



In the

**RESERVE BANK OF INDIA**  
Foreign Exchange Department  
Central Office Cell, 2nd floor  
6, Sansad Marg  
New Delhi - 110 001

Present

**R.K. Moolchandani**  
**Chief General Manager**

Date: January 10, 2020

C.A. No.107 /2019

In the matter of

**Mr Rakesh Kumar**  
**C-2/42 SDA, Hauz Khas**  
**New Delhi - 110016**

In exercise of the powers under Section 15 (1) of Foreign Exchange Management Act, 1999 and the Regulations / Rules / Notifications / Orders made thereunder, I pass the following Order.

### **Order**

The applicant Mr Rakesh Kumar has filed an application dated June 18, 2019 (received in RBI on June 18, 2019) for compounding of contravention of the provisions of Foreign Exchange Management Act, 1999 (the FEMA) and the regulations issued thereunder. The contravention sought to be compounded relates to making deposits in the FCNR (B) account by a resident in contravention of Para 10 of Schedule 2 to Notification No. FEMA.5/2000-RB dated 3rd May 2000.



**2. The relevant facts of the case are as follows:**

- a. The applicant, Mr. Rakesh Kumar retired from India Foreign Services on September 30, 2008.
- b. While the applicant was posted abroad, he had made various deposits under FCNR (B) account. He returned to India in the year 1995. Despite his return to India and change in residential status, he continued to renew FDRs under FCNR(B) account thereby contravening the Para 10 of Schedule 2 to Notification No. FEMA.5/2000-RB dated May 3, 2000.
- c. Para 10 of Schedule 2 to Notification No. FEMA.5/2000-RB dated May 3, 2000 states that when an account holder becomes a person resident in India, deposits may be allowed to continue till maturity at the contracted rate of interest, if so desired by him. However, except the provisions relating to rate of interest and reserve requirements as applicable to FCNR (B) deposits, for all other purposes such deposits shall be treated as resident deposits from the date of return of the accountholder to India. Authorized dealers should convert the FCNR(B) deposits on maturity into resident rupee deposit accounts or RFC account (if the depositor is eligible to open RFC account), at the option of the accountholder and interest on the new deposit (rupee account or RFC account) shall be payable at the relevant rates applicable for such deposits.
- d. The above contravention was Regularized vide RBI letter No. FED.CO.ND.NRFAD/760/22.13.018/2018-19 dated April 8, 2019
- e. The total amount involved in fixed deposits i.e. ₹ 4,53,15,444/- (Rupees four crore fifty-three lakh fifteen thousand four hundred forty four only) has been considered as the amount of contravention. Further, in the course of time, the applicant has earned an interest of ₹ 1,59,97,479/- (Rupees One crore fifty nine lakh ninety seven thousand four hundred seventy-nine only) on these fixed deposits.
- f. If the status of FCNR(B) account had changed to resident rupee account the applicant would have earned an interest of ₹ 61,98,941/-@ 4% p.a., subject to income tax @30% p.a i.e. ₹ 18,59,682/-. Hence, the net interest that the



applicant would have earned in resident rupee account is ₹ 43,39,259/- (Rupees forty-three lakh thirty-nine thousand two hundred fifty nine only).

- g. Since the applicant cannot earn by means of undue gain, the difference between the interest earned in FCNR(B) account and the net interest that applicant would have earned in resident rupee account i.e. ₹ 1,16,58,220/- (Rupees One crore sixteen lakh fifty-eight thousand two hundred twenty only) has been taken as undue gain.
- h. The first deposit was made/renewed on April 6, 1995 and the contravention was regularized on April 8, 2019. Hence, the period of contravention has been treated from April 6, 1995 to April 8, 2019 i.e. 24 years 2 days.
- i. The amount and period of contravention is as follows:
- Amount:** ₹ 4,53,15,444/- (Rupees four crore fifty-three lakh fifteen thousand four hundred forty four only)
- Undue Gain:** ₹ 1,16,58,220/- (Rupees One crore sixteen lakh fifty-eight thousand two hundred twenty only) has been taken as undue gain.
- Period:** 24 years 2 days i.e. from April 6, 1995 to April 8, 2019.

**Contravention:**

3. The applicant has contravened Para 10 of Schedule 2 to Notification No. FEMA.5/2000-RB dated May 3, 2000.

Para 10 of Schedule 2 to Notification No. FEMA.5/2000-RB dated May 3, 2000 states that when an account holder becomes a person resident in India, deposits may be allowed to continue till maturity at the contracted rate of interest, if so desired by him. However, except the provisions relating to rate of interest and reserve requirements as applicable to FCNR (B) deposits, for all other purposes such deposits shall be treated as resident deposits from the date of return of the accountholder to India. Authorized dealers should convert the FCNR(B) deposits on maturity into resident rupee deposit accounts or RFC account (if the depositor is eligible to open RFC account), at the option of the accountholder and interest on the new deposit (rupee account or RFC account) shall be payable at the relevant rates applicable for such deposits.



