The Prohibition of Benami Property Transactions (Amendment) Act, 2016

Presented By
CA (Dr) Raj Chawla
9811081083

About the Author

CA (Dr) Raj Chawla

- CA (Dr) Raj Chawla Partner, RCA & Co. LLP, Chartered Accountants, New Delhi.
- FCA, FCS, FCMA, LLB, MIMA, DISA, MICA Ph.D & ASA (Aust), CMP (USA).
- Central Council Member- ICAI (2022-25)
- Chairman of NIRC of ICAI (2015-16).
- Founder - NICAI Updates-Since 2009 serving more than 1 Lac Members
- Founder - CA Job Network & CA Empanelment Network.
- President - Krishna Sant Foundation (NGO).
- President, Rotary Club, Delhi Vivek (2018-19).
- President - Lions Club, Delhi Aishwarya (2005-6)
- Managing Committee Member Delhi Management Association (2024-26).

You can reach us at:-
712, New Delhi House,
27, Barakhamba Road,
New Delhi-110001
rajchawlaca@gmail.com
98110-81083

INTRODUCTION

1. **The Prohibition of Benami Property Transactions Act, 1988** is a landmark legislation enacted to prohibit **benami property transactions** and provide for the confiscation of benami properties, thereby promoting transparency in property ownership and preventing the concealment of beneficial ownership.

2. The Act was originally enacted in **1988** as the **Benami Transactions (Prohibition) Act, 1988**. However, due to limited enforcement provisions, it remained largely ineffective for several years. The **Benami Transactions (Prohibition) Amendment Act, 2016**, effective from **1 November 2016**, comprehensively amended the legislation, renamed it as the **Prohibition of Benami Property Transactions Act, 1988**, and introduced an effective mechanism for attachment, adjudication, confiscation, prosecution, and appellate remedies.

3. The Act defines a **benami transaction** under **Section 2(9)** as a transaction or arrangement where a property is held by one person while the consideration is provided by another person, and the property is held for the immediate or future benefit, direct or indirect, of the person providing the consideration, subject to the statutory exceptions specified in the Act.

1. The legislation provides a comprehensive framework for:
   A. Prohibition of benami property transactions
   B. Identification, provisional attachment, adjudication and confiscation of benami properties
   C. Appointment and powers of the Initiating Officer, Approving Authority, Administrator, Adjudicating Authority and Appellate Tribunal
   D. Imposition of stringent penalties and prosecution, including imprisonment and fine
2. The Act ***applies to movable, immovable, tangible, intangible, corporeal and incorporeal property, including rights, interests and legal documents representing ownership.***
3. Overall, the Prohibition of Benami Property Transactions Act, 1988 aims to promote transparency in property ownership, ***prevent tax evasion, concealment of beneficial ownership and accumulation of unaccounted assets***, and strengthen the integrity of the economic system by deterring the misuse of benami arrangements.

WHAT IS A BENAMI TRANSACTION?

A **benami transaction** is a transaction or arrangement in which a property is transferred to or held by one person (**Benamidar**), while the consideration for such property has been provided or paid by another person (**Beneficial Owner**), and the property is held for the **immediate or future benefit**, direct or indirect, of the person providing the consideration, unless it falls within the statutory exceptions prescribed under the Act.

Essential Ingredients

✓ Property is held in the name of one person (**Benamidar**).

✓ Consideration is provided by another person (**Beneficial Owner**).

✓ The property is held for the immediate or future benefit, direct or indirect, of the person who provided the consideration.

✓ The transaction does **not** fall within the statutory exceptions under Section 2(9).

Section 2(9) defines a **"Benami Transaction"** and is the foundation for determining whether a transaction is liable to attachment and confiscation under the Act.

What falls under Benami Transaction?

Property includes assets of every description, whether:

1. Movable
2. Immovable
3. Tangible
4. Intangible
5. Corporeal or Incorporeal
6. Any right, title or interest in property
7. Legal documents or instruments evidencing ownership or interest

KEY DEFINITIONS

BENAMI PROPERTY
Section 2(8)
"Benami property" means any property which is the subject matter of a benami transaction and includes the proceeds from such property.

CONSIDERATION
(Section 2(9))
The consideration may be provided directly or indirectly by another person.

BENAMIDAR
Section 2(10)
"Benamidar" means a person or fictitious person, as the case may be, in whose name the benami property is transferred or held, and includes a person who lends his name.

BENEFICIAL OWNER
Section 2(12)
"Beneficial Owner" means a person, whether his identity is known or not, for whose benefit the benami property is held by a Benamidar.

