A Decade of Black Money Act – Presumptions Galore

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The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (**BMA**) has been in the statute books for almost a decade now. There are still some teething issues and interpretation conundrums around the modus in which proceedings under BMA can be initiated.

An attempt to list major events around the limited aspect of initiation of BMA proceedings has been made below. The entire machinery of BMA is set in motion by issuance of a Section 10(1) assessment notice and there have been recent developments around how notices under Section 10(1) of BMA can be issued, especially concerning the Assessment Year (**AY**) for which such notices need to be issued. The author will juxtapose this provision with the way the Income Tax Act, 1961 (**IT Act**) works and an attempt will be made to cull out the peculiar differences between these two laws.

The author has been part of various articles in the past on this topic, **Black Money Act – All you need to know Part 1** listing the mechanics of this law, its triggers, applicability and implications of invocation. In a later part (**Black Money Act – All you need to know Part 2**), the defenses available to taxpayers as well as rulings in the context of BMA were analyzed. In **Black Money Act – All you need to know Part** , the author endeavored to provide some practical guidance on what course could be adopted once an assessment order was passed under BMA. An article titled **Six Years of Black Money Act - The Journey So Far & Way Ahead** was published enlisting developments in BMA laws until 2021. The present article will focus on certain practical aspects around the initiation of BMA assessment proceedings and rulings thereon.

Important provisions

The administrative machinery of BMA commences when a notice under Section 10 (1) of the BMA (an equivalent of Section 143(2) or 148 of IT Act) is issued. A combined reading of Section 3 (Charging section), Section 10 (Assessment related provisions) and Section 72(c) (Removal of doubts) is required to understand how the machinery is set in motion as well

as the relevance of the taxable period.

In case an undisclosed offshore asset existed (or was held by the taxpayer in the past) at the time of introduction of BMA, and the taxpayer did not avail the one-time disclosure window (that was introduced along with the BMA), and subsequently such offshore asset was to be discovered by the tax authorities, tax is leviable in the year in which the assessing officer issues a Section 10 notice (irrespective of the year in which such offshore asset was held / acquired). Section 3 further requires that such undisclosed offshore assets will be taxed on their value in the year in which such assets come to the knowledge of the assessing officer.

Section 72(c) of BMA is very important in analysing the charge of tax under BMA in this peculiar situation and it reads as under:

"Section 72 – Removal of doubts – For the removal of doubts, it is hereby declared that-

.....

(c) where any asset has been acquired or made prior to commencement of this Act, and no declaration in respect of such asset is made under this Chapter, ***such asset shall be deemed to have been acquired or made in the year in which a notice under section 10 is issued by the Assessing Officer and the provisions of this Act shall apply accordingly."***

Relevant provisions of Sections 3 and 10 of BMA are also reproduced below:

"Charge of tax.

3. (1) There shall be charged on every assessee for every assessment year commencing on or after the 1st day of April, 2016, subject to the provisions of this Act, a tax in respect of his total undisclosed foreign income and asset of the previous year at the rate of thirty per cent of such undisclosed income and asset:

Provided that an undisclosed asset located outside India shall be charged to tax on its value in the previous year in which such asset comes to the notice of the Assessing Officer.

(2) For the purposes of this section "value of an undisclosed asset" means the fair market value of an asset (including financial interest in any entity) determined in such manner as may be prescribed.

Assessment.

10. (1) 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 and may, from time to time, serve further notices requiring the production of such other accounts or documents or evidence as he may require.

.....”

A perusal of these sections of the BMA would make it clear that there is very high importance accorded to two events:

a. Discovery of undisclosed offshore asset by the assessing officer **AND**
b. Issuance of a notice under Section 10 by the assessing officer pursuant to such discovery.

It is very much possible that an assessing officer may receive information about a certain undisclosed offshore asset (acquired by a taxpayer in the past, say year X) in a later year (year of discovery, say year Y) and a notice under Section 10 may be issued by the assessing officer in a different year (year of issuance of assessment notice, say year Z). In such a situation what will happen is that notice will be issued to the taxpayer for the AY corresponding to year Z, to assess an undisclosed offshore asset that was acquired in year X and the valuation rules that will apply in the present case to decide the value of such undisclosed asset will be those which apply to year Y (being the year in which the assessing officer discovered such asset).

