



Adjudicating Authority Under PBPT Act, 1988

Rajendra, *Advocate*

One of the four objects of the Finance Bill, 2021 was stated to be 'removing of difficulties faced by the taxpayers'. Clauses 142-147 of the Finance Bill, proposing amendments to the Prohibition of Benami Property Transactions Act, 1988 (PBPTA), can be categorized as a step taken in that direction. Proposed amendments deals with the working of Adjudicating Authority (AA) under the PBPTA i.e. section 71 of the Act. Before deliberating upon the amendment, it will be useful to know the history of AA under the Act. Section 7 of the original Act i.e. PBPTA provided for an AA in the following manner:

Adjudicating Authority.--The Central Government shall, by notification, appoint one or more Adjudicating Authorities to exercise jurisdiction, powers and authority conferred by or under this Act.

For the unknown reasons the PBPTA remained practically unimplemented for a very long time. As the Rules and procedures to implement the Act were not framed, so it became a paper tiger. In 2016, certain amendments were made to the and section 71 was introduced. Section of the 71 of the Act reads as under:

71. Transitional provision.—The Central Government may, by

notification, provide that until the Adjudicating Authorities are appointed and the Appellate Tribunal is established under this Act, the Adjudicating Authority appointed under sub-section (1) of section 6 of the Money-Laundering Act, 2002 (15 of 2003) and the Appellate Tribunal established under section 25 of that Act may discharge the functions of the Adjudicating Authority and Appellate Tribunal, respectively, under this Act.]

Clearly, the provisions of the section were in the nature of stop gap arrangement, but as least these provisions tried to fill the vacuum created by the original Act. It appears that at the time of introducing the amendment to the PBPTA, the Ministry of Finance could not select and appoint the members of AA who could adjudicate the matters. So, as an emergency measure the AA.s of Prevention of Money Laundering Act (PMLA) were designated as AA.s of PBPTA also. Besides, the Appellate Tribunal of PMLA was assigned to function as the Appellate Tribunal for the PBPTA also.

While appointing the AA.s of the PMLA as the AA.s of PBPTA, the Ministry of Finance did not take in to cognizance the pendency of the cases and facilities of the AA.s of PMLA.

In the infancy days of PMLA, there were only a few cases with the AA.s of that Act. But, by the year 2016, when the amendments were introduced to PBPTA, hands of AA.s, PMLA were full-rather the AA.s were overburdened with the workload. Cases coming from all over India were distributed among the three members of the AA. Sometimes there were only two members in the AA, PMLA. The volume of adjudication work was so heavy that members of the AA, PMLA could hardly handle it. As in the most of the cases the AA.s would confirm the provisional attachment orders passed by the officers of the Enforcement Directorate, so it was easier for them to anyhow stick to the timeline of passing adjudicating orders under the PMLA.

It is said that famine never comes alone, it is generally accompanied by a 'Purshottam Maas'. Almost the same thing happened with the AA.s, PMLA. After 2016 amendment to the PBPTA, cases of that Act also started landing on the tables of members of the AA. It virtually became the proverbial overloaded camel that was being loaded with extra luggage. With its meager resources (manpower and office space) AA.s, PMLA were managing anyhow. But, the outbreak of fire in the office premises of AA, PMLA and shortage of staff made it difficult for them to handle the cases of both the Acts. I am witness to the huge piles of files surrounding the members of AA as well as their plight and stress. Due credit should be given to the members of AA, PMLA who were handling the cases of both the Acts till date. The proposed amendment will provide the most needed relief for the members of the AA, PMLA.

It is surprising that till date Government of India has not been able to appoint regular adjudicating authority to decide PBPTA cases. Four years was sufficient time to frame the terms and conditions for appointment of AA.s

and select them. But, why it has not taken place, no one knows. There is no shortage of competent officers of Government of India/ members of the Bar who can take over as members of AA, PBPTA. Proper recruitment rules and appointment of the members would have solved the problem for ever and would have given impetus to effective implementation of the PBPTA. An important legislation, to tackle the vices of Benami Property, deserves its own AA.s rather than depending on borrowed hands.

