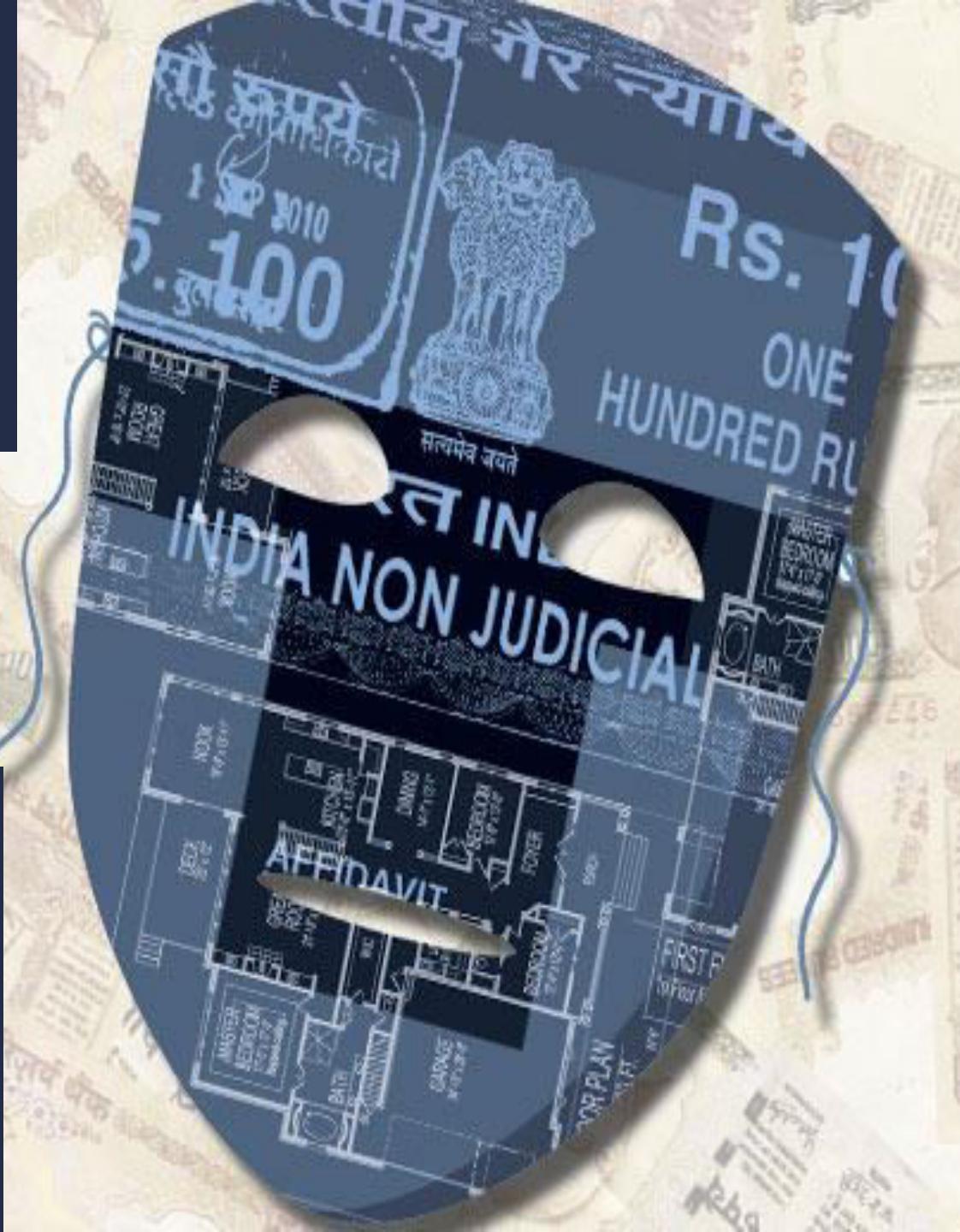


# The Prohibition Of Benami Property Transactions Act, 1988

## As amended by

# Benami Transactions (Prohibition) Amendment Act, 2016



# Introduction of 1988 Act

- The Prohibition of Benami Property Transaction Act, 1988 came into force on the 19<sup>th</sup> day of may, 1988.
- It extends to the whole of India except the state of Jammu and Kashmir.
- The Act prohibits benami transactions and provides for confiscating benami properties.
- Whoever enters into any benami transaction shall be punishable with an imprisonment for a term which may extends to 3 years or with a fine or with both.

