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**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05**

(DESTRUCTION OF RECORD RULES, 1990)

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(see Rule 42)

ORDER SHEET

Original No. 76/2002
Misc Petition No.
Contempt Petition No.
Review Application No.

Applicant(s) J.K. Goayl

Respondent(s) H-O-T forms

Advocate for Applicant(s) B.K. Sharma, P.K. Tiwari, S. Sharma
U.K. Prakash

Advocate for Respondent(s) Att. Case A. K. Chundly

Notes of the Registry	Date	ORDER OF THE TRIBUNAL
<p>1000 deposited in form C. 1000 deposited 765509118 7-2-2002 W.S. 6/3/92 Dy. Registrar</p>	7.3.02	<p>Pass over for the day. List on 8.3.2002 for admission.</p> <p><i>K.K. Sharma</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p>
<p>Steps taken ①</p>	8.3.02	<p>Put up before a Bench excluding Hon'ble Mr. K.K. Sharma, Administrative Member.</p> <p><i>K.K. Sharma</i> Member</p> <p><i>[Signature]</i> Vice-Chairman</p>

O.A. 76/2002

Notice framed, and sent
to DLS for filing the
respondents No 1 to 4
by Regd. A.D.

D/No 815 L/818

Dtd 18/3/02

8-3-2002

Application is admitted. Call
for the records. Returnable by four
weeks.

List on 9.4.2002 for written
statement and further orders.

Heard Mr. K. Sharma, learned senior
counsel for the applicant and Mr. A.
K. Choudhury, learned Addl. C.G.S.C for
the respondents on the interim relief
prayer.

Issue notice to show cause as to
why interim order as prayed for shall
not be granted. Returnable by two
weeks.

List on 26.3.2002 for interim
order.

Vice-Chairman

pg

27.3.2002

Heard Mr. B.K. Sharma, learned
counsel for the applicant who has prayed for
an interim order. Notice has already been
issued to the respondents on this matter. Mr.
A.K. Choudhury, learned Addl. C.G.S.C. has
prayed for time till 9.4.02. The matter is
adjourned and shall come up for further
orders on 9.4.02 for consideration of the
interim matter. The respondents are directed
to submit their reply.

Vice-Chairman

No reply has been
filed.

8.4.02

8.4.2002

W/S submitted
by the Respondent No.
1, 2, 3 & 4.

nkm

9.4.02

Put up before Single Bench excluding
Hon'ble Mr. K.K. Sharma, Administrative
Member.

List on 10.4.2002 for order.

Member

Vice-Chairman

mb

10.4.2002

Heard Mr.B.K.Sharma, learned Sr.counsel for the applicant and also Mr.A.K.Chaudhury, learned Addl.C.G.S.C. appearing on behalf of the respondents on the interim matter.

By order dated 18.2.2002 the applicant was placed under suspension in aid of power conferred by sub-rule 1 of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The said communication was preceeded by show cause memo dated 18.2.2002 indicating that the suspension order was directly related to the disposal of an appeal by the applicant relating to block assessment of one Shri Karuna Kar Mohanty, earlier assessed by the then DCIT (Inv) Circle-1, Bhubaneswar.

It was alleged that the applicant passed the appellate order in unseemly hurry without properly appreciating the evidences contained in seized papers and without affording any opportunity to the AO to be heard as prescribed under the Act. On the own showing of the respondents the applicant alleged that the suspension order is directly attributable to its exercise of quasi judicial power conferred by its statute. It is also stated that against the very order passed by the applicant, both the revenue as well as the assessee had preferred Appeals before the Income Tax Appellate Tribunal under section 253 of the Income Tax Act. I have also perused the reasons assigned in the Show Cause Memorandum dated 18.2.2002 (Annexure A/6)

Contd.

(4)
Contd.

asking explanation from the official as to the grounds for holding the appellate authority guilty of unseemly hurry without properly appreciating the evidence and without affording the AO to be heard. It at best only shows that the officer passed a wrong order and erred in appreciation of facts and the law. It may be noted that the alleged ground of imputation pertains to exercise of quasi judicial power conferred on the Appellate Authority under section 251 of the Income Tax Act. There is an obvious distinction between judicial - quasi judicial function qua administrative function. An administrative decision is made according to the administration policy. In the former act, the authority attempt to find out the right result according to legal principles and norms. The expression quasi judicial is a sobriquet or a label for the exercise of power to administration. Such power is to be exercised in legal and judicial way - where he has the jurisdiction to err. These are only tentative view expressed while examining the interim prayer.

Instead of passing any interim order, though would have preferred for disposal of the OA on merit, but that is not immediately possible since the other member consisting of this Bench is not inclined to take up the matter. The hearing of the application is likely to take some more time, therefore the interim application is taken up.

The alleged imputation are based on assessment records which are presently pending before the Income Tax Appellate Tribunal. There is thus no scope for the applicant to deflect or interpolate the evidence and all the materials on which the alleged misconduct is based.

Contd.

Contd.

Considering all aspects of the matter, the factors like the balance of convenience, irreparable loss and the public interest, I, therefore, pass the interim order suspending the operation of the order No. F.No.C-14011/5/2002-V&L dated 18.2.2002 until further orders. It will, however, always be open to the respondents to come for alteration and or modification of the interim order, if they are so advised.

List the case for order on 11.5.2002 for fixing a date of hearing.

Vice-Chairman

bb

13.5.02 put up this matter before the Administrative side for taking necessary steps.

Member

Vice-Chairman

mb

22.1.03

Pass over on the prayer of Mr. S. Sarma, learned counsel for the applicant. List on 23.1.2003 for hearing.

Member

Vice-Chairman

Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.

The Hon'ble Mr. S.K. Hajra Administrative Member.

Mr. A.K. Choudhury,

learned Addl. C.G.S.C. appearing on behalf of the respondents.

Letter received from The Dy. Registrar (JA) P.B. New Delhi as "O.A. may be listed as and when an e/n m(A) becomes available" vide letter NO. 13/1/95-JA/4580/A dated 28.5.02 by speed post.

3/6/2002

Order dtd. 10/4/02
Communicated to the
Renties Council.

16/4

Pl comply order
dated 13-05-02.
13/5/02

Letter send to two
Hon'ble P.B. New Delhi
Vide NO. CAT/944/63/2001
Judl/367 dated 15.5.2002
In an administrative member
to hold the court at Gurdahab
to hear two above case NO.

OA 76/2002 as per court's order
dated 13.5.02
15/5/02

28/5/02

7.1.03

Rejoinder to the
W/S has been submitted
by the applicant.

30.1.2003

Present:- The Hon'ble Mr. Justice D.N.
Chowdhury, Vice-Chowdhury.
The Hon'ble Mr. S.K. Hajra,
Administrative Member.

On the prayer of the learned Sr. coun-
sel for the applicant Mr. B.K. Sharma the
case is posted on 3.2.2003 alongwith oth-
er connected matters.

bb
bb Member

Vice-Chairman

23.1.2003 Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.
The Hon'ble Mr. S.K. Hajra, Administrative Member.

Mr. A.K. Choudhury, learned Addl. C.G.S.C. appearing on behalf of the respondents stated that he has received the rejoinder on day after yesterday and he wants to go through the same. As agreed by the parties, the matter is posted for hearing on 30.1.2003.


Member


Vice-Chairman

mb

30.1.2003 Present:- The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.
The Hon'ble Mr. S.K. Hajra, Administrative Member.

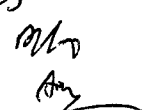
On the prayer of the counsel for the parties the case is posted for hearing on 3.2.2003 alongwith the other connected cases.


Member


Vice-Chairman

bb


3.2.2003. on the prayer of the counsel for the parties, the case is posted for hearing on 20.2.2003 alongwith other connected cases.



20.2.2003 Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.
The Hon'ble Mr. S. Biswas, Administrative Member.

The case is adjourned on the prayer of Mr. S. Sarma, learned counsel for the applicant to obtain necessary instruction. List the matter on 2.4.2003 for hearing


Member


Vice-Chairman

mb

2.4.2003 Division bench did not sit today.
The case is postponed to 27/5/2003.

8.5.2003

The matter is already posted for hearing on 27.5.2003. Put up the matter again on 27.5.2003 for hearing.

19.5.03

Reply to the rejoinder filed by the applicant has been submitted by the respondents.

Member

Vice-Chairman

27/5. Heard Mr P.K. Tewari, learned Counsel for the applicant & Mr. A.K. Chaudhury, learned Additional J.C. for the respondent. Hearing concluded, Judgment reserved.

30.5.2003

Present: Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman
Hon'ble Mr S.K. Hajra, Administrative Member.

We have heard the learned counsel for the parties at length. We have already directed the authority to complete the disciplinary proceeding within the time frame.

On consideration of all the aspects of the matter we make the interim order dated 10.4.2002 absolute and direct the authority to conclude the enquiry keeping the order of suspension in abeyance.

The application accordingly stands disposed of. No order as to costs.

Member

Vice-Chairman

9.6.2003

Copy of the order has been sent to the office for filing the same to the H.A. for the parties.

Read copy
S.K. Hajra

5 MAR 2002

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH

(An application under Section 19 of the Administrative Tribunals Act, 1985)

Title of the Case : O.A. No. 76 of 2002

Dr. J.K. Goayl ... Applicant

- Versus -

Union of India & Ors. ... Respondents

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For use in Tribunal's Office :

Date of filing : 5.3.2002

Registration No. O.A 76/2002

REGISTRAR

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. No. 76 of 2002

BETWEEN

Dr. J.K. Goyal,
Chief Commissioner of Income Tax,
resident of Uzanbazar,
Guwahati-1.

... Applicant

AND

1. The Union of India, represented by the Secretary, Department of Revenue, Ministry of Finance, Government of India, North Block, New Delhi.
2. The Chairman, Central Board of Direct Taxes, Ministry of Finance, North Block, New Delhi.
3. The Director General (Vigilance), Central Board of Direct Taxes, North Block, New Delhi.
4. The Under Secretary to the Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, New Delhi.

... Respondents

DETAILS OF APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE :

The present application is directed against the order of suspension dated 18.2.2002 passed by the Under Secretary to the Government of India, Ministry of Finance, Department of Revenue in the name of the President of India under Rule 10 (2) & 10(1) of the CCS (CCA) Rules, 1965.

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Filed by
Siddhartha
Sarma
Advocate
5-3-2002

2. JURISDICTION OF THE TRIBUNAL :

The Applicant declares that the subject matter of the application is within the jurisdiction of this Hon'ble Tribunal.

3. LIMITATION :

The Applicant further declares that the application is filed within the limitation period prescribed under Section 21 of the Administrative Tribunals Act, 1985.

4. FACTS OF THE CASE :

4.1 That the Applicant in the present case is assailing the legality of the order of his suspension. The impugned order of suspension has been passed in contemplation of disciplinary proceeding which is sought to be initiated against the Applicant on the ground of certain supposed act of omission or commission on his part while functioning as Commissioner, Income Tax (Appeals) at Bhubaneswar. It has been alleged that the Applicant when he was posted as the Commissioner, Income Tax (Appeal-I), Bhubaneswar having Appellate jurisdiction over the assessments completed by the Deputy Commissioner, Income Tax (Investigation) Circle-I, Bhubaneswar, had the occasion to decide the appeal in the case of block assessment of one Karunakar Mahanty assessed by the then Deputy Commissioner of Income Tax (Investigation) and the Applicant in the aforesaid capacity passed the order in unseemly hurry without properly appreciating the

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evidence contained in seized papers and without affording any opportunity to the Assessing Officer of being heard. Apart from the fact that the allegations made against the Applicant are baseless, it is to be noted that while discharging his duty as Commissioner of Income Tax (Appeals), the Applicant exercised statutory powers in quasi judicial capacity. His function was to decide a lis between the Department and the assessee in a free and fair manner and against the order passed by him in that capacity, there is a provision for appeal under Section 253 of the Income Tax Act. In the present case, the impugned order of suspension has been passed without any just and sufficient reason and apart from not serving any purpose, the same is also contrary to the established principles of service jurisprudence. Moreover, the order of suspension is the result of malafide exercise of power which would be borne out from the sequence of events resulting in the impugned order of suspension. Hence the present Original Application.

4.2 That the Applicant is a direct recruit of the Indian Revenue Service belonging to 1969 batch. He joined Indian Revenue Service on 24.7.69 and is presently posted as Chief Commissioner of Income Tax, Guwahati.

4.3 That for proper appreciation of the facts, it would be apposite to advert to the sequence of events of more than a decade of systematic victimisation and harassment of the Applicant by the official Respondents. It is the case of the Applicant that the

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impugned order of suspension is a part of victimisation and harassment of the Applicant which is going on since last more than a decade. Hence before adverting to the facts resulting in impugned order of suspension, certain facts pertaining to past events are being referred to.

4.4 That while the Applicant was posted as Deputy Commissioner of Income Tax, Range-I, Raipur (M.P.), a memo dated 19.4.90 was issued alleging a number of acts of misconduct committed by the Applicant. The Applicant submitted his reply on 31.5.90 as well as on 1.9.90. However, a charge memo dated 16.7.91 under Rule 14 of the CCS (CCA) Rules, 1965 was issued containing five articles of charges. Since out of these five articles of charges, the Applicant was exonerated of four charges, therefore, it would be sufficient to refer to fifth charge which was held to be only very marginally proved against the Applicant by the Enquiry Officer. This fifth charge was of making some excessive phone calls from the official telephone.

4.5 That the Applicant submitted his written statement of defence by his communication dated 30.9.91 wherein he denied each charge contained therein and explained in details as to how the charge under memo dated 16.7.91 was baseless. In his written statement of defence, the Applicant stated in detail as to how the framing of charges is the outcome of grudge held against the Applicant by one Mr. H.O.K. Srivastava who at the relevant time was the Commissioner of Income Tax

and under whom the Applicant was posted. According to Applicant, the relationship between him and Mr. H.O.K. Srivastava soured when the DPC held in April 1988 for recommending promotion to the grade of Commissioner of Income Tax superseded the Applicant. Being aggrieved, the Applicant approached the Jabalpur Bench of the Central Administrative Tribunal which in its order dated 17.5.89 held that the performance of the said Mr. H.O.K. Srivastava as reflected in the Annual Confidential Reports was inferior to that of the Applicant and the panel prepared by the April, 1988 DPC wherein the name of the said Shri H.O.K. Srivastava was included was quashed being arbitrary and illegal. It was due to this that the said Shri H.O.K. Srivastava nursed a grudge against the Applicant. It was in this background that the memorandum of charge dated 16.7.91 was issued against the Applicant.

4.6 That the Respondents took considerable time to consider the statement of defence submitted by the Applicant in answer to the charge memo. It was vide order dated 23.6.93 i.e. almost two years after the Applicant was charge sheeted, the Respondents finally appointed an Enquiry Officer.

4.7 That the Enquiry Officer started preliminary hearing of the case from 16.8.93 onwards. However, even the hearing of the case could not be conducted smoothly due to non-supply of relevant documents to the Applicant by the Presenting Officer. In this connection, even the direction of the Enquiry Officer were not heeded by the Presenting Officer. It was

under these circumstances that the enquiry against the Applicant could not be conducted speedily.

4.8 That when all this was happening, the aforesaid Mr. H.D.K. Srivastava withheld the clearance of TA Bills of the Applicant. Being aggrieved, the Applicant had to approach the Allahabad Bench of the Central Administrative Tribunal in O.A. No. 848/93 which by its order dated 27.11.97 not only directed the payment of the amount of TA Bills to the Applicant within a period of three months, but also awarded the cost of Rs.5,000/- in his favour.

4.9 That the Enquiry Officer on conclusion of the enquiry submitted the report on 17.5.95 and the same was made available to the Applicant after sixteen months on 17.9.96 vide letter dated 28.8.96. In the enquiry report, the Applicant was exonerated of four charges out of the five charges and the fifth charge was held to be "very marginally proved".

4.10 That after receiving the copy of the enquiry report, the Applicant gave his reply vide representation dated 22/30.10.96 wherein the Applicant brought out discrepancies, inconsistencies, contradictions and defects in the findings of the Enquiry Officer.

4.11 That thereafter, the Applicant did not receive any further communication from the Respondents, though a number of reminders were sent to the Respondents urging them to finalise the disciplinary proceeding so as to

put an end to the agony and unnecessary harassment of the Applicant, but the same was of no avail.

4.12 That meanwhile, the Applicant became due for consideration for further promotion as Chief Commissioner of Income Tax. A DPC for the same took place on 5.2.2001 and in regard to the Applicant, the recommendations of the DPC were put in a sealed cover on account of the pendency of the aforesaid disciplinary proceeding. Being aggrieved, the Applicant filed O.A. No. 590/2001 before the Principal Bench of the Tribunal.

4.13 That the Principal Bench of this Hon'ble Tribunal disposed of the Original Application vide order dated 29.3.2001 with a direction to the disciplinary authority to pass final order in the disciplinary proceeding expeditiously and within a period of two months from the date of service of the order.

4.14 That as the Respondents failed to pass final order in the disciplinary proceeding within the stipulated period of two months as directed in the order of the Hon'ble Tribunal dated 29.3.2001, the Applicant filed a Civil Contempt Petition being C.P. No. 336/2001. The Respondents meanwhile filed an application for extension of time which was listed as M.A. No. 1457/2001. Both the Contempt Petition filed by the Applicant and the M.A. filed by the Respondents were heard by the Hon'ble Tribunal on 6.8.2001 and by the order of the same date, the Hon'ble Tribunal directed the Respondents to open up the sealed cover in respect

of the Applicant's promotion and in the event of his being found eligible to grant him a provisional promotion which was made subject to the final orders to be passed in the disciplinary proceeding. The Respondents were directed to do the same within a period of two months from the date of service of the order. For finalisation of the disciplinary proceeding, the Respondents were granted extension of time of six months as prayed.

4.15 That inspite of the stipulation in the order of the Hon'ble Tribunal dated 6.8.2001 regarding the opening of the sealed cover and granting promotion to the Applicant, the Respondents did not do anything in the matter. Consequently, the Applicant filed C.P. No. 633/2001 before the Principal Bench of the Hon'ble Tribunal on 18.10.2001.

4.16 That meanwhile the Applicant filed another Original Application being O.A. No. 2966/2001 before the Principal Bench praying for a direction to the Respondents to promote the Applicant to the grade of Chief Commissioner of Income Tax in accordance with the recommendation of the DPC which took place on 5.2.2001. By way of interim relief, the Applicant prayed that the Respondents be restrained from promoting any officer junior to the Applicant to the grade of Chief Commissioner of Income Tax till the Respondents comply with the directions of the Hon'ble Tribunal contained in its order dated 6.8.2001 passed in CP No. 336/2001 in O.A. No. 590/2001.

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4.17 That on 30.10.2001, the Hon'ble Tribunal passed the interim order in O.A. No. 2966/2001 restraining the Respondents from promoting any officer junior to the Applicant to the grade of Chief Commissioner of Income Tax till the Respondents comply with the directions of the Hon'ble Tribunal contained in order dated 6.8.2001 passed in C.P. No. 336/2001 in O.A. No. 590/2001.

4.18 That even at this stage, the Respondents instead of acting in compliance of the order of the Hon'ble Tribunal moved the Misc. Application being M.A. No. 2569/2001 in O.A. No. 2966/2001 for vacation of the order dated 30.10.2001 stating inter alia that on account of the said order, the Respondents were not able to fill up vacant post in the grade of Chief Commissioner of Income Tax which is bound to hamper revenue collection. However, the aforesaid statement of the Respondents were thoroughly false as there was no impediment in the way of the Respondents to promote other officers on and after 28.12.2001 and before 7.11.2001 when the order dated 30.10.2001 was served. The Respondents issued order of promotion of a number of officers as Chief Commissioner of Income Tax only on 10.1.2002. The Misc. Application No. 2569/2001 was, therefore, meant only to stop the promotion of the Applicant for malafide reasons.

4.19 That the M.A. No. 2569/2001 in O.A. No. 2966/2001 was heard on 23.11.2001 and the same was rejected and the interim order dated 30.10.2001 was made absolute.

4.20 That meanwhile the Respondents filed their reply to C.P. No. 633/2001 and the case was heard on 10.12.2001 and the following order was passed :

"We have perused the reply filed in response to the Contempt Petition. The same has been affirmed by one Shri Sandip Garg, Under Secretary (V&I), Central Board of Direct Taxes, Deptt. of Revenue, New Delhi. Since this is a Contempt Petition, we would have expected the Respondents themselves to have submitted the reply. Be that as it may, we find from the reply that the sealed cover of the Applicant has been opened on 13.11.2001 in terms of the order passed on 6.8.2001. The same was opened after the period provided in the order has already elapsed. The reply further provides that the recommendations of the DPC on opening of the sealed cover have been sent for approval of the ACC and approval of the ACC is awaited. According to Shri Uppal, the learned counsel appearing for the contemnors, the approval of the ACC will be received within a period of three weeks. We do not find any justification why the approval of the ACC should take such a long duration especially when the same has been approved by the Finance Minister and sent on 23.11.2001. In the circumstances, we direct that in case the approval of the ACC is not received and not implemented within the aforesaid period of three weeks, the contemnors will appear before us in person on the adjourned date."

4.21 That inspite of the aforesaid order, the Respondents continued to dither and did not give effect

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to the various orders of the Hon'ble Tribunal. Instead the Respondents filed a Civil Writ Petition before the Hon'ble Delhi High Court being C.W.P. No. 7483/2001 praying for setting aside the order dated 23.11.2001 passed in O.A. No. 2966/2001. In the aforesaid case, the Division Bench of the Hon'ble Delhi High Court passed the following order :

"Respondent's promotion to the post of Chief Commissioner of Income Tax has remained stalled for a decade or more on a charge of making some excessive phone calls from his official telephone. A charge memo was served on him on 16.7.91 which was followed by an enquiry finalised sometime in 1995. He was not given the inquiry report for which, he made repeated representations but in vain.

Meanwhile Petitioner convened DPC for making promotion to the post and adopted sealed cover procedure qua Respondent. Apprehending that his juniors would be promoted to the post, Respondent filed O.A. No. 590/01 for quashment of pending disciplinary proceedings. Tribunal allowed this O.A. by order dated 29.3.2001 granting Petitioner two months to complete these proceedings. He then filed CCP 336/01 alleging non-compliance of this order and tribunal by, order dated 6.8.01 directed Petitioner to open the sealed cover and to grant provisional promotion to Respondent within two months and to complete disciplinary proceedings within six months meanwhile. Petitioner allegedly failed to comply with this order also and

initiated steps for making promotion to the post. Respondent challenged this in O.A. 2966/01 and obtained interim order dated 30.10.2001 restraining Petitioner from making any promotion to the post till its order dated 6.8.2001 was complied with. Petitioner applied for modification of this order which was rejected and this order made absolute. Hence this petition.

The sequence of events disclosed a sorry state of affairs. WE would have dealt with this petition on merit but we are informed that Petitioner was in the process of implementing Tribunal order dated 6.8.2001 by passing appropriate order shortly. Considering that this could end litigation between parties for good and to lend urgency to the matter, we direct the Petitioner to pass the requisite order pursuant to tribunal order dated 6.8.2001 within two weeks from receipt of this order. Mr. Rajinder Nischal is required to seek compliance of this order from the concerned Authority....."

Copy of the order of the Delhi High Court dated 11.12.2001 is annexed as ANNEXURE-A/1.

4.22 That it was under these circumstances, the Respondents were compelled to issue an order dated 28.12.2001 promoting the Applicant to officiate as Chief Commissioner of Income Tax on provisional basis subject to final order to be passed in pending disciplinary proceeding against him.

Copy of the order dated 28.12.2001 is annexed as ANNEXURE-A/2.

4.23 That as the Respondents did not finalise the disciplinary proceeding against the Applicant, they filed M.A. No. 177/2002 before the Principal Bench of this Hon'ble Tribunal seeking three months further time for finalisation of disciplinary proceeding. The Principal Seat of this Hon'ble Tribunal in its final order deprecated the delay caused by the Respondents in completing the disciplinary proceeding against the Applicant and gave Respondents six weeks time by way of last opportunity to complete the disciplinary proceeding against the Applicant from 8.1.2002 failing which the disciplinary proceeding against the Applicant was to abate.

Copy of the order dated 28.1.2002 passed by the Principal Seat of the Hon'ble Tribunal in M.A. No. 177/2002 is annexed as ANNEXURE-A/3.

4.24 That meanwhile, the Applicant submitted a representation dated 4.1.2002 to the Central Vigilance Commissioner wherein he narrated in detail the inordinate delay and various acts of omission and commission on the part of the Respondents in conducting disciplinary proceeding against the Applicant. In his representation, the Applicant stated as to how the fifth charge that has been held to be very marginally proved against the Applicant is frivolous and vexatious and as to how a number of officers for far more excessive billing of the STD telephone have been left unscathed.

Copy of the representation dated 4.1.2002 is annexed as ANNEXURE-A/4.

4.25 That since the Respondents could not complete the disciplinary proceeding against the Applicant within the six weeks time granted to them by the Principal Bench of this Hon'ble Tribunal, therefore, vide order dated 20.2.2002, the Government of India in exercise of power under Rule 15 of CCS (CCA) Rules, 1965 dropped the disciplinary proceeding initiated vide memorandum dated 16.7.91 without prejudice to any administrative action for recovery of the excess telephone call charges from the Applicant.

Copy of the order dated 20.2.2002 is annexed as ANNEXURE-A/5.

4.26 That it was in this backdrop that the Applicant was served with a show cause memorandum dated 18.2.2002 which was accompanied by the order of suspension of the same date. In the show cause memorandum, the allegation was made against the Applicant that during the period April 2001 to December 2001 when he was posted as Commissioner of Income Tax (Appeals-I), Bhubaneswar having appellate jurisdiction over the assessment completed by the Deputy Commissioner of Income Tax (Investigation) Circle-I and had the occasion to decide the appeal in the case of block assessment of one Karunakar Mahanty assessed by the then Deputy Commissioner of Income Tax, he passed the appellate order in unseemly hurry without properly appreciating the evidence contained in the seized paper

and without affording any opportunity to the Assessing Officer of being heard. The Applicant was given 15 days time to submit his explanation against the show cause notice.

Copy of the show cause memorandum dated 18.2.2002 is annexed as ANNEXURE-A/6.

4.27 That as stated earlier by the order of the same date, the Applicant was placed under suspension pending disciplinary proceeding. Though in the recital, the order of suspension was shown to have been passed under Rule 10(2) of the CCS (CCA) Rules, 1965, but in the body, the powers conferred by Rule 10(1) of CCS (CCA) Rules, 1965 were shown to have been invoked for placing the Applicant under suspension.

Copy of the impugned order of suspension dated 18.2.2002 is annexed as ANNEXURE-A/7.

4.28 That after issuing the show cause memorandum dated 18.2.2002, the official Respondents ought to have waited for the stipulated period of at least fifteen days so as to enable the Applicant to submit his explanation. However, instead of doing so on the same date, the order placing the Applicant under suspension was also passed. It is, therefore, apparent that in the present case, official Respondents acted with a preconceived mind and their act of issuing show cause memorandum to the Applicant was an empty formality.

4.29 That the contents of the show cause memorandum dated 18.2.2002 bears testimony to the fact that the

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Respondents have acted arbitrarily in total non-application of mind. The allegations made in the show cause notice are frivolous and baseless. The show cause memorandum runs on a theme that though the Applicant as Commissioner of Income Tax (Appeals) was exercising a quasi judicial function, but he ought not to have treated the department and the assessee on an equal footing and that he ought to have given a preferential treatment to the department. The Respondents possibly believed that the job of the Applicant as a quasi judicial authority while determining a lis between the department and the assessee is to lean in favour of the department and any action on his part of deciding a lis in favour of assessee is an act of misconduct.

4.30 That the show cause memorandum dated 18.2.2002 makes an issue of Applicant not hearing the Assessing Officer while deciding a lis between the department and the assessee. It is pertinent to mention that the two different notices dated 16.7.2001 and 17.7.2001 were sent to Assessing Officer. The Assessing Officer in response sent his report/written submission on 19.7.2001 which was received in the office of the Commissioner of Income Tax (Appeals) on 20.7.2001. The written submission/report of the Assessing Officer was duly considered by the Applicant while exercising the powers of Commissioner of Income Tax (Appeals). The first hearing took place on 24.7.2001 and the second hearing took place on 25.7.2001. The Assessing Officer had full knowledge of the date of hearing as the same was intimated to him. For the reasons best known to the

See para 13

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Assessing Officer, he chose not to appear before the Applicant on the day of hearing. It is also noteworthy that while sending his report/written submission, the Assessing Officer did not express any desire to be heard in person. In this connection, it is made clear that most of the cases of this nature are decided without the original records and copy of the notice also is not normally sent to the Assessing Officer. It is noteworthy that providing an opportunity of hearing to the Assessing Officer is more an exception than a rule and this fact is well known to the Income Tax officials. The Applicant while deciding the appeal acted in a manner he was expected in an ordinary situation. The notices were duly issued to the Assessing Officer and the report submitted by him was also duly taken into consideration. There was nothing in the conduct of the Applicant with which any fault can be found. Be that as it may, the Applicant was exercising a quasi judicial function and his orders, therefore, cannot be questioned except in accordance with the provisions of the Income Tax Act.

4.31 That in the show cause memorandum an effort has been made to make an issue of so called disappearance of ITNS-51. It is stated that ITNS-51 is a non-statutory form which is sent to the Assessing Officer on receipt of the appeal to indicate certain factors like whether the appeal preferred is within a period of limitation, whether the undisputed taxes have been paid by the assessee or not and whether the Assessing Officer would like to appear in person to assist the

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Commissioner of Income Tax (Appeals). It is not the job of the Applicant as Commissioner of Income Tax (Appeals) to find out as to why the ITNS-51 is not on the record. In any case, ITNS-51 is not such an important document so as to have a bearing on the merit of the issue decided by the Applicant as Commissioner of Income Tax (Appeals). In any case, the Assessing Officer was provided sufficient opportunity to assist Commissioner of Income Tax (Appeals) and he was given due notice of the date of hearing and for his own reasons, the Assessing Officer chose not to appear before the Applicant.

4.32 That in regard to the allegations made in the show cause memorandum that the Applicant as Commissioner of Income Tax (Appeals) heard the case without calling the Assessing Officer and that the seized materials was not called for examination and that Assessing Officer was not asked to give his comments on the written submission made by the assessee before the Applicant, it is stated that the Assessing Officer was given the sufficient opportunity to appear before the Applicant and he was given due intimation of the date of hearing. If the Assessing Officer did not appear despite having knowledge of the date of hearing, then he is to be blamed for the same. In regard to other allegations, it is reiterated that most of the cases are decided at the level of Commissioner of Income Tax (Appeals) without the original records or on the basis of whatever part/split records are made available by the Assessing Officer. This fact is well known in the

Income Tax Department. The Commissioner of Income Tax (Appeals) are expected to decide the lis on the basis of the records and materials available before them. Hence, there was nothing unusual in the conduct of Applicant as Commissioner of Income Tax (Appeals).

4.33 That the official Respondents have tried to make an issue of the fact that the appeal in question was against one of the biggest assessment orders in Orissa charge and the fact that the same was decided in a matter of two hearings and that the final order was passed within 32 days of the filing of the appeal, shows undue haste on the part of the Applicant. It is stated that the officials of the Indian Revenue Service are trained to decide the appeals without being bothered about the nature of assessment order. They are trained to behave in such a manner because it is believed that if the offices of Indian Revenue Service start giving importance to the size and nature of the assessment order, then they would not be able to discharge their duties impartially and fearlessly. In this connection, the past record of the Applicant is also noteworthy. The Applicant as Asstt. Commissioner Appellate during the period November 1979 to July 1983 disposed of approximately 10,000 appeals with an average of more than 2,500 appeals per year. This is an all time record in India. Even as Commissioner of Income Tax (Appeals), the Applicant disposed of approximately 100 appeals per month against the target of 60 appeals per month. Applicant has a reputation of quick disposal of appeals and all other matters. Even

the department emphasises the importance of quick disposal of the appeals and the officers capable of quick disposal are rated highly. On account of unduly long time taken by certain Appellate Officers in deciding appeals, the Income Tax Act provided for a stipulation to decide appeals within the period of one year from the date of filing. This time limit is further requested to be reduced by the Central Board of Direct Taxes in respect of appeals involving high demand. Hence it is unfortunate that in the case of the Applicant, department has chosen to make an issue of what it calls undue haste on the part of the Applicant as Commissioner of Income Tax (Appeals). In this connection, reference is made to the letter of the Chairman, Central Board of Direct Taxes dated 20.9.2000 and to the instructions No. 1973 of the Government of India dated 28.9.99 wherein speedy disposal of appeal by Commissioner of Income Tax (Appeals) have been emphasised.

Copies of the letter dated 20.9.2000 and of instruction dated 28.9.99 are annexed as ANNEXURE-A/8 colly.

4.34 That the Applicant while functioning as Commissioner of Income Tax (Appeals), Bhubaneswar vide his various communications dated 3.8.2001, 6.8.2001, 31.10.2001, 9.11.2001 and 28.9.2001 focussed on the fact of non-appearance of the concerned Assessing Officer during hearing of the appeals. The Applicant also drew the attention of the officials towards the

fact that the Assessing Officers do not make available the case records in the course of hearing of the appeals. In his D.O. letter dated 6.8.2001 addressed to Shri S.P. Swain, Commissioner of Income Tax, Bhubaneswar, the Applicant specially stated that while functioning as Addl. Commissioner of Income Tax (Hqrs.) of the office of the Chief Commissioner of Income Tax, Bhubaneswar, the aforesaid Shri Swain had addressed a letter to the Commissioner of Income Tax (Appeals) that ITNS-51 was not being sent to the Assessing Officer so also memos of appeals and that the appeals were being decided without calling for the case records. While referring to the aforesaid, the Applicant pointed out that on receipt of the letter of Shri Swain, he kept a close watch over such matters and found that the Assessing Officer despite clear opportunity do not sent case records and also do not return the ITNS-51. It was also pointed out by the Applicant that these Assessing Officer choose not to remain present during the course of hearing of the appeal. It was also pointed by the Applicant that in a number of cases, when the notices for hearing are sent to the Assessing Officers, they do not even return the notices in time after having got them duly served or otherwise. In his letter of 31.10.2001 addressed to the Joint Commissioner of Income Tax, Range-I, Bhubaneswar, the Applicant gave details of the appeals on the date of hearing of which not a single record was received in the office, nor the Assessing Officers were prepared to render necessary assistance on the ground that the notices for hearing from the office of the Joint Commissioner of Income Tax

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were received in their office only a day before. Similarly in his letter dated 9.11.2001 addressed to the Joint Commissioner of Income Tax, Range-I, Bhubaneswar, the Applicant informed that the Assessing Officer did not appear in the hearing of any of the appeals during the aforesaid period. The Applicant desired to know the reasons for the same vide his aforesaid letter. The letter of the Applicant dated 28.11.2001 is in regard to the same matter and highlights the fact that non-appearance of the Assessing Officer in the course of hearing of the appeals is a Rule rather than an exception. It is noteworthy that all the communications mentioned above were sent by the Applicant in his capacity of Commissioner of Income Tax (Appeals), Bhubaneswar. The aforesaid communications bear testimony to the fact that the Applicant while discharging his duties of Commissioner of Income Tax (Appeals) faced difficulties and hardships because of lack of proper assistance from the Assessing Officers. It is to the credit of the Applicant that despite these difficulties, he did his utmost in ensuring the quick disposal of the appeals.

Copies of the communications dated 3.8.2001, 6.8.2001, 31.10.2002, 9.11.2001 and 28.11.2001 are annexed as ANNEXURE-9 colly.

4.35 That moreover notwithstanding the fact that the Applicant was facing difficulties in ensuring quick disposal of the appeals because of lack of cooperation from the Assessing Officers, the Government of India,

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office of the Commissioner of Income Tax vide D.O. letter dated 12/13.6.2001, D.O. letter dated 6.8.2001 and memorandum dated 3.8.2001 exerted the pressure on the Applicant for quick disposal of the high demand appeals. In the aforesaid D.O. letters, the Applicant was directed to dispose of specified number of high demand appeals within the stipulated period. It is, therefore, seen that the Applicant was expected to ensure quick disposal of high demand appeals. It is, therefore, unfortunate that without any just and sufficient reasons, the Respondents in the present case are putting the blame on the Applicant for quick disposal of the high demand appeal in question.

Copies of the D.O. letters dated 12/13.6.2001, 6.8.2001 and memorandum dated 3.8.2001 are annexed as ANNEXURE-A/10 colly.

4.36 That it is difficult to understand as to how any fault can be found with the Applicant for giving importance to the contents of an affidavit while deciding the appeal. In this connection, statements made in para 14.4 of the show cause memorandum are not only contrary to law, but the same are also frivolous and vexatious.

4.37 That in the present case, the order of suspension has been passed in malafide exercise of power primarily for the purpose of victimising the Applicant. The same is apparent from the chain of events as adverted to in the preceding paragraphs of the present application. The Applicant has reasons to believe that the order of

suspension is a part of systematic victimisation of the Applicant which has been continuing since last more than a decade. The officials were involved in the act of victimisation of the Applicant in the last many years are, precisely the officers who are behind the present move of placing the Applicant under suspension.

4.38 That the basic object and purpose of passing the order of suspension is to ensure that the concerned officer does not tamper with the evidence and obstructs in any manner the course of disciplinary proceeding. In the case of the Applicant, the issue in question is in regard to his deciding an appeal as Commissioner of Income Tax (Appeals), Bhubaneswar. The records in question are with the department. Since at present, the Applicant is posted as Chief Commissioner of Income Tax at Guwahati, it is difficult to understand as to how the Applicant would be able to obstruct the course of disciplinary proceeding against him or he would be able to tamper with the evidence. Hence, the impugned order of suspension does not serve any purpose and the same has been passed primarily for the purpose of humiliating the Applicant.

4.39 That while functioning as Commissioner of Income Tax (Appeals), the Applicant was exercising statutory powers in quasi judicial capacity and he was not subject to the administrative control of the Government. In such a situation, the disciplinary proceeding cannot be instituted against the Applicant.

It is noteworthy that against the order of Commissioner of Income Tax (Appeals), there is a remedy in the form

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of an appeal under Section 253 of the Income Tax Act. The order of Commissioner of Income Tax (Appeals) is a quasi judicial order and unless vacated under the provisions of the Income Tax Act, the same is final and binding and cannot be questioned by the Government through disciplinary proceeding. It is pertinent to mention that against the order passed by the Applicant as Commissioner of Income Tax (Appeals), Bhubaneswar, both the parties i.e. the department as well as assessee have filed cross appeals before the Income Tax Appellate Tribunal and the same are pending disposal. During the pendency of the aforesaid appeals, it is not open for the official Respondents to institute disciplinary proceeding against the Applicant and re-examine the legality of his order as Commissioner of Income Tax (Appeals).

4.40 That in the instant case, there is no prima facie materials showing recklessness or misconduct on the part of the Applicant in discharge of his statutory powers in quasi judicial capacity. The impugned order of suspension has been passed on extraneous consideration with an ulterior motive. The same is also foreign to the object and purpose for which the order of suspension is passed in service jurisprudence. The impugned order of suspension is, therefore, liable to be set aside and quashed by this Hon'ble Tribunal.

4.41 That since in the present case, the impugned order of suspension has been passed by order and in the name of the President of India, therefore, there is no

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appropriate adequate, alternative remedy available to the Applicant. As such, the Applicant is preferring the present application for the ends of justice.

4.42 That the present case is a fit case wherein this Hon'ble Tribunal may be pleased to stay the operation and effect of the impugned order of suspension dated 18.2.2002. It was received by the Applicant on 20.2.2002. The Applicant has made out a prima facie case of illegality and arbitrariness on the part of the official Respondents. The balance of convenience is in favour of the Applicant and he would suffer irreparable loss and injury if the interim order prayed for is not passed by the Hon'ble Tribunal.

4.43 That the Applicant files this application bonafide for the ends of justice.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS :

5.1 Because the impugned order of suspension is contrary to the very scheme of the CCS (CCA) Rules, 1965 and the same is also violative of Rule 10(2) of the Rules inasmuch as in the facts and circumstances of the case, no such order can be passed under Rule 10(2) of the Rules. Moreover, the facts and circumstances of the cases do not justify passing of such an order under the provisions of Rule 10(1) of the rules either. Therefore, the impugned order of suspension is illegal and liable to be set aside and quashed by this Hon'ble Tribunal.

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5.2 Because the impugned order of suspension has been passed arbitrarily in mala fide exercise of power. The same has been passed as a measure of punishment without providing any opportunity of hearing to the Applicant. The show cause memorandum dated 18.2.2002 was issued on the very date when the impugned order of suspension was issued. The show cause memorandum therefore was an empty formality as the Respondents had made up their mind to place the Applicant under suspension.

5.3 Because the impugned order of suspension has to be read in conjunction with the show cause memorandum and as such, the same is stigmatic in nature. The show cause memorandum makes baseless allegation against the Applicant and it is in the light of these very allegations that the impugned order of suspension was passed. In the facts and circumstances of the case, the official Respondents could not have passed the order of suspension without applying their mind to the nature of explanation submitted by the Applicant in response to the show cause memorandum.

5.4 Because the sequence of events and the systematic acts of victimisation against the Applicant clearly demonstrate that the impugned order of suspension is integral part of the continuing acts of victimisation on the part of the official Respondents. The power of placing the Applicant under suspension in the present case has been exercised for extraneous considerations with ulterior purpose and as such, the order of suspension is liable to be quashed and set aside.

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5.5 Because the allegations made against the Applicant in show cause memorandum are baseless, frivolous and vexatious and no action can be taken against the Applicant on the basis of the same. The impugned order of suspension, therefore, is without any justification as the genesis of the same lies in unfounded allegations. .

5.6 Because the Applicant as Commissioner of Income Tax (Appeals) was exercising statutory powers and as such he was not subject to the administrative control of the Respondents and as such, disciplinary proceeding cannot, therefore, be instituted against the Applicant in respect of an act or omission committed by him in the course of his employment as Commissioner of Income Tax (Appeals). Moreover, the allegations pertaining to an act or omission on the part of the Applicant are frivolous and vexatious and the same do not cast any reflection upon the reputation of the Applicant in a matter pertaining to integrity or his devotion to duty as a public servant.

5.7 Because the Applicant while functioning as Commissioner of Income Tax (Appeals) was exercising a quasi judicial function and the order passed by him in the said capacity could only be questioned under Section 253 of the Income Tax Act before the Income Tax Appellate Tribunal. The order of Commissioner of Income Tax (Appeals) is final and binding and cannot be questioned by the Government through disciplinary proceedings.

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5.8 Because even the order in question which was passed by the Applicant as Commissioner of Income Tax (Appeals), Bhubaneswar has been assailed by both the department and the assessee by filing cross-appeals before the Income Tax Appellate Tribunal. The Government cannot, therefore, examine the legality of the aforesaid order by instituting the disciplinary proceeding against the Applicant.

6. DETAILS OF REMEDIES EXHAUSTED :

The Applicant declares that he has exhausted all the remedies available to him and there is no alternative remedy available to him in law..

7. MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT :

The Applicant further declares that he has not filed any application, writ petition or suit regarding the matter in respect of which this application has been made before any Court, Authority or any other Bench of the Hon'ble Tribunal nor any such application, writ petition or suit is pending before any of them.

8. RELIEFS SOUGHT FOR :

8.1 Quash and set aside the order dated 18.2.2002 vide F No.C-14011/5/2002-V & L passed by the Government of India, Ministry of Finance, by order and in the name of the President.

8.2 Pass such other order/orders as may be deemed fit and proper by this Hon'ble Tribunal in the fact and circumstances of the case.

8.3 Cost of this application.

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9. INTERIM ORDER PRAYED FOR :

Pending disposal of the application be further pleased to stay the operation and effect of the impugned order of suspension dated 18.2.2002 passed by the Government of India, Ministry of Finance, Department of Revenue, by order and in the name of the President of India.

10.

The application is filed through Advocate.

11. PARTICULARS OF THE I.P.O. :

- i) I.P.O. No. : 76 550915
- ii) Date : 17-2-2002.
- iii) Payable at : Guwahati.

12. LIST OF ENCLOSURES :

As stated in the Index.

V E R I F I C A T I O N

I, Dr. J.K. Goyal, aged about 57 years, son of Shri M.L. Goyal, resident of Uzanbazar, Guwahati-1, Chief Commissioner of Income Tax (U/S), Guwahati, do hereby solemnly affirm and verify that the statements made in paragraphs 4.1 to 4.20, 4.28 to 4.32, 4.36 to 4.39, 4.42, 4.43. are true to my knowledge ; those made in paragraphs 4.21, 4.22, 4.23, 4.24 to 4.27, 4.33 to 4.35 are true to my information derived from records and the rests are my humble submissions before the Hon'ble Tribunal.

And I sign this verification on this the 5th day of March, 2002 at Guwahati.

Dr. J.K. Goyal

Annexure - A/1

Date

Orders

11.12.2001

Present: Mr. Rajinder Nischal for the Petitioner.
 Mr. P.P. Khurana, Sr. Advocate with
 Mr. Sachin Sood for the Respondent.

CW 7483/2001

Respondents promotion to the post of Chief Commissioner, Income Tax has remained stalled for a decade or more on a charge of making some excessive phone calls from his official Telephone. A charge memo was served on him on 16.7.91 which was followed by an enquiry finalised sometime in 1995. He was not given the inquiry report for which he made repeated representations but in vain.

Meanwhile petitioner convened DPC for making promotion to the post and adopted sealed cover procedure qua respondent. Apprehending that his juniors would be promoted to the post, respondent filed OA No. 590/01 for quashment of pending disciplinary proceedings. Tribunal allowed this OA by order dated 29.3.2001 granting petitioner two months to complete these proceedings. He then filed CCP 336/01 alleging non-compliance of this order and tribunal by order dated 6.8.01 directed petitioner to open the sealed cover and to grant provisional promotion to respondent within two months and to complete disciplinary proceedings within six months, meanwhile. Petitioner allegedly failed to comply with this order also and initiated steps for making promotion

Attested

Advocate.

Orders

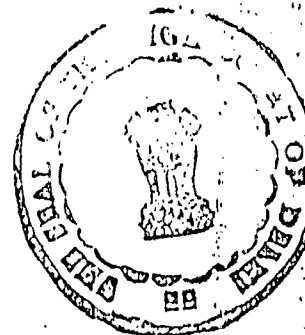
to the post. Respondent challenged this in OA 2966/2001 and obtained interim order dated 30.10.2001 restraining petitioner from making any promotion to the post till its order dated 6.8.2001 was complied with. Petitioner applied for modification of this order which was rejected and this order made absolute. Hence this petition.

The sequence of events discloses a sorry state of affairs. We would have dealt with this petition on merit but we are informed that petitioner was in the process of implementing tribunal order dated 6.8.2001 by passing appropriate orders shortly. Considering that this could end litigation between parties for good and to lend urgency to the matter, we direct the petitioner to pass the requisite orders pursuant to tribunal order dated 6.8.2001 within two weeks from receipt of this order. Mr. Rajinder Nischal is required to seek compliance of this order from the concerned Authority, and Registry is directed to furnish him a copy Dasti for this.

List on 10th January, 2002 for reporting instructions. Dasti.

December 11, 2001
da

Sd/-
B. A. Khan
Judge
Sd/-
Sharda Aggarwal
Judge
True Copy
Examiner



F.No.A.32011/9/2001-Ad.VI
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
.....


NEW DELHI, dated the 28th December, 2001

ORDER NO. 200 OF 2001

The President is pleased to promote Shri J.K. Goyal (69002), Commissioner of Income Tax (A)-I, Bhubaneswar to officiate as Chief Commissioner of Income Tax in the pay scale of Rs.22400-525-24500/- with effect from the date he assumes charge of the post and until further orders. His promotion is on provisional basis subject to the final orders to be passed in the pending disciplinary proceedings against him.

2. The seniority of Shri J.K. Goyal is fixed at Sl.No.29(A) below Shri M.H. Kherawala (Sl.No. 29) for the vacancies in the grade of Chief Commissioner of Income Tax relating to the year 2001-2002.

