

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No.403 of 2015

Present: Hon'ble Mr. Swarup Kumar Mishra, Member (J)

Hon'ble Mr. Anand Mathur, Member (A)

1. Sri N. P. Tripathy, Direct General of Exemption, Income Tax, New Delhi Chief (Retd.), at present residing at 3 Nirmalya Garden, PO. Kalinga Institute of Industrial Technology, Patia, Bhubaneswar – 751024.

.....Applicant.

VERSUS

1. Union of India, represented through its Secretary (Revenue), Ministry of Finance, Department of Revenue, Central Secretariat, New Delhi – 110 001.
2. The Under Secretary to Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, North Block, New Delhi – 110 001.
3. The Chairman, Central Board of Direct Taxes, Ministry of Finance, Department of Revenue, North Block, New Delhi – 110 001.
4. The Director General of Income Tax (Vigilance) & CVC, 1st Floor, Dayal Singh, Public Library Building No. 1, Din Dayal Upadhyay Marg, New Delhi – 110 002.

5. The Secretary, Union Public Service Commission (Sangh Lok SevaAyog), Dholpur House, Shahjahan Road, New Delhi – 110 069.

6. Chief Commissioner of Income Tax (CCA), Hyderabad.

7. Principal Chief Commissioner of Income Tax, Odisha Region, Aayakar Bhawan, RajaswaVihar, Bhubaneswar, Dist. Khurda.

8. The Principal Chief Commissioner of Income Tax, CC&A, Aayakar Bhawan, ITO, New Delhi.

.....Respondents.

For the applicant : Mr. J. M. Patnaik, Advocate.

For the respondents: Mr. S. Behera , Advocate.

Heard & reserved on : 07.01.2021 Order on :18.03.2021

O R D E R

Per Mr. Swarup Kumar Mishra, Member (J)

The applicant by filing this OA, has prayed for the following reliefs under section 19 of the Administrative Tribunals Act, 1985:-

(i) *To quash the Memorandum of Charge dated 29.11.2004 under Annexure A/2 and consequential action taken thereto be declared as non est in the eyes of law;*

(ii) *To quash the order dated 13.03.2014 under Annexure A/10 and consequently to direct the Respondents to issue revised PPO fixing the pension of*

the applicant correctly and properly i.e. without making any deduction;

- (iii) To direct the Respondents to release arrears of pension with 18% per annum and pay the applicant full pension in every monthly regularly;*
- (iv) To pass any other order/orders as deemed fit and proper;*
- (v) To allow this OA with costs.*

2. The case of the applicants in brief as inter alia averred in the OA is that the applicant while working as Director General of Exemption Income Tax, New Delhi retired on attaining the age of superannuation on 30.11.2004. The applicant submitted that he was served a memorandum under Rule 14 of Rule 1965 on last day on allegation to have taken place during his incumbency as Commissioner of Income Tax, Tamil Nadu-IV in addition to his own duty between 18.12.2000 and 07.01.2001. The applicant submitted that Hon'ble Finance Minister approved proposal for initiation of disciplinary proceeding on 29.11.2004 (Annexure A/1) and memorandum of charge was submitted to him vide letter dated 29.11.2004 (Annexure A/2). The applicant submitted that there is nothing available on record that the charge sheet was approved by Hon'ble Finance Minister. The applicant then submitted his reply to the charge sheet vide

Annexure A/3. Thereafter the inquiry process began, the applicant participated in it and after closure of inquiry applicant and the PO exchanged their written brief vide Annexure A/4 and A/5 respectively. The advice of CVC was sought on the report of the IO vide letter dated 11.12.2008 (Annexure A/6) which was supplied to the applicant. The applicant had furnished his view point justifying exoneration from the charge vide letter dated 16.01.2009 (Annexure A/7). Thereafter vide letter dated 21.08.2013 (Annexure A/8) advice of the UPSC and report of the IO was supplied to the applicant to furnish his defence which was submitted on 06.09.2013 (Annexure A/9). Final order in the disciplinary proceeding was issued in the name of President of India under the signature of Under Secretary to Govt. of India under Rule 9 of CCS (Pension) Rules 1972 read with Rule 15 of CCS (CCA) Rules, 1965 vide letter dated 13.03.2014 (Annexure A/10) imposing punishment of 30% pension cut from the pension of the applicant. Thereafter based on the order dated 13.03.2014, pension fixation order dated 17.03.2015 (Annexure A/11) was issued for 30% cut of pension from the pension of the applicant retrospectively from the date of the retirement of the applicant up to 30.11.2011. Hence this OA.

3. The respondents in their counter inter alia averred that the applicant who superannuated on 30.11.2014 was

given provisional pension Rs. 17,982/- from 01.12.2004 to 31.12.2005 and @ Rs. 27,094/- from 01.01.2006 to 31.10.2014. After conclusion of disciplinary proceeding order of penalty of 30% cut in monthly pension for a period of 7 years was imposed on the applicant under Rule 9 of CCS (Pension) Rules 1972 vide order dated 13.03.2014. The respondents submitted that proceeding for major penalty was initiated with approval of disciplinary authority dated 29.11.2004 and charge sheet issued was as per rule. The issue of delay is also not genuine as per judgments of Hon'ble Apex Court. The respondents submitted that charge sheet was issued for the manner in which decision was taken by the applicant and not for the decision taken per se as quasi judicial authority. The applicant had failed to ensure that sufficient other security was arranged by the assessee before the certificate u/s 230 of the IT Act was issued as a result of which the huge outstanding demand in the case could not be subsequently realized by the department and the decision was taken by the applicant with undue haste merely 2 days before the regular incumbent was to resume charge. The respondents submitted that the charge sheet was issued on 29.11.2004 whereas the applicant retired on 30.11.2004, therefore the provision of rule 9 (2) (b) (ii) are not applicable in the case of the applicant because the charge

sheet was issued during the service of the applicant. The respondents submitted that the penalty order under Rule 9 dated 13.03.2014 has been passed with the approval of the Disciplinary Authority i.e. Hon'ble Finance Minister dated 04.03.2014 and has been passed after considering entire facts of the case. The respondents submitted that the department had given ample opportunity to the applicant to defend his case and principles of natural justice have been followed in letter and spirit. The respondents further submitted that PPO and Pension fixation order has been passed by the Pr. CCIT, Delhi in pursuance to the order of DA dated 13.03.2014. There was mistake in implementing penalty order of 30% cut in pension from the date following the next date of the retirement of the applicant. Respondent No. 3 in their letter dated 29.03.2014 instructed that no retrospective effect is to be given to a penalty order and the penalty is to be imposed from the date of order of penalty and not from the date of retirement. Accordingly Respondent No. 8 implemented orders of the penalty of 30% cut in basic pension of the applicant imposing from the date of order i.e. 13.03.2014 and necessary revised calculation has been made and bills amounting to Rs. 83,119/- has been sent for payment.

