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TAXATION OF UNDISCLOSED FOREIGN INCOME & ASSET UNDER BMA, 2015 – A SIGNIFICANT MOVE BY INDIAN GOVERNMENT

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- 1. Cover Page**
- 2. Certificate from the Dean**
- 3. Certificate from the Research Supervisor**
- 4. Declaration**
- 5. Acknowledgement**
- 6. Table of the Content**
- 7. Abbreviations**
- 8. List of Cases**
- 9. Introduction**
 - (i) Object & Scope of the Study**
 - (ii) Research Problem/ Research Statement**
 - (iii) Research Question**
 - (iv) Hypothesis**
 - (v) Methodology**
 - (vi) Limitations**
 - (vii) Scheme of the Study**
 - (viii) Literature Review**
- 10. Chapters**
- 11. Conclusion & Suggestion**
- 12. Bibliography**
- 13. Webliography**
- 14. Paper Publication**



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LIST OF ABBREVIATIONS

BMA	Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015
ITA	Income Tax Act
ITR	Income tax Returns
NR	Non Resident
RNOR	Resident Not Ordinarily Resident
FA	Foreign Asset
FMV	Fair Market Value
LLP	Limited Liability Partnership
AO	Assessing Officer
OECD	Organization for Economic Co-operation and Development
KYC	Know Your Customer
MHA	Ministry of Home Affairs
MLM	Multi Level Marketing
PAN	Permanent Account Number
PMLA	Prevention of Money Laundering
SEBI	Securities and Exchange Board of India

TABLE OF CASES

S.No.	Case Name	Citation
1	Shrivardan Mohta v. Union of India & Ors	W.P. No. 568 of 2018 in High Court of Calcutta
2	Addl. CIT v. Leena Gandhi Tiwari	BMA No. 1/Mum/2022
3	Srinidhi Karti Chidambaram case	TS-658-HC-2028(MAD)
4	Mr. Gautam Khaitan 's case	
5	Shrivardhan Mohta Case	TS-64-HC-2019(CAL)
6	PCIT v. Income Tax Settlement Commission	TS-834-HC-2019(GUJ)
7	Mr. Jatinder Mehra Ruling	
8	Mr. Yashovardan Birla ruling	TS-837-ITAT-2021(MUM)
9	Mr. Rashesh Manhar Bhansali Ruling	
10	Ramjeth Malani and Ors. Union of India	

Table of Contents

CHAPTER-I.....	
1. INTRODUCTION	
1.1 AIM AND OBJECTIVE	
1.2 RESEARCH PROBLEM.....	
1.3 HYPOTHESIS	
1.4 SCOPE AND LIMITATION.....	
1.5 REVIEW OF LITERATURE	
1.6 RESEARCH METHODOLOGY	
1.7 SCHEME OF STUDY	
CHAPTER II	
2. TAXATION OF BLACK MONEY UNDER INCOME TAX ACT, 1961	
2.1 MEANING OF UNDISCLOSED FOREIGN INCOME AND ASSET	
2.2 PROVISIONS UNDER INCOME TAX ACT ON BLACK MONEY	
2.3 LOOPHOLES UNDER INCOME TAX ACT.....	
2.4 NEED FOR SEPARATE LAW ON UNDISCLOSED FOREIGN INCOME AND ASSETS	
CHAPTER III.....	
3. TAXATION OF BLACK MONEY UNDER BLACK MONEY ACT, 2015	
3.1 APPLICABILITY OF THE BMA ACT.....	
3.2 COMPUTATION AND ASSESSMENT UNDER BMA ACT	
3.3 TAX LIABILITY UNDER BMA ACT	
3.4 ILLUSTRATION TO DEPICT IMPLICATION UNDER BMA.....	
3.5 ILLUSTRATION TO PORTRAY TAX LIABILITY UNDER BMA	
3.6 RELEVANCE WITH INCOME TAX ACT	
CHAPTER IV	
4. COMMITTEE AND REPORTS ON BLACK MONEY.....	
4.1 COMMITTEES ON BLACK MONEY	
4.2 CONJOINT OPERATION OF ITA AND BMA	
CHAPTER V.....	
5. DEVELOPMENTS MADE IN INDIA PRE AND POST BLACK MONEY ACT	
5.1 ROLE OF CBDT	
5.2 PRE BMA ACT, 2015 ACQUIRED ASSETS	
5.3 ACTIONS TAKEN UNDER BMA ACT, 2015	
5.4 MEASURES TAKEN BY THE GOVERNMENT	

5.5 CRYPTOCURRENCY'S CONNECTION WITH UNDISCLOSED FOREIGN INCOME

.....

5.6 LOOPHOLES UNDER BMA ACT

CHAPTER VI.....

6. JUDICIAL PRONOUNCEMENTS UNDER BLACK MONEY ACT.....

6.1 IMPORTANT JUDICIAL PRONOUNCEMENTS UNDER BMA ACT, 2015.....

CHAPTER VII

7. CONCLUSION

8. FINDINGS.....

SUGGESTIONS.....

9. REFERENCES.....



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CHAPTER-I

1. INTRODUCTION

Black money refers to funds that are earned through illegal means, not reported to the tax authorities, or concealed to evade taxes. Before the enactment of the Black Money Act in 2015, the Indian Government had been grappling with the challenge of tracing and taxing unaccounted wealth, especially those hidden in foreign countries. Various reports and studies had suggested that a substantial amount of black money which belongs to legitimate money of India has been stashed abroad, leading to significant revenue losses and undermining the integrity of the tax system. Black money is always considered as dark evil in the society. In a nation like India, tax evasion of the millionaires and multi-millionaires take place through conversion of white money into black money and depositing the same in tax haven nations. Activities like this similar nature are deterrent to the growing economy of the nation which in turn increases the tax burden on the middle class people and also it will grossly affect GDP of Indian nation. To trace such black money which legally belongs to India, and bringing it back to India by imposing tax over it, the Black Money Act has been implemented.

The Act aims to unearth and tax such undisclosed income and assets, thereby promoting transparency and accountability in the financial system. The Black Money Act, 2015, marked a significant step forward in the government's efforts to curb black money and bring unaccounted wealth into the economy of the country. By encouraging voluntary disclosure and imposing strict consequences for non-compliance, the Act sought to create a fairer and more transparent tax regime and promote honest and ethical financial practices. This will increase the GDP of India to a significant extent in the growing competition of economy in the world countries.

1.1 AIM AND OBJECTIVE

In the backdrop of limited research in the area of tax evasion of undisclosed foreign asset and income, the present study ponders over it. Due to few research work in this particular area, there are difficulties in obtaining quality research data. However, the present study focuses on the following objectives:

- To understand the concepts of undisclosed foreign asset and income with respect to taxation
- To review the efficiency of the Black Money Act, 2015 and its implementation in India



- - To analyse the loopholes in the existing provisions in Black Money Act, 2015 and the possible suggestions for the same
 - To explicate the limitations in the Income Tax Act with respect to recovery of black money which belongs to India
- To study the key issues involved in recovering the amount from abroad

1.2 RESEARCH PROBLEM

Black money on the income in India of the Indian residents has been explicitly dealt under the Income Tax Act, 1961. But the income and asset which are undisclosed and are laid before foreign nations has been always a grey area under the provisions of Income Tax Act, 1961. Therefore, the need for a separate legislation to curb the menace of black money outside India came into lime light. With that intention alone, the Parliament of India enacted new legislation named as the Black Money Act, 2015. It has been seven years since this piece of legislation came into force. Due to the Black Money Act, the undisclosed black money recovered from abroad with the help of taxation on it has improved the economy of the nation. Hence the existing provisions in the Act is considered as one of the most important significant move by the lawmakers of the country.

1.3 HYPOTHESIS

The implementation of the Black Money Act, 2015, has resulted in increased tax compliance, revenue generation, and a reduction in the magnitude of black money which were previously hoarded in foreign jurisdictions.

1.4 SCOPE AND LIMITATION

The scope of the study is extended to understand the concept of tax evasion of undisclosed foreign asset and income outside India and the taxing regime of the same under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

The tax evasion has been adopted by Indian residents or non-residents in both the income received inside India or deemed to accrue in India. However this present study is limited only to the tax evasion of foreign income and asset which are undisclosed by

Indian residents and are ordinarily residing in India. This study does not look into the undisclosed foreign income and asset of Residents not ordinarily resident in India or non-residents. This study does not focus on tax evasion of income received or deemed to accrue in India.



