-tax Act, 1961 or such other authority or agency which is prescribed u/s 285BA(1) shall electronically transmit a copy of statement received by it u/s 285BA(1) of that Act to the Initiating Officer or such authority or agency authorised by the Initiating Officer on or before 15 days from the end of the month in which said statement is received.

# POWER OF AUTHORITY TO IMPOUND DOCUMENTS (SEC- 22)

- Where any books of account or other documents are produced before the authority in any proceedings and the authority in this behalf has reason to believe that any of the books of account or other documents are required to be impounded and retained for any inquiry, it may impound and retain the books of account or other documents for a period not exceeding 3 months from the date of order of attachment made by the Adjudicating Authority u/s 26(3) **Provided** that the period for retention may be extended beyond a period of 3 months but the authority records in writing the reasons for extending the same. [Sec- 22(1)]

# POWER OF AUTHORITY TO IMPOUND DOCUMENTS....

CONTD...

- Where the authority impounding and retaining the books of account or other documents is the Initiating Officer, he shall obtain approval of the Approving Authority within a period of 15 days from the date of initial impounding and seek further approval of the Approving Authority for extending the period of initial retention, before the expiry of the period of initial retention, if so required. [Sec-22(2)]
- The period of retention of the books of account or other documents under subsection (1) shall in no case exceed a period of 30 days from the date of conclusion of all the proceedings. [Sec- 22(3)]

# POWER OF AUTHORITY TO IMPOUND DOCUMENTS....

CONTD...

- The person, from whom the books of account or other documents were impounded under sub-section (1), shall be entitled to obtain copies thereof.

[Sec- 22(4)]

- On the expiry of the period specified under sub-section (1), the books of account or other documents shall be returned to the person from whom such books of account or other documents were impounded unless the approving authority or the adjudicating authority permits their release to any other person. [Sec- 22(5)]



# **POWER OF AUTHORITY TO CONDUCT INQUIRY, ETC (SEC- 23)**

The Initiating Officer, after obtaining prior approval of the Approving Authority, shall have power to conduct or cause to be conducted any inquiry or investigation in respect of any person, place, property, assets, documents, books of account or other documents, in respect of any other relevant matters.

# NOTICE AND ATTACHMENT OF PROPERTY INVOLVED IN BENAMI TRANSACTION (SEC- 24)

- Where the Initiating Officer, 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 a notice to the person to show cause within such time as may be specified in the notice why the property should not be treated as benami property. [Sec- 24(1)]
- Where a notice specifies any property as being held by a benamidar, a copy of the notice shall also be issued to the beneficial owner if his identity is known. [Sec-24(2)]

## NOTICE AND ATTACHMENT OF PROPERTY INVOLVED IN BENAMI TRANSACTION....

- Where the Initiating Officer is of the opinion that the person in possession of the property held benami may alienate the property during the period specified in the notice, he may, with the previous approval of the Approving Authority, by order in writing, attach provisionally the property in the manner as may be prescribed, for a period not exceeding 90 days from the date of issue of notice. [Sec-24(3)] (See Rule- 5)

# PROVISIONAL ATTACHMENT (RULE- 5)

For the purposes of sec- 24(3), the Initiating Officer shall provisionally attach any property in the manner provided in the II<sup>nd</sup> Schedule of Income-tax Act, 1961.

# NOTICE AND ATTACHMENT OF PROPERTY INVOLVED IN BENAMI TRANSACTION....

- The Initiating Officer, after making such inquiries and calling for such reports or evidence as he deems fit and taking into account all relevant materials, shall, within a period of 90 days from the date of issue of notice — pass an order continuing the provisional attachment of the property with the prior approval of the Approving Authority, till the passing of the order by the Adjudicating Authority u/s 26(3) or revoke the provisional attachment of the property with the prior approval of the Approving Authority, where the **provisional attachment has been made** under sub-section (3); **or** pass an order provisionally attaching the property with the prior approval of the Approving Authority, till the passing of the order by the Adjudicating Authority u/s 26(3) or decide not to attach the property as specified in the notice, with the prior approval of the Approving Authority, where **provisional attachment has not been made** under sub-section (3). [Sec-24(4)]

## NOTICE AND ATTACHMENT OF PROPERTY INVOLVED IN BENAMI TRANSACTION....

- Where the Initiating Officer passes an order continuing the provisional attachment of the property or passes an order provisionally attaching the property, he shall, within 15 days from the date of the attachment, draw up a statement of the case and refer it to the Adjudicating Authority. [Sec-24(5)]

# MANNER OF SERVICE OF NOTICE (SEC- 25)

- A notice u/s 24(1) may be served on the person named therein either by post or as if it were a summons issued by a Court under the Code of Civil Procedure, 1908.
- Any notice referred above may be addressed—
  - In case of an Individual, to such individual
  - In the case of a Firm, to the managing partner or the manager of the firm
  - In the case of a HUF, to Karta or any member of such family
  - In the case of a Company, to the principal officer thereof
  - In the case of any other Association or Body of Individuals, to the principal officer or any member thereof
  - In the case of any Other person (not being an individual), to the person who manages or controls his affairs.

# ADJUDICATION OF BENAMI PROPERTY (SEC- 26)

- On receipt of a reference u/s 24(5), the Adjudicating Authority shall issue notice, to furnish such documents, particulars or evidence as is considered necessary on a date to be specified therein, on the following persons — [Sec-26(1)]
  - the person specified as a benamidar therein;
  - any person referred to as the beneficial owner therein or identified as such;
  - any interested party, including a banking company;
  - any person who has made a claim in respect of the property.



# ADJUDICATION OF BENAMI PROPERTY....

**Provided** that the Adjudicating Authority shall issue notice within a period of 30 days from the date on which a reference has been received.

**Provided further** that the notice shall provide a period of not less than thirty days to the person to whom the notice is issued to furnish the information sought.

