Contents

| PAGE |
|-------------|
| I-5 |
| <i>I</i> -7 |
| I-11 |
| |

<u>1</u> Evolution of the concept of benami Transaction in India - An overview

| 1.1 | Introduction | 1 |
|-----|---|---|
| 1.2 | Meaning of the term 'Benami' | 1 |
| 1.3 | Codification of law by legislation - Various stages | 1 |
| 1.4 | Why amendment of Principal Act, 1988 - Why not new law? | 2 |

<u>2</u> Concept of 'Benami' - (Principles evolved in some landmark judgments)

| 2.1 | Introduction | 4 |
|-----|---|---|
| 2.2 | Some of landmark cases | 4 |
| 2.3 | Summing up of important principles enunciated by courts | 9 |

<u>3</u>

SHAM TRANSACTION AND ITS CHARACTERISTICS -CHANGES EFFECTED IN PBPT ACT, 1988

| 3.1 | Introduction | 11 |
|-----|---|----|
| 3.2 | Sham transactions - Its characteristics | 11 |

I-15

| | | PAGE |
|------|--|------|
| 3.3 | A sham transaction is not a benami transaction (landmark decisions) | 11 |
| 3.4 | Scope of sham transaction under PBPT Act, 1988 | 13 |
| | <u>4</u> Comparative Table of Various Provisions of the Principal Act, 1988 and the PBPT Act, 1988 - At a glance | |
| 4.1 | Introduction | 15 |
| 4.2 | Table of various provisions | 15 |
| | <u>5</u> Definition of 'Property' and its scope [Section 2(c) of The Principal Act, 1988 and section 2(26) of The PBPT Act, 1988] | |
| 5.1 | Introduction | 25 |
| 5.2 | Meaning of 'Property' | 25 |
| 5.3 | Different shades of meaning of 'Property' (As judicially defined) | 26 |
| 5.4 | Enlarged meaning of 'Property' in the PBPT Act, 1988 | 27 |
| 5.5 | Movable property - Meaning in various statutes | 28 |
| 5.6 | Immovable property - Meaning in various statutes | 29 |
| 5.7 | Tangible property | 30 |
| 5.8 | Intangible property | 30 |
| 5.9 | Corporeal property | 30 |
| 5.10 | Incorporeal property | 30 |
| 5.11 | Property rights | 31 |
| 5.12 | Interest in property | 31 |
| 5.13 | Legal documents or instruments evidencing title to and in- terest in the property | 32 |
| 5.14 | Instrument | 32 |
| 5.15 | Attestation | 32 |
| 5.16 | Actionable claim | 33 |
| 5.17 | Fair market value | 33 |
| 5.18 | 'If sold in the open market' - Connotation of | 33 |

| | | PAGE |
|------|---|------|
| 5.19 | Land | 33 |
| 5.20 | Right title or interest | 34 |
| 5.21 | Registration of a document | 34 |
| 5.22 | License | 35 |
| 5.23 | Evidentiary value of unregistered documents | 35 |
| 5.24 | 'Asset' and 'Capital asset' | 36 |
| 5.25 | 'Assets of any kind' and 'Any property' | 36 |
| | | |

<u>6</u>

BENAMI PROPERTY [SECTION 2(8) OF THE PBPT ACT, 1988]

| 6.1 | Introduction | 37 |
|------|--|----|
| 6.2 | 'Benami Property' and 'Proceeds' of Benami Property | 37 |
| 6.3 | Whether benami property only includes immovable property? | 37 |
| 6.4 | Situs of the benami property | 38 |
| 6.5 | Legal position regarding an undervalued property | 38 |
| 6.6 | Part of the property - Whether can be regarded as 'Benami Property'? | 39 |
| 6.7 | Benami property held by joint owners | 39 |
| 6.8 | Non-identification of benami property | 39 |
| 6.9 | Non-Identification of 'Benami Property' - Effect on issue of Show Cause Notice (SCN) | 39 |
| 6.10 | Proceeds of benami property deposited in bank | 40 |
| 6.11 | Cash deposits in the bank - Source of money | 40 |
| 6.12 | Property acquired out of income from undisclosed source in ones own name | 40 |
| 6.13 | Property acquired by a third party from the benamidar with- out having any knowledge about the nature of the property [Section 27] | 41 |

<u>7</u>

'BENAMI TRANSACTION' - ITS SCOPE [SECTION 2(a) OF PRINCIPAL ACT, 1988 AND SECTION 2(9) OF THE PBPT ACT, 1988]

| 7.1 | Introduction | 42 |
|-----|--|----|
| 7.2 | Key definitions relating to Benami transaction | 42 |

| 7.3 | Scope of <i>"Benami</i> Transaction" in the Principal Act, 1988 and in the PBPT Act, 1988 | 43 |
|------|--|----|
| 7.4 | Essential ingredients of <i>Benami</i> transaction under section 2(9)(A) of the PBPT Act, 1988 - At a glance | 44 |
| 7.5 | Meaning of some key expressions in section 2(9)(A) of the PBPT Act, 1988 | 46 |
| 7.6 | 'Transaction' | 46 |
| 7.7 | 'Arrangement' | 46 |
| 7.8 | 'Consideration' | 47 |
| 7.9 | 'Paid or Provided' | 49 |
| 7.10 | 'Hold' - Meaning of | 50 |
| 7.11 | 'Proceeds' | 50 |
| 7.12 | 'Conversion' | 51 |
| 7.13 | 'Benefit' | 51 |
| 7.14 | 'Direct or indirect benefit' | 51 |
| 7.15 | 'Immediate or future benefit' | 52 |
| 7.16 | 'Benamidar' (ostensible owner) | 53 |
| 7.17 | 'Beneficial owner' (real owner) | 53 |
| 7.18 | 'Fictitious person' | 54 |
| 7.19 | 'Transferor' | 54 |
| 7.20 | 'Transferred to' or 'held by' | 54 |
| 7.21 | 'Possession' | 55 |
| 7.22 | A genuine commercial arrangement - Not a <i>benami</i> transaction | 55 |
| 7.23 | Acquisition of property - Finance from bank | 55 |
| 7.24 | Acquisition of property in one's own name with genuine unsecured loan | 56 |
| 7.25 | Utilisation of genuine unsecured loan to acquire a property in the name of another person | 56 |
| 7.26 | Bona fide transactions and applicability of benami Law | 56 |
| 7.27 | Property acquired in the name of a relation without enjoying any benefit from the property | 57 |
| 7.28 | Treatment of cash <i>vis-a-vis</i> Benami Transaction - Various situations | 57 |