1.5 REVIEW OF LITERATURE

Arun Kumar, in his book **The Black economy in India With a New Forward by V.P. Singh** (2017)¹ has stated that “One of the biggest failures of the last three decades is that of planning. This can be linked to the growing black economy. Tax collection is inadequate, creating a shortage of resources, and funds are siphoned off from allocations and from profits so projects fail. Financial planning and time-

OECD, in its book **Illicit Financial Flows from Developing Countries: Measuring OECD Responses** (2014)² has stated that “In order to combat international tax evasion, tax authorities must be able to access and exchange relevant information about individuals’ and companies’ activities, assets or incomes in foreign jurisdiction. Since 2009, the environment for tax transparency has changed dramatically with the OECD and G20 providing leadership on actions to combat tax evasion.”

In **Ram Jethmalani and Others v. Union of India**³, it was observed that the Government has joined the global crusade against the black money. It had decided to create an appropriate legislative framework by incorporating various tax evasion (prevention) measures in the existing Acts. To give effect to this verdict, the Government of India set up Special Investigation Team on Black Money to submit periodical reports on black money.

Arun Jaitley, Minister of Finance in (2015)⁴ has stated that “Tracking down and bringing back the wealth which legitimately belongs to the country is our abiding commitment to the country. Recognising the limitations under the existing legislations, we have taken a considered decision to enact a comprehensive law on

With this background, the BMA Act, 2015 has been enacted by the Indian Parliament and this study focus on the success or failure of the BMA Act, 2015.

The Seventy Third Report of Standing Committee on Finance (2018-19) on **unaccounted income/wealth both inside and outside the country** (2019)⁵ has stated that there are no reliable estimates of black money generation or

¹ Arun Kumar, *The Black economy in India with a New Foreword by V.P. Singh*, 4 (Penguin Group 2017)

² OECD, *Illicit Financial Flows from Developing Countries Measuring OECD Responses*, 69 (OECD Publishing 2014)

³ [2011]200 Taxman 171(SC)

⁴ Budget 2015-2016, <https://www.indiabudget.gov.in>, (last visited on July 23, 2023)

⁵ Lok Sabha Secretariat, New Delhi, *Seventy Third Report Standing Committee on Finance (2018-19)*, available at <https://eparlib.nic.in>, last visited on July 24, 2023



accumulation neither is there an accurate well-accepted methodology for making such estimation. All estimates depend upon the underlying assumptions made and the sophistication of adjustments incorporated. Among the estimates made so far, there is no uniformity, or consensus about the best methodology or approach to be used for this purpose. The Report cleverly stated without a proper mechanism to tackle the menace of black money, it is always difficult to curb this social evil completely from the society.

1.6 RESEARCH METHODOLOGY

The present study is descriptive and various secondary sources have been relied upon to complete the study. Secondary data were collected from the books referred, reports, conference papers, journals, magazines, periodicals, and relevant articles.

1.7 SCHEME OF STUDY

The present study has been divided into the following chapters

Chapter I: Introduction contains history and intention behind in enacting the Black Money Act.

Chapter II: Taxation of Black Money Under Income Tax Act, 1961

Chapter III: Taxation of Black Money Under Black Money Act,

2015 Chapter IV: Committee and Reports on Black Money

Chapter V: Developments made in India Pre and Post Black Money Act

Chapter VI: Judicial Pronouncements under Black Money Act

Chapter VII: Conclusion, Findings and Suggestions

CHAPTER II

2. TAXATION OF BLACK MONEY UNDER INCOME TAX ACT, 1961

2.1 MEANING OF UNDISCLOSED FOREIGN INCOME AND ASSET

1. Undisclosed foreign income

Section 2(12) read with Section 4(1) of BMA Act, 2015, undisclosed foreign income means income of any previous year from a source outside India, which is not disclosed in the return of income that is furnished within the time specified in Explanation 2 to Section 139(1) or (4) or (5) of ITA or in respect of which the return of income is not filed within time specified under abovementioned provisions of Income Tax Act⁶.

2. Undisclosed foreign asset

Section 2(11) read with Section 4(1) of BMA, Act, 2015, defines an undisclosed foreign asset as:

- (i) an asset located outside India, and
- (ii) held by assessee in his name or such assessee is a beneficial owner or such assessee has financial interest in any entity, and
- (iii) such assessee has no explanation about the source of investment in such asset or the explanation given is not satisfactory according to Assessing Officer⁷.

2.2 PROVISIONS UNDER INCOME TAX ACT ON BLACK MONEY

a. Section 4 of Income Tax Act

The Section articulates that income tax shall be levied on the total income of the previous year of every person⁸. Under this section, it is implied that for an Indian resident, if he receives any foreign income that will be included in his total

⁶ Shaantanu Jain, Understanding Basics of Black Money Act, 2015, available at, <https://taxguru.in/>, last visited July 20, 2023.

⁷ Id

⁸ Income Tax Department > All Acts > Income-tax Act, 1961, <https://incometaxindia.gov.in>, (last visited on July 20, 2023)



income for the purpose of determining his tax liability and he will be taxed as per the provisions of Indian tax regime.

b. Section 5 of Income Tax Act

This section stipulates that for a resident in India, income which he receives in India and outside India will be taxed under the Income Tax Act. This particular Section expressly states that if an Indian resident, receives income from outside India, then such income will be included in his total income for the taxation purposes. As per Section 5 of the Act, if the following conditions are satisfied, then it will be foreign income:

- i. Income is not received or deemed to be received in India, and
- ii. Income does not accrue or arise or does not deem to accrue or arise in India⁹.

For a resident not ordinarily resident, if the following conditions are satisfied, then it shall be the foreign income of such RNOR.

- i. Business income and business is controlled wholly or partly from India
- ii. Income from profession which is set up in India¹⁰.

Foreign income except stated above such as salary, rent, interest, etc.¹¹ will be taxed in India with respect to a RNOR.

c. Section 6 of Income Tax Act

Section 6 of the Act elucidates the residential status for determining tax liability. The particular Section enunciates the resident rule in determining tax liability. So if resident rule is applied, then for an Indian resident, his undisclosed foreign income and assets might be taxed in India.

d. Schedule FA of Income Tax Act

Schedule FA to the Income Tax Act has been introduced since the Assessment Year 2012-12. The main objective behind this schedule is to make the ordinary Indian Residents to disclose their foreign income and assets even though such income and assets may not be taxed in India. In

TTR 2 and TTR 3 forms, this
nia, Taxmann's direct taxes law & practice with special reference to

⁹ Dr. Vinod K. Singhania, Dr. Monica Singhania, Taxmann Students' Guide To Income Tax Including GST, 33
Tax Planning, 62 (Taxmann Publications (P.) Ltd. 2017)

¹⁰ Id. at 63



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Schedule FA can be exclusively seen. Under Schedule FA, the following details are to be disclosed by the Indian Resident¹²:

- i. Asset which are held by the resident outside India (these assets may include shares, debentures, life insurance, annuity contract, immovable property or any other capital asset)
- ii. Financial or beneficial interest in any overseas entity (partner in an overseas LLP or firm, a beneficiary of a foreign private trust)
- iii. Signing authority in any account located outside the territory of India (this includes trading, depository, bank or custodian account)
- iv. Income from any source outside India (this income may arise by way of dividend, interest or capital gain).

2.3 LOOPHOLES UNDER INCOME TAX ACT

The provisions under the Income Tax Act are important tools for curbing black money and promoting tax compliance. However, the effectiveness of these provisions depends on various factors, including their enforcement, implementation, and the overall socio-economic environment. While the Income Tax Act contains several provisions to detect and penalize tax evasion and black money, there are challenges that can hinder their full impact. Some of these challenges include:

- i. **Tax Evasion Techniques:**
Tax evaders and those involved in generating black money often employ sophisticated methods to conceal their income and assets. They may use various loopholes, shell companies, or offshore accounts to hide their true financial status.
- ii. **Limited Resources:**
Tax authorities may face constraints in terms of resources, manpower, and technology, making it challenging to investigate and track complex financial transactions effectively.
- iii. **High Thresholds:**
The thresholds for reporting transactions and disclosing assets may be relatively high, allowing some individuals to stay under the radar even with significant unaccounted income.
- iv. **Time-Consuming Legal Processes:-**

¹² Taxmann in Blog, Understanding Schedule FA Guide on Disclosing Foreign Assets and Income in ITR Filing for Indian Residents available at, <https://www.taxmann.com/>, (last visited on (July 21, 2023, 6.39 PM)



Legal proceedings related to tax evasion can be lengthy, providing some offenders with opportunities to delay or avoid penalties.

v. Lack of Awareness and Compliance:

Some individuals may not be fully aware of their tax obligations or may deliberately choose to evade taxes due to a lack of understanding or fear of being caught.

vi. Black Economy:

In certain sectors, particularly in the informal or cash-based economy, transactions may occur without proper documentation, making it difficult to trace and tax such income.

vii. Global Nature of Black Money:

Black money can be parked in foreign bank accounts or invested in assets abroad, making it challenging for a single country's tax authorities to tackle the issue effectively.

