

¹[**PROHIBITION OF *BENAMI* PROPERTY TRANSACTIONS ACT, 1988**]

[45 OF 1988]*

[AS AMENDED BY FINANCE ACT, 2021]

An Act to prohibit benami transactions and the right to recover property held benami and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Thirty-ninth Year of the Republic of India as follows :—

²[**CHAPTER I** **PRELIMINARY**]

Short title, extent and commencement.

1. (1) This Act may be called the ¹[Prohibition of *Benami* Property Transactions Act, 1988] (45 of 1988).
- (2) It extends to the whole of India ^{2a}[***].
- (3) The provisions of sections 3, 5 and 8 shall come into force at once, and the remaining provisions of this Act shall be deemed to have come into force on the 19th day of May, 1988.

³[**Definitions.**

2. In this Act, unless the context otherwise requires,—

(1) “Adjudicating Authority” means the Adjudicating Authority ^{3a}[referred to in] section 7;

*Dated 5-9-1988.

1. Substituted for “*Benami* Transactions (Prohibition) Act, 1988” by the *Benami* Transactions (Prohibition) Amendment Act, 2016, w.e.f. 1-11-2016.
2. Inserted, *ibid*.
- 2a. Words “except the State of Jammu and Kashmir” omitted by the Jammu and Kashmir Reorganisation Act, 2019, w.e.f. 9-8-2019.
3. Substituted by the *Benami* Transactions (Prohibition) Amendment Act, 2016, w.e.f. 1-11-2016. Prior to its substitution, section 2 read as under :
 2. *Definitions.*—In this Act, unless the context otherwise, requires,—
 - (a) “*benami* transaction” means any transaction in which property is transferred to one person for a consideration paid or provided by another person;
 - (b) “prescribed” means prescribed by rules made under this Act;
 - (c) “property” means property of any kind, whether movable or immovable, tangible or intangible, and includes any right or interest in such property.’
- 3a. Substituted for “appointed under” by the Finance Act, 2021, w.e.f. **1-7-2021**.

- (2) "Administrator" means an Income-tax Officer as defined in clause (25) of section 2 of the Income-tax Act, 1961 (43 of 1961);
- (3) "Appellate Tribunal" means the Appellate Tribunal established under section 30;
- (4) "Approving Authority" means an Additional Commissioner or a Joint Commissioner as defined in clauses (1C) and (28C) respectively of section 2 of the Income-tax Act, 1961 (43 of 1961);
- (5) "attachment" means the prohibition of transfer, conversion, disposition or movement of property, by an order issued under this Act;
- (6) "authority" means an authority referred to in sub-section (1) of section 18;
- (7) "banking company" means a company to which the provisions of the Banking Regulation Act, 1949 (10 of 1949), applies and includes any bank or banking institution referred to in section 51 of that Act;
- (8) "*benami* property" means any property which is the subject matter of a *benami* transaction and also includes the proceeds from such property;
- (9) "*benami* transaction" means,—
 - (A) a transaction or an arrangement—
 - (a) where a property is transferred to, or is 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 when the property is held by—
 - (i) a *Karta*, or a member of a Hindu undivided family, as the case may be, and the property is held for his benefit or benefit of other members in the family and the consideration for such property has been provided or paid out of the known sources of the Hindu undivided family;
 - (ii) a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner, director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1996 (22 of 1996) and any other person as may be notified by the Central Government for this purpose;
 - (iii) any person being an individual in the name of his spouse or in the name of any child of such individual and the consideration for such property has been provided or paid out of the known sources of the individual;
 - (iv) any person in the name of his brother or sister or lineal ascendant or descendant, where the names of brother or

sister or lineal ascendant or descendent and the individual appear as joint-owners in any document, and the consideration for such property has been provided or paid out of the known sources of the individual; or

- (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.

