

(2023) 05 ATPMLA CK 0004

Appellate Tribunal Under Prevention Of Money Laundering Act

Case No: MP-PMLA-11653, 11654/DLI/2023, 11653

Sanjay Jain (IN JC)

APPELLANT

Vs

Deputy Director, Directorate Of
Enforcement, New Delhi

RESPONDENT

Date of Decision: May 8, 2023

Acts Referred:

- Prevention Of Money Laundering Act, 2002 - Section 2(u), 2(1)(u), 2(1)(zb), 26

Hon'ble Judges: Munishwar Nath Bhandari, Chairman; V. Anandarajan, Member

Bench: Division Bench

Advocate: Stuti Gujral, Shaurya Singh, Udipto Kausak Sharma, Vipin Kumar, Nidhi Raman, Akash Mishra

Final Decision: Dismissed

Judgement

FPA-PMLA-5850/DLI/2023

This Appeal under Section 26 of the Prevention of Money Laundering Act, 2002 (Short the Act of 2002) has been filed to challenge the order dated

13.04.2023 passed by the Adjudicating Authority under the Act of 2002.

The order under challenged is an interim order passed on an application filed by the Appellant to seek cross examination of two officers, namely, Shri

Manoj Kumar, Deputy Director and Shri Anil Kumar Monga, Assistant Director of the Enforcement Directorate. By the impugned order, application

was dismissed thus it has been challenged by way of this Appeal.

The cross examination of the two officers was sought in reference to the "value" of the property attached after registration of the ECIR against

the Appellant finding him involved in the crime. It is alleged that value of the property attached is disproportionate to value of the proceeds of crime.

The value of thirteen properties attached by the Respondent is much higher to value of the proceeds of crime assessed by the Enforcement

Directorate.

The cross examination would be to find out the value of the property and for that purpose the Learned Counsel for the Appellant even framed a

question of law for its determination by this Tribunal. The question of law otherwise goes into the root of the case for the cross examination of two

witnesses therefore, we would be first addressing the legal issue raised by the Appellant.

The legal issue is as to how value of the attached property to be determined. The facts on record show that after registration of ECIR, the Competent

Authority issued a Provisional Attachment Order. It was sent to the Adjudicating Authority for passing an appropriate order within 180 days. The

Adjudicating Authority caused a notice and served on the Appellant for filing reply by 02nd March, 2023. The Appellant filed an application to seek

cross examination of two officers. The cross examination was sought in reference to the value of the property attached by the Respondent. According

to the Appellant, the value of the property attached by the Respondent Department is much higher than the value of the proceeds of crime. The value

of the proceeds of crime is of Rs. 78,39,82,343/- and as against the aforesaid, the property attached is worth of Rs. 216, 84,36,000/- in the share of the

Appellant. To contest the property attached in excess to value of the proceeds of crime, the cross examination of the two officers of the department

was sought yet denied by the Adjudicating Authority.

The Respondent attached the property of value in excess to the proceeds of crime for the reasons that value of the attached property was not taken

on the current market value as on the date of the attachment. The value of the attached property was taken as on the date of its acquisition many

years back. The Respondent should not have taken value of the property as on the date of attachment and in that case there would have no

reasons to attach thirteen properties. The value of proceeds of crime is of Rs. 78,39,82,343/- but as against the aforesaid, the Respondent have

attached the property worth of Rs. 216,84,36,000/-.

The Learned Counsel for the Appellant gave reference to Section 2(1)(u) & (zb) of the Prevention of Money Laundering Act, 2002 (In short "the

Act of 2002"). The provision defines "proceeds of crime" and "value" respectively. Definition has been referred to impress upon the

Tribunal to give proper meaning to the word "value" defined in Section 2(u) of the Act, 2002. The word "value" used therein should denote

the market value of the property as on the date of the attachment. It cannot be the value of the property as on the date of its acquisition. To clarify the

aforesaid, it is submitted that if the proceeds of crime is worth of Rs. 10,00,000/- (Rupees Ten Lakh Only) then in absence of the availability of the

proceeds of crime in the hands of the Appellant, the property of such value can be attached and thereby the attached property should be of the current

market value of Rs. 10,00,000/- (Rupees Ten Lakh Only). In the instant case, the Respondent have not applied the aforesaid method before taking

"value of such property" to secure alleged proceeds of crime. The property so attached by the Respondent has been valued at a lesser rate than

the current market price. If this Tribunal holds that in absence of the availability of the proceeds of crime in the hands of the Appellant, any property

of equivalent value to be attached then value of property should be assessed at the current market price and in that case there would be no reasons to

deny cross examination of two officers of the Department to find out the proper value of the property.

