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CHAPTER: I

CASH HOLDINGS

1. Provision for curbing circulation of black money:—

(i) Section 40A(3) of The Income–Tax Act, 1961 ("I.T. Act"):—

Under the I.T. Act, various provisions have been introduced from time to time to curb the circulation of black money in the form of cash expenditure. One of the provisions is Section 40A(3) incorporated in the I.T. Act to disallow claim of certain expenses, if payment is made otherwise than prescribed mode (cheque, draft, etc.) in excess of limit laid down in the said Section. The said Section (as amended by the Finance Act, 2015) reads as under:—

"*3. Where the assessee incurs any expenditure in respect of which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, exceeds twenty thousand rupees, no deduction shall be allowed in respect of such expenditure.*

3A. Where an allowance has been made in the assessment for any year in respect of any liability incurred by the assessee for any expenditure and subsequently during any previous year (hereinafter referred to as

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subsequent year) the assessee makes payment in respect thereof, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, the payment so made shall be deemed to be the profits and gains of business or profession and accordingly chargeable to income tax as income of the subsequent year if the payment or aggregate of payments made to a person in a day, exceeds twenty thousand rupees:

Provided that no disallowance shall be made and no payment shall be deemed to be the profits and gains of business or profession under sub–section (3) and this sub–section where a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft, exceeds twenty thousand rupees, in such cases and under such circumstances as may be prescribed, having regard to the nature and extent of banking facilities available, considerations of business expediency and other relevant factors:

Provided further that in the case of payment made for plying, hiring or leasing goods carriages, the provisions of sub–sections (3) and (3A) shall have effect as if for the words "twenty thousand rupees", the words "thirty five thousand rupees" had been substituted."

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This Section empowers the assessing authority to disallow deduction of any expenditure in respect of which payment is made in cash exceeding the limit prescribed therein.

(ii) Mode of taking or accepting loans or deposits and mode of repayment of loans or deposits in relation to transfer of an immovable property, whether or not the transfer takes place:—

In addition, similar provision is made under Section 269SS of the I.T. Act. The relevant part thereof is as under:—

"***269SS. Mode of taking or accepting certain loans, deposits and specified sum.***

No person shall take or accept from any other person (herein referred to as the depositor), any loan or deposit or any specified sum, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account, if,—

(a) the amount of such loan or deposit or specified sum or the aggregate amount of such loan, deposit and specified sum; or

(b) on the date of taking or accepting such loan or deposit or specified sum, any loan or deposit or specified sum taken or accepted earlier by such person from the

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depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid; or

(c) the amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b),

is twenty thousand rupees or more:

... ...

Provided further that the provisions of this section shall not apply to any loan or deposit or specified sum, where the person from whom the loan or deposit or specified sum is taken or accepted and the person by whom the loan or deposit or specified sum is taken or accepted, are both having agricultural income and neither of them has any income chargeable to tax under this Act."

In order to curb generation of black money by way of dealings in cash in immovable property transactions, Section 269SS of the I.T. Act was amended by the Finance Act, 2015 with effect from 01st June, 2015 to provide that no person shall accept, from any person, any loan or deposit or any sum of money, whether as advance or otherwise, in relation to transfer of an immovable

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property otherwise than by an account payee cheque or account payee bank draft or by electronic clearing system through a bank account, if the amount of such loan or deposit or such specified sum is twenty thousand rupees or more.

Similarly, Section 269T of the I.T. Act was also amended with effect from 01st June, 2015 to provide that no person (Banking Company/Co–operative Bank–society/Company) shall repay any loan or deposit made with it or any specified advance received by it, otherwise than by an account payee cheque or account payee bank draft or by electronic clearing system through a bank account, if the amount or aggregate amount of loans or deposits or specified advances is twenty thousand rupees or more.

The specified advance shall mean any sum of money in the nature of an advance, by whatever name called, in relation to transfer of an immovable property whether or not, the transfer takes place. No doubt, some exceptions are provided for Government Companies, etc. which are not required to be referred.

