# Case Studies: Discussion & Analysis

PMLA and its Interplay with the Income Tax Act

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THE FOUNDATION

# No PMLA without three building blocks

### 1. Scheduled Offence

A predicate offence listed in the Schedule (Parts A, B, C) must exist- e.g. IPC 420, 467, 468, 471, 120B; PC Act; Black Money Act s. 51.

Income-tax Act offences are NOT in the Schedule.

### 2. Proceeds of Crime-s. 2(1)(u)

Property derived or obtained, directly or indirectly, as a result of criminal activity relating to the scheduled offence (or the value of such property).

Mere unexplained money is not, by itself, proceeds of crime.

### 3. Process or Activity-s. 3

Concealment, possession, acquisition, use, projecting or claiming as untainted-by anyone who directly or indirectly attempts, knowingly assists or is a party.

**Anchor authority:** *Vijay Madanlal Choudhary v. Union of India, 2022 SCC OnLine SC 929 (3-Judge Bench)* - upholds the scheme of PMLA; interprets s. 2(1)(u), s. 3, s. 5, s. 19, s. 24, s. 45 and s. 50.

*If any one block is missing, the PMLA case collapses. Keep returning to this test in every case study.*

CASE STUDY 1

# Does tax evasion amount to money laundering?

**SHORT ANSWER:** No, not automatically. Income-tax offences are not scheduled offences; PMLA needs a scheduled offence + proceeds of crime.

### LEGAL POSITION

– Evasion is punishable under the Income-tax Act (s. 276C etc.), but IT Act offences do not appear in the PMLA Schedule.

– Section 3 is attracted only where proceeds of crime arise from a scheduled offence and a laundering process/activity follows.

– Exposure begins where evasion is achieved through forgery, cheating or conspiracy (IPC 420, 467, 468, 471, 120B)-all scheduled.

– Wilful evasion of tax on undisclosed foreign income/assets-s. 51, Black Money Act, 2015-IS a scheduled offence (Part C).

### KEY AUTHORITIES

– ***Vijay Madanlal Choudhary v. UoI***, 2022 SCC OnLine SC 929-existence of a scheduled offence is the sine qua non; ED cannot proceed on assumed criminality

– ***Nikesh Tarachand Shah v. UoI***, (2018) 11 SCC 1-background of s. 45 twin conditions (later revived and upheld in Vijay Madanlal)

CASE STUDY 2

# Does an addition under section 69A automatically result in PMLA?

**SHORT ANSWER:** No. Section 69A is a deeming fiction for taxation only; it does not establish any scheduled offence or proceeds of crime.

### LEGAL POSITION

– Section 69A deems unexplained money as income for charging tax (with s. 115BBE rates); it records no finding of crime.

– "Proceeds of crime" must be derived or obtained from criminal activity relating to a scheduled offence-a distinct, independent proof.

– Assessment findings do not bind the ED, and ED allegations do not bind the AO-the proceedings run on separate evidentiary tracks.

– Attachment must trace the property to the scheduled offence; suspicion or a tax addition alone cannot sustain it.

### KEY AUTHORITIES

– ***Vijay Madanlal Choudhary v. UoI***, 2022 SCC OnLine SC 929-property must be linked to criminal activity relating to a scheduled offence

– ***Prakash Industries Ltd. v. ED***, 2022 SCC OnLine Del 2087-authorities must show the property is derived from the scheduled offence

– ***Seema Garg v. Dy. Director, ED***, 2020 SCC OnLine P&H 738-property acquired before the offence cannot ordinarily be attached (except value-equivalent)

CASE STUDY 3

# Can the ED investigate before completion of assessment?

**SHORT ANSWER:** Yes. ED action is independent of income-tax assessment-it depends only on the existence of a scheduled offence.

## LEGAL POSITION

- The ECIR can be recorded once an FIR/complaint for a scheduled offence exists; completion of assessment is not a precondition.
- ECIR is an internal ED document-not an FIR; its supply is not mandatory (Vijay Madanlal).
- Conversely, if no scheduled offence exists, PMLA cannot be invoked however large the assessed addition.
- Arrest under s. 19 requires recorded “reasons to believe” based on material in possession, and the necessity to arrest.

## KEY AUTHORITIES

- ***Vijay Madanlal Choudhary v. UoI***, 2022 SCC OnLine SC 929-PMLA proceedings are standalone, tied to the scheduled offence, not to tax proceedings
- ***Arvind Kejriwal v. ED***, (2025) 2 SCC 248-s. 19 arrest is an extreme power-material, recorded reasons and necessity are mandatory

CASE STUDY 4

# Does acquittal in the predicate offence end PMLA proceedings?

**SHORT ANSWER:** Yes. If the scheduled offence goes (acquittal / discharge / quashing), there are no proceeds of crime-PMLA cannot survive.

## LEGAL POSITION

– Vijay Madanlal (para 187): on acquittal, discharge or quashing of the scheduled offence, there can be no offence of money laundering.

– Attachment and prosecution under PMLA both fall with the predicate offence.