Explanation.—For the removal of doubts, it is hereby declared that *benami* transaction shall not include any transaction involving the allowing of possession of any property to be taken or retained in part performance of a contract referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882), if, under any law for the time being in force,—

- (i) consideration for such property has been provided by the person to whom possession of property has been allowed but the person who has granted possession thereof continues to hold ownership of such property;
 - (ii) stamp duty on such transaction or arrangement has been paid; and
 - (iii) the contract has been registered;
- (10) “*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;
 - (11) “Bench” means a Bench of the Adjudicating Authority or the Appellate Tribunal, as the case may be;
 - (12) “beneficial owner” means a person, whether his identity is known or not, for whose benefit the *benami* property is held by a *benamidar*;
 - (13) “Board” means the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963 (54 of 1963);
 - (14) “director” shall have the same meaning as assigned to it in clause (34) of section 2 of the Companies Act, 2013 (18 of 2013);
 - (15) “executor” shall have the same meaning as assigned to it in clause (c) of section 2 of the Indian Succession Act, 1925 (39 of 1925);
 - (16) “fair market value”, in relation to a property, means—
 - (i) the price that the property would ordinarily fetch on sale in the open market on the date of the transaction; and
 - (ii) where the price referred to in sub-clause (i) is not ascertainable, such price as may be determined in accordance with such manner as may be prescribed;

- (17) “firm” shall have the same meaning as assigned to it in section 4 of the Indian Partnership Act, 1932 (9 of 1932) and shall include a limited liability partnership as defined in the Limited Liability Partnership Act, 2008 (6 of 2009);
- (18) “High Court” means—
- (i) the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and
 - (ii) where the Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents, ordinarily resides or carries on business or personally works for gain;
- (19) “Initiating Officer” means an Assistant Commissioner or a Deputy Commissioner as defined in clauses (9A) and (19A) respectively of section 2 of the Income-tax Act, 1961 (43 of 1961);
- (20) “Member” means the Chairperson or the Member of the Adjudicating Authority or the Appellate Tribunal, as the case may be;
- (21) “notification” means a notification published in the Official Gazette and the expression “notified” shall be construed accordingly;
- (22) “partner” shall have the same meaning as assigned to it in section 4 of the Indian Partnership Act, 1932 (9 of 1932), and shall include,—
- (a) any person who, being a minor, has been admitted to the benefits of partnership; and
 - (b) a partner of a limited liability partnership formed and registered under the Limited Liability Partnership Act, 2008 (6 of 2009);
- (23) “partnership” shall have the same meaning as assigned to it in section 4 of the Indian Partnership Act, 1932 (9 of 1932), and shall include a limited liability partnership formed and registered under the Limited Liability Partnership Act, 2008 (6 of 2009);
- (24) “person” shall include—
- (i) an individual;
 - (ii) a Hindu undivided family; .
 - (iii) a company;
 - (iv) a firm;
 - (v) an association of persons or a body of individuals, whether incorporated or not;
 - (vi) every artificial juridical person, not falling under sub-clauses (i) to (v);
- (25) “prescribed” means prescribed by rules made under this Act;
- (26) “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 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;

- (27) “public financial institution” shall have the same meaning as assigned to it in clause (72) of section 2 of the Companies Act, 2013 (18 of 2013);
- (28) “Special Court” means a Court of Session designated as Special Court under sub-section (1) of section 50;
- (29) “transfer” includes sale, purchase or any other form of transfer of right, title, possession or lien;
- (30) “trustee” means the trustee as defined in the section 3 of the Indian Trusts Act, 1882 (2 of 1882);
- (31) words and expressions used herein and not defined in this Act but defined in the Indian Trusts Act, 1882 (2 of 1882), the Indian Succession Act, 1925 (39 of 1925), the Indian Partnership Act, 1932 (9 of 1932), the Income-tax Act, 1961 (43 of 1961), the Depositories Act, 1996 (22 of 1996), the Prevention of Money-laundering Act, 2002 (15 of 2003), the Limited Liability Partnership Act, 2008 (6 of 2009) and the Companies Act, 2013 (18 of 2013), shall have the same meanings respectively assigned to them in those Acts.]

