

**BENAMI LAW – A  
FUNDAMENTAL  
ANALYSIS**

**CA RAJIV KHANDELWAL**

# What is a *Benami* Property?

- Simply stated, a property where the “actual owner” is separate from its “legal/ on-paper owner”

## Example

- B’ has earned cash income which he wants to not disclose but put it to economic use too (invest)
- ‘B’ instructs his employee ‘X’ to acquire an agricultural land in the name of ‘X’

## What is a *Benami* Property – cont...

- ‘A’ executes the agreement in favour of ‘X’ and ‘X’ becomes the registered owner; however, the cash is provided by ‘B’ and all benefits of the land will be reaped by ‘B’
- ‘Here, the land is a benami property, ‘X’ is a benamidar, and ‘B’ is a beneficial owner
- “Legal/ on-paper” owner is called a “benamidar”
- “Actual owner” is called a “beneficial owner”

# Benami vs sham transaction

Even Supreme Court recognised the concept of *benami* in the case of **Sree Meenakshi Mills Ltd vs CIT [1957 31 ITR 28]** and observed that “.....*The word 'benami' is used to denote two classes of transactions which differ from each other in their legal character and incidents. In one sense, it signifies a transaction which is real, as for example, when A sells properties to B but the sale deed mentions X as the purchaser. Here the sale itself is genuine, but the real purchaser is B, X being his benamidar. This is the class of transactions which is usually termed as benami.*”

# **The 1988 Act (the Principal Act)**

**- Salient features**

# Important Definitions

The 1988 Act  
(the Principal Act)

- 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
- 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**

Decision – Pawan Kumar Gupta v Rochiram Nagdeo – 4 SCC 243 (SC)

# Prohibition of *benami* transactions

The 1988 Act  
(the Principal Act)

- Section 3(1) - No person shall enter into any benami transaction
- Section 3(3) - 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**

## ***Benami* property liable to acquisition**

- Section 5(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.**
- Section 5(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)



# Limitations of the Principal Act of 1988

- No authority was notified to carry out the functions of the Act – who would test whether a particular transaction is a *benami* transaction, who would acquire the *benami* property, etc
- The manner in which to acquire the property was not provided for
- The procedures to be followed to acquire the property were not notified

# Limitations of the Principal Act of 1988 - cont...

- Though the Act defined and prohibited *benami* transactions, the law was never implemented due to absence of machinery provisions for enforcement in the Act
- Section 8 provided powers to Central Government to make rules; however, such rules were never prescribed

# **The *Benami* Amendment Act of 2016**

# The Amendment Act of 2016

- To curb the shortcomings of the 1988 Act and to continue the anti-black money crusade, the Government came up with the *Benami Transactions (Prohibition) Amendment Bill*; which was passed by the Lok Sabha in 2016
- This bill introduced several measures establishing machinery for enforcement of the *benami* law.

# Why no new law was introduced

*“Anybody will know that a law can be made retrospective, but under Article 20 of the Constitution of India, penal laws cannot be made retrospective. The simple answer to the question why we did not bring a new law is that a new law would have meant giving immunity to everybody from the penal provisions during the period 1988 to 2016 and giving a 28 year immunity would not have been in larger public interest, particularly if large amounts of unaccounted black money have been used to transact those transactions. This was the principal object.”*



Hon'ble Finance Minister Late Shri Arun Jaitley - during the debate on the Amendment bill in Lok Sabha

**The Prohibition of  
*Benami*  
Property Transactions  
Act, 1988  
(PBPT Act)**

(as amended by The *Benami*  
Amendment Act of 2016)

# **Important Definitions**

# “Person”

Section 2(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)



## ***“Benamidar”***

Section 2(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**

## **“Beneficial owner”**

Section 2(12) - “beneficial owner” means a person, whether his identity is known or not, for whose benefit the *benami* property is held by a *benamidar*

