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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. OA 806/1991

Date of decision: 19.02.1993.

Shri Upendra Singh

...Applicant

Versus

Union of India & Others

...Respondents

For the Applicant

...Shri P.P. Khurana,
Counsel

For the Respondents

...Shri Vinod K. Kanth,
Sr. Counsel with
Shri R.S. Aggarwal,
Counsel

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr. B.N. Dhoundiyal, Administrative Member

1. To be referred to the Reporters or not? *Yes*

JUDGMENT

(of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice Chairman(J))

The applicant who belongs to the Indian Revenue Service (for short IRS) is presently working as Deputy Commissioner of Income Tax. He is aggrieved by the impugned Memorandum dated 7.2.1991 issued by the respondents whereby it has been proposed to hold enquiry against him under Rule 14 of the CCS(CCA) Rules, 1985. The allegation against him pertains to certain income-tax assessments

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in 1986-87 while he was posted as Inspecting Assistant Commissioner of Income-tax Bombay. He had originally filed OA 90/1991 in the New Bombay Bench of the Tribunal against the initiation of the disciplinary proceedings against him. He, however, did not pursue the same and the New Bombay Bench by its order dated 8.3.1991 gave him permission to withdraw his application with liberty to refile it on the same cause of action in accordance with law. Thereafter, the present application was filed by him.

2. On 5.4.1991 when the present application was admitted, the learned counsel for the applicant submitted that the charge-sheet served on the applicant related to the discharge of quasi-judicial functions ~~performed~~ by him. Basing himself on the decision of the Supreme Court in V.D. Trivedi Vs. Union of India, 1990(2) SCALE 1161, he sought for interim directions restraining the respondents from proceeding against him. In V.D. Trivedi's case, the Supreme Court has observed that "the action taken by the appellant was quasi-judicial and should not have formed the basis of disciplinary action". In view of this, the Tribunal passed an interim order restraining the respondents from proceeding with the disciplinary action in pursuance of the charge-sheet dated 7.2.1991. The Union of India

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filed Civil Appeal No.4316 of 1991 in the Supreme Court which was disposed of by order dated 10.09.1992 in which the Supreme Court observed that the case of the applicant is fully covered by the judgment of the Supreme Court in Union of India & Others Vs. A.N. Saxena, 1992(3) SCC 124. The Supreme Court allowed the appeal and set aside the interim order passed by the Tribunal on 05.04.1991. The Supreme Court ^{and} remanded the case to this Tribunal with the ^a Supreme Court/direction that "the Tribunal will deal with the matter in the light of the observations made by this Court in Union of India Vs. A.N. Saxena(Supra)*. In the meanwhile, the disciplinary proceedings initiated against the respondent on the basis of the Memorandum dated February 7, 1991 would continue.

3. It is in the above background that the case was finally heard by us. We have gone through the voluminous records of this case and have also considered the case law cited before us*. In A.N. Saxena's case ^a 1992(3) SCC 124 ^a the Supreme Court has observed that an argument that

* Decisions relied upon by the learned counsel for the applicant:-

65 ITR 381; JT 1992(2) SC 532; Judgment of this Tribunal dated 21.10.1991 in OA 509/1991 - S.K. Lal Vs. U.O.I. & Another; Judgment of this Tribunal dated 13.6.1992 in OA 2752/1991 - S.C. Gangwar Vs. U.O.I. & Others; Judgment of this Tribunal dated 18.09.1992 in OA 1394/1992 - S.K. Nigam Vs. Union of India

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no disciplinary action can be taken in regard to actions taken or purported to be done in the course of judicial or quasi-judicial proceedings is not correct. It is true that when an officer is performing judicial or quasi-judicial functions disciplinary proceedings regarding any of his actions in the course of such proceedings should be taken only after great caution and a close scrutiny of his actions and only if the circumstances so warrant. The initiation of such proceedings is likely to shake the confidence of the public in the officer concerned and also if lightly taken likely to undermine his independence. Hence there is need for extreme care and caution before initiation of disciplinary proceedings against an officer performing judicial or quasi-judicial functions in respect of his actions in the discharge or purported discharge of his functions. The Supreme Court, however, observed that where the actions of such an officer indicate culpability, namely, a desire to oblige himself or unduly favour one of the parties or an improper motive, there is no reason why disciplinary action should not be taken.

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4. In the above back ground, we may briefly consider the facts of the instant case. The Article of Charge framed against the applicant is as follows:-

* ARTICLE -I

The said Shri Upendra Singh while posted as Inspecting Assistant Commissioner of Income Tax, B.S.D.(North) Range Bombay during the financial year 1986-87, got a survey u/s 133A of Income Tax Act, 1961, conducted in the cases of Raghuvanshi group of builders on 9.1.1987. During the course of this survey incriminating documents and a confessional statement of the assesseees showing unaccounted receipts of Rs.1.56 crores and admitted unaccounted incomes of Rs.46.60 lakhs earned by four firms of this group, viz. M/s Raghuvanshi Builders, M/s Raghuvanshi Developers, M/s Raghuvanshi Associates and M/s Rughani Builders, were obtained:

- (a) The said Shri Upendra Singh initiated proceedings u/s 144A in the case of M/s Raghuvanshi Builders, M/s Raghuvanshi Developers and M/s Raghuvanshi Associates in an illegal and improper manner.
- (b) During the aforementioned proceedings u/s 144A, the said Shri Upendra Singh neither examined the incriminating documents and evidence collected during the survey, nor passed any orders u/s 144A, inspite of being aware of the evidence gathered during the survey.
- (c) The said Shri Upendra Singh during the aforementioned proceedings u/s 144A improperly and illegally acquiesced in the assessee's offer to disclose only an amount of Rs.11,27,794/- in the names of the aforementioned firms and did not direct the assessing officer to bring to tax the full amount of undisclosed incomes of these firms as admitted during the survey of 9.1.1987.
- (d) The said Shri Upendra Singh gave illegal and improper directions to the assessing officer to complete the assessments in the cases of M/s Raghuvanshi Builders, M/s Raghuvanshi Developers and M/s Raghuvanshi Associates u/s 143(1) even though at the relevant time proceedings u/s 144A of I.T. Act 1961 were pending before him and these cases did not come within the purview of the Summary Assessment Scheme or the Amnesty Scheme of the CBDT.

