

PROVISION AND ISSUES RELATING TO

Taxes on income referred to in section 68 to 69D : 115BBE and The Benami Transactions (Prohibition) Amendment Act, 2016



Presented By

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GENERAL BACKGROUND OF SECTION 68 to 69D

Chapter VI of the Income-tax Act, 1961 titled “Aggregation of Income” deals with sections 68 to 69D.

Section	Heading of section	Deals With
68	Cash Credits	Any sum credited in the books of accounts of assessee, nature & source whereof is not satisfactorily explained by the assessee
69	Unexplained investments	Amount of investments made by the assessee which are not recorded in the books of account and source whereof is not satisfactorily explained
69A	Unexplained money, etc.	Money and the value of the bullion, jewellery or other valuable article of which assessee is found to be the owner which is not recorded in his books of account and the assessee offers no explanation about the nature and source of it or the explanation offered by the assessee is not in the opinion of AO satisfactory
69B	Amount of investments, etc., not fully disclosed in books of account	Amount of investments, bullion, jewellery or other valuable article not fully recorded in the books of account
69C	Unexplained, expenditure, etc.	Amount of expenditure incurred for which source is not explained satisfactorily
69D	Amount borrowed or repaid on hundi	Amount borrowed or repaid on a hundi otherwise than through an account payee cheque drawn on a bank

SECTION 68

Where any sum found credited in the books of an assessee maintained for any PY and the assessee offers no explanation about the nature & source thereof or the explanation offered by him is not in the opinion of AO satisfactory, the sum so credited may be charged to income tax as income of assessee of that PY.

Provided that where the assessee is a company (not a co. in which public are substantially interested) and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee co. shall be deemed to be not satisfactory, unless-

- (a) the person, being a resident in whose name such credit is recorded in the books of such co. also offers an explanation about the nature and source of such sum so credited; and
- (b) such explanation in the opinion of AO has been found to be satisfactory.

Exception – Venture Capital Fund, Venture Capital Company

ISSUES

- Burden of proof- how to be discharged?
- Whether any sum refers only to sum of money or it can be any amount credited in the books of accounts?
- Whether section 68 attracted on amounts representing purchase made on credit?
PCIT Vs. Kulwinder Singh (2017) 156 DTR 333 (P&H) (HC) [Favour]
Smt. Rekha Krishnaraj Vs. ITO (2013) 91 DTR 132 (Kar.) (HC) [Against]
- Rejection of books vis-à-vis section 68
CIT Vs. Modern Rubber Industries (2013) 218 Taxman 70 (All.) (HC) (Mag.)
CIT Vs. G.K. Contractors 90 DTR 305 (Raj.) (HC)
- Presumptive taxation vis-a-vis section 68
- Whether bank pass book represents books of accounts?
Kamal Kumar Mishra Vs. ITO (2013) 143 ITD 686 (Luck) (Trib.)
Mehul V. Vyas Vs. ITO (2017) 164 ITD 296 (Mum.) (Trib.)
- Credits in partner's account on the first day of business
CIT Vs. M. Venkateshwara Rao & Ors. (2015) 119 DTR 189 (AP) (HC)
CIT Vs. Kewal Krishan & Partners 18 DTR 121 (Raj.) (HC) (2009)
CIT Vs. Kishori Lal Santoshi Lal 216 ITR 9 (Raj.) (HC) [Against]

ISSUES

- Whether advance received adjusted against sales in subsequent year or sale consideration can be added u/s 68?
- Section 68 vis-à-vis accommodation entries
- Section 68 vis-à-vis client code modification
- Section 68 vis-à-vis long term capital gain in shares claimed exempt
- Section 68 vis-à-vis section 56(2)(viib)
Subhlakshmi Vanijya Pvt. Ltd. & Ors. Vs. CIT (2015) 124 DTR 249/ 155 ITD 171 (Kol.) (Trib.)
- Section 68 vis-à-vis gifts
- Section 68 vis-vis peak credit vis-à-vis papers found in search

ISSUES

- Whether proviso to sec. 68 inserted w.e.f. 01-04-2013, is retrospective or prospective in nature?

CIT vs. Gagandeep Infrastructure Pvt. Ltd. (2017) 247 Taxman 245 (Bom.) (HC) [Favour]

The proviso to sec. 68 which creates an obligation on the issuing co. to explain the source of share capital & premium has been introduced by the Finance Act, 2012 with effect from 01.04.2013 and does not have retrospective effect. Prior thereto, as per *Lovely Exports* 317 ITR 218 (SC), if the AO regards the share premium as bogus, he has to assess the shareholders but cannot assess the same as the issuing company's unexplained cash credit.

Subhlakshmi Vanijya Pvt. Ltd. & Ors. Vs. CIT (2015) 124 DTR 249 (Kol.) (Trib.) [Against]

Contention that the proviso to sec.68 attached a new obligation and hence, it should be declared as prospective cannot be accepted. It is axiomatic that proving genuineness of a transaction of any credit, including share capital, was always an essential constituent of sec.68. Since sec.68 covers 'any sum credited' in the books without any exception, which inter alia includes share capital, it cannot be held that the examination of share capital with premium etc. was earlier outside the ambit of sec.68 and now this amendment has brought it into its purview. Therefore, though amendment to sec. 56(2)(viib) is prospective, the amendment to sec.68 is retrospective.

ISSUES- Section 69 to 69C

- Burden of proof- how to be discharged?
- Expenditure on non-verifiable purchases- Section 69 or 69C
- Addition for low household withdrawals of partners in case of firm
- Difference in cost of construction recorded in books vis-à-vis DVO report obtained u/s 142A
- Addition for jewellery found in search
- Addition u/s 69B vis-à-vis Section 56(2)(x) on account of difference in stamp value of property

SECTION 115BBE

Tax on income referred to in section 68/69/69A/69B/69C/69D

Earlier unexplained credits, money, investment, expenditure, etc., was subject to tax as per tax rate applicable to assessee, thus, giving the benefit of basic exemption limit.



By FA, 2012, section 115BBE was introduced to tax these income @ 30%. Further, no deduction in respect of any expenditure or allowance was allowed to the assessee in computing deemed income under the said sections.