CASE LAWS

Section 2(19)

- ◆ The notification issued by the Central Government in exercise of power under section 59 of the Act has specifically mentioned an Officer in the rank of Assistant Commissioner of Income Tax (Benami Prohibition)/Deputy Commissioner of Income Tax (Benami Prohibition) as Initiating Officer, to state that a Deputy Commissioner of Income Tax other than the Deputy Commissioner of Income Tax (Benami Prohibition) could exercise jurisdiction, would be in direct conflict with the mandate contained in section 59(1) of the Act. - *Cascade Energy (Pte.) Ltd. v. Union of India* [2018] 90 taxmann.com 28 (Madras).
- ◆ The Initiating Officer being not a Deputy Commissioner of Income-tax (Benami Prohibition), Deputy Commissioner of Income-tax, Corporate Circle could not have initiated proceedings under the Benami Act against the petitioner. - *Cascade Energy (Pte.) Ltd. v. Union of India* [2018] 90 taxmann.com 28 (Madras).
- ◆ Since a statutory notification is issued specifying the authority who will be entitled to exercise power as an Initiating Officer, no other authority would be entitled to exercise such power and if done so, it would be without jurisdiction. Thus, as the Notification specifies the Deputy Commissioner of Income Tax (Benami Prohibition) as Initiating Officer, a Deputy Commissioner of Income Tax other than the Deputy Commissioner of Income Tax (Benami Prohibition) could not exercise jurisdiction to initiate proceedings under the Benami Act. - *Cascade Energy (Pte.) Ltd. v. Union of India* [2018] 90 taxmann.com 28 (Madras).

Section 2(21)

- ◆ E-publication of the Gazette is the only mode of publication as on date as physical printing and publication of Government Gazette has been done away with. Therefore, the Notification No. SO 1620 dated 18-5-2017, having been e-published on 18-5-2017, it takes effect from the said date. Merely because same was uploaded online by the Government of India Press, New Delhi on the website of E-Gazette only on 22-5-2017, it could not be said that the said notification would come into effect on and after 22-5-2017. - *Cascade Energy (Pte.) Ltd. v. Union of India* [2018] 90 taxmann.com 28 (Madras).

⁴[CHAPTER IIPROHIBITION OF *BENAMI* TRANSACTIONS]**Prohibition of *benami* transactions.**

3. (1) No person shall enter into any benami transaction.

(2) ⁵[***]

⁶[(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.

⁷[(3)] Whoever enters into any *benami* transaction on and after the date of commencement of the *Benami* Transactions (Prohibition) Amendment Act, 2016, shall, notwithstanding anything contained in sub-section (2), be punishable in accordance with the provisions contained in Chapter VII.]

(4) ⁸[***]

4. Inserted by the *Benami* Transactions (Prohibition) Amendment Act, 2016, w.e.f. 1-11-2016.

5. Omitted, *ibid.* Prior to its omission, sub-section (2), as substituted by the Depositories Act, 1996, w.r.e.f. 20-9-1995, read as under :

(2) Nothing in sub-section (1) shall apply to—

- (a) the purchase of property by any person in the name of his wife or unmarried daughter and it shall be presumed, unless the contrary is proved, that the said property had been purchased for the benefit of the wife or the unmarried daughter;
- (b) the securities held by a—
 - (i) depository as a registered owner under sub-section (1) of section 10 of the Depositories Act, 1996;
 - (ii) participant as an agent of a depository.

Explanation.—The expressions “depository” and “participant” shall have the meanings respectively assigned to them in clauses (e) and (g) of sub-section (1) of section 2 of the Depositories Act, 1996.’

