

THE BLACK MONEY ACT, 2015, Valuation Rules and One Time Compliance Window

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BLACK MONEY ?

'Black money' is a common expression used to refer to tax-evaded income that is, the income, on which no taxes has been paid.

Objectives of the Act

- To tax undisclosed foreign income and assets acquired from such undisclosed foreign income.
- To punish the persons indulging in illegitimate means of generating money causing loss to the revenue .
- To prevent illegitimate income and assets kept outside India from being utilized in ways which are detrimental to India's social, economic and strategic interests and its national security.

Objectives of the Act-As per Title

- According to long title, it is :-

“An Act to make provisions to deal with the problem of black money that is undisclosed foreign income and assets, the procedure for dealing with such income and assets, to provide for imposition of tax on any undisclosed foreign income and asset held outside India and for matters connected therewith or incidental thereto.”

Existing Provisions for disclosure of foreign assets

- Fourth Proviso to Section 139(1), added by FA, 2012, provides for compulsory filing of return of income by ROR in respect of assets outside India irrespective of taxable income in India.
- FA 2015 amends fourth proviso w.e.f. A/Y 2016-2017 and makes it compulsory for ROR holding “beneficial interest” in any asset located outside India or has signing authority in any account outside India to file return of income.
- Fourth proviso further provides that any “beneficiary” of any asset located outside India is also required to file return.
- Fifth proviso provides that beneficiary not required to file return if beneficial owner files the same.

Existing Provisions for disclosure of foreign assets

- Finance Act 2015 has inserted Explanation 4 and 5 in Section 139(1) to clarify the terms "Beneficial Owner" and "Beneficiary":-
 - *"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.*
 - *"beneficiary" in respect of an asset means an individual who derives benefit from the asset during the previous year and the consideration for such asset has been provided by any person other than such beneficiary.*

Existing Disclosure Requirements

- Section 94A:-
 - Introduction of Section 94A in finance Act 2011 which empowered the government to notify any country which does not help India in Tax Information Exchange as a Notified jurisdictional Area u/s 94A (Currently only Cyprus is notified).
 - The Section was introduced to discourage transactions with countries who do not have an effective tax information exchange systems with India
 - Section 94A is also referred to as "Tool Box of Counter Measure"
- Enhanced time limit of 16 years for reopening assessment.

Need for Black Money Act

- The main highlighting point behind bringing about this legislation is to overcome the limitations of the existing provisions of Income Tax Act to deal with the task of tracking down and cracking down the UFI and UFA stashed abroad so that money could be brought back to India.

Key Features of the Act

- Applicable w.e.f 01/07/2015 to ROR
- Concealment of income in relation to a foreign asset will attract tax @ 30 % and penalty equal to three times the amount of tax (i.e., 90 per cent of the undisclosed income or the value of the undisclosed asset).
- Failure to furnish return of income by person holding foreign asset, failure to disclose the foreign asset in the return or furnishing of inaccurate particulars of such asset shall attract a penalty of Rs.10 lakh.
- No time limit vis-à-vis period for which the undisclosed foreign income/assets relates or escaped assessment.
- Limited Compliance Window- One time compliance opportunity for a limited time – 30% tax and 30% penalty. No prosecution

Key Features of the Act

- The Act provides for criminal liability with enhanced punishment. Willful attempt to evade tax in relation to a foreign income will be punished with rigorous imprisonment from three years to ten years and with fine.
- Failure to furnish a return of income though holding a foreign asset, failure to disclose the foreign asset or furnishing of inaccurate particulars of the foreign asset will be punishable with rigorous imprisonment for a term of six months to seven years.
- The provisions will also apply to banks and financial institutions aiding in concealment of foreign income or assets of resident Indians or falsification of documents.
- Second and subsequent offence will be punishable with rigorous imprisonment for a term of three years to ten years and with fine of Rs.5 Lakhs to Rs.1 Crore.
- In prosecution proceedings, the willful nature of the default shall be presumed and it shall be for the accused to prove the absence of the culpable state of mind.

Key Features of the Act

- To facilitate enquiry and investigation, authorities under the Act have been vested with the powers of discovery and inspection, issue of commissions, issue of summons, enforcement of attendance, production of evidence, impounding of books of account and documents.
- Persons holding foreign accounts with minor balances i.e having maximum balance of Rs.5 Lakhs at any time during the year, which may not have been reported out of oversight or ignorance have been protected from criminal consequences.
- The Act also amends Prevention of Money Laundering Act (PMLA), 2002 to include offence of tax evasion as a scheduled offence under PMLA.

Source of Information for Revenue

- Reporting made under FATCA
- Automatic Information Exchange from 2016 & 2017.
- Tax Information Exchange Agreements.
- Proceedings under Income Tax Act.
- Social and Digital Media.
- From other departments like RBI, SEBI or under FEMA.
- Through information sharing mechanism in Tax Treaties.
- Action initiated by Enforcement Directorate.