In order to curb the practice of laundering of unaccounted money by taking advantage of basic exemption limit, it is proposed to tax the unexplained credits, money, investment, expenditure, etc., which has been deemed as income under section 68/69/69A/69B/69C/69D @ 30% (plus surcharge & cess as applicable).



FA 2016, w.e.f. 01.04.17 amended sub-section (2) which prohibit setting off of any loss against these incomes.

Taxation Laws (Second Amendment) Act, 2016 w.e.f. 1.4.2017 amended the section to tax these income @ 60%.

The existing provisions can possibly be used for concealing black money. Thus, to ensure that defaulting assessee are subjected to tax at higher rate & stringent penalty provision, existing provisions are amended by substituting section 115BBE, amending section 271AAB and inserting new section 271AAC

COMPARISON IN EARLIER AND AMENDED PROVISIONS

Section	Particulars	Earlier Provisions	Amended Provisions
115BBE (w.e.f. 1.4.2017, i.e. AY 2017-18)	Income referred u/s 68, 69, 69A, 69B, 69C, 69D	<p><u>If total income does not exceed Rs.1 crore</u> Tax @ 30% + cess @ 3% of tax (i.e. 0.9% of income). Thus, total incidence of tax is 30.9%.</p> <p><u>If total income exceed Rs.1 crore</u> Tax @ 30% + Surcharge @ 15% of tax (i.e. 4.5% of income) + cess @ 3% of tax & surcharge (i.e. 1.035% of income). Thus, total incidence of tax is 35.54%.</p>	<p><u>If income is declared in the return of income furnished u/s 139 & tax has been paid before end of relevant PY</u> Tax @ 60% + surcharge @ 25% of tax (i.e. 15% of income) irrespective of the quantum of income + cess @ 3% of tax & surcharge (i.e. 2.25% of income). Thus, total incidence of tax is 77.25%.</p> <p><u>If income is added by AO</u> In addition to tax, penalty @ 10% of tax payable (i.e. 6% of income) u/s 271AAC would be levied. Thus, total incidence of tax & penalty is 83.25%.</p> <p>*No penalty u/s 270A will be imposed.</p>

COMPARISON IN EARLIER AND AMENDED PROVISIONS

Section	Particulars	Earlier Provisions	Amended Provisions
115BBE (w.e.f. 1.4.2017, i.e. AY 2017-18)	Income referred u/s 68, 69, 69A, 69B, 69C, 69D	No deduction in respect of any expenditure or allowance shall be allowed to the assessee under any provision of this Act in computing the deemed income under these sections.	No deduction in respect of any expenditure or allowance or <u>set off of any loss</u> shall be allowed to the assessee under any provision of this Act in computing the deemed income under these sections.

ACIT Vs. Sanjay Bairathi Gems Ltd. (2017) 157 DTR 225 (Jaipur) (Trib.)

In the absence of any provision in section 71 which restricts set off of business losses against income brought to tax under sec. 69B, assessee is eligible for set off of business loss against the income which has been brought to tax under sec. 69B r.w.s. 115BBE. Amendment brought in sec. 115BBE(2) by the Finance Act, 2016 is effective from 1st April, 2017 and will accordingly, apply to AY 2017-18 onwards.

ANALYSIS

1. Section 115BBE is amended w.e.f. 01.04.2017, i.e. from AY 2017-18. Therefore, even the credits/investments prior to the amendment act would be subjected to higher rate of tax. This is also clarified vide Q. No.9 of Circular No.2/2017 dt. 18.01.2017. To this extent the amendment has retrospective effect.
2. In the existing provision of section 115BBE, there is no requirement of filing of return and payment of tax before the end of the PY/AY. However, in the amended section, the return is required to be filed before the end of the relevant AY and taxes are required to be paid before the end of the PY. Thus, for any income offered for tax u/s 115BBE for FY 2016-17, tax is required to be paid on or before 31.03.2017 and return is required to be filed on or before 31.03.2018 in order to avoid the levy of penalty u/s 271AAC.
3. The authority to levy surcharge @ 25% u/s 115BBE is gathered by amending section 2(9) of the Finance Act, 2016 whereby reference of section 115BBE is omitted from the third proviso and seventh proviso is inserted to provide for levy of surcharge @ 25% for the purpose of payment of advance tax on the income referred to in section 115BBE.

Section	Particulars	Earlier Provisions	Amended Provisions
271AAB	Penalty in search and seizure cases	<p><u>Applicability</u> Search initiated on or after 01.07.2012 but before 17.12.2016</p> <p><u>Penalty Provisions</u> -10% of income, if admitted in search, substantiated, pays tax, interest & furnishes return on or before the specified date, i.e. the time available u/s 139(1)</p> <p>-20% of income, if not admitted but offered in return & tax/interest is paid as above</p> <p>-60% of income in any other case</p>	<p><u>Applicability</u> Search initiated on or after 17.12.2016</p> <p><u>Penalty Provisions</u> -30% of income, if admitted in the search, substantiated, pays tax, interest & furnishes return on or before the specified date, i.e. the time available u/s 139(1)</p> <p>-60% of income in any other case</p>

4. Penalty u/s 271AAC is subject to the provision of section 271AAB in as much as the section provides that 'the AO may, notwithstanding anything contained in this Act other than the provisions of section 271AAB'. Therefore, where the income in the nature of section 115BBE is found in course of search, the penalty provisions would be governed by section 271AAB and not be section 271AAC. Thus, in case of search, the tax and penalty on the income referred u/s 115BBE would be calculated as under:-

(a) Where income in nature of sec.68, 69, etc. is admitted in search, return filed u/s 139(1), then tax and penalty on such income would be calculated as under:-

Tax including surcharge and cess u/s 115BBE-	77.25%
Penalty u/s 271AAB	-30%

Thus, on income of Rs.100, tax & penalty would be Rs.107.25.

(b) Where income in nature of sec.68, 69, etc. is not admitted in search but assessed by AO, then tax and penalty on such income would be calculated as under:-

Tax including surcharge and cess u/s 115BBE-	77.25%
Penalty u/s 271AAB	-60%

Thus, on income of Rs.100, tax & penalty would be Rs.137.25.

