

APPELLATE TRIBUNAL UNDER SAFEMA AT NEW DELHI

**MP-FE-715/MUM/2020 (Exemp.)
FPA-FE-45/MUM/2020**

Shri Devendra N. Desai ... Appellant

Versus

The Assistant Director,
Directorate of Enforcement, Mumbai ... Respondent

Advocates/Authorized Representatives who appeared

For the Appellant : Mr. Khushal Thakur, Advocate
Mr. Ankush Bhardwaj, Advocate

For the Respondent : Mr. Shoumendu Mukherji, Advocate

CORAM

SHRI BALESH KUMAR : MEMBER
SHRI RAJESH MALHOTRA : MEMBER

FINAL ORDER

14.05.2026

This Order disposes of the Appeal No. FPA-FE-45/MUM/2020 filed by Shri Devendra N. Desai against the Order No. 01/MUM-CUSM/FEMA/2020-21 dated 09.06.2020 (Impugned Order) passed by the Competent Authority, Commissioner of Customs (Appeals), Mumbai-I. The Competent Authority has upheld the Seizure Order No. 01/2020 dated 02.03.2020 whereby the immovable property in India of the Appellant Shri Devendra N. Desai, to the extent of Rs. 1,77,63,590/- equivalent to AED 914,000 of Foreign Exchange held

outside India, was seized under Section 37A (1) of the Foreign Exchange Management Act, 1999 (FEMA).

2. Ld. Counsel for the Appellant submitted that the Appellant had stated that the said Flat was purchased by him through his close family friend/relative Shri Siddharth Kandpile, a Dubai based NRI for helping by way of giving consultation for Shri Kandpile's construction related business. It was also alleged that the Appellant admitted that his family members namely his wife Smt. Darshana D. Desai and his son Shri. Tejas D. Desai were not aware of the said deal. It is further alleged that AED 7,79,000/- receivable against consultation fee for rendering services to Shri Siddharth Kandpile in his business has been invested for purchasing the said Flat admeasuring 89.08 Sq. Meters in Dubai. It was submitted that the said Flat accrued income of AED 1,35,000/ by way of renting it out for two years which was deposited in the bank account of Shri. Siddharth Kandpile as he had been given Power of Attorney to deal with the rent, maintenance, etc.. It was also the case of the Respondent that the Appellant was in the process of bringing back the amount involving the cost of the said Flat and the rent received from it back to India.

3. Ld. Counsel for the Appellant stated that the Appellant is also the registered owner of an immovable property, i.e. Flat No. C-14, 3rd Floor, Sahil Co-operative. Hsg. Soc. Ltd., 4th Road, Tejpal Scheme, Vile Parle (East), Mumbai 400 057, (hereinafter called Property)

having built up area 516 Sq. Ft.. As per the Government registered valuer Shri. V. Karthikeyan of M/s. VK and Associates, the said Property was assessed at the distress sale value of Rs. 1,81,63,000/- vide valuation report dated 25.02.2020. Accordingly, having reasons to believe that the foreign exchange amounting to AED 9,14,000/- (equivalent to Rs. 1,77,63,590/-) was suspected to be held outside India in contravention of Section 4 of FEMA, the Assistant Director, Directorate of Enforcement, Mumbai, in terms of Sub-Section (1) of Section 37A of FEMA, and in terms of G.S.R. 702(E) dated 16.09.2015 and G.S.R. 701(E) dated 16.09.2015, seized the immovable property of the Appellant situated within India, of an equivalent value to the tune of AED 9,14,000/- (equivalent to Rs.1,77,63,590/-) vide Seizure Order No. 01/2020 dated 02.03.2020. It is alleged that the Appellant did not disclose about holding of the above-mentioned Flat outside India. However, the Flat has now been transferred back in the name of Shri Siddharth Kandpile, without any consideration, as well as the foreign exchange has been arranged to be brought back to India.

