

Overview of the Benami Transactions (Prohibition) Amendment Act, 2016

- Understanding Key Provisions and Implications

By Raghav Rathi
Anandram Sarda & Associates
- raghav@arsarda.in



Introduction to Benami Transactions

- **Definition:** Benami transactions refer to property or assets held by one person for the benefit of another, often to conceal the true ownership.
- **Example:** A person buys property in someone else's name to evade taxes, launder money, or avoid legal consequences.
- **Purpose of the Act:** To curb black money, prevent money laundering, and promote transparency in property transactions.



Key Terminology

- **Benami Property:** *benami property* means any property which is the subject matter of a *benami* transaction and also includes the proceeds from such property;
- **Benamidar:** "*benamidar*" means a person or a fictitious person, as the case maybe, in whose name the *benami* property is transferred or held and includes a person who lends his name;

Why Was the Previous Act Replaced??

- **Historical Context:**
 - The original **Benami Transactions (Prohibition) Act, 1988**, was enacted to curb benami transactions in India.
 - However, the law was largely ineffective due to loopholes and lack of robust enforcement mechanisms.
 - The **Benami Transactions (Prohibition) Act, 1988** originally had **8 sections**.



Issues with the 1988 Act:

Weak Implementation

Inefficient Confiscation Process

Limited Scope

Burden of Proof

Key Objectives of the Benami Act, 2016

Prohibition of
Benami
Transactions

Confiscation
of Benami
Assets

Punitive
Measures

Regulation of
Benami
Properties

Key Provisions of the Act

Benami Transactions Prohibited (Section 3)

- Prohibits any property transaction where the real owner is concealed.

Property held benami liable to confiscation(Section 5)

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

Key Provisions of the Act

Tax Authorities Empowered (Section 20)

- The Income Tax Department has the authority to investigate and act on benami transactions

Benami Property Management (Section 26)

- Procedures for the management and disposal of confiscated assets.

Types of Benami Transactions

- Quintessential *Benami* Transactions
- Transactions under a Fictitious Name
- Transactions with Denial of Ownership Knowledge
- Transactions with Untraceable or Fictitious Consideration Provider

Benami Transactions and Black Money

- **Connection to Black Money:** Benami transactions are a tool for laundering black money by hiding the true ownership of assets.
- **Impact on the Economy:** These transactions contribute to the informal economy, undermining taxation systems and enabling tax evasion.



Penalties under the Act

PENALTY



- Benamidar or any person who encourage other person to enter into such transactions will face rigorous imprisonment ranging from one to seven years in jail. The person may also be liable to pay a fine of up to 25% of the fair market value of such Benami property.
- Any person providing false information or documents under this Act shall be punishable with rigorous imprisonment for 6 months to 5 years, along with a fine upto 10% of the property's fair market value.

Exceptions of Benami Transactions

- Property Held by a Member of Hindu Undivided Family (HUF)
- Property Held by a Trustee for Beneficiaries
- Transactions Involving Payment of Consideration by the Spouse or Child
- Property Acquired through the Joint Holding or Business:
- Property Held for the Benefit of the Government:
- Certain Transactions Under Specific Laws.

Eg: Immovable property transactions under the Income Tax Act or property transferred in line with inheritance laws (wills, succession planning) may not be treated as Benami transactions.

Case Overview -Union of India vs. Ganpati Dealcom Pvt. Ltd.

- Ganpati Dealcom Pvt. Ltd., a private company, was engaged in property transactions.
- In 2011, the company purchased a property in Kolkata for ₹9.44 crore.
- In 2012, control over 99.9% of the shares of Ganpati Dealcom Pvt. Ltd. was acquired by M/s. PLD Properties Pvt. Ltd. and M/s. Ginger Marketing Pvt. Ltd.

Case Facts - Allegations

- In 2017, the Deputy Commissioner of Income Tax issued a notice to Ganpati Dealcom Pvt. Ltd. for potential violation of the Benami Transactions (Prohibition) Act, 1988.
- The notice was issued under the Benami Transactions (Prohibition) Amendment Act, 2016, which had extended the power of the authorities to attach and confiscate benami properties.
- The Adjudicating Authority provisionally attached the property and issued a show-cause notice alleging that the property was a benami transaction.

Legal Issues

- Whether the Benami Transactions (Prohibition) Amendment Act, 2016, applied retrospectively to transactions that took place before the law's enactment.
- The respondent (Ganpati Dealcom Pvt. Ltd.) argued that the 2016 amendment was prospective and could not be applied to property transactions made before its implementation.

Court's Ruling and Analysis

- **Calcutta High Court Decision:**
 - The Calcutta High Court ruled in favor of Ganpati Dealcom Pvt. Ltd. and quashed the show-cause notice.
 - The Court emphasized that the amendment under the Benami Transactions (Prohibition) Act, 2016, could not be applied retrospectively.
 - The Court held that the provisions of 2016 Amendment only applied to transactions occurring after the law's enactment

Court's Ruling and Analysis

- **Supreme Court's Review**

- The Supreme Court upheld the Calcutta High Court's decision, emphasizing the unconstitutionality of applying the law retrospectively for punitive purposes.
- The Court further struck down Section 3(2) of the 1988 Act, which was previously used for benami proceedings, highlighting the violation of constitutional safeguards under Article 20(1).

Key Takeaways

- The case reinforces the principle that retrospective laws, particularly those with punitive effects, cannot be applied in India.
- It upholds constitutional protections against retrospective criminal legislation under Article 20(1) of the Constitution.
- The judgment has significant implications on how the Benami Transactions (Prohibition) Act will be enforced, especially in relation to transactions that occurred before the 2016 amendment.

Conclusion


- **Final Thoughts:**
 - This case is a crucial landmark in the enforcement of anti-benami laws, ensuring that due process is followed and protecting rights against retrospective penal provisions.


Thank You!!

Contact us

 **NANDRAM SARDA & ASSOCIATES**
Chartered Accountants

#202-B, 2nd Floor, Highness Maurya
8-2-601/P, 7&10, Road No. 10, Banjara Hills
Hyderabad - 500034, TG (India)

 +91 7680050106 / +91 40 40050106

 +91 9100017170

 anand@arsarda.in

 <https://arsarda.in>

 <http://www.linkedin.com/in/arsarda>

 <https://twitter.com/AnandramSarda>

 <https://www.facebook.com/ARSardaCA>