3. On promotion Shri J.K. Goyal (69002) is posted as Chief Commissioner of Income Tax, Guwahati.


(KANWAR RAJINDER SINGH)
DIRECTOR TO THE GOVERNMENT OF INDIA

Copy to:-

1. Officer concerned.
2. All Chief Commissioners/Directors General of Income Tax.
3. Chief Commissioner of Income Tax, Guwahati/Orissa.
4. Principal Chief Controller of Accounts, New Delhi.
5. Zonal Accounts Officer, CBDT, c/o CCIT, concerned.
6. BO'S office (DOP&T) w.r.t. their approval No. 18/5/2001-EO(SM-II) dated the 26th December, 2001.
7. Secretary, UPSC, w.r.t. their letter F.1/15(29)/2000-AP-2 dated 2.2.2001.
8. DIT(IT)/DIT(RSP&PR)/DIT(Audit)/DIT(VIG)/DIT(SHS)/ DIT(Recovery)/DIT(O&MS)/DIT(Spl.Inv).
9. PS to FM/MOS(R)/PS/Secretary(R)/AS(A)/Chairman, CBDT/Members, CBDT/JSs, CBDT/DSs, CBDT/Dlr(Hq. Admn)/Directors, CBDT/OSD to FM/MOS(R)
10. US(Hq. Admn)/DO (PER/DT)/Ad. VIA/Ad. VII/ITCC/OT/Computer Cell/Hindi Section.
- ✓ 11. V&L Section w.r.t. their Note F.No.C.18011/86/2001-V&L and O.M.F.NO.C.18011/29/2001-V&L dated 29.11.2001.


(KANWAR RAJINDER SINGH)
DIRECTOR TO THE GOVERNMENT OF INDIA

SC
31/12

Attested

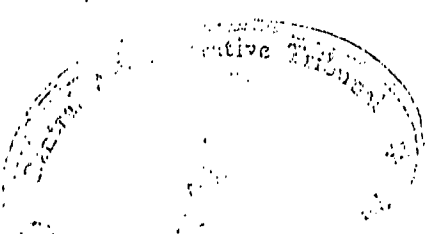
Advocate.

Date: 28th January, 2002.MA-177/2002 In
OA-590/2001

Present: Shri P.P. Khurana, Sr. Counsel with Shri Sachin
Sood, counsel for applicant
Shri V.P. Uppal, learned counsel for respondents

ORDER on MA-177/2002

OA-590/2001 of the applicant, therein, namely, Dr. J.K. Goyal was disposed of with direction to the disciplinary authority to pass final orders in the disciplinary proceedings expeditiously and within a period of two months from the date of service of that order. The respondents filed an MA-1457/2001 seeking extension of time for a further period of six months for disposing of the disciplinary proceedings. Vide order dated 6.8.2001, the MA was disposed of directing the respondents to open the sealed cover in respect of applicant's promotion and if he was found eligible to grant him a provisional promotion subject to final orders to be passed in the disciplinary proceedings. This was required to be done within a period of two months from the date of service of that order. The respondents were also granted extension of time of six months as prayed for concluding the disciplinary proceedings. The respondents have now come up with an Misc. Application 177/2002 seeking a further period of three months to complete the disciplinary proceedings. The learned counsel of the respondents, in the OA, stated that there has been disagreement between the advice of the CVC and that of the UPSC in the disciplinary enquiry against the applicant. Whereas UPSC has been consulted twice over the case has now been sent to the DOPT on 8.1.2002 for their advice as per procedure

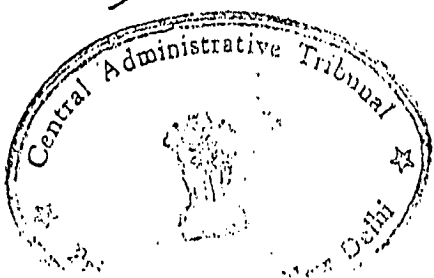
**Attested**

Advocate.

and on receipt of the DOPT advice, final decision shall be taken by the disciplinary authority for which the respondents shall require a total period of three months from 8.1.2002.

2. Shri P.P. Khurana, learned Sr. Counsel of the applicant stated that originally when the OA was disposed of, respondents were given two months only vide order dated 29.3.2001. That order was served on the respondents on 20.4.2001. The period of two months by which the respondents were supposed to complete the enquiry, therefore, expired on 2.6.2001. Thereafter the respondents were given an extension of six months time as prayed by them which too has expired on 19.12.2001. The learned counsel contended that as the respondents have caused inordinate delay in completing the enquiry against the charged officer and when the extended period for completing the enquiry has also expired, the respondents should not be given any further extension of time for compliance of the directions of this court and the enquiry should be ordered to be abated. The learned counsel stated that charge Memo against the applicant was issued on 16.7.1991 and that delay in the conduct of the proceedings or conclusion of the proceedings cannot be attributed to the charged officer. The learned counsel relied on State of Punjab and Others Vs. Chaman Lal Goyal (1995) 2 SCC 570 and State of A.P. Vs. N. Radhakishan (1998) 4 SCC 154.

3. Whereas we observed that the respondents in the OA have indeed caused lot of delay in completing the



Attested

[Signature]

disciplinary enquiry against the applicant, we find that they have now reached the final stage. It is in the interest of justice that this enquiry should be completed most expeditiously even though the respondents have now promoted the charged officer as Chief Commissioner of Income Tax vide order dated 28.12.2001 on provisional basis. We further observe that the second advice of UPSC for dropping the charges contrary to the advice of the CVC has been available with the respondents from 22.11.2001 while reference to DOPT for their advice has been made on 8.1.2002. After all this litigation and various directions from the court, the respondents have not been conscious of their role in concluding the enquiry in which inordinate delay has already been caused.

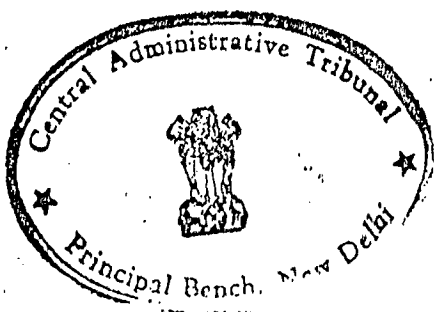
4. However, in the facts and circumstances of the case, MA-177/2002 is allowed and the respondents are granted six weeks time by way of last opportunity to complete the disciplinary proceedings against the charged officer Dr.J.K. Goyal from 8.1.2002, failing which the disciplinary proceedings against the charged officer shall abate.

5. MA-177/2002 is disposed of in the above terms.

(Kuldip Singh)
Member (J)

(V.K. Majotra)
Member (A)

cc.



Attested

Advocate.

महानिदेश प्रमाणित
CERTIFIED TRUE COPY
रु/दि/Date.....

Signature of Section Officer
महानिदेश प्रमाणित
Central Administrative Tribunal
New Delhi, New Delhi

From,

- 37 -

Annexure - A/4

J. K. Goyal,
Commissioner of Income-tax (Appeals)-I,
Aayakar Bhawan,
Rajaswa Vihar,
Bhubaneswar - 751 004
Telephone No. (0674) 582328

Date : 04.01.2002

To

Shri N. Vittal, IAS
Central Vigilance Commissioner,
New Delhi.

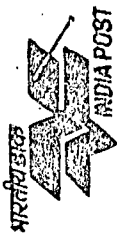
Sir,

Sub : Non finalisation of disciplinary proceedings for more than ten years by Central Board of Direct Taxes, Ministry of Finance, New Delhi - action against the erring Officer(s) - request regarding.

A memorandum bearing F. No. C-14011/59/91 dated 16.07.1991 was issued to me by C.B.D.T, Ministry of Finance prior to which a preliminary memo was issued on 19.04.1990. The following is the list of dates :

- | | |
|-------------------------------|--|
| 19.04.1990 | - Preliminary memo by Commissioner of Income-tax (not the Competent Authority) issued. |
| 30.05.1990 | - Reply filed. |
| 16.07.1991 | - Memorandum issued. |
| 30.09.1991 | - Reply to the memorandum filed. |
| 23.06.1993 | - Presenting Officer and Inquiry Officer appointed. |
| June, 1993 to September, 1994 | - Inspection of documents not given. Presenting Officer Changed. |
| 09.12.1994 | - Brief on behalf of P.O. given <u>without production/inspection of even the listed documents.</u> |
| 15.01.1995 | - Brief on behalf of C.O. given. |
| 17.05.1995 | - Report by I.O. given. |

Contd. Page..2



BHUBANESWAR NPO <751001>
SP EE866552451IN
Counter No:9, OP-Code:NPO
To: N VITTAL, C V C
NEW DELHI, PIN:110023
From: DR J K GOYAL, BSR
Wt:366grams,
Amt:60.00, 04/01/2002, 18:47:58
Have a nice day

Accepted

6
A. K. S. S. S.

28.08.1996 (received on 17.09.96)	-	I.O's report made available belatedly after more than 15 months.
22/30.10.1996	-	Reply to I.O's report given.
October, 1996 - January, 2002.	-	No action by Disciplinary Authority.

It may kindly be appreciated that the inquiry report dated 17.05.1995 has not been finalised despite a lapse of more than six and half years although the instructions of the C.V.C. are to the effect that the disciplinary proceedings should be completed expeditiously and within a period of six months whereas in the present case almost twelve years have passed.

2. The memorandum contained five articles of charge and the I.O. exonerated me of charges contained in Articles I, II, III & IV.

2.1 Article - V of the charge memo, which has been held by the Enquiry Officer as having been "very marginally proved" reads as under :

"Shri J.K. Goyal, had one official telephone No.24750 installed at his residence and another in his office. The expenditure on these telephone bills for the period 16th April, 1988 to 15th Nov., 1989 was extremely high as compared to the earlier period and as compared to the telephone bill of his counterpart, DCIT, Range-I, Jabalpur, for the same period. The span of control of Shri Goyal as Dy. Commissioner of Income-tax, Range-I, Raipur and that of the DCIT, Range-I, Jabalpur was almost equal and comparable.

Shri Goyal had informed the Commissioner of Income-tax, Jabalpur vide his letter No.R-1/Acct./Tel. Bill/88-89/2652, dated 9th December, 1988 that no residential telephone in his range had STD facility. But a look into his residential phone bill leads to a reasonable belief that STD facility was available on the phone. Shri Goyal by this act misinformed and misled the higher authorities. Thus, Shri Goyal being of the Rank of a Deputy Secretary maintained the STD facility on his residential telephone against the directions contained in Govt. of India, Ministry of

Contd. Page..3

Attested



Advocate.

Finance, Deptt. of Revenue, letter F.No. 1-34/23/87-IWSU dated 5th December, 1988. Shri Goyal also violated the guidelines issued by the Govt. of India, vide Cabinet Secretary's letter No.1/s(2)/AP-90/CA IV-8 dated 15th March, 1990. Shri Goyal, by these acts, violated the provisions of Rule 3(1)(i) and 3(1)(iii) of the CCS (Conduct) Rules, 1964."

2.2 The Enquiry Officer gave a finding that my residential telephone did not have STD facility and, therefore, the second limb of the above charge is not proved at all. As regards the first limb, even when the telephone bills of mine as well as of the D.C.I.T., Range-I, Jabalpur with whom a comparison was sought to be made were not produced though listed, it is beyond reason and comprehension as to how it can be held that the charge "of expenditure being high in comparison" was "very marginally proved" while at the same time, the I.O. giving the following finding :

"8.6 It is an admitted fact that the STD facility in the CO's residential telephone had been done away with in April, 1988. Therefore, the CO's intimation through his letter dt.9th Dec., 1988 in Ex.S.8 cannot be taken as a concealment of facts, because by that time the CO had already applied and paid for the discontinuation of the STD facility. On the same ground it cannot be said that the CO had violated the instruction coming from the Ministry of Finance, dt.5.12.88. From the table of expenditure as prepared by the PO at page 15 of his brief we find that the alleged high expenditure on account of local calls was incurred subsequent to April, 1988. Therefore, there is a reasonable element of doubt as to whether these calls were based on the wrong use of STD facility.

8.7 Again a comparison of the telephone bills of the CO and the DCIT, Jabalpur is not possible in the absence of the details of the bills relating to the DCIT, Jabalpur for the same billing period. The possibility of wrong billing by the P&T Deptt. which is a common feature in almost all parts of this country cannot also be ruled out. The CO states that he had taken up with the telephones Deptt. during Oct., 1988 to Dec., 1988 the incidence of possible wrong billing.

Contd. Page..4

Attested

Advocate.

8.3 The CO has explained why the comparison between his use of telephones and the use of telephones by the DCIT will not be very proper. Para 2.4 and para 3 & 4 at page 32-33 of the CO's brief is relevant - in this context.

8.9 However, although all the arguments given by the CO in his written brief have merit, yet apparently the expenditure which was incurred on the residential telephone of the CO on account of local calls, as brought out by the PO in table 2 of his brief, was comparatively high after taking into account the permissible free calls. Of course the evidence does not help us conclude that these local calls were disguised STD calls to Jabalpur, but, on the face of it, the expenditure appears to be on the higher side. To this limited extent the CO can be said to have somewhat overused his residential phone which was under his control. There is, however, no room for smelling a rat in this."

(extracts from I.O.'s report dated 17.05.1995)

2.3 It may not be out of context to bring to your notice that though listed in the charge memo, the telephone bills pertaining to the two ranges i.e. Range-1, Jabalpur and Range-1, Raipur (charge of which was held by me) were not produced and in the absence of production of telephone bills, amounts in which have been disputed all along, it is beyond comprehension to accept that the charge could at all be levelled, not to speak of its being proved.

2.4 At this juncture attention is also invited to annexure - II (article V of the memorandum dated 16.07.1991) wherein there are apparent contradictions as below because it is mentioned therein as under:

"The yearly expenditure on the official telephone of Sh. J. K. Goyal, D.C., Range-I, Raipur, was as under :

16.07.86 to 16.07.87	3,071.00
16.07.87 to 15.07.88	14,865.00
16.07.88 to 15.07.89	40,863.00
16.05.89 to 15.04.89	17,331.00

Contd. Page..5

Attested

Advocate.

Similarly, the yearly expenditure on the official telephone installed at Sh. Goyal's residence was as under :

16.04.86 to 15.04.87	23,485.00
16.04.87 to 15.04.88	30,091.00
16.04.88 to 15.04.89	84,320.00
16.04.89 to 15.12.89	98,266.00"

and at the same breath in the tables to follow, it has been mentioned as under :

Range	1988-89		1989-90	
	Office	Resi.	Office	Resi.
DC, Jabalpur	30,603	3,942	32,610	8,780
DC, Raipur (Sh. Goyal)	84,320	40,863	98,266	17,331

A further break up of the expenditure for his residential telephone yields startling results :

Period	Telephone No.24750			
	Rent	Local call	Trunk call	Total
16.05.88 to 15.07.88	140/-	5577.50	203.00	5920.50
16.07.88 to 15.09.88	140/-	13694.00	179.00	14014.00
15.09.88 to 15.11.88	--	5897.00	297.00	6334.50
16.11.88 to 15.01.89	--	4242.00	108.00	4490.00
16.01.89 to 15.03.89	--	4820.00	27.00	4987.00
16.03.89 to 15.05.89	--	4867.00	110.00	5117.00
16.05.89 to 15.07.89	--	2502.00	--	2642.00
Total	980/-	41601.00	924.00	45513.00"

How could the telephone bills in respect of same telephone for the same period be Rs.40,863/- and Rs.84,320/-? It is required to be explained by the disciplinary authority. Obviously, there are contradictions in the imputation of so-called misconduct. The Income-tax Department is fully aware that even if there is excessive use of telephone the same does not amount to misconduct otherwise nothing else explains the absence of initiation of disciplinary proceedings against Sri B.K. Sinha whose telephone bill as Chief C.I.T., Patiala exceeded Rs.2 lakhs for a period of two months, in respect of Sri Vijay Bhargav - C.I.T., Calcutta an amount of Rs.1,10,000/- allegedly incurred on his telephone was recovered in monthly instalments of Rs.1,000/- and in respect of Sri Vineet Sahay, C.I.T.(Appeals), Allahabad it was not even considered necessary to effect such recovery.

Contd. Page..6

Att.sted

[Signature]
Advocate.

3. Can it be concluded from the above that :

- (i) different treatment is given to different officers for the same alleged misconduct thus promoting nepotism, favouritism etc.
- (ii) nothing but ulterior motive explains the pendency of such proceedings in my case for more than a decade when the records of the C.B.D.T. do not even remotely suggest that all the proceedings initiated after initiation of proceedings in my case have continued to remain pending till now, and
- (iii) certain officers are liable to be subjected to disciplinary proceedings on account of deliberate, wilful, malafide delay in finalisation thereof.

4. I earnestly request your Honour to look into the sorry state of affairs because the cardinal principle of administration of justice is that "justice delayed is justice denied".

Thanking you,

Yours faithfully,

(Dr. J. K. Goyal)
Commissioner of Income-tax (Appeals)-I,
Bhubaneswar.

- Encl: (i) Copies of orders dt.08.10.1993,
21.01.1994, 02.03.1994, 20.09.1994.
(ii) Copy of letter dt.24.05.1994 of the C.O.
(iii) Copy of letter dt. 01.11.1996
(iv) Copy of report dt.15.05.1998 in respect of
Shri Vineet Sahai, C.I.T.(A), Allahabad.

Attested

[Signature]
Advocate.

F.No. C-14011/59/91- V&L
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, 20th February, 2002

ORDER UNDER RULE 15 OF CCS(CCA) RULES, 1965

Major penalty proceedings were initiated against Shri J.K. Goyal, DCIT, [presently Chief Commissioner of Income Tax (under suspension)], vide Memorandum No. C-14011/59/91-V&L dtd. 16.7.91, for various lapses committed by him as DCIT, Range-I, Raipur from the period from 16.4.88 to 15.11.89. An oral inquiry was instituted and the Inquiry Officer, vide his report dtd. 17.5.95, held only one charge, which related to excessive use of telephone installed at the residence of Shri Goyal, as proved.

2. After a careful examination of the matter in consultation with the UPSC and the DOP&T, the Disciplinary Authority is of the view that the facts and circumstances of the case do not warrant imposition of a penalty under the CCS(CCA) Rules, 1965.

3. Under the circumstances, the President is pleased to drop the disciplinary proceedings initiated vide Memorandum dtd. 16.7.91 against Shri J.K. Goyal, Chief Commissioner of Income Tax. This order, however, is passed without prejudice to any administrative action which may be taken for recovery of the excess telephone call charges from the officer.

By order and in the name of the President.

(Sandip Garg)

Under Secretary to the Govt. of India

Shri J.K. Goyal, CCIT (under suspension)
(through the CCIT, Guwahati)

Copy to

1. The CCIT, Guwahati.
2. The DGIT (Vigilance), New Delhi
3. The Secretary, UPSC, Dholpur House, Shahjahan Rd., New Delhi for information and w.r.t. the Commission's confidential letter No. F.3/322/97- SI dtd. 9.11.2001
4. The Secretary, Central Vigilance Commission, Satarkata Bhavan, Nr. Vikas Sadan, INA, New Delhi.
5. AD-VI/AD-VI-A/DT(P₂), C.B.D.T.
6. Office Copy.

(Sandip Garg)

Under Secretary to the Govt. of India

Attested

Advocate.

F.No. C-14011/5/2002-VTL
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes.

New Delhi: dated the 18th February 2002

SHOW CAUSE MEMORANDUM

Whereas during the period April 2001 to December 2001 Sri J K Goyal was posted as the CIT(Appeals)-I Bhubaneshwar, having appellate jurisdiction over the assessments completed by the DCIT (Inv) Circle-1, Bhubaneshwar and had the occasion to decide the appeal in the case of block assessment of Shri Karuna Kar Mohanty, assessed by the then DCIT (Inv) Circle-1, Bhubaneshwar.

2. Whereas in that case, as against Nil undisclosed income for the block period, assessment was made on a total income of Rs.9,92,59,143/- and the assessment order was served on assessee on 29.6.2001.

3. Whereas in that case the appeal memo in Form No.35 was filed on 12.7.2001 and was given appeal No.196/ORS/2001-2002. And on 16.7.2001 along with the appeal memo, assessee's application for stay of the demand raised in the block assessment was also forwarded to the AO for his report and Vide notice u/s. 250 dated 17.7.2001, the case was fixed for hearing on 24.7.2001. Copy of the notice shows that a copy was endorsed to the Assessing Officer for confirmation and necessary action.

4. Whereas the then DCIT, Investigation Circle-1 Bhubaneshwar (the AO) vide his letter No.DCIT/Inv./Circle-1/2001-02/91 dated 19th July, 2001, sent his report to Sri J K Goyal as the CIT(A), which was received on 20.7.2001 and is on the record of the CIT(A)'s file.

5. Whereas in that report, the Assessing Officer submitted that ample opportunity was given to the assessee and despite these opportunities, assessee failed to explain properly the transactions mentioned in the block assessment order, on the basis of which additions were made. Further, the assessee was also confronted with the results of inquiries made by him. The AO at the end submitted that contentions made by the assessee in the grounds of appeal and in the stay application are not factually correct or legally sound and therefore, requested that the grounds of appeal and stay application may be rejected.

6. Whereas at the end of his letter, the AO stated that the copy of ITNS-51 and Block Assessment records both were enclosed with this letter which was duly received in the office of Sri J K Goyal, CIT(A), on 20.7.2001, the said ITNS-51 is not found on the record of the CIT(A).

7. Whereas the then AO confirmed in writing that only one copy of the ITNS-51 was received, which was sent back to Sri J K Goyal without retaining any office copy with him and that he had sought personal appearance and also had requested that in case the CIT (Appeals) needed any clarification, further report should be called for from him.

8. Whereas the last sentence of the AO's letter dated 19.7.2001 in the record of the CIT(A)'s file has been underlined in red ink by the CIT(A)'s own hand and the words "copies of ITNS-51" have been underlined thrice by red ink-pen, which the CIT(A) has used for marking the rest of the letter and other documents, which, in the absence of any further correspondence on this issue, clearly suggests that the said ITNS-51 was received and seen by Sri J K Goyal as the CIT(A).

Attested

9. Whereas, as per the notings in the ordersheet of the CIT(A)'s file on 24.7.2001, Sri J K Goyal as the CIT(Appeals) heard the case without calling the Assessing Officer, who was thus not given an opportunity to rebut the contention of the assessee. Neither the seized material was called for examination by Sri J K Goyal as CIT(A) nor the AO was asked to give his comments on the written submission made by the assessee before Sri Goyal.

10. Whereas the CIT(A)'s order sheet reads that on 24.7.2001 the assessee was present and was partly heard and on 25.7.2001, the order sheet entry reads "the assessee is present with Sh. B.N. Mahapatra, Advocate, A/R". Next entry on the order sheet dated 13.8.2001 states in Hindi that the order is passed, which amply and clearly suggests that neither the AO was asked to be present nor was he afforded an opportunity to go through the submissions and evidences produced by the assessee before the CIT(A) and to present, before him, the Department's point of view.

11. Whereas the copy of the order was received personally by Shri K.K. Mohanty, assessee, as per the marginal acknowledgement dated 14.8.2001 on the body of the order sheet of the CIT(A)'s file, which is quite unusual because normally the appellate orders are despatched by post rather than handed over personally to the assessee.

12. Whereas apart from the fact that appeal against one of the biggest assessment orders in Orissa Charge was decided in a matter of two hearings, showing undue haste as the final order was passed within 32 days of the filing of the appeal, even the order sheet entry dated 25.7.2001 does not indicate that the case was fully heard. It is also pertinent to note that Shri K.K. Mohanty filed written submissions of 19 pages apparently on 24.7.2001, as the written submissions are signed by the appellant Shri K.K. Mohanty on 24.7.2001. These written submissions along with the Annexures were never sent to the AO for his comments or even for verification as to whether the Annexures filed were not new evidence or whether the text tallied with what was submitted with the AO.

13. Whereas the above sequence of events clearly shows total lack of application of mind and predetermination of issues by Sri J K Goyal as the CIT(A), as the assessment order spread over 29 pages, grounds of appeal comprising 96 grounds spread over 23 pages and written submissions spread over 19 pages filed on 24.7.2001, were all decided in two hearings on 24th and 25th July, 2001. It is also pertinent to note that the appellate order is dated 6th August, 2001 and this date was subsequently changed in hand to 13th August, 2001. Thus, as on 6th August, 2001, Sri Goyal as CIT(A) had already decided the issues against the Department and yet did not give an opportunity to the AO till 13th August, 2001, when the order was finally signed. It is also pertinent to note that at no stage before passing of the order did CIT (Appeals) call for the seized material and examine it or cause it to be examined.

14. Whereas even on merits, Sri J K Goyal committed gross irregularities in deciding the following issues :

14.1 The AO had found large discrepancies in the quantum of contract work reported by the assessee and the figures obtained by him from the Govt. Agencies, which awarded the contract, and which were duly confronted with the assessee in the course of assessment proceedings. The aggregate of the discrepancies was over a crore of Rupees. Though Sri Goyal as the CIT(A) has reproduced the details from the assessment order, in para-13 of his order, he accepted the assessee's version in a summary manner stating in Para - 13.1 "The above explanation is plausible and has not been gone through or cross checked by the AO before taking an adverse view on the basis of show cause notice dated 30.5.2001. In the circumstances, the additions made on account of such Table-1 by the Ld. AO are hereby deleted."

Attested

If the only ground on which the deletion has been made by Sri J K Goyal, as the CIT(A), is that the explanation of the assessee was not cross checked by the AO, Sri Goyal, as the CIT(A), is all the more guilty of deleting the additions without either cross checking the explanations himself, and giving any specific findings on each item on merits or by remanding the matter to the AO. As observed by the Supreme Court in the case of Kapoorchand Shrimal Vs CIT (131 ITR 451, 460 (SC)), which was followed in a

number of judgements thereafter, the first appellate authority in such cases must verify the facts himself or restore the issue with the AO for further verification. These duties cast on the CIT(A) assume greater significance in the instant case because the AO had specifically sought personal hearing. No such procedure was followed by Sri J K Goyal in deciding the above referred appeal.

14.2 Similarly in para - 13.3 onwards Sri J K Goyal, as the CIT(A), has blindly accepted the version of the assessee without seeking AO's version. Further, the fact that he, as the CIT(A), did not even prefer to call for the seized materials on the basis of which additions were made and with reference to which the assessee gave his explanations, (thus without himself verifying the seized materials) and also without obtaining the explanation from the AO, shows that Sri Goyal as the CIT(A) failed to observe the most elementary rules of decision making by an appellate authority and thus bestowed favour to the assessee and caused loss to the Revenue.

14.3 In the course of search, two audited sets of final accounts giving different figures relating to the assessee's business for the same period, i.e. F Y 96-97 and F Y 97-98, were found. The assessee's explanation was that the Balance Sheets which gave the higher figure were fictitious and were prepared with a view to obtain Solvency Certificates and higher credit limits from banks, etc. Apparently, the Chartered Accountant, who had signed the Balance Sheet was also examined. He said that the Balance Sheet giving higher figure was a correct one in so far as it was prepared on the basis of data and documents provided by the assessee himself. The AO also obtained copies of both the Balance Sheets, giving higher figures, from the Bank of India, Sahid Nagar Branch, Bhubaneswar. These copies bear the official stamps of Bank of India. The AO relied on the balance sheets which gave the higher figure, as also corroborated with the copies obtained from the Bank of India, and made additions. In para-3 of the appellate order, Sri J K Goyal, as the CIT(A), has given the submission of the assessee and implicitly accepted his contention that the Balance Sheet giving higher figure was only prepared on the basis of estimation. Secondly, as the CIT(A), Sri Goyal in his own hand, in red ink, has inserted a sentence stating "The AO also did not obtain the copies of Balance Sheet furnished to the Bank", ignoring the fact that copies of the balance sheets referred to by the AO were in place in the assessment record itself and the same bear the stamp of Bank of India, Sahid Nagar Branch, Bhubaneswar, as the AO obtained the same from that bank through Inspector of Income Tax.

14.4 In para-11 Sri Goyal, as the CIT(A), after referring to the affidavits of the assessee filed on 7.6.2001 and also to FIR dated 2.7.99 filed with the Police, observed that "It is a settled law that the contents of an affidavit cannot be rejected outright unless the deponent has been examined and it is brought on record during the course of examination that such contents are wrong, in which case the deponent can also be proceeded with for perjury. No such thing was done. Even the Ld. CA, Shri B.N. Subudhi, who was examined by the AO (such examination was not available in the case record) was not subjected to explain as to how two sets of financial affairs were signed by him for the same period in respect of the same appellant." However, it is also a settled law that on all issues considered by the AO, jurisdiction of the CIT(A) is co-terminus with that of the AO. If the AO, who was a junior officer and clearly was under lot of pressure of work, could not afford such cross examination, Sri Goyal, as the CIT(A), was duty bound himself to do so or cause it to be done by the AO. No such procedure was followed by him while deciding the above referred appeal.

14.5 The aforesaid observation is in fact contrary to the factual position obtaining from records. In fact, the A.O. did put the following questions to Sh. Subudhi, CA and his answers were as follows (as excerpted from his statement on oath recorded by the AO on 01-12-2000) :

"Q.8 : Please refer to your answer to question No.7 above. Please specify what are the informations/materials supplied by Sri Karunakar Mohanty for preparation of proforma balance sheet and audited balance sheet as on 31.3.97 and 31.3.98 and as stated above while preparing the proforma balance sheet as on 31.3.98, have you verified the true and

Assessee

correct information as supplied by Sri Karunakar Mohanty to you while the audited balance sheet for year ending 31.3.97 substantially differed in quantum of assets/liabilities as mentioned in proforma balance sheet for 31.3.97.

Ans. : The proforma balance sheet for 31.3.97 was prepared as per the list of assets/liabilities furnished by Sri Karunakar Mohanty at the time of preparation of the proforma balance sheet. But the audited balance sheet was prepared as per the records furnished to us.

As the assessee had promised to furnish the records in support of total assets/ liabilities at the time of audit, relying on the clients undertaking, the proforma balance sheet was prepared for 31.3.98.

Q.10 : As a certified auditor of ICAI, did you verify the assets and liabilities mentioned by Karunakar Mohanty for preparation of proforma balance of 31.3.97 and 31.3.98?

Ans. : The proforma balance sheet is subject to audit and certification later, when the audited balance sheet is prepared. We have only prepared proforma balance sheet for 31.3.97 and 31.3.98 and signed the same as it was prepared by us based on the information provided by Shri K.K. Mohanty at that time. The details were not verified at the time of preparation of proforma balance sheet as same was not provided by Shri K.K. Mohanty at that time and to be furnished later at the time of audit.

Q.11 : Please produce those informations which were furnished to you for preparation of proforma balance sheet as on 31.3.97 and 31.3.98?

Ans. : I am unable to produce the same now and I will produce the same by 15th Dec.'2000.

(The above information was never supplied)

Q.12 : As a certified auditor, did you ask Sri Karunakar Mohanty regarding substantial difference of assets/liabilities as mentioned by you in the proforma balance sheet as on 31.3.97 and 31.3.98 vis-a-vis those of audited balance sheet as on 31.3.97 and 31.3.98? If so, what are the explanations given by Sri Karunakar Mohanty to you?

Ans. : We did ask him about the difference in the assets and liabilities in both the balance sheets.

As I remember, he had explained that due to some documentation problem, he could not produce the records in support of all the assets and liabilities. I don't remember any specific detail now.

Q.14 : Please refer to your answer to question No.13. Do you confirm actual gross understatement of value of assets possessed by Karunakar Mohanty but not shown to you in terms of supportive details in proforma balance sheets vis-a-vis audited balance sheets as on 31.3.97 and 31.3.98?

Ans. : Yes, I do confirm that when I prepared and signed the proforma balance sheet as on 31.3.97 and 31.3.98, I thought it to be true and correct on the basis of informations supplied by Sri Karunakar Mohanty to me. However, on preparation of audited balance sheet on 31.3.97, I pointed out to Sri Karuna Kar Mohanty regarding the gross understatement of the values of assets as informed by said Sri Mohanty, while preparing the proforma balance sheet on 31.3.97 and Sri Mohanty despite our repeated request, did not supply those supportive details regarding the value of assets as per the proforma balance sheet as on 31.3.97. "

Attested

The above examination clearly reveals that assessee was duty bound to explain the variation in the two balance sheets which he never did in the course of assessment or the appellate proceedings. And yet, the CIT (A) without any basis deleted the addition by simply discrediting the balance sheets filed with the Bank.

14.6 It is also noted that Sri J K Goyal, as the CIT(A), has himself observed that the examination of the CA was not available in the case record nor any copy of it found placed in the appellate records and yet he gave a finding that relevant question was not put to Shri Subudhi, C A. Thus, Sri Goyal's bias and mala fide becomes clear in his relying on a self serving report filed by the assessee with the police and also on the fact that the assessee was not cross - examined by the AO. He totally ignored the examination of the C A which brought out the culpability of the assessee. As CIT(A), in para 11.2 of his order, Sri Goyal simply accepted the assessee's version that the proforma Balance Sheet duly signed by the CA was a self - serving balance sheet prepared with a view to obtain higher credit limit from the banks. Even this view is contradictory to the ratio of the decision of the Gauhati High Court in the case of Dhansiram Agarwalla Vs. CIT(1993) 201 ITR 192), which has also been impliedly affirmed by the Honourable Supreme Court as the SLP against the said Judgement of the Hon'ble Gauhati High Court has been dismissed by the Supreme Court.

15. Whereas there are other similar irregularities in the appellate order where the version of the assessee has been blindly accepted without cross verification from the seized materials and without obtaining a report of the AO on the written submission filed by the assessee on 24.7.2001, which have been enumerated as under :

15.1 The AO made additions of Rs. 19,67,693/- and Rs.7,48,055/- representing undisclosed investment in purchase of granulator and a mix plant respectively. The AO relied on seized paper which suggested that these machineries were purchased from one Utkal Stone Crusher and Everest Engineering Company. The assessee furnished an affidavit that these items had not been purchased by the assessee and the additions made on these accounts were deleted by Sri J K Goyal as the CIT(A). In this case, as is evident from many other incidents cited above, it was one person's version against another and in such a situation, the only course open before Sri Goyal as the CIT(A) was to collect necessary information from the alleged sellers of these machineries to find out whether those were actually purchased by the assessee or were only in the nature of proposals. Instead of arriving at the true nature of transaction as the first appellate authority, Sri Goyal again placed total reliance on the assertion made by the assessee, totally ignoring the information contained in seized papers.

15.2 In seized papers marked as KCP-6, page-1 and KCP-24, page-6, there was reference to investments of Rs.2,70,000 and Rs.2,31,000/-, total amounting to Rs.5,01,000/-, for financial year 1997-98 and the AO proposed, in a show cause notice issued and served to the assessee, to add this amount as undisclosed investments. The assessee, in his reply, mentioned that unless the original papers or photocopies were made available to him it would not be possible to offer any explanation on this issue. In short, there has been no rebuttal by the assessee of the stand taken by the AO ; the assessee only expressed his inability to offer any explanation in absence of photocopies being made available. The assessee had already taken photocopies of necessary seized papers earlier and since this process was completed long back, the AO did not allow photocopies of these documents to be given separately to the assessee. During appellate proceedings, this matter was reiterated by the assessee and Sri J K Goyal, as the CIT(A), deleted the addition without considering the evidence in the seized papers. As mentioned earlier, the assessee has not rebutted the findings in the seized papers and, therefore, Sri Goyal's action, as CIT(A), in simply deleting the said addition without considering the evidence available in seized record, was totally unwarranted.

15.3 In an order determining undisclosed income at Rs.9,92,59,143/- Sri J K Goyal, as CIT(A), has deleted the entire additions except two items (Rs.3,50,000+Rs.4,18,000) totalling Rs.7,68,000/-. While confirming these additions, he has mentioned that four bank slips were seized from the residence of the appellant and, as per presumption laid down u/s.132(4A), the burden lay on the appellant to claim that he had nothing to do with the same. It is not understood as to why the same reasoning and test have not been applied by Sri Goyal, as the CIT(A), to the other issues involving much larger revenue stakes, such as

Attested

[Signature]

Advocate

seized material reflecting discrepancies on account of unaccounted expenditure amounting to Rs.22,06,000/-, unaccounted sale of cement and steel amounting to Rs.12,36,180/- and inflation of expenditure to the tune of Rs.80,09,159/, seized either from the assessee's own premises or from the premises of the accountant who maintained assessee's books of accounts.

From the above, it appears that Sri J K Goyal, while functioning as CIT (Appeals) - I, Bhubaneshwar, passed the above referred appellate order in unseemly hurry, without properly appreciating the evidences contained in seized papers and without affording any opportunity to the AO to be heard as prescribed under the Act. J K Goyal is hereby given an opportunity to say what he may have to say, to explain his above mentioned actions. His explanation, if any, should be made in writing and submitted so as to reach the undersigned not later than 15 days from the date of receipt of this memorandum by Shri J K Goyal.

1
2
3


(Sandip Garg)

Under Secretary to the Govt. of India

✓ Shri J.K. Goyal,
Chief Commissioner of Income Tax,
Guwahati.
(Through DIT(Vigilance), Kolkata)

Copy to :

1. DIT(Vigilance), Kolkata alongwith the copy meant for Shri J.K. Goyal, CCIT, Guwahati.
2. V&L Section, CBDT, New Delhi.
3. US(AD-VI)/US(AD-VI-A)/DT(Per.), CBDT, North Block.
4. Secretary, CVC, New Delhi.
5. office copy.

(Sandip Garg)
Under Secretary(V&L)

Attested


Advocate.

257, North Block, New Delhi
Dated 18th February 2002

Order Under Rule 10(2) of the CCS(CCA) Rules, 1965

WHEREAS a disciplinary proceeding against Shri J.K.Goyal, Chief Commissioner of Income Tax, Guwahati is contemplated.

Now, therefore, the President in exercise of the powers conferred by subrule (1) of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, hereby places the said Shri J.K.Goyal under suspension with immediate effect.

It is further ordered that during the period that this order shall remain in force the headquarters of Shri J.K.Goyal, Chief Commissioner of Income Tax should be Guwahati and the said Shri J.K.Goyal shall not leave the headquarters without obtaining the previous permission of the undersigned.

(By order and in the name of the President of India)

(Sandip Garg)

Under Secretary to the Government of India

✓ Shri J.K.Goyal,
CCIT, Guwahati (under suspension)

(Through DIT (Vig.), Kolkata)

Copy to:-

1. The Director General of Income Tax (Vig.), New Delhi
2. The Director of Income Tax (Vig.), Kolkata
3. Deputy Secretary Ad.VI, CBDT, New Delhi

(Sandip Garg)

Under Secretary to the Government of India

Attested

S
Advocate.

केन्द्रीय प्रत्यक्ष कर बोर्ड
राजस्व विभाग, वित्त मंत्रालय
भारत सरकार

Central Board of Direct Taxes
Department of Revenue, Ministry of Finance
Government of India
North Block
नई दिल्ली New Delhi-110 001
Tel. : 301 2648

A. Balasubramanian
CHAIRMAN

My Dear *D.N.S. Sinha,*

20th September, 2000.

I am writing this letter to bring to your notice the very low level of disposal of appeals during the month of July, 2000 by the CsIT(Appeals). It is seen from the All India Summary Statistics that 201 CsIT(Appeals) all over India have disposed of 6836 appeals in July, 2000. It is also noted that till 31.7.2000 the progressive disposal is only 22,833, giving an average of 114 appeals. In other words in four months the average disposal is 114. The monthly average is less than 30. This is against the average disposal per month expected at 60.

You will agree that the performance by the CsIT(A) could not be said to be encouraging. It is more so in the present context when we are undertaking a restructuring of the Department giving out the promises of increasing the productivity of performance at all levels. Our proclaimed professional approach to matters of administration may come under question.

Only in few charges the average disposals have been at the expected level of 60 per month. In all the other charges the poor performance has to be attributed to the lack of supervision by the CCsIT. I would expect the CCs immediately to review the performance of each of the CIT(A) every month and ensure that the CsIT(A) dispose of sufficient number of appeals depending on the nature of the appeals. It would be the responsibility of the CC to ensure that the disposal of appeals is kept up to the minimum expectations. CCsIT will bear in mind that these appeals pending include the transfer of appeals from the Dy. Commissioners, which are of minor nature.

CCsIT may also remove the apprehension in the minds of some CIT(A)s that the promotions prospects may be affected in terms of the number of CsIT(A)s' posts. This could hardly be a consideration. Further, having regard to the pendency of appeals as on 1.4.2000 amounting to 1,89,603, on an average each CIT(A) has got nearly 950 appeals which is more than the disposal of 15 months. The idea of mentioning this is to disabuse the thinking in the minds of some of the CIT(A)s in this direction.

I would expect you to devote considerable time of yours in supervising the disposal of appeals by CsIT(A) and adding few lines in this regard in your monthly DO letter to your zonal Member/Chairman.

Yours sincerely,

A. Balasubramanian
(A. BALASUBRAMANIAN)

Shri D.N.S. Sinha,
Chief Commissioner of Income-tax,
Bhubaneswar.

Attested

Advocate.

(A) - 52 -

F.No.261/1/99-ITJ
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, dated 28.09.1999

OFFICE OF THE COMMISSIONER OF
INCOME-TAX (APPEALS) I

7 APR 2000

BHUBANESWAR
ORISSA

All Chief Commissioners of Income-tax,
All Directors General of Income-tax.

Sub:- Disposal of appeals by Commissioners of Income-tax (Appeals) -
Regarding.

Sir,

The norms for disposal of appeals by Commissioners of Income-tax (Appeals) were last dealt with in Board's Instruction No. 1895 dated 11.8.92. During the current financial year, disposal of appeals does not form part of the Central Action Plan. It does not follow that there should be no monitoring at all the quantum of disposals by the Commissioners of Income Tax (Appeals). The Chief Commissioners of Income Tax/Directors General of Income Tax should ensure that Commissioners of Income Tax (Appeals) dispose of 60 appeals per month on an average in their charges. To achieve this rate of disposal, the Chief Commissioners/Directors General of the region would be free to fix individual targets for Commissioners of Income-tax (Appeals) having regard to the nature of cases with that particular Commissioner of Income-tax (Appeals).

2. The Chief Commissioner of Income-tax/Directors General of Income Tax may also redistribute the work amongst various Commissioner of Income-tax (Appeals) in such a way that the pendency is evenly distributed.
3. The report as required in Instruction 1906 dated 18.5.93 may still be sent to Director (RSP&PR) in the same format.
4. This issues in supersession of all existing Instructions issued on the subject so far.

Yours faithfully,

(Sandip Pradhan)

Under Secretary to the Govt. of India
Tel.3016364

E.mail Address: CBDTJUDL@FINANCE.DELHI.NIC.IN

Attested

Advocate.

53
Copy to :-

1. The Chairman, Members and all other officers in CBDT of the rank of Under Secretary and above.
2. The Director of Income-tax (RSP&PR), Mayur Bhavan, New Delhi for printing in the quarterly tax bulletin and for circulation as per his usual mailing list.
3. The Comptroller & Auditor General of India (40 copies).
4. The Director of Income-tax (Vigilance), Mayur Bhavan, New Delhi.
5. Joint Secretary & Legal Adviser, Ministry of Law, Justice & Co. Affairs, New Delhi.


(Sandip Pradhan)

Under Secretary to the Govt. of India

No. CC/ITJ/S/5/RSP/2020.



आयकर आयुक्त अपिलीय, भुवनेश्वर, ओडिसा
COMMISSIONER OF INCOME TAX (APPEALS)
BHUBANESWAR, ORISSA

DR. J. K. GOYAL

डी. ओ. सं.

D.O. No. CIT(A)-I/Misc./2001-02/ 36

दिनांक

Dated, the 03rd August, 2001.

Dear Shri

Sub : D.O. for the month of July, 2001 - regarding.

A batch containing 29 appellate orders has already been sent to the C.I.T., Bhubaneswar.

2. Segregation of pending appeals, as desired in your Office letter No.CCIT/Adm(GI)-IV/06/2001-2002.4181-83 dated 05.07.2001 has already been completed which was communicated also through this office letter dated 12.07.2001. The same is awaiting your Honour's kind instructions.

3. The compliance in respect of appearance by the A.O.s and also making available the case records has once again been noticed to be extremely poor. For the hearings which commenced from 31.07.2001 the detailed lists were sent by the assistant of this office to the concerned A.O.s on 16.07.2001 with copies endorsed to the concerned C.I.T.s and Addl. Cs.I.T. but none of the A.Os till date appeared nor any case file was made available (copies enclosed for your ready reference).

Contd..2

Attested

Advocate.

[2]

4. I am also serious about Board's concern over disposal of pending high demand appeals by 31.12.2001 and efforts are afoot in this direction. However, it is brought to your kind notice that the Assistant as well as Stenographer of this office stand promoted as Inspectors and, therefore, if substitutes are not provided, the disposal rate would suffer.

Yours

6
(Dr. J. K. Goyal)

Shri V.D. Trivedi, IRS
Chief Commissioner of Income-tax,
Orissa,
Bhubaneswar.

Attested

Ad. Secy.



- 55 -

Telephone : 583645

582328

Fax : 583645

आयकर आयुक्त अपिलीय, भुवनेश्वर, ओडिसा
COMMISSIONER OF INCOME TAX (APPEALS)
BHUBANESWAR, ORISSA

DR. J. K. GOYAL

डी. ओ. सं.

D.O. No.

दिनांक

CIT(A)-I/Misc./2001-02/ ५४९

Dated, the

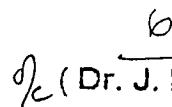
06th August, 2001.

My dear

You might recall that while functioning as Addl. C.I.T. (Hqrs.) of the Office of the Chief C.I.T., Bhubaneswar you had addressed a letter to the C.I.T.s(A) that ITNS - 51 was not being sent to the A.O.s so also memos of appeals and the appeals were being decided without calling for the case records. After receipt of that letter I have kept a close watch over such matters and I regret to write that the A.O.s, despite clear opportunity, do not send case records, do not return the ITNS - 51, do not choose to remain present during the course of hearing of appeal and what is more, in a number of cases when the notices for hearing are sent to them they do not even choose to return them in time after having got them duly served or otherwise. Such difficulties are on increase after re-organisation of the jurisdiction of the A.O.s and that is the precise reason that the appellate orders for the month of July, 2001 were not received by any responsible person in respect of I.T.O., Bhubaneswar Ward, D.C.I.T.s, Inv. Circle & Circle-III and Addl. C.I.T., Bhubaneswar Range. These orders are enclosed herewith for necessary action at your end.

2. You may like to discuss the matter with your A.O.s.

Yours


 (Dr. J. K. Goyal)

Shri S.P. Swain, IRS
Commissioner of Income-tax,
Bhubaneswar.

Encl. As above

Contd..2

Attested


Advocate.

[2]

Memo No.CIT(A)-1/Misc/2001-02/ 498
Dated, Bhubaneswar the 06th August, 2001.

Copy to the Chief Commissioner of Income-tax, Orissa, Bhubaneswar for
information.

P
(Dr. J. K. Goyal)

Attested

[Signature]
Adm. Secy.

GOVERNMENT OF INDIA
OFFICE OF THE COMMISSIONER OF INCOME-TAX (APPEALS)-I
BHUBANESWAR - 751 004

F.No.CIT(A)-I/Misc./2001-02/894
Dated, Bhubaneswar the 31st October, 2001.

To

The Jt. Commissioner of Income-tax
Range-I,
Bhubaneswar.

Sub : Hearing of appeals - sending of case records - Reg.

The following appeals were posted for hearing on 30.10.2001.

Sl.	ITA No.	Name of the appellant	A/y.
01.	68/Co./2001-02	Orissa State Warehousing Corpn.	1997-98
02.	138/Co./2001-02	M/s.Powmex Steels Ltd.	1995-96
03.	135/Co./2001-02	- do -	1996-97
04.	134/Co./2001-02	- do -	1991-92
05.	137/Co./2001-02	- do -	1992-93
06.	50/Co./2001-02	Orissa Forest Development Corpn.	1992-93
07.	53/Co./2001-02	- do -	1992-93
08.	51/Co./2001-02	- do -	1993-94
09.	54/Co./2001-02	- do -	1993-94
10.	57/Co./2001-02	- do -	1994-95
11.	55/Co./2001-02	- do -	1994-95
12.	56/Co./2001-02	- do -	1995-96

Not a single record was received in this office on the date of hearing nor the A.O's were prepared to render necessary assistance on the ground that the notices for hearing from your office were received in their office only a day before.

The A.O. also could not render any assistance during the course of hearing of the appeal in the case of Smt. Basanti Mohanty which was adjourned to 30.10.2001 from 15.10.2001 after part hearing and the reason given was that the A.O. was under the impression that the hearing was adjourned to 31.10.2001, although on 15.10.2001 the A.O. had signed the order sheet entry evidencing the adjourned date as 30.10.2001.

In the list of seventy appeals sent to you on 03.10.2001 with a request to communicate this office whether the jurisdiction over those files rests with you but despite my personal reminder to you, the report in only 29 cases was sent by you whereas there is no report in the rest.

You may like to look into the matter.

(Dr. J. K. Goyal)
Commissioner of Income-tax (Appeals)-I,
Bhubaneswar.

Attested

Advocate

- 58 -

[2]

Memo No.CIT(A)-I/Misc./2001-02/ 825
Dated, Bhubaneswar the 31st October, 2001.

Copy to the Chief Commissioner of Income-tax, Orissa, Bhubaneswar for
kind information.

(Dr. J. K. Goyal)

Commissioner of Income-tax (Appeals)-I,
Bhubaneswar.

