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

% Date of decision: 11th September, 2024

+ W.P.(C) 12526/2024 & CM APPL. 52050/2024

MARTIN JEBARATHNA DOSS ANTONISAMY.....Petitioner

Through: Mr. Balaji Srinivasan & Mr.
Vishwaditya Sharma, Advs.

versus

RESERVE BANK OF INDIARespondent

Through: Mr. Abhinav Sharma and Mr.
Dipan Sethi, Advs.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

CM APPL. 52049/2024 (Ex.)

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 12526/2024

3. The petitioner is invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, 1950, seeking quashing of the impugned compounding order dated 19.08.2024, passed by the respondent/Reserve Bank of India ['RBI'], whereby the petitioner has been levied with a fine of Rs. 41,04,675/-for violation of the provisions of the FEMA 1999¹, which has been directed to be deposited with the respondent/RBI within 15 days of the order, failing which he has been intimated that the same would be recovered in

¹ Foreign Exchange Management Act, 1999



terms of Rule 10 of the Foreign Exchange (Compounding Proceedings) Rules, 2000.

4. Learned counsel for respondent/RBI is present on advance notice.

5. Shorn off unnecessary details, suffice to state that the petitioner is a citizen of United States of America and Overseas Citizen of India [‘OCI’] Cardholder, and evidently, he purchased vast tracks of agricultural property located in Dindigul District, Tamil Nadu, without obtaining prior permission from the RBI, as required under Regulation 8 of the Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2000.

6. It is stated that the petitioner was unaware of such compliances, and therefore, the respondent/RBI *vide* letter dated 24.01.2023 *inter-alia* directed him to transfer the acquired property immediately to a person resident in India, who should be a citizen of India and eligible under FEMA 1999² for acquisition of the same property within six months of the date of the said letter. The petitioner was also informed that he should approach the respondent/RBI for compounding of the contravention within one month from the date of the transfer of the immovable property under reference. It is admitted fact that the petitioner complied with the said directives.

7. In the said backdrop, the compounding proceedings were initiated and *vide* impugned order dated 19.08.2024, a sum of Rs. 41,04,675/- has been levied as compounding fee in terms of Section 13 of the FEMA read with the relevant rules.

² Foreign Exchange Management Act, 1999



8. Learned counsel for the petitioner has urged that the respondent/RBI failed to appreciate that the petitioner *bona-fidely* purchased the said agricultural property and despite complying with the directions of the respondent/RBI thereby selling the properties an Indian Citizen, the petitioner has been levied an exorbitant penalty without any basis.

9. Learned counsel for the respondent/RBI has relied upon the notification providing **Master Direction-Compounding of Contravention** under the FEMA, 1999, and has referred to ‘**Guidance Note on Computation Matrix**’ at Sub-Clause [4] of Part-I of Clause 7.4 of the aforesaid Master Direction, which provides as under:-

<u>4] All other contraventions, - including all contraventions of FEMA 20(R)/2017/NDIR, 2019/FEMA 395/ 2019/, except contravention pertaining to FLA returns and corporate guarantees</u>	Rs.5000+given percentage: 1 st year : 0.50% 1-2 years : 0.55% 2-3 years : 0.60% 3-4 years : 0.65% 4-5 years : 0.70% > 5 years : 0.75%
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10. It is further pointed out that the aforesaid computation is subject to Part-II of Clause 7.4, which provides that that the amount imposed should not exceed 300% of the amount of contravention. It is further submitted that the based on the aforesaid Master Directions, the penalty computation has been done as under:-

3. Penalty Computation:

- i. Penalty computation was done in this case, in terms of Section 13(1) of FEMA, 1999 and Para 7.4 of Master Direction No. 4/ 2015-16 dated January 1, 2016, on Compounding of Contravention under FEMA, 1999.



ii. Period of contravention was considered from date of purchase till the date of sale of the property. It came out as 18 years, 7 months and 12 days, which fell under more than 5 years bracket.

iii. Amount of contravention was taken as the value of agricultural property paid by the petitioner at the time of acquisition. Further, the mode of payment as stated in Para 2(vi) was also in contravention of extant FEMA guidelines.

iv. While calculating penalty, the compounding authority considers several factors in terms of Master Direction – Compounding of Contraventions under FEMA, 1999. One of the factors is the amount of gain of unfair advantage, wherever quantifiable, made as a result of the contravention. In the instant case, the petitioner had sold property for Rs. 1,62,00,000, while purchase price was Rs. 13,68,225.

v. For both contraventions, i.e., purchase of agricultural property (Contravention A) and mode of payment (Contravention B), penalty was calculated in terms of para 7.4.1, Guidelines Note on Computation Matrix, of Master Direction on Compounding.

a. Penalty for Contravention A = Rs. 50,000 (Base penalty) + Rs. 10,261.69 (0.75% of the amount of contravention, i.e., Rs. 13,68,225/-)

b. Penalty for Contravention B = Rs. 50,000 (Base penalty) + Rs. 8,686.69 (0.75% of the amount of contravention, i.e., 11,58,225/-)

c. Undue gain = Rs. 1,48,31,775/-

d. Total calculated penalty = Rs. 1,49,50,723.38/-

vi. However, as per Para 7.4(II) of Master Direction on compounding, the amount imposed should not exceed 300% of the amount of contravention. Accordingly, the final penalty imposed on the petitioner was Rs. 41,04,675/- only. Thus, the penalty imposed on the petitioner was much less than the original penalty calculated in the case.

vii. As provided in Rule 8(2) of Foreign Exchange (Compounding Proceedings) Rules, the petitioner was granted an opportunity of being heard before deciding on the compounding application, vide RBI email dated August 13, 2024. The entity has conveyed via email dated August 14, 2024, its decision to not opt for any personal hearing. The application was, therefore, considered based on the averments made in the application and the documents submitted therewith.



11. The aforesaid Master Direction as well as the Guidance Note have been shared with the learned counsel for the petitioner during the course of hearing. It appears that the computation method has not been shared with the petitioner as such, however the gist of the same is exemplified in the impugned order dated 19.08.2024.

12. The bottom line is that the computation has been done in accordance with the prescribed Master Directions. There is nothing pointed out by learned counsel for the petitioner so as to challenge the manner in which the computation has been done. As a matter of fact, considering the cash component of the sale consideration in contravention of the provisions of FEMA, 1999, unhesitatingly the petitioner has been dealt with quite fairly and has been imposed with a fine not exceeding 300% of the amount of contravention. There is no denial that before passing the impugned order, an opportunity of hearing was afforded but not availed. Thus, the decision by the respondent cannot be faulted on any legally sustained grounds.

13. In view of the above, the present writ petition is dismissed. The pending application also stands disposed of.

DHARMESH SHARMA, J.

SEPTEMBER 11, 2024

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