| | | PAGE |
|------|---|------|
| 7.29 | Cash kept in locker - Benami Transaction [ref: Chapter 10] | 59 |
| 7.30 | Unclaimed Cash [no claimant] | 59 |
| 7.31 | Cash deposits in bank in post - Demonetization period | 60 |
| 7.32 | Cash deposited in the bank accounts of a relative | 61 |
| 7.33 | A mere custodian of a movable property - Benami transaction | 61 |
| 7.34 | On - Money received in a property transaction by a real estate dealer | 61 |
| 7.35 | On-Money paid in purchase of property by the transferee | 62 |
| 7.36 | Share Capital and share premium - Benami transaction | 62 |
| 7.37 | Company fails to produce the shareholder | 62 |
| 7.38 | Purchase of property by the company out of its share capi- tal - <i>Benami</i> Transaction | 63 |
| 7.39 | Unsubstantiated cash credit and Benami Transaction | 63 |
| 7.40 | Agreed assessment and cash credit under section 68 | 63 |
| 7.41 | Unexplained expenditure under section 69C of the Income-tax Act, 1961 - <i>Benami</i> transaction | 64 |
| 7.42 | Source of payment of consideration-out of disclosed and undisclosed source - Impact on <i>Benami</i> transaction | 64 |
| 7.43 | Bogus purchase (accommodation entry) | 65 |
| 7.44 | 'Gift' - <i>Benami</i> transaction | 65 |
| 7.45 | 'Exchange' - Benami transaction | 66 |
| 7.46 | 'Relinquishment' - Benami Transaction | 66 |
| 7.47 | Application of section 64 of Income-tax Act, 1961 - <i>Benami</i> transaction | 66 |
| 7.48 | Acquisition of property out of mixed sources in the name of spouse or in the name of ones child - <i>Benami</i> transaction | 67 |
| 7.49 | Acquisition of property in the names of relations | 67 |
| 7.50 | Splitting of deposits by a retired person in multiple names - Effect of benami law | 68 |
| 7.51 | Share trading in stock exchange | 68 |
| 7.52 | Exclusion of <i>bona fide</i> transactions from the purview of <i>benami</i> transaction | 68 |

PAGE

EXCEPTIONS TO OPERATION OF SECTION 2(9)(A) OF PBPT ACT, 1988 DEFINING 'BENAMI TRANSACTION'

| 8.1 | Introduction | 70 |
|------|--|----|
| 8.2 | Why exceptions? | 70 |
| 8.3 | Exception to clause (A) | 71 |
| 8.4 | Exceptions and exclusions under section 2(9)(A), (B), (C) and (D) of the PBPT Act, 1988 - At a glance | 73 |
| 8.5 | Non-application of exceptions to certain relatives under section 2(9)(A) of PBPT Act, 1988 | 76 |
| 8.6 | Holding of property in the name of wife-Changes effected in the PBPT Act, 1988 | 77 |
| 8.7 | Import of some key expressions | 77 |
| 8.8 | "Known sources" | 77 |
| 8.9 | Whether 'Streedhan' could be a 'known source'? | 78 |
| 8.10 | Hindu undivided family | 79 |
| 8.11 | Child, step child and illegitimate child | 80 |
| 8.12 | Lineal descendant and lineal ascendant | 81 |
| 8.13 | Cousin | 81 |
| 8.14 | Property falling under section 53A of TP Act [<i>Explanation</i> to section 2(9) of the PBPT Act, 1988] | 81 |
| 8.15 | Joint ownership | 82 |
| 8.16 | Fiduciary capacity and application of <i>benami</i> law [Section 2(9)(A)(<i>ii</i>) of PBPT Act, 1988] | 82 |
| 8.17 | Trustee | 83 |
| 8.18 | 'Author of the trust': 'Trustee': 'Beneficiary': 'Trust-property': 'Beneficial interest': 'Instrument of trust' | 83 |
| 8.19 | Firm and Partner | 84 |
| 8.20 | Burden of proof of fiduciary capacity | 84 |
| 8.21 | Holding of property by the firm in the name of the partner | 84 |
| 8.22 | Holding of property in the name of the director of a company | 84 |

<u>9</u>

EXCLUSIVE CATEGORIES OF BENAMI TRANSACTIONS STIPULATED IN CLAUSE (b), CLAUSE (c) AND CLAUSE (d) TO SECTION 2(9) OF THE PBPT ACT, 1988

| 9.1 | Introduction | 86 |
|------|---|----|
| 9.2 | Exclusive categories of cases | 86 |
| 9.3 | Transaction covered in clause (b) | 87 |
| 9.4 | Transactions covered in clause (<i>c</i>) | 89 |
| 9.5 | 'Not aware of and denies his knowledge' - Impact on benami proceeding | 92 |
| 9.6 | Transactions covered in clause (d) | 92 |
| 9.7 | Cash and jewellery in transit | 93 |
| 9.8 | Application of section 110 of Evidence Act - Benami transaction | 93 |
| 9.9 | Jewellery found in course of search and benami transaction | 94 |
| 9.10 | Dummy director of a company and <i>benami</i> transaction | 94 |
| 9.11 | Anonymous donation | 94 |

