

FINAL COURSE
ELECTIVE PAPER 6D: ECONOMIC LAWS

CASE STUDY - 4

Albert John, right from his childhood had high dreams and aspirations. His hobbies included travelling, scuba diving, gliding, trekking, and other adventurous sports. To go around the globe was his biggest wish. Therefore, after his schooling, to satisfy his prime interest in travelling, he opted for a two years' Diploma and thereafter, a 18 months' Post Graduate Diploma in Tourism and Travel Industry Management, from the University of Mumbai.

After post-graduation he had a lot of options like to become a travel agent or join any immigration and customs services, travel agencies, airline catering or laundry services, etc. Initially, however, he got a chance to join a reputed travel agency where he gathered on-hand experience and continued with the job for about two years but his innermost desire was to do his own business and therefore, he opened up a proprietary travel agency under the name of 'John Travel Agents' in Mumbai. Within a period of about five years he could earn substantially from his business. He used to arrange foreign currency also through his contacts for needy tourists who did not want to use banking channels for this purpose.

In the meantime, he got married to Neelima George and was comfortably settled in his 2BHK flat in Mumbai. Keeping in view the future expansion of his travel agency business, he decided to form a private limited company by the name 'John and George Travel Agency Pvt. Ltd. having its registered office in Mumbai. After, it was got registered with ROC, Mumbai with the authorised capital of Rs. 10 lacs, Albert wrapped up its business conducted so far under 'John Travel Agents'.

His business was flourishing. By now he had seen most of the touring destinations of Europe and East Asia by taking his clients around. One of such clients was Chimanbhai Patel, a leading and famous exporter of Mumbai. He was a rich and dynamic businessman dealing in gold, diamonds and precious as well as semi-precious stones. He had three companies *i.e.* Shining Gold Jewellery Pvt. Ltd., which dealt in gold jewellery; Red Star Pvt. Ltd. which dealt in diamonds and jewellery studded with diamonds; and Blue Sapphire Pvt. Ltd. which dealt in precious and semi-precious stones. He was the owner of two palatial bungalows situated at Bandra and Juhu.

Once he took Chimanbhai, his wife and both of their married daughters as well as sons-in-law to Europe for a family vacation trip. He arranged for them Royal Caribbean's cruise liner 'Harmony of the Seas' which was like a five star hotel at sea, for a 'seven night' cruise starting from Barcelona. While on board, Chimanbhai proposed him a business deal which required him to deliver gold biscuits worth Rs. one crore to one of his close friends on his next visit to Hong Kong and for accomplishing this job he would get some hefty commission. After some hesitation he agreed to do the assigned work and the deal was done. Albert managed to somehow pass on the tainted wealth as directed by Chimanbhai. In return he got rich kickbacks in the form of commission; and also admired this new way of earning quick money. The bond between Albert and Patel grew intense and he accomplished many such assignments including converting of Indian currency representing black money into foreign currency and delivering it outside India to a safe haven.

This way slowly and gradually Albert entered into money laundering activities. Time passed on. He was a rich person now. He purchased a new 3BHK flat in the same locality and rented out his old flat. He also acquired properties in Utrakhnad and Rajasthan and at the same time invested additional funds in purchasing gold jewellery and diamonds including buying a rust coloured Mahindra XUV500. Though the current line of activity helped him in fulfilling his high dreams and aspirations but in actuality he was converting proceeds of crime to make them appear as legitimate money. He was a changed person now keeping the moral ethics at bay.

Once, while travelling in a Vayu Airways flight from Hong Kong to Mumbai he was impressed by the hospitality provided by Neetu Bhatia, a member of the cabin crew. An idea clicked him. Albert knew very well that flight attendants had access to secure venues at airports. At times, they did not require baggage screening. The cabin crews underwent minimum security check and therefore, needle of suspicion and surveillance was also minimal in their case. Thinking so, Albert befriended her and through his mesmerizing talks he could gather that she was a resident of Vile Parle, Mumbai and a regular employee on this route. He developed a story which reflected his persona as that of a business tycoon. Neetu was highly impressed by the sweet talks and manners exhibited by Albert and they exchanged mobile numbers.

A few days later, Chimanbhai sent requisite Indian currency to Albert for conversion into around one lac US Dollars and its deliverance to his business associate in Hong Kong. This time Albert thought of Neetu, called her and they met at a high profile restaurant 'Green Tea Day' in Worli. Albert disclosed her about delivering of USD one lac in exchange for handsome commission to one of his known and trusted business associates who would get the money lifted from the Hong Kong International Airport itself. Initially, Neetu was a little bit hesitant but the desire to earn some quick cash without putting in much effort prevailed over her good senses and she relented. Both of them, however, knew that it was a criminal conspiracy.