# “Property”

Section 2(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

# **“*Benami* Transaction”**

Section 2(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,

# Decisions

1. Onus of establishing that a transaction is benami is upon who asserts it – that is, the IO

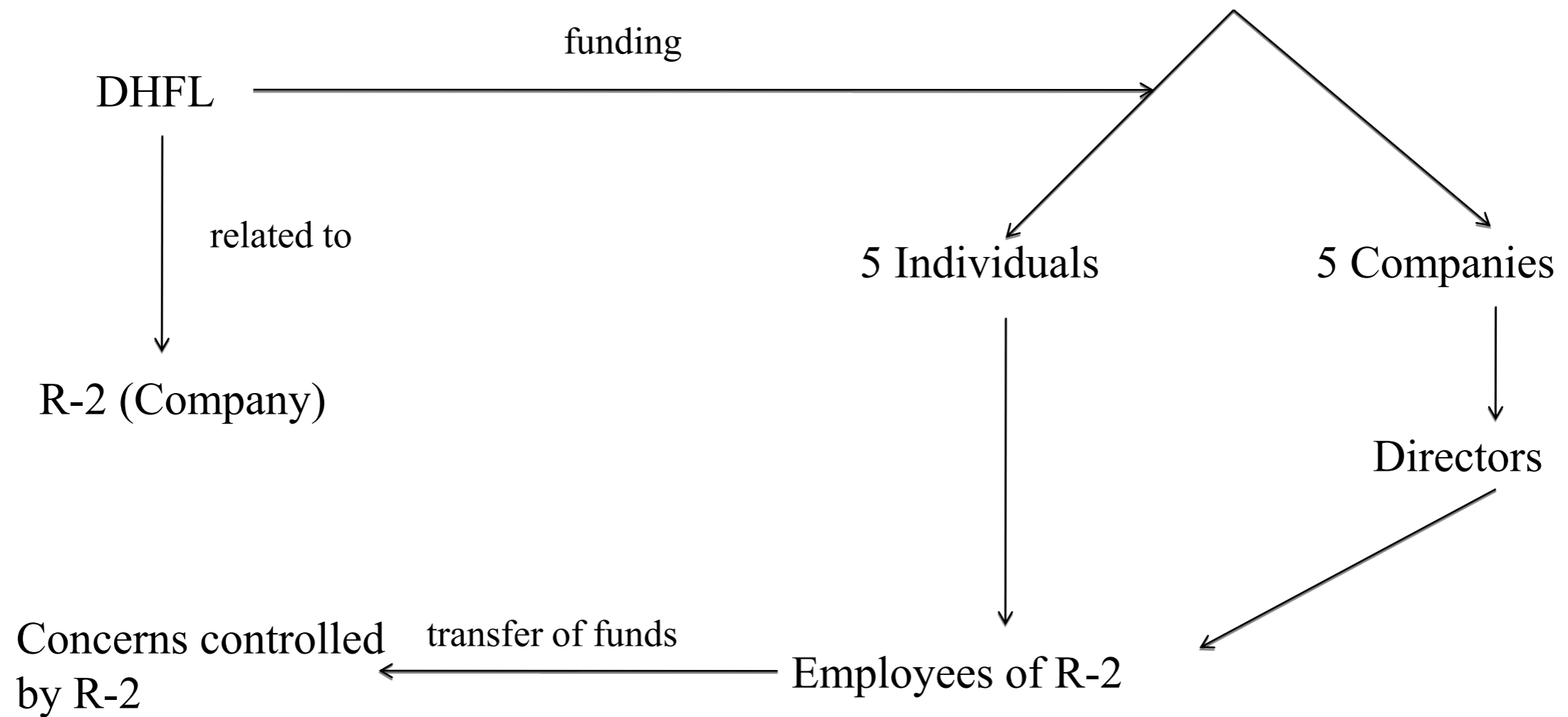
Mangathai Ammal vs Rajeswari – 111 taxmann.com 275 (SC)

