

# The Benami Transactions (Prohibition) Amendment Act, 2016

CA Sagar S. Tilak

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# Benami Transaction Prohibition Act



# Prevention of Money Laundering Act

CA Sagar Tilak  
Sagar.tilak@sstca.com

# Benami Transaction – The Concept





# Purpose of Benami Transactions

- Joint Hindu Family System
- Fraud on Creditors
- Tax Evasion
- Black Money
- Corrupt Practices



## Observations by Judiciary

- The burden of proving the benami transaction is on authorities
- Who paid the purchase consideration ?
- Intention of the parties
- The intentions are to be decided on the basis of surrounding circumstances, relationship of parties, motives governing their actions and subsequent conduct.
- Physical possession of the title deeds
- Payment of taxes, if any relating to property

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## Evolution of Benami Law

- ✚ Judicial Precedents
- ✚ Select Committee Report in 1969 & 1971
- ✚ Law Commission's 57<sup>th</sup> Report on 7<sup>th</sup> August 1973
- ✚ President's Ordinance on 19<sup>th</sup> May 1988 Law
- ✚ Commission's 130<sup>th</sup> Report on 14<sup>th</sup> August 1988
- ✚ Benami Transactions (Prohibition) Bill in Rajya Sabha on 31<sup>st</sup> August 1988
- ✚ President's assent on 5<sup>th</sup> September 1988
- ✚ Benami Transactions (Prohibition) Bill 2011 on 18<sup>th</sup> August 2011
- ✚ Benami Transactions (Prohibition) Bill 2015 on 13<sup>th</sup> May 2015
- ✚ President assent on 10<sup>th</sup> August 2016

## Key Comparatives

| Benami Transactions Prohibition Act 1988 | Amended Act 2016   |
|--|--|
| 9 Sections                               | 71 Sections  |
| Acquisition of Property                  | Confiscation of Property   |
| Benami Transactions Rules absent         | Benami Transaction Rules notified                                |
| No Administrators                        | Administration defined   |
| Imprisonment for 3 years OR fine OR both | Rigorous imprisonment for a period not less than 1 year AND Fine |

## Important Definitions

### (26) **Property :**

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

### (8) **Benami Property :**

Any property which is the subject matter of a benami transaction and also includes the proceeds from such property.





## Important Definitions

### (9) **Benami Transaction :**

(A) A transaction or an arrangement -

- a) where a property is transferred to, or 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

Except where the property is held by :

- i. A Karta or a member of a HUF
- ii. A person standing in a fiduciary capacity
- iii. Any person being an individual in the name of his spouse or in the name of any child of such individual
- iv. Any person in the name of his brother or sister or lineal ascendant or descendant as a joint owner

## Important Definitions

### (9) **Benami Transaction (continued) :**

- (B) A transaction or an arrangement in respect of a property carried out or made in a fictitious name or;
- (C) A transaction or an arrangement in respect of a property where the owner of the property is not aware of, or, denies knowledge of such ownership
- (D) A transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious;



## Important Definitions

### **Explanation relating to Section 53A of Transfer of Property Act, 1882:**

- i. Consideration for such property has been provided by the person to whom possession of the 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

### Section 3 :

Whoever enters into any benami transaction on and after the date of commencement of the Benami Transactions (Prohibition) Amendment Act, 2016, shall, be punishable in accordance with the provisions contained in Chapter VII

### Section 5 :

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

### Section 6 :

No re-transfer  
Re-transfer Null & Void



## Authorities ( Chapter III )

| Type of Authority      | Assigned to   |
|------------------------|---|
| Initiating Officer     | Assistant Commissioner or Deputy Commissioner of Income Tax |
| Approving Authority    | Assistant Commissioner or Joint Commissioner of Income Tax  |
| Administrator          | Income Tax Officer as per section 2(25) of Income Tax Act   |
| Adjudicating Authority | As Appointed u/s 7 of BTP Act                               |
| Appellate Tribunal     | As Established u/s 30 of BTP Act                            |

## Initiating Officer

### **Section 24 :**

Initiating officer having reasons to believe

Notice to beneficial owner also

Provisional attachment

Pass order within 90 days

Reference to Adjudication within 15 days from attachment





## Adjudication

### **Section 26 :**

Issue notice within 30 days from reference

Notice to all joint owners

Opportunity of being heard, submission

Pass order within 1 year from end of the month of reference

## Confiscation of Benami Property

### **Section 27 :**

Adjudicating Authority passes the order

No confiscation if bonafide buyer

Rights vests with Central Government



## Administrator

### **Section 28 :**

Administrator receives and manages the property

Issues notice for possession

Possession within 7 days from notice

Forceful Possession



## Offences & Prosecution [ Chapter VII ]

### Section 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 offence of benami transaction.

Rigorous imprisonment & Penalty

### Section 54 :

Penalty & Punishment for furnishing false information knowingly.