2. Shri Upendra Singh has, therefore, violated Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rules, 1964.

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5. It will be noticed that there is no reference in the Article of Charge to the actions of the applicant indicating culpability. But there are references in the statement of imputations of misconduct or misbehaviour in support of the Article of Charge that his actions amounted to conferring of undue and improper benefits on the assessees concerned and it is, therefore, necessary to mention in detail the statement of imputations of misconduct or misbehaviour in support of the aforesaid Article of Charge framed against him. The allegations made against him were as follows:-

(a) While posted as Inspecting Assistant Commissioner of Income Tax, BSD(North) Range, Bombay, during the period 1986-87, he directed Shri J.A. Patil, Additional 2nd ITO BSD(N) Bombay, to conduct a survey under Section 133A of the Income Tax Act, 1961, in the Raghuvanshi Builders group of cases of Bombay, comprising of the following concerns:-

- (i) M/s Raghuvanshi Developers
- (ii) M/s Raghuvanshi Builders
- (iii) M/s Raghuvanshi Associates
- (iv) M/s Raghuvanshi Enterprises
- (v) M/s Raghuvanshi Investments
- (vi) M/s Rughani Builders
- (vii) M/s Hansa Estate Investments
- (viii) M/s Parul Constructions
- (ix) M/s Panakin Builders Pvt. Ltd.
- (x) M/s Shreejee Constructions.

(b) Shri Patil carried out a survey on 9.1.1987 and submitted a report on 21.1.1987 to the applicant in which he placed on record the fact that those cases were selected for survey by the applicant himself on the basis of information that those assessees were collecting 'on-money' on sale of flats, but are disclosing much lower incomes for tax purposes. At the relevant time these case were being assessed to Income-tax by

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ITO BSD(N) ^a
Smt. P.V. Saraswathy, 12th / Bombay. Although, she too was under the administrative control of the applicant, she was not associated with the survey action.

(c) The survey team recorded a statement on oath of Shri T.M. Rughani the main partner of the assessee firms under Section 131 of the Income-tax Act on 9.1.1987 on the basis of the material and information gathered by the survey team.

(d) In the above statement Shri Gughani admitted that his firms were receiving black money on sale of flats. He gave the particulars of the 'on-money' collected in respect of different building projects, by the four main builder firms of his group as under:-

(i) <u>M/s Raghuvanshi Builders:-</u>	
(i) For sale in 'Mandar Apartments' 8 flats of 600 sq.ft. each @ Rs.100 per sq.ft.	-Rs.4,80,000/-
(ii) For sale in 'Raghuvanshi Apartments' of 27,000 sq.ft. @ Rs.40 per sq.ft.	- Rs.10,80,000/-
	<hr/> Rs.15,60,000/-
(ii) <u>M/s Raghuvanshi Developers</u>	
For sale of 36,000 sq.ft. in 'Rughani Park' @ Rs.50 per sq.ft.	- Rs.18,00,000/-
(iii) <u>M/s Raghuvanshi Associates</u>	
(i) For sale of 6000 sq.ft. in 'Dwarkesh Darshan' @ Rs.70 per sq.ft.	- Rs.4,20,000/-
(ii) For sale of 16,000 sq.ft. in 'Savitri Apartment' @ Rs.30 per sq.ft.	- Rs.4,80,000/-
	<hr/> Rs.9,00,000/-
(iv) <u>M/s Rughani Builders</u>	
For sale of 4000 sq.ft. in 'Gokul' at the rate of Rs.100 per sq.ft.	-Rs.4,00,000/-
	<hr/> Rs.46,00,000/-

(e) The above figures reflected net 'on-money' realisations admittedly earned by these concerns, i.e., the net undisclosed

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incomes arrived at after deducting unrecorded expenditure from their undisclosed receipts. This fact was evident from the following reply of Shri Rughani to question No.4 or the statement:-

*Q. On going through the papers found in your premises and taking into consideration the local enquiries made by me about the selling rate in the area where the construction has been made by you in different years, I find that the amount of on-money stated by you is too low and it should have been much more than what has been stated by you. For example I have also shown you the sales made by you in respect of Mandar Apt. wherein you have made an agreement @ Rs.300/- per sq.ft. and you have taken on-money @ Rs.231/- per sq.ft. which is recorded in the loose paper found in your premises. If this is taken into account it gives the proportion of on-money transaction at 40%. Please go through the rates again and let me know the correct affairs of the receipts of on-money in all the transactions.

A. Net cash realisation i.e. on-money by sale of the flats is after considering the cash payment made for the purchase of land as well as cash expenditure incurred for the construction activities. Considering the above facts I intend to declare under the Amnesty Scheme approximately Rs.40 lakhs (Rupees Forty Lakhs only).

(f) In reply to further questions, Shri Rughani admitted that he had no evidence or particulars to support the claim of incurring unrecorded expenditure on purchase of land and/or the construction of buildings. In question No.3 Shri Patil estimated the admitted undisclosed net income to be 43.29% of the total 'on-money' receipts. He thus worked out the gross unaccounted receipts as Rs.1.56 crores. The exact question and the reply of Shri Rughani thereto were as under:-

Q.3 Considering the on-money receipt of Rs.231/- against sale of flats in Mandar Aptt. and taking into consideration the amount of on-money stated by you at Rs.100/- per sq.ft. in Mandar Aptt., the percentage of receipt of net on-money per sq.ft. works out to 43.29 per cent. By applying same proportion to the total amount of Rs.67,80,000/- net amount received by you according to your own admission, the gross amount works out to Rs.1,56,00,000/-. Should it be considered that against the net money received of Rs.67,80,000/- your gross receipt of on-money were Rs.1,56,00,000/-.