CONCLUSION

Unaccounted
Cash/Deposit
(Black Money)

Self Declaration

1. Pay tax u/s 115BBE @ 60% on such money
2. Pay surcharge @ 25% of tax
3. Declare and file return

Detected By AO

1. Pay tax u/s 115BBE @ 60% on such money
2. Pay surcharge @ 25% of tax
3. Pay penalty @ 10% on tax

EXAMINE THE TAXABILITY OF FOLLOWING AMOUNTS UNDER SECTION 115BBE

Particulars	AY 2017-18	AY 2018-19
Cash deposited in bank prior to 08.11.2016 stated to be from sale of accumulated scrap but in absence of evidence declared as income from other sources in the return to buy peace	25 lacs	Nil
HD Notes deposited in bank between 08.11.2016 to 30.12.2016 supported by cash in hand as per books but treated by AO as unaccounted income	10 lacs	Nil
Loan received from X added by AO as unexplained cash credit as the lender has loaned the funds out of cash deposited in his account during demonetisation period and did not attend or cooperate in explaining the source of funds	Nil	25 lacs
Cash sales treated as unexplained cash credit for want of details of customers about their name, address, PAN, etc.	Nil	10 lacs
Addition for unexplained stock being the difference in value submitted to bank and that as per stock records	Nil	10 lacs
Addition on account of cost of construction estimated by DVO and that as per books	Nil	25 lacs

Benami Transaction



Money



White Money

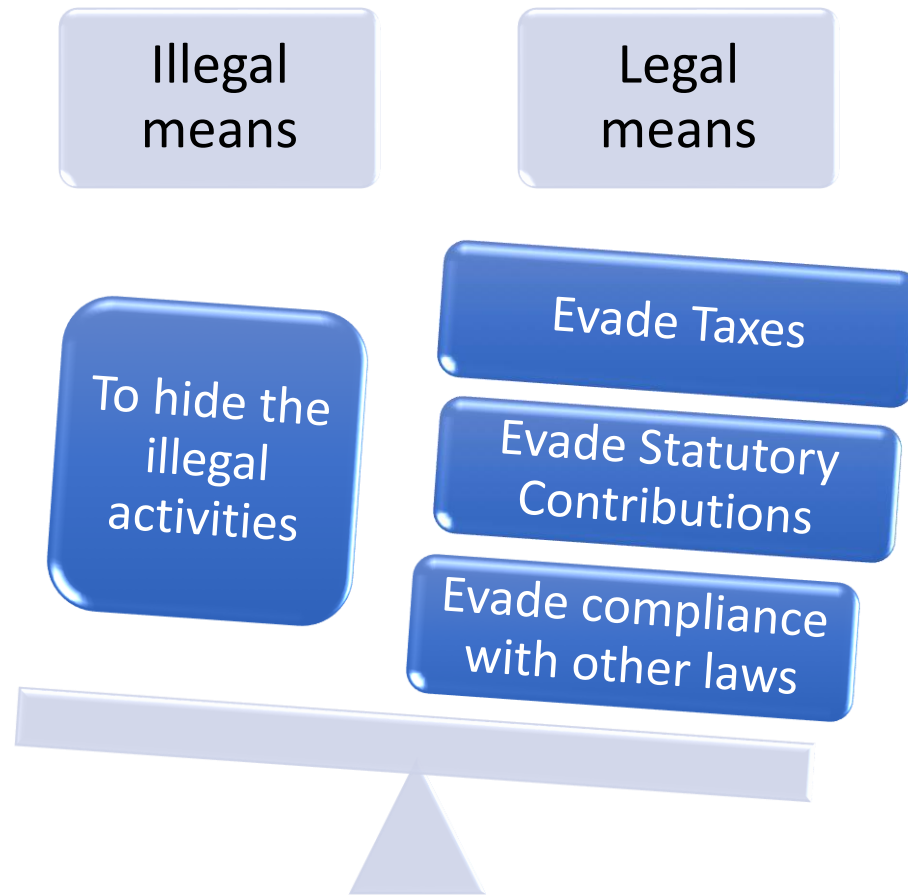


Black Money



Red Money

Why Red or Black Money



Tackling Red & Black Money

Prevention of Money-Laundering Act, 2002

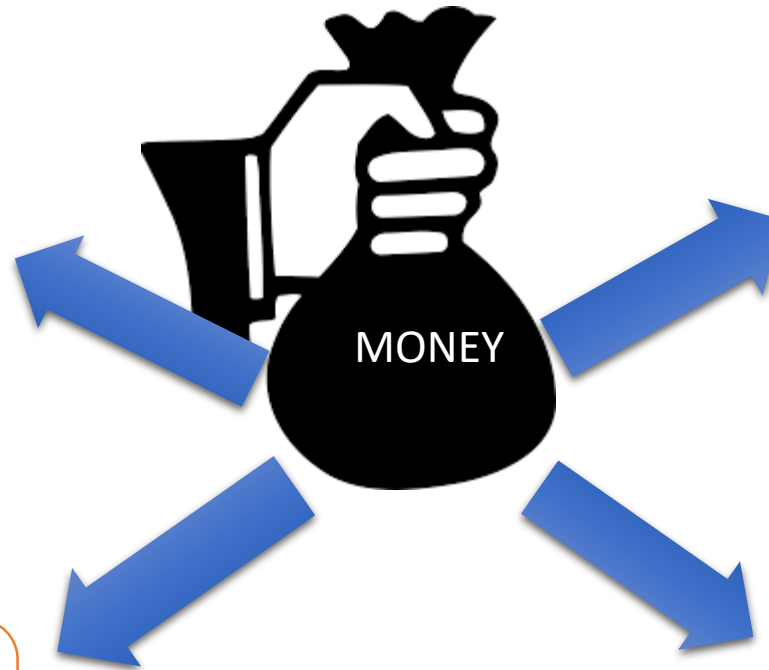
Income Tax Act, 1961

DOMESTIC

The Benami Transactions (Prohibition) Amendment Act, 2016c

FOREIGN

The Black Money (Undisclosed Foreign Income And Assets) And Imposition Of Tax Act, 2015



The Benami Transactions (Prohibition) Amendment Act, 2016

(Effect from November 01, 2016 vide Notification dated 25.10.2016)

CBDT Press Release: 11-01-18

- The Department had set up 24 dedicated Benami Prohibition Units (BPUs) under its Investigation Directorates all over India in May, 2017 to ensure swift action in respect of Benami properties.
- Due to intensive efforts undertaken by the Department, provisional attachment has been made in more than 900 cases of properties under the Act. These include plots of land, flats, shops, jewellery, vehicles, deposits in bank accounts, fixed deposits etc. The value of properties under attachment is more than Rs.3500 crore including immovable properties of more than Rs.2900 crore.

