



Recent trends in Benami Law, PMLA
and Role of a CA in Tax Writ
Petitions

DTRC of Pune Branch of ICAI 2026

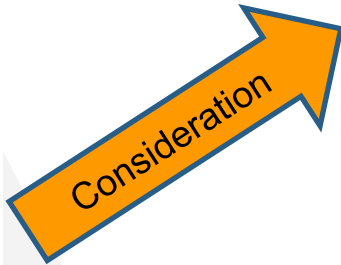
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Adv. Sagar S. Tilak

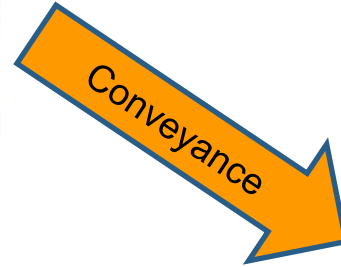
Benami Transaction – The Concept



Mr. A Real
Owner



Seller Mr. X



Mr. B
Benamidar

Purpose of Benami Transactions

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



4 Observations by Judiciary Pre-Benami Act

- The burden of proving the benami transaction is on the claimant
- 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

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

Definitions from 1988 Act

- **Section 2(a)**

“**Benami transaction**” means any transaction in which property is transferred to one person for a consideration paid or provided by another person.

- **Section 2(c)**

“**Property**” means property of any kind, whether movable or immovable, tangible or intangible, and includes any right or interest in such property.

Important Definitions from Amendment Act 2016

(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

(10) **Benamidar:**

Benamidar means a person or a fictitious person, as the case may be, in whose name the benami property is transferred or held and includes a person who lends his name

(8) **Beneficial owner:**

Beneficial Owner means a person, whether his identity is known or not, for whose benefit the benami property is held by a benamidar.



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

Case 1

Mr. X paid the consideration for 4 flats and got allotment letters in his name. Subsequently he paid the consideration and got sale deeds registered in the name of 4 other persons who later transferred the properties to Mr. X by Gift Deeds.

Reference:

[2026] 186 Taxmann.com 358 (SAFEMA- New Delhi)

Case 2

During the course of search by Income Tax Department, Jewellery and cash was found inside lockers. The lockers were in the name of person who was employee of the person searched.

The employee recorded the statement that he owns the locker whereas the jewellery and cash belongs to his employer. The employer recorded the statement that the jewellery and cash belongs to him and the locker was in the name of the employee. The valuables were kept with him out of trust.

Is it a Benami Transaction?

Reference:

[2024] 167 Taxmann.com 305 (SAFEMA- New Delhi)

[2024] 166 Taxmann.com 627 (SAFEMA- New Delhi)

[2026] 183 Taxmann.com 585 (SAFEMA-New Delhi)

Manjula vs. Srinivas [Civil Appeal 7370 of 2026 Supreme Court]

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Case 3

Mr. X, a public servant acquired properties in the name of his sons and wife when they had no sufficient means to acquire the properties.

Is it a Benami Transaction under section 2(9)(A)?

Reference:

[2024] 167 Taxmann.com 291 (SAFEMA- New Delhi)

[2026] 184 Taxmann.com 172 (SAFEMA- New Delhi)

[2026] 184 Taxmann.com 7 (SAFEMA- New Delhi)

Case 4

Cash deposited during the Demonetization Period

Whether Voluntary Disclosure of cash under Income Tax Scheme will change the implications?

Reference:

[2026] 186 Taxmann.com 236 (SAFEMA- New Delhi)

Case 5

Cash is found in a vehicle intercepted.

Unaccounted Cash found is a Benami Property?

What if the cash is taxed under the Income Tax Act during post search proceedings?

Reference:

[2026] 186 Taxmann.com 645 (SAFEMA- New Delhi)

Case 6

A company PMPL acquired land in Rajasthan in the name of its local employees where there was caste-based restriction for acquisition of land.

Reference:

[2026] 183 Taxmann.com 459 (SAFEMA- New Delhi)

[2026] 183 Taxmann.com 206 (SAFEMA- New Delhi)

Case 7

The shares of ABC Pvt. Ltd. were transferred from Mr. A to Mr. B on 10.12.2010. The consideration for the said transfer of shares on behalf of Mr. B was paid by Mr. Z. The dividend from the said shares has been transferred by Mr. B to Mr. Z from time to time.

The shares are in the name of Mr. B on the date of investigation/inquiry on 20.06.2025.

Is it a Benami Transaction?

Reference:

[2023] 157 Taxmann.com 623 (SAFEMA- New Delhi)

[2024] 161 Taxmann.com 119 (SAFEMA- New Delhi)

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;



Case 8

During the course of search by Income Tax Department, locker was found. The notice was issued to owner of the locker which returned undelivered as the addressee does not reside on the address.

Subsequently, the owner appeared before the authorities and disclosed that he owns the locker which is in the name of XY as “X” and “Y” is the combination of his own name and his sister’s name.

Is it a Benami Transaction under section 2(9)(B)?

Reference:

[2024] 168 Taxmann.com 390 (SAFEMA- New Delhi)

Case 9

During the course of search under Income Tax Act, a person was found in possession of Rs.87 lakhs in cash. He claimed that he was in the business of exchanging torn/damaged notes. He failed to produce any documentary evidence to show that he had exchanged torn/damaged notes from bank.

Is it a Benami Transaction under section 2(9)(D)?

Reference:

[2025] 173 Taxmann.com 277 (SAFEMA- New Delhi)

Restriction on re-transfer of Benami Property

- **Section 6: Prohibition on re-transfer of property by *benamidar***

(1) No person, being a *benamidar* shall re-transfer the benami property held by him to the beneficial owner or any other person acting on his behalf.

