

(2001) 04 KAR CK 0071
In the Karnataka High Court
Case No : M.F.A. No. 2857 of 1994

Special Dir., Enforcement Directorate

APPELLANT

Vs

Mohtesham Mohd. Ismail

RESPONDENT

Date of Decision : 10-04-2001

Acts Referred:

Foreign Exchange Regulation Act, 1973 (FERA) — Section 52, 54, 9 (3)

Citation : (2001) 76 ECC 160 : (2001) 131 ELT 555 : (2001) 3 KCCR 100 SN

Hon'ble Judges : K.R. Prasad Rao, J; Hari Nath Tilhari, J

Bench : Division Bench

Advocate : Ashok Haranahalli, SCGSC, for the Appellant; Lakshminarayan and Kiran S. Jawali, for the Respondent

Final Decision : Allowed

Judgement

Hari Nath Tilhari, J.—This miscellaneous first appeal u/s 54 of the Foreign Exchange Regulation Act, 1973 arises from the order dated 8th July, 1994 passed by the Foreign Exchange Regulation Appellate Board, New Delhi, in Appeal No. 709/1993 u/s 52 of the aforesaid Act, whereby the Appellate Board set aside the order dated 6-10-1993 passed by the Special Director, Enforcement Directorate (Foreign Regulation Act) New Delhi, in Case No. T 4/32-M/91, whereby the adjudicating authority had imposed a penalty of Rs. 20,00,000/-on Mohtesham Md. Ismail (respondent No. 1 herein).

2. The appellant before this Court is the Special Director, Enforcement Directorate (Foreign Exchange Regulation Act), Loknayak Bhavan, Khan Market, New Delhi.

3. The facts of the case in the nutshell are; that the first respondent according to the appellant's case is a citizen of India and has been working in Dubai and is a partner in M/s. Ahamed Illiyas Trading Company, Abu Dabi, U.A.E. The respondent was being approached by the people of Indian origin in Abu Dabi for remitting various amounts to their relatives in India. Respondent-1 according to

the appellant's case was collecting the amounts and money in Dirhams at Abu Dabi and was handing over the amount to Sri Tabraz Bhai at Abu Dabi for distribution of the same to the different persons in India. The present respondent-1 was charged for having contravened the provisions of Section 9(3) of the Foreign Exchange Regulation Act, 1973. According to case of the appellant, the Enforcement Directorate the first respondent had caused remittance and used to cause remit from U.A.E. the various amounts collected to the tune of Rs. 2,82,73,700/- to India through the persons other than authorised dealers in such a way that remittances were received by Mohd. Yousuf Kazia, Abdul Mateen Kazia, Abdul Rahim Kazia, Mohd. Isa Kazia and Champalal Singhvi of Bangalore, through persons other than authorised dealers in India as detailed in the annexure. On the basis of the information to the effect that Champalal Singhvi was returning home after making hawala payments that the many chits containing the names and addresses to whom the payments have been made and to whom the payments were to be made. The said Champalal Singhvi was apprehended by the Officers of the Enforcement Directorate, Bangalore, on 12-7-1990 at the Junction J.M. Road, C.T.9, Bangalore. According to the case of the Enforcement Directorate, as a result of search of the person of Champalal Singhvi u/s 34 of the Foreign Exchange Regulation Act, 29 chit papers were recovered and seized. According to the case of the Enforcement Directorate, the statement of Champalal Singhvi was recorded u/s 40 of the Foreign Exchange Regulation Act (Act No. 46 of 1973) (hereinafter referred to as the Act). The investigations were conducted, in addition to the statement of Champalal Singhvi and the documents were recovered. During the course of the investigations, the statement of Mohtesham Mohd. Ismail was recorded u/s 40 of the Foreign Exchange Regulation Act on 13/14-7-1990. The searches were also made u/s 37 of the Foreign Exchange Regulation Act on 12-7-1990 of Room No. 302, Hotel Mourya and the documents were seized which indicate that the brother and the brother-in-law of Mohtesham Mohd. Ismail were doing the said business all over Gulf countries. Champalal Singhvi and Mohtesham Mohd. Ismail were arrested by the Officers of the Enforcement Directorate, Bangalore.