2.4 NEED FOR SEPARATE LAW ON UNDISCLOSED FOREIGN INCOME AND ASSETS

The enactment of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, commonly known as the Black Money Act, was driven by the need to specifically address the issue of black money stashed abroad and undisclosed foreign assets, which goes beyond the scope of the regular Income Tax Act. While the Income Tax Act deals with the taxation of income earned domestically and foreign income that is brought back into the country and declared, the Black Money Act focuses on undisclosed foreign income and assets held abroad by Indian residents. Here are some key reasons why a separate law was enacted to deal with black money held abroad:

i. Foreign Black Money:

The Income Tax Act primarily deals with domestic income and assets and the taxation of foreign income brought into India. However, the issue of black money stashed abroad required a separate legal framework to target and penalize those who were keeping undisclosed income and assets outside the country.

ii. Enhanced Reporting and Penalties:

The Black Money Act provides for more stringent reporting requirements and higher penalties for non-compliance compared to the regular Income Tax Act. It aims



to create a deterrent effect and encourage taxpayers to disclose their foreign income and assets voluntarily.

iii. Focus on Foreign Assets:

The Black Money Act specifically targets undisclosed foreign assets and income, including those held in foreign bank accounts, properties, investments, etc. It provides provisions for the assessment, investigation, and taxation of such assets.

iv. Immunity Scheme:

The Act introduced a one-time compliance opportunity, the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015, which allowed individuals to declare their undisclosed foreign assets and income by paying taxes and penalties without fear of prosecution.

v. Information Exchange:

The Act also facilitates information exchange with other countries to obtain details of foreign accounts and assets held by Indian residents, which aids in identifying black money holders.

vi. Stringent Enforcement:

The Black Money Act empowers tax authorities to conduct investigations and take stringent actions against offenders who hold undisclosed foreign income and assets.

The Black Money Act does not replace the Income Tax Act but complements it by addressing the specific issue of black money held abroad. Both laws work together to curb tax evasion, ensure compliance, and promote transparency in financial transactions. Enacting a separate law specifically targeting black money held abroad was seen as a necessary step to address the challenges posed by undisclosed foreign income and assets, which were not adequately covered under the existing provisions of the Income Tax Act.

CHAPTER III

3. TAXATION OF BLACK MONEY UNDER BLACK MONEY ACT, 2015

3.1 APPLICABILITY OF THE BMA ACT

When the BMA Act, 2015 was enacted, the Act was made applicable only to the residents of India. However, as per amendment brought in July 2019, it is now also made applicable to a person being Not ordinary residents or Non resident (applicable with effect from 01.07.2015) but who was an ordinary resident of India in the previous year to which the foreign income relates or in the previous year in which foreign asset was acquired¹³.

The purpose of this amendment to make the black money act more effective, and to expand the scope and coverage of the Act to include the taxpayer who can take the shed of the earlier provisions which were not specific¹⁴.

3.2 COMPUTATION AND ASSESSMENT UNDER BMA ACT

1. Computation

As per Section 5(1)(i) of BMA, no deduction of any expenditure or any allowance or set off of any loss shall be allowed under BMA while making addition, even though the same are allowable under Income Tax Act. According to Section 5(1)(ii)(a) & (b) of BMA Act, 2015 if any income is assessed to tax for any assessment year under ITA prior to commencement of BMA Act, 2015 or any income which is assessable or assessed to tax for any assessment year under BMA then the same shall be reduced from the value of undisclosed foreign asset. But it will be only reduced after the assessee furnished evidence before the AO that the said foreign asset has been acquired from the income which is assessed or is assessable as aforesaid. Meaning thereby if undisclosed foreign income or asset is assessed under ITA before the commencement of BMA then such income or asset would not be taxed under BMA.

As per Section 4(2) of BMA, if any addition or disallowance made by Income Tax Department u/s 29 to 43C, 57 to 59 or 92C of ITA qua such foreign sourced income or India sourced income which is used to acquire foreign asset,

then it would not be treated as undisclosed foreign income or asset. Section 4(3) states that undisclosed

¹³ WIRC Reference Manual 2022-23, The Black Money (Undisclosed Foreign Income & Assets) & Imposition Of Tax Act, 2015, available at <https://wirc-icai.org/>, last visited July 27, 2023.

¹⁴ Naman Manocha, Provisions and Taxability Under Black Money Act, 2015, available at <https://taxguru.in>, last visited at July 27, 2023.



foreign income or asset assessed under BMA would not form part of total income under ITA.

2. Assessment

As per Section 10 of BMA, AO after receiving any information from any authority under any law or on coming to any information to his notice, serve a notice on any person requiring him to produce any document or accounts or any evidence as require. The AO can also make full enquiry for the purpose of obtaining full information qua undisclosed foreign income and undisclosed foreign asset. No order of assessment or reassessment shall be made after expiry of two years from the end of the financial year in which notice u/s 10(1) of the BMA was issued by the AO, as stated in Section 11 of BMA.

As per Section 83 of BMA, all information contained in any statement or return made or furnished under the ITA or obtained or collected for the purposes of ITA, may be used for the purposes of BMA. Section 81 of BMA also states that no assessment, notice, summons or other proceedings under the provisions of BMA shall be invalid or shall be deemed to be invalid merely by reason of mistake, omission in such assessment, notice, summons or other proceedings, if such notice, assessment or other proceedings is in substance and according to the intent and purpose of the Act. The tax shall be charged at the rate of 30% of such undisclosed foreign income and undisclosed foreign asset¹⁵.

3.3 TAX LIABILITY UNDER BMA ACT

a. Effect of Schedule FA of Income Tax Act

Under the BMA Act, 2015 if an Indian residents fails to disclose his foreign assets and income under Schedule FA of the Income Tax Act, then such resident will be punished with civil and criminal liability. A penalty of Rs.10,00,000/- and rigorous imprisonment of six months which may extend to seven years may be imposed on that resident along with fine¹⁶.

The following table will depict the tax penalty in instances where failure arises on the part of the assessee to furnish the undisclosed foreign income and assets¹⁷.

¹⁵ Supra

¹⁶ Naveen Wadhwa & Manila Mehta, How to report your foreign income, share investment while filing ITR



S.No.	Penal Provision	Penalty
1	Penalty for failure to furnish return in relation to foreign income and assets.	Penalty of Rs.10,00,000/-
2	Penalty for failure to furnish in return of income an information or furnish inaccurate particular about an assets (including financial interest in any entity) located outside India	Penalty of Rs.10,00,000/-
3	Punishment for failure to furnish return in relation to foreign income and assets	Rigorous imprisonment for a term which should not be less than 6 month but it may extend to seven years and with fine.
4	Punishment for failure to furnish in return of income, any information about an asset located outside India	Rigorous imprisonment for a term which should not be less than 6 month but it may extend to seven years and with fine.
5	Punishment for willful attempt to evade tax	Punishment with rigorous imprisonment for a term which should not be less than three years but which may extend to ten years and with fine applicable to assesee.

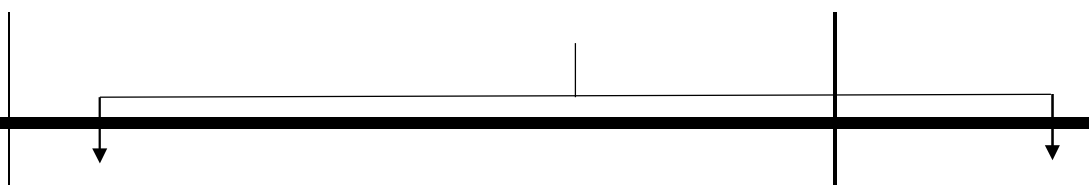
3.4 ILLUSTRATION TO DEPICT IMPLICATION UNDER BMA

Let us presume that 'A' is an Indian resident who files his income tax returns without any fail and regularly under the Income Tax Department. What will be the civil and criminal implication under the BMA Act, 2015 if he fails to declare his foreign income which he receives?

