

Analysis of Important FEMA Compounding Orders – Part I

Harshal Bhuta

M.Com., F.C.A., A.D.I.T., LL.M. in Intl. Tax Law
(Wirtschaftsuniversität Wien)

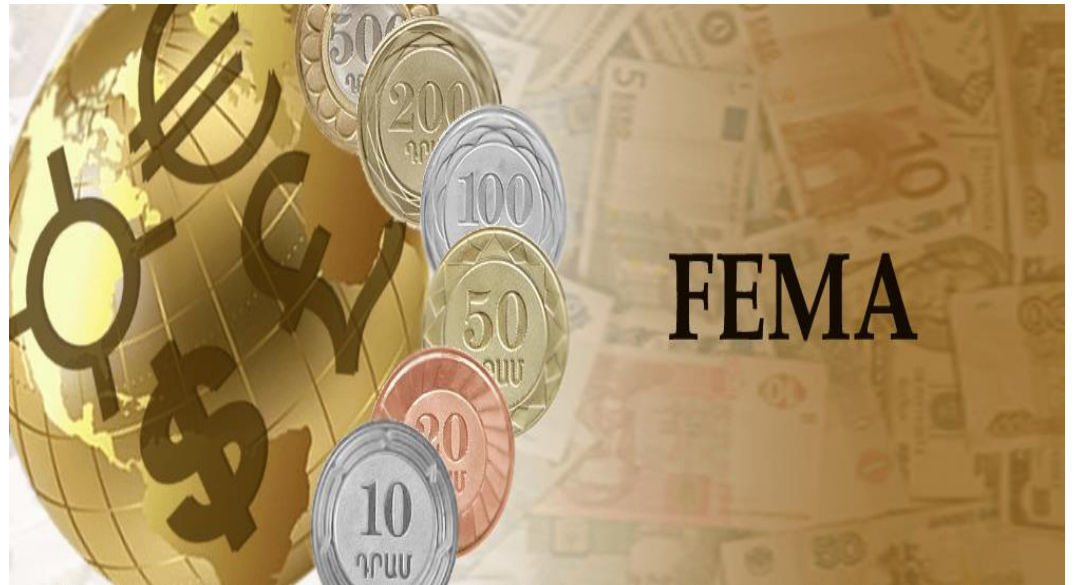
Introduction

- ❑ Vide A.P. (Dir Series) Circular No. 73 dated 26/05/2016, RBI decided to opt for public disclosure of compounding orders.
- ❑ Till date, 2355 orders have been hosted on the RBI website.
- ❑ Compounding orders are not very heavy or detailed in facts but to the point and crisp in listing the facts, highlighting the contravened provision and indicating compounding fee amount.
- ❑ They do not hold any precedence value yet they hold immense guidance value.
- ❑ Analysis of compounding orders provides an opportunity to obtain vital insights into principles applied by RBI while interpreting provisions of FEMA and important notifications.

Presentation outline – Coverage of Compounding orders

Regulation nomenclature	Corresponding Notification No.
✓ FEMA, 1999	-----
✓ Current Account Transaction Rules	GSR 381(E)
✓ Capital Account Transaction Regulations	FEMA 1/2000-RB
✓ ECB Regulations	FEMA 3/2000-RB
✓ Rupee Borrowing Regulations	FEMA 4/2000-RB
✓ Deposit Regulations	FEMA 5/2000-RB
✓ Forex Holding Regulations	FEMA 9/2000-RB
✓ Foreign Currency Account Regulations	FEMA 10/2000-RB
✓ Forex Receipt and Payment Regulations	FEMA 14/2000-RB
✓ Immovable Property Transaction Regulations	FEMA 21/2000-RB
✓ LO/BO/PO Regulations	FEMA 22/2000-RB
✓ Export Regulations	FEMA 23/2000-RB

Contravention of provisions under FEMA,1999



Foreign Exchange Management Act

❖ Mahendra Kumar Sanghi [C.A. No. 4446/2017]

Facts

- The shares of one Indian company were held by a Mauritius holding company. The applicant, a resident Indian had purchased shares of the said Indian company from its Mauritius based holding company on 5th July 2016. The shares were purchased using the funds held in the applicant's overseas UK account with funds remitted under LRS on 24th September 2013. While remitting the funds under LRS, applicant gave the declaration that said funds shall be utilised for investment in shares overseas.
- Subsequently, RBI advised the applicant to unwind the transaction and accordingly, the transaction was reversed on 16th May 2017 and the amount utilized was credited back on 30th May 2017.

