CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI -5

(DESTRUCTION OF RECORD RULES, 1990)

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O.A./TA/ NO. 198 2009 - 2008
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21.7.2015
SECTION OFFICER (JUDL.)

21.7.2015

FORM NO. 4
(See Rule 42)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :
ORDERSHEET

1. ORIGINAL APPLICATION No : ------198------/ 2009
2. Transfer Application No : --------/2009 in O.A. No.----------
3. Misc. Petition No : --------/2009 in O.A. No.----------
4. Contempt Petition No : ---------/2009 in O.A. No.----------
5. Review Application No : ---------/2009 in O.A. No.----------
6. Execution Petition No : ---------/2009 in O.A. No.----------

Applicant (S) : Syed Basit Doley alias Buddheswar Doley
Respondent (S) : The Union of India & ors.
Advocate for the {Applicant (S)} : Mr. Adil Ahmed, Mr. N. Ahmed
Advocate for the {Respondent (S)} : CGSC.

Notes of the Registry	Date	Order of the Tribunal
16.396.424/06. 16.9.09 Dy. Registrar 17/9/09	18.09.2009	Heard Mr. A. Ahmed, learned counsel appearing for the Applicant and Mrs. M.Das, learned Addl. Standing Counsel representing the Government of India. Notice be issued to the Respondents requiring them to file their reply/written statement/counter by 09.11.2009. (M.K.Chaturvedi) Member (A)
17.9.09 3(Three) copies of application with envelops received for issue notices to the Respondents No 1 to 3. Copy served. 17/9/09 K.Das Issue notice to the Respondents. 22.9.09 Appearance filed by Mrs M.Das, Addl CGSC. 22/9/09	/lm	09.11.2009 None appears for parties. Enable respondents to file reply, case is adjourned to 14.12.2009. (Madan Kumar Chaturvedi) Member (A) (Mukesh Kumar Gupta) Member (J) /lm

O.A.No.198/2009

Copies of notices along with order dated 18/9/09 send to D/Sec. for issuing to the respondents by regd. A/D post. D/No-11595-11597 Dt. 1.10.09
29/9/09.

09.11.2009 None appears for parties. Enabling respondents to file reply, case is adjourned to 14.12.2009.

(Madan Kumar Chaturvedi) Member (A)

(Mukesh Kumar Gupta) Member (J)

nkm

① Service report awaited.
6.11.09

14.12.2009 On the request of learned counsel for the Respondents three weeks time is granted to file reply.

List on 11.01.2010.

(Madan Kumar Chaturvedi) Member (A)

(Mukesh Kumar Gupta) Member (J)

lm/

10.12.09
No WS filed.

11.01.2010 Time is extended by 2 days three weeks to file reply, as prayed for. Rejoinder, if any, be filed before the next date of hearing.

List the matter on 01.02.2010.

(Madan Kumar Chaturvedi) Member (A)

(Mukesh Kumar Gupta) Member (J)

/PB/

No WS filed.
8.1.2010

13.1.2010
W/S filed by the Respondents. Copy served.
13/1/10

01.02.2010 Mr.A.Ahmed, learned counsel for Applicant contends that rejoinder is being filed during course of the day. Thus, pleadings will be complete.

Admit subject to legal objection, if any.

List for hearing on 04.03.2010.

(Madan Kumar Chaturvedi) Member (A)

(Mukesh Kumar Gupta) Member (J)

/bb/

No rejoinder filed.
29.1.2010

1.2.2010
Rejoinder has been filed by the Applicant in the court. Copy served.
1/2/2010

O.A. No. 198 of 2009

04.03.2010 On the request of Mr. Adil Ahmed, learned counsel for applicant adjourn to 22nd March 2010.

The case is ready for hearing.
19.3.2010

(Madan Kumar Chaturvedi) (Mukesh Kumar Gupta)
Member (A) Member (J)

/pb/

22.03.2010 This being a Division Bench matter, adjourned to 22.04.2010.

The case is ready for hearing.
21.4.2010

(Madan Kr. Chaturvedi)
Member (A)

/bb/

22.04.2010 On the request of Mr. N. Ahmed, learned counsel for Applicant, case is adjourned to 10th May 2010.

7.5.2010
Reply to the Rejoinder has been filed by the Respondents.
Copy served.
7/5/2010.

(Madan Kumar Chaturvedi) (Mukesh Kumar Gupta)
Member (A) Member (J)

/pb/

17.5.2010
Add. Rejoinder has been filed by the Applicant.
Copy not served.
17/5/2010.

10.05.2010 None appear for Applicant. This is a Division Bench matter.

List the matter on 20.5.2010.

(Madan Kumar Chaturvedi)
Member (A)

lm

The case is ready for hearing.
9.6.2010

20.05.2010 On the request of Mrs M. Das, learned counsel for the respondents, adjourned to 10.06.2010.

(Madan Kumar Chaturvedi) (Mukesh Kumar Gupta)
Member (A) Member (J)

nkm

O.A.No.198/2009

10.06.2010 Heard learned counsel for the parties. For the reasons recorded separately, O.A. is dismissed. No costs.

(Madan Kumar Chaturvedi)
Member (A)

(Mukesh Kumar Gupta)
Member (J)

nkm

22/6/2010

Sr.C.G.S.C
22/6/10

1-7-2010
Judgment/Final order
dated 10-6-2010 prepared and
Send to D/Section for issuing
to the long post
vide no 1463 to 1465
dated 8-7-2010

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

.....

O.A.No.198 of 2009

DATE OF DECISION: 10.06.2010

Syed Basit Doley alias Budheswar Doley .....Applicant(s)

Mr Mr A. Ahmed Advocate(s) for the Applicant (s)

- Versus -

Union of India and others Respondent(s)

Mrs M. Das, Sr. C.G.S.C. Advocate(s) for the Respondent(s)

CORAM:

The Hon'ble Shri Mukesh Kumar Gupta, Judicial Member

The Hon'ble Shri Madan Kumar Chaturvedi, Administrative Member

1. Whether reporters of local newspapers may be allowed to see the Judgment? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No
3. Whether their Lordships wish to see the fair copy of the Judgment? Yes/No

Member(J)

.....

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.198 of 2009

Date of Order: This the 10th day of June 2010

The Hon'ble Shri Mukesh Kumar Gupta, Judicial Member

The Hon'ble Shri Madan Kumar Chaturvedi, Administrative Member

Syed Basit Doley alias Budheswar Doley,
S/o late Cheniram Doley,
Income Tax Officer, Ward-1 (2),
Office of the Joint Commissioner of Income Tax,
Range-1, Guwahati-781005. ..... Applicant

By Advocate Mr A. Ahmed

- versus -

1. The Union of India, through the
Secretary to the Government of India,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi-110001.

2. The Chief Commissioner of Income-Tax
AYAKAR BHAVAN, G.S. Road,
Guwahati-781005.

3. The Commissioner Income Tax (Audit)
AYAKAR BHAVAN, G.S. Road,
Guwahati-781005. ..... Respondents

By Advocate Mrs M. Das, Sr. C.G.S.C.

.....

ORDER (ORAL)

MUKESH KUMAR GUPTA, JUDICIAL MEMBER

Penalty of withholding one increment for a period of one as inflicted vide order dated 14.02.2008 (Annexure-16), upheld by the Appellate Authority on 28/31.07.2009 (Annexure-20), is questioned in present O.A.

2. Admitted facts are: charge memo dated 15.05.2002 was issued under Rule 14 of CCS (CCA) Rules, 1965, which contained as many as five Articles of charge to the effect that applicant while working as Income Tax Officer, North Lakhimpur during the period 1996-1998 exceeded and abused his official powers in several instances and caused undue harassment to various assessees which culminated in a number of complaints being lodged against him. Details of such complaints have been specified therein. It was alleged that he demanded a bribe of certain amount from some complainants and when they did not accede to his demand, a high pitched assessment was made by him raising a huge tax demand. Furthermore, he acted arbitrarily and capriciously in the assessment of Shri Bhaben Chandra Pegu for the assessment year 1994-95 as evidenced from the assessment records listed therein. Further allegations made had been that he initiated proceedings with vindictive attitude and motive against Shri Bikash Das (Proprieter of M/s Beauty Stores, Dhemaji). On denial of allegations, an oral enquiry was held. Another supplementary charge memo dated 11.08.2004 (Annexure-9) was also issued which contained one Article of charge to the effect that while working as ITO Ward – North Lakhimpur during 26.05.1995 to 21.09.2008 he failed to conduct proper enquiry and investigation. He did not obtain any information from the assessees and did not scrutinize the book of accounts in some cases. Based upon Inquiry Officer's findings, which was made available to him, the Disciplinary Authority vide order dated 14.02.2008 (Annexure-16) after marshaling the facts and holding detailed discussion, inflicted aforenoted penalty. His statutory appeal, well documented had also

been considered and rejected by the Appellate Authority on 28/31.07.2009.

3. Mr A. Ahmed, learned counsel for applicant, strenuously urged basically two points namely, that: the charges levelled were stale in nature and he had offered detailed explanation for each article of charge, which had not been properly considered by the concerned authorities. Orders passed are cryptic and without any substance. Findings recorded were vague and did not attract the penalty imposed upon him. There has been a delay of almost twelve years in initiating enquiry without any cause or reason. Even, the finalization of enquiry had been delayed.

4. In the above premises, learned counsel for applicant emphasized that applicant's promotion was withheld, due in October 2005 and, therefore, he deserves the relief as prayed for.

5. Contesting the claim and by filing reply it was stated that a lot of complaints from different quarters were received by the respondents, against him. When more and more complaints started pouring in, the higher authorities decided to conduct an enquiry. On examination of the complaints, it was decided to initiate regular departmental proceedings for misconduct and misbehaviour, detailed vide charge Memo. He was afforded due opportunity of hearing, principles of natural justice were followed and taking into consideration the representations made including findings recorded by Inquiry Officer, the Disciplinary Authority took a lineant view and imposed a penalty of minor in nature. His appeal was also considered objectively and sympathetically and finding no ground to interfere with, the same had been rejected by the Appellate Authority vide

order dated 28/31.07.2009. It was contended that he has failed to bring forward a single shred of evidence to support his contention that charges against him were vague; there had been non-application of mind of the concerned authorities and he did not deserve the punishment imposed upon him. There was no procedural lapse and principles of natural justice were duly observed. Orders passed by the Disciplinary Authority and Appellate Authority were well analytical and detailed reasoned order. Applicant's various contentions had been duly noticed, considered and appropriately dealt with. In the above circumstances, learned counsel for the respondents emphasized that there is no scope for taking any further lenient view in the matter.

6. We have heard learned counsel for the parties, perused the pleadings and voluminous documents placed on record. Perusal of the documents placed on record indeed reveals that serious allegations were levelled against him including corruption and incompetence besides, the vindictive approach followed during assessment of various assessees for different years. It is not in dispute that the authorities concerned namely, Inquiry Officer, Central Vigilance Commission, Disciplinary Authority and Appellate Authority had considered various facets of the allegations in detail, comprehensively and after analyzing the same came to the conclusion that allegations of harassment etc., stood proved against him. We have carefully read the orders passed by the Disciplinary Authority, as well as the Appellate Authority (Annexures- 16 and 20 respectively) and observed that penalty imposed namely, withholding of increment for a period of one year without cumulative effect was warranted and was a result of lenient approach taken by said authorities. It is not in dispute that he has many years of service left in the career and,

therefore, said orders and penalty will not affect his pension adversely. This aspect had been duly noticed by the Disciplinary Authority as well as Appellate Authority in their orders. The scope of judicial review has been aptly summarized by the Hon'ble Supreme Court in (1995) 6 SCC 749, Union of India vs. B.C. Chaturvedi, wherein it was held as follows:

> "Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence."
>
> (emphasis supplied)

7. On examination of the orders passed by the Disciplinary Authority, as well as Appellate Authority, we find that the same are well considered, analytical and detailed orders. Allegation of non-application of mind has no substance. We cannot reappreciate the eveidence in the departmental proceeding findings, particularly when findings recorded were based on overwhelming evidences brought on record.

8. For the reasons recorded hereinabove, finding no merits, O.A. is dismissed. No costs.

(MADAN KUMAR CHATURVEDI)
ADMINISTRATIVE MEMBER

(MUKESH KUMAR GUPTA)
JUDICIAL MEMBER

nkm

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH :: GUWAHATI

Original Application No. 198 of 2009

Syed Basit Doley alias Budheswar Doley

. . . . . Applicant

-Vs-

The Union of India and Others

. . . . . Respondents

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
17 SEP 2009
Guwahati Bench
गुवाहाटी न्यायपीठ

S Y N O P S I S

Presently the Applicant is working as Income-tax Officer, Ward 1(2), in the Office of the Joint Commissioner of Income Tax, Range-1, Guwahati, PIN-781005. While the Applicant was working as Income-tax Officer at North Lakhimpur, he received a D.O. letter on 14/15.05.1997 from the Additional Commissioner of Income-tax Range-I, Guwahati regarding alleged charge of corruption against him. The Applicant submitted a representation on 26.05.1997 before the Additional Commissioner of Income Tax Range-1, Guwahati by stating about the harassment he faced while discharging his official duties. Thereafter the Additional Commissioner of Income-tax Range, Dibrugarh requested the Applicant to file a written reply against the alleged complaint made by one Shri Pegu on 10.09.1998. The Applicant submitted his reply. But the Commissioner of Income-tax, Jorhat proposed to hold an enquiry against the Applicant under Rule 14 of CCS(CC&A) Rules 1965. Applicant submitted his reply by denying the all charges leveled against him. The office of the Commissioner of Income-tax, Jorhat intimated the Applicant that a subsidiary proceeding started against him in the name of Vigilance Inspection. The Applicant submitted his reply against the Vigilance Inspection reports. The Commissioner of Income-tax, Guwahati supplied the aforesaid Vigilance Inspection cases to the applicant except the portion of the report of Sri R.N. Dey. The Applicant submitted his reply before the Commissioner of Income-Tax, Guwahati. In the meantime the Additional Commissioner of Income-tax, Hqrs. on 28.10.2005 notified a promotion list of Income-tax Officer to the grade of Assistant Commissioner of Income-tax by excluding the name of the Applicant. Being aggrieved by the promotion of his Junior to the post of Assistant Commissioner of Income-tax, the Applicant submitted representation to the Chief Commissioner of Income-tax, Guwahati.