Fair Communication & Consultants vs Surendra Kardile – 113 taxmann.com 377 (SC)

2. Manpreet Estates LLP, Mum – 105 taxmann.com 187 (PBPTA – AT)

# Manpreet Estates LLP

R-1 (LLP) - purchases 10 residential flats from 10 persons



## ***“Benami transaction” – cont...***

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;

## **“*Benami* transaction” – cont...**

except when the property is held by—

(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;



## **“*Benami* transaction” – cont...**

except when the property is held by—

(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;

### **Decision**

Manoj Arora vs Mamta Arora – 258 Taxman 1 (Del)

## **“*Benami* transaction” – cont...**

except when the property is held by—

(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 descendant 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;

## “*Benami* transaction” – cont...

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;

## **“*Benami* transaction” – cont...**

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.

## “*Benami* property”

Section 2(8) - *benami* property” means any property which is the **subject matter** of a **benami transaction** and also includes **the proceeds from such property**

# “Authority”

Section 2(6) - “authority” means an authority referred to in sub-section (1) of section 18

Section 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.

# **“Initiating Officer”**

Section 2(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)

## **“Approving Authority”**

Section 2(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)



# **“Administrator”**

Section 2(2) - “Administrator” means an Income-tax Officer as defined in clause (25) of section 2 of the Income-tax Act, 1961 (43 of 1961)

# **“Adjudicating Authority”**

Section 2(1) - “Adjudicating Authority” means the Adjudicating Authority appointed under section 7

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

**Chapter II**  
**The Charging**  
**Provisions**  
**Section 3 to Section 6**

# Prohibition of *Benami* Transactions

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

(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.

(3) Whoever enters into any *benami* transaction on and after the date of commencement of the *Benami* Transactions (Prohibition) Amendment Act, 2016 (43 of 2016) shall, notwithstanding anything contained in subsection (2), be punishable in accordance with the provisions contained in Chapter VII.

## **Prohibition of the right to recover property held *Benami***

Section 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.

## **Prohibition of the right to recover property held *Benami***

(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.

### Decision

Vinay Khanna vs Krishna Kumari Khanna – 115  
taxmann.com 9

**Chapter IV**  
**The Heart of *Benami***  
***Law***

**Section 24 to Section 29**

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

Section 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.



## **Notice and attachment of property involved in *benami* transaction – cont...**

Section 24(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.

Decision – Kavita Infrastructure (P) Ltd vs Initiating Officer Mum – 112 taxmann.com 68

## Notice and attachment of property involved in *benami* transaction - cont...

Section 24(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 from the date of issue of notice under sub-section (1).

Decision – Kavita Infrastructure (P) Ltd vs Initiating Officer  
Mum – 112 taxmann.com 68 (PBPTA – AT)

# Decisions

1. IO issued notice u/s 24(1) for alleged *benami* property of Rs 33 crores – provisionally attached entire construction project worth much more than that – Company put some flats valued Rs 33 crores under attachment so that the entire project is not attached –

Gami Infotech Pvt Ltd vs Initiating Officer  
– WP No 734 of 2019 (Bom)

# Decisions

2. Territorial jurisdiction – IO, Mumbai issued notice u/s 24(1) to a Company registered in Ghaziabad, U.P. – IO, Kanpur had jurisdiction over the Company; hence, impugned notice held invalid

Ace Infracity Developers (P) Ltd vs Initiating Officer – 110 taxmann.com 463 (PBPTA – AT)

3. If order of IO is set aside for technical reasons e.g. for violation of principles of natural justice or procedural defect, IO is not precluded from re-initiating proceedings by curing defects –

Smt Sunita Gupta vs Union of India – 101 taxmann.com 1(Del)

## **Notice and attachment of property involved in *benami* transaction – cont...**

Section 24(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 from the date of issue of notice under sub-section (1),

## **Notice and attachment of property involved in *benami* transaction – cont...**

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

(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

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

(ii) **revoke** the provisional attachment of the property with the prior approval of the Approving Authority;

