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With warm wishes

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DARSHAN MALA SERIES (DMS)

31 Frequently Asked Questions (FAQs) on the Courts cases against ITD → ED nexus for investigations and adjudications across the India

The Darshan Mala Series (DMS) presents weekly research and updates based on information available in the public domain.

This edition, comprising 31 Frequently Asked Questions (FAQs), examines the Courts cases against ITD → ED nexus for investigations and adjudications across the India including respective roles, jurisdiction, investigative processes, and areas of interaction between the two agencies.

The Series covers matters reported in the public domain concerning Special Courts, proceedings before such Courts, and proceedings relating to adjudication and other judicial or quasi-judicial processes concerning enforcement, investigation, attachment, prosecution, and related matters.

The Darshan Mala Series has been initiated with inspiration from the vision of the Hon'ble Prime Minister of India to promote greater public awareness and informed discussion on matters relating to governance, accountability, transparency, administration, enforcement, and the functioning of the justice delivery system.

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The contents of this Series have been compiled exclusively from information available in the public domain, including official statements, court records, judicial orders, government publications, media reports, and other publicly accessible sources.

The material is intended for research, educational, and public-awareness purposes. Readers are advised to refer to the original statutes, notifications, judicial orders, official records, and other primary sources for authoritative information and to obtain professional advice wherever necessary.

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31 FAQs on Courts cases against ITD → ED nexus for investigations and adjudications

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Author's Profile for 31 FAQs on Courts cases against ITD → ED nexus for investigations and adjudications





31 FAQs on Courts cases against ITD → ED nexus for investigations and adjudications

(Source of information's used in preparation of weekly updates are taken from public domain)

● The Supreme Court and High Courts Judgments for the ITD → ED Nexus ●

1. What are Courts cases against ITD → ED for investigations & adjudications?

- (i) There are several important cases where the Enforcement Directorate (ED) becomes involved in a matter which was "originally investigated or examined" by the Income Tax Department (ITD).
- (ii) The key legal distinction is that an ITD's investigation does "not automatically" become an ED case under the PMLA, 2002.
- (iii) The ED generally needs an independent statutory basis, most commonly a suspected PMLA schedule offence involving Proceeds of Crime (PoC) generated through a PMLA scheduled offence under the PMLA, 2002.
- (iv) The tax evasion, by itself, does "not automatically" establish money laundering under the PMLA, 2002.
- (v) It's useful to distinguish cases when the ITD initiated the investigation, the ITD's search or assessment material was shared with the ED, and the ED independently investigated related transactions under the PMLA, 2002.

2. What is the Supreme Court Case of Anil Tuteja v. Union of India (2025)?

(Supreme Court · 2025 SCC OnLine SC 2110)

- (i) This case is relevant on the use of Section 66(2) of PMLA, 2002 by the ED for sharing information with another investigating agency.
- (ii) The litigation concerned ED's communication under section 66(2) of PMLA, 2002 to the Uttar Pradesh police regarding alleged contraventions involving Prizm Holography & Security Films Pvt. Ltd.



(iii) **Relevance of Anil Tuteja v. Union of India (2025) case**

- (a) Whether information-sharing powers under section 66(2) of PMLA, 2002 can be used to initiate a separate investigation?
- (b) Whether the communication under section 66(2) of PMLA, 2002 and resulting proceedings satisfy the statutory requirements?

3. What is the Supreme Court Case of J. Sekar @ Sekar Reddy v. ED (2022)?

(Supreme Court · 5 May 2022 · Criminal Appeal No. 738 of 2022)

- (i) The ITD seized approximately INR 107 crore in cash and 128.495 kg of gold under the ITA, 1961.
- (ii) The ED initiated PMLA proceedings in the context “after” the CBI allegations.
- (iii) Subsequently, ITD confirmed that the seized cash belonged to the mining business, was recorded in its cash book, and the Income tax had been paid.
- (iv) The CBI closure report was also accepted by the court.
- (v) The Supreme Court set aside the High Court judgment and quashed the ED proceedings under the PMLA, 2002.
- (vi) This is the clearest case decided by the Supreme Court of India for examining the effect of ITD’s findings and the failure to establish a sustainable predicate offence under the ITA, 1961.
- (vii) The J. Sekar @ Sekar Reddy (appellant) relied on the ITD’s later communication that the cash was explained by business records and that tax had been paid.
- (viii) **Caution:**
 - (a) It does “not establish” that payment of tax “automatically immunises” property from PMLA, 2002.
 - (b) The underlying “criminal activity”, the source of the property and the specific findings of the competent authorities remain decisive under the PMLA, 2002.