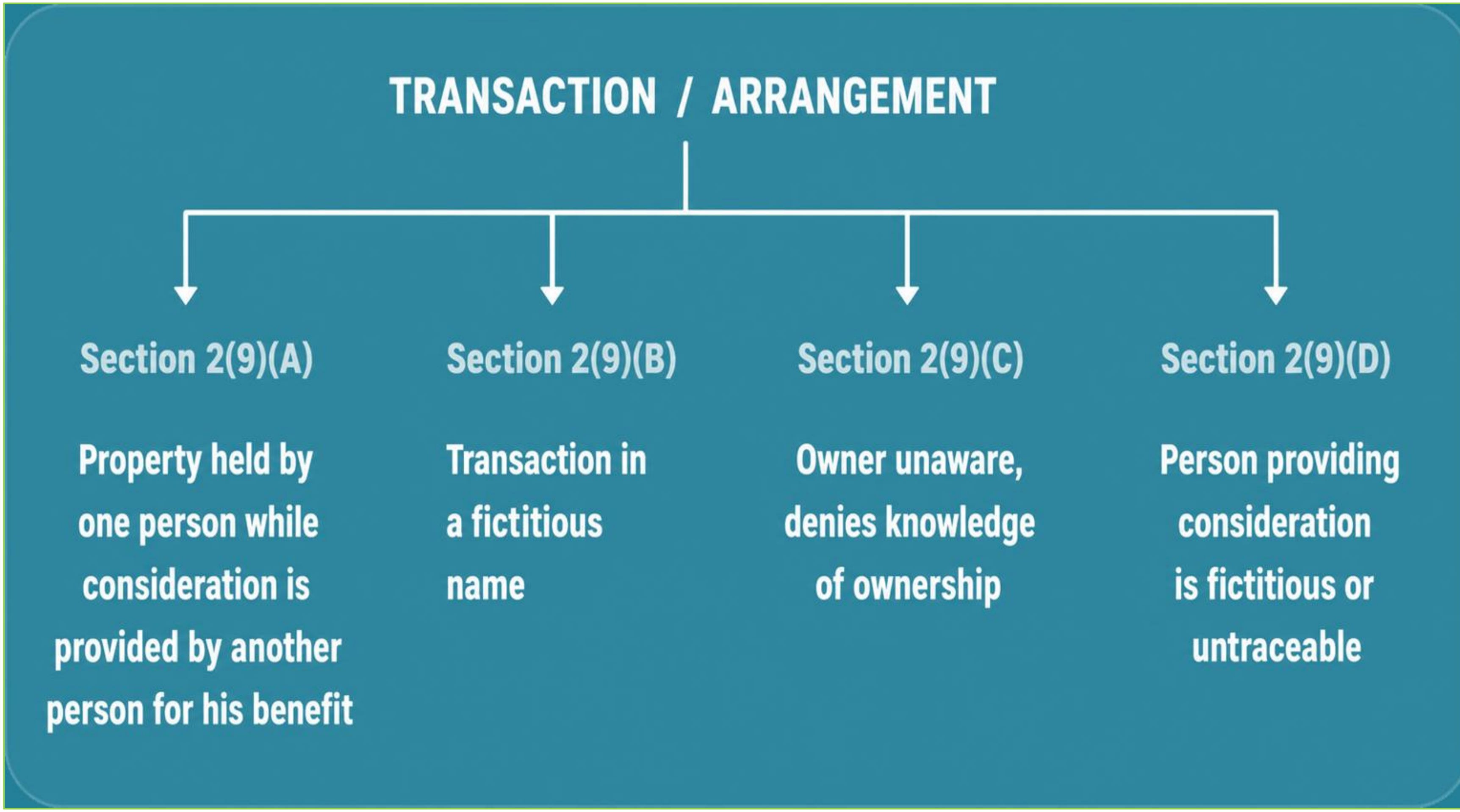
Benami Transaction ?

CONSIDERATION PROVIDER

PROPERTY HOLDER (Benamidar)

BENEFICIARY (IMMEDIATE / FUTURE/ DIRECT / INDIRECT

Benami Transaction



Exceptions :
1) Executor, Trustee, Partner, Director, {Karta, Spouse / child, brother, sister lineal D/A} Consideration out of known sources

2) Section 53A of Transfer of Property Act
- Ownership with X
- Possession with Y
- Stamp Duty Paid
- Registered

Benami Transaction

BENAMI TRANSACTION

Statutory Definition – Section 2(9)

A benami transaction means a transaction or arrangement where:

(a) A property is transferred to, or held by, one person (Benamidar);

(b) The consideration for such property has been provided or paid by another person, directly or indirectly; and

(c) The property is held for the immediate or future benefit, direct or indirect, of the person providing the consideration (Beneficial Owner),

unless the transaction falls within the statutory exceptions provided in the Act.

Additional Categories of Benami Transactions

A transaction is also regarded as benami where:

(a) The property is held in the name of a fictitious person. *(Section 2(9)(B))*

(b) The owner is not aware of, or denies knowledge of, such ownership. *(Section 2(9)(C))*

(c) The person providing the consideration is not traceable or is fictitious. *(Section 2(9)(D))*

Exclusions to a Benami Transaction

The following transactions are **not treated as benami**, subject to fulfillment of the prescribed conditions:

1. **HUF Property**
   - Held by the Karta or a member
   - For the benefit of the HUF
   - Consideration from the **known sources of the HUF**
2. **Fiduciary Capacity**
   - Property held by a Trustee, Executor, Partner, Director, Agent, Legal Adviser, or any other person acting in a fiduciary capacity.
3. **Spouse or Child**
   - Property held in the name of spouse or child
   - Consideration from the **known sources of the individual**
4. **Joint Ownership with Close Relatives**
   - Jointly held with brother, sister, lineal ascendant, or lineal descendant
   - Joint ownership in the title document
   - Consideration from the **known sources of the individual**

Note: These exclusions apply only when the statutory conditions under **Section 2(9)(A)** are satisfied.

