

THE PROHIBITION OF BENAMI PROPERTY TRANSACTIONS ACT, 1988

AS AMENDED BY

**THE BENAMI TRANSACTIONS (PROHIBITION)
AMENDMENT ACT, 2016**

PRESENTED BY

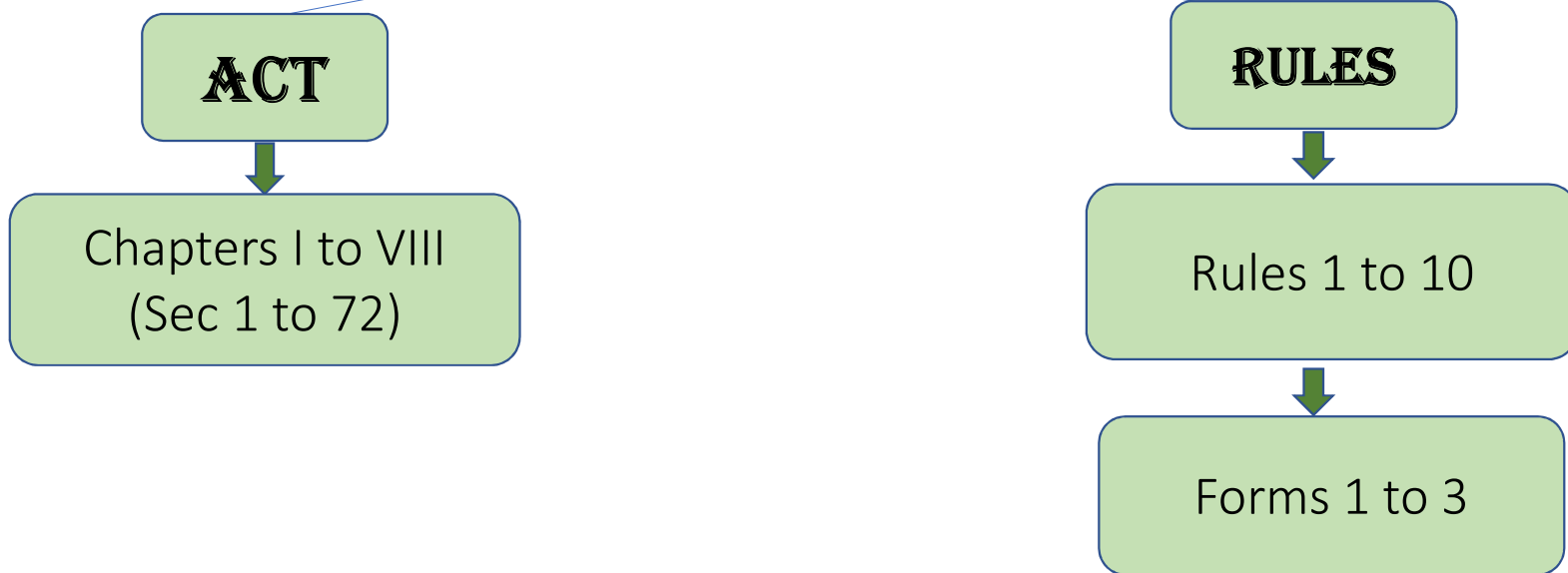
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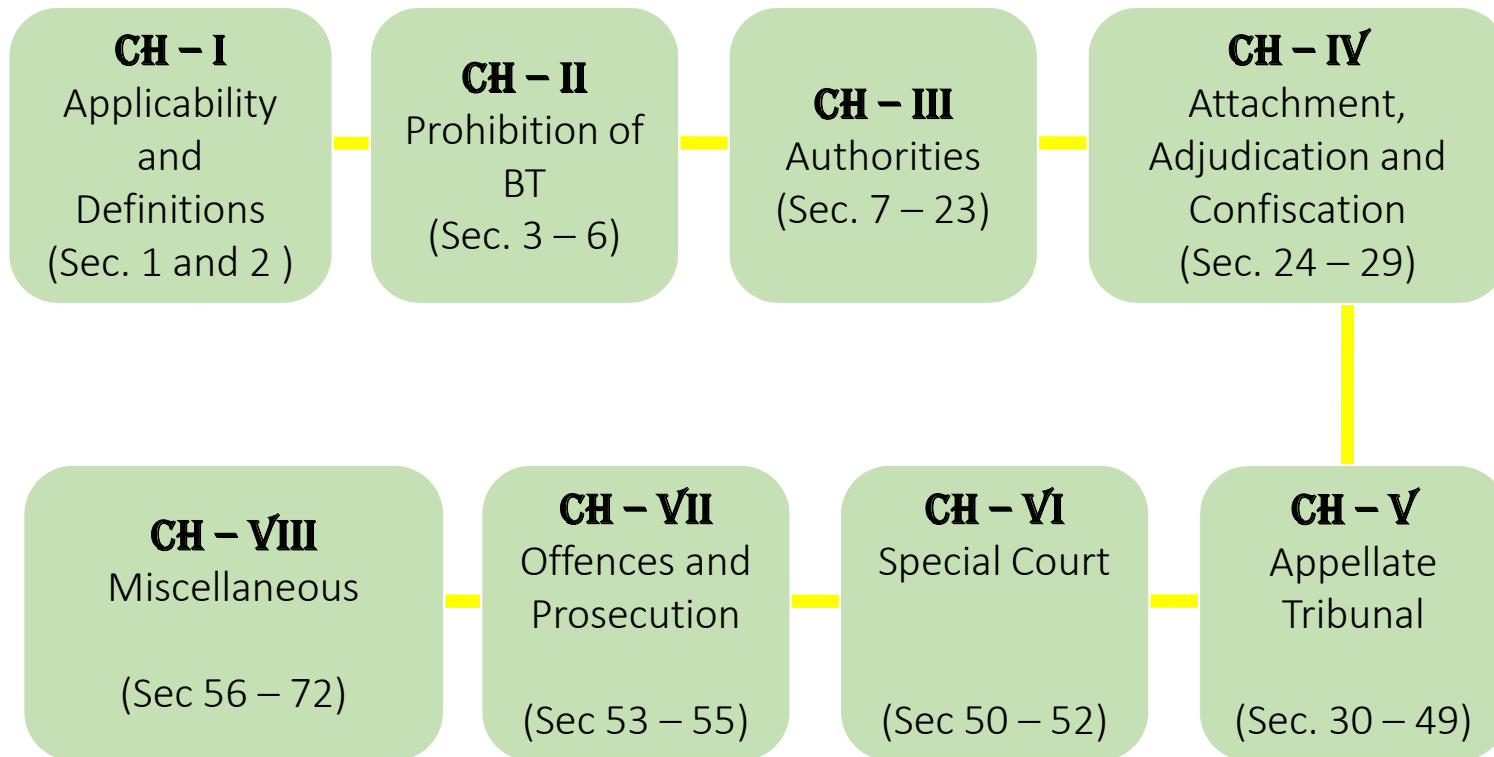
(MANAGING PARTNER)