(ix) ***Relevance of J. Sekar @ Sekar Reddy v. ED (2022) case***

- (a) *This case is an important when examining whether seized cash was explained and accounted for? and*
- (b) *Whether material supports to continue money-laundering proceedings under the PMLA, 2002?*
- (c) *This case should be read for its precise procedural and evidentiary findings.*

4. What is the Supreme Court Case of Vijay Choudhary v. Union of India (2022)?

(Supreme Court · July 27, 2022 OnLine SC 929; 2022 LiveLaw (SC) 633.)

- (i) *This is a leading constitutional judgment on PMLA, including the definition of Proceeds of Crime (PoC), the PMLA scheduled-offence requirement and the scope of ED's powers under the PMLA, 2002.*
- (ii) ***Relevance of Vijay Choudhary v. Union of India (2022) case***
 - (a) *In this case the Supreme Court explains why property is required to satisfy the statutory definition of Proceeds of Crime (PoC) under the PMLA, 2002.*
 - (b) *This case is also discussed the consequences when a person is acquitted or absolved of the "criminal activity" underlying the alleged Proceeds of Crime (PoC) under the PMLA, 2002.*

5. What is the Supreme Court Case of Union of India v. Hassan Ali Khan (2011)?

(Judgment dated 30 September 2011 · Criminal Appeal No. 1883 of 2011)

- (i) *The ED's case originated from information and documents received from the ITD "after" ITD's search in January 2007.*
- (ii) *The material seized included cash, jewellery, watches and documents relating to alleged foreign bank accounts and fund transfers under the ITA, 1961.*
- (iii) *This case illustrates the overlapping roles of the ITD under the ITA, 1961 and the ED under the PMLA, 2002, involving alleged undisclosed foreign assets.*



- (iv) *However, it is not a clean precedent establishing a general rule that an ITD under the ITA, 1961 can authorise the ED's proceedings under the PMLA, 2002.*
- (v) ***Relevance of Union of India v. Hassan Ali Khan & Anr (2011) case***
 - *It's a direct example of the ED's action based on material originated from an ITD's investigation.*

6. What is the Chhattisgarh High Court Case of Suryakant Tiwari v. ED (2026)?

(Chhattisgarh High Court · 21 January 2026 · MA Nos. 11, 12 and 13 of 2026)

- (i) *This judgement is a direct precedent on an ITD-originated ED case*
- (ii) *This judgement provides a particularly clear documentary trail like:*
 - (a) *ITD's search and seizure operations generated diaries, loose papers and digital evidence concerning alleged illegal coal levies.*
 - (b) *The Deputy Director of Income Tax lodged an FIR relating to alleged obstruction and destruction of evidence.*
 - (c) *The CBDT forwarded the FIR and the ITD's Investigation report to the ED on 13 September 2022.*
 - (d) *The ED registered an Enforcement Case Information Report (ECIR) and pursued proceedings under the PMLA, 2002.*
- (iii) *This case is strong evidence of the factual mechanism when an ITD's investigation under the ITA, 1961 can lead to the ED action under the PMLA, 2002.*
- (iv) *It's a bail judgment, however, not a final ruling that every such referral is legally sufficient.*
- (v) *This judgment is important for the referral mechanism from the ITD under the ITA, 1961 to the ED under the PMLA, 2002 including:*
 - (a) *The originating investigation report under the ITA, 1961*
 - (b) *The CBDT communication under the ITA, 1961*



- (c) *The subsequent ED's action under the PMLA, 2002.*
- (d) *This case is useful factual precedent for tracing how the referral operates from the ITD under the ITA, 1961 to the ED under the PMLA, 2002.*
- (vi) **Relevance of *Suryakant Tiwari v. ED (2026)* case**
 - (a) *This case is useful example of the "formal transfer" of ITD's Investigation material to the ED under the ITA, 1961 to investigate by the ED under the PMLA, 2002.*
 - (b) *This case is ensuing PMLA litigation under the PMLA, 2002*
 - (c) *This case's litigation also raises the critical issue, whether a qualifying PMLA scheduled offence continues to exist under the PMLA, 2002?*