Purpose

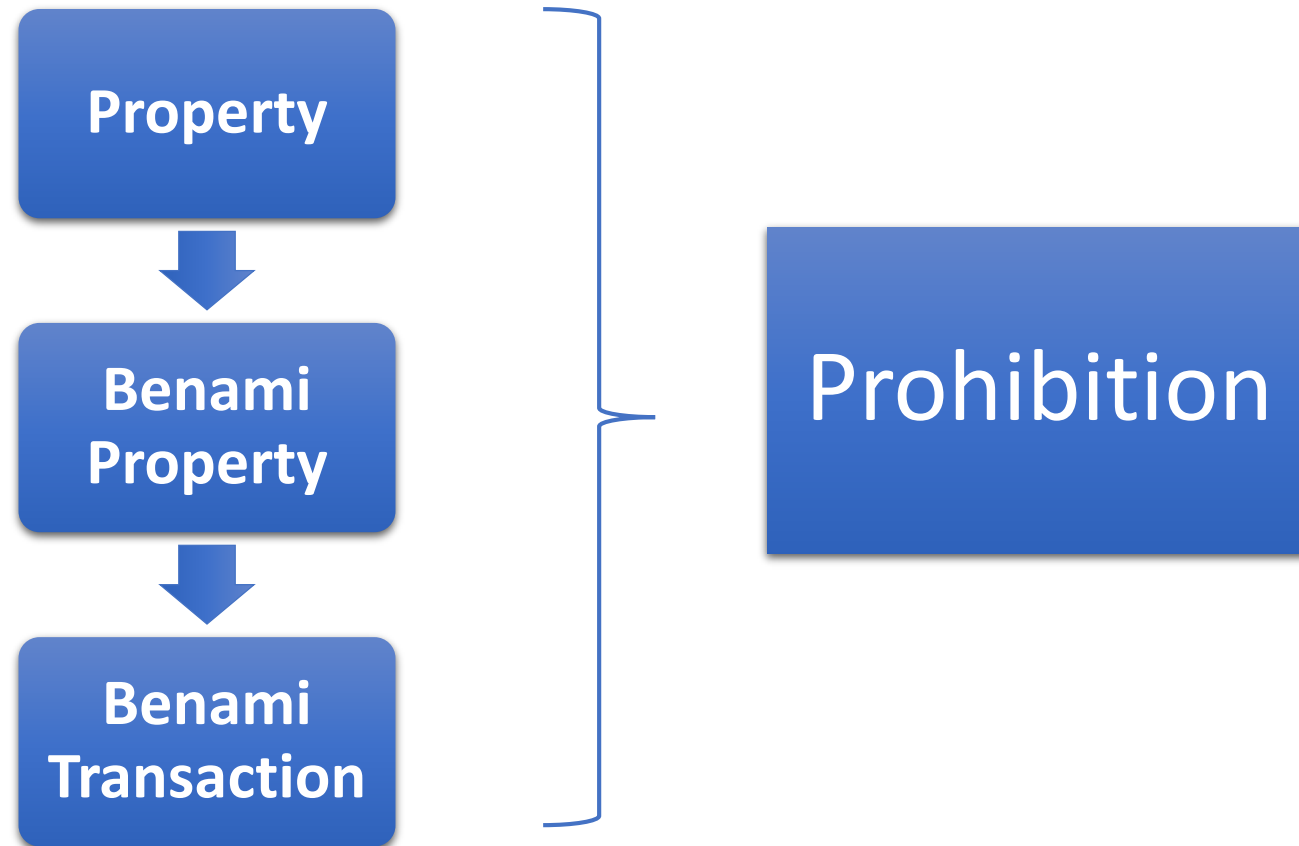
**Amend the
definition of
benami
transactions**

**Establish
adjudicating
authorities
and
Appellate
Tribunal**

**Specify
penalty**

2016 Amendment

- **New Name: The Prohibition of Benami Property Transactions Act, 1988**



Definitions: Benami Property [Sec.2(8)]

Property which is the subject matter of a benami transaction and also includes the proceeds from such property.

Definitions: Property [Sec.2(26)]

Old

Property of any kind, whether movable or immovable, tangible or intangible, and includes any right or interest in such property

New

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

Definitions: Benami Transaction

Old

Any transaction in which property is transferred to one person for a consideration paid or provided by another person

Re-defining Benami Transactions [Sec.2(9)]

- **A transaction or an arrangement**
 - 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
 - the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration
- Exceptions :
 - a member of HUF, and is being held for his or another family member's benefit, and has been provided for or paid off from known sources of income of that family
 - a person in a fiduciary capacity
 - a person in the name of his spouse or child, and the property has been paid for from the person's income-***if out of known sources***
 - Brother or sister or lineal ascendant or descendant (joint owners with individual) -***if out of known sources***

Re-defining Benami Transactions

- **A transaction or an arrangement in respect of property where:**
 - transaction is made in a fictitious name
 - the owner is not aware of denies knowledge of the ownership of the property
 - the person providing the consideration for the property is not traceable or is fictitious.

- **Exclusion**

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, if, –

- consideration for such property has been provided by the person to whom possession of property has been allowed but owner hold the ownership of property;
- stamp duty on such transaction has been paid and
- the contract has been registered.