10

BENAMIDAR (OSTENSIBLE OWNER) v. BENEFICIAL OWNER (REAL OWNER) [SECTION 2(10) AND 2(12) OF THE PBPT ACT, 1988]

| 10.1 | Introduction | 95 |
|-------|---|-----|
| 10.2 | Benamidar (ostensible owner) | 95 |
| 10.3 | Attributes of ostensible ownership | 96 |
| 10.4 | Attributes of beneficial ownership | 97 |
| 10.5 | Source of purchase consideration of <i>benami</i> property - Its implication | 97 |
| 10.6 | Consideration paid out of explained sources by the beneficial owner - Effect of | 98 |
| 10.7 | Taxation of real owner under Income-tax law and its relevance under benami law | 98 |
| 10.8 | Case of a mere license holder | 98 |
| 10.9 | Non-genuine firm and its assessment | 99 |
| 10.10 | Source of income of the <i>benamidar</i> | 100 |
| | | |

| | | PAGE |
|-------|---|------|
| 10.11 | Ignorance about real state of affairs by the benamidar | 100 |
| 10.12 | Source of income of the <i>benamidar</i> and its relevance | 101 |
| 10.13 | Liquor business-assessment in the hands of license holder - A different view | 101 |
| 10.14 | Common partners in the firms | 101 |
| 10.15 | Possession and enjoyment | 102 |
| 10.16 | Possession of the property - Impact on <i>benami</i> transaction | 102 |
| 10.17 | Relationship with managing partner | 103 |
| 10.18 | Joint ownership | 103 |
| 10.19 | Transaction between a company and firm belonging to the same group-test of commercial transaction | 104 |
| 10.20 | Evidences collected by AO cannot be brushed aside in a benami proceeding | 104 |
| 10.21 | Summing up of the principles | 105 |

<u>11</u>

'TRANSFER' UNDER THE PBPT ACT, 1988 & OTHER ALLIED CONCEPTS [SECTION 2(29) & SECTION 57 OF THE PBPT ACT, 1988]

| 11.1 | Introduction | 106 |
|-------|--|-----|
| 11.2 | Transfer [Section 2(29) of the PBPT Act, 1988] | 106 |
| 11.3 | Meaning of the word 'transfer' | 106 |
| 11.4 | Sale - Its attributes of under TP Act and benami law | 107 |
| 11.5 | Contract for sale of property | 109 |
| 11.6 | Agreement of sale of immovable property | 109 |
| 11.7 | Movable property and sale thereof | 110 |
| 11.8 | Exchange and sale | 111 |
| 11.9 | Gift and sale | 112 |
| 11.10 | Lease | 112 |
| 11.11 | Will and transfer | 113 |
| 11.12 | Transfer of right, title and possession | 113 |
| 11.13 | Lien | 114 |
| 11.14 | Power of Attorney Transfer (POA) | 114 |
| | | |

- **11.15** Transfer of immovable properties [landmark judgment in *115* Suraj Lamp's case]
- **11.16** Transfer of property to be *null* and *void* [section 57 of PBPT *116* Act, 1988]

12

CONSEQUENCES OF ENTERING INTO BENAMI TRANSACTIONS-ASPECTS OF DEFENCE [SECTION 3, SECTION 4 AND SECTION 5 OF THE PRINCIPAL ACT, 1988 AND SECTION 3, SECTION 4, SECTION 5 AND SECTION 6 OF THE PBPT ACT, 1988]

| Introduction | 117 |
|--|--|
| Consequences of entering into <i>benami</i> transactions - Principal Act, 1988 and the PBPT Act, 1988 | 117 |
| Essential aspects of section 3, section 4 and section 5 of the Principal Act, 1988 and section 3, section 4, section 5 and section 6 of the PBPT Act, 1988 | 119 |
| Exceptions to operation of section 4 of the Principal Act, 1988 <i>vis-a-vis</i> the section 2(9)(A) of the PBPT Act, 1988 | 120 |
| Objectives behind provisions of section 4 of the Principal Act, 1988 | 121 |
| Conjoint reading of section 3 and section 4 of the Principal Act - A requirement | 122 |
| Section 4 and its application to rights of the third parties - Sham transaction | 122 |
| Sections 3 and 4 of the PBPT Act, 1988 - Burden of proof | 123 |
| Whether provisions of section 3 of the Principal Act, 1988 is declaratory and can have retrospective operation? | 123 |
| Scope of section 4 of Principal Act, 1988 - Aspects of defence-judicial precedents | 124 |
| Purchase of property by any person in the names of son or married daughter - Effect of [Principal Act, 1988] | 125 |
| Section 5 of the PBPT Act, 1988 - Property held benami liable to confiscation | 126 |
| Section 6 of the PBPT Act, 1988 - Prohibition on re-transfer of property by <i>benamidar</i> - Effect of | 126 |
| Retrospective operation of section 4 of the Principal Act, 1988 (aspects of defence) | 127 |
| | Consequences of entering into <i>benami</i> transactions - Principal Act, 1988 and the PBPT Act, 1988 Essential aspects of section 3, section 4 and section 5 of the Principal Act, 1988 and section 3, section 4, section 5 and section 6 of the PBPT Act, 1988 Exceptions to operation of section 4 of the Principal Act, 1988 <i>vis-a-vis</i> the section 2(9)(A) of the PBPT Act, 1988 Objectives behind provisions of section 4 of the Principal Act, 1988 Conjoint reading of section 3 and section 4 of the Principal Act, 1988 Conjoint reading of section 5 and section 4 of the Principal Act - A requirement Section 4 and its application to rights of the third parties - Sham transaction Sections 3 and 4 of the PBPT Act, 1988 - Burden of proof Whether provisions of section 3 of the Principal Act, 1988 is declaratory and can have retrospective operation? Scope of section 4 of Principal Act, 1988 - Aspects of defe- nce-judicial precedents Purchase of property by any person in the names of son or married daughter - Effect of [Principal Act, 1988] Section 5 of the PBPT Act, 1988 - Property held benami liable to confiscation Section 6 of the PBPT Act, 1988 - Prohibition on re-transfer of property by <i>benamidar</i> - Effect of Retrospective operation of section 4 of the Principal Act, |