Consequential amendments were also made with effect from 01st June, 2015 in Section 271D and Section 271E to provide penalty for failure to comply with the amended provisions of Section 269SS and Section 269T, respectively.

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2. It is to be stated that Sections 40A(3), 269SS, 269T, 271D and 271E are intended to regulate the business transactions and **to prevent the use of unaccounted money** or reduce the chance to use black money for business transactions. **Such restraint is intended to curb circulation of black money and can not be regarded as curtailing the freedom of trade or business. [Ref.: Attar Singh Gurmukh Singh v/s. ITO [(1991) 97 CTR (SC) 251: (1991) 191 ITR 667 (SC)].**

However, the aforesaid Sections have no effect in controlling transactions by unaccounted / black money. It is a known fact that for purchasing articles of Rs.20,000/– or more, unaccounted / black money are used without bothering for tax deduction or penalty leviable under Section 271D or Section 271E of the I.T. Act. Question of levying penalty would arise only when such transaction comes to the knowledge of the I.T. Department, because it is difficult to find out or locate the same by the I.T. Department in a country where thousands of such transactions take place everyday. As such, these Sections have failed to control or have any effect on transactions or circulation of unaccounted money.

Hence, it is suggested that there should be a positive provision under the I.T. Act that any transaction involving more than Rs.3,00,000/– (Rupees Three Lacs) shall be invalid & illegal and would be a punishable offence, if amount is not paid by account payee cheque or account payee bank draft or use of electronic clearing system through a bank account. Limits on cash transactions would discourage white collared

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criminals or harden criminals from money laundering and dealing in unaccounted / black money. This would also discourage corruption to some extent. May be that corrupt persons would find out ways and means by accepting the gold or ornaments or constructed premises. However, it would prevent to a large extent funding of terrorism and organized crimes and transferring unaccounted money from one destination to other through Angadias or by any other method.

3. Provisions on cash transactions in other countries:—

For the aforesaid purpose, it would be appropriate to refer to the provisions incorporated in some countries restricting cash holding or cash transactions:—

(i) France:—

Noncash payments' share of total value of consumer payments is 92% and percentage of population with a debit card is 69%.

France's success in moving away from cash comes in part from its high level of banked population (97%) and also from a long–standing government focus on the efficiency and financial inclusion aspects of payments. France has been actively focused on payments innovation, bringing to market new solutions such as mobile payments, contactless cards, and m–POS to meet the diverse payment needs of French consumers.

€3,000 is the limit for the residents in France. €15,000 is the limit for the non–residents

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acting as a consumer.

Apart from the above, in the report, namely, **"France limits cash transactions to €1,000, puts restriction on Gold"** published on 19th March, 2015, it is *inter–alia* reported that,

"*the French Government will limit cash payments to 1,000 euros compared to 3,000 euros today, a move that will come into force in September* ***to combat terrorist financing and money laundering,*** *in an announcement from Finance Minister, Michel Sapin. For non–residents (mainly tourists), the limit will drop from 15,000 to 10,000 euros.* ***Also, starting next year, banks will have to notify authorities of any income or withdrawals of more than 10,000 euros per month.***"

(ii) Hungary:—

There is no limit for the consumers. Limit of HUF is 1.5 million (about 5,000 EUR/month) for legal persons, unincorporated business associations and VAT registered private persons that are obliged to open a bank account.

(iii) Portugal:—

The cash payments of goods and services between consumers and traders are limited by the law. Article 63–C of the Decree Law No.398/98, of December, 12 (General Tax Law), amended by the Law No.20/2012, of May, 14 (amending 2012 State Budget) requires that **the**

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payment of invoices or similar documents on the amount of more than €1,000 should be made to trader's bank account by a mean that allows the identification of the receiver (bank transfer, bank debit or by a nominative check).

(iv) Slovakia:—

Cash payments have been regulated in Slovakia by the Act No.394/2012 dated 01st January. The Act has set restrictions for the cash payments:—

(a) B2B, C2B and B2C payments up to 5,000 EUR; and

(b) natural person who is acting for purposes which are outside his or her trade, business up to 15,000 EUR by payments higher than afore–mentioned limits can be processed only by cashless transactions.