6. Sub-section (3) renumbered as sub-section (2), *ibid.*

7. Inserted, *ibid.*

8. Omitted, *ibid.* Prior to its omission, sub-section (4) read as under :

“(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence under this section shall be non-cognizable and bailable.”

Prohibition of the right to recover property held *benami*.

4. (1) No suit, claim or action to enforce any right in respect of any property held *benami* against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

(2) No defence based on any right in respect of any property held *benami*, whether against the person in whose name the property is held or against any other person, shall be allowed in any suit, claim or action by or on behalf of a person claiming to be the real owner of such property.

(3) ⁹[***]

¹⁰**[Property held *benami* liable to confiscation.**

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

Prohibition on re-transfer of property by *benamidar*.

6. (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.

(3) The provisions of sub-sections (1) and (2) shall not apply to a transfer made in accordance with the provisions of section 190 of the Finance Act, 2016 (28 of 2016).]

9. Omitted by the *Benami* Transactions (Prohibition) Amendment Act, 2016, w.e.f. 1-11-2016. Prior to its omission, sub-section (3) read as under :

“(3) Nothing in this section shall apply,—

(a) where the person in whose name the property is held is a coparcener in a Hindu undivided family and the property is held for the benefit of the coparceners in the family; or

(b) where the person in whose name the property is held is a trustee or other person standing in a fiduciary capacity, and the property is held for the benefit of another person for whom he is a trustee or towards whom he stands in such capacity.”

10. Substituted, *ibid*. Prior to their substitution, sections 5 and 6 read as under :

“5. *Property held benami liable to acquisition*.—(1) All properties held *benami* shall be subject to acquisition by such authority, in such manner and after following such procedure as may be prescribed.

(2) For the removal of doubts, it is hereby declared that no amount shall be payable for the acquisition of any property under sub-section (1).

6. *Act not to apply in certain cases*.—Nothing in this Act shall affect the provisions of section 53 of the Transfer of Property Act, 1882 (4 of 1882) or any law relating to transfer for an illegal purpose.”

¹¹[CHAPTER III

AUTHORITIES

^{11a}[**Adjudicating Authority.**

7. *The competent authority authorised under sub-section (1) of section 5 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (13 of 1976) shall be the Adjudicating Authority to exercise jurisdiction, powers and authority conferred by or under this Act.]*

Composition of Authority.

8. ^{11b}[***]

Qualifications for appointment of Chairperson and Members.

9. ^{11b}[***]

Constitution of Benches of Adjudicating Authority.

10. ^{11b}[***]

11. Chapter III, consisting of sections 7 to 23, inserted by the *Benami Transactions (Prohibition) Amendment Act, 2016*, w.e.f. 1-11-2016.

11a. Substituted by the Finance Act, 2021, w.e.f. **1-7-2021**. Prior to its substitution, section 7 read as under :

*"7. Adjudicating Authority.—*The Central Government shall, by notification, appoint one or more Adjudicating Authorities to exercise jurisdiction, powers and authority conferred by or under this Act."

11b. Omitted by the Finance Act, 2021, w.e.f. **1-7-2021**. Prior to their omission, sections 8 to 10 read as under :

*"8. Composition of Authority.—*An Adjudicating Authority shall consist of a Chairperson and at least two other Members.

"9. Qualifications for appointment of Chairperson and Members.—(1) A person shall not be qualified for appointment as the Chairperson or a Member of the Adjudicating Authority unless he,—

(a) has been a member of the Indian Revenue Service and has held the post of Commissioner of Income-tax or equivalent post in that Service; or

(b) (i) has been a member of the Indian Legal Service and has held the post of Joint Secretary or equivalent post in that Service; or

(ii) is qualified for appointment as District Judge.

(2) The Chairperson and other Members of the Adjudicating Authority shall be appointed by the Central Government in such manner as may be prescribed.

(3) The Central Government shall appoint the seniormost Member to be the Chairperson of the Adjudicating Authority.

