CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.2976 of 2004

New Delhi this the 31st day of October, 2005

HON'BLE SHRI JUSTICE B. PANIGRAHI, CHAIRMAN
HON'BLE SHRI M.K. MISRA, MEMBER (A)

Shri J.P. Hilori
S/o Late Shri Mannu Lal
R/o 146, Manoranjan Park
Saket, Meerut,
Utter Pradesh. .....Applicant.

(By Advocate : Shri P.P. Khurana, Sr. counsel with Ms.Tamali Wad and Ms.Seema Pandey)

Versus

1. Union of India
Secretary, Ministry of Finance
Department of Revenue,
CBDT, North Block,
New Delhi.

2. Chairman,
CBDT, Ministry of Finance,
Department of Revenue,
North Block, New Delhi.

3. Union Public Service Commission,
Dholpur House
Shahjhan Road,
New Delhi. .....Respondents

(By Advocate : Shri V.P. Uppal)

O R D E R

Shri M.K. Misra :

Applicant Shri J.P. Hilori, presently working as Additional Commissioner of Income Tax in U.P., filed this OA with the following prayer:-

"(I) To quash and set-aside the impugned punishment order at Annexure A-1 & A-2 with all consequential benefits including seniority, promotion, pay and allowances etc.

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(II) To direct the respondents to promote the applicant in the Senior Administrative Grade as Commissioner of Income Tax w.e.f. 13th September, 1997 when the officers of his batch and officers of batches junior to him and upto 1975 batch were promoted with all consequential benefits including pay, salary, arrear, etc.

(III) to direct the respondents to fix the seniority of the applicant at the appropriate place after issuing directions to promote him in the Senior Administrative grade as Commissioner of Income Tax w.e.f. 13.9.1997 when his juniors were given promotion.

(IV) Any other relief which this Hon'ble Tribunal may deem fit in the circumstances of the case."

2. Briefly the facts of the case are that the applicant was awarded the minor penalty under Rule 16 of the CCS (CCA) Rules, 1965 on account of misconduct/ misbehaviour alleged to be committed by him in the following manner:-

(i) The applicant dropped penalty proceedings under Section 271D and 271E of the Income Tax Act, 1961 in the cases of M/s Vasan Shah & Co. and M/s Diamond Textiles for the relevant assessment year 1992-93 without proper application of mind which resulted in loss to revenue of the Central Government and thus also provided undue benefit to the assessees;

(ii) The applicant did not give his approval to the draft penalty order under Section 271 (1) (c) of the Income Tax Act, 1961 submitted by the Assessing Officer in six cases, thereby the applicant misused his power vested in him under the Act, which again caused loss to the revenue of the Central Government. The penalty was dropped with a motive to pass on benefit to the assesses;

(iii) While exercising the power under Section 144A of the Income Tax Act, 1961, the applicant did not apply his mind in the case of M/s Swarg Sundram Cinema (P) Limited and in an arbitrary manner he determined the value of Cinema hall ignoring the evaluation given by the District Evaluation Officer;

(iv) The applicant issued direction under Section 144A of the Act without application of his mind and accepted the income return by the assessee even after search and seizure proceedings were conducted against the above assessee. This caused loss to the revenue to the Central Government. However, the remedial actions were taken by the competent authority under Section 262 of the Income Tax Act, 1961; and

(v) The applicant motivated the Income Tax Officer to force assesses to procure challans under Section 115 K of the Income Tax Act during the course of surveying proceedings.

All these five incidences narrated above are alleged to be in contravention of the Rules 3 (1) (i), (ii) and (iii) of the CCS (Conduct) Rules, 1964. The disciplinary authority awarded the penalty to the applicant after taking advice from the UPSC by way of imposing a penalty of reduction of pay to the lowest stage for a period of three years without cumulative effect.

3. Thereafter the applicant filed the review petition for the consideration by the competent authority under Rule 29-A CCS (CCA) Rules, 1965 against the penalty order. Under Rule 29-A of the Rules ibid, President may at his own motion or otherwise any time review any order passed under these Rules and any new material or evidence which could not

be produced or was not available at the time of passing the order under review and which has effect of changing the nature of the case has come and have been brought to his notice. However, the review petition was rejected on the ground that no new material or evidence was brought on record by the CO (applicant), which were not before the disciplinary authority at the time of passing the penalty order.