Definitions: Benamidar & Beneficial Owner

Benamidar [Sec.2(10)]

- Person or fictitious person in whose name benami property is transferred or held & includes a person who lends his name

Beneficial Owner [Sec.2(12)]

- A person, whether his identity is known or not, for whose benefit the *benami* property is held by the *benamindar*

Implications of Benami Transaction

Section	Implications
Sec. 5	Confiscation of property by Central Government
Sec. 6	<ul style="list-style-type: none">• Prohibition on re-transfer of property• Exception: Section 190 of Finance Act, 2016
Sec. 3	<ul style="list-style-type: none">• Imprisonment up to 3 years and/or Fine• Who enters into before November 01, 2016
Sec. 53	<ul style="list-style-type: none">• Rigorous Imprisonment of 1 to 7 years and fine up to 25% of FMV of benami property• Who enters, abets or induces• Beneficial owner and benamidar
Sec. 54	<ul style="list-style-type: none">• Rigorous Imprisonment of 6 months to 5 years and fine up to 10% of FMV of benami property• Providing false information to authorities

Section 3: Prohibition

- No person shall enter into any *benami* transaction.
- Whosoever enters into any *benami* transaction shall be punishable for **a term upto 3 years and/or fine.**
- Whosoever enters into any *benami* transaction **on and after the date of commencement of the Benami Transaction (Prohibition) Amendment Act, 2016**, shall, notwithstanding anything contained in sub-section (2), be punishable in accordance with the provisions contained in Chapter VII, i.e. section 53 & 54.

Section 5: Confiscation of Property

Section 5: Property held benami liable to confiscation

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

Chapter III- Authorities [Sec.18 & 30]

- Notification dated 25.10.2016 w.e.f. November 01, 2016

Income Tax Authority	Authority
Assistant Commissioner of Income Tax/ Deputy Commissioner of Income Tax Range I	Initiating Officer
Joint Commissioner of Income Tax/ Additional Commissioner of Income Tax Range I	Approving Authority
Tax Recovery Officer	Administrator
Adjudicating Authority under PMLA Act	Adjudicating Authority
Appellate Tribunal under PMLA Act	Appellate Tribunal

