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

Reserved on: 6 May 2026
Pronounced on: 12 August 2026

\# **CNR NO. DLHC010053972022**

\+ LPA 78/2022, CM APPLs. 5852/2022 & 31407/2025

INCOME TAX DEPT. .....Appellant
Through: Mr. Indruj Singh Rai, Sr. SC with Mr. Sanjeev Menon, Jr. SC, Mr. Rahul Singh, Jr. SC and Ms. Priya Sarkar, Jr. SC with Mr. Gaurav Kumar, Adv.

versus

VIKAS CHAUDHARY AND ORS. .....Respondents
Through: Mr. Shadman Ahmed Siddiqui, Mr. Kartik Pandey, Mr. Vaibhav Prasad Singh, Ms. Anushka Srivastava, Ms. Akshara Pareek and Mr. Daniyal, Advs.
Mr. Farman Ali, CGSC with Ms. Usha Jamnal and Mr. Tanya, Advs. for R-2

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

% **JUDGMENT**
12.08.2026

C. HARI SHANKAR, J.

A. The *lis*

1. The Deputy Director of Income Tax is in appeal before us, aggrieved by the judgment dated 12 January 2022, passed by a learned

Single Judge of this Court in WP (C) 5374/2021[1]. By the impugned judgment, the learned Single Judge has quashed and set aside a Look Out Circular[2] dated 25 February 2019 issued by the Ministry of Home Affairs[3] against the respondent Vikas Chaudhary at the instance of the Income Tax Department.

B. The facts

2. The respondent is a Director in M/s Nautilus Metal Crafts Pvt. Ltd. and M/s Aastha Apparels Pvt. Ltd., companies registered in Delhi and engaged in export of garments to the USA, Europe, South America, the UK and the UAE.

3. Following the issuance of a Warrant of Authorization[4] dated 5 February 2019 under Section 132(1) of the Income Tax Act, 1961[5] against the Kochar Group of companies and M/s HL Impex (P) Ltd, the premises of the respondent were searched from 6 to 9 February 2019. During the search, certain goods and documents were seized. The statements of the respondent and his wife Shilpa Chaudhary were recorded.

4. On the basis of a second WOA issued against the respondent and his wife on 12 February 2019, the locker of the respondent was searched and jewellery valued at ₹ 1,00,67,181/- was seized.

[1] **Vikas Chaudhary v. UOI & Ors.**
[2] "LOC" hereinafter
[3] "MHA" hereinafter
[4] "WOA" hereinafter
[5] "The IT Act" hereinafter

5. Following the aforesaid seizures, the LOC was issued against the respondent by the MHA at the instance of the Income Tax Department on 25 February 2019. The LOC restrained the respondent from leaving the country.

6. The reason disclosed by the Income Tax Authorities for issuance of the LOC was the existence of undisclosed foreign assets and interests in foreign entities by the respondent, rendering him liable for penalty and prosecution under the IT Act, the Black Money (Undisclosed foreign income and assets) and Imposition of Tax Act, 2015[6] and Prevention of Money Laundering Act, 2002[7].

7. The search in the respondent's premises continued on 4 and 5 April 2019, during the course of which the statement of the respondent was recorded and a *panchnama* was drawn up.

8. On 5 July 2021, two assessment orders were issued by the Deputy Commissioner of Income Tax, assessing additional undisclosed income of the respondent at ₹ 21.4 crores.

9. The respondent filed WP (C) 5213/2020 before this Court, challenging the search and seizure effected from his premises. A Division Bench of this Court, by judgment dated 7 December 2020, dismissed the writ petition, holding the search to be justified.

10. The respondent represented against the issuance of the LOC on

[6] "The Black Money Act" hereinafter
[7] "PMLA" hereinafter

2 April 2019, 4 May 2019, 15 May 2019 and 31 May 2019. The representations were also accompanied by affidavits to the effect that the respondent did not possess any foreign accounts or undisclosed assets in Dubai or elsewhere.

11. The respondent, thereafter, approached the learned Additional Chief Metropolitan Magistrate[8], Tis Hazari on 6 August 2019, seeking quashing of the LOC dated 25 February 2019. By order dated 27 August 2019, the learned ACMM suspended the operation of the LOC subject to certain conditions. The order also permitted the respondent to travel abroad to all countries except the UAE.

12. The order dated 27 August 2019 of the learned ACMM was challenged by the Income Tax Department before the learned Additional District Judge by way of a Revision Petition, which was allowed on 7 September 2019 on the ground that, as the respondent was neither a witness nor a complainant in any proceeding before the learned ACMM, the order dated 27 August 2019 of the learned ACMM was without jurisdiction.

13. It is in these circumstances that the respondent again approached this Court by means of WP (C) 5374/2021, seeking quashing of the LOC. The impugned judgment has come to be rendered in the said writ petition.

C. Rival Contentions before the learned Single Judge

[8] "learned ACMM" hereinafter

I. Submissions of the respondent

14. Before the learned Single Judge, the respondent contended that the LOC was issued on mere suspicion of possession of undisclosed foreign assets and investments in foreign entities. Despite the fact that his premises were searched in February and April 2019, the respondent pointed out that no case under the Black Money Act, the IT Act or the PMLA had been registered. The only justification provided by the MHA/Income Tax Authorities for issuance of the LOC was that digital evidence, seized from the residence of the respondent, revealed undisclosed transactions, resulting in a reference being made by the Foreign Tax and Tax Research Authorities[9] from authorities in Dubai, the outcome of which was awaited. On the basis of the said specious consideration, the respondent submitted that the MHA and Income Tax Authorities were alleging that undisclosed income had been transferred by the respondent to M/s Centurion International Limited[10], a company located in Dubai, to acquire its shares. To counter this allegation, the respondent submitted affidavits and certificates from authorities in Dubai in May 2019 itself, certifying that no share in CIL or any asset in Dubai was held by the respondent or by any of his family members.

15. The respondent further contended that the LOC had been issued on the basis of Office Memorandum[11] dated 27 October 2010[12] issued

[9] "FT&TRA" hereinafter
[10] "CIL" hereinafter
[11] "OM" hereinafter
[12] "The 2010 OM" hereinafter

by the Foreigners Division in the MHA. This OM permitted issuance of an LOC only against a person who was involved in a cognizable offence. Having issued the LOC on the basis of the 2010 OM, the MHA and the Income Tax Authorities were seeking to justify continuance of the LOC on the basis of a subsequent OM dated 5 December 2017[13] also issued by the Immigration Section in the Foreigners Division in the MHA. The 2017 OM not having been invoked at the time of issuance of the LOC on 25 February 2019, the respondent submitted that continuance of the LOC could not be sought to be justified on the basis of the 2017 OM.

16. Insofar as the 2010 OM was concerned, the respondent pointed out that an LOC could be directed or issued thereunder only against a person who was involved in a cognizable offence. Reliance was placed by the respondent, for this purpose, on the judgment of a learned Single Judge of this Court in ***Sumer Singh Salkan v. Asstt. Director***[14].

17. The respondent further submitted that no case for invoking the 2017 OM was made out either, for which purpose, he placed reliance on the judgments of learned Single Judges of this Court in ***Deept Sarup Aggarwal v. Union of India***[15] and ***Brij Bhushan Kathuria v. Union of India***[16]. The 2017 OM permitted issuance of an LOC in a case in which allowing the person concerned to leave the country would be detrimental to its economic interests. The respondent

[13] "The 2017 OM" hereinafter
[14] **2010 SCC OnLine Del 2699**
[15] **2020 SCC OnLine Del 1913**
[16] **2021 SCC OnLine Del 1260**

submitted that there was no material to indicate that allowing him to leave the country would result in detriment to India's economic interests.

18. The plea of detriment to the country's economic interests was being sought to be raised by the MHA/Income Tax Authorities on the basis of an unsigned draft agreement and some WhatsApp chats which, according to the Additional director of Income Tax, disclosed transfer, by the respondent, of AED[17] 16,500,000, equivalent to ₹ 30 crores, using which it was alleged that the respondent had purchased 10% shares in CIL. This undisclosed draft agreement and the WhatsApp chats, it was submitted, were of no evidentiary value. To counter this material, the respondent had provided documents to indicate that the amount transferred for the purchase of shares in CIL was not AED 16,500,000, but only AED 7,50,000, which was transferred by Aastha Chaudhary, the respondent's daughter, to M/s Royal Centurion Real Estate Development LLC, Dubai[18], at the request of the latter. However, as this transaction did not materialize, the amount was returned to the account of Aastha Chaudhary through banking channels.

19. The respondent further pointed out that, after the search and seizure effected at his premises, two income tax assessments had been carried out, which disclosed additional income of only ₹ 21.4 crores. The allegation of involvement of the respondent in tax evasion of ₹ 1,500 crores was, therefore, stated to be completely lacking in

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[17] "The United Arab Emirates Dirham"
[18] "RCRED" hereinafter

substance.

20. Without prejudice to the aforesaid submissions, the respondent further contended that the LOC had expired at the end of one year from its issuance on 25 February 2020 and that there was no evidence of its renewal. It was only an amendment introduced *vide* OM dated 22 February 2021 issued by the Immigration Section in the Foreigners Division of the MHA which provided that the LOC would continue to remain in force till a request for its deletion was received from the originator of the LOC.