(v) Czech Republic:—

The limit for cash payments is 3,50,000 CZK (about €14,000) in one day. As for the coins, the limit is 50 pieces.

(vi) Spain:—

Since 19th November, 2012, the limit is €2,500 (for Spain residents) and €15,000 (for non–residents). If the amount is higher than these (in each case), the payment should be done by bank transfer. **The fine for failing to carry out this precept could be about 25% of the**

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total transferred amount. The law applies for payments between consumers and traders.

(vii) Bulgaria:—

Limit is up to 10,000 leva (approximately €5,112). If the transaction is over that limit, then the consumer should pay through a bank. The same applies also in any case where the purchase price is over €5,112, even when the consumer pays not the total price but a part of it, then all parts of the price should go through a bank payment.

(viii) Belgium:—

Belgian Government has imposed a limit on cash payments limiting it to 3,000 euros.

(ix) Greece:—

Cash payments (including VAT) for the purchase of products and services are **permissible up to 1,500 euros.** Beyond that limit, payments should be done via bank accounts, cheques or credit / debit cards.

(x) Italy:—

In the article, namely, **"**new restrictions on cash transactions**"** published in the website of Studio Del Gaizo Picchioni, it is reported that,

"*The Italian Tax Authority is tightening up further on the possibilities of money–laundering and tax*

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evasion. As of 6th December, 2011, the limit of cash that can change hands in any transaction was reduced to €1,000. ***The previous limit was €2,500.*** *This means that if you want to pay your builder, plumber or commercialista (!), for example,* ***or even purchase an item in a shop for a value of €1,000 or more, you may no longer pay in cash but will need to use bank transfer, credit or debit card or the like.*** *The legislation also prohibits attempts to get round the new law by artificially breaking down larger transactions into smaller payments of amounts below the limit. This should not, however, affect the position where this is done for genuine commercial reasons, such as payment by installments.*

This new legislation may well prove a problem for those running a small business in Italy, where cash transactions are the norm. However, it will also have an impact on those of us who buy property in Italy and need to pay workmen and fit out our homes with higher value items. It may also affect those renting out Italian property who make or receive their rental payments in cash.

The fine for breaching the legislation is high – a minimum of €3,000 per transaction.

*It is hoped that the Italian tax authority will allow a grace period – possibly until the end of the year – to allow people to adapt to the change.***"**

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4. Press release on "ECB ends production and issuance of €500 banknote":—

In the press release dated 04th May, 2016 published in the website of European Central Bank, Directorate General Communications, Germany, it is stated that, **"***ECB has decided to discontinue production and issuance of €500 banknote. Europa series of euro banknotes will not include the €500. €500 banknote remains legal tender and will always retain its value.***"** Relevant part of the said press release is reproduced as under:—

"*Today, the Governing Council of the European Central Bank (ECB) concluded a review of the denominational structure of the Europa series.* ***It has decided to permanently stop producing the €500 banknote and to exclude it from the Europa series, taking into account concerns that this banknote could facilitate illicit activities. The issuance of the €500 will be stopped around the end of 2018,*** *when the €100 and €200 banknotes of the Europa series are planned to be introduced. The other denominations — from €5 to €200 — will remain in place.***"**

5. Limit for cash holding:—

(i) For successful implementation of restricting accounted / unaccounted cash transaction, it is absolutely necessary to have reasonable restriction in holding cash and to fix the limit of cash holdings. It is known fact that a number of persons are holding cash of lacs of rupees and such holding is undoubtedly unaccounted.

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(ii) In searches carried out by the Income Tax Department, during the Financial Year 2015–16, in the cases of persons mainly engaged in Medical & Education sectors, it resulted in seizure of cash of Rs.53.69 crores. The total undisclosed income admitted by the assessees concerned during the searches amounted to Rs.607.78 crores.

