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

+ **W.P.(C) 10849/2015 & CM 27939/2015 & 28810/2017**

RAJENDRA KUMAR PATEL

..... Petitioner

Through: Mr D.D. Singh, Mr Navdeep Singh,
Mr Ravi Mehrotra, Ms Seerut Deep
Singh, Advocates.

versus

UNION OF INDIA

..... Respondent

Through: Mr Dev P. Bhardwaj, Advocate for
CGSC/UOI.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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24.08.2017

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, praying that the petitioner be paid the actual rate of interest earned by the respondent on the amount seized and confiscated from the petitioner.
2. On 10.01.2007, the petitioner's business premises at Delhi, Surat and Mumbai were searched by the Enforcement Directorate (hereafter 'ED'). During the search, the respondent seized a total amount of ₹3,44,62,040/- and certain other documents. Thereafter, on 24.12.2007, a complaint was lodged under Section 16(3) of the Foreign Exchange Management Act, 1999 (hereafter as 'FEMA') before the Adjudicating Authority.
3. Pursuant to the complaint, the Adjudicating Authority issued a Show

Cause Notice (SCN) dated 12.05.2008 to the petitioner. The petitioner participated in the adjudication proceedings which culminated in the order dated 09.02.2009. By the aforesaid order dated 09.02.2009, the Adjudicating Authority directed confiscation of the seized amount and also imposed penalties on the appellant and its partners.

4. Aggrieved by the same, the petitioner challenged the Adjudication order dated 09.02.2009 by way of an appeal before the Appellate Tribunal for Foreign Exchange, New Delhi (Appeal No. 41 of 2009).

5. By an order dated 12.06.2009, the Appellate Tribunal for Foreign Exchange allowed the petitioner's appeal (Appeal no. 41/2009) and set aside the Adjudication order dated 09.02.2009. The Appellate Tribunal directed the respondent to return back the confiscated amount of ₹3,44,62,040/- within a period of 30 days from the receipt of the order.

6. The respondent preferred a writ petition before the Gujarat High Court impugning the order dated 12.06.2009 passed by the Appellate Tribunal for Foreign Exchange, which was later dismissed on 03.08.2010.

7. Thereafter, on 19.10.2012, that is, more than two years after the respondent's petition had been dismissed by the Gujarat High Court, the respondent released the confiscated amount of ₹3,44,62,040/- in favour of the petitioner. However, no interest was paid on the said amount at that stage.

8. The petitioner pursued the respondent for release of the accrued interest and also sent a legal notice dated 18.02.2013. Thereafter, the respondent released a sum of ₹1,19,09,803/- as interest which was computed

at the rate of 6% per annum from 10.01.2007 to 25.10.2012.

9. The respondent invested the seized amount in a fixed deposit with Union Bank of India, Lodhi Road, New Delhi. Admittedly, interest at the rate of 7.25% got accrued on the said deposit.

10. It is in the aforesaid context, the petitioner has moved this Court claiming (a) actual interest accrued on seized amount invested in the fixed deposit and (b) further interest at the rate of 6% on the amount of interest withheld by the respondent (from 25.10.2012 to 05.04.2013).

11. Mr Dev P. Bhardwaj, learned counsel appearing for the respondent submitted that the respondent had paid the entire principal and also the interest at the rate of 6% per annum *albeit* belatedly and, therefore, no further amount was payable to the petitioner. He submitted that in terms of Rule 8 of the Foreign Exchange Management (Encashment of Draft, Cheque, Instrument and Payment of interest) Rules, 2000 (hereafter 'the Rules'), only interest at the rate of 6% was payable and additional interest accrued on the amount seized/confiscated by the respondent would be at the benefit of the respondent.

12. Mr D.D. Singh, learned counsel appearing for the petitioner countered the aforesaid submission. He referred to the order dated 03.11.2014, passed by this Court in *Skybiz India Pvt. Ltd. v. Special Director, Directorate of Enforcement and Anr.: W.P.(C) 7492/2014* and on the strength of the said order, it was contended that the respondent could not earn profit from the seized amount. Mr Singh also referred to the decision of the Division Bench of the Bombay High Court in *R.K. Jewellers and N.B. Exports v. Union of*

India: (2010) 101 SCL 204 (Bom) in support of his contention that the petitioner was also entitled to any accretion in the amount seized/confiscated by the respondent.

13. I have heard the learned counsel for the parties.

14. There is no dispute that the seized amount of ₹3,44,62,040/- was invested in a fixed deposit with Union Bank of India, Khanna Market, Lodhi Road Branch. The said deposit carried an interest at the rate of 7.25% per annum and a total amount of ₹1,64,52,470/- was received by the respondent as interest on the said deposit. The contention that irrespective of the accretion of the amount seized, the respondent is only liable to pay interest at the rate of 6% per annum is not persuasive.