21. In the circumstances, the respondent contended that the continued operation of the LOC for three years, without any cognizable offence or criminal complaint having been registered against the respondent was *ex facie* illegal. It was also pointed out that the respondent had complied with all notices and summons issued to him, and had appeared before the Income Tax Authorities on as many as 19 occasions. In the circumstances, the respondent submitted that no further purpose would be served by continuing the operation of the LOC. In support of his submissions, the respondent placed reliance on the judgment of a learned Single Judge of the High Court of Madras in ***Aravindh Narayaswamy v. Deputy of Commissioner of Police***[19].

22. Apart from his business interests, the respondent submitted that, as his wife was suffering from endometriosis, for which she was being

[19] **2017 SCC Online Mad 36732**

treated in Dubai, it was necessary for him to visit Dubai. It was also submitted that there was no chance of the respondent fleeing the country, as his family, including his two children, were located in Delhi.

23. On the basis of these submissions, the respondent prayed, before the learned Single Judge, that the LOC issued to him be quashed and set aside.

II. Submissions of the UOI

24. Responding to the respondent's submissions, the Union of India contended that the departure of the respondent from the country would be detrimental to its economic interests. This, it was submitted, was a subjective decision which lay within the discretion of the Union of India and which could not be subjected to interference in judicial review. Reliance was placed, for this purpose, on the judgment of the Supreme Court in ***Union of India v. G. Ganayutham***[20]**.**

25. It was further submitted that the LOC had been issued in terms of the 2017 OM. Evidence which had been obtained from the search of the residence and locker of the respondent, it was submitted, disclosed that the respondent was involved in export of over-invoiced goods to Dubai and that, through his daughter, he had surreptitiously purchased 10% shares in CIL from one Amit Agarwal. It was submitted that the respondent was involved in a financial scam of huge magnitude in which investigation was progressing, and that there

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[20] **(1997) 7 SCC 463**

could not be any justification to allow the respondent to leave the country at that point of time.

26. The respondent's submission that it was only AED 750000 which had been paid for purchase of shares in CIL and that the said amount was received back when the transaction did not materialise, was denied. The UOI contended that a much higher amount had been paid by the respondent to RCRED, which had never been refunded.

27. This, it was submitted that the respondent and his family owned assets in Dubai, which were not disclosed in the respondent's income tax returns.

28. It was further contended that the respondent had a controlling interest in M/s JBB Apparels Pvt Ltd and M/s. JBN Apparels Pvt. Ltd. through his relatives and friends. Avtar Singh Kochar, who was involved in *hawala* transactions, had, in his statement, disclosed that some of the companies owned and controlled by the respondent were used by him for money laundering. The total amount of tax evasion in which the respondent was involved was stated to be in the region of ₹ 1500 crores.

29. In these circumstances, the Union of India disputed the respondent's contention that the LOC had been issued on the basis of a draft agreement. It was submitted that there was supporting evidence in the form of WhatsApp chats which indicated that in terms of the draft agreement, the respondent had paid AED 1.6 million on 6

January 2019 for purchase of 10% shares in CIL.

30. If no criminal complaint had been registered against the respondent, that was only because the income tax authorities were waiting for confirmation from Dubai regarding the interests and assets held by the respondent in that country.

31. In these circumstances, it was submitted that, if the respondent were permitted to travel outside the country, it was likely that he would temper with the evidence available abroad, especially in Dubai. In these circumstances, relying on the judgment of the High Court of Allahabad in ***G.S.C. Rao v State of UP***[21] and the High Court of Madras in ***S. Martin v. Deputy Commissioner of Police***[22]***,*** that, even if the respondent was cooperating with the investigation, the Union of India was still entitled to seek issuance of LOC to prevent the respondent from evading arrest by fleeing the country. It was submitted that the procedure for issuing the LOC, as envisaged in the MHA OMs dated 27 October 2010 and 5 February 2017, had been scrupulously followed.

D. The Impugned Judgment

32. Having thus recorded the rival submissions of both sides, the learned Single Judge has, in the impugned judgment, identified the issues arising before her for consideration thus:

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[21] **(2019) 106 ACC 437**
[22] **2014 SCC OnLine Mad 426**

> "25. From the rival submissions of the parties and a perusal of the record, I find that four issues arise for my consideration in the present case. The first and foremost, being whether the Court can interfere with the issuance of a LOC or whether it is purely an administrative decision, with which the Court ought not to interfere, as sought to be contended by the respondent no.3. The second issue being, whether having made a request for issuance of the LOC under the OM dated 27.10.2010, the respondents can now seek to defend the LOC by relying on a Clause introduced only vide the OM dated 05.12.2017 which for the first time permits issuance of a LOC, even when there is no involvement in a cognizable offence, a pre-condition for issuance of a LOC under the OM dated 27.10.2010.
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> 26. The third issue arising for my consideration, is whether the impugned LOC can be held to have lapsed after one year from the date of its issuance or whether the same still continues to hold the field, as urged by the respondent no. 3, for which purpose reliance has been placed on the consolidated guidelines issued by the respondent no. 1, vide it's OM dated 22.02.2021. Depending on the answer to the second issue, the fourth and final issue, which in my opinion is the pivotal issue, on which the outcome of the present case would depend, the same being as to whether the petitioner's case would fall within the ambit of the Clause '*detrimental to the economic interests of the country'* and if yes, whether the respondents can continue to curtail the petitioner's rights by the impugned LOC for an indefinite period, when admittedly, till date, no proceedings have been initiated against him."

33. The learned Single has decided the first three issues against the respondent and in favour of the appellant. However, with respect to the fourth issue, i.e. as to whether a case for issuance of LOC in terms of the 2017 OM, on the ground that allowing the respondent to leave the country would be detrimental to its economic interests was, or was not, made out, the learned Single Judge has held in favour of the respondent and against the appellant. On the fourth issue, therefore, the learned Single Judge has quashed and set aside the LOC.

34. We may briefly advert to the decision of the learned Single Judge on the first three issues, before proceeding to her findings with respect to the fourth issue, with which we are mainly concerned.

35. On the first issue, the learned Single Judge has held, apropos the scope of judicial review that, if the decision to issue LOC was reasonable, the court would be circumspect in interfering with it. However, if relevant factors had not been borne in mind while issuing the LOC, the learned Single Judge acknowledges that it was the duty of the court to come to the rescue.

36. On the second issue, the learned Single Judge holds that the respondent was entitled to rely on the 2017 OM, which was basically a continuation of the 2010 OM.

37. On the third issue, i.e. regarding lapsing of LOC on the expiry of one year, the learned Single Judge has accepted the contention of the appellant that the LOC had been renewed from time to time.

38. Before us, there is no challenge to the findings of the learned Single Judge with respect to the aforesaid three issues.

39. The learned Single Judge proceeds, thereafter, to deal with the fourth issue, which was whether the issuance of LOC could be justified under the 2017 OM on the ground that allowing the respondent to leave the country would be detrimental to its economic interests.

40. The learned Single Judge first distils what, according to her, is the legal position in this regard, in para 36 of the impugned judgment, which may be reproduced as under:

> "36. However, the matter does not end here and the crucial issue which needs to be now determined is as to whether the Clause 'detrimental to the economic interests of India' introduced vide the amendment in 2017, with a specific rider that the same would be used only in exceptional circumstances, could have, in the facts of the present case, been resorted to, for issuing the impugned LOC, as also whether the impugned LOC could be continued for the last almost 3 years without any proceedings under the IPC or any other penal law being initiated against the petitioner. It has to be kept in mind, that the issuance of a LOC necessarily curtails the rights of an individual to travel abroad and therefore, I am of the view, that for invocation of this Clause, which, in any event, is meant to be used only in exceptional circumstances, a mandatory pre-condition would be a formation of a reasonable belief by the originating authority that the departure of an individual would be 'detrimental to the economic interests of India' *to such an extent that it warrants curtailment of an individual's fundamental right to travel abroad.* Turning to the facts of the present case, what is emerging is that the entire case of the respondents to believe that the petitioner's departure from the country will be 'detrimental to the economic interests of India', hinges on an unsigned draft agreement and some WhatsApp chats, which it is the respondent's own case are not conclusive. The respondents, are therefore, awaiting a response to their FT & TR references to the authorities at Dubai, United Arab Emirates to proceed against the petitioner under the Black Money Act 2015, Income Tax Act 1969, and the Prevention of Money Laundering Act 2002, which were, in fact, the reasons provided by respondent no.3 itself to Respondent no.1, while forwarding its request for issuance of the LOC."
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> (Emphasis supplied)

41. Thus, in para 36 of the impugned judgment, the learned Single Judge holds that the *sine qua non* for issuance of an LOC is the formation of a reasonable belief that the departure of the individual from the country would be detrimental to the economic interests *to* *such an extent as would warrant curtailment of the fundamental right of the individual to travel abroad.*

42. The learned Single Judge observes that the case of the Union of India, in this regard, hinged on an unsigned draft agreement and certain WhatsApp chats which, even according to the Union of India itself, did not constitute conclusive evidence. As against this, notes the learned Single Judge, the respondent produced certificates from the Dubai government, which proved that the allegations against the respondent were untrue and that he and his family did not own any asset or shares in Dubai. This material was produced by the respondent in 2019 itself. Even while acknowledging that the lack of evidence may not have been conclusive, at that stage, with regard to the validity of the LOC, the learned Single Judge observes that though the LOC had continued to remain in force for three years, no action had been taken by the Union of India against the respondent under the IT Act, the PMLA Act or the Black Money Act.