The following appeals are pending for disposal on 31.10.2001

Attended

Advocate

ADMINISTRATIVE
GOVERNMENT OF INDIA
OFFICE OF THE COMMISSIONER OF INCOME-TAX (APPEALS)-I
BHUBANESWAR - 751 004

F.No.CIT(A)-I/Misc./2001-02/833
Dated, Bhubaneswar the 09th November, 2001.

To

The Joint Commissioner of Income-tax,
Range-1,
Bhubaneswar.

Sub : Non appearance of the A.O.s - reg.

During this week the A.O. mainly the Asst. Commissioner of Income-tax, Circle-1(i) did not appear in any of the appeals fixed before me for hearing. You may like to inform me the reasons for the same.

(Dr. J. K. Goyal)
Commissioner of Income-tax (Appeals)-I,
Bhubaneswar.

Attested

Advocate.

GOVERNMENT OF INDIA
OFFICE OF THE COMMISSIONER OF INCOME-TAX (APPEALS)-I
BHUBANESWAR - 751 004

F.No.CIT(A)-I/Misc.2001-02/ 890
Dated, Bhubaneswar the 28th November, 2001.

To

The Jt. Commissioner of Income-tax,
Range - 1,
Bhubaneswar.

Sub : Hearing of appeal - sending of records/
appearance by A.O.s - Matter regarding.

Please refer to your letters No.3573 and 3575 dated 13/15.11.2001 on the above subject.

It was desired by the C.I.T., Bhubaneswar that the notices be routed through the J.C.I.T. in the absence of jurisdiction specific files of different A.O. and that is why the notices are being sent to you. No A.O. appeared personally during the course of hearing of any of the appeals during this month nor has there been any information from any of the A.O.s to that effect.

(Dr. J. K. Goyal)
Commissioner of Income-tax (Appeals)-I,
Bhubaneswar.

Memo No.CIT(A)-I/Misc.2001-02/ 891
Dated, Bhubaneswar the 28th November, 2001.

Copy to the Commissioner of Income-tax, Bhubaneswar for information.

(Dr. J. K. Goyal)
Commissioner of Income-tax (Appeals)-I,
Bhubaneswar.

Attested

Advocate.

- 61 -

Annexure - A/10 colly



B.K.SAHU, IRS

भारत सरकार
आयकर आयुक्त कार्यालय
भुवनेश्वर

Telephone : 586921
586923 (D)
Res.
Fax : (0674) 586920

GOVERNMENT OF INDIA
OFFICE OF THE COMMISSIONER OF INCOME-TAX
BHUBANESWAR

Dear Goyal Sahab,

D.O.No.B&S.I-5/2001-2002/1261
Dated, Bhubaneswar the 12th June, 2001.

13/6

Sub:-Disposal of High Demand Appeals on
priority basis -request regarding-

While passing comments on dossier cases
exceeding Rs. One crore and above the Chief Commissioner of
Income-tax, Orissa, Bhubaneswar has directed me to request you
to take up the appeal cases as per the enclosed list for
hearing on priority basis.

With regards.

Yours

(B.K.Sahu)

Dr.J.K.Goyal, IRS
Commissioner of Income-tax (Appeals) -I
Bhubaneswar.

Attested

Advocate.

OFFICE OF THE COMMISSIONER OF
INCOME-TAX (APPEALS)

7 AUG 2001

OFFICE OF THE CHIEF COMMISSIONER OF INCOME-TAX, ORISSA,
BHUBANESWAR

GOVERNMENT OF INDIA

BHUBANESWAR.

No. CCIT/ORISSA/SBR-33/2001-02/ 6807-09
Dated, Bhubaneswar the 06th August, 2001.

To

- ✓ 1. The Commissioner of Income-tax (Appeals)-I,
Bhubaneswar.
2. The Commissioner of Income-tax (Appeals)-II,
Bhubaneswar.
3. The Commissioner of Income-tax (Appeals),
Cuttack.

