(Proceedings through V.C.)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.13796 of 1997 (O&M)
Date of Decision: 20.4.2021

Deepika Oberoi and another (minors) through their mother/guardian Kavita Oberoi

...Petitioners

Versus

Union of India and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr.Jagdish Manchanda, Advocate for the petitioners

Mr.Yogesh Putney, Sr.Standing Counsel
for respondents no.1 to 3

None for respondent no.4

ASHOK KUMAR VERMA, J.

1. The petitioners- Deepika Oberoi and Hina Oberoi who were minor at the time of filing this petition under Articles 226/227 of the Constitution of India have sought a writ of certiorari etc. for setting aside the impugned action of the respondent Nos. 1 to 3- Union of India/Income Tax Department (for short "the Income Tax Department") whereby they have encashed 4 FDRs of the petitioners in the denomination of ₹ 20,000/- each made on 6.5.1996. The petitioners have also sought a writ of mandamus thereby directing the said respondents to return and restore the said FDRs to their original status with damages and interest thereon.

2. Briefly culled out the facts of the case of the petitioners are that respondents-Income Tax Department encashed 4 FDRs dated 6.5.1996 in the denomination of ₹ 20,000/- each which were in the names of Deepika Oberoi, Hina Oberoi, Baby Deepika Oberoi and Baby Hina, daughters of Kavita Oberoi and deceased Shanti Nath. The said 4 FDRs which were lying with respondent no.4-Oriental Bank of Commerce, Yamunanagar (for short 'the Bank'), had been encashed by the respondents-Income Tax Department. Petitioners-Deepika Oberoi and Hina Oberoi who are minors have approached this Court through their mother and guardian-Kavita Oberoi being the LRs of deceased Shanti Nath who was an employee-cum-driver of one Ved Parkash Anand, a businessman of Yamunanagar. Deceased Shanti Nath is said to have died in an accident on 26.04.1996 at the age of 38 years alongwith one Ashwani Kumar, son of Ved Parkash Anand. The petitioners have challenged the action of the respondents, who have encashed the aforesaid FDRs, through this petition in the year 1997.

3. Respondent Nos. 2, 3 and 4 have filed their written statements. In the written statements, the case of the respondents have averred that a search and seizure operation was launched by the Income Tax Department on 24.12.1996 in the premises of one Ved Parkash Anand, a businessman of Yamunanagar, Surinder Anand, Smt. Bindoo Anand, Raj Pal Anand (brother of Ved Parkash Anand) and his daughters Smt. Asha Talwar and Smt. Varsha Taneja. A large number of benami assets of the Anand Group were recovered. Smt.Varsha Taneja in her statement stated that the briefcase, which contained the benami FDRs and other documents, was handed over to

her by her brother, Sanjay Anand. It was from the contents of the said briefcase, the Income Tax Department came to know that Anand Group is involved in all these dubious transactions. The said 4 FDRs of ₹ 20,000/- each which actually belonged to Hina Oberoi, Rupinder Oberoi, Baby Hina and Deepika Oberoi alongwith one more FDR made on 3.8.1996 in the denomination of ₹14,000/- in the name of Kavita Oberoi, mother and guardian of the petitioners which has never been challenged by her, were held benami by said Sanjay Anand who is said to be in partnership firm, M/s Om Parkash Sanjay Kumar and M/s Lime and Chemical Industries. During the assessment proceedings, the statement of Kavita Oberoi, mother and guardian of the petitioners was recorded on 06.1.1997. She stated that she was not even aware of any bank account held by her or by her husband in any bank. The amount of these FDRs were assessed in the hands of Sanjay Anand vide order dated 26.02.1998 passed by the Assistant Commissioner of Income Tax, Investigation Circle, Yamunanagar (Annexure R-1). On appeal filed by Sanjay Anand, the Tribunal held vide order dated 03.01.2003 (Annexure R-2) that the said FDRs were rightly added in the income of assessee- Sanjay Anand as no third party has made the claim of these FDRs.

4. Learned counsel for the petitioners, *inter alia,* contends that the action of the Income Tax Department is totally illegal and arbitrary. It is contended that many FDRs belonging to public at large had also been taken away by the respondents- Income Tax Department which is also clear from a letter dated 25.03.1997 written by respondent-Bank. It is vehemently argued that there is no sanction of authority of the respondents- Income Tax Department to encash the

said 4 FDRs. The petitioners are not family members or partners of Ved Parkash Anand except that their father was an employee of him. It is further contended that there is no provision under the Income Tax Act which authorizes the Income Tax Department to encash FDRs belonging to persons other than those whose premises were searched. It is further contended that respondent-bank was only a trustee of FDRs. It had no power/authority to allow encashment of the FDRs in favour of respondent-Income Tax Department, which results in breach of trust/contract. Learned counsel for the petitioners further contends that the said FDRs of the petitioners were made out of the funds given to the petitioners by the relatives and friends as a help on the sad incident of accidental death of their father on 26th April, 1996 and FDRs were made on 6th May, 1996. Learned counsel for the petitioners submits that the action of the respondents in encashing the FDRs is totally unwarranted.