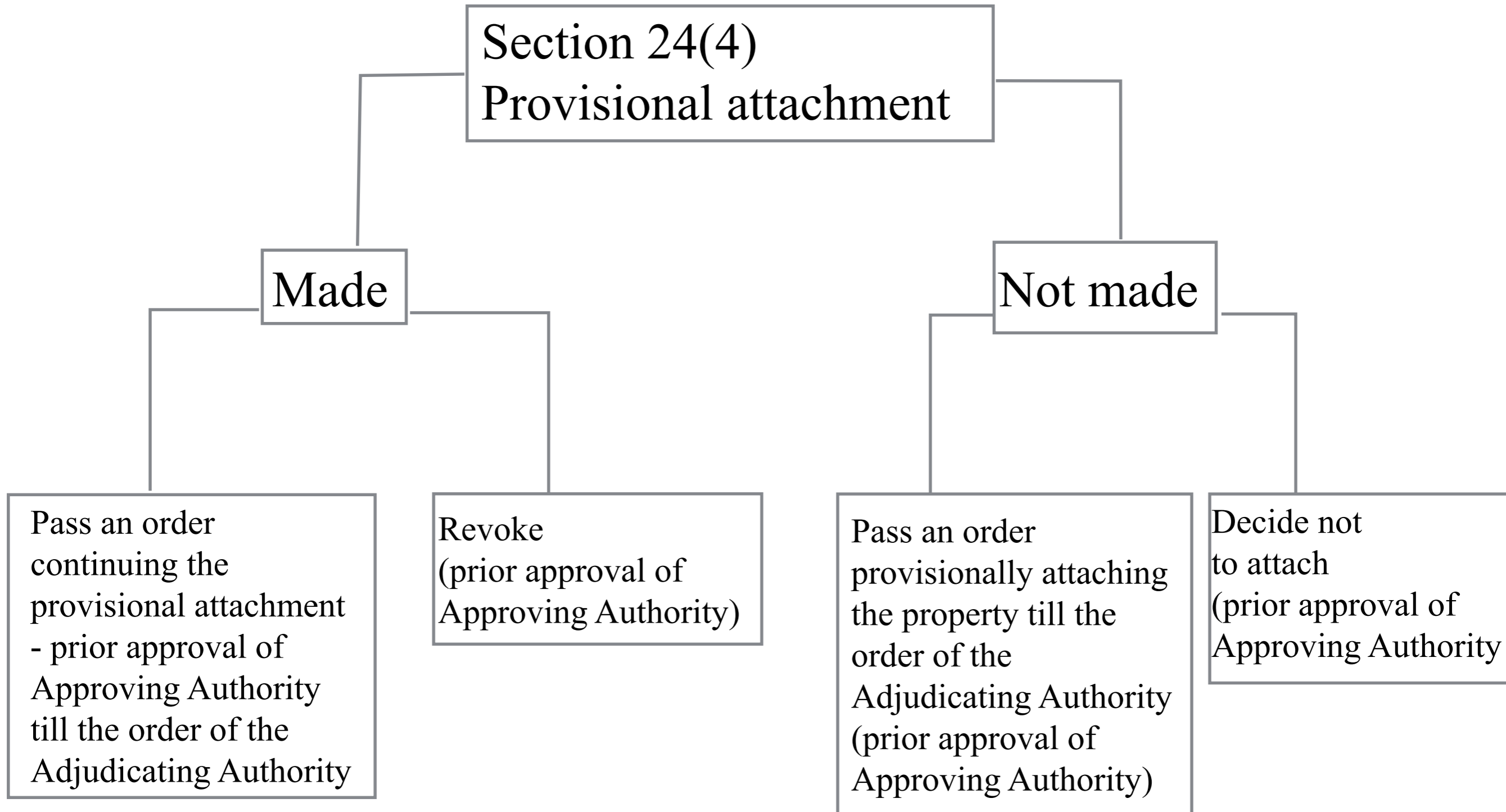
## **Notice and attachment of property involved in *benami* transaction - cont...**

(b) where the 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.





