



**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

APPLICATION U/S 528 BNSS No. - 1936 of 2025

Rakesh Srivastava

.....Applicant(s)

Versus

U.O.I. Thru. Vineet Khand Assistant Director
Income Tax (Inv.) Faiu-1 Lko.

.....Opposite
Party(s)

Counsel for Applicant(s)	: Shivanshu Goswami, Prerna Jalan
Counsel for Opposite Party(s)	: Kushagra Dikshit

Court No. - 16

HON'BLE BRIJ RAJ SINGH, J.

1. Sri Kushagra Dikshit, Advocate and Sri Neerav Chitravanshi, Advocate, have put in appearance on behalf of the opposite party by filing their memo of appearance, which is taken on record.

2. Heard Sri Purnendu Chakravarty, learned Senior Counsel, assisted by Sri Shivanshu Goswami, Advocate and Ms. Prerna Jalan, Advocate for the applicant; Sri Kushagra Dikshit, Advocate assisted by Sri Neerav Chitravanshi, Advocate, for the opposite party and perused the record.

3. By means of this application under Section 528, B.N.S.S. the applicant has prayed for quashing of the cognizance and summoning Order dated 20.06.2025 and the Criminal Complaint under Section 50 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (hereinafter referred to as 'Act 2015') dated 20.06.2025 along with the consequential proceedings in Complaint No. 65915 of 2025, under Section 50 of the Act, 2015, pending before the Learned Court of Special Chief Judicial Magistrate (Custom), Lucknow, in so far as the Applicant is concerned.

4. It is case of the applicant that a search was carried out on 05/03/2024 in case of Quantum Group, including the residential premises at 5/194, 5/195, 5/196, Vineet Khand, Gomti Nagar, which is pertaining to the house of the applicant as well as his brother Rakesh Srivastava. As per allegations, in the complaint it is mentioned that during search proceeding a copy of the Agreement dated 29/06/2021 in respect of the investment in an immovable property situated at Paramount Tower Hotel & Residence Dubai, was found and seized. It is mentioned in the complaint that statement under Section 132(4) of the Income Tax Act 1961, applicant herein was confronted about the impugned property in which the applicant stated that an immovable property bearing address PTR/35/3503, Paramount Tower Hotel & Residence Dubai, was purchased by him alongwith his brother Sri Rakesh Srivastava for sale-

consideration of AED 16,80,210 (INR Rs. 3,97,66,370.17) and the title deed was executed on 01.03.2023, on the basis of which complaint has been filed with allegation that the applicant did not disclose the aforesaid foreign asset in Schedule FA of ITR for AY 2023-24.

5. It has been submitted by learned counsel for the applicant that the offence regarding the aforesaid property, which has been stated in the complaint, is not made out under Section 50 of the Act 2015 for the reason that assessee is required to disclose foreign assets or financial interests held at any time during the relevant accounting period ending on 31 December of the previous year. For the Assessment Year 2023-24 (FY 2022-23) the reporting requirement under Schedule FA pertains to asset held as on 31/12/2022. In the present case, the property situated outside India was purchased and registered on 1st of March, 2023, therefore, the asset was not owned on or before 31/12/2022, therefore, there was no requirement of disclosure in Schedule FA of the return of income filed for the Assessment Year 2023-24. It has been submitted that return of income has been shown in the I.T.R. 2024-25 filed on 27/09/2024 in accordance with the statutory requirements.

6. In support of his submissions learned counsel for the applicant has relied upon the judgment of Hon'ble the Supreme Court in the case of **Indian Overseas Bank v. M.A.S. Subramanian & ors., in Civil Appeal No. .../Diary No. 38616 of 20018**, wherein the Hon'ble Supreme Court has observed that in view of Section 54 of the Transfer of Property Act, 1882 an agreement for sale does not create any interest in the property. The only mode by which an immovable property worth more than Rs. 100/- (Rupees one hundred) can be sold is by a sale-deed duly registered in accordance with the Indian Registration Act, 1908.