5. In stark contrast to the arguments of the learned counsel for the petitioners, Mr. Yogesh Putney, learned Senior Standing Counsel for respondents-Union of India/Income Tax Department, *inter alia*, vehemently argues that the said FDRs were benami transactions made by said Sanjay Anand. During the assessment proceedings, Sanjay Anand failed to give any explanation about the disclosed sources of income made in the 4 FDRs. The assessment proceedings qua Sanjay Anand already stand concluded. Furthermore, the petitioners have failed to show any source of disclosed income to make these FDRs. The stand of the petitioners that the said FDRs were made from the funds received from their relatives/friends as financial help on account of death of their father, is an after-thought

and concocted story. The petitioners have failed to show the names and source of funds of the persons who helped them to create the said FDRs in denomination of ₹ 20,000 each in the year 1996 in the name of the petitioners. Learned Senior Standing Counsel thus contends that the writ petition is liable to be dismissed.

6. We have considered the rival submissions of the learned counsel for the parties and have gone through the paper-book.

7. The only moot question that arises for consideration before this Court is whether father/mother of the petitioners were having any source of income for creating 4 FDRs of huge amount in the denomination of ₹ 20,000 each way back in the year 1996?

8. The pleadings of the petitioners are blown away from the statement of their own mother and guardian- Kavita Oberoi wife of deceased Shanti Nath recorded on 6.1.1997 vide Annexure R-2/1 before the Income Tax Authorities. In her statement, she clearly stated that neither she nor her deceased husband had any bank account/locker in any bank in India. She further stated that she had 3 children and her husband was employed as a Munshi with Raj Pal Anand getting ₹ 600/- to ₹ 700/- per month. She also stated that they were living hand to mouth. After the death of her husband, she had rental income of ₹ 300/- per month and was sustaining herself with great difficulty. She also stated that she does not have any jewellery to be kept in anybody's locker and even in her own home. It is to be noticed that during search under Section 132 of the Income Tax Act, 1995 at the residence of Sh. Raj Pal Anand, the Income Tax Department found a locker key No. 105 which was stated by him to

be belonging to Sat Pal Oberoi of Dehradun, who is from in-laws side of the mother of the petitioners. On enquiry with said Sat Pal Oberoi, he informed that the said key belonged to the deceased father of the petitioners i.e. Shanti Nath. When this was enquired from the mother of the petitioners, she replied that she does not know anything about it, since her husband used to fight/argue with her. There is nothing on record to show that there was any dispute between the mother and deceased father of the petitioners. The petitioners through their mother have not been able to explain the source of income of such huge amount of ₹ 80,000/- in 4 FDRs. In the absence of any such material on record, the story put forward by the petitioners seems to be totally concocted and the result of an after-thought. There is nothing on record to show that either the mother or father of the minor petitioners was having any other source of income to invest such huge amount for making 4 FDRs in the denomination of ₹ 20,000 each made way back in the year 1996. The source of money from the father/mother of the petitioners is not at all traceable since there is no cogent material such as Income Tax Returns on the record of the present case either filed by their father/mother or their relatives to show that the petitioners were having any other known sources of income so that it appears to be convincing and containing grain of truth that there was any other income from any lawful source which had been duly intimated while filing Income Tax Returns in the past years before the said FDRs were made. We are astonished to observe that 4 FDRs in the denomination of ₹ 20,000 each made in the year 1996 belonged to the petitioners alongwith others who were not even having account in any bank and were living in penury.

9. As a sequel to our above discussions, we have no hesitation in holding that it was only a ‘benami transaction’ made by the employer in the name of his employee (driver), namely Shanti Nath. It is not a case of the petitioners that their mother/father had been continuously filing ITRs showing such income and that it is also not the case of the petitioners that the previous years’ ITRs of the father/mother of the petitioners showing the requisite income for making such FDRs have not been taken into consideration by the Assessing Authority. The Assessing Authority has rightly acted by assessing and encashing the said FDRs. The petitioners have no locus standi to claim the said FDRs as they were made as a ‘benami transaction’.

10. In view of the above, we find no merit in this petition which is accordingly dismissed with no order as to costs. Consequent upon the dismissal of the writ petition, application bearing Civil Misc. No.22110 of 2003 for release of the aforesaid FDRs also stands dismissed.

(ASHOK KUMAR VERMA) **(AUGUSTINE GEORGE MASIH)**
JUDGE **JUDGE**

20.4.2021
I.S

Whether speaking/reasoned *Yes*
Whether Reportable *Yes*