If one were to juxtapose this situation with an income tax case, it would have been much easier as on discovery of an undisclosed asset (or an income) acquired in the year X, an assessment notice under section 143(2) or reassessment notice under Section 148 of IT Act would be issued for year X (assuming the same is not time barred) and valuation provisions, tax rates, etc as applicable to year X would only be applicable. Thus, while it would be clear that the IT Act generally tracks acquisition of asset / earning of income, however under the BMA what becomes important is discovery as well as actual issuance of a notice under Section 10 of BMA in view of the peculiar and substantive presumptions enshrined in provisions of Section 72(c) and Section 3 of BMA.

Note-worthy rulings on this presumption

The interplay between the provisions of Section 3 and Section 72(c) were before the Hon'ble Income Tax Appellate Tribunal (**ITAT**) in case of Anandi Kaushik Laijawala [TS-111-ITAT-2025(Mum)] and in this case the Hon'ble ITAT held as under:

6. In the instant cases, the impugned foreign assets have been acquired by both the assessees prior to the commencement of the BMIT Act and further they have also not filed any declaration u/s 59 of the Act voluntarily. Hence the deeming provisions mentioned in sec.72(c) of BMIT Act shall apply to the facts of the present cases. Accordingly, the "assessment year" for assessing those foreign assets would have to be determined on the basis of date of notice

issued by the AO u/s 10(1) of the Act. We noticed earlier that the proviso to sec.3(1) of the BMIT Act stated that the undisclosed asset located outside India shall be charged to tax on "its value in the previous year in which asset comes to the notice of the Assessing officer". A interplay between the proviso to sec.3(1) and sec. 72(c) in respect of assets acquired or made prior to the commencement of Act and which has also not been declared u/s 59 of the Act,

may be explained as under:-

(a) the determination of value of the undisclosed asset located outside India is one thing and assessing the said value under BMIT Act is another thing.

(b) While the value of the undisclosed asset will be determined on the basis of its value prevailing in the previous year in which such asset comes to the notice of the assessing officer, the same will be assessed in the hands of the assessee only in the assessment year, which is determined in terms of sec.72(c) of the Act.

Having understood this fine balance of presumptions under the BMA, we will now consider the importance of the AY for which Section 10 notices can be issued and a couple of rulings on that subject. These rulings are important as in both these cases, the assessment notices were ordered to be quashed as they were found to have been issued in violation of the basic provisions of BMA.

A more recent ruling of the Hon'ble ITAT, Chennai Bench in case of Smt. Elangovan Malarmangai @ Swetha [TS-508-ITAT-2025(CHNY)] has recognized this presumption and held that tax under BMA is to be levied in the year in which the assessing officer issues assessment notice under section 10(1). In this case the tax department had undertaken a search on the taxpayer on 13 July 2016 and it has been stated that the during such search, certain offshore assets held by the taxpayer were discovered. Section 10(1) notice was issued on 21 March 2020, however the AY mentioned on such notice was AY 2017-18 (probably in view of the fact that the search was conducted in that year and hence the discovery of offshore assets as far as tax department was concerned happened in that year). Such notice was challenged by the taxpayer and the ITAT has held that since the section 10(1) notice was issued on 21 March 2020, the correct AY should have been AY 2020-21 and not AY 2017-18 as stated in the case of the taxpayer.

The Chennai Bench of the Hon'ble ITAT also considered the arguments around section 81 of BMA[1] (Assessment not to be invalid on certain grounds) and went on to hold that wrong AY cannot be construed as a 'mistake, defect or omission in such assessment as laid down in section 81'. Key proposition of this ruling can be summarised as under:

Sr No	Particulars	Facts before Chennai Bench of ITAT	Relevant AY
1	Discovery	Date of search – 13 July 2016	2017-18
2	Issuance of section 10(1) notice	21 March 2020	2020-21
3	Actual 10(1) issued on / for AY	21 March 2020	2017-18
4	Correct AY	as per ITAT ruling	2020-21

Note: Since in this case, Section 10(1) notice was issued for AY 2017-18 as against AY 2020-21, the entire assessment proceedings (and consequent penalty proceedings under Section 41 being penalty in relation to undisclosed foreign income and asset) have been held to be invalid and ordered to be quashed by the Hon'ble ITAT.