7. What is the Jharkhand High Court Case of *Amar Mandal v. ED (2026)*?

(Jharkhand High Court · 1 September 2026 · W.P. (Cr.) No. 231 of 2026)

- (i) *The Amar Mandal (petitioner) sought quashing of the ED proceedings "after" acquittal in the predicate case under the ITA, 1961.*
- (ii) *The ED argued that its investigation had "uncovered additional assets" and documents beyond the scope of the original prosecution and that information was shared with other authorities under Section 66(2) of the PMLA, 2002.*
- (iii) **Relevance of *Amar Mandal v. ED (2026)* case**
 - (a) *This case is useful for declining to quash the ECIR at that stage, distinguishing the separate information-sharing function under Section 66 from prosecution for money laundering under the PMLA, 2002.*
 - (b) *The Amar Mandal (petitioner) was left to pursue remedies before the adjudicating authority under the PMLA, 2002 and other appropriate forums.*

8. What is the Delhi High Court Case of *ACIT v. Delhi State & Ors. (2025)*?

(Delhi High Court · 18 September 2025 Live Law (Del) 1173)

- (i) *The dispute concerned the competing claims of the ITD under the ITA, 1961 and ED under PMLA, 2002 over seized amounts allegedly arising from a fraudulent scheme.*



- (ii) *The Delhi High Court held that “the ED under the PMLA, 2002 takes precedence over the ITD” under the ITA, 1961 “the relevant conflict concerning the seized funds and the ongoing criminal process”.*
- (iii) **Relevance of ACIT v. Delhi State & Ors. (2025) case**
- *This case is important for questions about custody of seized assets, attachment and whether the ITD under the ITA, 1961 can deal with funds while PMLA proceedings remain pending under the PMLA, 2002.*

9. What is the Delhi High Court Case of ED v. Amlendu Pandey (2025)?

(Delhi High Court · 21 Nov 2025 Citation: 2025 DHC 10302-DB · Misc. Appeal (PMLA) No. 8/2022)

- (i) *This judgment discussed searches conducted by the ITD at the premises of Hassan Ali Khan and associates in January 2007, where foreign bank accounts were found by the ITD under the ITA, 1961 and thereafter this information was shared to the ED for investigations under the PMLA, 2002.*
- (ii) **Relevance of ED v. Amlendu Pandey (2025)**
- *This case is useful for examining the evidentiary history of the Hassan Ali Khan proceedings and the relationship between the original ITD's search under the ITA, 1961 and thereafter the ED's investigations under the PMLA, 2002.*

10. What is the Andhra Pradesh High Court Case of Jagati Publication v. ED (2022)?

(Andhra Pradesh High Court · Criminal Petition No. 1217 of 2021)

- (i) *This judgment discussed the effect of the Supreme Court's decision in Vijay Madanlal Choudhary on the relationship between the predicate offence under the ITA, 1961 and PMLA proceedings under the PMLA, 2002*
- (ii) **Relevance of Jagati Publication Ltd. v. ED (2022) case**
- *Whether the underlying a PMLA scheduled-offence case under the PMLA, 2002 be quashed or the accused discharged or acquitted?*



11. What are legal principles to be examined in the Courts cases?

S.No	Legal issue	Legal principles to be examined
(i)	Source of information	(a) Can ED initiate an ECIR under the PMLA, 2002 on the basis of material shared by the ITD under the ITA, 1961, (b) What additional legal conditions are to be satisfied?
(ii)	A PMLA scheduled offence	Is there a legally sustainable PMLA schedule offence that underlies the alleged Proceeds of Crime (PoC) under the PMLA, 2002?
(iii)	Independent investigation by the ED	Whether the ED is required to establish the connection between a PMLA scheduled offence, the alleged Proceeds of Crime (PoC) and the property sought to be attached under the PMLA, 2002?
(iv)	Seized cash and assets by the ITD under the ITA, 1961	What is the legal effect when the ITD accepts the explanation for cash or other assets and closes its proceedings under the ITA, 1961?
(v)	Parallel proceedings under the ITA, 1961 and PMLA, 2002	What is the name of authority who has lawful custody or control of seized or attached property where ITD's proceedings under the ITA, 1961 and PMLA's proceedings under the PMLA, 2002 are parallel?