43. The two income tax assessment orders which had been issued thereafter on 5 July 2021, notes the impugned judgment, disclosed the additional income of the respondent to be ₹ 21.4 crores. The allegation of involvement of the respondent in undisclosed income of ₹ 1500 crores was, therefore, unsupported by any material. The income tax assessment orders assessing additional income at ₹ 21.4 crores were themselves under challenge at the instance of the respondent.

44. The learned Single Judge further observes that the only material cited by the Union of India against the respondent was certain FT and TR references made by the Income Tax authorities to authorities in Dubai in 2019. There was no evidence of any active investigation being in place. The respondent had appeared before the Income Tax authorities on as many as 19 occasions. Even thereafter, and though the LOC had continued to remain in force for three years, the case continued to remain one of mere suspicion.

45. In these circumstances, the learned Single Judge holds that the Union of India could not continue to place fetters on the respondent's right to travel abroad, in the absence of sufficient evidence even after three years to charge the respondent under the IT Act, the PMLA Act or the Black Money Act.

46. The impugned judgment observes that the respondent was a garment exporter, who earned his livelihood by exporting garments to the US, Europe, South America, the UK and the UAE and that, in the very nature of its business, overseas travel was an integral part. The issuance of the LOC, therefore, curtailed the respondent's liberty and his right to livelihood under Article 21 of the Constitution of India, with no end in sight.

47. The learned Single Judge further observes, in the impugned judgment, that the issuance of an LOC is an extreme step to be employed in exceptional circumstances, and not routinely as in the present case. The mere suspicion of a person opening bank accounts in other countries or investing in foreign countries could not be accepted as the basis for holding that allowing the person to travel abroad would be detrimental to the economic interests of the country, as would justify placing a restriction on such travel by issuance of an LOC.

48. Reliance has been placed, by the learned Single Judge, in this context, on para 18 of the judgment in ***Brij Bhushan Kathurai***.

49. Apropos the decisions in ***G.S.C. Rao*** and ***S. Martin***, the learned Single Judge observes that, in those cases, FIRs had been lodged and criminal investigation was in progress, unlike the present case.

50. Following the aforesaid discussions, the learned Single Judge holds, in the impugned judgment, that the issuance of the LOC was unjustified in law or on facts and, on that basis, proceeds to quash and set it aside.

51. As we have noted, the Income Tax authorities are before us in Letters Patent Appeal against the judgment of the learned Single Judge.

52. We have heard Mr. Indruj Singh Rai, learned Senior Standing Counsel for the appellant and Mr. Shadman Ahmed Siddiqui, learned Counsel for the respondents at length. Learned Counsel have also filed written submissions, which have been taken into account.

E. Rival contentions before us

I. Submissions of Mr. Indruj Singh Rai

53. Mr. Rai places reliance on para 11 of the judgment of this Court in ***Sumer Singh Salkan*** and para 19 of ***Vikram Sharma v. Union of India***[23] as well as para 29 of the judgment of the High Court of Madras in ***C Sivasankaran v. Foreigner Regional Registration Officer***[24]. Relying on these decisions, Mr. Rai submits that the sufficiency of the material on the basis of which the LOC was issued is outside the scope of judicial review.

54. Mr. Rai further submits that the learned Single Judge has erred in considering only the black money case against the respondent and has completely ignored the huge amount of tax avoidance in which he was involved. In this regard, it is submitted as under:

(i) Re-assessment orders passed under the Income Tax Act in respect of the group of companies in which the respondent is involved, including Aastha Apparels Pvt Ltd., JBB Apparels Pvt Ltd and JBN Apparels Pvt. Ltd. indicated that they were involved in bogus purchases of approximately ₹ 1153 crores.

(ii) Re-assessment orders issued under the Income Tax Act in respect of the respondent personally, indicated that the search conduced at his premises revealed that he was sharing export

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[23] **2010 SCC OnLine Del 2475**
[24] **2019 SCC OnLine Mad 9045**

incentives with unrelated companies, without disclosure thereof, in his income tax returns. There was further evidence of unexplained cash transactions with one Sudhir Gulati, leading to an additional income tax demand of approximately ₹ 22 crores.

(iii) Investigations against the respondent under the Black Money Act revealed the existence of the draft agreement, a copy of which was available on his mobile phone, indicating acquisition of 10% shareholding by Aastha Chaudhary in CIL valued at ₹ 30 crores, relating to properties situated at Dubai. This was also not disclosed in the income tax returns either of Vikas Chaudhary or of Aastha Chaudhary. These facts had been communicated by the FT & TR division to the authorities in Dubai and investigations in respects thereof were underway.

55. Primarily, Mr. Rai submits that the impugned judgment fails to notice the magnitude of tax evasion in which Vikas Chaudhary is involved which also involves bogus purchases of approximately ₹ 1153 crores.

56. Mr. Rai further submits that the learned Single Judge has erroneously distinguished the decisions in ***S Martin*** and ***G.S.C. Rao***, solely on the ground that, in those cases, FIRs had been registered. In this contention, it is submitted that the learned Single Judge has failed to notice the fact that FT & TR references had been issued by the Income Tax authorities to the authorities in Dubai in respect of offences committed by the respondent under the Black Money Act and that the response thereto was awaited. It is further submitted that investigations in economic offences commence, not with registration of an FIR, but with a complaint. In any event, in view of the relaxation of the conditions in which LOC could be issued in the 2017 OM, vis-à-vis the 2010 OM, and the substitution of the requirement of a cognisable offence having been registered against the person concerned with the much more relaxed requirement of a *prima facie* case of detriment to the economic interests of the country, Mr. Rai submits that the fact that no FIR may, till date, have been registered against the respondent, cannot discountenance the validity of the LOC.

57. In this context, it is further submitted that, though the expression "detrimental to economic interests" is not defined in the OMs themselves, this expression has to be understood in the light of the definition of "scheduled offence" in Section 2(m)[25] of the Fugitive Economic Offenders Act 2018[26], which fixes a threshold of ₹100 crores for serious economic offences. In view thereof, tax evasion of over ₹ 1500 crores in which the respondent was involved, would certainly qualify as detrimental to the economic interests of the country. To substantiate theses submissions, Mr. Rai relies on para 34 of ***Y.S. Jagan Mohan Reddy v. CBI***[27]***,*** paras 53 to 54 of ***Ram***

[25] 2. **Definitions** -
(*m*) "Scheduled Offence" means an offence specified in the schedule, if the total value involved in such offence or offences is one hundred crore rupees or more;

[26] **"FEOA" hereinafter**

[27] **(2013) 7 SCC 439**

Jethmalani v. Union of India[28] and para 6 of the judgment of the High Court of Bombay in ***Suman Gupta v. Union of India***[29].

58. The reliance on the appellate orders passed by the Income Tax authorities, it is submitted, was misconceived, as the validity of the LOC had to be seen at the time of its passing. Moreover, the appellate Income Tax orders were based on jurisdictional and technical grounds and did not exonerate the respondent of the allegations against him on merits.

59. In conclusion, it is further submitted that investigations in respect of the contraventions committed by the respondent under the Black Money Act was still ongoing. In these circumstances, it is submitted that the Court ought not to set aside the LOC, thereby allowing the respondent to flee the country.

II. <u>Submissions of Mr. Shadman Ahmed Siddiqui</u>

60. As against this, Mr. Shadman Ahmed Siddiqui, learned Counsel for the respondent, reiterates and relies upon the grounds on which the learned Single Judge has set aside the issuance of LOC. It is pointed out again that the respondent had appeared 19 times during investigation and joined the assessment proceedings over 40 times and that, therefore, there was no justification for placing any fetter on his movement outside the country by issuing the LOC. Moreover, it is submitted that the LOC had been issued under the 2010 OM, and had

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[28] **(2011) 8 SCC 1**
[29] **WP(Crl) 1313/2020**

perished by efflux of time on 25 February 2020. It could not, therefore, have been revived two months later on 21 April 2020. Besides, the OM dated 22 February 2021, on which the Union of India relies, cannot have retrospective effect.

61. In these circumstances, the respondent submits that no case for interference with the impugned judgment passed by the learned Single Judge can be said to exist.

F. Analysis

62. The entire controversy can be dealt with, in our opinion, by addressing just two issues; firstly, the scope of judicial review in interfering with the decision of the Income Tax Department/MHA and, secondly, the extent to which, keeping these principles in mind, the learned Single Judge was justified in interfering with the decision to issue the LOC against the respondent in the facts of the present case.