4. Ld. Counsel for the Appellant stated that the Appellant through his daughter Mrs. Urvi Naik/Desai, remitted USD 2,49,992.50/- (equivalent to Rs. 1,86,96,939.08/ and to AED 9,14,000/-) as "Gift" to the bank account of the Appellant on 05.05.2020. However, the Respondent has contended that there is no link of the amount received to the export proceeds which had accrued to the Appellant

for his Consultancy Services. Ld. Counsel submitted that the impugned Order and the Seizure Order are void ab initio and need to be set aside being erroneous and contrary to the settled law that the provision of Section 37A, which came to be introduced as law on 14.05.2015, cannot be applied retrospectively. The said Flat, which is alleged to have been purchased by the Appellant, was purchased on 28.03.2012, which was much prior to the introduction of the Section 37A, having been added to the statute subsequently, i.e. on 14.05.2015.

5. Ld. Counsel for the Appellant contended that the Respondent has completely disregarded the language and the spirit of the Affidavit dated 12.02.2020 of Shri. Siddharth Kandpile inter-alia stating that the said Flat and the rental income had been enjoyed by Shri. Siddharth Kandpile and that the Appellant and his family had no legal right or claim on the said Flat. The Respondent has also failed and/or neglected to take into consideration the letter dated 16.03.2020, of Shri. Siddharth Kandpile to the Respondent, after issuing of Summons to Shri. Siddharth Kandpile, inter-alia stating that Shri. Siddharth Kandpile is the beneficial owner of the said Flat and that the said Flat was also transferred back in his favour, without any consideration. Despite bringing back foreign exchange amounting to Rs. 1,77,63,590/- as mentioned in the Seizure Order No. 01/2020, on 05.05.2020, the Respondent deviously and only for bettering its case mischievously contends that there is no link of the

receipt of export proceeds having been established with the amount received and thereby illegally continues to hold on to the property of the Appellant. A copy of Certificate from the HDFC Bank confirming the receipt of foreign inward remittance of Rs. 1,86,96,939/ in the Appellant's bank account was filed. The Respondent also failed to accept that the Appellant's daughter, viz. Mrs. Urvi Naik/Desai had sent foreign remittance to the account of the Appellant. The Respondent failed to acknowledge the letter from Appellant's daughter confirming the above remittance.

6. Ld. Counsel for the Appellant submitted that the Appellant is known to Shri Siddharth Kandpile since past many years as he is brother-in-law of the Appellant's daughter. Also, the Appellant is a qualified Engineer, having worked for more than 30 years with the Municipal Corporation of Greater Mumbai. Further, since Shri Siddharth Kandpile is the brother-in-law of the daughter of the Appellant, the entire consultation to Shri Siddharth Kandpile was given by Appellant out of love and respect and without any consideration or expectation of having any monetary gain. However, to reciprocate the same love and respect, it was the wish and desire of Shri. Siddharth Kandpile, that whenever the Appellant should visit Dubai or in future ever desire to settle in Dubai, the Appellant need not stay in a Hotel, but could live in an Apartment. Since Shri Siddharth Kandpile was unable to invest in his own name due to certain personal reasons, he decided to purchase a Flat in Dubai in

the name of the Appellant out of his own funds. It is only after much perseverance from Shri Siddharth Kandpile, that the Appellant agreed to sign the papers and/or documents that were prepared by the said Shri Siddharth Kandpile resulting in registration of the property with the office of the Dubai Land Records on 28.03.2012. Thus, Shri Siddharth Kandpile became the economic and beneficial owner of the said Flat in Dubai. It is a fact that the Appellant does not even have a Bank Account in Dubai, U.A.E. and since the said Flat belonged to Shri Siddharth Kandpile, there was no question and/or need for opening any Bank Account in Dubai, U.A.E. It was only after action was taken by the Respondent and based on the advice from his Chartered Accountant and Advocate, that the Appellant transferred the said Flat back to Shri Siddharth, without any consideration, as the said Flat was purchased by Shri Siddharth Kandpile. Hence, Shri Siddharth Kandpile requested the Appellant's daughter, Mrs. Urvi Naik/Desai, to send the money to her father so as to enable him to put an end to this matter, as permissible in law. On instructions and on account of Shri Siddharth Kandpile and with a view to buy peace as permissible under Section 37A (4) of FEMA and under advice from the Chartered Accountant and Advocate of the Appellant and with a view to put an end to the present investigation, the Appellant's daughter transferred an amount of USD 2,49,992/- (equivalent to AED 9,14,000/-) to the account of the Appellant, which otherwise Mrs. Urvi Naik/Desai had to repay to Shri Siddharth

