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THE BENEFICIAL OWNER CONUNDRUM

Tracing an Undefined Term
Through the Black Money Act

Introduction

"**Beneficial owner**" sounds like a simple idea i.e., the person who enjoys the asset, as opposed to whoever's name appears on the paperwork. In practice, it is one of the most litigated and least defined terms in Indian tax laws. The gap is starkest under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 ("BMA"), a law that taxes offshore wealth at a flat 30% with no deductions with a 90% penalty, and prosecution. However, the said term "Beneficial Owner" which is at the fulcrum of BMA, yet it is not defined in BMA.

Ownership, in everyday language, is binary i.e., either you own something or you don't. Tax law disagrees. Legal title and real economic benefit can sit with two different people as a nominee, a trustee, a relative, or a company interposed for planning and succession. Thus, the vacuum created under the law can be encapsulated under the umbrella of "beneficial owner" i.e., the person who actually enjoys or controls the asset, regardless of paperwork.

The concept of "Beneficial Owner" has travelled from English trust law into Indian laws such as securities law, company law, money laundering law, benami law, income tax, and now the BMA. However, except BMA every other law has attempted to define the said term but there is no standardisation, which creates scope for discretion under BMA while importing definition of "Beneficial Owner" from other statutes. This article attempts to explain the said term on "First Principle" basis, how it works under the BMA, what the courts have held on the said term so far, and where the law still leaves questions open.

I. Emergence of "Beneficial Owner" concept :-

The split between legal and beneficial ownership began in English trust law, a trustee holds the title, while the beneficiary enjoys the real benefit. Regulators and tax authorities later borrowed this idea for a different purpose such as looking past nominees, shell companies, and multi-layered structures to find the real person behind them.

The Financial Action Task Force (FATF), the global body that sets money laundering standards, defines a beneficial owner as the natural person who ultimately owns, controls, or benefits from an entity or transaction, even where that control is exercised indirectly.

Thus, the concept of beneficial ownership is, therefore, founded on the principle of "substance over form", which seeks to look beyond the apparent or legal ownership structure and pierce the layers of ownership and control to identify the person who is, in

substance, the true or ultimate owner and beneficiary. Indian courts, however, disregard a genuine structure only where it is a sham or colourable device (Union of India v. Azadi Bachao Andolan (2003) 263 ITR 706 (SC))

II. The Same Term, Different Meanings :-

Since the BMA does not define "beneficial owner," adjudicating authorities have had to look outward. The definitions in other statutes, however, differ in substance, as the summary below shows:

STATUTE	PROVISION	CORE TEST
Income-tax Act, 1961	Explanations 4 & 5 to Section 139(1)	A "beneficial owner" is one who has, directly or indirectly, paid for the asset, for his own or another's benefit. A "beneficiary" gains from the asset without having paid for it.
Income-tax Act, 2025	Section 263(9)	A "beneficial owner", in respect of an asset means an individual who has provided, directly or indirectly, consideration for the asset for the immediate or future benefit, direct or indirect, of himself or any other person; A "beneficiary", in respect of an asset means an individual who derives benefit from the asset during the tax year and the consideration for such asset has been provided by any person other than such beneficiary;
Companies Act, 2013	Sections 89 & 90; Significant Beneficial Owners Rules, 2018	Looks at indirect shareholding or the ability to exercise significant influence, above prescribed thresholds (typically 10%).

STATUTE	PROVISION	CORE TEST
Benami Transactions (Prohibition) Act, 1988	Section 2(12)	Beneficial owner means a person, whether his identity is known or not, for whose benefit the benami property is held by a Benamidar.
Prevention of Money Laundering Act, 2002	Section 2(1)(fa)	A beneficial owner as an individual who ultimately owns or controls a client, or the person on whose behalf a transaction is conducted.

On perusal of the above it can be inferred that no single definition runs across all these laws. Some definition emphasis more on consideration and some emphasis more on control. Thus, a person can be a "beneficial owner" under one statute and only a "beneficiary", or nothing at all, under another. That fragmentation is exactly the problem the BMA runs into, since it borrows the term without defining the said term of its own. The choice matters, a consideration test requires the Revenue to trace who paid for the asset; a control test does not.

III. Analysis of section 2(11) under the Black Money Act :-

The BMA taxes undisclosed foreign income and assets of Indian residents outside the normal income tax machinery and does so far more harshly a flat 30% tax with no deductions or set-offs, a 90% penalty, and criminal exposure. Section 2(11) defines an **"undisclosed asset located outside India"**, and the same is reproduced hereunder in verbatim:-

"undisclosed asset located outside India" means an asset (including financial interest in any entity) located outside India, held by the assessee in his name or in respect of which he is a beneficial owner, and he has no explanation about the source of investment in such asset or the explanation given by him is in the opinion of the Assessing Officer unsatisfactory;

It is easiest to read the said definition as two distinct limbs joined together, such as under:-

Part A :- The Ownership Limb

An asset (including a financial interest in any entity) located outside India, *"held by the assessee in his name or in respect of which he is a beneficial owner."* This said statement is very wide and it import not just assets held in the assessee's own name, but also assets parked behind a nominee, relative, trust, or offshore company, where the assessee is the real beneficial owner.