Relevant Regulation

- Section 3(b) & Section 10(6) of FEMA – Making payment to PROI in any manner

Key takeaway/ observations

- General v/s Specific – Section 3(b) v/s FEMA 20/2000-RB?
- LRS restrictions need to be borne in mind. Debits and credits.

Foreign Exchange Management Act

❖ Global Collect India Private Limited [C.A. No. 4230/2016]

Facts

- The applicant was engaged in the business of collecting payments from the customers located in India on behalf of non-resident merchants. The applicant entered into a service level agreement effective from 15th May 2006 with its holding co. incorporated in Netherlands. Pursuant to which, the applicant collected funds in its bank account in India on behalf of the overseas merchants for sale of products/services to Indian customers.
- The funds so collected by the applicant during the period February 2007 to November 2010 amounted to Rs. 2,60,69,306/-.

Relevant Regulation

- Section 3(c) of FEMA - Receive any payment otherwise than through AD by order or on behalf of PROI

Poser

- If settlement of forex obligation does not conclude within India and PRI would onward remit to foreign principal after deduction of commission, whether one can characterize it to be a current account transaction?

Foreign Exchange Management Act

❖ **Shri Vinit Beriwal, Smt Uma Beriwal, Shri Vitthal Beriwal [C.A. No. 4813/2018, C.A. No. 4814/2018, C.A. No. 4815/2018]**

Facts

- Shri Shyam Sunder Beriwal & Smt Bimla Devi Beriwal are relatives of the applicants. The applicants being resident individuals had remitted an aggregate amount of GBP 3,35,000 to the overseas joint foreign currency account of Shri Shyam Sunder Beriwal and Smt. Bimla Devi Beriwal as a gift on 19th November 2010 under LRS route.
- Thereafter, the applicants approached RBI for post facto approval and were advised to unwind the transaction and approach RBI for compounding. Subsequently, the applicants have received back the remitted amount on 05th November 2018 by unwinding the transaction.

Relevant Regulation

- Section 5 of FEMA r.w. Paragraph 7(b) of Master Direction ('MD') on LRS

Poser / Observations

- Relevance of Sec 5?
- Whether Master Direction carries force of law? - Krishnaraj Goswami vs RBI [2007(6)BomCR565]

Foreign Exchange Management Act

❖ Azoy Bansal [C.A. No. 4940/2019]

Facts

- The applicant was a Director of an Indian company viz. H F Metal Art Private Limited when the company had received certain export advances during January 2008 to July 2011 amounting to Rs. 6,30,79,984/-, but could not make exports within the prescribed time limit. However, later on the company had adjusted the said export advances against exports made by them during August 2013 to June 2014 and accordingly, no advances are outstanding.
- Also, the company could not realize export proceeds against certain exports amounting to Rs. 10,58,50,346/- within the prescribed time period of 9 months during 2014-2018.

Relevant Regulation

- Section 42(1) of FEMA – Deemed guilty of contravention

Poser

- Circumstances under which the provision of deemed liability of “person in charge of, and responsible to the company for the conduct of the business of the company” can be attracted?

Contravention of Current Account Transaction Rules



FEM (Current Account Transactions) Rules, 2000

❖ Jaguar Buildcon Private Limited [C.A. No. 3950/2016]

Facts

- The applicant was engaged in building a luxury hotel under the project name Namaste. The applicant hired various foreign consultants for completion of project. The applicant had remitted AED 8,113,406, USD 422,231, GBP 160,000 and Euro 229,687 equivalent to Rs.15,75,37,196/- through HDFC Bank between 10th June 2010 and 10th December 2012.
- However, the applicant thereafter obtained post facto approval from Foreign Exchange Department, Regional Office, New Delhi for the transactions.

