
(2009) 07 DEL CK 0264

In the Delhi High Court

Case No : Writ Petition (C) 10268 of 2009

Harshad Kantilal Patel

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-07-2009

Acts Referred:

Foreign Exchange Regulation Act, 1973 — Section 31, 9, 9(1)

Citation : (2009) 07 DEL CK 0264

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Sudhir Nandrajog and Manish Jain, for the Appellant; Rajdipa Behru, for the Respondent

Judgement

Sanjiv Khanna, J.

C.M. No. 8833/2009

Exemption allowed subject to all just exceptions.

W.P.(C) No. 10268/2009

1. Counsel for the respondent states that she is ready for arguments and as the issue involved is limited, the matter may be heard and disposed of today itself. With the consent of the parties, the matter has been heard and is being disposed of.

2. The petitioner, Mr. Harshad Kantilal Patel, who is about 65 years old, has filed the present petition impugning the order dated 4th May, 2009 passed by Appellate Tribunal Modified by Order dated 28.09.2009 for Foreign Exchange disposing of his application for waiver of pre deposit of the penalty amount. The learned Tribunal Modified by Order dated 28.09.2009 has directed the petitioner to deposit 50% of the penalty amount in cash and submit an unconditional bank guarantee for the remaining amount.

3. The allegations against the petitioner are that as an agent of nonresident

persons, he had let out a flat in Mumbai and had received Rs. 65 lacs from the tenant towards interest free security deposit. It is stated that this amount was deposited in the account of the petitioner and there was violation of Section 9(1) (b) and 9(a)(d) of the Foreign Exchange Regulation Act, 1973 (FERA, for short). The alleged transaction pertains to year 1987.

4. By the adjudicating order dated 27th September, 1997, penalty of Rs. 32, 50,000/- was imposed on the petitioner. Penalty was also imposed on the tenants. The petitioner has filed an appeal against the said order.

5. Counsel for the petitioner has relied upon proviso to Section 31 of FERA and submits that the petitioner was entitled to acquire or transfer any immovable property by way of lease for a period of upto 5 years without permission. It is stated that Rs. 65 lacs were refunded to the tenants. The alleged violation, if any, is technical and venial in nature, no malafides or illegal transfer by way of Hawala is alleged. Moreover, the amount was deposited in the bank account and was fully accounted for.

6. The petitioner it is stated has not been filing Income Tax returns as he does not have taxable income and he is dependent upon his daughter, who is earning. Counsel for the petitioner has drawn my attention to statement of bank accounts and it is stated that the said documents were filed before the Appellate Tribunal Modified by Order dated 28.09.2009.

7. It is stated that the petitioner has 4 immovable properties and the said properties are in occupation of tenants and rent has been attached by the Income Tax Department. He further states that the petitioner is residing in the 5th property at Mumbai and in the said property he has 1/11th share. He states that the said property is inherited.

8. The petitioner's first appeal against the adjudication order is pending before Appellate Tribunal Modified by Order dated 28.09.2009. The alleged violation pertains to year 1987. There is no evidence or material on record to show that the petitioner has sufficient cash to pay the penalty amount of Rs. 32, 50,000/- or even 50% thereof and furnish bank guarantee for the balance amount. The fact that the petitioner does not have taxable income is not controverted and denied. There is no evidence and material to the contrary. Even if levy of penalty is legal, question of quantum has to be examined. It is not disputed that the amount of Rs. 65 lacs was deposited in a bank account and subsequently refunded to the tenant. There is no allegation of hawala. Whether there was only a technical and venial breach and effect thereof requires examination.

9. However, from the records it is seen that the petitioner had purchased a LIC policy of Rs. 2,66,665/- in the year 2004 and also made investment of Rs. 1 lac in an FDR.

10. Keeping all these aspects in mind, it is directed that the petitioner will deposit 10% of penalty amount and give an undertaking before the Appellate

Tribunal Modified by Order dated 28.09.2009 that he shall not dispose of/sell/ create any charge on the immovable properties, without permission of the Appellate Tribunal Modified by Order dated 28.09.2009. In case attachment order passed by the Income Tax Department is withdrawn, the petitioner shall inform the Appellate Tribunal, who will be at liberty to amend the order. 10 % of the penalty amount will be deposited in two equal installments. The first installment will be paid on or before 24th August, 2009 and the second installment will be paid on or before 14th September, 2009. The impugned order is modified to the extent indicated above.

The petition stands disposed of. Observations made in this order are for disposal of writ petition and learned Tribunal Modified by Order dated 28.09.2009 will decide the appeal without being influenced by the said observations.

Dasti to both parties.