

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

RFA (OS) No.1/2025 c/w
RFA (OS) No.2/2025
RFA(OS) No.3/2025

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RFA (OS) No. 1/2025

Sarwa Zahoor wife of Zahoor Ahmad Shah resident of Bhagat Barzulla Srinagar and another.

RFA(OS) No. 2/2025

2 Zahoor Ahmad Shah son of Gh. Nabi Shah resident of Bhagat Barzulla Srinagar and others

RFA(OS) No. 3/2025

3.Zahoor Ahmad Shah son of GH. Nabi Shah resident of Baghat Barzulla Srinagar and others

appellants

Through: - Mr.R.A.Jan Sr. Advocate with
Mr. Shahid Habib Advocate

Vs.

Deputy Director, Directorate of Enforcement and another.

...Respondent(s)

Through: - Mr.T.M.Shamsi DSGI with
Mr. Faizan Ahmad CGC.

**CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR,JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR JUDGE**

JUDGMENT

Sanjeev Kumar, J

RFA (OS) No.1/2025

1 In this appeal on hand filed by the appellants under Section 42 of the Prevention of Money Laundering Act, 2002 [“the Act of 2002”], a

common question of law that arises for determination may be stated as under:

“Whether the appellate Tribunal defined under Section 2 (b) of the Act of 2002 and exercising powers under Section 26 thereof is empowered to remand the matter back to the Adjudicating Authority after setting aside the order of confirmation passed by the latter confirming the provisional attachment made by the authorized officer under Section 5 of the Act of 2002 ?”

2 Before we advert to the question of law framed above, a brief reference to the background facts would be necessary.

Factual Matrix

3 M/S Trison Farms and Construction is a private Ltd. Company incorporated under the Indian Companies Act, 1956, of which appellant No. 2 and his family members are promoters. The appellant No.2 was arrested by the National Investigating Agency, New Delhi, on the allegation that he was a conduit to transfer funds received from Pakistan and the Pakistan High Commission in Delhi to various persons in Kashmir. During searches, various documents were seized by the National Investigating Agency [‘NIA’] from the residence of one Gh. Mohd. Bhat which showed that appellant No.2 had received Rs.1,64,10,000/- during the year 2015-16 from illegitimate sources and passed it on to different persons engaged in separatist activities in Kashmir. The appellant No. 1 was not named in any FIR, ECIR or any criminal complaint.

4 Be that as it may, the Deputy Director, Directorate of Enforcement, New Delhi, the respondent No.1 herein, passed a provisional attachment order bearing No.03 dated 11.03.2019 attaching

the basement and ground floor, DLF Phase-II, Gurgaon, Haryana which was in the name of appellant No.1. Subsequently, the NIA filed OC No. 1114 of 2019 before the Adjudicating Authority jointly against the appellants. The appellants were put on a show-cause notice issued by the Adjudicating Authority on 16.04.2019. The show-cause notice was responded to by the appellants vide their reply dated 2nd of July 2019. The Adjudicating Authority vide its order dated 26.08.2019 confirmed the attachment ordered by the authorized officer under Section 5 of the Act of 2002.

5 Dissatisfied and aggrieved by the order of Adjudicating Authority, the appellants filed appeals before the appellate Tribunal and prayed for setting aside of the order of confirmation passed by the Adjudicating Authority in terms of Section 8 of the Act of 2002.

6 The aforesaid appeals were heard by the Appellate Tribunal and vide order dated 24.09.2024, the Appellate Tribunal accepted the plea of the appellants that the failure of the Adjudicating Authority to convey “reasons to believe” to the appellants had vitiated the order of confirmation. Accordingly, the appeals were allowed and the confirmation order passed by the Adjudicating Authority set aside. However, after setting aside of the order of confirmation passed by the Adjudicating Authority, the matter was remanded back to take *de novo* proceedings and issue fresh notice to the appellants along with “reasons to believe” so as to afford the appellants adequate opportunity to file reply. It is this order of the Appellate Tribunal dated 24.09.2024 which has been called in question by the appellants primarily on the ground that the Appellate Tribunal exercising its jurisdiction under Section 26

of the Act of 2002 is devoid of any power or jurisdiction to remand the matter back to the Adjudicating Authority.