- Where the property is held jointly by more than one person, the Adjudicating Authority shall make all endeavours to serve notice to all persons holding the property **Provided** that where the notice is served on any one of the persons, the service of notice shall not be invalid on the ground that the said notice was not served to all the persons holding the property. [Sec-26(2)]

# ADJUDICATION OF BENAMI PROPERTY.... CONTD...

- The Adjudicating Authority shall, after considering the reply, if any, to the notice issued under sub-section (1); making or causing to be made such inquiries and calling for such reports or evidence as it deems fit; and taking into account all relevant materials, provide an opportunity of being heard to the person specified as a benamidar therein, the Initiating Officer, and any other person who claims to be the owner of the property, and, thereafter, **pass an order** holding the property not to be a benami property and revoking the attachment order; or holding the property to be a benami property and confirming the attachment order, in all other cases. [Sec-26(3)]
- Where the Adjudicating Authority is satisfied that some part of the properties in respect of which reference has been made to him is benami property, but is not able to specifically identify such part, he shall record a finding to the best of his judgment as to which part of the properties is held benami. [Sec-26(4)]

# ADJUDICATION OF BENAMI PROPERTY....

- Where in the course of proceedings before it, the Adjudicating Authority has reason to believe that a property, other than a property referred to it by the Initiating Officer is benami property, it shall provisionally attach the property and the property shall be deemed to be a property referred to it on the date of receipt of the reference u/s 24(5).

[Sec-26(5)]

- The Adjudicating Authority may, at any stage of the proceedings, either on the application of any party, or suo motu, strike out the name of any party improperly joined or add the name of any person whose presence before the Adjudicating Authority may be necessary to enable him to adjudicate upon and settle all the questions involved in the reference. [Sec-26(6)]

## ADJUDICATION OF BENAMI PROPERTY....

- No order under sub-sec. (3) shall be passed after the expiry of one year from the end of the month in which the reference u/s 24(5) was received. [Sec-26(7)]
- The benamidar or any other person who claims to be the owner of the property may either appear in person or take the assistance of an authorised representative of his choice to present his case. [Sec-26(8)]

## Explanation to sec- 26(8) –

Authorised representative means a person authorised in writing, being—

- a person related to the benamidar or such other person in any manner, or a person regularly employed by the benamidar or such other person as the case may be; or
- any officer of a scheduled bank with which the benamidar or such other person maintains an account or has other regular dealings; or
- any legal practitioner who is entitled to practice in any civil court in India; or
- any person who has passed any accountancy examination recognised in this behalf by the Board; or
- any person who has acquired such educational qualifications as the Board may prescribe for this purpose.

# CONFISCATION AND VESTING OF BENAMI PROPERTY (SEC- 27)

- Where an order is passed in respect of any property u/s 26(3) holding such property to be a benami property, the Adjudicating Authority shall, after giving an opportunity of being heard to the person concerned, make an order confiscating the property held to be a benami property; **Provided** that where an appeal has been filed against the order of the Adjudicating Authority, the confiscation of property shall be made subject to the order passed by the Appellate Tribunal u/s 46; **Provided** further that the confiscation of the property shall be made in accordance with such procedure as may be prescribed. [Sec-27(1)] (See Rule-6)

# CONFISCATION AND VESTING OF BENAMI PROPERTY....

CONTD...

- Nothing in sub-section (1) shall apply to a property held or acquired by a person from the benamidar for adequate consideration, prior to the issue of notice u/s 24(1) without his having knowledge of the benami transaction. [Sec-27(2)]
- Where an order of confiscation has been made under sub-section (1), all the rights and title in such property shall vest absolutely in the Central Government free of all encumbrances and no compensation shall be payable in respect of such confiscation. [Sec-27(3)]
- 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. [Sec-27(4)]
- Where no order of confiscation is made upon the proceedings under this Act attaining finality, no claim shall lie against the Government. [Sec-27(5)]

# CONFISCATION OF PROPERTY UNDER SECOND PROVISO TO SECTION 27 (1) (RULE- 6)

- Where an order of confiscation of property u/s 27(1) has been made, the Adjudicating Authority shall send a copy of the order to the Authorised Officer.
- Where an order referred to in sub-rule (1) has been received by the Authorised Officer in respect of any immovable property, he shall,—
  - forthwith issue notice to the authority of the Central Government or a State Government, as case may be, having jurisdiction for the purposes of registration of such immovable property, intimating about the confiscation of the property;



# CONFISCATION OF PROPERTY UNDER SECOND PROVISO TO SECTION 27 (1) (RULE- 6)....

CONTD...

- arrange to place copy of the notice at some conspicuous part of the immovable property for the benefit of general public mentioning clearly therein, in English and in vernacular language, that the property has been confiscated under the Act and vests absolutely in the Central Government;
- arrange to make a proclamation for the confiscation of immovable property at some place on or near such property by beat of drum or other customary mode.
- Where an order referred to in sub-rule (1) has been received by the Authorised Officer in respect of any movable property, he shall,—
  - forthwith issue a notice to the authority or person having the custody of such movable property informing him about the confiscation of such property; or

# CONFISCATION OF PROPERTY UNDER SECOND PROVISO TO SECTION 27 (1) (RULE- 6)....

- sell the property, if the property is liable to speedy and natural decay or the expenses for maintenance is likely to exceed its value, with the leave of the concerned Adjudicating Authority, and deposit the sale proceeds in the nearest Government Treasury or branch of the State Bank of India or its subsidiaries or in any nationalised bank in fixed deposit and retain the receipt thereof:

**Provided** that where the owner of the property furnishes the fixed deposit receipt of State Bank of India or its subsidiaries or a nationalised bank equivalent to the value of property in the name of Administrator, the authorised officer may accept and retain such fixed deposit receipt as security:

## CONFISCATION OF PROPERTY UNDER SECOND PROVISO TO SECTION 27 (1) (RULE- 6)....

**Provided** further that where the movable property is a mode of conveyance of any description, the authorised officer, after obtaining its valuation report from the Motor Licensing Authority or any other authority, as the case may be, may accept and retain the fixed deposit receipt of State Bank of India or its subsidiaries or a nationalised bank, equivalent to the value of the movable property as security in the name of Administrator;

- cause to deposit the property consisting of cash, Government or other securities or bullion or jewellery or other valuables in a locker in the name of the Administrator or in the form of fixed deposit, as the case may be, in State Bank of India or its subsidiaries or in any nationalised bank and retain the receipt thereof;

## CONFISCATION OF PROPERTY UNDER SECOND PROVISO TO SECTION 27 (1) (RULE- 6)....

- cause to get the property in the form of shares, debentures, units of Mutual Fund or instruments to be transferred in favour of Administrator;
- issue a direction to the bank or financial institution, as the case may be, to transfer and credit the money to the account of the Administrator, where the property is in the form of money lying in a bank or a financial institution.