A. The quantum and the ratio applied for the Mandar Aptt. cannot be applied for all the other projects. As such the total on-money received stated above is not correct.

(g) In question No.11 Shri Patil confronted Shri Rughani with the circumstances that in the absence of any proof of the unrecorded expenditure, the entire unaccounted receipts of

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Rs.1.56 crores would have to be treated as assessee's income from undisclosed sources. Shri Rughani only replied that this was not, considering the general trend in construction business. In Question No.12 Shri Patil confronted Shri Rughani with the documents found during the survey, showing inter alia cash transactions aggregating over Rs.1 crore. Shri Rughani had no reply to this also.

(h). The survey team obtained photocopies of the various incriminating documents found by them and also inventorised and identified the regular books of accounts of those assesseees.

(i). It has been stated in the statement of imputations of misconduct that thus, the survey action in these cases clearly brought out evidence - both documentary and oral, showing that those assesseees were engaged in organised tax evasion of a considerable magnitude over a number of years. The confession on oath/duly corroborated by the incriminating documents and the fact that the actual incomes admittedly earned were not entered in the regular books of account of these assesseees, constituted positive evidence rendering these assesseees liable to be assessed at their actual incomes which were much higher than the incomes disclosed by them, as also to the levy of interest and penalties under the various sections of the Income-tax Act 1961, besides facing possible prosecution for concealment of income and filing of false returns of income.

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(j) In the survey report dated 21.1.1987 Shri Patil, inter alia, informed the applicant as under:-

" During the course of survey operation conversation with Mr. Tribhuvandas M. Raghani, the main partner, was taped with the help of tape-recorder wherein Mr. T.M. Rughani admitted having received on-money in all the transactions on sales of flats during 1979 till date. He also admitted having paid on-money in purchases of land transactions. Details of on-money received by him projectwise during 1979 to 1986 was also explained by him during the course of conversation with Mr. T.M. Rughani. Finally I recorded statement of Shri T.M. Rughani wherein he admitted in writing also that he had accepted on-money in transaction of sales of flats during 1979 to 1986. He has also stated in the said statement the details of extent of on-money received by him in each of such sales transactions of flats sold during 1979 to 1986. In short whatever on-money receipt was admitted by him during the conversation, the entire on-money transactions have been admitted by Mr. T.M. Rughani in the statement recorded by me during survey proceedings. Various incriminating documents, notings etc. were seen from his office which clearly show that in many of the sale ratio of cheque-payment and on-money payment was 60% to 40% or 65% to 35%. Zerox copies of all such incriminating documents have been obtained. During the course of recording the statement under Section 133 A on 9.1.1987, Shri T.M. Rughani expressed his desire to declare Rs.40 lakhs under Amnesty Scheme".

(k) The above survey report of Shri Patil was submitted to the applicant on 21.1.1987. A copy of the same was also endorsed to the assessing officer, Smt. P.V. Saraswathy. Thus the applicant was aware of, both, the reasons for which the survey was got conducted by him and also the developments and the materials gathered during the survey. In his report Shri Patil had clearly stated the salient features of the survey, the malpractices adopted by these assesseees, the highlights of the confessional statement dated 9.1.1987 of Shri Rughani and also his offer to disclose Rs.40 lakhs in the names of his four main builder firms under the then existing Amnesty Scheme.

(l) An application dated 2.2.1987 addressed by Shri Rughani to the applicant as the then IAC, BSD(N) Range, Bombay, showed.

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that on 12.1.1987 the applicant had also taken custody of the books of account of these assesseees. The relevant portion of this application reads as under:-

" As I wanted to take benefit of 'Amenisty Scheme' but (sic) I am unable to the correct conclusion. As books of accounts are in your custody since 12th January, 1987 and (sic) therefore I request you to return my books. So that I can take benefit of the said scheme".

(m) Although the records do not show as to how these books of account ^{came} into the custody of the applicant on 12.1.1987, it is a fact that he did not contest or otherwise refute the version of Shri Rughani contained in his above letter dated 2.2.1987. Instead, the applicant in his marginal note dated 2.2.1987 on this application itself, directed Shri Patil to discuss this case with him. Shri Patil was not the assessing officer in this case and having submitted his survey report on 21.1.1987, had become functus officio. The contents of these discussions are not recorded anywhere. However, Shri Rughani's claim of the books of account being in his custody was not denied by the applicant at any stage of the proceedings before him.

(n) Instead, records showed that on 2.2.1987 itself, the applicant issued notices under Section 144 A of the Income-tax Act, 1961 to three main builder firms of this group viz., M/s Raghuvanshi Builders (A.Y 1985-86 and 1986-87), M/s Raghuvanshi Developers (A.Y. 1986-87) and M/s Rughani Builders (A.Y 1986-87). Under the Income-tax Act proceedings

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under Section 144 A could be initiated only where assessment proceedings were pending before the assessing officer. As no assessment proceedings were pending in these cases for the aforementioned years, it has been alleged that the applicant was legally not competent to assume jurisdiction under Section 144 A on 2.2.1987. Although an IAC can suo motu assume jurisdiction under Section 144 A, in a case where assessment proceedings are pending, the Office Procedure Manual (Volume II, Part A page 51, 1982 Edition issued by the Directorate of Inspection (P&P) CBDT, New Delhi) required that in such an event the IAC must record a short note for initiating action under Section 144 A. Records showed that the applicant did not do so. Further, as per the said manual, where the IAC suo motu initiates proceedings under Section 144 A, he must send an intimation to the ITO and also forward a copy of his note recording the reasons for initiating the action under Section 144 A. The applicant, however, did not do so.