Sub: Disposal of High Demand & other appeals etc. -
Request regarding.

~~~~~

I have been directed to enclose herewith (i) list of cases over  
and of one crore and (ii) others for disposal by 30.09.2001 and  
30.11.2001 respectively. //

Please send a disposal list of High Demand Appeals by 15th of  
the succeeding month.

Yours faithfully,

*P.N. Sethi*

( P.N. Sethi )

Dy. Commissioner of Income-tax (Tech.),  
for Chief Commissioner of Income-tax, Orissa,  
Bhubaneswar.

Encl: As above.

Attested

*[Signature]*  
Advocate

OFFICE OF THE COMMISSIONER OF  
INCOME-TAX (APPEALS-I)  
BHUBANESWAR  
ORISSA

6 AUG 2001

GOVERNMENT OF INDIA,  
OFFICE OF THE COMMISSIONER OF INCOME-TAX,  
RAYAKAR BHAWAN, RAJASWA VIHAR, BHUBANESWAR

No. CIT/BBSR/2001-2002/ 2267  
Dated, the 3rd August, 2001.

To

1. The Commissioner of Income-tax (Appeals)-I,  
Bhubaneswar.
2. The Commissioner of Income-tax (Appeals)-II,  
Bhubaneswar.

Sir,

Sub : Disposal of high demand appeals.

I am directed to enclose herewith a list of appeals involving demand of Rs. 1 crore and above and to request you that those may be disposed of by 30th September, 2001.

Yours faithfully,

*S. P. Swain*

( S. P. Swain )  
Commissioner of Income-tax,  
Bhubaneswar.

Encl : as stated.

Memo No. CIT/BBSR/2001-2002/  
Dated, the 3rd August, 2001.

Copy to :

- (1) The Joint Commissioner of Income-tax, Range-I, Bhubaneswar and (2) The Joint Commissioner of Income-tax, Range-II, Bhubaneswar. They are directed to ask the Assessing Officers to represent the case before CIT(A) and in some cases they themselves may also represent the matter before the CIT(A).

*S. P. Swain*

( S. P. Swain )  
Commissioner of Income-tax,  
Bhubaneswar.

Appeal - I,

Attested

*[Signature]*  
22.8.2001.

8

- 64 -

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH ::: GUWAHATI

In the matter of -

OA No. 76/2002

Dr. J.K. Goyal

.....Applicant

- Vs -

Union of India & Ors.

.....Respondents

AND

In the matter of -

Written Statement for and on behalf of the Respondents No.

1, 2, 3 and 4.

I, Dhrubajyoti Chakraborty, Chief Commissioner of Income-tax, Guwahati, do hereby solemnly affirm and say as follows :-

1. That, I am the Chief Commissioner of Income-tax, Guwahati and fully acquainted with the facts and circumstances of the case. I have gone through a copy of the application and have understood the contents thereof. Save and except whatever is specifically admitted in the written statement the other contention and statements may be deemed to have been denied. I am competent and authorised to file this Written Statement on behalf of the respondents No. 1,2,3 and 4.

Contd.

Filed by:-  
Union of India  
Strongly  
Oppose the Claimant  
Addl. Central Govt.  
Standing Counsel  
8-4-02

2. That with reference to the statement made in paragraph 1 of the application, the respondents beg to state that the application is made against the order of suspension dated 18-02-2002. I beg to state that the suspension is not a punishment and as such the application deserves to be rejected as there is no cause of action.

3. That the respondents have no comments to the statements made in paragraphs 2, 3 and 4 of the application, these being matter of facts.

4. That with reference to the Statement made in paragraph 4.1 of the application, the respondents beg to state that the order of suspension was passed as per the provisions of Rule 10(1) of the CCS(CCA) Rules, 1965 and that the acts of omission and commission referred to in the show-cause Memorandum are not baseless. That the powers of Commissioner of Income-tax (Appeals) are statutory powers exercise in quasi judicial capacity and that there is a provision for appeal under Section 253 of the Income-tax Act, 1961, but the applicant committed several irregularities and did not follow the procedure and accordingly the order of suspension was passed. It is, further, stated that the order of suspension is as per the CCS (CCA) Rules and is not contrary to the principles of the service jurisprudence as alleged by the applicant. There is absolutely no malafide exercise of powers.

5. That the statements made in paragraph 4.2 of the application are matter of facts and hence no comments are offered.



6. That with reference to the statement made in paragraph 4.3 of the application, the respondents deny that there was more than a decade of systematic victimisation and harassment by the Official Respondents. The Order of Suspension was passed absolutely with reference to the acts of omission and commission as spelt out in the show cause Memorandum dated 18-02-2002.

7. That with reference to the statement made in paragraphs 4.4 to 4.11 of the application, the respondents beg to state that the matter under consideration has no relevance to the past events that have occurred when the applicant was Deputy Commissioner of Income-tax, Range-1, Raipur, Madhya Pradesh. The present order of suspension relates to the acts of omission/commission committed by the applicant as Commissioner of Income-tax (Appeals)-I, Bhubaneswar.

8. That with reference to the statement made in paragraphs 4.12 to 4.25 of the application, the respondents beg to state that the matter relating to DPC for considering the Commissioners of Income-tax for promotion to the grade of Chief Commissioner of Income-tax and subsequent filing of OA, CP, MA etc. by the applicant. This is again with reference to the proceedings arising out of inquiry with reference to the charge memo dated 16.07.1991. This is absolutely immaterial and irrelevant to the issue under consideration. Furthermore, the Disciplinary Proceeding initiated with reference to the memo dated 16.07.1991 was eventually dropped by the Government of India vide order dated 20.02.2002.

9. That the respondents have no comments to the statement made in paragraph 4.26 of the application.

10. That with reference to the statement made in paragraph 4.27 of the application, the respondents beg to state that the invocation of Rule 10(2) of CCS (CCA) Rules in the caption of the suspension order dated 18.02.2002 while reference has been made to Rule 10(1) of CCS (CCA) Rules in the body of the suspension order. It is a matter of fact that Rule 10(2) relates to situation when an Officer is deemed to be suspended, while Rule 10(1) relates to actual suspension orders, which may be passed under three situations. In the case of the applicant, the order of suspension is under Rule 10(1)(a). The reference to Rule 10(2) in the 'Caption' is an inadvertent error keeping in view the reference to the correct sub-rule in the body of the order. The applicant has been suspended under Rule 10(1)(a).

11. That with reference to the statement made in paragraph 4.28 of the application, the respondents beg to state that the stipulated period of fifteen days have been duly given to the applicant to submit his explanation. It is denied that the official respondents have acted with preconceived mind. It is also denied that the act of issuance of show cause Memorandum is an 'empty formality'. Suspension is an executive action. When allegations of a serious nature are received against an Officer, he can be suspended even before any charges are framed against him. The applicant has also been given further time to inspect relevant records and submit his show cause reply.

12. That with reference to the statement made in paragraph 4.29 of the application, the respondents beg to state that it is denied that the official respondents have acted arbitrarily or there has been no application of mind. The acts of omission and commission referred in the memorandum, contrary to the applicant's claim of being frivolous and baseless, are in fact extremely grave resulting in huge loss of revenue. It is strongly denied that respondents believe that the Commissioner of Income-tax (Appeals) should "lean in favour of the department" and any decision 'in favour of the assessee is an act of misconduct'. As stated in the Memorandum, the applicant as Commissioner of Income-tax (Appeals) committed gross irregularities. He did not give any opportunity to the Assessing Officer to present the case of the Department, accepted the submissions of the assessee without verifying the submissions of the assessee which were duly rejected by the Assessing Officer and passed the appeal order in haste without considering the evidence on record. The various irregularities and misconduct have been fully brought out in the Memorandum issued to the applicant.

13. That with reference to the statement made in paragraph 4.30 of the application, the respondents beg to state that the issue of opportunity given to the Assessing Officer while deciding the case under consideration. While it is a matter of record that 2 (two) notices dated 17.07.2001 and 17.07.2001 were sent to the Assessing Officer and that the Assessing Officer sent his report dated 19.07.2001, it has been stated by the Assessing Officer under oath that he had sought personal appearance. The

statements relating to procedural aspects like, most cases are decided without original records and copy of the notice and is not normally sent to the Assessing Officer that providing an opportunity to the Assessing Officer is more an exception than a rule is incorrect particularly keeping in view that this was a search case in which voluminous evidence adverse to the assessee was collected by the Department. The Income-tax Act lays down the procedure to be followed by the Commissioner of Income-tax (Appeals) before disposing appeal cases. Right to be heard has been expressly provided to the Assessing Officer by Section 250(2) of the Income-tax Act. Violation of the procedure would amount to gross irregularity.

14. That with reference to the statement made in paragraph 4.31 of the application, the respondents beg to state that the statement relates to issue of disappearance of ITNS-51 from the appellate file. Although the form is a non-statutory one, it gives effect to the mandatory provision of Section 250(1) of the Income-tax Act that requires the Commissioner of Income-tax (Appeals) to give notice to the Assessing Officers about the hearing of appeal. Thus, ITNS-51 is an official document, the placement of which has to be correct and proper. As in charge of Appeal Office, Commissioner of Income-tax(Appeals) has to ensure that all documents are placed in file and kept properly

15. That with reference to the statement made in paragraph 4.32 of the application, the respondents beg to state that it is a matter of fact that Assessing Officer was not given a chance to argue his case before the Commissioner of Income-tax(Appeals), as has been stated in the Memorandum.

16. That with reference to the statement made in paragraph 4.33 of the application, the respondents beg to state that it has been contended that the appeal order was passed keeping in mind the letter of the Chairman, Central Board of Direct Taxes (CBDT), dated 20-09-2000 and CBDT's Instruction No. 1973 dated 28-09-1999 that there should be speedy disposal of appeals. Speedy disposal of appeal has to be necessarily as per the provisions of law and after giving due opportunity to both the assessee and the Assessing Officer. The applicant's submission that IRS Officers are trained to decide appeals without being bothered about the nature of assessment order is denied. Appellate function is a quasi judicial function and it has to be carried out in fair manner after hearing both parties and deciding as per law. The nature of assessment order has a bearing on the disputed demand.

17. That with reference to the statement made in paragraphs 4.34 and 4.35 of the application, the respondents beg to state that the attempt of the applicant to draw attention of the Commissioner of Income-tax, Bhubaneswar and Joint Commissioner of Income-tax, Range-1, Bhubaneswar that Assessing Officers do not attend appeal hearings and do not render assistance to the Commissioner of Income-tax (Appeals). The letters referred by the applicant are matters of record. It is, however, of significance that this was a search case involving huge revenue in which the Assessing Officer had sent a letter to the Commissioner of Income-tax (Appeals) seeking opportunity to represent before him the case of the Department.

18. That with reference to the statement made in paragraph 4.36 of the application, the respondents deny that the statement made in paragraph 14.4 of the Show Cause Memorandum is contrary to law and frivolous and vexatious.

19. That with reference to the statement made in paragraph 4.37 of the application, the respondents vehemently deny that the order of suspension is a malafide exercise of power for the purpose of victimising the applicant. It is affirmed that the order of suspension has arisen wholly on account of gross irregularities committed by the applicant in deciding the appeal in the case of Karuna Kar Mohanty, as stated in the show cause Memorandum. It is denied that there has been any systematic victimisation lasting more than a decade being pursued by any official of the Department against the applicant.

20. That with reference to the statement made in paragraph 4.38 of the application, the respondents deny that suspension order is passed only when there is an apprehension of tampering of evidence or obstruction in the course of disciplinary proceeding. There are several other factors when order of suspension may be passed. It is denied that the order has been passed to humiliate the applicant.

21. That with reference to the statement made in paragraph 4.39 of the application, the respondents beg to state that this refers to the legality of initiating disciplinary proceeding against an Officer who was exercising

↑ powers in quasi judicial capacity. Contrary to the applicant's submissions, as Commissioner of Income-tax (Appeals) he was subject to administrative control of the Government. While the order itself of the Commissioner of Income-tax (Appeals) can not be questioned, but the manner in which appeal proceedings are conducted, is a matter of administrative scrutiny which has been exercised judiciously. The appeal proceedings are required to be conducted as per the relevant provisions of the Income-tax Act, 1961 read with Income-tax Rules, 1962 and serious violation of the procedural provisions is open to inquiry at any stage.

22. That with reference to the statement made in paragraph 4.40 of the application, the respondents beg to state that prima facie, there is enough material to show recklessness and misconduct of the applicant while discharging his statutory powers in quasi judicial capacity. It is denied that the order of suspension was passed on extraneous considerations and or with an ulterior motive. This order is not against service jurisprudence. It is not liable to be quashed or set aside.

23. That with reference to the statement made in paragraph 4.41 of the application, the respondents beg to state that the non-availability of any other remedy available to the applicant is not correct. Suspension is not a punishment. The applicant was required to give his reply to the show cause Memorandum within 15 days of its receipt so as to enable the Government to proceed further as per provisions of CCS (CCA) Rules. He has failed to do so. He has, however, been allowed further time to submit his explanation.

24. That, with reference to paragraph 4.42 of the application, the respondents deny that the applicant has made out a prima facie case of illegality and arbitrariness on the part of official respondents. Suspension is not a punishment. On the other hand, the order has been passed taking into account public interest and after due application of mind on the entire facts of the case. There is no justification for grant of an interim order of stay by the Hon'ble Tribunal.

25. That the respondents have no comments to the statement made in paragraph 4.43 of the application. The applicant is trying to delay the disciplinary proceedings by filing this application against his order of suspension dated 18-02-2002.

26. That, with reference to the statement made in paragraph 5 of the application, the respondents beg to state that suspension is not a punishment and as such there is no cause of action. There was a prima facie case for suspension of the applicant and the order of suspension is not violative of CCS (CCA) Rules. The order of suspension was passed with due application of mind and the rules. Considering the grave irregularities committed by the applicant, the order of suspension was necessary and in public interest.

27. That the respondents have no comments to the statement made in paragraph 6. This being matter of fact. Without prejudice, however, the applicant was required to reply to the show cause Memorandum so as to enable the Government to proceed as per the provisions of CCS (CCA) Rules. But the applicant has failed to do so.



28. That the respondents have no comments to the statements made in paragraphs 7 and 8 of the application.

29. That, the respondents beg to state that the order of suspension was made following a preliminary inquiry. It was believed that continuation of the applicant in service would not be in public interest. His leadership is likely to damage the Department's image and also the morale of the Officers of the Department. After considering all these aspects, it was decided to suspend him.

30. That, the applicant is not entitled to any relief so far and the application is liable to be dismissed with costs.

**Verification .....**

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## VERIFICATION

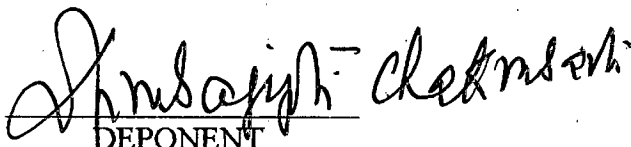
I, Shri Dhrubajyoti Chakraborty, working as Chief Commissioner of Income-tax, Guwahati do hereby solemnly affirm and state as follows :-

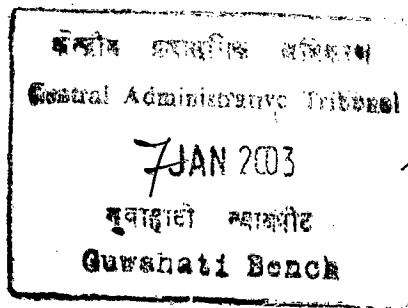
1. That, I am competent to file this verification on behalf of the respondents as authorised and I swear the same. I am also fully acquainted with the facts and circumstances of the case.

2. That, the statement made in this verification and in paragraphs of the accompanying written statement of defence are true to my knowledge, those made in paragraphs

Are being matters of records of the case are true to my information derived there from which I believe to be true and the rest are my humble submissions before this Hon'ble Tribunal.

I sign this verification on this day of April, 2002 at Kolkata.

  
DEPONENT



Filed by  
the applicant through  
Alsha Das.  
Advocate  
2/1/03

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL & GUWAHATI BENCH

O.A No. 76/2002

Dr. J.K. Goyal

- versus -

Union of India & Ors.

REJOINDER OF THE APPLICANT TO THE WRITTEN STATEMENT  
FILED BY THE RESPONDENTS NO.1, 2, 3 AND 4.

The Applicant in the above mentioned O.A.

begs to state as follows :

I, J.K. Goyal, aged about 58 years, son of Shri M.L. Goyal, Chief Commissioner of Income Tax (U/S), Fancy Bazar, Guwahati in the district of Kamrup, do hereby solemnly affirm and state as follows :

1. That I am the Applicant in O.A. No. 76/2002 and as such, well acquainted with the facts and circumstances of the case. I have received a copy of the written statement filed by the Respondents No.1, 2, 3 and 4, perused the same and have understood the contents thereof. Save and except the statements which are specifically admitted hereinbelow, all other statements made in the W.S. are hereby denied.

2. That after filing of the O.A. No. 76/2002 and during its pendency several developments in the case took place. It would be apposite to appraise this Hon'ble Tribunal of those facts as they have a bearing on the subject matter of the present case. These facts have

been stated in seriatim under the heading "preliminary statements of facts".

PRELIMINARY STATEMENTS OF FACTS

3. That in O.A. No. 76/2002, this Hon'ble Tribunal vide order dated 10.4.2002 stayed the operation of the order of suspension dated 18.2.2002 until further orders. It was however made clear by the Hon'ble Tribunal that it will be open for the Respondents to approach the Hon'ble Tribunal for alteration and/or modification of the interim order, if they are so advised. As per the order of this Hon'ble Tribunal, the case was listed for orders on 11.5.2002 for fixing a date of hearing.
4. That notwithstanding the interim order of this Hon'ble Tribunal dated 10.4.2002, the present Applicant was not allowed to discharge his duties as Chief Commissioner of Income Tax and the interim order of the Hon'ble Tribunal was not given effect to by the Respondents. Being faced with this situation, the present Applicant filed a contempt petition No. 21/2002 before this Hon'ble Tribunal under Section 17 of the Administrative Tribunals Act, 1985 read with Rule 24 of the Central Administrative Tribunal (Procedure) Rules, 1987.
5. That this Hon'ble Tribunal on 29.5.2002 issued notice in contempt petition No. 21/2002. However, immediately after issuance of notice in contempt petition No. 21/2002, the Respondents passed order No. 72 of 2002 dated 4.6.2002 transferring one D.

Chakraborty, from the post of Chief Commissioner of Income Tax-IV, Kolkata to the post of Chief Commissioner of Income Tax, Guwahati i.e. the post of the present Applicant. Strangely, in the order No. 72 of 2002 dated 4.6.2002, the post of the Chief Commissioner of Income Tax, Guwahati was shown as a vacant post.

Copy of the order dated 4.6.2002 is annexed as ANNEXURE-1.

6. That the order dated 4.6.2002 resulted in the Applicant filing the M.P. No. 79/2002 in C.P. No. 21/2002 before this Hon'ble Tribunal. The Applicant also filed a separate O.A. No. 181/2002 on 6.6.2002 assailing the legality of the order dated 4.6.2002 pursuant to which on the post of the Applicant at Guwahati, Mr. D. Chakraborty was sought to be transferred. This Hon'ble Tribunal vide its order dated 7.6.2002 admitted the O.A. No. 181/2002 and stayed the order dated 4.6.2002.

7. That thereafter on 14.6.2002, the Respondents filed W.P.(C) No. 3947/2002 before the Hon'ble Gauhati High Court assailing the legality of the interim order of this Hon'ble Tribunal dated 10.4.2002 passed in O.A. No. 76/2002 wherein this Hon'ble Tribunal had stayed the operation of the impugned order of suspension dated 18.2.2002. The Hon'ble Gauhati High Court vide its order dated 21.6.2002 admitted the writ petition and stayed the operation of the order of the Hon'ble Tribunal dated 10.4.2002 passed in O.A. No. 76/2002.

8. That in view of the interim order of the Hon'ble High Court dated 21.6.2002, this Hon'ble Tribunal vide its order dated 28.6.2002 closed the contempt petition No. 21/2002 and M.P. No. 79/2002 filed in the contempt petition. Further the O.A. No. 181/2002 was also dismissed by an order dated 6.8.2002 in view of stay order granted by the Hon'ble High Court.

9. That after the interim order of the Hon'ble High Court dated 21.6.2002 passed in W.P.(C) No. 3947/2002, the present Applicant was not only made to vacate his official accommodation at Uzan Bazar, but also not provided any alternative accommodation in new guest house and presently he is living in a room in a hotel. His residential telephone has also been taken away.

10. That the present Applicant being aggrieved by the interim order of the Hon'ble High Court dated 21.6.2002 passed in W.P.(C) No. 3947/2002 preferred a Misc. Case No. 1043/2002 in the aforesaid writ petition for vacation/modification of the interim order of stay dated 21.6.2002.

11. That the Hon'ble High Court vide its order dated 27.8.2002 disposed of the Misc. Case No. 1043/2002 and vacated the interim order dated 21.6.2002 pursuant to which the interim order of this Hon'ble Tribunal dated 10.4.2002 passed in C.A. No. 76/2002 was stayed.

12. That as a result of the order of the Hon'ble High Court dated 27.8.2002, the earlier interim order passed by this Hon'ble Tribunal on 10.4.2002 became effective and operative and consequently, the impugned order of suspension of the Applicant is no longer operative.

13. That the order of the Hon'ble Gauhati High Court dated 27.8.2002 resulted in total change of circumstances under which this Hon'ble Tribunal dismissed the O.A. No. 181/2002 vide its order dated 6.8.2002. In view of the changed situation, the reasons which impelled the Hon'ble Tribunal to dismiss the O.A. No. 181/2002 became non-existent. Therefore, it became necessary for the present Applicant to prefer the application for review of the order dated 6.8.2002 passed in O.A. No. 181/2002.

14. That the present Applicant accordingly preferred review application No. 5/2002 in O.A. No. 181/2002 under Section 22(3)(f) of the Administrative Tribunals Act, 1985. In the said review application, the Respondents have submitted their reply and the review application is pending disposal before this Hon'ble Tribunal.

15. That it is noteworthy that till this very date, the present Applicant has sent eight reminders, the last one being the reminder dated 16.10.2002 to the competent authority for giving opportunity to peruse

and/or inspect the relevant documents so as to enable him to submit an effective representation against the show cause dated 18.2.2002. However, despite the promise, neither the copies of those relevant documents have been made available to the Applicant nor he has been given an opportunity of inspecting the relevant file containing those documents. It is pertinent to mention here that the Respondent No. 4 vide letter dated 21.3.2002 had informed the Applicant that all the records for which a request was made by the Applicant are available with the Director of Income Tax (Vigilance), East Zone, Kolkata. The Applicant was, therefore, directed to approach the Director of Income Tax, East Zone, Aaykar Bhawan, 8th Floor, P-7, Chowringhee Square, Kolkata-700069 for inspecting the relevant documents in his office. It is stated that on 1.4.2002, the Applicant received the copy of the letter dated 21.3.2002 and immediately on 2.4.2002 he wrote to the Director of Income Tax (Vigilance), East Zone, Aaykar Bhawan, Kolkata for necessary instructions for inspection of relevant records and documents. The letter dated 2.4.2002 was followed by the reminder dated May 20, 2002, but there was no response. The Applicant also wrote to the Under Secretary, Vigilance, Central Board of Direct Taxes on 19.6.2002 in regard to the same matter, but from there also there was no response. As stated earlier, the Applicant by now has sent eight different reminders. The last reminder is dated 16.10.2002 which was sent to the Director of Income Tax (Vigilance), East Zone, Aaykar



Bhawan, Kolkata of which copy was sent to Under Secretary (Vigilance), New Delhi also.

Copies of letters and reminders showing the approach made by the Applicant for inspection of the relevant records and documents for filing the effective representation are annexed herewith and marked as ANNEXURE-2 colly.

16. That the Respondents instead of responding to the pleas of the Applicant that he be made available, the relevant documents so as to enable him to file an effective representation against the show cause notice, belatedly served upon him the memorandum of charge dated 28.10.2002. It is noteworthy that the memorandum of charge dated 28.10.2002 repeats the same allegations which were made in the show cause notice.

Copy of the memorandum of charge sheet dated 28.10.2002 is annexed as ANNEXURE-3.

17. That on receipt of the aforesaid memorandum of charge dated 28.10.2002, the Applicant submitted a representation dated 6.11.2002 highlighting his grievance and urged for the withdrawal of the same.

Copy of the representation dated 6.11.2002 is annexed as ANNEXURE-4.

18. That it is submitted that as highlighted in the aforesaid representation, the Respondents could not have issued the charge sheet at the time when the matter is subjudiced before the Hon'ble Tribunal and also having regard to the facts and circumstances

involved in the case. It is further submitted that the Applicant reserves his right of making an independent challenge to the said memorandum of charge.

19. That the memorandum of charge dated 28.10.2002 was followed by the order dated 18.11.2002 passed on the name of the President of India under the signature of Under Secretary to the Government of India, Ministry of Finance & Company Affairs, Department of Revenue. Pursuant to this order, in so-called compliance, of the order of this Hon'ble Tribunal dated 10.4.2002, the operation of the order of suspension dated 18.2.2002 was suspended with effect from 10.4.2002 till further orders.

Copy of the order dated 18.11.2002 is annexed as ANNEXURE-5.

20. That vide another order No. 181 of 2002 issued on the same date i.e. 18.11.2002, the Applicant is posted as Chief Commissioner of Income-tax (Officer-on-Special Duty), Guwahati with effect from 10.4.2002 until further orders.

Copy of the order No. 181 of 2002 dated 18.11.2002 is annexed as ANNEXURE-6.

21. That the Applicant reserves his right to assail the legality of the memorandum of charge dated 28.10.2002 and the order No. 181 of 2002 posting him as Chief Commissioner of Income Tax (Officer-on-Special Duty). The last order posting the Applicant as Chief Commissioner of Income Tax (Officer-on-Special Duty) is

apparently in violation of the interim order of this Hon'ble Tribunal. The effect of his stay on the order of suspension would naturally mean the restoration of status quo ante. However, vide order dated 18.11.2002, the Respondents have disturbed this status quo. Be that as it may, since the present case does not deal with the legality of the aforesaid two orders, therefore, the Applicant would be agitating these issues separately in different applications.

22. That like the show cause notice dated 18.2.2002, in the memorandum of charge also, the Respondents have basically made four allegations against the Applicant viz. (i) passing the appellate order in unseemly hurry, (ii) non-appreciation of evidence contained in seized papers, (iii) opportunity of hearing being not given to the Assessing Officer while passing the appellate order and (iv) submissions of the assessee were accepted without verification. The Applicant in his O.A. has elaborately dealt with these allegations and he craves leave of the Hon'ble Tribunal to rely on the same at the time of hearing of this case. However, it may be pertinent to refer to the report of the Kelkar Committee 2002 on the quality of such assessment as under :

"..... The assessment is one side, high pitched, completed in hurry when it is getting barred by limitation, ignoring the contentions of the assessee....In a search case, there is no real investigation. As a result, the assessment does not stand the test of judicial scrutiny in appeals....."

23. That the Respondents have taken pains to emphasise upon the fact that the Applicant as a quasi judicial authority passed an appellate order in an unseemly hurry. To buttress this argument, the Respondents have tried to show that the appellate order was passed in a period of one month of the institution of the case. It is stated that it is not unusual for an appellate authority to dispose of such cases in a period of one month particularly when appeals are accompanied by prayer for stay of demand. There are many instances wherein orders of such nature have been passed by the authorities holding the same position as that of the Applicant disposing of such block assessment appeals in around one month period.

24. That in the instant case, the Respondents have placed the Applicant under suspension as a measure of victimisation and punishment after having failed to eliminate him from the field of promotion by way of launching an unnecessary departmental proceeding against him and delaying the same for more than 10 years as narrated in the O.A. and tabled in Annexure-8. It may not be out of place to mention here that the Appointments Committee on that occasion while approving promotion of the Applicant as Chief Commissioner had directed the department to fix the responsibility for undue long delay in finalisation of the disciplinary

case. Such a recommendation naturally irked the department and they have reacted to the same by ensuring suspension of the Applicant after promotion and transfer in January 2002 and that too when the records of the case were with the Income Tax Appellate Tribunal and none of the allegations in the show cause forms a ground of departmental appeal before the Tribunal. Be it further stated here that the appeal in question is not the only appeal decided by the Applicant within 30/35 days' time.

25. That the core issue involved in the case is as to whether under the given circumstances, the order of suspension passed against the Applicant is justified or not. The Respondents have found fault with the Applicant in discharge of his duties by way of deciding an appeal in exercise of his quasi judicial function, which is totally unwarranted and opposed to the settled law on the subject. It is not the case of the Respondents that the quasi judicial order passed by the Applicant is based on some extraneous consideration or with any dishonest motive. Time and again, the Hon'ble Supreme Court by its various pronouncements has emphasised that the suspension should not be resorted to as a routine affair and that exception should be the rule. None of the ingredients to place an officer under suspension is present in the instant case. The Applicant craves leave to place those ingredients and the law laid down by the Hon'ble Supreme Court on suspension at the time of hearing of this case. With regard to exercise of quasi judicial function, the

Hon'ble Supreme Court has held "Officers entrusted with quasi judicial powers to decide issues arising between citizens and the Government should have the freedom to take independent decision in accordance with law without threat of disciplinary action if their decisions go against the interest of the Government. An order passed by such an officer against the interest of the Government, must be challenged by the Government before the Appellate or Revisional authority. The officer passing such order cannot be subjected to disciplinary proceeding."

PARAWISE REPLY

26. That in regard to the statements made in paragraph 2 of the written statement, it is stated that in the present case, the order of suspension has been passed as a measure of punishment. In this connection, the Applicant reiterates and reaffirms the statements made in the preceding paragraphs of this rejoinder.

27. That the averments made in paragraph 4 of the written statement are denied and it is stated that the Applicant did not commit any irregularity and he scrupulously followed the procedure while exercising his statutory powers of Commissioner of Income Tax (Appeals). It is reiterated that the impugned order of suspension is not in conformity with the CCS (CCA) Rules and the same is contrary to the principles of service jurisprudence. It is further stated that the impugned order of suspension has been passed arbitrarily and in malafide exercise of power. It is

reiterated that the so called acts of omission and commission referred to in the show cause memorandum are frivolous and baseless. In this connection, Applicant reiterates the statements made in paragraph 4.1 of the O.A.

28. That while reiterating the statements made in paragraph 4.3. of the O.A., the Applicant denies the statements made in paragraph 6 of the written statement. It is stated that the documents annexed with the O.A. unequivocally demonstrate that there has been more than a decade of systematic victimisation and harassment by the official Respondents of the Applicant. Notwithstanding the denial of the Respondents, it is stated that the impugned order of suspension has a nexus with the earlier acts of Respondents reference to which has been made elaborately in the O.A. Despite the various orders passed by the Hon'ble Delhi High Court, the Respondents indulged in dilatory tactics and continued to withhold the promotion of the Applicant. It clearly shows the strong animus of the Respondents against the Applicant. It is stated that the impugned order of suspension is a sequel to the decade long systematic victimisation and harassment of the Applicant by the official Respondents.

29. That the statements made in paragraphs 7 and 8 of the written statement are denied and the averments made in the preceding paragraph of this rejoinder are reiterated and reaffirmed. Nothing but malafide of the

Respondents explained by the finalisation of 2002 proceedings initiated in 1991 after repeated Court's directions when the enquiry report was received in 1995.

30. That the submission made in paragraph 10 of the written statement being a legal submission, the Applicant has no comment to make in regard to the same and he reserves his right to deal with it at the time of hearing of the case.

31. That in regard to the statements made in paragraph 11 of the written statement, it is stated that the contents of the show cause memorandum coupled with the memorandum of charge bear testimony to the fact that the official Respondents have acted with preconceived mind. It is reiterated that the act of issuance of show cause memorandum is an empty formality. It is noteworthy that despite sending eight different reminders, the last one being the reminder dated 16.10.2002, wherein the Applicant pleaded with the Respondents either to furnish him with the relevant documents or to enable him to inspect the file so as to allow him to submit an effective representation against the show cause notice, the Respondents chose to ignore the pleas of the Applicant and after a long time belatedly, the memorandum of charge dated 28.10.2002 has been issued against him. In the present rejoinder, under the heading "preliminary statements of facts", the Applicant has dealt with the series of letters and reminders sent by him to the competent authority for giving him the opportunity of inspecting the relevant



documents, but till this very date, no opportunity has been given to the Applicant to inspect the relevant documents in order to enable him to file/submit an effective show cause reply. On the other hand, before the Applicant could submit his show cause reply, the memorandum of charge as referred to above was issued with malafide intention. This only shows the animus of the official Respondents and their dilatory tactics.

32. That the statements made in paragraph 12 of the written statement are denied and the averments made in paragraph 4.29 of the O.A. are reiterated and reaffirmed. It is stated that the Applicant passed the order in his quasi judicial capacity of the Commissioner of Income Tax (Appeal)-I, Bhubaneswar. The order was passed after due application of mind and after considering all the relevant records. The order of the Applicant was dated 13.8.2001 passed in I.T. Appeal No. 196/ORS/2001-02 and it ran into 78 pages. The order is self-explanatory and unequivocally demonstrates the fairness of the action of the Applicant like providing more than one opportunity to the Assessing Officer and consideration of his submissions. In the present case, the competent authority acted exclusively on the basis of the allegation of the Assessing Officer who himself was an interested party in the case and against whom there were serious allegations of corruption/harassment. It is pertinent to mention that the two different notices dated 16.7.2001 and 17.7.2001 were sent to Assessing Officer. The Assessing Officer in response sent his

report/written submission on 19.7.2001 which was received in the office of the Commissioner of Income-tax (Appeals) on 20.7.2001. The first hearing took place on 24.7.2001 and the second hearing took place on 25.7.2001. The Assessing Officer had full knowledge of the date of hearing as the same was intimated to him. If the Assessing Officer wanted to be personally present, he could very well have been present. Nobody prevented him from appearing before the Appellate Authority at the time of hearing of the case. It is further stated that no specific order is required allowing Assessing Officer to appear before the Appellate Authority. The Assessing Officer after having failed to do his duty is trying to shift the blame on the Appellate Authority. As a matter of fact, this Assessing Officer is well known to be not presenting himself at the time of hearing of appeals.

Copy of the appellate order of the Applicant dated 13.8.2001 passed in I.T. Appeal No. 196/ORS/2001-02 is annexed as ANNEXURE-7.

33. That in regard to the statements made in paragraph 13 of the written statement, it is stated that the report sent by the Assessing Officer was duly considered by the Applicant while exercising his quasi judicial power of Commissioner of Income-tax (Appeals). It is noteworthy that in the show cause memorandum, no reference has been made to the factum of issuance of two different notices dated 16.7.2001 and 17.7.2001 to the Assessing Officer. There is also total silence

about the fact that the Assessing officer had submitted his written submission dated 19.7.2001. The official Respondents for their convenience have chosen to believe the words of the Assessing Officer that he had sought personal appearance. The Assessing Officer's assertion was never subjected to comments of the Applicant. It is stated that the Assessing officer was given the prior intimation of the dates of hearing and nobody prevented him from appearing at the time of hearing. Be that as it may, the report and record sent by the Assessing Officer were duly taken into consideration by the Applicant while passing the order in exercise of his powers of Commissioner of Income-tax (Appeals). It is reiterated that the proper procedure was followed by the Applicant while exercising his power of Commissioner of Income-tax (Appeals). It is further stated that adequate opportunity of hearing was given to the Assessing Officer. For the reasons best known to him, the Assessing Officer only sent the report dated 19.7.2001 and chose not to appear at the time of hearing. It is also noteworthy that while sending his report/written submission, the Assessing Officer did not express any desire to be heard in person. In this connection, the Applicant reiterates and reaffirms the statements made in paragraph 4.30 of the O.A.

34. That in regard to the statements made in paragraph 14 of the written statement, while reiterating and reaffirming the averments made in paragraph 4.31 of the O.A., it is stated that the objective behind the ITNS-

51 is to give opportunity and intimation to the Assessing Officer about the hearing of the appeal. In any case, the Assessing Officer was provided sufficient opportunity to assist the Commissioner of Income-tax (Appeals) and he was given due notice of the date of hearing. The Assessing Officer also sent his written submission and for his own reasons, he chose not to appear before the Appellate Authority. As Commissioner of Income-tax (Appeals), it was well nigh impossible for the Applicant to carry out the documentation in the file and to ensure that all the documents in the file are kept properly. Be that as it may, no motive can be imputed to the Applicant. It is also difficult to understand as to how the interest of the department has been prejudiced by the so called disappearance of ITNS-51 from the appellate file. In the show cause memorandum much has been made out of the factum of Applicant allegedly underlining thrice by red ink pen the words "copies of ITNS-51". From this, effort has been made to show that ITNS-51 was very much in the appellate file. It must not be forgotten that the factum of underlining the aforesaid expression with red ink pen can also be indicative of the fact that the ITNS-51 was not present in the file and as such, the same was marked with red ink pen by the Applicant. The official Respondents have chosen to draw presumptions and inferences to buttress their argument about the presence of ITNS-51 in the appellate file.

35. That the statements made in paragraph 15 of the written statement are denied and the averments made in

paragraph 4.32 of the O.A. are reiterated and reaffirmed.

36. That in regard to the statements made in paragraph 16 of the written statement, the Applicant reiterates and reaffirms the averments made in paragraph 4.33 of the O.A. It is stated that the Applicant carried out the appellate function in a fair manner after hearing both the parties and took a decision in conformity with law. Therefore, no fault can be found with the Applicant.

37. That in connection with averments made in paragraph 17 of the written statement, the Applicant reiterates and reaffirms the averments made in paragraphs 4.34 and 4.35 of the O.A. It is stated that Assessing Officer had not sent any letter to the Applicant seeking opportunity to represent before him the case of the department. Even the show cause memorandum is silent about this fact. The official Respondents are deliberately distorting the facts and making incorrect statements before the Hon'ble Tribunal.

38. That the statements made in paragraph 18 of the written statement are denied and the averments made in paragraph 4.36 of the O.A. are reiterated.

39. That in regard to the averments made in paragraphs 19 and 20 of the written statement, the Applicant reiterates the statements made in paragraph 4.37 and 4.38 of the O.A. It is noteworthy that the

official Respondents have themselves admitted in paragraph 20 of the written statement that in case of the Applicant there is no apprehension of tampering of evidence or obstruction in the course of disciplinary proceeding and that it is not on this ground that the Applicant has been placed under suspension. It is reiterated that the show cause memorandum prima facie fails to make out any case of gross irregularities committed by the Applicant in deciding the appeal.

40. That the statements made in paragraphs 21 and 22 of the written statement are denied and the averments made in paragraphs 4.39 and 4.40 of the O.A. are reiterated and reaffirmed. It is denied that prima facie there is enough material to show recklessness and misconduct of the Applicant while discharging his statutory powers in quasi judicial capacity. It is reiterated that the order of suspension was passed on extraneous considerations and with an ulterior motive.

41. That the statements made in paragraph 23 of the written statement are denied and the averments made in paragraph 4.41 of the O.A. are reiterated and reaffirmed. It is reiterated that the Applicant till now has sent eight reminders to the official Respondents for allowing him to inspect the relevant documents so as to submit an effective representation, but the same has not been done so far. The official Respondents are deliberately indulging in dilatory tactics. It is denied that despite being given an opportunity, the Applicant has failed to submit his reply to the show cause memorandum. As stated earlier

that till this very date, the Applicant has not been allowed to inspect the relevant official file to prefer his reply against the show cause memorandum.

42. That in regard to the statements made in paragraph 24 of the written statement, it is stated that in the facts and circumstances of the present case, the order of suspension, in fact, is an order of punishment. There is no public interest involved while passing the order of suspension and the official Respondents acted in total non-application of mind while appreciating the evidence available on record.

43. That the statements made in paragraph 25 of the written statement are denied and it is stated that instead of this Applicant, it is official Respondents who are trying to delay the disciplinary proceeding inasmuch as despite the Applicant issuing eight different reminders, the official Respondents till this very date have not allowed the Applicant to inspect the relevant file to prepare his representation against the show cause memorandum.

44. That the averments made in paragraphs 26 and 27 of the written statement are denied. It is reiterated that there is no prima facie case for placing the Applicant under suspension. It is further stated that despite his best efforts, the Applicant could not prepare the reply to the show cause memorandum inasmuch as he was not allowed to inspect the relevant files so as to enable him to effectively prepare the show cause reply. As stated earlier, the Applicant issued eight different

reminders to the official Respondents, but there was no response.

45. That the averments made in paragraph 29 and 30 of the written statement are denied and it is stated that there is no public interest involved behind placing the Applicant under suspension. The result of preliminary enquiry was never offered to the Applicant for comments/explanation. Without considering the two, together in the absence of explanation of the Applicant, the competent authority has been misled in coming to the conclusion that suspension was called for. As a matter of record, the competent authority was prejudiced by the Respondents by way of reference to earlier disciplinary proceeding which was eventually dropped after repeated advice of the UPSC. In regard to the statements that the leadership of the Applicant is likely to damage the department's image and also the morals of the officers of the department, reference is made to the list of the Income Tax officers against whom the Central Vigilance Commission has advised launching of criminal prosecution since 1.1.90. Many of the officers named in the said list are the holders of very high officers and in sharp contrast to the Applicant, these officers have not been placed under suspension nor any appropriate disciplinary action has been taken against them. Such cases have been kept pending since the year 1990.



Copy of the list of Income Tax Officers against whom Central Vigilance Commission has advised launching of criminal proceeding and/or disciplinary action is annexed hereto as ANNEXURE-8.

V E R I F I C A T I O N

I, J.K. Goyal, Chief Commissioner of Income Tax (U/S), Uzan Bazar, Guwahati, do hereby solemnly affirm and verify that the statement made in paragraphs 1,2,3,4,6,7,8,9,10,11,12,13,14,18,21 to 31, 33 & 44 are true to my knowledge ; those made in paragraphs 5, 15, 16, 17, 19, 20, 32 & 45 being matters of records are true to my informations derived therefrom and the rests are my humble submissions. I have not suppressed any material fact.

And I sign this verification on this 6th day of November 2002 at Guwahati.

6  
(G.K.GOYAL)

F.NO.A-32011/09/2000-AD.VI  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
(CENTRAL BOARD OF DIRECT TAXES)  
\*\*\*\*\*

-24-  
**ANNEXURE-1**

NEW DELHI, DATED THE 4<sup>TH</sup> JUNE, 2002

ORDER NO. 72 OF 2002

The following postings and transfers in the grade of Chief Commissioners/Directors General of Income Tax are hereby ordered with immediate effect and until further orders.

| SL. NO. | NAME (SHRI/SMT.) | CODE  | FROM               | TO                | REMARKS                                |
|---------|------------------|-------|--------------------|-------------------|----------------------------------------|
| 1.      | D. Chakravarti   | 67001 | CCIT-IV, Kolkata   | CCIT, Guwahati    | Vacant Post                            |
| 2.      | Hardeep Kaur     | 67004 | CCIT, Panchkula    | CCIT, Chandigarh  | Vacant Post                            |
| 3.      | R. Balakrishnan  | 67012 | CCIT, Trivandrum   | CCIT-II, Chennai  | Vice Smt. S. K. Aulakh Transferred.    |
| 4.      | K.K. Roy         | 67025 | CCIT-VII, Mumbai   | CCIT, Bhopal      | Vice S.N. Bhargava Transferred.        |
| 5.      | S.N. Bhargava    | 67027 | CCIT, Bhopal       | CCIT-IX, Delhi    | Vice Smt. Urvashi Saxena Transferred.  |
| 6.      | H.S. Subramaniam | 67030 | CCIT, Coimbatore   | CCIT-II Bangalore | Vice Sh. B.L. Rao Transferred.         |
| 7.      | N.K. Jain        | 68002 | CCIT-IV, Ahmedabad | CCIT, Trivandrum  | Vice Smt. R. Balakrishnan Transferred. |
| 8.      | M.S. Darda       | 68014 | CCIT, Baroda       | CCIT, Jodhpur     | Vice Smt. Baljit Bains Transferred.    |
| 9.      | Urvashi Saxena   | 68016 | CCIT-IX, Delhi     | CCIT, Thane       | Vice Smt. V.L. Sharma Transferred.     |
| 10.     | M.K. Mishra      | 68017 | CCIT-X, Delhi      | CCIT-IV, Kolkata  | Vice Sh. D. Chakravarti Transferred.   |
| 11.     | M.C. Joshi       | 68019 | CCIT-X, Mumbai     | CCIT, Baroda      | Vice Sh. M.S. Darda Transferred.       |
| 12.     | Baljit Bains     | 69009 | CCIT, Jodhpur      | CCIT, Panchkula   | Vice Smt. Hardeep Kaur Transferred.    |
| 13.     | V.L. Sharma      | 69021 | CCIT, Thane        | CCIT-XII, Mumbai  | Vacant Post                            |
| 14.     | B. Ramakumar     | 69026 | CCIT-VI, Chennai   | CCIT, Panaji      | Vacant Post                            |
| 15.     | V.K. Baranwal    | 69027 | CCIT-II Hyderabad  | CCIT-XIII, Mumbai | Vacant Post                            |
| 16.     | K.R. Bhatia      | 68025 | CCIT-XI, Delhi     | CCIT-X, Delhi     | Vice Sh. M.K. Mishra Transferred.      |
| 17.     | A.N. Prasad      | 69011 | CCIT-XII, Delhi    | CCIT-XI, Delhi    | Vice Smt. K.R. Bhatia Transferred.     |
| 18.     | A.S. Narang      | 68005 | CCIT-XIII, Delhi   | CCIT-XII, Delhi   | Vice Sh. A.N. Prasad Transferred.      |
| 19.     | Berjinder Singh  | 68003 | CCIT-XIV, Delhi    | CCIT-XIII, Delhi  | Vice Sh. A.S. Narang Transferred.      |

**Attested**  
*uSan*  
**Advocate**

*Dharmendra*

421917



Dr. J. K. Goyal, IRS  
B.E., LL.M., Ph.D., M.B.A.  
Chief Commissioner of Income Tax

Dt. 02.04.2002.

To,

The Director of Income-tax (Vig.),  
East Zone,  
Aayakar Bhawan, 8th Floor,  
P - 7, Chowringhee Square,  
Kolkata - 700 069.

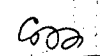
Sir,

This has a reference to Under Secretary (V & L)'s letter dated 21.03.2002, received by me on 01.04.2002, in response to my letter dated 01.03.2002 in connection with the Show Cause Memorandum dated 18.02.2002.

2. You might have received the necessary instructions in the matter. Kindly make available to me authenticated copies of the documents requested in my letter dated 01.03.2002 and to accede to other requests contained in the same.

Thanking you

Yours faithfully,

  
(Dr. J. K. GOYAL)  
C. C. I. T.,  
Guwahati (u.s.).

Copy to the Under Secretary (V & L), Ministry of Finance, Department of Revenue, New Delhi. The time-limit of 15 days ~~can~~ be reckoned with only from the date of completion of my request contained in letter dated 01.03.2002.

  
(J. K. GOYAL)

Attest  
  
Adv

SUMMARY GENERAL POST OFFICE 781001  
ALY VANDER  
Computer No. 1, 00-00-00-00-00  
To: SECY/MINISTRY OF FINANCE  
N. DELHI

With Press.  
Ant. 01.04.2002, 11:15:04  
Have a nice day

From:

Dr. J. K. Goyal, IRS,  
Chief Commissioner of Income-tax,  
Guwahati.

May 20, 2002.

To,

The Director of Income-tax (Vig.),  
East Zone,  
Aayakar Bhawan, 8th Floor,  
P - 7, Chowringhee Square,  
Kolkata - 700 069.

Sir,

Kindly refer to my letter dated 02-04-2002 addressed to you (Copy endorsed for ready reference). I have not heard anything in the matter so far.

2. Kindly expedite copies of relevant documents as also of the A.O.'s affidavit, C.V.C.'s advice, etc., for further action at this end.

Thanking you.

Yours faithfully,

*CND*  
(J. K. GOYAL)  
Chief Commissioner of Income-tax,  
Guwahati.

Copy to the Under Secretary (V & L), Central Board of Direct Taxes, 257, North Block, New Delhi, for necessary action in the matter.

*CND*  
(J. K. GOYAL)

भारतीय डाक  
GUWAHATI GENERAL POST OFFICE  
P.O. BOX 1  
Counter No. 1, CP-1, Chowringhee  
TENDER OF INCOME TAX,  
KOLKATA

Withdrew.  
Ante: 20. 05. 2002, 11:00 AM  
Have a nice day.

**Attested**  
*Wda*  
**Advocate.**

भारतीय डाक  
GUWAHATI GENERAL POST OFFICE  
P.O. BOX 1  
Counter No. 1, CP-1, Chowringhee  
TENDER OF INCOME TAX,  
KOLKATA

Withdrew.  
Ante: 20. 05. 2002, 11:00 AM  
Have a nice day.

From: Dr. J.K. Goyal, IRS,  
Chief Commissioner of Income-tax,  
Guwahati.

June 19, 2002.

To  
The Under Secretary (V&L),  
Central Board of Direct Taxes,  
257, North Block,  
NEW DELHI.

Sir,

Kindly refer to the show cause letter from F.No.C-14011/5/2002-V&L, dated 18-02-2002 and my request dated 01-03-2002 wherein certain documents were requested for to which your reply through letter dated 21-03-2002 was that the same were available with the DI, Vigilance (East), Calcutta, who was requested vide my letter dated 02-04-2002 (copy endorsed to you also) to make available the same. As this was not ~~there~~ done, a reminder was again sent to the DI on 20-05-2002 but so far I have not been supplied the copies of relevant documents requested for. I am enclosing herewith copy of my letter dated 20-05-2002 for ready reference.

It is requested that necessary action may please be taken at an early date.

Yours faithfully,

Encl.: As stated.

(J.K. GOYAL),  
Chief Commissioner of Income-tax,  
Guwahati.

|                                       |              |               |
|---------------------------------------|--------------|---------------|
| NOT INSURED                           |              | संक्रांक 5394 |
| समावे गये डाक प्रिन्ट का मूल्य रु.    | २२५          | No.           |
| Amount of Stamp affixed Rs.           | 225          |               |
| एक रजिस्ट्रार* 02                     | प्रान्त किया |               |
| Received a Registered* Udhakar S.C.C. | वारीख मोहर   |               |
| पानेवाले का नाम                       | Date Stamp   |               |
| Addressed to C.B.D.T.                 |              |               |
| Dr. D. K. Goyal                       |              |               |
| Signature of Receiving Officer        |              |               |

Attested  
Wan  
Advocate

F.No C-14011/5/2002-V&L  
GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
CENTRAL BOARD OF DIRECT TAXES

NEW DELHI dated the 28<sup>th</sup> October, 2002

MEMORANDUM

The President proposes to hold an inquiry against Shri J K Goyal, Chief Commissioner of Income Tax (under suspension), under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure I). A statement of the imputations of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure II). A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (Annexure III and IV).

2. Shri J K Goyal is directed to submit within 20 days of the receipt of this Memorandum a written statement of his defence and also to state whether he desires to be heard in person.
3. He is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically admit or deny each article of charge.
4. Shri Goyal is further informed that if he does not submit his written statement of defence on or before the date specified in para. 2 above, or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of Rule 14 of the CCS (CCA) Rules, 1965, or the orders/directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry against him *ex parte*.
5. Attention of Shri Goyal is invited to Rule 20 of the Central Civil Services (Conduct) Rules, 1964, under which no Government servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings it will be presumed that Shri Goyal is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the CCS (Conduct) Rules, 1964.
6. The receipt of the Memorandum may be acknowledged.

*V K Singh*

( V K SINGH )

Under Secretary to the Govt. of India

To:  
✓ Shri J K Goyal,  
Chief Commissioner of Income Tax (under suspension)  
(The CCIT, Guwahati)

Attested  
W.D.  
Advocate.

106

116

Copy to:

1. CCIT, Guwahati alongwith the copy meant for Shri J.K.Goyal, CCIT(under suspension).
2. US(AD-VI)/AD-VI-A/DT(Per), North Block, New Delhi.
3. DGIT(Vigilance), New Delhi.
4. Secretary, CVC, New Delhi.
5. Office copy.

( V.K. Singh )

Under Secretary to the Government of India

Attest:  
*W. Sen*  
Advocate



STATEMENT OF ARTICLE OF CHARGE AGAINST SH J K GOYAL, THE THEN  
COMMISSIONER OF INCOME TAX (APPEAL) - I, BHUBANESWAR

Article I

That the said Sh J K Goyal while functioning as Commissioner of Income Tax (Appeal)-I Bhubaneswar, showed undue haste in passing appeal order in the case of block assessment of Sh Karuna Kar Mohanty and decided the appeal without exercising due diligence, so as to grant undue favours to the appellant to the detriment of the interest of Revenue. While doing so he

- (a) accepted the submissions/claims made by the appellant assessee without examining their veracity with the material facts on record, including search records and without making independent verifications or enquiries with the Assessing Officer;
- (b) failed to afford an opportunity to the Assessing Officer, against whose order the appeal was preferred, to be heard as prescribed under the Income Tax Act; and
- (c) showed lack of application of mind and predetermination of issues.

By the aforesaid acts of omission and commission Sh J K Goyal failed to maintain absolute integrity and devotion to duty and exhibited conduct unbecoming of a Government servant. He thereby violated the Rules 3(1)(i), 3(1)(ii) and 3(1) (iii) of the CCS (Conduct) Rules, 1964.

Attested  
UDan  
Advocate.

STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR IN  
SUPPORT OF THE ARTICLE OF CHARGE FRAMED AGAINST SH J K GOYAL,  
THE THEN COMMISSIONER OF INCOME TAX (APPEALS)-I, BHUBANESWAR

Article I

During the period April 2001 to December 2001 Sh J K Goyal was posted as CIT(Appeals) - I Bhubaneswar, having appellate jurisdiction over the assessments completed by the DCIT(Inv) Circle - 1, Bhubaneswar and had the occasion to decide the appeal in the case of block assessment of Shri Karuna Kar Mohanty, assessed by the then DCIT(Inv) Circle -1, Bhubaneswar.

2. In that case, as against Nil undisclosed income for the block period, assessment was made on a total income of Rs.9,92,59,143/- and the assessment order was served on the assessee on 29.6.2001. The appeal memo in Form No. 35 was filed on 12.7.2001 which was given appeal No. 196/QRS/2001-2002. On 16.7.2001, along with the appeal memo, assessee's application for stay of the demand raised in the block assessment was also forwarded to the AO for his report. Vide notice u/s.250 dated 17.7.2001, the appeal was fixed for hearing on 24.7.2001. Copy of the notice shows that a copy was endorsed to the Assessing Officer (AO) for confirmation and necessary action.

3. The then DCIT, Investigation Circle - 1 Bhubaneswar (the AO), vide his letter No. DCIT/Inv./ Circle-1/2001-02/91 dated 19th July, 2001, sent his report to Sh J K Goyal CIT(A), which was received on 20.7. 2001 and is on the record of CIT(A)'s file. In that report, the Assessing Officer submitted that ample opportunity was given to the assessee and that despite these opportunities, assessee failed to explain properly the transactions mentioned in the block assessment order, on the basis of which additions were made. Further, that the assessee was also confronted with the results of enquiries made by the AO. It was also submitted by the Assessing Officer that contentions made by the assessee appellant in the grounds of appeal and in the stay application were not factually correct or legally sound and it was requested, therefore, that the grounds of appeal and stay application may be rejected.

4. At the end of his letter, the Assessing Officer stated that the copy of ITNS - 51 and Block Assessment records both were enclosed with this letter which was duly received in the office of CIT(A) on 20.7.2001. The said ITNS- 51 is not found in the record of the CIT(A). The then AO, Shri S. R. Senapati, has confirmed in writing that only one copy of the ITNS-51 was received, which was sent back to Sh. J K Goyal without retaining any office copy with him and that he had sought personal appearance and also had requested that in case the CIT(Appeals) needed any clarification, further report should be called for from him.

The last sentence of the A.O's letter dated 19.7.2001, in the record of the CIT(A)'s file, has been underlined in red ink by the CIT(A) Sh J K Goyal's own hand and the words "copies of ITNS-51" have been underlined thrice by red ink-pen, which the CIT(A) has used for marking rest of the letter and other documents. This, in the absence of any further correspondence on this issue, clearly suggests that the said ITNS- 51 was received and seen by Sh J K Goyal as the CIT(A).

5. As per the notings in the ordersheet of the CIT(A)'s file, on 24.7.2001, Sh J K Goyal heard the case without calling the Assessing Officer. The order sheet reads that on 24.7.2001 the assessee was present and was partly heard and on 25.7.2001, the order sheet entry reads "the assessee is present with Shri B. N. Mahapatra, Advocate, AIR". Next entry on the order sheet dated 13.8.2001 states in Hindi that the order is passed.

Attested.

*u.s.*  
Advocate.

6. This amply and clearly shows that neither was the AO asked to be present nor was he afforded an opportunity to go through the submissions and evidences produced by the assessee before the CIT(A) and to present before him, the Department's point of view. Sh. Goyal also did not call for or examine the seized material in order to verify the facts of the case.

7. One of the biggest assessment orders in Orissa Charge was decided in a matter of two hearings, showing undue haste as the final order was passed within a month of the filing of the appeal, even the order sheet entry dated 25.7.2001 does not indicate that the case was fully heard. It is also pertinent to note that Shri K.K. Mohanty filed written submissions of 19 pages apparently on 24.7.2001 as the written submissions are signed by the appellant Shri K.K. Mohanty on 24.7.2001. These written submissions along with the Annexures were never sent to the A. O for his comments or even for verification as to whether the Annexures filed were not new evidence or whether the text tallied with what was submitted with the AO. The assessment order spread over 29 pages, grounds of appeal comprising 96 grounds spread over 23 pages and written submissions spread over 19 pages filed on 24.7.2001, were all decided in two hearings on 24th and 25th July, 2001. It is also pertinent to note that the appellate order is dated 6th August, 2001 and this date was subsequently changed in hand to 13th August, 2001. Thus, as on 6th August, 2001, Sh. J K Goyal had already decided the issues against the Department and yet did not give an opportunity to the AO till 13th August, 2001 when the order was finally signed.

7.1 The copy of the order was received personally by Shri K.K. Mohanty, assessee, as per the marginal acknowledgment dated 14.8.2001 on the body of the order sheet of the CIT(A)'s file, which is unusual, because normally the appellate orders are despatched by post rather than handed over personally to the assessee.

7.2 The above sequence of events shows that Sh. J K Goyal decided the appeal in undue haste, without giving opportunity to the A O to represent the Department's case. It also shows total lack of application of mind and predetermination of issues by Sh. Goyal while deciding the appeal. This, along with the fact that the appeal order handed over personally to the assessee/appellant, indicates that Sh. Goyal's actions were guided by ulterior motives.

Even on merits, Sh J K Goyal committed gross irregularities in deciding the following issues:

8. The AO found large discrepancies in the quantum of contract work reported by the assessee and the figures obtained by him from the Govt. Agencies, which had awarded the contract, and duly confronted the assessee with those figures in the course of assessment proceedings. The aggregate of the discrepancies was over a crore of Rupees. Though Sh J K Goyal has reproduced the details from the assessment order, in para-13 of the appellate order, he accepted the assessee's version in a summary manner stating, in Para - 13.1 *"The above explanation is plausible and has not been gone through or cross checked by the AO before taking an adverse view on the basis of show cause notice dated 30.5.2001. In the circumstances, the additions made on account of such Table-I by the Ld. A.O. are hereby deleted"*.

However, Sh J K Goyal is as much guilty of deleting the additions without either cross checking the explanations himself and giving his specific findings thereon or by remanding the matter to the AO. As observed by the Supreme Court in the case of *Kapoorchand Shrimal Vs CIT (131 ITR 451, 460 (SC))* which was followed in a number of judgements thereafter, the first appellate authority in such cases must verify the facts himself or restore the issue with the AO for further verification. These duties cast on the CIT(A) assume greater significance in the instant case because the AO had specifically sought personal hearing. No such procedure was followed by Sh J K Goyal in deciding the above referred appeal.

Attested  
W.D.  
Advocate.