**Explanation-** For the purposes of this rule, an "**Authorised Officer**" means an Income Tax Officer who is authorised by the Adjudicating Authority in this behalf.

# MANAGEMENT OF PROPERTIES CONFISCATED (SEC- 28)

- The Administrator shall have the power to receive and manage the property, in relation to which an order of confiscation u/s 27(1) has been made, in such manner and subject to such conditions, as may be prescribed. (See Rule- 7 & 8)
- The Central Government may, by order published in the Official Gazette, notify as many of its officers as it thinks fit, to perform the functions of Administrators.
- The Administrator shall also take such measures, as the Central Government may direct, to dispose of the property which is vested in the Central Government u/s 27(3), in such manner and subject to such conditions as may be prescribed. (See Rule- 9)

# **RECEIPT OF CONFISCATED PROPERTY UNDER SUB-SECTION (1) OF SECTION 28 (RULE- 7)**

The Administrator shall, at the time of receiving the confiscated property, ensure proper identification of such property with reference to its particulars mentioned in the order made u/s 27(1).

# MANAGEMENT OF CONFISCATED PROPERTY U/S 28(1) (RULE- 8)

- Where the property confiscated is of such a nature that its removal from the place of attachment is impracticable or its removal involves expenditure out of proportion to the value of the property, the Administrator shall arrange for the proper maintenance and custody of the property at the place of its attachment.
- If the property confiscated consists of cash, Government or other securities, bullion, jewellery or other valuables, the Administrator shall cause to deposit them for safe custody in the nearest Government Treasury or a branch of the Reserve Bank of India or the State Bank of India or its subsidiaries or in any authorised bank.

# MANAGEMENT OF CONFISCATED PROPERTY U/S 28(1) (RULE- 8)....

- The Administrator shall maintain a register containing the details in **Form No. 1** annexed to these rules for recording entries in respect of moveable property, such as cash, Government or other securities, bullion, jewellery or other valuables.
- The Administrator shall obtain a receipt from the Treasury or the bank, as the case may be, against the deposit of moveable properties stated in sub-rule (2).
- The Administrator shall maintain a register containing the details in **Form No. 2** annexed to these rules for recording entries in respect of property other than the properties referred to in sub-rule (2).



# MANAGEMENT OF CONFISCATED PROPERTY U/S 28(1) [RULE- 8(3)]....

CONTD...

## FORM 1

[See rule 8(3)]

### MANAGEMENT OF CONFISCATED PROPERTY REGISTER (MOVEABLE).

Order number:

Date of receipt of properties:

Description of properties (quantity, amount, estimated value):

Name(s) and address(es) of the benamidar and beneficial owner, if his identity is known:

Name and address of the Treasury or bank where the properties are deposited for safe custody:

Date and time of deposit of confiscated properties in the Treasury or bank:

Receipt number with date of the receipt obtained from the Treasury or bank:

Remarks of the Administrator:

(Signature of the Administrator)

Name of the Administrator

Date:

(Seal)

# MANAGEMENT OF CONFISCATED PROPERTY U/S 28(1) [RULE- 8(5)]....

CONTD...

## FORM 2

[See rule 8(5)]

### MANAGEMENT OF CONFISCATED PROPERTY REGISTER (IMMOVEABLE)

Order Number:

Date of receipt of properties:

Description of properties:

(In case of land:- area, survey number, plot number, location and complete address. In case of building: house number, location and complete address)

Name(s) and address(es) of the benamidar and beneficial owner, if his identity is known:

Remarks of the Administrator:

(Signature of the Administrator)

Name of the Administrator

Date:

(Seal)

# **DISPOSAL OF CONFISCATED PROPERTY U/S 28(3) (RULE- 9)**

- Where the Central Government directs that the property vested in it u/s 27(3) be disposed of, then, the administrator shall arrange to dispose of the property in the manner provided in the Second Schedule to the Income-tax Act, 1961.

# POSSESSION OF THE PROPERTY (SEC- 29)

- Where an order of confiscation in respect of a property u/s 27(1), has been made, the Administrator shall proceed to take the possession of the property.
- The Administrator shall, by notice in writing, order within 7 days of the date of the service of notice to any person, who may be in possession of the benami property, to surrender or deliver possession thereof to the Administrator or any other person duly authorised in writing by him in this behalf;
- In the event of non-compliance of the order, or if in his opinion, taking over of immediate possession is warranted, for the purpose of forcibly taking over possession, requisition the service of any police officer to assist him and it shall be the duty of the officer to comply with the requisition.

# APPELLATE TRIBUNAL

- Appeals against the adjudicating authority's decision can be taken to the Appellate Tribunal at New Delhi, which will be established by the Central Government and will consist of one Chairperson and two other members of which one shall be Judicial member and other shall be an Administrative member. The Chairperson can also constitute the benches of Appellate Tribunal.
- The person to be appointed as Chairperson to the Appellate Tribunal must be a sitting or retired judge of a High Court.
- A Judicial member must have been a member of Indian Legal Service and have held the post of Additional Secretary or equivalent in that service and the administrative member must have been a member of Indian Revenue Service and have held the post of Chief CIT or equivalent post.