Rival contentions:

7 Mr. R. A Jan, learned senior counsel appearing on behalf of the appellants, would submit that the Appellate Tribunal referred to in Section 25 of the Act is a creation of the statute and, therefore, exercises limited power as is vested in it under the Act of 2002. The Appellate Tribunal having been vested with no inherent powers is not competent in law to order remand. It was argued that if a particular power is not vested under the statute on the Appellate Tribunal, it cannot exercise that power. Mr. Jan would argue that in terms of subsection (4) of Section 26 of the Act of 2002, the Appellate Tribunal has been empowered only to pass orders confirming, modifying or setting aside the order appealed against. There is no specific power conferred upon the Appellate Tribunal to remand the matter back to the Adjudicating Authority. He would argue that the expression “pass such orders thereon as it thinks fit” would mean that the Appellate Tribunal has discretion to act either by confirming, modifying or setting aside the order appealed against and nothing beyond that. It is also argued by Mr. Jan that even if the power of remand is conceded in favour of the Appellate Tribunal, yet the Adjudicating Authority would not be in a position to confirm the order of provisional attachment made by the authorized officer, for the reason that the provisional attachment order has lapsed by efflux of time. Reference was invited to Section 5 of the Act of 2002 which in subsection (1) provides that the order of provisional attachment of property shall remain in force for a period not

exceeding 180 days from the date of the order. Drawing attention of this Court to the third proviso of subsection (1) of Section 5 of the Act of 2002, it is contended that for the purposes of computing the period of 180 days, only such period during which proceedings under Section 5 remained stayed by the High Court alone is liable to be excluded. He would, therefore, wind up his submissions by submitting that the order of provisional attachment has outlived its life and, therefore, the Adjudicating Authority cannot confirm it as the same has become *non est* in the eye of law. Mr. Jan, in order to strengthen his case, would place reliance upon the following judgments:

- (i) Central Burea of Investigation vs. V.C.Shukla and others, (1998) 3 SCC 410;**
- (ii) Babu Verghese and others vs. Bar Council of Kerala and others, (1999) 3 SCC422;**
- (iii) Meera Sahni vs. Lieutenant Governor of Delhi and others, (2009) 9 SCC 177;**
- (iv) Aslam Mohammad Merchant vs. Competent Authority and others, (2008) 14 SCC 186;**
- (v) Kranti Associates Private Ltd. vs Masood Ahmed Khan and others, (2010) 9 SCC 496;**
- (vi) Division Bench Judgment of Karnataka High Court dated 25.09.2025 passed in Misc. 2nd Appeal No. 24 of 2020 titled Joint Director vs. M/S Devas Multimedia Pvt. Ltd and another**

8 Per contra, Mr. Tahir Shamsi, learned DSGI appearing for the respondents, would argue that the expression used in Section 26(4) of the Act of 2002, namely “*pass such orders thereon as it thinks fit*,” would mean that the Appellate Tribunal, in addition to confirming, modifying, or setting aside the order appealed against, may also pass any ancillary or consequential order as it thinks fit to give effect to its

decision. He would, therefore, submit that the power to remand is a concomitant and inherent component of the power to set aside or modify the impugned order, particularly when such setting aside or modification is necessitated on technical grounds, such as non-compliance with the principles of natural justice. He places reliance upon the following judgments:

- (i) **Commissioner of Income Tax, Shilong vs. Assam Travels Shipping Service Dibrugarh (1993) Supp (4) SCC 206; and**
- (ii) **A judgment of Single Bench of Delhi High Court titled V.K.Modi vs. Director, Enforcement Directorate and another, 2009 scc Online Del 24.**

Analysis & Conclusions:

9 Having heard learned counsel for the parties and perused the material on record, it is necessary to first set out Section 26 of the Act of 2002 herein below:

26. Appeal to Appellate Tribunal:

(1) Save as otherwise provided in sub-section (3), the Director or any person aggrieved by an order made by the Adjudicating Authority under this Act, may prefer an appeal to the Appellate Tribunal;

(2) Any [reporting entity] aggrieved by any order of the Director made under sub-section (2) of section 13, may prefer an appeal to the Appellate Tribunal;

(3) Every appeal preferred under sub-section (1) or sub-section (2) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Adjudicating Authority or Director is received and it shall be in such form and be accompanied by such fee as may be prescribed: Provided that the Appellate Tribunal may, after giving an opportunity of being heard, entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1) or sub-section (2), the Appellate Tribunal may, after giving the parties to the

appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Adjudicating Authority or the Director, as the case may be.