Syed Basit Doley

The Inquiry Officer examined the witnesses and complainant of the charges made against the Applicant. Thereafter, the Commissioner of Income-tax, (Audit) Guwahati cum disciplinary authority of the Applicant supplied the inquiry report dated 07.09.2006 alongwith the CVC's advice dated 28.05.2007 to the Applicant for his comments. On 30.11.2007 the Applicant submitted his reply to the Commissioner of Income-tax (Audit) cum disciplinary authority, Guwahati. But the disciplinary authority on 14.02.2008 imposed a minor penalty on the Applicant. The Applicant preferred an appeal on 27.02.2008 under Rule 24 of CCS(CC&A) Rules 1965 before the Appellate authority. Being aggrieved for non disposal of Appeal the Applicant approached before this Hon'ble Tribunal by filing an O.A. No. 37 of 2009 and the Hon'ble Tribunal vide its order dated 25.05.2009 disposed of the Original Application by remit back the matter to the Appellate Authority with a direction to dispose of the Appeal preferred by the Applicant within 60 days of the receipt of the copy of the order. The Appellate Authority vide its order dated 28/31.07.2009 confirmed the penalty imposed on the Applicant by the Disciplinary Authority dated 14.02.2008. Being aggrieved the Applicant filed this instant Original Application for seeking justice into this matter.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
17 SEP 2009
Guwahati Bench
गुवाहाटी न्यायपीठ

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH:: GUWAHATI

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

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
17 SEP 2009
Guwahati Bench
गुवाहाटी न्यायपीठ

Original Application No. 198 of 2009

Syed Basit Doley alias Budheswar Doley

. . . . . Applicant

-Vs-

The Union of India and Others

. . . . . Respondents

LIST OF DATES

30.01.1989 Para 4.2	The Applicant has joined as Inspector of Income-Tax under the Ministry of Finance, Department of Revenue at Sivasagar.
16.12.1994 Para 4.2	Applicant was promoted to the post of Income-Tax Officer.
14/15.05.1997 Para 4.3 ANNEXURE-1	Applicant received a D.O. letter issued by the Additional Commissioner of Income Tax range-I, Guwahati regarding charge of corruption.
26.05.1997 Para 4.4 ANNEXURE-2	Applicant submitted a representation before the Additional Commissioner of Income-Tax Range-I, Guwahati stating about the harassment faced by him in discharging his official duties.
06.01.1999 Para 4.5 ANNEXURE-3	The Additional Commissioner of Income-Tax Range Dibrugarh requested the Applicant to file written reply against the complaint dated 10.09.1998.
11/12.01.1999 Para 4.6 ANNEXURE-4	The Applicant submitted his reply to the Additional Commissioner of Income-Tax Range Dibrugarh.
15.05.2002 Para 4.7 ANNEXURE-5	The Commissioner of Income-Tax, Jorhat proposed to hold an enquiry against the Applicant under Rule 14 of CCS(CC&A) Rules 1965.
10.06.2002 Para 4.8 ANNEXURE-6	The Applicant submitted his reply before the Commissioner of Income-Tax, Jorhat denying the all charges leveled against him.
11.12.2003 Para 4.9 ANNEXURE-7	The office of the Commissioner of Income-Tax, Jorhat issued a letter to the Applicant intimating him that a subsidiary proceeding started against him in the name of Vigilance Inspection.
31.12.2003/ 02.01.2004 Para 4.10 ANNEXURE-8	The Applicant submitted his reply against the Vigilance Inspection Reports.

Syed Basit Doley

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
17 SEP 2009
Guwahati Bench
गुवाहाटी न्यायपीठ

11.08.2004 Para 4.11 ANNEXURE-9	The office of the Commissioner of Income-Tax, Guwahati-I supplied the aforesaid Inspection cases to the Applicant except the portion of the report of Sri R.N. Pandey.
16.08.04 Para 4.12 ANNEXURE-10	The Applicant submitted his reply before the Commissioner of Income-Tax, Guwahati.
28.10.2005 Para 4.13 ANNEXURE-11	The Additional Commissioner of Income-Tax Hqrs. notified a promotion list of the Income-Tax Officer to the grade of Assistant Commissioner of Income-Tax.
02.11.2005 Para 4.14 ANNEXURE-12	The Applicant submitted a representation to the Chief Commissioner of Income-Tax, Guwahati regarding promotion order dated 28.10.2005.
08.02.2006/ 10.02.2006/ 07.03.2006 Para 4.15 ANNEXURE-13	The Inquiry Officer examined the witnesses.
16.11.2007 Para 4.16 ANNEXURE-14	The Commissioner of Income-Tax, Guwahati supplied the Inquiry report dated 07.09.2006 alongwith the CVC'S advice dated 28.05.2007 to the Applicant for his comments.
30.11.2007 Para 4.17 ANNEXURE-15	The Applicant submitted a reply to the Commissioner of Income-Tax(Audit) cum disciplinary authority, Guwahati.
14.02.2008 Para 4.18 ANNEXURE-16	The Disciplinary Authority imposed a minor penalty on the Applicant.
27.02.2008 Para 4.19 ANNEXURE-17	The Applicant preferred an appeal under Rule 24 of CCS(CC&A) Rules 1965 before the Appellate Authority against the order dated 14.02.2008.
25.05.2009 Para 4.20 ANNEXURE-18	This Hon'ble Tribunal passed an order in O.A. No. 37 of 2009.
16.10.2008 Para 4.21 ANNEXURE-19	The Respondent No.3 recommended for considering the Appeal of the Applicant to the Appellate Authority.
28/31.07.2009 Para 4.22 ANNEXURE-20	The Appellate Authority confirmed the penalty imposed on the Applicant by the Disciplinary Authority.

Date- 17.09.09

Filed by

Nasruddin Ahmed

Advocate

Syed Basit Ahmed

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH :: GUWAHATI

Original Application No. 198 of 2009

Syed Basit Doley alias Budheswar Doley

. . . . . Applicant

-Vs-

The Union of India and Others

. . . . . Respondents

I N D E

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
17 SEP 2009
Guwahati Bench
गुवाहाटी न्यायपीठ

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1	Original Application		1 to 25
2	Verification		26
3	Photocopy of the D.O. F.No.Con.39/R-I/Ghy/420 dated 14/15.05.1997.	1	27
4	Copy of the representation dated 26.05.1997.	2	28
5	Copy of the F.No.E-186/Per/94-95/3945 dated 06.01.1999 with complaint.	3	29 to 30
6	Copy of the written reply of the Applicant dated 11/12.01.1999.	4	31 to 33
7	Copy of the Memorandum No.F.No.VIG-1/BD/CON/CIT/JRT/01-02/344 dated 15.05.2002.	5	34 to 51
8	Copy of the reply submitted by the Applicant dated 10.06.2002.	6	52 to 61
9	Copy of the F.No.VIG-1/CON/CIT/JRT/03-04/2541 dated 11.12.2003.	7	62 to 105
10	Copies of the reply vide F.No.PER/E-15/2003-2004/1757dated 31st December 2003/2nd January 2004.	8	106 to 115
11	Copy of Memorandum F.No.E-1741 DP/CIT/GHY-1/2004-05/1849-51 dated 11.08.2004.	9	116 to 157
12	Copy of the reply dated 16.08.2004.	10	158 to 167
13	Copy of the order dated 28.10.2005.	11	168 to 169
14	Copy of representation dated 02.11.2005.	12	170 to 171
15	Copy of the statements and cross examination of witnesses before the inquiry authority.	13	172 to 188
16	Copy of the letter No.F.No.Vig./CIT(Audit)/GHY/2007-08/594 dated 16.11.2007.	14	189 to 228
17	Copy of the representation dated 30.11.2007.	15	229 to 246

Syed Basit Doley

18	Copy of the Memo No.Vig./CIT(Audit)/GHY/2007-08/894-896 dated 14.02.2008.	16	247 to 264
19	Copy of the Appeal dated 27.02.2008.	17	265 to 285
20	Copy of the order dated 25.05.2009 passed in O.A. No.37 of 2009 by this Hon'ble Tribunal.	18	286 to 290
21	Copy of the letter No.F.No.Vig/CIT(Audit)/Ghy/2007-08/661 dated 16.10.2008.	19	291 to 292
22	Copy of the order No.DP-45/BD/VIG/CCIT/GHY/2009-10 dated 28/31.07.2009.	20	293 to 298

23. W/S 299 - 306
24. Rejoinder 307 - 314
Date- 17.09.09 Reply to Rejoinder - Filed by 315 - 321
25. Add. Rejoinder - 322 - 328
26.

Nurnddin Ahmed
Advocate

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
17 SEP 2009
Guwahati Bench
गुवाहाटी न्यायपीठ

Syed Basis Uddin

FILED By
Syed Basit Doley
Applicant
Through Nundlal Ahmed
Advocate
18/9/09

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

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

Original Application No. 198 of 2009

BETWEEN

Syed Basit Doley alias Budheswar Doley
Son of late Cheniram Doley,
Income Tax Officer, Ward-1(2),
Office of the Joint Commissioner of Income Tax, Range-1, Guwahati, PIN-781005.

-Applicant

-AND-

1. The Union of India,
through the Secretary to the Government of India, Ministry of Finance,
Department of Revenue, North- Block,
New Delhi, PIN-110001.

2. The Chief Commissioner of Income-Tax,
AYAKAR BHAVAN, G.S. Road, Guwahati,
PIN-781005.

3. The Commissioner Income-Tax (Audit),
AYAKAR BHAVAN, G.S. Road, Guwahati,
PIN-781005.

-Respondents

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
17 SEP 2009
Guwahati Bench
गुवाहाटी न्यायपीठ

DETAILS OF THE APPLICATION

1. PARTICULARS OF THE ORDER(S) AGAINST WHICH THIS APPLICATION IS MADE:

This application is made against the impugned orders passed by the Disciplinary Authority cum Commissioner of Income-tax (Audit), Guwahati vide Memo No. Vig./CIT (Audit)/GHY/2007-08/894-896 dated 14.02.2008 whereby the increment of pay of the Applicant has been withheld for a period of one year without cumulative effect with not adversely affecting pension under Rule 11 (1) of CCS (CCA) Rules 1965 and the Appellate order vides Memo No. DP-45/BD/VIG/CCIT/GHY/2009-10/588-89 dated 28/31.07.2009 passed by the Chief Commissioner of Income-tax (CCA) Guwahati cum Appellate Authority by

Syed Basit Doley

confirming the aforesaid order dated 14.02.2008 by which minor penalty has been imposed by the Disciplinary Authority on the Applicant.

2. JURISDICTION OF THE TRIBUNAL:

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

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
17 SEP 2009
Guwahati Bench
गुवाहाटी न्यायपीठ

3. LIMITATION:

The Applicant further declares that this 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 your Applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.

4.2] That your Applicant begs to state that he joined as Inspector of Income Tax under Ministry of Finance, Government of India, Department of Revenue on 30.01.1989 at Sivasagar, Assam. He was promoted to the post of Income Tax Officer (I.T.O., in short) on 16.12.1994. He has served as I.T.O. at North Lakhimpur, Dibugarh and Sivasagar. Presently, he is working as Income Tax Officer, Ward-1(2), in the office of the Joint Commissioner of Income Tax, Range-1, Guwahati, PIN-781005. It is worth to mention here that the Applicant is also known as Shri Budheswar Doley.,

4.3] That your Applicant begs to state that while he was serving as Income Tax Officer at North Lakhimpur, he received a D.O. letter under F.No.Con.39/R-1/Ghy/420 dated 14/15.05.1997 issued by the Additional Commissioner of Income Tax, Range-1, Guwahati. The subject matter of the letter was "charge of corruption-Reg". In the said letter the Additional Commissioner of Income Tax informed him that a vigilance file had already been opened against him.

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Copy of the D.O. F.No.Con.39/R-1/Ghy/420 dated 14/15.05.1997 is annexed herewith and marked as ANNEXURE-1.

4.4] That in reference to the D.O. letter under F.No.Con.39/R-1/Ghy/420 dated 14/15.05.1997 Applicant submitted a representation vide E-1/Con/NL/97-98 dated 26.05.1997 to the Additional Commissioner of Income Tax, Range-1, Guwahati. In the said representation he had stated about the harassment faced by him in discharging his official duties at North Lakhimpur because of some antagonistic and anti-social elements. Therefore, he requested the Additional Commissioner of Income Tax, Range-1, Guwahati to transfer him from North Lakhimpur to any other place.

Copy of the representation dated 26.05.1997 is annexed herewith and marked as ANNEXURE-2.

4.5] That the Additional Commissioner of Income Tax, Range-Dibrugarh vide his letter No.E-186/Per/94-95/3945 dated 06.01.1999 requested him to submit the written reply against the alleged complaint made by Sri B.C. Pegu, Ex-Principal, Dhemaji College, dated 10.09.1998 addressed to the Commissioner of Income Tax, Shillong through the Additional Commissioner of Income Tax, Range-Dibrugarh.

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Photocopy of the F.No.E-186/Per/94-95/3945 dated 06.01.1999 is annexed herewith and marked as ANNEXURE-3.