Payer of Consideration Not Traceable (Section 2(9)(D))

A transaction is benami where:

1. ***The person providing the consideration is not traceable; or***
2. ***The person providing the consideration is fictitious.***

Key Elements

1. ***Property is held in the name of another person.***
2. ***Identity of the consideration provider cannot be established.***
3. ***The transaction falls within Section 2(9)(D).***

Illustration: A property is purchased in Mr. A's name, but the alleged person who financed the purchase cannot be identified or does not exist.

Key Changes Introduced by the Benami Transactions (Prohibition) Amendment Act, 2016

A simple **Before vs. After** comparison makes this amendment easier to understand:

1988 Act	After 2016 Amendment
Limited enforcement	Comprehensive enforcement framework
No effective attachment mechanism	Provisional attachment & confiscation
Weak adjudication	Dedicated authorities & appellate mechanism
Limited penalties	Stringent penalties & prosecution
Narrow implementation	Expanded definition of benami transaction

Confiscation & Penalties

The 2016 Amendment strengthened enforcement by empowering authorities to:

1. *Provisionally attach suspected benami properties.*
2. *Adjudicate whether a property is benami.*
3. *Confiscate benami properties in favour of the Central Government.*
4. *Prosecute persons involved in benami transactions.*

Penalty (Section 53)

1. *Rigorous imprisonment: 1 to 7 years*
2. *Fine: Up to 25% of the Fair Market Value (FMV) of the benami property.*

Enforcement Date

1. *The Benami Transactions (Prohibition) Amendment Act, 2016 came into force on 1 November 2016.*
2. *The amended provisions significantly strengthened the enforcement mechanism under the Act.*
3. *The applicability of penal and confiscation provisions to pre-2016 transactions has been the subject of judicial interpretation, including the Supreme Court's decision in Union of India v. Ganpati Dealcom Pvt. Ltd. (2022).*

Judicial Developments

Union of India v. Ganpati Dealcom Pvt. Ltd. (2022)

- ***The Supreme Court held that the 2016 Amendment is prospective.***
- ***The penal and confiscation provisions introduced by the 2016 Amendment cannot be applied to transactions entered into before 1 November 2016.***
- ***Certain provisions were declared unconstitutional to the extent they operated retrospectively.***

Recall Order (2024)

- The Supreme Court **recalled the judgment in *Ganpati Dealcom***.
- The matter has been directed for **fresh consideration by a larger Bench**.
- The legal issues regarding the retrospective operation of the 2016 Amendment are **pending final adjudication**.

Present Legal Position

- The **2016 Amendment continues to remain in force**.
- Authorities continue to exercise powers under the Act.
- The issue of **retrospective applicability** is **sub judice** before the Supreme Court.

Current Legal Position

1. The Prohibition of Benami Property Transactions Act, 1988 (as amended in 2016) continues to be the governing law on benami transactions in India.
2. Authorities continue to exercise powers of provisional attachment, adjudication, confiscation, and prosecution under the Act.
3. The question of retrospective applicability of the 2016 Amendment is pending final adjudication before the Supreme Court.
4. Benami investigations and attachment proceedings continue to be actively undertaken by the Initiating Officers and other authorities under the Act.

Tests to Determine a Benami Transaction

Bhim Singh & Anr. v. Kan Singh & Ors. (1980) 3 SCC 72

The Supreme Court held that **no single test is conclusive**. The question whether a transaction is benami depends upon the **totality of the facts and circumstances**.

Judicial Tests

- **Burden of Proof**

The burden lies on the person alleging that the transaction is benami.

- **Source of Consideration**

Who provided the purchase consideration?

- **Intention of the Parties**

Was the property intended to benefit the person who provided the consideration?

- **Possession of the Property**

Who is in actual possession and enjoyment of the property?

- **Custody of Title Documents**

Who retains the original title deeds and ownership documents?

- **Motive for the Transaction**

Was there any reason for purchasing the property in another person's name?

- **Conduct of the Parties**

Relationship between the parties and their conduct before and after the transaction.