# APPELLATE TRIBUNAL....

- Any vacancy caused to the office of the Chairperson or any other Member shall be filled up within a period of 3 months from the date on which such vacancy occurs.
- The Chairperson and Members of the Appellate Tribunal shall hold office for a term of 5 years or till 65 years of age, whichever is earlier from the date on which they enter upon their office and shall not be eligible for re-appointment.
- The Central Government shall provide the Appellate Tribunal with such officers and employees who discharge their functions under the general superintendence of the Chairperson.

# APPELLATE TRIBUNAL....

- The Central Government may remove the chairperson or other members if he has been adjudged as an insolvent; or has been convicted of an offence, involving moral turpitude; or has become physically or mentally incapable; or has acquired such financial or other interest as is likely to affect prejudicially his functions; or has abused his position as to render his continuance in office, is prejudicial to the public interest by passing an order after an inquiry made by Chief Justice of the High Court. Opportunity of being heard must be provided. (Sec-35)
- The act or proceeding of the Appellate Tribunal shall not be invalid due to any vacancy in, or any defect in the constitution of the Tribunal or in the appointment of a person acting as a Member of the Authority; or any irregularity in the procedure of the Authority not affecting the merits of the case. (Sec-36)

# APPELLATE TRIBUNAL....

- The Chairperson or any other Member may resign his office by providing notice in writing to the Central Government, **Provided** that he shall continue to hold office until the expiry of 3 months from the date of receipt of the notice or a person is duly appointed enters upon his office or the expiry of his term of office, whichever is earlier, unless he is permitted by the Central Government to relinquish his office sooner. (Sec-37)
- In case of any vacancy in the office of the Chairperson due to his death, resignation or otherwise, the senior most Member shall act as the Chairperson until the date on which a new Chairperson enters upon his office. In case of absence, illness or any other cause, the Chairperson is unable to discharge his functions, the senior most Member shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.(Sec-38)



# APPELLATE TRIBUNAL....

- The Chairperson may make provision as to the distribution of the business of the Appellate Tribunal amongst the Benches and also provide for the matters which may be dealt with by each Bench. (Sec-41)
- The Chairperson of the Appellate Tribunal may transfer any case pending before one Bench to any other Bench for disposal on the application of any of the parties and notice to the parties, and after hearing them, or on his own motion without any notice. (Sec-42)

# APPELLATE TRIBUNAL....

- If the Members of a Bench differ in opinion on any point, they shall state the points on which they differ, and make a reference to the Chairperson who shall either hear the points himself or refer the case for hearing by other Members and the points shall be decided according to the opinion of the majority of the Members of the Appellate Tribunal who have heard the case, including those who first heard it. (Sec-43)
- The Chairperson, Members and other officers and employees of the Appellate Tribunal, the Adjudicating Authority, Approving Authority, Initiating Officer, Administrator and the officers subordinate to all of them shall be deemed to be public servants within the meaning of section 21 of the IPC. (Sec-44)

# PROCEDURE AND POWERS OF APPELLATE TRIBUNAL (SEC- 40)

- The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure. [Sec- 40(1)]
- The appellate tribunal shall, for the purposes of discharging its functions under this act, have the same powers as are vested in a civil court under the code of civil procedure, 1908 while trying a suit, in respect of the following matters :— [sec- 40(2)]
  - Summoning and enforcing the attendance of any person and examining him on oath;
  - Requiring the discovery and production of documents;
  - Receiving evidence on affidavits;

# PROCEDURE AND POWERS OF APPELLATE TRIBUNAL....

CONTD...

- Subject to the provisions of sections 123 and 124 of the Indian evidence act, 1872, requisitioning any public record or document or copy of such record or document from any office;
- Issuing commissions for the examination of witnesses or documents;
- Reviewing its decisions;
- Dismissing a representation for default or deciding it ex parte;
- Setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and
- Any other matter, which may be, prescribed by the central government.

# PROCEDURE AND POWERS OF APPELLATE TRIBUNAL....

CONTD...

- An order made by the Appellate Tribunal under this Act shall be executable by it as a decree of civil court and, for this purpose, the Appellate Tribunal shall have all the powers of a civil court. [sec- 40(3)]
- Notwithstanding anything contained in sub-section (3), the appellate tribunal may transmit any order made by it to a civil court having jurisdiction and the civil court shall execute the order as if it were a decree made by that court. [sec- 40(4)]
- All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code and the Appellate Tribunal shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973. [sec- 40(5)]

# BAR OF JURISDICTION OF CIVIL COURTS (SEC- 45)

- No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which any of the authorities, an Adjudicating Authority or the Appellate Tribunal is empowered by or under this Act to determine, and no injunction shall be granted by any court or other forum in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

# APPEALS TO APPELLATE TRIBUNAL (SEC- 46)

- Any person, including the Initiating Officer, aggrieved by an order of the Adjudicating Authority may prefer an appeal in such form and along with such fees, as may be prescribed, to the Appellate Tribunal against the order passed by the Adjudicating Authority u/s 26(3), within a period of 45 days from the date of the order. [Sec- 46(1)] (See Rule-10)
- The Appellate Tribunal may entertain any appeal after the said period of 45 days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. [Sec- 46(2)]
- The Appellate Tribunal may pass such orders as it thinks fit, after giving the parties to the appeal an opportunity of being heard. [Sec- 46(3)]

# APPEALS TO APPELLATE TRIBUNAL....

- An Appellate Tribunal while deciding the appeal shall have the power— [Sec-46(4)]
  - to determine a case finally, where the evidence on record is sufficient;
  - to take additional evidence or to require any evidence to be taken by the Adjudicating Authority, where the Adjudicating Authority has refused to admit evidence, which ought to have been admitted;
  - to require any document to be produced or any witness to be examined for the purposes of proceeding before it;