(o) The notices under Section 144 A issued by the applicant on 2.2.1987 were worded in general terms and it has been alleged that they were issued in a mechanical manner. These did not indicate any particular issue on which he required the assesseees to present his case before him. This was in violation of CBDT Instruction No.1367 dated 18.11.1980 prohibiting to issue of notices in a mechanical manner as also of the procedure laid down in the Office Procedure Manual. These notices were served directly on Shri Rughani on 3.2.1987 otherwise than through

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the normal channels of the service of notices prescribed in Chapter 25 of the aforementioned Office Procedure Manual. Copies of these notices were not endorsed to the assessing officer, neither was she otherwise asked to be present during the hearing. No report was called for from the assessing officer either on the position of the relevant assessment records or on the information/material obtained during the survey.

(p) Records showed that on 9.2.1987 one Shri Kishore M. Parakah, C.A. appeared before the applicant in compliance with the aforementioned notices under Section 144 A and the case was discussed by the applicant with him. The contents of these discussions were not reduced to writing by the applicant. The cases were, however, adjourned by him on 19.02.1987 without mentioning any particular compliance that he wanted from these assessees on that date. On 19.02.1987 a further letter dated 19.02.1987 of Shri Rughani addressed to the applicant was filed before him which reads as under:-

* As we had a discussion with you, now we proposed to disclose additional income of Rs.39,50,000/- (approximately) under Amnesity Scheme in the case of firms and associated assessees on which our tax liability comes to Rs.13,30,000/-. Out of that we have already paid a sum of Rs.6,11,909/- and hence the balance shall be paid by us on or before 31st March.

The working of the above facts are attached herewith for your ready reference, we will file our income-tax returns under Amnesity Scheme for the above disclosures on or before 31st March, 1987. We request you to kindly release our books of accounts impounded by you to make us the necessary adjustments in the books for the above disclosures.

A working sheet showing assessee-wise and year-wise income proposed to be disclosed in the names of different assessees including partners also was enclosed with the above letter. Although, in his confessional statement dated 9.1.1987 Shri Rughani had admitted the unaccounted incomes of his four main builder firms, M/s Raghuvanshi Builders, M/s Raghuvanshi Developers, M/s Raghuvanshi Associates and M/s Rughani Builders to be Rs.46.60 lakhs, in the working sheet filed with his letter dated 19.02.1987 prepared after discussions with the applicant, the total undisclosed income of the entire group including partners etc. was shown as Rs.39.50 lakhs only. The total amounts offered to be disclosed in the name of 4 main builder firms in respect of whom confessional statement was made on 9.1.1987 was Rs. 11,27,794/- only, the break-up of which was as under:-

Name	Asst. Year	Amounts disclosed (Rs.)	Total disclosure (Rs.)
(i) M/s Raghuvanshi Builders	1983-84	25,000	5,45,000
	1984-85	10,000	
	1985-86	2,00,000	
	1986-87	3,10,000	
(ii) M/s Raghuvanshi Developers	1984-85	25,000	5,57,794
	1985-86	2,02,394	
	1986-87	3,30,000	
(iii) M/s Raghuvanshi Associates	1981-82	25,000	25,000
(iv) M/s Rughani Builders	Nil		
		Total	11,27,794/-

No basis of computation of the above amounts were given by the assessee or otherwise indicated by the applicant.

(q). It has been alleged in the statement of imputations of misconduct that no order sheet notings were made by the applicant on 19.02.1987. However, the letter dated 19.2.1987 of Shri Rughani showed that the amounts proposed to be disclosed by these assesseees were computed after full discussion with the applicant who continued to have custody of their books of account at least till 19.02.1987. In fact in subsequent proceedings under Section 263 of the Income-tax Act before the CIT, BDX, Bombay, in 1988-89, the assessee and its counsel asserted that the amounts to be disclosed were determined after several rounds of discussions with the applicant and an assurance was given by the applicant that if those amounts were disclosed, no further investigation would be made in the assessee's affairs and the benefits of the Amnesty Scheme (i.e. waiver of interest, penalty and immunity from prosecution) would be extended to them. The records relating to the proceedings under Section 144 A did not show any further developments after 19.02.1987. These proceedings initiated by the applicant himself were left undecided and no orders under Section 144 A were passed by him even though under Section 144 A and also the procedure prescribed in the Office Procedure Manual an IAC should pass the formal order on conclusion of the proceedings under Section 144 A giving his specific directions

to enable the assessing officer to complete the relevant assessment. Even if the applicant for some reason proposed to drop the proceedings, it was incumbent upon him to pass a formal order concluding the proceedings under Section 144 A, because as per law where an IAC assumes jurisdiction under Section 144 A on any issue, the assessing officer is precluded from deciding the same, and the decision of the IAC is binding on the assessing officer.

(1). Records further showed that the amounts offered to be disclosed in the names of M/s Raghuvanshi Builders, M/s Raghuvanshi Developers, M/s Raghuvanshi Associates and M/s Rughani Builders, in the proceedings under Section 144 A before the applicant, as per the letter dated 19.02.1987 of Shri Rughani were for less than the undisclosed incomes of these concerns admitted by Shri Rughani in his statement dated 9.1.1987. In the statement of imputations of misconduct, the corresponding amounts have been indicated as under:-

	Undisclosed income admitted in state- ment dt.9.1.87	Amounts offered to be disclosed in letter dt. 19.2.87
(i) M/s Raghuvanshi Builders	Rs.15,60,000	Rs.5,45,000/-
(ii) M/s Raghuvanshi Developers	Rs.18,00,000	Rs.5,57,797/-
(iii) M/s Raghuvanshi Associates	Rs. 9,00,000	Rs. 25,000/-
(iv) M/s Rughani Builders	Rs.4,00,000	Rs. Nil
	<u>Rs.46,60,000</u>	<u>Rs.11,27,794ⁿ.</u>