4. The applicant in short notes submitted that the on the same set of allegation a criminal case was also instituted

against the applicant along with others vide CC Nos. 14/2005 and 11/2017 before the learned IX Additional Special Judge, CBI, Chennai which vide order dated 20th November, 2017 acquitted the applicant from the charges, therefore imposition of punishment on same set of allegation is bad in law. The applicant further submitted that the Respondents have admitted that the duties performed by the applicant were quasi judicial in nature, thus as per the provision made under Section 293 of the IT Act no prosecution, suit or other proceeding shall lie against the officer for anything done in good faith or intended to be done under this Act. Therefore the entire proceedings are liable to be quashed.

5. The statement of imputation of misconduct or misbehaviour in support of the article of charge framed against the applicant is extracted below:

Article – I

Shri N. P. Tripathi functioned as Commissioner of Income Tax, Tamilnadu – V during the period from 23.06.2000 to 25.06.2001. Vide order No. 365/2000 dtd. 14.12.2000 of the Chief Commissioner of Income Tax, Chennai, Shri Tripathi, was directed to hold additional charge of Commissioner of Income Tax, Tamilnadu – IV, Chennai between 18.12.2000 and 07.01.2001 during the leave period of Shri A. Banerjee, CIT, TN-IV, Chennai. The facts relating to the misconduct of Sh. Tripathi, as stated in the Article of Charge, are as given hereunder:

2. Dr. K. V. Radhakrishna was working as Joint Commissioner of Income Tax, Special Range-XI during the period from 1999 to 2001. He was the Assessing Officer for M/s IGGI Resorts International Limited during this period.

3. M/s IGGI Resorts International Limited was incorporated as a Private Limited company on 24.03.1988 and it became a Public Limited Company on 28.09.1992. The main objects of the company, as per the Memorandum of Association of the company, are to develop Holiday Resorts, build cottages, houses, etc., and to sell, give on lease or license or otherwise transfer on time share or property share basis. The promoted Directors of M/s IGGI Resorts International Limited, i.e. Shri A. Ignatius and Smt. Carmel Shanta Ingantius, resigned from the Board of Directors of the Company on 30.01.1999 and 18.08.98 respectively.

4. The late Shri K. A. Karthikeyan was appointed as Director of M/s IGGI Resorts International Limited on 28.05.2000. Shri J. R. Robinson was appointed as Director of M/s IGGI Resorts International Limited on 30.01.1999. Shri C. Muthusamy, an advocate, became Director of M/s Maxworth Country (India) Limited on an arrangement with Shri R. Subramaniam, the promote Director of M/s sterling Group of companies and Maxworth Group of companies. Shri P. K. Dwarka was a Licensed Engineer, resident of No. 22 I Bheemasena Garden Street, Mylapore, Chennai. Shri V. Ganeshan was appointed as Director of M/s IGGI Resorts International Limited on 12.08.1998 and he resigned from the Board of Directors of the company on 15.01.2001.

5. Shri N. P. Tripathi along with Shri K. V. Radha Krishna, KA Karthikeyan, JR Robinson, C Muthusamy, P K Dwarka and V. Ganeshan entered into a criminal conspiracy during 2000-2001 to cheat the Income Tax department. In pursuance of the said conspiracy, on 26.12.2000 the said K. A karthikeyan and J. R. Robinson, Directors of M/s IGGI Resorts International Limited

dishonestly applied for a certificate u/s 230 A of Income Tax Act to dispose of an attached property situated at Velankanni, Tamilnadu. Sri C Muthusamy, Director of M/s Maxworth Country (India) Limited, dishonestly supplied three title deeds of property situated at Vilpatty village, Tamilnadu belonging to third parties worth approximately Rs. 1,20m-,000 to J R Robinson. Shri P. K. Dwarka fraudulently supplied a valuation certificate indicating that the three properties were worth Rs. 85 lakhs. Sri N. P. Tripathi the then in charge Commissioner of Income Tax Tamilnadu IV, by abusing his official position, ordered issue of the certificate u/s 230 A of Income Tax Act and Sri K V. Radhakrishna, the then Joint Commissioner of Income Tax and Assessing Officer for the said company, issued the said certificate to the said Directors, by taking he said three title deeds of third parties as guarantee, both knowing fully well that the said company had Tax arrears of Rs. 7339 lakhs. In further pursuance of the said conspiracy, Shri V. Ganeshan transferred the property in the name of M/s MGM Entertainment Pvt Ltd. on the strength of the certificate issued u/s 230 A of the Income Tax Act.

6. The misconduct of Sh. N. P. Tripathi, acting in collusion with the other persons named above, becomes evident from the following facts and circumstances of the cases:

6.1 Till the Assessment year 1993-94, M/s IGGI Resorts International Limited filed its Income Tax Returns retuning net loss. The return of income (ROI) filed by the company on 31.12.93 for the assessment year 1993-94 was assessed u/s 143 (1) (a) of Income Tax Act on 26.08.94 and the loss of Rs. 12,62,910/- was allowed.

6.2 On 13.11.94 M/s IGGI Resorts International Limited filed its return of income for the assessment year 1994-95. Vides its Return the company claimed a gross total income of Rs. 38,96,258/- which was absorbed by brought forward losses of Rs. 55,68,807/- incurred by the company during assessment years 1990-91, 1991-92, 1992-93 and 1993-94. Hence it was not liable for Income Tax. Shri P. T. Pavithran, the then Dy. Commissioner of Income Tax assessed the returns of the company for no tax on 27.03.97 u/s 143 (3) of the Income Tax Act, allowing the company to claim the expenditure incurred on account of share issue expenses of Rs. 1,99,175/- during the financial year 1993-94. He further allowed the company to absorb unabsorbed depreciation loss of Rs. 19,065/- in the succeeding years. The allowance of share issue expenditure attracted an audit objection, in as much as share issue expenditure incurred by the company should not have been allowed u/s 35 (d) (ii) of Income Tax Act, as the company was not a manufacturing unit as decided in a Supreme Court Case No. 225 ITR, 795 (Brooke Bond India Limited vs CIT). In response to the audit objections, the succeeding assessing officer for the company i.e. Shri K. R. Megwal, the then Dy. Commissioner of Income Tax, vide a letter dt. 11.02.98 invited the company's objection if any, for disallowing share issue expenditure. As there was no response, a notice u/s 154 of the Income Tax act was issued to the company on 24.09.98 to appear in person. The company or its representatives did not appear and the succeeding assessing officer i.e. Shri K. V. Radhakrishna, the then joint commissioner of Income Tax, Special Range - XI, Chennai, passed a revised assessment order on 04.01.2000 disallowing the share issue expenditure of Rs. 1,99,175/. This resulted in a total demand of Rs. 1,78,083/- (Rs. 1,03,563/- as income tax and Rs. 74,520/- as interest u/s 234 B of the Income Tax Act). This demand was communicated to the company under acknowledgment.