(6) The appeal filed before the Appellate Tribunal under sub-section (1) or sub-section (2) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of filing of the appeal”

10 From a plain reading of Section 26, in particular subsection (4) thereto, it is abundantly clear that the words “may pass such orders thereon as it thinks fit” are of the widest amplitude and would vest in the Appellate Tribunal powers of remand as consequential to the power to set aside the order appealed against.

11 The Hon’ble Supreme Court in case of **Union of India vs Umesh Dhaimode 1997 10 SCC 223**, was confronted with a similar provision i.e Section 128(2) of the Customs Act 1962, as it then stood, which also vested the Appellate Authority under the said Act with powers to pass such orders as it deemed fit confirming, modifying or annulling the decision appealed against. In the aforesaid case, the Hon’ble Supreme Court has clearly held that an order of remand necessarily annuls the decision which is under appeal before the Appellate Authority and, therefore, the Appellate Authority cannot be said to have been divested of power to order remand. Para (2) of the said judgment reads thus:

“As the order under appeal itself notes, the aforesaid provision vested the appellate authority with powers to pass such order as it deemed fit confirming, modifying or annulling the decision appealed against. An order of

remand necessarily annuls the decision which is under appeal before the appellate authority. The appellate authority is also invested with the power to pass such order as it deems fit. Both these portions of the aforesaid provision, read together, necessarily imply that the appellate authority has the power to set aside the decision which is under appeal before it and to remand the matter to the authority below for fresh decision”.

12 Relying upon the aforesaid judgment, a Division Bench of the Calcutta High Court comprising Justice Gaurang Kanth and Justice Joymalya Bagchi (now a Judge of the Supreme Court) took a similar view in *CRA 168 of 2024*, titled **Partha Chakraborti and Others v. Directorate of Enforcement, Kolkata**. Paragraph 9 of the judgment is relevant and is accordingly reproduced below:

“Section 26(4) of the PMLA empowers the Appellate Tribunal to pass such orders as it thinks fit including confirming, modifying or setting aside the order appealed against. The wide amplitude of the expression "such orders as it deems fit" and the word 'setting aside' clearly confers jurisdiction in the Tribunal to remand the matter as an order of remand would imply setting aside the order appealed against. Any other interpretation would give rise to a paradoxical situation where the Tribunal after setting aside an order on the ground of procedural error (i.e. breach of natural justice) as in the present case, would be rendered powerless to remand and direct fresh consideration on merits”.

13 The judgment of the Division Bench of Calcutta High Court in **Partha Chakraborti’s** case (supra) applies on all fours to the facts of instant case. In the case on hand, the appeals have been allowed by the Appellate Tribunal and order of confirmation passed by the Adjudicating Authority has been set aside for breach of natural justice. The order of confirmation passed by the Adjudicating Authority under Section 8 of the Act of 2002 has not been set aside by the Appellate

Tribunal on merits, but on the ground that the appellants have not been conveyed “reasons to believe” while serving upon them the notice of show cause, and such omission has deprived them of a reasonable opportunity to submit an adequate reply.

14 If we were to concede that the appellate Tribunal can only confirm, modify or set aside the order of Adjudicating Authority appealed against and cannot remand the matter, it would present a paradoxical situation where the Tribunal, after setting aside an order on the ground of procedural error or a technicality, would be left helpless and allow the appellants to reap the fruits of procedural error or of a mere technicality.

15 Way back in 1993, the Hon’ble Supreme Court in the case of **Assam Travels Shipping Service** (supra) relied upon by Mr. Shamsi interpreted the expression “as it thinks fit” occurring in Section 254(1) of the Income Tax Act, 1961 and held that the said expression was wide enough to include the power of remand to the authority competent to make requisite order in accordance with law. Paras (6) and (7) of the said judgment deal with the issue and are, therefore, reproduced herein below:

“6. The expression "as it thinks fit" is wide enough to include the power of remand to the authority competent to make the requisite order in accordance with law in such a case even though the Tribunal itself could not have made the order enhancing the amount of penalty. The power of the Appellate Assistant Commissioner under [Section 251\(1\)\(b\)](#) includes the power even to enhance the penalty subject to the requirement of Sub-section (2) of [Section 251](#) of reasonable opportunity of showing cause against such enhancement being given to the appellant assessee. This could have been done in the assessee's appeal itself filed in the present case. The power of the Tribunal to

make an order of remand in such a situation is well settled.

