Black Money Act, 2015: Why India Needs This?

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Abstract

At the beginning, the author gives a brief introduction of the word "*black money*". Further the authorhas discussed the historical evolution of black money that is sources from where the black money is generated and the type of income which is covered under the ambit and scope of the Black Money Act 2015. The author also explains the economic problems which the country faces due to non-implementation of existing laws in a strict sense.

Further the author brings forward the flaws in the old governing provisions, as money laundering involves transferring of money from India to other countries, as there is no support from foreign agencies in unveiling the corrupt names. The author quotes the key features of the Black Money Act, *viz.* how it will be helpful in getting the undisclosed income from abroad. As per the data, there is over *Rs. 7 Lakh Crore* of black money which is hidden outside the country. Further the researcher stresses on the grey areas of the Act as the wording of the Act provides for penalizing foreign income and assets hidden abroad, but the domestic undisclosed income is a big problem to encounter and the Act fails in doing so.

The author has analysed the guidelines given by various commission reports as the main aim of the paper was to make suggestions for solving the black money issue. At the end the author provides a blueprint of measures that need to be taken to penalize the hoarder so that not even a single unaccounted penny can go out of the country.

KEYWORDS-Black Money, Foreign Agencies, Undisclosed Income.

BLACK MONEY: INTRODUCTION

What is Black Money?

'Black money' or 'undisclosed money' or 'unaccounted money' or the 'underground money'[1] is a matter of grave concern for any developing economy like India.These terms are being used synonymously. The report of Direct taxes Enquiry Committee setup under the chairmanship of Sri K. N. Wanchoo, explains the term that when we split the word we get 'black' and 'money', the black colour connotes of something evil, which violates some moral, social or legal norms.[2] In a landmark judgment, it wasstated that black money not only includes income generated by violating legal provisions or taking the benefit of loopholes of law but also the amount which is kept hidden and not revealed.[3] Unfortunately, people had a general impression about using the word 'black money' for both black income and black wealth, but in fact the meaning is different.In a lay man's term, black money means that part of income which is in liquidity i.e. in currency form or in bank deposits, and the summation of currency and assets like gold and diamond ornaments. Property purchased from black income constitutes a person's black wealth while black income is that income which has some nexus with illegality, like under reporting or non-reporting of income earned. These include income from current legal economic activities[4] like income generated by hoarding goods and selling them at a higher price as the business transaction is legal but the price at which the goods are being sold is undervalued, income by evasion of tax like in case of under valuing of property during sale of immovable property as one can evade stamp duty and that portion of amount will not be consider in calculating national income, income generated by illegal means like gambling, smuggling, black marketing, bribes, etc. There is a direct link between tax evasion and black income.

Sources of Black Income

In a country like India, where everyone in an office from a peon to a managing director is associated with the offence of bribery and corruption, it is a very difficult task to trace the origin of black income. When broadly classified, there are two sources of the generation of black money i.e. by doing legal activity in an illegal way or by doing illegal activity. The first source is by doing legally permitted activity but not bringing it to the notice of public authorities for taxation thus evading tax and generating black money. The second source is by indulging in activities which are not being permitted by law i.e. doing corruption, manipulating prices of expensive luxurious goods, drug trafficking, illegal weapons trading, etc.

We should not just think about the players of big league, like of politician or any big authority but the people who are working on their own like businessmen, artist, advocates, doctors, etc. these people are in a larger chunk and almost each and every one had a dream of becoming rich overnight and accordingly, emerged the concept of evading tax and hence cheating the government, which generates a large amount of black income. It is only their greed which makes them do such things. Although not only by not disclosing their income but also by inflating expenses by obtaining bogus or inflated invoices from the purchaser who charges nominal commission for this[5].For example at the time of refuelling nobody ask for the receipt and if a person goes for refuellingfor Rs. 100 and asks for a receipt of Rs. 500, he hasinflated his expenses by Rs. 400 and the personnel at the petrol pump issuing this can do so very easily as we do not ask for receipts and he has to show sales in his financial statement and so by doing this, he also evades tax. Here both of them generate black money.