4. A preliminary show cause notice was issued to the applicant for the alleged misconduct when he was working as Deputy Commissioner, Income Tax, Range 2, Indore for the period from 4.4.1994 to 5.6.1995. Inspection of his performance was made by the competent authority, which revealed that he committed certain lapses and irregularities in various cases which have been narrated as under :-

"2.1 Cases in which penalty orders have been passed U/s 271D, 271E and 272.

The officer dropped penalties U/s 271D,271E and 272 even though a proposal for imposition of penalties had been made by the A.O. in the following cases:-

1. M/s. Ramgopal Chironjilal - Annexure-I(1)
2. M/s. Vasan Shah & Company - Annexure-I(2)
3. M/s. Diamond Textiles - Annexure-I(3)
4. M/s. Prashant Watch Co - Annexure-I(4)

The lapses in this regard have specially been brought out in the Annexure-I separately (encl.)

2.2 Cases in which statutory approval for Penalty orders have been given:

The officer did not approve the draft penalty order U/s 271 (c) submitted by the A.O. in these cases. The observations on the lapses in handling the proposed penalty of the Mahidpurwala group of cases is separately noted in Annexure-II in these cases.

S.No.	Name of the assessee	A.Y.	Imposed Penalty
1 (a)	Sh Haidar Hussain Mahidpurwala.	1991-92	1,12,000

(b)	- do -	1992-93	15,000
2 (a)	Sh. Saifi Raja Mahidpurwala	1991-92	92,000
Sh. Yunus Raja Mahidruwal		1991-92	82,000
- do -		1992-93	32,000
Smt. Shakina Bai Pahldpurwala		1992-93	72,000

As a result, prosecution could also not been launched in these cases.

2.3 Cases in which directions U/s 144A were given by the DE®:

One case was inspected in this category. The case M/s Swarg Sundram Cinema (P) Ltd., Lalsikar Colony, Indore for A.Y. 1992-93 was referred to the DCIT U/s 144A. The directions rejecting to :-

(i) Valuation of Cinema Building at Rs.39 Lakhs as against Rs. 50.96 Lakhs determined by the DC.

(ii) Not to tax subsidy received from the M.P. Govt. as income.

(iii) Cash credits, deposits and since application monles, have not found to be proper and correct both from factual and legal stand point and has been dealt with in Annexure-III.

2.4 Cases in which approval given/not given for scrutiny:

The cases in which approval has been given officer wise has been examined and for reasons given in Annexure0IV (4.1. to 4.10) it is seen that the DCIT has used his discretion for granting and rejecting approval in an adhoc manner. Board's instruction on the subject has also not been adhered to by the officer.

2.5 Cases in which approval U/s 132(5) has been given and also cases in which approval has been given to the final orders to be passed in given cases:

Approval to order U/s 132(5) have been granted in the following cases:

S.No.	Name of the assessors	Date of receipt of the order	Date of granting approval
1.	Kapil Steel (P) Ltd.,	6.4.95	7.4.95
2.	C		
3.	Deopriya Alloys (P) Ltd.	17.4.95	18.4.95
4.	Smt. Anju Kukreja	4.5.95	4.5.95
5.	Sh. Nand Kisohre Talreja	4.5.95	Undated
6.	Shri Dilip Wadhwani	4.5.95	4.5.95
7.	Shri Gopal Kukreja	4.5.95	4.5.95

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The DCIT has granted approval on the same day or on the following day. Approval has been conveyed in a stereotyped manner, as is evident from the directions:

"Necessary approval is hereby accorded on the draft order U/s 312(5) sent by you in the above mentioned case".

This shows lack of proper application of mind in an important aspect of the officer's work. The position in respect of regular assessment in seizure case is also similar.

2.6 Lapses during survey U/s 132:

Surveys were conducted by the officer of the range. The correspondence in this regard shown that the DC(R) failed to coordinate with the officers and supervise the surveys in a proper manner. The DC(R) 'approved' of the officers practice by which assessee whose premises were surveyed were to manage payment in a certain number of cases under IISK of the Act."