4. On 14-7-1990 they were produced before the Special Court for Economic Offences. On the basis of the investigations conducted and referred to above in detail in the order of the Special Director, Enforcement Directorate, a show cause notice was issued vide Memorandum No. T-4/32-M/91 (SCN) dated 4th July, 1991 to Shri Champalal Singhvi and Sri Mohtesham Mohammed Ismail with the allegation to the effect that they have contravened the provisions of Sections 9(1)(b), 9(1)(d) and 9(3) of the Foreign Exchange Regulation Act, 1973. Shri Champalal Singhvi had been charged for having received and made payments aggregating to Rs. 60,00,000/- in contravention of Section 9(1)(b) and 9(1)(d) of the Foreign Exchange Regulation Act, 1973. While Shri Mohtesham Mohd. Ismail was charged for having caused to remit various payments to the tune of Rs. 2,82,73,700/- in contravention of Section 9(3) of the Foreign Exchange Regulation Act, 1973. Shri Champalal Singhvi was supplied with the Hindi

translation of the documents to be relied upon as per his desire and request vide the letter dated 8-1-1992. He was granted time to file the reply and extension of time for that purpose also was granted and was directed to file the reply by 15-7-1992. The personal hearing of the case was also given to their Counsels. The Special Director, Enforcement Directorate, after having considered the material placed on record, the facts of the case and the evidence recorded in the case found that the recipients and would be recipients have deposed before the investigating officer that they have been receiving money from Champalal Singhvi on the instructions from abroad and that the name of Sartaj and her address became available from the documents seized from Champalal Singhvi and Smt. Sartaj in her statement dated 17-5-1991 admitted delivery of Rs. 15,000/- to her and had identified the photo of Champalal Singhvi as that of the person who had delivered Rs. 15,000/- to her. Certain persons whose names and addresses were available in the seized documents from Champalal Singhvi show that the amounts to have been paid against the said names and Ms. Daisy Mequire, Rajesh Samual, Smt. Irshand Begum, Sri Syed Ismail, Smt. R. Moosa, Smt. Jayashree Laxmipathy, all admitted that they were aware of the arrangements made by their relations abroad to send money, but they had not received any amount till the date of their statements and were awaiting for the same. The adjudicating authority further found that the scrutiny of sheet No. 23 of the documents seized from the person of Champalal Singhvi indicated two telephone numbers of Room No. 302 of Hotel Mourya. That the search of aforesaid Room No. 302 was made in the presence of its occupant Shri Mohd. Mohtesham Ismail and the documents consisting of Xerox copies of the postal acknowledgment cards, the Xerox copies of the Bank drafts, account sheets, lists confirming the names and amounts in Urdu, etc., were seized. That Shri Mohtesham Mohd. Ismail had admitted that he had engaged Champalal Singhvi for making payments in India as well as has engaged Kazia brothers for making payments in India. The adjudicating authority further observed in its order that Sri Mohtesham Ismail had admitted to have himself collected the amounts in Dirham from the various non-resident Indians and that all amounts were sent to Shri Mohd. Yousuf Kazia and his brothers for distribution and these confessional statements of the persons coupled with the recovery of the documents and other circumstances according to the adjudicating authority established the charge framed against both persons. The adjudicating authority observed that he was satisfied with the charges levelled against both viz., the present respondent No. 1 Mohtesham Mohd. Ismail and Champalal Singhvi had been established and therefore it passed the order imposing penalty on Champalal Singhvi for the contravention of Section 9(1)(b) of the Foreign Exchange Regulation Act, 1973 to the tune of Rs. 2,50,000/-. Thus, in total on Champalal Singhvi a penalty of Rs. 5,00,000/- was imposed, while on Mohtesham Mohd. Ismail the present respondent-1, the adjudicating authority imposed penalty of Rs. 20,00,000/- for the contravention or breach of Section 9(3) of the Foreign Exchange Regulation Act, 1973 and directed deposit of the amount of penalties by demand draft to be drawn in favour of the Deputy Director, Enforcement Directorate, Madras Zonal

Office, at No. 26, Haddows Road, Shashtri Bhavan, III Floor, III Block, Madras, within 45 days from the date of receipt of the order dated 6-10-1993. A copy of the order was communicated to the present respondent-1 Mohtesham Mohd. Ismail and Champalal Singhvi.