Kandpile for the financial assistance given by him to her in the year 2014. The said fact was confirmed by Mrs. Urvi Naik/Desai by her email sent to Respondent on the same date. Copies of emails of Shri Siddharth Kandpile and Mrs. Urvi Naik/Desai confirming the same were filed. The Appellant thus justified the linkage of funds repatriated through USA by explaining that foreign exchange equivalent to the cost of Flat in Dubai, U.A.E. was adjusted against financial help given by Shri. Siddharth Kandpile to his daughter to set up her business and to buy a house in Texas, USA, to the tune of AED 9,00,000/- during the year 2014. The Appellant's daughter viz. Mrs. Urvi Naik/Desai, at the instance of Shri Siddharth Kandpile remitted foreign exchange of AED 9,14,000/- i.e. USD 2,49,992/- to the account of the Appellant.

7. Ld. Counsel for the Appellant contended that the Authority has failed to provide justifiable reasons for upholding Seizure Order, whereas the Authority ought to have been aware about the fact that Section 37A of FEMA, could not have any retrospective effect. The Respondent failed to investigate if the Appellant ever sent/paid any money to acquire an immovable property outside India. The Respondent and Authority have erred in not appreciating the fact that since the consideration for the purchase of the said Flat was paid by Shri Siddharth Kandpile, the said Flat has been transferred back to him without consideration. Ld. Counsel for the Appellant therefore prayed to allow the Appeal.

8. Ld. Counsel for the Respondent Directorate stated that vide Seizure Order No. 01/2020 dated 02.03.2020 the Assistant Director of the Respondent Directorate ordered the seizure of the immovable property in the name of the Appellant to the extent of Rs. 1,77,63,590/-. The Assistant Director recorded the reasons to believe that foreign exchange worth total amount of AED 9,14,000 [AED 7,79,000 (Cost of Property) + AED 1,35,000 (Rent received from the said property for two years)] equivalent to Rs. 1,77,63,590/ calculated @ 19.435 per AED as on 02.03.2020) is suspected to be held outside India in contravention of Section 4 of Foreign Exchange Management Act, 1999 and therefore, the equivalent value of the property of Shri Devendra Desai in India to the tune of Rs.1,77,63,590/- is liable to be seized in terms of the provisions of sub-section (1) of section 37 A of FEMA and in terms of G.S.R 702(E) dated 16.09.2015 & G.S.R. 701 (E) dated 16.09.2015 issued by the Central Government.

9. Ld. Counsel for the Respondent Directorate brought out the reasoning of the Competent Authority for upholding the Seizure Order. The Competent Authority found that during the investigations, the Appellant Shri Devendra N. Desai in his statements admitted that the said property was purchased by him through Siddharth M. Kandapile with a cost of AED 7,79,000. However, the payment was made by Shri Siddharth M. Kandapile for Shri Devendra N. Desai's consultation services given to him. He also

admitted that he had not taken approval of Reserve Bank of India (RBI) and that he did not report any details of foreign assets in the ITR filed during 2012-13 or afterwards as the said property had not been purchased by him or his family members. Smt. Darshana D. Desai, wife of Shri Devendra N. Desai and Shri Teja D. Desai, Son of Shri Devendra N. Desai in their respective statements stated that they were not aware of the above said property deal. Shri Siddharth M. Kandpile in his reply dated 16.03.2020 to Summon dated 03.03.2020 submitted that Shri Devendra N. Desai is an experienced Civil Engineer and that they used to exchange ideas and discuss issues regarding interior and other construction matter. Shri Devendra N. Desai had given him all the help and advice without any consideration and expectation and he had love and affection for him and he thought of reciprocating for his selfless help and consultation by buying an apartment in his name so that he could stay as and when he settled in Dubai. He also confirmed that the said residential flat was beneficially owned by him and its entire income by way of rent also belonged to him since rent was deposited in his account. In affidavit dated 12.02.2020, Shri Siddharth M. Kandpile confirmed that he had provided the entire funds to purchase the said property in the names of the Appellant and his family members.