The Learned Counsel for the Appellant submits that one and same word used in the statute can be given different meaning subject to the context in

which it is used, thus word "value" can be given different meaning used in different context. It may be different than what has been defined in

Section 2 (zb) of the Act of 2002.

The Learned Counsel for the Appellant has cited judgment of the Apex Court and the same would be considered while dealing the argument of the

Appellant. It is, however, submitted by the Counsel that cross examination, being part of the principle of natural justice, could not have been denied by

the Adjudicating Authority. It is more so when the Adjudicating Authority is under obligations to follow the principle of natural justice. The prayer is

accordingly to set aside the order and allow the Appeal with a direction to provide an opportunity of cross examination to the Appellant for the purpose of valuation of the properties.

The Learned Counsel for the Respondent has opposed the argument of the Learned Counsel for the Appellant. She has supported the order passed by the Adjudicating Authority where the legal issue of the "value of the property" has been kept open. The parties have been given liberty to substantiate their arguments in reference to the material produced by them so that factual and legal issue can be decided by the Adjudicating Authority.

However, the Appellant has now raised a legal issue at this stage. The short legal issue is regarding value of the property. According to the Appellant, value of the property sought to be attached should be at the current market price on the date of attachment. As per the definition of word "value" given under Section 2(1)(zb), the value of the property would be taken as on the date of acquisition. The prayer of the Appellant is to take a different meaning of word "value" then defined under the Act of 2002.

The argument is per say unsustainable as neither the Tribunal nor any Court can give different meaning to the word defined under the same enactment. The definition of word "value" given in Section 2(zb) is very clear and thereby the Respondent have taken the value of the property as on the date of its acquisition. It is as per the provision of the Act, 2002.

The Counsel for the Appellant has referred press release where the value of the property was taken as on the date of the attachment. It is submitted press release nowhere indicate assessment of value of the property said to have on the current market value as on the date of attachment. It may be that in the press release, the market value of the property is also indicated. The detailed argument on each issue were raised by the Learned Counsel for the Respondent and would be dealt with while dealing with the argument of the Learned Counsel for the Appellant.

We have considered the rival submissions of the Counsel for the parties and scanned the matter carefully. According to the Appellant, the Respondent have attached 34 properties after registration of ECIR. It is stated by the Learned Counsel for the Appellant that value of proceeds of crime is of Rs.

78,39,82,343/-. As against the aforesaid, 13 properties for worth of atleast Rs. 216,54,36,000/- has been attached. To secure the proceeds of crime,

the value of the property to be attached should not be in excess to the value of the proceeds of crime. It happened because value of the attached

property was not taken on current market rate but the date of its acquisition. To support value of attached property to be of Rs. 216,84,36,000/- a

reference of the Valuation Report has been given. The main issue for consideration is as to whether attachment of the property should be after

assessment of its value on the current market price as on the date of attachment to protect the proceeds of crime.

To answer of the question mentioned above, it would be necessary to quote Section 2 (1)(u) & 2(1) (zb) of the Act of 2002. Both the provisions are

quoted hereunder:-

“Section 2 in The Prevention of Money-Laundering Act, 2002

(u) “proceeds of crime” means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a

scheduled offence or the value of any such property [or where such property is taken or held outside the country, then the property equivalent in value

held within the country] [or abroad]

[Explanation- For the removal of doubts, it is hereby clarified that “proceeds of crime” including property not only derived or obtained from the

scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the

scheduled offence;]

(zb) “value” means the fair market value of any property on the date of its acquisition by any person, or if such date cannot be determined, the

date on which such property is possessed by such person.”

The “proceeds of crime” means any property derived or obtained, directly or indirectly by any person as a result of

criminal activity relating to a scheduled offence or the value of any such property etc. According to the Appellant, the property so attached by the

Respondent was not derived or obtained directly or indirectly as a result of criminal activity relating to a scheduled offence but the value of such

property. The value of the attached property has been taken as per Section 2(1)(zb). It has been questioned by the Appellant. According to the

Appellant, definition of "value" applied for the attachment of the property in question is not proper rather the meaning of word "value" of any

such property should have been on the current market value for the purpose of attachment of the property on equivalent value to the proceeds of

crime. The Respondent should not have applied the definition of the "value" given under Section 2(1)(zb) of the Act for the purpose of attachment

of the property.