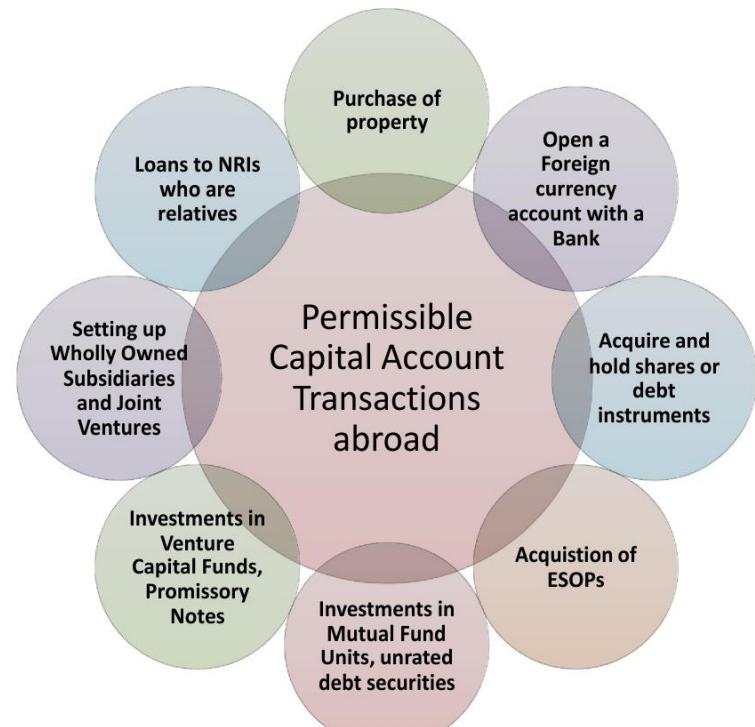
Relevant Regulation

- Paragraph 2(iii) of Schedule III of FEM (Current Account Transaction) Rules, 2000 – Not obtaining prior RBI approval for remittance > USD 1,000,000 for project

Key takeaway

- Threshold applicability is qua project and not per financial year/ per party(ies).
- Amount of contravention would be the remittance made in excess of USD 1,000,000 per project.

Contravention of Capital Account Transaction Regulations



Notification No. FEMA 1/ 2000-RB – Capital A/c Reg.

❖ Seba Bapu Moopan [C.A. No. 4961/2019]

Facts

- The applicant an Indian resident had remitted an amount of USD 2,71,480 under LRS during the F.Y. 2017-18 which exceeded the prescribed limit of USD 2,50,000. The Bank had reportedly sought clarification from the applicant.
- The applicant claimed ignorance stating that **she assumed that the LRS limit was not inclusive of ODI transactions and hence did not declare the transactions done for family maintenance in the cumulative position while remitting for ODI purpose.**
- As the LRS transactions were monitored manually by the applicant's bank during that time, control through PAN was not possible.
- The applicant was issued a memorandum of contravention advising her to remit back the excess amount. Pursuant to which, the applicant remitted back the excess amount of USD 21,480. .

Relevant Regulation

- Regulation 4 – Sell/ draw foreign exchange in excess of USD 2,50,000 without prior RBI approval

Notification No. FEMA 1/ 2000-RB

❖ Seba Bapu Moopan [C.A. No. 4961/2019]

Key takeaway/ Observations

- LRS limit of USD 2,50,000 includes remittance for current as well as capital account transaction including .
- A.P. (DIR) Series Circular No. 50 dated 11th February 2016 – PAN mandatory when making remittance under LRS. AD to report in FETERS.
- A. P. (DIR) Series Circular No. 23 dated 12th April 2018 – daily online reporting system of LRS transaction.
- Thus, as on today almost impossible that contravention of remittance in excess of LRS limit can happen going forward.
- Resident individuals to take care of newly enacted TCS provision while remitting the funds under LRS. TCS would not be counted under LRS limit.
- One should be careful since unwinding is necessary outcome of contravention and if the remittance funds are used up abroad, one would come under a fix!