6.3 On 01.12.95 M/s IGGI Resorts International Limited filed its return of income for the assessment year 1995-96. Vide this Return of Income, the company absorbed Rs. 16,72,549/- on account of unabsorbed depreciation of the previous years. The company paid income tax of Rs. 74,32,489/- on 29.11.95, before filing the return for the assessment years 1995-96 as above. In the assessment for AY 1994-95, the AO had allowed unabsorbed depreciation of only Rs. 19,065/- to be carried forward. However, while assessing the income of the company for this assessment year on 27.03.1997, Shri P. T. Pavithran allowed the claim of the company for absorbing unabsorbed depreciation of Rs. 16,72,549/- of previous years. In addition to this the company's claim of Rs. 14,93,732/- on account of share issue expenditure was also allowed by him. Tax demand of Rs. 26,21,710/- was thus raised. Both these attracted audit objection and a total demand of Rs. 43,63,482/- was raised against the company on 27.01.99 by rectifying the above mistakes u/s 154 of Income Tax Act by Shri K. R. Megwal, the then Jt. Commissioner of Income Tax. This demand was in addition to payment of Income Tax of Rs. 74,32,489/- which the company had already paid while filing these returns. The net demand of Rs. 43,63,482/- including interest of Rs. 30,93,402/- u/s 234 B & C of Income Tax act was raised against the company. (Out of this demand the company paid Rs. 1,00,000/- on 29.03.2001 as a part of instalment scheme agreed to on 5.1.2001). During the year 1999, Ministry of Finance announced Kar Vivad Samadhan Scheme and a scheme of paying Rs. 8,63,121/- was extended to the company. This amount of Rs. 8,63,121/- was 355 of disputed income of Rs. 24,66,088/- after considering the taxes paid by the company till 1999 for the assessment year 1995-96. The company did not avail the scheme even though initially it wanted to avail the scheme.

6.4 The company filed its return of income for the assessment year 1996-97 on 02.12.96. the company was assessed on income of Rs. 2,62,020/- by Shri K. R. Megwal the then Deputy Commissioner of Income Tax, who disallowed entertainment expenditure of Rs. 7,89,874/- incurred by the company and arrived at tax of Rs. 1,90,155/- including interest of Rs. 45790/- u/s 234 b of Income Tax Act on 08.10.94. However, Sri K. R. Megwal picked up the case for scrutiny u/s 143 (2) of Income Tax act. He passed final order u/s 144 of Income Tax Act on 30.03.99, demanding a total amount of Tax of Rs. 14,13,224/- including interest of Rs. 5,81,472/- u/s 234 B of Income Tax Act.

6.5 As on 30.05.2000 the Income Tax Department vide the above assessment orders had raised demand of tax and interest on the company as follows:

Assessment year 1994-95	Rs. 01,78,083.00
Assessment year 1995-96	Rs. 43,63,482.00
Assessment year 1996-97	<u>Rs. 14,13,224.00</u>

Total demand of Income Tax Rs. 59,54,789.00

6.6 On 31.05.2000, Shri K. V. Radhakrishna, the Assessing Officer for the company drew certificate u/s 22 of Income Tax Act for the arrears of Rs. 71,49,687/- with interest u/s 220(2) of Income Tax and sent the same to Tax Recovery Officer, enclosing a list of the properties of M/s IGGI Resorts International Limited. As per this list M/s IGGI Resorts International Limited owns three properties vis (1) M/s IGGI Resorts International Limited, Opp: Chettair Park, Kodaikanal (2) M/s IGGI Resorts International Limited Block No. 31/1. Theetukkal Fern Hill Road, Ooty and (3) M/s IGGI Resorts International Limited, Velankanni Village, Kilvelu Taluk, Nagapattinam District. He served the copy of the said certificate on M/s IGGI Resorts International Limited on 09.06.2000. Shri N. Ramachandran, the then Tax Recovery Officer, got three separate attachment orders simultaneously served on M/s IGGI Resorts International Limited and on the respective Sub Registrars, for having attached the above three properties of the company.

6.7 Out of the three properties listed above, M/s IGGI Resorts International Limited came into possession of a land measuring 1.21 Acres falling under Survey No. 52/1 B, 52/3 A, 52/4 at Velankanni Village through a slave deed dtd. 13.03.1998 executed by M/s. S. A Rayan & Sons. M/s IGGI Resorts International Limited built its resort of Velankanni on the above land and it obtained a loan of Rs. 1,00,000/- from M/s Tamilnadu Industrial Investment Corporation Limited (TIIC Ltd.). Vide document No. 70 dtd. 01.02.90, this property was mortgaged to TIIC Limited. The loan of Rs. 1,00,000 taken by M/s IGGI Resorts International Limited on 01.02.1990 became Rs. 9,02,456/- with interest. M/s IGGI Resorts International Limited represented by Shri V. Ganeshan and M/s MGM Entertainment Pvt Limited, represented by Shri M. G. Muthu, its Chairman and M/s Harita Finance Limited represented by Shri P. S. Sankarnarayanan, its Vice President – Finance, entered into a memorandum of understanding (MOU) on 02.03.2000 for the sale of the above resort at Velankanni by M/s IGGI Resorts International Limited, for a consideration of Rs. 135 lakhs. M/s Harita Finance Ltd. received two instalments of Rs. 67,50,000/- each on 02.03.2000 and 31.02.2000 from M/s MGM Entertainment Pvt Ltd., through cheques drawn of Global Trust Bank, Mylapore Branch. M/s Harita Finance paid Rs. 9,02,456/- to M/s. TIIC Limited on 09.03.2000, through a cheque drawn on Vysya Bank Ltd., Whites Road Branch Chennai. There was no other charge on this property at Velankanni before the Income Tax Department attached the same.

6.8 The Sec 230 A of Income Tax Act prohibited registration of any property by the Registering Officer (Registrar) unless there was a certificate from the assessing officer of the income tax department to the effect that the party intending to transfer the property has either paid or made satisfactory provision for payment of all existing liabilities under the Income Tax Act and other laws. Depositing of documents of third parties is not satisfactory arrangement under this section and a tangible provision has to be made to make one eligible for such a certificate u/s 230 A of Income Tax Act.

6.9 On 24.05.2000, Shri J. Robinson, Director of M/s IGGI Resorts International Limited filed an application if Form 34 A for a certificate u/s 230 A of Income Tax to sell the company's property at Velankanni, before Shri K. V. Radhakrishna who was the then assessing officer for the company. While filling the form with respects to column no. 6(iv), Shri J. R. Robinson stated that the dues under Income Tax Act were unknown to the company. This form was signed by Shri J. R. Robinson as a Director of M/s IGGI Resorts International Limited.

6.10 On 25.05.2000 Shri K. V. Radhakrishna rejected the application of the company, on the ground that the assessee company i.e. M/s IGGI Resorts International Limited had huge tax arrears and he communicated the same to the Sub Registrar of Tiruppoondi. On 30.05.2000, he communicated the rejection of the application to M/s IGGI Resorts International Limited vide a letter indicating that so long as arrears are pending, the clearance certificate could not be issued.