CONTENTS



BIRD'S-EYE VIEW OF THE ACT



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CHAPTER I

PRELIMINARY



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BENAMI TRANSACTION [SEC 2(9)]



But consideration paid by Mr. B.

A transaction or an arrangement where property is transferred or is held for immediate or future, direct or indirect benefits of Mr. B.

Mr. A unaware of transaction or denies knowledge.

Fictitious Mr. A

Mr. B is not traceable.

Sec. 69 (Unexplained Investments) of IT Act

Fictitious Mr. B

HUF PROPERTY

Property held by Karta for benefit of all members



DEPOSITORIES ACT,1966

Person standing in fiduciary capacity for benefit of other such as, Trustee, Executor, Partner, Director, depository or a participant as an agent of the depository

under the Depository Act etc.

EXCEPTIONS TO BENAMI TRANSACTION

Section 53A of TOPA,1882

BT shall not include any transaction where possession taken with reference to section 53A of TOPA, if:

- Consideration Paid
- Stamp Duty paid
- Contract Registered

Individual purchased property in name of his spouse/ any child or;

brother or sister or lineal ascendant or descendant and the **individuals appear as joint owners in any document.**



Consideration shall be from known sources

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Movable,
Immovable

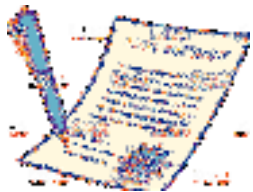


Sales
proceeds
of any
property



Tangible,
Intangible

PROPERTY
[SEC.
2(26)]



Legal
documents
evidencing
interest in
property

Corporeal,
Incorporeal



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Key Definitions

PERSON



An Individual

HUF

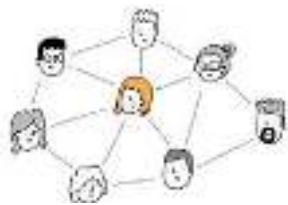
Company

Firm – Including minor
Partner

AOP – BOI

Incorporated or not

Every artificial person
not covered above



AOP



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BENAMI PROPERTY [SEC. 2(8)]

Property subject matter of benami transactions

BENAMIDAR [SEC. 2(10)]

Person or fictitious person in whose name property held

BENEFICIAL OWNER [SEC. 2(12)]

Identified or unidentified person benefiting from property

Section 2(9)

Smt P. Leelavati v Shankarnarayana Rao

[2019] 104 taxmann.com 153 (SC)

FACTS OF THE CASE

- Parties – 1 sister (Appellant) + 3 brothers (Defendants)
- Appellant alleged of having $\frac{1}{4}$ th share in property held by Defendants
- Reason – financial assistance given by father to purchase in name of Defendants
- Thus, property is a family property

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Question before Court :

Merely because some financial assistance has been given by the father to sons to purchase properties, can the transaction be said to be benami in nature?

Court observed the following circumstances to determine a particular transaction as benami in nature :

- The source from which the purchase money came
- The nature and possession of property after the purchase
- Motive, if any, for giving the transaction benami colour
- Position of parties and relationship
- Custody of title deeds after the sale and
- The conduct of parties after sale

Held by Court :

- The Court observed that all the above circumstances don't meet in the present case.
- The Appellant failed to prove that the property was purchased in name of sons on behalf of the family
- Some financial assistance by father cannot be sole determinative factor to hold property as benami
- Financial assistance was given by father to the Appellant to purchase a residential property in her and husband name as well.

Manoj Arora v. Mamta Arora

[2018] 96 taxmann.com 241 (Delhi)

Facts of the case :

- Husband purchased 2 properties in the name of wife in 2001 and 2007.
- Husband claimed properties a purchased from known source.
- Relief claimed by Husband in suit that he was the owner and not wife.
- Suit was rejected on 19/12/2016 by relying on :
- section 4 - real owner cannot file any suit for recovery of benami property from the person in whose name the property is held ; and
- repealed provision of section 3(2) of Old Benami Act - transaction not considered as benami - where property purchased in name of wife and for the benefit of wife.



Held by Delhi High Court :

- Order was passed on 19/12/2016 after considering old Benami Act.
- Not valid since Amendment in Benami Act became applicable w.e.f. 01/11/2016.
- Thus, the rejection order is set aside.
- The suit shall be tried after considering the exception in section 2(9)(A)(b) Exception (iii) as per Amended Benami Act.

