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

+ LPA 611/2018

PREM CHAND GUPTA

..... Appellant

Through: Mr.Varun Jain, Mr.Navin Kumar, Advs.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms. Shiva Lakshmi, CGSC for UOI
Mr. Ruchir Bhatai, Sr. Standing Counsel
for Income Tax with Mr.Sanampreet
Singh, Adv. for Respondent No.2

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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26.10.2018

Seeking exception to an order passed by the learned Writ Court on 20th August, 2018 in W.P.(C) No.8468/2018, this appeal stands filed under Clause 10 of the Letters Patent. Learned counsel for the petitioner argued that the finding arrived at by the Adjudicating Authority to the effect that the property is not a benami property, is a concluded finding and once the proceedings initiated by the Investigating Officer ('IO') under Section 24(3) of the Prohibition of Benami Property Transactions Act, 1988 have been quashed, initiation of fresh proceedings by issuing fresh show cause notice is unsustainable.

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2. We have considered the findings recorded and on going through the detailed order passed by the learned Writ Court, we find that in paragraphs 14 and 15, the learned Writ Court has recorded the following findings:

"14. The limited controversy to be examined in the present case is whether the IO was barred from issuing a fresh show cause notice under Section 24(1) of the Act. It is apparent from the above that the Adjudicating Authority had set aside the Provisional Attachment Orders passed under Section 24(3) and 24(4)(a)(i) of the Act only on the ground that the IO had not followed the procedure in terms of the scheme of Section 24 of the Act. The Adjudicating Authority had not examined the issue whether the properties (amounts) in question were benami properties in terms of Section 2(8) of the Act.

15. In the aforesaid circumstances, this Court finds no reason which would preclude the IO from issuing a fresh show cause notice and curing the procedural defect as observed by the Adjudicating Authority. The principles analogous to res judicata do not apply, as the Adjudicating Authority has not taken any decision on the merits of the matter; that is, he has not decided whether the sums deposited in the bank accounts of the petitioners were benami properties of Sh Nitin Jain."

3. Thereafter, in paragraph 16, the Writ Court goes on to hold that as the impugned order originally passed by the IO has been set aside on account of procedural defects and violation of the principles of natural justice, the bar created as canvassed by the Petitioner will not apply. The finding recorded by the learned Writ Court in this regard to say that the Adjudicating Authority has

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not examined the question as to whether the property in question is a benami property within the meaning of Section 2(8) of the Act is a finding recorded only on the basis of the fact that procedural requirements have not been followed and it is not a finding on merit. In paragraph 21 of the impugned order and thereafter in paragraph 22, the learned Writ Court has recorded the following conclusion:

“21. The aforesaid contention is also unpersuasive. A plain reading of the orders dated 21.05.2018 passed by the Adjudicating Authority clearly indicate that he had not examined the question whether the properties (amounts) in question were benami properties within the meaning of Section 2(8) of the Act. He had, nonetheless, held the properties to be not benami properties in view of the provisions of Section 26(3) of the Act, which only provided the Adjudicating Authority two options: pass orders holding the properties (amounts) in question not to be benami properties and revoking the Provisional Attachment Orders; or holding the properties (amounts) in question to be benami properties and confirming the Provisional Attachment Orders. Thus, if the petitioners insist that the finding of the Adjudicating Authority is on merits, the orders passed by the Adjudicating Authority would be unsustainable.

22. This Court is of the view that the conclusion of the Adjudicating Authority must be read in the context of its reasons. As noticed above, the orders of the Adjudicating Authority are founded on the basis that the IO did not follow the procedure as required under Section 24 of the Act. Thus, the only manner, in which the orders passed by the Adjudicating Authority dated 21.05.2018 under Section 26(3) of the Act can be read is to mean that the Orders of

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Provisional Attachment were set aside for failure on the part of the IO to follow the scheme of Section 24 of the Act and not because the properties (amounts) in question were found to be not benami properties."

4. In our considered view, once the interference made by the Adjudicating Authority with regard to the earlier impugned action of the IO was limited to the extent of procedural irregularity found and there being no finding on merit in dismissing the writ petition and permitting the IO to proceed with the matter, nm the Writ Court has not committed any error warranting reconsideration.

5. The appeal stands dismissed.


CHIEF JUSTICE


V. KAMESWAR RAO, J

OCTOBER 26, 2018

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