ALL YOU NEED TO KNOW ABOUT BENAMI TRANSACTIONS (PROHIBITION) AMENDMENT ACT 2016

(PART I)

For successful implementation of demonetisation & to curb black money, Central Government came up with the BENAMI TRANSACTION (PROHIBITION) AMENDMENT ACT 2016 which got assent of president on 10TH AUGUST' 2016

Although an act existed from 1988 but it was incomplete and was not strong enough to curb black money because of many flaws in it like no authority was made which could confiscate property, rules were also not framed and no provision specifying the amount of fine existed. In order to strengthen the primary act amendment act was passed which overall made following changes

1. Change in the definition of benami transaction and property
2. Formulation of various authorities like approving authority, appellate tribunal
3. Framing of rules regarding imprisonment and fines

So, talking about the changes, the first change that was made by this amendment act was change in name of principal act, i.e., from THE BENAMI TRANSACTION (PROHIBITION) ACT'1988 to PROHIBITION OF BENAMI PROPERTY TRANSACTIONS ACT'1988

BENAMI PROPERTY

As per amendment act, benami property means any property which is subject matter of benami transaction and includes its proceeds thereof.

BENAMI TRANSACTION

Here benami transaction means any transaction result of which property is transferred or held by a person (herein referred to as benamidar) & consideration has been paid by other person (herein referred to as beneficial owner) for the benefits of the person providing consideration out of unknown source of income subject to certain exceptions like property held by-

- Karta or any other member of HUF, for the benefits of other members & consideration has been paid out of known sources of income of HUF
- Person standing in fiduciary capacity for the benefits of another person. Person here includes both natural and artificial. For ex- property held in name of director or partner for the benefit of company or partnership firm and proceeds has been paid out of known sources of income of company and partnership firm respectively.
- Person being an individual having property in name of spouse or child(minor, major, step, son, daughter, dependent, independent) & consideration has been paid out of known sources of income of individual
- Property in name of brother/ sister/ lineal ascendant/ lineal descendant provided such individual and other person are joint owners and consideration has been paid out of known sources of income of such individual

  - Scope of benami transaction has been widened by including transactions in fictitious name
  - transaction where owner does not have knowledge of ownership or denies ownership
  - such transactions where person providing consideration is not traceable or is fictitious

For removal doubts any transaction related to part performance(where consideration has been given, possession has also been given, stamp duty has been paid but ownership has not been transferred) as defined in section 27 of income tax act'1961 and section 53A of transfer of property act 1882 shall not be treated as benami transaction

PROPERTY

Earlier before amendment, scope of definition of property was very limited as it only Included assets that are movable or immovable, tangible or intangible but now it includes any asset whether movable or immovable, tangible or intangible, corporeal or incorporeal & includes right of document of title, if property is capable of conversion in other form then property in converted form will also be included & proceeds thereof shall also be considered to be property.

One of the major flaw of unamended act was absence of provision which specifies amount of fine which has been overcome by this amendment act which says if a person(benamidar, beneficial owner or any other person) is involved in benami transaction then property which is subject matter of such transaction shall be confiscated and all persons shall be punishable with rigorous imprisonment for a term which shall be not less than one year and may extend to seven years and shall be liable to pay a fine which may extend to 25% of fair value of property.

Fair value of property shall be price that property would ordinarily fetch on sale in open market on date of transaction & if such price is not ascertainable then it shall be higher of

- Cost of acquisition
- Fair market value determined by merchant banker or accountant as per discounted free cash flow method
- Fair value by formula

  (A+B-L)*PV/PE

  Where

  A is book value of assets except gold bullion investment

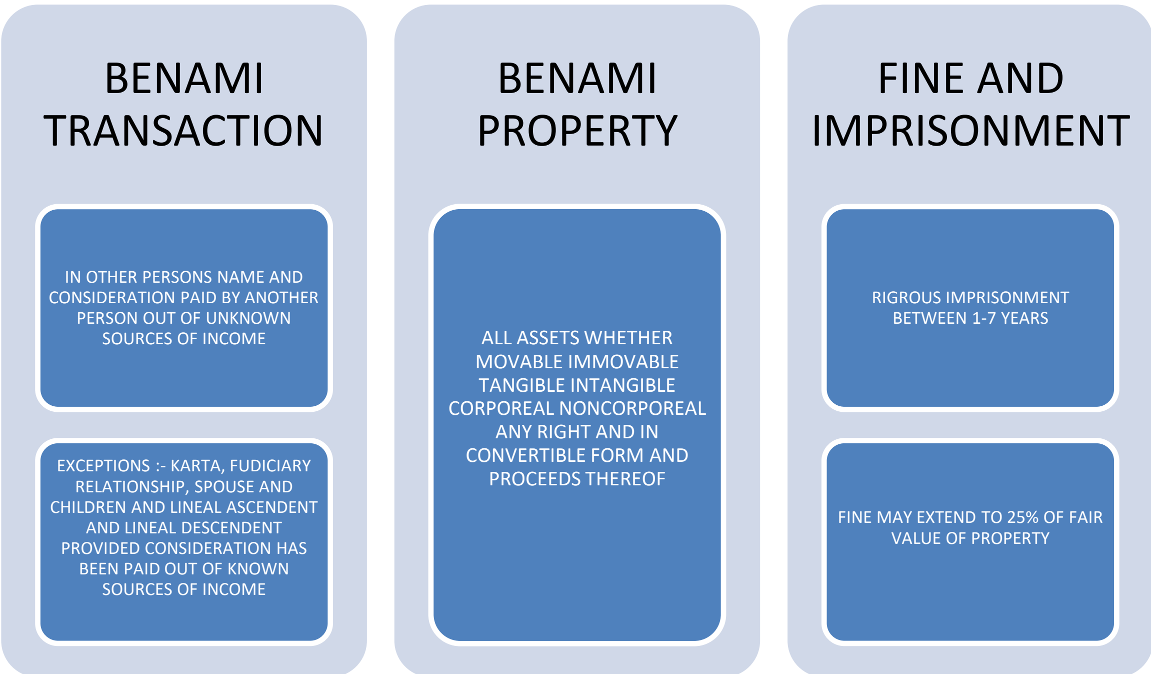
  B is the market value of gold bullion and investment

  L is the book value of liabilities

  PV is paid up value of Equity shares

  PE is the total amount of paid up equity shares as shown in balance sheet

SUMMARY CHART



Rest of the act shall be covered in part II and part III

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