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Debatable Issues under Benami Law which need brain storming

1. Retrospectivity:

- Any specific provision expressly saying that present law shall be applied retrospectively?
- See section 1(3): How shall it be read? Its effect?
- Section 2(9)(A): word- 'held': its effect- held since when, even prior to 1988
- What about other parts- where word 'held' is not used
- Is there any other indication in statute from where retrospective operation can be inferred?

What shall be the effect of providing new cut-off date for prosecution u/s 3 of the Act, whereby transactions done after 1.11.2016 shall be punishable as per new provisions contained in chapter VII i.e. section 53, 54 etc.?

Can it be suggested on the basis of this amendment that legislature is clearly intending to make retrospective operation of law?

- How to reconcile with the speech given by FM that government does not want to give immunity to the people who have done benami transactions in last 28 years

2. Reasonable Time Limit

If law is held to be retrospective, can one contend that an authority is allowed to take action within reasonable time limit only, where no time limit is provided, as has been held by various courts e.g. with respect to initiation of penalty proceedings under various sections of income tax act where no time limit is provided by the statute e.g. TDS related defaults, section 273B etc. where 4 years' time limit has been prescribed as reasonable time limit under few judgments.

If yes, what should be such reasonable time limit and from where any such guidance can be obtained.

3. Burden of Proof:

- Any specific provision under PBPT which legally casts burden upon a particular party in any given situation
- Is any deeming situation envisaged under the law
- If both the above are 'NO', whether provisions of Indian Evidence Act, 1872 shall come into play
- If yes, which provisions: section 91-92, 101-102 and 106
What shall be effect of these provisions?
- Whether judgments of SC in Vallimal, Mangathai, Leelavathi etc shall have effect under PBPT Act also OR these judgments are only for the matters to resolve civil disputes where provisions of PBPT have not been invoked? In other words whether provisions of PBPT Act have brought out change in the legal position wrt burden to prove as was explained by the SC in its various judgments
- If the Burden is upon the IO, how shall he discharge and in what manner he can claim that he has discharged or shifted the burden upon the noticee

And similarly, if burden is laid or shifted upon the noticee, how shall Benamidar prove that he is real owner and is not passing-on the benefits of the property to the alleged Beneficial owner and how and in what manner BO shall prove that he has not derived any benefits and he has not provided any consideration. In other words how shall he prove the negative?

4. Attachment:

- What properties are available for attachment u/s 24(3) and 24(4):
 1. If property alleged benami has been sold and proceeds are not identifiable
 2. If property is a remittance into the bank account, which is spent
 3. If property is a remittance into the bank account, which is utilised in acquiring an immovable asset

Case Study 1: Share Capital of Rs 10 crores is received by N Ltd, which is alleged to be benami. The amount is deposited in bank account of the N Ltd around ten years back. The IO is not aware about details of utilisation of funds so deposited. He makes attachment of 'Current and Non- Current asset' of N Ltd to the extent of Rs 10 Crores. Is he legally correct and empowered to do so?

Case Study 2: In aforesaid facts, the IO first attached share certificates u/s 24(3). During the proceedings he attached bank a/c to the extent of Rs. 10 Crores by passing another 24(3) order. Then finally, he passed order u/s 24(4) (b) and attached factory Building (to the extent of Rs 10 Crores). The building was acquired around 15 years back. IO's action is legally correct? If not what illegalities or lapses are done by him.

- Condition precedent for attachment u/s 24(3): Property is likely to alienated in the 'opinion' of the IO:
Opinion means just 'thoughts' of the IO or there should be some material in his possession for such 'opinion'
If there is no material or basis to support IO's opinion, what is legal status of such order passed u/s 24(3)
- If a new property is found to be benami, which is not connected with property for which proceedings are initiated, whether the same can be attached straight away u/s 24(4)(b)
- Whether Common Show Cause Notice u/s 24(1) and Common Attachment Order u/s 24(3) can be passed where:
 1. There are multiple transactions and properties between B and R
 2. There are different transactions and properties between B (only one benamidar) with different persons under separate transactions. Thus benamidar is common, but properties and beneficial owners are different.
 3. Beneficial owner is only 'One' having separate transactions of properties with different benamidars.

- **Effect of attachment:**
 1. Whether transfer only is restricted, or there is attachment upon enjoyment of fruits also barred:
What about dividend of shares, interest on loan, rent of immovable properties
 2. Whether tenant can be changed? If yes, old security deposit or *Pagri* etc can be refunded and new amount be accepted from new tenant

- **Protection to bonafide purchaser:**
 1. Whether protection is from attachment or confiscation only
 2. If for confiscation only, that would mean attachment would be done and continue? If yes, when and how it would be released?
 3. If attachment is continued, it would cause irreparable damage to the bonafide buyer.
 4. Whether, under the law, the IO is duty bound to serve notice to the purchaser of the subject property before making provisional attachment u/s 24(3) or thereafter but in any case before passing order u/s 24(4), especially when it comes to his knowledge that the property has already been sold/transferred by the alleged benamidar.
 5. If notice is required to be served, but not served by the IO upon the purchaser at any time during the proceedings carried out u/s 24, then what shall be the fate of such an order passed u/s 24(4)
 6. It is whose burden under the law to prove that the Purchaser had knowledge about the subject property being benami in the hands of alleged benamidar
 7. Whether IO can make attachment of property sold by the alleged benamidar as well as sale proceeds received from the sale of such property

Case Study: Land Parcel of around 100 acres is sold by Mr. X to M/s V Constructions Ltd, who in turn developed the

township on the same and built 500 units of residential flats and villas and sold most of them to retail buyers.

Subsequently, it was found by the BPU that land sold was benami in the hands of Mr. X as he was benamidar of one M/s R Ltd. and therefore land is attached u/s 24(3) and finally u/s 24(4) despite the factum of its sale to M/s V constructions Ltd being in the knowledge of BPU.

Now, the questions arising here are:

1. Whether action of IO is legal and justified?
2. What are the rights and protection available to V Constructions Ltd.
3. What is the legal status of units in the hands of new retail buyers
4. Whether new retail buyers can transfer the units till attachment of land in the hands of X Ltd continues
5. Whether V Construction Ltd can sell out and transfer remaining unsold units
6. Whether V Construction Ltd can execute conveyance deeds which were pending for registration though transaction has otherwise been already completed before the said attachment.

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