US:FATCA

- Foreign Account Tax Compliance Act (FATCA)
- It became law in March 2010.
- FATCA targets tax non-compliance by U.S. taxpayers with foreign accounts
- FATCA focuses on reporting as under:
 - It is a mechanism adopted by the US government to get information about US persons' financial accounts with FIs(Foreign and US Based). It requires due diligence in respect of financial account holders, obtaining relevant documentation and reporting certain information about US persons financial accounts with the FI's.
 - The objective of FATCA is the reporting of foreign financial assets;

Information under FATCA

- India is expected to start receiving information through Automatic Exchange Of Information route under FATCA from 30th September 2015.(Agreement signed with US in July 2015)
- Under Multilateral agreement India to start receiving information from other countries under AEOI route from 2017.
- 58 jurisdictions have committed to start giving information under AEOI by 2017 and rest by 2018.
- This includes jurisdictions having beneficial tax regime.
- Information will include information of controlling persons(Beneficial owner).

“Assessee” under Black Money Act

- “Assessee” means a person, being a resident other than not ordinarily resident in India within the meaning of clause (6) of section 6 of the Income-tax Act, by whom tax in respect of undisclosed foreign income and assets, or any other sum of money, is payable under this Act and includes every person who is deemed to be an assessee in default under this Act;

Residential Status-Individual

- How to determine whether a person is Resident and Ordinarily Resident (In case of individuals)

Stayed in India for 182 days or more in the PREVIOUS year? **OR**
Stayed for 60 days or more in the previous year **AND** 365 days or more during 4 years immediately **preceding** the previous year.

Whether he has been a resident in at least 2 out of the 10 years immediately preceding the previous year? **AND**
Whether during the 7 years immediately preceding the PY he has been in India for 730 days or more?

Non Resident

NO

YES

Resident and Not Ordinarily Resident

Resident and Ordinarily Resident

This Act is applicable only to Residents who are Ordinarily Resident and not the others

Residential Status-Company

- Before FA 2015, the test of residency was whether the company is incorporated in India or is wholly controlled and managed within India.
- Replaced term “wholly controlled and managed within India” with the standard of “place of effective management” (POEM).
- *“place of effective management” means a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole, are in substance made.*
- *Guiding set of principles to be provided by CBDT.*
- Since POEM has become the test for corporate residence in the ITA in India, the impact of the Black Money Act will have a wider scope than intended.

Section 2(11):“Undisclosed asset located outside India”

- 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.

Section 2(12):“Undisclosed foreign income and asset ”

- “The total amount of undisclosed income of an assessee from a source located outside India and the value of an undisclosed asset located outside India, referred to in section 4, and computed in the manner laid down in section 5”

Total Undisclosed Foreign Income and Asset(Sec 4)

- Total undisclosed foreign income and asset of any previous year shall be:
 - the income from a source located outside India, which has not been disclosed in the return of income furnished u/s 139(1),(4) or (5).
 - the income, from a source located outside India, in respect of which a return is required to be furnished but has not been furnished.
 - the value of an undisclosed asset located outside India.

Total Undisclosed Foreign Income and Asset(Sec 4)

- Notwithstanding anything contained in sub-section (1), *any variation made in the* income from a source outside India in the assessment or reassessment of the total income of any previous year, of the assessee under the Income-tax Act in accordance with the provisions of section 29 to section 43C or section 57 to section 59 or section 92C of the said Act, shall not be included in the total undisclosed foreign income.
- *The income included in the total undisclosed foreign income and asset under this* Act shall not form part of the total income under the Income-tax Act.

Diff between UFA and UFI

- UFI is defined with reference to whether the income is disclosed in a return filed under section 139 of the Act.
- UFA is not defined with reference to the disclosure in ITR filed. It refers to satisfactory explanation of source of investment in asset located outside India. If explanation not given then it would be treated as UFA even if disclosed in ITR and vice versa also true.

Computation of Total Income (Section 5)

- No expenditure shall be allowed as deduction from undisclosed foreign income or asset.
- No loss can be set-off against such an income or asset.
- Any income which has been assessed to tax under I-T Act shall be reduced from value of undisclosed foreign asset if asset is acquired from such income.
- Proportionate income, which was assessed to tax, shall be reduced from FMV of foreign undisclosed asset being immovable property and remaining amount shall be taxable under the Act.

Computation of Total Income

Example

- Example: A foreign asset was acquired by an assessee in the financial year 2009-10 for Rs. 50 lakhs. Out of total investment, Rs. 20 lakhs was assessed to tax. When the Assessing Officer identified the undisclosed asset in the year 2017-18, the value of such asset was determined at Rs. 1 crore. In this case the amount chargeable to tax shall be computed after reducing the proportionate value of sum which was assessed to tax and invested in the foreign asset. It shall be Rs. 60 lakhs [Rs.1 Crore less (Rs. 1 Crore X 20/50)]

Important Procedural Provisions

- Income Tax Authority to administer.
- In respect of person having no income chargeable to tax, ITA shall be authority having jurisdiction in respect of the area in which the assessee resides or carries on its business or has its principal place of business
- No separate return/form to be filed except in case of OTCS.
- Proceedings could be initiated any time when the Income Tax authorities notice undisclosed foreign Income or asset.
- Any source of information to be used to initiate proceedings.
- For purpose of making enquiry or investigation ,pendency of proceedings not necessary.

