ABSTRACT
The beginning of Benami Transaction Prohibition Law in India was done as the DA Desai law commission had given its report on Benami property transactions to Rajiv Gandhi government in August ,1988. In 2016 the present government has amended the older Benami Transaction Prohibition Act and present new Prohibition of Benami Property Transaction act. It was first introduced by Finance Minister Arun Jaitley in Lok shahba in May, 2013. Then it was referred by the standing committee of finance and finally committee submitted its report in April, 2016 and the act was passed in Lok Sabha and Rajya Sabha on 27th July and 2nd August respectively. The new Benami Act came into effect from 1st November, 2016. Government is at aim to prohibit the Benami transactions carried generally through black money and investment of such black money in the properties. The Act provides for prohibition of illegal Benami transactions and also provides for the imprisonment up to 7 years with financial penalties for those who are involved in the Benami transactions.

Keywords: Benami Transaction

INTRODUCTION
Essentially Benami means property without name. Generally under such transactions the person does not own property under his/her name. That means the property is purchased under the name of other or any fictitious person and benefit of property is enjoyed by the real owner.

OBJECTIVE
1. To understand the provisions of Prohibition of Benami Property Transaction Act, for the application of provisions into real life.
2. To expand awareness in the general public about the Benami transactions and its penal Implications in law

WHAT IS BENAMI TRANSACTION AND BENAMI PROPERTY?
Essentially Benami means property without name. Generally under such transactions the person does not own property under his/her name. That means the property is purchased under the name of other or any fictitious person and benefit of property is enjoyed by the real owner.

WHO IS BENAMIDAR AND BENEFICIARY?
Benamidar is fictitious person or person as the case may be, on whose name the Benami property is transferred or held. It will also include the person who lends his name for such person whereas the person who actually enjoyed the property or undertake such Benami transactions is known as beneficiary. To understand let us take following examples.
1. Mr. Hiten transferred or held the property on the name of his friend Mr. Shailesh, then Mr. Shailesh is Benamidar as he lends his name and Mr. Hiten is Beneficiary.

2. Ms. Renu held one property on the name of Ms. Shenu, who is fictitious person. Here Ms. Shenu is Benamidar and Ms. Renu is beneficiary.

WHAT CONSTITUTES A BENAMI TRANSACTION?

The definition of Benami transactions are covered in following four parts.

1. A transaction or arrangement in which the property is transferred to or held by a person, for which payment is paid by another person and the property is held for the immediate or future benefit, directly or indirectly of the beneficiary.
   a. For example Mr. Nirav shah purchased a new bungalow by paying Rs 2,00,00,000 on the name of his friend Mr. Viral, for direct or indirect future benefits from the bungalow, is Benami transaction.

2. A transaction or agreement in respect of property carried out or made in fictitious name. For example
   a. Mr. Shinde leased property to Mr. Shah, which was held on the name of Mr. Ramlal who is fictitious person, is Benami transaction.

3. A transaction or agreement in respect of property where owner of property is not aware of, or denies knowledge of, such ownership. For example Ms. Kajal owned a land for which she denies knowledge of such ownership of such land, is Benami transaction.

4. When there is a transaction or agreement regarding a property for which person who paid consideration is not traceable or is fictitious. For example a sale of motorcar, of which a true owner, means a person paid for it is not traceable is Benami transaction.

WHAT ARE SPECIFICALLY EXCLUDED FROM THE DEFINITION OF BENAMI TRANSACTION?

In following situations Benami transactions are not penalised and specifically excluded from the definition of Benami transactions.

(a) When Karta or member of Hindu Undivided Family (HUF), held a property for the benefit of him or for the benefit of other member of HUF, for which payment is paid by the HUF from it’s known source, is not treated as Benami Transaction.

(b) When a person holding fiduciary capacity undertook a property or any transaction for the benefit of the other person, it will not consider as Benami transaction. For this purpose fiduciary capacity includes trustee, executor, partner, director of a company, a depository or a participant as an agent of a depository under the Depositories Act, 1966 and any other person notified by the Central Government.

(c) When any individual undertake a transaction in respect of any property on the name of his/her spouse or child for which consideration is paid by the individual from his known source is not considered as Benami transactions.

(d) When any person holds the property in the name of his brother or sister or lineal ascendant or descendent, where above stated persons and individual appear as a joint holder of a property, is not considered as Benami transaction provided the consideration is paid from the known source of the individual.

(e) Where a transaction involving the allowing possession of any property to be taken or retained in a part performance of contract, if under any law for time being in force, such contract is registered and stamp duty is paid on such transaction.

WHAT CONSTITUTE “PROPERTY” FOR THE PURPOSE OF BENAMI TRANSACTION?

Literally, all assets, even gold and financial securities are included in definition of property under this act. As per the provision of the Act, “Property” includes

1. Any property, whether it is
WHAT ARE THE CONSEQUENCES OF BENAMI TRANSACTIONS?

1. Under the provision of this act, Central Government can confiscate any property which is the subject matter of Benami transaction.
2. In old act, any violation of any provision of this act would lead to imprisonment of up to three years, or fine or both. Now, under amended act violation of any provision of this act would be liable to imprisonment up to Seven years.
3. Anyone found guilty, whether “Benamidar” and “Beneficiary”, entering into the Benami transaction would be liable for both financial penalty and imprisonment both.
4. Financial penalty of up to 25% of the fair market value of the property,
5. Rigorous imprisonment for minimum 1 year to maximum 7 years.
6. If anyone gives incorrect information or explanation in response to any inquiry to any authority under this act would be liable for
   a. Financial penalty of up to 10% of the fair market value of the property and
   b. Rigorous imprisonment of minimum 6 months to maximum 5 years.

HOW IT AFFECT THE PEOPLE?

As for the general public, if the transaction is legal or done from the known source, it would not be much issue. But people with unaccounted income have tough time now. Now for real estate market it would be more difficult to purchase or sale the property without doing deeds and agreement. That means as of now purchase or sale of property under the stamp duty value is difficult. So prices of property will maintain in market. Moreover it would be more difficult to prove the ownership of property which was purchased from the unknown source i.e. black money. In corporate world it would be more difficult to prove ownership of factory building and leasehold properties if it was on the name of their sister concerns or subsidiary companies.

CONCLUSION

There will not be many issues to common man if the transactions are legal. If by mistake, somebody has entered into a Benami transactions, seek an experienced professional’s help to remedy the same. This act may help government in its mission of clean India on black money. As a honest citizen of India, we should try to avoid the Benami transactions and professional should also advise their clients to enter any transactions in legal and honest manner. These will a great contribution of us to develop our country.

REFERENCES

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