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

\+ W.P.(C) 11387/2017

SH. ASHWANI KUMAR MEHRA ..... Petitioner

Through: Mr R. K. Handoo, Mr N. P. Singh and Mr Aditya Chaudhary, Advocates.

versus

SH. A.H. KHAN, ASSISTANT DIRECTOR (HIU), DIRECTORATE OF ENFORCEMENT, FEMA ..... Respondent

Through: Mr Amit Mahajan, CGSC with Mr Kunal Dutt, Advocate for UOI.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 20.12.2017

CM No. 46477/2017

1. Allowed, subject to all just exceptions.

W.P.(C) 11387/2017 & CM No.46476/2017

2. Issue notice. Learned counsel for the respondent accepts notice.

3. The petitioner has filed the present petition impugning the seizure order dated 15.06.2017 and order dated 08.12.2017 passed by the Competent Authority in the proceedings initiated under Section 37A of the Foreign Exchange Management Act, 1999 (hereafter 'the Act').

4. The petitioner's grievance is that his money which is lying in the Saving Account No.008490700001612 with YES Bank, Chhattarpur Branch, New Delhi and has been seized under Section 37A of the Act.

5. It is the petitioner's case that under the Liberalised Remittance Scheme (LRS) he had remitted funds overseas and invested the same in purchasing shares of two overseas companies as well as in granting loan to the said companies. The petitioner contends that the same is not proscribed and was in conformity with the law as applicable in the material time.

6. Notwithstanding the above, it is the petitioner's case that the said money had been repatriated to India. The petitioner states that he has provided the accounts of inward and outward remittances and, therefore, there could be no possible reason to suspect that the petitioner had any assets overseas, which was represented by the outward remittances made under the LRS.

7. Apart from the above, the petitioner also contends that Section 37A of the Act would not be applicable to remittances that had been made through authorized dealers prior to the said section being included in FEMA.

8. Mr Mahajan, learned counsel appearing for the respondents submits that the petitioner has an alternative remedy to assail the impugned order before the Appellate Tribunal for Foreign Exchange.

9. *Prima facie*, some of the contentions advanced by the petitioner seem merited. Particularly, the petitioner's contention that the funds have been repatriated to India appears to have been ignored by the Competent Authority. Clearly, if the petitioner is correct in his submission that the funds remitted overseas has been repatriated, then the question of seizing the petitioner's account on the ground that the petitioner has acquired assets from the remittances made under the LRS would not be sustainable. However, in view of the alternative remedy available to the petitioner, this Court is refraining from making any further observations in this regard and

it would be open for the petitioner to canvass his case before the Appellate Authority.

10. Having stated above, this Court considers it apposite that the funds seized by the respondent be kept in an interest bearing fixed deposit. It is so directed. Needless to mention if the petitioner prevails in his contentions, the petitioner would be entitled to the funds along with the interest.

11. In view of the above, the present petition is disposed of by directing that if the petitioner prefers an appeal before the Appellate Tribunal within a period of one week from today, the same would be considered by the Tribunal as expeditiously as possible and in any event within a period of four weeks from the date of filing of the appeal. The respondent shall ensure that no adjournments are taken before the Appellate Tribunal and all records sought to be relied upon by the respondents are produced before the Tribunal on the first date itself.

12. The petition and the pending application are disposed of with the aforesaid directions.

13. Order *dasti* under signatures of the Court Master.

VIBHU BAKHRU, J

DECEMBER 20, 2017
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