I. <u>Re. Issue (1) – Scope of judicial review</u>

63. The learned Single Judge has rejected the submission of the UOI that the decision to issue the LOC was outside the scope of judicial review and, advisedly, neither side before us has sought to canvass this extreme proposition. As regards the scope and limitations of the power of judicial review of executive action, we can do no better than to reproduce the following passages from the decision of the Constitution Bench of the Supreme Court in ***Kalpana Mehta v. Union of India***[30], which were extolled by the Supreme Court in ***Union Territory of Ladakh v. Jammu & Kashmir National Conference***[31] as laying down a "talisman of sorts":

> "40. *While focussing on the exercise of the power of judicial review, it has to be borne in mind that the source of authority is the Constitution of India. The Court has the adjudicating authority to scrutinise the limits of the power and transgression of such limits*. The nature and scope of judicial review has been succinctly stated in ***Union of India v. Raghubir Singh***[32] by R.S. Pathak, C.J. thus:
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> > '*7. … <u>The range of judicial review recognised in the superior judiciary of India is perhaps the widest and the most extensive known to the world of law</u>. … With this impressive expanse of judicial power, <u>it is only right that the superior courts in India should be conscious of the enormous responsibility which rest on them</u>. This is especially true of the Supreme Court, for as the highest Court in the entire judicial system the law declared by it is, by Article 141 of the Constitution, binding on all courts within the territory of India*.'
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> And again:
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> > '*11. Legal compulsions cannot be limited by existing legal propositions, because there will always be, beyond the frontiers of the existing law, new areas inviting judicial scrutiny and judicial choice-making which could well affect the validity of existing legal dogma. The search for solutions responsive to a changed social era involves a search not only among competing propositions of law, or competing versions of a legal proposition, or the modalities of an indeterminacy such as "fairness" or "reasonableness", but also among propositions from outside the ruling law, corresponding to the empirical knowledge or accepted values of present time and place, relevant to the dispensing of justice within the new parameters*.'
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> <u>The aforesaid two passages lay immense responsibility on the Court pertaining to the exercise of the power keeping in view the</u>

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30 **(2018) 7 SCC 1**
31 **(2024) 18 SCC 643**
32 **(1989) 2 SCC 754**

accepted values of the present. An organic instrument requires the Court to draw strength from the spirit of the Constitution. The propelling element of the Constitution commands the realisation of the values. The aspiring dynamism of the interpretative process also expects the same.

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42. *When we speak about judicial review, it is also necessary to be alive to the concept of judicial restraint. The duty of judicial review which the Constitution has bestowed upon the judiciary is not unfettered; it comes within the conception of judicial restraint. The principle of judicial restraint requires that Judges ought to decide cases while being within their defined limits of power. Judges are expected to interpret any law or any provision of the Constitution as per the limits laid down by the Constitution.*

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45. At this juncture, we think it apt to clearly state that the judicial restraint cannot and should not be such that it amounts to judicial abdication and judicial passivism. The judiciary cannot abdicate the solemn duty which the Constitution has placed on its shoulders i.e. to protect the fundamental rights of the citizens guaranteed under Part III of the Constitution. The Constitutional Courts cannot sit in oblivion when fundamental rights of individuals are at stake. Our Constitution has conceived the Constitutional Courts to act as defenders against illegal intrusion of the fundamental rights of individuals. The Constitution, under its aegis, has armed the Constitutional Courts with wide powers which the courts should exercise, without an iota of hesitation or apprehension, when the fundamental rights of individuals are in jeopardy. Elucidating on the said aspect, this Court in ***Virendra Singh v. State of U.P.***[33], has observed:

> ‘*35. … We have upon us the whole armour of the Constitution and walk from henceforth in its enlightened ways, wearing the breastplate of its protecting provisions and flashing the flaming sword of its inspiration.*’
>
> 46. *While interpreting fundamental rights, the Constitutional Courts should remember that whenever an occasion arises, the courts have to adopt a liberal approach with the object to infuse lively spirit and vigour so that the fundamental rights do not suffer. When we say so, it may not be understood that while interpreting*

[33] **AIR 1954 SC 447**

> *fundamental rights, the Constitutional Courts should altogether depart from the doctrine of precedents but it is the obligation of the Constitutional Courts to act as sentinel on the qui vive to ardently guard the fundamental rights of individuals bestowed upon by the Constitution.* The duty of this Court, in this context, has been aptly described in ***K.S. Srinivasan v. Union of India***[34] wherein it was stated:
>
> > '*49. … All I can see is a man who has been wronged and I can see a plain way out. I would take it.*' "
>
> (Italics in original; underscoring supplied)

64. While, therefore, zealously guarding the fundamental rights of the citizens of this country as the sentinel on the *qui vive*, the Court has also to remain conscious of the fact that the width of judicial review, vested in it for the purpose, has to be tempered with a degree of judicial restraint, so as to ensure that the well delineated peripheries of judicial review are not breached.

65. The judicial and executive, it must be realized, are co-equal players in our democratic arena. The judiciary does not sit in appeal over the executive while exercising the power of judicial review. It tests the manner in which the executive has acted, to ensure that the action remains with legally permissible limits and subscribes to the tenets of justice and fair play. Superior courts are superior only within the judicial hierarchy; they are not superior to the executive. Mutual respect among the judiciary, executive, and legislature, is of the very essence, in order to ensure that any democratic establishment prospers and thrives. There can be no feeling of one-upmanship.

[34] **AIR 1958 SC 419**

66. If the judiciary expects the executive to respect its judicial wisdom in matters relating to the law, it must, equally, respect the wisdom of the executive in matters which fall within the subject realm of executive discretion. Courts must, therefore, defer to the executive discretion in matters which are best left to the province of the executive, so long as the exercise of such discretion does not breach constitutional boundaries.

67. This position is especially underscored in fiscal and economic matters, as they impact the entire country as a whole. Interference with the wisdom of the executive in fiscal policy has, therefore, to be restricted to ensuring that the exercise remains constitutional at all times. So long as this *Lakshmanrekha* is not crossed, Courts must respectfully acknowledge the right of the executive to decide on matters of fiscal policy. Where the best interests of the country would lie, in such matters, must essentially remain in the territory of the executive. Substitution of its own subjective satisfaction, by the Court, in place of the satisfaction of the executive, in such cases, must be near completely eschewed.

68. This position has been reiterated by the Supreme Court, time and again, and may justifiably be regarded as, by now, judicially fossilized and, to employ the favourite expression of Courts, no longer *res integra*.

69. ***State of M.P. v. Nandlal Jaiswal***[35], relying on the earlier classic decision in ***R.K. Garg v. Union of India***[36], explained the position thus:

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[35] **(1986) 4 SCC 566**
[36] **(1981) 4 SCC 675**

"34. But, while considering the applicability of Article 14 in such a case, we must bear in mind that, having regard to the nature of the trade or business, the Court would be slow to interfere with the policy laid down by the State Government for grant of licences for manufacture and sale of liquor. The Court would, in view of the inherently pernicious nature of the commodity allow a large measure of latitude to the State Government in determining its policy of regulating, manufacture and trade in liquor. Moreover, the grant of licences for manufacture and sale of liquor would essentially be a matter of economic policy where the Court would hesitate to intervene and strike down what the State Government has done, unless it appears to be plainly arbitrary, irrational or mala fide. We had occasion to consider the scope of interference by the Court under Article 14 while dealing with laws relating to economic activities in ***R.K. Garg v. Union of India***. We pointed out in that case that *laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc.* We observed that the legislature should be allowed some play in the joints because it has to deal with complex problems which do not admit of solution through any doctrinaire or strait jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature. We quoted with approval the following admonition given by Frankfurter, J. in ***Morey v. Dond***[37]***:***

> "In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the Judges have been overruled by events — self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability."

What we said in that case in regard to legislation relating to economic matters must apply equally in regard to executive action in the field of economic activities, though the executive decision may not be placed on as high a pedestal as legislative judgment insofar as judicial deference is concerned. We must not forget that in complex economic matters every decision is necessarily empiric and it is based on experimentation or what one may call "trial and error method" and, therefore, its validity

[37] **354 US 457**

cannot be tested on any rigid a priori considerations or on the application of any strait jacket formula. The Court must while adjudging the constitutional validity of an executive decision relating to economic matters grant a certain measure of freedom or "play in the joints" to the executive. "The problem of Government" as pointed out by the Supreme Court of the United States in ***Metropolis Theatre Co. v. State of Chicago***[38]"

> "*are practical ones and may justify, if they do not require, rough accommodations, illogical, it may be, and unscientific. But even such criticism should not be hastily expressed. What is best is not discernible, the wisdom of any choice may be disputed or condemned. Mere errors of Government are not subject to our judicial review. It is only its palpably arbitrary exercises which can be declared void.*"

The Government, as was said in ***Permian Basin Area Rate***[39] is entitled to make pragmatic adjustments which may be called for by particular circumstances. The Court cannot strike down a policy decision taken by the State Government merely because it feels that another policy decision would have been fairer or wiser or more scientific or logical. The Court can interfere only if the policy decision is patently arbitrary, discriminatory or mala fide."

(Emphasis supplied)

70. More recently, in ***Akola Municipal Corporation v. Zishan Hussain Azhar Hussain***[40], we find the following exposition:

"21. This Court has also held that judicial interference by way of public interest litigation is available only if there is injury to public because of dereliction of constitutional obligations on the part of the Government. The writ jurisdiction of the High Court cannot be exercised in public interest for questioning the economic/fiscal policy or reforms sought to be undertaken by the Government or its functionaries. In this regard, we may gainfully refer to the following observations made by a three-Judge Bench of this Court in the case of ***BALCO Employees' Union v. Union of India***[41]*:—*

> "93. **Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any**

[38] **57 L Ed 730**
[39] **20 L Ed (2d) 312**
[40] **2025 SCC OnLine SC 2729**
[41] **(2002) 2 SCC 333**

statutory provision or the Constitution. In other words, it is not for the courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts. Here the policy was tested and the motion defeated in the Lok Sabha on 1-3-2001.

[……….]

97. **Judicial interference by way of PIL is available if there is injury to public because of dereliction of constitutional or statutory obligations on the part of the Government. Here it is not so and in the sphere of economic policy or reform the court is not the appropriate forum. Every matter of public interest or curiosity cannot be the subject-matter of PIL**. Courts are not intended to and nor should they conduct the administration of the country. **Courts will interfere only if there is a clear violation of constitutional or statutory provisions or non-compliance by the State with its constitutional or statutory duties.** None of these contingencies arise in this present case.