| T- | 2 | 4 |
|----|---|---|
| | ~ | т |

| | | PAGE |
|-------|--|------|
| 12.15 | Meaning of some key expressions in PBPT Act, 1988 | 128 |
| 12.16 | 'Enter into' | 129 |
| 12.17 | 'Any' | 129 |
| 12.18 | 'Suit' | 129 |
| 12.19 | 'Action' | 129 |
| 12.20 | 'Claim' | 129 |
| 12.21 | 'Lie' | 129 |
| 12.22 | 'Hold' | 130 |
| 12.23 | Chapters 4 & 3 after Apex Court's decision in <i>Ganpati Deal-</i> com's case | 130 |

<u>13</u>

POWERS OF AUTHORITIES TO CONDUCT ENQUIRY [SECTIONS 18, 19, 20, 21, 22, 23 OF THE PBPT ACT, 1988]

| Authorities [Section 18] | 131 |
|---|--|
| Power of authorities [Section 19] | 132 |
| Certain officers to assist in enquiry [Section 20] | 132 |
| Power to call for information [Section 21] | 133 |
| Power of the authority to impound documents [Section 22] | 133 |
| Powers of authority to conduct enquiry etc. [Section 23] | 133 |
| Powers of IO to impound books while exercising the powers under section 23 | 134 |
| Detection and identification of <i>benami</i> property | 134 |
| Informers | 135 |
| Whether an inspector of income-tax is an authority under PBPT Act, 1988? | 135 |
| Whether all assistant/Deputy Commissioner can initiate a proceeding under section 24 of the PBPT Act, 1988? | 136 |
| | Power of authorities [Section 19] Certain officers to assist in enquiry [Section 20] Power to call for information [Section 21] Power of the authority to impound documents [Section 22] Powers of authority to conduct enquiry etc. [Section 23] Powers of IO to impound books while exercising the powers under section 23 Detection and identification of <i>benami</i> property Informers Whether an inspector of income-tax is an authority under PBPT Act, 1988? Whether all assistant/Deputy Commissioner can initiate a |

<u>14</u>

POWERS OF AUTHORITIES [ISSUE OF SUMMONS UNDER SECTION 19 OF PBPT ACT, 1988]

| 14.1 | Introduction | 137 |
|------|----------------------------------|-----|
| 14.2 | Statutory framework [Section 19] | 137 |

| | | PAGE | | |
|-------|--|------|--|--|
| 14.3 | 'For the purposes of the act' - Connotation of | 138 | | |
| 14.4 | 'While trying a suit' - Connotation of | 138 | | |
| 14.5 | Meaning of 'proceeding' | 139 | | |
| 14.6 | Meaning of 'pending' | 140 | | |
| 14.7 | Proceeding must relate to a direct but not a related proceeding | 140 | | |
| 14.8 | Is investigation a proceeding? | 140 | | |
| 14.9 | Application of mind before issue of summons | 140 | | |
| 14.10 | Issue of summons for production of 'all' documents | 141 | | |
| 14.11 | No right of silence - Article 20 of the constitution of India | 142 | | |
| 14.12 | Refusal to answer questions - Section 132 of the Indian Evidence Act | 142 | | |
| 14.13 | Statement recorded by a person not competent to record - Evidentiary value | 142 | | |
| 14.14 | Issue a warrant of arrest against a person who intentionally avoids service of summons - Rule $10(3)$ of order XVI of C.P.C. | 142 | | |
| 14.15 | Can the authorized representative be present and assist the witness in course of giving evidence? | 143 | | |
| | <u>15</u> | | | |
| | POWER TO IMPOUND DOCUMENTS [SECTION 22 OF PBPT ACT, 1988] | | | |

| 15.1 | Introduction | 144 |
|------|--|-----|
| 15.2 | Salient features of the provision [Section 22] | 144 |

<u>16</u>

ISSUE OF SHOW CAUSE NOTICE (SCN) AND PROVISIONAL ATTACHMENT [SECTION 24 OF THE PBPT ACT, 1988]

| 16.1 | Introduction | 146 |
|------|--|-----|
| 16.2 | 'Cause of action' - Exercise of jurisdiction by BPU | 146 |
| 16.3 | Show cause notice - Importance of | 147 |
| 16.4 | Issue of show cause notice under section 24 - Essential requirements | 148 |
| 16.5 | 'Reasons to believe' - Its attributes | 149 |