Two points deserve emphasis. First, where the assessee holds shares in a foreign company, the shareholding is itself a "financial interest in any entity" held in his name; proof of beneficial ownership is needed only to attribute the company's underlying assets to him. Secondly, section 2(11) speaks only of a "beneficial owner"; a mere "beneficiary" is outside the charge, though exposed to the Rs. 10 lakh reporting penalty under sections 42 and 43 (inapplicable, from 1 October 2024, to non-immovable assets aggregating up to Rs. 20 lakh).

Part B :- The Source Limb

The asset must be one for which the assessee "has no explanation about the source of investment or the explanation given by him is, in the opinion of the Assessing Officer, unsatisfactory." This limb decides **whether** the asset can be taxed at all.

If the assessee can prove to the AO's satisfaction that the asset was bought out of already taxed Indian income, for instance, funds remitted under the Liberalised Remittance Scheme, then the asset is no longer "undisclosed", and the BMA charge does not apply, even if the assessee is admittedly the beneficial owner. Thus, the satisfaction of both the limbs together is required to create charge under BMA.

Combine reading of the two limbs together cast initial onus on the AO, wherein the AO is required to establish both the conditions i.e., that the assessee is the beneficial owner/ legal owner of the asset (Part A), and that the source of investment is unexplained (Part B). Proving of either of the limb is not enough to create charge under BMA.

Further, out of the two, "Source" is usually the easier aspect to establish or rebut by bringing on records documents such as bank records or remittance trails. Beneficial ownership is the harder-fought limb, because assets are rarely held in an Indian resident's own name; they typically sit behind layers of foreign companies, trusts, or nominees.

IV. Analysis of CBDT Circular No. 13 of 2015 dated 06th July, 2015 :-

The CBDT itself, vide Circular No. 13 of 2015 dated 6 July 2015 (Question No. 31), has expressly clarified that the expressions "beneficial owner" and "beneficiary" for the purposes of the BMA are to be understood with reference to Explanation 4 and Explanation 5 to Section 139(1) of the Income-tax Act, respectively. The Circular further delineates the distinction between the two concepts by providing that a beneficial owner is an individual who has provided, directly or indirectly, consideration for an asset for the immediate or future benefit of himself or any other person, whereas a beneficiary is an individual who derives benefit from the asset during the relevant previous year, where the consideration has been provided by another person.

Significantly, the CBDT has also acknowledged that this statutory framework is at variance with the determination of beneficial ownership under Rule 9(3) of the PMLA (Maintenance of Records) Rules, 2005. This clarification assumes considerable significance, as it reflects the Board's own understanding of the legislative framework governing beneficial ownership under the BMA and lends support to the proposition that the tests prescribed under Explanations 4 and 5 cannot be disregarded while determining the scope of Section 2(11) of the BMA. However, the clarification reflects the Board's own understanding of the BMA and binds the Revenue (UCO Bank v. CIT (1999) 237 ITR 889 (SC)), though not the courts.

V. Analysis of various judicial precedents :-

The analysis of various judicial precedent is essential to give correct effect to section 2(11) of BMA and create charge under BMA:-

i) In case of **Jatinder Mehra (128 taxmann.com 152), the Hon'ble Delhi Tribunal** has analysed the definition of "beneficial owner" across the Income-tax Act, Benami Act, Companies Act, PMLA, and SEBI's framework and not merely restrict itself to the definition given under explanation 4 and 5 to section 139 of the Income Tax Act. Further, the Tribunal also held that the source of the foreign asset must also be established before creating charge under BMA i.e., the twin-condition approach described above.

ii) In the case of **Krishan Das Agarwal (150 taxmann.com 290), the Hon'ble Jaipur Tribunal** has relied on Hon'ble Delhi Tribunal in the case of Jatinder Mehra and reaffirmed the law laid down by Hon'ble Delhi Tribunal in the case of Jatinder Mehra. Further, it also

reaffirmed that a shareholder and a company are separate legal persons so a company's assets cannot simply be treated as the shareholder's own asset and thus restrict the expansive scope of the term "Beneficial Owner". The ruling thus confines the term to a person shown to have provided the consideration for the asset.

iii) In Rashesh Manhar Bhansali v. Addl. CIT (132 taxmann.com 20), the Hon'ble Mumbai Tribunal adopted a different approach. It held that Explanation 4 cannot be adopted, because the BMA's context requires otherwise and requiring the AO to prove consideration for concealed offshore assets would make the BMA unworkable, and it rejected the assessee's "no consideration" defence. That order has since been recalled for fresh hearing under section 18(7) [(2025) 212 ITD 210 (Mum-Trib.)], so it is not presently an operative precedent.