KEY AUTHORITIES

The Act (as amended in 2016) establishes the following key authorities for implementation and enforcement:

1. Initiating Officer (IO)
- Issues notice under **Section 24**
- Conducts inquiry and investigation
- Provisionally attaches suspected benami property (with prior approval)

2. Approving Authority
- Grants prior approval for provisional attachment
- Supervises actions requiring statutory approval

3. Adjudicating Authority
- Examines evidence and hears the parties
- Determines whether the property is benami
- Confirms or revokes provisional attachment

4. Administrator
- Takes possession of confiscated property
- Manages and disposes of property as per law

5. Appellate Tribunal
- Hears appeals against orders of the Adjudicating Authority
- Passes final appellate orders under the Act

6. Special Court
- Tries offences under the PBPT Act
- Awards imprisonment and fine upon conviction

Notice & Attachment (Section 24)

1. Reason to Believe

- The **Initiating Officer (IO)** must have **"reason to believe"**, based on material in possession, that a person is a **Benamidar** in respect of a property.
- The reasons must be **recorded in writing** before issuing notice.

2. Issue of Notice

- A **show cause notice** is issued to the alleged **Benamidar** [Section 24(1)].
- A copy of the notice shall also be issued to the **Beneficial Owner**, if his identity is known [Section 24(2)].

Provisional Attachment of Property (Section 24(3) & (4))

Conditions for Provisional Attachment

1. The Initiating Officer (IO) has reason to believe that the property is likely to be alienated during the notice period.
2. Previous approval of the Approving Authority is mandatory.
3. The property may be provisionally attached to safeguard the interests of the Central Government pending adjudication.

Timeline (Effective from 1 October 2024)

1. The earlier period of 90 days has been replaced with 4 months.
2. Within 4 months from the end of the month in which the notice is issued, the IO shall:
   - Confirm the provisional attachment; or
   - Revoke the provisional attachment; or
   - Pass an order not attaching the property,
     with the prior approval of the Approving Authority.

Reference to Adjudicating Authority
(Sections 24 & 26, PBPT Act, 1988)

Reference by the Initiating Officer

After passing an order under Section 24(4), the Initiating Officer shall, within one month:

- Prepare a Statement of the Case.
- Refer the matter to the Adjudicating Authority for adjudication.

Proceedings before the Adjudicating Authority

The Adjudicating Authority shall:

- Issue notices to the concerned persons.
- Provide an opportunity of being heard.
- Examine the evidence and submissions.
- Determine whether the property is benami.

If the Property is Held to be Benami

- The property stands liable to confiscation by the Central Government.
- The Administrator takes possession and manages the confiscated property in accordance with the Act.

Penalty for Benami Transaction (Section 53)

Who is liable:

1. Beneficial owner
2. Benamidar (name holder)
3. Any person who abets/induces another to enter a benami transaction

When is the Offence Attracted?

A person enters into a benami transaction to:

1. Defeat the provisions of any law;
2. Avoid payment of statutory dues; or
3. Avoid payment to creditors.

Punishment:

1. Rigorous imprisonment: Minimum 1 year and up to 7 years
2. Fine: Up to 25% of the fair market value of the benami property
3. Penalty applies to all participants (owner, holder, abettor) equally unless specified otherwise.

Penalty for False Information (Section 54)

Applies to any person required to furnish information under the Act who:

1. Knowingly gives false information, or
2. Furnishes false documents during proceedings under the Act.

Punishment:

1. Rigorous imprisonment: Minimum 6 months and up to 5 years
2. Fine: Up to 10% of the fair market value of the benami property associated with the false information.

Confiscation of Benami Property

1. Where the Adjudicating Authority declares a property to be benami, it becomes liable to confiscation by the Central Government.
2. No compensation is payable to the Benamidar or the Beneficial Owner in respect of the confiscated property.
3. The Administrator takes possession and manages the confiscated property in accordance with the Act.
4. Confiscation is independent of criminal prosecution under Sections 53 and 54.

Note: Attachment is temporary; confiscation is permanent. Confiscation follows only after adjudication under Section 26 and is effected under Section 27.

Key Enforcement Points

- Attachment, adjudication and confiscation are independent of criminal prosecution.
- Both the Beneficial Owner and Benamidar may be liable under the Act.
- Persons abetting or inducing a benami transaction may also be prosecuted.
- Proceedings under the PBPT Act are independent of Income-tax proceedings, though both may run simultaneously.
- Furnishing false information or documents is a separate offence.

Penalties at a Glance

Offence	Section	Imprisonment	Fine
Entering into a prohibited benami transaction	53	1–7 years (RI)	Up to 25% of FMV
Knowingly furnishing false information/documents	54	6 months–5 years (RI)	Up to 10% of FMV

New Benami Transactions Informants Reward Scheme, 2018

Objective

Encourage reporting of **specific, credible and actionable information** on benami properties and transactions under the **PBPT Act, 1988**.

Key Features

- Any eligible person (other than Government servants) may act as an informant.
- Information must be **original, specific and verifiable**.
- **Reward up to ₹1 Crore** (subject to the Scheme).
- Reward is **ex gratia (discretionary)** and **not a matter of right**.
- Informant's identity is kept **confidential**, as per the Scheme.

Purpose

- Detect benami properties.
- Strengthen enforcement.
- Encourage public participation against concealed beneficial ownership.

Note: Reward is granted only in accordance with the terms and conditions of the Scheme.