APARNA SHARMA VS. SIDHARTHA SHARMA

250 (2018) DLT 126



FACTS OF THE CASE:

- The brother sought possession, damages etc. of the suit property whose title deed were in the name both the brother and the sister.
- The sister had stated that said suit property was purchased in name of the brother and consideration for such purchase was paid by her to the seller.
- The sister relied on the 'Power of Attorney' executed by the brother in favour of sister stating that she was owner of the said suit property. The Trial Court rejected the counter claim of the sister on account of the same being barred by Section 4 of the Benami Transactions (Prohibition) Act, 1988.

Issues before High Court

1. Does the claim of the sister fall under the exception to definition of 'Benami Transaction'?
2. Is the Power of Attorney a valid document to show joint ownership of the individuals?

Held by High Court

- Pre-condition of Joint ownership mandatory requirement for exception u/s 2(9)(A)(b)(iv).
- In this case, no document produced to show Joint ownership.
- In the present case, the only document that is relied upon by the sister is the two General Power of Attorneys and these attorneys show in no manner any co-ownership or any right, title and interest in the said property

Retrospective part



Prospective part

Sec 1(3) :The provisions of Section 3, 5 and 8 shall come into force at once (*that means it shall not have retrospective effect*), and the remaining provisions of this Act shall deemed to have come into force on 19th May, 1988 (*Remaining provisions shall have retrospective effect*).

Amendment w.e.f. 01/11/2016

Applicability:

Extends to the whole of India except the State of J&K

<p align="center">Sec 3: Prohibition of Benami Transactions (Ch II)</p>	<p align="center">Sec 5: Property held Benami liable to confiscation (Ch II)</p>	<p align="center">Sec 8: Composition of Authority (Ch III)</p>
<p>1. No person shall enter into any Benami Transaction</p>	<p>Property held Benami liable to confiscation by Central Government</p>	<p>An Adjudicating Authority shall consist of a Chairperson and atleast 2 Members (Chp. III).</p>
<p>2. If entered into BT: a. Before Amendment= Imprisonment of 3 years and/or fine b. After Amendment= Punishable with provisions of Ch VII- Offences and Prosecution.</p>		

Niharika Jain v. Union of India
[2019] 107 taxmann.com 272 (Rajasthan)

Facts of the case :

- Search action u/s. 132 of IT Act on the Appellant before 01/11/2016.
- Incriminating documents seized indicating several benami transactions
- IO issued show cause notice u/s. 24(1) as per Amended Benami Act (amended w.e.f. 1/11/2016)
- Provisional attachment order passed u/s. 24(3)

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Question before the Court :

Whether the provisions of Amended Benami Act shall be applicable retrospective or not ?

Amended Benami Act is not retrospective for reasons :

- unless a contrary intention is reflected, a legislation is presumed and intended to be prospective.
- affects accrued rights or imposes obligations or casts new duties or attaches a new disability is to be treated as prospective.
- Benami Amendment Act, 2016, neither appears to be clarificatory nor curative.

DEFINITION OF AUTHORISED REPRESENTATIVE

- Person related to the Benamidar or regularly employed by the Benamidar.
- Officer of the scheduled bank or person maintains an account of Benamidar regularly.
- Legal practitioner, Chartered Accountant.
- Any person as the board may be prescribe for this purpose.

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CHAPTER - II
PROHIBITION OF BENAMI
TRANSACTION





"I had hoped to keep the lawyers out of this."

SECTION 4

No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

Sec 4 r.w Sec 2(9)
Ekant Baruta v Rakesh Baruta
[2019] 102 taxmann.com 29 (Delhi)

FACTS OF THE CASE

- Parties (Brothers) = Plaintiff and 4 defendants
- Property purchased in joint names of all parties
- The entire consideration for purchase of said property was paid by Defendant no. 1 and “A” not a party to the transaction.
- Defendant no.1 pleaded that he is the owner of the property

Issues before High Court

- i. Whether the said transaction or an arrangement of property is covered by Sec 2(9) and Sec 4 of the Benami (Amended Act)?

Held by High Court

- i. The property in law is of the persons in whose name title has been recorded.
- ii. Defendant no. 1 and “A” cannot make use of Section 2(9) of Amendment Benami Act – Benami transaction – Property held by one person for the benefit of another person
- iii. Since Section 4 – prohibits filing of suite by the another person against the person in whose name the property is being held.



SECTION 6

No person being a benamindar shall re-transfer the benami property held by him to the beneficial owner or any other person acting on his behalf and such re-transfer, if any, shall be deemed to be null and void.

CHAPTER - III

AUTHORITIES



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AUTHORITIES AND JURISDICTION [SEC. 18]

INITIATING OFFICER

ACIT/DCIT

APPROVING AUTHORITY

ADDL CIT/JT. CIT

ADMINISTRATOR

ITO

ADJUDICATING AUTHORITY

PREVENTION OF MONEY LAUNDERING ACT, 2002



POWERS OF AUTHORITIES

SEC. 19 - 23

- Same powers as are vested in a Civil court under CPC, 1908 (5 of 1908).
- Every proceeding shall be deemed to be judicial proceedings within meaning of Sec 193 and Sec 228 provision under IPC (Explain?)
- If have reason to believe that books are required to be impounded for any inquiry – Not exceeding 3 months

