ABSTRACT

The Benami Transactions (Prohibition) Amendment Bill, 2015 was introduced in Lok Sabha on May 13, 2015. The Bill seeks to amend the Benami Transactions Act, 1988. The Benami Transactions (Prohibition) Amendment Act, 2016 received the President's assent on August 10, 2016 and has come into force from November 1, 2016 to wash out black money from our country. This is again big step of government to prohibit Benami transactions and properties.

Keywords: Benami transactions

INTRODUCTION

The main objective for introducing The Benami Transactions (Prohibition) Amendment Act, 2016 is to: (i) give the thorough meaning of Benami transactions, (ii) provide procedures to adjudicating authorities and an Appellate Tribunal to deal with Benami transactions, and (iii) specify the penalty for entering into Benami transactions. The Act seeks to deal with all such transactions which are carried out by a certain person but the consideration is provided and benefits are availed by some other person. With this, the beneficiary/financer enjoys the property but does not fulfill legal responsibilities towards such properties. This article discusses the major implications of the amended Act.

OBJECTIVES

1. To gain Knowledge about The Benami Transactions (Prohibition) Amendment Act, 2016
2. To aware general people about impact of introduction of The Benami Transactions (Prohibition) Amendment Act, 2016

TERMINOLOGY

BENAMI TRANSACTION

Benami transaction, as defined under Section 2(9) of the Act is a transaction in which:

a. The property is held by one person and paid for by another; or
b. It is held in a fictitious name; or
c. The owner of such property is unaware of or denies having knowledge of such ownership; or
d. The person financing such transaction is not traceable.

However, the Act prescribes certain exceptions to Benami transactions under Section 2(9). These exceptions include property held by:

a. Karta for his or his family member's benefit; or
b. A person standing in fiduciary capacity for the benefit of another, including a trustee, an executor, a partner, a company director or a depository participant or agent; or

c. A person for the benefit of his spouse or child; or

d. A brother or sister or lineal ascendant or descendent.

Provided the consideration paid for such transactions comes from known and traceable resources.

Also, the Central Government may, by notification, exempt any property relating to charitable or religious trusts from the operation of this Act.

ADJUDICATING AUTHORITY

{Sec.2(1)}: "Adjudicating Authority" means the Adjudicating Authority appointed under section 7

BENAMI PROPERTY

{Sec.2(8)}: "Benami property" means any property which is the subject matter of a Benami transaction and also includes the proceeds from such property.

EFFECT OF ACT ON CORPORATE WORLD

Generally Benami transactions are entered into by persons who have huge black money and make investment in real estates in others name or fictitious name. Now onwards result is that huge penalty will be levied on such types of Benami transactions. Even legal advisor for making advice for such transaction is also punishable under this Act. The real estate sector will be highly affected as in suspet cases they have to prove title of property i.e ownership of property. However the genuine transaction entered into by book entry end genuine source will not be affected by such provisions. The only thing is that there should be original proof of transactions and sources as well.

Also there is adverse effect on Some business where most of transactions are made in cash like market yard traders where most of consumers are farmers who doesn’t possesses bank accounts. So such traders have huge amount of cash balance to do further transaction which may result in difficulties to prove genuine transactions.

EFFECT ON GENERAL PUBLIC

There is huge impact of this act on rural areas where most of transaction related to sell and purchase of land will be made in cash only. This is because as a poor quality of state land records, it is difficult for genuine land owners to prove there title.

The persons who made any transaction by using unsecured loan from his book is also in trouble if it not from genuine source. In such transaction, the loan payer has also to be give clarification regarding sources from which he has made loan.

EFFECT ON LEGAL ADVISOR

There is storm on legal advisor gallery due to Benami Transactions Act. As They are also punishable under this Act for providing adverse advise for making Benami transactions or direct the ways to do such transaction. This Act will not left CA, Advocates or Tax practitioners for an offence punishable under this Act. So they have to be also careful in performing their duty.

CONSEQUENCES OF BENAMI TRANSACTIONS

The persons who made Benami transaction will be punishable under this Act for imprisonment of 1 To 7 Years and penalty equals to 25 % of Benami transactions.

The person who is the part of such Benami transactions of fake informer of such transaction is also punishable under this Act for imprisonment of 6 months To 5 Years and penalty equals to 10 % of Benami transactions.
CONCLUSION

This provision made sudden storm in the country for possible outcomes. Due to this Act, now peoples have to think about to walk with serious steps of Government to wash out black money from country and to make Clean India.

REFERENCES

1. Benami Transactions (Prohibition) Amended Act, 2016 issued by The Gazette of India