'A'

Civil Implication

Criminal Implication



→	→
S. 3 of BMA Act (Levy of tax)	S. 50 of BMA Act
→	→
Rate of tax on undisclosed foreign income & asset: 30%	Criminal prosecution for
→	→
S. 41 of BMA Act (Penalty Equivalent to 3 times of BM tax non-disclosure of foreign i.e., 120% of undisclosed foreign income & asset is penalty income & asset)	S. 51 of BMA Act
(30% of tax + 3 times of tax = 120%) can be simultaneously prosecuted under BMA Act	S. 42, 43 of BMA Act No Penalty
for (Aggregate balance in bank account of undisclosed foreign evading black money tax Income & asset is less than Rs.5,00,000/-)	Criminal prosecution for

Based on the above il for both civil and criminal proceedings if he fails to disclose his foreign income and assets.

3.5 ILLUSTRATION TO PORTRAY TAX LIABILITY UNDER BMA

Let us presume that an assessee has undisclosed foreign income from his Income Tax Returns. That undisclosed amount is Rs.2,00,00,000/-. Further, the assessee failed to file Income Tax Return with respect to foreign income of Rs.50,00,000/-. In addition, with regard to the undisclosed foreign asset, its Fair Market Value has been calculated as per Rule 3 of Black Money Rules is Rs.1,00,00,000/-. The tax liability of the assessee as per the BMA, 2015 has been given below¹⁸:

- Step 1: The undisclosed foreign income from Income tax Returns = Rs.2,00,00,000/-
- Step 2: Foreign income for which income tax returns has not been filed = Rs.50,00,000/-
- Step 3: FMV of undisclosed foreign asset = Rs.1,00,00,000/-
- Step 4: Total value of undisclosed foreign income & asset =

3.6 RELEVANCE WITH INCOME TAX ACT

The Income Tax Act, 1961 has not been amended when the BMA Act came into picture. This has led to confusions as to under which Act undisclosed foreign income and assets are to be taxed? If the undisclosed foreign income and assets are taxed under the provisions of Income

¹⁸ CA Sathish Kumar Gupta, Black Money (Undisclosed Foreign Income & Assets) & Imposition of Tax Act, 2015, Kochi ICAI, 16, <https://kochiicai.org>



Tax Act, then will the same be taxed under the ambit of BMA Act¹⁹? The answer is affirmative. Because there is no express or implied provision in the Income Tax Act which says that if tax on undisclosed foreign income and asset has been paid under Income Tax Act it shall be taxed under BMA Act. On the flip side, S. 4(3) of the BMA Act, 2015 stipulates that if tax has been paid for undisclosed foreign income and assets under the BMA Act, then income tax need not be paid for the same. So to be on the safer side, the Indian residents can opt to pay tax for undisclosed foreign income tax and asset under BMA Act. Otherwise it might lead to double taxation under both Income tax and BMA Act.

The comparison of provisions under Income Tax Act, 1961 and BMA Act, 2015 has been elucidated as below²⁰:

S.No.	BMA Act, 2015	Income Tax Act, 1961
1	BMA Act, 2015 has been applicable against the Undisclosed foreign income and assets from the date of July 1, 2015 as notified by the Department of CBDT.	Income Tax Act, 1961 has been applicable on the Undisclosed foreign income and assets till the date of June 30, 2015 wherein the undisclosed foreign income and assets has been noticed by the Assessing Officer.
2	Notice under the BMA Act, 2015 for both assessment and reassessment can be issued without any prescribed time limit such as 3 year or 10 year under the Income Tax Act, 1961	Notice under the provisions of the Income Tax Act, 1961 for the purpose of assessment and reassessment can be issued within maximum of three years or 10 years against the undisclosed foreign income and asset
3	There is no provision for interest to be levied on undisclosed foreign income and asset under BMA Act, 2015. So flat income tax which is at the rate of 30% along with minimum fine of 100% or	Provisions such as Section 234A, 234B and 234C deals with the penal interest with regard to undisclosed foreign income and asset

¹⁹ Editorial Team, Metalegal Advocates, India: An illustrative Inquiry Under The Black Money Act, mondaq (July 20, 2023, 5:16 PM), <https://www.mondaq.com>

²⁰ CA Satish Agarwal, Undisclosed Foreign Income and Asset (UFIA) under Black Money Act, 2015, taxguru, (Jan 19, 2023), <https://taxguru.in>



	maximum fine of 300% under BMA Act, 2015 will be levied.	
4	BMA Act, 2015 has no provisions with regard to credit of tax paid for undisclosed foreign income and assets under Double Taxation Avoidance Agreement or non DTAA for the tax paid in a country outside India.	Under the Income Tax Act, 1961, it allows 100% of credit on income tax paid and income tax deducted on undisclosed foreign income and asset under Double Taxation Avoidance Agreement or non DTAA.



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CHAPTER IV

4. COMMITTEE AND REPORTS ON BLACK MONEY

4.1 COMMITTEES ON BLACK MONEY

The committees and task forces that have studied the issue of black money in India have made several recommendations to address the problem effectively. Some of the key recommendations from these committees include:

- i. Special Investigation Team (SIT) on Black Money (2014):
 - Strengthening laws and enforcement to combat black money and tax evasion effectively.
 - Taking necessary measures to curb the generation and circulation of black money in the economy.
 - Enhancing international cooperation to tackle cross-border tax evasion and money laundering.
 - Improving the capacity and capabilities of tax authorities to track and investigate cases of black money.
 - Encouraging the use of technology and data analytics to identify potential tax evaders and unreported income.
- ii. Rangarajan Committee (1978):
 - Widening the tax base to bring more individuals and entities into the tax net. Reducing tax evasion by simplifying tax laws and minimizing opportunities for tax avoidance.
 - Strengthening tax administration and compliance mechanisms.
 - Encouraging voluntary compliance through taxpayer education and awareness programs.
- iii. Chelliah Committee (1991):
 - Reforms in the tax structure to make it more equitable and efficient.
 - Addressing loopholes in tax laws that enable tax evasion and generation of black money.
 - Promoting voluntary tax compliance and reducing the scope for tax avoidance.
- iv. Task Force on Direct Taxes (2019):

-
- Revising and updating the existing Income Tax Act, 1961, to simplify tax laws and make them more contemporary.
- Improving tax administration and taxpayer services to enhance
- compliance. Exploring the possibility of implementing a taxpayer-friendly tax assessment process.
- Strengthening anti-abuse provisions to prevent tax evasion and
- aggressive tax planning.
- v. NIPFP Report on Black Money (2019):
 - Suggesting measures to detect and tax unaccounted income and wealth in India. Analyzing the sources and sectors where black money is prevalent.
 - Recommending strategies to curb tax evasion and improve tax compliance.
- vi. White Paper on Black Money (2012):
 - Providing an overview of the black money problem in India and its consequences.
 - Highlighting the measures taken by the government to tackle black money.
 - Emphasizing the need for coordinated efforts between various government agencies to combat the issue effectively.

4.2 CONJOINT OPERATION OF ITA AND BMA

The Income Tax Act and the Black Money Act, 2015 can work together to complement each other in curbing black money. While the Income Tax Act deals with various aspects of taxation, including domestic income and foreign income brought into India, the Black Money Act specifically targets undisclosed foreign income and assets held abroad by Indian residents. The way how these two enactments can go hand in hand has been elucidated as²¹:

- i. Section 2(1) of BMA defines 'Appellate Tribunal' to mean Appellate Tribunal constituted under section 252 of ITA.
- ii. Section 2(15) of BMA provides that all other words and expressions used in BMA and not defined in BMA but defined in ITA shall have meaning assigned to them in ITA. Rule 2(2) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015 too provides that words and expressions used and not defined in these rules but defined in the Act, the Income tax Act or the rules made thereunder shall have

the meanings respectively assigned to them in those Acts and

²¹ BlackMoneyLawinIndia_Rakeshji.pdf, available at <https://www.voiceofca.in>, last visited on July 30, 2023.



rules. Expressions not defined under BMA but defined under ITA such as 'Assessing Officer' 'Legal representative' 'person' 'total income' are few to be noted.