5. From the order of the adjudicating authority dated 6-10-1993 referred to above, Mohtesham Mohd. Ismail filed the appeal in No. 709/1993 which has been decided and allowed by the Foreign Exchange Regulation Appellate Board, vide the order dated 8th July 1994. The appellate Board allowed the appeal and set aside the order of the adjudicating authority. The appellate Board opined that there is no evidence to indicate that those persons had actually brought the amount in question from Abu Dhabi/Dubai to India and the evidence does not disclose the fact of actual remittance of any amount from Abu Dhabi/Dubai to India. In paragraph 12 of the order, the Appellate Board, observed that it would appear from the above discussion that neither in the documents seized from Champalal Singhvi and those seized from the premises of Yousuf Kazia, nor in the statements of Champalal Singhvi and Kazia brothers, there is any evidence of actual remittance of any amounts from abroad as alleged, even though prima facie that evidence may indicate distribution of amounts in India on the instructions from persons abroad. There is nothing in those documents also to show that the appellant had remitted or caused to be remitted the amount as alleged or any other amount. The appellate Board interfered with the order passed by the adjudicating authority referred to above on the above grounds and set aside the order of the adjudicating authority. Feeling aggrieved from the order of the Foreign Exchange Regulation Appellate Board, the Special Director, Enforcement Directorate (Foreign Exchange Regulation Act), Lok Nayak Bhavan, Khan Market, New Delhi, had come up in appeal before this Court u/s 54 of the Foreign Exchange Regulation Act, 1973.

6. We have heard Sri Ashok Haranahalli, learned Central Government Senior Standing Counsel for the appellant - Union of India, as well as Sri Lakshminarayana, holding brief for Sri Kiran S. Jawali, learned Counsel for respondent-1.

7. The learned Counsel for the appellant contended that the Foreign Exchange Regulation Appellate Board had committed error of law in taking the view that for the application of Section 9(3) of the Foreign Exchange Regulation Act, 1973, remittance or causing of remittance must mean physical movement of amount and to establish the remittance or causing remittance of amount, the actual physical movement of amount or money must be proved i.e., evidence must be produced to show and establish the actual physical movement of currency from foreign land to India. The learned Counsel contended that remit or caused to be remitted is an expression which has to take different meaning in the context of the present economy and economic transaction. The learned Counsel contended that to remit means to send or to cause it to be sent and the expression sent or to have caused to have been sent means and includes bringing of the amount

into India without physical movement even. The learned Counsel contended that in the present days the system of payment or remittance system has developed so much that where the amount is deposited in the Bank from where it is remitted only debit entry is made and the credit entry is made in the accounts in the banks, where remittances are received and in such cases actual currency does not move from one place to another. The amounts deposited at one end and paid accounted for at the other end without physical movement of currency on the direction from remitter and the expression remit or caused to be remit cannot be held to require the actual physical movement of cash as held by the Appellate Board. The learned Counsel, as such, contended that the Appellate Board adopted a wrong criteria on the basis of misinterpretation of Section 9(3) of the Foreign Exchange Regulation Act, 1973, by having wrongly interpreted the expression. The expression remit or cause to remit in a narrow sense requiring proof of actual physical movement of the amount or currency. The learned Counsel further contended that apart from this question of law as to interpretation of Section 9(3) of the Foreign Exchange Regulation Act, 1973, the Appellate Board had committed error of law in opining that there was no evidence to support the conclusion of the adjudicating authority that the first respondent has either remitted or caused to be remitted any amount from U.A.E. to India and that the Appellate Board had ignored the material piece of evidence in the form of statement of the first respondent Mohtesham Mohd. Ismail itself and as the Appellate Board has ignored that important piece of evidence, it has committed error of law of substantial nature.