4.6] That your Applicant begs to state that he submitted his written reply vide F.No.Per/P-15/98-99/02 dated 11/12.01.1999 to the Additional Commissioner of Income Tax, Range-Dibrugarh. In the said written reply he has stated that the complaint made by one Sri Pegu are false, fabricated, malicious one and he totally denied the alleged complaint made by Sri Pegu.

Photocopy of the written reply of the Applicant dated 11/12.01.1999 is annexed herewith and marked as ANNEXURE-4.

4.7] That your Applicant begs to state that the Commissioner of Income Tax, Jorhat, vide Memorandum F.No.VIG-

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1/BD/CON/CIT/JRT/01-02/344 dated 15.05.2002 proposed to hold an enquiry against him under Rule 14 of the CCS(CCA) Rules 1965. The aforesaid Memorandum was received by him on 06.06.2002. In the Memorandum five Articles of charges brought against the Applicant. Those Articles of charges are as follows:

Article of Charges:

Article-1

That the said Shri Budheswar Doley while functioning as ITO, North Lakhimpur, during the period 1996-98 exceeded and abused his official powers in several instances and caused undue harassment to various assesses that culminated in a number of complaints being lodged against him. Three such specific complaints of:

1. Sri Purna Kanta Pegu, Dhemaji College, Station Road, Dhemaji.
2. Sri Bikas Das, Prop: M/s Beauty Stores, Dhemaji and
3. Sri Bhaben Chandra Pegu, Vill:Tanganapara, Ward-3, P.O. and Dist:Dhemaji, were looked into and the respective case records also verified and it emerged that Sri Budheswar Doley, ITO had failed to maintain absolute integrity, did not display devotion to duty, acted unbecoming of a Government servant and in the performance of his official duties acted in discourteous manner, thereby contravening Rules 3(1)(i), 3(1)(ii)3(1)(iii) and 3A(a) of the CCS(Conduct) Rules 1964.

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Article-II

In the separate complaint of Sri Purna Kanta Pegu it is alleged by the complainant that a bribe demand of Rs.10,000/- was made during the course of the assessment proceedings for the AY1994-95 but since the bribe was not conceded to, a huge tax demand of Rs.1,63,212/- was raised.

Also that during the aforesaid period and while functioning in the aforesaid office, the said Shri Budheswar Doley, ITO is alleged to have demanded a bribe of Rs.1,00,000/-(one lakh) only from another

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complainant Sri Bhaben Chandra Pegu during the course of the assessment proceeding for the AY 1994-95. Since only a bribe amount of Rs.10,000/- was paid first and later on another Rs.10,000/- a high pitched assessment was made raising a huge tax demand of Rs.9,87,196/-.

By these allegation of the complainants, Shri Budheswar Doley, ITO has contravened of the following provisions of the CCS(Conduct) Rules:

Rule 3(1)(i) - failed to maintain absolute integrity
Rule 3(1)(iii)-acted unbecoming of a Government servant.

Article-III

That during the aforesaid period and while functioning in the aforesaid office, the said Shri Budheswar Doley, ITO acted arbitrarily in the assessment of Sri Purna Kanta Pegu(assessee) for the AY 1995-96 as is evidenced from the assessment records; acts of misconduct of which are listed hereunder.

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1. The assessment proceeding has been initiated after the survey report of the Inspector dated 16.6.1995. The survey so authorized was illegal as the power to survey u/s 133A or 133B can be exercised only at a place which for business or profession is carried on; whereas in these instance case the assessee is only a salaried person.

This act confirms the allegations in other complaints received that Shri Budheswar Doley, ITO had arbitrarily committed survey with view to harass and intimidate the assessee.

2. Even if the survey is considered as an enquiry u/s 133(6), it is illegal as there were no proceedings pending under the Income Tax Act as on that date against Sri Purna Kanta Pegu (assessee).

3. By mentioning in very first line at the assessment order that the survey was done by his Inspector, it appears that Shri Budheswar Doley, ITO had sinister designs in mind so that if in the

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eventuality of any complaints or complications later on, he would be in a position to push the blame to his subordinate.

4. Shri B.Doley, ITO has abused the power to survey and also blatantly trespassed upon the power to search when he directed his Inspector (Shri H.Rabha) to ente inside the residential premises of the assessee and to observe and take measurement of the building, as is evidenced by the report of the Inspector dated 04.4.96.

5. Shri Budheswar Doley, ITO has time and again abused to power to when he directed his Inspector to make enquiries at several residential houses as is evidenced from the report of the Inspector dated 16.6.95.

6. Shri Budheswar Doley, ITO made huge estimated addition towards investment in construction of the residential building belonging to the assessee, without having given the assessee an inkling of the estimated method of valuation that he was to do. He, therefore, denied to the assessee the very basic right to be given opportunity to be heard and the right to natural justice.

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7. The impugned assessment order was challenged in appeal before the Commissioner of Income Tax (Appeal) and the leaned CIT (Appeal) in his order dated 7.1.98 set-aside with directions the estimated additions in the building construction and deleted the other additions. However, Shri Budhesawr Doley, delayed in the giving effect to the Appellate order and further did not follow the directions while given to the effect to the Appellate order, thereby still raising a tax demand of Rs.1,00,306/-.

8. Though the tax demand of Rs.1,00,306/- after giving appellate effect was wrong, yet Shri Budheswar Doley issued recovery attachment notice u/s 226(3) dated 27.8.98 of the Income Tax Act, 1961 to the employer of the assessee, i.e. Principal of Dhemaji College, Dhemaji attaching an amount of Rs.3000/- per month from the salary of the assessee, thereby

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causing undue harassment and humiliation to the assessee.

By all these above acts Shri Budheswar Doley, ITO has willfully contravened the following provisions of the CCS(Conduct) Rules:

3(1)(i) - failed to maintain absolute integrity,

3(1)(ii) - failed to maintain devotion to duty,

3(1)(iii) - acted unbecoming of a Government servant,

3A(a) - in the performance of his official duties, acted in a discourteous manner.

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Article-IV

That during the aforesaid period and while functioning in the aforesaid office the said Shri Budheswar Doley, ITO, acted arbitrarily and capriciously in the assessment of Sri Bhaben Ch. Pegu (assessee) for the AY 1994-95 as evidenced from the assessment records the acts of misconduct of which are listed hereinunder:

1. Shri B. Doley, ITO abused and over-stepped the power to survey when he directed his Inspector to cause enquiry, as evidenced from the Inspector's report dated 6-6-95,and also required Sri B.C. Pegu to furnish various details of assets as evidenced from the proforma that was asked to be submitted by Sri Pegu dated 07-6-05.

2. Shri B. Doley, ITO had caused enquiries into the properties without ascertaining and verifying from the past Income Tax records, as has been the allegation in several complaints received against him, thereby causing undue harassment to the tax payers.

3. Shri B. Doley, ITO, initiated the assessment proceeding in the case of Sri B.C.Pegu (assessee) for the AY 1994-95 by issuing of notice u/s 142(1) dated 27.7.1995/2-8-95 of the I.T.Act 1961calling for return of income to be filed. Though he has used a standard departmental form to issue the notice, yet he had not applied his mind in that the items not applicable were not struck off. This would have caused confusion to the assessee.

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4. Shri B. Doley, ITO, has misused ad over-stepped the power to survey when he directed his Inspector to enter the building of the assessee and also to enter the residential house of the assessee and to observe a layout, nature of construction and to take measurements and also to estimate the value of the construction, as is evidenced by the inspection report dated 12.10.96.

5. Shri B. Doley, ITO, passed the assessment order on01.12.96 and has made arbitrarily high-pitched assessment by simply estimating cost of construction of the building, and estimated cost of land as per his whims and fancies. There does not appear in the records any prior intimation to the assessee of his intended basis for estimated valuation. Shri B. Doley, ITO has therefore denied the assessee the opportunity to be heard on the issue and the right to natural justice.

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Because of this act in the assessment order, high Income tax demand of Rs.9,87,196/- was raised on the assessee causing the assessee undue mental pressure and agony.

6. The assessee being a layman and having been taken aback by such high pitched assessment, submitted a detailed revised petition dated 29.12.96 seeking for review of the Income tax assessment. As the subject matter and reasoning were not within the purview of even a rectification, Shri B. Doley should have advised the assessee that the proper procedure was to approach the appropriate higher authority by filing appeal u/s 246 before the CIT(A) or to file revision petition u/s 264 before the CIT.

7. Shri B. Doley, ITO did not choose or advise the assessee properly and instead after the assessment has been completed, in the name of rectification, he conducted and caused detailed enquiries trespassing beyond his statutory jurisdiction and thereby causing further mental agony to the assessee.

8. Shri B. Doley, ITO, again abused and over stepped the power to survey when he deputed his Inspector (Shri Raj Kumar Singha) to visit and enter

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the premises belong to the assessee and to take measurement, as evidenced from the Inspector's report dated 16.1.97.

9. Shri B. Doley, ITO, has over exceeded his his power as an assessing officer in the rectification order passed dated 01.07.97 as none of the issue were 'mistake apparent from records'.

10. Although the assessment was high pitched and undue harassment has been caused in the process, yet Shri B. Doley, ITO caused further humiliation by sending a recovery attachment notice u/s 226(3) of the I.T.Act, 1961 to the employer of the assessee, i.e. the Principal, Dhemaji College, Dhemaji.

11. Shri B. Doley, ITO had made enquiries and correspondences with the Branch Manage, United Bank of India, Dhemaji. The style and manner in which he has conveyed his correspondences with the bank official is improper and not expected of, in official communications as evidence vide his letter dated 27.6.97 sent to the Bank Officer.

12. The impugned assessment order was challenged in appeal before the CIT(A) and the learned CIT(A) vide his order dated 10.12.98 had observed the high-handedness and arbitrary manner of the assessment that had been done by Shri B.Doley, ITO by remarking in the appellate order: I feel that the A.O. should have considered the appellant past assessment records especially when he was considering investment made in buildings, lands etc by the appellant in the past and in failing to do so, he had failed to do justice to the appellant".

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By the above act of misconduct and misbehaiour, Shri B. Doley, ITO has willfully contravened the following Rules of the CCS(Conduct) Rules, 1964 viz:- 3(1)(i)-failed to maintain integrity,

3(1)(i)-failed to maintain integrity

3(1)(ii)-failed to maintain devotion to duty,

3(1)(iii)-acted unbecoming of a Government servant and

3A(a)-in the performance of official duties, acted in a discourteous manner.

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Article-V

That during the aforesaid period and while functioning in the aforesaid office, the said Shri B. Doley, ITO acted upon and initiated proceedings with vindictive motive against Shri Bikash Das (Proprietor of M/s Beauty stores), Dhemaji as is mentioned hereunder:

1. Due to not conceding to a price bargain which Shri B. Doley, ITO wanted as customer, Shri B. Doley, ITO then misused, with vindictive intention, the power to survey by conducting survey at the shop premises on 01.11.96, even though as an Income tax authority he should have been aware that the shop being quite small in size, a survey was spiteful and with vindictive motive to humiliate Sri Bikash Das.

2. Shri B. Doley, ITO further initiated proceedings by issuing notice dated 09.01.97 u/s 142(10 of the Income TaxAct calling for the return of income to be filed. Even while issuing the notice he did not apply his mind in that the irrelevant portion of the form were not struck of, and this would have created confusion in the mind of Sri Bikash Das.

3. Shri B. Doley, ITO had misused the power u/s 142(1) in that after initiating the proceedings, he simply dropped the proceedings on 29.04.97 on receiving a letter from Sri Bikash Das that he would not be having any taxable income. This indicates that Shri B. Doley, ITO misused the power u/s 142(1) to achieve his vindictive motive against Sri Bikash Das and once the motive was achieved, the proceedings were dropped as there was no other reason to have conducted the survey.

By all these above acts of Shri B. Doley, ITO has willfully contravened the following provisions of the CCS(Conduct) Rules, 1964 :

3(1)(i)-failed to maintain absolute integrity,

3(1)(ii)-failed to maintain devotion to duty,

3(1)(iii)-acted unbecoming of a Government servant and

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3A(a)-in the performance of official duties, acted in a discourteous manner.

Copy of the Memorandum F.No.VIG-1/BD/CON/CIT/JRT/01-02/344 dated 15.05.2002 is annexed herewith and marked as ANNEXURE-5.

4.8] That on 10.06.2002 Applicant submitted his reply before the Commissioner of Income Tax, Ayakar Bhavan, Thana Road, Jorhat in reference to the Memorandum dated 15.05.2002 by denying all the charges made against him. Further he clarified that the complaints were all bogus and concocted only to malign his reputation.

Photocopy of the reply submitted by the Applicant dated 10.06.2002 is annexed herewith and marked as ANNEXURE-6.

4.9] That your Applicant begs to state that the office of the Commissioner of Income Tax, Jorhat vide F.No.VIG-1/CON/CIT/JRT/03-04/2541 dated 11.12.2003 issued a letter to the Applicant intimating him that subsidiary proceeding started against him in the name of Vigilance Inspection.

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Photocopy of the F.No.VIG-1/CON/CIT/JRT/03-04/2541 dated 11.12.2003 is annexed herewith and marked as ANNEXURE-7.

4.10] That your Applicant begs to state that he submitted the case wise reply vide F.No.Per/E-15/2003-2004/1757 dated 31st December 2003/02nd January 2004 against the Vigilance Inspection reports dated 11.12.2003.

Photocopy of the F.No.Per/E-15/2003-2004/1757 dated 31st December 2003/2nd January 2004 is annexed herewith and marked as ANNEXURE-8.