Further, as per the information received from the CBDT, total cash seizure was Rs.514.30 crores for the year 2013–14; Rs.518.55 crores for the year 2014–15; and Rs.470.89 crores for the year 2015–16.

(iii) SIT on Black Money submitted its third report in May, 2015 wherein a recommendation with regard to **"**Shell Companies and Beneficial Ownership**"** was made alongwith other recommendations. The said recommendation reads:—

"*In case, after investigation/assessment by CBDT, a case of creating accommodation entries is clearly established, the matter should be referred to SFIO to provide under relevant sections of IPC for fraud. SFIO should also refer the matter to Enforcement Directorate for taking action under PMLA for all such cases of money laundering.***"**

On the basis of the aforesaid recommendation, investigation was carried out and money laundering of unaccounted cash to the tune of Rs.11,970 crores was found. The relevant part of the communication dated 18th April, 2016 of the Director, Serious Frauds Investigation Office (SFIO), is reproduced as under:—

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"*2. SFIO has just completed investigation into the affairs of …….. Pvt. Ltd. and 10 other group companies. Search & seizure operation under the Income Tax Act was conducted at the business premises of some of these companies alongwith residential premises of its promoters, Sh. …… and Sh ……. and the Income Tax Department has recorded a finding that …….. were controlling around 99 companies / entities and indulged in providing accommodation entries to a large number of beneficiaries.*

3. During the follow up investigation done by SFIO, a clear case of money laundering has been established. In its report, it has been recommended that money laundering, being an organized crime, requires coordinated investigation by many agencies including Enforcement Directorate, Income Tax department, Reserve Bank of India, SEBI & ICAI. The money laundering operation was conducted by …….. with the help of 56 professionals who worked as mediators to bring the potential beneficiaries to Jain brothers for laundering their unaccounted cash. ***The report has identified 559 beneficiaries during the Financial Year 2009–10 and the total quantum has been estimated at a minimum of Rs.11,970/– Crores.*** *The modus operandi for laundering money during pre and post search period has been clearly brought out in the report. SFIO investigation focussed on only some of the players associated with this organized crime to prove criminal conspiracy. However, this*

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*investigation needs to be expanded to cover all the beneficiaries and the professional mediators, most of them being Chartered Accountants registered with ICAI.***"**

If there is a limit of cash holding and direction is issued to the banks to report suspicious transactions, then such fraud and money laundering could be easily controlled.

(iv) In the Second Report, SIT suggested that,

"*for regulating the possession and transportation of cash, particularly putting a limitation on cash holdings for private use and including provisions for confiscation of cash held beyond prescribed limits, provision in the Act should be made. ..... **Further, for holding of cash / currency notes also, there should be a limit, by prescribing a reasonable threshold, may be Rs.10 lacs or Rs.15 lacs.** This would control holding of unaccounted money to a large extent. This would also control transfer of unaccounted cash from one destination to other, which at present is rampant, may be by Angadias or by other means.***"**

Law should provide that if any cash amount more than the prescribed limit is found, the same shall vest in the Union of India.

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Law as stated above would have its own impact on "Income Declaration Scheme (IDS)" for disclosure of unaccounted money from 01st June, 2016.

For making the aforesaid suggestions, the SIT relied upon following reports.

(v) On cash economy, in the report of the Committee headed by the Chairman, CBDT on **"**Measures to tackle Black Money in India and Abroad, 2012**",** it was observed that:—

"*In a recent judgement delivered by Hon'ble Kerala High Court (P.D. Abraham v. CIT (Central), Cochin Cross Objection 112/2008 in ITA 323/2008 dated 15.12.2008), the Court has suggested putting restrictions on possession and handling of cash above certain limits. In an earlier case (Rajendran Chingaravelu vs. UoI in CA No.7914 of 2009; ORDER DATED November 24, 2009 (320 ITR 1)), Hon'ble Supreme Court had also observed that* **"***The nation is facing terrorist threats. Transportation of large sums of money is associated with distribution of funds for terrorist activities, illegal pay offs, etc. There is also rampant circulation of unaccounted black money destroying the economy of the country.***"** *Further,* **"***Money which is drawn from a Bank and legitimately belonging to the carrier, may still be used for an illegal purpose, – say to pay for a crime or to fund an act of terrorism. It may also be used for a routine illegal function – to make part payment of sale consideration for a property in cash, so that the full price is not reflected in the*