8. Shri Lakshminarayana, learned Counsel for the first respondent, in addition to his contesting contentions, advanced by the learned Counsel for the appellant submitted by way of preliminary objection that the present appeal is not maintainable at the instance of Enforcement Directorate through its Special Director. He submitted that it is only Union of India or Central Government could be said to be the aggrieved party and not the Enforcement Directorate. He submitted that there being no special authorisation in favour of the Enforcement Directorate or Special Director from the Central Government to file the appeal, the present appeal filed by the appellant is not maintainable. As such, the learned Counsel submitted that the appeal filed by the appellant may be dismissed as not maintainable. He further contended that the present appeal is concluded by finding of fact arrived and recorded on the basis -merely of appreciation of evidence on record. Shri Lakshminarayan urged that the scope of appeal u/s 54 of the Foreign Exchange Regulation Act, 1973 is limited and confined to the question of law i.e., error of law as such the appeal is not maintainable and is liable to be dismissed as being concluded by finding of fact. He further contended that the expression remit or cause to remit means actual sending or causing of being sent of the currency and its physical movement from foreign land to India. The idea of money being moved from one place to the other and the same having not been established by evidence that money had moved from Dubai to India, the Appellate Board was justified in setting aside the

order passed by the adjudicating authority. He further contended that even the statement of Mohtesham Mohd. Ismail or Champalal Singhvi could not be relied as they were retracted confessions.

9. The learned Counsel for the first respondent in support of the preliminary objection to the maintainability of the appeal at the instance of the Enforcement Directorate through its Special Director made reference to a single Judge decision of the Madras High Court in the case of Director of Enforcement, Madras Vs. Rama Arangannal and Another, , and he further made reference to another single Judge decision of the Punjab and Haryana High Court in the case of Director of Enforcement v. Lal Chand and Anr. reported in 1985 Excise and Customs Cases at page 55.

10. We have applied our mind to the respective contentions advanced by the learned Counsels appearing for the parties.

11. Before proceeding to deal with the merits of the appeal, we propose to dispose of the preliminary objection raised by the learned Counsel for the first respondent.

12. Section 54 of the Foreign Exchange Regulation Act, 1973 reads and provides as under:

"54. Appeal to High Court. - An appeal shall lie to the High Court only on question of law from any decision, or order of the Appellate Board under Sub-section (3) or Sub-section (4) of Section 52:

Provided that the High Court shall not entertain any appeal under this section, if it is filed after the expiry of sixty days, of the date of communication of the decision, or order of the Appellate Board, unless the High Court is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

Explanation. - In this section, and in Section 55, "High Court" means

(i) the High Court within the jurisdiction of which the aggrieved party ordinarily resides, or carries on business, or personally works for gain; and

(ii) where the Central Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents, ordinarily resides or carries on business or personally works for gain."

13. Section 54 of the Foreign Exchange Regulation Act, 1973 appears to indicate that an appeal shall lie to the High Court only on question of law from any decision or order of the Appellate Board at the instance of the party aggrieved. What is question of law is to be discussed hereinafter. But, so far as the question who can file the appeal, the answer is party or person aggrieved. The Enforcement Directorate under the Act has been given power and duty to enforce the provisions of the Act and is required to discharge the duties. The Enforcement Directorate has to take steps in the matter of performance of their

duty, it enforces the provisions of law and make them effective, so there is no need to seek for special authorisation to file the appeal. No doubt, opinion of the Law Department may be taken, but the Enforcement Directorate being a part and parcel of the Government as well as being authorised to enforce the provisions of the Act can be said and held to be entitled to Act and to file the appeal. It will be appropriate to refer to Sections 3 and 4 of the Foreign Exchange Regulation Act, 1973, which read as under :

3. Classes of officers of Enforcement. - There shall be the following classes of officers of Enforcement, namely :-

(a) Director of Enforcement,

(b) Additional Directors of Enforcement,

(c) Deputy Directors of Enforcement,

(d) Assistant Directors of Enforcement; and

(e) such other class of officers of Enforcement as may be appointed for the purposes of this Act.

4. Appointment and powers of officers of Enforcement. - (1) The Central Government may appoint such persons as it thinks fit to be officers of Enforcement.

(2) Without prejudice to the provisions of Sub-section (1), the Central Government may authorise a Director of Enforcement, or an additional Director of Enforcement or a Deputy Director of Enforcement, or an Assistant Director of Enforcement to appoint officers of Enforcement below the rank of an Assistant Director of Enforcement.