### Section 55 :

No prosecution without previous approval of the Board



## Key Factors



Judicial Proceedings

Burden of Proof

Admissibility of Evidence

Criminal Offence Justification

## Case 1 &amp; Case 2

Mr. X



Black Money

Own Name

Mr. X



Black Money

Wife of Mr. X



## Case 3 &amp; Case 4

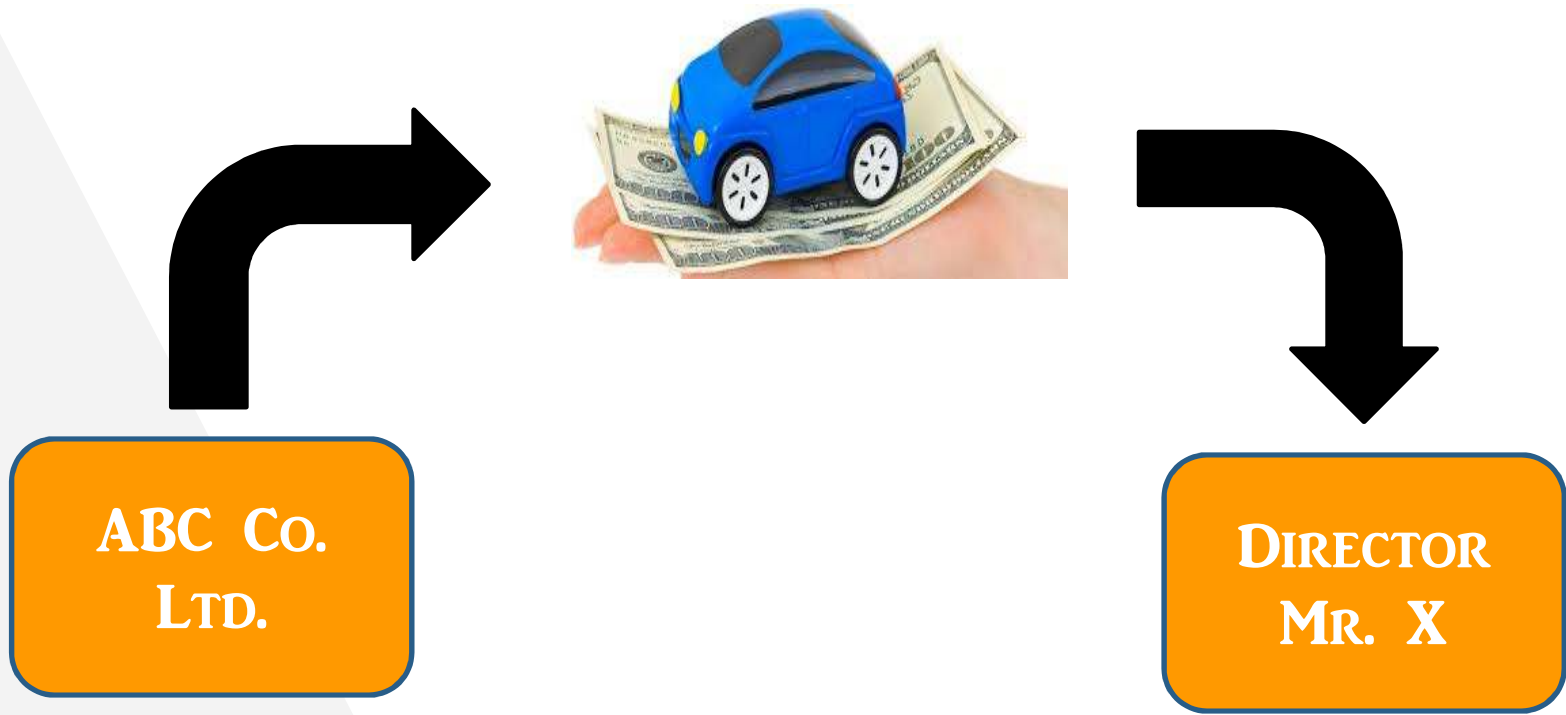
Mr. X

Brother of  
Mr. XTrustee of  
Charitable  
Trust

Own Name

Unknown Source  
of Trust

# Case 5



# Case 6



Search at Mr. X



Found Valuables



Mr. X Claims Valuables Belongs to Wife



Mrs. X



# Case 7



Search at Mr. X



Mrs. X



Mrs. X admits being a Partner in a Firm

Mrs. X unaware of her Share / other details



# Case 8

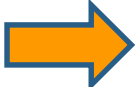


Unregistered MOU / Joint  
Venture Document



# Case 9

After  
Demonetization



Jan Dhan Account

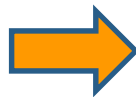
CA Sagar Tilak  
Sagar.tilak@sstca.com



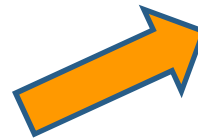
# Case 10



Mr. X



Acquires  
Shares of Co.



Driver



Servant

# Case 11



# THANK YOU

## Questions ???

Email : [sagar.tilak@sstca.com](mailto:sagar.tilak@sstca.com)

Blog : [Benamilaw.blogspot.in](http://Benamilaw.blogspot.in)