Important Procedural Provisions

- For the purposes of making an assessment or reassessment under this Act, the Assessing Officer may, on receipt of an information from an income-tax authority under the Income-tax Act or any other authority under any law for the time being in force or **on coming of any information to his notice**, serve on any person, a notice requiring him on a date to be specified to produce or cause to be produced such accounts or documents or evidence as the Assessing Officer may require for the purposes of this Act.
- Proceedings to be completed within 2 years of end of financial year in which notice has been issued.
- Reassessment, appeals, revisions of order possible.
- Principal of natural justice to be followed .

Various Modes of Recovery

- Can ask employer to withheld the arrear from salary.
- Can ask debtor to pay to tax recovery arrear.
- Property abroad can be sold through CBDT.

Compliance Scheme under Chapter VI

Considering the stringent nature of the provisions contained in The Black Money Act, 2015, Section 59 to 72 provides for one time compliance opportunity to declare UFA for the Residents.

Salient Features of Compliance Window

- One Time Compliance Opportunity Scheme(OTCS) to enable those with UFA, which hitherto not been disclosed for Income Tax purposes, to declare the same with 30% Tax and 30% Penalty and No Prosecution.(No Surcharge/ED/SHEC)(No credit for TDS/Advance Tax).
- It is one time opportunity for "*any person*" to come clean and become compliant before stringent provisions of Black Money Act,2015 comes into force.
- Open for Limited Period from 01/07/2015 to 30/09/2015.
- No Interest u/s 234A,B,C would be charged.
- No exemption, deduction, set off and carried forward losses shall be allowed.

Salient Features of Compliance Window

- Wealth Tax not payable on assets disclosed.
- Immunity from prosecution under Five Acts:-
 - Income Tax Act
 - Wealth Tax Act
 - FEMA
 - Companies Act
 - Customs Act
- Further immunity from Prevention of Money Laundering Act 2002 as Section 59 makes Section 51 inapplicable.

Foreign assets eligible for declaration under OTCS-

- Any undisclosed asset located outside India and acquired from income chargeable to tax under the Income-tax Act for any assessment year prior to the assessment year beginning on 1st day of April, 2016:-
 - *(a) for which he has failed to furnish a return under section 139 of the Income-tax Act;*
 - *(b) which he has failed to disclose in a return of income furnished by him under the Income-tax Act before the date of commencement of this Act;*
 - *(c) which has escaped assessment by reason of the omission or failure on the part of such person to make a return under the Income-tax Act or to disclose fully and truly all material facts necessary for the assessment or otherwise.*

Tax Rates and Time Limits under Compliance Scheme

- Act shall come in force w.e.f 01/07/2015 and declaration under compliance scheme to be made by 30th Sept.2015 before designated CIT in Form 6.(Can be filed online also using DSC).
- Tax Rate @ 30% plus penalty @ 100% of such tax. Hence 60% of FMV of UFA.
- CIT to issue intimation before 31st October 2015.
- Taxes to be paid before 31th December 2015.
- CIT to issue acknowledgement in Form 7 within 15 days of intimation of payment by declarant.