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However, it has been alleged that the applicant neither questioned the assessee on this large difference nor passed any order under Section 144 A directing the assessing officer to tax the undisclosed incomes admitted by Shri Rughani in his statement on oath dated 9.1.1987. Even if for some technical reason the applicant was of the view that no formal order under Section 144 A need be passed, as the Range IAC and being aware of all facts and circumstances of the case, as also the attempts of these assessee to resile from the statement on oath dated 9.1.1987, he was duty bound to at least ask the assessing officer, through an administrative letter or direction to ensure that the undisclosed receipts and incomes admitted by Shri Rughani in his statement on oath dated 9.1.1987 are properly brought to tax. The failure of the applicant to pass any formal order under Section 144 A or to otherwise ensure that full admitted amounts of concealed incomes were brought to tax allegedly amounted to conferring of undue benefits on the assessee.

(s) Further, in a report submitted by the applicant on 17.02.1987 to the CIT, BCX, Bombay, regarding the survey cases of January, 1987, he gave the following remarks in respect of the Raghuvanshi Builders Group:-

"In this case action u/s 133A was conducted on 9.1.87. The assessee is a builder. During the course of survey books of accounts were identified and stamped. As a result of this survey the assessee has shown his willingness to come-forward for disclosure under the Amnesty Scheme. The quantum of additional income is being determined which may be around Rs.40 lakhs".

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The above remarks of the applicant that the additional income is being determined which may be around Rs.40 lakhs, in the context of the discussions held by him with the assessee on 19.2.1987 indicated that the quantum of undisclosed income was being determined by him and had already been tentatively settled at Rs.40 lakhs by 17.2.1987, which figure was later confirmed by the assessee in the letter dated 19.2.1987 of Shri Rughani. Till 17.2.1987, the assessee's letter of 19.2.1987 had not come on record and the amount admitted by him in the statement of 9.1.1987 was Rs.46.60 lakhs. Therefore, the fact that on 17.2.1987 the applicant could predict that the additional income being determined might be around Rs.40 lakhs and that on 19.2.1987 the assessee filed a letter offering to disclose Rs.39.50 lakhs, clearly showed full and prior knowledge on the part of the applicant. Since the assessing officer was not involved in the hearing under Section 144 A nor any report was called from her before sending the report to the CIT on 17.2.1987, it was clear that the applicant himself was fully responsible for determining the concealed income of Rs.40 lakhs in respect of 11 different assessee's of the group ignoring the fact that Shri Rughani had himself confessed on oath on 9.1.1987 that the undisclosed incomes of the 4 main builder firms was Rs.46.60 lakhs.

(t) Thereafter, the four main builder firms filed returns of

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income for the following years as under:-

Name/A.Y.	81-82	82-83	83-84	84-85	85-86	86-87	Total
M/s Raghuvanshi Builders	-	-	25000	10000	200000	310000	545000
M/s Raghuvanshi Developers	-	-	-	25600	202794	330000	557794
M/s Raghuvanshi Associates	25000	-	-	-	-	-	25000
M/s Rughani	-	-	-	-	-	-	Nil".

The amounts disclosed by these assesseees in the aforementioned returns were identical to those offered to be disclosed by Shri Rughani in his letter dated 19.02.1987 addressed to the applicant, after discussions with him. The difference between the aggregate amount disclosed i.e., Rs.11,27,794/- and the aggregate undisclosed incomes of these four firms admitted in the statement dated 9.1.1987 i.e., Rs.46,60,000 was still not explained.

(u) It has been stated in the statement of imputations of misconduct that the records showed that shortly after the filing of the aforementioned returns of income, the assessing officer, Smt. P.V. Saraswathy submitted a hand-written reference dated 25.3.1987 to the applicant seeking his directions regarding completion of these assessments. The relevant portion of the reference was as under:-

"As a result of action under Section 133A carried out in the case of M/s Raghuvanshi Builders and group of cases on 9.1.1987, Shri Tribhuvandas R. Rughani, main partner of the firm, admitted the concealment and offered an amount of Rs.40 lakhs to taxation in the hands of the firm, associated concerns, partners and individuals under amnesty scheme during the course of recording of the statement during proceedings under Section 133 A. Accordingly, returns are filed after paying the taxes. Since original returns filed in all these cases are below Rs.1 lakh I propose to accept these revised returns and also first returns filed under exceeding Rs.1 lakh under section 143 (1) of the Income Tax Act 1961. Submitted for instructions".

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(v) On the above letter itself, the applicant jotted down the following hand-written directions on the same date without getting the reference processed through his office in the normal course:-

"Yes, you may accept the return under Section 143(1) as original returned income is below Rs.1 lakh.

Sd/-
(Upendra Singh)".

(w) On the basis of the above direction of the applicant, the relevant assessments were completed by Smt. Saraswathy accepting the returned incomes under Section 143(1). It has been alleged that as a result, the difference of Rs.46,60,000/- and Rs.11,27,794/- (i.e. Rs.34,72,306) escaped assessment.

(x) It has been alleged that the action of the applicant in giving the aforementioned directions in completion of the assessments u/s 143(1) was wholly improper and illegal because on the relevant date, i.e., 25.3.1987 the proceedings initiated by him under Section 144 A on 2.2.1987 for these very assessments were still pending. Legally, the assessing officer stood debarred from completion of these assessments under Section 143(1) till the proceedings under Section 144 A were concluded by the applicant. Since the assessing officer was not informed by the applicant of these proceedings under Section 144 A at any stage, she was unaware of the same. As against this, the applicant was clearly aware of these proceedings under Section

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144 A having himself conducted the hearing as late as 9.2.1987 and 19.2.1987. It has been alleged that it is also inconceivable that the applicant could have forgotten a matter involving disclosure of Rs. 40 lakhs emanating from a survey ordered by him, when the same was being heard by him till the preceding month. Even otherwise, the applicant was not justified in directing that these assessments should be completed under Section 143(1) or under the Amnesty Scheme. As per CBDT Instruction No.1617 dated 12.5.1985 the summary assessment scheme was at the relevant time applicable to only those cases where the returned incomes were below Rs.1 lakh. The benefits of the Amnesty Scheme were available to only those tax payers who voluntarily and in good faith made full and true disclosure of their concealed incomes prior to detection by the Income-tax Department. The benefits of both these schemes were not available as the returned income in some of the years exceeded Rs.1 lakh and the additional amounts were disclosed after detection by the Department and were not full and complete even according to the admission of Shri Rughani made on 9.1.1987.

