



2025:DHC:8338



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

% ***Pronounced on: 18th September, 2025***

+ **CRL.M.C. 2198/2018**

ASST. COMMISSIONER OF INCOME TAX,

Central Circle-13, ARA Centre,

Jhandewallan Extension,

New Delhi-110055

.....Petitioner

Through: Mr. Sanjeev Rajpal, Advocate.

versus

1. **STATE**

Through Jt. Commissioner of Police,

EOW (Crime Branch), Delhi Police,

Mandir Marg, New Delhi.

.....Respondent No.1

2. **DIRECTORATE OF ENFORCEMENT**

Through its Director, 6th Floor,

Loknaya Bhawan, Khan Market,

New Delhi-110033

...Respondent No.2

3. **ULHAS PRBHAKAR KHAIR,**

Presently lodged in Jail No. 10

Rohini Jail, Delhi.

...Respondent No.3

4. **PRIYANKA SARASWAT,**

presently lodged in

Jail in Gangtok, Sikkim

...Respondent No.4

5. **NITIN SINHA**

108, Krishna Apartment,

Sec.8, Dwarka, New Delhi.

....Respondent No.5

6. **NARESH KHARAB,**

Village Ugalan,

Distt. Hisar.

.....Respondent No.6



Through: Mr. Ajay Vikram Singh, APP for the State.
Mr. Balendu Shekhar, CGSC with Mr. Raj
Kumar Maurya and Mr. Krishna Chaitanya,
Advocates for UOI.
Mr. Anupam S. Sharma, SPP for CBI/R-2.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Petition under Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.P.C.'*) has been filed on behalf of the Petitioner/Asst. Commissioner of Income Tax (ACIT), to challenge the Order dated 05.02.2018 of learned Special Judge (PC Act), CBI-05, New Delhi, ***dismissing the Application under Section 226(4) of the Income Tax Act, 1961 (hereinafter referred to as 'IT Act')***, filed by the Petitioner in SC No. 9593/2016 for direction to release all the FDRs, for recovery of Tax Demand against the Respondent Nos. 3 to 6 and M/s Stockguru India, a Partnership Firm of the Respondent Nos. 3 and 4, for the Assessment Years (AY) 2010-2011 and 2011-2012.

2. The **brief facts of the case as per the Petition** are that a search and seizure operation under Section 132 of the IT Act, 1961, was carried out by the Investigation Wing of Income Tax Department on 18.01.2011, at the residential and office premises of the Respondent Nos. 3 to 6 and the Firm M/s Stockguru India in which number of incriminating documents, details of all Bank Account/s deposit/s with all kind properties, articles, etc. in their names including the cash of Rs.34,69,00,000/-, were seized by the Investigation Wing of the Income Tax Department, under Section 132(3) of



IT Act. A Seizure Order was also served upon their HDFC Bank, Dwarka Branch, New Delhi on 18.01.2011 *qua* their Bank Accounts with the direction not to deal with them, without prior approval.

3. The **FIR No. 84/2011** under *Sections 406/409/419/420/467/468/471/120-B/34 IPC and Sections 3/4/5 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978* dated 07.04.2011. and **FIR No. 152/2011** under *406/409/419/420/467/468/471/120-B/34 IPC and Sections 3/4/5 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978* dated 29.06.2011, were registered on the complaint of Sh. Sunil Kumar who allegedly paid Rs.60 lac on 30.12.2010 and Rs. 1 Crore on 31.01.2011 by cheques to Respondent No.3 for investment of which he and other investors were cheated.

4. The Block Assessment proceedings of the Respondent Nos. 3 to 6 and M/s Stockguru India, were initiated by the Income Tax Department and Special Audit under the IT Act, was conducted for the Financial Year 2004-2005 to the Financial Year 2010-2011. As the assessment in the search cases is for the block period of six years, Attachment Orders under Section 281B of IT Act, were issued on 09.01.2013 to all Bank Accounts including HDFC Bank, Dwarka Branch, New Delhi, of the Judgment Debtors. On 18.01.2011, all its bank accounts were seized by the investigation wing of the Income tax Department.

5. On 28.05.2013, Notice under Section 102 Cr.P.C. was received by the Petitioner/Asst. Commissioner of Income Tax, from the Investigating Officer of the *FIR No. 152/2011* asking not to release the seized money to any one till further Order of Chief Metropolitan Magistrate (West). Learned



CMM (West), Delhi, on the report filed by the Investigating Officer of the Criminal Case, *vide Order dated 04.06.2013* directed the Petitioner to appear on 07.06.2013 with the seized amount of Rs.34.69 Crore by its Department.