10. Ld. Counsel for the Respondent Directorate submitted that the Competent Authority found it to be evident that the Appellant with his family members had acquired an immovable property i.e.

admeasuring area 89.09, plot no. 103, Property no. 105, Building no. 4, Park Island, Bonaire, Marsa, Dubai. The payment of AED 7,79,000 towards acquisition of said property was made by Shri Siddharth M. Kandpile for reciprocating to the Appellant's help and consultation in his business. The above property was on rent and total rent of AED 1,35,000/- had been received by Shri Siddharth M. Kandpile. Thus, a sum of AED 9,14,00/- in the form of cost of property and rent received from renting out the said property was held outside India. The Competent Authority further found that as per Section 6 (3) (h) of FEMA, the RBI may by regulations prohibit, restrict, or regulate the transfer or issue of any foreign security by a person resident in India and transfer of immovable property outside India, other than a lease not exceeding five years by a person resident in India. The term transfer as defined under Section 2 (ze) of FEMA includes sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien. Regulation 3 of Foreign Exchange Management (Acquisition and Transfer of immovable property outside India) Regulations, 2015 provides that save as otherwise provided in the Act or in these regulations, no person resident in India shall acquire or transfer any immovable property situated outside India without general or special permission of the Reserve Bank. Section 4 of the FEMA states that save as otherwise provided in this Act, no person resident in India shall acquire, hold, own, possess or transfer any foreign exchange, foreign

security or any immovable property situated outside India. Section 37 A (1) of the FEMA stipulates that upon receipt of any information or otherwise, if the Authorised Officer prescribed by the Central Government has reason to believe that any foreign exchange, foreign security, or any immovable property, situated outside India, is suspected to have been held in contravention of Section 4, he may after recording the reasons in writing, by an order, seize value equivalent, situated within India, of such foreign exchange, foreign security or immovable property.

11. Ld. Counsel for the Respondent Directorate submitted that the Appellant in written submission has not denied the fact that the aforementioned property in Dubai was held in his name and names of his wife and son. The WhatsApp chats extracted during the investigation also indicate that the Appellant is owner of the flat. The Appellant's mere contentions that payment for acquiring the property was made by Shri Siddharth M. Kandpile and that property was in his possession and rental income from the said property was received in the bank account by Shri Siddharth M. Kandpile do not assist them. In view of the above relevant provisions of FEMA and Foreign Exchange Management (Acquisition and transfer of immovable property outside India) Regulations, 2015 and facts as above, the Authorised Officer had reasons to believe that immovable property is suspected to have been held in contravention of Sections 4 and 6 (3) (h) of FEMA and Regulation 3 of the Foreign Exchange Management

(Acquisition and transfer of immovable property outside India) Regulations, 2015. Ld. Counsel argued that the sufficiency of the said reasons to believe cannot be questioned. Therefore, in terms of Section 37A (1), there was nothing wrong in the seizure of value equivalent, situated within India of such foreign exchange/immovable property which the petitioner was suspected to have held in contravention of Section 4 of the FEMA.

12. Ld. Counsel for the Respondent Directorate quoted at length paragraphs from 11.1 to 11.5 & 12 of the Impugned Order as follows:

“The validity of seizure under Section 37A (1) is not questionable in the matter. However, in view of further development in the matter subsequent to seizure order and consequent to divestment of property at Dubai in question and thereafter repatriation of fund into India, the matter requires further discussions in terms of proviso to Section 37A (4) of FEMA, 1999

11.2 The respondent has contended that since the consideration for the purchase of the said flat was paid by Mr. Siddharth Manohar Kandpile, hence, the said Dubai flat has been transferred back to him without consideration and submitted copy of latest Title Deed of the said Flat. The respondent has further contended that during investigation the respondent has disclosed

the facts about the holding of aforementioned Dubai property and in view of the same the said foreign exchange against consideration amount i.e., Rs. 1,77,63,590/- as mentioned in the Order of Seizure bearing no. 01/2020 dated 02.03.2020 has been arranged and brought back to India. In support of this contention the respondent has submitted copy of the HDFC bank's certificate showing inward remittance of foreign exchange worth of Rs. 1,86,98,939 in the Respondent's bank account number 02271000014535, HDFC Bank, Vileparle (E) Br. Mumbai 400057. The respondent also submitted a copy of letter from the Respondent's daughter confirming the above remittance and therefore, since all the pre-requisites viz disclosure of the foreign exchange lying outside India and bringing back the same into India have been fully complied with, the respondent has prayed for setting aside of the above seizure of Rs. 1,77,63,590/- under proviso to Section 37A (4) of FEMA, 1999.