We find that as per the definition word "value" in Section 2(1) (zb), it should be fair market value of any property on the date of its acquisition for

any purpose or if such date cannot be determined, the date on which such property is possessed by such person.

In view of the definition of word "value" given under the Act, we would be unable to accept the argument of the Learned Counsel for the

Appellant to give different meaning to the word "value" then provided under Section 2(zb). According to the Appellant, word "value" of the

property for the attachment should be the fair market price as on the date of attachment and not on the date of acquisition. The prayer is to deviate

from the definition of word "value" given under the Act of 2002. We could not persuade ourselves to accept the aforesaid arguments. It would be

not only for the reasons that the Tribunal and even for that any Court of the land cannot re-write the provisions or given different meaning to a

provision than provided under the Statute. The substitution of the provision of a statute by the Tribunal and even by the Court is not permissible though

it can be struck down by a Constitutional Court if it is found to be ultravires to the Constitution.

No challenge to the word "value" defined under Section 2(1)(zb) has been made before any Constitution Court. The Tribunal was inclined to

defer the hearing of the Appeal for that but Appellant did not show inclination to challenge the Constitutional validity of the provision referred above.

The Tribunal was even inclined to give liberty to the Appellant to first raise the legal issues before the Adjudicating Authority where it was kept open

and is coming out from the perusal of the impugned order. The Learned Counsel for the Appellant submitted that liberty is not required in view of the clear instructions of the Appellant to press the legal issue before this Tribunal.

The word "value" has been used in Section 2(1)(u) defining "proceeds of crime" and if Section 2(1) (u) & 2(1) (zb) are read together

"value of any such property" can be assessed at the fair market value as on the date of acquisition and not at the current market price on the date of attachment.

The Legislature under their wisdom have defined the word "value" and it remains Constitutional validity unless is strict down by a Constitutional Court.

The Learned Counsel for the Respondent has submitted that the definition of "value" of the property was not deliberately worded to take it on

current market price. It is to avoid any conflict in assessment of the property which may vary on assessment at market price. The "value" of the

property is to be taken as on the date of its acquisition or possession. We find that the argument of the Learned Counsel for the Respondent to be

acceptable and otherwise this Tribunal or for that even any Court is not having jurisdiction to re-write the provision of a Statute. If we accept the

arguments of the Learned Counsel for the Appellant for giving different meaning to the word "value" than defined under Section 2(1) (zb) of the

Act, it would be to re-write the provision going beyond our jurisdiction.

The Learned Counsel for the Appellant had tried to pursue this Tribunal to take different meaning of word "value" in the context it is required for

giving proper interpretation to the provision of Act of 2002. The reference of the judgment in the case of Shri Jagdish Chand Sapehia V/s. State of

Himachal Pradesh & Ors. in SCC OnLine HP 1533 was given. Para 28 to 35 of the said judgment was referred and are quoted hereunder:-

"28. The view we take is forfeited by law. The principles of interpretation of a statute are now well settled. A statute is an edit of the Legislature

(Vishnu Pratap Sugar Works (Private) Ltd. v/s. Chief Inspector of Stamp, U.P., AIR 1968 SC 102 (Three Judges)), and the conventional way of

interpreting or construing a statute is to seek the 'intention' of its maker {RMD Chamarbaugwala v. Union of India, AIR 1957 SC 628 (Five Judges)}.

29. The Court has to look essentially to the words of the statute to discern the 'referent' aiding their effort as much as possible to the context.

30. The legal maxim mens or sententia legis {Abhiram Singh v. C.D. Commachen (Dead) by Legal Representatives & others, (2017) 2 SCC 629

(Seven Judges)}, and Generalia specialia non derogant {General Things do not derogate from special things, OSBORNS Law Dictionary}, are well settled.

31. It is also settled principle of law that the statute must be read as a whole and one provision of the Act should be construed with respect to the

other provisions in the same Act, so as to make a consistent enactment of the whole statute. This, in fact, is the elementary rule of interpretation. {AG

v. HRH Prince Ernest Augustus, (1957) 1 All ER 49; Philips India Ltd. v/s. Labour Court, (1985) 3 SCC 103 (Two Judges)}.

32. Every clause of a statute should be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a

consistent enactment of the whole statute or series of statutes relating to the subject-matter. {M. Pantiah and others v. Muddala Veeramallappa and

others, AIR 1961 SC 1107 (Five Judges)}. The principle for such construction is ex visceribus actus {Newspapers Ltd. v. State Industrial Tribunal,

U.P. & others, AIR 1957 SC 532 (Three Judges)}.