Declaration not eligible in certain cases

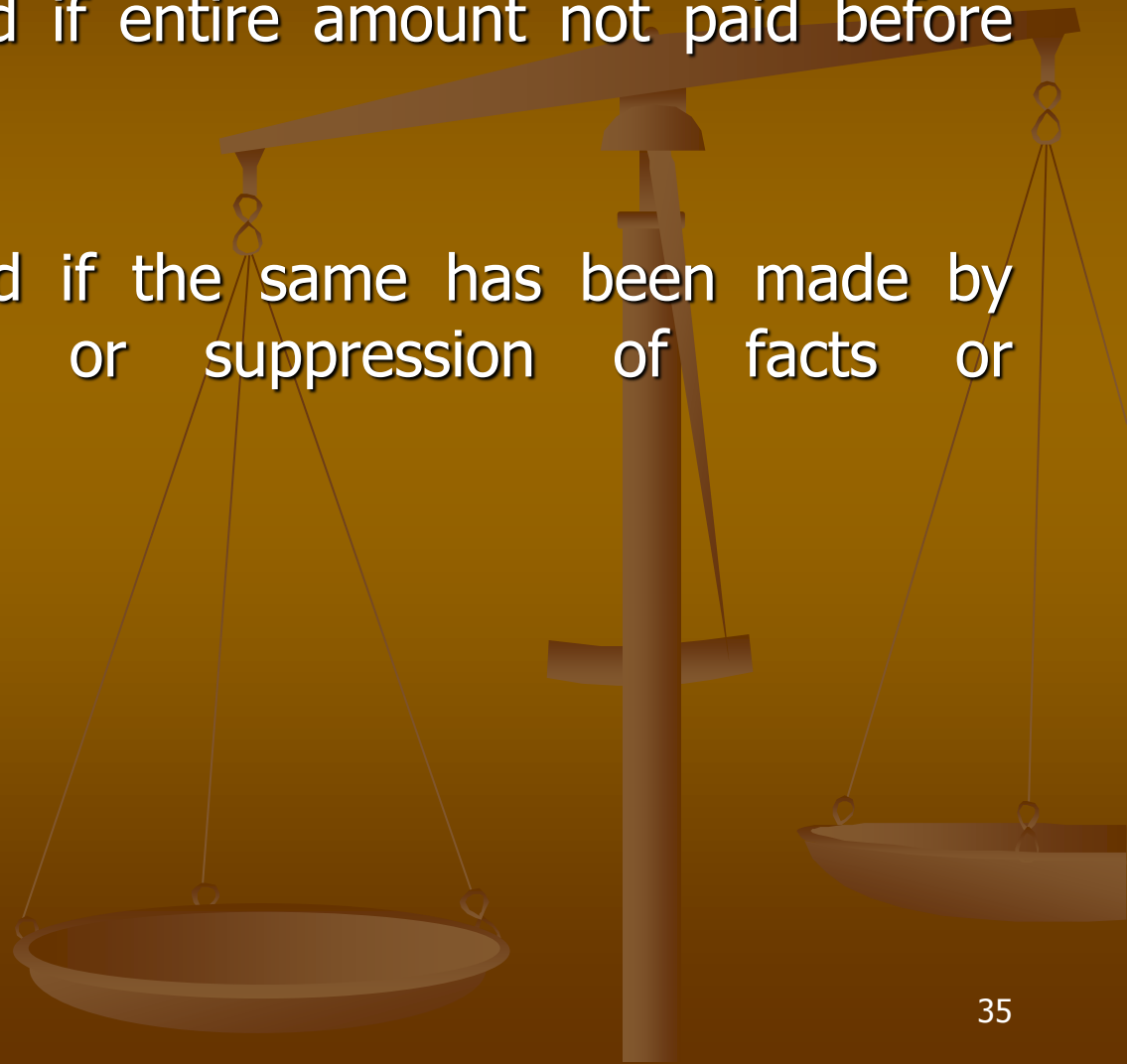
- Section 71 prohibits declaration for UFA acquired in or before A/Y 2015-2016 in following:-
 - Notice u/s 142,143(2),148,153A or 153C issued and served on assessee on or before 30/06/2015.
 - Search conducted u/s132, requisition made u/s 132A or survey carried out u/s 133A and time limit for issuance of notice u/s 143(2),153A or 153C not expired.
 - Information received by government u/s 90 or 90A.

Declaration not eligible in certain cases

- Detenu under COFEPOSA
- Person notified in respect of Securities Transaction Scam of 1991-1992
- Person against whom proceedings for prosecution are pending as under :-
 - Proceedings for prosecution under Chapter IX (offences relating to public servants) are pending.
 - Proceedings under Chapter XVII (offences against property) of IPC are pending.
 - Proceedings under the Unlawful Activities(Prevention) Act are pending.
 - Proceedings under Prevention of Corruption Act are pending.

Declaration not eligible in certain cases

- Declaration invalid if entire amount not paid before 31.12.2015
- Declaration invalid if the same has been made by misrepresentation or suppression of facts or information.



FAQ's for Compliance Scheme

- Whether applicable to companies.
 - Immunity to Directors ?
- Immunity other than 5 acts under Section 67?
- Declaration by firm ?
 - Whether partner can declare in his own name
- Immunity from PMLA,2002.
- Capital Gains on declared assets in future?
 - COA ? POH ?
- Notice u/s 142/143(2)/148/153A/153C.

FAQ's for Compliance Scheme

- If notice u/s 142,143(2),148,153A,153C issued but not in knowledge of assessee ?
- UFA acquired partly during year for which assessment pending?
- Declaration in respect of assets acquired during the year for which assessment done?
 - Assets assessed in assessment
 - Assets not assessed in assessment
- If search/survey operations initiated against assessee?

FAQ's for Compliance Scheme

- If assessment in relation to search/survey assessment completed and UFA not taxed?
- Declaration, whether possible, if information received by Govt. under DTAA ?
- How would person know that Govt. has received information ?
- Consequences of No Declaration under Chapter VI.
- Consequences of declaration of Ineligible assets(Govt. already having info).

FAQ's for Compliance Scheme

- Option of settlement commission in respect of Ineligible assets ?
- If UFA have been reported in Schedule FA of ITR for A/Y 2015-16, is there any need to declare those assets under Chapter VI ?
- Assets for which source explained but not reported in Schedule FA. Consequences ?
- Undisclosed foreign income deposited in foreign bank account over the years which has negligible balance now. Any declaration required?