– A person need not be an accused in the predicate offence to be tried under PMLA-but the predicate offence itself must exist.

– Practical tip: closure/quashing of the FIR is often the most effective defence to the entire PMLA case.

## KEY AUTHORITIES

– ***Vijay Madanlal Choudhary v. UoI***, 2022 SCC OnLine SC 929-para 187-the foundational proposition

– ***Parvathi Kollur v. ED***, 2022 SCC OnLine SC 1975-PMLA prosecution quashed after acquittal in the predicate offence

– ***Pavana Dibbur v. ED***, 2023 SCC OnLine SC 1586-PMLA accused need not figure in the predicate offence; but the offence must subsist

CASE STUDY 5

# Can agricultural income be treated as proceeds of crime?

**SHORT ANSWER:** Genuine agricultural income-No. Bogus “agricultural income” used to explain tainted money-Yes, it can invite PMLA exposure.

### LEGAL POSITION

- Genuine agricultural income is exempt (s. 10(1)) and lawful-it can never be proceeds of crime.
- Where bogus agri income is claimed to launder unaccounted or tainted funds, the claim itself may involve false documents-forgery/cheating are scheduled offences.
- s. 2(1)(u) covers property derived directly or indirectly-tainted money routed through an “agricultural” veneer remains traceable.
- Evidence to keep ready: land records, cultivation proof, mandi/sale receipts, yield reasonableness, bank trail.

### KEY AUTHORITIES

- ***Vijay Madanlal Choudhary v. UoI***, 2022 SCC OnLine SC 929-“directly or indirectly”-tracing through layers is permissible
- ***Prakash Industries Ltd. v. ED***, 2022 SCC OnLine Del 2087-but the nexus with a scheduled offence must still be shown for each property

CASE STUDY 7

# Rights, liability and responsibility of legal heirs

**SHORT ANSWER:** Criminal prosecution dies with the person; proceedings against the property (attachment / confiscation) continue-heirs defend the estate.

### LEGAL POSITION

- Criminal liability is personal-prosecution under PMLA/Benami/IT Act abates on the death of the accused.
- Attachment and confiscation are proceedings in rem-they continue against the property in the hands of legal heirs.
- Heirs step in as “persons interested/aggrieved”-they can contest before the Adjudicating Authority and appeal to the Tribunal.
- Income-tax: s. 159-legal representative liable, but only to the extent of the estate inherited.
- Bona fide purchaser / heir without notice: a recognised defence in attachment-plead it early and specifically.

### KEY AUTHORITIES

- ***Section 159, Income-tax Act***-LR’s liability capped at the estate
- ***Section 72(2), PMLA***-appeal rights continue in favour of legal representatives
- ***Vijay Madanlal Choudhary v. UoI***, 2022 SCC OnLine SC 929-attachment/confiscation operates against the tainted property itself

CASE STUDY 8

# What if cash is found during a search?

**SHORT ANSWER:** Seizure + presumption + 78%+ tax if unexplained. PMLA arises only if the cash is proceeds of a scheduled offence-not merely unexplained.

## LEGAL POSITION

- s. 132: cash can be seized; presumption under ss. 132(4A)/292C that it belongs to the person searched.
- Unexplained cash → addition u/s 69A, taxed u/s 115BBE (60% + surcharge + cess ≈ 78%), penalty u/s 271AAB in search cases.
- Defences: cash book & books of account, disclosed withdrawals, family household savings, gifts/streedhan, business cash-in-hand.
- Statement u/s 132(4) has evidentiary value-but retraction with supporting evidence is permissible; avoid admissions under pressure.
- For PMLA the department must still link the cash to a scheduled offence-the Q1/Q2 test applies squarely.

## KEY AUTHORITIES

- ***Vijay Madanlal Choudhary v. UoI***, 2022 SCC OnLine SC 929-unexplained wealth per se is not proceeds of crime
- ***Pr. CIT v. NRA Iron & Steel (P) Ltd.***, (2019) 412 ITR 161 (SC)-onus principles on unexplained credits (context: s. 68)

CASE STUDY 9

# What if excessive jewellery is found in the locker?

**SHORT ANSWER:** CBDT Instruction 1916 protects customary holdings; beyond limits, explain source-else s. 69A + 115BBE. PMLA needs a scheduled offence link.

## LEGAL POSITION

– CBDT Instruction No. 1916 dt. 11.05.1994-not to be seized: 500 gm per married lady, 250 gm per unmarried lady, 100 gm per male member.

– Courts treat the Instruction as reflecting customary Indian family holdings-usable even at the assessment stage.

– Streedhan of a long married life is acceptable even without purchase bills-Ashok Chaddha (Delhi HC).

– Beyond limits: wealth-tax returns, purchase invoices, inheritance/gift evidence, family settlement documents.

– Unexplained excess → s. 69A + s. 115BBE; PMLA only if the jewellery traces to a scheduled offence.

