



Economic Offences Laws & Do's and Don'ts for Chartered Accountants

Adv Sagar S. Tilak

Economic Offences Laws

- ▶ Prohibition of Benami Property Transactions Act
- ▶ Prevention of Money Laundering Act
- ▶ Companies Act
- ▶ Income Tax Act



Prohibition of Benami Property Transactions Act



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Benami Transaction – The Concept



Key Comparatives

Benami Transactions Prohibition Act 1988	Amended Act 2016
9 Sections	72 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;



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	Additional 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 the Act
Appellate Tribunal	As Established u/s 30 of the Act

Initiating Officer

Section 23: Power to conduct inquiry

Section 24 : - Initiating officer having reasons to believe

- Notice to beneficial owner also
- Provisional attachment after approval
- Pass order within 90 days
- Reference to Adjudication within 15 days from attachment

Section 19: Powers of the Authority



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 of confiscation

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 & fine

Section 54 :

Penalty & Punishment for furnishing false information knowingly.

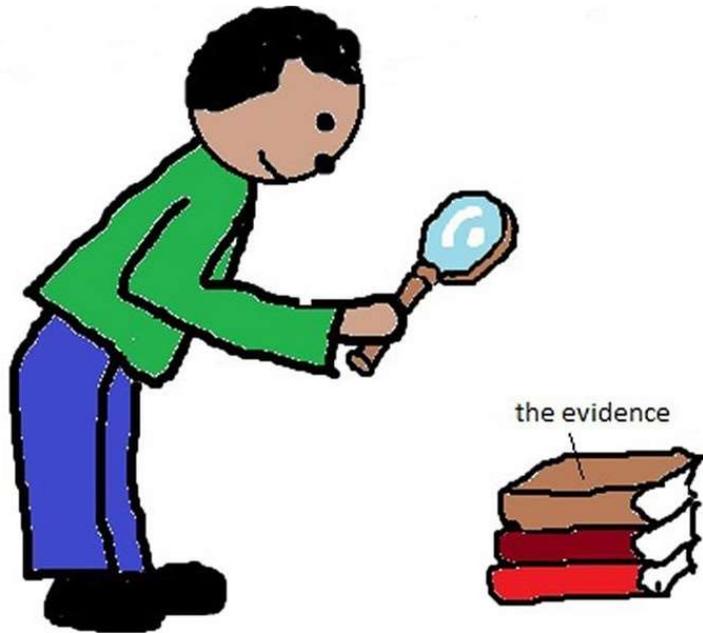
Section 55:

Prosecution with previous sanction

TRIALS UNDER BENAMI ACT



Key Factors



Burden of Proof

Admissibility of Evidence

Prevention of Money Laundering Act



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Prevention of Money Laundering Act

Section 3: OFFENCE OF MONEY-LAUNDERING:

Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.

Prevention of Money Laundering Act

Section 2 (1) (u): "PROCEEDS OF CRIME"

Means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad;

Prevention of Money Laundering Act

Section 4: PUNISHMENT FOR MONEY-LAUNDERING:

Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Indian Penal Code

Section 120A: DEFINITION OF CRIMINAL CONSPIRACY:

When two or more persons agree to do, or cause to be done,-

- (1) an illegal act, or
- (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy.

D.K.Shivkumar vs. ED Judgment

Indian Penal Code

Section 107: ABATEMENT OF A THING:

A person abets the doing of a thing, who

Firstly : Instigates any person to do that thing; or

Secondly: Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly: **Intentionally aids, by any act or illegal omission, the doing of that thing.**

COMPANIES ACT



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COMPANIES ACT

Section 447: PUNISHMENT FOR FRAUD:

Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud:

Provided that,
where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

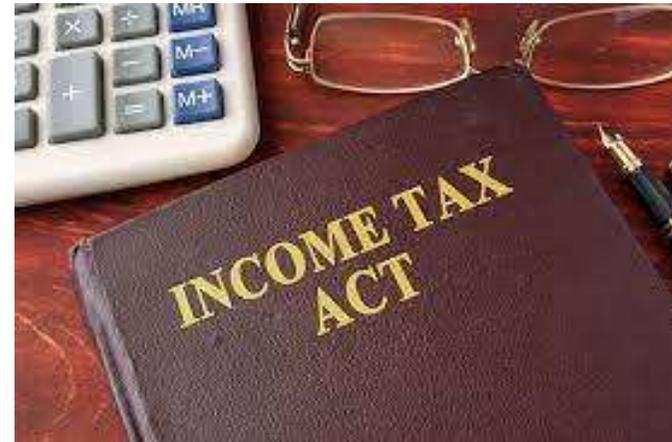
COMPANIES ACT

Explanation:

For the purposes of this section

- i. Fraud in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;
- ii. Wrongful gain means the gain by unlawful means of property to which the person gaining is not legally entitled;
- iii. Wrongful loss means the loss by unlawful means of property to which the person losing is legally entitled.

INCOME TAX ACT



INCOME TAX ACT

Section 277A: FALSIFICATION OF BOOKS OF ACCOUNT OR DOCUMENT, ETC:

If any person (First person) willfully and with intent to enable any other person (Second person) to evade any tax or interest or penalty chargeable and imposable under this Act, makes or causes to be made any entry or statement which is false and which the first person either knows to be false or does not believe to be true, in any books of account or other document relevant to or useful in any proceedings against the first person or the second person, under this Act, the first person shall be punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to two years and with fine.