However, not being satisfied with the explanation submitted by the applicant, a Memorandum dated 7.1.1999 was issued with the statement of imputation of misconduct and misbehaviour. The applicant submitted the reply dated 30.11.1999 explaining his position summarily as to why the decisions taken in a particular manner by him and issued directions under Section 144A of the Income Tax Act, 1961 to the Assessing Officer. The competent authority treated ~~as~~ directions without application of mind by the applicant, thus, causing revenue loss to the Central Government. However, the disciplinary authority came to the conclusion that the case of the applicant is such that minor penalty be awarded to him. Accordingly, the minor penalty was imposed on the applicant in the manner hereinafter referred to.

5. In the counter reply, the respondents submitted that the applicant was not promoted as Commissioner of Income Tax because the disciplinary proceedings were pending against him at the time of DPC and as per the rules, no official can be promoted to the next higher grade, if disciplinary proceedings are pending against him at the relevant time. The delay in

finalization of the disciplinary proceedings were due to long drawn procedure to be followed as laid down in CCS (CCA) Rules, 1965. The applicant also took time to furnish the reply to the show-cause notice/chargesheet after a lapse of 10 or 11 months from the date of issue of such show-cause notice/chargesheet.

6. The contention of the applicant that M/s Vasan Shah & Co. and M/s Choudhury Cloth Store are sisters concern and they made certain transaction of loan/deposits above Rs.20,000/- in cash is without any evidence on record. This is a violation of the provision of Section 269T of the Income Tax Act, 1961. For this, there is a penal provision under Section 271E of the Act for imposing penalty. The penalty was not imposed on the ground that the transactions were made between sisters concern. As such penalty was not attracted in those cases. From the explanation, the respondents came to the conclusion that there is no evidence on record to show that M/s Vasan Shah & Co. and M/s Choudhury Cloth Store are sisters concern. Therefore, the violation of provision of 269T of the Act by them attracts penalty under Section 271E of the Act, which was though proposed by the Assessing Officer and was sent to the applicant for his approval and he did not give the approval for levying of penalty under Section 271E of the Act to the Assessing Officer on the ground that they were sisters concern.

7. Regarding non-imposing of penalty under Section 271(1) (c) of the Income Tax Act, the respondents came to the conclusion that the assessee filed the revised return on 25.2.1994 whereas original return was filed some time in 1992. This gap of two years clearly indicates that the revised return cannot to be deemed to be voluntarily. The revised return was filed on

account of showing agriculture income as taxable income. In the original return, the income was shown as agriculture income, which is not taxable under the Income Tax Act, 1961. Since the assessee was under pressure to file the revised return due to investigation made by the Income Tax Officer, therefore, by no stretch of imagination, it cannot be said that the return was filed by the assessee voluntarily. Accordingly, the provisions of Section 271(1) (c) of the Act ibid were attracted and direction issued by the applicant to the Assessing Officer not to imposed penalty is illegal and arbitrary. The applicant, however, came to the conclusion by no piece of evidence that the assessee revised the return in good faith by way of surrendering the income from agriculture to be taxed to income tax in order to avoid litigation from the department and to buy peace of mind. This surrender was intentional in so far as that no penalty of concealment of income under Section 271(1)(c) of the Act would be levied by the Assessing Officer. As per the provision of Income Tax Act, 1961, if the return is revised after the detection of concealed income, penalty under Section 271(1) (c) of the Act is attracted and return would not be considered as having been filed voluntarily. There were four such cases of this type.

8. In the case of M/s Swarg Sundram Cinema (P) Ltd., the District valuation Officer opined that market value of the Cinema is Rs.50,98,500/-. The applicant issued the instructions to the Assessing Officer on his reference to the applicant, who gave instructions under Section 144A of the Act ibid that the value should be adopted at Rs.39,00,000/- on the ground that value adopted by the DVO in respect of Ujjain Cinema was on the basis of the value of Cinema in Delhi and which is not comparable keeping

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in view the classifications of cities i.e. Delhi being 'A' Class Metropolitan city whereas Ujjain is not even 'B1' class city of Madhya Pradesh.