(y). The applicant was transferred from the post of IAC BSD (North), Bombay on 30.06.1987. On 18.08.1987 Smt. P.V. Saraswathy, ITO submitted a proposal under Section 263 of the Income-tax Act, 1961 to the CIT, BC-X, Bombay requesting that since the assessments completed by her in these cases were erroneous and prejudicial to the interest of the revenue, the same might be cancelled. The CIT accepting the request of the ITO initiated

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proceedings under Section 263 and passed 9 orders on 17.12.1987 cancelling these assessments as they were found erroneous and prejudicial to the interest of revenue. He directed that the same may be completed afresh after full and proper investigations.

(z) The assessee in his written submission dated 19.11.1987 and 3.12.1987 filed before the CIT during the proceedings under Section 263 reiterated that several meetings were held between the assessee, its counsel and the appli^{cant} after the survey operation during which the quantum of incomes to be declared under the Amnesty Scheme was discussed and settled. The assessees also reiterated that their books of account were in the custody of the applicant and that the returns disclosing additional incomes were filed as per the incomes determined by the applicant. This version of the assessee was in consonance with the letters dated 2.2.1987 and 19.2.1987 filed by Shri Rughani in the proceedings under Section 144 A before the applicant.

6. In the order under Section 263 the CIT held that the assessee had derived a total amount of Rs.1.56 crores as undisclosed receipts while there was no evidence of unrecorded expenditure. The CIT further held that the offer of disclosure of Rs.40 lakhs in the statement dated 9.1.1987 of Shri Rughani related only to 4 main builder firms named in reply to Question No.2 of the statement of Shri Rughani i.e., Raghuvanshi Developers, Raghuvanshi Builders, Raghuvanshi Associates and Rughani Builders and even the admitted amount of Rs.40 lakhs was not disclosed.

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7. In view of the above, it has been summed up in the statement of imputation of misconduct as follows:-

- (i) The survey was conducted at the instance of the applicant who selected the case and deputed Shri Patil, ITO along with some other officers/officials in preference to the assessing officer Smt. P.V. Saraswathy. A novel practice of first obtaining a tape-recorded conversation of the assessee regarding his black money transactions and then officially confronting him with the same was adopted by the survey party to good effect. All these facts were placed on record by Shri Patil in his report to the applicant.
- (ii) The applicant was actively associated in the pre-survey as well as in the post-survey proceedings in this group. He was aware of the confessional statement as well as other incriminating material gathered during the survey.
- (iii) Even before a copy of the survey report dated 21.1.1987 was submitted to the applicant or endorsed to the assessing officer, the applicant had some-how obtained the custody of the books of account of those assessees on 12.1.1987. The fact that he did not, at any stage during his tenure as IAC, BSD(N) Range, contest the claim of Shri Rughani that the books of account of these assessees were in his custody since 12.1.1987 while the assessee consistently maintained till the proceedings under Section 263 before the CIT, showed that the books were in fact in his custody. If this was not so, he would have taken the first opportunity to refute the assessee's version which was in writing and was being addressed directly to him, particularly

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when he was himself conducting the hearing and was aware of the nature and extent of concealment involved in these cases.

(iv) Even after the survey report was formally endorsed by Shri Patil to the assessing officer on 21.1.1987, the applicant was still calling Shri Patil for discussions in this case, which is evident from his marginal noting on his application dated 2.2.1987 of Shri Rughani.

(v) Even though the survey report dated 21.1.1987 showed that incriminating records were found during the survey and the books of account of these assesseees were in the custody of the applicant and he considered the matter serious enough to justify assumption of direct jurisdiction by him under Section 144 A, yet he neither examined the incriminating documents and books of account himself nor obtained a report on the same from the assessing officer concerned.

(vi) The proceedings under Section 144A were initiated by the applicant improperly and without legal jurisdiction so as to compel the assessee to appear before him. The case was heard in the absence of the assessing officer or her report and the proceedings under Section 144 A were left undecided without verifying the offer of disclosure of Rs.39.50 lakhs (approximately) made by the assessee, with reference to the incriminating documents and or the books of account or statement on oath dated 9.1.1987 of Shri Rughani. Even after assuming jurisdiction under Section 144 A ^{or} he did not pass any order Under Section 144A ^{or} otherwise directing the assessing officer to bring the amount of Rs.46.50 lakhs admitted ^{or} by Shri Rughani ^{or} to be the undisclosed income of his 4 main builder firms, to tax.

(vii) Although the survey report and the statement dated 9.1.1987 of Shri T.M. Rughani showed unaccounted receipts of his 4 main firms to be about Rs.1.56 crores, out of which Shri Rughani had himself admitted on oath undisclosed incomes of those 4 firms to be Rs.46.60 lakhs, the relevant assessments were completed with the prior approval of the applicant of a much lower figure (Rs.11,27,794/-) resulting in aggregate under-assessment of at least Rs.34,72,206/-.

Since as per Shri Rughani's own statement unaccounted receipts worked out to be Rs.1.56 crores and he had admitted lack of any evidence to establish any undisclosed expenditure, even the income of Rs.46.60 lakhs admitted in the statement on oath dated 9.1.1987 of Shri Rughani did not reflect the actual concealed incomes of these assesseees as per the evidence collected during the survey.