Albert had drawn a very simple *modus operandi* for her. He wrapped the stacks of dollars in aluminium foils and carbon sheets to dodge x-ray machine at the Mumbai airport. After placing them in her suitcase he put her make-up kit and clothes over them. At the security check, as he had anticipated, the foils were passed off as chocolates. After landing at Hong Kong Airport, Albert's local conduit picked up the cash from there. As promised, Neetu got the commission for deliverance. Not being caught in her first operation, Neetu's confidence level rose to a considerable extent. A few other consignments, delivered through her, were a no glitch operation but in the seventh one Albert's luck ran out and this operation was spoiled by Enforcement of Directorate (ED) officials who caught her before the plane could take off from the Chhatrapati Shivaji International Airport, Mumbai.

After being caught, Neetu got frightened and spilled the beans. She was taken under custody by Directorate of Enforcement Officers and her thorough investigation revealed the involvement of Albert. Her offence of carrying foreign currency on the behest of Albert was considered to be a Scheduled Offence falling in Part A of the Schedule to the PML Act (*i.e.* criminal conspiracy involving Section 120B of the IPC). After following due procedures including filing a complaint before the jurisdictional Magistrate for taking cognizance of the scheduled offence, her residence was also searched and gold jewellery worth Rs. 21 lacs was recovered and Dy. Director duly authorised by the Director took steps to provisionally attach the recovered jewellery in the presence of two independent witnesses.

Simultaneously, following due procedures, a search team headed by Dy. Director raided the house of Albert. By the time the officers of ED entered his house, Albert was almost ready to go on a trip to Dubai as a part of routine job but with a special mission. The officers could smell a rat and took him to his rust coloured Mahindra XUV500. Immediate search of his car gave way to the recovery of 24 kgs. of gold which was going to be smuggled out of India through various conduits. It transpired from Albert that the gold belonged to Chimanbhai Patel, a famous exporter of Mumbai.

From the search of Albert's residence, various incriminating documents were also recovered. In one of the almirahs, there was a hidden bottom drawer but the hawk eyes of ED officers were able to detect it. Albert was asked to open it but he did not oblige giving lame excuse that the keys were misplaced. This compelled the officers to break open it. When opened forcibly, this secret drawer contained five silver pouches where narcotic drugs were securely kept. On further enquiry it was found that he had two lockers in two different banks. A search of the lockers gave way to the recovery of fixed deposits receipts worth Rs. 1.25 crores, hard cash Rs. 50 lacs and property papers showing properties in Utrakhhand and Rajasthan. In both the properties his name was not registered as the owner. The title documents of residential property at Utrakhhand contained

the name of Raj Karan, his driver and the property in Rajasthan was a farm house which was in the name of Sanju who was the husband of the full time maid-servant Rani working at his house. Both the properties seemed to be benami properties. Recovery of a green diary from one of the lockers confirmed the name of Chimanbhai Patel and the various transactions Albert had with him. Time was up for both of them.

Since dealing in drugs was a Scheduled offence under the PML Act, the ED Officers, filed a complaint before the jurisdictional Magistrate for taking cognizance of the scheduled offence. Thereafter, following the property attachment procedures, the Dy. Director duly authorised by the Director provisionally attached and seized all the movable and immovable properties as well as records. Identification marks were placed and an inventory was made in respect of seized property and records. This was done in the presence of two independent witnesses.

At the time when Albert revealed the involvement of Chimanbhai, immediately, a search team under the supervision of duly authorised Dy. Director was sent to the palatial bungalow of Chimanbhai Patel situated at Bandra. It was found that the bungalow was spread over 5000 sq.ft. approximately. A search of the basement of his bungalow revealed presence of narcotic drugs and psychotropic substances. In between the wooden partitions used in the basement, they also found counterfeit Indian currency valuing Rs. 40 crores. It was a Scheduled offence falling in Part A of the Schedule to the PML Act where amount involved had no consideration. It was alleged by the Dy. Director that Chimanbhai Patel possessed proceeds of crime but tried to project the same as untainted property and therefore he was guilty of offence of money-laundering under Section 3 of the PML Act.