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sale deed, resulting in evasion of stamp duty and registration charges and evasion of payment of capital gains and creation of black money. ***The carrying of such a huge sum, itself gives rise to a legitimate suspicion."*** *The Court concluded that,* ***"****Any bona fide measures taken in public interest, and to provide public safety or to prevent circulation of black money, cannot be objected as interference with the personal liberty or freedom of a citizen.****"***

On the measures which can be taken to curb use of cash in the economy, it was observed in the aforesaid report that:—

> ***"****6.13 Government may consider amending existing laws (The Coinage Act 2011, The Reserve Bank of India Act 1934, FEMA, IPC, Cr PC, etc.), or enacting a new law, for regulating the possession and transportation of cash, particularly* ***putting a limitation on cash holdings for private use, and including provisions for confiscation of cash held beyond prescribed limits.*** *This would address the concerns expressed by various courts, and also the Election Commission of India for reducing the influence of money power during elections.****"***

(vi) In the report, namely, **"**White Paper on Black Money**"** published by the Government of India in the year 2012, it was observed as under:—

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"Cash economy and use of counterfeit currency:—

3.25 'Cash' as an asset has its own demand. However, in large cash economies, such as India, counterfeit currency poses a major threat to the economy. Countries have attempted to check counterfeiting of currency notes, as it disrupts smooth commercial transactions and has a multiplier effect on mainstream economy. India faces this problem, as immigrants become carriers for small amounts. The Indo–Bangladesh, Indo–Pakistan and Indo–Nepal borders are targeted for this purpose by agencies inimical to the interests of India.

In an earlier case, Hon'ble Supreme Court had also observed that 'The nation is facing terrorist threats. Transportation of large sums of money is associated with distribution of funds for terrorist activities, illegal pay offs, etc. There is also rampant circulation of unaccounted black money destroying the economy of the country.'"

(vii) The afore–quoted response of CBDT was quoted in the Third Report of the SIT wherein it has been pointed out that, ***"SIT is awaiting the response of the concerned Departments, as the large cash amount is normally used in***

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illegal transactions such as, those involving, payment for drugs / narcotics deals, corruption / bribery, cricket betting and use of huge cash during elections, etc. *According to SIT, if holding of cash is restricted and regulated, to a large extent, it would control circulation of black money within the country and discourage stashing of money abroad. In the meeting held on 30th April, 2015, the concerned Joint Secretary, remained present and he stated that the aforesaid issue would be decided as early as possible.***"**

(viii) In the Fourth Report, the issue with regard to limit on cash holding was reiterated by referring to the afore–quoted suggestions made in earlier reports. SIT, in the Fourth Report, observed and suggested that, **"*It appears that for taking decision, there is inordinate delay on the part of the Department. It should be realized that in almost all cases of illegal transactions, cash is used. At present, cash is transferred from one city to other only by telephonic call. If there is restriction on holding cash, dealing in black money would be to a large extent restricted.*** *It is reported that in some cases, large amount has been found from some officers as corruption amount. Similar is the case for the election purpose, real estate dealing, etc.……***"**

It appears that the aforesaid recommendation is still pending with the Department of Economic Affairs of the Ministry of Finance.

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7. Suggestions:—

Considering the wide–spread circulation of unaccounted / black money in the country without bothering for the Income Tax Act, or Prevention of Money Laundering Act, or its authorities;

and also

above–quoted restrictions imposed by various countries:—

(i) In our view, it would be just and reasonable to have a total ban of cash transactions above Rs.3,00,000/– (Rupees Three Lacs). There should be specific provision in the Act that such transactions shall be illegal, invalid and punishable under the law.