I-25

| 16.6 | Need for recording satisfaction - Finance Minister's clari- fication | 151 |
|-------|--|-----|
| 16.7 | 'Material' - Import of | 151 |
| 16.8 | Information and material | 152 |
| 16.9 | Tangible material - Basis of show cause notice | 152 |
| 16.10 | Recording of reasons and principles of natural justice | 153 |
| 16.11 | Whether initial satisfaction or an order can be improved? | 154 |
| 16.12 | 'Reasons to believe' under section 147 of Income-tax Act, 1961 and under section 24 of the PBPT Act, 1988 | 154 |
| 16.13 | Rules of natural justice and cross examination at the stage of issuance of notice under section 24(1) | 155 |
| 16.14 | Reasonsrecorded-Contradictionsorinconsistenciesoffacts | 156 |
| 16.15 | Borrowed satisfaction - Basis of show-cause notice | 156 |
| 16.16 | Statement recorded by another authority - Whether could be the sole basis for initiation of proceeding under section 24? | 156 |
| 16.17 | Asking for reasons recorded for initiation of proceeding under section 24 | 156 |
| 16.18 | Identification of <i>benami</i> property - A prior requirement before issue of SCN | 157 |
| 16.19 | Property should be held by the <i>benamidar</i> as on the date of SCN | 157 |
| 16.20 | Fate of <i>benami</i> property transferred after receipt of notice under section 24(1) of PBPT Act, 1988 | 158 |
| 16.21 | Nature of transaction (demonetization period) - Issue of SCN | 158 |
| 16.22 | A <i>Prima facie</i> case of <i>benami</i> transaction should be brought out in the SCN [Section 2(9) of PBPT Act, 1988] | 158 |
| 16.23 | Derivation of benefit - Satisfaction note | 159 |
| 16.24 | Information collected from sub-register's office-basis for initiation of proceeding | 159 |
| 16.25 | Evidence to be gathered before issue of SCN $u/s 24(3)$ | 159 |
| 16.26 | Mere assumption of some non-existent facts - Issue of SCN | 160 |
| 16.27 | Violation of statutory requirement of section 24(1) - Effect of | 161 |
| 16.28 | Every cash transaction cannot take the character of a <i>benami</i> transaction | 162 |

PAGE

| 16.29 | 'Consideration' from legitimate and known source - Issue of SCN | 163 |
|-------|--|-----|
| 16.30 | Regular commercial transaction - Whether benami? | 164 |
| 16.31 | Re-initiation of fresh proceeding under section 24(1) - Validity | 165 |
| 16.32 | Transfer of property void after issue of notice under section 24(1) of PBPT Act, 1988 - Section 57 of the PBPT Act, 1988 | 165 |
| 16.33 | Re-issue of SCN after the adjudicating authority passes the order holding the property as not a <i>benami</i> property | 166 |
| 16.34 | Whether adjudicating authority has power to remand the case to IO for issue of a SCN afresh? | 166 |
| 16.35 | Principle of <i>res judicata</i> -Reissue of notice under section 24(1) | 166 |
| 16.36 | Failure to draw up the <i>statement of the case</i> within 15 days - Effect on provisional attachment | 167 |
| 16.37 | Rules of procedure - Non-observance of | 167 |
| 16.38 | Exercise of power - Its scope and limitation | 168 |
| 16.39 | Matters relevant, partly irrelevant and neutral evidence - Evaluation of | 168 |
| 16.40 | Writ jurisdiction - Invocation of | 168 |
| 16.41 | Initiation of proceeding after considerable of lapse of time | 169 |

<u>17</u>

PROVISIONAL ATTACHMENT [SECTION 24(3), 24(4) AND 24(5) OF THE PBPT ACT, 1988]

| 17.1 | Introduction | 170 |
|------|---|-----|
| 17.2 | Provisional attachment - Various stages | 170 |
| 17.3 | Exclusion of the period of limitation by Finance Act, 2019 | 172 |
| 17.4 | Issue of provisional attachment under section 24(3) statu- tory requirements | 172 |
| 17.5 | Property acquired prior to coming into force of PBPT Act, 1988 - Effect of | 173 |
| 17.6 | Cancellation of purchase order - Provisional attachment | 173 |
| 17.7 | Provisional attachment under section 24(3) should follow show cause notice under section 24(1) | 174 |
| 17.8 | Scope of provisional attachment - Madras High Court's view | 174 |

DACE

176

178

| | | | | | TAUL |
|-----------------------------------|----------|----------|------|---------|------|
| Can adjudicating authority confin | rmingthe | eprovisi | onal | attach- | 174 |

ment as an interim measure and direct the IO for further enquiry [Section 26]17.10 Provisional attachment under section 281B of Income-tax 175

Act, 1961 and its applicability to benami law

| 1 | 7. | 1 | 1 | 'Opin | ion' | - N | leaning | of |
|---|----|---|---|-------|------|-------|----------|-----------|
| - | | | | Opin | IUII | - IV. | icannig. | UI |

17.9

- **17.12** Procedure of attachment Rule 5 of the PBPT Rules, 2016 *177* read with second schedule of the Income-tax Act, 1961 (immovable property)
- **17.13** Second schedule of the Income-tax Act, 1961 (immovable 177 property)
- **17.14** Filing of writ against provisional attachment

<u>18</u>

ATTACHMENT, ADJUDICATION AND CONFISCATION [SECTIONS 24, 26, 27, 28, 29, 30 TO 48, 49, 50 TO 52 & SECTION 66 OF THE PBPT ACT, 1988]

| 18.1 | Introduction | 179 |
|-------|--|-----|
| 18.2 | Process of adjudication | 179 |
| 18.3 | Drawing of statement of the case - Reference to adjudicating authority [Section 24(5)] | 180 |
| 18.4 | Adjudication of <i>benami</i> property by the adjudicating auth- ority [Sections 26 and 27] | 180 |
| 18.5 | Need for comprehensive reply by the affected party | 181 |
| 18.6 | Order of adjudicating authority [Section 26] | 182 |
| 18.7 | Show-cause notice issued by the adjudicating authority - Whether an 'order' and appealable? | 183 |
| 18.8 | Power of remand by the adjudicating authority | 183 |
| 18.9 | Order of confiscation, vesting of <i>benami</i> property and con- sequences [Section 27] | 183 |
| 18.10 | Confiscation of the property [Rule 6 of PBPT Rules, 2016] | 184 |
| 18.11 | Role of the administrator under PBPT Act, 1988 [Sections 28 & 29] | 185 |
| 18.12 | Management of confiscated property [Sections 28 & 29 of PBPT Act, 1988 read with Rule 8 of PBPT Rules, 2016] | 185 |