FAQ's for Compliance Scheme

- Undisclosed foreign income deposited in foreign bank account over the years which has been closed ten years back. Any declaration required?
- Property inherited in 2003-2004 , sold in 2011-2012. Disclosure requirements and Valuation?
- An undisclosed property acquired in 2001-2002 and sold in 2007-2008. Proceeds deposited in Bank account. What to declare ?
- Can a Non Resident file declaration for UFA acquired during the year when he was Resident?

FAQ's for Compliance Scheme

- Is there a need for Resident to file declaration for assets acquired during the year when he was Non-Resident out of income which was not chargeable to tax in India?
- Immunity in case of part declaration ?
- Resident earning abroad and paying taxes there but not disclosed in Indian ITR ? Consequences. Whether he will get credit of foreign taxes?
- UFA declared out of money earned through corruption.
- UFA acquired out of partly undisclosed income and partly out of disclosed/exempt income.

FAQ's for Compliance Scheme

- Whether UFA should be held by person as on date of declaration?
- What sought of enquiry would be conducted by Commissioner in respect of declaration made before accepting the same ?
- Whether a person, who is beneficial owner or beneficiary of a foreign asset, eligible for declaration ?
- Whether a non resident , who acquired or made an asset out of income earned abroad required to make declaration under Chapter VI ?

The Black Money Rules, 2015

- The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015
- Rule 2(2):- Words and expressions not defined in rules shall have meaning assigned to them in Black Money Act, Income Tax Act and Rules.

Fair Market Value of Bullion

Rule 3(1)(a)

- Rule 3(1)(a) : Value of Bullion, Jewellery or precious Stone shall be higher of :-
 - Cost of Acquisition
 - Price that would ordinarily fetch in open market for which report from valuer recognized in foreign country by foreign government or its any agency may be obtained.(hereinafter referred to as report from Foreign Valuer)

Fair Market Value of Art Work

Rule 3(1)(b)

- Rule 3(1)(b):- Value of archaeological collections, drawings , paintings, sculptures or any work of art shall be higher of :-
 - Cost of Acquisition
 - Value as per report from Foreign Valuer.

Valuation of Shares and Securities (Rule 3(1)(c))

- (I) :- FMV of quoted shares shall be higher of :-
 - Cost of Acquisition
 - Average of lowest and highest price quoted on established securities market on valuation date.

(II) :- FMV of Unquoted equity shares shall be higher of:-

- Cost of Acquisition
- $(A+B-L) * PV / PE$

Valuation of Shares and Securities (Rule 3(1)(c))

- (III) :- FMV of unquoted share and security other than equity shares shall be higher of :-
 - Cost of Acquisition
 - Value as per report from Foreign Valuer.

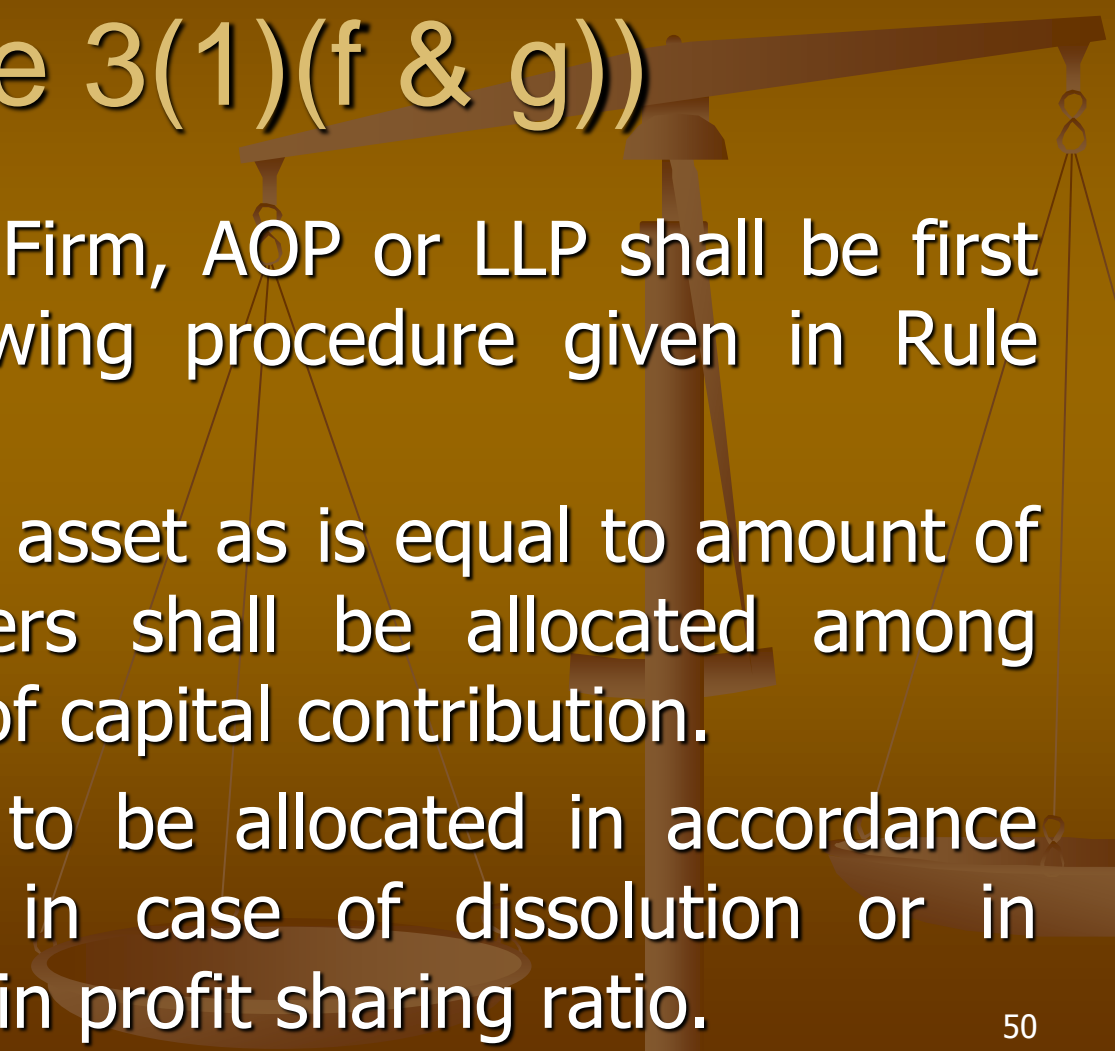
Valuation of Shares and Securities (Rule 3(1)(d))