7. Learned counsel has also submitted that during search loose papers containing the articles of incorporation of M/s JMD Trade FZ LLC was incorporated on 08/09/2016 and the applicant and his brother are equal shareholders (50% each) in the company and the capital introduced by both directors in the company was AED 75000 of each were found. It has also been submitted that the department did not issue any single notice under Section 10 of the Act 2015 to the applicant or his brother, which was incorporated on 08/09/2016 before the date of cognizance of present complaint, i.e., 20/06/2025. It has also been submitted that it is settled principle that loose paper sheets has no evidentiary value. To support his submission learned counsel for the applicant has relied upon a judgment of Hon'ble the Supreme Court in the case of Indian Overseas Bank (supra) (para-6). Learned counsel has also relied on another judgment of Hon'ble the Supreme Court in the case of Common Cause (A Registered Society) and ors. v. Union of India and ors., Interlocutory Application Nos. 3 and 4 of 2017 in Writ Petition (Civil) No. 505 of 2015 (para nos. 16 and 26).

8. It has been submitted that under the Act 2015 it is necessary to issue show-cause penalty and provide an opportunity to be heard, but in the

present case it is surprising that no notice for such penalty has been issued against the applicant or his brother. It is further submitted that under Section 46(3) of the Act 2015 there is requirement that assessing officer has to issue a notice and granting an opportunity of hearing. As per provision of section 46 of the Act 2015, the procedure of imposing penalty is provided and section 46(2)(b) provides that within a period of 3 weeks from the end of the financial year in which the default is committed in respect of penalties referred to in section 45. Since the matter is of financial year 2016-17, the penalty is not imposable on the applicant or his brother, since it is time barred under Section 46(2)(b).

9. Learned counsel for the applicant has lastly submitted that a bare perusal of the summoning order dated 20/06/2025 indicates that it is a non-speaking order. The trial court has not recorded any finding as to how it is satisfied and the order is cryptic. The summons in a criminal case is a serious matter and while issuing summons against a person, the court has to apply its mind and after recording reasons and satisfaction the summons should be issued, but in the present case the non-speaking order has been passed, which is not sustainable in the eyes of law.

10. On the other hand, Sri Neerav Chitravanshi, Advocate has relied on provision of Section 50 and 48 of the Act 2015. He submitted that provision of Chapter-V for the offences and prosecution shall be in addition to and not in derogation of the provisions of any other law providing for prosecution for the offences thereunder and has further submitted that the provisions of this chapter shall be independent of any order under this act that may be made or has not been made on any person and there shall be no defence that the order has not been made on account of time limitation or for any other reason. He submitted that the period of limitation, which has been taken by the counsel for the applicant will not be applicable in the present case after going through section 48 of the Act 2015.

11. Sri Chitravanshi has further submitted that if any person being a resident other than not ordinarily residing in India within the meaning of Clause-VI of Section 6 of the Income Tax Act, who has furnished the return of income for any previous year under sub-section (1) or sub-section (4) or sub-section (5) of section 139 of the Act willfully fails to furnish in such return the information relating to an asset (including financial interest in any entity) located outside India, held by him, as a beneficial owner or otherwise or in which he was beneficiary at any time during such previous year or disclose any income from source outside India, he shall be punishable with rigorous imprisonment for a term, which shall not be less than 6 months, but which may extend to 7 years and with fine.

12. It has been submitted by learned counsel for the complainant that sections 48 and 50 are governed for the offences under Chapter V of the Act 2015, therefore, the argument advanced by counsel for the applicant in respect of section 46 will not be applicable.

13. After going through the rival contentions of the parties, their legal and factual submissions and the argument that the impugned summoning order is a non-speaking order, without recording any reason or satisfaction of the court below, I am of the opinion that matter requires consideration on facts and law both.

14. Let counter-affidavit be filed by the learned counsel for the complainant within 2 weeks. Rejoinder-affidavit to the same, if any, may be filed within 1 week thereafter.

15. List this case in the last week of December, 2025.

16. Till the next date of listing, proceedings of the cognizance and summoning Order dated 20.06.2025 and the Criminal Complaint under Section 50 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (hereinafter referred to as 'Act 2015') dated 20.06.2025 along with the consequential proceedings in Complaint No. 65915 of 2025, under Section 50 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, pending before the Learned Court of Special Chief Judicial Magistrate (Custom), Lucknow, in so far as the Applicant herein, are hereby stayed.

(Brij Raj Singh,J.)

November 25, 2025

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