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Central Administrative Tribunal
Principal Bench

O.A. No. 2645 of 1999.

New Delhi, dated this the 27 February 2002

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

K.K. Veer,
S/o Late Shri Ram Lal,
R/o C-4/4034, Vasant Kunj
New Delhi-70
(By Advocate: Shri A.K. Behera) ...Applicant.

Versus

Union of India
through
the Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi.
(By Advocate: Shri V.P. Uppal) ...Respondents.

ORDER

S.R. ADIGE, VC (A)

Applicant impugns the Disciplinary Authority's order dated 4.5.99 (Annexure. A-1). He seeks a direction to grant him all consequential benefits including payment of pension and other retiral benefits as if the impugned order had not been passed with interest @24% p.a. on delayed payment and costs.

2. Applicant was proceeded against departmentally under Rule 14 CCS(CCA) Rules vide Memo dated 31.7.91 (Annexure.A-2) on the charge that while working as Chief Commissioner, Income Tax II Calcutta during the financial year 1990-91, he passed orders on 5.2.91 abrogating two purchase orders dated 12.1.88, passed by the Appropriate Authority under section 269 UD of Income Tax Act, 1961, in the case of M/s Martin Burn Ltd. Calcutta, directing the purchase of the immovable property at 2nd Floor of M/s Martin Burn

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Ltd. Calcutta. Applicant further directed that the above property would stand re-vested in the Transferor M/s Martin Burn Ltd. An examination of the facts and circumstances relating to the aforesaid actions of applicant showed that he entertained a petition of M/s Martin Burn Ltd. without any jurisdiction or legal authority to do so, allowed the party to introduce new claims of a dubious nature that altered the complexion of the case, accepted these claims as facts without any inquiry and against the information available on record, and thereafter passed an improper and illegal orders in a deliberate and calculated manner against the provisions of the Income Tax Act, 1961. Records further show that applicant by his above actions, conferred huge undue benefits on a private party against the provisions of law and facts on record, and in a predetermined and deliberate manner. He therefore failed to maintain absolute integrity and devotion to duty as required under Rules 3(1) (i) & 3(1)(ii) CCS (Conduct) Rules. He therefore acted in a manner unbecoming of a Govt. servant and therefore violated Rules 3(1) (i), 3(1) (ii) and 3(1) (iii) CCS (Conduct) Rules.

3. Applicant submitted his written statement of defence denying the charge on 19.8.91, upon which oral enquiry was considered necessary, and an Enquiry Officer and Presenting Officer was appointed in January, 1992. Meanwhile applicant had retired from service on attaining the age of superannuation on 31.8.91 upon which the disciplinary proceeding against him was deemed to be continued under Rule 9

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CCS(Pension) Rules. Applicant filed OA No.2195/91 seeking quashing of the chargesheet. Taking note of the fact that the Enquiry Officer had submitted his report by then, the Tribunal in its order dated 4.1.93 (Annexure A-3) rejected the prayer for quashing of the chargesheet, but directed that the disciplinary proceeding should be concluded within one month from the date of receipt of a copy of the order, and if applicant was aggrieved by the order of the disciplinary/appellate authority, it would be open to him to agitate his grievance in accordance with law, if so advised, and all the grounds taken in that OA would be open to him.

4. The Enquiry Officer in his report dated 22.10.92 held the charge as established, subject to the observations in para 72 of the report, which are extracted below

"Other issues raised by the charged officer about the functioning of the Appropriate Authority, consequences of the purchase orders passed by them, blocking of Govt. Funds, recurring expenses on the maintenance of properties purchased by the department which could not be auctioned are important in their own right. The precedents quoted by the CO(Ex.D1 to Ex.D4) are also important in spite of the facts and circumstances relating to these cases being different. However, these issues do not negate the fact that the CO did not have any jurisdiction or legal authority to pass the order dated 4.2.91. However, it is for the disciplinary authority to consider whether these facts extenuate the present charge."

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5. A copy of the Enquiry Report was made available to applicant for representation, if any, and applicant submitted his representation on 25.8.93.

6. After considering the report and findings of the Enquiry Officer, the representation of the applicant against the Enquiry Report and the relevant facts and circumstances of the case, the Disciplinary Authority accepted the Enquiry Officer's findings and came to a provisional conclusion for imposing a suitable cut in applicant's pension, and the Ministry referred the case to UPSC for their advice.