33. It is also a settled principle of law that the same word may mean one thing in one context and another in a different context. For this reason the

same word used in different sections of a statute or even when used at different places in the same clause or section, may bear separate meanings.

{D.N. Banerji v. P.R. Mukherjee, AIR 1953 SC 58 (Five Judges); Ramnarayan Mor v. State of Maharashtra, AIR 1964 SC 949 (Five Judges); and

Anand Nivas (P) Ltd. v. Anandji Kalyanji, AIR 1965 SC 414 (Three Judges)}.

34. In Macquarie Bank Limited Vs. Shilpi Cable Technologies Limited, (2018) 2 Supreme Court Cases 674, Hon'ble Supreme Court has held that the

task of a Judge, when he looks at the literal language of the statute as well as the object and purpose of the statute, is not to interpret the provision as

he likes but to interpret the provision keeping in mind the Parliament's language and the object that Parliament had in mind.

35. In K.P. Sudhakaran and another Vs. State of Kerala and others, (2006) 5 Supreme Court Cases 386, Hon'ble Supreme Court has held that once a statutory rule is made without providing any exceptions, it is not possible to carve out exceptions to such rule by judicial interpretation.â€

In para 33, it has been held that same word may mean one thing in one context and another in a different context but in

para 31, it was categorically held that statute must be read as a whole and one provision of the Act should be construed with respect to the

other provision in the same Act, so as to make a consistent enactment of the whole statute. In para 35, referring to the judgment of the Apex Court in

K.P. Sudhakaran V/s. State of Kerala, (2006) 5 SCC 386, it was held that once a statutory rule is made without providing an exceptions, it is not

possible to carve out exceptions to such rule by any judicial interpretation. The judgment of the Apex Court (Supra) goes against the Appellant who

were insisting to take a different meaning of word "value" then defined in Section 2(zb) of the Act, 2002. One and the same word can be given

two meaning when it is not defined under the Statute and is to be used in the context of the provision. For example word "may" can be read as

"shall" and at the same time it is read as "may" in the context of a provision but when the word has not been defined under the Act.

The Appellant has also cited the judgment in the case of D.N. Banerji V/s. P.R. Mukherjee (1952) 2 SCC 619. Para 15 of the said judgment is

quoted hereunder:-

"15. These remarks are necessary for a proper understanding of the meaning of the terms employed by the statute. It is no doubt true that the

meaning should be ascertained only from the words employed in the definitions, but the get-up and context are also relevant for ascertaining what

exactly was meant to be conveyed by the terminology employed. As observed, by Lord Atkinson in Keates v. Lewis Merthyr Consolidated Collieries

Ltd.

"In the construction of a statute it is, of course, at all times and under all circumstances permissible to have regard to the state of things existing at

the time the statute was passed, and to the evils which, as appears from its provisions, it was designed to remedy."

If the words are capable of one meaning alone, then it must be adopted, but if they are susceptible of wider import, we have to pay regard to what the statute or the particular piece of legislation had in view. Though the definition may be more or less the same in two different statutes, still the objects to be achieved not only as set out in the preamble but also as gatherable from the antecedent history of the legislation may be widely different. The same words may mean one thing in one context and another in a different context. This is the reason why decisions on the meaning of particular words or collection of words found in other statutes are scarcely of much value when we have to deal with a specific statute of our own; they may be helpful, but cannot be taken as guides or precedents.â€

As per the judgment supra, if the word is capable of one meaning alone then it must be adopted but if they are susceptible of wider import, we need to pay regard to what the statute or the particular piece of legislation had in view. In the instant case, definition of word â€œvalueâ€ is not capable two meaning and more specifically the meaning taken by the Appellant. If we take meaning of word â€œvalueâ€ to mean current market rate of the property then virtually we would substitute the provisions not permissible under the law. The definition of â€œvalueâ€ given in Section 2(zb) of the Act is unambiguous. The value of the property would be as it was on the date of its acquisition or the possession. Any other meaning may lead to ambiguity. It may even lead to serious dispute on the value of the property as would exist in this case where Appellant has taken valuation report from the valuer not accepted by the Respondents.

TheÂ LearnedÂ CounselÂ forÂ theÂ AppellantÂ hasÂ alsoÂ referredÂ following judgments to support her arguments:-

(1) Dhankeswari Cotton Mills Ltd. v/s. Commissioner of Income Tax, West Bengal (1955) 1 SCR 941.