9. In another case of Daulat Ram Chhotwani, certain directions were issued under Section 144A of the Act in respect of recovery of demand and the C.I.T. appeal set aside the re-assessment made in the above case in lieu of the directions issued by the Commissioner of Income Tax under Section 263 of the Income Tax Act. In other words, indirectly the applicant directions were not contrary to the provisions of law keeping in view the poor financial status of the assessee in the above case.

10. Regarding the cash credits and direction issued under Section 144A of the Act by the applicant to the Assessing Officer, the respondents mentioned in their counter reply that the cash credits were accepted in the case of M/s. Swarg Sundram Cinema (P) Limited without application moved by the applicant.

11. Similarly in other case, the directions under Section 144A of the Act were issued by way of overlooking the appraisal report submitted after search and seizure conducted on the premises of the assessee. Action under Section 263 of Income Tax Act, 1961 was taken against the assessments made by the Assessing Officer for re-assessment of income and thereby it is clearly proved that the applicant caused revenue loss to the Government. However, the factual position is that Commissioner of Income Tax (Appeal) had remanded back the assessment orders of the Assessing Officer passed by him on account of the directions issued to the Assessing Officer under Section 263 of the Act by the Commissioner of Income Tax.

12. In OA 1320/2004, in compliance of the directions issued by this Tribunal vide order dated 27.5.2004, the President of India had considered

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the review petition of the applicant and decided the same by way of rejecting the contentions of the applicant.

13. The applicant also filed the rejoinder to the counter reply. In the rejoinder more or less facts and grounds as mentioned in the OA has been repeated and reiterated.

14. We have heard the learned counsel for both the parties at great length and also perused the material available on record.

15. We observe that the applicant having been vested with statutory power under the Income Tax Act, 1961 and as a Supervisory Officer over the Assessing Officer had issued the directions under Section 144A of the Income Tax Act, 1961. Any direction issued by the Supervisory Officer under Section 144A of the Act are of quasi-judicial in nature. The Assessing Officer under the Income Tax Act is also quasi-judicial authority. There are catena of judgments of the Apex Court as well as of various Hon'ble High Courts that income tax authority while discharging the judicial as well as administrative functions under the Act, having statutory powers, are quasi-judicial authority.

16. Therefore, the case of the applicant is that no action could be initiated under CCS (CCA) Rules, 1965 against the applicant by serving him with the Memorandum of charges for passing orders in exercise of powers under Section 144A of the Act even though the orders were wrong and against the interest of revenue and passed in undue haste because it does not constitute misconduct, which could be the subject matter of the chargesheet/Memorandum.

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17. On the other hand, the respondents' case is that the Tribunal has no jurisdiction to interfere with the chargesheet/Memorandum as per the decision of the Hon'ble Supreme Court in the following cases :-

(i) ***Union of India v. K.K. Dhawan***, 1993(2) SCC 5;

(ii) ***Union of India v. Upender Singh***, 1994(3) SCC 357;

(iii) ***B.C. Chaturvedi v. Union of India***, 1995 (6) SCC 749;

(iv) ***Apparel Export Promotion Council v. A.K. Chopra***, 1999(1) SCC 759;

(v) ***R.S. Saini v. State of Punjab***, JT 1999 (6) SC 507;

(vi) ***Bank of India v. Dequla Surya Narayan***, JT 1999 (4) SC 489;

(vii) ***State of UP v. Harinder Arora***, 2001 (6) SCC 392; and

(viii) ***Dr. Anil Kapoor v. Union of India***, 1991 (1) SCSLJ 162.

18. Two characteristics are common in all quasi-judicial cases: (i) presentation of the case by the parties; and (ii) decision on the question of facts by means of evidence adduced by the parties. However, in many cases, it has been seen that the first characteristic is absent and the authority may decide the matter not between two or more contesting parties but between itself and another party. For example, Income Tax Officer while making assessment under the Income Tax Act, 1961. Here the authority itself is one of the parties and still it decides the matter and it does not represent its case to any Court or authority. Moreover, cases are not unknown in which no evidence is required to be taken yet the authority has to determine the questions of facts after hearing the parties for example, price fixation cases.