7. The UPSC in their advice letter dated 29.3.96 (Annexure.R-2) advised as under:

"In the light of their findings as discussed above and after taking into account all other aspects relevant to the case the Commission consider that in view of the facts and circumstances of the case and the proven guilt apart from the hefty loss caused to the State, the ends of justice would be fully met in this case only if the penalty of forfeiture of the entire pension and gratuity on a permanent basis is inflicted on Shri K.K.Veer. They advice accordingly."

8. Meanwhile applicant had been assigned a provisional monthly pension of Rs.3695/- w.e.f. 1.9.91 and his DCRG amount of Rs.1 lakh had also been sanctioned.

9. Having regard to the facts and circumstances of the case in their entirety, the President being the disciplinary authority, accepted the UPSC's advice and by impugned order dated 4.5.99 has directed

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forfeiture of the entire pension and gratuity of applicant on permanent basis, giving rise to the present OA.

10. We have heard applicant's counsel Shri A.K.Behera and respondents' counsel Shri V.P.Uppal. We have also perused the contents of File No.PRO-I/XXC/Writ/20D/87-88 maintained in the office of respondents organisation titled "Mission Row Investment Ltd. Vs. Appropriate Authority."

11. The brief facts of the case are that M/s Martin Burn Ltd. Calcutta filed two intimations before the Appropriate Authority, Calcutta in Form 37-I on 30.11.87 intimating that they proposed to transfer immovable property consisting of two covered floor spaces, each measuring 10,200 sq.ft. on the 2nd floor of Martin Burn House, to each of their two newly floated and wholly owned subsidiary companies namely M/s Lal Bazar Investment Ltd. and M/s Mission Row Investment Ltd. for Rs.87,50,000/-each. The covered area of the premises proposed to be transferred to M/s Lal Bazar Investment Ltd. (10,200 sq.ft) was described in Form 37-I as partly let out (3000 sq.ft) to M/s Hoogly Dock and Port Engrs' Ltd., a Govt. of India undertaking at a rent of Rs.11,870/- p.m., and partly vacant (7200 sq.ft). The covered area of the premises proposed to be transferred to M/s Mission Row Investment Ltd. (10,200 sq.ft.) was described in Form 37-I as Vacant. The Department estimated the fair market value of these premises to be Rs.1,17,30,000/- each. As there was

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substantial difference in the market value of these properties, the Appropriate Authority, Calcutta passed orders on 12.1.88 under section 269 UD of IT Act, 1961 directing that both these properties shall vest in the Central Govt. against payment of Rs. 87,50,000/- each to M/s Martin Burn Ltd. Both the transferor and transferees filed writ petitions before the Calcutta High Court and the court stayed further proceedings on 1.2.88. A representation dated 22.8.89 was made by M/s Martin Burn Ltd. before the CBDT requesting that the order of the Appropriate Authority be quashed. The then Chief Commissioner Income Tax in his report dated 22.11.89 pointed out that the Appellate Authority had, after due consideration of all facts and circumstances, concluded that the property is undervalued, and that in any event the statute did not permit revocation of the order passed by the Appellate Authority. Accordingly the Board did not intervene in the matter.

12. Nearly one year later on 26.11.90 M/s Martin Burn Ltd. addressed a letter to the Appropriate Authority stating that if Appropriate Authority passed a rectification order or issued a 'No objection Certificate', or issued a letter to the effect that the earlier order was allowed to be lapsed, the company undertakes to withdraw the writ petition filed before the Calcutta High Court. A copy of this letter was endorsed to the the Chief Commissioner of Income Tax (II) i.e. the present applicant for information and necessary action. The said letter

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appears to have been received by the CO on 3.12.90 and it was received in the Section on 6.12.90 and the same was put up on 7.12.90, vide Note dated 7.12.90. It was suggested in the note that comments of the Appropriate Authority may be obtained and this suggestion was approved by the applicant on 10.12.90.

13. Meanwhile another petition dated 13.12.90 was filed by M/s Martin Burn Ltd. addressed to applicant in continuation of their earlier letter dated 26.11.90. A copy this letter was not endorsed to the Appropriate Authority. This letter bears applicant's initials dated 14.12.90 and the same was put up by the Section on 18.12.90 suggesting that the comments of the Appropriate Authority may be obtained. This suggestion was approved by the applicant on the same day, directing that the comments of the Appropriate Authority may be obtained quickly. Accordingly, a letter was issued to Appropriate Authority on 19.12.90 asking for his comments on five points specifically mentioned therein. The Appropriate Authority sent his reply on 28/31.12.90.