## APPEALS TO APPELLATE TRIBUNAL....

- to frame issues which appear to the Appellate Tribunal essential for adjudication of the case and refer them to the Adjudicating Authority for determination;
- to pass final order and affirm, vary or reverse an order of adjudication passed by the Adjudicating Authority and pass such other order or orders as may be necessary to meet the ends of justice.
- The Appellate Tribunal may hear and finally decide the appeal within a period of one year from the last date of the month in which the appeal is filed. [Sec- 46(5)]

# APPEALS TO THE APPELLATE TRIBUNAL (RULE- 10)

- An appeal to the Appellate Tribunal u/s 46(1) of the Act shall be filed in **Form No. 3** annexed to these rules.
- At the time of filing, every appeal shall be accompanied by a fee of Rs.10,000.
- The appeal shall set forth concisely and under distinct head the grounds of objection to the order appealed against and such grounds shall be numbered consecutively; and shall specify the address of service at which notice or other processes of the Appellate Tribunal may be served on the appellant and the date on which the order appealed against was served on the appellant.
- Where the appeal is preferred after the expiry of the period of 45 days referred to in u/s 46(1) , it shall be accompanied by a petition, in quadruplicate, duly verified and supported by the documents, if any, relied upon by the appellant, showing cause as to how the appellant had been prevented from preferring the appeal within the period of 45 days.

# APPEALS TO THE APPELLATE TRIBUNAL (RULE- 10)

CONTD...

## FORM 3

[See rule 10(1)]

From .....

(Mention name and address of the appellant here).

To

The Registrar,

Appellate Tribunal

(Address)

Sir,

The above-named appellant, begs to prefer this appeal under section 46 of the Prohibition of Benami Property Transactions Act, 1988 against order Number. .... dated ..... passed by the Adjudicating Authority

(*address of Adjudicating Authority*) under the said Act on the following facts and grounds.

### FACTS

(Mention briefly the facts of the case here. Enclose copy of the order passed by the or Adjudicating Authority and copies of other relevant documents, if any.)

### GROUND

(Mention here the grounds on which appeal is preferred).

# APPEALS TO THE APPELLATE TRIBUNAL (RULE- 10)

CONTD...

## PRAYER

In the light of what is stated above, the appellant prays for the following relief—

### RELIEF SOUGHT

(Specify the relief sought)

### DECLARATION

The fee payable for this appeal as mentioned in sub-rule (2) of rule 10 has been deposited in the form of demand draft with the Registrar, Appellate Tribunal, . . . . . (Address). . . . . vide receipt number . . . . . dated . . . . .

(Signature of the Appellant)

(Name of the Appellant)

# APPEALS TO THE APPELLATE TRIBUNAL (RULE- 10)

CONTD...

## VERIFICATION

I..... the appellant, do hereby declare that the facts stated above are true to the best of my information and belief.

Verified today the ..... day of .....

(Signature of the Appellant)

(Name of the Appellant)

List of documents:

Place:

Date:

# RECTIFICATION OF MISTAKES (SEC- 47)

- The Appellate Tribunal or the Adjudicating Authority may, in order to rectify any mistake apparent on the face of the record, amend any order made by it under section 26 and section 46 respectively, within a period of one year from the end of the month in which the order was passed. [Sec- 47(1)]
- No amendment shall be made under sub-section (1), if the amendment is likely to affect any person prejudicially, unless he has been given notice of intention to do so and has been given an opportunity of being heard. [Sec- 47(2)]

# RIGHT TO REPRESENTATION (SEC- 48)

- A person preferring an appeal to the Appellate Tribunal under this Act may either appear in person or take the assistance of an authorised representative of his choice to present his case before the Appellate Tribunal.
- The Central Government may authorise one or more of its officers to act as presenting officers on its behalf, and every person so authorised may present the case with respect to any appeal before the Appellate Tribunal.

## Explanation to sec- 48 —

Authorised representative means a person authorised in writing, being—

- a person related to the appellant in any manner or a person regularly employed by the appellant; or
- any officer of a scheduled bank with which the appellant maintains an account or has other regular dealings; or
- any legal practitioner who is entitled to practice in any civil court in India; or
- any person who has passed any accountancy examination recognised in this behalf by the Board; or
- any person who has acquired such educational qualifications as the Board may prescribe for this purpose.



# APPEAL TO HIGH COURT (SEC- 49)

- Any party aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within a period of 60 days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such order.
- The High Court may entertain any appeal after the said period of 60 days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the specified period.
- Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question. The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question.

# APPEAL TO HIGH COURT....

- Nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.
- The High Court shall decide the question of law so formulated and deliver the judgment thereon containing the grounds on which any decision is founded and may award any cost as it deems fit.

# APPEAL TO HIGH COURT....

- The High Court may determine any issue which—
  - has not been determined by the Appellate Tribunal; or
  - has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-section (1).
- Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908, relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.

# SPECIAL COURTS (SEC- 50)

- The Central Government, in consultation with the Chief Justice of the High Court, shall, for trial of an offence punishable under this Act, by notification, designate one or more Courts of Session as Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification. [Sec- 50(1)]
- While trying an offence under this Act, a Special Court shall also try an offence other than an offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial. [Sec- 50(2)]

# SPECIAL COURTS....

- The Special Court shall not take cognizance of any offence punishable under this Act except upon a complaint in writing made by the authority; or any officer of the Central Government or State Government authorised in writing by that Government by a general or special order made in this behalf. [Sec- 50(3)]
- Every trial under this section shall be conducted as expeditiously as possible and every endeavour shall be made by the Special Court to conclude the trial within 6 months from the date of filing of the complaint. [Sec- 50(4)]

# APPLICATION OF CODE OF CRIMINAL PROCEDURE, 1973 TO PROCEEDINGS BEFORE SPECIAL COURT (SEC- 51)

- Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973, shall apply to the proceedings before a Special Court and the persons conducting the prosecution before the Special Court, shall be deemed to be Public Prosecutors **Provided** that the Central Government may also appoint for any case or class or group of cases, a Special Public Prosecutor.