6. The learned CMM by its Order dated 07.06.2013 granted liberty to the Petitioner to raise the objections *qua* the maintainability of the Application filed by the Investigating Officer and sustainability of any Order passed in terms thereof and directed the Petitioner to make an FDR of the cash seized during the search, till disposal of the Objections.

7. The **Axis Bank** filed an Application in the present case before learned CMM (West), stating that in terms of the direction of the Court, the amounts lying in the accounts of the accused persons, have been converted into FDRs. It was further submitted that it has received the Attachment Orders from Government Department and other statutory authorities for that amount.

8. The Petitioner filed the copy of the FDR of the seized cash of Rs.34.69 Crore with the Objections to the Order dated 04.06.2013 and 07.06.2013 passed in the present case, on the Application of the Investigating Officer for deposit of 11 FDRs made of the amounts lying in the different Bank Accounts of the Accused. **HDFC Bank** and **Standard Chartered Bank** also filed similar Applications.

9. Learned CMM (West) while considering the Applications of the Banks, took a view on **16.08.2013** that though the amounts lying with the various Banks had been under attachment by different Departments, the amounts be converted into FDRs with existing lien of the Department on those amounts.



10. On 09.09.2013, Commissioner of Income Tax (Central)-II, New Delhi and EOW issued a Notice, in view of the claim of the Income Tax Department against the Respondent No. 3 and M/s Stockguru India (Judgment Debtor).

11. Subsequently, the investors/depositors of M/s Stockguru India filed W.P. (Crl.) No. 632/2012 titled as *Victims of Stock Guru India vs. UOI & Ors.* in May, 2012, wherein Income Tax Department was impleaded as one of the Respondent. *A prayer was made that the Income Tax Department be directed to return the seized money to the depositors of the said Firm. Subsequently, the Writ Petition was withdrawn on 03.08.2012.*

12. In the meanwhile, in CS(OS) No. 2866/2011 the *ex-parte* money Decree for Rs.1.60 Crore was passed *vide* Judgement dated 16.08.2012 against the Respondent No. 3/Ulhas Prbhakar Khair and M/s Stockguru India. The **Execution Petition No. 381/2012** was filed for the *Money Decree* in which an Application was filed by HDFC Bank in view of the Attachment Orders of the Income Tax Department, which was modified *vide* Order dated 11.01.2013 and HDFC Bank was directed not to pay any amount to any one till further Orders, on 20.03.2013.

13. On 06.11.2013, the Assessment Order of M/s Stockguru India for the AY 2010-2011 and 2011-2012 was made determining the tax liability for these two years at Rs.345,97,46,885/-, and the demand Notices were issued to the Respondent Nos. 3 to 6 and M/s Stockguru India for payment of the outstanding taxes.

14. On 12.12.2013, the Petitioner/ACIT filed an ***Application under Section 226(4) of IT Act***, for recovery of the outstanding Tax demand against the Respondent Nos. 3 to 6, praying for release of all the FDRs made



of the seized money during the search and seizure, before the learned CMM (West) in FIR No. 152/2011.

15. The Respondent No. 1 filed a Reply followed by the Rejoinder by the Petitioner.

16. An Application was filed by the Income Tax Department contended that the amounts seized from Respondent Nos. 3 to 6 and M/s Stockguru India, now lying in FDRs, ought to be appropriated first towards satisfaction of outstanding tax liabilities as mandated by the provisions of the IT Act, which remained pending in the Ex.P. No. 381/2012. This Court *vide* Order dated 21.01.2015 directed the learned CMM (West), Delhi, to to dispose of the objections of the Petitioner, at the earliest.

17. In compliance of this Order, the learned CMM (West) *vide* detailed Order dated 27.03.2015, allowed the Objections of the Petitioner granting liberty to apply the seized money from the Respondent No. 3 and others, while holding that the Court had no jurisdiction to impede the recovery proceeding initiated by the Income Tax Department.

18. The ***FIR No. 152/2011*** was committed by the learned CMM (West) to Special Judge, New Delhi. An Application was filed under Section 44 of the Prevention of Money Laundering Act, 2002 (*hereinafter referred to as 'PMLA'*) by Respondent No.2/Directorate of Enforcement on 26.09.2016, as it had filed a Complaint before that Court against the Respondent No.3 to 5 for money laundering.

