

11.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 10985/2009

Date of decision: 6th October, 2009

DEVENDER C. KOTHARI Petitioner
Through Mr. Pradeep Jain & Ms. Deeksha
Bhutani, Advocates.

versus

APPELLATE TRIBUNAL FOR FOREIGN EXCHANGE, NEW DELHI &
ANR. Respondents
Through Ms. Rajdipa Behura, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

ORDER

1. The appellant, Mr. Devender C. Kothari, had filed an appeal before Appellate Tribunal for Foreign Exchange, Appeal No. 414/2005, against the adjudication order dated 23rd March, 2005 imposing a penalty of Rs.15 lacs.

2. The petitioner along with the appeal had filed an application for waiver of pre-deposit. By order dated 24th August, 2005, the Appellate Tribunal for Foreign Exchange disposed of the application for waiver of penalty amount, directing the petitioner to deposit Rs.5 lacs as a pre-

condition for hearing of the appeal on merits.

3. It is the case of the petitioner that by letter dated 15th October, 2005 bank draft dated 14th October, 2005 for Rs.5 lacs was deposited in terms of the order dated 24th August, 2005. The receipt of the said amount is not denied by the respondent-Enforcement Directorate.

4. The Appeal No. 414/2005 came up for hearing before the Appellate Tribunal on 1st May, 2008 and in view of the statement made by the respondent-Enforcement Directorate that Rs.5 lacs has not been deposited by the petitioner in terms of order dated 24th August, 2005, the appeal was dismissed. The petitioner thereupon filed a review application stating, inter alia, that he had deposited Rs.5 lacs. The review application was also dismissed vide impugned order dated 13th April, 2009.

5. Learned counsel appearing for the respondent-Enforcement Directorate was asked to obtain instructions and she has very fairly stated that the petitioner had deposited Rs.5 lacs by way of demand draft along with letter dated 15th October, 2005. It is, however, pointed out that the said deposit was treated as deposit made in response to appeal No. 11/2001. It is stated that the said mistake had occurred as the petitioner had wrongly mentioned the details of the impugned order in the letter dated 15th October, 2005. A perusal of the letter dated 15th October, 2005 shows that the petitioner had mentioned the appeal No. 414/2005 in which the said deposit was made. It is brought to my notice that the penalty

amount subject matter of Appeal No. 11/2001 was Rs.2 lacs and, therefore, there was no question of the petitioner making a deposit of Rs.5 lacs in the said appeal.

6. It will be unfair to punish the petitioner as he had correctly mentioned the appeal number in the letter dated 15th October, 2005.

7. In these circumstances, the order dated 1st May, 2008 dismissing the appeal filed by the petitioner on the ground of failure to make pre-deposit of Rs.5 lacs is set aside. Consequently, the order dated 13th April, 2009 is also set aside. The Appellate Tribunal for Foreign Exchange will accordingly hear the appeal on merits. It is clarified that this Court has not expressed any opinion on the merits of the appeal and the order passed by the respondent-Enforcement Directorate.

The writ petition is disposed of. No costs.

SANJIV KHANNA, J.

OCTOBER 06, 2009
VKR