7. This being the position in law the Tribunal was not justified in taking the view that it had no other alternative except to affirm the order of the Appellate Assistant Commissioner cancelling even the lesser penalty imposed by the Income-tax Officer. In view of [Section 251](#)(1 Kb) of the Act it is also clear that the Appellate Assistant Commissioner was wrong in taking the view that he had no power to enhance the penalty in accordance with law on reaching the conclusion that the computation of penalty made by the Income-tax Officer was illegal, and that he could only cancel even the lesser penalty which had been imposed by the Income-tax Officer. It has now to be seen whether the question of law referred to the High Court under [Section 256\(1\)](#) of the Act covered this aspect”.

16 In somewhat similar circumstances, the High Court of Delhi in the case of **V.K.Modi** (supra) has also taken a similar line of reasoning. In the aforesaid case, a single Bench of Delhi High Court was confronted with the interpretation of Section 52(3) of Foreign Exchange Regulation Act, 1973. The said provision read thus:

“On receipt of an appeal under sub-section (2), the Appellate Board may, after making such further inquiry as it deems fit, confirm, modify or set aside the order appealed against and the decision of the Appellate Board shall, subject to the provisions of section 54, be final and if the sum deposited by way of penalty under sub-section (2) exceeds the amount directed to be paid by the Appellate Board, the excess amount shall be refunded.”

17 In the aforesaid case, the learned Single Judge of Delhi High Court, after surveying the entire case law on the issue, in para 22 of the judgment held thus:

“In my view, therefore, the power to remand is an important postulate of any authority exercising appellate jurisdiction and such a power is a necessary concomitant of the powers of the Appellate Authority to do complete justice between the parties in the absence of which the

power to be exercised by the Appellate Authority would become illusory and ineffective. The very existence of the Appellate Jurisdiction obliges the Authority exercising the Appellate Boards powers to discharge its jurisdiction fully and effectively and in the given set of facts the appellate authority can always remand the matter back for proper and effective decision by the Authority of the first instance who for some reasons or in the absence of complete material before it failed to return a proper finding”

18 From the aforesaid case law, it is beyond pale of any discussion that the power of remand is an important postulate of any authority exercising appellate jurisdiction and vested with the power to confirm, modify or set aside the order appealed against. Such power is a necessary concomitant to the powers of the Appellate Authority to pass the orders like the order of confirmation, modification or setting aside. Absent such power, the power to set aside or annul the order appealed against, that too, on the technical grounds, like non compliance with the principle of natural justice, would render the power itself illusory and ineffective.

19 As is rightly held by the Supreme Court, the power to set aside or annul an order appealed against would necessarily carry with it the power to pass such ancillary and concomitant orders as may be necessary to give effect to the order of annulment or setting aside of the order appealed against.

20 While there is no dispute regarding the proposition advanced by Mr. Jan, supported by the judgments of the Supreme Court, that the Appellate Tribunal, being a creature of statute, must exercise only those powers which are expressly conferred upon it by the statute, and that statutory Tribunals do not possess inherent powers such as those vested

in civil Courts or Constitutional Courts. However, the proposition put forth by learned counsel does not in any manner advance the case of the appellants. In the instant case, as we have already held, the power to remand being a concomitant power of an Appellate Authority vested with the power to annul or set aside an order appealed against, has neither been taken away nor excluded by the statute. This power is inherent in, and forms an integral part of, the power of the statutory appellate authority to annul or set aside an order under appeal.