Land Transfer



Land

Registry



Consideration



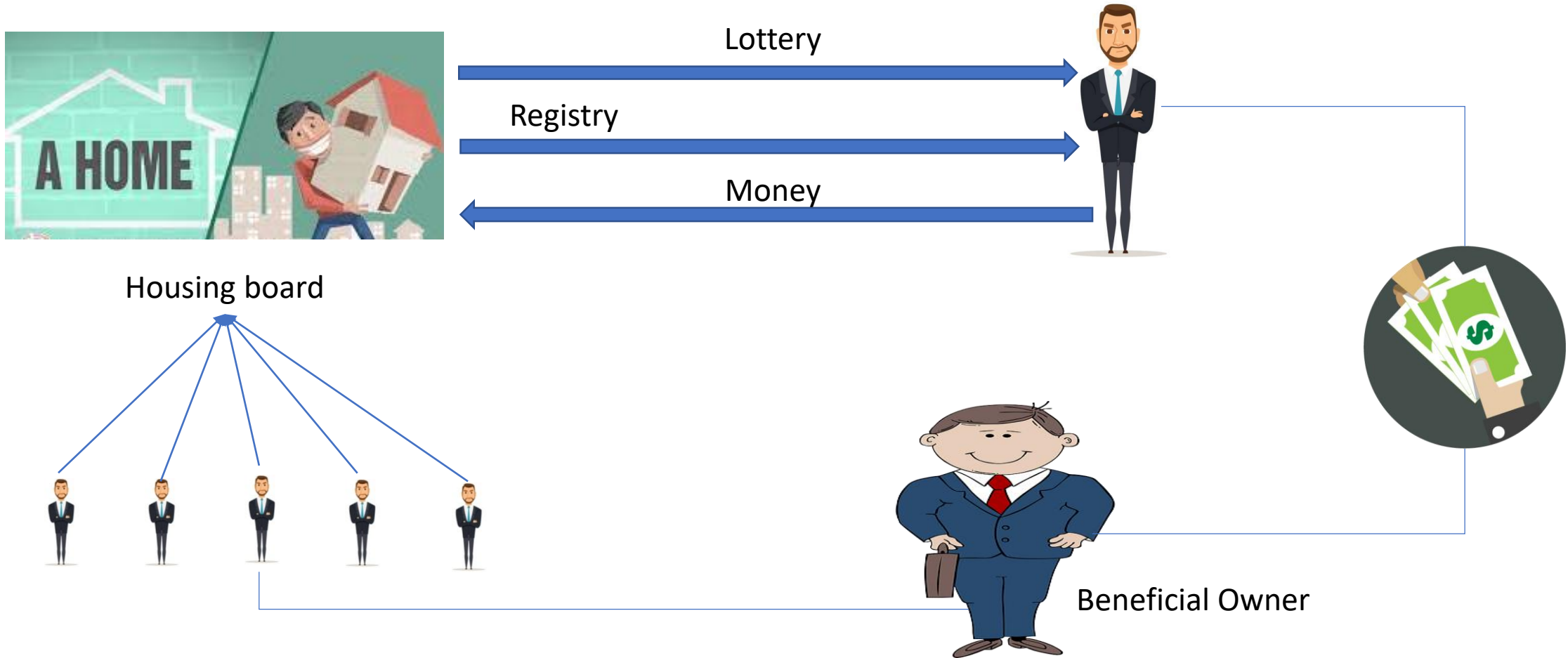
Other Person



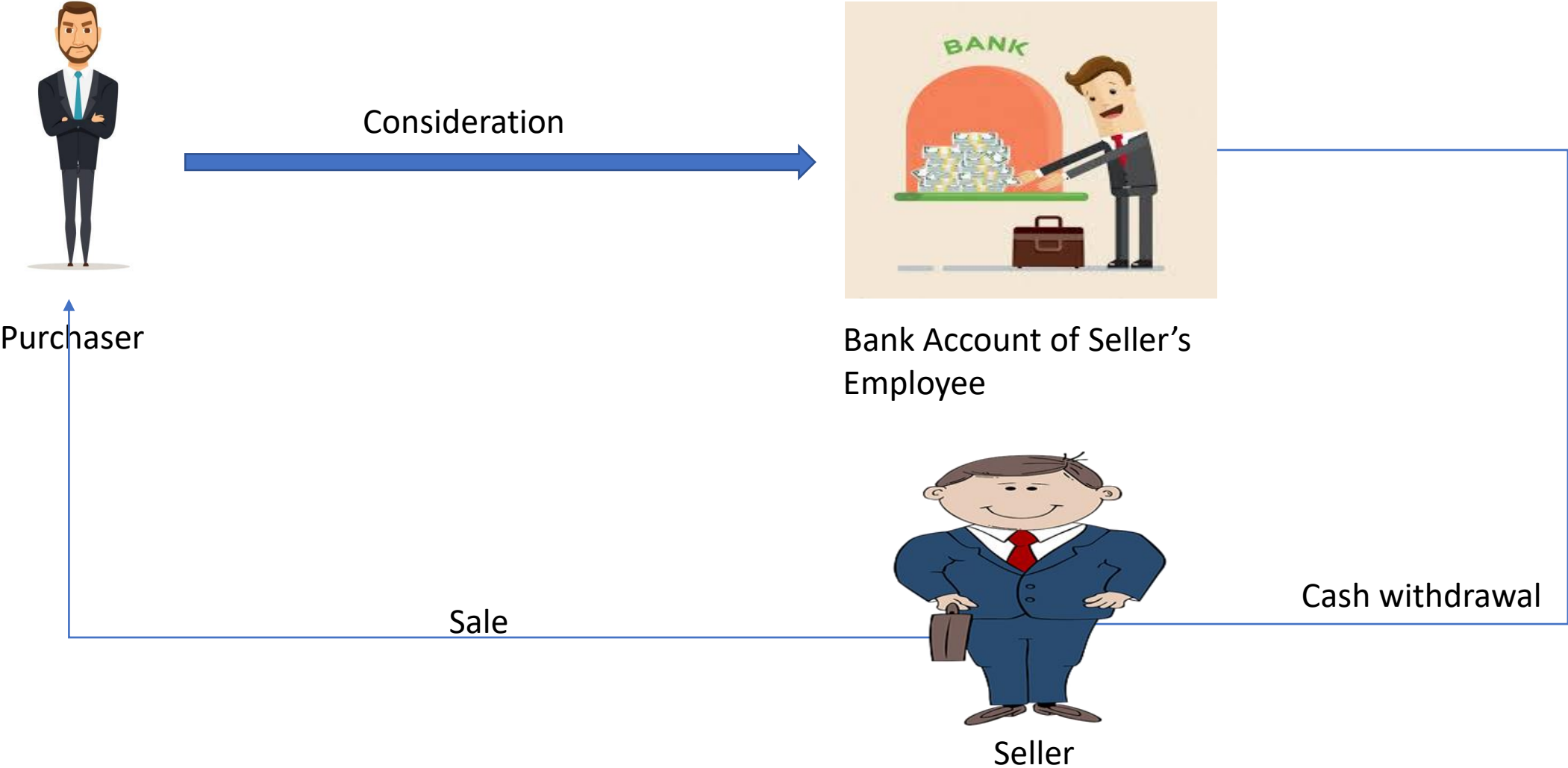
Purchaser



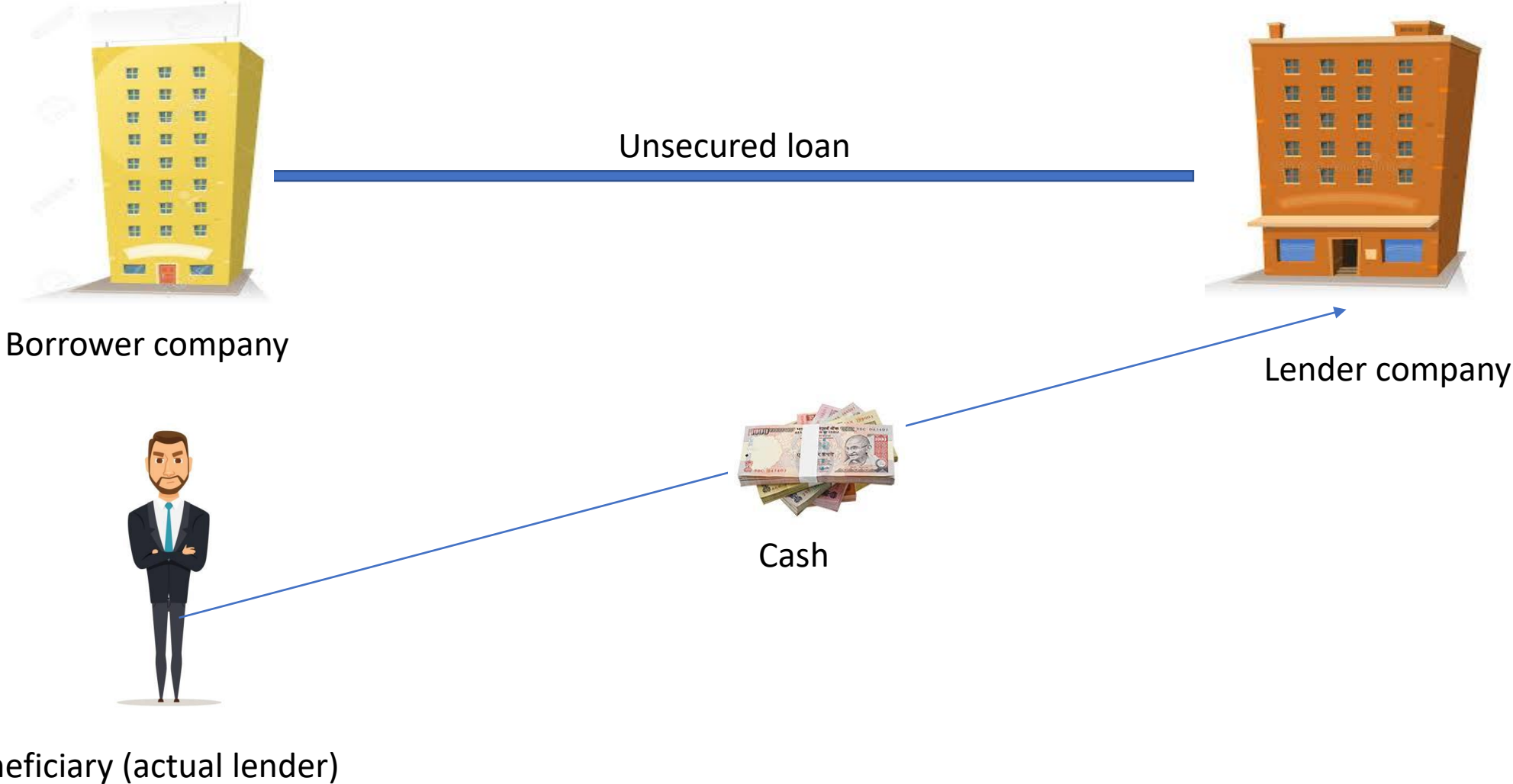
Housing Board Schemes



Transaction Through Account of Another Person



Example: Unsecured Loan



Brotherhood



Land

Registry



Brother 1



Consideration



Brother 2

Co-owner



Land



Consideration

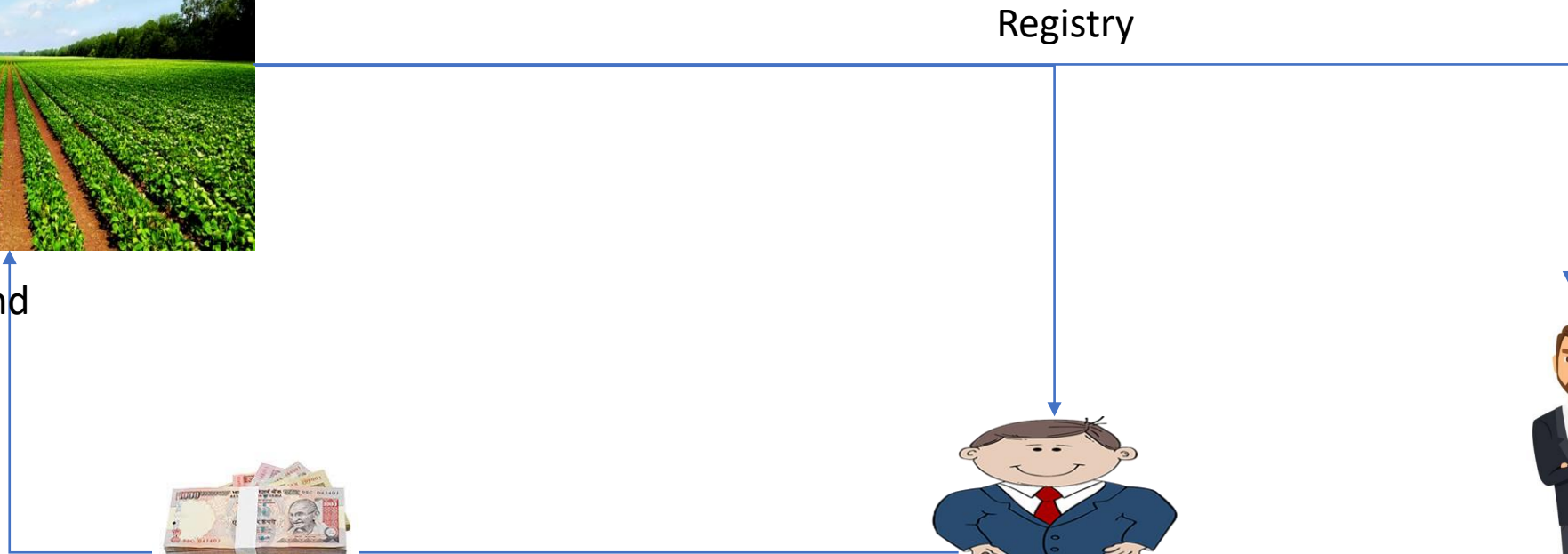
Registry



Brother 1



Brother 2



Search Cases



Search at Mr. Y's House

Property in name of Mr. X

Whereabouts of Mr. X not known



Search at Mr. Y's House

Property in name of Mr. X

Person X

Denies being the owner of the property



Search at Mr. Y's House

Property in name of Mr. Y

Source of funds

Proceeds/Gift from fictitious/non-traceable person

Landmark Judgements

- ***Jaydayal Poddar (Deceased) through L.Rs. and Anr. vs. Mst. Bibi Hazra and Ors.***
(AIR 1974 SC 171)
- ***Pawan Kumar Gupta vs. Rochiram Nagdeo***
(AIR 1999 SC 1823)
- ***Bhargavy P. Sumathykutty vs. Janaki Sathyabhama and Ors.***
(AIR 1995 Ker 42)
- ***Joseph Isharat vs. Rozy Nishikant Gaikawad order dt. 30.03.2017***
(2017 (5) ABR 706)

Jaydayal Poddar (Deceased) through L.Rs. and Anr. vs. Mst. Bibi Hazra and Ors.

(AIR 1974 SC 171)

- The burden of proving that a particular sale is benami and the apparent purchaser is not the real owner, always rests on the person asserting it to be so.
- This burden has to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of Benami or establish circumstances unerringly and reasonably raising an inference of that fact.

Jaydayal Poddar (Deceased) through L.Rs. and Anr. vs. Mst. Bibi Hazra and Ors.