19. Application under Section 226(4) of IT Act dated 12.12.2013 was filed by the Petitioner before learned CMM (West) in FIR No. 152/2011. Certain objections had been filed by the accused persons (*Ulhas Prbhakar and Raksha, J. Urs @ Priyanka Saraswat Dev*). However, a Joint



Application dated 26.11.2016 was filed, for withdrawal of the said objections.

20. **The Application of the Petitioner/ACIT under Section 226(4) IT Act, for release of FDRs, was rejected by the learned Special Judge *vide* the impugned Order dated 05.02.2018.**

21. **This Order has been challenged by the Petitioner/ACIT on the grounds** that the Order is contrary to the settled precedents of the Apex Court and the High Courts. In the case of *State vs. Manjit Singh*, Crl. M.C. No. 4485/2013, it was held that the mere fact that an article has been seized or that it furnishes evidence of the commission of an offence, is no ground to delay or decline its release. The learned CMM (West) has created a chaotic situation by dismissing the Recovery Application filed by the Petitioner under the IT Act, which is a Special statute.

22. **Section 136 of IT Act** provides that all the proceedings before the Income Tax Authorities, are judicial proceedings and the Income Tax Authority is deemed to be a Civil Court. Section 293 of the Act, bars the jurisdiction of Civil Courts to interfere with the proceedings under the IT Act.

23. It is submitted that the observations of the learned Special Judge that the money was seized by the Income Tax Department much prior to the filing of the *Money Laundering case* by the Respondent No. 2/Directorate of Enforcement, who is not the Complainant in the *Case No. SC No. 9593/2016* in FIR No. 152/2011 which was filed by the Respondent No. 1/EOW wherein the Petitioner raised the Objections to the jurisdiction of the said Court, which was allowed. Hence, the impugned Order is bad in law.



24. Learned CMM has already held in the Order dated 27.03.2015 that the Court holds no Appellate or Revisional powers over the Income Tax Department and that no Order passed by the CMM Court, shall impede the Income Tax Department in applying the seized money (now converted into FDRs) towards recovery of its dues in terms of the IT Act.

25. The learned Special Judge has wrongly dismissed the Recovery Application of the Petitioner by incorrectly holding that the same is not maintainable as the PMLA, 2002 is the later Special Law which would prevail over the Income Tax Act.

26. It is asserted that the amounts lying in the Bank Accounts of the Respondent Nos. 3 to 6 and their Firms, etc. were seized by the Investigating Wing of Income Tax Department and not by the Investigation Officer of the Respondent No. 1. The provisions of PMLA Act, 2002 have been wrongly applied as the PMLA Act does not provide for its supremacy over other Special Laws.

27. Reliance has been placed on Rakesh Kumar Aggarwal vs. Bansal Commodities, (2013) 39 Taxmann 136 (Delhi) wherein it was held that after search and seizure operation, the amount seized by way of deemed seizure qua the Bank Account, has to be adjusted as per the provision of Section 132 of IT Act.

28. It is further submitted that the learned CMM wrongly relied on Solidare India Ltd. vs. Fair Growth Financial Service Ltd., (2001) 3 SCC 71 which pertains to the recovery by the Financial Institution.

29. Likewise, incorrect reference has been made to Bombay Stock Exchange Ltd. vs. V.S. Kandalgaonkar & Ors., AIR 2015 SC 193 which pertains to the recovery proceedings initiated by the Financial Institution



wherein it was held that the secured creditors would have the precedence over the Revenue liability of the Assessee. Neither the Respondent No. 2 nor the investors of M/s Stockguru India are the *secured creditors* who can take precedence over the legally recoverable debt against the Assessee, who has already withdrawn its Objections to the Application for the recovery.

30. Further reliance has been placed on Imperial Chit Funds (P) Ltd. vs. Income Tax Officer, (1996) 85 Taxmann 513 (SC) wherein the Income Tax Department has been held to be the *secured creditor*. It has also been held that the situation may arise where the authorities under the IT Act and Central Sales Tax Act may lay their claims, in which case the question of priority shall be with respect to the date of receipt of Orders.