Contravention of External Commercial Borrowings Regulations



Notification No. FEMA 3 - ECB

- ❖ **Arun Mammen [C.A. No. 3967/2016]**
- ❖ **Arvind Singh Mewar [C.A. No. 4623/2018]**

Facts

- Under both cases, the applicants being resident individuals, opened foreign currency accounts overseas – under LRS / from foreign earnings. Out of the balances held in overseas foreign currency account, the applicants lent amounts to persons outside India – individual in Mauritius / company incorporated in UK.

Relevant Regulation

- Arun Mammen: Regulation 3; Arvind Singh Mewar: Regulation 5(1) – Lending in foreign exchange by resident to non-resident

Observations

- Vide Notf. No. FEMA 263/RB-2013 dated 05th March 2013, an individual were permitted to make ODI. However, thereunder too an individual is not permitted to extend loan to overseas entity.
- Interplay between Regulation 3 of FEMA 3 v/s Regulation 5(1) of FEMA 3

Notification No. FEMA 3 - ECB

❖ Cisco Systems (India) Private Limited [C.A. No. 4253/2016]

Facts

- The applicant was jointly held by Cisco Systems Management B.V., Netherlands, CSI, Mauritius Inc. (Cisco Mauritius) and Cisco Systems Denmark ApS (Cisco Denmark).
- The applicant had entered into certain transactions with Cisco US (Group Company) and Cisco Netherlands (one of the parent companies) from the years 2001 to 2011 amounting to Rs. 3,84,59,60,000/-.
- This amount remained outstanding beyond the stipulated time period and was remitted to group companies only on 19th January 2017.

Relevant Regulation

- Regulation 3 read with Schedule I – General prohibition

Poser/ Observations

- Deemed ECB – Benchmark period?
- Computation of undue gains in ECB transactions.

Notification No. FEMA 3 - ECB

❖ **Dharpal Agarwal (for self and on behalf of Vineet, Chander, Urmila, Priyanka & Chandrima) [C.A. No. 4931/2019]**

Facts

- The applicant and the others, all resident individuals had jointly acquired a residential property in Singapore at a total cost of SG\$ 3,032,320/-. While a portion of the cost was met through remittances made under LRS, balance amount was paid by availing a loan from OCBC Bank, Singapore in the year 2007.
- Further, the applicant vide e-mails dated stated that:
 - Instalments for repayment of loan and payment of interest (EMIs) with respect to the loan were met out of the proceeds of lease rental.
 - In the initial years of loan repayment, reduction in principal amount of loan was small and the interest component made a large part of the EMI. Therefore, considering the total amount paid under EMIs on the loan, over the years, the applicant ended up effectively re-paying more than the amount of loan.
 - They have not made any gains through availing loans overseas for acquisition of the property abroad.
- The applicant (and others) later on sold the property and repaid the loan amount in the year 2016.

Notification No. FEMA 3 - ECB

❖ **Dharmpal Agarwal (for self and on behalf of Vineet, Chander, Urmila, Priyanka & Chandrima) [C.A. No. 4931/2019]**

Relevant Regulation

- Regulation 3 – General prohibition

Poser/ Key take away/ observations

- Who is an applicant? - Since this case relates to acquisition of immovable property abroad jointly, it seems that RBI had permitted Mr. Dharmpal to file the compounding application for self and on behalf of others.
- Whether immovable property can be acquired abroad on an installment basis?

Contravention of Rupee Borrowing Regulations



Notification No. FEMA 4- Borrowing/ Lending in Rupee

❖ Ayursundra Healthcare Private Limited [C.A. No. 4791/2018]

Facts

- The applicant had granted an interest free loan of Rs. 1,30,00,000/- to the NRI Director on 26th July 2008 and 11th August 2008. The loan was repaid on various dates during the period 2008-2009.
- Also, the applicant availed an interest free unsecured loan on various dates during the period 2009-10 to 2015-16 amounting to Rs. 22,29,89,851/- from its NRI Director without issuance of non-convertible debentures (NCDs).