12. What is judicial conclusion when an addition made in taxable income by the ITD?

- (i) An addition to taxable income "after" a search conducted by the ITD under the ITA, 1961 does not, by itself, establish an offence under Section 3 of PMLA, 2002.
- (ii) Therefore, a PMLA scheduled offence and the legally required connection to Proceeds of Crime (PoC) are required to be examined separately by the ED under the PMLA, 2002.



13. What are the important legal points arising “after” different court’s cases?

- (i) An ITD’s referral is not a substitute for the PMLA’s statutory ingredients under the PMLA, 2002.
- (ii) The existence of an Income Tax search, unexplained assets or an assessment addition does “not automatically” establish Proceeds of Crime (PoC) under the PMLA, 2002.
- (iii) The evidentiary value of ITD’s findings depends on their substance may be material as demonstrated by J. Sekar Reddy like:
 - (a) On going books
 - (b) On going source records
 - (c) The ITD’s final findings
 - (d) The proof of Income tax payment
- (iv) A predicate-offence closure or acquittal can be highly significant
- (v) However, its effect is required to be assessed carefully.
- (vi) The nature of the PMLA scheduled offence, the findings of the competent court, and any genuinely distinct alleged “criminal activity” is required to be examined.
- (vii) The section 66 (2) PMLA is required to be analysed separately from Sections 3 and 4 of the PMLA, 2002.
- (viii) A communication to another authority to investigate a suspected contravention is not itself a finding that money laundering has occurred under the PMLA, 2002.

14. What is comparative case-laws table for use in professional representations?

S.No	Authority	Legal proposition and its proper use
(i)	J. Sekar @ Sekar Reddy v. ED, (2022) 7 SCC 370	(a) whether the evidence establishes a legally sustainable connection between the alleged property and “criminal activity” relating to a PMLA scheduled offence under the PMLA, 2002?



		(b) The subsequent status of predicate proceedings is required to be established from the actual case record.
(ii)	<i>Suryakant Tiwari v. ED, 2025: CGHC: 4696, judgement, dated 27 January 2025</i>	<p>(a) This judgement concerns a bail application and describes the ITD's search, the FIR and the allegations underlying the investigation.</p> <p>(b) This judgement can be used for the factual sequence.</p> <p>(c) However, do not treat its factual recital as a final finding that the ITD's material was insufficient.</p>
(iii)	<i>Anil Tuteja v. Union of India, Supreme Court judgement, dated 16 September 2025, SLP (Crl.) No. 11790/2024 and connected matters</i>	<p>(a) This judgement is relevant to the section 66(2) of PMLA, 2002.</p> <p>(b) The Supreme Court stated that sharing material with another agency and that agency's subsequent investigation, FIR and charge-sheet operate on separate channels.</p> <p>(c) The Supreme Court stated further that common source material does not necessarily mean identical conclusions.</p>
(iv)	<i>Vijay Madanlal Choudhary v. Union of India, 2022 SCC OnLine SC 929</i>	<p>(a) This judgement is important for the statutory relationship between a PMLA scheduled offence, "criminal activity" relating to that offence, Proceeds of Crime (PoC) under Section 2(1)(u), and money laundering under the section 3 of PMLA, 2002.</p> <p>(b) The judgement is further important that an alleged property is required to satisfy the statutory definition.</p> <p>(c) This judgement stated that mere possession of property does "not automatically" establish that it is Proceeds of Crime (PoC).</p>
(v)	<i>Suryakant Tiwari v. ED, 2026: CGHC:3552-DB, order dated 21 January 2026</i>	(a) This judgement is important for an appeal under Section 42 of PMLA, 2002 arising from a common Appellate Tribunal order under SAFEMA.



		(b) This judgement is further important for its precise holdings to be checked “before” relying on it for a general proposition concerning the existence of a PMLA scheduled offence or the adjudicating authority’s application of mind under the PMLA, 2002.
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15. What are important statutory provisions for ITD → ED information flow?