# Introduction of 2016 Act

- The Benami Transactions (Prohibition) Amendment Bill, 2015 was introduced in Lok Sabha on May 13, 2015 by the Minister of Finance Mr. Arun Jaitley and got the assent of The President of India on 10<sup>th</sup> August, 2016 . The Bill seeks to amend The Benami Transactions Act, 1988.
- The Amendment Act has come into force with effect from 1<sup>st</sup> November, 2016.
- The Bill seeks to: (i) amend the definition of Benami Transactions, (ii) establish adjudicating authorities and an Appellate Tribunal to deal with Benami Transactions, and (iii) specify the penalty for entering into Benami Transactions.

# Meaning of Benami Transaction

- Purchase or holding of properties in India in the name of another person is known as a Benami Transaction. BENAMI literally means “without a name” transaction. These transactions means:-

## A. A transaction or an arrangement :-

- a) 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
- b) The property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration,

# Meaning of Benami Transaction.....

Except when the property is held by-

- A property acquired out of known sources of income of the Hindu Undivided Family (HUF) and held by the HUF for the benefit of a Karta or for the benefit of other members of HUF as the case may be.
- Properties held by a person in fiduciary capacity (where a fiduciary is responsible for managing the assets of another person, or a group of people).
- Any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of income of the individual.
- 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, and the consideration for such property has been provided or paid out of the known sources of income of the individual.

# Meaning of 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 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.

# Meaning of Benami Transaction.....

## Explanation-

- Benami Transaction shall not include any transaction involving the allowing of possession of any property to be taken or retained in part performance of a contract referred to in sec. 53A of the Transfer of Property Act,1882 (4 of 1882), if, under any law for the time being in force,-
  - i. 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;
  - ii. Stamp duty on such transaction or arrangement has been paid; and
  - iii. The contract has been registered.

# Prohibition Of Benami Transaction

As per Sec 3:-

- No person shall enter into any Benami Transaction.
- Whoever enters into any Benmai Transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.
- 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 sud-section(2), be punishable in accordance with the provisions contained in Chapter VII.

# Important Definitions

- “**Benami Property**” means any property which is the subject matter of a Benami Transactions and also includes the proceeds from such property.
- “**Benamidar**” means 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.
- “**Beneficial Owner**” means a person, whether his identity is known or not, for whose benefit the Benami property is held by a Benamidar.

# Important Definitions

- “Fair Market Value”, in relation to a property, means:-
  - i. The price that the property would ordinarily fetch on sale in the open market on the date of the transaction; and
  - ii. Where the price referred to in sub-clause (i) is not ascertainable, such price as may be determined in accordance with such manner as may be prescribed.
- “Person” shall include-
  - i. An Individual;
  - ii. A Hindu Undivided family;
  - iii. A company;
  - iv. A firm
  - v. An association of persons or a body of individuals, whether incorporated or not;
  - vi. Every artificial juridical person, not falling under sub clauses (i) to (v).

# Meaning Of Property

- 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 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.
- If a Benami Property has changed its color or form, even then it will continue to be Benami.
- Further, if the Benami property has been sold or disposed of, its proceeds received will continue to be benami.
- The Benami Transactions are not confined only to purchases, leasing of immovable property in the name of another person or mortgaging property for a fictitious consideration is also considered as a Benami Transaction and is subject for prosecution under Benami Transaction Act.

# Exclusions

- ❑ If a property is transferred but the contract of transferring the property is partly executed, the same shall not be considered as benami property.
- ❑ If the property transaction is done based on General Power of Attorney (GPA), through a registered contract and even stamp duty is paid, such property is not considered as benami property.
- ❑ Benami Property declared under Income Declaration Scheme 2016 (IDS) will no longer be treated as Benami Property.

# Benami vis-à-vis Demonetisation

- Such an arrangement where a person deposits old currency of Rs. 500 and Rs. 1,000 in the bank account of another person with an understanding that the account holder shall return his money in new currency, the transaction shall be regarded as Benami Transaction under the said Act.
- The person who deposits old currency in the bank account shall be treated as beneficial owner and the person in whose bank account the old currency has been deposited shall be categorised under this law as a Benamidar.
- According to the Benami Act, the ‘Benamidar’, the Beneficial Owner, and any other person who abets or induces a Benami Transaction, shall be punishable with **Rigorous Imprisonment for a period from 1 year to 7 years.**
- The Benami amount in the bank account deposited post Demonetisation will be **seized and confiscated** and the accused will also be liable to **fine which may extend up to 25 per cent of the fair market value of the Benami property.**

