(1986) 09 P&H CK 0024

In the Punjab And Haryana At Chandigarh

Case No : Second Appeal From Order No. 38 of 1984

Union of India (UOI) APPELLANT

Vs

Mohinder Singh and Anr RESPONDENT

Date of Decision : 06-09-1986

Acts Referred:

Foreign Exchange Regulation Act, 1973 — Section 31

Citation : (1986) 10 ECC 301

Hon'ble Judges : J.V. Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

J.V. Gupta, J.—This appeal is directed against the order of the Appellate Board dated April 9, 1984, whereby the order of the Assistant Director imposing the penalty of Rs. 800 because of the contravention of the provisions of Section 31(1) of the Foreign Exchange Regulation Act, 1973 (hereinafter called the Act) was imposed.

2. The charge framed against the respondent Mohinder Singh was that during the year 1973 he, though resident outside of India, acquired Immovable property situate in India worth Rs. 9207 without any previous general or special permission of the Reserve Bank of India in contravention of Section 31(1) of the Act. During the course of enquiry it was found that Shri Mohinder Singh had acquired Immovable property worth Rs. 9207 in India and is still holding the same without the permission of the Reserve Bank of India. Accordingly, a show cause notice for contravention of Section 31(1) of the Act was issued. When the case was fixed for personal hearing on July 18, 1983, the counsel for Mohinder Singh admitted the charge and requested for lenient view to be taken. The learned Assistant Director, after going through the registration deeds for the purchase of the said property found that Mohinder Singh is a foreign citizen and a person resident outside India, since he is staying in U.K. for the last 15 years and is holding property in India without the permission of the Reserve Bank of

India. Therefore, he was held liable to pay penalty of Rs. 800. Further, a direction was also given that Mohinder Singh should apply for permission to the Reserve Bank of India for holding the said property in India. Dissatisfied with the same, Mohinder Singh filed the appeal. In appeal, the Appellate Board took the view that since the consent of the respondent was not obtained in writing to admit the charge, the admission of the counsel was of no consequence. On examining the material on the record, it was found that there is nothing on the record to show that the payment of the consideration relateable to one-third share of the respondent amounting to Rs. 9207 was made by his father on behalf of or under instructions from the respondents. Nor was there anything to show that the respondent had accepted the beneficial interest in the alleged acquisition of the land which is the subject matter of the charge. Consequently, the appeal was allowed and the order of the Assistant Director was set aside. Dissatisfied with the same, the Union of India has filed the second appeal in this Court.

3. The learned Counsel for the appellant contended that once the charge was admitted by the counsel for the respondent the same was binding on him. The law did not require that he should be given a written application by the respondent duly signed by him authorising his counsel to make such an admission. It was further contended that on the record also the finding of the Appellate Board is wrong.

4. After hearing the learned Counsel for the appellant, I find force in the contention raised on their behalf. The law does not require that there should be a written application on behalf of the respondent admitting the charge. Thus, the admission made by the counsel on behalf of the respondent was binding on him. The view taken by the Appellate Board in this behalf was wrong, illegal and misconceived. On merits also, the finding is not supported by documents. From the perusal of the registration deeds for the purchase of the property it is evident that Mohinder Singh, the respondent, who is a foreign citizen, a person resident outside India, since he is staying in the U.K. for the last 15 years, is holding the property in India without the permission of the Reserve Bank of India in contravention of the provisions of Section 31(1) of the Act.

5. In this view of the matter, the appeal succeeds, the order of the Appellate Board is set aside and that of the Assistant Director is restored. However, keeping in view the facts and circumstances of the case, the penalty imposed is reduced from Rs. 800 to Rs. 100.