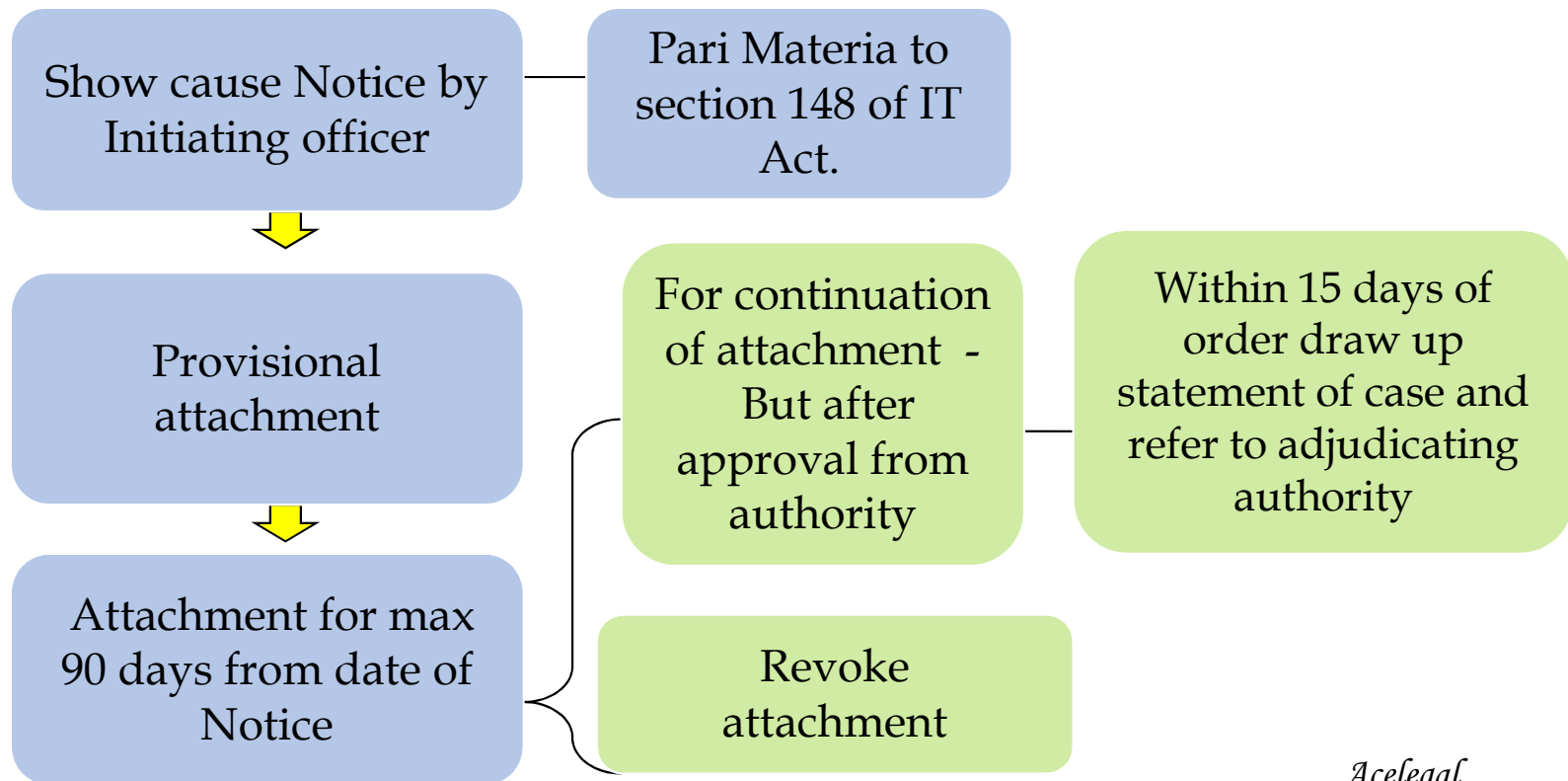
CHAPTER IV
ATTACHMENT, ADJUDICATION
AND CONFISCATION



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ATTACHMENT OF PROPERTY

SEC . 24 AND 25



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**Sec 24 r.w Sec 2(9)
Akashdeep v. Manpreet Estates LLP, Mum
[2019] 105 taxmann.com 187 (PBPTA-AT)**

- Onus of proving a benami transaction rests entirely on the shoulder of IO
- The burden of proof shall shift to the person taking a

contrary view within the meaning of section 91
and 92 of Evidence Act, 1972



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G. Bahadur v Mr. K Visakh, ACIT, Chennai
[2018] (12) TMI 905- Appellate Tribunal

- Appellant is employed as a security with a College run by a Trust.
- Appellant received advance salary in cash.
- Advanced salary utilized by Appellant for his personal use.
- Search on Trust.
- Bank account of the Appellant attached by IO u/s. 24(3) of Amendment Benami Act.

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Question before Tribunal :

Order passed by IO u/s. 24(4) is wrong as it relates to property which does not exist at all ?

