

Prohibition of Benami Property Transaction Act



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Introduction



- ❑ Prohibition of Benami Property Transaction Act 1988
 - Earlier 1988 Act, with 9 Sections, No Rules for 28 years
 - Implementation, acquisition procedures not strong
 - **Not one case in 28 yrs.**

- ❑ AMENDMENT IN 2016
 - 72 section
 - Received assent of the President on the 10-8-2016 vide Notification that Act has come into Force from 1-11-2016
 - Authorities as under PMLA appointed on 1-11-16
 - The Prohibition of Benami Property Transactions Rules, 2016 come into force on 1-11-16
 - **Why amendment after 28 years & Why not new Act ?**

 - Sec 3 - Prohibition , 5 - Confiscation & 8 - AA applicable from 1-11-16
 - Rest all sections applicable from 19-5-1988
 - Benami Act not applicable to Jammu & Kashmir
 - Govt can exempt Charitable/religious trust from Benami Act u/s 58

WHAT IS 'BENAMI TRANSACTION'

Section 2(9)- What is 'Benami Transaction'

Benami transaction is a transaction or arrangement whereby the identity of real owner (beneficial owner) of property is concealed by showing someone else (benamidar) as owner on record. The beneficial owner provides or pays consideration for purchase of property.

**For Benami Transactions,
Benamidar and beneficial owner.**

'any person' means (viz., individual, HUF, firm, company, trust, etc.)

"Property" "means

Asset of any kind-Moveable, Immoveable, Tangible or Intangible, Corporeal or Incorporeal and **Includes**

- any right or interest or legal documents or instruments
- **the property in the converted form**
- **proceeds from the property**

BENAMI PROPERTY

Means any Property which is the subject matter of a **Benami Transaction** & includes **proceeds from such a property**

Foreign properties can also be benami properties, provided they are not covered by Black Money Act.

Benamidar may be actual person or fictitious/non-existent person or entity. Benamidar can be even a mere name-lender

Beneficial Owner- It is immaterial that identity of beneficial owner is known or not known.

“Benami Transaction” v “Sham Transaction”

When A sells properties to B but the sale deed mentions X as the purchaser. Here, the sale itself is genuine but the real purchaser is B, X, being his benamidar. This is the class of transactions, which is usually termed as benami



Real Transfer – Question Whether Consideration is Paid by X or B

Covered by Prohibition of Benami Property Transaction Act

When A purports to sell his property to B without intending that his title should cease or pass to B.



Sham Transfer- Question Whether any Consideration is paid or Not

Covered by GAAR

'Benami Transaction' - 4 categories

Category I : Transaction where consideration provided by Person other than the Transferee or the Person In whose Name Property is held

- Property Transferred or Held by X Consideration Paid by Y & Held for Benefit of Y
 - **Exceptions**
 - HUF Property held in the name of Karta/Members of HUF
 - Property held in Fiduciary Capacity
 - Property held in the Name of Spouse or Child
 - Joint Owner of Self and Brother/Sister/Lineal Ascendant/Lineal Descendent

Category II : Where Transaction is carried or made in a Fictitious Name

- the *benamidar* is fictitious person or entity or non-existent person or entity.

CATEGORY III : Benamidar not aware of or denies knowledge of Transaction

- a black money hoarder B deposits Rs. 10 lakhs in *Jan Dhan* bank account of X a labourer. X has no clue how that money landed in his account and expresses shock when told of it. He denies knowing B or ever having met B or ever talking to him personally or over phone. Bank balance of X, to the extent of Rs. 10 lakhs, is *benami* property.

CATEGORY IV : Beneficial Owner who paid consideration is Fictitious or is Untraceable

- Transaction or arrangement in respect of property is *benami* transaction if beneficial owner is fictitious or is untraceable
 - **Exceptions**
 - *Part performance Transactions under section 53A of Transfer of Property Act*

CONSEQUENCES OF BENAMI TRANSACTION

BENAMI TRANSACTIONS ENTERED INTO PRIOR 1-11-2016

Legal Consequences

Benami transaction is a punishable offence

imprisonment for a term which may extend to **three years** or with fine or with both.

Prohibition of the right to recover property

No suit, claim or action
- to enforce any right
- To Defend
against the person in whose name the property is held or against any other person

liable to confiscation

Shall be liable to be confiscated by the Central Government.

Re-transfer of property by benamidar *null and void*

Any such re-transfer shall be *null and void*

Exception:

Re-transfer is made in accordance with Income Declaration Scheme, 2016 *i.e.* in accordance with section 190 of the Finance Act, 2016.

BENAMI TRANSACTIONS ENTERED INTO ON OR AFTER 1-11-2016

Legal Consequences

Benami transaction is a punishable offence

section 53 of the Act:
beneficial owner,
benamidar and
any other person who
abets or induces
***imprisonment for a term
Min 1 & Max 7 Years Plus
Fine upto 25% of FMV***

No prosecution shall be instituted against any person in respect of any offence u/s 3, 53 or section 54 without the previous sanction of the Board (CBDT) – S. 55

Prohibition of the right to recover property

No suit, claim or action
- to enforce any right
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Shall be liable to be
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Re-transfer of property by *benamidar null and void*