CONT...

- The essence of a benami is the intention of the party or parties concerned; and such intention is shrouded in a thick veil which cannot be easily pierced through. But such difficulties do not relieve the person asserting the transaction to be benami of any part of the serious onus that rests on him; nor justify the acceptance of mere conjectures or surmises, as a substitute for proof.
- The reason is that a deed is a solemn document prepared and executed after considerable deliberation and the person expressly shown as the purchaser or transferee in the deed, starts with the initial presumption in his favour that the apparent state of affairs is the real state of affairs.

Jaydayal Poddar (Deceased) through L.Rs. and Anr. vs. Mst. Bibi Hazra and Ors.

CONT...

- Though the question, whether a particular sale is Benami or not, is largely one of fact, and for determining this question, no absolute formulae or acid tests, uniformly applicable in all situations, can be laid down; yet in weighing the probabilities and for gathering the relevant indicia, the courts are usually guided by these circumstances:

Jaydayal Poddar (Deceased) through L.Rs. and Anr. vs. Mst. Bibi Hazra and Ors.

CONT...

- the source from which the purchase money came;
- the nature and possession of the property, after the purchase;
- motive, if any, for giving the transaction a benami colour;
- the position of the parties and the relationship, if any between the claimant and the alleged benamidar;
- the custody of the title-deeds after the sale and
- the conduct of the parties concerned in dealing with the property after the sale.

