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* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **W.P.(C) 8605/2010**

BIMAL KUMAR JAIN ..... Petitioner
Through

versus

DIRECTOR ENFORCEMENT DIRECTORATE ..... Respondent
Through Mr Sanjeev Narula, CGSC with
Mr Abhishek Ghai, Advocate.

17.
\+ **W.P.(C) 1897/2013**

NARESH KUMAR JAIN ..... Petitioner
Through
versus

DIRECTOR ENFORCEMENT DIRECTORATE ..... Respondent
Through Mr Sanjeev Narula, CGSC with
Mr Abhishek Ghai, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **14.09.2017**

1. The petitioners have filed the present petition, *inter alia*, seeking return of jewellery and currency that were seized pursuant to the search and seizure operations conducted on 24.09.2009. Apparently, the said operations were conducted under Section 37 of The Foreign Exchange Management Act, 1999 (hereafter 'FEMA'). It is the petitioner's case that the said operations were illegal and were beyond the scope of the statutory provisions.

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2. The learned counsel has referred to the provisions of Section 37 (3) of FEMA, which mandate that the specified officers shall exercise powers, which are similar to those conferred on income-tax authorities under the Income-Tax Act, 1961. It is further enacted that such powers would also be subject to such limitations as provided therein. It is the petitioner's case that there are a number of safeguards provided under Section 132 of the Income Tax Act, 1961; one of which is that the officer authorizing the search must have *reason to believe* that there is unclosed income.

3. The learned counsel for the petitioner has earnestly contended that in the present case there was no reason to believe that any assets that were liable to be seized or confiscated, were located at the searched premises. It was further contended that Section 132 of the Act provides for a maximum period for which the seized currency/assets could be retained.

4. In the present case, the seizure operations were conducted on 24.09.2009 and no further steps in respect of seized currency was undertaken by the respondents for over six years. This led the petitioner to file the present petition. On 18.12.2015, this Court took note of the submissions and directed that if a Show Cause Notice is not issued by 13.01.2016 and proceedings are not initiated for confiscation of the seized currency by January, 2016, the petitions would be allowed and the respondents would be directed to return the seized currency (the seized jewellery had already been returned to the petitioners).

5. Thereafter, the respondents have issued a Show Cause Notice dated 11.01.2016, which this Court is informed is under consideration.

6. It is seen that more than one and a half year has already elapsed since the Show Cause Notice was issued, however, there has been no significant

progress.

7. In order to satisfy itself, whether there were any reasons to conduct the search and seizure operations, this Court had called for the relevant files, which were produced in Court. On examination of the said files it was noticed that the concerned officer has unequivocally recorded that on the basics of information available on the record, he had reasons to believe that provisions of FEMA were violated and had authorised the search and seizure operations.

8. In the circumstances and given that the respondents have already issued a Show Cause Notice for, *inter alia*, adjudicating whether the currency seized ought to be confiscated, this Court considers it apposite to dispose of the present petitions by directing the respondents to complete the adjudication proceedings as expeditiously as possible and in any event not later than six months from today.

9. The petition and pending application are disposed of.

VIBHU BAKHRU, J

SEPTEMBER 14, 2017

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