4.11] That the Commissioner of Income Tax, Guwahati-1, vide Memorandum F.No.E-1741/DP/CIT/Ghy-1/2004-05/2849-51 dated 11.08.2004 again supplied the same Vigilance Inspection case to the Applicant as earlier on 11.12.2003 supplied by the Commissioner of Income Tax, Jorhat with the only exception that this time the portion of the vigilance report of Sri R.N. Dey, the Applicant's successor ITO was omitted.

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Photocopy of the Memorandum F.No.E-1741/DP/CIT/Ghy-1/2004-05/2849-51 dated 11.08.2004 is annexed herewith and marked as ANNEXURE-9.

4.12] That your Applicant begs to state that he submitted his reply on 16.08.2004 to the Commissioner of Income Tax cum Disciplinary authority, Guwahati-1 in reference to the Memorandum dated 11.08.2004.

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Copy of the reply dated 16.08.2004 annexed herewith and marked as ANNEXURE-10.

4.13] That your Applicant begs to state that the office of the Chief Commissioner of Income Tax, Guwahati vide its order dated 28.10.2005 issued a promotion list of the Income Tax Officer to the grade of Assistant Commissioner of Income Tax (Junior Time Scale). In the said promotion list one Sri Anderson Sangma, Income Tax Officer who is junior to the Applicant was promoted to the post of Assistant Commissioner of Income Tax by superceding the Applicant.

Copy of the order dated 28.10.2005 annexed herewith and marked as ANNEXURE-11.

4.14] That your Applicant being aggrieved by the said promotion order submitted a representation to the Chief Commissioner of Income Tax, Guwahati on 02.11.2005.

Copy of the representation dated 02.11.2005 is annexed herewith and marked as ANNEXURE-12.

4.15] That after 4 (four) years of issuance of the Memorandum F.No.VIG-1/BD/CON/CIT/JRT/01-02/344 dated 15.05.2002 to hold an enquiry against the Applicant under Rule 14 of the CCS(CCA) Rules 1965, the Inquiry Officer examined the various complainants and witnesses on 8.2.2006, 10.2.2006 and 7.3.2006. It is to be stated that all the statements of the complainants and witnesses were contradictory and disagreed with the complains. At the time of hearing the authority concern could not confirm any of the complaints and the charges made against the Applicant, ultimately inquiry authority dropped all the charges against him. However, finding no alternative, the

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inquiry authority implicated the Applicant with the charges of lack of devotion to duty with no specific base but with some cropped up reports of omissions and commissions which are not recognized by the CCS(Conduct) Rules as lack of devotion to duty.

Photocopy of the statements and cross examinations of the complainants and witnesses are annexed herewith and marked as ANNEXURE-13.

4.16] That the Commissioner of Income Tax (Audit), Guwahati vide its letter F.No.Vig/CIT(Audit)/Ghy/2007-08/594 dated 16.11.2007 supplied a copy of the inquiry report of the inquiry officer dated 7-9-2006 to the Applicant with the proposal to impose minor penalty on him.

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Photocopy of the letter F.No.Vig/CIT(Audit)/Ghy/2007-08/594 dated 16.11.2007 along with the inquiry report of the inquiry officer dated 7-9-2006 are annexed herewith and marked as ANNEXURE-14.

4.17] That your Applicant submitted his reply to the Commissioner of Income Tax (Audit) cum Disciplinary authority, Guwahati on 30.11.2007 by contradicting all the findings of the inquiry report of the inquiry officer as baseless.

Photocopy of the representation dated 30.11.2007 is annexed herewith and marked as ANNEXURE-15.

4.18] That the Disciplinary authority cum Commissioner of Income Tax (Audit), Guwahati, vide his Memo No.Vig/CIT(Audit)/Ghy/2007-08/894-896 dated 14.02.2008 imposed a minor penalty on the Applicant without considering the representation submitted by him against the inquiry report. Accordingly the increment of pay of the Applicant was withheld for a period of one year from the date of next increment of pay, i.e. 1st of April 2008 provided in Rule 11(iv) of CCS(CCA) Rules 1965.

Photocopy of the Memo No.Vig/CIT(Audit)/Ghy/2007-08/894-896 dated 14.02.2008 is annexed herewith and marked as ANNEXURE-16.

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4.19] That your Applicant begs to state that he preferred an appeal on 27.02.2008 under Rule 24 of CCS(CCA) Rules 1965 before the Chief Commissioner of Income Tax cum Appellate authority, Ayakar Bhavan, G.S. Road, Guwahati through the Commissioner of Income Tax (Audit), Guwahati against the order dated 14.02.2008.

Photocopy of the Appeal dated 27.02.2008 is annexed herewith and marked as ANNEXURE-17.

4.20] That the Chief Commissioner of Income Tax cum Appellate authority kept the Appeal of the Applicant pending for more than 1 (one) year and finding no other alternative the instant Applicant was compelled to approach before this Hon'ble Central Administrative Tribunal, Guwahati Bench, Guwahati by filing an O.A. No.37 of 2009. The Hon'ble Tribunal vide its order dated 25.05.2009 passed in O.A. No.37 of 2009 to dispose of the case and remit back the matter to the Appellate Authority with direction to take up the Appeal of the Applicant, consider the same and pass orders, as due and admissible under the Rules, within a period of 60 days from the date of receipt of a copy of the order.

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Copy of the order dated 25.05.2009 passed in O.A. No.37 of 2009 by this Hon'ble Tribunal is annexed herewith and marked as ANNEXURE-18.

4.21] That the Disciplinary Authority i.e. Commissioner of Income-tax (Audit), Guwahati vide his letter No.F.No.Vig/CIT(Audit)/Ghy/2007-08/661 dated 16.10.2008 addressed to Appellate Authority i.e. the Chief Commissioner of Income-tax, Guwahati recommended for considering the Appeal in favour of the Applicant as the mistake committed by the Applicant appear to be on account of lack of experience and ignorance on his part while he was posted in a isolated single ITO charge of North Lakhimpur. Therefore, it is admitted fact that the Applicant have not done any offence attracting Vigilance penalty.

Copy of the letter No.F.No.Vig/CIT (Audit)/Ghy/2007-08/661 dated 16.10.2008 is annexed herewith and marked as ANNEXURE-19.

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4.22] That your Applicant begs to state that the Respondent No.2 i.e. the Chief Commissioner of Income Tax, Guwahati cum Appellate authority without due application of mind and without proper analysis of the case vide Memo No.DP-45/BD/VIG/CCIT/GHY/2009-10/588-89 dated 28/31.07.2009 confirmed the penalty order of the Disciplinary Authority dated 14.02.2008.

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Copy of the order No.DP-45/BD/VIG/CCIT/GHY/2009-10/588-89 dated 28/31.07.2009 is annexed herewith and marked as ANNEXURE-20.

4.23] In the Appellate order dated 28/31.07.2009, the Appellate Authority has gone beyond the Inquiry Authority report and Disciplinary Authority findings. The Appellate order is fully contrary to the findings of the Disciplinary Authority.

4.24] That your Applicant respectfully submits before this Hon'ble Tribunal that the findings of the Disciplinary Authority dated 14.02.2008 and Appellate order dated 28/31.07.2009 is vague and not sustainable in the eye of law. Moreover, the Disciplinary Authority has recommended before the Appellate authority that the act done by the Applicant did not attract any vigilance penalty. The mistake committed by the Applicant appear to be on account of lack of experience and being novice officer while he was posted in isolated single ITO Charge of North Lakhimpur. Therefore, the Hon'ble Tribunal may be pleased to interfere into the matter by setting aside and quashing the impugned finding of the Disciplinary order dated 14.02.2008 and Appellate order dated 28/31.07.2009.

4.25] That your Applicant submits that the procedures adopted by the Respondents in case of the Applicant are malafide, illegal and without jurisdiction.

4.26] That this application is made bonafide and for the cause of justice.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS:

5.1] For that, on the above narrated facts and circumstances the action of the Respondents are prima-facie illegal, mala-fide and without jurisdiction. Hence the impugned orders passed by the Disciplinary Authority cum Commissioner of Income-tax

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(Audit), Guwahati vide Memo No.Vig./CIT (Audit)/GHY/2007-08/894-896 dated 14.02.2008 and the Appellate order vide Memo No.DP-45/BD/VIG/CCIT/GHY/2009-10/588-89 dated 28/31.07.2009 passed by the Chief Commissioner of Income-tax (CCA) Guwahati cum Appellate Authority are liable to be set aside and quashed.

5.2] For that, finding no other proof against the other Article of charges the inquiry authority implicated the Applicant with the charge of 'Lack of devotion to duty' under Rule 3(ii) of the CCS (Conduct) Rules. The Explanation 1 of the Rule 3, CCS(Conduct) Rules defines 'Lack of devotion to duty as: A Government servant who habitually fails to perform the task assigned to him within the time set for the purpose and with the quality of performance expected of him shall be deemed to be lacking in devotion to duty. However, the Disciplinary Authority cum the Commissioner of Income-tax (Audit), Guwahati in his letter F.No.Vig/CIT(Audit)/Ghy/2007-08/661 dated 16.10.2008 (at Annexure-19 of the instant Application) addressed to the Appellate Authority cum Chief Commissioner of Income-tax, Guwahati observed that "the findings regarding to lack of devotion to duty against the CO were mostly based on Vigilance Inspection reports on the assessments made by him. The mistakes committed by him appear to be on account of lack of experience and being novice officer while he was posted in a isolated single-ITO charge of North Lakhimpur. Thus considering the circumstances of the case and the conduct of the officer during the period under my charge, the petition of the Applicant may be considered favourably". Hence the impugned orders passed by the Disciplinary Authority cum Commissioner of Income-tax (Audit), Guwahati vide Memo No.Vig./CIT (Audit)/GHY/2007-08/894-896 dated 14.02.2008 and the Appellate order vide Memo No.DP-45/BD/VIG/CCIT/GHY/2009-10/588-89 dated 28/31.07.2009 passed by the Chief Commissioner of Income-tax (CCA) Guwahati cum Appellate Authority are liable to be set aside and quashed.

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5.3] For that, the Disciplinary authority delayed the case for more than 12 years without any reason or cause. In this instant case, the framing of charges was taken 61 months, inquiry time taken 4 and ½ years and the case was dragged for more than 12 years. Even in the appellate stage, the case was kept pending

Syed Basit Ashraf

for 17 months. The Hon'ble Supreme Court in State of Madhya Pradesh -Vs- Bani Singh and another, JT 1990 (2) SC 54: 1990(2) SLR 798 (SC) held that "inordinate delay in completion of the enquiry proceedings which remains unexplained would be a sufficient ground for quashing of the proceedings". Hence the impugned orders passed by the Disciplinary Authority cum Commissioner of Income-tax (Audit), Guwahati vide Memo No.Vig./CIT (Audit)/GHY/2007-08/894-896 dated 14.02.2008 and the Appellate order vide Memo No. DP-45/BD/VIG/CCIT/GHY/2009-10/588-89 dated 28/31.07.2009 passed by the Chief Commissioner of Income-tax (CCA) Guwahati cum Appellate Authority are liable to be set aside and quashed.

5.4] For that, the disciplinary proceeding which was initiated against the Applicant on the basis of some complaints lodged by some vested circle only to malign the image of the Applicant before the public. The complainants miserably failed to prove the same before the inquiry authority. Finding nothing from the main complains, the authority cropped up some baseless reports and even added a subsidiary proceedings in the name of vigilance inspection and with a pre set mind and to save their face thrust upon the penalty on the Applicant one sided without considering the replies he has given contradicting all the cropped up reports of the inquiry authority. Hence the impugned orders passed by the Disciplinary Authority cum Commissioner of Income-tax (Audit), Guwahati vide Memo No.Vig./CIT (Audit)/GHY/2007-08/894-896 dated 14.02.2008 and the Appellate order vide Memo No.DP-45/BD/VIG/CCIT/GHY/2009-10/588-89 dated 28/31.07.2009 passed by the Chief Commissioner of Income-tax (CCA) Guwahati cum Appellate Authority are liable to be set aside and quashed.

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5.5] For that, the inquiry officer's finding on the Article III and IV is that the Applicant denied the assessee the very basic right of opportunity of being heard and the right to natural justice while making the addition in building investment. In fact, the inquiry officer did not discuss this point with the Applicant at the time of hearing and this point has been replied by the Applicant vide his letter F.No.Per/E-15/2002-2003/314 dated 10.06.2002 (At Annexure-6 of the instant Application) in page no.3, paragraph no.6 and page no.4,

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paragraph no.5. Moreover, the inquiry authority had given his finding seeing only the assessment order of the assessee, not the assessment records as the Department did not produce before him the assessment records, therefore, his finding is not only incomplete but very superficial too as the Applicant discussed and noted the building investments in the note sheets of the assessment records. In contrary, the inquiry officer denied the Applicant the very basic right of opportunity of being heard and the right to natural justice while one sided reporting his findings without asking the Applicant anything on this point or without considering the reply of the Applicant submitted on 10.06.2002. In the Article IV, it is also alleged that the Applicant blatantly exceeded his power as an Assessing Officer while passing an order u/s 154. Under section 154 of the Income Tax Act, an Assessing Officer can rectify the mistake apparent from record on its own or the Assessing Officer can rectify any mistake apparent from record if it is brought to his notice by the assessee. In the case of Sri B.C. Pegu, Assessment Year (AY) 1994-95, the Applicant noticed that the tax computation was wrongly done and this mistake was apparent from the record, so there was no violation of any laws or rules. In the mean time, the assessee also filed a petition for rectification pointing out that some land was purchased by the assessee's father. These mistakes were apparent from the records and documents which were not debatable at all, therefore, there was no exceeding of any power by the Applicant. It will be worth to quote that: i) "Rectification proceedings are part of the proceedings for assessment" - Rambhai Jethabhai Patel V. CIT (1977) 108 ITR 771(Guj). ii) "Record does not mean only the order of assessment but it comprises of all proceedings on which assessment order is based" - Maharana Mills (P) Ltd V. ITO (1959) 36 ITR 350(SC).