10. *Constitution of Benches of Adjudicating Authority.—*(1) Subject to the provisions of this Act,—

(a) the jurisdiction of the Adjudicating Authority may be exercised by Benches thereof;

(b) a Bench may be constituted by the Chairperson of the Adjudicating Authority with two Members, as the Chairperson may deem fit;

Power of Adjudicating Authority to regulate its own procedure.11. ^{11c}[***]**Term of office of Chairperson and Members of Adjudicating Authority.**12. ^{11c}[***]**Terms and conditions of services of Chairperson and Members of Adjudicating Authority.**13. ^{11c}[***]**Removal of Chairperson and Members of Adjudicating Authority.**14. ^{11c}[***]

(Contd. from page 1.14)

(c) the Benches of the Adjudicating Authority shall ordinarily sit in the National Capital Territory of Delhi and at such other places as the Central Government may, in consultation with the Chairperson, by notification, specify;

(d) the Central Government shall, by notification, specify the areas in relation to which each Bench of the Adjudicating Authority may exercise jurisdiction.

(2) Notwithstanding anything contained in sub-section (1), the Chairperson may transfer a Member from one Bench to another Bench."

*Earlier, section 9 was amended by the Finance Act, 2020, w.e.f. 1-4-2020.

11c. Omitted by the Finance Act, 2021, w.e.f. **1-7-2021**. Prior to their omission, sections 11 to 14 read as under :

"11. *Power of Adjudicating Authority to regulate its own procedure.*—The Adjudicating Authority shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Authority shall have powers to regulate its own procedure.

12. *Term of office of Chairperson and Members of Adjudicating Authority.*—The Chairperson and Members of the Adjudicating Authority shall hold office for a term not exceeding five years from the date on which they enter upon their office, or until they attain the age of sixty-two years, whichever is earlier and shall not be eligible for reappointment.

13. *Terms and conditions of services of Chairperson and Members of Adjudicating Authority.*—(1) The salary and allowances payable to, and the other terms and conditions of service of the Chairperson and other Members of the Adjudicating Authority shall be such as may be prescribed.

(2) Any vacancy caused to the office of the Chairperson or any other Member shall be filled up within a period of three months from the date on which such vacancy occurs.

14. *Removal of Chairperson and Members of Adjudicating Authority.*—(1) The Central Government may, by order, remove from office, the Chairperson or other Members of the Adjudicating Authority, if the Chairperson or such other Member, as the case may be,—

(a) has been adjudged as an insolvent; or

(b) has been convicted of an offence, involving moral turpitude; or

(c) has become physically or mentally incapable of acting as a Member; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions; or

(e) has so abused his position as to render his continuance in office is prejudicial to the public interest.

(2) No Chairperson or Member shall be removed from his office under clause (d) or clause (e) of sub-section (1) unless he has been given a reasonable opportunity of being heard in the matter."

Member to act as Chairperson in certain circumstances.

15. ^{11d}[***]

Vacancies, etc., not to invalidate proceedings of Adjudicating Authority.

16. ^{11d}[***]

Officers and employees of Adjudicating Authority.

17. ^{11d}[***]

Authorities and jurisdiction.

18. (1) The following shall be the authorities for the purposes of this Act, namely:—

- (a) the Initiating Officer;
- (b) the Approving Authority;
- (c) the Administrator; and
- (d) the Adjudicating Authority.

(2) The authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, assigned, as the case may be, to it under this Act or in accordance with such rules as may be prescribed.

Powers of authorities.

19. (1) The authorities shall, for the purposes of this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely:—

- (a) discovery and inspection;

11d. Omitted by the Finance Act, 2021, w.e.f. 1-7-2021. Prior to their omission, sections 15 to 17 read as under :

“15. *Member to act as Chairperson in certain circumstances.*—(1) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the seniormost Member shall act as the Chairperson of the Adjudicating Authority until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

(2) When the Chairperson is unable to discharge his functions owing to absence, illness or any other cause, the seniormost Member shall discharge the functions of the Chairperson until the date on which the Chairperson resumes his duties.