- iii. Section 6 of BMA prescribes the tax authorities to be the income tax Authorities specified in section 116 of the Income Tax Act.
- iv. Section 84 of BMA provides for the applicability of several sections of ITA in the following terms: "The provisions of clauses (c) and (d) of sub-section (1) of section 90, clauses (c) and (d) of sub-section (1) of section 90A, sections 119, 133, 134, 135, 138, Chapter XV and sections 237, 240, 245, 280, 280A, 280B, 281, 281B and 284 of the Income Tax Act shall apply with necessary modifications as if the said provisions refer to undisclosed foreign income and asset instead of to income tax."
- v. Foreign sourced income of the previous year, not offered to tax in the income tax return filed within the time prescribed under section 139(1), (4), (5) of ITA is the undisclosed foreign income, as provided under section 4(1)(a)&(b) of BMA. If there is an asset located outside India and assessee has no explanation about the source of investment in such asset or explanation given is not satisfactory, such asset is also part of total undisclosed foreign income and asset under section 4(1)(c) read with section 2(11) of BMA. Disclosure in the income tax return does not mean mere disclosure in FA schedule of income tax return. If the source of asset located outside India is not explained, it would constitute undisclosed foreign asset and would be charged to tax under section 3 of BMA.
- vi. When foreign-sourced income and/or India sourced income used in acquiring foreign asset stood declared in the income tax return filed and income tax assessment is made under ITA, any addition or disallowance made to such foreign sourced income in income tax assessment under section 29 to 43C, section 57 to 59 or section 92C of ITA would not be treated as undisclosed foreign income as per section 4(2) of BMA. Once foreign sourced income, and/or income in the form of foreign asset were declared in the income tax return filed and during the course of income tax assessment, any variation results due to additions or disallowances made under the sections 29 to 43C of ITA under the head 'income from business' &/or under section 57 to 59 of ITA under the head 'income from other sources' or on account of transfer pricing adjustment under section 92C of ITA, such additions and disallowance or adjustments would not partake the colour of undisclosed foreign income and undisclosed foreign asset under BMA as provided in



- vii. Undisclosed foreign income & undisclosed foreign asset assessed under BMA would not form part of total income under ITA as provided in section 4(3) of BMA. But, no such provision has correspondingly been made under ITA.
- viii. If such undisclosed foreign income or asset has been assessed under ITA after commencement of BMA, then also, such foreign undisclosed income or undisclosed foreign asset, it appears, can be brought to tax under BMA as is clear from section 5(1)(ii)(a)(b) of BMA. Appropriate proceeding in the form of section 154 of ITA read with section 4(3) of BMA would have to be resorted to by the assessee for exclusion of such amount of income and asset from the amount of total income computed under ITA.
- ix. If undisclosed foreign income or undisclosed foreign asset has been assessed under the Income Tax Act, 1961 prior to the assessment year to which BMA applies i.e. A.Y. 2015-16 or earlier years, such undisclosed foreign income and asset would not be taxed under BMA as prescribed under section 5(1)(ii) (a) of BMA.
- x. No deduction of any expenditure or any allowance or set off of any loss shall be allowed under BMA while computing the total undisclosed foreign income and asset even though such expenditure or allowance or set off may be allowable under the provisions of Income Tax Act as provided under section 5(1)(i) of BMA. Similar, disability, you may kindly recall, has been enshrined under section 115BBE of ITA. In so far as the disability of the loss to be set off is concerned, it is understandable. Therefore, if there is any loss under any other head which but for such disability could be set off under section 70 or 71 of ITA, would not be available for the set off. But what is the disability by way of disallowance of any expenditure or allowance section 5(1)(i) of BMA is talking, is not clear. As a matter of cardinal principle of computation of income, all that can be brought to tax is only income which would in fact be computed after allowing the expenditure or allowance admissible as deduction under the respective head of income. There cannot be any concept of taxing the income on gross basis. That being so the disability by way of disallowance of expenditure or allowance as prescribed by section 5(1)(i) of BMA is not clear. Plausible interpretation to this phrase perhaps would cover a situation where foreign sourced income when being assessed in India under ITA would not qualify for any additional deduction of any expenditure or allowance which is otherwise admissible under ITA and which was not available under the foreign laws.

- xi. Value of an undisclosed foreign immovable property as on the first day of the financial year in which it comes to the notice of the assessing officer, assessed or assessable under BMA needs to be reduced by such amount which bears the same proportion as the assessed or assessable foreign income bears to the total cost of the asset as prescribed under section 5(2) of BMA.
- xii. BMA has been brought into effect on and from 1.7.2015 i.e. from AY 2016-17 as provided in section 1(3) of BMA. Section 3(1) of BMA brings to charge undisclosed foreign income of the previous year which means previous year commencing on or after 1.7.2015. Therefore, undisclosed foreign income earned up to assessment year 2015-16 is not chargeable to tax under BMA. Certainly, such undisclosed foreign income can be brought to tax under ITA subject to the conditions and limitations contained in this regard in section 147 to 151 under ITA.
- xiii. Section 2(11) of BMA which seeks to define 'undisclosed asset located outside India' read with section 59, 42, 43, 49, 50 of BMA and further read with section 3(1) of BMA would strongly indicate that such asset must be held by the assessee in his name or in respect of which he is a beneficial owner at the commencement of this Act (BMA) i.e. on 1.7.2015. It would mean that if there was any undisclosed foreign asset acquired or made prior to the commencement of BMA which did not exist at the commencement of BMA may not be brought to tax under BMA but can be brought in the tax net under ITA. Such undisclosed foreign asset representing the undisclosed income can be brought to tax under the ITA in the year of origin of such income/ asset provided the conditions of section 147 to 151 of ITA are complied with.
- xiv. Declaration to be made under section 59 of BMA for availing immunity was also to be made in respect of undisclosed foreign asset acquired from income chargeable to tax under ITA for an assessment year prior to assessment year 2016-17 and in respect of which return of income was not filed under section 139 of ITA or if such return stood filed, such foreign asset was not disclosed in that return or which had escaped assessment under section 147 of ITA, due to the failure to file income tax return or due to non-disclosure of all material facts fully & truly necessary for assessment.
- xv. 'Assessee' covered under section 2(2) of BMA has to be 'resident' as per ITA. Also, if in the year of assessment under BMA, he is 'non-resident' or 'not ordinarily resident' as per ITA but was 'resident' under ITA in relation to the year to which undisclosed foreign income related or undisclosed foreign asset was acquired or made, he would be



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- xvi. Penalty under section 42 of BMA for a sum of Rs. 10 lacs can be imposed on a person who is 'resident' as per ITA or is a person as referred in clause (o) above, if such person has failed to furnish his return of income under section 139(1) or its proviso, of ITA for such previous year in which he at any time held foreign asset or foreign income.
- xvii. Penalty under section 43 of BMA for a sum of Rs. 10 lacs can be imposed on a person who is 'resident' as per ITA or is a person as referred in clause (o) above, if such person has failed to furnish any information or furnishes inaccurate particulars of foreign income or foreign asset in the return filed by him under section 139(1),(4),(5) of ITA of any previous year in which such person held such foreign asset at any time during the previous year.
- xviii. Prosecution provision under section 49, 50 of BMA also is applicable on a person who is 'resident' as per ITA or is a person as referred in clause (o) above & who has committed the defaults of not furnishing income tax return or not furnishing the information or furnishing inaccurate information in case such income tax return stood filed, as mentioned in penalty provisions of section 42 & 43 of BMA.
- xix. Prosecution provision under section 51 of BMA is also applicable to a person who is 'resident' as per ITA or is a person as referred in clause (o) above and who wilfully attempts to evade any tax, interest or penalty under BMA.
- xx. Amount of undisclosed investment in an 'asset located outside India' declared under section 59 of BMA would not be included in the total income of the declarant-assessee for any assessment year under ITA if tax and penalty due under BMA stood paid before the notified date under BMA.
- xxi. Section 40 of BMA provides that if income from a source outside India has not been disclosed in the return of income furnished under section 139(1) of ITA or return of income has not been filed under the said section of ITA, interest shall be chargeable in accordance with the provisions of section 234A of ITA. Similarly, if advance tax has not been paid on such undisclosed foreign income in accordance with the provisions of ITA, interest shall be chargeable in accordance with the provisions of section 234B & 234C of ITA.