Another way of generating black income is by indulging in illegal activities of importing goods or exporting goods without paying custom duties or other taxes which directly leads to the smuggling of goods which are notaccountable in the books and are sold in the black markets and hence generate huge amount of black money which goes undisclosed. Also, considering the scenario of a developing country like India where there is an urgent need of essential commodities and services in order to avoid the exploitation of the common people by sellers, many things happen around us which are enough in nature to generate black money. Few other most important factors which add to this black money are corruption in public offices, private offices and other business related departments of any kind. Acceptance of bribe in any form by the respective officials in order to perform their expected duties leads to the generation of a huge amount of black money.[6]

Impacts of Black Money on Indian Economy

1. High rate of inflation: When black money comes to the market, it becomes difficult for the government to control the situation as the flow of money is more than the expectancy of the government which puts buyer in a dominant situation as his purchasing power increases and it directly hits the supply demand graph. This causes prices of commodities to go beyond normal level.

2. Development and economic growth: Due to the high level of corruption, the scope of development and overall development stands still. As budget is prepared at the beginning of the financial year and due to illegal practices, government is unable to get expected tax revenues which results in non-executionof the plans and formulae for development and growth. If taking the example of the corruption which took place at Commonwealth Games or in 2G spectrum, government released funds but due to lack of transparency and control, the allotted money got into the account of black money hoarders.

3. Inflated real estate and gold prices: When people with black money come into market to do business, they are ready to go to any extent to pay for a small piece of land whichautomatically increases the value of land. This enables them to convert their black money into legal money.[7]

4. Increase in corruption: Nowadays, people have plenty of black income so they want everything to be done as per their will, but at the end this leads to corruption. People with black income easily bribe the politicians and administrators and get done what they want which leads others to get off the track.[8]

5. Depletion of foreign currency: Black income which is being generated in India is being transferred to foreign banks for safe keeping, which is done by under valuing the exports or over valuing the imports.These are the only methods by which Indian money reaches to foreign countries. By this, the black money holders put a pressure on economy as well as on the government in balancing foreign trade payments.[9]

6. Widens the gap between rich and poor: There is a saying in the corridors of each and every organization that rich is getting richer and poor is getting poorer. This statement is completely correct as the constant growth of black money makes the rich richer and thus widening the gap between the two societies.

FLAWS IN OLD LAWS IN GOVERNING BLACK MONEY:

1. **Prevention of Money Laundering Act (PMLA):** Prevention of money laundering Act forms the core of the legal framework in combating the black money income and money laundering.

   The following four sections have been fused by Prevention of Money Laundering Act from the Prevention of Corruption Act:

   "Section 7- Public servant taking gratification other than legal remuneration in respect of an official act

   Section 8- Taking gratification in order, by corrupt or illegal means to influence public servant

   Section 9- Taking gratification for exercise of personal influence, with public servant

   Section 10- Abetment by public servant of offences defined in section 8 or section 9 of the Prevention of Corruption Act, 1988."[10]

   The act has restricted approach and is limited to these conditions alone. Along these lines, there is no request of government avoidance in these particular exhibitions of taking the unlawful fulfilments. Some of the profits from wrongdoing would turn out to be conceivably the most vital component exactly when the wrongdoer utilizes the money by investing it into the market, by purchasing assets, i.e. compromise, in the wake of pushing these endeavours or immense cash executing options i.e. layering. Hence, by whatever means, no offense of washing money can be established and criminal proceedings cannot be started and the person will be using the proceeds out of that.

   Money laundering, as an offense, which is statedin section 13 (1)(e) of Prevention of Corruption Act states that *"A public servant is said to commit an offence of criminal misconduct if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income".*[11] Under section 3 of PMLA basic three conditions required for bringing the offence under this ambit a) gaining, owning, having or exchanging continues of wrongdoing, b) intentionally going into any exchange which is straightforwardly or in a roundabout way identified with continues of wrongdoing and c) covering or helping in the disguise of the returns of wrong doing. This section for instances of defilement to go under the impression of the conditions imposed in the PMLA, the fundamental wrongdoing ought to be acknowledgment or abetting the acknowledgment of influence cash, which is mentionedpreviously, is a coincidental occurrence including bribe sum. Such types of heinous crimes should be brought before a court of law along with conducting an enquiry under the PMLA Act. Moreover such type of cases should be charge sheeted for the offense. The charge imposed under the section does not fall under the same. In the event that by any stretch of the imagination, unbalanced resources are discovered, a different case u/s 13(1) (e) is filed and a fresh charge sheet is to be filed.