## KEY AUTHORITIES

– ***Ashok Chaddha v. ITO***, (2011) 337 ITR 399 (Del)-jewellery of long married life accepted without bills

– ***CBDT Instruction No. 1916***, dt. 11.05.1994-seizure guidelines-the first shield in every locker case

CASE STUDY 10

# What if a person is involved in accommodation entries?

**SHORT ANSWER:** Tax addition u/s 68 + penalty + possible prosecution; where forged papers / cheating are involved, both operator and beneficiary face PMLA risk.

## LEGAL POSITION

- s. 68 test: identity, creditworthiness and genuineness-onus on the assessee; deeper scrutiny for share capital/premium (NRA Iron & Steel).
- Consequences: s. 115BBE tax, penalty u/s 271AAC/270A, prosecution u/s 276C possible.
- Entry operations typically involve bogus bills, forged documents, shell companies-IPC 420/467/468/471/120B are scheduled offences → PMLA exposure.
- Right of cross-examination of the entry operator whose statement is used-denial violates natural justice (Andaman Timber).
- Retraction of statements: possible, but must be prompt, supported by evidence, and explained.

## KEY AUTHORITIES

- ***Pr. CIT v. NRA Iron & Steel (P) Ltd.***, (2019) 412 ITR 161 (SC)-AO duty to probe; onus on assessee for share capital
- ***Andaman Timber Industries v. CCE***, (2015) 324 ELT 641 (SC)-no reliance on a statement without offering cross-examination
- ***CIT v. Lovely Exports (P) Ltd.***, (2008) 216 CTR 195 (SC)-identity of subscribers furnished-revenue may proceed against them

CASE STUDY 11

# Position of beneficiaries when dummy directors are found

**SHORT ANSWER:** Substance over form: the real beneficiary/controller is the primary target; dummies are not automatically absolved, nor automatically liable.

### LEGAL POSITION

– Courts lift the corporate veil to reach the beneficial owner who controls funds and enjoys the proceeds.

– PMLA s. 70: where a company offends, every person in charge of and responsible for its business is liable-role must be shown, not assumed.

– Vicarious liability in crime needs a specific role/active part-designation alone is not enough.

– Benami angle: the company/dummy is the benamidar; the beneficial owner (s. 2(12)) faces attachment, confiscation and prosecution.

– Statements of dummy directors u/s 50 PMLA are admissible-handle recording, retraction and corroboration carefully.

### KEY AUTHORITIES

– ***Sunil Bharti Mittal v. CBI***, (2015) 4 SCC 609-no automatic vicarious liability-specific role required

– ***Vijay Madanlal Choudhary v. UoI***, 2022 SCC OnLine SC 929-s. 50 statements-ED officers are not police; statements not hit by Art. 20(3) at summons stage

– ***UoI v. Ganpati Dealcom (P) Ltd.***, (2023) 3 SCC 315-framework of benamidar vs. beneficial owner

CASE STUDY 12

# Do fake GST invoices result in PMLA proceedings? If yes, one party or both?

**SHORT ANSWER:** GST offences are not scheduled-but fake-invoice rackets usually involve forgery/cheating/conspiracy (scheduled). Both issuer and beneficiary can be roped in.

## LEGAL POSITION

– CGST Act offences (s. 132) are not in the PMLA Schedule; a pure GST contravention does not, by itself, trigger PMLA.

– In practice, fake ITC chains involve forged invoices, fictitious firms and cheating-IPC 420/467/468/471/120B → scheduled offences → PMLA.

– s. 3 PMLA reaches anyone who "knowingly assists or is a party"-issuer, beneficiary, broker and banker alike, once knowledge is shown.

– GSTN is a notified authority for information-sharing with ED (s. 66(1)(ii) notification, 07.07.2023)-expect data flow between departments.

– GST arrests: valid, but CrPC/BNSS safeguards apply-recorded reasons, credible material; anticipatory bail is maintainable.

## KEY AUTHORITIES

– ***Radhika Agarwal v. UoI***, 2025 INSC 272-GST/Customs arrest powers upheld with CrPC-level safeguards; no prior adjudication needed but recorded reasons mandatory

– ***Arvind Kejriwal v. ED***, (2025) 2 SCC 248-s. 19 PMLA arrest standards-extended in spirit to tax arrests

FIVE PRINCIPLES TO CARRY HOME

# If you remember nothing else

1. **No scheduled offence → No PMLA.**
   Every defence begins and ends with this test (Vijay Madanlal).
2. **A tax addition is not proceeds of crime.**
   ss. 68/69/69A are deeming fictions for tax-the ED must independently prove the criminal origin.
3. **Acquittal in the predicate offence kills the PMLA case.**
   Vijay Madanlal (para 187); Parvathi Kollur.
4. **Benami must be strictly proved by the person alleging it.**
   Mangathai Ammal; and the 2016 Amendment is prospective-Ganpati Dealcom.
5. **Liberty safeguards are real and enforceable.**
   s. 19 arrest-Arvind Kejriwal; GST/Customs arrest-Radhika Agarwal; s. 50 statements-retraction and cross-examination.

# Questions & Answers

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