## **Notice and attachment of property involved in *benami* transaction – cont...**

Section 24(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.

# **Adjudication of *Benami* property**

## **– Section 26**

- AA – receipt of reference from IO;
- AA has powers to make further enquiries (Section 19) – directly or by issuing commission and call for reports / evidence
- After hearing all the parties to the reference, the AA will pass an order
- AA has the powers to attach any other property other than the one that was referred by IO

# Adjudication of *Benami* property – Section 26 – cont....

- AA may strike out a person / bring in another person whose presence is felt necessary
- Any other person who claims to be owner of the property may appear before the AA and present his case – **Kavita Infrastructure**
- Order to be passed by the AA not after the expiry of 1 year from the end of the month in which the Reference is received u/s 24(5)

# **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

# Confiscation and Vesting of *Benami* Property

Section 27(1) Where an order is passed in respect of any property under sub-section (3) of section 26 holding such property to be a *benami* property, the Adjudicating Authority shall, after giving an opportunity of being heard to the person concerned, make an order confiscating the property held to be a *benami* property:

Provided that where an appeal has been filed against the order of the Adjudicating Authority, the confiscation of property shall be made subject to the order passed by the Appellate Tribunal under section 46:

Provided further that the confiscation of the property shall be made in accordance with such procedure as may be prescribed.

## **Confiscation and vesting of *benami* property – cont...**

Section 27(2) Nothing in sub-section (1) shall apply to a property held or acquired by a person from the *benamidar* for adequate consideration, prior to the issue of notice under sub-section (1) of section 24 without his having knowledge of the *benami* transaction.

(3) Where an order of confiscation has been made under sub-section (1), all the rights and title in such property shall vest absolutely in the Central Government free of all encumbrances and no compensation shall be payable in respect of such confiscation.

## **Confiscation and vesting of *benami* property - cont...**

Section 27(4) Any right of any third person created in such property with a view to defeat the purposes of this Act shall be null and void.

(5) Where no order of confiscation is made upon the proceedings under this Act attaining finality, no claim shall lie against the Government.



# **Possession of the property**

Section 29(1) Where an order of confiscation in respect of a property under sub-section (1) of section 27, has been made, the Administrator shall proceed to take the possession of the property.

## **Possession of the property - cont...**

Section 29(2) The Administrator shall, -

(a) by notice in writing, order within seven days of the date of the service of notice to any person, who may be in possession of the *benami* property, to surrender or deliver possession thereof to the Administrator or any other person duly authorised in writing by him in this behalf;

(b) in the event of non-compliance of the order referred to in clause (a), or if in his opinion, taking over of immediate possession is warranted, for the purpose of forcibly taking over possession, requisition the service of any police officer to assist him and it shall be the duty of the officer to comply with the requisition.

# Prohibition on re-transfer of property by *Benamidar*

Section 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).

# Appeals

Section 46 – Appeals to Appellate Tribunal –

– within 45 days from **the date of the order** –

D. Saibaba v Bar Council of India - 6 SCC 186 (SC),

Golden Time Services Pvt Ltd - 113 taxmann.com 524 (Del),

Peterplast Synthetics Pvt Ltd – 364 ITR 16 (Guj)

Section 47 – Rectification of apparent mistakes

Section 49 – Appeals to High Court – within a 60 days from the date of communication of the order of the Appellate Tribunal

# Offences and Prosecutions

Section 53 – Penalty for *Benami* transactions

Section 54 – Penalty for false information

Section 55 – Previous sanction of Board required

# Miscellaneous Provisions

# Miscellaneous Provisions

Section 19 Powers of authorities

Section 20 Certain officers to assist in inquiry, etc

Section 21 Power to call for information

Section 22 Power of authority to impound documents.