21 The Division Bench of Karnataka High Court in the case of **M/S Devas Multimedia Pvt. Ltd** (supra) relied upon by the Mr. Jan, with due respect, has not considered this aspect of the matter and, thus cannot be said to have laid down a good law. The Division Bench has overlooked the fact that an order of remand necessarily annuls the decision appealed against, and such power is an essential postulate and a necessary concomitant of the power of the Appellate Authority to annul or modify the order appealed against. The other judgments relied upon by Mr. Jan do not, in any manner advance, the cause of the appellants as projected before us in these appeals.

22 It is thus settled law that the power to set aside an order by the Appellate Tribunal includes the power to remand, which is a necessary attribute or concomitant of the power to annul or set aside the order under appeal, unless such power is expressly, or by necessary implication or intendment, taken away by the statute which creates the appellate tribunal.

23 Viewed thus, it would not be fair to argue that by conceding the power of remand as ancillary to, and a necessary concomitant of, the

power of appellate Tribunal to set aside an order, this Court would be substituting anything to subsection (4) of Section 26 of the Act of 2002, as is sought to be contended by Mr. Jan. The power to remand in favour of the appellate Tribunal has to be necessarily conceded so as to give effect to its authority to set aside or annul the orders appealed against. The judgment of the Division Bench of Calcutta High Court in the case of **Partha Chakraborti** (supra), which in turn places reliance upon the judgment of Supreme Court in **Umosh Dhaimode's** case (supra), lays down the correct proposition of law, and we see no reason or justification to take a contrary view on the issue.

24 This takes us to the another argument of Mr. Jan that the provisional attachment as per Section 5(1) of the Act of 2002 has a limited lifespan and would, therefore, outlive its life by efflux of time. This issue too has been considered by the Division Bench of Calcutta High Court in **Partha Chakraborty's case** (supra). The Division Bench placed reliance upon **Kaushalya Infrastructure Development Corporation Ltd vs Union of India, 2022 LiveLaw (SC) 161** in which the Hon'ble Supreme Court has held that the adjudication proceedings may continue notwithstanding the expiry of the provisional attachment order. The observations of the Supreme Court in the aforesaid judgment are apt and are , therefore, reproduced herein below:

“It is further urged that provisional attachment order triggers the adjudication proceedings and as the provisional attachment order is set aside by the High Court, no adjudication proceedings can be continued further against the petitioner.

Going by the scheme of Sections 5 and 8 of the PMLA, we have no hesitation in observing that the aforenoted

argument is misplaced. The fact that the petitioner has succeeded before the High Court, does not per se result in nullifying the adjudication proceedings, which, nevertheless, can proceed and need to be taken to its logical end by the Adjudicating Authority in accordance with law.”

25 In the instant case, it is nobody’s case that the confirmation order, which was set aside by the appellate Tribunal has lapsed by efflux of time. The Appellate Tribunal has only set aside the confirmation order, not the proceedings before the Adjudicating Authority under Section 8 of the Act of 2002. The Appellate Tribunal, by setting aside the confirmation order and remanding the matter back to the Adjudicating Authority, has merely restored the proceedings to the stage at which the Adjudicating Authority had passed the confirmation order. It is also not the case of the appellants that, as on the date on which the confirmation order was passed by the Adjudicating Authority, the provisional attachment order had lapsed by efflux of time.

26 Viewed thus, the argument of Mr. Jan that the provisional attachment order has outlived its life and, therefore, cannot now be confirmed by the Adjudicating Authority is without any substance and cannot be accepted. To reiterate, we say that the Appellate Tribunal has only set aside the confirmation order and not quashed the proceedings before the Adjudicating Authority and, therefore, the Adjudicating Authority, on remand, would be put in the same position in which it stood at the time of passing the order confirming the provisional attachment.

Decision

27 Viewed thus, we find no merit in these appeals and the same are, accordingly, dismissed. Interim orders, if any, shall stand vacated. Consequently, the order of Appellate Tribunal is upheld.

RFA (OS) No.2/2025 & RFA(OS) No.3/2025

The judgment rendered in RFA (OS) 1/2025 shall govern the disposal of these appeals, as the issue involved herein is identical to the one decided in the said appeal. Accordingly, both these appeals are also dismissed, and the orders of the Appellate Tribunal upheld.

(SANJAY PARIHAR) (SANJEEV KUMAR)
JUDGE JUDGE

Jammu
20.11.2025
Sanjeev

Whether the order is speaking: Yes
Whether the order is reportable: Yes