11.3. The above written submission of the respondent was forwarded to the Petitioner for factual verification and comments in the matter. The Petitioner vide rejoinder dated 31.05.2020 has confirmed the fact that the respondent has received foreign exchange of Rs.

1,86,96,939/- in the bank account number 02271000014535 of Shri Devendra N Desai from Ms. Urvi Desai on 05.05.2020 by declaring the purpose of the said inward remittance as GIFT. The petitioner has further contended that however no link of the receipt of export proceeds is established with the amount sent by his daughter under the head namely "GIFT". The Petitioner has also contended that all the procedure provided under section 37A of the Foreign Exchange Management Act, 1999 were followed at the time of issuance of Order of Seizure No. 01/2020 dated 02.03.2020. The respondent was in possession of the foreign exchange outside India in contravention of Section 4 of Foreign Exchange Management Act, 1999 and therefore, the equivalent value of the property of Shri Devendra Desai in India to the tune of Rs. 1,77,63,590/- is liable to be seized in terms of the provisions of sub-section (1) of section 37A of FEMA, 1999 and in terms of G.S.R 702(E) dated 16.09.2015 & G.S.R. 701(E) dated 16.09.2015 issued by the Central Government.

11.4 I find that Section 37A (4) provides that "The order of the Competent Authority confirming seizure of equivalent asset shall continue till the disposal of

adjudication proceedings and thereafter, the Adjudicating Authority shall pass appropriate directions in the adjudication order with regard to further action as regards the seizure made under subsection (1):

Provided that if, at any stage of the proceedings under this Act, the aggrieved person discloses the fact of such foreign exchange, foreign security or immovable property and brings back the same into India, then the Competent Authority or the Adjudicating Authority, as the case may be, on receipt of an application in this regard from the aggrieved person, and after affording an opportunity of being heard to the aggrieved person and representatives of the Directorate of Enforcement, shall pass an appropriate order as it deems fit, including setting aside of the seizure made under subsection (1)."

11.5 From the above it is evident that proviso to Section 37A(4) provides that if the aggrieved person at any stage of the proceedings initiated under Section 37A of the FEMA brings back the foreign exchange which had been allegedly repatriated outside India in contravention of the provisions of FEMA, the Competent

Authority or the Adjudicating Authority as the case can pass an appropriate order as it deems fit including setting aside the seizure of properties in India in terms of Section 37A(1) of the FEMA. The property abroad in question has been transferred to Shri Siddharth M Kandpile without any consideration vide Title Deed dated 16.02.2020 and the amount held in Dubai has been repatriated through USA from his daughter as GIFT. The Petitioner objected that it has no link between the proceeds of services rendered by the respondent to Shri Siddharth M Kandpile. In other words, the export proceeds towards export of services are not repatriated. Since, the Petitioner has not convinced on the aspect of repatriation of funds which are required to be repatriated, I have no option but to maintain the continuance of the seizure of the equivalent value of Rs.1,77,63,590/-The respondent vide further E-Mail dated 02.06.2020 though has attempted to justify the linkage of funds repatriated through USA by explaining that foreign exchange equivalent to the cost of apartment in Dubai is adjusted against financial help given by Siddharth to his daughter to setup her business and to buy a house in TX., US, to the tune of 900000/- aed during the year

2014 and accordingly, he and Siddharth requested his daughter who is also related to Siddharth, to remit foreign exchange of aed 914000/- i.e. USD 249992/-. However, in the absence of cogent evidence, the same does not seem convincing one. Even otherwise this aspect of repatriation of funds under Section 37A (4) of FEMA, 1999 appears premature at this stage. This aspect could be taken at appropriate time at the appropriate level i.e. adjudicating authority.