16. *Vacancies, etc., not to invalidate proceedings of Adjudicating Authority.*—No act or proceeding of the Adjudicating Authority shall be invalid merely by reason of—

- (a) any vacancy in, or any defect in the constitution of the Authority; or
- (b) any defect in the appointment of a person acting as a Member of the Authority; or
- (c) any irregularity in the procedure of the Authority not affecting the merits of the case.

17. *Officers and employees of Adjudicating Authority.*—(1) The Central Government shall provide each Adjudicating Authority with such officers and employees as that Government may think fit.

(2) The officers and employees of the Adjudicating Authority shall discharge their functions under the general superintendence of the Chairperson of the Adjudicating Authority.”

- (b) enforcing the attendance of any person, including any official of a banking company or a public financial institution or any other intermediary or reporting entity, and examining him on oath;
- (c) compelling the production of books of account and other documents;
- (d) issuing commissions;
- (e) receiving evidence on affidavits; and
- (f) any other matter which may be prescribed.

(2) All the persons summoned under sub-section (1) shall be bound to attend in person or through authorised agents, as any authority under this Act may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

(3) Every proceeding under sub-section (1) or sub-section (2) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).

(4) For the purposes of this Act, any authority under this Act may requisition the service of any police officer or of any officer of the Central Government or State Government or of both to assist him for all or any of the purposes specified in sub-section (1), and it shall be the duty of every such officer to comply with the requisition or direction.

(5) For the purposes of this section, "reporting entity" means any intermediary or any authority or of the Central or the State Government or any other person as may be notified in this behalf.

Explanation.—For the purposes of sub-section (5), "intermediary" shall have the same meaning as assigned to it in clause (n) of sub-section (1) of section 2 of the Prevention of Money-Laundering Act, 2002 (15 of 2003).

Certain officers to assist in inquiry, etc.

20. The following officers shall assist the authorities in the enforcement of this Act, namely:—

- (a) income-tax authorities appointed under sub-section (1) of section 117 of the Income-tax Act, 1961 (43 of 1961);
- (b) officers of the Customs and Central Excise Departments;
- (c) officers appointed under sub-section (1) of section 5 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985);
- (d) officers of the stock exchange recognised under section 4 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);
- (e) officers of the Reserve Bank of India constituted under sub-section (1) of section 3 of the Reserve Bank of India Act, 1934 (2 of 1934);
- (f) police;
- (g) officers of enforcement appointed under sub-section (1) of section 36 of the Foreign Exchange Management Act, 1999 (40 of 1999);

- (h) officers of the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);
- (i) officers of any other body corporate constituted or established under a Central or a State Act; and
- (j) such other officers of the Central Government, State Government, local authorities or banking companies as the Central Government may, by notification, specify, in this behalf.

Power to call for information.

21. (1) The Initiating Officer or the Approving Authority or the Adjudicating Authority shall have power to require any officer of the Central Government or State Government or a local body or any person or officer who is responsible for registering and maintaining books of account or other documents containing a record of any transaction relating to any property or any other person to furnish any information in relation to any person, point or matter as in his opinion shall be useful for or relevant for the purposes of this Act.

(2) Without prejudice to sub-section (1), every officer or person referred to in sub-section (1) shall furnish such information to any authority under this Act in such form and manner as may be prescribed.

Power of authority to impound documents.