Relevant Regulation

- Regulation 3 – General Prohibition & Regulation 5(1) – Borrowing in rupee from NRI by without the issuance of NCDs

Poser/ Key takeaway/ Observations

- Undue gains in case of rupee transactions?
- RBI has considered notional interest rates in some of the compounding orders for the calculation of undue gains and has charged compounding fee accordingly.
- Rupee borrowing v/s acceptance of deposit under FEMA 5(R)

Contravention of Deposit Regulations



Notification No. FEMA 5- Deposit

❖ **Gaurav Bamania, Edunetwork Private Limited [C.A. No. 4578/2017, C.A. No. 4577/2017]**

Facts

- **Gaurav Bamania**
 - The applicant an NRI acquired shares of an Indian company Edunetwork Pvt Ltd., and paid the consideration amount through his resident bank account.
 - The applicant was advised by RBI to apply for regularization of the contraventions subject to compounding. Accordingly, the applicant informed Reserve Bank of the designation of the resident account as an NRO account and applied for compounding thereafter.
- **Edunetwork Private Limited**
 - The applicant received the consideration amount from Shri. Gaurav Bamania an NRI, for acquisition of its shares, through the NRI's resident bank account.

Relevant Regulation

- **Gaurav Bamania:** Paragraph 8(a) of Schedule 3 of FEMA 5 & Para 3 of Schedule 4 of FEMA 20
- **Edunetwork Private Limited:** Regulation 4 of FEMA 20 & Para 3 of Schedule 4 of FEMA 20

Notification No. FEMA 5- Deposit

❖ **Gaurav Bamania, Edunetwork Private Limited [C.A. No. 4578/2017, C.A. No. 4577/2017]**

Poser

- **Gaurav Bamania**
 - Period of contravention for non-designation of resident account to NRO account has been considered as beginning from the date of remittance. Instead, should it begin from the date of applicant becoming NRI?
 - Two contraventions for singular transaction on same person?
- **Edunetwork Private Limited**
 - Regulation 4 of FEMA v/s Paragraph 3 of Schedule 4 of FEMA 20 – Whether both the provisions can be attracted simultaneously on different persons for same transaction?

Contravention of Forex Holding Regulations



Notification No. FEMA 9- Real./ Repat./ Surr. of forex

❖ Suresh Taneja [C.A. No. 4966/2019]

Facts

- The applicant is a person resident in India and group CFO of Triveni Engineering and Industries Ltd. The applicant had undertaken various official visits between the year 2001 to 2006 to other countries but failed to surrender the forex amount which he held above the prescribed limit of USD 2000.
- On 07th April 2010, DDIT conducted search and seizure action and foreign currency in excess of USD 2000 was found and inventorised. The applicant received SCN from DoE for the same matter. Subsequently, the applicant encashed the amount exceeding the prescribed limit of USD 2,000 through the authorised person. As the excess forex was surrendered to the authorised person administrative action for the aforesaid contravention was complete.

Relevant Regulation

- Regulation 6(2) – unspent balance of forex not surrender within the prescribed time

Poser/ Key takeaway/ Observations

- Reg. 3 of FEMA 11 which prescribed limit for possession of forex has also invoked in this case. Interplay between Reg. 6(2) of FEMA 9 v/s Reg. 3 of FEMA 11?

Contravention of Foreign Currency Account Regulations



Notification No. FEMA 10- Foreign Currency a/c by PRI

❖ Arvind Singh Mewar [C.A. No. 4624/2018]

Facts

- The applicant during his visit to UK opened an account (parent account) with HSBC, UK on 09th July 2008 by depositing an amount of GBP 5000 (Rs.4,25,100/-) by cash and one more saving account by transfer of funds from the parent account.
- Another account was opened by the applicant with HSBC, UK 03rd August 2011 by transfer of funds from the parent account. The applicant remitted an amount of GBP 154,500 (Rs.1,33,91,218.85) to these foreign currency accounts held with HSBC, UK during the period from November 2008 to October 2014 under the Liberalized Remittance Scheme from the bank accounts held in India.
- In addition to the above remittance, a total amount of USD 800,000 (Rs.4,62,75,732/-) was deposited in the applicant's foreign currency accounts by the JCB group directly during the period 2010-2018 towards fee for appointment as a senior advisor on the JCB Indian Advisory Council.
- Out of the above amount, USD 200,000 (Rs.1,31,48,730.40/-) was repatriated by the applicant in January 2018.