(3) Subject to such conditions and limitations as the Central Government may impose, an officer of Enforcement may exercise the powers and discharge the duties conferred or imposed on him under this Act."

14. A perusal of Sub-section (3) of Section 4 of the Foreign Exchange Regulation Act, 1973 per se reveals that unless and until the Central Government has put certain conditions or limitations on the powers of the officers of the Enforcement Directorate, the law authorises and requires the officers of Enforcement Directorate to exercise powers and to discharge the duties conferred and imposed upon them under the Act. No doubt, u/s 5 of the Foreign Exchange Regulation Act, 1973 the Central Government is empowered subject to the conditions and limitations to authorise other officers such as officers of the Central Excise, or any Police Officer or any other officer of the Central Government or State Government to exercise the powers and to discharge the functions of the Enforcement Directorate or any other officer of the Enforcement Directorate under the Act as may be specified. So far as the entrustment of the functions of or authorisation to exercise powers of the Directors or other officers of the Enforcement Directorate in favour of the officers other than those of

Directors Enforcement consisting of Directors of Enforcement, Additional Directors of Enforcement, Deputy Directors of Enforcement, Assistant Directors of Enforcement and such other class of officers of Enforcement is concerned the Central Government is empowered u/s 5 of the Act to confer those powers on the officers referred to above i.e., the officers of the Customs Department, Central Excise, etc. But, the officers of the Enforcement Directorate as mentioned in Section 4(3) of the Foreign Exchange Regulation Act, 1973 can exercise the powers by virtue of the provisions of the Act. Section 54 of the Foreign Exchange Regulation Act, 1973, does not specifically mention and provide that the Principal Officers of Enforcement Directorate cannot file the appeal. It cannot be assumed in the absence of such a bar that the Enforcement Directorate could not file the appeal. The appeal could be filed by the Directors of Enforcement as instrumentality of the Central Government in matters covered by the Foreign Exchange Regulation Act, 1973, in cases decided against the Department, as appeals could be filed either under the Income Tax Act, or under the Land Acquisition Act. Explanation (2) to Section 54 of the Foreign Exchange Regulation Act, 1973 cannot be read as providing that the appeal cannot be filed by the Directors of Enforcement which is instrumentality of the Government of India or the Central Government. As the Foreign Exchange Regulation Act, 1973 provides that the officers of the Enforcement Directorate shall Act on behalf of the Government of India and Government of India acts through its instrumentality in our opinion the appeal filed in the name of the Special Director, Enforcement Directorate cannot be held to be not maintainable. We are of the opinion that the explanation only indicates that in cases where the appeal has to be filed on behalf of the Central Government or its instrumentality through which it works as per explanation (ii) to Section 54 of the Foreign Exchange Regulation Act, 1973, the appeal may be filed before the High Court within whose territorial jurisdiction the respondent or where there are more than one respondent, any of respondents ordinarily reside or carries on business or personally works for gain. It is not to be taken to be creating any rider to the Enforcement Directorate's right to file the appeal. With due respect to the Hon''ble Judges of the High Court of Madras and that of Punjab and Haryana, we are unable to agree with the view expressed in the case of Director of Enforcement, Madras v. Rama Arangannal AIR 1981 Mad 88 as well as in the case of Director of Enforcement v. Lal Chand and Anr. (1985 Excise and Customs Cases at page 95). The Punjab and Haryana High Court has only followed the Madras High Court's decision and on the basis thereof it has dismissed the appeal filed by the Director of Enforcement. So far as the Madras High Court's decision is concerned, the interpretation placed by the Madras High Court, in our opinion amounts to legislation and interference with into the field of Legislation. As such, we find ourselves unable to agree with the view expressed by the Madras High Court. Thus, in our considered opinion the Enforcement Directorate, Director of the Enforcement Directorate, no doubt is entitled to file the appeal in exercise of its function and duty of enforcing the provisions of the Act. As such, the preliminary objection raised by the learned Counsel for the first respondent is hereby rejected.

15. As regards the merits of the case, there can be no doubt that appeal to the High Court u/s 54 of the Foreign Exchange Regulation Act, 1973 is maintainable only on the question of law from the decision or order of the Appellate Board. What is the question of law has been much explained by their lordships of the Supreme Court and Privy Council in the context of Section 100 of the C.P.C. as well.