9. Similarly in para - 13.3 onwards, of his order, Sh J K Goyal accepted the version of the assessee without seeking AO's version. Further, Sh J K Goyal did not even call for the seized materials on the basis of which additions were made and with reference to which the assessee gave his explanations. He neither verified the seized materials himself nor obtained the explanation from the AO. Sh J K Goyal thus failed to observe the most elementary rules of decision making by an appellate authority and thus bestowed favour to the assessee and caused loss to revenue.

10. In course of search, two audited sets of final accounts giving different figures belonging to the assessee for the same period were found. The assessee's explanation was that the Balance Sheet which gave higher figure was fictitious one and was prepared with a view to obtain Solvency Certificates and higher credit limits, from banks etc. Apparently, the Chartered Accountant, who has signed the Balance Sheet was also examined. He said that the Balance Sheet giving higher figure was a correct one in so far as it was prepared on the basis of data and documents provided for by the assessee himself. The AO also obtained a copy of the Balance Sheet giving higher figure from the Bank of India, Shahid Nagar Branch, Bhubaneswar. In assessment the AO relied on the balance sheet which gave higher figure, as also corroborated with the copy obtained from the Bank of India and made additions.

In para - 3 of the appellate order, Sh J K Goyal has given the submission of the assessee and implicitly accepted his contention that the Balance Sheet giving higher figure was only prepared on the basis of estimation. Secondly, Sh J K Goyal in his own hand in red ink inserted a sentence stating "*The A.O also did not obtain the copies of Balance Sheet furnished to the Bank*" ignoring the fact that copy of the balance sheet referred to by the AO was in place in the assessment record itself and the same bears stamp of Bank of India, Shahid Nagar Branch, Bhubaneswar, as the AO obtained the same from that bank through Inspector of Income Tax. In para- 11 Sh J K Goyal after referring to the affidavits of the assessee filed on 7.6.2001 and also to FIR dated 2.7.99 filed with the Police observed that "*It is a settled law that the contents of an affidavit cannot be rejected outright unless the deponent has been examined and it is brought on record during the course of examination that such contents are wrong in which case the deponent can also be proceeded with for perjury. No such thing was done. Even the Ld. CA., Shri B.N. Subudhi, who was examined by the A.O.(such examination was not available in the case record) was not subjected to explain as to how two sets of financial affairs were signed by him for the same period in respect of the same appellant*".

It is a settled law that on all issues considered by the AO, jurisdiction of the CIT(A) is co-terminus with that of the A.O. If the AO, who was a junior officer and clearly was under lot of pressure of work, could not afford such cross examination, Sh J K Goyal as CIT(A) was duty bound himself to do so or cause it to be done by the A.O. No such procedure was followed by Sh J K Goyal while deciding the above referred appeal.

Further, Sh J K Goyal also concluded, without assigning any reason or basis, as to what the C.A was asked to explain, because he himself had observed that the examination of the C.A was not available in the case record nor any copy of it found placed in the appellate records. In para 11.2 of his order, Sh J K Goyal simply accepted the assessee's version that the Balance Sheet duly signed by the C.A was a self serving balance sheet prepared with a view to obtain higher credit limit from the banks. Even this view is contradictory to the ratio of the decision of the Gauhati High Court in the case of *Dhansiram Agarwalla Vs. CIT* (1993) 201 ITR 192, which has also been impliedly affirmed by the Honorable Supreme Court as the SLP against the said Judgement of the Hon'ble Gauhati High Court has been dismissed by the Supreme Court.

Thus Sh Goyal failed in his duty as an appellate authority to carry out the examination of the witness/evidence to arrive at the correct facts. He acted contrary to law in accepting the assessee appellant's version that the balance sheet showing higher

Attested  
*[Signature]*  
Advocate.

figure was a fictitious, self-serving one. This shows malafide on the part of Sh. Goyal and his bias towards the appellant.

Other similar irregularities in the appellate order, where the version of the assessee has been accepted without cross verification from the seized materials and without obtaining a report of the A. O. on the written submission filed by the assessee on 24.7.2001, are enumerated as under:

11 The AO made additions of Rs. 19,67,693/- and Rs. 7,48,055/- representing undisclosed investment in purchase of granulator and a mix plant respectively. The A.O. relied on seized paper which suggested that these machineries were purchased from one Utkal Stone Crusher and Everest Engineering Company. The assessee furnished an affidavit that these items have not been purchased by the assessee and the additions made on these accounts were deleted. In this case, as is evident from many other instances cited above, it was one person's version against another and in such a situation, the only course open before Sh J K Goyal was to collect necessary information from the alleged sellers of these machineries to find out whether those were actually purchased by the assessee or were only in the nature of proposals. Instead of arriving at the true nature of transaction as the first appellate authority, Sh J K Goyal again placed total reliance on the assertion made by the assessee, totally ignoring the information contained in seized papers.

12 In the seized papers marked as KCP-6, page-1 and KCP-24, page-6, there was reference to investments of Rs. 2,70,000 and Rs.2,31,000/-, total amounting to Rs.5,01,000/-, for financial year 1997-98 and the AO proposed in a show cause notice issued and served to the assessee to add this amount as undisclosed investments. The assessee in his reply mentioned that unless the original papers or photocopies were made available to him it would not be possible to offer any explanation on this issue. In short, there was no rebuttal by the assessee of the stand taken by the A.O; the assessee only expressed his inability to offer any explanation in absence of photocopies being made available. The assessee had already taken photocopies of necessary seized papers earlier and since this process was completed long back, the A.O. did not allow photocopies of these documents to be again given separately to the assessee. During appellate proceedings, this matter was reiterated by the assessee and Sh J K Goyal simply deleted the addition. Since the assessee had not rebutted the findings in the seized papers, Sh J K Goyal's action in simply deleting the said addition, without considering the evidence available in seized record, was totally unwarranted.

13 In an order determining undisclosed income at Rs. 9,92,59,143/- Sh J K Goyal deleted the entire additions except two items (Rs.3,50,000 + Rs. 4,18,000) totalling Rs. 7,68,000/-. While confirming these additions Sh J K Goyal mentioned that four bank slips were seized from the residence of the appellant and as per presumption laid down u/s.132(4A), the burden lay on the appellant to claim that he had nothing to do with the same. However, Sh Goyal declined to apply the same reasoning and test to the other issues involving much larger revenue stakes, such as seized material reflecting discrepancies on account of unaccounted expenditure amounting to Rs.22,06,000/-, unaccounted sale of cement and steel amounting to Rs.12,36,180/- and inflation of expenditure to the tune of Rs.80,09,159/- seized either from the assessee's own premises or from the premises of his accountant who maintained the assessee's books of accounts. This shows the total lack of application of mind by Sh. Goyal as also his mala fide intent in deciding the really vital issues in favour of the assessee applicant.

14 From the facts discussed above, it is shown that Sh. J K Goyal, for apparently mala fide reasons, passed the appeal order in the case of Sh. Karuna Kar Mohanty in unseemly haste, without verifying the material facts from the available record or from independent inquiry and without giving opportunity to be heard to the AO. He showed lack of application of mind and predetermination of issues, even ignoring the law laid down by the Courts and decided the appeal so as to grant undue favours to the assessee. Sh. Goyal thus failed to maintain absolute integrity and devotion to duty and displayed conduct unbecoming of a government servant.

Ames  
W.D.M.  
Advocate.

ANNEXURE-III

LIST OF DOCUMENTS IN SUPPORT OF THE ARTICLES OF CHARGE FRAMED  
AGAINST SHRI J K GOYAL, THE THEN CIT (APPEAL)-I, BHUBANESWAR

Following records in the case of Sh Karuna Kar Mohanty

1. Appellate Folders and Records
2. Assessment Folders and Records
3. Search and Seizure Records
4. Statement dated 26.12.2001 of the Assessing Officer Sh. S.R. Senapati, relating to ITNS 51

Attn:  
U.D. An  
Advocate

ANNEXURE-IV

LIST OF WITNESSES IN SUPPORT OF THE ARTICLES OF CHARGE FRAMED  
AGAINST SHRI J K GOYAL, THE THEN CIT(APPEAL)-I, BHUBANESWAR

NIL

Attest  
[Signature]  
Advocate.

From  
J. K. Goyal  
CCIT

Guwahati  
06/11/02

To,  
The Under Secretary (V & L)  
Ministry of Finance, CBDT  
North Block, New Delhi

Sub : Objection against issuance of chargesheet  
Ref : Memorandum of chargesheet issued under  
F. No. C-14011/5/2002-V & L dtd. 28/10/2002

Sir,

I am deeply hurt by the manner and method in which I have been put to perpetual humiliation over the years latest being by way of issuance of the memorandum of chargesheet under reference.

2. As you are aware, I was dragged on through a departmental proceeding for the period of long ten years during which time I was also denied my promotion. Eventually at the intervention of the court I could get my promotion to the present grade/rank and the departmental proceedings were dropped. However, again to my misfortune, the same very circle with vested interests which was instrumental towards blocking my promotion over the years got issued an order of suspension dtd. 18/02/2002. Along with the said order of suspension, a show cause notice was also enclosed stating the ground of my suspension.

3. Being aggrieved against the said order of suspension, I approached the Hon'ble CAT Guwahati Bench by filing O.A. No. 76/2002. The Hon'ble Tribunal by its order dtd. 10/04/2002 was pleased to stay the order of my suspension. However, without implementing the said order of the Hon'ble Tribunal, the Department preferred a writ petition being WP (C) No. 3947/2002 before the Hon'ble Guwahati High Court. Although initially the Hon'ble Court by its order dtd. 21/06/2002 was pleased to stay the order of the Hon'ble Tribunal, however, by its subsequent order dtd. 27/08/2002, has been pleased to vacate the said stay order and thus the Hon'ble Tribunal's stay order has been restored.

4. In spite of the above, I am still not being allowed to function in my post and am still being treated as to be under suspension in clear violation of judicial orders. My repeated requests asking for related documents in respect of the show cause notice have also not been responded to. It appears that necessary clearance of the competent authority towards issuance of the chargesheet has been obtained by suppressing all these vital factors. Even in the memorandum of chargesheet, I have been described and shown to be under suspension in clear violation of the orders of the Hon'ble Courts.

cont. (2)

Attested  
u/s  
Advocate.



5. The allegations made in the chargesheet are the same very allegations made in the show cause towards issuance of the order of suspension which is now subjudice before the Court of law. Any decision thereof will have a direct bearing on the chargesheet, which the Department is fully aware of. In such a situation the chargesheet under reference could not have been issued so as to usurp the power and jurisdiction of the Hon'ble Court. This speaks of volumes of malafide and colourable exercise of power.

6. In view of the above factual as well as legal position pertaining to the matter, you are hereby humbly requested to withdraw the chargesheet and/or otherwise forbear from proceeding in the matter till such time a final decision is arrived at in the aforesaid proceedings pending in the Court of law.

7. An early reply in the matter entitling me to take further course of action, if need be, will be highly appreciated.

Thanking you

Yours faithfully,

*Coo*

(J. K. Goyal)

Attested

*W.D.*

Advocate.

-40-  
F.No.C-14011/5/2002-V&L  
Government of India  
Ministry of Finance & Company Affairs  
Department of Revenue  
Central Board of Direct Taxes  
.....

New Delhi, the 18<sup>th</sup> November, 2002

**ORDER**

Whereas disciplinary proceedings were contemplated against Shri J.K. Goyal, Chief Commissioner of Income Tax, Guwahati;

And Whereas Shri J.K. Goyal was placed under suspension with immediate effect vide order of even number dated the 18<sup>th</sup> February, 2002 under Rule 10 (2) of the CCS (CCA) Rules, 1965.


And Whereas Shri J.K. Goyal filed an OA No. 76/2002 before Hon'ble Central Administrative Tribunal, Guwahati Bench against the order dated the 18<sup>th</sup> February, 2002. The Hon'ble CAT vide interim order dated 10.04.2002 suspended the operation of the order F.No.C-14011/5/2002-V&L dated 18.02.2002.

And Whereas Hon'ble Guwahati High Court vide order dated 21.06.2002 in WPC No.3947/2002 (UOI & ors Vs. Shri J.K. Goyal) stayed the operation of the order dated 10.04.2002 passed by the Hon'ble CAT, Guwahati Bench in OA No.76/2002.

And Whereas subsequently, Hon'ble Guwahati High Court vide order dated 27.08.2002 vacated its order dated 21.06.2002 staying the operation of the order passed by the Hon'ble CAT on 10.04.2002 in OA No.76 of 2002.

Now, therefore, in compliance with the order dated 10.04.2002 of CAT, Guwahati Bench, the President is pleased to suspend the operation of the suspension order dated 18.02.2002 with effect from the 10<sup>th</sup> April, 2002 i.e. the date of the CAT order and till further orders subject to the outcome of WPC No. 3947/2002 pending before the Guwahati High Court and/or any SLP that may be filed before the Hon'ble Supreme Court of India.

(by order and in the name of the President of India)

  
(Dr. V.K. SINGH)

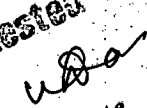
Under Secretary to the Government of India

✓ Shri J.K. Goyal,  
CCIT (under suspension)

(Through O/o CCIT, Guwahati)

Copy to: -

1. The Chief Commissioner of Income Tax, Guwahati.
2. The Director General of Income Tax (Vig.), New Delhi.
3. The Director of Income Tax (Vig.), Kolkata.
4. The Under Secretary Ad-VI, CBDT, New Delhi.
5. Ad-VIA/DT (Per).
6. Litigation file
7. Office Copy.
8. Guard file.

**Attested**  
  
**Advocate.**

(Dr. V.K. SINGH)  
Under Secretary to the Government of India

No. A.22011/16/2002 Ad.VI(Pt.)  
Government of India  
Ministry of Finance & Company Affairs  
Department of Revenue  
(Central Board of Direct Taxes)

\*\*\*\*

New Delhi the 18th November 2002.

ORDER NO. 181 OF 2002

Consequent upon the revocation of the operation of the suspension order dated 18.2.2002 (E.No. 14011/5/2002-V&I) with effect from 10.4.2002 Shri J.K. Goyal (69002) CCIT is posted as CCIT (OSD), Guwahati with effect from 10.4.2002 and until further orders.

(P.C. BHATT)  
Under Secretary to the Government of India

Copy to :

1. Officer concerned.
2. All Chief Commissioners/Directors General of Income Tax.
3. Principal Chief Controller of Accounts, New Delhi.
4. Zonal Accounts Officer CBDT, C/O CCIT concerned.
5. DIT (IT) DIT/RSPS/DIT(Audit)/DIT(Vig) DIT (Systems) DIT(O&M)s DIT (Spl.Inv.)
6. PSs to FM MOS(A)/Secy.(R)/AS(R)/Chairman, CBDT/ Members, CBDT JS (Admn)CBDT, EWRT/DS(Hqrs/Admn)/ Directors, CBDT/DSS CBDT, US (Hqrs) US(AD- VI(A)/Ad.VII/ITCC/OT/Computer Cell, Hindi Section.

Sd/-  
(P.C. BHATT)  
Under Secretary to the Government of India

Attest  
u Sen  
Advocate

-42 - / 118  
**ANNEXURE - 7**  
**IN THE OFFICE OF  
THE COMMISSIONER OF INCOME-TAX (APPEALS) - I  
BHUBANESWAR.**

Date of order : 13.08.2001

I.T. Appeal No.: 196/Ors/2001-02

Instituted on 12.07.2001

from the Order of the I.T. Inv. Circle-I, Bhubaneswar.

( Sri S. R. Senapati )

(1) Year of assessment : 1990-91 to 2000-01 (Block Asstt.)

(2) Name of appellant : Sri Karunakar Mohanty,  
607, Lewis Road,  
Bhubaneswar.

Income assessed : Rs. 9,92,59,143/-

Income demanded : Rs. 7,33,72,358/-

Section under which amendment was made : 158 BC(c) of the I.T. Act., 1961.

Date of hearing : 24.07.2001 & 25.07.2001

Present for appellant : Shri B. N. Mahapatra, Advocate &  
Shri Karunakar Mohanty, Appellant.

Present for department : None.

**APPELLATE ORDER AND GROUNDS OF DECISION**

There was an action u/s. 132 of the Income-tax Act, 1961 at the business as well as residential premises of the appellant and also some other persons on 20.06.1999. Consequent upon the proceedings u/s. 158BC(c), the A.O. determined the undisclosed income at Rs. 9,92,59,143/- for different years of the block period as under :

| "ASST.<br>YEAR | ADDITION                                                       | TOTAL INCOME<br>INCLUDING<br>UNDISCLOSED<br>INCOME U/S.<br>158BB(A)(Rd.) | RETURNED/<br>ASSESSED<br>INCOME(B)<br>(Rs.) |
|----------------|----------------------------------------------------------------|--------------------------------------------------------------------------|---------------------------------------------|
| 1990-91        | As per block return                                            | 22,680                                                                   | 22,680                                      |
| Add            | Undisclosed profit as<br>discussed above.                      | 236,069                                                                  |                                             |
| -do-           | Undisclosed investment in<br>properties as discussed<br>above. | 404,800                                                                  |                                             |
| 1991-92        | As per block return                                            | 21,120                                                                   | 21,120                                      |
| Add            | Undisclosed profit as<br>discussed above                       | 329,028                                                                  |                                             |
| -do-           | Undisclosed investment in<br>properties as discussed<br>above. | 535,800                                                                  |                                             |

Contd. Page..2

**Attested**  
*u/s*  
**Advocate.**

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[ 2 ]

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Sri Karunakar Mohanty IIA No.196/Oms/2001-02

A/Y-1990-91 to 2000-01

|         |                                                          |            |           |
|---------|----------------------------------------------------------|------------|-----------|
| 1992-93 | As per block return                                      | 43,710     | 43,710    |
| Add     | Undisclosed profit as discussed above.                   | 129,380    |           |
| 1993-94 | As per block return                                      | 55,920     | 55,920    |
| Add     | Undisclosed profit as discussed above.                   | 407,777    |           |
| -do-    | Undisclosed investment in properties as discussed above. | 494,800    |           |
| 1994-95 | As per block return                                      | 361,910    | 361,910   |
| Add     | Undisclosed profit as discussed above.                   | 1,705,797  |           |
| -do-    | Undisclosed investment in properties as discussed above. | 494,800    |           |
| 1995-96 | As per block return                                      | 833,420    | 833,420   |
| Add     | Undisclosed capital as discussed above.                  | 1,638,133  |           |
| -do-    | Undisclosed profit as discussed above.                   | 2,021,486  |           |
| -do-    | Undisclosed investment in properties as discussed above. | 494,800    |           |
| -do-    | Undisclosed investment as discussed above.               | 429,200    |           |
| 1996-97 | As per block return                                      | 1,015,730  | 1,015,730 |
| Add     | Undisclosed capital as above.                            | 2,382,228  |           |
| -do-    | Undisclosed profit as discussed above.                   | 2,353,341  |           |
| -do-    | Undisclosed expenditure as discussed above.              | 19,600     |           |
| -do-    | Undisclosed receipt                                      | 572,939    |           |
| 1997-98 | As per block return                                      | 2,645,440  | 2,645,440 |
| Add     | Undisclosed capital as                                   | 29,135,801 |           |
| -do-    | Undisclosed profit as discussed above.                   | 5,169,859  |           |
| -do-    | Undisclosed investment in properties as discussed above. | 4,185,000  |           |
| -do-    | Undisclosed expenditure as discussed above.              | 980,000    |           |
| -do-    | Undisclosed receipt as discussed above.                  | 501,000    |           |
| 1998-99 | As per block return                                      | 4,896,510  | 4,896,510 |
| Add     | Undisclosed capital as discussed above                   | 4,200,361  |           |
| -do-    | Undisclosed profit as discussed above                    | 10,768,144 |           |
| -do-    | Undisclosed investment in properties as discussed above. | 3,300,000  |           |
| -do-    | Undisclosed expenditure as discussed above.              | 12,284,990 |           |

Contd. Page..3

Attest  
UPD  
Advocate

|           |                                                          |           |           |
|-----------|----------------------------------------------------------|-----------|-----------|
| -do-      | Undisclosed investment as discussed above.               | 3,004,108 |           |
| -do-      | Undisclosed receipt as discussed above.                  | 250,000   |           |
| 1999-2000 | As per block return                                      | 1,932,870 | 1,932,870 |
| Add       | Undisclosed profit as discussed above.                   | 4,536,063 |           |
| -do-      | Undisclosed investment in properties as discussed above. | 2,067,693 |           |
| -do-      | Undisclosed expenditure as discussed above.              | 1,508,600 |           |
| -do-      | Undisclosed investment as discussed above.               | 209,000   |           |
| 2000-2001 | As per block return                                      | 142,680   | 142,680   |
| Add       | Undisclosed investment in properties as discussed above. | 775,465   |           |
| -do-      | Undisclosed expenditure as discussed above.              | 630,070   |           |
| -do-      | Undisclosed investment as discussed above.               | 650,000   |           |
| -do-      | Undisclosed receipt as discussed above.                  | 200,000   |           |

Total 111,231,133 11,971,090

Undisclosed income (A-B) = Rs. 111,231,133/- - Rs. 11,971,090/- =  
Rs. 99,260,143/-

2. The appellant during the course of hearing before the A.O. had objected to the present A.O. proceeding with the case because according to him the said Officer was biased and had harassed him during the course of operations u/s. 132 but such application made by the appellant to the C.I.T. for transfer of jurisdiction was rejected.

3. The A.O. noticed that there were proforma balance sheets and proforma P & L account as per seized document KMO-11 and the balance sheets indicated the position as under :

| Financial Year | As per seized documents Proforma Balance Sheet Value of assets (in Rs.) | Balance sheet as per return Value of assets (in Rs.) | Difference (in Rs.) |
|----------------|-------------------------------------------------------------------------|------------------------------------------------------|---------------------|
| 1993-94        | 2380931                                                                 | 1008539                                              | 1372392             |
| 1994-95        | 5625431                                                                 | 2165802                                              | 3659629             |
| 1995-96        | 7977431                                                                 | 3241861                                              | 4735570             |
| 1996-97        | 46494466                                                                | 12188806                                             | 34305660            |
| 1997-98        | 37960037                                                                | 23011532                                             | 14968505            |

Contd. Page..4

**Attest.**  
  
 Advocate

-45-  
[ 4 ]

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Sri Karunakar Mohanty I.A. No.100/Org/2001-02 A/Y-1990-91 to 2000-01

These proforma balance sheets were also signed by the auditor namely Shri B. S. Subudhi of M/s. B. S. Subudhi & Co., 356, Sahid Nagar, Bhubaneswar like the balance sheet etc. which were submitted with the returns of income from time to time. On examination the said auditor Sri Subudhi submitted that the proforma balance sheets were signed by him on the basis of figures and data furnished by the appellant. However, to this contention of the Ld. C.A., the A.O. did not make any further query nor during the course of the search any physical verification of the assets in question on the basis on which the proforma balance sheets were prepared was carried out. The A.O. also did not obtain copies of Balance sheets furnished to the Banks. The A.O. inferred that the appellant had certain assets value of which worked out to Rs.3,42,68,696/- as under :

| Sl.                                                                                                                                                 | Name of the machinery | no. of machinery | Price @ [price quoted from authorised dealers as prevalent in F/Y.96-97] |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|------------------|--------------------------------------------------------------------------|
| 01.                                                                                                                                                 | Excavator             | 4 nos.           | Rs.37 lakh =Rs.148 lakh                                                  |
| 02.                                                                                                                                                 | Tipper                | 25 nos.          | Rs.6.5 lakh =Rs.162.5 lakh                                               |
| 03.                                                                                                                                                 | Trucks                | 5 nos.           | Rs.4 lakh =Rs.20 lakh                                                    |
| 04.                                                                                                                                                 | Concrete mixer        | 10 nos.          | Rs.55,000 =Rs.5,50,000                                                   |
| [In the contract agreement no.25/CPM/BBS/SER/95 & contract agreement no.38/CE/C/HQ/BBS/SER/2000 of Sri Karunakar Mohanty as awarded by SE Railways] |                       |                  |                                                                          |
| 05.                                                                                                                                                 | Dozer                 | 2 nos.           | Rs.49,000 =Rs.98,000                                                     |
| 06.                                                                                                                                                 | Vibrator(concrete)    | 10nos.           | Rs.16,500 =Rs.1,65,000                                                   |
| 07.                                                                                                                                                 | Diesel Pump(5 HP)     | 12nos.           | Rs.18,195 =Rs.2,18,340                                                   |
| 08.                                                                                                                                                 | Generator             | 3 nos.           | Rs.62,452 =Rs.1,87,356                                                   |
|                                                                                                                                                     |                       |                  | Rs.3,42,68,696"                                                          |

Such value was worked out by him on the basis of information obtained from authorised dealers the details of which were not made available to the appellant. Still on the above value of Rs.3,42,68,696/- was approximately the same as the difference of Rs.3,43,05,860/- as at the end of the accounting year 96-97, the inference of the A.O. was that the proforma balance sheets reflected the true and correct position of statement of financial affairs.

When called upon, the appellant submitted before the A.O. that the proforma balance sheets etc. were prepared on the estimation but the A.O. held that the basis for estimates was not indicated.

Contd. Page..5

Attested  
[Signature]  
Advocate.

4. Further, the A.O. proceeded to obtain information from the concerned departments in respect of the contract works allotted to the appellant and the following position emerged therefrom :

TABLE-I

| Financial year | Received from                                  | Gross bill amount received as per enquiry | Gross receipt shown in the I.T. return. | Higher figure amount being taken into consideration |
|----------------|------------------------------------------------|-------------------------------------------|-----------------------------------------|-----------------------------------------------------|
| 1989-90        | Executive Engineer, Div-III, BDA, Bhubaneswar. | 1,303,744                                 | record not available.                   | 1303744                                             |
| 1990-91        | - do -                                         | 1,750,738                                 | record not available                    | 1750738                                             |
| 1991-92        | - do -                                         | 865,450                                   | record not available.                   | 856450                                              |
| 1992-93        | Executive Engineer, BCD-1, IDCO, Bhubaneswar.  | 898,530                                   | record not available.                   | 898530                                              |
| - do -         | Executive Engineer, Div-II, BDA, Bhubaneswar.  | 664,384                                   | record not available.                   | 664384                                              |
| - do -         | Executive Engineer, Div-III, BDA, Bhubaneswar  | 755,569                                   | record not available                    | 755569                                              |
| 1993-94        | Executive Engineer, Div-II, BDA                | 6,575,871                                 | 6,575,871                               | 2318483<br>6575871                                  |
| - do -         | Executive Engineer, Div-III                    | 380,976                                   | n.a.                                    | 380976                                              |
| - do -         | Executive Engineer (R&D), Paradip Port Trust.  | 1,078,273                                 | n.a.                                    | 1078273                                             |
| - do -         | Executive Engineer, BCD I, IDCO, Bhubaneswar.  | 2,303,390                                 | n.a.                                    | 2303390                                             |
| 1994-95        | EE, IDCO, BCD-II                               | 7,836,847                                 | 7,184,154                               | 10338510<br>7836847                                 |
| - do -         | Executive Engineer, Div-II, BDA                | 1,107,340                                 | 1,729,657                               | 7836847<br>1729657                                  |
| - do -         | General Manager, IDCO, Balasore.               | 1,766,058                                 | 1,766,058                               | 1766058                                             |
| - do -         | EE, R&B Div, Paradip Port Trust                | 2,701,346                                 | 2,686,570                               | 2701346                                             |
| 1995-96        | Executive Engineer, IDCO, BCD-II, Mancheswar.  | 6,830,276                                 | 6,830,276                               | 14033908<br>6830276                                 |
| - do -         | Executive Engineer, BCD-I                      | 440,710                                   | 440,710                                 | 440710                                              |
| - do -         | Executive Engineer, CPWD, Div-II               | 4,611,063                                 | 4,611,063                               | 4611063                                             |

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Attested  
Advocate.



|         |                                                  |                                            |             |          |
|---------|--------------------------------------------------|--------------------------------------------|-------------|----------|
| - do -  | General Manager, IDCO, Balasore                  | 2,952,497                                  | 2,952,497   | 2952497  |
| - do -  | South Eastern Railway                            | 1,306,651                                  | 1,306,651   | 1306651  |
| - do -  | Executive Engineer, (R&B), Paradip Port Trust    | 704,147                                    | n.a.        | 704147   |
|         |                                                  |                                            |             | 16845344 |
| 1996-97 | South Eastern Railway                            | 8,947,985                                  | 8,947,985   | 8947985  |
| - do -  | Executive Engineer, IDCO, B. Construction Div-II | 3,842,337                                  | 3,842,337   | 3842337  |
| - do -  | Executive Engineer, Central Div-II, CPWD         | 20,852,898                                 | 20,852,898  | 20852898 |
| - do -  | Executive Engineer, (R&B), Paradip Port Trust    | 172,233                                    | N.A.        | 172233   |
| - do -  | Executive Engineer, IDCO, Balasore               | 1,602,300                                  | N.A.        | 1602300  |
|         |                                                  |                                            |             | 35417753 |
| 1997-98 | Executive Engineer, Div-III, BDA, BBSR           | N.A.                                       | 460,754     | 460754   |
| - do -  | Executive Engineer, BCD-II, IDCO                 | 1,478,992                                  | 1,478,992   | 1478992  |
| - do -  | Executive Engineer, BCD-II, CPWD                 | 12,432,651                                 | 12,432,651  | 12432651 |
| - do -  | Executive Engineer, Rengali, Mahisapat.          | 24,704,138#                                | 33,50,949#  | 24704138 |
|         |                                                  | Gross bill amount - break up not available |             |          |
| - do -  | Executive Engineer, Rengali, Godikatala          | not available                              | 2,647,300// | //       |
| - do -  | Executive Engineer, Rengali, Mahisapat           |                                            |             |          |
| - do -  | CAO, RIP, Rengali, Samal                         | not available                              | 2,200,000// | //       |
| - do -  |                                                  | not available                              | 1,468,230   | 1468230  |
| - do -  |                                                  | not available                              | 789,244     | 789244   |
| - do -  |                                                  | not available                              | 1,995,844   | 1995844  |
| - do -  |                                                  | not available                              | 3,925,047   | 3925047  |
| - do -  |                                                  | not available                              | 8,327,525   | 8327525  |
| - do -  |                                                  | not available                              | 2,250,287   | 2250287  |
| - do -  |                                                  | not available                              | 2,011,039   | 2011039  |
| - do -  |                                                  | not available                              | 1,651,697   | 1651697  |

Contd. Page..7

**Attested**  
*W. S. Das*  
**Advocate.**

|         |                                                          |               |           |          |
|---------|----------------------------------------------------------|---------------|-----------|----------|
| - do -  | - do -                                                   | not available | 2,696,698 | 2696698  |
| - do -  | - do -                                                   | not available | 351,200   | 351200   |
| - do -  | - do -                                                   | not available | 1,469,326 | 1469326  |
| - do -  | EE, B&C Div., Paradip Port Trust                         | 5,368,860     | 5,368,860 | 5368860  |
| - do -  | Dy. Chief Engineer, Construction, South Eastern Railway. | 3,597,983     | 3,597,983 | 3597983  |
| - do -  | General Manager, IDCO, BDC-I                             | N.A.          | 801,336   | 801336   |
| - do -  | Dy. Chief Engineer, South Eastern Railway.               | N.A.          | 1,416,066 | 1416066  |
| - do -  | Executive Engineer, IDCO, Balasore.                      | 107,650       | N.A.      | 107650   |
|         |                                                          |               |           | 77304567 |
| 1998-99 | Executive Engineer, IDCO, Cuttack.                       | 6,805,361     | 6,805,361 | 6805361  |
| - do -  | Executive Engineer, BCD-II, CPWD                         | 6,393,076     | 6,393,076 | 6393076  |
| - do -  | Dy. Chief Engineer, South Eastern Railway                | 6,363,614     | 6,363,478 | 6363614  |
| - do -  | - do -                                                   | N.A.          | 892,923   | 892923   |
| - do -  | EE, B&C Div., Paradip Port Trust                         | 4,249,505     | 4,249,505 | 4249505  |
| - do -  | General Manager, BCD-I, IDCO                             | 2,436,078     | 2,436,078 | 2436078  |
| - do -  | Executive Engineer, IDCO, Balasore.                      | 1,649,990     | N.A.      | 1649990  |
| - do -  | Samal Project                                            | not available | 2,064,912 | 2064912  |
| - do -  | Samal Project                                            | not available | 1,014,686 | 1014686  |
|         |                                                          |               |           | 30860045 |

6. The books of accounts, when required to be produced, which were not found during the course of search also were claimed by the appellant to have been stolen/misplaced/destroyed but this contention, supported by an affidavit was not accepted by the A.O.

7. According to the A.O., there was unaccounted for expenditure as per seized book SPD - 2 as under :

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Attested  
W.Dan  
Advocate.

1. Payments of p.c./special account recorded in SPD-2:  
(Unaccounted expenditure)

| <u>Expenditure</u>   | <u>Amount in Rs.</u> |
|----------------------|----------------------|
| Special Account      | 1,190,000            |
| Tender Exp.          | 50,000               |
| P.C. paid total      | 650,000              |
| Indramani            | 200,000              |
| 2nd Tender-Indramani | 17,000               |
| S.E., F.E., EST,     | 70,000               |
| Steno to C.E. & SE   | 3,000                |
| Thana Expenditure    | 10,000               |
| O.L.C. Samal         | 16,000               |
| Total                | 2,206,000            |

and at the same time he inferred that the materials supplied by the contractor department had been partly sold by the appellant as detailed below :

- (i) Receipt of Rs.4,07,095/- from sale of cement. (Refer page-109 to 116 of KCP-1).
- (ii) Sale of cement of Rs.3,16,585/- (Refer page-69 of KCP-24).
- (iii) Receipt of Rs.3,20,000/- from sale of cement (Refer page-41, backside, KCP-24).
- (iv) Receipt of Rs.1,38,000/- from sale of cement (Refer page-10 of KCP-24).
- (v) Receipt of Rs.12,500/- from sale of steel. (Refer page-10 of KCP-24).
- (vi) Receipt of Rs.40,000/- from sale of cement at Samal. (Refer page-52 of SPD-2).

7.1 From these facts the A.O. inferred as under :

"It also appears from the seized records that the unaccounted sale of cement and steel of amount Rs.12,36,180/- and unaccounted expenditure of Rs.22,06,000/- (as per SPD-2) so as to reduce the actual income earned by Sri K.K. Mohanty, actually done in the financial year 1997-98 and concerning to the contract works awarded at Rengali - Samal Projects, as evidenced from such seized records. The assessee has stated to have earned gross bills of Rs.2,69,36,137/- from Samal Projects in F/Y.1997-98 and as net profit @ 8% of the gross bill has been taken into consideration in the return of income of the said financial year. Hence, the net profit @ 8% on the said gross bill amount of Rs.2,69,36,137/- comes to Rs.21,54,690/-. However, the actual net profit is to be calculated after taking into account the unaccounted expenditure of Rs.22,06,000/- as part of unaccounted income/receipt and undisclosed receipt of Rs.12,36,180/- on account of sale of cement and steel, which comes to Rs.55,97,070/- i.e. 20.7% of the said gross bill."

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**Attested**  
*W.D.*  
**Advocate.**

Srl. Karunakar Mohanty ITA No. 196/Drs/2001-02 A/Y-1990-91 to 2000-01

7.2 According to the A.O. certain expenses were inflated by the appellant for the financial year 1997-98 as per the seized document KMO-34 as under:

| Sl. No. | Expenditure A/c.                 | Amount as per P&L A/c. (in Rs.) | Amount as per KMO-34 (in Rs.) | Difference |
|---------|----------------------------------|---------------------------------|-------------------------------|------------|
| (1)     | Cement account including transp. | 3,075,208                       | 1,275,178                     | 18,00,030  |
| (2)     | Chips including transportation.  | 1,325,305                       | 975,835                       | 3,49,470   |
| (3)     | Bricks including transportation. | 4,555,308                       | 2,152,816                     | 24,02,492  |
| (4)     | Metal including transportation.  | 2,096,000                       | 621,372                       | 14,74,628  |
| (5)     | Balla, Patta etc.                | 1,065,714                       | 719,627                       | 3,46,087   |
| (6)     | Travelling exp.                  | 327,500                         | 127,529                       | 1,99,971   |
| (7)     | Salary to staff                  | 1,055,400                       | 555,400                       | 5,00,000   |
| (8)     | Sand including transportation.   | 1,525,255                       | 949,835                       | 5,75,420   |
| (9)     | Rajuri including transportation. | 637,285                         | 276,194                       | 3,61,091   |
|         |                                  | 1,56,62,975                     | 76,53,786                     | 80,09,189  |

The same worked out to about 19.9% and, therefore, the A.O. inferred that the profit should have been returned by the appellant by applying not profit rate of 20% on gross bill amounts. Accordingly, the undisclosed profits were worked out as under :

| Financial Year | Gross Bill Amount | Source  | 20% of gross bill amount (Net Profit) | Net profit as declared in the return of income | Difference amount as Undisclosed profit. |
|----------------|-------------------|---------|---------------------------------------|------------------------------------------------|------------------------------------------|
| 1989-90        | 1,303,744         | TABLE-I | 260,749                               | 22,680                                         | 238,069                                  |
| 1990-91        | 1,750,738         | TABLE-I | 350,148                               | 21,120                                         | 329,028                                  |
| 1991-92        | 865,450           | TABLE-I | 173,090                               | 43,710                                         | 129,380                                  |
| 1992-93        | 2,318,483         | TABLE-I | 463,697                               | 55,920                                         | 407,777                                  |
| 1993-94        | 10,338,510        | TABLE-I | 2,067,702                             | 361,905                                        | 1,705,797                                |
| 1994-95        | 14,033,908        | TABLE-I | 2,806,781                             | 785,285                                        | 2,021,496                                |
| 1995-96        | 16,845,344        | TABLE-I | 3,369,068                             | 1,015,727                                      | 2,353,341                                |
| 1996-97        | 35,417,753        | TABLE-I | 7,083,550                             | 1,913,691                                      | 5,169,859                                |
| 1997-98        | 77,304,567        | TABLE-I | 15,460,913                            | 4,692,769                                      | 10,768,144                               |
| 1998-99        | 30,860,045        | TABLE-I | 6,172,009                             | 1,635,946                                      | 4,536,063                                |
| Total          | 191,038,542       |         | 38,207,707                            | 10,548,753                                     | 27,658,954                               |

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**Attested**  
  
**Advocate.**

8. The A.O. further noticed that the appellant did not maintain any books of accounts - atleast they were not produced nor were found during the course of search and certain transactions were entered into by the appellant in the name of S/Sri. S. Mohapatra, N. Tripathy and N. Mohapatra, who stated that the cash/drafts in their respective bank accounts were deposited by the appellant as under :-

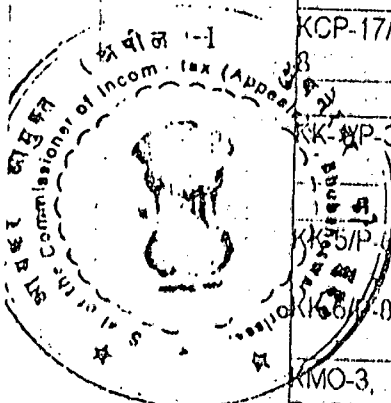
| KARUNAKAR MOHANTY                               |                                         |                                                 |                    |                         |                |
|-------------------------------------------------|-----------------------------------------|-------------------------------------------------|--------------------|-------------------------|----------------|
| Book No./Page No.                               | Transaction done by                     | Transaction done with                           | Amount (Rs.)       | Transaction type        | Financial Year |
| KK-1/P-11                                       | K.K. Mohanty                            | Sterling Holiday Resort India Ltd.              | 14,100             | Unaccounted Investment. | 1994-95        |
| KK-1/P-63                                       | K.K. Mohanty                            | Sterling Holiday Resort India Ltd.              | 14,100             | Unaccounted Investment. | 1994-95        |
| As per statement of Sri K.K. Mohanty on 29.6.99 | Karunakar Mohanty                       | Time share - Toshali Sands Ltd.                 | 66,000             | Unaccounted Investment. | 1994-95        |
| As per statement of Sri K.K. Mohanty on 29.6.99 | Karunakar Mohanty                       | Time share - Sterling Holiday Resort India Ltd. | 60,000             | Unaccounted Investment. | 1994-95        |
| As per statement of Sri K.K. Mohanty on 29.6.99 | Karunakar Mohanty                       | Time share - Sterling Holiday Resort India Ltd. | 25,000             | Unaccounted Investment. | 1994-95        |
| KK-1/P-64                                       | N. Mohapatra, N. Tripathy, S. Mohapatra | Bank of India, Ashok Nagar, Bhubaneswar.        | 350,000            | Unaccounted Investment. | 1994-95        |
| JNV-4/P-17                                      | K.K. Mohanty                            | N.A.                                            | 529,200<br>572,935 | Unaccounted Receipt.    | 1995-96        |
| KK-1/P-12                                       | Prahalad Swain, C/o. K.K. Mohanty       | BCL Financial Services Pvt. Ltd.                | 19,600             | Unaccounted expenditure | 1995-96        |
| JNV-1/P-35                                      | K.K. Mohanty                            | N.A.                                            | 300,000            | Unaccounted expenditure | 1996-97        |
| JNV-5/P-60                                      | K.K. Mohanty                            | N.A.                                            | 660,000            | Unaccounted expenditure | @ 1996-97      |
|                                                 |                                         |                                                 | 960,000            |                         |                |

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**Attested**  
*[Signature]*  
**Advocate.**

|              |                                          |                                                           |            |                         |           |
|--------------|------------------------------------------|-----------------------------------------------------------|------------|-------------------------|-----------|
| KCP-6/P-1    | M/s.K.K. Mohanty                         | N.A.                                                      | 270,000    | Unaccounted Receipt     | 1996-97   |
| KCP-6/P-1    | M/s.K.K. Mohanty                         | N.A.                                                      | 231,000    | Unaccounted Receipt.    | 1996-97   |
|              |                                          |                                                           | 501,000    |                         |           |
| KCP-24/P-6   | K.K. Mohanty                             | N.A.                                                      | 250,000    | Unaccounted Receipt.    | 1997-98   |
|              |                                          |                                                           | 250,000    |                         |           |
| As submitted | N. Mohapatra, N. Tripathy, S. Mohapatra. | Bank of India, Ashok Nagar, Bhubaneswar.                  | 418,000    | Unaccounted investment. | 1997-98   |
| KK-1/P-40    | Namila Mohapatra                         | Iata Engineering & Locomotive Co. for purchase of lipper. | 2,586,108  | Unaccounted investment. | 1997-98   |
|              |                                          |                                                           | 3,004,108  |                         |           |
| KCP-24/P-18  | K.K. Mohanty                             | N.A.                                                      | 311,535    | Unaccounted expenditure | 1997-98   |
| KK-1/P-1     | K.K. Mohanty                             | Toshali Royal View                                        | 75,155     | Unaccounted expenditure | 1997-98   |
| KMO-23/P-2   | K.K. Mohanty                             | Related to Shivpur Project p.c. payment.                  | 800,000    | Unaccounted Expenditure | 1997-98   |
| SPD-1        | K.K. Mohanty                             | do -                                                      | 3,960,067  | Unaccounted expenditure | 1997-98   |
| KCP-17/P-18  | K.K. Mohanty                             | N.A.                                                      | 7,138,233  | Unaccounted expenditure | 1997-98   |
|              |                                          |                                                           | 12,284,990 |                         |           |
| KK-4/P-34    | K.K. Mohanty                             | U.K. Rath                                                 | 280,000    | Unaccounted investment  | 1998-99   |
|              |                                          |                                                           | 280,000    |                         |           |
| KK-5/P-13    | K.K. Mohanty                             | Bisnu                                                     | 10,000     | Unaccounted Expenditure | 1998-99   |
| KK-5/P-10    | K.K. Mohanty                             | N.A.                                                      | 153,000    | Unaccounted Expenditure | 1998-99   |
| KMO-3, P-45A | K.K. Mohanty                             | Mukesh Kaul                                               | 800,000    | Unaccounted Expenditure | 1998-99   |
| KMO-3/P-52   | K.K. Mohanty                             | N.A.                                                      | 545,600    | Unaccounted Expenditure | 1998-99   |
|              |                                          |                                                           | 1,508,600  |                         |           |
| KCP-1/P-47 5 | K.K. Mohanty                             | N.A.                                                      | 580,070    | Unaccounted Expenditure | 1999-2000 |
| KK-5/P-38    | K.K. Mohanty                             | Admission Fee for daughter                                | 50,000     | Unaccounted Expenditure | 1999-2000 |
|              |                                          |                                                           | 630,070    |                         |           |
| KK-1/P-21    | K.K. Mohanty                             | Margin money paid to Bank of India, Solihdnagar.          | 650,000    | Unaccounted investment  | 1999-2000 |
|              |                                          |                                                           | 650,000    |                         |           |

Attested  
 [Signature]  
 Advocate.



|                                                                |                      |                                                     |         |                         |         |
|----------------------------------------------------------------|----------------------|-----------------------------------------------------|---------|-------------------------|---------|
| KMO-11,<br>P-49                                                | K.K.<br>Mohanty      | Rajendra Prasad Naik                                | 100,000 | Unaccounted<br>receipt. | 99-2000 |
| As per<br>statement<br>of Sri<br>K.K.<br>Mohanty<br>on 29.6.99 | Karunakar<br>Mohanty | Mahendra Nath Sahoo,<br>Prop. Seetal<br>Automobiles | 100,000 | Unaccounted<br>receipt  | 99-2000 |
|                                                                |                      |                                                     | 200,000 |                         |         |

8.1 The A.O. also recorded the following note:

"Note:- (a) There are certain entries which have not been taken into consideration in the above table for unaccounted transaction as those entries relate to contract works executed by Sri Karunakar Mohanty for Surangi, Shilpur & Samal Projects, as gross bill amounts of these projects have already been taken into consideration for the purpose of undisclosed net profits earned out of such projects as stated above.

(b) In some of the transactions wherein financial year is not available for noting, particular financial year has been taken into consideration as the assessee Sri Karunakar Mohanty has executed most of the contract works as inferred above during the financial years 1996-97 & 97-98, as the said transactions may be indicated to have been done during the said financial years concerning to mostly the said projects. Also in some of the transactions where the date or year is not known or not even stated by the said assessee, the current financial year i.e. 1999-2000 has been taken into consideration as the search was conducted on 29.6.1999.

(c) Some of the transactions as mentioned in the questionnaire dtd.16th Nov., 2000 which have not been placed in the above table, have been considered separately as those transactions relate mostly to expenditures done for contract works at Samal, Shilpur & Surangi projects and the gross bill amounts received separately due to the said projects have been taken into consideration for the purpose of undisclosed net profits as discussed above.

(d) The main banker of Sri Karunakar Mohanty & Smt. Basanti Mohanty i.e. Bank of India, Sahidnagar Branch, Bhubaneswar has reported vide their letter No.SN/ADV/KCB/2000-01/090 dtd.8.8.2000 that Sri Karunakar Mohanty had availed the following facilities :

Cash Credit : Rs.60 lakhs  
Demand Loan : Rs.15 lakhs  
Bank Guarantee : Rs.60 lakhs

as against the valuation of the properties land and building mortgaged in respect of the said advances

Contd. Page..13

**Attested**  
*W.D.*  
**Advocate.**

Basanti Mohanty Rs.40.43 lakhs

Plot No.4, Bhagawanpur,  
I.E. Patraparu,  
Bhubaneswar. (as per  
report of valuation from  
Tahasildar, Bhubaneswar  
vide Misc. case  
No.107/1995 dtd.4.4.1995)

Basanti Mohanty Rs.9.13 lakhs

Plot No.329, Khata No.200  
& 62, Area No.247, dec.,  
Dumduma (as per  
valuation by Ramesh C.  
Swain, Architect for  
Creative Architects).

Karunakar-Mohanty Rs.24.74 lakhs

Building at Plot No.607,  
Lewis Road,  
Bhubaneswar (as per  
valuation by Ramesh C.  
Swain, Architect for  
Creative Architects).

It appears that the above facilities from the said bank have been taken by Sri Karunakar Mohanty since financial year 1995-96.

(c) As stated by Sri Karunakar Mohanty during the search operation on 29.6.99, the entire investment for purchase of four tippers had to be finally done by him although initially the said tippers were purchased in the name of Mrs. Namita Mahapatra and as evidenced Sri Karunakar Mohanty had arranged entire loan facilities which were subsequently repaid out of his income from undisclosed sources. The extract of the said statement is reproduced below :

Q.No.13 Please refer to loose sheet No.40 at loose sheet bunch identified as KK-1. This is a provisional receipt issued by Telco, for amount received from Bank of India, Saheed Nagar Branch in the n/o of Mrs. Namita Mahapatra C/o. K. K. Mohanty, 607 - Lewis Road. Please explain the nature of this payment and your connection with Mrs. Namita Mahapatra ?

Ans. The four tippers as evident from this receipt actually belong to Mrs. Namita Mahapatra, W/o. Shri Prasanna Kumar Mahapatra, Ratnakarbag, Bhubaneswar. This four tippers were purchased by taking around Rs.19,00,000/- as loan from Bank of India, Saheed Nagar Branch. In this connection I had paid from my C.C. account of the same bank approximately Rs.6.5 lakhs towards margin money. Subsequently, an agreement was made between Namita Mahapatra, my self and Bank of India that I shall take possession of the four tippers and the loan would be paid by me on behalf of Namita Mahapatra. In fact these four tippers were engaged in my business and I had agreed to pay Rs.30,000/- per month for each tipper as rent. I must have paid around Rs.10 to Rs.12 lakhs to the Bank as the repayment of loan."

Contd. Page..14

Attested  
W.D. Sen  
Advocate.



So Sri Karunakar Mohanty has been investing in other person's name from his own income from undisclosed sources, preferably from unaccounted net profits earned from contract works as inferred above and also it appears that any expenses including hire expenses due to the above said tippers as claimed by Sri Karunakar Mohanty, are not genuine.

(f) Moreover, Sri Karunakar Mohanty has stated on dtd.29.6.99, the extracts of which are as follows:

Q.No.14 Do you have anything to say?

Ans. I have paid Rs.2.8 lakhs (Rupees two lakhs & eighty thousand) to Sri U.K. Rath of BJB Nagar as advance for purchase of a plot of land. Subsequently, the agreement has been cancelled. The amount was paid to him sometime in March, 1997. This amount has been returned back by Shri U.K. Rath.

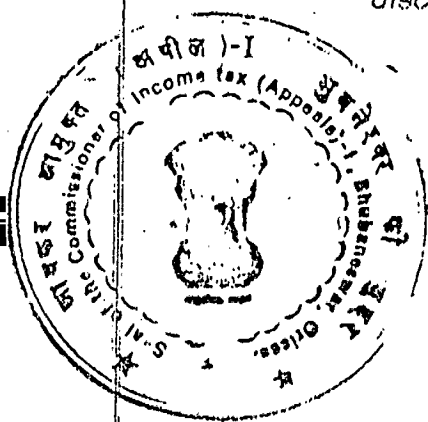
Further, I have purchased shares worth Rs.86,000/- from Bank of India, Bombay. I have also purchased time shares of Toshali Sand Ltd. and Sterling Holidays with an investment of Rs.66,000/-, Rs.60,000 and Rs.25,000/-. I have also borrowed Rs.1,00,000/- from Shri M.N. Sahoo at Seetal Automobiles, Mancheswar Industrial Estate, Bhubaneswar.

As evidenced Sri Karunakar Mohanty has invested as above from his income out of undisclosed sources preferably from unaccounted profits. Moreover, M/s. Seetal Automobiles has denied to have advanced any loan to Sri Karunakar Mohanty. So if Sri Karunakar Mohanty is stating to having taken Rs.1,00,000/- from M/s. Seetal Automobiles, it appears that the said amount of Rs.1,00,000/- represents the undisclosed income of Sri Karunakar Mohanty. On verification from Bank of India, in fact Sri Karunakar Mohanty had deposited Rs.1,25,000/- before the said bank for purchase of share, subsequently he was allotted shares worth Rs.81,000/-. Considering the facts and circumstances of the said case the nature and source of the said amount Rs.1,25,000/- has not been explained properly and satisfactorily. So, the said amount of Rs.1,25,000/- is considered as undisclosed investment from unaccounted net profits earned by Sri Karunakar Mohanty as discussed above in the financial year 1996-97.

(g) Details of payments recorded in SPD - 1:

| Date    | Page No. | Amount (in Rs.) |
|---------|----------|-----------------|
| 5.3.97  | 4        | 3500            |
| 8.4.97  | 13       | 20000           |
| 18.5.97 | 26       | 100,000         |
| 19.5.97 | 26       | 75,000          |
| 19.5.97 | 26       | 100,000         |
| 6.8.97  | 41       | 20000           |
| 14.9.97 | 45       | 50,000          |
| 23.5.97 | 29       | 200,000         |
| 23.5.97 | 29       | 700,000         |
| 23.5.97 | 29       | 2,081,567       |
| 26.5.97 | 30       | 200,000         |
| 8.8.97  | 42       | 100000          |
|         |          | 3950067         |

Contd. Page..15



Approved  
Signature  
Date

As seen above Sri Karunakar Mohanty has done some unaccounted expenditure at Shivpur & Samal contract projects, which are part of his undisclosed income earned out of unaccounted net profits. So, total amount as per the above seized record SPD-1 is taken as unaccounted expenditure preferably in the financial year 1997-98 considering the overall facts and circumstances."

8.2 Based upon the above and other materials available on record, the A.O. assessed the appellant on undisclosed income of Rs.9,92,59,143/-

9. The appellant had submitted an application for stay of demand and has preferred the appeal on the following grounds :

"1. For that the order of Block assessment dated 22.06.2001 as passed u/s.158BC(c) of the Income-tax Act, 1961 for the block period (Financial Year 1989-90 to 1999-2000 and from 01.04.99 to 29.06.99, Assessment Year 1990-91 to 2000-2001) determining the undisclosed income at Rs.9,92,59,143 by the Deputy Commissioner of Income-tax (Investigation) Circle-I, Bhubaneswar here in after referred to as the learned "Assessing Officer" is not just and legal on the facts and in the circumstances of the case..

2. For that the Block assessment order as passed by the learned Assessing Officer u/s.158BC(c) is not sustainable in the eye of law since from the very beginning the appellant challenged the jurisdiction of the learned Assessing Officer before the Honourable Commissioner of Income-tax vide his petition dated 15.09.1999 moved in response to order u/s.127 dated 06.09.99 and the said jurisdiction matter which goes to the root of the case was pending for disposal before the Honourable Commissioner of Income-tax till the block assessment order is passed on the facts and in the circumstances of the case.

3. For that notice issued u/s.158BC is invalid as the same has been issued to the appellant to file block return before the appellant was allowed to take the xerox copy of entire seized books of account/documents/papers on the basis of which only block period return could be prepared and consequently the block assessment order is invalid on the facts and in the circumstances of the case.

4. For that before passing the assessment order u/s.158BC(c) of the I.T.Act for the Assessment Year 1990-91 to 2000-2001, not a single opportunity of hearing has been afforded to the appellant and till completion of the assessment the appellant was not served with notice under sub-section (2) and sub-section (3) of section 143 as provided u/s.158BC(b) of the I.T. Act for hearing of the case which is violative of principle of natural justice and statutory provisions contained in section 158BC(b) of the I.T. Act on the facts and in the circumstances of the case.

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Advocate.



5. For that in the interest of natural justice, the learned Assessing Officer should have allowed opportunity of being heard to the appellant and should have confronted to the appellant the adverse material collected by him at the back of the appellant and utilised against the appellant as the appellant prayed for the same specifically in his reply letter dated 07.06.2001 on the facts and in the circumstances of the case.

6. For that the learned Assessing Officer has failed to appreciate the meaning of undisclosed income as defined u/s.158B(b) of the I.T. Act and the procedure for making the assessment under chapter XIV-B of the I.T. Act and has passed the block assessment order without following the procedure laid down in section 158B(b) and the provisions of section 142, sub-section (2) and (3) of section 143 of the I.T. Act on the facts and in the circumstances of the case.

7. For that the learned Assessing Officer should not have taken any adverse view for non production of audited books of account and other documents and information on the basis of such books of account, documents for the block period before him and should have accepted the submissions of the appellant that only after going through the seizure list on 01.07.99 given by the search party after completion of the search in midnight on 29.06.99, the appellant came to know that some of the books of account, documents relating to his business from the year 1989 to 28.06.99 kept in his office situated at plot No.126-B, Ashok Nagar, Bhubaneswar were either stolen or misplaced and this fact was intimated to the Inspector-in-charge, capital police station on 2.7.99 which has been numbered in capital police station as SDE-41 on 2.7.99 on the facts and in the circumstances of the case.

8. For that the finding/observation of the learned Assessing Officer, that the appellant has not submitted any satisfactory explanations in respect of questions asked in letter dated 16.11.2000 is not correct and against the materials available on record and that the above findings/observation of the learned Assessing Officer regarding appellant's reply dated 12.03.2001 is not specific and general in nature and the learned Assessing Officer has not stated as to why and how any specific explanation/reply is not satisfactory on the facts and in the circumstances of the case.