98. In the case of a **policy decision on economic matters, the courts should be very circumspect in conducting any enquiry or investigation and must be most reluctant to impugn the judgment of the experts who may have arrived at a conclusion unless the court is satisfied that there is illegality in the decision itself.**"

[Emphasis supplied]

22. Recently, in the case of ***Kirloskar Ferrous Industries Ltd. v. Union of India***[42], this Court held as below:—

"54. The doctrine of judicial restraint, which is central to this discussion, emphasizes that courts should exercise caution and avoid involvement in policy decisions, as these are complex judgments that require a balancing of diverse and often competing interests. Policies are crafted based on thorough analysis of social, economic, and political factors, considerations beyond the court's purview. **The court is tasked with ensuring that policies do not breach constitutional provisions or statutory limits; however, they should not replace policymakers' judgments with their own unless absolutely necessary.**

[42] **(2025) 1 SCC 695**

55. Policy decisions often require the expertise of professionals and specialists in fields such as economics, public health, national security, and environmental science. These domains involve specialized knowledge that judges, as generalists in legal matters, may lack. For instance, in economic policy, the executive may decide on trade tariffs or subsidies based on extensive data and projections that aim to balance domestic industry support with global trade commitments. The courts, lacking the same level of economic expertise and without the authority to make trade-offs among competing policy objectives, is typically not equipped to second-guess these kinds of decisions.

56. **While courts have the power of judicial review to ensure that executive actions and legislative enactments comply with the Constitution, this power is not absolute. Judicial review is meant to act as a safeguard against actions that overstep legal boundaries or infringe on fundamental rights, but it does not entail a comprehensive re-evaluation of the policy's wisdom. The judicial review of policy decisions is limited to assessing the legality of the decision making process rather than the substantive merits of the policy itself.** For example, if a government policy infringes on fundamental rights or discriminates against a particular group, the courts have a duty to strike down such policies. **However, in the absence of constitutional or legal violations, the courts should respect the policy choices made by the executive or legislature.**

57. The duty of the court in policy-related cases is **primarily to determine whether the policy falls within the scope of the authority granted to the relevant body. If the policy decision is within the executive's legal authority and has been made following proper procedures, the courts should defer to the expertise and discretion of the policy-makers, even if the policy appears unwise or imprudent**. This restraint ensures that the courts do not impose its own perspective on policy matters that are rightly the responsibility of other branches.
58. Economic and social policies often involve significant redistribution of resources, prioritization of interests, and balancing of public needs, which requires careful consideration by those with specialized knowledge and broad perspectives. **In the realm of economic policy, for instance, questions regarding the allocation of subsidies, fiscal deficits, or budget allocations are best managed by the executive, which has access to economic data and**

<u>is accountable to the public for its financial management. Judicial interference in such areas risks creating disruptions in the economic balance that policymakers are trying to achieve.</u>

59. Courts should assume that policy-makers act in good faith unless there is clear evidence to the contrary. **<u>As long as the policy does not contravene the Constitution or violate statutory provisions, it is not the role of the courts to question the wisdom or fairness of such policy.</u>**
60. While judicial restraint is essential in respecting the boundaries of each branch of government, it does not mean that courts abdicate their responsibility to protect constitutional rights. The courts must still intervene if a policy infringes on fundamental rights, discriminates unfairly, or breaches statutory provisions. The role of the court in such instances is to protect individuals and groups from unlawful actions while maintaining the overall integrity of the policy-making process. This balance ensures that while courts do not interfere in matters of policy wisdom, they remain vigilant guardians of constitutional rights."

[Emphasis supplied]
(Emphasis as in the original report)

71. The Constitution Bench of the Supreme Court revisited the position in ***Vivek Narayan Sharma v. Union of India***[43], which involved a challenge to the decision of the Government to demonetize certain currency notes, and observed as under:

"226. Recently, this Court in ***Small Scale Industrial Manufactures Assn. v. Union of India***[44] had an occasion to consider the issue with regard to scope of judicial review of economic and fiscal regulatory measures. This Court observed thus:

"69. What is best in the national economy and in what manner and to what extent the financial reliefs/packages be formulated, offered and implemented is ultimately to be decided by the Government and RBI on the aid and advice of the experts. The same is a matter for decision exclusively within the province of the Central Government.

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[43] **(2023) 3 SCC 1**
[44] **(2021) 8 SCC 511**

Such matters do not ordinarily attract the power of judicial review. Merely because some class/sector may not be agreeable and/or satisfied with such packages/policy decisions, the courts, in exercise of the power of judicial review, do not ordinarily interfere with the policy decisions, unless such policy could be faulted on the ground of mala fides, arbitrariness, unfairness, etc.

70. *There are matters regarding which the Judges and the lawyers of the courts can hardly be expected to have much knowledge by reasons of their training and expertise. Economic and fiscal regulatory measures are a field where Judges should encroach upon very warily as Judges are not experts in these matters*.

71. *The correctness of the reasons which prompted the Government in decision taking one course of action instead of another is not a matter of concern in judicial review and the court is not the appropriate forum for such investigation. The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering of the points from different angles. In assessing the propriety of the decision of the Government the court cannot interfere even if a second view is possible from that of the Government.*"

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227. This Court in ***Small Scale Industrial Manufactures Assn.*** observed that *the Court would not interfere with any opinion formed by the Government if it is based on the relevant facts and circumstances* or based on expert's advice. *The Court would be entitled to interfere only when it is found that the action of the executive is arbitrary and violative of any constitutional, statutory or other provisions of law.* It has been held that when the Government forms its policy, it is based on a number of circumstances and it is also based on expert's opinion, which must not be interfered with, except on the ground of palpable arbitrariness. It is more than settled that the *Court gives a large leeway to the executive and the legislature in matters of economic policy.* A reference in this respect could be made to the judgments of this Court in ***P.T.R. Exports (Madras) (P) Ltd. v. Union of India***[45] and ***Bajaj Hindustan Ltd. v. Sir Shadi Lal Enterprises Ltd.***[46]

[45] **(1996) 5 SCC 268**
[46] **(2011) 1 SCC 640**

228. *It is not the function of this Court or of any other Court to sit in judgment over such matters of economic policy and they must necessarily be left to the Government of the day to decide since in such matters with regard to the prediction of ultimate results, even the experts can seriously err and doubtlessly differ.* The Courts can certainly not be expected to decide them without even the aid of experts."

(Emphasis supplied)

72. Bela M. Trivedi, J., in her concurring opinion in ***Radhika Agarwal v. Union of India***[47], dealt with the scope of judicial review while examining the decision of the executive to arrest persons in economic offences, thus:

"83. While completely agreeing with the well-considered opinion expressed by the Hon'ble Chief Justice, on when and how the power of arrest should be exercised by the authorised officers, I have thought it expedient to pen down my views *on the jurisdictionary powers of judicial review under Article 32 and Article 226 of the Constitution of India, when the arrest of a person is challenged.*

84. *At the outset, it may be noted that as well settled, though the powers of judicial review under Articles 32 and 226 of the Constitution of India are very wide and untrammelled and are vested in the superior courts to protect the legal and fundamental rights of the citizens and even non-citizens, the courts over the years have evolved certain self-restraints for exercising these powers*. They have done so in the interest of the administration of justice and for better and more efficient and informed exercise of the said powers. *The self-restraints or limitations are imposed as a matter of prudence, propriety, policy and practice*. The extraordinary jurisdiction under Articles 32 and 226, by its very nature is used sparingly and in the extraordinary circumstances.

85. It may further be noted that again as well settled, the Fundamental Rights under Part III of the Constitution *are part of the integrated scheme of the Constitution. They are not exclusive of each other but operate, and are, subject to each other*. The action complained of must satisfy the tests of all the said rights so far as they are applicable to the individual cases. Though Article 21 grants a person right to life and personal liberty, it permits the State to deprive a person of his life and personal liberty, provided

[47] **(2025) 6 SCC 545**

it is done strictly according to the procedure established by law. This permission is expressly controlled by Article 22 in cases both of arrest and detention. Therefore, *reading Articles 21 and 22 together, it is very clear that the Constitution permits both punitive and preventive detention provided it is according to the procedure established by law made for the purpose, and if both the law and the procedure laid down by the law, are valid*.

86. Whenever the jurisdiction of the High Court or the Supreme Court is invoked under Article 226 or Article 32 as the case may be, challenging the punitive or preventive detention, *the Court is expected to take into consideration the nature of right infringed, the scope and object of the legislation under which such arrest or detention is made, the need to balance the rights and interests of the individual as against those of the society, the circumstances under which and the persons by whom the jurisdiction is invoked, etc*. In exercise of their discretionary jurisdiction, the High Courts and the Supreme Court do not, as courts of appeal or revision, correct errors of law or of facts. The *judicial intervention is warranted only in exceptional circumstances when the arrest is prima facie found to be mala fide; or is prompted by extraneous circumstances, or is made in contravention of or in breach of provisions of the statute concerned; or when the authority acting under the statute concerned does not have the requisite authority, etc*.