14. No decision was taken by the respondents on the basis of this reply till 3 separate letters were received by the CO on 10.1.91. These letters were written by Fox & Mandal, Solicitors and Advocates intimating that the writ petitions filed by M/s Martin Burn Ltd., M/s Mission Row Investment Ltd., and M/s Lal Bazar Investment Ltd. were dismissed by the Court for non-prosecution on 8.1.91. On receipt of these letters, the office put up a note on 14.1.91

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stating that since the injunction had been vacated, the Govt. has to pay the amount in terms of Section 269 UD(1) Income Tax Act and that there were only 28 days left (reckoned from the date of receipt of these three letters) for making the payment, out of which 6 days had already expired from the date of passing the order i.e. 8.1.91. It was also stated that if the payments were to be made, necessary steps would have to be taken for searching the title deed etc.

15. On the aforesaid note dated 14.1.91 the Charged Officer recorded as follows:

"Seen. & Put up further note as discussed after examining the files and also the file in which NOC was issued to the same party for the same building." Sd/- CC (II) 14.1.1991"

16. In pursuance of this direction, a note was put up by the office on 24.1.91. The basic thrust of the note was that it would not be advisable to purchase the property in question. As per noting dated 24.1.91 thereon, the CO agreed with this view but recorded that before he took any decision in the matter, it would be better to obtain the written opinion of the Standing Counsel. Accordingly, a letter was written to the standing counsel under applicant's signatures on 24.1. 91 (page 122 C of aforesaid file). In this letter, the following facts were brought to the pointed attention of the Govt.

(1) The entire premises No. 1, R.N. Mukherjee Road, Calcutta, owned by the transferor and on advance being taken by the transferor from Grindlays Bank and United Industrial Bank (now Allahabad Bank) the said property was charged and consequently mortgaged to the Banks.

(2) A part of the floor space (northern side), that is about 3,000 sq.ft. was under the occupation of tenant M/s Hooghly Dock & Port Engineers Ltd. who were paying rent to the transferor.

The balance part of 10,200 sq.ft. was under the occupation of M/s Lal Bazar Investment Ltd. (one of the transferees a 100% subsidiary) under a tenancy agreement dated 20.11.87.

(3) The southern part comprising of 10,200 sq.ft. of the said 2nd floor though shown to be vacant in Form No.37 I but in reality was occupied by the other subsidiary company, M/s Mission Row Investments Ltd. under a tenancy agreement dated 27.11.87 made between the transferor and the subsidiary company.

(4) The Appropriate Authority on 11.11.87 issued two NOCs in respect of the floor space of 10,200 sq.ft. each situated on the 5th floor of the same premises, i.e. No.1, R.N. Mukherjee Road, Calcutta. The apparent consideration for which such NOCs were issued were Rs.87,50,000/- each which was same as that of the cases where purchase orders under sec.269 UD (1) were passed in respect of the 2nd floor.

17. The Standing Counsel's opinion was sought on the following issues:

1) Whether, in the facts and circumstances of the case it can be said that the property is free from encumbrances as contemplated in Section 269 UE(1) of the Income Tax Act, 1961.

2) Whether in the facts and circumstances of the case, the Appropriate Authority would not be able to dispossess the tenants who were presently occupying the floor space, even if the tenants were the subsidiary companies.

18. In this connection, attention was invited to letter dated 13.12.90 written by Appropriate Authority to applicant from which it appears that in the counter affidavit filed before the Hon'ble Supreme Court in the case of C.B. Gautam Vs. Union of India, Govt. had laid down its intention of not affecting the rights of the tenants.

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19. Meanwhile two letters dated 18.1.91 and 22.1.91 were received from M/s Martin Burn Ltd. by applicant furnishing certain additional informations and requesting applicant to rectify the Appropriate Authority's orders or to issue No Objection Certificate.

20. The Standing Counsel furnished his opinion on 29.1.91 recommending that in the facts and circumstances of the case it was not prudent to acquire the said property for the Central Govt. as such acquisition may involve litigation and the tenants who were in occupation of the said property may resist any attempt for their eviction, particularly in view of the stand taken taken by the Central Govt. in the affidavit filed before the Hon'ble Supreme Court.

21. The aforesaid opinion of the Standing Counsel was received by applicant on 30.1.91, and upon being marked down to office was resubmitted by the office on 30.1.91 itself for applicant's orders.