CHAPTER V

5. DEVELOPMENTS MADE IN INDIA

PRE AND POST BLACK MONEY ACT

5.1 ROLE OF CBDT

The Central Board of Direct Taxes has been actively involved in various measures and initiatives to combat black money. CBDT is the apex authority responsible for administering direct tax laws in the country. It operates under the Department of Revenue, Ministry of Finance, and plays a crucial role in the implementation and enforcement of direct tax laws, including the Income Tax Act and the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. The CBDT has been actively working to detect and prevent tax evasion, promote tax compliance, and curb the generation and circulation of black money in the Indian economy. Some of the key roles and responsibilities of CBDT in dealing with black money include:

- i. **Formulating Policies:**
CBDT is involved in formulating policies and laws related to direct taxes, including those aimed at curbing black money and tax evasion.
- ii. **Investigation and Enforcement:**
CBDT oversees the investigation and enforcement activities carried out by the Income Tax Department to identify cases of tax evasion and black money. This includes conducting surveys, raids, and inquiries into suspicious financial transactions.
- iii. **Information Exchange:**
CBDT facilitates the exchange of financial information with other countries to identify and track individuals holding undisclosed foreign income and assets, as part of efforts to tackle black money stashed abroad.
- iv. **Promoting Voluntary Compliance:**
CBDT encourages voluntary compliance by taxpayers through various awareness campaigns and initiatives. It also offers one-time compliance opportunities for individuals to declare undisclosed income and assets, such as the



- v. Modernization and Technology:
CBDT has been investing in modernizing tax administration and adopting technology-driven solutions to improve tax compliance and detect tax evasion more efficiently.
- vi. Legal Framework:
CBDT provides guidance and clarifications on tax laws, including those related to the taxation of black money and foreign assets. It ensures that the legal framework is robust and effective in tackling tax evasion and black money.
- vii. Collaboration:
CBDT collaborates with various agencies, both domestically and internationally, to enhance the effectiveness of measures against black money, such as cooperation with the Enforcement Directorate (ED), the Central Bureau of Investigation (CBI), and other financial intelligence units.

5.2 PRE BMA ACT, 2015 ACQUIRED ASSETS

As per section 72(c) of the Black Money Act, 2015, where any asset has been acquired prior to the commencement of the Act and no declaration under Chapter VI of the Black Money Act is made then such asset shall be deemed to have been acquired in the year in which it comes to the notice of the Assessing Officer and the provisions of the Act shall apply accordingly.

India is expected to start receiving information through Automatic Exchange of Information (AEOI) route under FATCA from USA later in the year 2015. Further, under the multilateral agreement India will start receiving information from other countries under AEOI route from 2017 onwards. As at 18th March 2015, 58 jurisdictions (including India) have committed to share information under AEOI by 2017 and 36 jurisdictions have committed to share by 2018, including jurisdictions which have beneficial tax regime. The multilateral agreement is expected to cover all the countries in the near future. The information under the AEOI will include information of controlling persons (beneficial owners) of the asset. The possibility of discovery of an undisclosed asset may arise at any time in the future; say for example, information of an immovable property can be unearthed if any utility bills/property

²² Circular13_2015.pdf. available at <https://incometaxindia.gov.in/>, last visited on July 26, 2023.



Therefore, if any information of an undisclosed foreign asset acquired earlier, say in the year 1975, for \$ 100,000 comes to the notice of an Assessing Officer later, say in the year 2020, when its value becomes, say, \$ 5 Million, the liability under the Act amounting to 120 percent of the fair market value of the asset on the valuation date may arise in the year 2020, besides prosecution and other consequences. In this case if the valuation date is in the year 2020 the amount of tax and penalty under the Act will be \$ 6 Million²³.

5.3 ACTIONS TAKEN UNDER BMA ACT, 2015

The BMA Act came into force in the year 2015. With regard to the action taken under the BMA Act, the Union Minister of State for Finance, Mr. Pankaj Chaudhary in a written reply to a question on Lok Sabha stated on February 13, 2023. The action report has been given as under²⁴:

- i. Action taken by the Income Tax Department under BMA Act, 2015
 - Total disclosures which involves undisclosed foreign income and asset
 - through one time compliance window which closed on September 30, 2015: 648.
 - Amount disclosed through one time compliance window; Rs.4,164 crore
 - Amount collected as tax and penalty in above cases: Rs.2,476 crore

Total assessment completed under BMA Act, 2015 as on 30.11.2022:

 - 394 Tax demand raised in 394 cases: Rs.15,570 crore
 - Prosecution complaints filed under BMA Act: 125

No separate State / Union Territory wise list with regard to above has been maintained by the Department
- ii. Action taken by Enforcement Directorate under BMA Act, 2015
 - When investigation has been carried out in 13 cases relating to Prevention of Money Laundering Act to predicate cases which involves violations under BMA Act, 2015 that resulted in proceeds of crime which amounted to Rs.42.57 crore and the same has been attached and seized. Three prosecution complaints are also filed for the above.

Ministry of Finance
In a total of 5 cases under S.37A of FEMA, assets to an extent of Rs 93.07 crore has been seized.

²³ Id.
²⁴
2023.

4.



- iii. Action taken with the help of International Authorities²⁵
- The following action has been taken under the BMA Act, 2015 with the help of International authorities as on May 31, 2021
 - Undisclosed income to an extent of Rs.8,465 crore has been brought within the tax ambit and a penalty of Rs.1,294 crore has been levied in HSBC cases.
 - Undisclosed income to an extent of Rs.11,010 crore has been detected in the cases of International Consortium of Investigative Journalists.
 - Undisclosed credits to an extent of Rs.20,078 crore has been detected in Panama Papers Leaks Cases.
 - Undisclosed credits to an extent of Rs.246 crore has been detected in the Paradise Papers Leaks Cases.

5.4 MEASURES TAKEN BY THE GOVERNMENT

Curbing black money has been a significant priority for various authorities in India.

Over the years, the government and related agencies have implemented several measures to tackle this issue. Some of the key measures taken by various authorities to curb black money in India include:

- i. Demonetization:

banknotes of the Mahatma Gandhi Series. The move aimed to flush out black money held in cash, curb counterfeit currency circulation, and promote digital transactions.

- ii. Special Investigation Team (SIT) on Black Money:

The Central Government has set up a Special investigation Team on Black Money in the year 2014. This Investigation Team was set up based on the decision

investigating into large amount of money which are stashed abroad by ways of

evading taxes or indulging in unlawful activities. The SIT has been headed by Justice M.B. Shah and its Vice Chairman is Justice Arijit Pasayat²⁶. The SIT has been assigned with the task on giving periodical reports about black money.

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last visited on July 25, 2023.



The government introduced various Income Declaration Schemes, such as the Income Declaration Scheme, 2016, and the Pradhan Mantri Garib Kalyan Yojana (PMGKY), which provided a one-time opportunity for individuals to disclose their undisclosed income and assets by paying taxes and penalties, thereby regularizing their status and avoiding prosecution.

- iv. **Benami Transactions (Prohibition) Act:**
The government enacted the Benami Transactions (Prohibition) Act, 1988, and amended it in 2016 to provide a more stringent framework to curb benami properties, where the property is held in the name of someone else to conceal the actual ownership.
- v. **Goods and Services Tax (GST):**
The implementation of GST has significantly reduced tax evasion opportunities by creating a unified tax structure and promoting transparency in transactions.
- vi. **Tax Information Exchange Agreements (TIEAs):**
India has signed several TIEAs with other countries to facilitate the exchange of financial information and improve the detection of tax evasion and undisclosed foreign income and assets.
- vii. **Digital Payments Promotion:**
Encouraging digital transactions and reducing cash-based transactions has been a part of the government's strategy to bring more economic activities into the formal system and reduce the circulation of black money.
- viii. **Strengthening Tax Administration:**
The authorities have been investing in technology and capacity building for tax authorities to improve their ability to detect tax evasion and track financial transactions more efficiently.

These are some of the key measures taken by various authorities in India to curb black money and promote transparency in financial transactions. The fight against black money is an ongoing process, and the government continues to implement new measures and strategies to address this issue effectively.