Notification No. FEMA 10- Foreign Currency a/c by PRI

❖ **Arvind Singh Mewar [C.A. No. 4624/2018]**

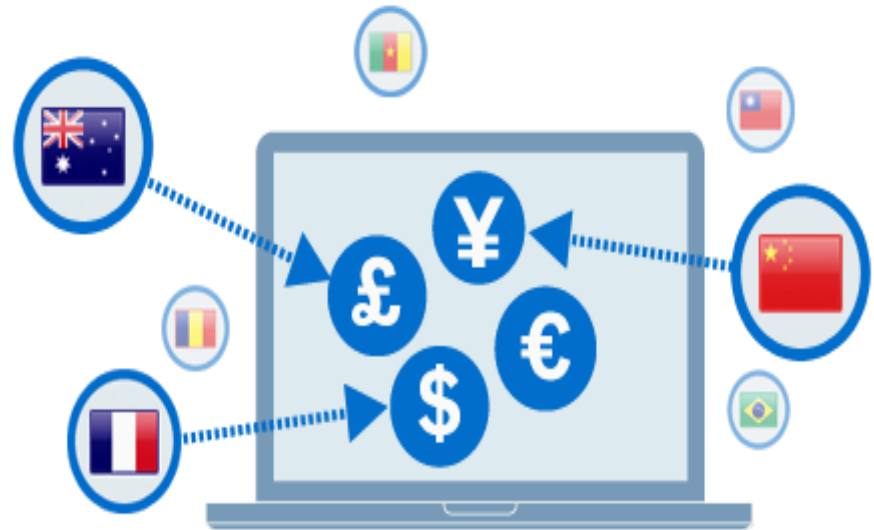
Relevant Regulation

- Regulation 7(6) – Maintenance of foreign currency account (opened with a bank outside India on a foreign visit) even upon return to India

Poser

- Does credit of advisory fee from JCB directly to the applicants foreign currency bank account maintained with bank outside India attract any contravention?

Contravention of Forex Receipt and Payment Regulations



Notification No. FEMA 14- Manner of Receipt/ Payment

❖ Solarwinds (India) Private Limited [C.A. No. 3952/2016]

Facts

- During the years 2009-2012, the applicant had set-off import services payable against export services receivable from Solarwinds IP Holding Company Limited, Cayman Islands, and Solarwinds Software Europe Limited.

Relevant Regulation

- Regulation 3, Regulation 4 and Regulation 5 – Set off of service payables against export service receivable without prior RBI approval

Poser/ Key takeaway/ Observations

- Set-off of import payables against export receivables permitted under limited circumstances subject to satisfaction of conditions. Otherwise prior RBI approval required.

Contravention of Immovable Property Transaction Regulations



Notification No. FEMA 21- Immovable Property in India

❖ **Mr. Barry Kendal Dansie, Ms. Wendy Dansie, Mr. Derek Alfred Parker and Ms. Catherine Margaret Ingram [C.A. No. 48/2016]**

Facts

- The applicants, British citizens and residents of UK, had jointly acquired an immovable property in India by way of purchase on 17th April 1995 for a total consideration of Rs. 10,00,000/-. The said immovable property consisting of residential house, cultivation of coconut and other trees, was situated at Goa, India.
- The applicants did not obtain prior RBI approval at the time of acquisition.
- Subsequently, the applicants were granted permission by RBI to dispose of the property under reference within a period of 6 months to a person eligible to acquire the same as per FEMA with the condition that:
 - Sale proceeds to be deposited to NRO account;
 - Filing of compounding application for contravention committed;
 - Repatriation of funds from NRO account would be subject to prior approval of the RBI.
- Later on, the immovable property was sold by applicants on 09th March 2016 for a consideration of Rs. 90,00,000/-

Notification No. FEMA 21- Immovable Property in India

❖ **Mr. Barry Kendal Dansie, Ms. Wendy Dansie, Mr. Derek Alfred Parker and Ms. Catherine Margaret Ingram [C.A. No. 48/2016]**

Relevant Regulation

- Regulation 8 - Acquisition of an immovable property in India by a foreign nationals without the prior RBI approval.