- FMV of immoveable property shall be higher of:-
 - Cost of Acquisition
 - Value as per report from Foreign Valuer.

Value of an account with a Bank(Rule 3(1)(e))

- Value of an account with a bank shall be:-
 - Sum of all deposits made in account with the bank since the date of opening of the account
 - If account declared under Chapter VI, then all deposits after date of declaration
 - Provided any deposit made from out of any withdrawal from account would not be added again.

Valuation of Person in Net Asset of Firm/LLP/AOP (Rule 3(1)(f & g))

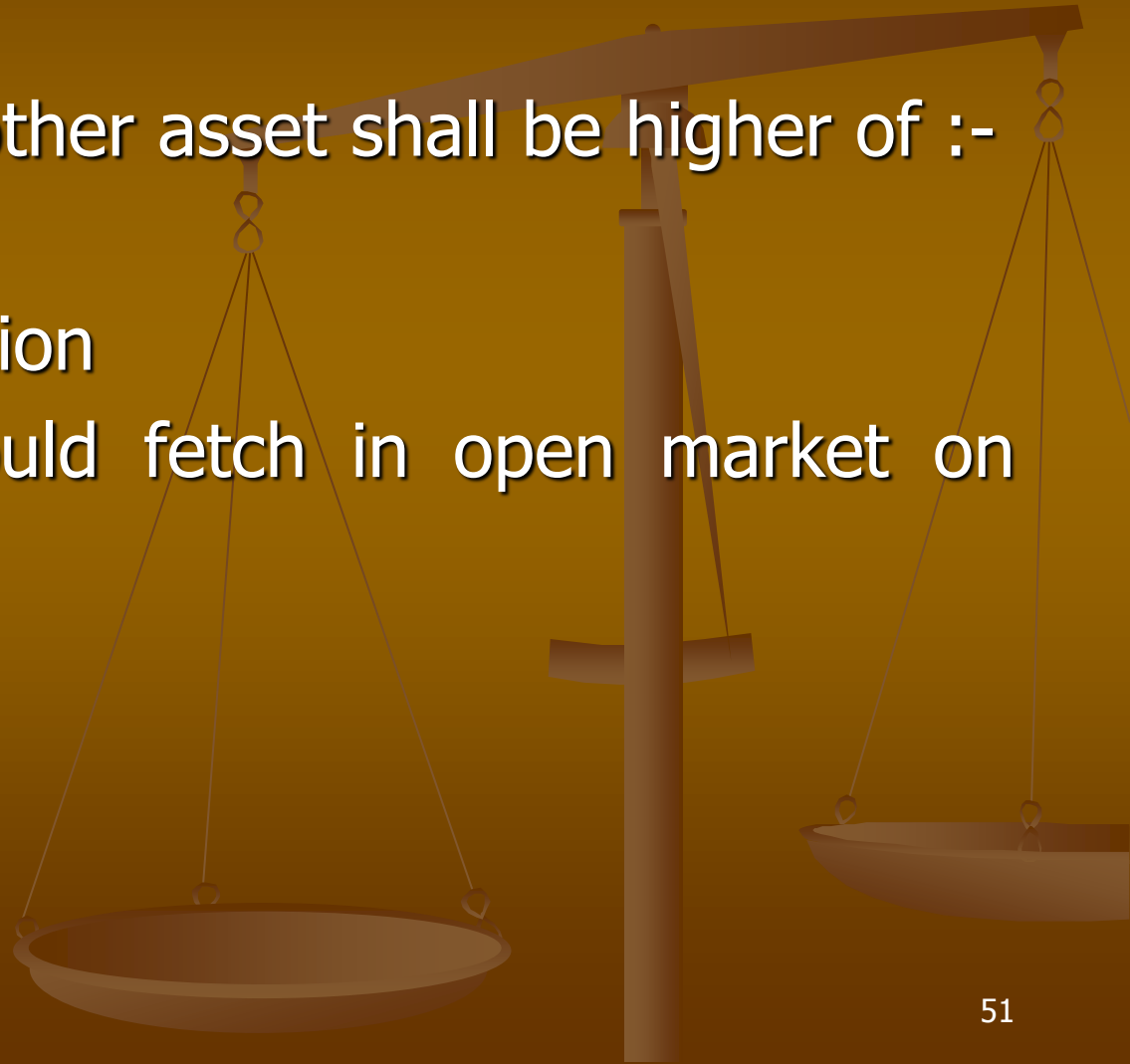


- Net asset of the Firm, AOP or LLP shall be first determined following procedure given in Rule 3(1)(c)II.
- Proportion of net asset as is equal to amount of capital of partners shall be allocated among partners in ratio of capital contribution.
- Residue amount to be allocated in accordance with agreement in case of dissolution or in absence thereof, in profit sharing ratio.

Valuation of any other asset

Rule 3(1)(h)

- Valuation of any other asset shall be higher of :-
 - Cost of Acquisition
 - Price asset would fetch in open market on valuation date.



Valuation of already disposed off assets - Rule 3(2)