(viii) Even if the assessing officer had submitted a proposal to him to complete these assessments under Section 143(1) under the Amnesty Scheme, the applicant as the Range IAC, being aware of the full facts of the case, particularly the information gathered during the survey was duty bound to get the incriminating records thoroughly examined before granting his approval. Instead, the records showed that he scribbled his directions on the proposal itself without getting the same processed in the normal course, even though the same did not involve any limitation matter. The proposal of the assessing officer came before the applicant on i.e within a short time after his conducting the hearing on 9.2.87 25.03.1987/sending report to the CIT on 19.02.1987, receiving

assessee's offer on 19.02.1987. Further, for a Range like BSD(N), Range Bombay, the case involving unaccounted receipts of Rs.1.56 lakhs and disclosure of Rs.40 lakhs was bound to be one of the biggest concealment cases. It was, therefore, inconceivable that the applicant would have granted the approval on 25.03.1987 in a routine manner or through oversight, particularly when the assessing officer had stated in the proposal itself that this was a survey case involving disclosure of Rs.40 lakhs.

(ix) The disclosures made by these assesseees in their letter dated 9.2.1987 after discussions with the applicant on the basis of which the returns of income were filed on 12.03.1987 and 26.03.1987^{were} neither true nor full and complete as per the confessional statement dated 9.1.1987 of Shri T.M. Rughani himself. The same were also neither voluntary nor made before detection by the Income Tax Department, as the same were actuated by discovery of specific incriminating evidences during the survey and the consequent confessional statement of Shri Rughani. Therefore, these assesseees were not entitled to the benefits granted by the CBDT vide their Circulars No. 423, 432, 439, 440, 441, 451 and 453. Neither ^{under} the Amnesty Scheme nor under the Income Tax Act, the applicant had any power to make any settlement of the assessee's incomes or to give any assurance of discontinuation of investigations or waiver of interest/penalty^{etc.} in lieu

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of the assessee making any disclosure in a case where the conditions of full and voluntary disclosure before detection by the department were not fulfilled.

8. It has, therefore, been concluded in the statement of imputation of misconduct that the applicant got a survey in these cases conducted through an officer of his choice; that, when incriminating evidence showing huge concealment came to light, he initiated proceedings under Section 144A in an illegal, improper and surreptitious manner; that, when the assessees came forward with an offer to disclose a nominal amount of Rs.11,27,794/- as against the admitted concealment of Rs.46.60 lakhs and the unaccounted receipts of Rs.1.56 crores, the applicant did not pass any order under Section 144 A or otherwise to bring to full the undisclosed income to tax; that, when the assessees filed returns disclosing the amounts determined after discussions with the applicant during the proceedings under Section 144 A, he illegally and improperly allowed the assessing officer to accept these returns under Section 143(1) thereby foreclosing any additions to the returned income; and, that, the applicant allowed the assessing officer to improperly confer the benefit of the Amnesty Scheme on these assessees knowing fully well that these returns were not voluntary and the amounts disclosed were not full and complete. The conduct of the applicant showed an intention to confer undue and improper benefits on these assessees. He has thus displayed lack of integrity, lack of devotion to duty

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and conduct unbecoming of a Government servant thereby contravening Rule 3 of the CCS(Conduct) Rules, 1964.

9. The respondents have stated in their counter-affidavit that at the time of the filing of the application, the applicant had not filed his statement of defence in reply to the charge-sheet dated 7.2.1991. They have contended that he did not pass any order of a quasi-judicial nature in the case of Raghuvanshi Builder group of assessees. According to them, the applicant is guilty of conferment of undue benefit on the assessee with improper motives, violation of departmental instructions and legal provisions etc. which have been pointed out in the charge-sheet. These allegations have been denied by the applicant.

10. Several contentions have been raised by both parties in respect of their respective pleadings in regard to the impugned disciplinary proceedings. Normally in such a case, it will be premature for the Tribunal to interfere and the law should be allowed to take its own course. However, in the instant case during the pendency of the present application, the Income Tax Appellate Tribunal has by its order dated 21.7.1992 allowed the appeals filed by the assessees and has quashed the orders passed by the Commissioner under Section 263 of the Income Tax Act, holding that he should not have taken any such action in respect of the assessment orders in question. We have to consider the implications of the said order.

11. The assessees filed appeals before the Income Tax Appellate

Tribunal challenging the validity of the action taken by the Commissioner of Income Tax under Section 263 of the Income Tax Act. ^{Income Tax Appellate} The Tribunal noted that the assessee firms and their associates were carrying on the business of construction of flats and shops and selling them. They used to purchase land and raise construction thereon for selling. During the survey operations held on 09.01.1987, the statement of Shri Rughani was recorded wherein he had admitted that the assessee firms were receiving on-money in respect of the property sold by them and this on-money had not been shown in the books of account. He had also stated the rate at which on-money was received. Out of the on-money received, the assessee had incurred expenditure while purchasing the land and also during construction. However, no accounts were maintained in respect of the receipts ^{of} on-money and the expenditure incurred out of the said receipts. During the statement, Shri Rughani, stated that he intended to declare under the Amnesty Scheme approximately Rs.40 lakhs. The gross receipts by way of on-money were stated to be about Rs.1.56 crores. Thereafter, the assessee had discussions with the IAC, BD(N) Bombay in connection with the amount to be offered for taxation under the Amnesty Scheme. The Tribunal noted that there were several meetings between the assesseees and the IAC. By letter dated 19.02.1987 the assesseees

had proposed to disclose additional income of Rs.39.50 lakhs under the Amnesty Scheme in the case of the firms and associated assesseees. A working of the said amount was also filed. Ultimately, the assessee had offered about Rs.43 lakhs for taxation in the case of the assessee firms and their associates. The returns of income were filed on 12.03.1987 under the Amnesty Scheme. The assessments were completed by the ITO under Section 143(1) of the Income Tax Act and the returned income was accepted.