Poser/ Key takeaway/ Observations

- Power of RBI to compound offence committed at the time of FERA?
- Since the applicant continued to hold the property under reference even after enactment of FEMA, 1999 without the prior RBI approval, regulation 8 of FEMA 21 has been attracted.
- Compounding fee has been levied u/s 13 of FEMA, 1999 as thrice the amount of purchase consideration. In doing so, undue gains earned by the applicants has not been neutralized.

Notification No. FEMA 21- Immovable Property in India

❖ **Mr. Joel Queirel and Mrs. Benedicte Pascale Mireille Caille [C.A. No. 90/2019]**

Facts

- The applicants are non-resident French citizens of non-Indian origin. They had acquired a plot located at Kerala in joint names, without the RBI permission on 16th May 2005 and subsequently built a residential building on the same plot. The cost of acquisition of the land was Rs. 15,00,000/- whereas cost incurred for construction was Rs. 85,00,000/-.
- Later on, the applicants were advised by RBI to sell the property under reference to a PRI within 6 months. Accordingly, applicants sold the property under reference on 19th April 2017 for total consideration of Rs. 75,00,000/- to an Indian company.
- The applicants had submitted the valuation report dated 09th July 2018 wherein the land and Building were valued at Rs. 84,91,000/-. However, RBI had independently obtained the valuation report wherein the land and building were valued at Rs. 1,28,75,000/-.
- RBI considered contravention amount as sum of purchase price of Rs. 15,00,000/- and cost of construction as Rs. 85,00,000/- and Undue gains has been calculated as: Rs. 1,28,75,000 (as per valuation report obtained by RBI) minus Rs. 1,00,00,000 (purchase + construction cost) = Rs. 28,75,000/-.

Notification No. FEMA 21- Immovable Property in India

❖ **Mr. Joel Queirel and Mrs. Benedicte Pascale Mireille Caille [C.A. No. 90/2019]**

Relevant Regulation

- Regulation 8 - Acquisition of an immovable property in India by a foreign nationals without the prior RBI approval.

Poser/ Key takeaway/ Observations

- Allowance for opportunity cost has not been given.
- The applicants indeed did not earned any gain by selling the property under reference, still the undue gains has been calculated on a notional basis. In fact, the applicants have suffered loss on actual transaction.
- RBI has ignored the valuation report submitted by the applicants and instead obtained valuation report independently.
- RBI concluded from the valuation report obtained by them that the property was not transferred at its fair value.

Contravention of LO/ BO/ PO Regulations



Notification No. FEMA 22- LO/ BO/ PO in India

❖ H. B. Fuller Adhesives Deutschland GmbH [C.A. No. 67/2017]

Facts

- The applicant was a German company. The applicant got Reserve Bank's permission to establish its Branch Office at Mumbai, Maharashtra subject to the terms and conditions mentioned in the permission letter.
- The applicant, prior to the closure of Branch Office in India, had sold off certain assets belonging to the Branch Office to a third party in India for Rs.4,00,000/-. These assets were valued approximately Rs. 9,14,000/- in the audited financial statements of the Branch Office as on 31st March 2012.

Relevant Regulation

- Regulation 6(i) – Transfer of assets by a branch office

Poser

- Whether concept of undue gains should arise when assets are sold at less than fair market value?
- What if it would have been sold to parent company or any other related parties?

Notification No. FEMA 22- LO/ BO/ PO in India

❖ Person Education (Singapore) Pte. Ltd. – Branch Office; C.A. No. 70/2017

Facts

- The applicant was granted permission by RBI to open a Branch Office in India under FERA, 1973 regime .
- Although the Branch Office of the company ceased to carry on its activities with effect from 1st August 2005, it had kept funds amounting Rs. 13,00,00,000/- in interest bearing Term Deposit with HSBC Limited from 08th November 2013 to 27th February 2015.
- In terms of A. P. (DIR Series) Circular No. 3 dated 06th July 2002, an AD can allow term deposit account for a period not exceeding 6 months in favour of a BO of a PROI provided the bank is satisfied that the term deposit is out of temporary surplus funds and the BO furnishes an undertaking that the maturity proceeds of the term deposit will be utilised for their business in India within 3 months of maturity.
- Further, while the company kept its funds in current account until 08th November 2013, it was not enabled to place the funds in Term Deposit subsequently. The aforementioned contravention was regularized by RBI subject to compounding of contraventions.