# APPLICATION OF CODE OF CRIMINAL PROCEDURE, 1973 TO PROCEEDINGS BEFORE SPECIAL COURT....

- A person shall not be qualified to be appointed as a Public Prosecutor or a Special Public Prosecutor unless, the Public Prosecutor has been in practice as an advocate for not less than 7 years, and the Special Public Prosecutor has been in practice as an advocate for not less than 10 years in any court.
- Every person appointed as a Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973 and the provisions of that Code shall have effect accordingly.

# APPEAL AND REVISION (SEC- 52)

The High Court may exercise, so far as may be applicable, all the powers conferred by Chapter XXIX or Chapter XXX of the Code of Criminal Procedure, 1973, on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.



# PENALTY FOR BENAMI TRANSACTION (SEC- 53)

- Where any person enters into a benami transaction in order to defeat the provisions of any law or to avoid payment of statutory dues or to avoid payment to creditors, the beneficial owner, benamidar and any other person who abets or induces any person to enter into the benami transaction, shall be guilty of the offence of benami transaction.

[Sec- 53(1)]

- Whoever is found guilty of the offence of benami transaction referred to in sub-section (1) shall be punishable with rigorous imprisonment for a term which shall not be less than 1 year, but which may extend to 7 years and shall also be liable to fine which may extend to 25% of the fair market value of the property. [Sec- 53(2)]

# **PENALTY FOR FALSE INFORMATION (SEC- 54)**

Any person who is required to furnish information under this Act knowingly gives false information to any authority or furnishes any false document in any proceeding under this Act, shall be punishable with rigorous imprisonment for a term which shall not be less than 6 months but which may extend to 5 years and shall also be liable to fine which may extend to 10% of the fair market value of the property.

## PREVIOUS SANCTION (SEC- 55)

No prosecution shall be instituted against any person in respect of any offence under sections 3, 53 or section 54 without the previous sanction of the Board.

## REPEAL OF PROVISIONS OF CERTAIN ACTS (SEC- 56)

- Sections 81, 82 and 94 of the Indian Trusts Act, 1882, section 66 of the Code of Civil Procedure, 1908 and section 281A of the Income-tax Act, 1961, are hereby repealed. [Sec-56(1)]
- For the removal of doubts, it is hereby declared that nothing in sub-section (1) shall affect the continued operation of section 281A of the Income-tax Act, 1961 in the State of Jammu and Kashmir. [Sec- 56(2)]

# **CERTAIN TRANSFERS TO BE NULL AND VOID (SEC- 57)**

Notwithstanding anything contained in the Transfer of the Property Act, 1882 or any other law for the time being in force, where, after the issue of a notice u/s 24, any property referred to in the said notice is transferred by any mode whatsoever, the transfer shall, for the purposes of the proceedings under this Act, be ignored and if the property is subsequently confiscated by the Central Government u/s 27, then, the transfer of the property shall be deemed to be null and void.

# EXEMPTION (SEC- 58)

- The Central Government may, by notification, exempt any property relating to charitable or religious trusts from the operation of this Act. [Sec- 58(1)]
- Every notification issued under sub-section (1) shall be laid before each House of Parliament. [Sec- 58(2)]

# POWER OF CENTRAL GOVERNMENT TO ISSUE DIRECTIONS, ETC. (SEC- 59)

- The Central Government may, from time to time, issue such orders, instructions or directions to the authorities or require any person to furnish information as it may deem fit for the proper administration of this Act and such authorities and all other persons employed in execution of this Act shall observe and follow the orders, instructions and directions of the Central Government. [Sec- 59(1)]

# POWER OF CENTRAL GOVERNMENT TO ISSUE DIRECTIONS, ETC....

- The Central Government may have regard to any one or more of the criteria, namely— territorial area; classes of persons; classes of cases; and any other criterion that may be specified by the Central Government in issuing the directions or orders referred to in sub-section (1). [Sec- 59(2)]
- No orders, instructions or directions under sub-section (1) shall be issued so as to require any authority to decide a particular case in a particular manner; or interfere with the discretion of the Adjudicating Authority in the discharge of its functions. [Sec- 59(3)]

# **APPLICATION OF OTHER LAWS NOT BARRED (SEC- 60)**

The provisions of this Act shall be in addition to, and not, save as hereinafter expressly provided, in derogation of any other law for the time being in force.

# **OFFENCES TO BE NON- COGNIZABLE (SEC- 61)**

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence under this Act shall be non-cognizable.



# OFFENCES BY COMPANIES (SEC- 62)

- Where a person committing contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly. [Sec- 62(1)]
- Nothing contained in sub-section (1), shall render any person liable to punishment if he proves that the contravention took place without his knowledge. [Sec- 62(2)]

# OFFENCES BY COMPANIES....

- Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, the director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly. [Sec- 62(3)]

# EXPLANATION TO SEC- 62

- "Company" means a body corporate, and includes—
  - A firm; and
  - An association of persons or a body of individuals whether incorporated or not; and
- "Director", in relation to—
  - A firm, means a partner in the firm;
  - Any association of persons or a body of individuals, means any member controlling the affairs thereof.

# **NOTICE, ETC., NOT TO BE INVALID ON CERTAIN GROUNDS (SEC- 63)**

No notice, summons, order, document or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid, or shall be deemed to be invalid merely by reason of any mistake, defect or omission in the notice, summons, order, document or other proceeding if the notice, summons, order, document or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.

# PROTECTION OF ACTION TAKEN IN GOOD FAITH (SEC- 64)

No prosecution, suit or other proceeding shall lie against the Government or any officer of the Government or the Appellant Tribunal or the Adjudicating Authority established under this Act, for anything done or intended to be done in good faith under this Act.