19. In the cases of ***Bharat Bank Ltd. Vs. Employees of Bharat Bank Ltd.***, AIR 1950 SC 188, ***Board of High School vs. Gyanshyam***, AIR 1962

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SC 1110, ***State of Orissa vs. Murlidhar***, AIR 1963 SC 404, ***State of Mysore vs. Shivabassappa***, AIR 1943 SC 375, it was held by the Apex Court that quasi-judicial authorities have some of the trapping of a Court but not all of them. The quasi-judicial authority is not so much bound by the rules of evidence and procedure as the Court, but it has to observe the principles of natural justice and fair play. The quasi-judicial authority may decide the cases being a judge in its own cause, if the principles of natural justice and fair play have been adopted. Administrative functions are those functions, which are neither legislative nor judicial in character. Therefore, it is quite evident from the above discussion that the applicant had acted as a quasi-judicial authority under the Income Tax Act by way of giving directions under Section 144A of the Act to the Assessing Officer because there is a specific provision under the statute of the Income Tax which requires the administrative authority to act judiciously and that action of such authority would necessarily be a quasi-judicial function although the statute may not expressly provide for a duties to be acted upon on the basis of judicial principle.

20. Now coming to the provision of Section 144A of the Income Tax Act, 1961 which reads as under:-

> "144A. A Joint Commissioner may, on his own motion or on a reference being made to him by the Assessing Officer or on the application of an assessee, call or and examine the record of any proceeding in which an assessment is pending and, if he considers that, having regard to the nature of the case or the amount involved or for any other reason, it necessary or expedient so to do, he may issue such directions as he thinks fit for the guidance of the Assessing Officer to enable him to complete the assessment and such directions shall be binding on the Assessing Officer.

Provided that no directions which are prejudicial to the assessee shall be issued before an opportunity is given to the assessee to the heard.

Explanation - For the purpose of this section on direction as to the lines on which an investigation connected with the assessment should be made, shall be deemed to be a direction prejudicial to the assessee."

21. This Section was inserted by the Taxation Laws (Amendment) Act, 1975 w.e.f. 1.1.1976 on the recommendations of the Wanchoo Committee.

22. The plain reading of Section 144A of the Act ibid shows that the competent authority can call for and examine the record of any proceedings in which the assessment is pending in any of the three eventualities i.e. (i) on its own motion, (ii) revision made to him by the Assessing Officer; and (iii) on an application of the assessee. After examining the record of such proceedings, the authority is empowered to issue such directions, which, according to him, are required for the guidance of the Assessing Officer with a view to enable him to complete the assessment which, as already stated above, would obviously amount to the completion of the assessment in a just and fair manner. In other words, directions will have to be issued by the supervisory authority under Section 144A of the Act after taking view point of the revenue as projected by the Assessing Officer and after hearing the assessee. The only restriction is that the instructions should be issued in just and fair manner and they should not be issued arbitrarily or capriciously. There is another restriction on the supervising authority under Section 144A of the Act that no instructions or directions should be issued, which are prejudicial to the assessee without affording an opportunity of being heard to the assessee. This restriction clearly shows and indicates that supervisory authority has to act in a judicious manner and will have to discharge the functions of a quasi judicial officer while giving direction to

the Assessing Officer under Section 144A of the Act. It is worth mentioning that the directions issued by the supervisory authority under Section 144A of the Act are not independent of the assessment order as they are not enforceable unless and until they are incorporated in the assessment order by the Assessing Officer. Since the Assessing Officer is bound by the directions issued under Section 144A of the Act, he is required to finalise the assessment by incorporating the findings and the result of the findings in the assessment order. However, if the assessee is aggrieved with the assessment order, it can be challenged before the Commissioner of Income Tax (Appeal) or if it is against the revenue, the Commissioner of Income Tax is competent to take action under Section 263 of the Income Tax Act for issuance of the directions to the Assessing Officer for re-assessment.