Held by Tribunal :

- Benami Transaction has not been identified – section 2(9)(A)
- Benami Property has not been identified – SCN talks about cash received and no reference that it was for future benefit of alleged beneficial owner
- Benamidar and Owner of Property not established
- Property not held for the benefit of alleged beneficial owner – as the salary was used for personal use by Appellant

Held by the Appellate Tribunal

- Not all cash transaction can be treated as 'Benami Transactions'.
- The existence of the 'Benami Transaction' has to be proved by the authorities i.e. the person who alleges the transaction.
- The issue of notices cannot be without the application of mind

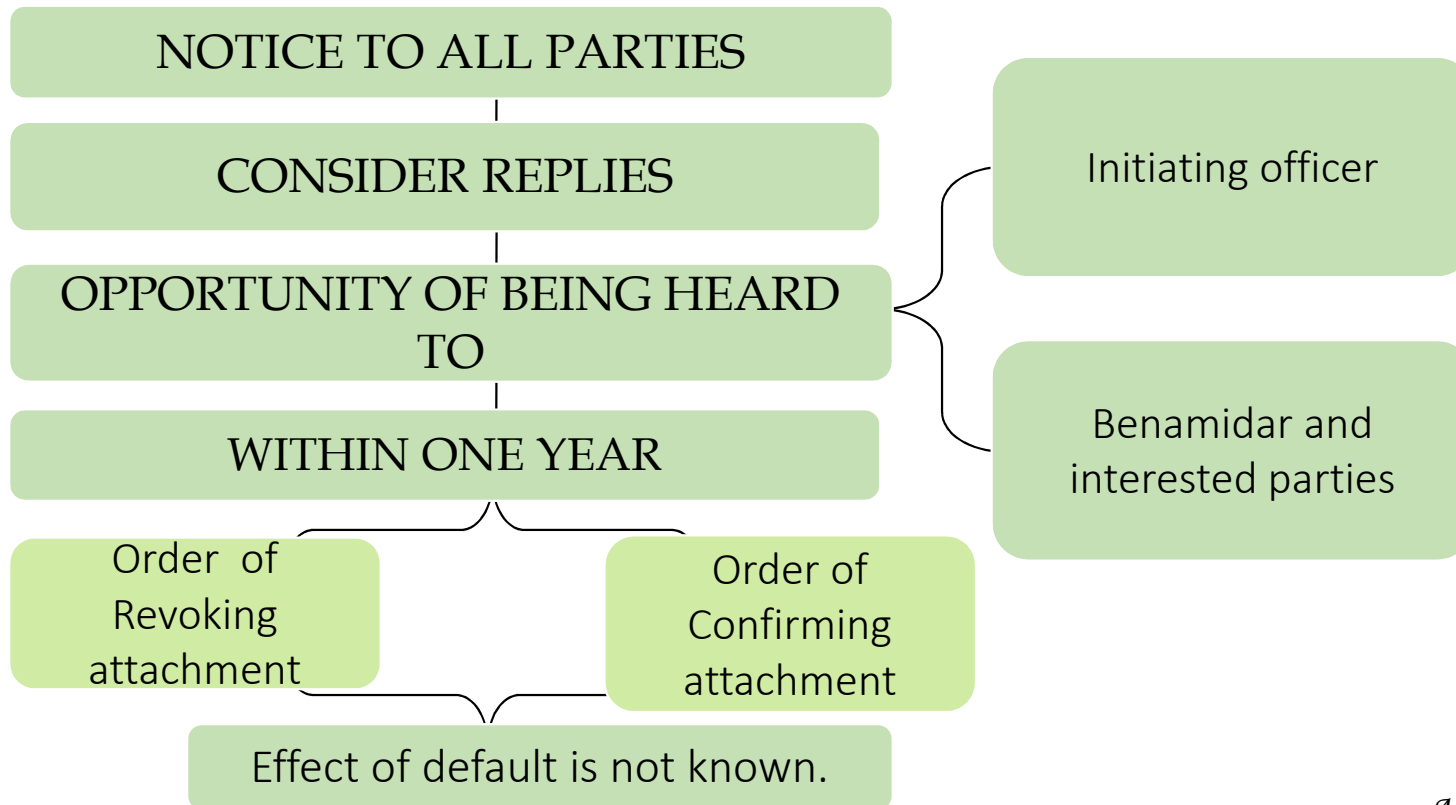


MANNER OF SERVICE OF NOTICE (SEC . 26)

1. Upon reference adjudicating authority shall issue notice within 30 days calling information from Benamidar, Beneficial Owner, any interested party eg. Real owner, any person who has made claim in respect of the property.
2. Joint holders – Endeavour to serve notice to all persons holding property.

Where notice is served any one of the persons, the service of notice shall not be invalid.

MANNER OF SERVICE OF NOTICE (SEC . 26)



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Sec 24 r.w Sec 2(8)
Smt Sunita Gupta v. Union of India
[2019] 101 taxmann.com 1 (Delhi)



FACTS OF THE CASE

- 25/01/2017 – IO issued provisional attachment order u/s. 24(3) attaching bank account of Appellant wherein “A” deposited cash.
- 08/02/2017 – IO issued show cause notice u/s. 24(1) calling to explain why provisional order shall not be continued.
- 21/04/2017 – IO passed order u/s. 24(4)(a)(i) continuing the provisional attachment order till the Adjudicating Authority (AA) passes any order.

- AA u/s. 26(3) has to decide whether a property is benami or not ?
- However, AA here held that provisional attachment could not be passed by IO without first issuing a show cause notice.
- Thereafter, the IO issued a fresh show cause notice u/s. 24(1).

Question before Court :

Whether it is open for the IO to once again pass orders attaching the property?

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Court held that :

- Yes, IO is not precluded from re-initiating the proceedings after curing procedural defects
 - If it is within the jurisdiction of the authority and are not barred by limitation
 - If the order has been set aside on account of violation of principles of natural justice / on account of any procedural defect in decision making process.
 - And the AA has set aside the provisional attachment order on the ground that IO has not followed the scheme of section 24.