VI. Analysis of Finance Minister Speech :-

Hon'ble erstwhile Finance Minister Late Shri. Arun Jaitley while presenting his Annual Budget for 2015 has announced that Government is intending to enact a separate legislation to deal with "Undisclosed Foreign Income and Asset". The intention of the said legislation is to target a person's who has stashed illegal assets abroad and to squeezed the parallel economy. Thus, the legislature always intended to expand the base of income tax within the country by squeezing the parallel economy and thus it may be argued that BMA was enacted to complement Income Tax Act. Therefore, u/s 2(15) of BMA the legislature has explicitly stated that if something is not defined under BMA but under Income Tax Act, than the meaning given under Income Tax Act can be borrowed under BMA.

Thus, the purpose of BMA is to tax all the untaxed money parked in the form of "Undisclosed Foreign Income and Asset" and therefore definition of "Beneficial Owner" and "Beneficiary" given under explanation 4 and 5 to section 139 of the Income Tax is wide enough to create a charge under BMA. Therefore, the said definition coincides with the intent of BMA.

Further, the Hon'ble Supreme Court of India in the case of K.P. Varghese (7 taxman 13) explicitly stated that *mover of the Bill explaining the reason for the introduction of the Bill can certainly be referred to for the purpose of ascertaining the mischief sought to be remedied by the legislation and the object and purpose for which the legislation is enacted.* Pursuant to the judgement of the Hon'ble Supreme Court it can be understood that the definition of "Beneficial Owner" and "Beneficiary" given under explanation 4 and 5 to section 139 of the Income Tax is coincides with the intent of BMA.

VII. Piercing of Veil :-

In most BMA cases, the foreign assets sits behind a chain such as a holding company, sometimes a trust, and thus each layer adding distance between the beneficial owner and the asset in his name. The law recognized that a company is a separate legal person from its shareholders, a principle that traces back to Salomon v A. Salomon & Co Ltd and has been repeatedly affirmed by Indian courts. However, the said default, however, is not absolute. Over the time various courts have recognised that the corporate veil can be lifted where the entity is shown to be a mere façade, a conduit, or a paper structure with no independent existence set up not to carry on genuine business, but solely to hold assets on behalf of, and for the benefit of, the person who truly controls them. Equally, Vodafone International Holdings B.V. v. Union of India (2012) 6 SCC 613 rejected a mechanical "look-through" approach: a structure is to be "looked at" as a whole and disregarded only if it is a sham.

This doctrine plays wider role by which the ownership limb of Section 2(11) of BMA is usually tested. The Revenue cannot tax anyone merely because he is a director, or holds shares, in a foreign company that owns an asset, that would collapse the distinction between a company and its shareholders. But where the facts show that the foreign entity has no real business of its own, that funds moved from the assessee (or his known Indian sources) into the entity, and that the assessee alone directs what happens to the asset, piercing the veil is not just permissible, it is the only way to give effect to section 2(11) of BMA.

Conclusion

"Beneficial owner" is the hinge on which the BMA's charge turns, yet the statute leaves it undefined. Parliament did not, however, leave the gap open. Section 2(15) provides that an expression not defined in the BMA but defined in the Income-tax Act bears the meaning given in that Act. Explanations 4 and 5 to section 139(1), now section 263(9) of the Income-tax Act, 2025, supply that meaning: the beneficial owner is the individual who has provided the consideration, directly or indirectly. The CBDT affirmed this for the BMA in Circular No. 13 of 2015, and the BMA itself uses the same expressions in sections 42 and 43, in relation to the very returns that section 139 governs.

The Tribunals have nonetheless gone their own ways. Some apply consideration, others ownership, control or enjoyment, and *Rashesh Bhansali* set Explanation 4 aside as making the BMA unworkable. That approach does not survive scrutiny. The Supreme Court has

held that a definition may be drawn from another statute only where the two are in *pari materia* or the legislature adopts it by reference *(Textiles Committee v. Premium Suiting, 2026 INSC 1158; Jagatram Ahuja v. CGT (2000) 246 ITR 609 (SC))*. Section 2(15) adopts the Income-tax Act and no other. The PMLA, the Companies Act and the Benami Act serve different ends and form no part of the BMA's scheme. Nor can difficulty of proof justify discarding a meaning Parliament has chosen; that would be rewriting the statute, not construing it.

A levy that can consume 120% of an asset's value, with prosecution besides, must rest on the definition the legislature supplied, not on one assembled Bench by Bench. Until Parliament enacts a definition specific to the BMA or any higher court settles this prevalent issue, beneficial ownership must be tested by the Income-tax Act's measure of consideration: proved, not presumed.

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Company Overview

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