



My Dear Friend

I am presenting Thursday Article on Laws against Benami Property in India

- 1. Any kind of non-compliance is attracting **maximum penalty** for @ **300%** on tax amount + **maximum imprisonment** for **7/10 year**.*
- 2. It's humbly suggested to stop non-compliance for furnishing of legal documents + correct informations (both).*
- 3. I trust that you will be enriched by reading this article*

● *With best wishes from CA Satish Agarwal* ●



Laws against Benami Property in India

INDEX		
<i>Sl. No.</i>	<i>Particulars</i>	<i>Page No.</i>
<i>Under Benami Transactions (Prohibition) Amendment Act, 2016</i>		
<i>1</i>	<i>Introduction on Benami Transactions (Prohibition) Amendment Act, 16</i>	<i>3</i>
<i>2</i>	<i>Definition of word Benami Transaction under Benami Property Act, 16</i>	<i>3 & 4</i>
<i>3</i>	<i>History of Benami Property Act, 2016</i>	<i>4</i>
<i>4</i>	<i>Exempted property under Benami Property Act, 2016</i>	<i>4 & 5</i>
<i>5</i>	<i>Power of Benami Property Authority under Benami Property Act, 2016</i>	<i>5</i>
<i>6</i>	<i>Definition of word Benami Property under Benami Property Act, 2016</i>	<i>5</i>
<i>7</i>	<i>Imprisonment + Financial penalty under Benami Property Act, 2016</i>	<i>5 & 6</i>
<i>8</i>	<i>Role of Income Tax (IT) Department under Income Tax Act, 1961</i>	<i>6 & 7</i>
<i>Profile of Publisher on Laws against Benami Property in India</i>		<i>8</i>



Laws against Benami Property in India

Under Benami Transactions (Prohibition) Amendment Act, 2016 (Benami Property Act, 2016)

1. Introduction on Benami Transactions (Prohibition) Amendment Act, 2016

- (i) This Act is empowering to authorize authority for provisional attachment (Confiscation) of Benami property in India.***
- (ii) Confiscation of Benami property in India is required to prohibit any transfer + conversion + disposition (any).***

2. Definition of word Benami Transaction under Benami Property Act, 2016

- (i) Any transaction + arrangement (both) made by real beneficiary (actual owner) through using the name of other person instead of using own name.***
- (ii) Hence any transaction + arrangement (both) made by actual owner through using name of fictitious person instead of using own name.***
- (iii) Any transaction + arrangement (both) made by actual owner through using name of other person where other person is not aware about his ownership.***
- (iv) Any transaction + arrangement (both) made by actual owner through using name of other person where actual owner is not traceable.***
- (v) Any transaction + arrangement (both) made by actual owner through using any right + interest + legal document + instrument (any) evidencing an interest in property where title in name of other person instead of using own name.***



- (vi) (a) *However Benamidar is not permitted to re-transfer the Benami property in India to actual owner.*
- (b) *Hence any re-transfer transaction to be treated as invalid under Benami Act, 2016.*

3. History of Benami Property Act, 2016

- (i) *Benami Transactions (Prohibition) Act, 1988 (Old Act) was first introduced to prohibit benami transactions + to recover the Benami property in India.*
- (ii) (a) *Old Act was containing 8 sections (only).*
- (b) *Moreover rules + regulations + procedures (all) for implementation of old Act were not framed.*
- (c) *Hence old Act became ineffective.*
- (iii) (a) *Benami Transactions (Prohibition) Amendment Act, 2016 (New Act) is enacted in month of July 2016 with 72 section + rules + regulations + procedures (all) for implementation of New Act.*
- (b) *New Act is applicable from November 01, 2016.*
- (c) *Hence new Benami Property act , 2016 is not applicable against Benami property transaction in India as exercised up to October 31st, 2016*
- (d) *However PMLA, 2002 or ITA, 1961 (both) applicable where Benami property transaction in India as exercised by actual owner up to October 31st, 2016 + covered under PMLA, 2002 or ITA, 1961 (both).*

4. Exempted property under Benami Act, 2016

- (i) *Where property is held by Karta or member of Hindu Undivided Family (HUF) on behalf of HUF.*