CONFISCATION OF BP (SEC 27)



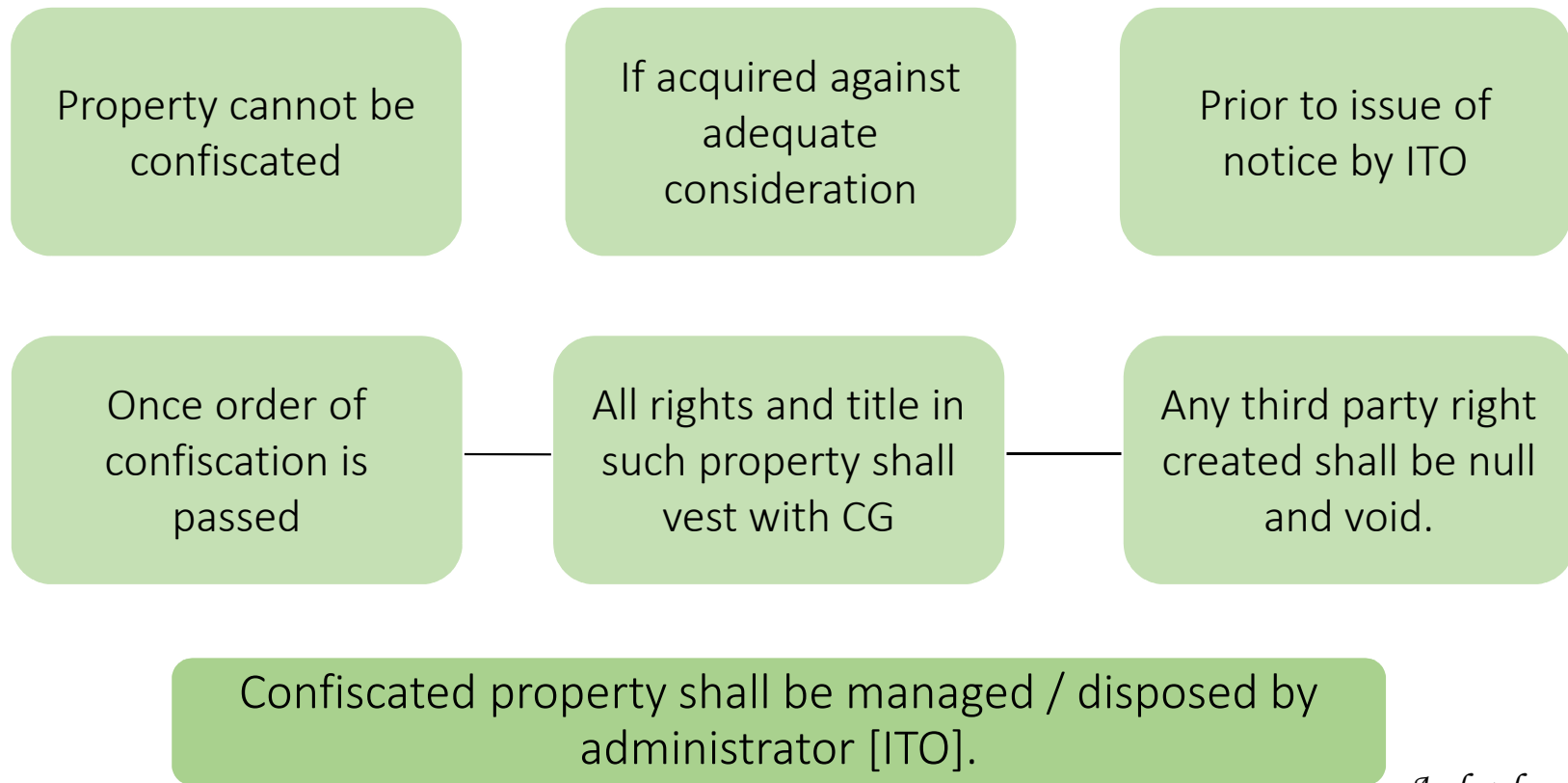
Final order for attachment of BP by adjudicating authority

After providing opportunity of hearing to concerned person

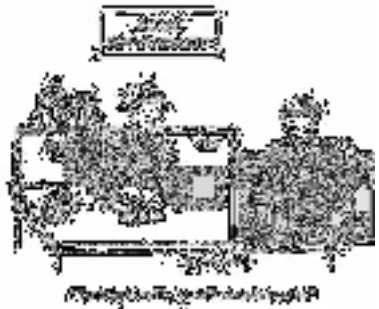
Pass an order confiscating the BP by adjudicating authority

Where appeal against above order is filed – Confiscating shall be subject to final order of Appellate Tribunal

CONFISCATION OF BP (SEC 27)..CONTD



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MANAGEMENT OF PROPERTIES CONFISCATED (SEC 28)

Sr. no.	Nature of Property	Maintenance
1	Immovable Property	Arrange the proper maintenance and custody of its attachment.
2.	Cash, Securities, Bullion, Jewellery or other valuables.	Deposit :- Government Treasury RBI SBI

ITO shall maintain register containing every details of confiscated property



POSSESSION OF THE PROPERTY (SEC 29)

When an order of confiscation has been made, the Administrator shall proceed to take possession of the property:

by notice in writing, order within 7 days of the date of the service of notice to any person in possession of the benami property-

to surrender or deliver possession to the Administrator or any other person authorised in writing by him on his behalf

Non Compliance

It is the duty of any Police Officer to comply with the requisition to assist the Administrator to forcibly take over possession of the BP

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APPEALS AGAINST ORDERS OF ADJUDICATING AUTHORITY (CH V)

APPEAL TO APPELLATE TRIBUNAL

APPEAL TO HIGH COURT

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PROCEDURE AND POWERS OF APPELLATE TRIBUNAL (SEC 40)

- Prevention of money laundering Act is notified for this purpose
- Shall not be bound by the procedure laid down by CPC – rather Principle of Natural justice.
- Shall have same powers as Civil Court.
- Order issued by Tribunal be executable by it as a Decree of Civil Court.