Section 23 Power of authority to conduct inquiry, etc

## **Miscellaneous provisions – cont...**

Section 28 Management of properties  
confiscated

Section 50 Special Courts

Section 57 Certain transfers to be null and  
void

Section 58 Exemptions

Section 59 Power of Central Government to  
issue directions, etc.



## **Miscellaneous provisions - cont...**

Section 61 Offences to be non-cognizable

Section 62 Offences by companies

Section 63 Notice, etc., not to be invalid on certain grounds

Section 66 Proceedings, etc., against legal representative

Section 67 Act to have overriding effect

Section 68 Power to make rules.

Applicability of Act to  
*Benami* Transactions  
Between 1988 and 2016  
The Big Question

# Why the Controversy

- The Principal Act was dormant for poor drafting and for the lack of machinery provisions
- Section 3 of the Principal Act prohibited *benami* transactions and further, provided for punishment for such transactions
- Section 5 of the Principal Act provided for acquisition of *benami* property by “such authorities”; however, “such authorities” were not defined and were not put in place to function.
- There was no provision for attachment or confiscation of *benami* property

## Why the controversy – cont...

- Subsequently, the Old Act was completely overhauled and radically amended with effect from 1st November, 2016. All amended provisions came into force only on 1st November, 2016
- No controversy on the intent of the legislation - it is clear that the intent of the legislation is to bring in the *benami* transactions entered into between 1988 and 2016 under the purview of the *benami* law - refer FM Speech
- The question is - Can this be upheld?

# Certain Guiding Principles

Article 20(1) of the Constitution of India - *“no person shall be convicted of an offence except for violation of a law in force at the time of the commission of the offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence”*

## Certain guiding principles - cont...

Supreme Court in the case of CIT vs Vatika Township Pvt Ltd [367 ITR 466] - *“.....Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past.....This principle of law is known as lex prospicit non respicit : law looks forward not backward. As was observed in Phillips v. Eyre[1870] LR 6 QB 1, a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law”*

# What Courts have held on retrospectivity

Rajasthan High Court in the case of Niharika Jain vs Union of India - “.....it is well settled law that a substantive provision unless specifically made retrospective or otherwise intended by the Parliament should always be held to be prospective. The power to confiscate and consequent forfeiture of rights or interests are drastic being penal in nature, and therefore, such statutes are to be read very strictly. However, there can be no exercise of powers under such statutes by way of extension or implication.....this Court has no hesitation to hold that the Benami Amendment Act, 2016, amending the Principal Benami Act, 1988, enacted with effect from 1-11-2016, i.e. the date determined by the Central Government in its wisdom for its enforcement; cannot have retrospective effect.....”

# What Courts have held on retrospectivity – cont...

Calcutta High Court in the case of Ganpat Dealcom (P) Ltd vs Union of India - *“.....The contention of the revenue that the provision in section 1(2) of the said Act automatically made the amending Act of 2016 retrospective is to be rejected. The 2016 amendment is a new legislation and in order to have retrospectivity it should have been specifically provided therein that it was intended to cover contraventions at an earlier point of time. That express provision is not there.....It could also contend that no criminal action could be initiated on the ground of limitation.....In other words, applying the definition of benami property and benami transaction the Central Government could not, on the basis of the 2016 amendment allege contravention and start the prosecution in respect of a transaction in 2011.....”*

Note - this decision has been stayed by the Supreme Court.



## What Courts have held on retrospectivity - cont.

Chhattisgarh High Court in the case of Tulsiram vs ACIT -  
“.....It can also not to be said that provisions of the Amended Act of 2016 could not have been made applicable in respect of properties which were acquired prior to 1-11-2016. The whole Act of 1988 as it stands today inclusive of the amended provisions brought into force from 1-11-2016 onwards applies irrespective of the period of purchase of the alleged Benami property. Amended Act of 2016 does not have an existence by itself. Without the provisions of the Act of 1988, the amended provisions of 2016 has no relevance and the amended Provisions are only laying down the proceedings to be adopted in a proceeding drawn under the Act of 1988 and the penalties to be imposed in each of the cases taking into consideration the period of purchase of Benami property.....”