Explanation:

For the purposes of establishing the charge under this section, it shall not be necessary to prove that the second person has actually evaded any tax, penalty or interest chargeable or imposable under this Act.

INCOME TAX ACT

Section 278E: PRESUMPTION AS TO CULPABLE MENTAL STATE:

- 1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the Accused, the court shall presume the existence of such mental state but it shall be a defense for the Accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation:

In this sub-section, "culpable mental state" includes intention, motive or knowledge of a fact or belief in, or reason to believe, a fact.

- 2) For the purposes of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Draconian Provisions

- Bail Provisions:
 - Section 45 of PMLA
 - Section 212(6) of Companies Act
- Presumption of Culpable Mental State
 - Section 278E of Income Tax Act
 - Section 54 of Black Money Act

IMPORTANT JUDGMENT

- **Constitutional Validity of Section 278E of Income Tax Act**

Selvi J. Jayalalitha vs. Union Of India and others
W.P. No. 23581/ 2006, Madras High Court, December, 2006

- **Acquittal of CA by ICAI Disciplinary committee can't be a ground for escaping prosecution under PMLA**

Mahesh Agarwalla VS Assistant Directorate
Appeal no.: C.R.R. No. 2582/2016, Calcutta High Court

- **Chartered Accountant & Financial Advisor of Y.S. Jagan Mohan Reddy denied bail by Supreme Court in money laundering case**

V. Vijay Sai Reddy VS CBI
Appeal No.: Cr. Appeal No. 729/2013

Case Study 1

Auditor of a company Mr. A is present in an audit committee and Board of Directors meeting of XYZ Ltd.

During the meeting large number of Related Party Transactions at exorbitantly high price were approved.

The auditor did not participate in the discussion.

Later on Enforcement Directorate and Serious Fraud Investigation Office alleged that the directors of XYZ Ltd. have syphoned off funds of the company through related parties.

Whether the silence of the auditor can save him?



Case Study 2

A Chartered Accountant has assisted the Real estate company for obtaining Project Funding from a bank. The entire proposal along with projections was prepared by a Chartered Accountant.

Subsequently, the utilization certificates were also issued by the same Chartered Accountant.

However, the bank at the advanced stage found that the funds were diverted for other projects and purposes.

The Bank filed the FIR against the directors and also accuses the Chartered Accountant for the conspiracy.

Case Study 3

A Chartered Accountant having client X who has regularly paid the advance tax by estimating his income for the year. However, at the end of the year the Advance Tax falls short of the actual tax liability.

A Chartered Accountant having client Y raises an invoice on Client X for some services. It results into reduction of tax liability for X and no further payment of Tax. The Chartered Accountant facilitated the transaction between X and Y.

The Income Tax Department later alleges that the said invoice was not for the genuine services but an accommodation entry to reduce the tax liability of X.

What will be the consequences for a Chartered Accountant?

Case Study 4

Mr. A intends to purchase House Property from **Mr. B**

Mr. B is not willing to sale the house property to **Mr. A** due to their personal disputes.

Hence **Mr. A** has provided **consideration** of house property to his **friend Mr. C** & requests him to purchase house property in his own name from **Mr. B**



Whether such transaction will be under purview of benami law?

Case Study 5

Members of “**Mahila Bachat Gat**” incorporated one company by investing their funds. The company was incorporated to build houses for members of Mahila Bachat Gat.



The land on which they want to build houses was agriculture land. However none of them was agriculturist to purchase land in their name.

Mr. A (Agriculturist) who is social worker helped them by purchasing agriculture land in his own name. He was also director in the said company & he gave development rights of the land to the company to build houses.

Whether houses built in the project will be Benami Property to be confiscated?

Case Study 6



Search at Mr. X



Found Valuables



Mr. X Claims Valuables Belongs to Wife



Mrs. X

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Case Study 7



Search at Mr. X



Mrs. X



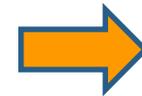
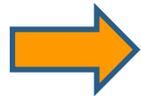
Mrs. X admits being a Partner in a Firm



Mrs. X unaware of her Share / other details

Case Study 8

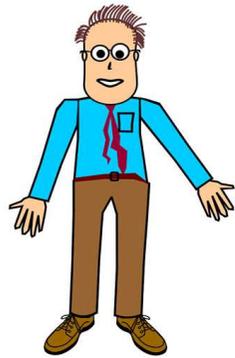
After
Demonetization



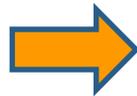
Jan Dhan Account

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Case Study 9



Mr. X



Acquires
Shares of Co.



Driver



Servant

Case Study 10

A Chartered Accountant has provided services of arranging Private Equity Funding for the client. As per the understanding, the investor was not going to participate in the operations of the company.

Subsequently, the investor got arrested for the offence of money laundering under PMLA. All his investments were scrutinized.

What will be the consequences for the client company?

KEY TAKEAWAYS

- ▶ Certification Assignments
- ▶ Management Representation Letter
- ▶ Letter of Engagement
- ▶ Bank Funding Proposals
- ▶ Board Meetings and Audit Committee Meetings
- ▶ Advisory over phone
- ▶ Accommodation entries
- ▶ Recoding statements under Economic Offence Laws



THANK YOU

Questions ???

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