| | | PAGE |
|-------|---|------|
| 18.13 | Disposal of the confiscated property [Rule 9 of PBPT Rules, 2016] | 186 |
| 18.14 | Attachment and confiscation | 187 |
| 18.15 | Multi-story building and confiscation of <i>benami</i> property [Section 26(4)] | 187 |
| 18.16 | Protection to a <i>bona fide</i> purchaser [Section 27(2) of PBPT Act, 1988] | 187 |
| 18.17 | Communication of the order | 188 |
| 18.18 | Principles of natural justice | 188 |
| 18.19 | Violation of principles of natural justice - Effect on order | 189 |
| 18.20 | Appeal against the order of adjudicating authority before appellate tribunal [Section 46 of PBPT Act, 1988 read with rule 10 of PBPT Rules, 2016] | 189 |
| 18.21 | Procedure of filing appeal [Section 46 read with rule 10 of PBPT Rules, 2016] | 191 |
| 18.22 | Powers of appellate tribunal [Section 40 of the PBPT Act, 1988] | 191 |
| 18.23 | Constitution of bench - Discretion of chairperson | 192 |
| 18.24 | Appellate Tribunal's power while deciding the appeal [Section 46(4) of PBPT Act, 1988] | 192 |
| 18.25 | Condonation of delay for filing appeal before tribunal [Section 46(2) of PBPT Act, 1988] - Sufficient cause | 193 |
| 18.26 | Rectification of mistake [Section 47] | 193 |
| 18.27 | Right to representation before the appellate tribunal [Section 48] | 194 |
| 18.28 | Provisions of Civil Procedure Code - Applicability [Section 40 of the PBPT Act, 1988] | 194 |
| 18.29 | Jurisdiction of the civil court barred [Section 45 of the PBPT Act, 1988] | 195 |
| 18.30 | Appeal to High Court [Section 49 of the PBPT Act, 1988] | 195 |
| 18.31 | What is substantial question of law? | 196 |
| 18.32 | Writ jurisdiction - Various aspects | 197 |
| 18.33 | Proceedings etc. against legal representative [Section 66 of the PBPT Act, 1988] | 198 |
| 18.34 | Whether a show cause notice issued under section 26(3) is an appealable order before appellate tribunal? | 198 |

PAGE

SPECIAL COURT - OFFENCE AND PROSECUTION [SECTIONS 50 TO 55, 62, 64 AND SECTION 2(16) OF THE PBPT ACT, 1988]

| 19.1 | Introduction | 199 |
|--------|---|-----|
| 19.2 | 'Offence' - Meaning of | 199 |
| 19.3 | 'Prosecution' - Meaning of | 200 |
| 19.4 | 'Cause of action' - Meaning of | 200 |
| 19.5 | 'Complaint' - What should it contain? | 201 |
| 19.6 | Cognizance of an offence - What it connotes? | 201 |
| 19.7 | Special court - Its constitution and function [Sections 50, 51, 52 & 2(28) of the PBPT Act, 1988] | 201 |
| 19.8 | Difference between penalty and prosecution | 202 |
| 19.9 | Should prosecution proceeding await till the decision by the appellate tribunal? | 203 |
| 19.10 | Penalty for <i>benami</i> transaction [Section 53 of the PBPT Act, 1988] | 203 |
| 19.11 | Scope of confiscation and prosecution | 204 |
| 19.12 | Persons coming under section 53 of the PBPT Act, 1988 | 204 |
| 19.13 | 'Abet' - Meaning of | 204 |
| 19.14 | Punishment under Principal Act, 1988 and the PBPT Act, 1988 | 206 |
| 19.15 | 'Fair market value' [Section 2(16) of the PBPT Act, 1988] | 206 |
| 19.16 | Confiscation of <i>benami</i> property under section 5 and prose- cution under Chapter VII of the PBPT Act, 1988 | 208 |
| 19.17 | Offences by companies [Section 62 of the PBPT Act, 1988] | 208 |
| 19.18 | Penalty for false information [Section 54 of the PBPT Act, 1988] | 209 |
| 19.19 | Previous sanction for launching prosecution [Section 55 of the PBPT Act, 1988] | 209 |
| 19.20 | Release of confiscated property and compensation | 210 |
| 19. 21 | Penalty for non-compliance to notices or furnish information [Section 54A of PBPT Act, 1988 with effect from 1-9-2019] | 210 |
| 19.22 | Proof of entries in records and documents [Section 54B with effect from 1-9-2019] | 211 |
| 19.23 | 'Record' - Meaning of | 211 |

| | | PAGE |
|-------|--|------|
| 19.24 | Notings in loose slips - Whether constitutes record? | 211 |
| 19.25 | 'Document' - Meaning of | 211 |
| 19.26 | 'Double jeopardy' - Its applicability under benami law | 212 |
| 19.27 | Mens rea | 212 |
| 19.28 | Presumption of culpable mental state - Benami law | 213 |
| 19.29 | Nature of offence | 213 |
| 19.30 | Compounding of offences | 213 |