CBDT launches e-portal for filing complaints regarding tax evasion/Benami Properties/Foreign Undisclosed Assets

Dated: 12 Jan 2021

Key Features

1. Online reporting of:
   - Tax Evasion
   - Benami Properties/Transactions
   - Foreign Undisclosed Assets
2. Complaints can be filed **with or without PAN/Aadhaar** (OTP-based verification).
3. Separate online forms for each category of complaint.
4. Unique Complaint Reference Number for tracking the status.

Objective

Encourage public participation in reporting tax evasion and benami transactions.
Strengthen transparency and enforcement under the Income-tax Act and the PBPT Act.

Note: The portal enables confidential online reporting of actionable information to the Income-tax Department.

IMPORTANT CASE LAWS KEY TAKEAWAYS

Smt. P. Leelavathamma v. Shankarnarayan Rao

Principle:

Source of consideration alone is not conclusive.

The intention of the parties is the most important test.

Financial assistance by a father does not automatically make the property benami.

Key Takeaway: Benami is determined by the overall facts and intention, not merely by who paid the consideration.

Niharlika Jain (W/o Shri Andesh Jain) v. Union of India

Principle:

The Rajasthan High Court held that the **2016 Amendment is prospective**.

Pre-2016 transactions could not be subjected to the amended provisions.

Current Status: The issue of **retrospective applicability** is presently **pending before the Supreme Court**.

Note:. Courts examine the substance of the transaction, intention of the parties, source of funds, possession, custody of title deeds, and surrounding circumstances—not merely the name in which the property stands.

Case Law 3: Bhim Singh & Anr. v. Kan Singh & Ors.
(1980) 3 SCC 72 – Supreme Court)

Key Principles

- *Benami is a question of intention, to be determined from the totality of the facts and circumstances.*
- *Source of consideration alone is not conclusive.*
- *No single test determines whether a transaction is benami.*
- *The burden of proving that a transaction is benami lies on the person making the allegation.*

Judicial Tests
The Court considers:

1. *Source of purchase consideration*
2. *Intention of the parties*
3. *Possession of the property*
4. *Custody of title documents*
5. *Relationship between the parties*
6. *Motive and subsequent conduct*

Key Takeaway: A benami transaction is determined by the cumulative effect of all surrounding circumstances, not by any single factor.

Union of India v. Ganpati Dealcom Pvt. Ltd.
Citation: (2022) 10 SCC 1

Background

1. The Prohibition of Benami Property Transactions Act, 1988 was substantially amended by the **Benami Transactions (Prohibition) Amendment Act, 2016**, which came into force on **1 November 2016**.
2. The 2016 amendment introduced a comprehensive mechanism for **identification, attachment, adjudication, confiscation, and prosecution** of Benami properties.
3. The Government initiated proceedings under the amended law against properties allegedly acquired through Benami transactions **before 1 November 2016**.
4. The affected parties challenged these proceedings, contending that the amended provisions could not be applied retrospectively because they created new liabilities and severe consequences.

Issues Before the Supreme Court

The Supreme Court was called upon to decide the following important questions:

1. Whether the **2016 Amendment Act** applies **prospectively or retrospectively**.
2. Whether the Government can initiate proceedings for **Benami transactions entered into before 1 November 2016**.
3. Whether properties acquired before the amendment can be **attached and confiscated** under the amended Act.
4. Whether criminal prosecution under the amended law can be initiated for earlier transactions.
5. Whether retrospective application of the penal provisions violates **Article 20(1)** of the Constitution, which prohibits retrospective criminal punishment.

Supreme Court Judgment (23 August 2022)

A. 2016 Amendment Held Prospective

The Supreme Court held that:

1. The 2016 Amendment introduced **substantive rights, liabilities, powers, and penalties**, and was **not merely procedural**.
2. Since Parliament did not expressly provide retrospective operation, the amendment would operate **only from 1 November 2016**.
3. Laws creating new obligations or imposing harsher consequences are presumed to be prospective unless the statute clearly states otherwise.

Criminal Prosecution Cannot Be Retrospective

The Court further held:

1. Sections **53 and 54**, which prescribe punishment for Benami transactions, cannot be applied to transactions that took place before **1 November 2016**.
2. Criminal statutes imposing punishment cannot operate retrospectively.
3. Such retrospective prosecution would violate **Article 20(1)** of the Constitution.
4. The Constitution protects every person from being punished under a law that did not exist at the time the alleged act was committed.

Confiscation of Property

The Supreme Court also ruled that:

1. The confiscation mechanism introduced by the 2016 Amendment is **punitive in nature**.
2. Consequently, confiscation provisions cannot be invoked for properties acquired before **1 November 2016**.
3. Authorities were restrained from continuing confiscation proceedings relating to pre-amendment transactions.
4. The Court treated confiscation as a serious legal consequence which could not be imposed retrospectively.

Significance of the 2022 Judgment

The judgment had far-reaching consequences:

1. Thousands of pending Benami proceedings involving pre-2016 transactions were affected.
2. Authorities could not rely upon the amended provisions for earlier transactions.
3. It significantly restricted retrospective enforcement of the PBPT Act.
4. The decision became one of the most important constitutional judgments concerning retrospective penal legislation.
5. It strengthened the constitutional protection against retrospective criminal liability.