22. Thereupon applicant passed a detailed order on 4.2.91 in which he has stated that he had carefully gone through the previous notings as well as the opinion of the Standing Counsel and for the following reasons he decided not to make the payment of purchase of Rs.87,50,000/- in each of the two cases of companies i.e M/s Lal Bazar Investment Ltd. and M/s Mission Row Investment Ltd. in respect of southern and northern side of 2nd floor of

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premises No.1, R.N.Mukherjee Road, Calcutta measuring 10,200 sq.ft each side to transferor M/s Martin Burn Ltd. Calcutta.

a) The proposed transfer of one floor of space totalling 10,200 sq.ft on 2nd floor of 1, R.N.Mukherjee Road, Calcutta by M/s Martin Burn Ltd. to its two subsidiary companies mentioned above, was not a transaction which could be stated to be tainted with passing of black money, which was the sole purpose of introducing Chapter XX-C. The capital gains arising, if any, out of such transaction between closely held companies was not taxable.

b) In the same building owned by the same company one floor and measuring same space was transferred to two subsidiary companies in November, 1987 for which the Appropriate Authority issued NOCs. When asked to produce any valuation report, it was stated on 31.1.91 that this matter was not referred to the valuation cell and no reasons were given and it was not clarified that how within one month of the issue of NOCs, why NOC was refused for another floor (2nd floor) of the same building for same type of transaction.

c) It had been clearly brought out from the facts and circumstances of the case that the property in question was tenanted as evidenced by the letters and agreements filed and there is nothing on record to show that the Appropriate Authority visited the site and verified whether the property in question is tenanted or not.

d) It was also clear from the accompanying documents filed with Form No.37-I that the entire property was mortgaged with two banks and therefore it was not a property free from liabilities.

(e) As per the Appropriate Authority's letter dated 31.12.90 it was stated that the Central Govt. in its affidavit filed before the Hon. Supreme Court in the case of C.B. Gautam Vs. UOI, had laid down its intention of not affecting the rights of the tenants.

(f) The Standing Counsel had also opined that in the facts and circumstances of the case, it may not be prudent to acquire the said property for the Central Govt. as such acquisition may involve litigation and the tenants who were in occupation of the property may resist any attempt for their eviction.

23. In view of these reasons, applicant directed that no payment of the purchase price in respect of the said property should be made and the purchase order got abrogated under section 269-UH (1) IT Act. The Transferor was directed to be informed that the property would be revested in the transferor w.e.f. 6.2.91 and the Appropriate Authority was directed to issue declaration to this effect under sub-section (2) of Section 269 UH (1) IT Act, 1961 under intimation to that office.

24. Accordingly by letter No. PRO/XXC/WRIT/20D/87-88/1055 dated 5.2.91 the Appropriate Authority was informed that applicant had taken a decision on 4.2.91 for not making payment to the transferor M/s Martin Burn Ltd. and the purchase order dated 12.1.88 passed in respect of M/s Mission Row Investment Ltd. and Lal Bazar Investment Ltd. in respect of 10,200 sq. ft. of floor space each on Northern and Southern side of the 2nd floor of the premises No.1 R.N. Mukherjee Road, Calcutta stood abrogated in terms of Section 269 UH (1) of the Income Tax Act, 1961 under intimation to applicant's office.

25. On 18.2.91 the Managing Director, Martin Burn

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Ltd. was also informed with reference to his letter dated 26.11.90 and 13.12.90 that applicant had decided that no payment should be made in respect of the purchase order passed under Section 269 UD (1) in the proceedings by the appropriate authority in respect of LBIL and MRIL.

26. The office notings dated 10.4.91 in the aforesaid [^]filed reveal that applicant inquired from office as [^]to whether order[^] had been passed by the Appropriate Authority u/s 269 UH (1) IT Act as communicated to him vide letter dated 5.2.91. When he was informed that no order had been passed, he passed orders in the file on 10.4.91 directing that the Appropriate Authority be directed to intimate why orders had not been passed u/s 269 UH (1).