APPEALS TO APPELLATE TRIBUNAL (SEC 46) AND RECTIFICATION OF MISTAKE (SEC 47)

- Appeal shall be filed within 45 days from date of order of adjudicating authority. [Condonation of delay can be accepted on satisfaction of the Tribunal]
- As far as possible, order may be passed within a period of one year from date of appeal.
- Tribunal may rectify any mistake apparent from face of record within 1 year.

No Civil Court shall have jurisdiction to entertain any suit in respect of any action taken or to be taken in pursuance of this Act.

APPEAL TO HIGH COURT [SEC. 49]

>> High Court will determine issues relating to Question of Law

>> Appeal to be filed within 60 days from the date of communication of order of appellate tribunal subject to delay for sufficient cause,

>> Appeal procedure same as for other appeals to High court under Code of Civil Procedure 1908

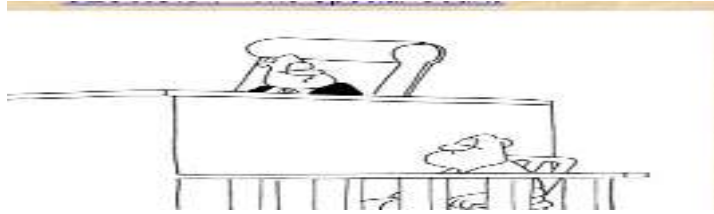
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QUALIFICATION FOR APPOINTMENT OF MEMBERS OF APPELLATE TRIBUNAL

NOT QUALIFIED AS <u>MEMBER OR CHAIRPERSON</u>	NOT QUALIFIED AS <u>JUDICIAL MEMBER</u>	NOT QUALIFIED AS <u>ADMINISTRATIVE MEMBER</u>
<ul style="list-style-type: none"> ❖ Not qualified unless he is sitting judge of High Court, completed not less than 5 years. ❖ Only after consultation with Chief Justice of HC. 	<ul style="list-style-type: none"> ❖ Unless he has been a Member of the Indian legal Service and, ❖ Held the post of Additional Secretary or equivalent post 	<ul style="list-style-type: none"> ❖ Unless he has been a Member of the Indian Revenue Service and, ❖ Held the post of Chief Commissioner of Income Tax or equivalent post

NO ONE FROM PROFESSION



CHAPTER VI **SPECIAL COURTS (SEC 50)**

CG in consultation with CJ of High Court designate one or more of 'Sessions Court' as Special Court

Special Courts shall also try an offence other than offences punishable under this Act under Crpc,1973 (2 of 1974)

Court shall not take cognizance of any offence unless authorities filed written complaint

Court shall conclude trial within 6 months from filing complaint.



APPEAL AND REVISION (SEC 52)

The High Court may exercise all powers conferred by Cr. PC on a High Court as if the Special Court is within the local limits of the jurisdiction of the High Court.

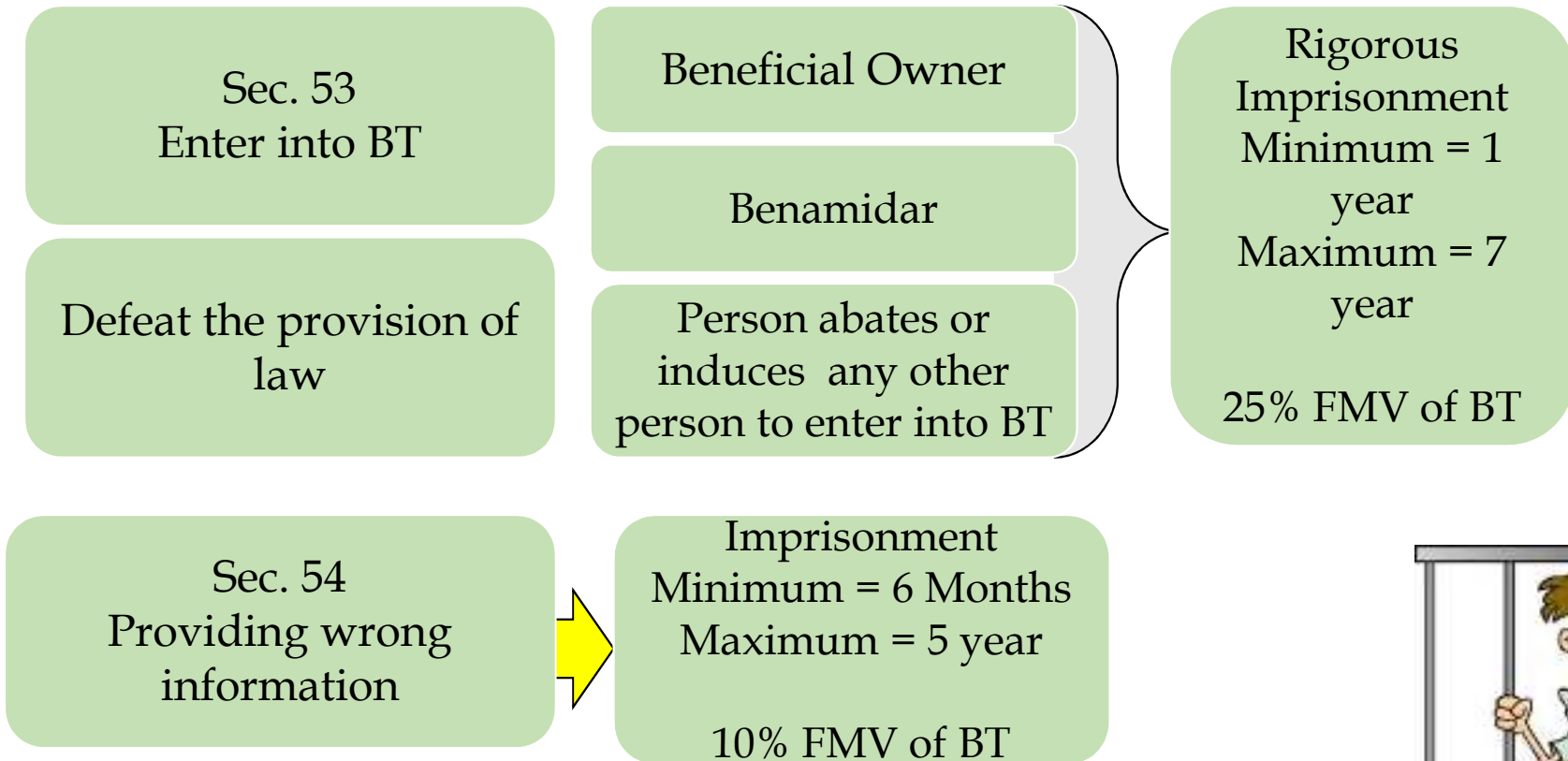
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CHAPTER VII
OFFENCES AND PROSECUTION
AN OFFENCE UNDER THIS ACT
SHALL BE
NON – COGNIZABLE