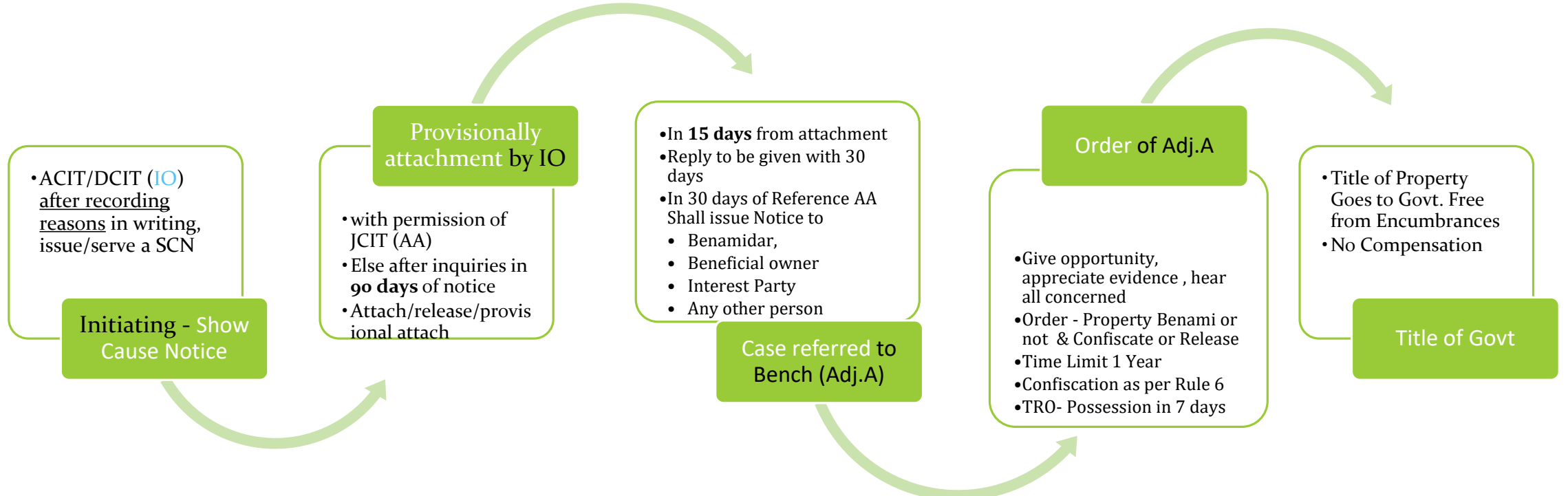
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ATTACHMENT, ADJUDICATION AND CONFISCATION

Procedure for Attachment, Adjudication & Confiscation



Initiating Officer (IO) – ACIT/DCIT
Approving Authority(AA)- JCIT or Addl. CIT
Adjudicating Authority(Adj. A) - CIT & Joint Secretary to Govt of India – Benches – As per PMLA 1-11-16
Administrator – TRO from 1-11-16
Appellate Tribunal - PMLA Benches (Aggrieved person or IO can file appeal in 45 days of Adj A order)

S. 27(2): Protection for Genuine Buyer from Bemanidar

Nothing contained herein will apply to a property held or acquired by a person from the benamidar for adequate consideration, **prior to the issue of notice by IO u/s 24** without buyer having knowledge of the benami transaction – Read with section Sec 57
(Needs to be incorporated in Agreements)

No Protection to Legal Heirs

The Provision of Benami Act is in addition to and not in derogation to other laws. This Act shall have effect notwithstanding anything inconsistent in any other laws
Proceedings to continue or to be initiated against legal heirs (No Jail)

NEW BENAMI LAW & INCOME TAX ACT

INCOME DECLARATION SCHEME, 2016 (IDS) & NEW BENAMI LAW

If benami properties were declared in IDS, instalments of 45% of total amount declared are paid punctually and benami properties got re-transferred on or before 30-9-2017, Benami Act, as per section 6(3), shall not to apply in respect of so declared benami properties

If declarant defaults in payment of 45% of total declared amount, the declaration would be ***null and void*** and no immunity under the Benami Act would be available either to the declarant or the benamidar. Also benamidar can't re-transfer nor can beneficial owner file suit to recover.

PRADHAN MANTRI GARIB KALYAN YOZANA (PMGKY) & NEW BENAMI LAW

WHICH INCOME CANNOT BE DECLARED UNDER PMGKY?

Undisclosed income in the nature of "Red money" i.e. proceeds of crime, drugs, terrorism, **benami property**, money-laundering can't be declared.

Whether declaration of cash belonging to another as own cash can be made under the Scheme and will it be immune under Benami Act?

Effect on Deposits in **JAN DHAN ACCOUNT** ?

Whether Transferring the Balance from Benamidar to Beneficial Owner is possible ? Q. No. 3 of FAQ issued by CBDT on 18-01-2017 (Refer section 6 of Benami Act)

INCOME-TAX ACT, 1961 AND NEW BENAMI LAW

Issue:

If any person(benamidar) is found to be the **owner** of any money, bullion, jewellery or other valuable article and same is not recorded in any books of account of the person and/or the source of acquisition is not satisfactorily explained. Applicability of Section 68, 69, 69A etc.,

- **Owner here means the real owner and obviously cannot mean the benamidar**
- **Income cannot be taxed in the hands of ostensible owner**
- **It may be noted that benamidar can't preclude enquiry into the benami aspect by voluntarily declaring the amount in his ITR.**

Options with Deptt.

- Reopen the Assessment of Real Owner and tax accordingly
- Instead, the matter would be proceeded for under the Benami Act and the amount would be confiscated and the benamidar and the real owner would both be prosecuted under the Benami Act.