# Penalty for holding a BENAMI Property

- There is defined punishment for commencing any BENAMI Transaction after the date of commencement of the bill which includes:-
  - For guilty of offence of a BENAMI Transaction (Sec53):-
    - Penalty up to 25% of the fair market value of the property, and
    - Rigorous imprisonment for minimum 1 year up to 7 years
  - For False Information (Sec 54):-
    - Penalty up to 10% of the fair market value of the property, and
    - Rigorous imprisonment for minimum 6 months up to 5 years
- Property will be confiscated by The Central Government and no compensation shall be payable in respect of confiscation of Benami Property.(Sec 27)

# Prohibition on Re-Transfer of Property by Benamidar (sec 6)

- ❑ No person, being 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-sec(1), the transaction of such property shall be deemed to be null and void.

# Authorities

- Under the New Amended Act, 4 authorities have been formed to conduct inquiries or investigation of Benami Transactions:-
  - A. Initiating Officer (means Asst. Commisioner or Deputy Commisioner of Income Tax)
  - B. Approving Authority (means an Additional Commisioner or a Joint Commisioner)
  - C. Administrator (means an Income Tax Officer)
  - D. Adjudicating Authority and Appellate Tribunal appointed under Prevention of Money Laundering Act, 2002 is notified for the purpose of Benami Property Transactions Act, 1988 by notification no.97/2016, dt.25.10.2016.

# Notice and Attachment of Property involved in Benami Transaction (Sec 24)

- Initiating officer on the basis of material in his possession, has reason to believe that any person is a Benamidar, may issue show cause notice and may initiate provisional attachment of property.
- A show cause notice shall also be issued to the Beneficial Owner.
- After conducting the inquiries, the Initiating Officer shall within a period of 90 days from the date of notice shall pass an order for continuing the provisional attachment or revoke the provisional attachment with the prior approval of approving authority.

# Notice and Attachment of Property involved in Benami Transaction (Sec 24).....

- ❑ Where provisional attachment has not been made, the authority shall pass an order for provisional attachment of the property or not to attach the property with the prior approval of Approval Authority.
- ❑ Where the Initiating Officer passes order for continuing the provisional attachment, Initiating Officer shall within a period of 15 days from the date of attachment, draw up a statement of case and refer it to the Adjudicating Authority.
- ❑ To further hold the property, the case is referred to Adjudicating Authority which will examine all the documents and evidence relating to the matter and then pass an order on whether or not to hold the property as Benami.

# Notice and Attachment of Property involved in Benami Transaction (Sec 24).....

- Based on the order of Adjudicating Authority, the Administrator will confiscate the property in a manner and subject to the conditions as prescribed under the law.
- In case the individual is not satisfied with the order of adjudicating authority, he can challenge the same with Appellate Tribunal, and if he is not satisfied with the order of Appellate Tribunal, the appeal can be made with High Court.

# Adjudication of Benami property (Sec 26)

- The Adjudicating Authority shall issue **Notice** on the following persons, namely:
  - a) Benamidar,
  - b) Beneficial owner,
  - c) Any interested party, including a Banking Company,
  - d) Any person who has made a claim in respect of the property.
- The Adjudicating Authority shall issue notice within a period of 30 days from the date on which a reference has been received and the notice shall provide a period of not less than 30 days to furnish the information sought.

# Adjudication of Benami property (Sec 26)...

- If the property is held jointly by more than one person, then Adjudicating Authority shall make all endeavors to serve notice to all persons. Where a notice is served on any one person then notice shall not be invalid on the ground that said notice was not served to all persons.
- In addition to Benami Property referred by Initiating Officer, other property which is found to be Benami in proceedings, it shall also be provisionally attached.
- The Adjudicating Authority shall pass an order for revoking the Attachment Order or confirming the Attachment Order within a period of 1 year from the end of the month in which reference is made.

# Management of Confiscated Property (Sec 28)

- If the property confiscated consists of cash, Govt. or other securities, bullion, jewellery or other valuables, the Administrator shall cause to deposit them for Safe custody in the nearest Govt. Treasury or a branch of the RBI or the SBI or its subsidiaries or in any authorised bank. The Administrator shall also maintain a register containing the details in Form No. 1 for recording entries in respect of movable property.
- The Administrator shall maintain a register containing details in Form No. 2 for recording entries in respect of property other than movable properties such as cash, Govt. or other securities, bullion, jewellery or other valuables.

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