The year in which a foreign asset is acquired is irrelevant and importance is placed only on its detection and the presumption is that tax will be levied in the year of detection (relevant for valuation) and notice by the authorities (date of notice is relevant for ascertaining the year for which such tax will be levied).

The relevance of AY for which Section 10(1) notices are issued is the ruling pronounced by the Kolkata Bench of the ITAT in case of Vikas Marda [TS-956-ITAT-2024(Kol)], wherein though there were multiple issues involved, one of the key considerations before the ITAT was that the tax department had initiated proceedings under BMA act for AY's 2014-15, 2015-16 and 2016-17. It was held that the first AY under BMA could only be AY 2016-17 and not prior to that, hence the proceedings initiated prior to AY 2016-17 were quashed. The relevant finding of the Hon'ble Tribunal is as under:

8. We have heard the rival contentions and gone through the records. Admittedly, initially the Black Money Act, 2015 vide section 1(3) had come into force on 01.04.2016. However, its implementation was preponed w.e.f. 01.07.2015, through Notification No. 1970(E) to facilitate voluntary disclosures so that a reasonable opportunity may be given to the concerned persons to voluntarily disclose their undisclosed assets and pay due taxes to avoid the tax penalty and prosecution on coming into force the Black Money Act, 2015. ***Under such a position, the first previous year under the provisions of Black Money Act, 2015 would be FY 2015-16 and the corresponding AY will be AY***

2016-17. Therefore, the AO could not have assessed the income of the assessee for AYs 2014-15 and 2015-16. *Similarly, there would not have any jurisdiction to impose penalty for AYs 2014-15 and 2015-16 before coming into force the Black Money Act, 2015.* ***The assessee was not supposed to comply the provisions of Black Money Act, 2015, before it has come into force and, therefore, the assessee cannot be held liable for non-compliance of any provisions of the Black Money Act, 2015 in relation to AY 2014-15 and 2015-16 and penalty levied u/s. 41 & 43 of the Black Money Act, 2015 and would also be not sustainable for AY 2014-15 and AY 2015-16.*** *Therefore, there is no force in the appeals of the revenue relating to action of the Ld. CIT(A) in deleting the tax imposed u/s. 10 of the Black Money Act, 2015 and penalty levied u/s. 41 & 43 of the Black Money Act, 2015 for AYs 2014-15 and 2015-*

9. Appeals of the revenue relating to AY 2014-15 and AY 2015-16 are hereby dismissed.

Conclusion

Several presumptions work against taxpayers under BMA laws. Section 72(c) is one such presumption that addresses arguments like time barring, etc which would have otherwise been available in case of old assets for taxpayers. However, under the BMA, assets are presumed to have been acquired in the year of issuance of the Section 10 notice (irrespective of their acquisition and disposal) and are to be taxed on their value in the year of their discovery (this year (of discovery) could be different than the year in which Section 10(1) is issued). One will also need to further interpret Rule 3 (Fair Market Value) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015 after considering this dichotomy between the year for which notice is issued and the year of which valuation needs to be adopted.

It is also pertinent to note that under Section 54 of the BMA (corresponding to Section 278E of IT Act) which relates to prosecution of offences under BMA, there is a presumption of culpable mental state on the part of the taxpayer wherever required. It will be for the taxpayer to prove beyond reasonable doubt that there was no such intention / culpable mental state on the part of the taxpayer which is a very high threshold to meet.

The implications of BMA proceedings in terms of financial outflows as well as possible criminal sanctions can be very harsh and hence it is important that taxpayers be mindful of these finer legal nuances. While one is used to checking the time barring dates applicable for AYs, approvals, etc. in case of income tax notices, the above discussed rulings under BMA bring to fore an important point that the most critical aspect to check in BMA assessment notices is the AY for which such notice is issued. This can be a make-or-break data point for ascertaining the validity of and in defending such assessment proceedings.

[1] ***Assessment not to be invalid on certain grounds.***

81. *No assessment, notice, summons or other proceedings, made or issued or taken or purported to have been made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such assessment, notice, summons or other proceeding if such assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.*