(ii) Further, if there is cash withdrawal of more than Rs.3,00,000/– (Rupees Three Lacs) from any bank, then that bank should consider it as a suspicious activity and should report it to Financial Intelligence Unit (FIU) & the concerned Income–tax Department.

(iii) The afore–said limitation on the cash transaction can succeed **only if there is limitation for cash holding**, as suggested in the previous reports, quoted above. Maximum limit may be fixed between Rs.10 to 15 lacs. In any case, if any person or industry requires holding of more cash, it may obtain necessary permission from the Commissioner of Income–tax of the area.

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(iv) In addition, starting from the next year, all banks including co–operative banks be directed to notify any income or withdrawals of more than Rs.3,00,000/– to the Directorate General of Income Tax (Investigation) Authorities of the State and to the FIU.

Limitation on cash holding would have its deterrent effect. Persons holding more unaccounted money would like to disclose the unaccounted money as per the "Income Declaration Scheme (IDS)" which begins from 01st June, 2016 for such disclosure.

(v) Amendment in the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015:—

In the Additional Fourth Report (January, 2016), the SIT suggested to amend the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. In this regard, the SIT *inter–alia* reported that,

"*Upto the prescribed period i.e. 30th September, 2015; 638 declarations have been received under the compliance window declaring undisclosed foreign assets amounting to Rs.3,770 crores. These figures are subject to final reconciliation. Tax at the rate of 30% and penalty at the rate of 30% was to be paid by 31st December, 2015. It appears that response to the aforesaid disclosure is totally inadequate. Therefore, other steps of amending the Act, as suggested in fourth report of the SIT, be implemented.***"**

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Hence, it was suggested to amend the aforesaid Act to the following effect:—

"*All money/moveable & Immovable property owned by or under the control of every Indian National* ***which ought to have been disclosed under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, shall, after 01st October, 2015,*** *vest in the Union of India. The right, title and interest of every Indian National in such money or property shall stand transferred to and vested absolutely in the Union of India. If any Bank or like entity has forfeited the customer's deposit either because he is dead and no claim is made by anyone or for any other cause arising from the customer's contract with the Bank, the forfeiture shall not affect in any manner the title of Union of India created by this Act.***"**

The aforesaid suggestion, if implemented, would have its deterrent effect on the persons holding unaccounted money outside the country. In such cases, the burden to prove would be on the assessee that stashing of money outside the country was legal and the justifiable reasons for not disclosing the same in the income tax returns.

(a) Considering the recent disclosure in the Panama Papers Investigation, it appears that unless there is the deterrent provision, it would be difficult to get back the stashed money outside the country.

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(b) Secondly, the investigation by various Departments would take long time and Departments are required to follow prescribed procedure. Further, in almost all Departments, there is shortage of staff. Investigation in HSBC cases also took long time.

(c) Thirdly, even if some cases are traced out, it would be difficult to recover the money because the Departments have to follow prescribed procedure. That itself takes months together. After following long drawn procedure, the order would be subject to appeal, revision and proceedings before the High Courts & the Supreme Court. The said procedure, as it is well known, would take years together and the result would not be visible. In addition, in most of the cases, assessees would obtain stay orders from the Courts.

Therefore, it is suggested that appropriate steps may be taken for amending the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, by incorporating the provision that undisclosed foreign income and assets would vest in the Union of India. Once it is held that under the law, property vests in Union of India, the person who is holding the said property outside the country shall have to prove that it was acquired legally and/or held after obtaining necessary permission from the RBI.

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(vi) In some of the Panama cases, it is contended by the assessees that they have obtained the permission from RBI before depositing the amount in foreign countries. However, such information is not given by the assessees to the Income Tax authority.

Hence, it is suggested that before investing any amount or purchasing any property outside the country, the assessee must inform the concerned jurisdictional Commissioner of Income Tax Department of the State. It should be made clear that even if the permission of RBI is not required for investing or purchasing the assets outside the country, the assessee must inform the concerned jurisdictional Commissioner of Income Tax Department of the State, before investing or purchasing the assets outside the country.

... ...