12. On examination of the assessment records, the Commissioner of Income Tax was prima facie of the view that the assessments had been completed without taking into consideration the factual position recorded in the statement during the course of action under Section 133 A and as such the assessments were erroneous and prejudicial to the interests of the revenue. Therefore, action under Section 263 of the Income Tax Act was initiated and notices were issued to the assessee firms to show cause. In the said notice, the reason for taking action under Section 263 was described as under:-

" The Income Tax Officer has wrongly completed the assessment by accepting the total income shown in the revised return of income filed under Amnesty Scheme without taking into consideration the factual position recorded in the statements during the course of action under Section 133 A in January, 1987".

13. In response to the above notice, the assessee firms filed

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written objections pleading, inter alia, that there were a number of meetings between the assessee and the IAC after the survey operations, wherein it was discussed upto what extent the income could be said to have escaped and which could be declared under the Amnesty Scheme. It was also pleaded that the IAC had persuaded the assessees that if the assessee firms and associated persons disclosed approximately a sum of Rs.40 lakhs under the Amnesty Scheme, then there would be no further investigation and the assessees disclosure would be accepted as true and correct. It was thus urged that the assessments completed under Section 143(1) of the Income Tax Act were not erroneous and prejudicial to the revenue.

4. The submissions of the assessee did not find favour with Commissioner. No details of the expenditure incurred out of on-money received on the sale of flats had been furnished and, therefore, it had to be considered that all the expenditure incurred had been debited to the profit and loss account.

Consequently, the entire amount of Rs.1.56 crores represented the undisclosed income of the assessee firms of this group.

Thus, he concluded that the assessments have been completed by the assessing officer without taking into account the factual position recorded in the statement of Shri Rughani and without verifying the transactions on the loose papers found during the course of

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survey. He, therefore, set aside the assessment with the following directions:-

" In view of the foregoing, it is clear that the assessment for Assessment years 1983-84 completed by Additional 12th ITO, BSD(N) Bombay under Section 143(1) by accepting the total income shown in the revised return filed under the Amnesty Scheme, without taking into consideration the factual position recorded in the statement of Shri T.M. Rughani, as explained above and also without verifying the transactions on the loose papers found during the course of survey, is erroneous and prejudicial to the interest of revenue".

15. The ITO was directed to make a fresh assessment after due verification of the factual position recorded in the statement of Shri Rughani and also verifying the transactions on the loose papers found during the course of action under Section 133A. The ITO was directed to make a fresh assessment after giving adequate opportunity of hearing to the assessee.

16. Identical orders were passed relating to the other Assessment years from 1984-85 to 1986-87.

17. The correctness of the Commissioner's order was challenged before the appeals in the ITAT.

18. On consideration of the rival submissions and the evidence available on record, the ITAT found ample substance in the submissions advanced by the learned counsel for the assessees. It was observed that a reading of statement of Shri Rughani showed that during the survey operations, he

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had stated that expenditure out of on-money receipts had been incurred by the assessee firms and their associates. He had also stated that no accounts had been maintained in respect of the on-money receipts as also expenditure incurred out of such receipts. Thus, the assessee's case from the very beginning was that expenditure has been incurred out of the on-money receipts. This was the case before the IAC as well, in as much as, the entire on-money receipts were not offered for taxation and in the meetings with the IAC the amount to be offered by the IAC under the Amnesty Scheme was worked out.

19. ^{Income Tax Appellate} The ~~T~~ribunal observed that the assessee had reiterated his claim in the return filed under the Amnesty Scheme that expenditure had been incurred out of the on-money receipts. It was further observed that "in the given situation, it is hard to accept the position that the ITO had failed to consider the statement of Shri Rughani recorded during the survey operations". The very fact that on-money receipts, for which there is no dispute was not offered for taxation, and the same was treated as the gross receipts and expenditure was claimed out of it also lends strength to the plea that the ITO had taken into consideration the assessee's stand on the point, including the statement of Shri Rughani. The assessments have been set aside by the Commissioner only for

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the reason that the ITO has omitted to consider the statement of Shri Rughani and he has directed the ITO to complete the assessments after taking into consideration the said statement. Since it is established that the said statement had already been considered by the ITO, the ITAT held that "the assessments completed under Section 143(1) were not erroneous, and this being so, the Commissioner was not justified in setting aside the assessments by invoking the provisions of Section 263".

20. The Income Tax Appellate Tribunal also observed that in view of the fact that the assessee has been receiving on-money "it is reasonable to expect that he had also to pay some on-money while purchasing the land. Taking all these facts into consideration, we are of the view that the assessments in question cannot be said to be erroneous".

21. Thus, according to the order of the ITAT dated 21.7.92, there is no evidence that the action taken by the applicant in regard to the assessments in question was pursuant to any corrupt motive or an improper motive to oblige any one indicating culpability. Assuming that the assessments made were erroneous or wrong, no disciplinary action can be taken against the applicant as he had only discharged quasi-judicial functions. In the instant case, the Income Tax Appellate Tribunal allowed the appeal filed by the assesseees against the orders passed by the C.I.T. under Section 263 of the

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Income Tax Act. The decision of the Income Tax Appellate Tribunal which is the highest fact finding authority lends support to the stand of the applicant in the instant case.

22. In the conspectus of the facts and circumstances of the case, we allow the present application. The impugned charge-sheet dated 07.02.1991 is accordingly set aside and quashed.

There will be no order as to costs.

B.N. Dhoundiyal
(B.N. DHOUNDIYAL) 19/2/93.
MEMBER (A)
19.02.1993

P.K. Kartha
(P.K. KARTHA)
VICE CHAIRMAN(J)
19.02.1993

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