Review Petition by Union of India

The Union Government filed a Review Petition on the grounds that:

1. The judgment had serious implications for the enforcement of the PBPT Act.
2. The Court had declared certain provisions unconstitutional even though **their constitutional validity had never been challenged**.
3. The original dispute only concerned the **retrospective operation** of the amendment.
4. The Government requested reconsideration of the judgment by the Supreme Court.

Supreme Court Review Order (18 October 2024)

The Supreme Court allowed the Review Petition and observed that:

1. The constitutional validity of Sections 3 and 5 of the unamended Act had **never been pleaded or argued** by the parties.
2. A constitutional issue cannot be decided in the absence of a proper dispute (**lis**) between the parties.
3. Since those issues were decided without being directly raised, the earlier judgment required reconsideration.
4. Accordingly, the Court **recalled its judgment dated 23 August 2022**.

Directions Issued in the Review Order

The Supreme Court directed that:

1. The **2022 judgment stands recalled**.
2. Civil Appeal No. 5783 of 2022 shall be heard afresh by a Bench nominated by the Chief Justice of India.
3. Parties whose cases had been decided based on the 2022 judgment were given liberty to seek review.
4. Pending applications were disposed of.
5. The Court intentionally left all substantive legal issues open for fresh adjudication.

Present Legal Position (July 2026)

The present legal position is as follows:

1. The **PBPT Act, 1988**, as amended in 2016, continues to remain in force.
2. The **2022 Ganpati Dealcom judgment is no longer binding**, as it has been recalled by the Supreme Court.
3. The question of whether the 2016 Amendment applies retrospectively has **not yet been finally decided**.
4. The matter is pending before the Supreme Court for fresh adjudication.
5. Until a fresh judgment is delivered, authorities continue to administer the Act under the existing statutory framework.

Practical Implications

For Taxpayers

- Proceedings relating to pre-2016 transactions may continue.
- The final outcome will depend upon the Supreme Court's fresh decision.

For Tax Professionals

- Do not rely solely upon the recalled 2022 judgment as binding precedent.
- Carefully examine the facts of each case.
- Keep track of future developments before advising clients.

For Authorities

- Continue enforcement under the amended PBPT Act.
- Await authoritative guidance from the Supreme Court on retrospectively.

8. Timeline

Year	Event
1 November 2016	Comprehensive PBPT Amendment came into force.
23 August 2022	Supreme Court held the amendment to be prospective and barred retrospective penal application.
18 October 2024	Supreme Court recalled the 2022 judgment in review proceedings.
Present (2026)	Fresh adjudication is awaited; retrospective applicability remains undecided.

Practical Q&A – Benami Law & PMLA

Q1. Father Pays, Son Purchases

Facts: Mr. A pays ₹1 crore from disclosed income to purchase a house in the name of his son.

Question: Is this a benami transaction?

Answer: No, if the consideration is paid from the father's known sources and the transaction satisfies the statutory exception under Section 2(9)(A).

Q2. Property Purchased in Friend's Name

Facts: Mr. X purchases land in the name of his friend but retains possession and receives all rental income.

Question: Can it be treated as benami?

Answer: Yes. The property is held by another person while the beneficial ownership remains with Mr. X, subject to the evidence and statutory requirements.

Q3. Property in Wife's Name

Facts: A flat is purchased in the wife's name using unexplained cash.

Question: Does the spouse exception automatically apply?

Answer: No. The exception applies only if the consideration is paid from the known sources of the individual.

Q4. Fictitious Purchaser

Facts: A property is registered in the name of a person who does not exist.

Question: Which provision applies?

Answer: Section 2(9)(B) – Property held in the name of a fictitious person.

Q5. Owner Denies Ownership

Facts: The registered owner states that he has no knowledge of the property.

Question: Can the transaction be treated as benami?

Answer: Yes, subject to proof, under Section 2(9)(C).

Q6. Consideration Provider Cannot Be Traced

Facts: The alleged financer cannot be identified or traced.

Question: Which provision applies?

Answer: Section 2(9)(D) – The person providing the consideration is fictitious or not traceable.

Q7. Can Income-tax and Benami Proceedings Run Together?

Answer: Yes. Proceedings under the Income-tax Act and the PBPT Act are independent and may proceed simultaneously, depending on the facts.

Q8. Does Every Income-tax Addition Lead to PMLA or Benami Proceedings?

Answer: No. An addition under the Income-tax Act does not automatically attract proceedings under the PBPT Act or PMLA. Each law has distinct statutory requirements.

Q9. Can a Benamidar Be Prosecuted Even If He Did Not Pay the Consideration?

Answer: Yes. The Benamidar may be liable under the Act, subject to the evidence establishing the ingredients of the offence and the role attributed to the Benamidar.

Q10. Can Benami Property Be Confiscated Without Criminal Conviction?