The Finance Bill proposes that now the Competent Authority constituted under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (SAFEMA) shall be the Adjudicating Authority under the PBPTA. SAFEMA, containing only 27 Sections, is one of the very small Acts. Section 3 (b) defines Competent Authority as under:

- (b) "competent authority" means an officer of the Central Government authorised by it under sub-section (1) of section 5 to perform the functions of a competent authority under this Act;

Section 5 of SAFEMA reads as under:

Competent authority. (1) The Central Government may, by order published in the Official Gazette, authorise as many officers of the Central Government (not below the rank of a Joint Secretary to the Government), as it thinks fit, to Perform the functions of the competent authority under this Act.

(2) The competent authorities shall perform their functions in respect of such persons or classes of persons as the Central Government may, by order, direct.

Sections 7 and 16-19 deal with functions and powers of the Competent Authority. In short, an officer of the Central Government, not below the rank of a Joint Secretary to the Government, will now function as AA for the PBPTA matters. The members of BAR are not eligible to be appointed as Competent Authority under the SAFEMA.

One of the reasons for transferring the matters to the CA.s, SAFEMA, can be that only a few SAFEMA cases are pending for disposal with them. But, if their hands are full like that of AA of PMLA, then the proposed change will not be able to bring any qualitative change.

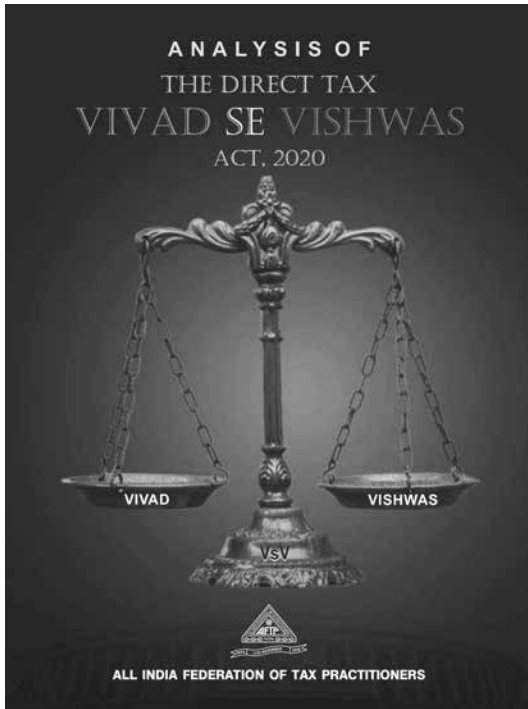
As the offices of CA.s, SAFEMA are located in Chennai, Delhi, Kolkata and Mumbai, it is possible that matters pending with AA, PMLA would be sent to all the four places. If it happens, noticees of PBPTA would not be

required to travel to Delhi to appear before the AA, PMLA. But, we have to wait to find out the nitty gritty of the proposed scheme of transfer of cases from AA, PMLA to CA, SAFEMA.

As per the Finance Bill, CA.s, SAFEMA will commence discharging their functions as AA PBPTA, from 01.07.2021. The Bill has proposed to extend the period of limitation under sub-section (7) of section 26 of the PBPTA. It provides that where the time limit for passing order under sub section (7) of section 26 of the PBPTA expires during the period beginning from 1.07.2021 and ending on 29.09.2021, the time limit for passing such order shall stand extended to 30.09.2021.

Let us hope that the proposed arrangement will remove the difficulties faced by the tax payers, as promised in the Bill.





**1st E-Publication of
All India Federation of Tax
Practitioners Now available in
Downloadable Format**

**Subject – Vivad Se Vishwas
Act, 2020**
(Regularly Updated with latest
Notifications & Circulars)

Authored by
Vipul Joshi & Dinkle Hariya, Advocate

Price ₹ 500 + GST ₹ 90 = ₹ 590/-

Special 50% discount to members
@ ₹ 250 + GST ₹ 45 = ₹ 295/-