Bhargavy P. Sumathykutty vs. Janaki Sathyabhama and Ors.

(AIR 1995 Ker 42)

- A typical instance of it is when A sells a property to B, but the sale deed mentions C as the purchaser.
- The second class or category of benami transactions is the sham transaction in which one person purports to transfer his property to another without intending to pass title to the transferee.
- The fundamental difference between the two categories of transactions is this : in the former, there is an operative transfer resulting in vesting of title in the transferee, whereas in the latter, there is no operative transfer and the transferor continues to retain title to the property notwithstanding execution of the document.

Bhargavy P. Sumathykutty vs. Janaki Sathyabhama and Ors.
(AIR 1995 Ker 42)

CONT...

- The Benami Act contains a definition of "benami transactions" in section 2 thereof. The definition takes in only the first category or tripartite benami transactions.
- Section 3 of the Benami Act contains a prohibition against any person entering into any benami transaction. It also contains a penal, provision. By expressing that the definition is intended for the Act and by employing the restrictive term "means" in preference to the word "includes", Parliament has conveyed its intention that the word benami transaction is not to be confined to one section alone and that the definition would contain only one category the tripartite-of benami transactions.
- Parliament has used the expression "property held benami" in sections 4 and 5 of the Benami Act instead of "property held under benami transaction". In a sham transaction, there is no holding of a property benami.

Pawan Kumar Gupta vs. Rochiram Nagdeo

(AIR 1999 SC 1823)

- Section 2(a) of the Benami Act defines benami transaction as "*any transaction in which property is transferred to one person for a consideration paid or provided by another person.*"
- The word "provided" in the said clause cannot be construed in relation to the source or sources from which the real transferee made up funds for buying the sale consideration.
- The words "paid or provided" are disjunctively employed in the clause and each has to be tagged with the word "consideration".

Pawan Kumar Gupta vs. Rochiram Nagdeo
(AIR 1999 SC 1823)

CONT...

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- The correct interpretation would be to read it as "consideration paid or consideration provided". If consideration was paid to the transferor then the word provided has no application as for the said sale. Only if the consideration was not paid in regard to a sale transaction the question of providing the consideration would arise.
 - The word "provided" in Section 2(a) of Benami Act cannot be understood in a different sense. Any other interpretation is likely to harm the interest of persons involved in genuine transactions,

Joseph Isharat vs. Rozy Nishikant Gaikawad

(2017 (5) ABR 706) (Bombay)

- If the change introduced by the Benami Act is a matter of procedure then the procedure as applicable on the date of hearing may be relevant, if on the other hand, it is a matter only have a prospective application unless the amended law speaks in a language "which expressly or by clear intention, takes in even pending matters".
- The Benami Act as a whole, creates substantive rights in favour of benamidars and destroys substantive rights of real owners who are parties to such transaction and for whom new liabilities are created under the Act.

Joseph Isharat vs. Rozy Nishikant Gaikawad

(2017 (5) ABR 706) (Bombay)

CONT.

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- If one has regard to the substance of the law rather than to its form, it is quite clear that the Benami Act affects substantive rights and cannot be regarded as having a retrospective operation.
 - The Court while relying on its previous judgment held that the expression "shall lie" in Section 4(1) or "shall be allowed" in Section 4(2) of the Benami Transaction Act are prospective and apply to the present (future stages) as well as future suits, claims and actions only.

Will new Benami law be given retrospective effect

Case of Satyendra Jain, Health Minister, Delhi

Delhi High Court ask the Income tax department whether it intend to examine under the new Benami law all accommodation entries made prior to 2016 when it came into effect.

Justice Vibhu Bakhru said if the newly amended benami law was being interpreted by the tax department in such a manner as to give it retrospective effect from 1988, when the legislation was first enacted, then it would lead to reopening of 20-30 year old cases, many of which would have gone all the way to the Supreme Court.

"You have to take a clear stand on how this Act would be administered," the court told the tax department and added that the issue would have "huge ramifications".

It also asked the department whether assets held now by a company, in which accommodation entries have been made in the past, would be construed as being a benami transaction under the Prohibition of Benami Property Transactions Act 2016.

Some Media News

- **Crackdown on benami properties: I-T officials scanning profiles of those with assets above Rs 30 lakh: Business Today, 14-11-2017**
- "We will destroy all instruments that are used to convert black money into white. This also includes shell companies. Also, the department is checking the income tax profiles of all properties which have a registry value of over Rs 30 lakh. We get this information under the law. If these profiles are found suspicious or incorrect, action will be taken (under the Benami Act)," Chandra said

The Economic Times: 07-11-17

- Finding the real beneficiary of benami properties is a Herculean task and that is the main reason for its slow implementation. To speed up this information gathering, the government should come out with cash reward up to Rs 1 crore for 'secret informers' (those who give tips to tax agencies). But the success rate will be less because people will be scared that some rogue employees from these agencies will leak the information of the informer.
- Once the Aadhar linkage happens, tax authorities can approach the 'legal owners' and it can be treated as benami property if the 'legal owners are unaware or denies knowledge of the ownership
- Even if the 'legal owner' takes onus and claims that it is his property, he needs to show the 'source of income' for buying that property
- Will this amount to some discomfort to 'genuine tax payers'? Yes, because they may have to visit the registrar's office for updating their Aadhar number (Until some online system is evolved linking immovable property with Aadhar, it appears difficult to implement this)
- Housing and Urban Affairs minister Hardeep Singh Puri informed in the parliament that there was no proposal to make Aadhaar linkage mandatory for property transactions :19-12-2017

Article in Times of India: 08-12-17

- "Until now many taxpayers at the time of assessment would offer to pay tax on unexplained credits and investments if these were raised by the revenue department and (if) the taxpayers were not able to substantiate them. However, one has to be very careful now as such unexplained credits and investments may be examined under the Benami Act and may invite penal and criminal consequences.
- Another Tax experts, however, said even now a distinction between unexplained tax credits, where higher tax is applicable, and a benami transaction has to be made. "If a cash credit is unexplained and the tax department can trace back the money to some other person, then only Benami Act can apply.

Танкшод!