- FMV of asset(other than Bank Account) already transferred before valuation date shall be higher of Cost of Acquisition and the sale price.
- Provided if transferred for inadequate consideration or no consideration then FMV would be higher of COA and fair market value on date of transfer.

Valuation of assets acquired of earlier UFA- Rule 3(3)

- Asset acquired out of consideration received on account of transfer of an old asset or drawings from a bank account:-
 - FMV of old asset or bank account shall be determined.
 - That value shall be reduced by amount of consideration invested in the new asset.

Example - Rule 3(3)

- HP1(UFA) bought in 1997 for 20 Lakhs.
- Sold in 2001 for 25 Lakhs and amount deposited in Foreign Bank Account.
- In 2002 another UFA HP2 bought for 30 Lakhs whose FMV on valuation date is 50 Lakhs.
- Assuming value of Bank Account as per Rule 3(1)(e) on valuation date is 70 Lakhs. Calculate FMV of UFA.

Example - Rule 3(3)

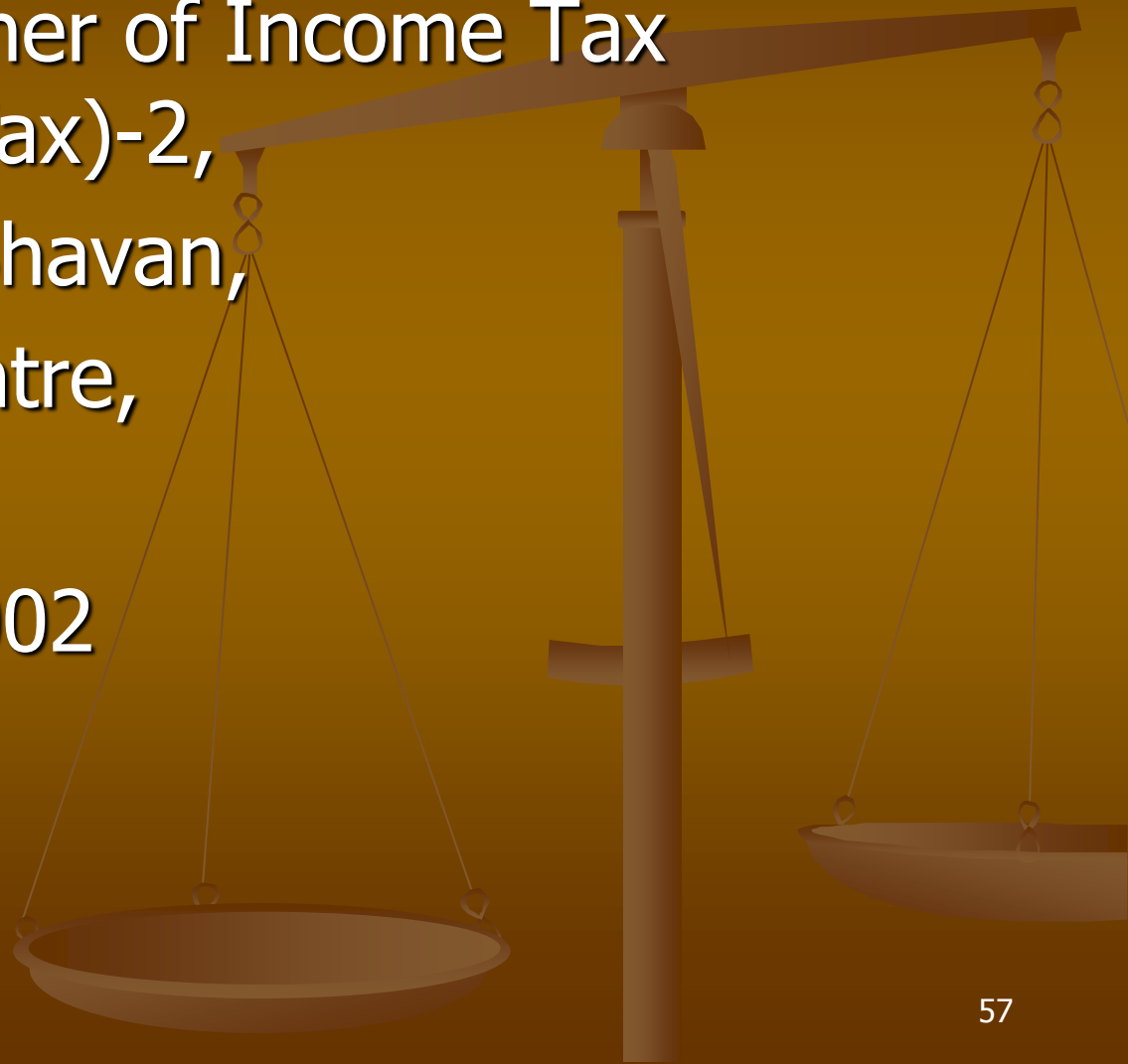
- FMV of HP1: Higher of 20 or 25L : 25L-
25L(invested in Bank Account) = NIL- (A)
- FMV of Bank Account : 70L-30L(Invested in HP2)
= 40L - (B)
- FMV of HP2 : Higher of 30L of 50L = 50L- (C)
 - FMV of UFA as on Valuation date = A+B+C
 - = 0+40L+50L
 - = 90 LAKHS