22. (1) Where any books of account or other documents are produced before the authority in any proceedings under this Act and the authority in this behalf has reason to believe that any of the books of account or other documents are required to be impounded and retained for any inquiry under this Act, it may impound and retain the books of account or other documents for a period not exceeding three months from the date of order of attachment made by the Adjudicating Authority under sub-section (3) of section 26:

Provided that the period for retention of the books of account or other documents may be extended beyond a period exceeding three months from the date of order of attachment made by the Adjudicating Authority under sub-section (3) of section 26 where the authority records in writing the reasons for extending the same:

(2) Where the authority impounding and retaining the books of account or other documents, under sub-section (1) is the Initiating Officer, he shall obtain approval of the Approving Authority within a period of fifteen days from the date of initial impounding and seek further approval of the Approving Authority for extending the period of initial retention, before the expiry of the period of initial retention, if so required.

(3) The period of retention of the books of account or other documents under sub-section (1) shall in no case exceed a period of thirty days from the date of conclusion of all the proceedings under this Act.

(4) The person, from whom the books of account or other documents were impounded under sub-section (1), shall be entitled to obtain copies thereof.

(5) On the expiry of the period specified under sub-section (1), the books of account or other documents shall be returned to the person from whom such books of account or other documents were impounded unless the Approving Authority or the Adjudicating Authority permits their release to any other person.

Power of authority to conduct inquiry, etc.

23. The Initiating Officer, after obtaining prior approval of the Approving Authority, shall have power to conduct or cause to be conducted any inquiry or investigation in respect of any person, place, property, assets, documents, books of account or other documents, in respect of any other relevant matters under this Act.]

¹²[*Explanation.*—For the removal of doubts, it is hereby clarified that nothing contained in this section shall apply and shall be deemed to have ever applied where a notice under sub-section (1) of section 24 has been issued by the Initiating Officer.]

^{12a}[**CHAPTER IV**

ATTACHMENT, ADJUDICATION AND CONFISCATION

Notice and attachment of property involved in *benami* transaction.

24. (1) Where the Initiating Officer, on the basis of material in his possession, has reason to believe that any person is a *benamidar* in respect of a property, he may, after recording reasons in writing, issue a notice to the person to show cause within such time as may be specified in the notice why the property should not be treated as *benami* property.

(2) Where a notice under sub-section (1) specifies any property as being held by a *benamidar* referred to in that sub-section, a copy of the notice shall also be issued to the beneficial owner if his identity is known.

(3) Where the Initiating Officer is of the opinion that the person in possession of the property held *benami* may alienate the property during the period specified in the notice, he may, with the previous approval of the Approving Authority, by order in writing, attach provisionally the property in the manner as may be prescribed, for a period not exceeding ninety days ¹³[from the last day of the month in which the notice under sub-section (1) is issued].

(4) The Initiating Officer, after making such inquiries and calling for such reports or evidence as he deems fit and taking into account all relevant materials, shall, within a period of ninety days ¹³[from the last day of the month in which the notice under sub-section (1) is issued],—

(a) where the provisional attachment has been made under sub-section (3),—

12. Inserted by the Finance (No. 2) Act, 2019, w.r.e.f. 1-11-2016.

12a. Chapter IV, consisting of sections 24 to 29, inserted by the *Benami* Transactions (Prohibition) Amendment Act, 2016, w.e.f. 1-11-2016.

13. Substituted for “from the date of issue of notice under sub-section (1)” by the Finance (No. 2) Act, 2019, w.e.f. 1-9-2019.

- (i) pass an order continuing the provisional attachment of the property with the prior approval of the Approving Authority, till the passing of the order by the Adjudicating Authority under sub-section (3) of section 26; or
 - (ii) revoke the provisional attachment of the property with the prior approval of the Approving Authority.
- (b) where provisional attachment has not been made under sub-section (3),—
- (i) pass an order provisionally attaching the property with the prior approval of the Approving Authority, till the passing of the order by the Adjudicating Authority under sub-section (3) of section 26; or
 - (ii) decide not to attach the property as specified in the notice, with the prior approval of the Approving Authority.
- (5) Where the Initiating Officer passes an order continuing the provisional attachment of the property under sub-clause (i) of clause (a) of sub-section (4) or passes an order provisionally attaching the property under sub-clause (i) of clause (b) of that sub-section, he shall, within fifteen days from the date of the attachment, draw up a statement of the case and refer it to the Adjudicating Authority.