31. In the present case, Income Tax Department seized cash of Rs.34.69 Crore and passed the Seizure Order under Section 132B of IT Act in respect of all the Bank Accounts of the M/s Stockguru India and its partners on 18.01.2011, which are still in force. Further, the Tax Demand Notices dated 08.11.2013 was served on the Respondent Nos. 3 to 6 and their Firm M/s Stockguru India and the Application under Section 226(4) of IT Act, was filed for release of all the FDRs made from the seized amount on 12.12.2013. It is submitted that no proceedings under PMLA, 2002 had been initiated against the *Respondent No. 3/Ulhas Prbhakar Khair.*, till these Orders were made till 2013. The Complaint under PMLA got filed Before Special Judge only on 30.12.2013.

32. It has not been considered that subsequently on Assessment, the demand was raised on 06.11.2013 upon the Respondents, which became legally recoverable debt. The Application filed before the learned CMM (West) on 12.12.2013 was kept pending till the decision of the objections to



its jurisdiction, which was allowed *vide* Order dated 27.03.2015 wherein the Court held that it has no jurisdiction to intervene in the proceedings taken up under IT Act against the Respondents and that no Order of the Court would impede the recovery of the Income Tax Department against them.

33. It is further contended that the Respondent No. 2/Directorate of Enforcement could not place any document on record through the Investigating Officer of the Criminal Case, that seized amount belonged to the Respondent No. 3/ Ulhas Prbhakar Khair, prior to the Seizure Orders passed by the Investigation Wing of the Income Tax Department. It is only the Income Tax Department who seized all the Bank Accounts of the Assessee and no proceedings under PMLA Act was taken up against the Respondent Nos. 3 to 5, which commenced only on 30.12.2013.

34. The reliance on the decision of the Apex Court in the Case of Tax Recovery Officer vs. Custodian, AIR (2007) SC 2935 is misplaced as it pertains to Recovery proceedings taken up before the Special Court, who were holding the custody of money belonging to the Accused and had put the same under attachment, before the claim of the Income Tax Department.

35. The claim of the Petitioner is clearly covered by the Judgment of Division Bench of this Court in Rakesh Kumar Aggarwal vs. Bansal Commodities, RFA (OS) No. 92/2009 whereby the money Decree obtained by the Claimant, was set-aside on the premise that the Seizure Order passed by the Revenue Authority during the course of search, had not been set-aside. Therefore, its effects will continue to enable the Revenue to exercise its right and authority to recover the amount, as per the Taxation law.

36. The Special Judge was not sitting in Appeal to the proceedings under Income-Tax Act *qua* the assessment of *undisclosed income* against the



Respondent Nos. 3 to 6. The provision of Section 132B of IT Act provides the mechanism for application of the seized money after the assessment of the income, in the search cases.

37. The proviso to Section 132B of IT Act gives similar power to the Assessing Officer to adjudicate upon the Objections of the interested person where the nature and source of the acquisition of such Asset, is explained *qua* the seized money and is disposed of. This provision was duly considered by the learned CMM (West) in the Order dated 27.03.2015 when the Petitioner was allowed to apply the seized money from the Respondent No. 3, as per the provisions of the Income Tax Act, 1961.

38. Reliance has been placed on CIT vs. Piara Singh, reported in Volume 124 of Income Tax Reporter 40, wherein it was held that *if a business is illegal, neither the profits earned nor the losses incurred, would be enforceable in law; however, that does not take profit out of Taxing statute*. Similarly, the taint of illegality of the business cannot detract from the losses being taken into account for computation of the amount which can be subjected to tax as “profits” under the IT Act, 1922.

39. Admittedly, the seized amounts in the Bank Accounts of the Respondent Nos. 3 to 6 and M/s Stockguru India, has to be adjusted as per Section 132B of the Income Tax Act, 1961.

40. *It is, therefore, submitted that the Order dated 05.02.2018 of the learned Special Judge (PC Act), CBI-05, New Delhi, be set-aside and the Application of the Petitioner under Section 226(4) of the IT Act for recovery of outstanding Tax demand against the Respondent Nos. 3 and 6 and M/s Stockguru India, be allowed and the FDRs be directed to be released to the Petitioner.*



41. The **Respondent No.2 Directorate of Enforcement in its Reply** has submitted that the Directorate had filed two separate Applications seeking execution of two Provisional Attachment Orders No.6/13 and 6/14 in *ECIR/29/DZ/2012* under Section 5(1) of PMLA. The learned CMM *vide* Order dated 10.11.2014 disposed of both the Applications by observing that *the Provisional Attachment Orders have been duly confirmed by the adjudicating Authority and the Application was allowed.* It was clarified that after taking possession of the said properties, they shall be retained by the Adjudicating Authority during the pendency of the case, as laid down in Section 8(3)(a) of the Act. Moreover, the Order was made applicable only with respect to the attached movable and immovable properties which have been seized by the I.O and are in custody of the Court, list of which had already been filed by the I.O in the Court. For remaining properties there is no requirement for seeking directions from the Court as per the Rules framed in Notification No.558(E) dated 19.08.2013 of Govt. of India. *The Order shall not be deemed to be giving any directions in respect of movable/immovable properties which are not in the custody of the Court.*