9. For that the proforma balance sheet and the proforma profit and loss account for the financial year 1993-94, 1994-95, 1995-96, 1996-97 and 1997-98 were prepared on estimated round figure for the limited purpose of obtaining higher cash credit/loan facility from different financial institutions including bank but after preparing the proforma balance sheet and profit and loss account when it was felt that absurd figures and results were appearing due to estimation without basis and the same could not be substantiated, those were discarded and not filed before the bank or any other authorities and that the appellant did not possess the value of assets as per proforma balance sheet to the tune of

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Rs.23,60,931, Rs.58,25,431, Rs.79,77,431, Rs.4,64,94,466 and Rs.3,79,80,037 during financial years 1993-94, 1994-95, 1995-96, 1996-97 and 1997-98 respectively on the facts and in the circumstances of the case.

10. For that the learned Assessing Officer should not have acted upon the proforma balance sheet while passing block assessment order under chapter XIV-B of the I.T. Act as the learned Assessing Officer has not brought any material/evidence into record by exercising his powers under the I.T. Act to the effect that the appellant has/had in fact possessed the assets mentioned in the proforma balance sheet in spite of the fact that the appellant vide his reply letter dated 12.03.2000 has specifically stated that the proforma balance sheet has been prepared on estimated round figures without any basis and the said proforma balance sheet was not produced before any authority and in his statement dated 29.06.99 recorded u/s.132(4), he has stated that the proforma balance sheet is false and fabricated on the facts and in the circumstances of the case.

11. For that in course of search in residence and site office the authorised officers did not find any such asset or seized any paper relating to acquisition/possession/purchase of such asset as mentioned in the proforma balance sheet on the facts and in the circumstances of the case.

12. For that the learned Assessing Officer should have accepted the submission of the appellant made vide his reply letter dated 12.03.2000, 7.6.2001 and the affidavit dated 7.6.2001 and the confirmation of Sri B.S. Subudhi, C.A. that he has prepared as per the information furnished by the appellant without verifying the correctness/authenticity of the information of assets and liabilities and should have confronted the material/evidence if any in his possession that the appellant possessed assets as mentioned in proforma balance sheet for the five financial years to the appellant in the interest of natural justice, before utilising the same against the appellant to determine the concealed income of the appellant in the block assessment order on the facts and in the circumstances of the case.

13. For that no valid and cogent reason has been assigned by the learned Assessing Officer to hold that the date and figures which are in higher side as per the proforma balance sheet seized by the department are true and correct and the appellant has submitted lower figure and data to the auditor for the purpose of filing such balance sheet along with the return of income for the above financial year to suppress the actual/real income and capital and that the finding/observation of the learned Assessing Officer that it was a fact on record and no inquiry it has been found that the balance sheet as at 31.03.97 and 31.03.98 as seized by the department were submitted to Bank of India, Sahid Nagar, Bhubaneswar is not factually correct on the facts and in the circumstances of the case.

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Advocate.



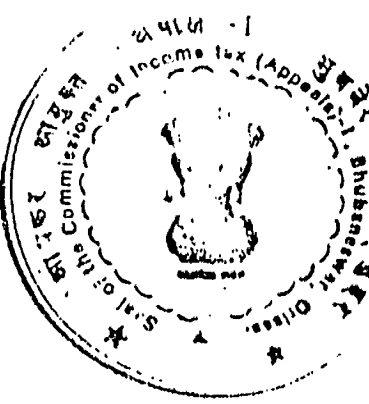
14. For that the decision of the Honourable Supreme Court in the case of Dhansiram Agarwal Vs. CIT (201 ITR 192) (SLP against this decision was dismissed by the Supreme Court), Coimbatore Spinning and Weaving Co. Ltd. Vs. CIT (95 ITR 375), Swadeshi Cotton Mills Co. Ltd. Vs. CIT (160 ITR 651) has no application in the case of the appellant as the facts of those cases are different from the facts of the case of the appellant on the facts and in the circumstances of the case.

15. For that the learned Assessing Officer should have accepted the submission of the appellant that he did not possess the various machineries, equipments as mentioned in the list furnished to the Executive Engineer, Right Canal Division-IV, Hindol Road, Dhenkanal except the machineries/equipments shown in the audited balance sheet filed along with return of income and that in order to execute the work "excavation of Right canal from RD 39.713 km to 43.563 km including CD and VRBS excluding SEQUDUCT H.RLR under EE Right canal Division-IV Handle Road, Dhenkanal the pre condition was that the contractor should process/deploy sufficient number of machineries in the work to participate in such tender for which the assessee has filed a statement showing possession of excavator 4 nos., Tipper 25 nos, Truck 5 nos., Concrete Mixture 10 nos., Dozer 2 nos., Vibrator (Concrete) 10 nos., Diesel Pump (5HP) 12 nos., Generator 3 nos., in the sense that he could arrange and deploy the above numbers of machineries in the work if the work will be awarded to him but no where the assessee has stated that he is the owner of the above number of machineries other than the machineries shown in the audited balance sheet filed along with return of income and neither the appellant has produced nor the Executive Engineer, Right canal Division-IV, Hindol Road, Dhenkanal asked the appellant to produce evidence in support of possession/ownership of the machineries/equipments as per the list furnished to him on the facts and in the circumstances of the case.

16. For that in course of search in the residence, office, at 176-B, Ashok Nagar, Bhubaneswar and work site the search party neither seized any documentary evidence in support of ownership of the machineries/equipments as per the list furnished to the EE, nor found any such machineries/equipments in possession of the assessee except document relating to four numbers of tipper belong to Namita Mohapatra which the appellant taken from her on hire on the facts and in the circumstances of the case.

17. For that the machineries like excavator or tipper, truck, dozer are required to be registered under the Motor Vehicle Act and that neither the search party have found any registration certificate book under the M.V. Act in respect of those alleged machineries from search premises nor the learned Assessing Officer has cited the registration numbers in respect of machineries mentioned in the list furnished to E.E. Right Canal Division IV, Hindol Road, Dhenkanal under the M.V. Act in his notice dated 6.11.2000 and 30.05.2001 on the facts and in the circumstances of the case.

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Advocate.

18. For that the learned Assessing Officer before holding that the appellant possessed machineries/equipments as per the list furnished before the Executive Engineer, Right Canal Division-IV, he should have confronted the evidence/material if any he has, in possession to the effect that the appellant owned the alleged machineries/equipments worth Rs.3,42,68,696 (the value of which estimated by the learned Assessing Officer), he should have confronted the same to the appellant, in the interest of natural justice as specifically prayed for by the appellant in his reply letter dated 7.6.2001 on the facts and in the circumstances of the case.

19. For that it is illogical/fallacious to compare the alleged differential amount in value of assets of Rs.3,43,05,660 which includes value of closing stock, Income tax deducted at source, cash in hand and bank deposit and machineries and equipments with the estimated value of machineries and equipments of Rs.3,42,68,696 to establish a correlation between the two on the facts and in the circumstances of the case.

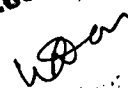
20. For that the learned Assessing Officer has gone wrong to estimate the undisclosed income of the appellant for the purpose of block assessment on the basis of assets shown in proforma balance sheet without taking into consideration the liabilities shown in the balance sheet which was prepared on estimated round figure of assets and liabilities for specific purpose of furnishing the same to the bank to obtain loan facilities (though not submitted to the bank) without taking into consideration the liabilities which was also shown on estimated and incorrect figures on the facts and in the circumstances of the case.

21. For that the learned Assessing Officer has not referred any seized document to hold that the appellant has earned substantially during the financial year 93-94 to 98-99 except referring to the proforma balance sheet and the statement of machineries submitted to the Executive Engineer, Right Canal division-IV, Hindol Road, Dhenkanal which are not true and correct as consistently stated by the appellant supported by affidavit and the learned Assessing Officer has also failed to bring any material/evidence to prove that the figures appeared in the proforma balance sheet are based on correct and true figures and the appellant actually own the machineries as per the statement furnished to the Executive Engineer on the facts and in the circumstances of the case.

22. For that the learned Assessing Officer is not justified to hold that the appellant has grossly under stated the assets and liabilities on the balance sheet of the respective financial year submitted along with the Income tax return relying on the letter No.SN/JK/DI.20.04.2001 of Branch Manager, Bank of India, Suheed Nagar, Bhubaneswar in which the said Manager has only intimated to the learned Assessing Officer that the Solvency Certificate was issued in the nature of a credential certificate in respect of the appellant at the request of the appellant for the specified purpose

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Advocate


of registration as Class-I contractor with DG, CPWD, New Delhi and no where he has intimated/admitted/stated that the solvency certificate is issued after verifying the assets and liabilities of the appellant on the facts and in the circumstances of the case.

23. For that the learned Assessing Officer should have accepted the submission of the appellant that during the financial year 1989-90 to 1993-94 (both inclusive) the appellant was deriving share income from the firm M/s. Karunakar Mohanty and Associates and also the appellant was deriving income from execution of some contract works in his individual capacity as per the details given by the appellant in his reply letter dated 7.6.2001 and the learned Assessing Officer should not have assessed the entire gross bill for the above financial years in the hands of the appellant without excluding the gross bill paid in the name of Karunakar Mohanty in respect of the works executed by M/s. Karunakar Mohanty and Associates and was assessed in the status of partnership firm to the Income-tax on the facts and in the circumstances of the case.

24. For that the gross bill shown by the appellant in his return of income during the different financial years are correct figures and the gross amounts alleged to have been received as per inquiry are in many cases wrong figures as per the details given by the appellant in his reply letter dated 7.6.2001 and the learned Assessing Officer should not have adopted the figures obtained as per the inquiry report for the purpose of estimating undisclosed income without confronting the inquiry report to the appellant and allowing the appellant to cross examine the officer of the contractor department who has supplied the information as categorically prayed in his reply letter dated 7.6.2001 on the facts and in the circumstances of the case.

25. For that Sri Siba Prasad Das who was working as a supervisor under the appellant during the financial year 1997-98 and was entrusted with the work of supervision of Rangali Right Canal and Samel Barrage work during the financial year 1997-98 and after some months of joining when it was came to the knowledge of the appellant that he was involved in pilferage and manipulation of accounts for his personal gain, he was sacked from the service by the appellant and there after Sri Das acted against the appellant in different ways and the appellant suspects that Sri Das's hand was there behind the search u/s.132(1) to harass the appellant on the facts and in the circumstances of the case.

26. For that the appellant has no knowledge and he is no way connected with the account if any seized from the residence of Sri Siba Prasad Das and that SPD-1 and SPD-2 have neither been seized from the business place/office premises of the appellant nor from his residence nor from his work site and nothing has been stated by the learned Assessing Officer where from SPD-1 and SPD-2 were seized and who had written such document and its authenticity and the appellant has not incurred any unaccounted

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W. S. M.  
Advocate.

expenditure while executing contract works at Rengali Right Canal and RIP, Samal, Gudiakaleni and Mahispal, Dhenkanal as alleged by the learned Assessing Officer on the facts and in the circumstances of the case.

27. For that the learned Assessing Officer has committed a grave error of law by utilising the entries made in SPD-1 and SPD-2 against the appellant without disclosing the material/evidence on the basis of which he has come to the conclusion that SPD-1 and SPD-2 belong to the appellant and without confronting such material/evidence to the appellant as prayed for by the appellant in his reply letter dated 7.6.2001 on the facts and in the circumstances of the case.

28. For that the very allegation that the raw materials which were supplied to the appellant by Government were partly sold by him and the receipt of money from sale of cement and steel at different sites have been found from seized document as alleged by the learned Assessing Officer is without any basis and are not factually correct since the seized record which have been referred by the learned Assessing Officer i.e. Page 109 to 116 of KCP-1, Page 60 of KCP-24, Page 41 of back side of KCP-24, Page 10 of KCP-24, no where it is mentioned/written that the appellant has sold government material on the facts and in the circumstances of the case.

29. For that the learned Assessing Officer should have accepted the submission of the appellant that the appellant has undertaken one work under G.M, IDCO, Cuttack namely construction of OSFC tower at Cuttack and among others one condition was originally there that the appellant would purchase cement and steel from open market and utilize the same in execution of works contract and accordingly he has purchased some cement from L & T cement, Cuttack and Steel from Aditya Steel, Cuttack, but subsequently the original agreement was amended providing that the contractor G.M., IDCO will supply cement and steel for their work and under the changed situation since he could not find out a prospective buyer at Cuttack and he had his own transport facility without any transport charges to work site, he took the material to the work site and sold there at cost price and this facts was stated to search party in course of search and for the reasons stated above there is no element of profit on sale of cement and steel.

30. For that the appellant has nowhere stated that he has received gross bill of Rs.2,69,36,137 from Samal project during the financial year 1997-98 as alleged by the learned Assessing Officer in his letter dated 30.05.2001 on the facts and in the circumstances of the case.

31. For that the basis/reasons given by the learned Assessing Officer to work out that the appellant has earned profit of Rs.55,57,070 against gross bill of Rs.2,59,36,137 which comes to 20.7% of the gross bill are wrong, falacious, since it is not at all a

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fact that the appellant has received Rs.2,59,36,137 from Samal Project in financial year 97-98 and that the alleged unaccounted expenditure of Rs.22,06,000 calculated on the basis of SPD-2 is no way connected to the appellant's business and there is no element of profit on sale of cement and steel amounting to Rs.12,36,180 for the reason stated in foregoing paragraphs and more over as the cement and steel were sold at Paradeep there is no reason to take the said sale proceed to compute net profit from the works executed at Samal on the facts and in the circumstances of the case.

32. For that no valid and cogent reason has been assigned by the learned Assessing Officer to hold that the appellant has earned 20% profit of the gross bill received from Samal work on the facts and in the circumstances of the case.

33. For that the sole reason given by the learned Assessing Officer to come to the conclusion that the appellant has earned net profit of Rs.1,27,01,956 as against the returned income of Rs.46,32,769 for the financial year 1997-98 which comes 20% of the gross bill is that verification of seized document identified as KMO-34 revealed that certain expenses to the tune of Rs.80,09,159 under nine different heads of expenditure were inflated in the profit and loss account for the financial year 1997-98 is not factually correct and legally tenable since no date is mentioned in KMO-34 and also nothing is mentioned in KMO-34 to which work and which period the said expenses related and without establishing these two vital points, it is illogical/absurd to add the expenses written in KMO-34 with the expenses claimed in profit and loss account prepared in respect of all the works executed during the financial year 1997-98 on the facts and in the circumstances of the case.

34. For that the learned Assessing Officer should have taken into consideration the submission of the appellant that some manipulation has been made on front page of KMO-34 wherein it is written "Certified that this ledger (97-98) contains (57) written pages only" with an intention to harass the appellant to prove that the appellant has earned 20% profit though in fact the profit never exceeds 8% of the net bill (gross bill - departmental material) before depreciation and this allegation of the appellant is based on the material that no date or place is mentioned against any entry noted in KMO-34 and in none of the other eight seized documents bearing identification mark KMO-1, 3, 5, 6, 7, 11, 23, 33 and 34 the period has been certified as revealed from the photocopy taken by the appellant on the facts and in the circumstances of the case.

35. For that the learned Assessing Officer is not justified to estimate the profit of the appellant from his contract business @ 20% of the gross bill for all the financial years falling under the block period while the learned Assessing Officer has himself alleged that the appellant has earned 20% profit during the financial year 1997-98 which the appellant has proved to be incorrect and false on the facts and in the circumstances of the case.

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**Attested**  
*[Signature]*  
**Advocate.**



36. For that the estimation of net profit @ 20% as made by the learned Assessing Officer of all the financial years falling under the block period is not sustainable in the eye of law as the learned Assessing Officer has himself estimated the net profit @ 8% of the gross bill while passing order u/s.143(3) on the best of his judgement in absence of books of account for the assessment year 1997-98 and 1998-99 and in appeal for the assessment year 1997-98 the Honourable Commissioner of Income-tax (Appeals) vide his order dated 29.03.2001 passed in appeal No.39/Ocs/2000-2001 held that net profit @ 8% should be calculated on the net bill i.e. gross bill - department material on the facts and in the circumstances of the case.

37. For that the total payments made towards purchase of time share is Rs.1,51,000 (Rs.66,000 + Rs.60,000 + Rs.25,000) and not Rs.5,59,200 since during the financial year 1994-95 the appellant has purchased time share of Toshali sands of Rs.66,000 and time share of Sterling Holiday Resorts India Ltd. of Rs.25,000 and another time share of Sterling Holiday Resorts India Ltd. of Rs.60,000 which includes payment of Rs.14,100 as per KK-1 page-11 and another payment of Rs.14,100 KK-1/Page-63 on the facts and in the circumstances of the case.

38. For that the appellant has not invested Rs.3,50,000 during the financial year 1994-95 in cash on 12.09.94 in the name of N. Mohapatra, N. Tripathy, S. Mohapatra as per KK0-1/Page-64 which relates to deposit of Rs.1 lakh in the name of N. Mohapatra and KK-1/Page-65 relates to deposit of Rs.1 lakh in the name of N. Tripathy and KK-1/Page-66 relates to deposit of Rs.1 lakh in the name of S. Mohapatra and KK-1/Page-67 relates to deposit of Rs.50,000 in the name of P.K. Mohapatra and that S. Mohapatra, N. Mohapatra and N. Tripathy having admitted that these amounts were deposited in their bank account as stated by the learned Assessing Officer at page -13 of his questionnaire dated 30.05.2001 and the appellant having denied such deposit, the learned Assessing Officer has gone wrong to treat these deposits as unexplained investment in the hands of the appellant without confronting S. Mohapatra, N. Mohapatra and N. Tripathy with the appellant as prayed for by the appellant in his reply letter dated 7.6.2001 which is violative of principle of natural justice on the facts and in the circumstances of the case.

39. For that JNV 4 is a register maintained for the year 95-96 by the appellant for execution of work at JNV Surangi and the money paid by the appellant to meet such expenses from time to time are recorded and at page-17 of JNV-4 Rs.5,72,939 represents the payments (not receipts) made to different persons in connection with execution of the work which are written in right side of the page and also in the left side of the same page money paid by the appellant towards such expenses are recorded which the appellant has paid after withdrawing the same from the bank account and the said bank account is disclosed in his balance sheet on the facts and in the circumstances of the case.

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Advocate

40. For that the learned Assessing Officer is not justified to treat Rs.19,600 deposited by the appellant on behalf of Sri Prahalad Swain with BCI Financial Service Private Limited as unaccounted expenditure of the appellant since Sri Prahalad Swain has purchased a truck by obtaining financial assistance from BCI Financial Service Private Limited and engaged his truck at the work site of the appellant during the year 1995-96 and the appellant being requested by Sri Swain has made such deposit towards his dues on the facts and in the circumstances of the case.

41. For that it is not at all a fact that as per JNV-1/Page-35, the appellant has incurred unaccounted expenditure of Rs.3 lakh as alleged by the learned Assessing Officer since as per JNV-1/Page-35, the appellant has paid Rs.40,000 on 15.01.96 and Rs.1,60,000 on 12.2.96 to one Sri Sarbeswar Rao out of his bank account for purpose of chips and the bills received by the appellant in respect of the works at JNV Surangi are duly reflected in the Income-tax return for the corresponding assessment year on the facts and in the circumstances of the case.

42. For that as per JNV-5/P-60 the appellant has incurred expenditure Rs.6,60,000 in connection with execution of works on contract JNV Surangi out of withdrawal from bank account and the gross bill received in respect of works executed at JNV Surangi having duly reflected in the return of income, there is no reason to treat the expenditure of Rs.6,60,000 as unexplained expenditure.

43. For that the learned Assessing Officer should have supplied the photo copy of KCP-6/Page-1 and KCP-24/Page-6 to the appellant as requested by the appellant in his reply letter dated 7.6.2001 to enable him to give specific answer on the said two seized papers and the learned Assessing Officer should not have taken any adverse view in this regard on the facts and in the circumstances of the case.

44. For that the allegation of the learned Assessing Officer without referring any seized document that the appellant has made unaccounted investment of Rs.4,18,000 during the financial year 1997-98 in the name of N. Mohapatra, S. Tripathy and S. Mohapatra in Bank of India, Ashok Nagar, Bhubaneswar is not correct and the learned Assessing Officer before taking any adverse view in this regard should have confronted with the submission/statement of N. Mohapatra, S. Tripathy and S. Mohapatra with the appellant and should have allowed the appellant to cross examine them as prayed by the appellant in his reply letter dated 7.6.2001 on the facts and in the circumstances of the case.

45. For that no valid and cogent reason has been assigned by the learned Assessing Officer to treat that the cost of 4 tippers of Rs.25,86,108 purchased by Namita Mohapatra as unaccounted investment of the appellant during the financial year 1997-98 and

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that in absence of any adverse material on record or any contrary statement from Namita Mohapatra the learned Assessing Officer should have accepted the submission of the appellant in this regard that KK-1/Page-40 is a provisional receipt bearing no.4619 dated 28.03.97 issued by Telco, Patrapada, Bhubaneswar in the name of Namita Mohapatra against receipt of Rs.25,86,108 through pay order bearing no.0051587 dated 27.08.99 of Bank of India, Saheed Nagar Bhubaneswar towards sale of 4 Tala Sk-1612/26BT chasis and the appellant has paid Rs.650 lakh out of his cash credit account maintained with Bank of India towards margin money payable by Namita Mohapatra for availing loan from Bank of India, Saheed Nagar, Bhubaneswar to purchase 4 tippers by her and the appellant has given this margin money for Namita Mohapatra with the understanding that Namita Mohapatra will engage her tipper for his work and the annual rent payable to Namita Mohapatra will be adjusted against the margin money paid by the appellant and the Bank of India, Sahid Nagar, Bhubaneswar has financed Rs.19 lakhs towards the purchases of 4 nos. of tippers on the facts and in the circumstances of the case.

46. For that in absence of the copy of KCP-24, so far the appellant remembers this expenditure of Rs.3,11,535 relates to the fuel expenses for running the appellant's tippers at Paradeep for sand filling work undertaken under Paradeep Port Trust and this expenses were met out of withdrawal from bank account from time to time and the gross bill received in respect of such work and expenses incurred relating to that work were shown in the respective income-tax return by the appellant and the learned Assessing Officer should not have taken any adverse view in his regard on the facts and in the circumstances of the case.

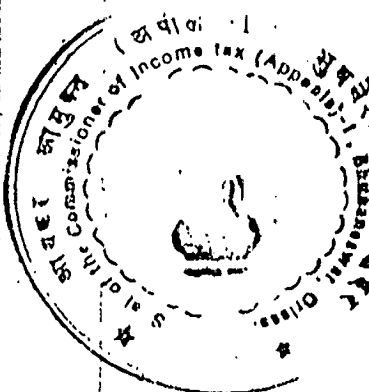
47. For that the appellant has purchased time share from Toshali sands Ltd during the financial year 94-95 against payment of Rs.6,000 and subsequently when M/s.Toshali Sands Pvt. Ltd. offered a new scheme (Toshali royal view) in which they provided some more facilities against extra payment of Rs.8,155 the appellant agreed to pay and in view of the above the learned Assessing Officer is not justified to treat the entire Rs.75,155 as unaccounted expenditure during the year 97-98.

48. For that as per KMO-23/Page-2 the appellant has incurred expenditure of Rs.8 Lakh during the financial year 97-98 towards Porcelain charges (excavator) at Sivapur work site and the gross bill received and expenditure incurred in respect of Sivapur project are duly shown in the profit and loss account attached to the return of income for the corresponding assessment year 1996-99 and the learned Assessing Officer should not have taken adverse view in this regard on the facts and in the circumstances of the case.

49. For that the learned Assessing Officer is not legally justified to treat Rs.39,60,067. as unaccounted expenditure in the hands of the appellant on the basis of SPD-1 as the appellant is no way connected with SPD-1 on the facts and in the circumstances of the case.

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Attested  
W.S.M.  
Advocate



50. For that perusal of KCP-17/Page-188 reveals that there is no mention of Rs.71,38,233 towards expenditure and the learned Assessing Officer should have accepted the submission of the appellant that when the complete set of books of account is not available and the learned Assessing Officer is proposing to estimate the appellant's profit in relating to the bills received by the appellant, there is no reason to examine the source of expenditure incurred for executing the work as the appellant is an old contractor and has been availing various loan facilities from bank and procures material on credit on the facts and in the circumstances of the case.

51. For that the appellant entered into an agreement with U.K. Rath for purchase of plot of land and accordingly paid Rs.2,60,000 to him as per KK-1/Page-34 and since the said deal was not materialised Sri U.K. Rath has returned the said amount of Rs.2,60,000 and the appellant having paid the said amount by pay order from cash credit account the learned Assessing Officer is not justified to treat the same as unaccounted investment.

52. For that as per KK-5, page-33 the appellant has spent Rs.10,000 during the financial year 98-99 towards house hold expenses and hence the learned Assessing Officer is not justified to treat the same amount as unaccounted for expenditure in the hands of the appellant on the facts and in the circumstances of the case.

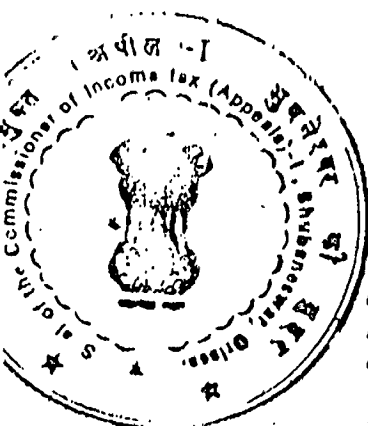
53. For that the notings made in KK-6, page-8 being related to the business expenses incurred at the work sites of the appellant and dues payable to different persons and the gross bill received in respect of such work was shown by the appellant in his income-tax return the learned Assessing Officer is not justified to treat the same as unaccounted expenditure during the financial year 98-99.

54. For that KMO-3/Page-45-A is a rough paper and the appellant has no knowledge about the writings noted therein and the appellant does not know anybody in the name of Mukesh Kaul of Sriram Industries Limited and anything regarding notings of Rs.8 lakhs made in the said chit on the facts and in the circumstances of the case.

55. For that KMO-3/P-52 relates to the expenditure incurred by the appellant towards hire charges paid for utilising Tata Hitachi machineries in the work site at Sivpur and Samal and since the bills received and expenditure incurred in respect of work executed at Sivpur and Samal are shown in the Income-tax return the learned Assessing officer is not justified to treat the expenditure of Rs.5,45,600 as unaccounted for expenditure in the hands of the appellant on the facts and in the circumstances of the case.

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Attested  
  
 Advocate



56. For that KCP-1/Page-475 related to the expenditure incurred for execution of work at Paradeep Site and were paid out of withdrawals of the bank and that since the gross bill received and expenditure incurred in respect of work executed at Paradeep are shown in the income-tax return the learned Assessing Officer is not justified to treat the expenditure of Rs.5,80,070 as unaccounted for expenditure in the hands of the appellant on the facts and in the circumstances of the case.

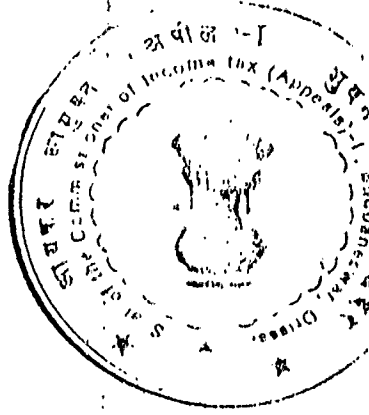
57. For that as per KK-5/Page-38 the appellant has paid admission fees of Rs.50,000 for his daughter Sonny out of his business income in the financial year 1999-2000 and thus the learned Assessing Officer should not have treated the same as unaccounted expenditure in the hands of the appellant.

58. For that the learned Assessing Officer has gone wrong to treat Rs.6.5 lakh as per KK-1/Page-21 as the unaccounted investment of the appellant since KK-1/P-21 is a request letter sent by the appellant to branch manager, Bank of India, Saheed Nagar, Bhubaneswar on 26.09.99 for release of Rs.6.5 lakhs out of the cheque deposit of Rs.12.30 Lakhs for the reasons stated in the said letter and at no stretch of imagination it can be said that release of Rs.6.5 lakhs from the bank from the Cash Credit Account is unaccounted investment by the appellant on the facts and in the circumstances of the case.

59. For that the learned Assessing Officer should not have taken any adverse view in respect of KMO-11/Page-49 since the appellant participated in a tender called by Central Warehousing Corporation for construction of godown and ancillary building at Balasore and being found first lowest bidder and assuming the work could be awarded to him, he made an agreement with R.P. Nayak and has received Rs.1 lakh towards security from Sri R.P. Nayak for executing the work in partnership and subsequently the said work being awarded to OSIC, Cuttack he has canceled the agreement with R.P. Nayak and has returned the money of Rs.1 lakh to Sri R.P. Nayak on the facts and in the circumstances of the case.

60. For that the learned Assessing Officer should have accepted the submission of the appellant that during search he was in a disturbed mind and stated that he has taken loan of Rs.1 lakh from Sri Mahendra Nath Sahu proprietor of Seetal Automobiles which in fact he has not taken and the learned Assessing Officer has not legally justified to treat Rs.1 lakh as unaccounted receipt in the hands of the appellant since in the seized record it was not mentioned anywhere that the appellant has taken loan from Sri Mahendra Nath Sahu though private loan received from other persons were recorded and the same were seized in the course of search on the facts and in the circumstances of the case.

61. For that the learned Assessing Officer has committed a grave error of law for taking into consideration the transactions noted in some seized records where in the date and year is not mentioned in the financial year 96-97, 97-98 and 99-2000 on the facts and in the circumstances of the case.



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Adv. etc.

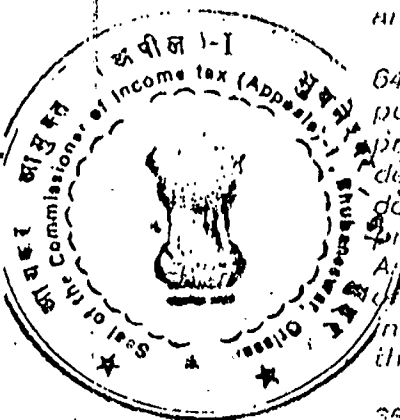
62. For that all the allegation of the learned Assessing Officer that the entire investment for the purchase of 4 tippers have been finally done by the appellant out of his income from undisclosed sources is not at all a fact and against the materials available on records since loan of Rs.18 lacs was availed by Namita Mohapatra by mortgaging property value worth Rs.20 lacs belonging to her mother-in-law MST. Uttara Mohapatra and the entire loan was repaid by Namita Mohapatra and at no point of time the ownership of 4 tippers has been transferred to the name of the appellant from Namita Mohapatra and the appellant has only paid about Rs.10 to 12 lacs by the time of search towards hire charges payable by the appellant to Namita Mohapatra for engaging her 4 tippers in his work and the learned Assessing Officer has not confronted any material/evidence to the appellant if any collected by him contrary to the fact stated by the appellant as requested by the appellant in his reply letter dated 7.6.2001 on the facts and in the circumstances of the case.

63. For that the learned Assessing Officer has committed a grave error of law for treating Rs.24.74 lakhs in different financial years i.e. Rs.4,94,800 in each financial years 1989-90, 1990-91, 1991-92, 1992-93, 1993-94 and 1994-95 and Rs.41,000 for the purchase of land during 1990-91 as undisclosed income of the appellant during the block period since the valuation of the property at 607, Lewis Road, Bhubaneswar-14 was made at Rs.24.74 lakhs for the purpose of obtaining loan and the appellant has invested Rs.8,40,000 in construction of the house property besides the purchase of land for Rs.41,000 in the assessment year 1990-91 which was shown in the Income-tax return filed by the firm M/s. Karunakar Mohanty and Associates for the assessment year 1990-91 and out of the total investment of Rs.8,40,000 in construction of the house building, Rs.30,000 was drawn from the capital account of the firm M/s. Karunakar Mohanty and Associates and shown to the Income-tax department along with the return of income filed by the firm for the assessment year 1992-93 and the balance amount of Rs.8,10,000 was declared under VDIS' 1997 on the facts and in the circumstances of the case.

64. For that since the full particulars/materials regarding the purchase of land and investment in construction of house property at 607, Lewis Road, Bhubaneswar was disclosed to the department prior to the date of search and in course of search no document is seized showing more investment in the said house property other than what was shown by the appellant, the learned Assessing Officer does not assume any power under Chapter XIV-B of the I.T. Act, 1961 to bring the investment in the said property into purview of the definition of undisclosed income u/s.158B(b) of the I.T. Act on the facts and in the circumstances of the case.

65. For that the learned Assessing Officer has committed a grave error of law to treat Rs.1,20,000 as undisclosed income of the appellant for the financial year 1996-97 towards purchase of land measuring 100 decimal at Puri under document no.108 at Balukhand in respect of which the appellant has declared Rs.1,10 lakhs under VDIS'1997 prior to the date of search on the facts and in the circumstances of the case.

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**Attested**  
*[Signature]*  
 Advocate.

66. For that without referring any seized document, the learned Assessing Officer has gone wrong to treat Rs.1,50,000 as undisclosed investment of the appellant during the financial year 1996-97 for purchase of land measuring 0.126 decimal at Puri since the appellant has not purchased any such land at Puri on 28.06.99 the appellant has not stated that he has purchased such land under builders contract for Rs.1,50,000 during the financial year 1996-97 as alleged by the learned Assessing Officer and in fact the appellant has entered into an agreement with one Pusparani Chakravarty of Puri to develop her land by constructing hotel with a condition that the appellant will be owner at 75% of the constructed area and the land owner will be the owner of 25% of the constructed area towards her share on the facts and in the circumstances of the case.

67. For that the learned Assessing Officer has gone wrong to treat the fixed deposit of Rs.32 lakhs as undisclosed income of the appellant for the financial year 1997-98 which the appellant has disclosed in the balance sheet filed along with the return of income prior to the date of search for the assessment year 1998-99 onwards on the facts and in the circumstances of the case.

68. For that the learned Assessing Officer is not justified to treat Rs.6 lakhs as undisclosed income of the appellant for the financial year 1996-97 since the appellant has not deposited any such amount towards earnest money in shape of bank guarantee in Right Canal Division-II during the financial year 1996-97 and the learned Assessing Officer has not supplied the letter No.3376 dated 21.08.2001 basing on which he has alleged the deposit of such amount towards earnest money on the facts and in the circumstances of the case.

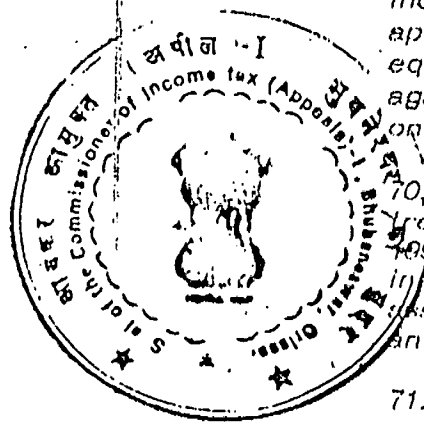
69. For that the learned Assessing Officer is not justified to treat the share application money of Rs.1,25,000 as undisclosed income of the appellant during the financial year 1996-97 as the appellant has paid the said amount as per KK-1 for purchase of equity share of Bank of India out of the cash credit account against which share valued Rs.81,000 was allotted to the appellant on the facts and in the circumstances of the case.

70. For that the purchase of NSC worth Rs.9 lakhs can not be treated as undisclosed income of the appellant for financial year 1997-98 in the block assessment as the said purchase was shown in the balance sheet filed along with the return of income for the assessment year 1997-98 prior to the date of search on the facts and in the circumstances of the case.

71. For that the learned Assessing Officer has committed a grave error of law by treating Rs.24 lakhs as undisclosed income of the appellant during the financial year 1997-98 in respect of Life Insurance Policy since the appellant has not invested Rs.24 lakhs in LIC Policy during the financial year 1997-98 and as

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**Attester**  
  
**Advocate**





required by the bank the appellant has made a policy worth Rs.24 lakhs against which the appellant has paid Rs.1 lakh and there after no amount was paid on the facts and in the circumstances of the case.

72. For that the learned Assessing Officer has committed a grave error of law to treat Rs.19,67,693 as undisclosed income of the appellant during the financial year 1998-99 as per KMO-4 which is only a quotation sent by a seller of granulator in the name of Utkal Stone Crusher and in fact no such purchase has been effected and the learned Assessing Officer has not brought any material/evidence to the record to the effect that the appellant has purchased granulator for Rs.19,67,693 on the facts and in the circumstances of the case.

73. For that the learned Assessing Officer is not justified to treat Rs.1 lakh as undisclosed income in the hands of the appellant for the financial year 1998-99 since the appellant has paid advance of Rs.1 lakh out of his cash credit account for booking a flat from Manorama Properties which was subsequently returned to the appellant in the same year on cancellation of the agreement on the facts and in the circumstances of the case.

74. For that Rs.21,610 can not be treated as undisclosed income in the hands of the appellant for the financial year 1999-2000 since the appellant has purchased waremas for the said amount as per KK-1 for the Samal work, the gross bill of which was shown in the Income-tax return on the facts and in the circumstances of the case.

75. For that it is illegal to treat Rs.5,800 as undisclosed income in the hands of the appellant out of the cash credit account to purchase MMTC gold medallions from Bank of India, Ashok Nagar, Bhubaneswar on the facts and in the circumstances of the case.

76. For that the learned Assessing Officer is wrong to treat Rs.7,48,055 as undisclosed income of the appellant during the financial year 1999-2000 or in any other financial year as the appellant has not made any such investment of Rs.7,48,055 for purchase of hot mix plant from Everest Engineering Company, 151 Old Estate and the learned Assessing Officer has not confronted to the appellant any material/evidence or confirmation letter from Everest Engineering Company to the effect that the appellant has purchased hot mix plant from them in spite of specific request of the appellant in this regard on the facts and in the circumstances of the case.

77. For that it is not at all a fact that the appellant has invested money in the name of his wife Smt. Basanti Mohanty and Smt. Basanti Mohanty does not have any primary source of income to invest in properties or in capital like Utkal Stone crusher, Patrapara but on the other hand she has been carrying on her independent business from 1983 onwards on the facts and in the circumstances of the case.

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Attested  
  
 Advocate.



78. For that estimation of undisclosed capital at Rs.5,90,41,756 and undisclosed profit at Rs.2,76,58,954 and differential undisclosed capital at Rs.3,73,56,524 as made by the learned Assessing Officer is without any basis and not sustainable in the eye of law on the facts and in the circumstances of the case.

79. For that estimation of undisclosed investment in properties at Rs.1,28,53,156, undisclosed expenditure at Rs.1,54,03,260, undisclosed investment at Rs.44,63,308 and undisclosed receipt at Rs.15,23,939 as made by the learned Assessing Officer is without any basis and not sustainable in the eye of law on the facts and in the circumstances of the case.

80. For that it is not at all a fact that the appellant was given any opportunity of being heard vide letter no.51 dated 30.05.2001 as observed by the learned Assessing Officer at Page-23 and Page-26 of his assessment order on the facts and in the circumstances of the case.

81. For that since audited books of account were either stolen or misplaced, the same could not be produced before the learned Assessing Officer and for which the copy of the FIR filed in the Capital Police Station was produced and that the appellant was maintaining complete set of books of account which is evident from the audited profit and loss account, balance sheet and the report of the auditor on the facts and in the circumstances of the case.

82. For that the learned Assessing Officer having not proved that the facts stated in the affidavit are false/incorrect by cross examining the deponent, he should have accepted the facts stated in the affidavit on the facts and in the circumstances of the case.

83. For that the allegation of the learned Assessing Officer that the proforma balance sheet and proforma profit and loss account are prepared with true and correct figures for different financial years during the block period and were submitted by the appellant before the Bank of India, Saheed Nagar, Bhubaneswar for availing higher cash credit, loan facility from the bank and also submitted before the authorities of Rengali Project, Sibapur Project, Samal Project along with the tender documents are not factually correct as the appellant has not filed the proforma balance sheet and proforma profit and loss account either before any bank including Bank of India, Saheed Nagar, Bhubaneswar or any contractor department and the learned Assessing Officer has also failed to brought any evidence/material into the record in support of his allegation and confronted the same to the appellant before utilising the same against the appellant on the facts and in the circumstances of the case.

84. For that no valid and cogent reason has been assigned by the learned Assessing Officer to hold that no confrontation is necessary since the appellant has failed to submit supporting evidence in support of his contention that he has not submitted the audited balance sheet and profit and loss before any banking

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W.Dan  
Advocate.

authorities and contractor department as negative fact can not be proved and the burden of proof is on the learned Assessing Officer to prove that the allegation he has brought against the appellant on the facts and in the circumstances of the case.

85. For that the appellant having specifically stated that he did not possess machinery/equipment other than those shown in the balance shown in the balance sheet and filed an affidavit in support of his contention which the learned Assessing Officer has not proved as false and incorrect by cross examining the deponent-appellant and that the burden of proof is on the learned Assessing Officer to brought the allegation that the appellant owned machineries as per the list submitted before the Executive Engineer, Right canal Division-IV, Hindol Road, Dhenkanal and that the learned Assessing Officer having not discharged the same and also having not brought any material/evidence in support of his allegation into the record and confronted the same to the appellant as prayed for by the appellant in his reply letter dated 7.6.2001, the utilisation of the said allegation of the learned Assessing Officer against the appellant is illegal and unjust on the facts and in the circumstances of the case.

86. For that whatever gross bill received by the appellant in different financial year from different contractor departments were duly shown in the Income-tax return filed by the appellant in respective assessment years and he has not under stated any gross bill in his Income-tax return as stated by the appellant in his affidavit dated 7.6.2001 and the learned Assessing Officer having not disputed the facts stated by the appellant in his affidavit by cross examining him and having not confronted the adverse report obtained at the back of the appellant to the appellant and allowing the appellant to cross examine the authorities from whom the learned Assessing Officer has obtained the figures towards gross bill which the appellant disowned and specifically prayed by the appellant in his reply letter dated 7.6.2001 and the learned Assessing Officer has also not proved from the bank account of the appellant or from any other evidence that the appellant has received the disputed payments, he is not justified to utilise the said adverse material against the appellant on the facts and in the circumstances of the case.

87. For that the works executed by the firm M/s. K.K. Mohanty and Associates during the financial year 1980-81 to 1993-94 (both inclusive) is well evident from the assessment record of the firm available with the Income-tax department and the learned Assessing Officer is not justified to treat the works executed by the firm as the individual work of the appellant on the facts and in the circumstances of the case.

88. For that the learned Assessing Officer has committed a grave error of law by utilising the documents seized from Sri Siba Prasad Das against the appellant without confronting Sri Siba Prasad Das and the books of accounts seized from Sri Siba Prasad Das with the appellant as specifically prayed for by the appellant in his reply letter dated 7.6.2001 on the facts and in the circumstances of the case.

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Attest:

U. S. Das  
Advocate.



89. For that no valid and cogent reason has been assigned by the learned Assessing Officer to estimate the net profit @ 20% of the gross bill on the facts and in the circumstances of the case.

90. For that the learned Assessing Officer has not proved/established a single instance that the appellant has made any investment, expenditure in the name of various persons on the basis of any seized document as alleged by the learned Assessing Officer on the facts and in the circumstances of the case.

91. For that the finding of the learned Assessing Officer that the appellant has not explained properly and satisfactorily regarding the nature and source of investment in NSCs, FDs, Purchase of immovable properties is incorrect and against the materials available on record on the facts and in the circumstances of the case.

92. For that the finding of the learned Assessing Officer that the appellant has failed to explain the nature and the source of various receipts and nature and source of investments in various assets concerned to the various assessment years during the block period are incorrect and against the materials available on record on the facts and in the circumstances of the case.

93. For that no valid and cogent reason has been assigned by the learned Assessing Officer to estimate the total income including undisclosed income at Rs.11,12,31,133, returned income at Rs.1,19,71,990 and undisclosed income at Rs.9,92,59,143 during the block period on the facts and in the circumstances of the case.

94. For that charging of interest u/s.158BFA(1) of the I.T.Act, 1961 without allowing the appellant to take the copy of the seized documents, papers to prepare his block return before issuing notice u/s.158BC is illegal on the facts and in the circumstances of the case.

95. For that initiation of penal proceeding u/s.158BFA(2) of the I.T.Act without allowing the appellant to take xerox copy of seized records to prepare his block return before issuing notice u/s.158BC is illegal on the facts and in the circumstances of the case.

96. For that the order of the learned Assessing Officer is otherwise bad in law and liable to be quashed on the above grounds or such other grounds if any to be urged at the time of hearing on the facts and in the circumstances of the case."

The prayer for stay of demand as well as grounds of appeal, not only in respect of the appellant but also in respect of his wife Smt. Basanti Mohanty (ITA No.195/Ors/2001-02) were forwarded to the Ld. A.O. who has submitted his consolidated report dt.19.07.2001 as under :

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Attested  
W.D. on  
Advocate.

"Sub : Comments on hearing of stay petition and appeal in the case of Sri Karunakar Mohanty and Smt. Basanti Mohanty for the block period 1990-1991 to 2000-01 - Reg.

Sir,

Kindly refer to the above.

In this connection I am to report as follows :-

Both the block assessment orders in the case of Sri Karunakar Mohanty and Smt. Basanti Mohanty for the block assessment period 1990-91 to 2000-01 have been made as per facts on record, merit of the cases and as per income-tax provisions, and after providing sufficient and reasonable opportunities of being heard to the said assessees which have been duly incorporated in the body of the said block assessment orders, which may be perused. Regarding the challenge of Jurisdiction order u/s.127, as has been duly mentioned in both the assessment orders, the jurisdiction of both the said cases have been properly and legally vested with the undersigned Assessing Officer till the finalisation of the said block assessment orders which have also been incorporated in the body of the said orders.

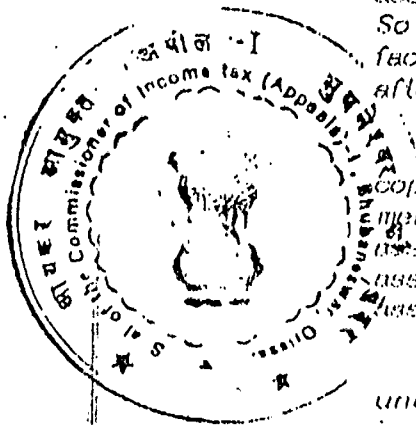
The additions which have been made in both the said block assessment orders have been duly incorporated in the body of the said block assessment orders including the reasons of such additions, appreciation of facts on record, consideration of appropriate provisions of Income-tax laws and after affording sufficient and reasonable opportunities of being heard to both the said assessees after confronting the said additions to both the assessees through the service of draft block assessment orders. So the additions have been made as per reasonable appreciation of facts on record as discovered from the seized documents etc. and after appreciating the provisions of income-tax laws.

Both the assessees have been well provided with the xerox copies etc. of the entire seized documents which have been also mentioned in the block assessment orders. Even the draft block assessment order have been well served on both the said assessees which have also been incorporated in the final block assessment orders.

The Assessing Officer has appreciated the meaning of undisclosed income as per provisions of Income-tax act and has included/determined the undisclosed income as mentioned in the said block assessment orders in both the cases. Similarly, regarding each additions made, the Assessing Officer has stated specifically the explanations/reasons of such additions as incorporated in the said body of assessment orders by considering provisions of section 158BB(3) as both the assessees have failed to explain properly regarding the transactions/investments etc. as mentioned in the said block assessment orders, which have also

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**Attested**  
*[Signature]*  
 Advocate.



been confronted to both the said assesseees during the course of block assessment proceedings. All the additions as mentioned in both the said assessment orders have been made as per the reasonable appreciation of facts discovered from the seized documents vis-a-vis explanations/replies submitted by the said assesseees and after affording reasonable opportunities of being heard to the said assesseees which have been duly considered in the said block assessment orders.

So the Assessing Officer has not violated any rules of natural justice or has not exceeded any jurisdiction while making such block assessment order.

The additions made on account of different heads including investments in properties, undisclosed capital, un-accounted transactions etc. have been drawn as adverse inferences by appreciating the facts on record as found from the seized documents vis-a-vis explanations/replies submitted by the said assesseees and after affording reasonable opportunities of being heard.

So both the block assessment orders in the said cases have been made as per law and due appreciation of facts on record and after affording reasonable opportunities of being heard and specific explanations regarding each additions have been duly incorporated in the body of the said block assessment orders.

Hence, the grounds of appeal and stay petitions of both the said assesseees may not be considered as factually correct and legally sound. So both the said petitions, grounds of appeal and stay petitions of both the said assesseees may be rejected."

According to the above, the Id. A.O. stated to have given opportunity, recorded reasons in the impugned order which has been passed in a law full manner and, therefore, both the stay petition as well as the appeals deserve to be dismissed.

9.2. In view of the fact that the various grounds raised in appeal are being adjudicated upon hereinunder, the stay petition filed by the appellant has become infructuous and no separate order is being passed on the same.

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 Advocate.



10. I have considered the submissions and have also gone through the records. It is seen from the records that the notice u/s.158BC for the block period from 01.04.1989 to 29.06.1999 (being the date of search) was duly served on the appellant on 16.09.2000. Through this notice the return for the above block period was required to be filed within 20 days. Thereafter, some time was spent on taking xerox copies and the following detailed questionnaire was issued to the appellant (and also others) :

"Sub :- Block assessment proceedings in your case -  
regarding - Date of search - 29.06.1999.

Sir/Madam,

You are requested to submit/produce the explanations along with the supporting evidences as per the above captioned subject for necessary compliance to block assessment proceedings pending in your case(s), found from the seized books of accounts and documents etc. and framed questionnaires as follows :

(a) Complete personal balance sheet, statement of affairs - statement of assets and liabilities in your case from 1.4.1989 to 29.6.1999 as per the computation of income shown to the I.T. Department.

(b) Cash flow statement of each project/contract work executed by you during the period from 1.4.89 to 29.6.99 and details of tax deduction at sources.

(c) Computation of income shown to I.T. Department and expenditure thereof during the period from 1.4.89 to 29.6.99 in your case.

(d) The nature and source of other assets of Rs.27,000/- seized from the residence of Sri Siba Prasad Das, nature and source of deposits and purpose of withdrawal from the following bank accounts during the period of its opening of the account till the date of search on 29.6.1999.

(e) Nature of contract work executed, total tender amount for each such contract work, earnest money deposit/security money paid, total bills paid to you on such contract work executed, name and address of the person who has paid such contract amount, any outstanding amount payable to you pending between the period from 1.4.89 to 29.6.99.

(f) Details of immovable assets - Plot No., khata No., area, location, amount invested for purchase of land/construction of building/renovation, etc. in your name and in the name of your family members or in any other name holding by you from 1.4.89 to 29.6.99.

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Accepted  
Advocate.

(g) Details of movable assets - Plot No., Khata No., area, location, amount invested for purchase of land/construction of building/renovation etc. in your name and in the name of your family members or in any other name holding by you from 1.4.89 to 29.6.99.

(h) Details of bank loans - Name of the Bank/Branch, limit sanctioned for term loan/OT/CC etc. - actual amount drawn, purpose and nature of such drawal of loans from the banks etc. between 1.4.89 to 29.6.99, margin/collateral security amount paid to such banks for such loans, nature and source of such margin/security money.

(i) Please explain/show the record of following transactions in your audited books of accounts including proper explanation regarding nature and source of such transactions:

| Identified books<br>Page No.                                                                                                                         | Who paid                                                         | To whom<br>paid                       | Nature of<br>transaction                                                      | Amount of<br>transaction<br>(in Rs.) | date, if<br>available |
|------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|---------------------------------------|-------------------------------------------------------------------------------|--------------------------------------|-----------------------|
| KK-1, P-40                                                                                                                                           | Namita Mohapatra                                                 | Tata Engineering & Locomotive Co.     | For purchase of upper.                                                        | 2586108                              | ---                   |
| KK-1, P-40                                                                                                                                           | K.K. Mohanty                                                     | Bank of India<br>Subash Nagar         | Margin money<br>for availing loan.                                            | 6.5 lakhs                            | ---                   |
| KK-1,<br>P-64 to 67                                                                                                                                  | P.K. Mohapatra,<br>N. Mohapatra<br>N. Tripathy &<br>S. Mohapatra | Bank of India,<br>Bhubaneswar.        | ---                                                                           | 350000                               | 12.9.94               |
| KK-1, P-12                                                                                                                                           | Prahallad Swain                                                  | BCL Financial<br>Service Ltd.         | ---                                                                           | 19600                                | ---                   |
| KK-1, P-106                                                                                                                                          | Toshali Royal View,<br>Simla                                     | K.K. Mohanty                          | Membership<br>Price.                                                          | 75155                                | ---                   |
| KK-1, P-11                                                                                                                                           | K.K. Mohanty                                                     | Sterling Holiday<br>Resort India Ltd. | In Cheque for<br>purchase of time<br>shares.                                  | 11100                                | 13.9.94               |
| KK-1, P-63                                                                                                                                           | K.K. Mohanty                                                     | Sterling Holiday<br>Resort India Ltd. | For purchase of<br>time shares                                                | 14100                                | ---                   |
| KK-1, P-41                                                                                                                                           | K.K. Mohanty                                                     | Tata Finance Ltd.                     | Receipt of EMIs                                                               | 128500                               | ---                   |
| KK-1, P-34 & 35                                                                                                                                      | K.K. Mohanty                                                     | U.K. Rath                             | Purchase of plot                                                              | 2.8 lakhs                            | ---                   |
| KK-2,<br>P-14 to 16                                                                                                                                  | K.K. Mohanty                                                     | Shyam Sundar<br>Panda                 | Purchase of land                                                              | 1.2 lakhs                            | ---                   |
| KK-3, P-23                                                                                                                                           | ---                                                              | ---                                   | Purchase of land<br>at Bhubaneswar.                                           | 817838                               | ---                   |
| (Source:- Rs.3 lakhs from Julu, Rs.2.95 lakhs from Raghuram Babu, Rs. 1 lakh from Subudhi Babu and Rs.1.35 lakhs is possibly from sale of ornaments) |                                                                  |                                       |                                                                               |                                      |                       |
| KK-4                                                                                                                                                 | Basanti Mohanty                                                  | Govt. of India                        | Purchase of land                                                              | 817838                               | ---                   |
| KK-5, P-38                                                                                                                                           | ---                                                              | ---                                   | Filling up of Add-<br>mission forms of<br>Sonny (daughter<br>of K.K. Mohanty) | 50000                                | 28.5.99               |
| KK-5, P-33                                                                                                                                           | ---                                                              | Bishnu                                | House hold<br>expenses.                                                       | 10000                                | ---                   |
| (House hold expenses incurred around Rs.35000 per month)                                                                                             |                                                                  |                                       |                                                                               |                                      |                       |
| KK-6, P-8                                                                                                                                            | ---                                                              | ---                                   | ---                                                                           | 153000                               | ---                   |

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Attested  
Advocate.



[Books of accounts seized from Sri Siba Prasad Das:]

|                                                                                                                      |                                     |                                                  |                                                        |                |         |