Answer: Yes. After adjudication and a declaration that the property is benami, it may be confiscated under Section 27, independent of criminal prosecution.

Q11. Can Shares, Mutual Funds or Bank Deposits Be Benami?

Answer: Yes. The definition of property under Section 2(26) is wide enough to include movable, immovable, tangible, intangible property and rights or interests therein.

Q12. Can a Chartered Accountant Be Prosecuted?

Answer: A Chartered Accountant is not liable merely for providing professional services. However, if there is evidence of abetment, inducement, fabrication of documents, or knowing participation in a prohibited benami transaction or other offence, liability may arise under the applicable law.

Q13. Is Jewellery Covered Under the PBPT Act?

Answer: Yes. Gold, jewellery, bullion and other movable assets can constitute "property" if the statutory ingredients of a benami transaction are established.

Q14. What Is the Difference Between a Benamidar and a Beneficial Owner?

Answer: The Benamidar is the person in whose name the property is held, whereas the Beneficial Owner is the person for whose benefit the property is held.

Q15. Is Provisional Attachment Final?

Answer: No. Provisional attachment under Section 24 is an interim measure. Final confiscation can occur only after adjudication under Section 26 and confiscation under Section 27.

Q16. What is a Benami Transaction?

A transaction where property is held in one person's name, but the consideration is paid by another person for his benefit.

Q17. Evolution of Benami Law

Benami transactions were recognized under common law until the Benami Transactions (Prohibition) Act, 1988. The law was comprehensively strengthened by the 2016 Amendment.

Q 18. What was the 2016 Amendment?

The amendment expanded the definition of benami transactions, established authorities, and introduced attachment, confiscation, penalties, and prosecution provisions.

Q19. Present Legal Position

Benami transactions are prohibited. Benami properties can be attached and confiscated, and offenders may face imprisonment and fines.

Q20. Who is a Benamidar?

A person in whose name the benami property is held, though he is not the real owner.

Q21. Who is the Beneficial Owner?

The person who pays the consideration for the property and enjoys its benefits.

Q22. What is Benami Property?

Any property that is the subject matter of a benami transaction, including its proceeds.

Q23. What is Fiduciary Capacity?

A relationship where a person holds property on behalf of another, such as a trustee, partner, or guardian. Such holdings are generally exempt.

Q24. What are the Exemptions?

The Act excludes certain genuine transactions, including property held by:

- Karta of HUF,
- Persons in fiduciary capacity,
- Joint owners with spouse, child, brother, sister, or lineal ascendant/descendant, where consideration is from known sources.

Q25. Authorities under the Benami Act

The Act provides four authorities:

- Initiating Officer
- Approving Authority
- Adjudicating Authority
- Appellate Tribunal

Q26. Who is the Initiating Officer?

An Income-tax authority empowered to investigate suspected benami transactions and initiate proceedings.

Q27. Who is the Approving Authority?
A senior Income-tax authority who approves provisional attachment of suspected benami property.

Q28. Who is the Adjudicating Authority?
An authority that decides whether a property is benami after hearing all parties.

Q29. What is the Appellate Tribunal?
A tribunal that hears appeals against orders of the Adjudicating Authority.

Q30. What are Attachment Proceedings?
The process by which suspected benami property is provisionally attached to prevent its transfer during investigation.

Q31. What is Confiscation?
The permanent vesting of benami property in the Central Government after it is declared benami.

Q32. What is the Penalty?

Providing false information may attract imprisonment from 6 months to 5 years and a fine up to 10% of the fair market value of the property.

Q33. What is Prosecution?

A person entering into a benami transaction may face 1 to 7 years' rigorous imprisonment and a fine up to 25% of the fair market value of the property.

Q34. Difference between Benami Act and PMLA

- Benami Act: Deals with property held in another's name.
- PMLA: Deals with proceeds of crime and money laundering.

Q35. Union of India v. Ganpati Dealcom Pvt. Ltd. (2022)
Citation: (2023) 3 SCC 315 (SC)

Facts

The Income-tax Department initiated proceedings under the Benami Transactions (Prohibition) Amendment Act, 2016 against properties acquired before 01 November 2016. The issue before the Supreme Court was whether the amended provisions could be applied retrospectively.

Issue

Whether the 2016 Amendment to the Prohibition of Benami Property Transactions Act, 1988 applies to benami transactions entered into before 01 November 2016.

Supreme Court's Decision

The Supreme Court held that the 2016 Amendment is prospective and cannot be applied to transactions that took place before 01 November 2016.

Key Observations

The 2016 Amendment introduced new authorities, attachment, confiscation, enhanced penalties, and prosecution, making it a substantive law.

Penal provisions cannot be applied retrospectively as it would violate Article 20(1) of the Constitution, which prohibits retrospective criminal liability.

Confiscation of property is a punitive consequence and therefore cannot operate retrospectively.

Held

The amended provisions cannot be invoked for benami transactions entered into before 01 November 2016.

Proceedings under the 2016 framework for pre-amendment transactions were held to be unsustainable.