The other - Jal Tarang Mahal residence - a 7 BHK villa of Chimanbhai Patel at Juhu was also raided concurrently by the ED officials. It was really a humongous, palatial sea-facing bungalow covering approximately 25,000 sq.ft. area and fully done up with imported and handpicked interiors. The building had basement, ground floor and a first floor. In a two-day long search, the officials seized, *inter-alia*, thirty diamond rings worth Rs. 30 crores; fifty watches worth Rs. five crores; the choicest of rare paintings by M. F. Hussain, Hebbbar, Tyeb Mehta and Amrita Shergil valuing approximately Rs. 21.5 crores which were displayed in a special air-tight hall so that moisture in the air could not damage them; high end and antique jewellery valued at Rs. 46 crores; high end cars which included Rolls Royce Ghost, Mercedes Benz, Porsche Panamera, Ford Mustang, Toyota Fortuner and Innova. The total attachment and seizure of diamonds, gold, precious and semi-precious stones and other movable and immovable assets stood at Rs. 6562 crores. His various companies were also searched and a number of incriminating documents, files, computers, etc. were seized.

The intensive search revealed that Chimanbhai used to bring his own black money from about twenty shell companies based at Hong Kong and Dubai into the accounts of his three main companies in India as foreign direct investment. He subsequently diverted these funds into the accounts of various shell companies describing transfers as unsecured loans from where the funds were siphoned off through various means including cash withdrawals.

An investigation was also conducted under FEMA, 1999 for alleged violations of Sections 3 and 4 of FEMA for dealing in and acquiring and holding foreign exchange in his account with United Royal Bank of Switzerland whose value in Indian currency was approximately Rs. 3,600 crores.

Being a Scheduled offence falling in Part A, it was required of authorised ED Officers, to file a complaint before the jurisdictional Magistrate for taking cognizance of the offence which was done immediately. Thereafter, following the provisions of Section 17, the ED Officers seized all the movable and immovable properties as well as records in the presence of two independent witnesses. As in the case of Albert, identification marks were placed and an inventory of the seized property was also made.

All of them were arrested by the authorised ED Officers, since ED officers, on the basis of material in their possession, had reason to believe that they were guilty of an offence punishable under PML Act. Immediately

after their arrest, the officers forwarded a copy of the order along with the material in their possession to the Adjudicating Authority in a sealed envelope, in the prescribed manner. Further, the guilty persons were, within 24 hours, taken to the jurisdictional Magistrate.

As we have noted earlier, keeping in view Section 5 (1), in all the above cases, the ED Officers, through written orders provisionally attached the properties because it was suspected that they were derived from the proceeds of crime. The ED Officers knew that the maximum period of attachment would be limited to 180 days from the date of the order.

Thereafter, the ED Officers forwarded the copies of the orders provisionally attaching the properties of Neetu, Albert and Chimanbhai Patel along with the various documents in his possession to the Adjudicating Authority in a sealed envelope.

The ED Officers also filed complaints stating the facts of such provisional attachments before the Adjudicating Authority within thirty days of such attachments.

The Adjudicating Authority served on Neetu, Albert and Chimanbhai Patel notices to explain in not less than 30 days their source of income, earning or assets out of which they had acquired the attached property.

The attachment of the properties was confirmed by the Adjudicating Authority bearing in mind that such properties were involved in money laundering being obtained through the proceeds of crime. However, such confirmation was made only after considering the replies of the aggrieved persons as well as after hearing them.

In terms of confirmation order passed by the Adjudicating Authority, the ED Officers, forthwith took the possession of the attached properties.

The trial of the above money laundering offences is being done by the jurisdictional Special Court. The Central Government in consultation with the Chief Justice of the High Court is empowered to designate one or more Courts of Sessions as Special Court or Special Courts for trial of offence of money laundering .

Under Section 4, if Neetu, Albert and Chimanbhai Patel are found to have committed the offence of money-laundering, then they shall be punishable with rigorous imprisonment which shall be minimum three years and maximum seven years and shall also be liable to fine. In case it is proved that the proceeds of crime involved in money-laundering relate to any offence specified under paragraph 2 of Part A of the Schedule, the maximum punishment may extend to ten years instead of seven years.

On conclusion of a trial, if the Jurisdictional Special Court finds that the offence of money-laundering has been committed, it shall order that the properties involved in the money laundering shall stand confiscated to the Central Government.

If on conclusion of a trial, the Special Court finds that the offence of money laundering has not taken place, it shall order release of such property to the person entitled to receive it.

Required (MCQ of 2 marks each)

Select the most appropriate answer from the options given for each question:

1. Whether the 2BHK flat owned by Albert but rented out can be considered to have been derived from the proceeds of crime:
 - (a) Yes it can be considered because Albert, the owner, is involved in money laundering activities;
 - (b) No, it cannot be considered because Albert did not purchase it from funds obtained through money laundering activities;
 - (c) No, it cannot be considered because Albert has rented it out;
 - (d) None of the above.