2. **Foreign Exchange Management Act (FEMA**): FEMA is an Act relating to foreign trade governing the exports of the country. The basic purpose of the Act is to facilitate foreign trade and maintain foreign exchange market in India. This Act is very much considered as exporter friendly Act[12] and due to which the offenders took the advantage of these loopholes and evade tax and generate black income.

   One identifies the genuine change in the non-resident status. FEMA characterizes a person as a resident as a man living in India for over 182 days throughout financial year. The law now gives full opportunity to a man living in India to hold or own or exchange any security or property arranged outside India and obtained when he/she was an inhabitant there. What this implies, as a result, is that now any Indian by going all through India notwithstanding for as short a period as one month can secure resources there, return and still own and arrangement in those advantages. Through this mechanism, the people with heavy black income can now procure assets at foreign and can now easily hide their black income in spite of such stringent and draconian laws.

Black Money Act, 2015

The Black Money Act officially known as "The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015" came into existence on July 1st 2015. The statement and purpose of the act seeks to curb the growth of black money and furthermore comes up with a complete set of rules and regulations, so as to levy tax on the undisclosed assets and income held by Indian residents and Indian-sourced income of non-residents in abroad.[13]

Black money or "black income", which is salary on which imposes payable have been dodged, can be clubbed into two categories i.e. domestic and foreign. The finance minister has cleared up that the new law has nothing at all to do with household dark cash.

The law accommodates separate levy of any undisclosed salary from remote resources and livelihoods; such pay will hereafter not be burdened under the Income Tax Act, 1961. The strict money related punishment and criminal indictment proposed under the law has welcomed both criticism and appreciation.

India is also the signatory to the Multilateral Competent Authority Agreement (MCAA) on 3rd June, 2015[14] in consonance with its various tax disclosure initiatives including Automatic Exchange of Information (AEOI). It is the treaty under which the sharing of information is done without making a specific request for it. It also discloses the information furnished by the bulk taxpayer in a very précised and in a timely manner amongst the countries which are part of this agreement or treaty.

This Act levies a tax of 30% and imposes a fine or says penalty up to 90% on assessee's total undisclosed foreign income and which includes assets procured during the previous year. However the window is open for shorter duration and it's a one-time opportunity for voluntary disclosure.After it,if the authorities find concealed income and assets, it will be fined at the rate of 300%. The definition of undisclosed asset located outside India (**undisclosed foreign asset**) construed by the black money acthereby states that as "*any 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, and he has no explanation about the source of investment in such asset or the explanation given by him in the opinion of the Assessing Officer is unsatisfactory.*"[15]

"A significant number of provisions of the Act are considered to be the most sever. Apart from these things they (a) provide surveying officers the sole adjudicating authority to acknowledge or reject the validity of exposures made; (b) allowing theassesses to disclose up salary points of interest notwithstanding for the timein which the individual was not commonly a resident of India; (c) accumulatedportion of not less than 60% of the present value of the interestdisclosed, and much increase degree of punishments if the amount is found by the duty powers later; (d) implemented the procedure of imprisonment for assessment avoidance and (e) take into consideration prompt seizure of advantages, equivalent to the sum payable to the administration, on the off chance that real accumulation of punishments is not possible."[16]

Key features of the Black Money Act:

1. The offence will be compoundable and the offender will not be allowed to approach the settlement committee for resolution of disputes.[17]
2. The bill empowers the centre to enter into agreements with foreign countries for exchange of information, tax recovery and for avoiding double tax process.
3. The principal of natural justice is there as one booked under this, had full right to appeal to income tax appellate tribunals, concerned High Court and Supreme Court.
4. The Act also gives powers to tax authorities for issuance of summons, can make one liable for compulsory attendance and for production of evidences and documents for better and faster disposal of case.
5. The bill also puts forward an option for concealment of income and evasion of tax in relation to foreign asset a predicate offence under the Prevention of Money Laundering Act, which will give the authorities the power of attaching and confiscating the accounted assets held abroad and initiate proceedings.[18]
6. Failure to file returns on foreign income and assets will approach an imposition of fine of Rs. 10 lakh.
7. Rigorous punishment can be given for a term between 3 to 10 years and a fine up to Rs. 1 Crore can be imposed, if they try to conceal their foreign income.
8. The tax liability would be calculated on the current prices and not on the earlier acquired price.
9. Individuals can pronounce undisclosed resources in outside nations in Form 6 by computing their abroad salary and resources, for example, immovable properties, gems and jewellery, archaeological works, etc. The principles additionally incorporate the

rundown of individuals who can benefit of the consistence opportunity and the individuals who can't.[19]

Grey Areas of Black Money Act:

1. The Act does not distinguish between beneficial ownership of public and non-public companies and there are grey areas around control of companies. From the enforcement point of view, there are certain limitations in getting back date information from foreign banks or governments.[20]

2. The declaration made by the taxpayer in this regard will not be used as evidence for prosecution under the Foreign Exchange Management Act, IT Act, Wealth Tax Act, Companies Act or Customs Act.[21]

3. The Act's will is incompetent to book the sole proprietor business men or partnership which by means of some fraud tries to evade tax and deposit their black income in the form of assets in the country, as the primary intention behind legislature in making this Act is only to book the corrupts who have hidden their income abroad in banks. Not only this, the act is incompetent to hold people liable who have black income in foreign countries which is being placed with other people or is associated in illegal and immoral activities like of terrorism.

4. "The government's lack of desire in stopping the Participatory Notes (PNs) is an excellent example. When the Special Investigation Team (SIT), appointed by the Supreme Court for probing into the issue of black money, asked the Securities & Exchange Board of India (SEBI) to control the flow of PNs, the finance ministry promptly raised its voice and said that Participatory Notes could not be disturbeduntil and unless they affect the stock-market. This is in spite of everybodyrealizing that PNs remain one of the biggest channels for pouring the hot money in and out of the market, but the finance ministry till now did not care to announce a due date by when these PNs will finally get banned." [22]

5. The act does not give a place to book all these spiritual gurus and religious trust as the government is closing its eyes from their income. Here we could say that a larger chunk of black wealth is accumulatedby these people's as if we have to meet Nirmal Baba personally then he will pay such hefty amount that no normal individual can afford.[23] So, no one is there to keep an eye on these people income as the money is accumulated in our country itself. The frauds which took place in many religious trusts, as people donate money in the name of God and the trustees put the entire amount into their pocket as these people are exempted from paying taxes and the entire amount constitutes country's black money.

6. The compliance window is only being provided to the Indian residents and has spent more than 182 days but this window will not be offered to non-resident Indians or professionals. This is a clear violation of right of equality as these people will be

brought under the ambit of this act but not will be given compliance window, as it is totally unjustified on their part.

7. According to Daksha Baxi, Executive Director, Khaitan and Co, “IT people will only be brought under theambit of the Act to the stretchif they haven’t declared the income earned in abroad in the relevant assessment year and neither the income has been declared in their revised returns for those respective years. Those professionals, who have filed their return as per the provision of the Income Tax Act, will be protected under this act.”[24]

8. The compliance window being provided to the assessee is too short as three months duration is none other than a challenge from 1st July to 30th September, 2015 and if there is any miss reporting of any income receipts, that assessee is unable to clear the error and proceedings will be initiated against him.

RESEARCHER SUGGESTIONS

1. Disclosure window time limit should be widened in disclosing their income as it has to collect the details for all the income receipts and if by mistake it missed at some point, hefty penalty is waiting for him.
2. The primary focus of the Act is on the foreign income and assets. In spite of stressing on foreign income and assets, government should focus on the wealth which is here buried in our land in many forms.
3. The Act should also bring these local and small business houses who are defrauding the nation and evading taxes as the Act is silent on these issues. Additionally, all these spiritual gurus need to be brought under the ambit.

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