|----------------------------------------------------------------------------------------------------------------------|-------------------------------------|--------------------------------------------------|--------------------------------------------------------|----------------|---------|
| SPD-1, P-1                                                                                                           | ---                                 | Sibaprasad Das                                   | Cash receipts                                          | 1720921        | ----    |
| (Out of the total amount, Rs.10 lakhs has been shown to have been received from 'Bhai' indicating Sri K.K. Mohanty). |                                     |                                                  |                                                        |                |         |
| SPDd-1, P-2                                                                                                          | Bhai                                | Sibaprasad Das                                   | ---                                                    | 7 lakhs        | 12.2.97 |
| (indicating K.K.Mohanty)                                                                                             |                                     |                                                  |                                                        |                |         |
| SPD-1                                                                                                                | Sibaprasad Das                      | ---                                              | Payment                                                | 15 lakhs       | 18.1.97 |
| SPD-2, P-62                                                                                                          | ---                                 | ---                                              | Total receipt                                          | 290000000 till | 31.3.98 |
| (Relating to Shitpur & Samal Project)                                                                                |                                     |                                                  |                                                        |                |         |
| SPD-2, P-82 & 80                                                                                                     | ---                                 | ---                                              | Total expenditure                                      | 14108000 &     | ----    |
| (Relating to Shitpur & Samal Project)                                                                                |                                     |                                                  |                                                        |                |         |
| SPD-2                                                                                                                | ---                                 | ---                                              | Payment for                                            | 85 lakhs       | ----    |
| hira charges of machinery.                                                                                           |                                     |                                                  |                                                        |                |         |
| SPD-3, P-52 to 54                                                                                                    | NTPC                                | K.K.Mohanty                                      | For execution of contract work from 24.2.96 to 24.2.97 | 21813189.39    | ---     |
| SPD-5, P-48                                                                                                          | ---                                 | ---                                              | Payment of p.c.                                        | 9.1 lakhs      | ----    |
| SPD-5, P-87                                                                                                          | Smt. Sabita Das                     | Sterling Tree Mugnum Indus Ltd.                  | Purchase of                                            | 24975          | ----    |
| SPD-5, P-88                                                                                                          | Smt. Sabita Das                     | M/s. Shree Karni Builders, 5, Satya Nagar, BBSR. | Purchase of Duplex house.                              | 25000          | ----    |
| SPD-5, P-100                                                                                                         | Siba Prasad Das & Smt. Sabita Das   | ---                                              | Purchase of furniture.                                 | 61500          | ----    |
| SPD-5, P-2                                                                                                           | ---                                 | P.K. Behera                                      | ---                                                    | 2.4 lakhs      | ----    |
| SPD-5, P-10                                                                                                          | ---                                 | State Bank of India.                             | credit                                                 | 409000         | ----    |
| SPD-11                                                                                                               | NTPC, Talcher Super Thermal Project | K.K.Mohanty                                      | Contract work from 1.6.95 to 1.6.96.                   | 2.70 crore     | 96-97   |

[Books of A/c. seized from the office of Sri K.K. Mohanty]

|                                                                        |                                                                                                                |              |                                       |             |      |
|------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|--------------|---------------------------------------|-------------|------|
| KMO-1, 61                                                              | The total value of assets including fixed deposits, bills receivable etc. have been noticed to be Rs.15850000. |              |                                       |             |      |
| KMO-3, P-55                                                            | NTPC                                                                                                           | K.K. Mohanty | Earth work contract.                  | 11079267    | ---  |
| (Reference to the work completion certificate of NTPC for Rs.27000017) |                                                                                                                |              |                                       |             |      |
| KMO-3, P-55                                                            | ---                                                                                                            | ---          | Hire charges of Tata Hitachi Machine. | (@1100 p/h. | ---- |
| KMO-3, P-4, 4                                                          | Transaction with Mr. Mukesh Kaul of Sritram Industries Ltd.                                                    | ---          | ---                                   | 8 lakhs     | ---  |
| KMO-3, P-35                                                            | ---                                                                                                            | K.K. Mohanty | Total amount received.                | 88 lakhs    | ---  |
| KMO-3, P-35                                                            | ---                                                                                                            | K.K. Mohanty | Total expenditure                     | 53.80 lakhs | ---  |
| (Relating to Shitpur & Samal Project)                                  |                                                                                                                |              |                                       |             |      |
| KMO-3                                                                  | Rasanti Mohanty                                                                                                | ---          | Allotment of land                     | 817838      | ---  |
| KMO-5, P-28                                                            | (Agreement between Umakanta Rath & Karunakar Mohanty for purchase of land at Bhubaneswar).                     | ---          | Sale consideration                    | 1325000     | ---  |

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Attested

W.Das  
Advocate

|                      |                                  |     |                                                                            |              |                                 |
|----------------------|----------------------------------|-----|----------------------------------------------------------------------------|--------------|---------------------------------|
| KMO-5,P-30           | Sibaprasad Das                   | --- | Expenditure at Shyampur work site.                                         | 843278.1     | ---                             |
| KMO-5,P-30           | Sibaprasad Das                   | --- | Expenditure at Samal Work.                                                 | 6561058      | ---                             |
| KMO-5,P-30           | Sibaprasad Das                   | --- | Total receipt of Shyampur & Samal Project.                                 | 15406282     | ---                             |
| KMO-6<br>P-84 to 87  | K.K.Mohanty &<br>Sibaprasad Das  | --- | Bills received from the project Samal & Shyampur.                          | 3.15 crores  | ---                             |
| KMO-6,P-86           | K.K. Mohanty &<br>Sibaprasad Das | -   | Payment of hire charges of machines & tippers at Samal & Shyampur Project. | 130.82 lakhs | ----                            |
| KMO-6                | ---                              | --- | Payment of cash as P/c & Special A/c.                                      | 52.47 lakhs  | ---                             |
| KMO-6,<br>P-64 to 66 | K.K.Mohanty                      | --- | Expenditure for Shyampur & Samal Project.                                  | 14687744     | 97-98<br>10.4.97 to<br>01.04.98 |

j) Explain the following transactions found from the following books of accounts/documents with proper explanations of nature and source of such transactions :

KMO-7,P-90 (The details of stock of construction materials as on June & July'97. The value of stock as on June, 1997 is stated to be Rs.54,37,000)

KMO-7,P-89 (Details of stock hypothecated to Bank of India, Sahidnagar, Bhubaneswar. The total value of such stock as on 1.8.97 is found to be Rs.51,21,000.

KMO-11 The value of fixed assets including that of the construction equipment is found to much higher than the total value of fixed assets as indicated in the final balance sheet. The value of closing stock as indicated in the proforma balance sheet is Rs.1,82,26,875 as against Rs.18,56,886 stated in the final balance sheet. For explaining the source of these investments there has been addition to the capital account amounting to Rs.80 lakhs which is conspicuously absent in the final balance sheet. Similarly, the profit during the year has been stated to be Rs.60,72,300 as against Rs.11,75,215 appearing in the final balance sheet. In addition to this, in the proforma balance sheet, a deposit amounting to Rs.248 lakhs has been stated to have been received from friends and relatives which is totally absent in the final balance sheet.

KMO-11, P-1 & 2 - Proforma balance sheet and profit & loss account for the year ended 31.3.98. This set of documents have been signed on 16.4.98 which is again after the end of the concerned financial year. The profit during the year has been stated to be Rs.95,18,420 as against Rs.46,92,769 stated in the return of income.

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Advocate  
W.D.  
Advocate.

Sri Karunakar Mohanty I.T.A. No. 100/Oct/2001-02 A/Y-1000-01 to 2000-01

KMO-11 Rajendra Prasad Naik K.K. Mohanty Agreement between 9 lakhs ---  
K.K. Mohanty and  
Rajendra Prasad Naik  
Construction of a  
godown and ancillary  
buildings awarded by  
Central Ware Housing  
Corpn. at Balasore.

(As per this agreement, Sri Rajendra Prasad Naik has agreed to execute this contract on partnership basis with Sri Mohanty for which he has agreed to pay Rs. 9 lakhs and the escalation amount to Sri Mohanty. Out of this, Rs. 1 lakh has been received by Sri Mohanty at the time of agreement.)

KMO-23,P-2 K.K. Mohanty -- Hire charges 85 lakhs upto  
of equipment 31.3.98  
related to Shilpur  
Project.

(The details of the actual payments made towards hire charges of machine and the identity of the payee may be examined.)

KMO-23,P-2 K.K. Mohanty --- p.c. payment 8 lakhs ---  
relates to Shilpur  
Projects.

KMO-33 --- M/s. Sub Industries Payment for 9 lakhs ---  
Surangi and  
Keonjhar work.

KMO-33 --- S. Ram Saran Payment for 14.73 lakhs 96-97 &  
Surangi and 97-98  
Keonjhar work.

KMO-34 This is a ledger containing details of expenses made under different heads related to F.Y. 1997-98. The expenses recorded under various heads such as cement account including transportation, metal including transportation, chips and bricks including transportation, travelling expenditure etc., are found to be much less than the amounts debited in the profit and loss account for the year ending 31.3.98 under the respective heads. The total differences observed in some of the heads of expenses, which are tabulated in annexure-4, is found to be Rs. 80,35,189/-. Further, it has been noted that no entry relating to labour charge payments has been recorded in this ledger. Therefore, explain the genuineness of the amounts debited as expenditures incurred under various heads in the profit and loss account for the year ending 31.3.98.

#### Analysis of books of accounts seized from site office at Paradip :

|     |     |                                                                             |          |                           |
|-----|-----|-----------------------------------------------------------------------------|----------|---------------------------|
| --- | --- | Details of expenses related to contract work executed at Paradip. (In cash) | 580070   | ---                       |
| --- | --- | Cash from H.O. (In cash)                                                    | 10503035 | October to June '99       |
| --- | --- | Receipt under the head cement selling account as C.S. A/c.                  | 407095   | December 1997 to June '99 |

(This amount represents receipts made from illegal sale of cement)

|             |                                     |              |            |
|-------------|-------------------------------------|--------------|------------|
| KCP-4, P-47 | Negative cash balance of Rs. 179396 | --           | ---        |
| KCP-6, P-1  | K.K. Mohanty                        | Receipt from | 270000 --- |
| KCP-6, P-1  | K.K. Mohanty                        | Receipt from | 231000 --- |

Contd. Page..41

Admitted  
Laden  
Advocate.

|                                      |     |     |                                            |            |              |
|--------------------------------------|-----|-----|--------------------------------------------|------------|--------------|
| KCP-13,P-323                         | --- | --- | Receipt from sale of cement                | 135000     | ---          |
| KCP-17,P-188                         | --- | --- | Cash receipt relating to sale cement       | 6873545    | upto 24.3.98 |
| KCP-17,P-188                         | --- | --- | Payment relating sale of cement            | 7138232.72 | upto 24.3.98 |
| (Resulting in shortage of Rs.264687) |     |     |                                            |            |              |
| KCP-24,P-10                          | --- | --- | Receipts relating to sale of cement        | 138 000    | ---          |
| 41(back side) & 69                   | --- | --- |                                            | 320000     |              |
| KCP-24,P-10                          | --- | --- |                                            | 318585     |              |
| KCP-24,P-69                          | --- | --- | Receipt from sale of steel.                | 12500      | ---          |
|                                      | --- | --- |                                            | 788085     |              |
| KCP-24,P-18                          | --- | --- | Income from the head under company tipper. | 250000     | ---          |
|                                      | --- | --- | Payment towards the company tipper.        | 311535     | ---          |

Analysis of books seized from site office at Bhagawanpur :  
USP-16,P-31 There is a calculation for Rs.722331.

Analysis of books found at site office at Surangi :

|            |     |     |                                                        |            |         |
|------------|-----|-----|--------------------------------------------------------|------------|---------|
| JNV-1,P-35 | --- | --- | Payment towards supply of chips.                       | 3 lakhs    | ---     |
| JNV-4,P-17 | --- | --- | Cash transaction Paid to different persons as advance. | 572939     | 17.2.96 |
| JNV-4,P-17 | --- | --- | Received from different persons.                       | 572939     | 17.2.96 |
| JNV-5,P-60 | --- | --- | Payment was made to different persons in cash.         | 6.60 lakhs | 2.1.97  |

You are directed to submit evidences along with proper explanations regarding such transaction in respect of books of accounts.

(k) If you do not have any proper books of account like audited cash book and ledger for any of the contract work executed by you between 1.4.89 to 29.6.99, you are directed to produce/submit the necessary evidences regarding the payment like purchase, any other expenses in your P&L account etc. for each execution of contract work with the details of name and address of the person to whom paid, the nature of payment, the amount of payment, the date of payment, etc. between 1.4.89 to 29.6.99, any explanation should be supported by proper evidences of such payment with the identification of the person, genuineness of transaction and proof of drawal from cash book or drawal through cheque.

(i) It appears from the seized records as follows that you have suppressed the receipt of amount against contract works executed by you :

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Annoted  
1000  
Advocate.



It appears from the seized records that the raw materials which are supplied to Sri K.K. Mohanty by the Government are partly sold by him, particularly the receipt of money from sale of cement and steel at different sides have been found from seized records. Please explain why the following amounts should not be treated as unaccounted income of Sri K.K. Mohanty from the sale of cement and steel. The details of entries indicating such sale of cement and steel are summarised as below :

- (i) Receipt of Rs.4,07,095/- from sale of cement.(Refer page-109 to 116 to KCP-1).
- (ii) Sale of cement of Rs.3,16,585/- (Refer page-69 of KCP-24)
- (iii) Receipt of Rs.3,20,000/- from sale of cement (Refer page-41, backside, KCP-24)
- (iv) Receipt of Rs.1,38,000/- from sale of cement. (Refer page-10 of KCP-24).
- (v) Receipt of Rs.12,500/- from sale of steel.(Refer page-10 of KCP-24).
- (vi) Receipt of Rs.40,000/- from sale of cement at Samal.(Refer page-52 of SPD-2)

(The total amount comes to Rs.12,36,180/- received from the sale of cement and steel as unaccounted income of Sri K.K. Mohanty).

(m) It appears from the seizure record that you have suppressed the gross amount received in respect of samal & Shivpur project for the financial year 97-98. Thus as evident from the seized book SPD-2 (P-79 to 82) that you had incurred a total expenditure of Rs.215.84 lakhs for Samal and Shivpur project as against declared gross receipt of Rs.381.81 lakhs. Hence, the profit derived from these two contracts comes to Rs.165.97 lakhs (i.e. Rs.381.81 lakh - Rs.215.84 lakh) whereas profit in your return of income has been shown at Rs.42.82 lakhs. Therefore, please explain why Rs.123.15 lakhs (i.e. Rs.165.97 lakh - 42.82 lakh) shall not be treated as the undisclosed income of Sri K.K. Mohanty for the financial year 97-98 in respect of Samal & Shivpur project.

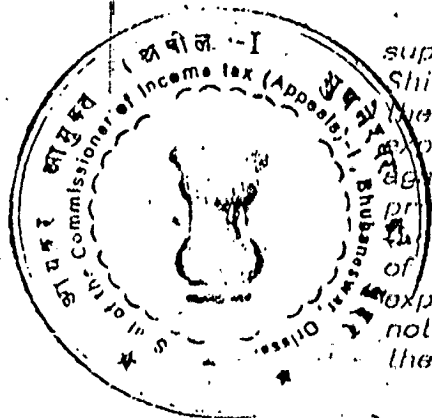
(n) As per your proforma balance sheet for the year ended 31.3.97 you had borrowed unsecured loan to the extent of Rs.2.48 crores from friends and relatives. Please furnish details of these loans like the date on which the loan was borrowed, confirmatory letters from all the said friends and relatives along with details of the ward/assessment circle where they are assessed to tax.

(o) Explain the following transactions regarding the nature and source as per your audited books of accounts.

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Attested

W.D. An  
Advocate



(i) Details of payments recorded in SPD-1 :

| Date    | Page No. | Amount (in Rs.) |
|---------|----------|-----------------|
| 5.3.97  | 4        | 3,500           |
| 8.4.97  | 13       | 20,000          |
| 19.5.97 | 26       | 100,000         |
| 19.5.97 | 26       | 75,000          |
| 19.5.97 | 26       | 100,000         |
| 6.8.97  | 41       | 20,000          |
| 14.9.97 | 45       | 50,000          |
| 23.5.97 | 29       | 200,000         |
| 23.5.97 | 29       | 700,000         |
| 23.5.97 | 29       | 2,091,567       |
| 26.5.97 | 30       | 200,000         |
| 8.8.97  | 42       | 400,000         |

(ii) Payments of p.c./special account recorded in SPD-2 :

| Expenditure          | Amount in Rs. |
|----------------------|---------------|
| Special Account      | 1,180,000     |
| Tender Exp.          | 50,000        |
| P.C. paid total      | 650,000       |
| Indramani            | 200,000       |
| 2nd Tender-Indramani | 17,000        |
| S.E., E.E., EST,     | 70,000        |
| Steno to C.E. & SE.  | 3,000         |
| Thana Expenditure    | 10,000        |
| O.I.C. Samal         | 16,000        |
| Total                | 2,206,000     |

(iii) Expenses recorded in KMO-34 :

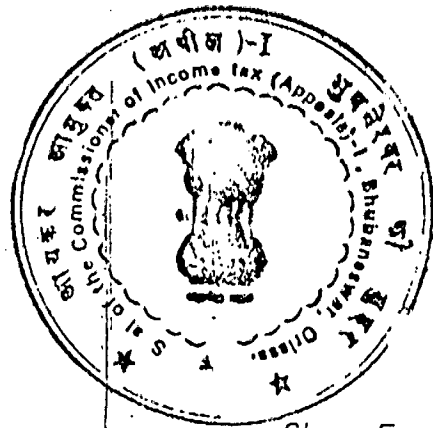
| Sl. No. | Expenditure A/c.                 | Amount as per P&L A/c (in Rs.) | Amount as per KMO-34 (in Rs.) |
|---------|----------------------------------|--------------------------------|-------------------------------|
| (1)     | Cement account including transp. | 3,075,208                      | 1,275,178                     |
| (2)     | Chips including transportation   | 1,325,305                      | 975,835                       |
| (3)     | Bricks including transportation  | 4,555,308                      | 2,152,816                     |
| (4)     | Metal including transportation   | 2,096,000                      | 621,372                       |
| (5)     | Balla, Putta etc.                | 1,065,714                      | 719,627                       |
| (6)     | Travelling exp.                  | 327,500                        | 127,529                       |
| (7)     | Salary to staff                  | 1,055,400                      | 555,400                       |
| (8)     | Sand including transportation    | 1,525,255                      | 949,635                       |
| (9)     | Bajuri including transportation  | 637,285                        | 276,194                       |

(p) Production of complete set of books of accounts - audited accounts - cash book, ledger, party ledger, purchase register etc. particularly for financial years 95-96, 96-97, 97-98, 98-99, 99-2000.

(q) Production of persons for examination along with proper evidences like identification of the parties, genuineness of transaction and creditworthiness, who have advanced unsecured loan to you between 1.4.89 to 29.6.99.

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**Attested**  
  
**Advocate**



(r) Please explain that in the proforma balance sheet for the year ending 31.3.97 it has been stated that unsecured loans to the extent of Rs.2.48 crores was received from the friends and relatives.

(s) Details with descriptions regarding amount of investment, financial year of investment, etc. of all the assets immovable and movable owned/in possession of you and your family members and the nature and source of such investments along with evidences and proper explanations.

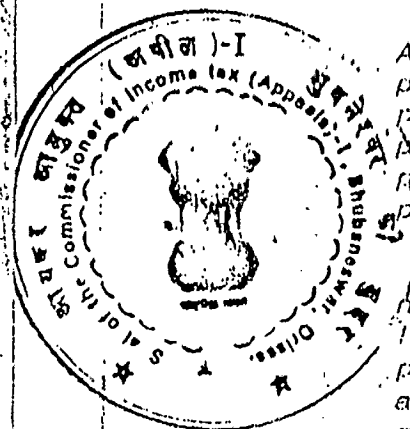
(t) Details of expenses relating to hire charges paid for machines, lippers, excavation machines, etc. in Rengall Right Canal Project, Samal project and Shivpur project in the financial years 95-96, 96-97, 97-98, 98-99 and 99-2000 - name and address of the person to whom paid, the amount in cash/cheque/DD date when payment, nature of payment, proper confirmations regarding such payment, nature of transactions with the said persons who has provided such machines/lippers for hiring jobs.

If you wish to be presented or attended through an Authorised Representative, the same should be complied with the provisions of Sec.208 of I.T. Act, 1961 who should hold valid power of attorney in your case for assessment year 1998-99. Any person who is not properly/duly authorised to be presented/attended in the said assessment proceedings the same person will not be entertained during such proceedings.

Any failure to comply to the said letter will be viewed as non-compliance to the provisions of assessment proceedings under Income Tax Act, 1961. Please note that any adjournment/time petition by you can not be entertained without sufficient reason and without production of evidence of non-appearance or non-submission of details/documents along with supporting evidences. Moreover, any adjournment/time petition by you in the office dak may not be treated as adjournment application before the A.O. unless the same is presented before me for hearing of allowing or non-allowing such adjournment. Any compliance partly will be viewed as non-compliance to the provisions of assessment proceedings under Income Tax Act, 1961 and your assessment will be completed for the said assessment year as per facts on record and merit of the case after allowing you only one more reasonable opportunity of being heard before passing the final assessment order.

Since the date of service of the notice u/s.158BC, sufficient and reasonable time has already been allowed to you for submission of your block return and explanations/details along with supporting evidences vide this office letter, you have been given the time up to 29th December, 2000 for submission of such details/explanations along with supporting evidences etc., and in case you fail to do so or you submit the explanations/evidences etc. partly, you will be allowed only one more opportunity there after, before finalisation of your assessment intimating you the

**Attested**  
  
**Advocate.**



additions proposed to be made by the under signed A.O. in your said case for the reasons cited. In the meanwhile, you have already taken/provided with photo copies/xerox copies/inspection of seized books of accounts/documents and, if any other photocopy/xerox copy etc. are to be taken by you, then same must be done on or before 15th December, 2000 positively, failing which no further opportunity will be granted to you on any ground.

In the said case, the assessee/A.R., should submit their explanations along with details and supporting evidences etc. in accordance with the order of the questions as above.

This letter may be treated as information sought for u/s.142(1) of I.T. Act, 1961."

10.1 The appellant sought time on account of sickness whereafter the block return was filed on 12.03.2001 declaring NIL undisclosed income. Along with the above return, the appellant had also filed copies of the assessment orders starting from the assessment year 1990-91 substantiating the figures of income returned/assessed as under :

| <u>Asslt. Year</u> | <u>Date of order</u>  | <u>Returned income/Assessed income</u> |
|--------------------|-----------------------|----------------------------------------|
| 1990-91            | 03.03.1992            | 22,680/-                               |
| 1991-92            | 26.02.1993            | 21,120/-                               |
| 1992-93            | 21.02.1994            | 43,710/-                               |
| 1993-94            | 29.03.1996            | 55,920/-                               |
| 1994-95            | 27.12.1995            | 3,61,910/-                             |
| 1995-96            | 06.12.1996            | 7,85,830/-/8,33,420/-                  |
| 1996-97            | ---                   | 10,15,730/-                            |
| 1997-98            | 07.03.2000            | 20,55,680/-/26,45,440/-                |
| 1998-99            | 11.01.2001/17.01.2001 | 51,42,880/-/48,96,513/-                |
| 1999-2000          | 30.03.2000/17.01.2001 | 16,88,500/-/19,32,867/-                |
| 2000-01            | 29.01.2001            | 8,90,440/-                             |

It is pertinent to notice here that even after the date of search, the assessments for the assessment years 1997-98 and 1998-99 were completed by the Ld. A.O. as detailed above under section 143(3).

10.2 The appellant submitted a reply to the above extracted letter of the Ld. A.O. dated 16.11.2000 on 12.03.2001, which reads as under :

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*Advocate*  
*W.S.*  
*Advocate.*



"Sir,

With reference to Your Honours' above cited letter it is humbly stated that before furnishing the parawise reply it is relevant to draw your Honour's kind attention to the following submissions :

1) That the Block assessment period comprises of following previous years and assessment years and the returned/assessed income during those period of Sri Karunakar Mohanty, and Smt. Basanti Mohanty are as follows :

KARUNAKAR MOHANTY

| PREVIOUS<br>YEAR | ASSESSMENT<br>YEAR | INCOME RETURNED/<br>ASSESSED |
|------------------|--------------------|------------------------------|
| 1989-90          | 1990-91            | Rs. 22,680                   |
| 1990-91          | 1991-92            | Rs. 21,120                   |
| 1991-92          | 1992-93            | Rs. 43,710                   |
| 1992-93          | 1993-94            | Rs. 55,920                   |
| 1993-94          | 1994-95            | Rs. 3,61,910                 |
| 1994-95          | 1995-96            | Rs. 8,33,420                 |
| 1995-96          | 1996-97            | Rs. 10,15,730                |
| 1996-97          | 1997-98            | Rs. 26,45,440                |
| 1997-98          | 1998-99            | Rs. 48,96,510                |
| 1998-99          | 1999-2000          | Rs. 19,32,870                |
| 1999-2000        | 2000-2001          | Rs. 1,42,660                 |

He was originally assessed under G.I.R. No.1313-K which was subsequently PAN:16-005-PQ-7105 (New PAN : ACXPM-6919-P).

BASANTI MOHANTY

| PREVIOUS<br>YEAR | ASSESSMENT<br>YEAR | INCOME RETURNED/<br>ASSESSED |
|------------------|--------------------|------------------------------|
| 1989-90          | 1990-91            | No return filed.             |
| 1990-91          | 1991-92            | - do -                       |
| 1991-92          | 1992-93            | - do -                       |
| 1992-93          | 1993-94            | - do -                       |
| 1993-94          | 1994-95            | - do -                       |
| 1994-95          | 1995-96            | Rs. 28,000(VDIS,97)          |
| 1995-96          | 1996-97            | Rs. 18,37,000(VDIS,97)       |
| 1996-97          | 1997-98            | No return filed.             |
| 1997-98          | 1998-99            | Rs. 1,44,000                 |
| 1998-99          | 1999-2000          | Rs. 3,61,000                 |
| 1999-2000        | 2000-2001          | No return filed.             |

Smt. Basanti Mohanty has been allotted PAN-AAWPM-1668-L.

2) That during the assessment year 1990-91, 1991-92, 1992-93, 1993-94 and 1994-95 Sri K.K. Mohanty derived share income from the firm M/s. Karunakar Mohanty & Associates as its' partner. From the assessment year 1994-95 to 1999-2000 both inclusive he has derived income from the individual contract business.

Contd. Page..47

**Attester**  
*[Signature]*  
**Advocate**



3). That for the purpose of business proper books of accounts were maintained and on the basis of such accounts returns of income of Karunakar Mohanty are filed.

4) That a search was conducted in residence and business premises of Sri Karunakar Mohanty & Smt. Basanti Mohanty on 29.06.1999.

That when Sri K.K. Mohanty went through the seizure list on 01.07.99 given by the search party after completing the search in the midnight on 29.06.99, he came to know that some of the books of accounts/documents relating to his business from the year 1980 to 28.06.99 kept in his office situated at plot No.126 B, Ashok Nagar, Bhubaneswar-9 either stolen or misplaced. This fact was informed to the Inspector in-charge, Capital Police Station on 02.07.1999.

The said information report has been numbered in the Capital Police Station as SDE No.41 dated 02.07.1999.

The copy of the information report given to Capital Police Station is attached hereto.

It is pertinent to mention here that inspite of his sincere effort, the said stolen/misplaced books of accounts could not be traced out.

On the above back ground it is respectfully submitted as follows :

Q.(a) Complete personal .....to the I.T. Department.

That on the basis of the books of accounts maintained, Statement of affairs, Statement of Assets and liabilities were filed along with the return of income in the respective assessment years before the concerned Assessing Officer which may kindly be referred to.

Q.(b) Cash flow statement.....deduction at source.

That in absence of complete books of accounts it is not possible to draw Cash flow statement of each project/contract work executed during the period from 01.04.89 to 29.06.99. Certificate of tax deducted at source and work statements issued by Contractee departments have already been attached to respective Income Tax returns may kindly be referred to.

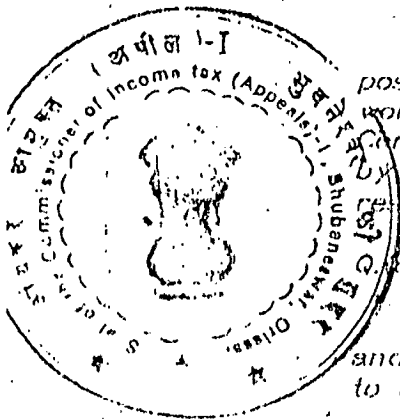
Q.(c) Computation of .....in your case.

That computation of income shown to Income Tax Department and expenses during the period from 01.04.89 to 29.06.99 attached to the respective Income Tax returns may kindly be referred to.

Q.(d) The nature and source.....on 29.06.1999.

Contd. Page. 48

**Attested**  
*Wen*  
**Advocate.**



That cash of Rs.27,000/- seized from residence of Sri Siba Prasad Das has no connection with Sri K.K. Mohanty.

Q.(e) Nature of contract.....1.4.69 to 29.06.99

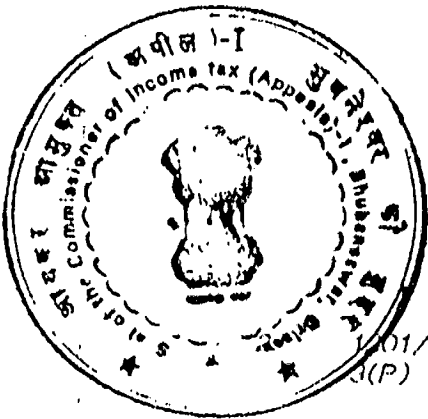
That in absence of books of accounts the details as called for vide Clause 'e' of the above said questionnaire for the period from 01.04.89 to 29.06.99 could not be furnished.

Q.(f) Details of immovable .....1.4.89 to 29.6.99

### KARUNAKAR MOHANTY

That the details as called vide clause 'f' are as follows :

| Sl. No. | Plot No. | Khata Area No.          | Location                                 | Amount Invested for purchase of land/building/renovation. | Remark                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|---------|----------|-------------------------|------------------------------------------|-----------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.      | 607      | ---                     | A0.51 Lewis Road dec. Bhubaneswar (Land) | Rs.40,000                                                 | Rs.40,000/- shown in the I.T. return filed by the firm Karunakar Mohanty & Associates for the assessment year 1990-91 in which the assessee was a partner. Copy of the firm's capital account is attached hereto. Out of the total investment of Rs.8,40,000/- in construction of house building Rs.30,000/- drawn from Capital A/c of the firm M/s. KARUNAKAR MOHANTY & ASSOCIATES and shown to the I.T. Deptt. alongwith the return of income filed by the firm for the assessment year 1992-93. Copy of the said capital a/c is attached hereto. The balance Rs.8,10,000 was declared under VDIS, 97. |
|         |          | 01/ Khairund (P) No.108 | 2.100 Bala khand, Puri                   | Rs.1,20,000 (Land)                                        | There was no construction till date of raid. Out of the total investment of Rs.1,20,000, Rs.1,00,000 has been declared under VDIS, 97. Balance amount paid out of personal drawings.                                                                                                                                                                                                                                                                                                                                                                                                                     |



**Attested**  
*W.D.*  
 Advocate

Sri Karunakar Mohanty

TA No.196/Ors/2001-02

A/Y-1990-91 to 2000-01

BASANTI MOHANTY

|    |      |     |                                |                                                          |                                                                                                               |
|----|------|-----|--------------------------------|----------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|
| 1. | 324  | --- | AO.243 Dumduma<br>dec. BBSR.   | Rs.55,000.                                               | Investment declared under<br>VDIS, 97.                                                                        |
| 2. | --   | --- | AO.500 Tapang,<br>dec. Khurda. | Rs.28,000                                                | - do -                                                                                                        |
| 3. | 4    | --- | Bhagaban-<br>pur, BBSR.        | Rs.80,000.                                               | Stone Crusher (investment<br>declared VDIS,97)                                                                |
| 4. | 4    | --- | - do -                         | Rs.5,25,000                                              | Building constructed over<br>plinth area of 2500 sq.ft.<br>Investment declared under<br>VDIS, 97.             |
| 5. | ---  | --- | AO.500 Nandan,<br>Tirtol       | Rs.13,500<br>Land<br>Rs.1,95,000<br>(constru-<br>ction). | Investment declared under<br>VDIS,97. Building construc-<br>ted over plinth area of<br>1000 sq.ft. at Nandan. |
| 6. | 126B | --- | Janpath,<br>BBSR               | Rs.8,68,000                                              | Investment shown in the<br>I.T. return filed for the<br>assessment year 1999-2000                             |

No moveable, immovable property stands in the name of the children.

Q.(g) Details of movable.....1.4.69 to 29.6.99.

That the moveable assets stands and belongs to Sri K.K.Mohanty have been shown in the balance Sheet and filed alongwith return of income.

That Smt. Basanti Mohanty owns gold ornaments of 706.230 gms. (Approx), one T.V. and one Refrigerator.

(h) Details of bank loans.....margin/security money.

That the details of Bank loans are given below :

KARUNAKAR MOHANTY

| Name of<br>the Bank/<br>Branch | Limit sanction<br>for Term Loan/<br>OT/CC | Actual<br>amount<br>drawn | Purpose<br>& nature<br>of with-<br>drawn of<br>loan | Margin/<br>collo-<br>ctorial<br>security                                | Nature &<br>source of<br>margin/<br>security<br>money. |
|--------------------------------|-------------------------------------------|---------------------------|-----------------------------------------------------|-------------------------------------------------------------------------|--------------------------------------------------------|
| 1. Andhra<br>Bank,<br>BBSR     | 10,00,000 CC<br>30,00,000 BG              | 31.03.95<br>10,49,972     | For business<br>purpose.                            | Land & Bui-<br>lding of<br>K.K.Mohanty in I.T.<br>& Basanti<br>Mohanty. | Source<br>explained<br>return.                         |
| -do-                           | 10,00,000 CC<br>30,00,000 BG              | 31.03.96<br>11,47,000     | -do-                                                | -do-                                                                    | -do-                                                   |

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Attorney  
Advocate.

|                         |              |           |      |                                                           |                 |
|-------------------------|--------------|-----------|------|-----------------------------------------------------------|-----------------|
| 2. Bank of India, BBSR. | 30,00,000 CC | 31.03.97  | -do- | Margin money 15.90 Lac in shape of F.D. both for CC & BG. | -do-            |
|                         | 50,00,000 BG | 29,93,849 |      |                                                           |                 |
| -do-                    | 60,00,000 CC | 31.03.98  | -do- | -do-                                                      | -do-            |
|                         | 60,00,000 BG | 57,41,292 |      |                                                           |                 |
| 3. UCO Bank, CRP, BBSR. | 5,00,000 OD  | 5,00,000  | -do- | No margin money. NSC pledged. 4 lacs                      | -do-            |
| 4. SBI, Telsing         | 34,00,000 OD | 34,00,000 | -do- | No security                                               | Does not arise. |

Smt. BASANTI MOHANTY has no bank account.

Q.(i) Please explain/show ..... such transactions.

KK-1, P-40

Does not belong to Sri K.K. Mohanty, those belongs to Namita Mahapatra who has given her four tippers to Sri Mohanty on annual rent basis.

KK-1, P-40

This page does not speak anything about Rs.6.5 lacs. However Sri K.K. Mohanty has paid Rs.6.5 lacs out of his cash credit A/c maintained with Bank of India towards margin money payable by Namita Mahapatra for availing loan from Bank of India, Saheed Nagar, Bhubaneswar to purchase four tippers by her. He has given this margin money for Namita Mahapatra with the understanding that Namita Mahapatra would engage her tippers for his works and the annual rent payable to Namita Mahapatra will be adjusted against the margin money paid by Sri Karunakar Mohanty.

KK-1, P-64 to 67 :

Sri K.K. Mohanty is no way connected with the papers marked as KK-1, P-64 to 67.

KK-1, P-12 :-

So far Sri K.K. Mohanty remembers one truck of Prahalad Swain was engaged in his work and Rs.19,600/- might be the dues of BCL Financial Ltd. on account of Prahalad Swain, owner of the truck and the same was paid by Sri K.K. Mohanty and adjusted against the dues payable to Prahalad Swain.

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*Handwritten signature*  
Advocate

KK-1, P-1 to 6:-

Rs. 75,155/- has been paid to Toshali Royal View, Simla towards membership price.

KK-1, P-11 &amp; 63 :-

In absence of the books of accounts so far it is remembered that Rs. 11,100 and Rs. 14,100/- was paid to Sterling Holiday Resort for purchase of Time Share of Sterling Holiday Resorts India Ltd. by Sri K.K. Mohanty.

KK-1, P-41:-

In absence of the books of accounts so far it is remembered Rs. 1,28,500/- was paid towards instalment against purchase of four nos. of Tippers through Tata Finance and the purchase of said 4 Tippers have been shown in the Income Tax Return of Karunakar Mohanty.

KK-1, P-34 &amp; 35:-

That Sri Karunakar Mohanty entered into an agreement with U.K. Rath for purchase of a plot and accordingly paid Rs. 2,60,000/- to him and since the said deal was not materialised Sri U.K. Rath has returned the said amount of Rs. 2,60,000/-.

KK-2, P-14 to 18:-

That Sri Karunakar Mohanty has purchased one land from Sri S.S. Panda at Rs. 1.2 lacs the details of which given above and has been disclosed under VDIS, 87.

KK-3, P-23 &amp; KK-4 :-

This is a rough estimate in which a rough calculation in round figure has been made before purchasing a land at Janpath, Bhubaneswar from Govt. of Orissa. Before purchasing the said land it was decided to arrange fund by obtaining loan from different persons and also selling ornaments which finally was not materialised. Smt. Basanti Mohanty has taken a financial assistance from her husband Sri K.K. Mohanty for purchase of the land in question. The total investment for purchase of land has been explained in the return of income filed by Smt. Basanti Mohanty for the assessment year 1999-2000. The financial assistance of Rs. 5,00,000/- given by her husband was duly reflected in the return of income filed by Smt. Basanti Mohanty and by Sri K.K. Mohanty.



Contd. Page..52

**Attested**  
*U. D. S.*  
**Advocate.**

KK-5, P-38 :

That Sri Karunakar Mohanty has paid admission fees of Rs.50,000/- of his daughter Sony out of his business income.

KK-5, P-13:

In this chit house-hold expenses towards vegetable, washerman etc. written. In the said paper no where it is written that the monthly house hold expenses is Rs.35,000/-.

KK-6, P-8 :

That the notings made in KK-6, P-8 are related to the business expenses incurred at work-site of Sri K.K. Mohanty and the dues payable to different persons.

BOOKS OF ACCOUNTS SEIZED FROM SRI SIBA PRASAD DAS SPD 1 TO SPD 11  
THAT all the queries relating to SPD-1 to SPD-11, the books of accounts seized from Siba Prasad Das and carries identification mark SPD are no way connected with Sri K.K. Mohanty and he has no knowledge about that.

KMO-1, P-61

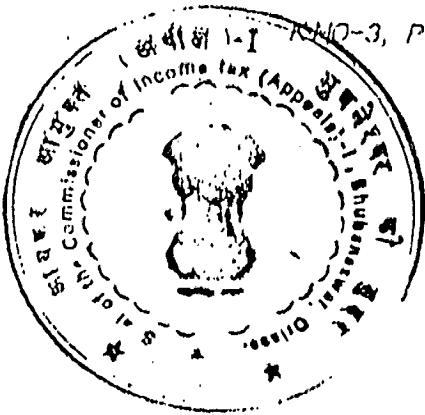
This is a rough sheet which contains the assets and liabilities of K.K. Mohanty with estimated round figures on a particular point of time. As per the said sheet the liabilities are more than the assets. The liabilities are Rs.1,94,60,000/- against the assets of Rs.1,68,00,000/- as per the estimation. Hence this rough paper may be discarded.

KMO-3, P-55 :

That Sri Karunakar Mohanty has not executed any work under NTPC during any year. As appears from KMO-3, P-55 it has been written by one of his supervisors namely Sri Siba Prasad Das, New LIC Colony, Badambadi, Cuttack and Sri Mohanty is no way connected to any work under NTPC and also he has no knowledge about KMO-3 and also ignorant of the writings appear in KMO-3, P-55 including the hire charges @ Rs.1100 per hour.

It is a rough paper and Sri K.K. Mohanty has no knowledge about the writing noted therein and he does not know anybody in the name of Mukesh Kaul of Sriram Industries Ltd. and anything regarding the notings of Rs.8 lacs made in the said chit KMO-3, P-45A.

KMO-3, P-45A : -



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Mohanty  
Advocate.

KMO-3, P-35

This is a rough estimation slip made in round figures in respect of earth work executed under E.E., Rengali and estimated expenditure only in respect of excavation and tipper under F.A., RIP, Samal. The gross payments received and expenditure incurred from the above two contractor departments have been duly reflected in the Income Tax return filed for the assessment year 1998-99. In absence of the books of accounts it is not possible to furnish details about the expenditure in respect of the said work including expenditure of Rs.53.80 lacs noted on estimation.

KMO-3 :

The Govt. has allotted a land bearing Plot No.126 B, Ashok Nagar, Bhubaneswar in the name of Basanti Mohanty and she has disclosed it in the Income Tax return in the relevant assessment year 1999-2000.

KMO-5, P-26

That Sri Karunakar Mohanty entered with an agreement with one Sri Umakanta Rath, son of Jagannath Rath on 05.03.98 for purchase of plot of land measuring 155 decimals at B.J.B. Nagar, Bhubaneswar for a consideration of Rs.13,25,000/- and in pursuance to such contract he was received Rs.2,80,000/- from Sri K.K. Mohanty through Banker's cheque No.108239 dt.24.03.98 drawn on B.O.I., Seherd Nagar, Bhubaneswar. Subsequently since the deal was not materialised due to some litigation over the land in question Sri Rath returned the said Rs.2,80,000/- to Sri K.K. Mohanty in instalments.

KMO-5, P-30



It has been prepared by Sri Siba Prasad Das and Sri K.K. Mohanty has no knowledge about this. In absence of books of accounts and any date mentioned in the bill it is not possible to say any thing about it. However it is pertinent to mention here that Sri K.K. Mohanty is a works contractor and all along has been executing contract works under Govt. and Semi Govt. authorities and has disclosed all his works in respective Income Tax returns. He has never executed any work under any private organisation.

Contd. Page.,54

**Attested**  
*[Signature]*  
 Advocate.



KMO-6, P-84 to 87 &  
KMO-6, P-86

That Sri K.K. Mohanty has no knowledge about KMO-6, P-84 to 87. So far, he guesses KMO-6, P-84 to 87 were prepared by Siba Prasad Das one of his supervisor working under him on estimation in round figures. In absence of any date noted in the chit as well as in absence of books of accounts it is not possible to verify the entries. However the fact remains that whatever gross bill received by him from the works executed at Sibapur and Samal have been duly reflected in the respective returns of income filed by him.

KMO-6 :

That Sri K.K. Mohanty has no specific knowledge about the expenditure under the head PC and special account. So far he remembers expenditures incurred relating the work were noted by the supervisors in charge of the work. In absence of the books of accounts it is not possible to cross verify the expenditure under the head PC and special account in detail.

KMO-6, P-64 to 66

It is a rough estimation of expenditure in round figures and in absence of any books of accounts, the details of expenditure cannot be cross verified.

KMO-7, P-80 :

Sri K.K. Mohanty does not know anything about the writing in this paper and so far he recollects the handwriting with which the notings are made in the paper do not belong to him or any of his staff or employees.

KMO-7, P-89 :

This is a rough estimation sheet prepared in round figures and as it appears from body who has no knowledge about Sri K.K. Mohanty's business activities has prepared the same. The said statement was never submitted before the Bank by him.

KMO-11



That by the time of preparing the proforma balance sheet & profit and Loss Account on 2nd July, 1997 for the year ending on 31.03.97 since actual figures could not be obtained the Profit and Loss Account and Balance Sheet were prepared on estimated figures. After preparing the proforma Balance Sheet and Profit & Loss Account when it was felt that absurd figures and results are appearing due to

Contd. Page..55

Attested  
W.Dan  
Advocate.

estimation without basis, the same were discarded and not filed before the Bank or any other Authority including I.T. Department. The correct audited Balance Sheet and Profit & Loss Account prepared on 27th October, 1997 were filed before different authorities including Income Tax Department.

KMO-11, P 1 & 2 :

That by the time of preparing the proforma balance sheet & profit & loss Account on 16.04.98 for the year ending on 31.03.98 since actual figures could not be obtained the Profit & Loss Account and Balance Sheet were prepared on estimated figures. After preparing the proforma Balance Sheet and Profit & Loss Account when it was felt that absurd figures and results are appearing due to estimation without basis, the same were discarded and not filed before the Bank or any other Authority including I.T. Department. The correct audited Balance Sheet and Profit & Loss Account prepared on 29.10.98 were filed before different authorities including I.T. Department.

KMO-11 :



KMO-23, P 2

Sri K.K. Mohanty was participated in a tender called by Central Ware Housing Corp. for construction of a godown and ancillary building at Dalesore and being found first lowest bidder and assuming the work could be awarded to him, he made an agreement with R.P. Nayak and has received Rs.1,00,000/- towards security from Sri R.P. Nayak for executing the work in partnership. Subsequently the said work being awarded to O.S.I.C., Cuttack he has cancelled the agreement with R.P. Nayak and returned the money of Rs.1 lac to Sri R.P. Nayak.

As it appears a rough estimation has been made by staff of Sri K.K. Mohanty in round figures regarding hire charges equipments and other payments relating to Project cost in respect of Sivpur Project.

KMO-33

That steel grills were purchased by Sri K.K. Mohanty from Sab Industries for Surangi & Keonjhar work and payments were made to the said industry. In absence of books of account the exact amount of payment could not be

Contd. Page..56

**Attested**

*W.Dan*  
Advocate

ascertained. As regards payments of Rs.14.73 lacs to Sri Ram Saran it is stated that so far he remembers there is no person in such name to whom payment to the tune of Rs.14.73 lacs during the year has been made in respect of Surangi & Keonjhar work for the year 1996-97 & 1997-98. It is pertinent to mention here that the entire gross bill received in respect of Surangi and Keonjhar work has been duly shown by the Income Tax Return by him during the year 1996-97 & 1997-98 and in Profit & Loss account relating to said works are debited.

KMO-34

That since all the books of accounts relating to the business of Sri Karunakar Mohanty were not seized as stated earlier and only a part of the accounts were seized it is difficult to make any reconciliation/analysis/or to determine the exact amount of expenditure incurred for any year including year ending on 31.03.96.

KCP-24, P-18

So far it is remembered this expenditure of Rs.3,11,535/- relate to the fuel expenses for running the company tippers at Paradeep for sand filling work taken under Paradeep Port Trust. The gross bill received in respect of such work and expenses incurred relating to that work were shown in the respective I.T. return by Sri Karunakar Mohanty.

USP-16,P-31

This paper has been seized from the crusher site at Bhagabanpur. This is a rough sheet and the owner Smt. Basanti Mohanty and her husband Sri K.K. Mohanty are no way connected with this paper.

JNV-1, P-35

JNV-4, P-17

JNV-5, P-60

As it appears expenditure made in connection with the work executed at Surangi under different heads are noted in these papers. The total gross bill received by Sri K.K. Mohanty in respect of Surangi work and the related expenditure were duly shown in the respective I.T. returns. In absence of all the books of accounts the details about the expenses incurred noted in the above chit could not be explained.

Contd. Page..57



Attested

Wan  
Advocate.

Q.(k) If you do not have .....drawal through cheque.

That since the books of accounts/documents and evidence relating to the work have been stolen/misplaced and the same fact was informed to the Department earlier, the details as called for under clause (k) at page 8 could not be furnished.

Q.(l) It appears from the .....of Sri K.K. Mohanty.

That Sri K.K. Mohanty is a works contractor and he has been executing contract works under different Govt. and Semi Govt. authorities. Whatever gross bills received by him have been duly reflected in his return of income for respective assessment years. It is pertinent to mention here that not a single instance has been cited by Your Honour in the above cited questionnaire either on the basis of accounts seized or on the basis of any other evidence/information that Sri K.K. Mohanty has suppressed the receipt of any amount against execution of contract work. Hence the allegation of suppression of receipt of amount against contract work executed by him is without any basis.

That the very allegation that Sri K.K. Mohanty has partly sold the materials supplied by the Department is without any basis and he hereby strongly objects the said allegation. As regards the various receipts cited at page 10 of the questionnaire relating to sale of cement and steel he has to humbly state that these figures are collected from the account seized from the Paradeep Site. He has under taken one work under G.M., IDCO, Cuttack namely construction of O.S.F.C. Tower at Cuttack. Among others one condition originally was there that he would purchase cement and steel from open market and utilise the same in execution of works contract and accordingly he has purchased some cement from L & T Cement, Cuttack and steel from Aditya Steel, Cuttack. But subsequently the original agreement was amended providing that the contractor, G.M., IDCO will supply cement and steel for their work. Under the changed situation since he could not find out prospective buyer at Cuttack and had his own transport facility without any transportation charges to Paradeep and Samal, he took the material to Paradeep & Samal and sold there at cost price. For the reasons stated above there is no element of profit on sale of cement and steel and Your Honours' proposal to estimate the profit at 8% is improper which may kindly be dropped.

Q.(m) It appears from the seizure.....Samal & Sivpur Project.

That Your Honours' proposal of making addition of Rs.123.15 lacs (Rs.1,65.97 lacs - Rs.42.82 lacs) is based on a document bearing SPD 2 not seized either from place of business or office premises of K.K. Mohanty or from his works sites and hence he is unable to know and also unable to explain the entries if any made in SPD 2 as the same is not within his knowledge. In clause 'm' nothing has been mentioned wherefrom document bearing No.SP-D-2 was seized and who has written such document and the

Contd. Page..58

Advocate.

authenticity of such document on the basis of which such allegation is made. Since the allegation is without any cogent and valid basis the same may kindly be dropped. If any adverse view is intended he may kindly be supplied with the copy of the SPD-2 which has not been seized either from his residence or office(s) or from the work site(s) and the person who has written the said document (SPD-2 may kindly be confronted with him and he may kindly be allowed to cross examine the document (SPD-2) and the person who has written such document. It is pertinent to mention here that the entire gross bill received by him in respect of Samal and Sivapur project and the expenses incurred in respect of such work were duly shown in the Income Tax Return filed for respective periods.

Q.(n) As per your proforma ..... are assessed to tax.

That since actual figure was not available by the time of preparing proforma Balance Sheet, the Proforma Balance Sheet was prepared with estimated/imaginary figures for which the same was not produced before any authority including Income Tax Department and Bank. Balance Sheet prepared on the basis of actual figure for the year ending on 31.03.97 on dt.29.10.97 was filed before different authorities including the Bank and I.T. Department. Hence different figures appeared in Proforma Balance Sheet may kindly be discarded.

Q.(o) Explain the following ..... 637,285,270,104.

That details of payments recorded in SPD-1 & SPD-2 cannot be explain by Sri K.K. Mohanty since document bearing No.SPD-1 and SPD-2 have neither been seized from his place of business nor from his residence nor from any of the work site, Sri K.K. Mohanty is unable to know and also unable to explain the entries if any made in SPD 1 & SPD 2 as the same is not within his knowledge. In clause (o) nothing has been mentioned where from SPD 1 & 2 were seized and who has written such document and its authenticity. Since he does not know what is written in SPD 1 & SPD 2 he is unable to explain the same and hence no adverse view may kindly be taken in this regard.

That the various expenses recorded in KMO-34 relates to the expenses incurred by Sri K.K. Mohanty under different heads in respect of works executed by him. Since all the books of accounts were not seized and only a part of the books of accounts were seized the amount written in KMO-34 which represents only a part of the total expenditure incurred under different heads does not tally with the various expenses claimed in the Profit & Loss account.

Q.(p) Production of complete ..... 95-99, 99-2000.

That as stated earlier since books of accounts were misplaced/stolen and the same has been reported to the police station and so far could not be traced out, the books of accounts as mentioned under clause (p) for the financial year 95-96 to 99-2000 could not be produced.

Contd. Page..59

Attested

uon

20.10.02



Q.(q) Production of persons.....1.4.99 to 29.6.99

That in absence of books of accounts and so far Sri K.K. Mohanty remembers he has not taken any loan from anybody except Banks as stated in the return of income filed in respective assessment years.

Q.(r) Please explain that.....friends and relatives.

Kindly refer to the explanation given against questionnaire (n) above.

Q.(s) With.....proper explanations.

Kindly refer to the explanation given against questionnaire (f) above.

Q.(t) That in absence of the books of accounts it is not possible to give the detail expenses under different heads for the financial year 95-96 to 98-2000 in respect of Rengali Right Canal Project, Samal Project and Sivpur Project as required in clause (l).

This may kindly be treated as compliance to Your Honours' above cited queries and obliged."

whereupon the Ld. A.O. issued a detailed showcause notice dated 30.05.2001 requiring the appellant to file reply on or before 07.06.2001. It is noticed that this contained more or less same information as in the impugned order and was served on the appellant on 01.06.2001. Obviously, it can not be held that the A.O. was justified in allowing only six days time to the appellant for furnishing reply to 13 page showcause notice issued by him. Nonetheless, the appellant tried to give a reply which was filed on 07.06.2001 and the same was also accompanied by an affidavit reading as under :

BEFORE THE NOTARY PUBLIC, BHUBANESWAR  
A F F I D A V I T

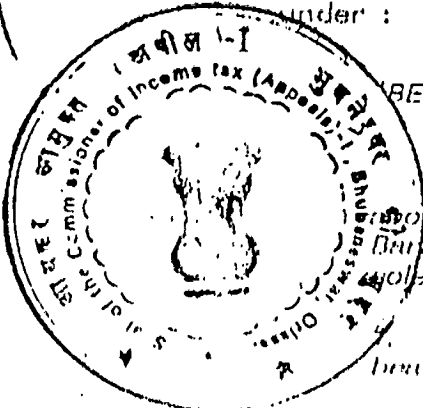
I Sri Karunakar Mohanty, S/o Sri Narayan Mohanty, aged about 46 years, Resident of Plot No.607, Lewis Road, BBSR-14, P.S. Bhubaneswar by religion Hindu, by profession Business do hereby solemnly affirm and state as follows :

That I am an assessee under the Income Tax Act, 1961 bearing PAN No. ACNPM 0019 P.

2. That I did not procure or own following value of assets in different financial years as per proforma Balance sheet.

Contd. Page..60

Attested  
W.D. An  
Advocate.



| Financial Year | Value of Assets as per Proforma Balance Sheet |
|----------------|-----------------------------------------------|
| 1993-94        | Rs. 23,80,931/-                               |
| 1994-95        | Rs. 56,25,431/-                               |
| 1995-96        | Rs. 79,77,431/-                               |
| 1996-97        | Rs. 4,64,94,466/-                             |
| 1997-98        | Rs. 3,79,80,037/-                             |

3. That proforma balance sheet and proforma profit and loss account for the above Financial year 1993-94, 1994-95, 1995-96, 1996-97 and 1997-98 were prepared on estimated round figures for the purpose of obtaining higher case credit/loan facility from different financial institution including Banks but after preparing Proforma balance sheet and Profit loss account when it was felt that absurd figures and results appearing due to estimation without basis and the same could not be substantiated they were discarded and not filed before the Bank or any other authorities. The Balance sheet and Profit and loss account prepared with correct figures were filed before different authorities including the Bank for above said five years.

4. That I have not possessed/owned following nos. of machineries in the financial year 1996-97 as per the statement submitted by me to Executive Engineer, Right canal Div-IV, Hindol Road, Dhenkanal.

| Sl. | Name of the machinery | No. of machinery | Amount                   |
|-----|-----------------------|------------------|--------------------------|
| 1.  | Excavator             | 4 nos.           | Rs. 148 lakh             |
| 2.  | Tipper                | 25 nos.          | Rs. 162.5 lakh           |
| 3.  | Trucks                | 5 nos.           | Rs. 20 lakh              |
| 4.  | Concrete mixer        | 10 nos.          | Rs. 5,50,000/-           |
| 5.  | Dozer                 | 2 nos.           | Rs. 96,000/-             |
| 6.  | Vibrator (Concrete)   | 10 nos.          | Rs. 1,65,000/-           |
| 7.  | Diesel Pump (5H.P)    | 12 nos.          | Rs. 2,18,340/-           |
| 8.  | Generator             | 3 nos.           | Rs. 1,67,356/-           |
|     |                       |                  | <u>Rs. 3,42,68,696/-</u> |

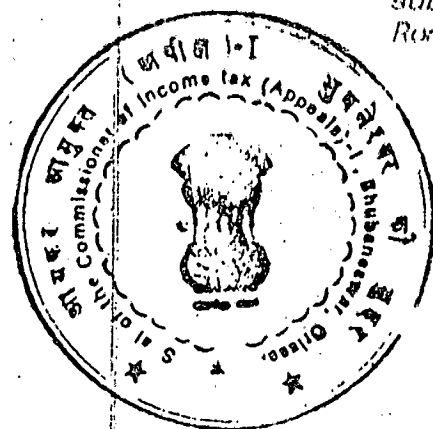
5. That I have owned machineries and equipments as per Balance sheets filed alongwith my returns of Income submitted in the Income Tax Department.

6. That whatever gross bill received by me in different financial years from different contractor departments were duly/truly shown in the income tax return filed by me in respective assessment years and I have not understated the gross bill in my income tax return.

7. That after some months of joining them it came to my knowledge that Sri Siba Prasad Das is involved in pilferage and manipulation of accounts for his personal gain he was sacked from service by me.

Contd. Page..61

**Attested**  
*WDM*  
**Advocate.**



6. That I am no way connected with the seized documents bearing identification Mark SPD-1 and SPD-2 and I do not know what is written in these documents.

9. That it is not at all a fact that I have sold raw materials (Construction materials) which were supplied to me by Government as alleged by the Assessing Officer.

10. That I have sold the construction material (Cement and Steel) which were purchased by me from L&T, Cuttack and Aditya Steel Cuttack.

11. That I have not stated anywhere that I have earned gross bill of Rs.2,69,36,127/- from Samal Project in Financial Year 97-98.

12. That the seized document bearing identification mark KMO-34 do not relate to any work executed during financial year 1997-98.

13. That I have not deposited Rs.3,50,000/- in the bank account of N. Mahapatra, N. Tripathy and S. Mahapatra.

14. That I have not deposited Rs.4,18,000/- during financial year 1997-98 in Bank of India, Ashok Nagar, Bhubaneswar in the name of N. Mahapatra, N. Tripathy and S. Mahapatra.

15. That I have not invested Rs.25,06,109/- to purchase 4 nos of Lippera in the name of Namita Mahapatra as alleged by Assessing Officer.

16. That all the facts stated by me in my reply letter dt.7.6.2001 filed in response to notice No. DCIT/INV-1/BBSR/2001-2002/51 dt.30.05.2001 before the Deputy Commissioner of Income Tax, Investigation Circle-1, Bhubaneswar are true and correct.

17. That this affidavit is required to be filed before the Deputy Commissioner of Income Tax, Investigation Circle-1, Bhubaneswar in connection with my Block assessment proceeding along with my reply dt.07.06.2001.

That the facts stated above are true to the best of my knowledge and belief."

11. It is a settled law that the contents of an affidavit can not be rejected outright unless the deponent has been examined and it is brought on record during the course of examination that such contents are wrong in which case the deponent can also be proceeded with for perjury. No such thing was done. Even the Ld. C.A, Sri B.S. Subudhi, who was examined by the A.O. (such examination is not available in the case record) was not subjected to explain as to how two sets of the financial affairs

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**Attested**  
*W Sen*  
Advocate.





Sri Karunakar Mohanty. ITA No.196/Org/2001-02 A/Y-1990-91 to 2000-01

were signed by him for the same period in respect of the same appellant. Eventually, the assessment order was passed after the draft was sent to the Addl. C.I.T. on 15.06.2001, whose approval was obtained on 21.06.2001 wherein the income, as proposed to be assessed as undisclosed income in the showcause notice dated 30.05.2001 was duly included.

11.1 At this juncture it is also relevant to refer to the report of the appellant made to Capital Police Station, Bhubaneswar dated 02.07.1999 which reads as under :

"To

THE INSPECTOR IN-CHARGE,  
CAPITAL POLICE STATION,  
BHUBANESWAR.

(MISSING OF BOOKS OF ACCOUNTS/DOCUMENTS)

Sir,

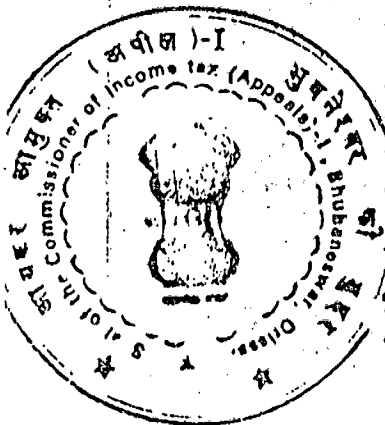