6.11 M/s. Century Estates on behalf of Shri S. Marimuthu and Shri K. V. Veluchamy executed two sale deeds vide Document Nos. 866/95 & 882/95 dtd. 21.04.95, in the name of one Smt. C. Poonghuzhali and Shri R. Pandian for two lands measuring 1.21 acres and 2.35 acres under survey Nos. 1695/2 and 1671/7 of Vilpatty village respectively. These documents were registered in the office of Sub Registrar Kodaikanal for the value of Rs. 23,830/- and Rs. 46,200/-, respectively. Shri P. Ganesh Raja of Kodaikanal executed a sale deed for having sold his land of 2.96 acres under survey no. 1639/32 at a value of Rs. 58,300/- to one Shri N. R. Sangameswaran on 08.08.1994 vide document no. 1448/94 of Sub Registrar Kodaikanal. The three transactions were for M/s Maxworth Country (India) Ltd. engaged in the business of developing plantation lands and selling the same in India and abroad. M/s Maxworth Country (India) Ltd. purchased these lands in the name of the above individuals.

6.12 On 06.07.1998 M/s Maxworth Country (India) Limited sold a unit of land measuring 0.519 acres consisting of a part of land purchased under survey no. 1695/2 in the name of Smt. C. Poonghuzhali and another part of land purchased in the name of Mrs. G. Subhadra, to Shri K. Rayappa Reddy of Hyderabad, at a value of Rs. 18,000/-. Shri K. Rayappa Reddy paid a total amount of Rs. 5,62,000/- towards the cost of land and development of the same, vide agreement entered into between Shri K. Rayappa Reddy and M/s. Maxworth Country (India) Ltd.

6.13 Another part of land purchased under survey no. 1695/2 in the name of C. Poonghuzhali was sold by M/s Maxworth Country (India) Ltd to one Shri Harinayan Subramanian of Bangalore. Smt. Malathi Subramanian, Chennai purchased 10 acres of land from M/s. Maxworth Country (India) Ltd. on 12.10.99 for Rs. 3 lakhs. This stretch of 10 acres of land consisted of 0.37 acres under survey no. 1639/32 purchased in the name of Shri N. R. Sangameswaran by M/s Maxworth Country (India) Ltd on 08.08.1994. Hence parts of land as purchased in the name of Smt. C. Poonghuzhali vide document no. 866/95 and in the name of Shri N. R. Sangameswaran vide document no. 1448/94 by M/s. Maxworth Country India Ltd were already sold out to Shri K. Rayappa Reddy of Hyderabad, Shri Harinayan Subramanian of Bangalore and Smt. Malathi

Subramanian of Chennai before 31.05.2000. therefore the document no. 866/95 and 1448/95 did not represent the total extent of land survey nos. 1695/2 and 1639/32 and its value as on 31.05.2000.

6.14 *Shri C. Muthusamy, being the Director of M/s Maxworth Country (India) Ltd., delivered the title deeds of documents in the name of Shri R. Pandian (full extent of 2.35 acres under survey no. 1671/7) and Smt. C. Poonghuzhali (full extent of 1.27 acres under Survey No. 1695/2) and Shri N. R. Sangameswaran (full extent of 2.96 acres under survey No. 1639/32) to Shri J. R. Robinson, under acknowledgment dtd. 06.10.2000 signed by Shri J. R. Robinson. The guide line value of land under survey nos. 1695/2, 1671/7 and 1639/32 was only Rs. 30,000/- per acre during 2000-2001.*

6.15 *While Shri N. P. Tripathi was holding additional charge of Commissioner of Income Tax, Tamilnadu IV, Shri J. R. Robinson filed a letter dtd. 26.12.2000 with Shri N. P. Tripathi, addressed to Commissioner of Income Tax, Tamilnadu V of which Shri N. P. Tripathi was having regular charge as on 27.12.2000. Shri N. P. Tripathi received the letter in person. Vide this letter, Shri J. R. Robinson proposed to the Commissioner that (1) the company agreed to pay Rs. 10 lakhs towards income tax, (2) for the remaining portions of the tax liability the company offers to create a mortgage on immovable property, whose market value was likely to cover the unsettled tax liability (3) to clear the entire tax liability within 18 months (4) the company was considering to generate more funds by trimming of the unwanted/unused properties of the company and (5) from the sale proceeds of such sale the company's management undertakes to pay larger sums and retire the tax liability at the earliest and (6) the company requests the commissioner to issue a clearance certificate.*

6.16 *Smt. Vijayalakhsimi, the then Tax Assistant, O/c CIT, TN-IV opened a new file after the receipt of this letter and prepared the note on the letter and placed the Dossier file of M/s IGGI Resorts International Limited for perusal on 27.12.2000, Shri G. Ramamurthy, then Dy. Commissioner (Hqrs), who was assisting the Commissioner of Income Tax, TN-IV, asked his office to 'put up with assessing officer's report as and when received'. However before any report of Assessing Officer was called for, Shri N. P. Tripathi wrote that "the assessee was coming forward for making the payment for obtaining 230 A certificate. It appears from the records that the assessee is a habitual defaulter and we are not able to make any headway for collection of arrears. Ask the JC to submit a detailed report and ask the TRO to come for discussion. Then only we can think of issue of 230 A".*

6.17 *Shri Laxmanan, the then Stenographer Grade I in the O/c CIT, TN-IV, communicated the order of Shri N. P. Tripathi to Shri K. V. Radhakrishna and placed the report dtd. 04.01.2000 of Shri K. V. Radhakrishna, the assessing officer for the company. Shri K. V. Radhakrishna vide his report dtd. 04.01.2001, submitted that earlier the company did not fill the relevant column in Form 34 A regarding existing tax arrears and as the application was incomplete, the same was rejected. Shri K. V. Radhakrishna further indicated the proposals of the company in the letter dtd 26.12.2000. Shri K. V. Radhakrishna deviated from the proposal of the company and in his report indicated that 'it is preferable that a no-encumbrance certificate be given by the assessee regarding the new property proposed to be mortgaged in favour of the department'. He further proposed that the value of the property 'should be as per the guide lien value of the concerned sub registrar.'*

6.18 *On 05.01.2001, Shri N. P. Tripathi passed an order, in his own handwriting, that JCIT was to issue a challan for Rs. 10 lakhs immediately to the assessee company and a letter to adhere to the instalment plan, that the assessee company was to deposit three title deeds of the properties at Kodaikanal, whose approximate value was Rs. 85 lakhs; that the Directors of assessee company were to file an affidavit that the properties were non-encumbered; that it was to file the non-encumbrance certificate within one week and that 230 A certificate could be issued. After writing the above order in his own handwriting, Shri N. P. Tripathi dictated a detailed order to his Stenographer on 05.01.2001 itself, that the Directors of the company agreed to deposit original documents in respect of three properties and the directors of the company agreed to file affidavits that there were no encumbrances on these three properties. Shri N. P. Tripathi ordered vide this dictated letter, that the certificate u/s 230 A could be issued on payment of Rs. 10 lakhs and on filing the affidavit with regard to non-encumbrance of the properties at Kodaikanal.*