Notification No. FEMA 22- LO/ BO/ PO in India

❖ Person Education (Singapore) Pte. Ltd. – Branch Office [C.A. No. 70/2017]

Relevant Regulation

- Regulation 6(i) – Carrying on activities other than permitted activities by branch office in India

Poser/ Key takeaway/ Observations

- As the applicant was not permitted to place funds in term deposit, interest earned (net off tax) has been neutralized as undue gains.
- Whether bank account can be continued post cessation of activities of branch office?

Contravention of Export Regulations



Notification No. FEMA 23- Export of Goods & Services

❖ Agro Dutch Industries Limited [C.A. No. 4921/2019]

Facts

- The applicant had made exports to Russia during the period June 2013 – September 2013 and the proceeds amounting to USD 187,693.50 were received through the AD bank. However, the payments were received from a third party - associate company of the importer.
- Pursuant to this, the AD bank cancelled the e-BRCs related to the export proceeds received from a third party, after the Commissioner of Customs sent a letter.
- As the applicant incurred huge losses, the operations of the applicant company were discontinued completely in August 2018. Subsequently, liquidation/winding up order was passed by Hon'ble High court of Punjab and Haryana on 16th May 2019.
- As the applicant company is now closed, the proceeds could not be refunded.
- In view of the facts of the case and the status of the entity, Trade Division, FED, CO has considered the administrative action as deemed to be complete as on the date of submission of the compounding application.

Notification No. FEMA 23- Export of Goods & Services

❖ Agro Dutch Industries Limited [C.A. No. 4921/2019]

Relevant Regulation

- Regulation 13(i) – Receipt of payment for an export transaction through a third party

Observations

- Third party payments were permitted from 8th November 2013 vide A. P. (DIR) Series Circular No. 70. However, such third party payments were also subject to various conditions such as irrevocable order along with tripartite agreement and other conditions.
- Administrative action was deemed to be completed on the date of filing of compounding application.

Notification No. FEMA 23- Export of Goods & Services

❖ **Shri. Ashok Choudhary (Prop. M/s Coropex) [C.A. No. 4952/2019]**

Facts

- M/s Coropex is a proprietary concern of Shri Ashok Choudhary.
- The applicant had sent sample of goods to overseas buyer and received export advance of Euro 16154.52 (Rs.11,93,382/-) on 15th October 2015. Subsequently, while goods were ready to dispatch, applicant received 2nd remittance of Euro 16154.52 (Rs.11,76,097/-) on 10th December 2015.
- However, the export could not be made as overseas buyer was not been able to submit mandatory 'Form M' for importing goods into Nigeria to the applicant and thereafter the importer demanded refund of advance.
- The applicant claimed his inability to refund the advance payment as the same was utilized in manufacturing the goods which were specifically designed for the overseas buyer. Goods had only scrap value for the exporter and thus could not be returned.
- Accordingly, the applicant was unable to export goods within the prescribed period of one year from the date of receipt of advance against export order.

Notification No. FEMA 23- Export of Goods & Services

❖ **Shri. Ashok Choudhary (Prop. M/s Coropex) [C.A. No. 4952/2019]**

Relevant Regulation

- Regulation 16(1) – Not able to fulfill the export obligation within 1 year of receipt of advance payment from overseas buyer

Observations

- The contravention has been considered till the date of taking on record compounding application by RBI.
- Indian export was penalised even though he was not at fault as the exporter could not ship the goods due to inability of overseas importer to provide him the required documentation.

Sincere acknowledgement:

Pankaj Bhuta, Naisar Shah

Thank you



Contact Information



P. R. BHUTA & Co.
CHARTERED ACCOUNTANTS

Address 2-I, Jeevan Sahakar, 2nd Floor, Sir P. M. Road, Fort, Mumbai – 400001, India.

Telephone +91 22 22660010/3427; 43471727

Mobile +91 9930114418;

E-mail harshal.bhuta@bhutaco.com

Website www.bhutaco.com

LinkedIn <https://in.linkedin.com/in/harshalbhuta>