15. In terms of Rule 5 of the Rules, the seized amount is required to be deposited in a nationalized bank in the name of Directorate of Enforcement. Rule 8 of the Rules provides for payment of interest on the amount seized and reads as under:-

"8. Payment of interest on the seized Indian currency.- (i) Where it is found after completion of the investigation that the Indian currency seized under section 37 of the Act is not involved in the contravention and is to be returned, the same shall be returned to such persons together with interest at the rate of 6% per annum from the date of seizure till the date of payment.

(ii) Where it has been found during the course of adjudication that the seized Indian currency is not relevant for such adjudication, the Adjudicating Authority may pass such order returning such Indian currency together with interest at the rate of 6% per annum to such person."

16. In terms of the present case, the respondent invested the amount

seized in a separate fixed deposit. Although, the amount was seized by the respondent, it continued to belong to the petitioner. As noticed above, the order of confiscation dated 09.02.2009 was set aside a few months later by an order dated 12.06.2009.

17. It is seen that there was an inordinate delay in the release of the currency seized by the respondent. The Appellate Tribunal had passed an order dated 12.06.2009, directing return of the amounts seized/confiscated. The writ petition preferred by the respondent was also dismissed on 03.08.2010 and the respondent had taken more than two years to refund the confiscated amount. The retention of seized/confiscated amounts for an extended period cannot be permitted as a revenue generating exercise. Plainly, the respondent cannot profit from the interest earned on the amounts seized and retained by the respondent.

18. In ***R.K. Jewellers and N.B. Exports*** (*supra*), the Division Bench of the Bombay High Court considered the question whether the petitioners would be entitled to the amount of interest earned on the seized amount that was invested by the respondent in fixed deposits with the bank and answered the same in the affirmative, the Bombay High Court held that the petitioners would be entitled to the accretion on the amount seized by the respondent. This Court respectively concurs with the aforesaid view.

19. The interest on the fixed deposit represents an accretion to the amount seized from the petitioner and, thus, plainly the petitioner would be entitled to the same. The provisions of Rule 8 of the Rules, must be considered in the context of the respondent depositing the money in the account of the ED and is intended to ensure that the person from whom the amounts are seized

is paid an interest at the rate of 6% per annum from the date of seizure till the date of payment. This provision would obviously not be applicable where the funds were directly invested in a separate fixed deposit bearing a higher rate of interest. In such cases the interest on the funds of the owner would represent accretion on the amount and would have to be paid to the owner, as there is no substantive provision which provides for vesting or confiscating such property. Plainly, in absence of any law permitting appropriation of property, the question of depriving the owner of his property (accretion to his property) does not arise. Thus, Rule 8 of the Rules, which provides for payment of interest at the rate of 6% per annum, must be read to apply where the funds are retained in a nationalised bank but are not invested in a separate fixed deposit bearing a higher rate of interest.

20. In the present case it is admitted that the respondent had received interest amounting to ₹1,64,52,470/- on the separate fixed deposit created from the currency seized. However, it is seen that the respondent has paid only a sum of ₹1,19,09,803/- as interest. Thus, the respondent is directed to refund the balance amount of ₹45,42,667/- (₹1,64,52,470/- minus ₹1,19,09,803/-).

21. The respondent has also provided no justification for not paying the amount of interest along with the amount seized. Even according to the respondent, a sum of ₹1,19,09,803/- was payable to the petitioner on 25.10.2012. However, this amount was paid by the respondent on 05.04.2013, and there is no explanation, whatsoever for retaining the amount. The petitioner has been deprived of the use of the said funds and, thus, is entitled to be compensated for the same. There are numerous

decisions, where the Courts have awarded interest as compensation for denial of the right to utilise the money due. In ***Thazhathe Purayil Sarabi & Ors v. Union of India: AIR (2009) SC 3098***, the Supreme Court observed that *"As has been frequently explained by this Court and various High Courts, interest is essentially a compensation payable on account of denial of the right to utilise the money due, which has been, in fact, utilized by the person withholding the same. Accordingly, payment of interest follows as a matter of course when a money decree is passed"*.

22. Thus, this Court is of the view that the respondent be also directed to pay interest at the rate of 6% per annum on the said sum of ₹1,19,09,803/- (which was concededly due to the petitioner on 25.10.2012) for the period from 25.10.2012 to 05.04.2013.

23. The writ petition is allowed with the aforesaid directions.

AUGUST 24, 2017
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VIBHU BAKHRU, J