CONNECTION WITH

UNDISCLOSED

FOREIGN INCOME

Cryptocurrency has been a subject of interest and concern when it comes to issues related to black money, money laundering, and other related issues such as undisclosed foreign income and assets. While cryptocurrencies themselves are not inherently linked to undisclosed



foreign income, their decentralized and pseudonymous nature has raised regulatory challenges in monitoring and controlling their use in the financial system. The potential risks that revolves around the Cryptocurrency makes them to be regulated in order to reduce the possible threats of undisclosed foreign income and assets.

a. Pseudonymity and Anonymity:

Cryptocurrencies operate on blockchain technology, which provides a certain level of privacy. While transactions are recorded on the blockchain, user identities are often represented by cryptographic addresses rather than personal information. This can allow individuals to transact with a degree of pseudonymity, making it challenging for authorities to track the true identities of those involved in transactions. This makes the Indian residents to invest in more of cryptocurrencies which will make the stashing of cryptocurrencies in abroad. If this becomes unregulated by proper stringent mechanisms, cryptocurrencies will be the next name for undisclosed income and assets in the near future.

b. Cross-Border Transactions:

Cryptocurrencies enable borderless transactions, which can facilitate the movement of funds across international boundaries without the need for traditional banking channels. This characteristic can make it easier for individuals to move money in and out of countries discreetly, potentially aiding in black money-related activities.

c. Money Laundering:

Cryptocurrencies have been associated with cases of money laundering, as criminals may use them to convert illicit funds into seemingly legitimate assets by moving the funds through multiple cryptocurrency wallets or exchanges.

d. Regulatory Concerns:

The decentralized and often global nature of cryptocurrency exchanges and transactions can make it challenging for regulatory authorities to enforce anti-money laundering and know-your-customer regulations effectively. This in turn makes it very hard for the lawmakers to regulate the flow of cryprocurrencies by changing the context of undisclosed foreign income and assets into cryprocurrencies.

e. Tax Evasion:

The pseudonymity of cryptocurrencies often can potentially be exploited by individuals to hide income and assets, leading to concerns about tax evasion and non-compliance.



All the transactions which involves cryptocurrency are not indulged in illicit activities, and many legitimate use cases exist for these digital assets. Cryptocurrencies have gained popularity as a means of fast and low-cost cross-border transactions, as investment assets, and as a means of financial inclusion in areas with limited access to traditional banking.

To address the potential risks associated with cryptocurrency and black money, many countries, including India, have been working on developing regulatory frameworks to govern the use of cryptocurrencies. Governments are increasingly focusing on strengthening Anti Money Laundering and KYC measures for cryptocurrency exchanges, implementing transaction monitoring systems, and requiring proper reporting and disclosures for crypto- related activities.

As the cryptocurrency space continues to evolve, regulatory authorities worldwide are striving to strike a balance between embracing technological innovations while safeguarding against potential risks and misuse associated with black money and other illicit activities.

5.6 LOOPHOLES UNDER BMA ACT

While the Black Money Act, 2015, is a crucial piece of legislation aimed at curbing black money and undisclosed foreign income and assets, like any law, it have certain loopholes or shortcomings. If those are amended then the Act will be implemented in a more better way. The loopholes are as:

- i. The provisions of the Act and reporting requirements can be complex and burdensome for taxpayers, especially those who have undisclosed foreign income and assets. The complexity may discourage some taxpayers from voluntarily disclosing their black money.
- ii. While the Act empowers the tax authorities to conduct investigations, the process of tracking and verifying undisclosed foreign assets can be challenging, particularly when dealing with jurisdictions that have strict banking secrecy laws.
- iii. The one-time compliance window provided by the Act may have limitations in terms of its duration and the scope of disclosure. Some taxpayers may have missed the opportunity to disclose their foreign income and assets due to various reasons.
- iv. While the Act does include provisions for international cooperation and information

exchange, the effectiveness of such cooperation may be hindered by the reluctance of certain foreign jurisdictions to share financial information.



- v. Tax evaders may employ sophisticated strategies, such as layering their assets through multiple entities and using tax havens, to conceal their black money effectively.
- vi. Despite the stringent penalties prescribed under the Act, some tax evaders may still be willing to take the risk, hoping that their undisclosed foreign income and assets will remain undetected.
- vii. The Act's provision for special courts to expedite the resolution of cases related to black money is essential. However, the legal process can still be time-consuming, leading to delays in justice.
- viii. The Act primarily focuses on undisclosed foreign income and assets, potentially leaving some domestic black money sources untouched.

Addressing these loopholes and shortcomings would require a holistic approach involving legislative amendments, enhanced enforcement efforts, and greater international cooperation. The Government must continually review and update the Act to keep pace with evolving strategies used by tax evaders and to strengthen its effectiveness in tackling the black money issue effectively.

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CHAPTER VI

6. JUDICIAL PRONOUNCEMENTS UNDER BLACK MONEY ACT

6.1 IMPORTANT JUDICIAL PRONOUNCEMENTS UNDER BMA ACT, 2015

*Shrivardan Mohta v. Union of India & Ors.*²⁷
petitioner s

The brief facts of the case is HSBC bank accounts which was held by the petitioner overseas were found by the Income Tax Authorities when search and seizure was conducted at house. The petitioner stated that he inherited that overseas account from his deceased mother. With regard to the same, Assessing Officer issued notice to the petitioner for the same. The Assessing Officer concluded his proceedings by raising demands on the amount which is being held in foreign bank account. The Settlement Commission applications are also rejected. The High Court observed that the petitioner failed to disclose his foreign assets during the search and seizure and settlement commission proceedings. Only one portion of Black Money Act will not apply to a person who is proceeded under the provisions of the BMA Act is pending. However, the prosecution proceeding under BMA could still apply in this case. The High Court rejected the writ petition filed by the petitioner.

This particular decision provides the stringency on the provisions of the BMA Act, 2015 which makes it compulsory on the part of the Indian residents to disclose all the income and assets which they are holding outside India in their income tax returns. Further, this decision made a clarity that wherein income and assets has been undisclosed under several machinery provided under the Act, the provisions of the BMA Act, 2015 may be applicable to them as well²⁸.

*Addl. CIT v. Leena Gandhi Tiwari*²⁹

stringent provisions of the BMA Act can be invoked in the cases where the mistakes where of

²⁷ W.P. No. 568 of 2018 in the High Court of Calcutta

²⁸ Prosecution proceedings under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, regarding undisclosed inherited foreign bank accounts upheld, KPMG Tax Flash News 2, (2019), <https://www.in.kpmg.com>

²⁹ BMA No. 1/Mum/2022



bonafide or harmless or carelessness nature? The answer is negative to this issue. Further, the Tribunal observed that the well intended stringent laws such as BMA Act has been enacted to place a check on the economic offenders who has stashed their illegally obtained money in abroad. The Act cannot be invoked for punishing a venial breach of law by a bonafide business person. In the above case, the assessee has not reported a foreign bank account which was inherited to her from her father. The entire amount in the bank amount has been ultimately transferred to a globally reputed medical charity. This explanation by the assessee has been accepted by the AO also.

From the above case, it is made clear that the bonafide action from the side of the taxpayers must be excluded from the ambit of applying the stringent provisions of the BMA Act, 2015³⁰.

*Srinidhi Karti Chidambaram case*³¹

The taxpayers in this case had approached the High Court seeking two reliefs, the ruling of the court on these reliefs sought is summarised as under:

1) Writ of prohibition, prohibiting tax authorities from instituting and sanctioning any prosecution against the taxpayers. The HC considered the provisions of Sections 48 and 55 as well as Chapter V of BMA dealing with offences and prosecution. It was also observed that there was no material placed on record to show that there was a sanction under Section 55 or steps have been taken to initiate prosecution against the taxpayer. In view of such position, the HC decided that it cannot issue a writ of prohibition as sought by the taxpayers.

2) Direction be given to tax authorities to conclude the assessment proceedings under BMA forthwith without any delay. It was prayed that substantial details were sought and submitted by the taxpayers and that the department was delaying conclusion of proceedings and that there were multiple officers issuing notices / summons in relation to the same assets which was causing undue harassment. With a view to bring a conclusion to the same, the taxpayer sought a direction from the court that the authorities should be directed to forthwith conclude the assessment proceedings initiated under BMA.

The Court considered these arguments and held that since a limit had already been prescribed under BMA for passing an assessment order, no such direction compelling

Editor, "Black Money Act cannot be invoked over slight errors", available at <https://taxguru.in>, last visited on

the

³⁰
July 24, 2023.



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authorities to pass an order well before the stipulated time was feasible. It is pertinent to note that prosecution proceedings were indeed launched later and quashed by the High Court after considering the facts and circumstances of the case.

