

A Case Study on Prevention of Money Laundering Act

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As part of its investigations into potential violations of the Prevention of Money Laundering Act (PMLA) by the Chinese smartphone manufacturer and its associates, the Enforcement Directorate (ED), the nation's financial watchdog, recently carried out raids on 44 offices belonging to Vivo India and its affiliated businesses. The smartphone manufacturer Vivo allegedly transferred a staggering Rs 62,476 crore "illegally" to China in order to avoid paying taxes in India, according to the Enforcement Directorate. Vivo India also sent Rs 62,476 crore, or nearly 50% of the total revenue, primarily to China, out of the total sale revenues of Rs 1,25,185 crore. These transfers were conducted in order to reveal significant losses in Indian-incorporated businesses and avoid paying taxes there "The identity was manufactured to launder money through shell firms, and "proceeds of the crime" have been transported to China and other businesses to circumvent Indian restrictions," the

Enforcement Directorate (ED) thinks. This is the second time that an Indian government has investigated a Chinese corporation for sending money outside of India. Xiaomi was previously investigated by the ED for remitting more than 5,500 crore.

The Prevention of Money Laundering Act, 2002 (PMLA) is a criminal statute designed to stop money laundering and to make provisions for the confiscation of property obtained from, involved in, or related to money-laundering, as well as for things related to or incidental to those activities. The ED's job is to carry out investigations to identify assets acquired through the proceeds of crime, to temporarily seize the assets, to ensure that offenders are brought to justice, and to ensure that the Special court seizes the assets.

Section 3 of the **PMLA** defines money-laundering as – "Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering".

Explanation- For the removal of doubts, it is hereby clarified that-

- (i) A person who is determined to have directly or indirectly sought to engage in, knowingly assisted, knowingly is a party to or is actually involved in one or more of the following procedures or acts linked with the proceeds of crime, shall be guilty of the offence of money-laundering, namely: –
 - (a) concealment;
 - (b) possession;

- (c) acquisition;
 - (d) use;
 - (e) projecting as untainted property;
 - (f) claiming as untainted property, in any manner whatsoever;
- (ii) The process or activity around the proceeds of crime is ongoing and will continue until someone is directly or indirectly benefiting from the proceeds of crime by their concealment, ownership, acquisition, or use, or by projecting or claiming them to be untainted property in any way.

COMMON FORMS OF MONEY LAUNDERING:

Some of the typical techniques of money laundering include hawala, bulk cash smuggling, fictitious loans, cash-intensive industries, round-tripping, trade-based laundering, Shell companies and trusts, real estate, gaming, and phoney invoicing..

KEY ISSUES:

1. Whether the vivo and its subsidiary company are liable under PMLA.
2. What is the liability of the companies under the act?
3. Whether the officials of the company are liable under the PMLA.
4. What are the authorities of ED under PMLA to deal with these kind of offences?
5. Who are the authorities under the act which deal with these types of crimes?