12. In view of the above discussions and considering the fact that these are interim proceedings and the matter of repatriation of export proceeds of services is still in dispute, I do not find any reason to interfere in the impugned Seizure Order at this stage in the case where the validity of Seizure Order is unquestionable. Accordingly, I hold that the impugned order of seizure no. 01/2020 dated 02.03.2020 seizing the immovable property to the extent of Rs. 1,77,63,590/- which is equivalent to AED \$ 9,14,000 of foreign exchange held outside India by the respondent in terms of Section 37A(1) is legal and proper and therefore the impugned Seizure Order No. 01/2020 dated 02.03.2020 by the petitioner Asstt. Director, Directorate of Enforcement, Mumbai is confirmed.”

Ld. Counsel therefore pleaded to dismiss the Appeal.

13. We have considered the rival submissions and the material on record. There is no dispute as to the facts that the Apartment ad measuring 89.09 Sq. Mts., at Plot No. 103, Property No. 105, Building No. 4, Park Island, Bonaire, Marsa, Dubai had been purchased on 28.03.2012 in the name of the Appellant. The Appellant has challenged the seizure under Section 37 A (1) of FEMA of the property Flat No. C-14, 3rd floor, Sahil Cooperative Housing Society Ltd., 4th Road, Tejpal Singh, Vile Parle (East), Mumbai 400057 with built up area of 516 Sq. Ft. valued at Rs. 1,81,63,000/- on the grounds that Section 37 A came into effect on 09.09.2015 vide S.O. 2454(E) dated 08.09.2015 and hence could not have been applied retrospectively to seize a property abroad acquired on 28.03.2012. Section 37 A (1) of FEMA is reproduced below:

“37A. Special provisions relating to assets held outside India in contravention of Section 4—(1)

Upon receipt of any information or otherwise, if the Authorised Officer prescribed by the Central Government has reason to believe that any foreign exchange, foreign security, or any immovable property, situated outside India, is suspected to have been held in contravention of section 4, he may after recording the reasons in writing, by an order, seize value

equivalent, situated within India, of such foreign exchange, foreign security or immovable property:

Provided that no such seizure shall be made in case where the aggregate value of such foreign exchange, foreign security or any immovable property, situated outside India, is less than the value as may be prescribed.”

On perusal of the aforementioned provisions, we note that to effect seizure, the word that has been used for having reasons to believe, that the immovable property is suspected, to have been **‘held’** in contravention of Section 4 of FEMA. What is therefore material for invoking Section 37 A (1) is not the date of acquisition of the said immovable property, but whether on the date of seizure the seized immovable property was being held by a person resident in India. Shri Devendra N Desai has been the resident of India is not disputed. The date of seizure of the impugned property is 02.03.2020. On the said date it is undisputed that the property stood in the name of Shri Devendra N Desai, Smt. Darshana Desai, wife of Shri Devendra N. Desai and Shri Tejas Desai, son of Shri Devendra N. Desai. We may add that Shri Devendra N Desai has taken the sole responsibility for the transaction which has also been corroborated by his wife and son, who denied being aware of the said property deal. It is obvious that the property in Dubai was being held by the Appellant on the

date of the seizure. In fact, even when the provisions of Section 37 A were introduced in FEMA, the property in Dubai was being held by the Appellant. Therefore, the argument of the Appellant that the provisions of Section 37 A (1) has been applied retrospectively cannot be accepted.

14. The Ld. Competent Authority has confirmed the seizure of the property in India of the Appellant equivalent in value to the property being held by the Appellant in Dubai. In this regard, Ld. Competent Authority has accepted and confirmed the prima facie basis of contravention of Section 4 of FEMA. Para 10.7 of the Impugned Order brings this out:

“10.7 The respondent in written submission has not denied the fact that the aforementioned property in Dubai was not held in his name and names of his wife and son. The WhatsApp chats extracted during the investigation also indicate that the respondent is owner of the flat. The Respondent 's mere contentions that payment for acquiring the property was made by Shri Siddharth M. Kandpile and that property is in his possession and rental income from the said property is received in the bank account by Shri Siddharth M. Kandpile do not assist them. In view of the above relevant provisions of FEMA, 1999 and Foreign