27. In this connection it would be useful to refer to the relevant provisions of the I.T. Act. Section 269 UD(1) I.T. Act empowers the appropriate authority to order preemptive purchases by Central Government of immovable property at an amount equal to the amount of apparent consideration. Under Section 269 UE (1) such property vests with Central Govt. Section 269 UF (1) lays down that where an order for the purchase of any immovable property by the Central Govt. is made under Section 269 UD (1), the Central Govt. shall pay by way of consideration for such purchase, an amount equal to the amount of

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apparent consideration. Section 269 UG (1) lays down that the amount of consideration payable in accordance with the provisions of Section 269 UF shall be tendered to the person or persons entitled therein, within a period of one month from the end of the month in which the immovable property concerned becomes vested in the Central Govt. Section 269 UH (1) under which the decision by applicant was taken to abrogate the Appropriate Authority's orders, and Section 269 UH (2) under which the Appropriate Authority advised to make a declaration in writing about revesting of the property, read as follows:

Revesting of property in the transferor on failure of payment or deposit of consideration

269UH (1) If the Central Govt. fails to tender under sub-section (1) of Section 269 UG or deposit under sub-section (2) or sub-section (3) of the said section, the whole or any part of the amount of consideration required to be tendered or deposited thereunder within the period specified therein in respect of any immovable property which has vested in the Central Govt. under sub-section (1) or, as the case may be, sub-section (6) of Section 269 UE, the order to purchase the immovable property by the Central Govt. made under sub-section (1) of Section 269 UD shall stand abrogated and the immovable property shall stand re-vested in the transferor after expiry of the aforesaid period.

Provided that where any dispute referred to in sub-section (2) or sub-section (3) of Section 269 UG is pending in any court for decision, the time taken by the court to pass a final order under the said sub-sections shall be excluded in computing the said period.

(2) Where an order made under sub-section (1) of Section 269 UD is abrogated and the immovable property re-vested in the

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transferor under sub-section (1), the appropriate authority shall make, as soon as may be, a declaration in writing to this effect and shall -

(a) deliver a copy of the declaration to the persons mentioned in sub-section (2) of Section 269 UD; and

(b) deliver or cause to be delivered possession of the immovable property back to the transferor or, as the case may be, to such other person as was in possession of the property at the time of its vesting in the Central Govt. under Section 269 UE."

28. In this connection Section 269 UN is also extremely relevant and reads as follows:

Order of the appropriate authority to be final and conclusive.

269UN. Save as otherwise provided in this Chapter, any order made under sub-section (1) of Section 269 UD or any order made under sub-section (2) of Section 269 UF shall be final and conclusive and shall not be called in question in any proceeding under this Act or under any other law for the time being in force."

29. As pointed out by the E.O. in his report the gravamen of the charge against applicant is that

- a) he entertained the petition of M/s Martin Burn Ltd. without any jurisdiction or legal authority to do so.
- b) he allowed the party to introduce new claim of dubious nature that altered the complex of the case.
- c) accepted their claim on facts without any inquiry against the information available on record.
- d) passed an improper and illegal order in a deliberate and calculated manner against the provisions of the I.T. Act.
- e) by passing the said order he conferred huge undue benefits on a private party against the provisions of law and facts

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on record and in a predetermined and deliberate manner.

30. In our considered opinion the E.O. has correctly pointed out that under Chapter XXG of I.T. Act, no powers have been vested in the CCIT to sit in judgment over the merits of an order passed by the Appropriate Authority u/s 2689 UD (1) I.T. Act. On the contrary orders passed by the Appropriate Authority are final and conclusive u/s 269 UN. Only the Appropriate Authority has the powers u/s 269 UT to amend any order passed by it with a view to rectifying any mistake apparent from the record. In the context of M/s Martin Burn Ltd.'s first representation dated 22.8.89, the then CCIT had conveyed it to CBDT vide letter dated 22.11.89 that the statute did not permit the revocation of the order passed by the member of the Appropriate Authority. In spite of this view conveyed by his predecessor to CBDT in this regard, which was on record and which represents the correct legal position, applicant ordered abrogation of the same order of the Appropriate Authority on 4.2.91. The E.O. has also correctly pointed out that Sec. 269 UH under which applicant purports to have acted, does not empower the CCIT to take a conscious decision not to make payment and abrogate the purchase orders. Significantly the decision not to make payment was not taken because of inability to verify the title deeds or non-availability of funds. Thus it was not a case of 'failure' to make payment within 30 days as envisaged in Section 269 UH. Indeed it was a

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deliberate decision not to pay which was not in accordance with the provisions of Chapter XXC of the Act.

31. In his defence, and indeed in the grounds taken in the O.A. applicant has contended firstly that he took a conscious decision in good faith to abrogate the order of the Appropriate Authority, because the purchase would lock up public money in property which was involved in litigation and which was under heavy financial liability (mortgage) to two banks; secondly that the CBDT did not overrule his decision although they were aware of it and had adequate time to so; thirdly that as CCIT he had the responsibility of responsibly releasing Govt. funds for purchasing of property; fourthly that the objective of Chapter XX (C) I.T. Act is to deter tax evasion and not to acquire property merely to enrich the coffers of the State; fifthly that there were past precedents where different CCITs had ordered abrogating the order of the appropriate authority for purchase of property, and sixthly that he was acting in a quasi-judicial capacity in the bonafide exercise of his statutory power and could not be penalised for the same.