¹⁴[*Explanation*.—For the purposes of this section, in computing the period of limitation, the period during which the proceeding is stayed by an order or injunction of any court shall be excluded:

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation referred to in sub-section (4) available to the Initiating Officer for passing order of attachment is less than thirty days, such remaining period shall be deemed to be extended to thirty days:

Provided further that where immediately after the exclusion of the aforesaid period, the period of limitation referred to in sub-section (5) available to the Initiating Officer to refer the order of attachment to Adjudicating Authority is less than seven days, such remaining period shall be deemed to be extended to seven days.]

CASE LAWS

Section 24

- ◆ As section 24 refers to ‘the Initiating Officer’, it denotes ‘a particular officer or a person’ and it cannot be generalised and stated that all Deputy Commissioners of and Assistant Commissioners of can function as the Initiating Officer under section 24. - *Cascade Energy (Pte.) Ltd. v. Union of India* [2018] 90 taxmann.com 28 (Madras).

14. Inserted by the Finance (No. 2) Act, 2019, w.e.f. 1-9-2019.

- ◆ The notification issued by the Central Government in exercise of power under section 59 of the Act has specifically mentioned an Officer in the rank of Assistant Commissioner of Income Tax (Benami Prohibition)/Deputy Commissioner of Income Tax (Benami Prohibition) as Initiating Officer, to state that a Deputy Commissioner of Income Tax other than the Deputy Commissioner of Income Tax (Benami Prohibition) could exercise jurisdiction, would be in direct conflict with the mandate contained in section 59(1) of the Act. - *Cascade Energy (Pte.) Ltd. v. Union of India* [2018] 90 taxmann.com 28 (Madras).
- ◆ The Initiating Officer being not a Deputy Commissioner of Income-tax (Benami Prohibition), Deputy Commissioner of Income-tax, Corporate Circle could not have initiated proceedings under the Benami Act against the petitioner. - *Cascade Energy (Pte.) Ltd. v. Union of India* [2018] 90 taxmann.com 28 (Madras).
- ◆ Since a statutory notification is issued specifying the authority who will be entitled to exercise power as an Initiating Officer, no other authority would be entitled to exercise such power and if done so, it would be without jurisdiction. Thus, as the Notification specifies the Deputy Commissioner of Income Tax (Benami Prohibition) as Initiating Officer, a Deputy Commissioner of Income Tax other than the Deputy Commissioner of Income Tax (Benami Prohibition) could not exercise jurisdiction to initiate proceedings under the Benami Act. - *Cascade Energy (Pte.) Ltd. v. Union of India* [2018] 90 taxmann.com 28 (Madras).

Manner of service of notice.

25. (1) A notice under sub-section (1) of section 24 may be served on the person named therein either by post or as if it were a summons issued by a Court under the Code of Civil Procedure, 1908 (5 of 1908).

(2) Any notice referred to in sub-section (1) may be addressed—

- (i) in case of an individual, to such individual;
- (ii) in the case of a firm, to the managing partner or the manager of the firm;
- (iii) in the case of a Hindu undivided family, to *Karta* or any member of such family;
- (iv) in the case of a company, to the principal officer thereof;
- (v) in the case of any other association or body of individuals, to the principal officer or any member thereof;
- (vi) in the case of any other person (not being an individual), to the person who manages or controls his affairs.

Adjudication of *benami* property.

26. (1) On receipt of a reference under sub-section (5) of section 24, the Adjudicating Authority shall issue notice, to furnish such documents, particulars or evidence as is considered necessary on a date to be specified therein, on the following persons, namely:—

- (a) the person specified as a *benamidar* therein;
- (b) any person referred to as the beneficial owner therein or identified as such;