# TRANSFER OF PENDING CASES (SEC- 65)

- Every suit or proceeding in respect of a benami transaction pending in any Court (other than a High Court) or Tribunal or before any forum on the date of the commencement of this Act shall stand transferred to the Adjudicating Authority or the Appellate Tribunal, as the case may be, having jurisdiction in the matter. [Sec- 65(1)]

# TRANSFER OF PENDING CASES....

- Where any suit, or other proceeding stands transferred to the Adjudicating Authority or the Appellate Tribunal under sub-section (1),— [Sec- 65(2)]
  - the court, Tribunal or other forum shall, as soon as may be, after the transfer, forward the records of the suit, or other proceeding to the Adjudicating Authority or the Appellate Tribunal, as the case may be;
  - the Adjudicating Authority may, on receipt of the records, proceed to deal with the suit, or other proceeding, so far as may be, in the same manner as in the case of a reference made u/s 24(5), from the stage which was reached before the transfer or from any earlier stage or de novo as the Adjudicating Authority may deem fit.

# PROCEEDINGS, ETC., AGAINST LEGAL REPRESENTATIVE (SEC- 66)

- Where a person dies during the course of any proceeding under this Act, any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased. [Sec- 66(1)]
- Any proceeding which could have been taken against the deceased if he had survived may be taken against the legal representative and all the provisions of this Act, except section 3(2) and the provisions of Chapter VII, shall apply accordingly. [Sec- 66(2)]



# PROCEEDINGS, ETC., AGAINST LEGAL REPRESENTATIVE....

- Where any property of a person has been held benami u/s 26(3), then, it shall be lawful for the legal representative of the person to prefer an appeal to the Appellate Tribunal, in place of the person and the provisions of section 46 shall, so far as may be, apply, or continue to apply, to the appeal.

[Sec- 66(3)]

# ACT TO HAVE OVERRIDING EFFECT (SEC- 67)

The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

# POWER TO MAKE RULES (SEC- 68)

- The Central Government may make rules for carrying out the provisions of this Act by notification.
- In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters :—
  - manner of ascertaining the fair market value under clause (16) of section 2;
  - the manner of appointing the Chairperson and the Member of the Adjudicating Authorities u/s 9(2);
  - the salaries and allowances payable to the Chairperson and the Members of the Adjudicating Authority u/s 13(1);
  - the powers and functions of the authorities u/s 18(2);

# POWER TO MAKE RULES....

- other powers of the authorities u/s 19(1)(f);
- the form and manner of furnishing any information to the authority u/s 21(2);
- the manner of provisional attachment of property u/s 24(3);
- the procedure for confiscation of benami property under the second proviso to sec 27(1);
- the manner and conditions to receive and manage the property u/s 28(1);
- the manner and conditions of disposal of property vested in the Central Government u/s 28(3);

# POWER TO MAKE RULES....

- the salaries and allowances payable to and the other terms and conditions of service of the Chairperson and other Members of the Appellate Tribunal u/s 33(1);
- the manner of prescribing procedure for removal of Chairperson or Member u/s 35(4);
- the salaries and allowances payable to and the other terms and conditions of service of the officers and employees of the Appellate Tribunal u/s 39(3);
- any power of the Appellate Tribunal u/s 40(2)(i);
- the form in which appeal shall be filed and the fee for filing the appeal u/s 46(1);
- any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by rules.

# LAYING OF RULES AND NOTIFICATIONS BEFORE PARLIAMENT (SEC- 69)

Every rule made and notification issued under this Act shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rules or notifications, as the case may be, both Houses agree that the rules or notifications, as the case may be, should not be made or issued, the rule or notification, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification, as the case may be.

# POWER TO REMOVE DIFFICULTIES (SEC- 70)

- If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty.
- No order shall be made under this section after the expiry of two years from the commencement of this Act.
- Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

# TRANSITIONAL PROVISION (SEC- 71)

The Central Government may, by notification, provide that until the Adjudicating Authorities are appointed and the Appellate Tribunal is established under this Act, the Adjudicating Authority appointed under sub-section (1) of section 6 of the Money-Laundering Act, 2002 and the Appellate Tribunal established under section 25 of that Act may discharge the functions of the Adjudicating Authority and Appellate Tribunal, respectively, under this Act.



# REPEAL AND SAVING (SEC- 72)

- The Benami Transactions (Prohibition of the Right to Recover Property) Ordinance, 1988 is hereby repealed.
- Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

**IMPORTANT CIRCULARS,  
NOTIFICATIONS  
&  
CLARIFICATIONS**

## **Liability to estate duty in respect of property held benami - Whether arise on the death of real owner and not on the death of benamidar [CIRCULAR NO. 364, dated 15-7-1983]**

The Supreme Court has held that in the case of benami transactions, the real owner has got the title, though the property is in the name of the benamidar. The real owner can deal with the property without reference to the benamidar. A benamidar has no interest at all in the property standing in his name. The fact that the real owner cannot recover the property sold by the benamidar unless he shows that the purchaser had actual or constructive notice of the real title, does not mean that the benamidar has real title to the property. He is merely an ostensible owner thereof. In view of the analysis, liability to estate duty in respect of property held benami would arise on the death of the real owner and not on the death of the benamidar.

## **[CIRCULAR NO. 27, dated 14-7-2016, CLARIFICATIONS ON THE INCOME DECLARATION SCHEME, 2016, FAQ-4]**

In a case where the declarant gets the benami asset transferred in his name without payment of any monetary consideration to the benamidar, whether capital gains would be chargeable in the hands of benamidar consequent upon such transfer and whether the tax at source @ 1% would be deducted in such case?

- In this case the consideration for acquisition of benami property has already been paid by the beneficial owner and the fair market value of the property has been declared by the beneficial owner under the Scheme. Since, the transfer of property from benamidar to beneficial owner is only to regularize and there will be no involvement of monetary consideration for transfer of immovable property by the benamidar in the name of the declarant, the question of capital gains in the hands of benamidar and deduction of tax at source thereon shall not arise.

# [NOTIFICATION NO. 97/2016, dated 25-10-2016]

- The Central Government notifies that, with effect from the 01-11-2016, the Adjudicating Authority appointed u/s 6(1) of the Prevention of Money-Laundering Act, 2002 and the Appellate Tribunal established u/s 25 of that act shall discharge the functions of the Adjudicating Authority and Appellate Tribunal, respectively, under the Prohibition of Benami Property Transactions Act, 1988 until the Adjudicating Authorities are appointed and the Appellate Tribunal is established under the Prohibition of Benami Property Transactions Act, 1988.