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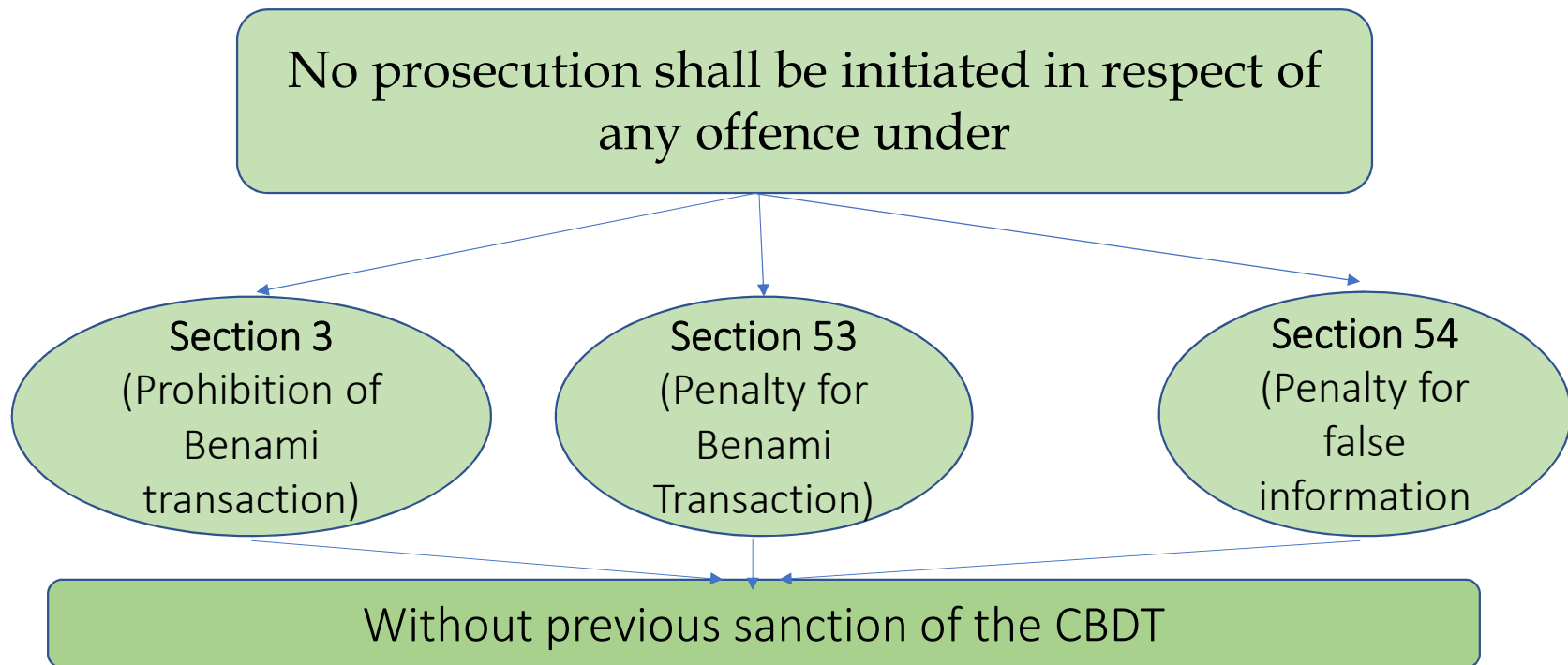
PENAL PROVISION



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PREVIOUS SANCTION (SEC 55)



GENERAL POINTS

SECTION 57

After issue of notice u/s 24 for notice and attachment of property, any transfer for the purpose of proceedings under this Act will be ignored if the property is subsequently confiscated by the CG u/s 27.

SECTION 58

Central Govt may by notification (laid down before each House of Parliament) exempt any property relating to 'Charitable or religious Trusts'

- **SECTION 62** : Offence by company - Every person [responsible for business] shall be as well company shall be deemed to be guilty.
- **SECTION 63** : No notice, summons, order or other document issued shall be deemed to be invalid merely on the ground of mistake, defect or omission in the same as long as the intent of the Act is served.
- **SECTION 67** : This Act shall have overriding effect over any other law for time being in force.

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Bharat Agarwal
Managing Partner

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