42. It is submitted that the movable and the immovable properties which are the subject matter of Provisional Attachment Orders (6/2013 and 6/2014) are also the subject matter of the Complaint under Section 45 of PMLA which is pending before the learned Special Judge, CBI, New Delhi.

43. After further investigations, the Competent Authority passed another *Provisional Attachment Order No.5/15 dated 24.03.2014* in the case which is also the subject matter of the Complaint Case bearing No. *ECIR/29/DZ/2012* pending before the Special Judge (PC Act), CBI, New Delhi.



44. The investigations revealed that the seized Indian currency of Rs.34,69,00,000/- was obtained by Accused, Lokeshwar Dev and Priyanka Saraswat Dev as a result of criminal activities under scheduled offences i.e. Section 419, 420, 467, 471, 120B IPC and this amount is *proceeds of crime* as well as the subject matter of the ongoing investigations.

45. *Section 71 of PMLA* has an overriding effect over the provisions of the IT Act because PMLA got assent from the President on a later day. Therefore, the Authority is competent to pass an Provisional Attachment Order, after following due procedure prescribed under the Act.

46. In *Solidaire India Ltd. vs. Fair Growth Financial Services Ltd. and Others*, (supra), the Apex Court held that the special law shall prevail over the earlier special law for the reason that “*at that time of enactment of the latter statute, the legislature was aware of the earlier legislation and its non-obstante clause*”.

47. The Prayer of the Income Tax Department for release of amount kept as FDRs and other deposits in different Banks under Section 226(4) IT Act, is untenable and deserves to be dismissed.

48. The conflict had arisen due to Section 226(4) of IT Act being *pari materia* with Section 71 of PMLA. This conflict has been put to rest by the Apex Court in the case of *Bank of India vs. Ketan Parekh & Ors.*, 2008 8 SCC 148, wherein it had been observed that cases might arise where both the enactments have the *non-obstante clause*. In such cases, the proper perspective would be that one has to see the subject and the dominant purpose for which the special enactment was made and in case the dominant purpose is covered by that contingency, then notwithstanding that the Act



might have come at a later point of time, still the intention can be ascertained by looking into the objects and the reasons.

49. It is further submitted that in Sarvan Singh vs. Kasturilal, AIR 1977 SC 265 and Kamayu Motor Association vs. State of Uttar Pradesh, AIR 1956 SC 785 the Supreme Court has held that conflict of non-obstante clause arising in respect of two enactments, has to be resolved on consideration of policy underlying the enactments and the language used therein. PMLA has been enacted to provide for forfeiture of *proceeds of crime* involved in money laundering which was considered necessary of deprive persons engaged in serious illegal activities and thereby been increasing their resources for operating in clandestine manner. The Act was created to forfeit illegal properties and to prevent the money laundering activities which are threat to financial system of the county and its integrity and sovereignty.

50. The interest of the victim is protected under the scheme of the Act. It ensures that the claimant with a legitimate interest in the property confiscated, may be restored such property or rights therein. *It is, therefore, submitted that the Petition is liable to be dismissed.*

51. The ***Petitioner in his Rejoinder*** has reaffirmed the contentions as raised in the Petition.

Submissions heard and record perused.

52. The relevant facts may be succinctly stated herein, for the purpose of understanding the controversy raised by both the parties.

53. The **case of the Prosecution** is that about 2,05,062 investors invested a total amount of Rs.493,94,44,584/- in M/s Stockguru India and during the investigations, Complaints were received from 15,000 investors. According



to the Chargesheet filed in FIR 152/2011, Respondent No.3/Ulhas Prbhakar Khair and Respondent No.4/Priyanka Saraswat (Accused No.1 and 2) who were the Partners in M/s Stockguru India, had purchased *14 properties and 12 vehicles out of cheated money*. 14 Bank Drafts of State Bank of India totalling Rs.19,9631,000/-, 15 Bank Drafts of ICICI Bank totalling Rs.17,85,33,373/- and eight Bank Drafts of HDFC Bank totalling to **Rs.4,71,00,000/-** recovered from the residence of Accused No.1 and 2/Respondent No.3 and 4, were frozen. During the investigations, a sum of Rs.2,93,00,000/- was seized by Income Tax Department during the search of premises of Nitin Sinha; a sum of Rs.4,88,00,000/- during the search of premises of Naresh Kumar Kharab.