S.No	Provision	Legal relevance
(i)	The Section 138 of ITA, 1961	<p>(a) This section governs the disclosure of information by ITD under the ITA, 1961</p> <p>(b) The disclosure of information is subject to statutory conditions, applicable rules, notifications and directions under the ITA, 1961.</p> <p>(c) The disclosure of tax information does not, by itself, establish the commission of money laundering under the PMLA, 2002.</p>
(ii)	The Section 66(2) under the PMLA, 2002	<p>(a) This section enables the Director or other authorised authority to furnish information to a concerned officer or authority when statutory requirements are satisfied under the PMLA, 2002</p> <p>(b) There should be “reason to believe” that a offence another law has been contravened under the PMLA, 2002.</p> <p>(c) It is an information-sharing mechanism, not an independent source of proof of money laundering under the PMLA, 2002.</p>
(iii)	Sections 2(1)(u) and 3 under the PMLA, 2002	<p>(a) Section 2(1)(u) defines Proceeds of Crime (PoC)</p> <p>(b) The section 3 defines the offence of the money laundering.</p> <p>(c) The alleged property is required to satisfy the statutory definition of Proceeds of Crime (PoC), with the necessary connection to “criminal activity” relating to a PMLA scheduled offence under the PMLA, 2002.</p>



(iv)	Sections 5 and 8 under the PMLA, 2002	<p>(a) Section 5 governs provisional attachment of property, subject to its statutory conditions under the PMLA 2002.</p> <p>(b) The section 8 provides for adjudication of the attachment, including consideration of the relevant material and the opportunity of hearing prescribed by law under the PMLA 2002.</p>
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• **Conclusion important statutory provisions for ITD → ED information flow**

- (v) An ITD report may provide the basis for investigation to the ED under the PMLA, 2002.
- (vi) However, the ED is required to satisfy the relevant legal requirements for the particular action it takes under the PMLA, 2002.

16. What are defences available for challenging ED's proceedings?

- (i) Whether the material supplied by the ITD establishes a legally sustainable a PMLA scheduled offence and a sufficient nexus between the alleged "criminal activity" and the property treated as Proceeds of Crime (PoC) under the PMLA, 2002?
- (ii) Whether ED has proceeded merely on the basis of unexplained assets, tax discrepancies or an ITD's search "without" establishing the essential statutory ingredients of PMLA under the PMLA, 2002?

17. What are documents available for challenging ED's proceedings?

- (i) The ITD's search and seizure panchnama under the ITA, 1961.
- (ii) The ITD's investigation report and CBDT forwarding memorandum.
- (iii) The predicate FIR and the sections actually invoked under the ITA, 1961.
- (iv) The ECIR, provisional attachment order and complaint under sec. 5(5) PMLA, 2002.
- (v) The subsequent assessment orders, closure reports, discharge orders or acquittals, if any under the ITA, 1961.
- (vi) The bank trail and documentary evidence connecting the property to the alleged "criminal activity" under the PMLA, 2002.



18. What is formal case-law memorandum for professional representations?

(i) **ITD-to-ED referrals**

- Whether an ITD's investigation report, search findings or CBDT communication can trigger the ED's proceedings under the PMLA, 2002?

(ii) **Mandatory legal requirements**

- Whether the PMLA scheduled offence, Proceeds of Crime (PoC) and the necessary nexus are existed under the sec. 2(1)(u) and 3 of PMLA, 2002?

(iii) **Effect of ITD findings**

- Whether the evidentiary significance of explained cash, recorded transactions, tax payments and assessment orders are considered by the ED under the PMLA, 2002?

(iv) **Effect of predicate-case closure**

- Whether the consequences of a closure report, discharge or acquittal for pending ED proceedings are considered under the PMLA, 2002?

(v) **Attachment and adjudication**

- Whether the relevant safeguards are taken under the sections 5 and 8 of PMLA, 2002?

(vi) **Verified authorities**

- Whether the exact case citations, paragraph references, operative orders and subsequent appellate developments are applied by the ED under PMLA, 2002?

19. Whether the ED can start proceedings based on information's received from ITD?

Yes

(i) An ITD's referral can provide the basis for the ED to investigate under the PMLA, 2002

(ii) However, the referral itself does "not establish money laundering" under the PMLA, 2002.

(iii) The legality of subsequent action depends on the statutory ingredients, the evidence and the particular stage of proceedings under the PMLA, 2002.