6.19 *On 05.01.2001 Shri K. A. Karthikeyan and Shri J. R. Robinson dishonestly filed an affidavit to the extent that they were lodging the original documents i.e. document no. 882/95, 866/95 and 1448/94 covering the survey nos. of 1671/7 (2.35 acres), 1695/2 (1.21 acres) and 1639/2 (2.96 acres) and solemnly affirmed that the total of 6.52 acres of land falling in the above survey nos. are free from encumbrance. They further undertook to file necessary encumbrance certificate to prove the above statement. They further offered to create mortgage in favour of Income Tax Department whenever called for.*

6.20 *It is to be noted that the properties vide these title deeds are worth only Rs. 1.2 lakhs on the face of them. The three lands whose title deeds were deposited on 05.01.2001 in the O/o JCIT, Special Range XI are unkempt and there was no development except laying of roads. The guide line value of the lands in question during the years 2000-2001 was Rs. 30,000/- per acre.*

6.21 *Shri K. V. Radhakrishna issued a certificate u/s 230 A in accordance with the directions of the CIT i.e Shri N. P. Tripathi on 05.01.2001 itself, indicating that the assessee company had made satisfactory arrangements to clear the tax liability. Accordingly Shri N. Ramachandran the then Tax Recovery Officer lifted the attachment of the property of M/s IGGI Resorts International Limited at Velankanni with immediate effect, by addressing a letter dtd. 05.01.2001 to the sub Registrar, Tirupoondi.*

6.22 *On 08.01.2001 Smt. K. Rajewwari, the then Sub Registrar of Tirupoondi registered the sale deed executed by Shri V. Ganesan in favour of M/s MGM Entertainments Pvt Ltd with the total*

value of transaction shown as Rs. 135 lakhs, as document no. 27/2001 on the basis of 230 A certificate issued by Shri K. V. Radhakrishna 05.01.2001.

6.23 Shri A Karthikeyan and Shri J R. Robinson never mortgaged the property to the Income Tax Department. They never paid the tax arrears after remitting Rs. 10 lakhs on 5.1.2001 and Rs. 1 lakh on 29.3.2001. The income tax department was put to a wrongful loss of Rs. 62.39 lakhs.

7 It is to be noted that whereas the Income Tax Department had already attached the three properties of M/s IGGI Resorts International Limited, Velankanni, Ooty and Kodaikanal, Sh. N. P. Tripathi allowed the attachment of the Velankanni Property to be lifted and the same to be sold by the assessee for a sum of Rs. 135 lakhs. Even though the outstanding Income Tax demand against the assessee exceeded Rs. 70 lakhs, Sh. Tripathi did not care to ensure that the said demand was paid out of the sale proceeds of this property, either through a suitable deposit with the department, a lien on the sale proceeds or through a bank guarantee. Instead he stipulated a cash payment of only Rs. 10 lakhs to be made at the time of issue of the certificate u/s 230 A. He also did not ensure that the assessee had made satisfactory arrangements for paying its outstanding demand. It is a fact that the documentary value of the other two attached properties at Ooty and Kodaikanal was much less than the said outstanding demand. In such circumstances Sh. Tripathi only required the assessee to file title deeds of three additional properties at Kodaikanal even though the assessee's title to such properties was not clear and their document value was only about Rs. 1.20 lakhs.

8 It is thus seen that Shri N. P. Tripathi while holding additional charge of CIT, Tamilnadu ensured issue of certificate u/s 230 A of Income Tax Act to M/s IGGI Resorts International Limited on 05.01.2001, thus allowing the assessee to alienate property which had already been attached by the Tax Recovery officer u/s 222 of the Income Tax Act, for recovery of the heavy outstanding demand against the assessee. He further failed to ensure that sufficient other security was arranged by the assessee before the certificate u/s 230 A was issued, so that the recovery of the huge outstanding demand in the case became well nigh impossible. This decision of Sh. Tripathi was taken in apparent haste, merely two days before the regular incumbent CIT Tamil Nadu IV was to resume charge. In thus extending undue benefit to the assessee and sacrificing the interest of revenue, Sh. Tripathi acted in a grossly negligent and perverse manner. By his aforesaid act of omission and commission, Sh. Tripathi failed to maintain absolute integrity and devotion to duty and displayed conduct unbecoming of a Government Servant, thus contravening the Rules 3 (1) (i), 3 (1) (ii) and 3 (1) (iii) of the CCS (Conduct) Rules 1964."

6. Learned counsel for the applicant relied on few citations including the following:

a) This Tribunal order dated 22.09.2011 in oA No. 447/2010 upheld by Hon'ble High Court of Orissa order dated 07.03.2019 in W.P (C) No. 19169/2018.

b) Hon'ble Supreme Court in case of B. V. Gopinath vs UOI (2014) I SCC (L&S) 161

7. Learned counsel for the respondents relied on few citations including the following:

a) Hon'ble Supreme court in B. C. Chaturvedi vs UOI 1996 AIR484, 1995 SSC (6) 479

b) Hon'ble Supreme Court in WP (CRL) No. 50 of 20012

in Niranjan Hemchandra Sashittal and another
versus State of Maharashtra.

c) Hon'ble Suprme Court in Civil Appeal No. 2333 of
2007 in case of Secretary Min of Defence & ors
versus Prabhash Chandra Mirdha

8. Heard learned counsels for both the sides, gone through
their pleadings, materials on record, written notes of
submission and citations relied upon by them. The
applicant retired after attaining the age of
superannuation on 30th November, 2004. Disciplinary
proceeding under Rule 14 of the CCS (CCA) Rules 1965
was initiated against the applicant vide memorandum
dated 29.11.2004. As the applicant retired on
superannuation on 30.11.2004 therefore the said
departmental proceeding initiated against him, while he
was in service, continued as deemed to be proceeding
under Rule 9 of CCS (Pension) Rules 1972.

9. The applicant was holding the post of Commissioner of
Income Tax, Tamil Nadu - IV, Chennai, in addition to his
own duty, between 18.12.2000 and 07.01.2001. The
Income Tax Department had raised a demand of tax and
interest total amounting to Rs. 59,54,789/- for the
assessment year 1994-95, 95-96 and 96-97 on a
company i.e. M/s. IGGI Resorts Ltd as on 30.05.2000.
One application dated 24.05.2000 filed by one Mr. J. R.