23. There is no dispute rather it is an admitted fact that the applicant gave certain directions to the Assessing Officer in the cases mentioned above in exercise of his power under Section 144A of the Act and which were complied with by the Assessing Officer while framing the assessment order. These directions are the subject matter of the issue of the Memorandum containing charges against the applicant. The main charges against the applicant are that he issued reckless directions, which were prejudicial to the interest of the revenue and were of undue haste and without proper investigation. Therefore, the directions are perverse and malafide. It is worth mentioning that no allegation was made by the respondents that the applicant while issuing the directions to the Assessing Officer under Section 144A of the Act ibid in the above cases had accepted illegal gratification or the directions were issued on account of any other

extraneous consideration, which might have influence the issuance of these directions.

24. Now the question under our consideration is whether the directions which were wrong or reckless can form the basis for initiating disciplinary proceedings against the officer giving such directions in exercise of his power under Section 144A of the Income Tax Act, 1961.

25. In the case of ***Zunjarrao Bhikaji Nagarkar v. Union of India***, (1999) 7 SCC 409, it was held by the Apex Court that :

> "42. Initiation of disciplinary proceedings against an officer cannot take place on information which is vague or indefinite. Suspicion has no role to play in such matter. There must exist reasonable basis for the disciplinary authority to proceed against the delinquent officer. Merely because penalty was not imposed and the Board in the exercise of its power directed filing of appeal against that order in the Appellate Tribunal could not be enough to proceed against the appellant. There is no other instance to show that in similar case the appellant invariably imposed penalty.
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> 43. If every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi-judicial officers like the appellant. Since in sum and substance misconduct is sought to be on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words, to maintain any charge-sheet against a quasi-judicial authority something more has to be alleged than a mere mistake of law, e.g., in the nature of some extraneous consideration influencing the quasi-judicial order. Since nothing of the sort is alleged herein the impugned charge-sheet is rendered illegal. The charge-sheet, if sustained, will thus impinge upon the confidence and independent functioning of a quasi-judicial authority. The entire system of administrative adjudication where under quasi-judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings."

26. In the case of ***Dolly Saxena v. Union of India*** in OA No.2199 of 1999, Principal Bench of this Tribunal by following the view taken by the Apex Court in ***Zunjarrao Bhikaji Nagarkar*** (supra) quashed the

chargesheet although the respondents in the written statement submitted that in view of the various decisions of the Apex Court, on more than one occasions that the Tribunal should be reluctant to interfere with the cases involving disciplinary proceedings and punishment. However, this case of the applicant stands on different footings. It does not relate to merit of the chargesheet, but it relates to jurisdiction of the competent authority to issue chargesheet on the basis of the wrong advice or reckless directions given by the applicant to the Assessing Officer during the course of assessment proceedings in discharging the quasi-judicial functions as provided under the Income Tax Act, 1961. The respondents took the support of the following cases to prove their point of view:-

1. ***Z.B. Nagarkar v. UOI***, (1991) 7 SCC 409;
2. ***P.C. Joshi v. State of U.P.***, (2001) 6 SCC 491;
3. ***State of Punjab v. V.K. Khanna***, (2001) 2 SCC 330;
4. ***Noratanmal v. M.R. Murli***, (2004) 5 SCC 689;
5. ***Ujjam Bai v. State of U.P.***, AIR 1962 SC 1621;
6. ***V.K. Behl v. UOI & Ors.***, OA No.2822/2004 decided on 30.8.2005;
7. ***UOI v. K.M. Shankarappa***, (2001) 1 SCC 582; and
8. ***Shri G.S. Sandhu IRS v. UOI & Ors.***, OA No.833.

27. It is observed that the respondents have delayed the proceedings right from the issue of the show-cause notice to the conclusion of the disciplinary proceedings on the ground that because of the lengthy procedure such delay has happened. But the facts indicate otherwise. This is evident from the facts that the cause of action arose in 1992 – 1994. The preliminary show-cause notice was issued in 1996, Memorandum

containing the imputation of the misconduct was issued in 1999 and the penalty was levied in 2002.