<u>20</u>

ISSUE AND SERVICE OF NOTICE AND COMMUNICATION OF ORDER [SECTIONS 25 AND 63 OF THE PBPT ACT, 1988 & ORDER V OF CIVIL PROCEDURE CODE, 1908]

| 20.1 | Introduction | 214 |
|-------|--|-----|
| 20.1 | Introduction | 217 |
| 20.2 | Statutory framework of section 25 of the PBPT Act, 1988 | 214 |
| 20.3 | Procedure for issue and service of notice - Code of Civil Procedure (Order V of Civil Procedure Code, 1908) | 215 |
| 20.4 | Section 27 of General Clauses Act, 1987 - Service of notice | 215 |
| 20.5 | Service through e-mail and whatsapp | 216 |
| 20.6 | Service on non-residents with no agent in India | 216 |
| 20.7 | 'Issue' and 'service' of notices | 216 |
| 20.8 | Date of signature of the order - Significance of | 217 |
| 20.9 | Notice etc. not to be invalid on certain grounds [Section 63 of PBPT Act, 1988] | 218 |
| 20.10 | Judicial precedents - Service of summons/notices | 218 |
| 20.11 | Participation in the proceeding and waiver of jurisdiction | 220 |
| | | |

<u>21</u>

OPERATION OF BENAMI LAW & ITS INTERPLAY WITH INCOME-TAX ACT, 1961 [SECTIONS 68, 69, 69A, 69B, 69C AND 69D OF THE IT ACT SECTIONS 60 AND 67 OF THE PBPT ACT, 1988]

- 21.1 Introduction 221
 21.2 Basic principles of interpretation of a statute Clash of 221 jurisdiction
- **21.3** Exercise of exclusive jurisdiction by various authorities 222

| | | INCL |
|-------|--|------|
| 21.4 | Operation of section 60 and section 67 of the PBPT Act, 1988 | 222 |
| 21.5 | Interplay between benami law and income-tax law [Sections 68, 69, 69A, 69B, 69C] | 223 |
| 21.6 | Application section $56(x)$ of Income-tax Act - Benami law | 226 |
| 21.7 | Capital building cases - Benami transaction | 227 |
| 21.8 | Capital or revenue expenditure - Impact on benami trans- action [Section 37] | 228 |
| 21.9 | Penalty under section 271AAB and benami transaction [search cases] | 228 |
| 21.10 | Penalty under section 270A and misreporting of income | 229 |
| 21.11 | Income offered to buy peace and avoid litigation - A word of caution | 229 |
| 21.12 | Is there any conflict between <i>benami</i> law with income-tax law? | 229 |
| 21.13 | Income-tax assessment - Effect on operation of benami law | 230 |
| 21.14 | Provisions of sections 3 and 4 of the PBPT Act, 1988 - Effect on income-tax proceeding | 230 |
| 21.15 | Section 147 of IT Act and benami law | 230 |
| 21.16 | Estimated income and benami law | 231 |
| 21.17 | Settlement commission and benami law | 231 |
| | | |

<u>22</u>

INTERPLAY BETWEEN BENAMI LAW WITH OTHER ENACTMENTS

| 22.1 | Introduction | 232 |
|------|--|-----|
| 22.2 | Income-tax law, law relating to Prevention of Corruption Act and benami transaction | 232 |
| 22.3 | Benami law and PMLA | 233 |
| 22.4 | Objectives behind PMLA and Benami Act | 234 |
| 22.5 | Scope of attachment under PBPT Act, 1988 and under PMLA Act, 2002 | 235 |
| 22.6 | Interplay between benami law and provisions of Companies Act | 235 |
| 22.7 | Section 41 of Transfer of Property Act, 1882 - Transfer by ostensible owner-effect on benami transaction | 236 |
| 22.8 | Immunity provided under IDS Scheme 2016 and PMKGY Scheme | 238 |

PAGE

23

OPERATION OF BENAMI LAW [RETROSPECTIVITY AND PROSPECTIVITY]

| 23.1 | Introduction | 239 |
|-------|--|-----|
| 23.2 | Different stages of operation of benami law over the years | 239 |
| 23.3 | Maxwell on the interpretation of statutes - Issue of retro- spectivity | 240 |
| 23.4 | Parliament's power to enact law - Constitutional provisions | 240 |
| 23.5 | Observations in 130th report of law commission on 'benami transactions' | 241 |
| 23.6 | Cardinal principles of operation of law | 241 |
| 23.7 | Clarification by the finance minister on the issue of retro- spectivity | 242 |
| 23.8 | Scope of substantive law and procedural law - Essential aspects | 242 |
| 23.9 | Judicial precedents on retrospectivity | 243 |
| 23.10 | Declaratory law and clarificatory law - Retrospectivity | 245 |
| 23.11 | 'Doctrine of fairness' - Operation of law | 246 |
| 23.12 | Issue of retrospectivity - Some landmark judgments | 246 |
| 23.13 | Scope of operation of benami law contained in principal Act, 1988 <i>vis-a-vis</i> PBPT Act, 1988 - Recently decided cases | 250 |
| 23.14 | Divergent views on operation of benami law - Summing up | 261 |
| 23.15 | Differing views | 263 |
| | | |

<u>24</u>

BURDEN OF PROOF IN BENAMI TRANSACTION

| 24.1 | Introduction | 267 |
|------|---|-----|
| 24.2 | Burden of proof by operation of law | 267 |
| 24.3 | Burden of proof and onus of proof | 267 |
| 24.4 | Burden of proof relating to a document | 268 |
| 24.5 | Various stages in a trial - Evaluation of evidence | 268 |
| 24.6 | Preponderance of probabilities - Standard of proof | 269 |
| 24.7 | Burden of proof in benami transactions and judicial prec- edents | 270 |

- **24.8** Burden of proof in benami transaction- Recent legal prec- 273 edents
- **24.9** Applicability of sections 91 and 92 of Indian Evidence Act to 276 benami transaction Discharge of initial burden
- **24.10** Discharge of burden in benami transaction The predomi- 276 nant view