## What Courts have held – cont...

Delhi High Court in the case of Anis Ur Rehman vs Mohd Tahir Niharika Jain vs Union of India - “.....*Therefore, by defining the expressions fiduciary capacity and trustee, it is not as if any vested right existing under the earlier provisions of section 4(3) is taken away. What was the subject matter of section 4(3) of the unamended Act being the transactions which were exempted from being classified as benami transactions, the said aspects are now brought in the subject matter of section 2(9) of the Amended Act..... It is, therefore, held that definitions of the exempted transactions to the prohibited benami property transactions, and now contained in the four exceptions in section 2(9) are always deemed to have been included in the exceptions to the prohibited benami transactions.....*”

# **A Few Practical Cases**

# Case No. 1

- Search operations in the premises of B Ltd
- CMD Mr B surrenders Rs 10 crores which includes share application money received from X Ltd.
- Money received was utilised to acquire an immovable property
- The Initiating Officer issued notices to Mr B, B-Ltd and X Ltd alleging that share allotment transaction is a benami transaction, share certificates are benami properties, and immovable property is a benami property

## Case no. 1 – cont...

- The Initiating Officer further holds X Ltd as the benamidar and B Ltd as the Beneficial Owner
- **Questions:**
  - Can IO allege this transaction as a benami transaction?
  - Can the IO treat the share certificates as benami property?
  - Can the IO treat the immovable property as benami property?
  - Can the IO treat P Ltd as the Beneficial Owner?
  - What if this was a loan?

## Case No. 2

- In 2011, 'B' Ltd issued equity shares to 2 shareholders at a premium of Rs 90 per share (FV Rs 10) for a total consideration of Rs 20 crores
- 'B' Ltd immediately utilised the funds by acquiring two immovable properties
- Under income-tax proceedings, relying on search proceedings of a third party, the Assessing Officer made an addition of the said Rs 20 crores under section 68, holding that it is 'B' Ltd's own unaccounted money that has been routed through shareholders

## Case no. 2 – cont...

- The IO issued notice under section 24 to ‘B’ Ltd and to the 2 shareholders
- The IO held that ‘B’ Ltd is the actual owner of the equity shares for the reason that ‘B’ Ltd’s own money is utilised for purchase of the equity shares
- Accordingly, the IO held the equity shares to be *benami* property, ‘B’ Ltd to be the beneficial owner, and both the shareholders to be *benamidars*
- The IO further, held the two immovable properties to be *benami* properties on the ground that such properties represent **property in converted form**

## Case No. 3

- Mr 'X' retired from a PSU in 1998 after 38 years of service. Post retirement, he has been earning small income from a house property, and from a family business
- Mr 'A' has been working as a document writer and a stamp vendor (facilitator)
- Mr 'B' has been working in a government organisation for 5 years. He is also the son-in-law of Mr 'I'
- Mr 'X' and Mr 'A' purchased a property for Rs 90 lacs: Rs 60 lacs was paid by DDs and Rs 30 lacs by cash



## Case no. 3 – cont...

- The Initiating Officer received information from the Anti Corruption Bureau that Mr ‘B’ (a government servant) was holding a *benami* property in the name of Mr ‘X’ and Mr ‘A’
- The IO, on the basis of statements recorded by the ACB, observed that Mr ‘X’ did not have sufficient income to acquire the property. It was Mr ‘B’ who provided cash to Mr ‘X’ for arranging the DDs and for providing cash consideration. Further, he also observed that Mr ‘A’ was just a facilitator.
- Accordingly, the IO held Mr ‘X’ to be the *benamidar*, Mr ‘B’ to be the beneficial owner and the said property to be a *benami* property.

# **THANK YOU**

**CA Rajiv Khandelwal**

Special Thanks to CA Akash Kumar for the support