Exchange Management (Acquisition and transfer of immovable property outside India) Regulations, 2015 and facts as above, the Authorised Officer had reasons to believe that immovable property is suspected to have been held in contravention of Section 4 and 6(3)(h) of Foreign Exchange Management Act, 1999 and Regulation 3 of the Foreign Exchange Management (Acquisition and transfer of immovable property outside India) Regulations, 2015. The sufficiency of the said reasons to believe cannot be questioned. Therefore, in terms of Section 37A (1), there is nothing wrong in the seizure of value equivalent, situated within India, of such foreign exchange/immovable property which the petitioner suspected to have been held in contravention of Section 4 of the FEMA.”

15. Even though the Appellant after having admitted that the property in Dubai was acquired by him for his consultancy services rendered to Shri Siddharth M. Kandpile, subsequently the Appellant offered an explanation that Shri Kandpile in his affidavit dated 12.02.2020 stated that the said Apartment and the rental income therefrom was enjoyed by Shri Kandpile and that the Appellant had no legal right or claim on the said Apartment. This explanation is falsified by the copy of the Title Deed dated 28.03.2012 bearing the approval of the Land Department, Government of Dubai and showing

that the property was purchased by Shri Devendra N. Desai and Smt. Darshana Devendra Desai and Shri Tejas Devendra Desai from Shri Adel Siddiq Ibrahim Babikir through the Land Registration No. 1670/2012 dated 28.03.2012 for the amount 7,79,000 AED. The explanation is further shown to be wrong by the copy of the Title Deed dated 16.02.2020 bearing the approval of the Land Department, Government of Dubai that the impugned property was purchased by Shri Siddharth M. Kandpile from Shri Devendra N. Desai and Smt. Darshana Devendra Desai and Shri Tejas Devendra Desai by the Land Registration No. 15492/2020 dated 16.02.2020 for the amount AED 9,00,000. The Appellant failed to produce any document to demonstrate the acquisition and holding of said property in Dubai with the permission of RBI. We therefore agree with the findings of the Ld. Competent Authority that there was prima facie basis available with the Assistant Director of the Respondent Directorate to invoke the provisions of Section 37 A (1) and have reasons to believe to suspect that Foreign Exchange worth total amount of AED 9,14,000 was held outside India in contravention of Section 4 of FEMA. We may clarify that the contravention of Section 4 of FEMA and other Sections cited in the matter shall however be established only after the adjudication proceedings before the Adjudicating Authority is decided through an Order under Section 13 (1A) of FEMA.

16. The Appellant has also pleaded that the said property in Dubai has ceased to be in his name and that of his family members, which is evident from the aforementioned Title Deed dated 16.02.2020. The Appellant has further pleaded that the foreign exchange of amount USD 2,49,992 (equivalent to AED 9,14,000) was transferred to the Appellant's Account No. 02271000014535 in the HDFC Bank, Vileparle (E) Branch, Mumbai 400057. The said amount equivalent to Rs. 1,86,96,939.08 was remitted on 05.05.2020 by his daughter Ms. Urvi Desai, who is citizen of USA, as gift to her father. We find that the Certificate of Foreign Inward Remittance issued by the HDFC Bank is on record. The Respondent Directorate has refused to accept the said remittance on the grounds that it has no links with the proceeds of consultancy services rendered by the Appellant to Shri Siddharth M. Kandpile in Dubai. The explanation of the Appellant is to the effect that Shri Siddharth M. Kandpile, being brother-in-law of his daughter, had extended financial help to his daughter to the tune of 9,00,000 AED during the year 2014. Accordingly, the Appellant and Shri Siddharth had requested his daughter Ms. Urvi Desai to remit the said fund.