54. The ***Complaint under Section 45 of PMLA*** was filed against the Respondent No.3 and 4 and other accused. In the said Complaint, the Income Tax Department moved an Application under Section 226(4) of IT Act stating that the tax liability of M/s Stockguru India was assessed at Rs.3,45,97,46,885/-; the tax liability of Respondent No.3/Ulhas Prbhakar was assessed as Rs.63,28,19,554/-; and of Respondent No.4/Priyanka Saraswat as Rs.23,69,12,735/-.

55. By the Order of the Court dated 07.06.2013, the substantial amounts seized from the accused persons and lying in their Accounts in various banks including the amount of Rs.34,69,00,000/- that was seized by the Income Tax Department during the search conducted on 18.01.2011, were directed to be converted into the FDRs. Further, the learned CMM *vide* Order dated 27.03.2015 permitted the IT Department to apply the sum of Rs.34,69,00,000/- (*the amount recovered in the search and seizure*) in terms of IT Act.



56. The Income Tax Department has now sought release of the entire amounts recovered from the various accounts of the Accused persons and M/s Stockguru India, towards the Income Tax liabilities of all the accused persons.

57. The question which thus, arises is ***whether the tax liability of the Respondent would take precedence over the trial under PMLA to ascertain whether the amounts traced in the various accounts, is proceed of crime.***

58. The first aspect is that there are competing claims of the Income Tax Department to adjust the recovered amounts towards tax liability and of the individuals who have been defrauded of their investments made with Respondent No.3 to 6 and whether the recovered amounts are proceeds of crime to be dealt as per provisions of PMLA.

59. To ascertain which Act would take precedence because of the conflict of *non-obstante clause* in respect of the two enactments, the Apex Court in Sarvan Singh, (supra) and Kamayu Motor Association, (supra) held that the same may be resolved by consideration of Policy underlying the enactments.

60. While the objective of the IT Act is to levy, collect, and regulate income tax to ensure revenue generation and economic equity; PMLA has been enacted for forfeiture of the *proceeds of crime* involved in money laundering. Essentially, the objective is to forfeit illegal properties which have been amassed through illegal activities to increase their resources, in a clandestine manner. *The corresponding objective is to ensure that the Claimants who have legitimate interests, are able to get restored such property or rights therein.* **Section 8(8) of PMLA** provides that where the property stands confiscated to the Central Government, it may be restored to the Claimants with legitimate interest in the property.



61. Therefore, it becomes significant to consider *whether it is the legitimate income of the accused persons on which the liability to pay the income tax exists or it is a proceed of crime which is liable to be confiscated and returned to the rightful persons*. This determination is crucial because if the funds constitute *proceeds of crime* rather than legitimate income, no tax liability can arise on money that never legally belonged to the accused persons and which is liable to be confiscated or restored to its legitimate claimants.

62. As per the case of the Prosecution, M/s Stockguru India floated a Scheme promising high returns on a minimum investment of Rs.10,000/- plus Registration Fee of Rs.1,000/-. The investor was assured to get Rs.2,000/- per month for six months on every investment of Rs.10,000/- and return of principal amount after six months. Post-dated cheques for repayment of monthly instalment plus a promissory note as security was given to the investors on registration. There were referral bonus as well, running upto to 27 levels which were given as an extra incentive. It also provided *terminal handling service* for investors for a minimum capital amount of Rs.5 lakhs. The *modus operandi* adopted for inducing and alluring people to invest in such Ponzi scheme, was to guarantee exorbitant returns i.e. 220% return to investors within a short span of six months.

63. It was stated in the Complaint under Section 45 of PMLA that there were various other Companies that were floated with the purpose of rotating the funds obtained by cheating people at large and also to give an impression to the investors that they were doing serious business and their money was in safe hands.



64. A *Partnership Firm* in the name of *M/s Copper Tranzz* was also opened by Lokeshwar Dev and Priyanka Saraswat, with the sole objective to induce investors that they had mastery in the business of copper. Lokeshwar Dev often boasted amongst investors that he was *the ‘Copper King’*.