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5.6] For that, in Article V, the inquiry authority's charge is that the Applicant dropped the proceedings after issuing the notice u/s 142(1) of Income Tax Act. In the instant case, as the assessee applied for not compelling him to file the return of income as he declared to have no taxable income, it was most convenient and logical to drop the proceedings so as to save time and resource of the Department and the assessee both. Moreover, the law does not say that after issue of notice u/s

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142(1) of the Income Tax Act, the assessee must be compelled to file return of income and end up in passing of an assessment order. Also there is no law or rule that after issue of notice u/s 142(1) of the Income Tax Act, a case can not be dropped. Therefore, this charge of the inquiry authority is baseless and just a cropped up report. Hence the impugned orders passed by the Disciplinary Authority cum Commissioner of Income-tax (Audit), Guwahati vide Memo No.Vig./CIT (Audit)/GHY/2007-08/894-896 dated 14.02.2008 and the Appellate order vide Memo No.DP-45/BD/VIG/CCIT/GHY/2009-10/588-89 dated 28/31.07.2009 passed by the Chief Commissioner of Income-tax (CCA) Guwahati cum Appellate Authority are liable to be set aside and quashed.

5.7] For that, the complaints of Sri P.K. Pegu, Sri Bikash Das and Sri B.C. Pegu and all other complainants complains have been proved false and fabricated. In fact, Sri Bikash Das not filed any single complain against the Applicant either orally or in writing but his name was shown as a complainant which clearly establishes the disciplinary authority's misuse of power and position in conducting the disciplinary proceeding against the Applicant. Hence the impugned orders passed by the Disciplinary Authority cum Commissioner of Income-tax (Audit), Guwahati vide Memo No.Vig./CIT (Audit)/GHY/2007-08/894-896 dated 14.02.2008 and the Appellate order vide Memo No.DP-45/BD/VIG/CCIT/GHY/2009-10/588-89 dated 28/31.07.2009 passed by the Chief Commissioner of Income-tax (CCA) Guwahati cum Appellate Authority are liable to be set aside and quashed.

5.8] For that, the complains of Sri B.C. Pegu deserved no consideration as his complain was time barred as per Limitation Act as his Assessment was done on 02.06.1996 but he filed his complain only on 10.9.1998, almost after 2 years. As per Limitation Act, an assessee may complain within 1 year from the date of his assessment order passed if he has something to say. The complain was with the motive of transferring the Applicant from North Lakhimpur Office by the year 1998, the appeal order was coming with restoration of the matter back to the ITO which would have been not advantageous for Pegu if the Applicant continued there. Hence the impugned orders passed by the Disciplinary Authority cum Commissioner of Income-tax (Audit), Guwahati vide Memo No.Vig./CIT (Audit)/GHY/2007-08/894-896

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dated 14.02.2008 and the Appellate order vide Memo No.DP-45/BD/VIG/CCIT/GHY/2009-10/588-89 dated 28/31.07.2009 passed by the Chief Commissioner of Income-tax (CCA) Guwahati cum Appellate Authority are liable to be set aside and quashed.

5.9] For that, in the hearing of the Appeal dated 12.06.2009 before the Appellate Authority, the Applicant has stated that he gave full opportunity to the assessee of being heard. The aforesaid contention has been written in details at the pages of 2 and 3 in the Appeal paper but the Appellate Authority seems to have not gone through and pass one sided findings that the assessee was not given opportunity by the Applicant. Hence the impugned orders passed by the Disciplinary Authority cum Commissioner of Income-tax (Audit), Guwahati vide Memo No.Vig./CIT (Audit)/GHY/2007-08/894-896 dated 14.02.2008 and the Appellate order vide Memo No.DP-45/BD/VIG/CCIT/GHY/2009-10/588-89 dated 28/31.07.2009 passed by the Chief Commissioner of Income-tax (CCA) Guwahati cum Appellate Authority are liable to be set aside and quashed.

5.10] For that, the statement made in paragraph 4.1 of the Appellate order, the Appellate authority has gone out of the inquiry authority's report while mentioning like 'unlawful survey', 'high-pitched assessment' and 'attached the salaries'. Hence the impugned orders passed by the Disciplinary Authority cum Commissioner of Income-tax (Audit), Guwahati vide Memo No.Vig./CIT (Audit)/GHY/2007-08/894-896 dated 14.02.2008 and the Appellate order vide Memo No.DP-45/BD/VIG/CCIT/GHY/2009-10/588-89 dated 28/31.07.2009 passed by the Chief Commissioner of Income-tax (CCA) Guwahati cum Appellate Authority are liable to be set aside and quashed.

5.11] For that, the statement made in paragraph 6.1 of the Appellate order is not in conformity with the version of the inquiry report and the disciplinary authority.

5.12] For that, the statement made in paragraph 6.2 of the Appellate order, the Appellate authority has gone out of the context of the Inquiry report as there was no report like 'valuer's report', 'unlawful survey' and 'harassment to assessee'.

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5.13] For that, the statement made in paragraph 6.3 of the Appellate order, there are no findings of the inquiry report about 'assessee's taxable income', 'assessee's movable and immovable assets', 'style of living', 'family', 'bank accounts', ''closing the proceeding in haste' etc., hence again the Appellate authority has gone out of the original issues.

5.14] For that, the statement made in paragraph 6.4 of the Appellate order, the contention of the appellate authority is not true and also misleading to this Hon'ble Tribunal. The Applicant has given some of the examples to refute the charges, therefore, it is not necessary to pick up all the cases to refute the charges.

5.15] For that, the statement made in paragraph 6.5 of the Appellate order, the Appellate authority seemed to have not properly gone through the appeal made by the Applicant before him. In support of obtaining of details/information etc, the Applicant has extensively cited such examples in page 8 of his appeal viz: Sudhir Dutta, AY 1995-96, Md A.Rahim Talukdar, AY 1995-96, Malchand Maheswari, AY 1995-96, Banshilal Lahoty, AY 1996-97 etc. The Applicant did not say that "when an assessee does not have any bank account, there is no necessary to call for other particulars". The Appellate authority has entirely misquoted and misunderstood the Applicant. The Applicant stated that "when an assessee even does not have a bank account what details/information can be obtained by the ITO".

5.16] For that, the statement made in paragraph 6.6 of the Appellate order, the Appellate authority has gone beyond the findings of the Disciplinary authority as there was no mention about 'penalty proceeding after assessment u/s 144 of the Income-Tax Act.

5.17] For that, the statement made in paragraph 6.7 of the Appellate order, the Appellate authority has again deviated from the findings of the Disciplinary authority as there was no mention about summon u/s 131 of the Income-Tax Act and other points expressed therein by the Appellate authority.

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5.18] For that, the statement made in paragraph 6.8 of the Appellate order, the Appellate authority again deviated from the truth. The Applicant never admitted that he has committed any offence attracting vigilance action but some human error may be occurred which can be remedied by Audit or other measures.

5.19] For that, the Appellate authority has not made objective assessment of the inquiry report and not issued a detailed order which can be termed as speaking order. The Appellate authority has not given weightage to most of the points and not discussed properly, viz - 'giving opportunity to assessee of being heard', the cited sample examples in respect of obtaining of details/information' etc. The procedure requires that all the points raised by the Applicant are summarized in the order and logically discussed how they are tenable or not acceptable. It is obligatory on the part of the Appellate authority to discuss how there has been no procedural flaw or denial of opportunity of defence. Hence the impugned orders passed by the Disciplinary Authority cum Commissioner of Income-tax (Audit), Guwahati vide Memo No.Vig./CIT (Audit)/GHY/2007-08/894-896 dated 14.02.2008 and the Appellate order vide Memo No.DP-45/BD/VIG/CCIT/GHY/2009-10/588-89 dated 28/31.07.2009 passed by the Chief Commissioner of Income-tax (CCA) Guwahati cum Appellate Authority are liable to be set aside and quashed.

5.20] For that, the Appellate authority has not discussed any thing about the breach of procedure laid down in the CCS(CCA) Rules and thereby violation of any provisions of the Constitution of India. The Appellate authority is also silent as to the findings of the inquiry authority and the action of the disciplinary authority whether the lapses/mistakes cited there warrant such a punishment and whether the punishment was adequate, inadequate or severe.

5.21] For that, the Appellate authority also did not discuss why the inquiry proceedings was not completed within six months as per existing instructions from the date of appointment of I.O/P.O. and why the proceedings took more than 12 years. In the instant case the I.O/P.O. were first appointed on

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11.08.2003 and the inquiry was completed only on 7.9.2006 and copy was given to the Applicant only on 16.11.2007.

5.22] For that, the Appellate authority himself also arbitrarily delayed in disposing the appeal for a long 17 months thereby violating provision of the Constitution of India. The Appellate authority attributed the delay as 'there was no regular Chief Commissioner of Income Tax' before this Hon'ble CAT which also is false excuse as there was a regular Chief Commissioner of Income Tax for 10 months from the date of filing of the Appeal.

5.23] For that, the above discussions amply prove that the order and decision of the Appellate authority are arbitrary and summary in nature and also mostly out of the context of the inquiry report and therefore the order dated 28/31.07.2009 of the Appellate authority and findings of the Disciplinary Authority order dated 14.02.2008 are liable to be set aside and quashed.

5.24] For that, the action of the Respondents are arbitrary, mala-fide and discriminatory for all intent and purpose.

5.25] For that, the disciplinary authority as well as the Appellate authority have totally violated the principle of natural justice in the instant case.

5.26] For that, the Respondents have violated the provisions of Article 14, 16 and 21 of the Fundamental Rights guaranteed under the Constitution of India.

5.27] For that, in any view of the matter the action of the Respondents are not sustainable in the eye of law as well as facts of the case.

The Applicant craves leave of this Hon'ble Tribunal to advance further grounds at the time of hearing of the instant application.

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6. Details of remedies exhausted.

That the applicant declares that he has exhausted all the remedies available to him and there is no other alternative remedy than to file this application.

7. Matters not previously filed or pending with any other Court.

The applicant had not previously filed any application, writ petition or suit before any Court or any other Authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, writ petition or suit is pending before any of them.

8. Relief(s) sought for:

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the entire records of the case and issue notice to the respondents to show cause as to why the relief(s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

8.1] To set aside and quash the impugned Memo No.Vig./CIT(Audit)/GHY/2007-08/894-896 dated 14.02.2008 passed by the Disciplinary Authority and the Appellate order dated 28/31.07.2009 passed by the Appellate Authority.

8.2] To direct the Respondents to give the Applicant all consequential service and monetary benefits including his promotion to the post of Assistant Commissioner of Income-Tax from the date of his juniors were promoted.

8.3] Pass such other order(s) as may be deemed fit and proper in the facts and circumstances of the case.

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8.4] Pay the cost of the application.

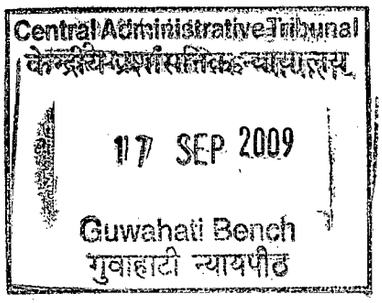
9. Interim Order prayed for:

The Applicant most respectfully prays before this Hon'ble Tribunal for an ad-interim order by directing the Respondents to open the sealed cover procedure in case of the Applicant for his promotion to the post of Assistant Commissioner of Income-Tax which is due since October 2005 and this Hon'ble Tribunal may also be pleased to pass any appropriate interim order(s) as may deem fit and proper.

10. Application is filed through Advocate.

11. Particulars of I.P.O.:

I.P.O. No. : 396 424106
Date of Issue : 16.9.2009
Issued from : Guwahati G.P.O.
Payable at : Guwahati



12. List of Enclosures:

As stated above.

Verification

Syed Basid Ahmed

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VERIFICATION

I Syed Basit Doley alias Budheswar Doley Son of late Cheniram Doley, aged about 52 years, Income-Tax Officer, (Headquarters), Office of the Commissioner Income-Tax (Audit), AYAKAR BHAVAN, G.S. Road, Guwahati, Pin Code-781005, do hereby verify that the statements made in para 4.1, 4.2, 4.4, 4.6, 4.8, 4.12, 4.14, 4.15 (Partly) 4.17, 4.23 - - - - - are true to my knowledge and those made in 4.3, 4.5, 4.7, 4.9, 4.10, 4.11, 4.13, 4.15 (Partly), 4.16, 4.18 to 4.22 - - - - are being matters of records are true to my information derived therefrom which I believe to be true and those made in Paragraph 5 are true to my legal advice and rests are my humble submission before this Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this the 17th day of September 2009.

Syed Basit Doley

DECLARENT

-27-

CONFIDENTIAL

आयकर उपायुक्त (मंडल I, गुवाहाटी)

ADDITIONAL COMMISSIONER OF INCOME-TAX
RANGE 1, GUWAHATI
दूरभाष : कार्यालय -541237
आवास -562896
Telephone { Office -541237
Res. -562896
RED CROSS BHAWAN, 1st FLOOR
River Side, M. G. Road, Uzan Bazar, Guwahati-781 001

D.O.F.No.Con.39/R-I/Ghy/420 Dated 1-14.5.97

Mrs.M.Sailo, IRS,
Addl.Commissioner of Income-tax,
Range-I, Guwahati

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Sub:- Charge of corruption - Reg.