16. The expression "Question of law" has got a meaning and has got many faces and it may arise in various circumstances.

17. The question of law may arise in cases where the question relates to the interpretation of the provisions of the Act and as to ascertainment of material ingredients to be established for determining the application of a provision or its breach. The question of interpretation of the provisions of law is beyond doubt, the question of law. If a decision is arrived at contrary to the basic principles of law, or on the basis of misconception about the law, or a finding has been arrived at on the basis of conjectures or surmises, or on the basis of inadmissible piece of evidence, or after having erroneously ignored a material piece of evidence, or, for Court or Tribunal's acting illegally, or with substantial irregularity then the case may be said, in such circumstances, to involve a question of law. The finding of fact based on non-consideration of a material fact or relevant evidence may also be said to involve question of law.

18. In the present case, the Appellate Board has interpreted Section 9 of the Act, and has opined that there must be actual movement of money from the place where it is sent i.e., from a foreign land to India and evidence must be thereof i.e., of actual remittance of the currency and its actual movement. The Appellate Board has recorded a finding that there is no evidence, and evidence on record does not show or disclose the actual movement or actual remittance of the amount from Abu Dhabi/Dubai to India. Section 9 of the Foreign Exchange Regulation Act, 1973 reads as under:

"9. Restrictions on payment. - (1) Save as may be provided in and in accordance with any general or special exemption from the provisions of this sub-section which may be granted conditionally or unconditionally by the Reserve Bank, no person in or resident in India shall -

(a) make any payment to or for the credit of any person resident outside India;

(b) receive, otherwise than through an authorised dealer, any payment by order or on behalf of any person resident outside India;

Explanation. - For the purposes of this clause, where any person in, or resident in, India receives any payment by order or on behalf of any person resident outside India through any other person (including an authorised dealer) without a corresponding inward remittance from any place outside India, then such person shall be deemed to have received such payment otherwise than through an authorised dealer.

(c) draw, issue or negotiate any bill of exchange or promissory note or acknowledge any debt, so that a right (whether actual or contingent) to receive a payment is created or transferred in favour of any person resident outside India;

(d) make any payment to, or for the credit of, any person by order or on behalf of any person resident outside India;

(e) place any sum to the credit of any person resident outside India;

(f) make any payment to, or for the credit of, any person or receive any payment for, or by order or on behalf of any person as consideration for or in association with -

(i) the receipt by any person of a payment or the acquisition by any person of property outside India;

(ii) the creation or transfer in favour of any person of a right (whether actual or contingent to receive payment or acquire property outside India;

(g) draw, issue or negotiate any bill of exchange or promissory note, transfer any security, or acknowledge any debt, so that a right (whether actual or contingent) to receive a payment is created or transferred in favour of any person as consideration for or in association with any matter referred to in clause (f).

(2) Nothing in Sub-section (1) shall render unlawful -

(a) the making of any payment already authorised either with foreign exchange obtained from an authorised dealer or a moneychanger u/s 8 or with foreign exchange retained by a person in pursuance of an authorisation granted by the Reserve Bank;

(b) the making of any payment with foreign exchange received by way of salary or payment for services not arising from any business in, or anything done while in India.

(3) Save as may be provided in, and in accordance with, any general or special exemption from the provisions of this sub-section, which may be granted conditionally or unconditionally by the Reserve Bank, no person shall remit or cause to be remitted any amount from any foreign country into India except in such a way that the remittance is received in India only through an authorised dealer.

(4) Nothing in this section shall restrict the doing by any person of anything within the scope of any authorisation or exemption granted under this Act.

(5) For the purposes of this section and Section 19 "security" includes coupons or warrants representing dividends or interest and life or endowment insurance policies."