In the instant case the applicant continued to renew FDRs under FCNR(B) despite his return to India in 1995 and change in residential status, thereby contravening the Para 10 of Schedule 2 to Notification No. FEMA.5/2000-RB dated May 3, 2000. The above contravention was Regularized vide RBI letter No. FED.CO.ND.NRFAD/760/22.13.018/2018-19 dated April 8, 2019

4. The applicant was given an opportunity for personal hearing vide email dated October 31, 2019 for further submission in person and /or producing documents, if any, in support of the application. Applicant appeared for the personal hearing on November 8, 2019. The applicant admitted the contravention committed by him for which he has sought compounding and submitted that the contravention was not intentional and requested to take a lenient view. It was clarified to him during the hearing that undue gain i.e. interest income earned by him by continuing to maintain (although being a resident) FCNR(B) deposits, which were not permitted, shall require to be neutralized for completing the compounding procedure.

5. The applicant had first approached RBI vide letter dated August 24, 2017 for regularization of the contravention. In the application it was mentioned that the continuation of FCNR fixed deposit has been flagged by DoE on reference from CBI. The applicant had also submitted copy of Show Cause notice issued by DoE. It has been declared in the compounding application that the particulars given by the applicant in the application are true and correct to the best of his knowledge and belief. It has been declared in the undertaking furnished with the compounding application that the applicant is under adjudication by Directorate of Enforcement. In view of the above, comments were sought from DoE in the matter vide RBI letter No. FED.CO.ND.NRFAD/430/22.13.018/2017-18 dated December 12, 2017. In response, Enforcement Directorate vide their letter F.No. RBI/SDE/WR/B-182/2017/3676 dated 27.02.2018 has informed that necessary action as per law may be taken by the RBI in the matter in respect of Compounding application by Sh. Rakesh Kumar.

It has further been declared that the applicant has not filed any appeal under section 17 or section 19 of FEMA, 1999. Accordingly, the above contravention which is being compounded in this order is subject to the veracity of the above declarations made by the applicant and this order is without prejudice to any other action which may be



taken by any authority under the extant laws if the said declarations are subsequently discovered to be false and/or incorrect. The application for compounding is, therefore, being decided on the basis of the averments/submission made in the application as well as other documents and also submissions made in this context by the applicant during the personal hearing.

6. I have given my careful consideration to the documents on record and submission made by the applicant. Accordingly, I hold that the applicant has contravened Para 10 of Schedule 2 to Notification No. FEMA.5/2000-RB dated May 3, 2000. The contravention amount i.e. the amount involved in fixed Deposits, therefore, comes to ₹ 4,53,15,444/- (Rupees four crore fifty-three lakh fifteen thousand four hundred forty four only) and the period of contravention stands at 24 years 2 days i.e. from April 6, 1995 to April 8, 2019(i.e. date of first deposit to the date of regularization)

7. In terms of Section 13 of FEMA, 1999, any person contravening, interalia any provision of the Act or any condition subject to which an authorization is issued by the Reserve Bank, shall be liable to a penalty up to thrice the sum involved in such contravention upon adjudication. However, after considering the submissions made by the applicant and the entire facts and circumstances of the case, I consider that payment of an amount of ₹ 1,20,48,086/- (Rupees One crore twenty lakh forty-eight thousand eighty-six only) will meet the ends of justice in the circumstances of this case.

8. Accordingly, I compound the admitted contravention namely the contravention of Para 10 of Schedule 2 to Notification No. FEMA.5/2000-RB dated May 3, 2000, in terms of the Foreign Exchange (Compounding Proceedings) Rules, 2000 on payment of an amount of ₹ 1,20,48,086/- (Rupees One crore twenty lakh forty-eight thousand eighty-six only) which shall be deposited by the applicant with the Reserve Bank of India, Foreign Exchange Department, Central Office Cell, 1<sup>st</sup> Floor, 6, Sansad Marg, New Delhi – 110 001 by a demand draft drawn in favour of the "Reserve Bank of India" and payable at Delhi within a period of 15 days from the date of this Order. In case of failure to deposit the compounded amount within the above mentioned period, Rule 10 of the Foreign Exchange (Compounding Proceedings) Rules, 2000 dated May 03, 2000, as amended from time to time, shall apply.



The application is disposed accordingly.

Dated this the 10<sup>th</sup> day of January 2020.

**R.K. Moolchandani**  
**Chief General Manager**