2. Adjudicating Authority may serve a notice of not less than ----- on Neetu, Albert and Chimanbhai Patel who are believed to have committed offence of money laundering to explain their source of income, earning or assets out of which they had acquired the attached property.
 - (a) 14 days
 - (b) 30 days
 - (c) 60 days
 - (d) None of the above
3. After provisional order of attachment is confirmed by the Adjudicating Authority, the Director shall forthwith -----.
 - (a) confiscate the attached properties;
 - (b) take the possession of the attached properties;
 - (c) seize the attached properties;
 - (d) None of the above
4. Provisional attachment of property of Chimanbhai Patel suspected to be involved in money laundering ensures that he is prohibited to:
 - (a) transfer the attached property;
 - (b) convert the attached property;
 - (c) dispose of the attached property;
 - (d) All of the above
5. A complaint with the Adjudicating Authority is to be filed within a period of ----- days by the Director who provisionally attaches the property involved in money laundering.
 - (a) 15
 - (b) 20
 - (c) 30
 - (d) 60
6. If on conclusion of a trial by the Jurisdictional Special Court, the guilt of Neetu, Albert and Chimanbhai Patel is proved, it shall make an order to -----
 - (a) Freeze the attached property;
 - (b) Confiscate the attached property;
 - (c) Seize the attached property;
 - (d) None of the above.
7. Chimanbhai Patel was found to have been in possession of counterfeit Indian currency which is a Scheduled offence belonging to:
 - (a) the Unlawful Activities (Prevention) Act, 1967;
 - (b) the Indian Penal Code;
 - (c) the Prevention of Corruption Act, 1988;
 - (d) None of the above.
8. An offence specified in Part B of the Schedule shall be considered as Scheduled offence under PML Act only if the total value involved in such offence is -----.

- (a) Rs. 30.00 lacs or less;
 - (b) Rs. 50.00 lacs or less;
 - (c) Rs. 1.00 crore or more;
 - (d) None of the above.
9. Both Raj Karan and Sanju are to be considered as Benamidar because they are the:
- (a) fictitious persons who have not made any payment for purchase of properties;
 - (b) persons in whose name the benami properties are held without making any payment by them;
 - (c) persons who have lent their names to be owners of the properties without making any payment by them;
 - (d) All of the above.
10. Any property found to be involved in money laundering cannot be provisionally attached by the Director, ED for more than -----.
- (a) 30 days
 - (b) 60 days
 - (c) 90 days
 - (d) 180 days

Required (Descriptive Questions of 10 marks each)

1. As per the facts, Albert through laundered money purchased 3 BHK. Suppose if the said flat is purchased by him jointly on his and his wife's name, Neelima Goerge. Examine in the light of the Prevention of Money Laundering Act 2002, the following situations:
- (a) Will Neelima be also liable for holding of the such joint property.
 - (b) If property is claimed by a person, other than whom the notice has been issued. Discuss the legal position of the person claiming the property.
2. (a) Suppose Mr. X, a non-resident Indian, purchases a flat of Albert in India, for Rs. 50,00,000 and paid 30,00,000 in by account payee cheque of his own account and rest in cash. The registry was done at a value of Rs 30,00,000 which was paid by cheque. Discuss the nature of the transaction.
- (b) (i) Albert was assigned by Chiman Bhai to deliver counterfeit currency-notes to one of his close friends to Hongkong for which hefty commission was fixed by the Chiman Bhai. Discuss, whether the said act can be considered as money laundering. Who shall be liable for the commission of the money Laundering.?
 - (ii) State whether maintenance of foreign currency accounts in India and outside India by Albert is permissible in FEMA, due to his nature of business.
3. (i) Chiman bhai is a person resident in India. He has different business units as to manufacturing & designing of jewellery in Hongkong which is owned by him. How will you determine whether a particular business units of Chiman bhai is a 'person resident in India' under the Foreign Exchange Management Act, 1999?
- (ii) Suppose if 'Blue Sapphire Pvt. Ltd.' is a Singapore based company having several business units all over the world. It has a unit for cutting & manufacturing precious and semi-precious stones in the form to be used for the jewellery with its Headquarters in Mumbai. It has a Branch in Dubai which is controlled by the Headquarters in Mumbai. What would be the residential status under the FEMA, 1999 of units of Blue Sapphire Pvt. Ltd in Mumbai and that of Dubai branch?