Dear Shri Doley.,

Ever since you held the charge of ITO, Ward-North-Lakhimpur on promotion from inspector a lot of complaints from different quarters have reached the higher authorities. Putting full faith on you, no serious enquiry was conducted against you so far with the hope that these complaints will died down once you pick up the work as an Assessing Officer and charge ITO. Unfortunately this is not to be. More and more complaints are reaching the higher authorities and I myself am beginning to have some doubts regarding your integrity. I would like to request you to have a self introspection and if there is any thing on your part which requires to be rectified, please do so immediately. You are just beginning your career as an officer in this department and it seems that you have made a very bad start so far as public image is concerned. The higher authorities will back you up only if you have made bonafide mistakes but this too cannot be taken for granted. Please note that a vigilance file has already been opened against you and your action will be closely monitored.

With...Regards.....

Yours Sincerely

(Mrs.M.Sailo) 14/5/97

To
Shri B.Doley,
Income-tax Officer,
North-Lakhimpur.

Copy to :- The Commissioner of Income-tax, NER, Shillong for information.

(Mrs.M.Sailo)
Addl.Commissioner of Income-tax
Range-I, Guwahati-

ATTESTED
ADVOCATE

ANNEXURE--2

E-I/Con/NL/97-98/
Office of the Income-Tax Officer,
Ward, North Lakhimpur,
Dated North Lakhimpur, the 26th May'97.

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To,
The Addl. Commissionor of Income-Tax(By Name)
Range-I,
Red Cross Building,
Ujan Bazar,
Gauhati-1

Esteemed Madam,

Sub:Charge of corruption- Reg.
Ref:Your D.O. F.No.Cons/R-1/Gnty-420 dated 14.5.97

The charges of corruption have been a go with me ever since I joined here at North Lakhimpur as Inspector in July'94.The first complain was that Sri B. Doley,Inspector visited [illegible] at North Lakhimpur town and each and every shop paid him 500/-.This totally was a fabrication to malign me by a Tax consultant who also was acting and still wants to actas the authority.This was the start of the trend of the corruption charges.In the last part of Dec'94, I was transferred to Dibrugarh as ITO on promotion and in May'95 I joi joined at North Lakhimpur as charge ITO.Thereafter, corruption allegations again started flowing in one after another.In Jun'96 an allegation was published in daily news paper.My rejoinder was also published in the same daily.Thereafter till 13th May'97,I thought no more allegation was coming in.Madam, I was really dismayed and disgusted to hear on 13th May at Gauhati that more allegation charges were coming in.It is really the tactics of the Nazi days that repeat a lie hundred times it becomes equal to truth and people start believing it to be truth.My image at large in the public is not bad at all but as days passing by the self-posing authority cum tax-consultant is increasing his confrontations and is forming a circle to sling mud on me at any time.Even some staff of my office are purchased by this consultant.I am not aware when the allegations were filed this time but if these are after March'97, then I think that these allegations might be from the assessees in whose cases I assessed some high undisclosed income and these assessees are connected to that very consultant.I have learnt that the allegations filed upto June'96 were either filed by the consultant himself or through others on his initiation.

Madam, since joining at North Lakhimpur, the allegations have become a part of my life and these are causing some unnecessary strains in my mind and spirit.My sicerity, devotion, hard works have no value at all.I lose keenness, vigour and enthusiasm. At North Lakhimpur, I have been harassed directly and indirectly. physically and mentally by these allegations and otherwise.Madam, I am deeply moved by your letter and its advice.Still I feel and I am sure the wrath of the pests will continue who are death bent upon removing me and would be satisfied the moment I am removed from here.I like to be removed from North Lakhimpur at the earliest as I no longer want to bear the wrath of some perversed peoples' perversed acts.

Madam, I earnestly request you to arrange my withdrawal from North Lakhimpur and post me anyyhere.

With sincere regards.

Yours faithfully.

(B. Doley)
INcome-tax Officer,
Ward, North Lakhimpur,

ATTESTED
ADVOCATE

Copy to :The CITfor favour hf his kind information and necessary

ANNEXURE- 3

F.No.E-186/Per/94-95/ 3945

OFFICE OF THE ADDITIONAL COMMISSIONER
OF INCOME TAX:::RANGE::DIBRUGARH.

Dated, Dibrugarh the 6th. January'99

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To
Shri B.Doley,
Tax Recovery Officer,
Dibrugarh.

Sub:- Complaint against Shri B.Doley, I.T.O. North Lakhimpur (Now T.R.O. Dibrugarh) by Shri B.C.Pegu, Tanganapara, Dhemaji submission of written reply - regarding.

Please find herewith the relevant extract of a complaint letter dtd. 10.09.98 of Shri B.C. Pegu, Ex-Principal, Dhemaji, received from the Commissioner of Income-tax, Dhankhati, Shillong. You are requested to submit the written reply against the complaint addressed to The Commissioner of Income-tax, Shillong through Additional Commissioner of Income-tax, Range-Dibrugarh, early.

Encl:- As stated.

(N. LHUNGDIM)
Additional Commissioner of Income-tax,
Range:::::Dibrugarh.
Dibrugarh.

A. TESTED
ADVOCATE

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Copy Received
17 SEP 1998
To Shri/Smt/Kum. ...
Addl. Commissioner of Income-Tax, Range-1

To

The Commissioner of Income-Tax,
Range-1, Gauhati.

Dated 10-09-98

Sub: Complaint against Shri Budheswar Doley, I.T.O., North Lakhimpur Ward, for his corruption and harrassment done to me on personal grudge.

Ref: Our Telephonic talk on 9.0.98 on the same subject matter.

Sir,

With reference to the subject cited above, with due respect and affirming my full confidence upon your good office, I beg to bring your kind and prompt attention for the corrupt practices and the harrassment done to me in vindictive manner/personal grudge by the said I.T.O. and thereby request you kindly to enquire into the complaint lodged by me through your own administrative channel and on findings of the enquiry a drastic action may kindly be taken in the interest of natural justice and to uphold the highly dignified public office like Income-Tax of India which has a distinguished and unique image throughout the country. The complaints are narrated below one by one :-

2. That, as his usual practice of corruption, Shri Doley demanded from me to pay an amount of Rs.1,00,000/- (one lakh) in presence of my wife at Doley's father in-law 's residents, Kasaiting village, Dhemaji as his bribe when I approached him to look into the actual assessment of income tax payable by me in the early part of the January, 1997. But I refused to give the bribe, However, he took an amount of Rs.10,000/-(ten thousand) later on as bribe and another 10,000/- (ten thousand) through H. Rabha IIT, North Lakhimpur Ward (Rs.5000/- for Rabha and 5000/- for I.T.O. Doley) was realised from me as bribe in the month of February, 1997 on the condition and assurance of gentleman agreement that no further assessment shall be done hencefoth

Yours faithfully,

(B.C. Pegu)
Ex. Principal,
Tanganapara
P.O.: Dhemaji -787057.

Copy to :

1. The Director of Income Tax (Vigilance) 8th floor, Mayur Bhaban, Conn.Circus, New Delhi-110001.
2. The Commissioner of Income Tax, North Easter Region, Kharomalki Road, Shillong-793003, MEGHALAYA.
3. The Deputy Commissioner of Income Tax, Guwahati, Panbazar, for favour of their kind information and necessary action.

ATTESTED
ADVOCATE

ANNEXURE--4

F.No.per/P-15/98-99/02
OFFICE OF THE TAX RECOVERY OFFICER,
INCOME!TAX DEPARTMENT: DIBRUGARH
Dated Dibrugarh the 11th January 1999.

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
17 SEP 2007
Guwahati Bench
गुवाहाटी न्यायपीठ

To,
The Addl Commissioner of Income-Tax,
Range-Dibrugarh,
Dibrugarh,

Sir,

Sub:Submission of written reply against Sri B.C.Pegu's Complain.
Ref:Your letter F. No.R-186/Per/94-95/3945dt 6.1.99.

Most respectfully I beg to submit the following few lines for favour your kind information and clarification against the concocted,malicious complain filed by Sri B.C. Pegu.

1.That sir, before going into the exact picture of his meeting with me at my father-in-law's village at Kasaiting,kindly permit me to cite a few words on the nature of this(in)famous ex-principal as I feel it has become very relevant to cite here.

2.This Pegu is really an infamous ex-principalk known for his embezzlement of college fund, eating up even students' scholarship money and twice suspended for years for many corruptions and other irregularities.

3. Now he is retired.At the verge of retirement he got back hi his job for 1 or 1½ years and during this time his assessment proceeding was done by me. During this time also I heard that he ate up the money for deposit into LIC,PF of the staff and teachers and th there was again hue and cry and he absconded for days to avoid police arrest.

4. Sri Pegu also styles himself to be a man of some political partya and learnt to be making business with this political trade mark.

5.Now it has come to my knowledge that (as I was out of Dhemaji for my studies and after studies for service too for many years) while he was first suspended for embezzlement, my father-in-law helped him financially to make good the fund and still he has not repaid the money and he has no intention to repay also.So far I know my father-in-law is not pressing him for return of his money. They are still like brothers and friends and have good friendly relations.

6.As he has cited in his complain that harassment done to him on personal grudge, I could not understand as to how and for what I had personal grudge with him as though I hail from Dhemaji I was out from Dhemaji for the last 25 years prior to coming to North Lakhimpur as I.T.O. I had no links and dealings with him directly or indirectly, socially or officially except the assessment proceedings.

7.He also has alleged to have been harassed by me.I fail to understand what sort of harassment I meted out to him.Why did not he cite the harassment in specific.

8.During my stay at North Lakhimpur as I.T.O. many local people of Dhemaji verbally reported to me that this Pegu was receivin money in thousands in the plea of giving Govt. jobs with his political nexus and power.

9.I deputed Inspector for survey and inquiry and scrutiny due approval was obtained and I did the assessment which culminated i in demands of lakhs.The materials and records of the assessment are very much there in the records of the North Lakhimpur office and a plain checking and reading of the papers would reveal that how much sincerity, labour and pain and time I spent in doing the assessment.

ATTESTED
ADVOCATE

10. In the course of assessment proceedings, he appeared many times before me and every time I found him to be trying to mislead me and show me " what this boy knows" attitude towards me.

11. The allegation is that I demanded him Rs 1 lakh at my father-in-law's residence in presence of his wife. If I had the intention why did not I demand him in so many appearances in my office. Why at my father-in-law's residence that too in one visit? Why in presence of his wife? The truth is that I never and nowhere uttered him a single paise.

12. Does Sri Pegu think that Rs20000/- is a matter of joke? Can a sane and prudent man play with Rs20000/-? Where he paid this amount at my father-in-law's residence, or at my office or at my residence or at market ? It is the political agent like Sri Pegu who can play in thousands and those who play in mud , naturally throw mud to others when they fail to achieve their ends.

13. The allegation is that he refused to pay the bribe then where was the question of paying Rs20000/- again? What was this Rs20000/- ?

14. A careful analysis of the complain itself would amply prove that this complain is a fabricated and malicious one, lacking in all logic and reasonability.

THE KASAITING EPISODE

1. I generally keep my harvested thatched-paddy bundle in the godown of my father-in-law. It was a Saturday. Mywife and myself alongwith two labourers were doing 'morona'(morona- the process of se separating the paddy seeds from the thatch by repeated trampling of the thatched-paddy by bullocks). The residence and the godown of my father-in-law are in the same compound just 200 yards apart. While we were doing 'morona' in the godown premises, one ambassador car moved into my father-in-law's residence. We noticed that Sri Pegu and his wife got out of the car and entered into the house of my father-in-law. After some time one of my father-in-law's labourerss came to me and told me that Sri Pegu was calling me. I told the labour that I was in dust and dirt, not in a position to go there, it would be better if he came here. The labourer went back and Sri Pegu came to me. He started talking about the assessment why I taxed him so much-still requested to do something. I told him that it was over by now and as a literate person I expected that he well understood the assessment. His meeting here with me was after the assessment only as he was least bothered with "What this boy knows" negative attitude towrds me.

2. From the godown premises he went back to my father-in-law's residence and after few minutes, they left therefrom in the car.

3. After finish of the work at the godown, I washed my hands and face and went to my father-in-law's residence. My father-in-law and mother-in-law now told me that the principal requested them to request me to do something about his tax assessment. My mother-in-law also told me that she told the principal how should they request their son-in-law for a matter of which they had no idea at alla and also this being a purely official matter.

4. Sri Pegu met me at godown, his wife did not come to the godown. While Sri Pegu and his wife were there in the residence of my father-in-law, I did not go there and met him. Then how come I demanded him Rs1 lakh in presence of his wife?

5. By this complain, Sri Pegu has proved himself to be a very ungrateful person as my father-in-law has been a saviour in his crisis days but he took his residence as episode of the complain and did not show an iota of hesitation to sling mud to his saviour's son-in-law.

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(3)

NEXT DAYS EPISODE

1. Sri Pegu alongwith his wife came to my **residence**. He brought brought his assessment order copy and asked me to destroy it and destroy everything and make assessment afresh raising demand of Rs50000/-. He also proposed me to pay a handsome amount for doing this. I refused him saying that destroying official documents was a crime- how a person of his age and status could ask me to do that. He insisted-"Everything is possible, it is in your handd and it is upto you only". He desperately tried to get me destroy the papers and d do fresh assessment but at all cost I did not concede. Now it is like " The grapes have become sour for the jackal"and so the complain.

Sir, my hard labour and sincerity have brought me lots of complains at North Lakhimpur and this is just one of them and basing on such fabricated and malicious topsy-turvy complains, I have already been rewarded with an adverse remarks. I feel too disturbed as unnecessarily I have to waste time and energy in replying all these. I am confident enough that truth is with me but I mostly feel pain for these people who stoop so low when their ingenuine demands are not fulfilled.

That sir, from the above facts, I hope your benevolent authority is amply convinced that the complain filed by Sri Pegu is nothing but a fabricated and malicious one.