³²
Mr Gautam Khaitan's case

In this case, the court had in an interim order held that BMA was introduced from 1 April 2016, hence the notification (dated 1 July 2015) amending the effective date of BMA from 1 April 2016 to 1 July 2015 was retrospective and hence, ultra vires the law and thus, the tax authorities were restrained from taking any action under the BMA. This could have huge repercussions on the applicability of BMA and hence the tax authorities immediately approached the Supreme Court challenging the Delhi HC ruling. The Supreme Court considered the intention of the law as well as the fact that the amendment in dates was made to enable taxpayers to avail the One Time Disclosure Window as well as and to remove difficulties with respect to penal provisions under BMA. Supreme Court by its order, reported as [TS-616-SC-2019], held that there was no infirmity and that the Delhi HC was not right in treating the notification as ultra vires. The matter is now pending before the Delhi HC to decide on the merits of the grounds taken by the taxpayer.

*Shrivardhan Mohta case*³³ The

The Calcutta High Court dismissed a writ petition seeking a declaration that provisions of BMA must be applied prospectively and inter alia, the quashing of the sanction for the

taxpayer's prosecution under BMA. taxpayer in this case also argued that there was a double jeopardy so far as the taxpayer could have been held liable for prosecution under BMA as well as IT Act. The HC noted that the petitioner had opportunities to make a true and proper disclosure about his foreign bank accounts on two occasions after the introduction of the BMA and his failure to do so would attract prosecution under the BMA.

*Maharashtra v. Sayyed Hassan*³⁴

offence under two enactments, the offender may be prosecuted and punished under either or

State of

Court held that in this case, the Income Tax Act does not impose a punishment of imprisonment

³² TS-278-HC-2019(DEL)

³³ TS-64-HC-2019(CAL)

³⁴ (2019) 18 SCC 145



³⁵ TS-834-HC-2019(GUJ)

³⁶ TS-521-ITAT-2021(DEL)



affidavit stating he never signed any documents and did not receive any funds from this company. The Commissioner of Income Tax (Appeals) found merit in the submissions of the assessee and deleted the additions made. The Tax Department agitated this before the Tribunal and even the Tribunal upheld the appellate order. In doing so, the Tribunal also examined

number of laws including Companies Act, Prevention of Money Laundering Act, The Benami Property (Prohibition) Act, etc. and held that there was no evidence placed on record to prove that the assessee was the beneficial owner of such offshore assets. The Tribunal also held that

does not become an owner of such a bank account and that the onus is on the department to prove that the funds sought to be taxed belonged to such a taxpayer.

*Mr Yashovardhan Birla ruling*³⁷

The offshore assets were subject matter of litigation under Wealth Tax Act 1957, and there was a positive ruling in the context of Wealth Tax in case of the taxpayer.

In the present case, the Tribunal held that the provisions of BMA were not applicable in the case of Yash Birla as merely on account of his being a discretionary class beneficiary of an offshore trust, he could not have been alleged to be the owner of the assets of the trust. It was observed that the taxpayer was not a contributor to the trust structure and was not liable to be construed as sole beneficiary of the trust. It was held that the Revenue cannot collapse the offshore trust structure. It was further held that the bank account in foreign jurisdictions pertaining to offshore entities could not be treated as bank accounts of the taxpayer, even though for anti-money laundering purposes the taxpayer had been declared as a beneficial

*Mr Rashesh Manhar Bhansali ruling*³⁸

In this case, the taxpayer denied any relationship with the offshore assets under investigation to begin with and at the fag end of the BMA assessment proceedings, the taxpayer owned up the accounts, stating that these were set up on instructions of his late

father. The Tribunal has considered the factual matrix very minutely and made many observations which have culminated in the confirmation of additions.

³⁷ TS-837-ITAT-2021(Mum)

³⁸ TS-1015-ITAT-2021(Mum)



the knowledge of 'assessing officer' is the trigger and the Tribunal's finding is that "whether The Tribunal after considering the language of Section 3(1) held that asset coming to an undisclosed foreign income is in the knowledge of the Assessing Officer at any point of time or not is not the material factor; the material factor is that it should remain undisclosed in the income tax return or return of income in respect of the same is not indicates, is not a material factor.?" filed. While the investigation wing was indeed carrying out inquiries even before the point of time when the provisions of the BMA came into effect but that factor, as the above analysis of legal position



CHAPTER VII

7. CONCLUSION

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, is a significant step taken by the Indian government to address the issue of black money and undisclosed foreign assets. The Act aimed to curb tax evasion, promote transparency, and bring back unaccounted money stashed abroad. Since its introduction, the Act has had both positive and negative outcomes. On the positive side, it has increased awareness among taxpayers about the consequences of holding undisclosed foreign assets and income. It has also facilitated the identification of individuals who were previously evading taxes and brought them into the tax net. The Act's provisions for strict penalties and prosecution have acted as a deterrent to potential tax evaders.

However, there have been challenges in its implementation. Some critics argue that the Act's complexities and cumbersome procedures have made it difficult for taxpayers to comply. Additionally, cases under the Act have faced delays in the legal system, hindering swift justice and timely resolution. To improve the implementation of the Black Money Act, 2015, it is crucial to focus on education and awareness campaigns to ensure that taxpayers understand their obligations and incentives to comply voluntarily. Simplification of procedures and reducing the burden of compliance would encourage more people to disclose their foreign assets and income correctly. Strengthening enforcement and providing resources to tax authorities to effectively investigate cases related to black money is essential. Modernizing capabilities through technology and international cooperation can help track and recover undisclosed foreign assets more efficiently.

Overall, the Black Money Act, 2015, is an important tool in the government's efforts to combat black money and tax evasion. To enhance its effectiveness, a continuous review of its provisions and regular updates are necessary to adapt to changing economic and technological circumstances. A comprehensive approach that addresses both the legal framework and underlying causes of black money generation will be crucial in achieving the Act's intended objectives and ensuring a more transparent and compliant financial system.

8. FINDINGS

- i. Provisions of Income Tax Act are relevant



From my research, it is found that BMA Act, 2015 is only applicable to the undisclosed foreign income and assets. With regard to domestic black money, the provisions of Income Tax Act are made relevant.

- ii. Stringent BMA Act
The BMA Act, 2015 is stringent enough to curb the black money which has been stashed abroad. The provisions of the BMA Act, 2015 made it clear to disclose the foreign income and assets in every assessment year to escape from the more penalty which might be inflicted, if he fails to do so.
- iii. BMA Act and Income Tax Act go hand in hand
Both the BMA Act and Income Tax Act are synonymous in curbing black money. But there are provisions in Income Tax Act which has not been made in par with BMA Act. For example: the Income Tax Act is silent on the taxation ambit of undisclosed foreign income under the provisions of Income Tax Act
- iv. Statistics on recovered Black Money
Various statistics released by the CBDT and other relevant authorities reveals that many crores of money which were stashed abroad were recovered by way of penalty or taxing the foreign income and assets.
- v. Need for more judicial interpretation
It has been seven years since the BMA Act has been enacted by the Indian Parliament. However, the particular Act needs more interpretation and judicial validity in certain provisions and amendments. For example: the retrospective effect of certain provisions, etc.

SUGGESTIONS

- i. Another one time voluntary compliance window may be opened by the Department. With this, the assesseees who have missed the earlier one time compliance window will make their voluntary disclosure of undisclosed foreign income and asset. Through this, their tax burden will be reduced.
- ii. There are still more countries which are not ready to share the names of the Indian residents who have deposited their income in their country. To address this, strengthening international cooperation and information exchange with other countries to track and recover black money stashed abroad has to be made by the International Agencies in this regard.

- iii. Unlike the general perception on data leaks, not all names and entities appearing in these leaks are tainted. It is very much possible that the structures as appearing in the so called leaked or tainted / confidential information would be completely legal structures compliant with all regulatory framework, reporting requirements, etc. Even the websites on which leaked information is uploaded and made available for public access.
- iv. The constitutional validity of provisions of BMA Act has not been stated in any of the rulings of the Court. This give raise to questions that provisions of BMA Act, 2015 are in violative of Article 20(1) (eg: it has retrospective application and criminal sanctions) and Article 20(2) (eg: a taxpayer may be liable under BMA as well as IT Act for certain offences for instance incorrect return filings as discussed earlier in this article) of the Constitution of India. This has to be addressed by the Indian judiciary.



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