20. What are arguments available to the accused?**● Argument 1 — Referral does not establish the offence ●**

- (i) *Whether an ITD's report provide information to the ED?*
- (ii) *However, it cannot replace proof of the ingredients of the sections 2(1)(u) and 3 of PMLA, 2002.*
- (iii) *The ECIR and subsequent proceedings are required to be assessed against the PMLA scheduled offence and the alleged Proceeds of Crime (PoC) under the PMLA, 2002*

● Argument 2 — The property is explained and documented ●

- *Books of account, contemporaneous business records, bank statements and ITD findings may demonstrate a legitimate source for the property. J. Sekar Reddy is particularly relevant where such evidence materially undermines the allegation.*

● Argument 3 — The scheduled offence no longer survives ●

- (i) *When the predicate FIR has been quashed, or the competent court has accepted a closure report or acquitted the accused under the ITA, 1961, the precise legal effect on the PMLA case must be examined under the PMLA, 2002.*
- (ii) *The nature of the final order and the existence of any other qualifying a PMLA scheduled offence are critical under the PMLA, 2002.*

● Argument 4 — Attachment is broader than the evidence supports ●

- *The attachment order is required to be tested against the statutory conditions, the material supporting the requisite belief and the nexus between the property attached and the alleged Proceeds of Crime (PoC) under the PMLA, 2002.*

21. What are arguments available to the ED?

- (i) *A referral is a legitimate source of information.*
- (ii) *The PMLA does not generally require the ED to receive information exclusively from the police or from a particular agency.*



- (iii) *The tax assessment and money laundering address different legal questions.*
- (iv) *The payment of tax or acceptance of an explanation under the ITA, 1961 does not necessarily establish that the property was unconnected with “criminal activity” under the PMLA, 2002.*
- (v) *The predicate offence and laundering allegations are required to be examined in context.*
- (vi) *The ED may rely on other evidence or another qualifying a PMLA scheduled offence where legally permissible under the PMLA, 2002.*
- (vii) *A closure report is not the same as a finding that every transaction was legitimate.*
- (viii) *Its legal effect depends on the court’s order, the offences investigated and the material on which the report was based.*

22. What are documents required for professional representations?

- (i) *ITD’s search authorisation, panchnama and seizure inventory.*
- (ii) *ITD’s investigation report and CBDT forwarding memorandum.*
- (iii) *The predicate FIR, charge-sheet or closure report, and competent court’s order.*
- (iv) *The ECIR-related documents and ED’s recorded allegations.*
- (v) *The provisional attachment order and complaint under Section 5(5) of the PMLA, 2002, when it’s applicable.*
- (vi) *Bank statements, books of account, source-of-funds evidence and relevant tax orders.*
- (vii) *Any discharge, acquittal, quashing or appellate order passed subsequently.*

23. What are suggested submissions required for professional representations?

- (i) *The mere transmission of information or investigation material by the Income Tax Department to the Directorate of Enforcement cannot, by itself, establish the commission of an offence under the section 3 of PMLA, 2002.*



- (ii) *The material is required to be examined to determine whether the statutory requirements concerning a scheduled offence, Proceeds of Crime (PoC) and the alleged laundering activity are satisfied under the PMLA, 2002.*
- (iii) *The findings of the ITD, the source and accounting treatment of the property, and the ultimate outcome of the predicate criminal proceedings are relevant to that assessment.*
- (iv) *The decision of the Hon'ble Supreme Court in J. Sekar @ Sekar Reddy v. ED, Criminal Appeal No. 738 of 2022, decided on 5 May 2022, demonstrates that PMLA proceedings cannot necessarily be sustained where the evidence and subsequent findings in the connected proceedings fail to support the allegations on which the ED action rests.*
- (v) *Accordingly, the validity of the proceedings is required to be determined on the statutory ingredients and the evidence in the individual case, rather than on the fact of an interdepartmental referral alone.*
- (vi) **Conclusion**
 - (a) *To challenge the ED proceedings, start with J. Sekar Reddy and apply Vijay Madanlal Choudhary to the statutory requirements.*
 - (b) *To use Suryakant Tiwari to establish the factual referral mechanism, not as authority that the referral itself proves or disproves money laundering.*
- *This is a research memorandum, not a substitute for checking the complete judgments, later appellate developments and the documents in the particular case before filing.*