(2) K.L. Tripathi v/s. State Bank of India & Ors. (1984) 1 SCC 43.

(3) Andaman Timber Industries v/s. Commissioner of Central Excise, Kolkata-II, (2016) 15 SCC 785.

(4) Shahid Balwa v/s. The Directorate of Enforcement 2013 SCC OnLine

(5) Prem Singh v/s. Special Director, Enforcement Directorate 2014 SCC OnLine Del 2706.

(6) Kalpena Industries Limited v/s. Union of India 2018 SCC OnLine Bom 304.

(7) Madhumilan Syntax Pvt. Ltd. and Anr. v/s. Union of India 1984 SCC

(8) Dr. J.J. Merchant & Ors. v/s. Shrinath Chaturvedi (2002) 6 SCC 635.

(9) Sampad Narayan Mukherjee v/s. Union of India & Ors. 2019 SCC

(10) Dr. U.S. Awasthi v/s. Adjudicating Authority, PMLA and Anr. W.P. (C) 125/2023 dated 10.01.2023 before the Honâ€™ble High Court of Delhi.

(11) Dr. U.S. Awasthi v/s. Adjudicating Authority, PMLA and Anr. FPA-PMLA-5382/DLI/2023 dated 31.01.2023 Before the Honâ€™ble Appellate Tribunal under PMLA at New Delhi.

(12) Abbeys Realcon LLP v/s. Directorate of Enforcement PMLA, New Delhi FPA-PMLA-5526/DLI/2022 dated 19.12.2022 Before the Honâ€™ble Appellate Tribunal under PMLA at New Delhi.

(13) Jagdish Chand Sapehia v/s. State of Himachal Pradesh & Ors.

(14) Printers (Mysore) Ltd. and Anr. v/s. Asst. Commercial Tax Officer and Ors. (1994) 2 SCC 434.

(15) Shamrao Vishnu Perulekar v/s. District Magistrate, Thana AIR 1957

(16) D. N. Banerji v/s. P.R. Mukherjee (1952) 2 SCC 619.

(17) Anand Nivas (P) Ltd. v/s. Anandji Kalanji AIR 1965 SC 414.

(18) Dy. Director, Directorate of Enforcement Delhi v/s. Axis Bank & Ors. 2019 SCC OnLine Del 7854.

(19) Prakash Industries Ltd. and Anr. v/s. Directorate of Enforcement 2022

(20) Surendra Singhi v/s. Joint Director, Directorate of Enforcement Hyderabad and Ors. 2018 SCC OnLine AT PMLA 51.

The judgments referred to above are on the issued not relevant to this case or repetition of the issue discussed while dealing with two judgments thus

we are not elaborately discussing those judgments.

In the light of the discussions made above, we find that the arguments of the Learned Counsel for the Appellant to give meaning to the word

â€œvalueâ€ different then provided under Section 2(1) (zb) cannot be accepted and in the light of the aforesaid, the very basis to seek cross

examination of the officers to get market value of the property at the date of attachment fails.

At this stage, we may clarify that certain press release of the Enforcement Directorate has been enclosed alongwith the Appeal to impress upon that

even the Department is taking market value of the property as on the date of attachment thereby discrimination has been caused with the Appellant.

The aforesaid has been clarified by the Learned Counsel for the Respondent. The press release does not indicate that the property attached therein

was after taking its market value as on the date of attachment. Mere reference of the current value of the property does not mean attachment of the

property taking its current market value. It is otherwise to be clarified that even if the Respondent had taken current market value of the property, as

on the date of the attachment in few case, this Tribunal cannot perpetuate the illegality committed by the Department, if any.

In the light of the discussions made above, we do not find that a ground is made out to seek cross examination of the two officers. It is when cross

examination of the officer is sought for valuation of the property attached and that too as on the date of attachment while as per the definition of

“value” given in Section 2(zb) of the Act, 2002, it is to be taken as on the date of its acquisition or possession, as the case may be. We

accordingly find no reasons to cause interference in the interim order passed by the Adjudicating Authority though it kept the legal issue open with

liberty to the Appellant to raise it appropriately but Tribunal was requested to decide the legal issue and accordingly we have passed the order after

considering the legal issue raised before us.

Before parting with the order, we may observe that the cross examination of the witness may be part of the principle of natural justice but it cannot be

sought for the sake of it and even in the case, issue for cross examination is not even made out. The proceeding before the Adjudicating Authority is

otherwise to be completed within 180 days as per the provisions of the Act of 2002. The appeal is accordingly fails and dismissed.