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88. The safeguards provided in the special Acts against the arrest of a person, are provided keeping in view the fundamental rights of life and personal liberty of a person enshrined in the Constitution of India. It cannot be gainsaid that such safeguards provided against the arrest of a person under the special Acts or the Code of Criminal Procedure, must be observed not only to protect his fundamental right of personal liberty but also to prevent a potential misuse of the power to arrest a person at the instance of the authorised officer. The safeguards are — the requirement to have "material" in possession of the authorised officer, to form an opinion and record in writing the "reasons to believe" that the person arrested is guilty of an offence or has committed an offence as the case may be, under the provisions of the Act concerned, and the requirement to inform the person arrested, as soon as may be, of the grounds of arrest. As per Article 21 of the Constitution, no person could be deprived of his life or personal liberty except according to procedure established by law. Since, the personal liberty of a person is deprived, when he is arrested, the procedure laid down in the statute while depriving his personal liberty, has to be followed. Similarly, as per Article 22(1) of the Constitution, no

person who is arrested, could be detained in custody without being informed, as soon as may be, of the grounds for such arrest. Thus, the grounds for such arrest have to be communicated to him as soon as may be after the arrest is made. Tersely put, there has to be due compliance of the constitutional and statutory mandates, whenever an arrest is made of a person under the special Acts.

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91. However, <u>when the legality of such an arrest made under the special Acts like PMLA, UAPA, Foreign Exchange, Customs Act, GST Acts, etc. is challenged, the Court should be extremely loath in exercising its power of judicial review. In such cases, the exercise of the power should be confined only to see whether the statutory and constitutional safeguards are properly complied with or not, namely, to ascertain whether the officer was an authorised officer under the Act, whether the reason to believe that the person was guilty of the offence under the Act, was based on the "material" in possession of the authorised officer or not</u>, and whether the arrestee was informed about the grounds of arrest as soon as may be after the arrest was made. <u>*Sufficiency or adequacy of material on the basis of which the belief is formed by the officer, or the correctness of the facts on the basis of which such belief is formed to arrest the person, could not be a matter of judicial review.*</u>

92. It hardly needs to be reiterated that the power of judicial review over the subjective satisfaction or opinion of the statutory authority would have different facets depending on the facts and circumstances of each case. *The criteria or parameters of judicial review over the subjective satisfaction applicable in service related cases, cannot be made applicable to the cases of arrest made under the special Acts. The scrutiny on the subjective opinion or satisfaction of the authorised officer to arrest the person could not be a matter of judicial review, inasmuch as when the arrest is made by the authorised officer on he having been satisfied about the alleged commission of the offences under the special Act, the matter would be at a very nascent stage of the investigation or inquiry. The very use of the phrase "reasons to believe" implies that the officer should have formed a prima facie opinion or belief on the basis of the material in his possession that the person is guilty or has committed the offence under the relevant special Act.* <u>*Sufficiency or adequacy of the material on the basis of which such belief is formed by the authorised officer, would not be a matter of scrutiny by the courts at such a nascent stage of inquiry or investigation.*</u>

93. As held in ***Adri Dharan Das v. State of W.B.***[48], ordinarily arrest is a part of the process of investigation intended to secure several purposes. *The accused may have to be questioned in detail regarding various facets of motive, preparation, commission and aftermath of crime and the connection of other persons, if any, in the crime. There may be circumstances in which the accused may provide information leading to discovery of material facts. It may be necessary to curtail his freedom in order to enable the investigation to proceed without hindrance and to protect witnesses and persons connected with the victim of the crime, to prevent his disappearance, to maintain law and order in the society, etc. For these or such other reasons, arrest may become an inevitable part of the process of investigation*.

94. It is pertinent to note that the special Acts are enacted to achieve specific purposes and objectives. *The power of judicial review in cases of arrest under such special Acts should be exercised very cautiously and in rare circumstances to balance individual liberty with the interest of justice and of the society at large. Any liberal approach in construing the stringent provisions of the special Acts may frustrate the very purpose and objective of the Acts*. It hardly needs to be stated that the offences under the PMLA or the Customs Act or FERA are the offences of very serious nature affecting the financial systems and in turn the sovereignty and integrity of the nation. The provisions contained in the said Acts therefore must be construed in the manner which would enhance the objectives of the Acts, and not frustrate the same. *Frequent or casual interference of the courts in the functioning of the authorised officers who have been specially conferred with the powers to combat the serious crimes, may embolden the unscrupulous elements to commit such crimes and may not do justice to the victims, who in such cases would be the society at large and the nation itself. With the advancement in technology, the very nature of crimes has become more and more intricate and complicated. Hence, minor procedural lapse on the part of authorised officers may not be seen with magnifying glass by the courts in exercise of the powers of judicial review, which may ultimately end up granting undue advantage or benefit to the person accused of very serious offences under the special Acts*. Such offences are against the society and against the nation at large, and cannot be compared with the ordinary offences committed against an individual, nor the accused in such cases be compared with the accused of ordinary crimes.

95. *Though, the* power of judicial review keeps a check and balance on the functioning of the public authorities and is

[48] **(2005) 4 SCC 303**

exercised for better and more efficient and informed exercise of their powers, *such power has to be exercised very cautiously keeping in mind that such exercise of power of judicial review may not lead to judicial overreach, undermining the powers of the statutory authorities*. To sum up, the powers of judicial review may not be exercised unless *there is* manifest arbitrariness or gross violation or *non-compliance* of the statutory safeguards provided under the special Acts, required to be followed by the authorised officers when an arrest is made of a person prima facie guilty of or having committed offence under the special Act."

(Italics in original; underscoring supplied)

73. Thus, even in a case involving deprivation of the personal liberty of the individual, where the deprivation was consequent to action taken in respect of an economic offence, the Court has emphasized the need for caution, and circumspection while interfering. In any event, the Court is proscribed from entering into the *sufficiency* of the material on the basis of which the action is taken – unless, of course, in a given case, there is practically no material at all.

74. It is here that we find it difficult to agree with the learned Single Judge in her view, as expressed in the italicized words in the following extracts from paras 36 and 39 of the impugned judgment:

"It has to be kept in mind, that the issuance of a LOC necessarily curtails the rights of an individual to travel abroad and therefore, I am of the view, that for invocation of this Clause, which, in any event, is meant to be used only in exceptional circumstances, a mandatory pre-condition would be a formation of a reasonable belief by the originating authority that the departure of an individual would be 'detrimental to the economic interests of India' *to such an extent that it warrants curtailment of an individual's fundamental right to travel abroad.*"

(From para 36)

"Merely because the OM dated 5-12-2017 permits the issuance of a LOC, in exceptional circumstances, even when the individual is not involved in any cognizable offence under the IPC or any other Penal Law, it has to be remembered that this power, is meant to be used in exceptional circumstances and not as a matter of routine, it must therefore, be interpreted in a manner that indicates an offence *of such a magnitude so as to significantly affect the economic interests of the country*."

(From para 39)

(Emphasis supplied in both paras)

To our mind, the scope of judicial review of a decision to issue an LOC, while certainly not foreclosed, cannot extend to subjectively assessing the *extent* or *magnitude* of the material available with the authorities, or whether it is *sufficient* to issue an LOC. ***Radhika Agrawal*** specifically proscribes this. Save and except where the decision to issue an LOC is so shockingly disproportionate to the material on the basis of which the decision is taken, we are of the view that the issue of whether the material available with the executive authorities *is sufficient* to issue an LOC has to be left to the authorities, and there can be no judicial review of the *sufficiency* of such material.

75. The power and authority to issue an LOC stems, not from statute, but from executive instructions in the form of the OMs issued by the MHA. In understanding the amplitude of the said power, therefore, the Court has to be guided by the words of such executive instructions, as they manifest the intent and purpose to be served by issuance of an LOC.

76. The 2010 OM was amended by the 2017 OM. Paras 8(g), (h) and (j) of the 2010 OM provided thus:

"g) Recourse to LOC is to be taken in cognizable offences under IPC or other penal laws. The details in column IV of the enclosed Pro forma regarding 'reason for opening LOC' must invariably be provided without which the subject of an LOC will not be arrested/detained.

h) In cases where there is no cognizable offence under IPC or other penal laws, the LOC subject cannot be detailed/arrested or prevented from leaving the country. The originating agency can only request that they be informed about the arrival departure of the subject in such (cases).

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j) In exceptional cases, LOCs can be issued without complete parametres and/or case details against CI suspects, terrorists, antinational elements etc. in larger national interest."

The 2017 OM replaced para 8(j) to read thus:

"In exceptional cases, LOCs can be issued even in such cases, as would not be covered by the guidelines above, whereby departure of a person from India may be declined at the request of any of the authorities mentioned in clause (b) of the above-referred OM, if it appears to such authority based on inputs received that the departure of such person is detrimental to the sovereignty or security or integrity of India *or that the same is detrimental to* bilateral relations with any country or to the strategy and/or *economic interests of India* or if such person is allowed to leave, he may potentially indulge in an act of terrorism or offences against the State and/or that such departure ought not to be permitted in the larger public interest at any given point in time."

The residuary clause contained in para 8(j) of the 2010 OM was, therefore, deliberately and consciously widened and expanded to include, inter alia, a case in which it appeared, to the authority issuing the LOC, based on inputs received, that the departure of the person concerned from India was detrimental to the economic interests of India. The subjective satisfaction which the amended para 8(j) envisages is, therefore, that of the authority issuing the LOC. *Unless and until, therefore, the Court is satisfied that there was no material* *on the basis of which the authority issuing the LOC could have arrived at the satisfaction regarding the existence of one, or more, of the factors envisaged in the amended para 8(j), or that, for the sake of argument, the material available was such as would never persuade any right thinking person to issue an LOC, the Court would, to our mind, not be justified in interfering with the decision to issue the LOC merely because, in its estimation, the material available was not sufficient to merit issuance of the LOC.*

77. While we may not be at variance with the learned Single Judge in her view that issuance of an LOC curtails the freedom of the citizen to travel outside the country and is, therefore, to that extent a somewhat drastic step, we cannot accept the extrapolation of the view to hold that the Court can assess whether the material available was *sufficient* to justify taking such a drastic step. The sufficiency of the material has, to our mind, fundamentally to remain within the province of the authority issuing the LOC. The Court cannot don the cloak of a super-executive authority.