24. What are main legal points for challenging ED's case?

- (i) *To challenge ED proceedings originating from an ITD's investigation under the PMLA, 2002*
- (ii) *To establish ED's legal authority to act based on an ITD referral under PMLA, 2002*
- (iii) *To prepare arguments for both sides under the PMLA, 2002*



25. What are the various stages of proceedings for challenging ED's case?

- (i) Issue of Show Cause Notice (SCN) or provisional attachment
- (ii) To start ECIR investigation or prosecution complaint
- (iii) To proceed for High Court or Supreme Court proceedings
- (iv) To start general research, "without" a specific case

26. How to determine a status of the underlying Income Tax or scheduled-offence case?

- (i) Whether investigation or prosecution is pending?
- (ii) Whether closure report, quashing or acquittal is pending?
- (iii) Whether an Income Tax assessment, search or tax demand is pending?
- (iv) Whether mandatory requirements are not yet established?
- (v) Whether legal memorandum is pending?

27. What is legal memorandum?

- **The legal memorandum will focus on the following core question:**
 - (i) Whether the ED initiate or continue PMLA proceedings solely on the basis of material originating from an ITD's investigation under the PMLA, 2002?
 - (ii) What will happen when the underlying criminal case is closed or the assets are explained under the ITA, 1961?

28. What are the important matters for legal memorandum?

- (i) The Supreme Court judgement in the case of J. Sekar @ Sekar Reddy v. ED
- (ii) The Supreme Court judgement in the case of Vijay Madanlal Choudhary v. Union of India
- (iii) The Chhattisgarh High Court judgement in the case of Suryakant Tiwari v. ED
- (iv) Proper study of the sections 2(1)(u), 3, 5, 8 and 66 of PMLA, 2002
- (v) Proper study of the section 138 of the ITA, 1961.



- (vi) *Prepare arguments for the accused and the ED*
- (vii) *Proper study of the effect of a closure report, acquittal, tax assessment or payment of tax under the ITA, 1961.*

29. What are the important conclusions for legal memorandum?

- (i) *The central principle will be that an interdepartmental referral may trigger investigation under the PMLA, 2002.*
- (ii) *However, it does not dispense with the statutory requirements for establishing money laundering under the PMLA, 2002.*
- (iii) *Moreover, for a court filing, the exact paragraph references and subsequent appellate status of each judgment is required to be verified against the complete primary judgment before reliance on it.*

30. What are questions for determination of ITD → ED nexus?

- (i) *Whether the ED initiate an investigation on the basis of an ITD's search, investigation report or referral from the CBDT?*
- (ii) *Whether an ITD's search, an assessment of undisclosed income or the seizure of cash independently establish an offence under Section 3 PMLA, 2002?*
- (iii) *What is the effect of ITD accepting the source of assets, a predicate-offence closure report, or an acquittal on pending ED proceedings under PMLA, 2002?*
- (iv) *What legal remedies are available against an ECIR, a provisional attachment order, an adjudication order or a prosecution complaint under the PMLA, 2002?*

31. What are executive conclusions for determination of ITD → ED nexus?

- (i) **Referral**
 - (a) *Whether the information received from ITD provide a basis for the ED to examine suspected money laundering under the PMLA, 2002?*
 - (b) *However, the referral is not, by itself, proof of the PMLA schedule offence under the PMLA, 2002.*



(ii) **Independent statutory requirements**

- (a) *Whether the property is required to satisfy the definition of Proceeds of Crime (PoC) under Section 2(1)(u) under the PMLA, 2002?*
- (b) *Whether the allegations are required to satisfy the section 3 of the PMLA, 2002?*

(iii) **Tax findings**

- (a) *Whether an assessment order, payment of tax or acceptance of an explanation may be relevant evidence under the ITA, 1961?*
- (b) *However, it does “not automatically” exclude the PMLA liability under the PMLA, 2002.*

(iv) **Predicate proceedings**

- (a) *Whether a closure, quashing or acquittal can materially affect the ED case under the PMLA, 2002?*
- (b) *Whether an effect depends on the nature of the PMLA scheduled offence under the PMLA, 2002?*
- (c) *Whether the court’s findings and another legally sustainable predicate offence are existed?*

(v) **Attachment**

- (a) *Whether the legality of attachment is required to be assessed separately under Sections 5 and 8 PMLA, 2002?*
- (b) *Whether the validity of the original referral and the sufficiency of evidence for attachment are distinct questions?*

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