(2) Where any property is re-transferred in contravention of the provisions of sub-section (1), the transaction of such property shall be deemed to be null and void.

- **Once Benami then Benami forever!**



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

Proceedings under Benami Act

- **Section 23: Power to Conduct Inquiry**
- **Section 24: Proceedings before Initiating Officer (Show Cause, Provisional Attachment)**
- **Section 26: Proceedings before Adjudicating Authority (Confirmation of PA)**
- **Section 26: Proceedings before Appellate Tribunal (Appeal)**
- **Section 50: Special Court**



Case 10

During the course of search statement u/s 132(4) of Income Tax Act was recorded. On the basis of the said sworn statement IO issued notice u/s 24(1) of Benami Act.

Whether IO (BPU) was under obligation to record to record a separate statement under Benami Act instead of relying on the statement recorded u/s 132(4) of Income Tax Act?

Reference:

[2024] 166 Taxmann.com 662 (SAFEMA- New Delhi)

Prohibition and Punishment u/s 3

- **Section 3(1)**
No person shall enter into any benami transaction
- **Section 3(2)**
Whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.
- **Section 3(3)**
Whoever enters into any benami transaction on and after the date of commencement of the Benami Transaction (Prohibition) Amendment Act, 2016, shall, notwithstanding anything contained in sub-section (2), be punishable in accordance with the provisions contained in Chapter VII.

Chapter VII

Section 53- Penalty for Benami Transaction

- **Section 53(1) Who shall be guilty?**

- ✓ To defeat provisions of any law
- ✓ To avoid payment of statutory dues
- ✓ To avoid payment to creditors



- **Section 53(2) Punishment:**

- ✓ Rigorous Imprisonment not less than 1 year, extended to 7 years **AND**
 - ✓ Fine up to 25% of FMV of the property
- Fair Market Value is defined u/s 2(16) of the Act

Chapter VII

- **Section 54- Penalty for False Information**

- ✓ Knowingly gives false information
- ✓ to any authority under the Act
- ✓ in any proceedings under the Act

- **Punishment:**

- ✓ Rigorous Imprisonment not less than 6 months, extended to 5 years **AND**
- ✓ Fine up to 10% of FMV of the property

- **Section 54A:** Penalty of Rs.25,000 for non-compliance.

- **Section 55: Sanction for Prosecution:**

No prosecution shall be instituted without prior approval of CIT, DIT, PCIT, PDIT.



Confiscation

Section 5: Property held benami liable to confiscation:

- Any property, which is subject matter of benami transaction, shall be liable to be confiscated by the Central Government.
- Confiscation proceedings are separate proceedings.
- Adj. Auth. gives opportunity of being heard u/s 27(1) before passing order.
- Administrator issues Notice to deliver possession within 7 days.
- Procedure of confiscation as prescribed under Rule 6 & 7 of Rules



Other Important considerations

- **Section 27(2): BONA-FIDE BUYER**
- ✓ Acquired by buyer for adequate consideration
- ✓ Acquisition is prior to issue of notice u/s 24(1) of the Act
- ✓ Acquisition by buyer is without having knowledge of benami transaction



Benami Law Retrospective or Prospective?

- **Section 3(1)**
No person shall enter into any benami transaction
- **Section 3(2)**
Whoever enters into any benami transaction shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.
- **Section 3(3)**
Whoever enters into any benami transaction on and after the date of commencement of the Benami Transaction (Prohibition) Amendment Act, 2016, shall, notwithstanding anything contained in sub-section (2), be punishable in accordance with the provisions contained in Chapter VII.

Benami Law Retrospective or Prospective?

- **Ganpati Dealcom Pvt. Ltd. Vs. Union of India [(2020) 421 (ITR) 483 (Calcutta)] 12.12.2019**
- **Ganpati Dealcom Pvt. Ltd. Vs. Union of India [(2022) 447 (ITR) 108 (SC)] 23.08.2022**
- **Ganpati Dealcom Pvt. Ltd. Vs. Union of India [(2025) 474 (ITR) 354 (SC)] dt. 18.10.2024**
- **DDIT(BPU) Vs. Kokilaben Chhaganlal Patel dt. 12.02.2025 [SLP (C) Diary No. 49828/2023 & Review Petition (C) No. Diary No. 45349/2024]**

**Relied on the Judgment of 3 judges bench of Hon'ble Supreme Court:
Govt. of NCT of Delhi Vs. K.L.Rathi Steels Limited (2024) 7 SCC 315 dt. 17.05.2024**

Important issues

- Income Tax is about income and Benami is about ownership.
- Taxation in case of benami transaction.
- Reopening of assessment initiated on the basis of Benami Transaction. [(2025) 171 Taxmann.com 498 (Raipur ITAT)]
- Recording of statement is very critical.
- Benami transaction is not just about public servants and black money.
- BPU does not have a power of survey/search
- Burden of Proof
- Role of advisor to the transaction is most critical.

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.

- **Section 2(u): Proceeds of Crime:**

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.

PMLA & Benami Act (Property and Punishments)

- ▶ **Provisional Attachment**
- ▶ **Adjudicating Authority**
- ▶ **Appellate Tribunal**
- ▶ **Arrest or Prosecution for Punishment**



Practical Issues

- Possession of Proceeds of Crime
- Kolkata Project Management company case
- Bangalore NBFC Case
- Undisclosed Foreign Bank Accounts

Role of a CA in Tax Writ Petitions

- ▶ Powers of Hon'ble High Court under Article 226 and Section 482 of CrPC
- ▶ Stay Petitions
- ▶ Delay Condonation
- ▶ Quashing of Reassessment Proceedings
- ▶ Quashing of Tax Prosecution cases
- ▶ Directions Expediting Appeals

Questions ???