Procedure for Declaration

- Declarant should apply for PAN if no PAN is there.
- Obtain Valuation reports for FMV as on 01/07/2015 in respect of eligible assets where ever applicable.
- Check calculations and values thoroughly and fill in Form 6 as no provision of revised declaration to correct errors.
- Duly signed Form 6 to be submitted by 30/09/2015 without payment of any taxes or penalty.
- If intimation received from CIT before 31/10/2015, revised declaration to be filed within 15 days.
- Pay tax and penalty on or before 31/12/2015 and file proof before relevant CIT.
- No refund of taxes paid in any case so no hurry to pay taxes along with Form 6.

CIT Designated

- The Commissioner of Income Tax
(International Tax)-2,
Pratyaksh Kar Bhavan,
S.P.M. Civic Centre,
Minto Road,
New Delhi-110002



Penalties and Prosecution

Nature	Penalty	Prosecution (if Any)
Non Disclosure of Foreign Income or Asset	300% of the Tax Payable	3 years – 10 years for willful attempt to evade tax.
Failure to disclose foreign asset or income in the return of income	Rs.10 Lakhs	6 months – 7 years – if default can be proved to be willful
If person willfully attempts to evade any tax, penalty or interest		3 years – 10 years
Continuing default by assessee in making payment of tax	Amount of arrears of tax	

Nature	Penalty	Prosecution (if any)
If Assessee fails to answer any question, sign a statement he is legally bound to or fails to produce books and supporting evidences	Rs.50,000 to Rs.2,00,000	
Person makes false statement or delivers false evidences		6 Months – 7 Years
Abetment to make and deliver false return, account, statement or declaration relating to tax payable		6 Months – 7 Years
Subsequent offences under this act – where a person commits the second(or more) offence under this act	Rs.5 lakhs – Rs.1 crore	3 years – 10 years

Punishment for Abetment

- If a person abets or induces in any manner another person to make and deliver an account or a statement or declaration relating to tax payable under this Act which is false and which he either knows to be false or does not believe to be true or to commit an offence under sub-section (1) of section 51, *he shall be punishable with rigorous imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine.*

Presumption as to culpable mind

■ Who has the burden of proof of culpability under the Black Money Act?

- Section 54 of the Act provides that in any prosecution for any offence under this Act which requires culpable mental state on part of accused, the court shall presume the existence of such mental state.
- However, it shall be a defense for the accused to prove the fact that he had no such mental state.
- A fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely on basis of preponderance of probability.
- The term “culpable mental state” includes intention, motive or knowledge of a fact or belief in, or reason to believe , a fact.

Assessment Proceedings

- The Income Tax Authorities continue to levy taxes and administer revenues through the Income Tax Act, however, will refer to this act with regard to any Foreign Assets and Foreign Incomes .
- Tax authorities can make any inquiry or investigation into matters of the Assessee even though there are no proceedings pending before it.
- AO will serve notice on the Assessee before proceeding to take any action under this Act.
- The principles of Natural Justice cannot be violated. The Assessee will be given an opportunity to be heard and to appeal to CIT(A), ITAT, High Court and Supreme Court(where substantial question of law is involved).



THANK YOU