

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 20399 of 2015 (O&M)

Date of decision: 9.8.2017

Indu Sachdeva

.. Petitioner

vs

Union of India and others

.. Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Gurminder Singh Gill**

Present: Mr. Vineet Sehgal, Advocate, for the petitioner.
Ms. Ranjana Shahi, Advocate, for Union of India.

Rajesh Bindal, J.

The petitioner has approached this Court impugning the order dated 14.7.2009 passed in appeal by the Appellate Tribunal for Foreign Exchange, New Delhi (for short, 'the Tribunal') and the order dated 24.6.2015 passed in review of the aforesaid order.

Vide impugned orders, the petitioner has been directed to pay 10% of the amount of penalty demanded from her as pre-condition for hearing of the appeal on merits.

Learned counsel for the petitioner submitted that vide impugned order dated 20.6.2008 passed by the Special Director of Enforcement Directorate, Government of India, New Delhi, penalty of ₹ 6 crores was levied on M/s Sachdeva & Sons Industries (P) Limited, Amritsar, for violation of Section 50 of the Foreign Exchange Regulation Act, 1973 (for short, 'the Act'). In addition, penalty of ₹ 3 crores each was levied on

Ashok Sachdeva and the petitioner (Mrs. Indu Sachdeva), being the Directors of the aforesaid company for violation of Section 50 of the Act.

Aggrieved against the order passed by the Special Director of Enforcement Directorate, the petitioner preferred appeal before the Tribunal along with an application for entertainment of appeal without any prior deposit of the amount of penalty. Vide order dated 14.7.2009, the petitioner was directed to deposit 10% of the amount of penalty as precondition for entertainment of appeal to be heard on merits. As the petitioner claimed that she was never the Director of M/s Sachdeva & Sons Industries (P) Limited, Amritsar, she filed review application. The same was dismissed vide order dated 24.6.2015. The aforesaid orders have been impugned before this Court.

Learned counsel for the petitioner while referring to a certificate issued by the Chartered Accountants, submitted that the Company M/s Sachdeva & Sons Industries (P) Limited, Amritsar, was incorporated on 5.5.1997 with Ashok Kumar Sachdeva and Chiman Lal Sachdeva as its Directors. On death of Chiman Lal Sachdeva, Vijay Sharma was inducted as Director. The certificate further mentioned that petitioner Mrs. Indu Sachdeva had never been director of M/s Sachdeva & Sons Industries (P) Limited, Amritsar, since its inception. He further submitted that the petitioner was a Director in the company, namely, M/s Sachdeva & Sons Rice Mills Limited, which was partner in firm M/s Sachdeva & Sons Industries. The partnership firm was dissolved on 5.5.1997 on incorporation of M/s Sachdeva & Sons Industries (P) Limited. As the petitioner had never been the Director in the company M/s Sachdeva & Sons Industries (P) Limited, she had wrongly been issued notice for imposing penalty. The

appeal filed by her against the order dated 20.6.2008 should have been entertained by the Tribunal without any precondition for deposit of any amount as that will be too harsh on her. She is not part of the business on account of any alleged violation for which penalty proceedings have been initiated.

On the other hand, learned counsel for the respondents submitted that being director of M/s Sachdeva & Sons Rice Mills Limited, the petitioner was a partner in the firm M/s Sachdeva & Sons Industries. The deed of settlement was entered on 22.4.1997, to which the petitioner is a signatory. It finds mentioned in the Memorandum of Association of M/s Sachdeva & Sons Industries Private Limited, hence, she is a director in the company and liable to be penalized. The precondition for entertainment of appeal does not deserve to be set aside. The Tribunal has merely directed the petitioner to deposit 10% of the demand.

Heard learned counsel for the parties and perused the paper book.

At this stage, we are not opining finally on the merit of the controversy as the issue is pending before the Tribunal. However, there is prima facie, merit in the case set up by the petitioner. There is a certificate produced from the Chartered Accountants at page 26 of the writ petition certifying that the petitioner had never been the director of the company, namely, M/s Sachdeva & Sons Industries (P) Limited. Further from a perusal of the facts narrated in the order passed by the authorities, it is evident that the petitioner was a director in M/s Sachdeva & Sons Rice Mills Limited, a separate legal entity, which was a partner in firm M/s Sachdeva & Sons Industries. On dissolution of M/s Sachdeva & Sons

Industries, partnership firm on 5.5.1997, M/s Sachdeva & Sons Industries (P) Limited, came into existence, which took over the business of M/s Sachdeva & Sons Industries, but the petitioner was not inducted as director in the newly incorporated company. There is nothing on record to suggest otherwise. Once, prima facie, on the basis of material produced on record before this Court, it is found that the petitioner was not the director in the company, namely, M/s Sachdeva & Sons Industries (P) Limited, directing her to deposit part of penalty as precondition for hearing of her appeal on merits will certainly cause undue hardship to her. Hence, in our view, the condition of pre-deposit of 10% of the penalty amount imposed on her for hearing of the appeal filed by her and pending before the Tribunal deserves to be set aside. Ordered accordingly.

It is made clear that expression of opinion by this Court on prima facie case set up by the petitioner will not debar the Tribunal to consider the case on the merit of the controversy in case the department is able to establish that the petitioner had been the director of the company, namely, M/s Sachdeva & Sons Industries (P) Limited, hence, liable to be penalized.

The petition stands disposed of accordingly.

(Rajesh Bindal)
Judge

9.8.2017
vs

(Gurvinder Singh Gill)
Judge

Whether speaking/ reasoned

Yes/No

Whether Reportable

Yes/No