- (ii) *Where property is held by person as trustee + partner + director + depository (any) in fiduciary capacity on behalf of trust + partnership firm/ LLP + company + depository (any) respectively.*
- (iii) *Where property is held by person in name of spouse + own children + step children (all).*
- (iv) *Where property is jointly held by person with lineal ascendant + lineal descendant + brother + sister (any) + share of total consideration is paid by lineal ascendant + descendant + brother + sister from own source.*

5. Power of Benami Property Authority under Benami Property Act, 2016

- (i) *Discovery + inspection (both) of Benami property in India.*
- (ii) *Instruction to produce the books of accounts*
- (iii) *Receiving any evidence against affidavit*
- (iv) *Confiscation of Benami property in India.*

6. Definition of word Benami Property under Benami Property Act, 2016

- (i) *Any movable + immovable (both) properties*
- (ii) *Any tangible + intangible (both) properties*
- (iii) *Any corporeal + incorporeal (both) properties*
- (iv) *Any right + interest + legal document + instrument against evidence of interest in property.*

7. Imprisonment + Financial penalty (both) under Benami Act, 2016

- (i) *100% confiscation of property as involved under Benami Property Act, 2016*
- +
- (ii) *Imprisonment for minimum 1 year or maximum 7 year under Benami Act, 2016*

+



- (iii) **Additional financial penalty for maximum 25% of Fair Market Value (FMV) of property under Benami Act, 2016**
- (iv) (a) **Hence maximum financial penalty is computed as 125%**
 (b) **Like 100% confiscation of Benami property in India. + additional financial penalty 25% of FMV of property = 125%**
- +
- (v) (a) **Additional Imprisonment for minimum 6 month or maximum 5 year against not providing information or providing false information under Benami Act, 2016**
- +
- (b) **Additional financial penalty for maximum @ 10% of FMV of property against not providing information or providing false information under Benami Act, 2016**
- (vi) **Imprisonment + financial penalty (both) applicable on actual owner + Benamidar (both).**

8. Role of Income Tax (IT) Department under Income Tax Act, 1961

- (i) **Now IT Department is forwarding the thousands of cases to authorized officer under Benami Property Act, 2016 for investigation against alleged Benami property in India where IT department is suspecting for Benami property transaction.**
- (ii) **Now 2 time the Imprisonment and financial penalty under Income Tax Act (ITA) 1961 + imprisonment and financial penalty under Benami Property Act, 2016 (both) to be levied against same financial transaction where income tax evasion + Benami property transaction in India (both) existed**
- (iii) **Further IT department is forwarding the thousands of cases to authorized officer under Benami Property Act, 2016 for investigation against alleged**



Benami property in India where Income tax case is time barred for issuing of notice under section 148A of ITA, 1961 after expiry of 10 Assessment year against likely escaped income exceeding INR 50 lacs per assessment year.

- (iv) (a) *Now IT department + other Govt. departments (both) forwarding the thousands cases to authorized officer against alleged Benami property transaction under Benami Property Act, 2016 for investigation against alleged benami properties through using the latest digital techniques like Artificial Intelligence (AI) + data mining + data analyzing + etc. (all) for finding the cases against Benami property transaction.*
- (b) *Hence IT department + other Govt. departments (both) extra vigilant for finding Benami property transaction + forwarding to authorized officer (both) for investigation under Benami Act, 2016*
- (v) *Also Govt. of India is motivating to general public to provide information against Benami property + giving award money in percentage of FMV to informer of Benami property transaction.*



Published By



CA. Satish Agarwal

B.com (Hons.) FCA

*Practicing Chartered Accountant Since **1985***

+919811081957

9/14 (First Floor) East Patel Nagar, New Delhi- 110008

Email: satishagarwal307@yahoo.com

Website: www.femainindia.com

◆ *Disclaimer*

- 1. Contents of this **article are solely for informational purpose**. Neither this article nor information's as contained herein constitute a contract or will **form** basis of contract.*
- 2. Material contained in this article does **not constitute** or **substitute professional advice** that may be required before acting on any matter.*
- 3. While every care has been taken in preparation of this article to **ensure its accuracy at time of publication**.*
- 4. **Satish Agarwal assumes no responsibility for any error** which despite all precautions may be found herein.*
- 5. We **shall not be liable for direct, indirect or consequential damage** if any arising out of or in any way connected with use of this article or information's as contained herein.*