<u>25</u> INTENTION AND BENAMI TRANSACTION

| 25.1 | Introduction | 277 |
|-------|--|-----|
| 25.2 | Intention in criminal and civil proceedings | 277 |
| 25.3 | Importance of intention - View of the parliamentary com- mittee | 277 |
| 25.4 | Ingredients of intent in a benami transaction | 278 |
| 25.5 | Intention and motive | 279 |
| 25.6 | Knowledge and intention | 279 |
| 25.7 | Is payment of consideration by the real owner enough to infer motive behind a benami transaction ? | 279 |
| 25.8 | Tests to judge the import of intention | 280 |
| 25.9 | Attempt, intention and Criminal Act - Various aspects | 281 |
| 25.10 | Evidence of intent in benami transaction | 281 |
| 25.11 | Documentary and circumstantial evidence indicating inten- tion | 281 |
| 25.12 | Suspicion and benami transaction | 282 |
| 25.13 | Motive to avoid payment of income-tax - How far relevant in the context of benami transaction? | 282 |

<u>26</u>

BONA FIDE TRANSACTION - SCOPE OF

| 26.1 | Introduction | 284 |
|------|---|-----|
| 26.2 | What is ' <i>bona fide</i> ' and what is not? | 284 |
| 26.3 | Ingredients of bona fide transaction | 284 |
| 26.4 | Exclusion of <i>bona fide</i> transactions from the purview of benami transaction | 285 |

PAGE

<u>27</u>

FRAUD AND BENAMI TRANSACTION

| 27.1 | Introduction | 287 |
|------|--|-----|
| 27.2 | Benami transaction and fraudulent motive | 287 |
| 27.3 | Impact of fraud in a suit | 287 |

<u>28</u>

DOCTRINE OF SUBSTANCE OVER FORM - BENAMI LAW

| 28.1 | Introduction | 289 |
|------|---|-----|
| 28.2 | Raison d'etre behind a benami transaction | 289 |
| 28.3 | Attributes of the doctrine | 290 |
| 28.4 | 'Form' and 'substance' theory | 290 |

<u>29</u> BENAMI LAW AND RULES OF EVIDENCE

| 29.1 | Introduction | 292 |
|-------|---|-----|
| 29.2 | Strict rules of evidence - Taking of official notice by <i>quasi judicial</i> authorities | 292 |
| 29.3 | Documentary evidence and benami transaction | 293 |
| 29.4 | Evidentiary value of photocopy of a document | 293 |
| 29.5 | Utilisation of electronic/digital evidence - Procedure to be followed | 294 |
| 29.6 | Oral evidence - Evaluation of | 294 |
| 29.7 | Modes of proving contents of a document | 295 |
| 29.8 | 'Best evidence rule' - Relevance in benami transaction | 295 |
| 29.9 | 'Consideration' mentioned in a written document <i>benami</i> transaction | 297 |
| 29.10 | 'Best evidence rule' under Indian Evidence Act and section 67 of the PBPT Act, 1988 | 297 |
| 29.11 | Use of circumstantial evidence and benami transaction | 298 |
| 29.12 | Supreme court on circumstantial evidence | 299 |
| 29.13 | Surrounding circumstances - Benami transaction | 300 |
| 29.14 | 'Balance of probabilities' - Benami transaction | 301 |
| | | |

| | | PAGE |
|-------|--|------|
| 29.15 | Presumption and <i>benami</i> transaction | 302 |
| 29.16 | Benefit of doubt and proof beyond reasonable doubt - Application to <i>benami</i> transaction | 302 |
| 29.17 | Absolute certainty - Benami transaction | 303 |
| 29.18 | Affidavit - Evidentiary value | 303 |
| 29.19 | Notings on loose papers - How far relevant in a <i>benami</i> transaction? | 304 |
| 29.20 | 'Books of account' - Import of | 304 |
| 29.21 | Entries in books of account - How far relevant in a <i>benami</i> proceeding? | 305 |
| 29.22 | Relevancy of entry in public records and <i>benami</i> transaction (section 35 of Indian Evidence Act) | 305 |
| 29.23 | Admission - Scope of | 306 |
| 29.24 | Retraction - Its relevance | 307 |
| 29.25 | Examination of witness - Various stages | 309 |
| 29.26 | Cross - Examination | 309 |
| | | |

<u>30</u>

ACTION POINTS AND TIME LIMITS FOR VARIOUS ACTIONS UNDER PBPT ACT, 1988 - AT A GLANCE

| 30.1 | Introduction | 311 |
|------|--------------|-----|
| 30.2 | Table | 311 |

<u>31</u>

FREQUENTLY ASKED QUESTIONS (FAQs)

Introduction

321

APPENDICES

APPENDIX 1 : SECTION 28, READ WITH SECTION 59, OF THE PROHI-BITION OF BENAMI PROPERTY TRANSACTIONS ACT, 1988 AND SECTION 166 OF THE INCOME-TAX ACT, 1961 - CONFISCATED PROPERTIES - MANAGEMENT OF -NOTIFIED INCOME-TAX AUTHORITIES

APPENDIX 2 : BENAMI TRANSACTIONS INFORMANTS REWARD *362* SCHEME, 2018

- APPENDIX 3 : SECTION 50 OF THE PROHIBITION OF BENAMI PROP-879 ERTY TRANSACTIONS ACT, 1988 – SPECIAL COURTS – DESIGNATED COURT(S) OF SESSION AS SPECIAL COURT(S) FOR TRIAL OF OFFENCES PUNISHABLE UNDER PROVISIONS OF SAID ACT
- **APPENDIX 4**: ALLOCATION OF JURISDICTION AMONG COMPETENT AUTHORITIES AUTHORIZED UNDER SECTION 5(1) OF SMUGGLERS AND FOREIGN EXCHANGE MANIPULA-TORS (FORFEITURE OF PROPERTY) ACT, 1976 FOR THE PURPOSE OF SECTION 7 OF THE PROHIBITION OF BENAMI PROPERTY TRANSACTIONS ACT, 1988