# [NOTIFICATION NO. SO 1621(E), dated 18-05-2017]

- In exercise of the powers conferred u/s 28(2) r.w.s. 59 of the Prohibition of Benami Property Transactions Act, 1988, and in supersession of the Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, notification no. S.O. 3290(E), dated 25-10-2016, published in the Gazette of India, Extraordinary, Part-II, Section 3(ii), dated 25-10-2016, except as respects things done or omitted to be done before such supersession, the Central Government hereby directs that the Income-tax authorities under section 116 of the Income-Tax Act, 1961 specified in column (2) of the Schedule, having headquarters at the places specified in the corresponding entry in column (3), to exercise the powers and perform the functions of the 'Authority' under the Prohibition of Benami Property Transactions Act, 45 of 1988 specified in the corresponding entries in column (4) in respect of the territorial areas specified in the corresponding entries in column (5) of the Schedule having jurisdiction vested in them—

<b>S.No. (1)</b>	<b>INCOME-TAX AUTHORITY (2)</b>	<b>HEADQUARTERS (3)</b>	<b>AUTHORITY UNDER THE PROHIBITION OF BENAMI PROPERTY TRANSACTIONS ACT, 1988 (4)</b>	<b>TERRITORIAL AREA (5)</b>
1	(i) Jt. CIT/ Addl.CIT, Chandigarh (ii) ACIT/ DCIT, Chandigarh (iii) ITO, Chandigarh	Chandigarh	(i) Approving Authority (ii) Initiating Officer (iii) Administrator	Areas within the limits of the States of Haryana and Himachal Pradesh and Union territory of Chandigarh
2	(i) Jt. CIT/ Addl.CIT, Ludhiana (ii) ACIT/ DCIT, Ludhiana (iii) ITO, Ludhiana	Ludhiana	(i) Approving Authority (ii) Initiating Officer (iii) Administrator	Areas within the limits of the States of Jammu and Kashmir and Punjab

<b>S.No. (1)</b>	<b>INCOME-TAX AUTHORITY (2)</b>	<b>HEADQUARTERS (3)</b>	<b>AUTHORITY UNDER THE PROHIBITION OF BENAMI PROPERTY TRANSACTIONS ACT, 1988 (4)</b>	<b>TERRITORIAL AREA (5)</b>
3	(i) Jt. CIT/ Addl.CIT, Unit-1 & 2, Delhi (ii) ACIT/ DCIT, Unit-1 & 2, Delhi (iii) ITO, Unit-1 & 2, Delhi	Delhi	(i) Approving Authority (ii) Initiating Officer (iii) Administrator	Areas within the limits of the National Capital Territory of Delhi
4	(i) Jt. CIT/ Addl.CIT, Jaipur (ii) ACIT/ DCIT, Jaipur (iii) ITO, Jaipur	Jaipur	(i) Approving Authority (ii) Initiating Officer (iii) Administrator	Areas within the limits of the State of Rajasthan



# DIFFERENCE BETWEEN THE OLD BENAMI ACT & THE AMENDED BENAMI ACT

S.No.	BASIS	OLD ACT	AMENDED ACT
1	Name	Benami Transactions (Prohibition) Act, 1988	Prohibition of Benami Property Transactions Act, 1988
2	Sections	9 Sections	72 Sections
3	Property	Acquisition of Property	Confiscation of property
4	Rules	Benami Transaction Rules Absent	Benami Transaction Rules notified
5	Administration	No administration	Administration defined
6	Punishment	Imprisonment for 3 years or fine or both	Rigorous imprisonment for a period not less than one year but which may extend to Seven years and also fine which may extend to 25% of the F.M.V. of the property

**STANDARD OPERATING  
PROCEDURES (SOP) ON  
IMPLEMENTATION OF  
PBPT ACT ISSUED BY  
CBDT.**

# CONSTITUTION OF BENAMI PROPERTY UNITS (BPUs):

- 24 BPUs created across the country under the charge of Principle DIT (Investigation).
- Each BPU to consist of :-
  - Additional/Joint CIT (Benami Prohibition)
  - Deputy/Assistant CIT (Benami Prohibition)
  - ITO (Benami Prohibition)
  - Other Officials/Officers (Benami Prohibition)

# DUTIES & FUNCTIONS OF BPU:

- **All functions under the PBPT Act:-** Duties & functions of IO/AA and administrator.
- **Criminal Prosecution related monitoring and coordination functions under Black Money Act & Income-tax Act:-**
  - Building the requisite capacity in matters of criminal proceedings.
  - Facilitation in filing of prosecution complaints by the Officers of Investigation Directorates in terms of overseeing the drafting of complaints & coordination between DDIT/ ADIT investigating a particular case from which the prosecution has arisen, Prosecution Counsels & the court for filing the same.
  - Coordination between the Courts & the officers regarding to hearing of prosecution cases, keeping track of dates & nature of hearing and keeping the Officers concerned & Prosecution Counsels informed.

# DUTIES & FUNCTIONS OF BPU....

- Facilitation of logistics, including arranging relevant case records in advance for reference of the Officers concerned & others as and when required, and briefings and their production before the courts, if required, in coordination with Prosecution Counsels.
- Processing of matters relating to payment of the fees of Prosecution Counsels engaged by the Investigation Directorates.
- Coordination between the Officers concerned and the Standing Counsels/ Other counsels in all those cases where Writ Petitions have been filed against prosecution complaints of Investigation Directorates, including with regard to hearing of such cases, keeping track of dates & nature of hearing and keeping the Officers concerned & Prosecution Counsels informed.
- Any other related matter assigned by the PDIT (Inv) concerned.

# **THANK YOU!!!**

**Presented by : CA. Sanjay Kumar Agarwal**

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