Robinson, the director of said company in form no. 34 A for a certificate under section 230 A of the income Tax to the sell company's property at Vellankeni before K V. Radhakrishna who was the then assessing officer of the company. Mr. Robinson had mentioned regarding with dues of income tax as unknown. Shri Radhakrishna rejected the application of the company on 25.05.2000 on the ground that "the assessee company i.e. M/s IGGI Resorts Ltd had huge tax arrears" and communicated the said order to concerned sub-registrar and to the company in question mentioning that so long as arrears are pending the clearance certificate could not be issued.

10. Thereafter, Shri J. R. Robinson filed a letter dated 26.12.2000 addressed to Commissioner of Income Tax V, of which the applicant was having regular charge as on 27.12.2000. The applicant received the letter in person. Vide this letter, Shri J. R. Robinson proposed to the Commissioner that (1) the company agreed to pay Rs. 10 lakh towards income tax, (2) for the remaining portion of the tax liability the company offers to create a mortgage on immovable property, whose market value was likely to cover the unsettled tax liability, (3) to clear the entire tax liability within 18 months, (4) the company was considering to generate more funds by trimming off the unwanted/unused properties of the company and (5) from the sale proceeds of such sale the company's

management undertakes to pay larger sums and retire the tax liability at the earliest and (6) the company requests the Commissioner to issue a 'clearance certificate'. Shri G.R. Ramamurthy the then Deputy Commissioners (Hqrs) who was assisting the Commissioner of Income Tax, TN-IV, asked his office to 'put up with Assessing Officer's Report as and when received'. However before any report of Assessing Officer was called for, Shri N. P. Tripathi wrote that "the assessee was coming forward for making the payment for obtaining 230 A certificate. It appears from the records that the assessee is habitual defaulter and we are not able to make any headway for collection of arrears. Ask the JC to submit a detailed report and ask the TRO to come for discussion. Then only we can think of issue of 230 A". Shri K. V. Radhakrishna, Assessing Officer for the company vide his report dated 04.01.2001 submitted that earlier the company did not fill the relevant column in Form – 34 A regarding existing tax arrears and as the application was incomplete, the same was rejected. Shri K. V. Radhakrishna further indicated the proposals of the company contained in the letter dtd. 26.12.2000. Shri K. V. Radharishna deviated from the proposal of the company and in his report indicated that 'it is preferable that a no-encumbrance certificate be given by the assessee regarding the new property proposed to be

mortgaged in favour of the Department'. He further proposed that the value of the property 'should be as per the guide line value of the concerned Sub- Registrar. On 05.01.2001, Shri N. P. Tripathi passed an order, in his own handwriting, that JCIT was to issue a challan for Rs. 10 lakhs immediately to the assessee company and a letter to adhere to the instalment plan; that the assessee company was to deposit three title deeds of the properties at Kodaikanal, whose approximate value was Rs. 85 lakhs; that the Directors of assessee company were to file an affidavit that the properties were non-encumbered; that it was to file the non-encumbrance certificate within one week and that 230 A certificate could be issued. After writing the above orders in his own handwriting, Shri N. P. Tripathi dictated a detailed order to his Stenographer on 05.01.2001 itself, that the Directors of the company agreed to deposit original documents in respect of three properties and the Directors of the company agreed to file Affidavits that there were no encumbrances on these three properties. Shri N. P. Tripathi ordered, vide this dictated letter, that the certificate u/s 230 A could be issued on payment of Rs. 10 lakhs and on filing the affidavit with regard to non-encumbrance of the properties at Kodaikanal.

11. The fact that the applicant had received the said letter in question personally is admitted by him. He has also

admitted that he had made necessary endorsement in his own hand on the said application. The necessary non-encumbrance certificate was not filed. Before the direction by the applicant to the concerned officer for issue of certificate under section 230 A of the IT Act was passed. In fact the said non-encumbrance certificate was also not filed before the certificate in question was issued. K. V. Radhakrishna had issued the said certificate under section 230 A as per direction given by the applicant on 05.01.2001 itself. Accordingly, Shri N. Ramachandran the then tax recovery officer lifted the attachment of the property of M/s IGGI Resorts Ltd at Velankanni with immediate effect by issuing a letter to concerned sub-registrar on the same day i.e. 05.01.2001. It is also proved that on 08.01.2001 the then sub-registrar of Tirupondy registered the sale deed executed by one Shri V. Ganeshan in favour of M/s MGM Entertainment Pvt Ltd with total value of transaction shown as Rs. 135 lakh vide document 27/2001, on the basis of certificate issued under section 230 A issued by K. V. Radhakrishnan on 05.01.2001. It is also proved that K. A. Karthikeyan and Shri J. R. Robinson never mortgaged the property to the Income Tax Department. They never paid the tax arrears after remitting Rs. 10 lakh on 05.01.2001 and Rs. 1 lakh on 29.03.2001. The income tax department was put to a wrongful loss of Rs. 62.39 lakhs. It is also proved that

even though outstanding income tax demand against the assessee exceeded Rs. 70 lakhs, the applicant did not care to ensure that the said demand was paid out of the sale proceed of the property either through suitable deposit with the department, instead the applicant stipulated cash payment of Rs. 10 lakhs as offered to be made by the company at the time of issue of certificate under 230 A. It is also proved that the applicant did not ensure that the assessee should make satisfactory arrangement for paying its outstanding demand. It is also proved that documentary value of other two attached properties at Ooty and Kodaikanal was much less than the said outstanding demands. Thus the action of the applicant ultimately resulted in allowing the assessee to alienate property which had already been attached by tax recovery officer under section 222 of IT Act for recovery of outstanding dues. It is also proved that the said decision of the applicant i.e. direction given to his subordinate officer to issue certificate under section 230 of IT was made in haste, when the regular incumbent was expected to join within two days and thereby he extended undue benefit to the assessee by causing huge loss of revenue to the state.

12. It was submitted by learned counsel for the applicant that the applicant had faced CBI case bearing No. 14/2005 and 11/2017, and he has been honourably

acquitted in the said case. He had further submitted that documents and oral evidence in the said CBI case as well as departmental proceeding were almost the same and so also the charge made against the applicant in both the cases. Accordingly learned counsel for the applicant submits that the departmental proceeding should not have been initiated and no such punishment could have been legally imposed on the self same allegation on the basis of self same set of evidence and documents, when he has already been honourably acquitted by competent court i.e. the CBI court. In this regard the Tribunal find that 82-85 documents were relied upon in the departmental proceeding and on the other hand in criminal case, 244 documents were marked as exhibits from the side of prosecution and four documents from the side of defence. Similarly in departmental proceeding 54 nos. of witnesses were examined but in the criminal case in question 44 number of prosecution witness were examined besides the applicant being examined as PW 1 in his own favour from the side of defense. The charge made against the applicant in the CBI case were u/s 120-B r/w 420 of IPC and u/s 13(2) r/w 13(1)(d) of Prevention of Corruption Act 1988 but in the departmental proceeding the charge against the applicant was "Shri Tripathi failed to maintain absolute integrity and devotion to duty and displayed conduct unbecoming of a