19. Sub-section (3) of Section 9 of the Act very clearly provides that save as may be provided in, and in accordance with, any general or special exemption from

the provisions of this sub-section which may be granted conditionally or unconditionally by the Reserve Bank, no person shall remit or cause to be remitted any amount from any foreign country into India except in such a way that the remittance is received in India only through an authorised dealer. Sub-section (3) of Section 9 of the Act bars remitting or causing of remittance of any amount from a foreign country into India, subject to the exceptions indicated therein viz., remittance may be received in India through an authorised dealer. The expression "remit or cause to be remitted" is important along with the expression "any amount" from any foreign country. The expression used "any amount" whether in the form of foreign currency or Indian coin or in the form of Indian currency. It prohibits the remittance or causing of remittance of any amount from any foreign country to India, except the remittance received through an authorised dealer. What is the meaning of remit or cause to be remitted. Does it mean that the actual sending of that money and that very money which has been realised from the citizens in the foreign land in foreign currency or it includes in self sending of money from a foreign country in any mode or manner. What remittance means. Whether it is necessary in such cases to prove that money had moved actually or that movement of money is to be assumed, such as in cases where money is remitted, or sent by or through cheque or bank draft. Money is posted and given in the Post Office for being sent and being paid over to the remitter or a person to whom it is sent. Whether it will include in itself money being handed over to one on the foreign land and then he takes the money and directs his agent in India to pay that much amount to the person to whom it is directed to be paid. Whether it will be included within the frame work of the expression remit or cause to be remitted. In Stroud's Judicial Dictionary, the expression "To remit" has been defined as under:

"(1) "To remit" e.g. money realised by the sale of goods means to send off the money, in the ordinary matter a person whose duty is to "remit" money or documents, discharges that duty as soon as he has, in the ordinary course and manner of business, sent it or them off;"

20. In Words and Phrases, Permanent Edition, Volume 36A, remit has been defined as under :

" "Remit" means to transmit or send, as money, bills or other things in payment for goods received; to transmit, or send, especially to a distance."

21. At page 565, it has been mentioned the word "remittance" implied a direction not only to send a cheque in payment of the premium, but also to send it through the ordinary channel, namely by mail; "Remit" means to send forward or send. In the modern fast running economic world, the expression remit or caused to be remitted may include in itself the sending of money or sending of the amount through a person to whom it is given with the object of paying or being paid to a person at a distance and it will include in itself cases where a person in foreign land hands over money or amount, may be in the form of currency of that land for paying off that amount or that amount being paid in

India in Indian currency and the person taking the money for sending it to the remitter for whom it is to be sent, he collects that money and then directs his agent or his person or his instrumentality in India to pay the amount collected by the former in the foreign land for being sent to the person in India and then payment of money on his direction by his agent to the persons in India may even amount to be an Act of remittance or causing remittance of the amount from a foreign country into India, and if such remittance is not through an authorised dealer, it may amount to breach of Sub-section (3) of Section 9 of the Act. In modern days, where Science has developed it is not that the money actually transmitted, but the amount is collected at the one place and the person collecting it on a foreign land directs his own agency in India to distribute that much of amount to the payee to whom it is directed to be paid and for whom it has been sent by the sender or by the relative. So, in the present context of economic and commercial transaction, it appears that it is always not necessary to prove the actual movement of money from one in the foreign land to other in India. That, the real nature of transaction irrespective of its form is to be considered and taken into account and if under the direction of one in the foreign land the money i.e., amount is handed over to the persons like the appellant with direction for being paid to the near relations of the sender i.e., in between the agency who collects money and directs his own agency in India to make payment of that amount in Indian coin or currency to a person in India, he may be said and be held to have remitted or caused remittance of the amount from a foreign land into India, and if such remittance does not come within the exceptions indicated in Sub-section 3 of Section 9 of the Foreign Exchange Regulation Act, 1973 itself and without the exemption being granted by the Reserve Bank, or it is a remittance received through one who is not an authorised dealer, then in that case the person who has remitted the amount can be said to have committed breach of Section 9(3) of the Foreign Exchange Regulation Act, 1973 and the person receiving money in India otherwise than through an authorised dealer for payment by or under the directions or order of a person resident outside India, such person receiving money may also be held to have committed the offence u/s 9(1) of the Foreign Exchange Regulation Act, 1973, as Section 9 bars receiving of the amount, under the instructions of a person residing in a foreign land, except through an authorised dealer. Section 9(3) of the Foreign Exchange Regulation Act, 1973 bars sending or remitting or causing to remit any amount by one in foreign country to India except by way of remittance to be received in India through authorised dealers.