This is to inform you that I have kept all my books of accounts including Cash Book, Ledger etc. relating to my business from the year 1989 to 28.06.99 in my office situated at Plot No.126B, Ashok Nagar, Bhubaneswar-9 except one ledger relating to the year 1997-98 and Bank accounts which were kept with my Chartered Accountant Mr. B.S. Subudhi, Saheed Nagar, Bhubaneswar. On 29.06.99 search and seizure was conducted in the said office premises by the Income Tax Authority and the search party seized books of accounts/documents/papers/Bank accounts in course of search as per Seizure list dated 29.06.99 vide Annexure-A and Annexure-1. From the seizure list I found that many other books of account relating to my business were not seized as per Seizure list and the same were also not found in my office premises.

This is for your kind information and necessary action."

11.2 In view of the affidavit and also the above fact of lodging a report with Capital Police Station regarding loss of books of accounts, I am of the considered opinion that the A.O. was not justified in rejecting the claim of the appellant and in merely inferring that the books of accounts were not deliberately produced by the appellant. It has been claimed that business men in order to avail loan facility from banks/financial institutions give exaggerated state of financial affairs which do not have relevance to the actual figures and that in what precisely was done by the appellant also which was also necessary for projecting a sound financial position

Contd. Page.63

Attested  
W.Das  
Advocate.



before the contractee departments after obtaining the solvency certificates from the banks so that higher contracts are awarded to them. It is astonishing that neither during the course of search nor otherwise any books of accounts were found out by the search party, including the Ld. A.O., who was an active member of such search party. Even no valuable was found in respect of the appellant whose only source of income is essentially from execution of Government contracts. The claim that the proforma balance sheets were of no avail so far as the business profits are concerned has been cursorily rejected by the A.O. This is also evident from the fact that no contractor worth the name or otherwise would be disclosing/earning a net profit of about 20% particularly when the A.O. himself after the date of search has proceeded to assess the appellant at 8% of the contract receipts (para 10.1 supra). The A.O. referred to the balance sheet for the year ending 31.03.1997 wherein the apparent discrepancy was worked out to Rs.3,43,05,800/- and tried to justify the same by observing that the cost of new machinery as on date works out to Rs.3,42,68,686/-, which can be hardly said to be justified because who are the suppliers, what information was given by them has nowhere been indicated in the impugned order so also as to what was the value of the different machineries as on 31.03.1997 or that the suppliers indicated the value as on the date of information. This is a serious lapse on the part of the Ld. A.O. while completing the search assessment and, therefore, any adverse inference drawn on this basis is unjustified.

11.3 Likewise, in Table - 1 starting from Page 6 and running upto page 9 of the assessment order, the Ld. A.O. has proceeded to work out the receipts on the basis of higher figures as available as per the information obtained on enquiry or as available in the Income-tax returns filed by the appellant. In a number of places it is seen that the Ld. A.O. has observed that the I.T. records are not available. If this is the state of affairs in completing a search assessment, the appellant can not be penalised for the same - it was for the A.O. to trace out the records, club them with the proceedings for the year. When the appellant has been assessed in respect of these year also on income from contract receipts, it is highly unjustified that receipts as per I.T. returns are taken to be NIL and the receipts as per the enquiry made during the course of search proceedings are taken

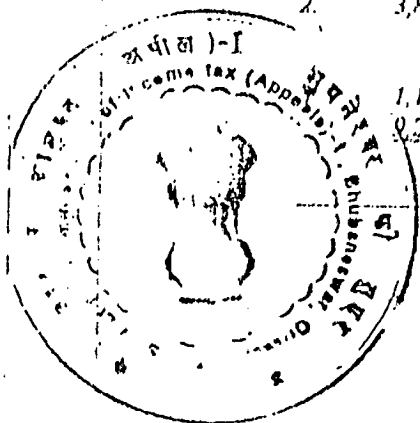
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 Advocate.

to be the gross true receipts. The A.O. has also tried to blow hot as well as cold in as much as that for the financial year 1994-95 in respect of Executive Engineer, Divn. II, BDA the receipts as per enquiry amounted to Rs.11,07,340/- whereas as per the return they amounted to Rs.17,29,657/- and the A.O. has proceeded to assess the appellant in respect of the receipts as per the return filed originally viz. Rs.17,29,657/-. The A.O. ought to have called for further information from the Executive Engineer and reconcile the figures but no attempt appears to have been altogether made by him in this regard. Likewise, for the financial year 1997-98 the figure supplied by the Executive Engineer, Divn. III, BDA is Nil whereas the A.O. has adopted a figure of Rs.4,60,754/- as per the return. So is the position with regard to the Executive Engineer, Rengali, Gadiakateni and the Executive Engineer, Rengali, Mahisapat and CAO, RIP, Rengali, Samal. This approach in making assessment is highly unscientific and can not be approved.

11.4 At this juncture it is also necessary to refer to the certificate U/s.68(2) of the VDIS, 1997 bearing No.001378 dated 27.03.1998 issued by the C.I.T., Bhubaneswar wherein the following declaration was accepted :

| Serial No. | Amount of income declared. | Assessment year(s) to which the income relates. | If the income is represented by cash (including bank deposit), jewellery, bullion, investment in shares, debts due from other persons, commodities or any other assets |                    |            | Remarks                                                                                                                                               |
|------------|----------------------------|-------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
|            |                            |                                                 | Description of asset                                                                                                                                                   | Name in which held | Amount     |                                                                                                                                                       |
| 1          | 2                          | 3                                               | 4                                                                                                                                                                      | 5                  | 6          | 7                                                                                                                                                     |
| 1          | 4,25,000/-                 | 1993-94                                         | Construction of double storied Bldg. at Plot No 607, Lewis Road, BRSR(1200 Sq.ft)                                                                                      | Self               | 4,25,000/- | Out of cash of Rs.1,10,000/-, has paid to Shyam Sundar Panda towards purchase of Plot No xxx/3(P) in Bahukunda Mouza Khasma hal No.108 in Puri Sadar. |
| 2.         | 3,85,000/-                 | 1994-95                                         | -do-                                                                                                                                                                   | -do-               | 3,85,000/- |                                                                                                                                                       |
|            | 1,10,000/-                 | 1996-97                                         | Cash                                                                                                                                                                   | -do-               | 1,10,000/- |                                                                                                                                                       |
|            | 9,20,000/-                 |                                                 |                                                                                                                                                                        |                    |            |                                                                                                                                                       |



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Advocate

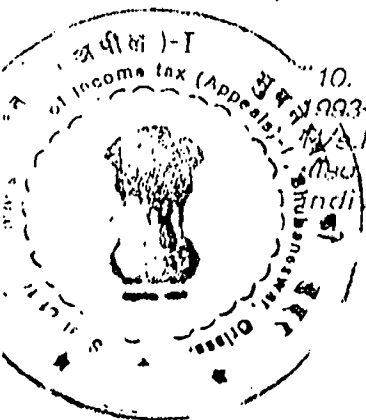
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Sri Karunakar Mohanty. I.T.A. No. 196/Om/2001-02 A/Y-1989-91 to 2000-01

11.5 The appellant also filed before the Ld. A.O. submissions dated 07.06.2001 running into 28 pages which were more or less of an elaborative nature to those filed on 12.03.2001 and the arguments on behalf of the appellant are also essentially confined to the same.

12. As stated above and discussed earlier, it was argued that in order to avail higher loan facilities from banks/financial institutions the business men give exaggerated state of affairs which claim can not be rejected in respect of appellant also more so because such statement of affairs were not test checked from the banks, the concerned Chartered Accountant who had signed them had also not been cornered on the issue and the appellant has since beginning been claiming that the position of affairs in KMO-11 was not true position which was corroborated by filing of an affidavit also by him which has not been proved to be false. On page 5 of the impugned order also, the learned A.O. has admitted this position.

13. The appellant has been executing contracts of various Government and Semi Government departments from year to year and the payments have been received from the contractee departments by way of cheques/drafts which have been drawn in favour of the appellant. The Ld. A.O. in Table-1 has drawn statement of works purported to have been executed by the appellant on the basis of enquiries made by him with the contractees and the discrepancies were explained by the appellant as being the receipts belonging to M/s. K.K. Mohanty & Associates, a partnership firm in which the appellant is one of the partners. The explanation appears in Paragraph 10(a) of the reply filed on 07.08.2001 and for the sake of ready reference, the same is being reproduced herein under:



10. (a) That the assessee during the financial year 1989-90 to 1993-94 both inclusive, was deriving share income from the firm M/s. Karunakar Mohanty and Associates. Besides the assessee was also deriving income from execution of some contract works in his individual capacity the details of which are given below :

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Attorney  
V. S. An  
Advocate.

Sri Karunakar Mohanty. JTA No. 195/Qrs/2001-02

A/Y-1990-91 to 2000-01

| Financial Year | Name of the Contractee Department | Name of the Assessee                  | Gross Amt. Received as per enquiry | Gross Amt. shown as per I.T. Return | Remark                                                                                                                                                                                                                                                            |
|----------------|-----------------------------------|---------------------------------------|------------------------------------|-------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1989-90        | E.E., Div-III<br>BDA, BBSR        | M/s. Karunakar Mohanty and Associates | 13,03,744                          | 13,22,748                           | Firm                                                                                                                                                                                                                                                              |
| 1990-91        | - do -                            | - do -                                | 17,50,738                          | 17,50,738                           | Firm                                                                                                                                                                                                                                                              |
| 1991-92        | - do -                            | - do -                                | 08,65,450                          | 08,65,430                           | Firm                                                                                                                                                                                                                                                              |
| 1992-93        | E.E., BCD-I<br>IDCO, BBSR         | - do -                                | 08,98,530                          | 08,98,530                           | Firm                                                                                                                                                                                                                                                              |
|                | E.E., Div-III,<br>BDA, BBSR       | - do -                                | 07,55,569                          | 07,55,569                           | Firm                                                                                                                                                                                                                                                              |
|                | E.E., Div-II,<br>BDA, BBSR        | Karunakar Mohanty                     | 06,64,384                          | 07,48,753                           | Individual                                                                                                                                                                                                                                                        |
| 1993-94        | E.E., Div-II,<br>BDA, BBSR        | - do -                                | 65,75,871                          | 65,75,871                           | Individual                                                                                                                                                                                                                                                        |
|                | E.E., BCD-I,<br>IDCO, BBSR        | M/s. Karunakar Mohanty and Associates | 23,03,390                          | 23,03,390                           | Firm                                                                                                                                                                                                                                                              |
|                | E.E., Div-III,<br>BDA, BBSR       | ---                                   | 03,80,976                          | --                                  | This amount does not belong to assessee and the assessee may kindly be confronted with the enquiry report and further be allowed to cross examine the office of the contractee dept. who has supplied the information that the assessee has received Rs.3,80,976. |
|                | E.E., R. & R,<br>Paradeep Port    | ---                                   | 10,78,273                          | --                                  | This amount does not belong to assessee and the assessee may kindly be confronted with the enquiry report and further be allowed to cross examine office of the contractee dept. who has supplied the information that the assessee has received Rs.10,78,273.    |

(b) That as regards the gross receipts during the financial year from 1994-95 to 1996-99 there are some discrepancies which are given below :

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Att. Secy.

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Sri Karunakar MohantyITA No.196/Ora/2001-02A/Y-1990-91 to 2000-01

| Financial Year | Name of the Contractee Department | Gross Amt. Received as per enquiry | Gross Amt. shown as per I.T. Return | Remark                                                                                                                                                                                                                                                                                                                                                                           |
|----------------|-----------------------------------|------------------------------------|-------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1994-95        | E.E., BCD-II, IDCO, BBSR          | 78,36,847                          | 71,84,154                           | Copy of works statement in support of amount shown in I.T. return is attached hereto and the receipt of excess amount of Rs.6,52,693 is hereby denied and the assessee may kindly be confronted with the enquiry report and further be allowed to cross examine the office of the contractee dept. who has supplied the information that the assessee has received Rs.78,36,847. |
|                | E.E., Div-II, BDA, BBSR           | 11,07,340                          | 11,07,340                           | The assessee has never shown Rs.17,29,657 in his I.T. Return. The assessee may kindly be confronted with the return filed by him as alleged by the learned A.O.                                                                                                                                                                                                                  |
| 1994-95        | E.E. R & B Paradeep Port          | 27,01,346                          | 26,86,570                           | copy of TDS certificate in support of amount shown in I.T. Return is attached hereto and the assessee hereby denied receipt of excess amount of Rs.14,776 and he may kindly be confronted with the enquiry report and further be allowed to cross examine the office of the contractee dept. who has supplied the information that the assessee has received Rs.27,01,346.       |
| 1995-96        | E.E. R & B, Paradeep Port         | 07,04,147                          | -----                               | This amount does not belong to assessee and the assessee may kindly be confronted with the enquiry report and further be allowed to cross examine office of the contractee dept. who has supplied the information that the assessee has received Rs.7,04,147.                                                                                                                    |
| 1996-07        | E.E., BCD-II, CPWD, BBSR.         | 2,08,52,898                        | 1,96,28,865                         | The amount of Rs 1,96,28,865 has already been accepted by the learned A.O vide his order dated 17.08.99 passed u/s.154 of the I.T Act after adjustment of refund of security deposit and refund of excess sales tax amounting to Rs.12,24,033 from Rs.2,08,52,898                                                                                                                |
|                | E.E., R & B Paradeep Port         | 1,72,233                           | ----                                | This amount does not belong to assessee and the assessee may kindly be confronted with the enquiry report and further be                                                                                                                                                                                                                                                         |



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allowed to cross examine office of the contractee dept. who has supplied the information that the assessee has received Rs.1,72,233.

1996-97 E.E., IDCO  
Balasore 16,02,300

--- This amount does not belong to assessee and the assessee may kindly be confronted with the enquiry report and further be allowed to cross examine office of the contractee dept. who has supplied the information that the assessee has received Rs.16,02,300.

1997-98 E.E., Rengali 2,47,04,138 2,47,04,139

The said amount of Rs.2,47,04,139 includes the amount received from E.E., Rengali, Gudlakateni and P.A and CAO, RIP Samal. Although the said work was executed under the authority named E.E., Rengali Mahispat but the payments upto October '97 was made by P.A and CAO, RIP Samal and accordingly TDS certificate was issued by him. There after payments for such work made by authority himself from Nov '97 to Feb '98 and TDS certificate were issued by him. there after again the said work handed over to E.E., Div-IV, Gudlakateni and the payment made by him from March '98. The copy of the relevant TDS certificates and works statement are attached here to. If any doubt arises in the minds of the learned A.O the assessee may kindly be allowed to explain the matter to him.

CAO, RIP  
Rengali  
Samal

14,68,230

All those amounts were already included in the amount executed through E.E., Rengali, Mahispat amounting to Rs. 2,47,04,139.

-do-

07,89,244

The copy of the relevant TDS

-do-

19,25,864

certificates which were already

-do-

39,25,047

enclosed from where it is clearly evident that said amounts were of

-do-

83,27,525

E.E., Rengali, Mahispat and those amounts are repetition of the amount already included in Rs.2,47,04,139. If any doubt arises in the minds of the learned A.O the assessee may kindly be allowed to explain the matter to him.

1997-98 E.E., IDCO  
Balasore 01,07,650

--- This amount does not belong to assessee and the assessee may kindly be confronted with the

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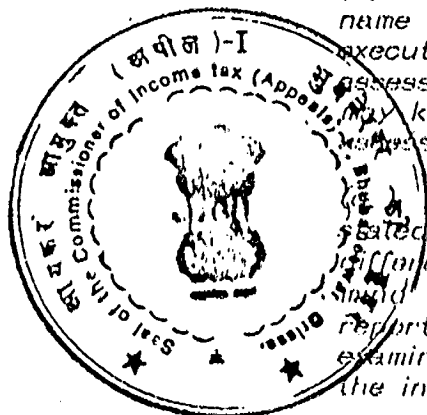
enquiry report and further be allowed to cross examine office of the contractee dept. who has supplied the information that the assessee has received Rs.01,07,650.

1998-99 E.E., HDCCO 16,49,990 -----  
Balsore

This amount does not belong to assessee and the assessee may kindly be confronted with the enquiry report and further be allowed to cross examine office of the contractee dept. who has supplied the information that the assessee has received Rs.16,49,990.

(b) In view of the facts stated above the gross bill paid in the name of the assess Sri Karunakar Mohanty in respect of works executed by M/s. Karunakar Mohanty and Associates which was assessed in status of partnership firm to Income-tax separately may kindly be excluded while computing net profit in case of the assessee in his individual status for the Block period.

That now it is evident that the assessee has not under stated gross bill received from different contractee departments in different financial years. If any doubt arises in Your Honour's mind the assessee may kindly be confronted with the adverse report regarding receipt of gross bill and also be allowed to cross examine the authority who has informed about the gross bill in the interest of natural justice".



13.1 The above explanation is plausible and has not been gone through or cross checked by the A.O. before taking an adverse view on the basis of the show cause notice dtd.30.05.2001. In the circumstances, the additions made on account of such Table-1 by the Ld. A.O. are hereby deleted.

13.2 At this juncture it may also be reiterated that a rate of 20.7% applied by the A.O. is unjust as no assessee in this line of business can be expected to earn such huge profit. The appellant disclosed profit @ 8%, which is reasonable and is the one prescribed u/s.44AD although the receipts exceeded the limit laid down under the provisions of section 44AD.

13.3 As regards the adverse inference drawn on the basis of SPD-1 and SPD-2, the reply filed on 07.06.2001 by the appellant before the Ld. A.O. is as under :

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Attested  
by  
Advocate



"11. (a) That Sri Siba Prasad Das was working as supervisor under the assessee during the financial year 1997-98 and prior to that the assessee has no relation with Siba Prasad Das. Before that he was working under another contractor namely Sri Prafulla Kumar Das of Nayapalli, Bhubaneswar.

That Sri Siba Prasad Das was entrusted with the work of supervision of Rengali Right Canal and Samal Barrage work during the financial year 1997-98. After some months of joining when it was came to the knowledge of the assessee that he is involved in pilferage and manipulation of accounts for his personal gain he was sacked from the service by the assessee. There after Sri Das acted against the assessee in different ways and the assessee suspects that Sri Siba Prasad Das's hand was there behind the present search u/s.132(1) to harass the assessee.

(b) That the assessee has no knowledge and no way connected with the account if any seized from the residence of Sri Siba Prasad Das. It is quite unnatural and not believable as to why the assessee will allow any of his employee to maintain accounts and keep in his residence in respect of his business instead of keeping the same either at the assessee's site office or at his head office.

(c) That the assessee has not incurred any unaccounted expenditure while executing contract works at Rengali Right Canal and RIP Samal, Gudia Katoni and Mahisapat, Dhonkanal as alleged by Your Honour.

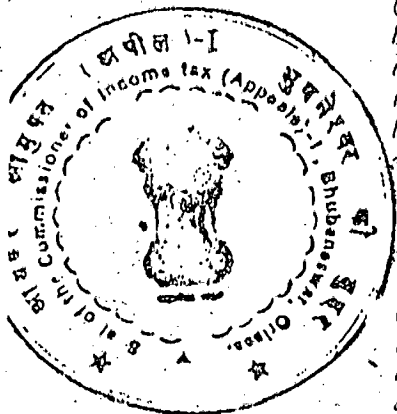
(d) That SPD-1 and SPD-2 have neither been seized from the business place/office premises of the assessee nor from his residence nor from any of his work site. Nothing has been mentioned by Your Honour where from the SPD-1 and SPD-2 has been seized and who has written such document and its authenticity. Since the assessee is no way connected with SPD-1 and SPD-2 and what is written in the said seized document is not within his knowledge he is unable to explain the same and no adverse view may kindly be taken in this regard.

(e) That Your Honour has also not mentioned anything or indicated any material/evidence on the basis of which Your Honour has come to the conclusion that SPD-1 and SPD-2 relate to the assessee and if any such material/evidence is in Your Honour's possession the same may kindly be confronted to the assessee and the assessee may kindly be allowed to cross examine the same in the interest of natural justice and in fairness of the case".

The document SPD-2 was not written up by the appellant, it was not seized from the premises of the appellant but from the premises of one of the employees of the appellant namely Sri Siba Prasad Das. There is no identification mark to suggest that it belongs to the appellant and in the

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Attested  
Usen  
Advocate.



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Sri Karunakar Mohanty. JTA No.196/Qrs/2001-02 A/Y-1990-91 to 2000-01

same there was no mention about the period to which the document pertained and the A.O. has not been able to hold that the said document belongs to the appellant and, therefore, the adverse inference drawn by the A.O. on such basis is unjustified.

13.4 The A.O. also held that the appellant had sold steel and cement for Rs.12,36,180/- which was supplied by the contractor department. When a show cause notice was issued, the appellant submitted that he had received the amounts in question at his work site at Paradeep having undertaken the work under G.M., IDCO namely construction of OSFC Tower at Cuttack for which originally the condition was that the appellant shall purchase cement and steel from open market and its utilization in execution of contract work whereby cement was purchased from L&T, Cuttack and the steel from M/s.Aditya Steel, Cuttack but consequent upon the amendment of the original agreement, IDCO was to supply cement and steel for their works which was actually done also and, therefore, whatever material was purchased from the open market was sold out at work site at cost price without any profit element. This contention was raised at the time of search also and has not been found by the I.D. A.O. to be contrary to facts. Accordingly, this basis also for applying a rate of 20.7% for determining income from contract works is unjustified and, therefore, consequential additions made from contract business income have to be naturally deleted. It is ordered accordingly.

13.5 The position with regard to KMO-34 is similar i.e. the same was not written by the appellant or by any of his employees; there does not appear anything with reference to any work to be executed or executed by the appellant, does not bear any date and, therefore, on the basis of the same no adverse inference is held to have not been warranted. It is also seen that there was no justification for the A.O. to infer that the said document KMO-34 pertained to the financial year 1997-98 particularly when no period was mentioned on the same.

Contd. Page..72

**Attested**  
*W.D.*  
**Advocate**

14. It was also argued that the appellant did not possess various machinery/equipments as mentioned in the list furnished to the Executive Engineer, Right Canal Division-IV, Hindol Road, Dhenkanal except the machinery/equipments shown in the audited balance sheet filed along with the returns of income. In order to execute the work "Excavation of Right Canal from RD 39.713 km to 43.563 km including CD and VRBS excluding SEQUODUCTHRLR" under EE Right Canal Division, IV, Hindol Road, Dhenkanal the precondition was that the contractor should process/deploy sufficient number of machinery and in order to comply with such apparent conditions with a view to be eligible for participating in the tender a statement was filed showing possession of 4 excavators, 25 tippers, 5 trucks, 10 concrete mixers, 2 bulldozers, 10 vibrators, 12 diesel pumps (5HP), 3 generators etc. This was of a paper indication and in reality the appellant was neither the actual owner nor actual possessor or constructive owner/possessor of the machineries in question. The claim of the appellant regarding the possession or hire of machinery than actually possessed was never verified physically by the contractee department or by the A.O. including the search party and no document was seized to hold that the appellant did actually possess such machinery/equipments except that four tippers on the basis of seized documents were found to have been possessed by Smt. Namita Mohapatra, who had given the same on hire to him. The excavators or tippers, trucks, dozers etc. were also not registered with the Motor Vehicle Authority nor any registration certificate book was found out by the search party. The appellant had also requested the learned A.O. to supply to him the material on the basis of which it was proposed to be held that the said machinery belongs to the appellant, through letter dated 07.06.2001 but no such material, if gathered any, was ever made available to the appellant and as stated above, the very basis of determination of the cost of such machinery at Rs.3,42,68,696/- is unscientific because the list prepared by the Ld. A.O. does not indicate from whom the quotations were obtained and the period for which such quotations were applicable and the machinery in possession of the appellant pertained to which period. Accordingly, it is clear that the adverse inference drawn on the basis of the above list of machinery is totally unjustified.

Contd. Page.73

Attested  
*U. S. S.*  
 Advocate.

15. It has also been argued that the decision of the Hon'ble Supreme Court in the case of Dhansiram Agarwal Vs. CIT reported in 201 ITR 192 and the decisions reported in 95 ITR 375 in the case of Coimbatore Spinning and Weaving Co. Ltd. Vs. CIT, 180 ITR 651 in the case of Swadeshi Cotton Mills Co. Ltd. Vs. CIT have no application to the appellant's case because in those cases the assessee had declared higher value of closing stock to the banks whereas the appellant had not shown any such thing in respect of items dealt in by him. These arguments do not deserve any discussion for the reasons observed/held herein above.

16. The A.O. held that the appellant invested Rs.3,50,000/- during the financial year 1994-95 in cash on 12.09.1994 in the name of N. Mohapatra, N. Tripathy, S. Mohapatra. KK-1, Page-64 relates to deposit of Rs.1 lakh in the name of N. Mohapatra, KK-1, Page-65 relates to deposit of Rs.1 lakh in the name of N. Tripathy and KK-1, Page 66 relates to deposit of Rs.1 lakh in the name of S. Mohapatra whereas page-67 relates to deposit of Rs.50,000/- in the name of P.K. Mohapatra. These persons had admitted during the course of examination u/s.131 that the amounts were deposited by the appellant in their bank accounts which have been denied by the appellant. The argument against this addition is that these persons were not confronted to the appellant and, therefore, the addition is violative of principles of natural justice.

16.1 I find that the four bank slips relating to deposit of Rs.1 lakh, Rs.1 lakh and Rs.50,000/- were seized from the residence of the appellant and as per presumption laid down u/s.132(4A) the burden lay on the appellant to claim that he had nothing to do with the same. I am of the opinion that, since the same has not been discharged by the appellant, the addition of Rs.3,50,000/- made by the A.O. on this account is just which is hereby confirmed.

17. The A.O. had further made addition of Rs.4,18,000/- towards unaccounted for investment during the financial year 1997-98 in the name of N. Mohapatra, N. Tripathy and S. Mohapatra in the Bank of India, Ashok Nagar, Bhubaneswar. In respect of this addition also the arguments are similar as in respect of Rs.3,50,000/- (supra) and for the reasons given in the preceding paragraph, the A.O.'s action in this regard is also hereby confirmed.

Contd. Page 74

Attested  
Wan  
Advocate.

Sri Karunakar Mohanty ITA No.196/Ocs/2001-02 A/Y-1990-91 to 2000-01

18. The next addition relates to a sum of Rs.25,86,108/- being the cost of four tippers purchased by N. Mohapatra, which also stand registered in her name. These have been held by the A.O. to be unaccounted for benami investment made by the appellant during the financial year 1997-98 in the name of N. Mohapatra. The same was done on the basis of KK-1, Page-40, which is a provisional receipt No.4619 dated 28.03.1997 issued by Telco, Bhubaneswar which was found in the premises of the appellant.

18.1 It is the claim of the appellant, reiterated from time to time before the A.O. also that the provisional receipt issued by Telco is not in the name of the appellant, the tippers are not registered in the name of the appellant, they belong to N. Mohapatra and the same were taken on hire, amount towards which is paid to her from time to time by adjustment; she is the ostensible owner and usufruct of such user goes to her only and, therefore, the addition was unjustified.

18.2 I find that N. Mohapatra nowhere stated that the tippers belong to the appellant or that they did not belong to her, the provisional receipt No.4619 dated 28.03.1997 issued by Telco was clearly in her name and that she was only a name lender. She paid a sum of Rs.25,86,108/- through pay order bearing No.0051587 dated 27.08.1997 on Bank of India but the appellant had paid Rs.6.5 lakhs out of the CC account maintained with Bank of India towards margin money payable by N. Mohapatra for availing loan from Bank of India which was availed on payment of such margin money. The tippers were purchased by her. The margin money which was advanced by the appellant to N. Mohapatra was returned by her and in fact the appellant obliged her in arranging the purchase because she had an understanding with the appellant that the tippers would be engaged for the appellant's work and even the annual rent payable to their user would be adjusted against the margin money which was actually so done. As a matter of fact the Bank of India, Sahid Nagar Branch had financed Rs.19 lakhs towards purchase of such tippers and this loan was raised by her by mortgaging the property belonging to her Mother-in-Law Smt. Uttara

Contd. Page..75

*W. R. Das*  
Advocate.

Mohapatra. The appellant was in no way involved with the repayment of the loan and about Rs.10 to 12 lakhs was paid till the time of search towards hire charges for use of such tippers. The contentions are also borne out from the affidavit which has also not been found to be false and, therefore, the addition made by the A.O. on this account is hereby deleted.

19. The appellant has been held to have spent undisclosed income of Rs.24.74 lakhs in different financial years viz. Rs.4,94,800/- in each of the financial years 1990-91, 1991-92, 1992-93, 1993-94, 1994-95. In addition to Rs.41,000/- for purchase of land during 1990-91 in respect of property bearing No.607, Lewis Road, Bhubaneswar. It has been contended that out of the total investment of Rs.8,40,000/- in the year 1990-91 which was shown in the return filed by M/s. Karunakar Mohanty & Associates, Rs.30,000/- was drawn from the capital account of the said firm as filed before the Income-tax Department and the balance amount of Rs.8,10,000/- was declared under VDIS-1997.

19.1 I have considered the submissions. VDIS, 1997 was converted into an Act after the Scheme was approved by Act of Parliament and, therefore, has the sanction of the highest Legislative body. In view of this legal and factual position, the A.O. was not justified in holding that there was investment of Rs.24.74 lakhs in the property at 607, Lewis Road, Bhubaneswar because the matter stood concluded by way of VDIS certificate dtd.27.03.1998 which has been extracted earlier in the order.

19.2 Likewise in respect of land admeasuring 100 decimals at Puri (document No.100) a sum of Rs.10,000/- was declared under VDIS for which also the above certificate was issued by the C.I.T and, therefore, any adverse inference with regard to the same is also unjustified and consequent addition made by the A.O. in this regard is hereby deleted.

The A.O. treated a sum of Rs.1,50,000/- as undisclosed investment of the appellant during the financial year 1996-97 for purchase of land admeasuring 0.126 decimals at Puri. The appellant has denied to have made

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Attested  
[Signature]  
Advocate.

any such purchase. There was only an agreement with one Pusparani Chakravarty for developing the land by constructing hotel with a precondition that the appellant will be owner of 75% of the constructed area and she will be the owner to the extent of 25% but the same never materialised and, therefore, the action of the A.O. in making addition of the amount in question is unjustified. This explanation of the appellant is also acceptable and, therefore, the addition made by the A.O. in this regard is deleted.

21. The A.O. noticed that there was a FD of Rs.32 lakhs during the financial year 1997-98 from undisclosed sources, addition of which has been made. It has been submitted that the FD was already disclosed by the appellant in the balance sheet filed along with the return of income for the assessment year 1998-99 which was filed before the date of search being 29.06.1999 and, therefore, as per Chapter XIV-B the A.O. did have no power to act upon the same once again as it was not an undisclosed income u/s.158B(b). It is a settled law that in so far as block assessment is concerned, such assessment can be made in respect of concealed income which is to be confined to be determined on the basis of seized material and such proceedings do not empower the A.O. to reappraise the material that was already before him prior to the date of search for which other provisions of the Act like sections 147, 154, 263 etc. can be taken recourse to. In view of this, the contention of the appellant is held to be tenable and the addition made by the A.O. is deleted.

21.1 Likewise, addition of Rs.6 lakhs made on account of purchase of HSCs during the financial year 1997-98 is hereby deleted because the factum was disclosed in the balance sheet for the assessment year 1997-98 filed prior to the date of search.

22. The A.O. made another addition of Rs.6 lakhs as undisclosed income being the deposit towards earnest money in the form of a Bank Guarantee for the financial year 1996-97. The appellant has denied to have made any such undisclosed which came out of the CC loan facility available to the appellant from Bank of India, Saheed Nagar, Bhubaneswar. In the circumstances, the addition is hereby deleted.

Contd. Page..77

Amended  
Advocate.

23. As regards addition of Rs.1,25,000/- as per KK-1 by way of share application money in the financial year 1986-87, it was submitted that the purchase of equity share of Bank of India was from the CC account. This claim also gets corroborated by documentary evidence and, therefore, the addition made by the A.O. is hereby deleted.

24. The A.O. treated a sum of Rs.24 lakhs as undisclosed income by way of investment in LIC policy during the financial year 1997-98. It was submitted that the appellant had paid Rs.2,71,192/- only for taking the policy worth Rs.24 lakhs whereafter no amount whatsoever was paid and this amount of Rs.2,71,192/- was also paid for a period of five years from the CC account maintained with Bank of India, Sahid Nagar, Bhubaneswar which is found under the head 'withdrawals from his capital account'. This claim is as per the confirmation letter of the bank and, therefore, it is held that the appellant did not invest Rs.24 lakhs in the LIC policy and a sum of Rs.2,71,192/- which was invested came out of withdrawals from his capital account in which case the addition of Rs.24 lakhs so made by the A.O. is hereby deleted.

25. The A.O. also made addition of Rs.19,67,693/- towards undisclosed income by way of investment in purchase of granulator as per KMO-4 to which it has been submitted that this was only a quotation sent by the seller in the name of Ulkal Stone Crusher and there was actually no purchase of such machinery nor the I.d. A.O. brought on record any material to hold that the appellant did actually effect any such purchase. This being the factual position, the addition of Rs.19,67,693/- made by the A.O. is hereby deleted.

26. Addition of Rs.1,00,000/- made by the A.O. by way of investment in Mandrama Properties is also held to be unjustified because the investment came out of the withdrawals from the CC account of the appellant maintained with Bank of India which was done for booking of a flat but was returned to the appellant in the same year on account of cancellation. Accordingly, this addition is deleted.

Attested  
*W. Sen*  
 Advocate



27. The A.O. treated a sum of Rs.7,48,055/- as undisclosed income of the appellant for the financial year 1999-2000 being the purchase price of mix plant from Everest Engineering Company. The purchase has been denied by the appellant through the affidavit also and the A.O. has not brought on record any material to substantiate that infact the appellant had made such purchase. Accordingly, the addition so made by the A.O. is hereby deleted.

28. The A.O. further treated a sum of Rs.6.5 lakhs as per KK-1, Page-21 as unaccounted for income of the appellant. It is seen that the same is a request letter sent by the appellant to the Bank of India, Sahid Nagar Branch on 26.06.1999 for release of Rs.6.5 lakhs out of the cheque deposit of Rs.12.30 lakhs. Obviously, such release can not be said to be an undisclosed investment of the appellant and, therefore, the addition made by the A.O. is hereby deleted.

29. In view of the above decisions on merit, the various other issues raised on behalf of the appellant including general/infructuous/consequential grounds of appeal are not being adjudicated upon.

30. With the above, the appeal stands partly allowed.



sd/-  
( Dr. J. K. Goyal )  
Commissioner of Income-tax (Appeals)-I,  
Bhubaneswar.

Copy

the C.I.T./Addl.C.I.T./J.C.I.T./A.O./Appellant along with the

*[Signature]*  
A.V.N. Srinivas  
Stenographer, Gr.-II  
Office of the Commissioner  
of Income Tax (Appeals)-I  
Bhubaneswar.

*[Signature]*  
Advocate.

LIST "A"

**LIST OF IRS (INCOME TAX) OFFICERS AGAINST WHOM THE COMMISSION HAS ADVISED LAUNCHING OF CRIMINAL PROCEEDINGS SINCE 1.1.90.**

| S. No. | NAME OF THE OFFICER (WITH CADRE & YEAR OF ALLOTMENT) | DESIGNATION & DEPARTMENT AT THE TIME OF COMMISSION OF OFFENCE | COMMISSION'S ADVICE WITH DATE                            | DATE OF ISSUE OF SANCTION ORDER |
|--------|------------------------------------------------------|---------------------------------------------------------------|----------------------------------------------------------|---------------------------------|
|        | Shri Bani Singh                                      | Asstt. Commissioner<br>Delhi                                  | Prosecution<br>05.11.1999                                | 27.12.1999                      |
|        | Shri Hargovind Arora                                 | Asstt. Commissioner<br>Gurgaon                                | Prosecution<br>20.05.1996                                | 10.07.1996                      |
|        | Shri Rajiv Kumar                                     | Asstt. Commissioner<br>Mumbai                                 | Prosecution<br>28.09.1999                                | 02.09.2000                      |
|        | Shri S.R. Goyal                                      | Member (Retd.)<br>Delhi                                       | Prosecution<br>18.06.1998<br>Major Penalty<br>18.06.1998 | Information awaited             |
|        | Shri V.N. Srivastava                                 | Then CIT, Mumbai                                              | Prosecution<br>23.05.2000                                | Information awaited             |
|        | Shri Madhusudan Thanvi                               | CIT and Member (appropriate Authority), Ahmedabad             | Prosecution<br>06.09.2000                                | Information awaited             |
|        | Shri P.C. Hadia                                      | Commissioner and Member (AA), Ahmedabad                       | Prosecution<br>06.06.2000                                | Information awaited             |
|        | Shri Om Dutt Mahindra                                | Then Chief Engineer & Member (Valuation) (AA), Mumbai         | Prosecution<br>06.06.2000                                | Information awaited             |

Attest

*W.D.A.*  
Advocate

|     |                   |                              |                           |                        |
|-----|-------------------|------------------------------|---------------------------|------------------------|
|     | Shri N.R. Solanki | Then ACIT (AA),<br>Ahmedabad | Prosecution<br>06.06.2000 | Information<br>awaited |
| • 1 | Shri D.S. Khoba   | Then ACIT (AA)<br>Ahmedabad  | Prosecution<br>06.06.2000 | Information<br>awaited |

LIST "B"

**LIST OF IRS (INCOME TAX) OFFICERS AGAINST WHOM THE COMMISSION HAS  
ADVISED IMPOSITION OF A MAJOR PENALTY SINCE 1.1.90.**

| S. No. | NAMT OF THE OFFICER<br>(WITH CADRE & YEAR OF ALLOTMENT) | DESIGNATION &<br>DEPARTMENT AT<br>THE TIME OF<br>COMMISSION OF<br>MISCONDUCT | COMMISSION'S<br>ADVICE WITH<br>DATE | NATURE OF<br>PUNISHMENT<br>IMPOSED (WITH<br>DATE) |
|--------|---------------------------------------------------------|------------------------------------------------------------------------------|-------------------------------------|---------------------------------------------------|
|        | Shri B.N. Ranganath                                     | Asstt. Commissioner<br>Bangalore                                             | Major Penalty<br>31.01.1995         | Information awaited                               |
|        | Shri K.R. Subbaraman                                    | Asstt. Commissioner<br>(Retd.), Chennai                                      | Major Penalty<br>22.09.1997         | Information awaited                               |
|        | Shri V.N. Wani                                          | Asstt. Commissioner<br>(Retd.), Mumbai                                       | Cut in Pension<br>19.05.1997        | 15.02.2001                                        |
|        | Shri H.L. Nagpal                                        | Asstt. Commissioner<br>Ajmer                                                 | Token Cut in Pension<br>09.08.1999  | Information awaited                               |
|        | Shri O.P. Chaudhary                                     | Asstt. Commissioner<br>(Retd.), Delhi                                        | Major Penalty<br>11.08.1999         | Information awaited                               |
|        | Shri R.G. Kukreja                                       | Asstt. Commissioner<br>(Retd.), Mumbai                                       | Cut in 10% Pension<br>27.11.1997    | Information awaited                               |

Attested:  
[Signature]  
Advocate

|                        |                                           |                              |                                                                                         |
|------------------------|-------------------------------------------|------------------------------|-----------------------------------------------------------------------------------------|
| Shri M.V. Javali       | Asstt. Commissioner<br>(Retd.), Bangalore | Cut in Pension<br>31.03.1995 | Information awaited                                                                     |
| Shri S.N. Halder       | Asstt. Commissioner<br>(Retd.), Calcutta  | Cut in Pension<br>02.12.1996 | 09.11.2000                                                                              |
| Shri P.N. Dixit        | Asstt. Commissioner<br>Ahmedabad          | Major Penalty<br>17.04.1997  | Information awaited                                                                     |
| Shri I.M. Vaghela      | Asstt. Commissioner<br>(Retd.), Navsari   | Cut in Pension<br>23.06.1998 | Information awaited                                                                     |
| Shri B.N. Mukherjee    | Asstt. Commissioner<br>Calcutta           | Major Penalty<br>02.09.1997  | 25.10.2000                                                                              |
| Shri A. Banerjee       | Asstt. Commissioner<br>(Retd.), Calcutta  | Major Penalty<br>19.05.1997  | 03.01.2001                                                                              |
| Shri S.D. Nyayanirgunc | Asstt. Commissioner<br>(Retd.), Mumbai    | Major Penalty<br>16.09.1996  | Cut in 20% pension<br>for 5 years<br>08.01.1999                                         |
| Shri Arbindo Ghosh     | Asstt. Commissioner<br>(Retd.), Calcutta  | Cut in Pension<br>02.12.1996 | Information awaited                                                                     |
| Shri R.S. Mandal       | Asstt. Commissioner<br>(Retd.), Calcutta  | Cut in Pension<br>07.11.1997 | Information awaited                                                                     |
| Shri J.P. Abhichandani | Asstt. Commissioner<br>(Retd.), Mumbai    | Cut in Pension<br>05.01.1998 | Information awaited                                                                     |
| Shri K.S. Minhas       | Asstt. Commissioner<br>Patiala            | Major Penalty<br>11.09.1996  | Reduction of Pay by<br>1 stage for 1 year<br>without cumulative<br>effect<br>29.04.1998 |
| Shri J.M. Sahay        | Dy. Commissioner<br>Calcutta              | Major Penalty<br>15.10.1993  | Reduction in pay by<br>1 stage for 2 years<br>without cumulative                        |

Attested  
  
 Advocate

|  |                      |                                     |                              |                                                                                          |
|--|----------------------|-------------------------------------|------------------------------|------------------------------------------------------------------------------------------|
|  |                      |                                     |                              | effect<br>30.04.1996                                                                     |
|  | Shri S.C. Jain       | Dy. Commissioner<br>Baroda          | Major Penalty<br>03.12.1996  | Information awaited                                                                      |
|  | Shri P.K. Mandal     | Dy. Commissioner,<br>Calcutta       | Major Penalty<br>06.09.1993  | Withholding of<br>increments for 2<br>years without<br>cumulative effect<br>18.05.1999   |
|  | Shri J.B. Sangma     | Joint Commissioner,<br>Calcutta     | Major Penalty<br>13.10.1997  | Reduction in Pay by<br>1 stage without<br>cumulative effect<br>for 4 years<br>17.03.1999 |
|  | Shri S.K. Tyagi      | Dy. Commissioner,<br>Mumbai         | Major Penalty<br>11.05.1992  | Information awaited                                                                      |
|  | Shri V.M. Patki      | Dy. Commissioner<br>(Retd.), Mumbai | Major Penalty<br>06.06.1994  | Withholding of 20%<br>Pension for 3 years<br>23.05.1996                                  |
|  | Shri I.A. Theba      | Dy. Commissioner<br>(Retd.), Rajkot | Cut in Pension<br>02.04.1998 | Information awaited                                                                      |
|  | Shri B.K. Sinha      | Dy. Commissioner,<br>Calcutta       | Major Penalty<br>16.09.1998  | Information awaited                                                                      |
|  | Shri V.D. Trivedi    | Commissioner,<br>Chandigarh ,       | Major Penalty<br>13.11.1998  | Information awaited                                                                      |
|  | Shri V.S. Banthia    | Commissioner,<br>Calcutta           | Major Penalty<br>22.10.1998  | Information awaited                                                                      |
|  | Shri V.N. Srivastava | Commissioner,<br>Mumbai             | Major Penalty<br>13.11.1998  | Information awaited                                                                      |

**Attested**  
  
 Advocate.

|                     |                                     |                                  |                                                         |
|---------------------|-------------------------------------|----------------------------------|---------------------------------------------------------|
| Shri C.U. Choure    | Commissioner (Retd.),<br>Nasik      | Cut in Pension<br>29.02.1996     | Cut in 20% monthly<br>pension for 3 years<br>03.08.1998 |
| Shri G. Ramdas      | Commissioner,<br>Chennai            | Major Penalty<br>13.10.1999      | Information awaited                                     |
| Shri G.S. Bhagia    | Commissioner (Retd.),<br>Mumbai     | Cut in 25% Pension<br>31.07.1997 | Information awaited                                     |
| Shri K.K. Dhar      | Commissioner (Retd.),<br>Delhi      | Cut in Pension<br>20.03.1991     | Cut in 50% Pension<br>permanently<br>25.10.1996         |
| Shri B. Narain      | Commissioner (Retd.),<br>Chandigarh | Cut in Pension<br>04.08.1994     | Information awaited                                     |
| Shri Dilip Shivpuri | Dy. Commissioner,<br>Jaipur         | Major Penalty<br>17.08.1998      | 12.03.2001                                              |
| Shri A. Dev Verma   | Dy. Commissioner,<br>Mumbai         | Major Penalty<br>08.03.1995      | Charges dropped<br>22.12.1998                           |
| Smt. Swati S. Patil | DCIT, Belgaum (Now<br>Addl. CIT)    | Major Penalty<br>28.03.2001      | Information awaited                                     |

**Attested**  
  
**Advocate.**

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH ::: GUWAHATI.

In the matter of -

O.A.No. 76/2002

Dr. J.K. Goyal

..... Applicant.

- Vs -

Union of India & Ors.

..... Respondents.

AND

In the matter of -

Reply to the rejoinder filed by the applicant.

The Respondents most respectfully beg to state as follows :-

01. That with regard to the statement made in Para 1 of the rejoinder the respondents beg to reiterate all the averments made in the written statement filed by the respondents in the case.

02. That with regard to the statement made in Para 2 of the rejoinder the respondents deny all the events mentioned in paras 3 to 25 have a bearing on the subject matter of the present case. In particular, the events relating to disciplinary proceedings initiated vide charge-sheet dated 16.07.1991, which have since been dropped, have no bearing whatsoever on the issue involved in the present case.

03. That with regard to the statements made in paragraph 3 of the rejoinder, the respondents beg to state that this being matter of record, hence no comment is offered by the respondents.

04. That with regard to the statement made in Para 4 of the rejoinder the respondents beg to state that the respondents have filed a writ petition WP(C) No. 3947/2002 before the Hon'ble Gauhati High Court against the Hon'ble Tribunal's order dated 10.04.2002 and the said writ petition is pending for disposal. The respondents further state that

210  
Union of India & Ors.  
- Respondents  
Through:  
Anup Kumar Choudhury  
19/5/03  
ACB, Central Govt.  
Staffing Council

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CP-21/2002 has been dismissed by the Hon'ble Tribunal vide order dated 28.06.2002.

05. That with regard to the statements made in paragraphs 7,8,10 & 11 of the rejoinder, the respondents beg to state that these being matter of records, hence no comment is offered by the respondents.

06. That with regard to the statement made in Para 12 of the rejoinder the respondents beg to state that the contention of the applicant is not fully correct. The Hon'ble Gauhati High Court, vide its order dated 27.08.2002, had only vacated the stay granted by its earlier order dated 21.06.2002, by which the operation of the Hon'ble Tribunal's order dated 10.04.2002 was stayed. The High Court's order did not in any way amount to quashing or completely setting aside the suspension of the applicant.

07. That with regard to the statements made in Paras 13 & 14 of the rejoinder the respondents beg to state that the applicant's contention that the Hon'ble Gauhati High Court's order dated 27.08.2002 resulted in total change of circumstances is incorrect.

08. That with regard to the statements made in Paras 15 & 16 of the rejoinder the respondents beg to state that the contentions of the applicant are not correct. Vide Board's letter dated 21.03.2002 ( which was served on the applicant on 01.04.2002), the applicant was informed that all the relevant records were available with the DIT(Vigilance), East Zone. The applicant was also requested to approach the concerned DIT for inspecting the records and was also asked to furnish his explanation within 15 days of receipt of the letter. Instead of inspecting the documents in the office of the DIT(Vigilance), East Zone and furnishing his explanation within the given time, the applicant adopted delaying tactics by repeatedly asking for authenticated copies of the documents. It was under these circumstances that, in absence of an explanation from the applicant, it was finally decided to issue a charge-sheet to the applicant. It may be mentioned that even after issuance of the charge-sheet dated 28.10.2002 and after allowing a fresh opportunity to the applicant for inspecting the relevant documents, the applicant has persisted with his delaying tactics and his written statement of Defence has been received in the Directorate General only on 03.03.2003.



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09. That with regard to the statement made in paragraph 17 of the rejoinder, the respondents beg to state that this being matter of record, hence no comment is offered by the respondents.

10. That with regard to the statements made in Para 18 of the rejoinder the respondents beg to state that the applicant's contention that the respondents could not have issued the charge sheet as the matter was sub-judice is totally incorrect because the subject matter of the present OA is the suspension of the applicant and the outcome of the present OA could not have in any manner affected or barred the issuance of charge sheet. In fact, in para 21 of the Rejoinder, the applicant has himself admitted that the present case does not deal with the legality of the chargesheet dated 28/10/2002.

11. That with regard to the statements made in paragraphs 19 & 20 of the rejoinder, the respondents beg to state that these being matter of records, hence no comment is offered by the respondents.

12. That with regard to the statements made in Para 21 of the rejoinder the respondents beg to state that as the applicant has himself admitted that the present case does not deal with the legality of the charge-sheet dated 28/10/2002 and the Board's order dated 18/11/2002 and that these issues would be agitated by him through different applications.

13. That with regard to the statements made in Para 22 of the rejoinder the respondents beg to state that the observations of the Kelker Committee's report, in so far as these have been reproduced in the rejoinder, are too general in nature and can not be said to apply to the assessment which was in appeal before the applicant and which is the subject matter of the charge sheet dated 28/10/2002.

14. That with regard to the statement made in Para 23 of the rejoinder the respondents beg to reiterate the averments made in the written statement filed by the respondents in the case.

15. That with regard to the statements made in Para 24 of the rejoinder the respondents deny that the applicant was placed under suspension as a measure of victimisation or punishment. The disciplinary proceedings initiated vide charge sheet dated 16/7/1991, which pertained to the applicant's tenure as DCIT, Raipur, Range-1, have no bearing on the order of suspension of the applicant which was solely and absolutely on account of lapses/irregularities committed by the applicant during his tenure as CIT(Appeals), Bhubaneswar.

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16. That with regard to the statements made in Para 25 of the rejoinder the respondents beg to state that the applicant's contention that he can not be proceeded against in respect of orders passed by him in discharge of his quasi-judicial powers is not correct as CIT(Appeals), the applicant, was subject to administrative control of the Government. While the order itself of the CIT(Appeals) can not be questioned, the manner in which appellate proceedings were conducted is a matter of administrative scrutiny which has been exercised judicially. The appellate proceedings are required to be conducted as per the relevant provisions of the Income Tax Act read with Income Tax Rules, 1962 and serious violation of the procedural provisions is open to enquiry at any stage.

The applicant's statement that is not the respondent's case that the appellate order passed by the applicant was based on extraneous consideration or with any dishonest motive is also totally incorrect. From the details of lapses/irregularities committed by the applicant as given in the statement of imputations of misconduct in the charge sheet dated 28/10/2002, it is clear that there is adequate evidence to show that the appellate order was passed in an improper manner, with dishonest motive to impart undue favours on the concerned assessee.

It is also stated that the necessary ingredients for placing the applicant under suspension were very much present in this case. Contemplation or pendency of disciplinary proceedings on charges of serious irregularities itself is an adequate and valid ground for placing an employee under suspension and considering the high official position held by the applicant immediately before his suspension ( he was the Cadre Controlling Authority for the entire North Eastern Region), the suspension was fully justified.

17. That with regard to the statement made in Para 26 of the rejoinder the respondents reiterate the statement made in para 2 of the written statement.

18. That with regard to the statement made in Para 27 of the rejoinder the respondents reiterate the statement made in para 4 of the written statement.

19. That with regard to the statement made in Para 28 of the rejoinder the respondents reiterate the statement made in para 6 of the written statement. It is further reiterated that the disciplinary proceedings initiated

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vide charge sheet dated 16/07/1991 have no bearing on the suspension of the applicant.

20. That with regard to the statement made in Para 29 of the rejoinder the respondents reiterate the statements made in paras 7 and 8 of the written statement.

21. That with regard to the statements made in paragraph 30 of the rejoinder, the respondents beg to state that this being matter of record, hence no comment is offered by the respondents.

22. That with regard to the statement made in Para 31 of the rejoinder the respondents reiterate the averments made in para 11 of the written statement.

23. That with regard to the statement made in Para 32 of the rejoinder the respondents reiterate the statements made in para 12 of the written statement. It is denied that the appellate order in question was passed by the applicant after due application of mind and after considering all relevant records.

24. That with regard to the statements made in Para 33 of the rejoinder the respondents reiterate the statements made in para 13 of the written statement.

25. That with regard to the statements made in Para 34 of the rejoinder the respondents reiterate the statements made in para 14 of the written statement.

26. That with regard to the statements made in Para 35 of the rejoinder the respondents reiterate the averments made in para 15 of the written statement.

27. That with regard to the statement made in Para 36 of the rejoinder the respondents reiterate the averments made in para 16 of the written statement.

28. That with regard to the statements made in Para 37 of the rejoinder the respondents reiterate the averments made in para 17 of the written statement.

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29. That with regard to the statements made in Para 38 of the rejoinder the respondents reiterate the averments made in para 18 of the written statement.

30. That with regard to the statements made in Para 39 of the rejoinder the respondents reiterate the averments made in para 19 and para 20 of the written statement.

31. That with regard to the statements made in Para 40 of the rejoinder the respondents reiterate the averments made in para 21 and para 22 of the written statement.

32. That with regard to the statements made in Para 41 of the rejoinder the respondents reiterate the averments made in para 18 of the written statement.

33. That with regard to the statement made in Para 42 of the rejoinder the respondents reiterate the statements made in para 24 of the written statement.

34. That with regard to the statement made in Para 43 of the rejoinder the respondents reiterate the averments made in para 25 of the written statement.

35. That with regard to the statement made in Para 44 of the rejoinder the respondents reiterate the averments made in paras 26 and 27 of the written statement.

36. That with regard to the statement made in Para 45 of the rejoinder the respondents reiterate the statements made in para 29 and para 30 of the written statement. It is denied that there was no public interest involved in placing the applicant under suspension.

Verification .....

## V E R I F I C A T I O N

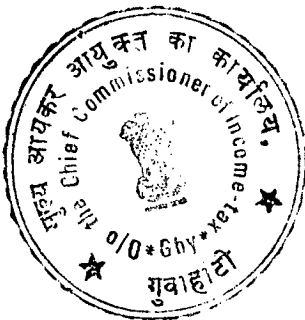
I, Goulen Hangshing, working as Additional Commissioner of Income-tax(Vigilance), Guwahati do hereby solemnly affirm and state as follows:-

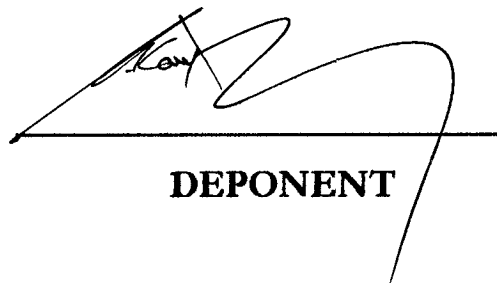
1. That, I am competent to file this verification on behalf of the respondents as authorised and I swear the same. I am also fully acquainted with the facts and circumstances of the case.

2. That, the statement made in this verification and in paragraphs 1-3, 5, 7, 9, 11, 17-36

of the accompanying written statement of defence are true to my knowledge, those made in paragraphs 4, 6, 8, 10, 12; 13, 14, 15 + 16 are being matters of records of the case are true to my information derived therefrom which I believe to be true and the rest are my humble submissions before this Hon'ble Tribunal.

I sign this verification on this thirteenth day of May, 2003 at Guwahati.



  
DEPONENT