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Ct No.16
07.01.2025
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FMAT No. 464 of 2024
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CAN 1 of 2024

Shri Julfikkar Molla
Vs.
Shri Rajat Subhro Biswas and others

Mr. Nigam Ashish Chakraborty,
Mr. Joydeep Chakraborty,
Mr. Anujit Mukherji,
Mr. Agniva Banerjee,
Ms. Ankita Paul,
Mr. Debdut Banerjee,

Mr. Prithish Chandra

... for the appellant

Mr. Tilak Mitra,
Mr. Partha Chakraborty

....for the respondent no.1

Mr. Vipul Kundalia, Ld. Sr. Adv.,
Mr. Amit Sharma,
Mr. Anindya Kanan

...for the respondents

1. The present appeals are being taken up for admission hearing.
2. It may be noted at the outset that under Section 49(3) of the Prohibition of Benami Property Transactions Act, 1988 (hereinafter referred to as “the 1988 Act”), the High Court can only entertain an appeal against the order of the Appellate Tribunal if a substantial question of law is involved, in which case the High Court shall formulate that question.
3. Learned counsel for the appellant in each of the matters argues that the appellant’s contentions were misrepresented by the appellant’s learned Advocate-on-record before the Adjudicating Authority. It is submitted that it will be evident from the reply of the appellant to the show cause notice issued under the 1988 Act that the contentions there and the arguments made on behalf of the appellant were contradictory to some extent.
4. Whereas brokerage was clearly disclosed as a source of income of the appellant by the appellant,

arguments were advanced before the Adjudicating Authority substantially on agricultural income and other sources of income, thereby diluting the defence of the appellant.

5. It is contended that Section 46(4) of the 1988 Act clearly mandates the Appellate Tribunal to have the power to take additional evidence or to require any evidence to be taken by the Adjudicating Authority where the said authority has refused to admit evidence which ought to have been admitted.
6. Under clause (c) of sub-section (4) of Section 46, the Appellate Authority can require any document to be produced or any witness to be examined for the purpose of proceeding before it.
7. As such, the Appellate Authority, that is, the Tribunal ought to have granted opportunity to the appellant to prove the additional evidence sought to be adduced by the appellant. However, the Tribunal, instead of permitting the appellant to explain and argue on the documents sought to be relied on, on the one hand refused to permit such documents to be adduced as additional evidence and on the other, looked into the veracity of those documents by itself, without granting any opportunity to the appellant to explain and argue on the said documents.
8. It is contended that in the event the appellant was permitted to advance his contentions on the said

documents, the correct picture would have come before the Appellate Authority. Hence, the Tribunal, it is contended, substantially erred in law in taking a contradictory stand by refusing to permit the appellant to adduce additional evidence on the one hand and on the other, by looking into the veracity of those documents by itself, thereby denying the appellant the opportunity to address the Tribunal on the said documents and apprise it of the significance and effect of the said documents properly.

9. We find from a bare perusal of the impugned judgment of the Appellate Tribunal that the Appellate Tribunal has considered the documents sought to be produced as additional evidence at length.
10. Although the Appellate Tribunal did not permit such documents to be adduced as additional evidence, such refusal *per se* does not prevent the Appellate Tribunal to *prima facie* consider the efficacy of those documents, if permitted to be adduced as additional evidence within the contemplation of Section 46(4) of the 1988 Act. The Appellate Tribunal proceeded precisely on such premise and came to a *prima facie* conclusion that the said documents, even if permitted to be produced, would tantamount to substantiate circular transactions made by the appellant which would not help the case of the appellant in any manner.

11. Even if we consider such findings of the Appellate Tribunal on the merits of the documents, sought to be adduced as additional evidence, as superfluous, we are of the clear opinion that the learned Tribunal also decided that the additional documents sought to be adduced as evidence before the Tribunal by the appellant did not come within the purview of Section 46(4) of the 1988 Act.
12. We find from a careful perusal of Section 46(4) that clauses (b) and, at best, (c) of Section 46(4) might permit the Appellate Tribunal to take additional evidence. Whereas clause (b) provides that additional evidence may be permitted to be adduced where the Adjudicating Authority has refused to admit evidence which ought to have been admitted, the said clause does not apply in the present case since the documents now sought to be produced were never produced before the Adjudicating Authority, although there were rudiments of pleadings regarding the brokerage income in the reply to the show cause notice authored on behalf of the appellant before the Adjudicating Authority and the documents were available to the appellant at that juncture.
13. Insofar as clause (c) is concerned, even if widest amplitude is lent to the said provision, it might empower the Appellate Tribunal to require any

document to be produced or any witness to be examined for the purpose of proceeding before it.

14. However, the said provision in no manner whatsoever mandates the Appellate Tribunal to compulsorily permit any and every document which is sought to be produced by the appellant.
15. Rather, the said power, as couched in clause (c), is a *suo moto* power conferred on the Appellate Tribunal and it is within the discretion of the Appellate Tribunal to exercise the same or not. Moreover, such power cannot be exercised by the Tribunal merely to allow the appellant to fill up the *lacunae* of the appellant inasmuch as the concerned documents were not produced before the Adjudicating Authority without any explanation as to why those could not be produced despite due diligence being exercised by the appellant.
16. The Tribunal dealt with the contention of the appellant that the appellant was not properly assisted by his Advocate-on-record and, as such, the relevant documents could not be produced before the Adjudicating Authority. We find such adjudication by the Appellate Authority on such contention of the appellant to be one of the plausible views which might have been taken on preponderance of probability and it is well-settled that merely because another view is possible, the Appellate Court should

not interfere with the finding of an authority which is judicially subordinate to it.

17. Moreover, there is a subtle distinction between the powers conferred under Order XLI Rule 27(b) of the Code of Civil Procedure, which empowers a Civil Appellate Court to permit additional evidence, and Section 46(4)(c) of the 1988 Act which is relevant here. Whereas the former permits the appellate court, if it requires any document to be produced or any witness to be examined to enable it to pronounce judgment or for any other substantial cause, to permit any document to be produced, clause (c) of Section 46(4) of the 1988 Act is restricted to any document or witness to be produced or examined for the purpose of proceeding before it. The discretion conferred under Order XLI Rule 27(b) is of much wider amplitude and, as such, the shades of the said provision cannot be imported into the limited scope of Section 46(4)(c) to enable the Appellate Court to permit production of documents even if the Appellate Authority feels it necessary to do so for any substantial cause or to enable it to pronounce judgment.
18. Be that as it may, in view of the above discussions, we do not find any pure question of law having been raised in the appeal, let alone any substantial question of law. The issues now sought to be raised

before this court could at best be issues of fact or mixed questions of fact and law, which are insufficient for this court to admit an appeal under Section 49(3) of the 1988 Act.

19. In such view of the matter, the appeals are not being admitted.
20. Accordingly, FMAT 455 of 2024, FMAT 456 of 2024, FMAT 457 of 2024, FMAT 458 of 2024, FMAT 459 of 2024, FMAT 460 of 2024, FMAT 461 of 2024, FMAT 462 of 2024, FMAT 463 of 2024, FMAT 464 of 2024 are dismissed upon being heard under Section 49(3) of the 1988 Act. Consequentially, the applications bearing CAN 1 of 2024 in each of the appeals stand disposed of as well.
21. There will be no order as to costs.
22. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

(Subhendu Samanta, J.)