22. We have perused the records. The statement of the present respondent No. 1 - Mohtesham Mohd. Ismail is very clear on this aspect of the matter. He states that I used to collect amounts from those who were giving me in Dirhams at Abu Dabi and handed it over to Tabaraz Bhai, who is next to my company along with the addresses of the persons in India to whom the amount has to be sent, vide page 70 of the paper book. He further states at page 71 of the paper book that I have asked one Sri Mohd. Yousuf Kazia and his brothers Sri Abdul Mateen Kazia,

Sri Abdul Rahim Kazia and Sri Mohd. Isa Kazia of "Faran" house, Bhatkal, whether they can distribute amounts in India particularly in Karnataka and Kerala. Sri Mohd. Yousuf Kazia, who is studying in Bangalore has accepted to distribute the amount in India along with his brothers as per instructions from Abu Dabi. Accordingly, Sri Mohd. Yousuf Kazia and his brothers have been distributing amounts. Referring to Sri Champalal Singhvi, Mohtesham Mohd. Ismail states that Champalal Singhvi met him on 12-7-1990 at my room and assured me to give his accounts of distribution the next day.

23. The deposition/statement of Mohtesham Mohd. Ismail coupled with the other evidence placed on record which has been discussed in great detail by the adjudicating authority, it is clearly established that the first respondent used to collect amounts at Dubai in Dirham from the persons who desired to send money to their relatives in India and then he used to pass on the amounts to his agents, Champalal Singhvi and others and then got distributed or remitted to the said persons to whom it was to be paid on behalf of those who wanted their money to be remitted or sent to their relatives. The Appellate Board on the basis of the misconception of law erred in law by holding actual movement or sending or remitting of the amount is not proved and so charge against present respondent No. 1 was not established. In our considered opinion, the Appellate Board acted illegally in allowing the appeal. In paragraph 11, the Appellate Board observed that the statement of the appellant even though it had been retracted discloses that the people of Indian origin used to approach the appellant for sending amounts to their wives and old parents and that he used collect amounts from those persons in Dirhams and he used to handover the said amounts to Tabaraz Bhai and Tabaraz Bhai used to send these amounts through some persons to India and this read along with the evidence of Mohtesham Mohd. Ismail (present respondent No. 1) and the deposition of Champalal Singhvi appears to establish the charge. The statement of Champalal Singhvi at page 63 of the paper book is to the effect that "I used to receive these amounts and distribute it to the concerned people. In this manner from June, 1989 to July, 1990 I have received amounts on 12 occasions. Every time Shri Mohtesham Mohd. Ismail used to send Rs. 5,00,000/- and I used to receive these amounts and distribute them. In this manner, I have received and distributed rupees sixty lakhs on the instructions of Sri Mohtesham Mohd. Ismail."

24. Thus considered and applying the above principles of law to the effect that if the sender of money from a foreign land or from foreign country collects money and directs to his own men in India to distribute the said amount to the persons concerned to whom it was meant to be paid and then that person under the instructions of the former distributes the said amount of money to the persons for whom it has been sent and to them is paid in Indian currency, it can well be said to be a case of remittance or remitting of money or causing to remit money from a foreign land into India for distribution and disbursement, in such a case charge of Section 9(3) of the Act may be found to have been established and in the present case the charge against the respondent remitting the amount

otherwise than in accordance with law under Act in India stands established. Thus, considered in our opinion, the order of the Appellate Board is not only erroneous on facts, but also is erroneous in law as it is based on failure to apply its mind to the essential requisites of section. The order passed by the adjudicating authority appears to be correct, just and proper and has to be restored after setting aside the order of the Appellate Board.

25. In view of the above, the appeal filed by the Special Director, Enforcement Directorate (Foreign Exchange Regulation Act), New Delhi, is hereby allowed and the order passed by the Foreign Exchange Regulation Appellate Board, on 8-7-1994 in Appeal No. 709/1993 is set aside and the order passed by the adjudicating authority dated 6-10-1993 is hereby restored, confirmed and maintained. Let it be implemented and enforced.