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Yours Faithfully ,

12.1.99

(B. Doley)
Tax-Recovery Officer,
Income-Tax Department,
Dibrugarh.
Date 11-1-99

Memo No.Per/P-15/98-99/------
Copy to:

1. The director of Income-tax(Vigilance) 8th floor, Mayur Bhavan, Connought Circus, New Delhi-110001-
2. The Commissioner of Income-Tax, Red Cross Building, Ujan Bazar, Gauhati-1.
3. The Addl. Commissioner of Income-Tax, Range-1, J.B. Path, Silpukhuri, Gauhati-3.

12.1.99.

(B. Doley)
Tax- Recovery Officer,
Income-tax Department,
Dibrugarh.

ATTESTED

ADVOCATE

ANNEXURE--5

STANDARD FORM OF CHARGE-SHEET FOR MAJOR PENALTIES
(Rule 14 of CCS (CCA) Rules)

F.No. VIG-1/BD/CON/CIT/JRT/01-02/344

भारत सरकार	Govt of India	दूरभाष/Ph
वित्त मंत्रालय	Ministry of Finance	०३७६-३३२३६३६
राजस्व विभाग	Department of Revenue	0376-3323636
आयकर आयुक्त का कार्यालय	**Office of the Commissioner of Income-tax**	Fax/फैक्स
आयकर भवन, थाना रोड,	Aayakar Bhawan, Thana Road,	०३७६-३३२३८३८
जोरहाट, ७८५ ००१	Jorhat 785 001	0376-3323838

Dated : Wednesday, May 15, 2002

MEMORANDUM

The undersigned proposes to hold an inquiry against Shri Budheswar Doley under Rule 14 of the Central Civil Services (Classification, control and appeal) Rules, 1965. The substance of the imputations of mis-conduct 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 (Annexures-III and IV).

2. Shri Budheswar Doley is directed to submit within 10 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 Budheswar Doley 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.

Contd. P/2.

06/06/2002

06/06 Pers

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Attention of Shri Budheswar Doley 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 Budheswar Doley 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.

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Guwahati Bench
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(By order and in the name of the President)

(A. M. Sangma)
Commissioner of Income-tax
Jo[redacted]
Name and desig[redacted] of Competent Authority
[redacted]
Jorhat

To
Shri Budheswar Doley
Income-tax Officer,
Ward-1, Sibasagar

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ANNEXURE - 1

STATEMENT OF ARTICLES OF CHARGE FRAMED AGAINST SHRI BUDHESWAR DOLEY, INCOME-TAX OFFICER, NORTH LAKHIMPUR (NOW ITO, SIVASAGAR).

Article - I

That the said Shri Budheswar Doley while functioning as ITO, North Lakhimpur, during the period 1996- 98 exceeded and abused his official powers in several instances and caused undue harassment to various assessees that culminated in a number of complaints being lodged against him. Three such specific complaints of

1. Shri Purna Kanta Pegu, Dhemaji College, Station Road, Dhemaji
2. Shri Bikas Das, Prop. M/s Beauty Stores, Dhemaji and
3. Shri Bhaben Chandra Pegu, Vill. Tanganapara, Ward-3, P.O. & Dist. Dhemaji

were looked into and the respective case records also verified, and it emerged that Shri Budheswar Doley, ITO had failed to maintain absolute integrity; did not display devotion to duty; acted unbecoming of a Government servant, and in the performance of his official duties acted in a discourteous manner, thereby contravening Rules 3(1)(i), 3(1)(ii), 3(1)(iii), and 3A(a) of the CCS (Conduct) Rules, 1964.

Article - II

In the separate complaint of Shri Purna Kanta Pegu it is alleged by the complainant that a bribe demand of Rs. 10,000/- was made during the course of the assessment proceedings for the AY 1994-95 but since the bribe was not conceeded to, a huge tax demand of Rs. 1,63,212/- was raised.

Also, that during the aforesaid period and while functioning in the aforesaid office, the said Shri Budheswar Doley, ITO is alleged to have demanded a bribe of Rs. 1,00,000 (one Lakh) only from another complainant Shri Bhaben Chandra Pegu during the course of the assessment proceedings for AY 1994-95. Since only a a bribe amount of Rs. 10,000/- was paid first, and later on another Rs. 10,000/- , a high pitched assessment was made raising a huge tax demand of Rs. 9,87,196.

By these allegations of the complainants, Shri Budheswar Doley, ITO has contravened of the following provisions of the CCS (Conduct) Rules :

Rule 3(1)(i) - failed to maintain absolute integrity

Rule 3(1)(iii) - acted unbecoming of a Government servant.

Article - III

That during the aforesaid period and while functioning in the aforesaid office, the said Shri Budheswar Doley, ITO acted arbitrarily in the assessment of Shri Purna Kanta Pegu (assessee) for the AY 1995-96 as is evidenced from the assessment records; acts of misconduct of which are listed hereunder.

Contd. P/2.

A. TESTED

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1. The assessment proceeding has been initiated after the survey report of the Inspector dated 16-6-95. The survey so authorised was illegal as the power to survey U/s 133A or 133B can be exercised only at a place at which for business or profession is carried on; whereas in these instance case the assessee is only a salaried person.

This act confirms the allegations in other complaints received that Shri Budheswar Doley, ITO had arbitrarily conducted survey with view to harass and intimidate the assessees.

2. Even if the survey is considered as an inquiry U/s 133(6), it is illegal as there were no proceedings pending under the Income-tax Act as on that date against Shri Purna Kanta Pegu (assessee).

3. By mentioning in the very first line of the assessment order that the survey was done by his Inspector, it appears that Shri Budheswar Doley, ITO had sinister designs in mind so that if in the eventuality of any complaints or complications later on, he would be in a position to push the blame to his subordinate.

4. Shri B. Doley, ITO has abused the power to survey and also blatently trespassed upon the power to search when he directed his Inspector (Shri H. Rabha) to enter inside the residential premises of the assessee and to observe and take measurement of the building, as is evidenced by the report of the Inspector dated 04-4-96.

5. Shri Budheswar Doley, ITO has time and again abused to power to survey when he directed his Inspector to make enquiries at several residential houses as is evidenced from the report of the Inspector dated 16-6-95.

6. Shri Budheswar Doley, ITO made huge estimated addition towards investment in construction of the residential building belonging to the assessee, without having given the assessee an inkling of the estimated method of valuation that he was to do. He, therefore, denied to the assessee the very basic right to be given opportunity to be heard and the right to natural justice.

7. The impugned assessment order was challenged in appeal before the Commissioner of Income-tax (Appeals), and the learned CIT (Appeal) in his order dated 07-01-98 set-aside with directions the estimated additions in the building construction, and deleted the other additions. However, Shri Budheswar Doley, delayed in the giving effect to the Appellate Order, and further did not follow the directions while given to the effect to the Appellate Order, thereby still raising a tax demand of Rs. 1,00,306/-.

8. Though the tax demand of Rs. 1,00,306/- after giving appellate effect was wrong, yet Shri Budheswar Doley issued recovery attachment notice U/s 226(3) dated 27-8-98 of the Income-tax Act, 1961 to the employer of the assessee, i.e. Principal of Dhemaji College, Dhemaji attaching

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A. TESTED

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an amount of Rs. 3000/- per month from the salary of the assessee, thereby causing undue harassment and humiliation to the assessee.

By all these above acts Shri Budheswar doley, ITO has willfully contravened the following provisions of the CCS (Conduct) Rules :

3(1)(i) - failed to maintain absolute integrity.
3(1)(ii) - failed to maintain devotion to duty.
3(1)(iii) - acted unbecoming of a Government servant.
3A(a) - in the performance of his official duties, acted in a discourteous manner.

Article - IV

That during the aforesaid period and while functioning in the aforesaid office the said Shri Budeswar Doley, ITO, acted arbitrarily and capriciously in the assessment of Shri Bhaben Ch. Pegu (assessee) for the AY 1994-95 as evidenced from the assessment records the acts of misconduct of which are listed hereinunder :

1. Shri B. Doley, ITO abused and over-stepped the power to survey when he directed his Inspector to cause enquiry, as evidenced from the Inspector's report dated 06-6-95, and also required Shri B. C. Pegu to furnish various details of assets as evidenced from the proforma that was asked to be submitted by Shri Pegu dated 07-6-95.

2. Shri B. Doley, ITO had caused enquiries into the properties without ascertaining and verifying from the past income-tax records, as has been the allegation in several complaints received against him, thereby causing undue harassment to the tax payers.

3. Shri B. Doley, ITO initiated the assessment proceeding in the case of Shri B. C. Pegu (assessee) for the AY 1994-95 by issuing of notice U/s 142(1) dated 27-7-95/02-8-95 of the I.T. Act, 1961 calling for return of income to be filed. Though he has used a standard departmental form to issue the notice, yet he had not applied his mind in that the items not applicable were not struck off. This would have created confusion to the assessee.

4. Shri B. Doley, ITO, has misused and over-stepped the power to survey when he directed his Inspector to enter the building of the assessee, and also to enter the residential house of the assessee and to observe a layout, nature of construction, and to take measurements and also to estimate the value of the construction, as is evidenced by the inspection report dated 12-10-96.

5. Shri B. Doley, ITO passed the assessment order on 01-12-96 and has made arbitrarily high-pitched assessment by simply estimating cost of construction of the building, and estimated cost of land as per his whims and fancies. There does not appear in the records any prior intimation to the assessee of his intended basis for estimated valuation. Shri B. Doley,ITO has,

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therefore, denied the assessee the opportunity to be heard on the issue, and the right to natural justice.

Because of this act in the assessment order, high income-tax demand of Rs. 9,87,196/- was raised on the assessee causing the assessee undue mental pressure and agony.

6. The assessee, being a layman, and having been taken aback by such high pitched assessment, submitted a detailed revised petition dated 29-12-96 seeking for review of the income-tax assessment. As the subject matter and reasoning were not within the purview of even a rectification, Shri B. Doley should have advised the assessee that the proper procedure was to approach the appropriate higher statutory authorities by filing appeal U/s 246 before the CIT(A) or to file for revision petition U/s 264 before the CIT.

7. Shri B. Doley, ITO did not choose or advise the assessee properly and instead after the assessment has been completed, in the name of rectification, he conducted and caused detailed enquiries trespassing beyond his statutory jurisdiction and thereby causing further mental agony to the assessee.

8. Shri B. Doley, ITO, again abused and over stepped the power to survey when he deputed his Inspector (Shri Rajkumar Singha) to visit and enter the building premises belonging to the assessee, and to take measurements, as evidenced from the Inspector's report dated 16-01-97.

9. Shri B. Doley, ITO has over-exceeded his power as an assessing officer in the rectification order passed dated 01-7-97, as none of the issues were "mistakes apparent from records".

10. Although the assessment was high pitched and undue harassment has been caused in the process, yet Shri B. Doley,ITO caused further humiliation by sending a recovery attachment notice U/s 226(3) of the I. T. Act, 1961 to the employer of the assessee, i.e. the Principal, Dhemaji College, Dhemaji

11. Shri B. Doley, ITO had made enquiries and correspondences with the Branch Manager, United Bank Of India, Dhemaji. The style and manner in which he has conveyed his correspondences with the bank official is improper and not expected of, in official communications, as evidenced vide his letter dated 27-6-97 sent to the Bank Officer.

12. The impugned assessment order was challenged in appeal before the CIT(A) and the learned CIT(A) vide his order dated 10-12-98 had observed the high-handedness and arbitrary manner of the assessment that had been done by Shri B. Doley, ITO by remarking in the appellater order :I feel that the A.O should have considered the appellant past assessment records especially when he was considering investment made in buildings, lands, etc by the appellant in the past and in failing to do so, he had failed to do justice to the appellant".

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ATTESTED

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By the above act of misconduct and misbehaviour, Shri B. Doley, ITO has willfully contravened the following Rules of the CCS (Conduct) Rules, 1964 viz :-

3(1)(i) - failed to maintain integrity.
3(1)(ii) - failed to maintain devotion to duty,
3(1)(iii) - acted unbecoming of a Government servant and
3A(a) - in the performance of the official duties, acted in a discourteous manner.

Article - V

That during the aforesaid period and while functioning in the aforesaid office, the said Shri B. Doley, ITO acted upon and initiated proceedings with vindictive motive against Shri Bikash Das (Proprietor of M/s Beauty Stores), Dhemaji, as is mentioned hereunder :

1. Due to not conceeding to a price bargain which Shri B. Doley, ITO wanted as customer, Shri B. Doley, ITO then misused, with vindictive intention, the power to survey by conducting survey at the shop premises on 01-11-96; even though as an Income-tax authority he should have been aware that the shop being quite small in size, a survey was not at all warranted. The conduct of the survey was spiteful and with vindictive motive to humiliate Shri Bikssh Das.

2. Shri B. Doley, ITO further initiated proceedings by issuing notice dated 09-01-97 U/s 142(1) of the Income-tax Act calling for the return of income to be filed. Even while issuing the notice he did not apply his mind in that the irrelevant portion of the form were not struck of, and this would have created confusion in the mind of Shri Bikash Das.

3. Shri B. Doley, ITO had misused the powers U/s 142(1) in that after initiating the proceedings, he simply dropped the proceedings on 29-04-97 on receiving a letter from Shri Bikash Das that he would not be having any taxable income. This indicates that Shri B. Doley, ITO misused the power U/s 142(1) to achieve his vindictive motive against Shri Bikash Das and once the motive was achieved, the proceedings were dropped as there was no other reason to have conducted the survey.