28. In the cases of M/s Vasan Shah & Co. and M/s. Choudhury Cloth Store, cash transactions were not made only transfer entries were depicted and both being the sister concern, the penalty under Section 271D of the Act was dropped by the applicant. Thus, the applicant gave the reasons for doing so. Regarding the agriculture income and revision of returns, the revised returns were filed in respect of agricultural income before any notice was issued by the Assessing Officer in respect of whatsoever investigation he had made, thus the applicant gave reasons for accepting the revised return without imposing the penalty under Section 271 (1) (c) of the Income Tax Act, 1961.

29. Regarding evaluation of the Cinema, DVO evaluated the value the Cinema about Rs.50,98,500/- whereas the registered Valuator indicated the value of such Cinema ~~as~~ above mve Rs.41,00,000/- whereas the applicant directed the Assessment Officer to adopt the value of cost of construction above Rs.39,00,000/- by allowing the discount of 7.5% towards personal supervision by the Cinema owner, which is legally allowable deduction from the total value while making valuation of immovable property. Further the valuation of the DVO is not binding on the Assessing Officer under the Income Tax Act and moreover, the value of Cinema was made by the DBO in the light of the evaluation of Cinema in Delhi. Thus, the applicant gave the reasons for adopting the lower value above Rs.39,00,000/-. mve

30. Regarding the acceptance of cash credits, three conditions are required to be looked into i.e. (i) identity of the cash creditor; (ii) genuineness of the transaction; and (iii) credit worthiness of the creditor. The applicant issued the directions on the basis of the confirmation letters of the creditors. The amount in many cases paid through A/c payee cheques and the creditors were found to be income tax assessees. The normal course is that in such cases the respective income tax Assessing Officers are about the cash credits having jurisdiction to take necessary action against those cash creditors as per provisions of law and this process was done by the applicant as mentioned in paragraph 9 of the rejoinder. This is the minimum requirement, which was adopted by the applicant.

31. Regarding search and seizure cases, re-assessments made by the Assessing Officer on the directions of the Commissioner of Income Tax under Section 263 of the Act was set aside in appeal by the C.I.T. (Appeal) who remanded back the matter to the Assessing Officer. This fact clearly shows that the directions issued by the applicant were having certain reasoning.

32. In the light of the above discussion, we are very much conscious and of the confirmed view that in such cases where the applicant is under obligation to discharge his quasi-judicial function, the disciplinary proceedings cannot be initiated against the delinquent officer for giving such directions in exercise of the power of a quasi-judicial authority and having regard to the above fact that the final orders of the assessment are subject matter of appeal before the Commissioner of Income Tax (Appeal) as well as under Section 263, the power vested with Commissioner of Income Tax, i.e., in case the assessee is aggrieved he may go in an appeal

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before the Commissioner of Income Tax (Appeal) or may take shelter of Section 264 of the Act ibid, where the Commissioner of Income Tax is empowered to grant relief to the assessee, and in case the Commissioner of Income Tax is of opinion that the order is prejudicial to the interest of revenue, he may take action under Section 263 of the Act ibid. Commissioner of Income Tax (Appeal) and Commissioner of Income Tax, they are two distinct authorities under the Income Tax Act. Whatever orders were passed by Commissioner of Income Tax under Section 263 of the Act for re-assessment purposes, were challenged before the Commissioner of Income Tax (Appeal) by the assessees. The Commissioner of Income Tax (Appeal) set aside the assessments and remanded back the cases to the file of the Assessing Officer. Whenever any directions would be issued by the supervisory authority under Section 144A of the Act ibid, they will either cause, gain to revenue or loss to revenue. Hence, only ground that the directions issued in all cases had caused loss to revenue would not invite the initiation of penalty proceedings against the authorities functioning as a quasi-judicial authority. The applicant gave the reasons for issue of direction in all the cases, may be sufficient or not, but they exist in the case of the applicant.

33. Thus, the penalty order dated 19.1.2002 and order dated 4.10.2004 are quashed and set aside. The consequential benefits would follow as per rules to be complied with by the respondents.

34. In the result, OA is allowed with no order as to costs.

(M.K. MISRA)
MEMBER (A)

(B. PANIGRAHI)
CHAIRMAN

/ravi/