17. The provisions of Section 37 A (4) of FEMA are being reproduced as follows:

“37 A (4) The order of the Competent Authority confirming seizure of equivalent asset shall continue till

the disposal of adjudication proceedings and thereafter, the Adjudicating Authority shall pass appropriate directions in the adjudication order with regard to further action as regards the seizure made under sub-section (1):

Provided that if, at any stage of the proceedings under this Act, the aggrieved person discloses the fact of such foreign exchange, foreign security or immovable property and brings back the same into India, then the Competent Authority or the Adjudicating Authority, as the case may be, on receipt of an application in this regard from the aggrieved person, and after affording an opportunity of being heard to the aggrieved person and representatives of the Directorate of Enforcement, shall pass an appropriate order as it deems fit, including setting aside of the seizure made under sub-section (1).”

We find that the Ld. Competent Authority has rejected the plea of the Appellant to set aside the Seizure Order despite the proviso to Section 37 A (4) of FEMA having not found the explanation by the Appellant for the remittance of USD 2,49,992 in his bank account as satisfactory. We note that with effect from 16.02.2020, the Appellant does not hold the immovable property in Dubai. This is corroborated

by the Title Deed dated 16.02.2020 of the said property. The Respondent Directorate has also not challenged the genuineness of the said document. From the facts of the case, it is also clear that the said property in Dubai was held in the name of the Appellant and his family members with effect from 28.03.2012 as is evident from the Title Deed of the same date. Again, the Respondent has not challenged the said Title Deed. It is on record as brought out by the statement of the Appellant which is also corroborated through communication from Shri Siddharth M. Kandpile that the payment for the said property was made by Shri Kandpile, as compensation for the consultancy services rendered by the Appellant to Shri Kandpile in his construction business in Dubai. They also stated that besides the purchase value of AED 7,79,000 borne by Shri Kandpile, the amount of rent of AED 1,35,000 for two years was credited in the bank account in Dubai of Shri Kandpile. There is nothing to the contrary which has been brought on record. Subsequently, when the remittance of USD 2,49,992 equivalent to AED 9,14,000 was made by Ms. Urvi Desai, daughter of the Appellant to her father's account in HDFC Bank, Mumbai, the Respondent Directorate has rejected the explanation given by the Appellant even though corroborated through communications from Shri Siddharth M. Kandpile and Ms. Urvi Desai. The explanation advanced by the Appellant is that the remittance made by Ms. Urvi Desai was in lieu of the financial help extended by her brother-in-law Shri Siddharth M. Kandpile in 2014

to start her business and buy a house in Texas, USA. This explanation cannot be ruled out as plausible. Again, there is nothing produced by the Respondent Directorate to challenge its veracity. Moreover, for the sake of argument it can be stated that it was also possible that the flow back of the remittance from Ms. Urvi Desai living in USA, to Shri Kandpile in Dubai, could have occurred which in turn could have then been remitted to the Bank account of the Appellant. We also observe that no allegation has been made about the funds which have been remitted, were not lawful.

18. We are satisfied that the property in Dubai in the name of the Appellant and his family members is no longer in their name. We are also satisfied that the equivalent of the foreign exchange that had accrued to the Appellant in Dubai has been remitted to India. The purpose of the introduction of Section 37A of FEMA was to secure the foreign exchange/foreign security/immovable property held abroad by residents in India, through effecting seizure of the equivalent value in India from such residents. We therefore conclude that the action taken by the Respondent Directorate in effecting seizure has met its purpose as provided for Section 37A of FEMA. The property held abroad is no longer held by the Appellant and the foreign exchange that accrued abroad has since been repatriated in its equivalent value. Therefore, in view of the provisions of the Proviso of Section 37A (4) of FEMA, we set aside the seizure of the said property in India of the Appellant. The Respondent Directorate shall be at liberty to

pursue the case against the Appellant for the alleged contravention of Section 4 and other provisions of FEMA for the period during which the Appellant was suspected to have held the immovable property situated outside India.

19. In view of the aforementioned discussions and analysis, we allow the Appeal No. FPA-FE-45/MUM/2020 filed by Shri Devendra N. Desai with liberty to the Respondent Directorate to pursue the contravention, if any, of the provisions of FEMA, despite this Order having set aside the Seizure Order 01/2020 dated 02.03.2020. Applications pending, if any, stand disposed of accordingly.

(Rajesh Malhotra)
Member

(Balesh Kumar)
Member

New Delhi
14th May, 2026
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