Government Servant, thus contravening the Rules 3 (1) (i), 3 (1) (ii) and 3 (1) (iii) of the CCS (Conduct) Rules 1964". The standard of proof as required in criminal case is beyond reasonable doubt, on the other hand the standard of proof as required in departmental proceeding is in the standard of "preponderance of probability". That apart the honourable court while dealing in CBI case in question had also taken into consideration the fact that there was no sanction of prosecution of applicant as accused no 1 in the said case. It was also found in the said criminal case that concerned authorities had refused to accord any permission for sanction for prosecution of accused while he was in service and therefore as settled principle of law, as held by Hon'ble Supreme Court the prosecution of applicant as accused no. 1 even after retirement without sanction is not permissible. This aspect has been mentioned by the trial court i.e. CBI at page no. 71. Copy of the said judgment dated 16.11.2017 was not filed as annexure along with OA but was subsequently filed by learned counsel for the applicant. The applicant in reply to statement of imputation of misconduct and misbehaviour had mentioned that it was simple, normal and routine administrative decision. He had also tried to defend his own order on the ground that the regular incumbent, after rejoining in the post in question had not reported

about action of the applicant to higher authority. The said aspect cannot help the applicant in any way in view of detailed circumstances as found by the inquiring officer in the report which has been adequately dealt by UPSC and also in the second report submitted by CVC. It has been proved that the applicant had failed to ensure other security was arranged by the assesee before issuing the certificate and that he had failed to maintain absolute integrity and devotion to duty and the said conduct is unbecoming of govt servant and contravened the relevant rules of CCS (Conduct) Rules 1964(?). Of course the applicant has tried to explain things saying that the application in question was filed on 26.12.2000 before the JCIT and the report of JCIT was dated 04.01.2001 which was put up before the applicant on 05.01.2001 before discussion. The applicant had tried to justify his action in issuing direction on the same day i.e. on 05.01.2001 saying that as per rule vide exhibit b 4 the time being 21 days from the date of application and therefore he took a decision in this regard. Although in the defence brief he had mentioned about rule 12 of second schedule (exhibit 85) which speaks of obtaining report from TRO, the applicant tried to explain it away saying that the matter was discussed with TRO, but discussion with TRO cannot be substitute for obtaining report from the TRO. Not waiting for report of TRO and

not insisting for the same and to proceed ahead with directions given by the applicant to issue certificate in question clearly shows that although the applicant was well aware of the rules position he did not prefer to follow the same and no specific and satisfactory reason have been submitted by him as to why he decided to bypass the said rule and practice. In the above circumstances the finding of the concerned authorities that grave doubt inevitably arises regarding the bonafide action of the applicant cannot be brushed aside. The action of the applicant in personally receiving the application in question while he was in additional charge of the post without waiting for the application to be received by following proper official procedure cannot also be overlooked in view of the finding given by the inquiring officer and the authority that he had hastily tried to give direction and ensure certificate in question on same day i.e. 05.01.2001. He had also not insisted that non-encumbrance certificate should also be submitted by the assessee. He had also not made any inquiry at all and not tried to ascertain that the title deed were in the name of the assessee and he has tried to explain it away by saying that it was not brought to his notice or to the notice of incumbent who subsequently took charge from him. He had also not tried to be *prima facie* satisfied about the adequacy of value of other two properties i.e.

Ooty and Kodaikanal. He himself has mentioned in the order that the assessee is habitual defaulter and therefore it was incumbent and expected from one responsible higher officer like him to at least be *prima facie* be satisfied and ensure that outstanding tax dues of the assessee should have been obtained by taking sufficient security, without hurrying in the manner by giving direction and ensuring that certificate in question should be issued on the same day i.e. on 05.01.2001. The applicant has tried to support his action by saying in his brief that he had relied on verbal report of TRO about the status and kind of attachment. This kind of superficial action by the applicant who was holding a very senior sensitive position in the income tax department was not at all expected and was unbecoming of his position and therefore the concerned authorities as well as inquiring officer has rightly found that the charges against the applicant as proved. The matter was referred to CVC along with views of the department. The CVC vide its second step advice communicated vide OM dated 16.10.2008 has concurred with the findings of the inquiring authority and the administrative authorities and had advised for imposition of suitable major penalty on the applicant.

13. The plea taken by the applicant that the previous application for issue of certificate under section 230 A of

IT was rejected on technical grounds is not correct and this has also been found by the inquiring officer as well as the departmental authorities. In this regard the JCIT (AO) report dated 04.01.2001 reveals that there were tax arrears in the case, the assessee company did not fill in relevant column in form no. 34 A regarding existing tax arrears. The assessee failed to discharge its tax liability after payment of initial instalments of Rs. 10 lakh and Rs. 1 Lakh. As those property did not belong to and were not in the name of the defaulter company. Those properties were not saleable as right of property did not rest with the company. The applicant has not adhered to the boards instruction no 1660 which stipulates that the income tax officer should obtain reports from the concerned tax recovery officer before issue of certificate under section 238 A in respect of the defaulter. Shri N. Ramachandra, TRO IV (2) in his written statement in the month of October 2002 has stated that he had informed the applicant that it would not be possible to recover any amount from the assessee as it has become defunct and was not in a position to pay the arrear and therefore issue of certificate under section 238 A (1) to the assessee would not be beneficial to the revenue. The applicant had ignored the said advice and thereby jeopardized govt revenue. It is proved from the materials on record that the deputy commissioner of income tax, Mr. M. G.

Rammurthy had asked his office to put up with assessing officers report as and when received. But the applicant even before submission of report by the assessing officer wrote that the assessee was coming forward for making payment of part amount of Rs. 10 lakh toward the income tax liability of the company for obtaining certificate under section 230 A of the IT act.

14. Learned counsel for the applicant had drawn the attention of this Tribunal to the averment made in para 4.3 of the OA with regard to issue of charge memo. It has been mentioned therein “that besides the above, hastiness in issuing the charge without due application of mind smacks mala fide exercise of power is no more *res integra*. Therefore, viewed the matter from this angle, the charge at no stretch of imagination can pass the test of bona fide exercise of power and as such, the same is not sustainable in the eyes of law. As to why the action is not bona fide is that the applicant was to retire from service on reaching the age of superannuation on 30.11.2004. The Ld. Finance Minister approved the proposal for initiation of DP against the applicant on 29.11.2004 and on the same day charge sheet containing so many pages and facts was prepared and served on the applicant. Hence it is presumed that approval was only a mere fashion as it was already determined by the officers in the hierarchy to proceed against the applicant.