65. When the number of investors got so high that sustaining such returns was getting difficult, accused devised a money Bank system. They stopped giving *post-dated cheques* and the returns were converted to points that accrued to the respective account IDs of the investors. These points could be redeemed for money for which a requisition could be placed before the Company between the 7th and 10th of every month. Thereafter, the Company assured that they would transfer the equivalent money to the account of the investor. However, when the demands for redemption rose, the software of the Company would not work incapacitating the investors for applying for redemption in time. Investors then started selling their accumulated points at huge discounts. This led to a widespread dissent and distrust among the investors who then started complaining to the agents. This eventually resulted in raids by Income Tax Department which prompted the investors to demand their money back. With the mounting pressure from the investors at large and the Government Agencies at their tail, Lokeshwar Dev and Priyanka Saraswat and their other associates fled from Delhi.

66. **Section 132 of IT Act** provides that the assets/money mentioned in *Sub-Section 1 (c)* can be seized if the said property is *income or property* which has not been or would not be disclosed for the purpose of Income Tax Act. **Section 2(24) of IT Act** defines **Income** as *the profits, gains or monetary return coming from a definite source*.



67. *In the present case*, as has been discussed above, it is not the money which is relatable to the Income of the Accused. *Prima facie*, it is evident that this is the money which had been fraudulently obtained by the accused persons by floating fraudulent schemes under the name of various Companies. Section 2(24) would apply to an Income of an individual.

68. *The proceeds of crime as in the present case, can in no way be termed as the income of the Accused at this stage, as trial in PMLA case is yet to be concluded.* As has been contended by EOW, the money never belonged to the Accused persons as it was only the entrusted money which was sought to be returned with higher returns. As contended by Respondent No. 2, the accused persons had got possession of money of the investors by deception and malice, which can never be termed as their income.

69. The embezzled money by the Director of a Company cannot constitute a benefit of pre-requisite obtained from the Company and *cannot be called his income*. In the present case, the money is the defrauded/embezzled amounts of innocent investors acquired by the Accused through illegal means. These funds would not come within the income of the Accused.

70. In Sayed Khaja vs. Raghavendra Rao & Ors., [1976] 103 ITR 294 (AP), decided on 22.07.1974, the High Court of Andhra Pradesh held that the purpose, spirit and intendment of Section 226(4) of IT Act makes it patent that only such amount can be proceeded against over which the Assessee has full proprietary rights or an exercisable right, or else there can be no question of recovery of Income Tax. Similarly, in B. Ramlal vs. State of U.P., AIR 1954 All 758 it was observed that it is in public interest that the property acquired by the offender through commission of offence, should be



taken away from him. Nobody can claim a right to a property in the possession over which has been acquired through commission of offence.

71. Section 2(13) of IT Act provides business as any trade, commerce or manufacture or any adventure or concerned in the nature of trade, commerce or manufacture

72. In Black's Law Dictionary, Trade is defined as : "*Trade: exchange of any article either by barter or for money or for services rendered.*". Oxford Dictionary defines trade as "*exchange (something) for something else, typically as a commercial transaction.*" Likewise, Cambridge Dictionary defines trade as "*the activity of buying and selling, or exchanging, goods and/or services between people or countries.*"

73. In the present circumstances, it cannot be said at this stage that the Accused persons had entered into trade or business and the income generated therefrom, can be termed as an income on which tax liability arises because of concealment. It is evident from the definition of the 'trade' that the *modus operandi* of the functioning of the Accused Company cannot be termed as an activity of trade and business. As has been discussed above, it is a money which is accumulated by fraud and deception and infact, *prima facie* comes within the definition of *proceeds of crime*.

74. In the case of Commissioner of Income Tax vs. State of Punjab and Anr., [1983] 139 ITR 602 (P&H) when the money has been recovered from the accused persons, it cannot be held as an income or belonging to the accused till the conclusion of the trial, if the accused is unable to explain its source and is convicted under the Prevention of Corruption Act.

75. The Apex Court in the case of State of Bombay vs. R.M.D. Chamarbaugwala, 1957 SCR 874 had held that certain activities can under



no circumstances be regarded as trade, business or commerce although the usual forms and instruments are employed therein. To exclude such activities from the meaning of those words, is not to cut down their meaning at all, but to say only that they would not fall within the meaning of words “trade” or business”; there can be no “trade” or “business” in crime.

