(2009) 04 DEL CK 0479

In the Delhi High Court

Case No : Writ Petition (C) 640 of 2009

K. Mohammed Imran APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 17-04-2009

Acts Referred:

Citation : (2009) 04 DEL CK 0479

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Mohd. Imran and Saurabh Prakash, for the Appellant; Rajdipa Behura and Deepak Anand, for the Respondent

Final Decision : Disposed Off

Judgement

Sanjiv Khanna, J.

CM No. 4959/2009

With the consent of the Learned Counsel for the parties, the application is allowed and the writ petition is taken for hearing today itself.

W.P.(C) No. 640/2009

1. Learned Counsel for the respondent waives service of notice and states that the matter may be heard today itself.

2. The present writ petition is directed against the order dated 27th November, 2008 whereby Appellate Tribunal for Foreign Exchange has disposed of an application for waiver of pre-deposit by partly allowing the same and directing the petitioner to pre-deposit 70% of the penalty amount within thirty days. It is stated that the Assessing Officer had imposed penalty of Rs. 50,00,000/- by order dated 25th August, 2004. Thus, the petitioner has been asked to make a pre-deposit of Rs. 35,00,000/- as a pre-condition for hearing of his appeal before the Appellate Tribunal for Foreign Exchange.

3. Learned Counsel for the petitioner has drawn my attention to photocopy of the income tax returns of the petitioner for the period 2002-03 onwards. The income tax returns reveal that the petitioner has a declared his income varying between Rs. 54,000/- per annum to Rs. 1,96,000/ -. Learned Counsel for the petitioner submits that the petitioner''s wife had purchased an immovable property for Rs. 64,000/- in the year 1996. The income tax returns further reveal that the petitioner had obtained loan from bank and interest payable on the said loan is being claimed as a deduction from income from house property with effect from assessment year 2003-04. The bank, therefore, has granted loan to the petitioner after verifying his creditworthiness. Petitioner had claimed deduction of Rs. 37,428/ - towards interest in the year 2003-04. The allegations against the petitioner are that he had indulged in hawala transactions along with his brother-in-law for more than Rs. 2 crores. Learned Counsel for the petitioner, however, disputes the said submission and states that as per the respondent''s own case, the petitioner had utilized foreign exchange worth Rs. 46,000/ - only.

4. I need not, at this stage, dwell deep into the relative merits of the case as the appeal is pending before the Appellate Tribunal for Foreign Exchange. I am also conscious of the fact that the petitioner has to be given an opportunity of being heard. Keeping all these aspects in mind, the petitioner is directed to deposit Rs. 10,00,000/ - in two installments as a pre-condition for hearing of the appeal. The first installment of Rs. 5,00,000/- will be deposited within 20 days from today and the second installment of Rs. 5,00,000/- will be deposited on or before 30th June, 2009. The period has been fixed at the request of the Counsel for the petitioner.

The writ petition and all pending applications are accordingly disposed of.

