



The benami transaction prohibition (Amendment) Act 2016

SCOPE - WHOLE OF INDIA EXCEPT JAMMU AND KASHMIR
EFFECTIVE DATE - 1 ST NOVEMBER 2016.

Property

- ▶ As per clause (26) of section 2 of the Act, the property means assets of any kind, whether movable or immovable, tangible or intangible, corporeal or incorporeal and includes any right or interest or legal documents or instruments evidencing title to or interest in the property , where the property is capable of conversion.

N.B: Property includes any moveable or immovable assets and any right or interest in the property, moveable assets means cash, jewellery, bullion, inventory, plant & machinery

Benami transactions

- ▶ Where property is transferred to, or is held by a person, and the consideration for such property has been provided or paid by another person
- ▶ The property is held for the immediate or future benefit, direct or indirect of the person who has provided the consideration.
- ▶ Benami transaction also means arrangement.

Example - A plot of land is in the name of X, the consideration of the same is paid by B. This is called Benami Transaction

Accommodation entries

- ▶ Share capital/Share application money
- ▶ Long term / Short term capital gain
- ▶ Loans & Advances
- ▶ Any other mode

N.B Accommodation entries are also Benami Transaction.

DEVELOPMENT AGREEMENT

- ▶ If no stamp duty has been paid and the agreement is not registered, it will be a benami transaction even if the possession has been given and post consideration has been received by the

AGREEMENT FOR SALE

- ▶ If no stamp duty has been paid and the agreement is not registered, it will be a benami transaction even if the buyer has made payment part/full consideration and has taken the possession

Consequences of Benami transactions

- ▶ Prosecution – Rigorous imprisonment between 1 Year to 7 Years
- ▶ Fine upto 25% of the F.M.V. of the property
- ▶ Penalty for furnishing of false information
 - ▶ Imprisonment from 6 months to 5 Years
 - ▶ Maximum of 10% of F.M.V. of the property
- ▶ Confiscation of property :-
 - ▶ Property is liable to be acquired by the government without consideration

Proceeding under the Act

- ▶ Initiation of proceeding by Asst. / Dy. Commissioner of Income Tax
- ▶ Reference to the adjudicating authority is made by ACIT/DCIT
- ▶ Right of appeal to the person before Tribunal and against order of Tribunal , appeal to High Court
- ▶ Confiscation Proceedings

Authorities

- ▶ Initiating Officer
- ▶ Approving Authority
- ▶ Administrator
- ▶ Adjudicating Authority

INITIATING OFFICER

- ▶ Issue of the show cause notice to the parties.
 - ▶ Must have reason to believe on the basis of material with him
 - ▶ Must record the reason before issuing notice
- ▶ May provisionally attach the property with prior permission of approving authority for a period not exceeding 90 days.
- ▶ May revoke the provisionally attached after prior permission of the approving authority.
- ▶ Shall have the power to conduct inquiry in respect of as person, place, property, documents, banks, etc.
- ▶ Shall pass an order for attachment of the property as for non attachment of the property within 90 days from the date of service of notice.

APPROVING AUTHORITY

- ▶ Shall give approval for retention of books of accounts to the initiating officer.
- ▶ Shall give approval within 15 days of the initial impounding of books of account.
- ▶ Shall give approval to the initiating authority for passing order for continuation of attachment of property
- ▶ Shall give the permission to the initiating officer for revoking the provisional attachment.
- ▶ Shall give permission to the initiating officer for enquiry and investigation

Adjudicating Authority

- ▶ Consisting of at least 2 members and chairman
- ▶ On reference from the initiating officer, the authority shall issue notice to the party
- ▶ May pass an order holding a property to be a benami property or not.
- ▶ Confirming or Revoking attachment
- ▶ Shall pass an order within the expiry of one year from the end of the month in which the reference u/s 5 of sec 24 was received
- ▶ Shall make an order for confiscating the property.

Powers of appellate tribunal

- ▶ Summon for enforcing the attendance and examination on oath .
- ▶ Production of documents
- ▶ Receiving evidence on affidavits
- ▶ Issuing commission
- ▶ Reviewing its decisions
- ▶ Deciding it ex parte
- ▶ Any other matter which may be prescribed by the Central Government.

Appeal to high court

- ▶ Any party aggrieved by the decision or order of the appellate tribunal may file an appeal to the High court .
- ▶ The appeal should be filed within a period of 60 days.
- ▶ The appeal shall be entertained only on question of law.