76. The Petitioner has relied on the case of Commissioner of Income Tax Patiala vs. Piara Singh, (supra) which relates to claim of deduction due to confiscation of goods while smuggling, which was allowed as a business deduction as arising out of a business of smuggling i.e., *a loss which sprung directly from carrying on of his business and was incidental to it*. This judgement is distinguishable and not applicable to the present facts.

77. Recently, the Supreme Court in Commissioner of Income Tax Jaipur vs. Prakash Chand Lunia, Civil Appeal Nos.7689-90 of 2022 decided on 24.04.2013, distinguished the facts in Piara Singh, (supra) which involved confiscation losses incurred in an illegal business (smuggling), from those of Prakash Chand Lunia, (supra) where the Assessee was engaged in a legitimate business and the confiscation was incidental to an infraction or illegal act. *The Court further held that any loss or expenditure arising from illegality or offence (including confiscation or penalty) is not allowable as a business loss, irrespective of whether the underlying business is lawful or unlawful. This principle is also fortified by the statutory prohibition introduced to ensure no allowances are granted against violations of law.*

78. The seized amounts in the present case subject to investigation under PMLA are *prima facie* proceeds of crime, and not lawful income from trade or business. Therefore, till such time the trial is concluded under PMLA/the FIR No.84/2011 dated 07.04.2011 (regarding cheating the investors) and it



is established that the income/money recovered from the various Bank accounts which has been put in FDRs was indeed the income of the accused persons, the Income Tax Department cannot appropriate for tax liability by holding it as the income of the Company/Directors. Therefore, to treat such amounts as taxable income recoverable by the Income Tax Department, prior to the conclusion of the PMLA trial or adjudication, would be erroneous. The case of Piara Singh, (supra) cannot be relied herein to support the premature appropriation of the seized funds for tax recovery purposes.

79. Moreover, as has been observed by the Special Judge, in the case of Solidare India Limited, (supra), it was held when there are two special Acts then the one which is subsequent in point of time shall prevail. The PMLA Act has been enacted subsequent to Income Tax Act.

80. This position finds further support in the Division Bench judgment of the Punjab & Haryana High Court in Deputy Director vs. PNB Housing Finance Limited, 2020:PHHC:029640-DB, which dealt with a similar conflict between PMLA and the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act). The Appellate Tribunal under PMLA had released attached properties to secured creditors (Banks) during the pendency of criminal trial, despite the properties being subject to PMLA proceedings. The Division Bench, however, held that “*on the conjoint reading of both the Acts, we are of the considered view that PMLA would prevail over the SARFAESI Act*”. Even though Section 26E of SARFAESI Act contains its own *non-obstante clause* giving priority to secured creditors over “all revenues, taxes, cesses and other rates payable to the Central Government or



State Government”, the court held that *PMLA’s overriding provision of Section 71, would prevail.*

81. The Karnataka High Court in the case of Dyani Antony Paul and Ors. vs. Union of India and Ors., 2020 SCC OnLine Kar 4995 noted the observations of the Apex Court in Solidare India Limited, (supra) and Ketan Parekh, (supra), that cases might arise where both the enactments have the non-obstante clause, then in that event the proper perspective would be that *one has to see the subject and dominant purpose for which the special enactment was made and in case the dominant purpose is covered by that contingencies*, then notwithstanding that the act might have come at a later point of time, the earlier enactment prevails and the intention of law makers can be ascertained by looking to the objects and reasons.

82. Even if, arguendo, the ‘dominant purpose’ test noted in Dyani Antony Paul, (supra) were to be applied in determining which special enactment should prevail when both contain non-obstante clauses, PMLA would still take precedence in the present circumstances. The dominant purpose of PMLA is to forfeit proceeds of crime and restore such property to legitimate claimants, which directly addresses the core issue in this case - whether the seized funds constitute proceeds of crime obtained through fraudulent schemes or legitimate income subject to taxation. The IT Act’s purpose of revenue collection becomes secondary when *the very foundation of taxable income is disputed and under criminal investigation.*

83. Considering the objective and purpose of PMLA and Income Tax Act as detailed above and also considering that PMLA is a subsequent Act, it is hereby held that the Application of the Income Tax Department for release of the FDR amounts to be appropriated towards the alleged tax liability of



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the accused persons, has been rightly rejected and cannot be entertained until the conclusion of the trial in the criminal case, as any premature release would prejudice the ongoing PMLA proceedings.

84. There is no merit in the present Petition, which is hereby dismissed.

85. The Petition stands disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

SEPTEMBER 18, 2025

RS/Va