Significance

The judgment is a landmark ruling affirming that penal laws are prospective unless expressly provided otherwise. It protects individuals from retrospective attachment, confiscation, and prosecution under the amended Benami law for transactions undertaken before 01 November 2016.

Specific Q&A

Q36. whether benami proceedings and income tax proceedings can run simultaneously ?

Yes. Benami proceedings under the Prohibition of Benami Property Transactions Act, 1988 (PBPT Act) and income-tax proceedings under the Income-tax Act, 1961 can run simultaneously because they operate in different fields and have different objectives.

Why can both proceedings continue together?

Particulars	Benami Proceedings	Income-tax Proceedings
Objective	To identify and confiscate benami property	To assess and recover tax on income
Nature	Civil/confiscatory (with penal consequences in certain cases)	Fiscal/tax assessment
Authority	Initiating Officer, Approving Authority, Adjudicating Authority	Assessing Officer, CIT(A), ITAT, etc.
Issue examined	Whether the property is benami	Whether income has escaped assessment or is taxable
Result	Attachment/confiscation of property	Tax, interest and penalty

CASE STUDY 1

The Businessman, Driver and ₹12 Crore Farmhouse

Facts

Mr. Raj Malhotra is engaged in the business of infrastructure contracting.

During FY 2023-24, a farmhouse worth ₹12 crore was purchased.

The registered owner in the Sale Deed is Mr. Ramesh, who has been working as Mr. Raj's driver for the last 18 years.

Facts revealed during investigation:

1. *Driver's annual salary – ₹3.60 lakh.*
2. *Entire consideration paid from bank accounts of different companies controlled by Mr. Raj.*
3. *Stamp duty also paid by Mr. Raj.*
4. *Electricity connection is in Raj's name.*
5. *Security staff appointed by Raj.*
6. *Rental income from farmhouse credited to Raj's personal account.*
7. *Driver has never visited the property.*
8. *Original title deeds recovered from Raj's residence during Income-tax search.*
9. *Driver states he signed documents because his employer instructed him.*

Subsequently,

1. *Income-tax Department completed search.*
2. *Initiating Officer issued notice under Section 24 PBPT.*
3. *ED also started investigation alleging proceeds of crime.*

1. **Is it a Benami Transaction?**
   Yes. The transaction falls within Section 2(9)(A) of the PBPT Act, as the property is held in the driver's name while the consideration was paid by Mr. Raj for his own benefit.
2. **Who is the Benamidar?**
   Mr. Ramesh (Driver), being the registered owner without financial capacity or beneficial interest.
3. **Who is the Beneficial Owner?**
   Mr. Raj Malhotra, who paid the consideration and exercised possession and control over the property.
4. **Is the notice under Section 24 valid?**
   Yes. The Initiating Officer has sufficient "reason to believe" based on documentary evidence and investigation.
5. **Can the property be attached?**
   Yes. The IO may provisionally attach the property under Section 24(3), subject to the conditions prescribed in the Act.
6. **Can Income-tax, Benami and ED proceedings continue simultaneously?**
   Yes. These proceedings are independent and can run concurrently, as they are initiated under different statutes for different purposes.
7. **Possible Consequences Confiscation of the property.**
   - Prosecution under Section 53 of the PBPT Act.
   - Rigorous imprisonment of 1 to 7 years.
   - Fine up to 25% of the Fair Market Value of the property.
   - Separate action under the Income-tax Act and PMLA, if applicable.

CASE STUDY 2

Property Purchased in Wife's Name

Facts

Mr. Sharma purchases a luxury apartment worth ₹6 crore.

Sale deed is executed in wife's name.

Payment made as follows:

- *₹2 crore through bank from disclosed income.*
- *₹4 crore in cash.*

During search:

- *Wife states she never paid any amount.*
- *Husband claims property was gifted.*
- *Wife has no independent income.*
- *EMI is paid by husband.*
- *Rent credited to husband's account.*

1. Is it a Benami Transaction?
Partly Yes. The ₹4 crore cash component may be treated as a benami transaction if the conditions under Section 2(9)(A) are satisfied. However, the ₹2 crore paid from the husband's disclosed income may qualify for the exception under Section 2(9)(A)(iii), subject to proving that the source of funds is known.

2. Does the spouse exception apply?
Yes, but only to the extent the property is held in the name of the spouse and the consideration is paid from the known sources of the individual. Therefore, the ₹2 crore qualifies, whereas the ₹4 crore cash (if unexplained) does not.

3. Who is the Beneficial Owner?
Mr. Sharma, as he funded the purchase, paid the EMIs, and received the rental income.

4. Is the wife's lack of income sufficient to make it benami?
No. Merely because the wife has no independent income does not make the transaction benami. The statutory exception for property held in the name of a spouse must also be considered.

5. Can proceedings under the PBPT Act be initiated?
Yes. The Initiating Officer may initiate proceedings to examine whether the spouse exception is available, particularly in respect of the ₹4 crore cash component.

Thank you

Presented By
CA (Dr) Raj Chawla
9811081083
rajchawlaca@gmail.com