Further, it will be evident that the Ld. Finance Minister approved for initiation of major penalty proceedings but thereafter, nothing is available on record that the charge sheet was approved by him as required under the Rules. The statutory authority cannot act whimsically or arbitrarily and its action should be guided by principles of reasonableness and fairness. Requirements of morale, discipline and justice have to be reconciled. The Constitution of India protects not only life and liberty but also dignity of every person. As such the charge sheet is not sustainable in the eyes of law and thus, is liable to be set aside". In this regard learned counsel for the applicant had relied on the decision of Hon'ble Supreme Court reported in (2014) 1 SCC (L&S) at page 161 (Union of India & ors vrs. B. V. Gopinath) in support of his submission that although the issuance of charge sheet has been approved by Hon'ble Finance Minister but the charge sheet itself has not been approved by Hon'ble Finance Minister as required under Rule 14 of the CCS (CCA) Rules. In the present case the respondents in their counter have specifically mentioned in para 10 of the counter that "the proceeding for major penalty was initiated with the approval of the DA dated 29.11.2004 and charge sheet dated 29.11.2004 was issued to the applicant. The process altogether was concluded as prescription of law so prevails". In para 15 of the counter

affidavit it has also been further averred that the proceeding for major penalty was initiated with the approval of the DA and charge sheet issued in this case is as per rules. The said averment made in the counter affidavit has not been challenged or refuted by filing any rejoinder by the applicant. No prayer has been made by the applicant for production of any such documents from the side of respondents to show that Hon'ble Finance Minister has not approved the charge sheet in question. In the decision of Hon'ble Supreme Court as relied upon by learned counsel for the applicant, it was found that the charge sheet was not put up for approval by the Hon'ble Finance Minister. In the said case it was also admitted by the Union of India that the charge sheet has been placed before Hon'ble Finance Minister for approval and it was contended on their behalf that approval by the Hon'ble Finance Minister for issue of the charge memo is sufficient and no separate approval of the charge sheet by the said authority was required. But in the present case there is no such admission from the side of the respondents. The averment made in the counter affidavit, as quoted above, have not been denied or challenged by the applicant by filing rejoinder. In the above circumstances, the facts and circumstances of the said case is not applicable to the facts and circumstances of the present case. Learned counsel for the applicant

had inter alia submitted that the initiation of departmental proceeding by issue of charge sheet is not in accordance with law as the same has not been authorized by the competent person. On the other hand the letter dated 03.05.2005 issued by Under Secretary to Govt. of India shows that the Hon'ble President has considered that Inquiry authority should be appointed to inquire into charges framed against the applicant and the president has appointed inquiring authority in this case to inquire into the charge. The said order has been passed in the order and name of the Hon'ble President. It has been specifically mentioned in the para 15 of the counter that the proceeding for major penalty was initiated with the approval of the disciplinary authority dated 29.11.2004 and the charge sheet issued in this case is as per rules. It has also been pleaded in Para 13 of the counter that the penalty order issued under the signature of Under Secretary to Govt. of India was with approval dated 04.03.2014 of disciplinary authority i.e. Hon'ble Finance Minister which is covered under delegation of powers of Hon'ble President of India and is in conformity to the rules.

15. It was submitted by learned counsel for the applicant that there was delay in initiating disciplinary proceeding against him. It is seen that the period during which the misconduct in question took place relates to period in

between 18.12.2000 & 07.01.2001. The charge memo was issued to the applicant on 29.11.2004. The applicant has not made out any case to the satisfaction of this Tribunal that any prejudice has been caused to him by the said delay in issuing the charge memo. It is not the case of the applicant that the said delay in issuing the charge memo was intentional. The applicant has not been able to prove that there was any malafide made by any authority of respondent department in causing such delay. Therefore when the delay was not intentional and has not caused any prejudice to the applicant the said point cannot be given any importance by this Tribunal. In the present case, CBI had registered a case against the applicant. Therefore it would have taken some time for the respondents to take necessary steps to find out the illegality committed by the applicant and for taking follow up action by the department. Hence there is no material to show that any prejudice has been caused to the applicant due to said gap in initiating departmental proceeding in question. Accordingly the point of delay as raised by learned counsel for the applicant cannot be given any importance.

16. Penalty order dated 13.03.2014 was passed ordering imposition of penalty of 30% cut in monthly pension of the applicant for a period of 7 years. It was submitted by learned counsel for the applicant that the order of cut in

pension has been imposed retrospectively. In this regard learned counsel for the respondents had denied the said allegation made by the applicant and had drawn the attention of this Tribunal to the averment made in para 17 of the counter wherein it has been mentioned that “There was mistake in implementing penalty order of 30% cut in pension from the date following the next date of the retirement of the applicant i.e. 01.12.2004. The respondent no. 3 in their letter dtd. 29.03.2017 issued from F. No. C-18011(V)/48/2015-SO (V&L) instructed that *no retrospective effect is to be given to a penalty order and the penalty is to be imposed from the date of order of penalty and not from the date of retirement.* Accordingly, Pr. CCIT, New Delhi, Respondent No. 8 implemented orders of the penalty of 30% cut in basic pension of the applicant imposing from the date of order, i.e. 13.03.2014 and necessary revised calculation has been made and bills have been sent to ZAO, CBDT, New Delhi vide Bill No. 108 dated 21.04.2017 amounting to Rs. 83,119/- for payment.”

17. Learned counsel for applicant had relied on decision of this Tribunal given in OA No. 447 of 2010 on 22.09.2011. Hon’ble High Court had affirmed the said order by dismissing the writ petition no. 169/2018 filed by the respondent on 07.03.2019. The SLP filed by the department was dismissed by Hon’ble Supreme Court as

per order dated 14.02.2020. It is seen from the said order that Hon'ble Supreme Court has observed that question of law is kept open to be urged in an appropriate case. The fact of the said case before the Tribunal was regarding passing of order by the applicant under section 363 and 364 in quasi judicial capacity and there was nothing other than this with regard to misconduct of the applicant in the said case. In the fact and circumstance of the said case, the Tribunal came to the finding that the applicant in the said case was entitled to protection under section 293 of IT Act. But the fact and circumstance of the said case is quite different from the facts and circumstance of the present case. In the present case the applicant had in his capacity as Commissioner Income Tax had given direction to his subordinate authority to issue certificate under section 230 A of Income Tax Act.

18. This Tribunal after going through materials on records and finding given by the concerned authorities is not satisfied that there was any extraneous considerations in finding the applicant guilty. The applicant has not been able to prove that there was any malafide by any authority for either initiating disciplinary proceeding or for imposing the punishment against him. The finding given against the applicant that there was grave misconduct on the part of the applicant within the

meaning of Rule 9 of CCS (Pension) Rules 1972 is based on record and there is no scope to interfere with the same by this Tribunal. The applicant has not been able to prove given in the stand of pre-ponderance of probability that the direction given by the applicant for issue of certificate in question was made in good faith or intended to be done under this act and therefore the said action of the applicant is not protected under section 293 of Income Tax Act.

19. Accordingly the OA is dismissed but in the circumstances without any order as to cost.

(ANAND MATHUR)
MEMBER (A)

(SWARUP KUMAR MISHRA)
MEMBER (J)

(CSK)