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

+ W.P.(C) 7923/2007

% **Date of decision : 23rd November, 2009**

ANIL RAO Petitioner
Through Mr. P.Ojha, advocate.

versus

UOI THR. SECRETARY
DEPARTMENT OF REVENUE
MINISTRY OF FINANCE & ORS. Respondents
Through Ms.Rajdipa Behura, Mr.C.S.Chauhan,
advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER

By the impugned Order dated 31st July, 2007 the Appellate Tribunal for Foreign Exchange has partly allowed the application for waiver of pre-deposit and directed pre-deposit of 25% of the penalty amount of Rs.20 lacs.

2. Income Tax Department in 2002 during the course of search in the premises of the petitioner had come across foreign bank accounts maintained by the petitioner. The petitioner did not have permission of the Reserve Bank of India to maintain the said accounts after he returned back to India in 1986. The petitioner, however,

claims that in 2003 he had written to the Reserve Bank of India and he was asked to close the foreign currency accounts and remit the proceeds to his bank accounts to India. It is the case of the petitioner that subsequently the foreign bank accounts were closed and the proceeds therein of about US\$ 75000.00 were remitted to India.

3. Learned counsel for the petitioner contends that letter dated 14th July, 2003 written by the Reserve Bank of India is a special direction/permission granted under the provisions of the Foreign Exchange Management Act, 1999 and therefore the alleged violation by the petitioner stands condoned after the permission was granted. This is disputed by the learned counsel for the respondent-Enforcement Directorate who submits that the petitioner had written a letter to the Reserve Bank of India after the search was conducted by the Income Tax Department and the letter dated 14th July, 2003 is not a permission granted with retrospective effect.

4. These aspects and contentions have to be adjudicated and decided on merits by the Appellate Tribunal for Foreign Exchange. Limited controversy before me is in respect of waiver of pre-deposit and the direction given by the tribunal to deposit 25% of the penalty amount. In the impugned Order dated 31st July, 2007, the Tribunal has granted waiver from deposit of 75% of the penalty amount. Learned Tribunal has taken a prima facie view. It may be noted that as per the exchange rate prevailing in 1996, the foreign currency in the bank accounts of the petitioner was about Rs.26 lakhs and as per the exchange rate prevailing today, the foreign currency in the bank accounts of the petitioner was about Rs.35 lakhs. Keeping these aspects in mind, I do not think the direction to pre-deposit Rs. 5 lacs warrants interference. The petitioner had not pleaded financial

stringency or lack of sources. No ground for interference under Article 226 of the Constitution of India is made out.

5. Writ Petition is dismissed. It is clarified that the observations made in this Order are prima facie and tentative and for the purpose of disposing of the Writ Petition. Learned Tribunal will decide the appeal on merits without being influenced by any of the observations made above. Petitioner is given time to deposit the said amount within four weeks from today.

No costs.

SANJIV KHANNA, J.

NOVEMBER 23, 2009.

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