78. Our understanding is influenced, to no small extent, by the width and amplitude of the words "detrimental to the economic interests of India". The decisions cited by us earlier in this judgment clearly accord primacy to the executive in the matter of deciding where the economic interests of the country lie. In matters involving economic considerations, and the fiscal or economic interests of the country, Courts have necessarily to step back. Particularly in the context of the present case, the income tax authorities would essentially be best equipped to decide where the economic interests of the country would lie, and this Court cannot, even if it has a subjective view in the matter, substitute that view for the view of the authorities.

79. Issue (i), as framed by us in para 63 *supra* has, therefore, to be answered by holding that, while judicial review of the decision to issue the LOC is not inexorably foreclosed, the Court cannot sit in appeal over the subjective satisfaction of the authority issuing the LOC or assess, for itself, whether the material on the basis of which the decision has been taken is sufficient to justify the decision. Of course, in a case where the material is only speculative, or appears, to the Court, to be no more than moonshine, the Court would strain every sinew to ensure that the fundamental right of the citizen is not jeopardised. The Court cannot, however, quite clearly, assess, for itself, whether the material on which the authority issuing the LOC has acted, and done so, is qualitatively or quantitatively sufficient to justify the decision.

II. Re. Issue (2) – Does the decision to issue the LOC merit interference in judicial review?

80. Paras 37 to 40 of the impugned judgment[49] contain the reasons for the learned Single Judge's decision:

> "37. However, the matter does not end here and the crucial issue which needs to be now determined is as to whether the clause "detrimental to the economic interests of India" introduced vide the amendment in 2017, with a specific rider that the same would

[49] As reported in **2022 SCC OnLine Del 97**

be used only in exceptional circumstances, could have, in the facts of the present case, been resorted to, for issuing the impugned LOC, as also whether the impugned LOC could be continued for the last almost 3 years without any proceedings under the IPC or any other penal law being initiated against the petitioner. It has to be kept in mind, that the issuance of a LOC necessarily curtails the rights of an individual to travel abroad and therefore, I am of the view, that for invocation of this clause, which, in any event, is meant to be used only in exceptional circumstances, a mandatory pre-condition would be a formation of a reasonable belief by the originating authority that the departure of an individual would be "detrimental to the economic interests of India" to such an extent that it warrants curtailment of an individual's fundamental right to travel abroad. Turning to the facts of the present case, what is emerging is that *the entire case of the respondents to believe that the petitioner's departure from the country will be "detrimental to the economic interests of India", hinges on an unsigned draft agreement and some WhatsApp chats, which it is the respondent's own case are not conclusive*. *The respondents, are therefore, awaiting a response to their FT & TR references to the authorities at Dubai, United Arab Emirates to proceed against the petitioner under the Black Money Act, 2015, Income Tax Act, 1969, and the Prevention of Money-Laundering Act, 2002, which were, in fact, the reasons provided by Respondent 3 itself to Respondent 1, while forwarding its request for issuance of the LOC.*

38. *The petitioner, on the other hand, has produced certificates from the Government of Dubai, to show that the allegations levelled against him are absolutely untrue and neither he nor his family members own any asset or shares in any company in Dubai*. These certificates were, I may note, produced by the petitioner and submitted to the respondents in 2019 itself. *Even though it is correct that at this stage, this Court is neither expected to examine the evidence in detail nor will the lack of evidence be conclusive, the fact however remains that the LOC in question, has remained in force for almost three years, during which period, the respondents have admittedly not taken any further action against the petitioner either under the Black Money Act, 2015, the Income Tax Act, 1969, or the Prevention of Money-Laundering Act, 2002. The two income tax assessment orders passed on 5-7-2021, have assessed the petitioner's additional income to be Rs 21.40 crores; even these orders are under challenge by the petitioner. It is also an admitted position that except for the FT & TR references made by Respondent 3, to the government authorities in Dubai in July 2019, no action has till date been taken by any of the respondents, to substantiate their allegation that the petitioner is involved in a huge financial scam or is involved in an offence under any other Penal Laws. Thus, when as on date, there is no active investigation*

in regard to the alleged economic offences by the petitioner, coupled with the fact that the petitioner has, on 19 occasions appeared before Respondent 3, I have no hesitation in accepting the petitioner's plea that the very premise of the issuance of the LOC against him is based on a suspicion, which suspicion remains a mere suspicion even as on date, and that is perhaps the reason as to why no prosecution has been undertaken against him either under the Black Money Act, Income Tax Act or Prevention of Money-Laundering Act, even after an inordinately long period of almost three years.

39. Moreover, even if the respondent's plea, that in view of the ongoing investigation regarding the petitioner's foreign interests, the issuance of the LOC in February 2019 was justified, were to be accepted, *the continuance of this LOC for almost three years without any cogent reasons forthcoming from them, is not understandable. In my considered opinion, it would be wholly impermissible, for the respondents, to continue placing fetters on the petitioner's right to travel abroad, in such a routine and mechanical manner without due consideration of the fact that even after almost three years there is still no sufficient evidence to charge the petitioner under the Black Money Act, 2015, Income Tax Act, 1969, or the Prevention of Money-Laundering Act, 2002*. It is important to note that the petitioner herein, earns his livelihood by exporting garments to the United States of America, Europe, South America, the United Kingdom and the United Arab Emirates; an integral part of such business is overseas travel. The LOC does not only curtail his right to personal liberty but also his right to livelihood, as enshrined in Article 21 the Constitution of India. Thus, *the issuance of a LOC against the petitioner, without any end in sight, would definitely cause irreparable and considerable damage to the business interests of the petitioner*. One also has to keep in mind that the issuance of a LOC is an extremely severe step and when purportedly issued in exceptional circumstances, on the ground of the departure of the person being "detrimental to the economic interests of India", the authorities must tread with caution. *Once this clause itself is meant to be used in exceptional circumstances, it cannot be permitted to be used in such a mechanical manner, as in the present case*.

40. Merely because the OM dated 5-12-2017 permits the issuance of a LOC, in exceptional circumstances, even when the individual is not involved in any cognizable offence under the IPC or any other Penal Law, it has to be remembered that *this power, is meant to be used in exceptional circumstances and not as a matter of routine, it must therefore, be interpreted in a manner that indicates an offence of such a magnitude so as to significantly affect the economic interests of the country. Mere suspicion of a*

person opening bank accounts in other countries and of investing in a foreign company cannot, in my view, be accepted as the basis for holding that the petitioner being allowed to travel abroad would be "detrimental to the economic interests of India", when it is undisputed that this suspicion has remained a suspicion for such a long period of almost three years."

81. The factors which have persuaded the learned Single Judge to hold the issuance or, the very least, the continuance, of the LOC, to be unjustified in law are, therefore, the following:

(i) The UOI was basing its case on an unsigned draft agreement and some WhatsApp chats, which were not conclusive.

(ii) The UOI was, therefore, awaiting a response from the authorities and Dubai, to its FT & TR references.

(iii) The respondent had produced materials from the government of Dubai, to show that neither he, nor his family members, owned any asset or shares in any company in Dubai.

(iv) The LOC had remained in force for almost three years, without the UOI taking any further action against the petitioner under the Black Money Act, the IT Act and the PMLA.

(v) The two income tax assessment orders dated 15 July 2021 assessed the respondent's additional income to be ₹ 21.4 crores.

(vi) There was no other material to substantiate the stand of the UOI that the respondent was involved in a huge financial scam or any offence under any other penal law.

(vii) There was no active investigation in regard to the alleged economic offences committed by the respondent.

(viii) The respondent had appeared on 19 occasions before the income tax authorities.

(ix) The case against the respondent was, therefore, even as on that date, mere suspicion, and nothing more.