32. None of these grounds constitute a denial of the basic legal position that applicant had no jurisdiction or legal authority to pass the order dated 4.2.91 directing abrogation of the two purchase orders in the absence of any provisions in the I.T. Act itself. Under the circumstances, it is clear that ingredients (a) and (d) of the charge (please

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see para 29) namely that applicant entertained the petition from M/s Martin Burn Ltd. without any jurisdiction or authority to do so, and passed an illegal and improper order in a deliberate and calculated manner against the provisions of the I.T. Act, stand proved.

33. Furthermore, as borne out by the E.O's findings, the materials on which applicant relied on while abrogating the purchase orders, such as the claims that the properties were let out to subsidiary companies, their mortgage with banks; their excessive valuation etc. were indeed advanced before him for the first time, and were accepted by him without any attempt being made to establish as to whether the claims made by the assessee were correct. As stated in the disciplinary authority's impugned order, applicant requisitioned a report from the Appropriate Authority but disregarded the same, and relied heavily upon a⁷ No Objection Certificate issued by the Appropriate Authority in respect of an identical transaction for the fifth floor of the same building, but while doing so he ignored the vital fact that the fifth floor of the holding was fully tenanted unlike the properties in question. Furthermore applicant readily accepted the claim of the assessees that the properties had been let out to subsidiary companies without putting those transactions to close scrutiny to determine their authenticity. Thus it is clear that segments (b) and (c) of the charge namely that applicant allowed the

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party to introduce new and dubious claims and he accepted these claims without proper inquiry also stands proved.

34. From the foregoing it is clear that property whose fair market value was assessed at over Rs.1.17 crores each was purportedly transferred by M.B. Ltd. to its two subsidiary companies for an apparent consideration of only Rs.87.50 lakhs each, and thereby huge benefits were conferred on a private party naemly Messrs. Martin Burn Ltd. Hence ingredient (e) of the charge also stands established.

35. In the light of the above, quite clearly the charge as a whole against applicant stands fully proved. In so far as applicant's defence that he was acting in exercise of his quasi-judicial authority is concerned, we have already seen that the I.T. Act itself gave applicant no jurisdiction or legal authority to act in the manner he did and hence this defence is not available to him.

36. Applicant has also contended that the disciplinary proceedings are ab initio void as they were not concluded within the time spelt out in the Tribunal's order dated 4.1.93 in OA No.2195/91. Respondents in their reply have stated that as applicant had retired on superannuation during the pendency of the proceeding, the matter had to be referred to UPSC for their advice and pleadings reveal that it took nearly 2 & 1/2 years to obtain UPSC's advice and further time was lost in taking a decision in the matter. However, as the charge which

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is very serious has been proved, we hold that we would not be justified in interfering with the disciplinary authority's orders on grounds of delay alone. We are supported in this view by the Hon'ble Supreme Court's ruling in Secretary to Govt. Prohibition & Excise Deptt. Vs. L.Srinivasan JT 1996(3) SC 202.

37. Both sides have cited several Supreme Court rulings, a list of those rulings is taken on record. In this connection the Supreme Court's ruling in Union of India & Others Vs. Upendra Singh (1994) 27 ATC 200 is specially relevant, wherein in Para 6 thereof it has been observed thus:

"In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. the tribunal cannot take over the functions of the disciplinary

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authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of court/Tribunal is one of judicial review, the parameters of which are repeatedly laid down by the Court. It would be sufficient to quote the decision in H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal Vs. Gopi Nath & Sons (1992 Supp(2) SCC 312). The Bench affirmed the principle thus:

Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

38. Applying the aforesaid parameters of judicial review as laid down by the Hon'ble Supreme Court to the facts and circumstances of the present case, we find that the disciplinary proceedings have been conducted according to prescribed rules and procedure; applicant was given full opportunity to defend himself; it is not a case of no evidence; the findings are not perverse or malafide; the

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impugned orders have been passed by the competent authority. and the penalty imposed is not disproportionate to the gravity of the misconduct.

39. The O.A., therefore, warrants no interference. It is dismissed. No costs.

A. Vedavalli

(Dr. A. Vedavalli)
Member (J)

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S.R. Adige

(S.R. Adige)
Vice Chairman (A)