82. Mr. Rai has sought to submit that, in arriving at the above findings, the impugned judgment has not holistically considered all the factors which influenced the decision to issue the LOC and, on a perusal of the record, we are inclined to agree with him. The grounds for issuing the LOC, as contained in the counter-affidavit filed by the Income Tax authorities, by way of response to the writ petition, read thus:

> "6. It was found that the Petitioner Mr. Vikas Chaudhary is not only running the company M/s Nautililus Metal Crafts Pvt Ltd and M/s Aashtha Apparels Pvt Ltd, but also controlling companies like M/s JBB Apparels Pvt Ltd and M/s JBN Apparels Pvt Ltd through his relatives. During the course of search and survey operations, incriminating documents/ digital evidences relating to over invoiced exports, trade-based money laundering, fictitious purchases, fraudulently availing of export incentives, duty drawback, ROSL and sharing them with other exporters were found.
>
> 7. Mr. Avtar Singh Kochar was found to be running a hawala racket and in his statement, he admitted that he helped in getting a telegraphic transfer to one of the entities of the Petitioner Vikas Chaudhary. Vikas Chaudhary made exports to various companies out of which the department found evidences for few companies, which were involved in Money Laundering (as retrieved from the

evidences collected mainly from premises of Avtar Singh Kochar). Following companies are the common companies, which were found in the list of Avtar Singh Kochar through which he made hawala transactions and to which sales were made by the entities controlled by Vikas Chaudhary:

Company Name	Financial Year	Receipts
In the Books of Aastha Apparels Pvt. Ltd.		
Diastone Trading FZE	2017-18	30,673,725
Tirupati General trading LLC	2017-18	22,580,586
Pilot Trading LLC	2017-18	16,203,062
Pilot Trading LLC	2018-19	38,074,586
Diastone Trading FZE	2018-19	45,630,196
Total		**153,162,155**
In the books of JBB Apparels Pvt. Ltd.		
Diastone Trading FZE	2017-18	1,005,959
Diastone Trading FZE	2018-19	9,944,687
Total		**10,950,646**
In the books of JBN Apparels Pvt. Ltd.		
Tirupati General Trading LLC	2017-18	2,680,052
Tirupati General Trading LLC	2018-19	25,530,637
Total		**28,210,689**
Grand Total		**192,323,490**

8. From earlier actions of various law enforcement agencies, one Mr. Manoj Garg has been found to be involved in International Hawala transactions. The Petitioner Vikas Chaudhary is related to him, as is evident from various evidences seized during the course of searches at the premises of Vikas Chaudhary. In the phone of Vikas Chaudhary there is a list of various numbers of MG and people who are known to Vikas Chaudhary through Manoj Garg. The list of persons related to Manoj Garg whose contact numbers have been found from the mobile Vikas Chaudhary are as follows –

Name	Phone Numbers
Ajay Gupta Ref MG	+919871034123
Manoj garg	00971505502919
Mg	9910091921
MG India	+918527891921
Mg Uk	+447471500001
Reg MG Ajay Gupta	+919871034123
Siddharth Mandavia MG Friend Mumbai	+919920799999
Vipin garg ref	9911113344

manojgarg	

9. Further there is a company named 'M/s Maximus International General Trading LLC' which is controlled by Mr. Manoj Garg from whom significant amount of money is received by the Petitioner Vikas Chaudhary's Group companies, on account of purchases shown to have been made by the former. The exports so made by the companies controlled by Vikas Chaudhary are as follows:

Name of company of Shri Vikas Chaudhary	**Sales**	**Receipt**
Aastha Apparels Pvt. Ltd.	297,42,46,511	220,10,20,376
JBB Apparels Pvt. Ltd.	24,44,06,264	15,23,59,513
JBN Apparels Pvt. Ltd.	36,37,94,588	25,24,30,074
Total	358,24,47,363	260,58,09,963

10. There are further evidences seized during the searches conducted at various premises of the Petitioner Vikas Chaudhary which proved that over-invoiced goods were exported to Dubai. Export incentives fraudulently earned by the companies controlled by Vikas Chaudhary runs into Rs 170 crores. Information was shared with the Directorate of Revenue Intelligence and action has been taken against the illegal activities of Vikas Chaudhary.

11. Further, bogus purchases to the tune of Rs 1153 crores were identified to be made in the three entities- M/s Aashtha Apparels Pvt Ltd, M/s JBB Apparels Pvt Ltd and M/s JBN Apparels Pvt Ltd. Findings of the Income Tax authorities were shared with the Directorate General of GST Intelligence (DGGI). They had also confirmed that the companies controlled by Vikas Chaudhary had raised fake invoices and availed GST inputs fraudulently.

12. From the digital evidences seized during the course of searches by the Income Tax Department, a draft agreement for an offshore Company in the name of M/s Centurion International Limited registered in Jebel Ali Free zone, Dubai was found. As per the documents, Vikas Chaudhary bought 10% share in the company for 16,500,000 AED or INR 30 Crores (as per the trust deed) from one Mr. Amit Agarwal in the name of his daughter Ms. Aastha Chaudhary. Based on the passport details, Mr. Amit Aggarwal is found to be a person who frequently visited Dubal and files return of Income declaring nominal income below 5 Lakhs. At

this stage, primarily, the above said offences are being investigated and if during investigation, evidence of violation of the Prohibition of Benami Transaction Act 1988 are found, the investigations would also cover the same. Under the above circumstances, Information related to details of M/s Centurion International Limited was sought from the authorities in United Arab Emirates (U.A.E. hereinafter) under FT & TR reference in July, 2019. However, the replies from the U.A.E authorities is still awaited, probably delayed on account of the Covid SARS 2 pandemic.

13. Therefore, the Petitioner Vikas Chaudhary has committed various offences under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 ("Black Money Act") under Sections 50, 51, 52, 53 and 56(3) of the Black Money Act, by purchase of shares of M/s Centurion International Limited, which have not been disclosed with the Income Tax Authorities.

14. The total income tax evasion which has been found by the Income Tax Department as a result of search action is more than Rs 1500 crores on account of bogus purchases, fraudulent claim of export incentives, unaccounted cash transaction, unaccounted investment etc. (Detailed findings of the Income Tax Department in the form of the Appraisal Report will be placed in a sealed cover for the perusal of the Hon'ble Court). Further, final assessment order in the case of the Petitioner Vikas Chaudhary and his companies is due on 30.06.2021.

15. It is submitted that though the Black Money Act does not provide as to whether the offences under the Act are cognizable or not, the first Schedule of the Cr.P.C. Part II, provides that if any offence is punishable with imprisonment for 3 years and upwards, but not more than 7 years, such offense shall be classified as a cognizable and a Non-Bailable offense. Hence, while classifying the offences against the Petitioner, as detailed hereinabove, the above Schedule may be referred and the offences, are to be treated as Cognizable offences.

16. In the present case, the economic interest of Country is involved wherein the petitioner is involved in trade-based money laundering, Hawala Transactions with the help of bogus and fake export invoices and thereby causing huge losses to the exchequer of the Country which is causing huge losses to the Economic interest of the Country."

83. A reading of the above paragraphs from the counter-affidavit filed by the IT authorities before the learned Single Judge reveals that the allegations against the respondent were not limited to investing amounts in shares in CIL or in any other company in Dubai, or in acquiring possession of property situated in Dubai. They are much more. According to the counter-affidavit, the material resumed from the residence and the locker of the respondent indicated, inter alia,

(i) a hawala racket being run by Avtar Singh Kochar, which included a telegraphic transfer to one of the entities of the respondent,

(ii) exports made by the respondent to companies involved in money-laundering,

(iii) hawala transactions by Avtar Singh Kochar through Aastha Apparels Pvt Ltd, JBB Apparels Pvt Ltd and JBN Apparels Pvt Ltd involving sales, by the said companies of amounts to the tune of ₹ 15.31 crores, ₹ 1.09 crores and ₹ 2.82 crores,

(iv) the existence of the telephone numbers, in the phone of the respondent, of Manoj Garg and other persons known to the respondents through Manoj Garg, involved in international hawala transactions,

(v) receipts, by Aastha Apparels Pvt Ltd, JBB Apparels Pvt Ltd and JBN Apparels Pvt Ltd, of ₹ 220.1 crores, ₹ 15.2 crores and ₹ 25.2 crores, working out to a total of ₹ 260.58 crores, on account of purchases stated to have been made by M/s Maximus International General Trading LLC, a company owned by Manoj Garg,

(vi) export of over invoiced goods to Dubai by companies owned or controlled by the respondent, involving fraudulent export incentives to the tune of ₹ 170 crores, in respect of which information was also shared with the Directorate of Revenue Intelligence, and action initiated, and

(vii) bogus purchases by Aastha Apparels Pvt Ltd, JBB Apparels Pvt Ltd and JBN Apparels Pvt Ltd to the tune of ₹ 1153 crores, the information relating to which had been shared with the Directorate General of GST Intelligence which also confirmed raising of fake invoices and availing of fraudulent GST input credit by the said companies,

apart from the purchase of 10% shares of CIL through a draft agreement executed by Aastha Chaudhary. Even in respect of this purchase, the counter-affidavit alleged that the purchase was one from Amit Agarwal, who frequently visited Dubai and had filed income tax returns income of less than ₹ 5 lakhs. The investigations with the Dubai authorities were essentially with respect to the purchase of shares in the company situated in Dubai and acquisition of property therein.

84. The counter-affidavit alleged that all the above details remained undisclosed to statutory authorities, including the Income Tax authorities and, if found to be substantiated, would reveal huge amounts of tax evasion and commission of offences under the IT Act, the Black Money Act and the PMLA.

85. We have seen the official file which was provided to us in a sealed cover. The contents bear out the assertions in the counter affidavit.

86. All that we can say is that if, based on the above material, the Income Tax authorities were of the view that allowing the respondent to leave the country could be detrimental to its economic interests, it cannot, by any stretch of imagination, be said that the decision was taken on irrelevant, inadmissible or even insubstantial material.

87. As we have already observed, it is not for us to comment on the merits of the allegations raised by the appellant against the respondent. What the final outcome of the investigations which are presently being conducted would be, is anybody's guess. Suffice it, however, to state that, in the above facts, it cannot be said that a case for quashing and setting aside the LOC issued to the respondent was made out.

G. Conclusion

88. As a result, the impugned judgment dated 12 January 2022 is quashed and set aside.

89. WP (C) 5374/2021, filed by the respondent, shall stand dismissed.

90. The present appeal is accordingly allowed with no orders as to costs.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

AUGUST 12, 2026/AR/DSN