By all these above acts shri B. Doley, ITO has willingly contravened the following provisions of the CCS (Conduct) Rules, 1964 :

3(1)(i) - failed to maintain absolute integrity
3(1)(ii) - failed to maintain devotion to duty
3(1)(iii) - acted unbecoming of a Government servant
3A(a) - in the performance of his official duties, acted in a discourteous manner

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ANNEX URE - II

STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR IN SUPPORT OF THE ARTICLES OF CHARGE FRAMED AGAINST SHRI B. DOLEY, INCOME-TAX OFFICER, NORTH LAKHIMPUR (NOW ITO WARD-1, SIVASAGAR)

Article - I

During the period 1996-98 when the said Shri Budheswar Doley was functioning as Income-tax Officer, North Lakhimpur, several complaints alleging of high handedness, harassment, and victimisation were received against him.

The complaints of Shri Purna Kanta Pegu (listed as SD-1), Bhaben Chandra Pegu (listed as SD-3) were looked into and the relevant case records verified and it emerged that in the process of functioning in his duties, Shri B. Doley had misconducted himself.

Other complaints also alleging of misconduct are regarding Shri Bikas Das (SD1,4), complaint of Income-tax Practitioner of North Lakhimpur (SD-6), complaint of Chamber of Commerce, North Lakhimpur (SD-7).

By these complaints, and on verification of the verifiable allegations it has emerged that the said Shri B. Doley, ITO while discharging his functions and duties as a Government Servant had failed to maintain absolute integrity did not display devotion to duty, acted unbecoming of Government servant and in the governance of his official duties acted in a discourteous manner, thereby contravening Rules 3(1)(i), (ii), (iii) and 3A(a) of the CCS (Conduct) Rules, 1964.

Article - II

In the complaint of Shri Purna Kanta Pegu, it is alleged that Shri B. Doley, ITO in the assessment proceedings for AY 1994-95 had demanded a bribe of Rs. 10,000/-. As the bribe was not paid, a huge tax demand of Rs. 1,63,212/- was raised.

Verification of the relevant case records indeed show that Shri B. Doley unduly abused his powers to cause enquiries, and culminating in the unnecessarily high-pitched assessment made.

Also, in the salaried case of Shri Bhaben Ch. Pegu an allegation that due to the not conceding bribe demand of Rs. 1,00,000/- roving enquiries were made and unnecessarily high pitched assessment was done raising a huge tax demand of Rs. 9,87,196/-.

The above 2 assessments have been eventually set aside/deleted by CIT(A) in the appellate order.

The above trend of instances show that the allegation of bribe demand as being the cause of harassment, lead to a strong implication of the allegation against Shri B. Doley and therefore, Shri B. Doley had failed to maintain absolute integrity and acted unbecoming of a Government Servant thereby contravening Rules 3(1)(i) & 3(1)(iii) of the CCS (Conduct) Rules, 1964.

A. TESTED

ADVOCATE

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Article - III (Assessment of Shri Purna kanta pegu)

Shri B. Doley had without any legal validity directed his Inspector to cause various enquiries and conduct survey as evident by the mention of the Inspector's survey reports dated 16-6-95, 04-4-96, 16-6-95. The power to survey U/s 133A of the Income-tax Act is not available in the case of salaried income assessees. Even otherwise it is not permissible that surveys be carried out as residetial premises.

Huge estimated additions have been made towards investment in the construction of the residential building, without having given the assessee an inkling of the estimated method of the valuation that he was to do. The very basic right of the assessee to natural justice has been denied, thereby belittling the assessment orders, and causing mental agony to the assessee. Even after the CIT(A) had set-aside as well as deleted the additions made in the assessment, Shri B. Doley, ITO did not given proper effect and still raised a huge tax demand of Rs. 1,00,306/- . To cause further injury and humiliation, he even further proceeded to attach and recover the salary income of the assessee, even though the demand was totally and legally wrong.

All the above acts show vindictiveness, high handedness and improper functioning in the discharge officer official duties and thereby, Shri B. Doley, ITO as willfully contravened Rules 3(1)(i), 3(1)(ii), 3(1)(iii) and 3A(a) of the CCS (conduct) Rules, 1964.

Article - IV (in the assessment of Shri B.C. Pegu)

Here too, Shri B. Doley had abused and over-stepped the power to cause enquiries and conduct surveys, as is evident by the Inspector's reports dated 06-6-95, 12-10-96, 16-01-97. The power to cause survey is not available in case of salaried income assessees. Also it is not permissible to enter residential houses, not to speak taking measurement and to estimate the value of construction.

Even though there were no proceedings under the Income-tax Act as on 06-6-95 against Shri Bhaben Ch. Pegu, yet Shri B. Doley, ITO violated statutory powers under the I.T. Act and required Shri Bhaben Ch. Pegu to furnish details regarding his assets, investments made, an sources of income for several years even since 1965. The violation is evident as there does not appear to be any written communication addressed to Shri Bhaben Ch. Pegu requiring him to do so, nor any mention of the exercise under any particular provision of the I.T. Act. The entire exercise seems to have been verbal, until Shri Bhaben Ch. Pegu was made to submit the details in writing.

Though Shri B. Doley, ITO without much hesitation causes enquiries to be made and surveys to be conducted, yet in issuing simple statutory notice U/s 142(1) he does not apply his mind to delete the inapplicable portions, and therefore, the options/ requirements in the standard form being many, a lot of confusion and incomprehension would have arose in the mind of Shri Bhaben Ch. Pegu on receiving the notice.

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No inkling of the method of estimation to be adopted in the assessment, was given to Shri Bhaben Ch. Pegu and therefore, denying right to proper opportunity and the right to natural justice. This most crucial as huge addition were made raising the huge income-tax demand of Rs. 9,87,196/-.

Shri B. Doley even after having passed the high pitched assessment order started even to transgress upon the statutory jurisdiction of the CIT and CIT(A) by not properly advising the assessee to file revision/appeal, and instead he choose to treat as rectification, and in the process got further occasion to cause further enquiries and surveys. 154

Shri B. Doley, ITO does not re-examine the assessment made by him, and is very quick to use his powers by sending attachment and recovery notices U/s 226(3) of I.T. Act.

In his correspondences with the Branch Manager, United Bank of India, Dhemaji, he calls clarification of matters of several years ago, of which the then incumbent Branch Manager could not have been possibility aware of. The language use in the correspondences is also unbecoming of official communication as is evident in the letter dated 27-6-97.

Shri B. Doley has asked to Shri Bhaben Ch. Pegu to furnish details of his assets and investments some 25 years back even since 1965. This would have been impossible for Shri Bhaben Ch. Pegu. Shri Doley does not hesitate to ask the assessee for details and records of decades together but when it comes to himself he doesn't even bother to find from own office records the available details of only a few years back in order to ascertain his suspicion about the assesses assets. Shri B. Doley did not practice nor exhibits even a fraction of what he a expected others to do

By the above acts of mis-conduct and mis-behaviour Shri B. Doley, ITO had failed to maintained integrity, failed to maintained devotion to duty, acted of an unbecoming of Government servant, in the performance of official duties acted in a discourteous matter, thereby contravening Rules 3(1)(i), (ii), (iii) and 3A(a) of the CCS (Conduct) Rules, 1964.

Article - V

The survey conducted on 01-11-98 was vindictive as a result of the price bargaining that Shri B. Doley, ITO wanted as customer. There was no reason to conduct such a survey. Even the initiation of proceedings by issue of notice U/s 142(1) was unwarranted. This is apparent as eventually the proceedings had to be dropped.

Shri B. Doley, ITO had thus failed to maintain absolute integrity devotion to duty, acted unbecoming of a Government servant, and in the performance of his official duties acted in a discourteous manner, thereby contravening Rules 3(1)(i), (ii), (iii) and 3A(a) of the CCS (conduct) Rules, 1964 in this instant case also.

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ANNEXURE - III

LIST OF DOCUMENTS BY WHICH THE ARTICLE OF CHARGE FRAMED AGAINST SHRI B. DOLEY, INCOME-TAX OFFICER, NORTH LAKHIMPUR (NOW ITO WARD-1, SIVASAGAR) ARE PROPOSED TO BE SUSTAINED.

For all the Articles of charge.

1	Complain of Shri Purna Kanta Pegu dated 19-03-1997	It will prove that the complaint was made by Shri Purna Kanta Pegu and describe the bribe demand of Rs. 10,000, the high-pitched assessment made and also containing other instances of harassment meted out to other tax payers.
2	Order sheet dated 06-6-97 of the attendance of Shri Purna Kanta Pegu before the Addl. CIT, Range-1, Guwahati.	do
3	Complaint dated 10-9--98 of Shri Bhaben Ch. Pegu	Indicates the high handed attitude of Shri Budheswar Doley, ITO, and the demand of bribe of Rs. 1,00,000/- and that since only an amount of Rs. 10,000/- and later on only Rs. 10,000/- was paid and not the entire amount, and therefore, his assessment for the AY 1994-95 was from high pitched raising a huge tax demand.
4	Order sheet dated 26-10-98 of the attendance of Shri Bikash Das before the Addl. CIT, Range-1, Guwahati.	This describes how Shri B. Doley, ITO when he was not given price bargain as a customer, then carried out survey of the shop promises of Shri Bikash Das with vindictive motive.
5	Report of the Addl. CIT, Range-1, Guwahati addressed to the CIT, Shillong F.No. CON-39/Addl.CIT/R-1/95-96/1529 dated August 19th, 1999	In this report, the Addl. CIT is of the view and opinion that Shri B. Doley, ITO has acted vindictive in the cases cited therein.
6	Copy of complain by some Income-tax practitioners of North Lakhimpur sent to the Chairman of CBDT, New Delhi, received on 4th April, 1996.	This will indicate the high handedness and vindictive conduct of Shri B. Doley, ITO.
7	Complaint from the Chamber of Commerce dated 03-4-96 addressed to the Chairman, CBDT, New Delhi	do

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8	Complaint of Income-tax Bar Association, North Lakhimpur dated 16-5-96 addressed to the CIT, Shillong	That Shri B. Doley is harassing by asking irrelevant particulars of assets years long back without quoting any section of the Income-tax Act, and that he is abusing and overstepping the power of survey.

For Article - III (In connection with mis-conduct against Shri Purna Kanta Pegu):

In addition to the state documents as cited above, the following further documents -

9	Assessment order for the AY 1994-95 passed U/s 143(3) on 02-01-97	This will show that Shri B. Doley, ITO had directed his Inspector to conduct a survey on 16-6-95. It will also show in the computation how Shri B. Doley, ITO has simply estimated cost of construction as per his own imagination, without having informing the assessee of his intention to do so, thereby denying the right to natural justice.
10	Survey report of the Inspector (Shri H. Rabha) dated 04-4-96.	This will prove that Shri B. Doley, ITO had directed to his Inspector to conduct survey which is other wise not permissible under Income-tax Act as the Inspector has entered measurements as well as estimated value and also made enquiries from the family members.
11	Survey report of the Inspector (Shri H. Rabha) submitted on 16-6-95.	This report shows that Shri B. Doley, ITO had directed to his Inspector to visit several residential houses and make enquiries. Shri B. Doley, ITO has earmarked on the report itself as "original" place in the survey further U/s 133(1). This shows that Shri B. Doley had also directed to his Inspector to conduct survey U/s 133B which is therefore also illegal as such survey can not be carried out at residential promises.
12	Appellate order of the CIT(A) Appeal No. NLP-5/96-97 dt. 07-01-98	The learned CIT(A) had set aside with directions the estimated addition made on building construction and has deleted the other additions.

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13	Order of Shri B. Doley, ITO U/s 251 dated 28-7-98 giving effect to the appellate order	This order is supposed to give appeal effect to the order of the CIT(A). But it will be seen that though the CIT(A) had set aside with direction to estimated addition made on building construction, amounting to Rs. 1,10,051, yet Shri B. Doley, ITO though he deleted this amount, yet again he added back thereby restoring back his own order and not following the direction of CIT(A). Because of this wrong doing, there still was raised a huge tax demand of Rs. 1,00,306
14	Recovery attachment notice 226(3) of the Income-tax Act dated 27-8-98 issued by Shri B. Doley, ITO and addressed to the Principal, Dhemaji College, Dhemaji.	This recovery attachment notice is unwarranted, as Shri B. Doley did not obey direction of the CIT(A) when giving effect to the appellate order.
15	Letter of Shri Purna Kanta Pegu dated 07-10-98 addressed to Shri B. Doley, ITO.	Through this letter Shri Purna Kanta Pegu brings to notice of Shri B. Doley ITO that he did not given proper effect to the appellate order and therefore Shri Purna Kanta Pegu requested for an appointment for hearing.
16	Letter from the Principal, Dhemaji College, Dhemaji dated 22-10-98 addressed to Shri B. Doley, ITO	In view that the recovery attachment notice sent was wrong, the Principal, Dhemaji College, Dhemaji seeked for clarification from Shri B. Doley, ITO.

Article - IV (In connection with the survey & asstt. in the case of Shri Bhaben Ch. Pegu)

In addition to the documents mentioned earlier above the following further documents.

1	Report of the Inspector (Shri H. Rabha) dated 06-6-95	Reporting that Shri B. C. Pegu has two RCC buildings and also estimating the value of these buildings.
2	Details called for as per 'proforma' dated 07-6-95 filed by Shri B.C. Pegu	As there was no proceedings pending on that date against Shri B. C. Pegu calling of such information was illegal. More over, he was a salaried person.
3	Notice dated 26-7/02/-8-95 issued U/s 142I1) of the I.T. Act by Shri B. Doley, ITO requiring return of income for the AY 1994-95 to be filed by Shri B. C. Pegu.	Shri B. Doley, ITO did not apply his mind while issuing the notice as the irrelevant items in the form were not struck off.

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4	The report of the Inspector (Shri H. Rabha) dt. 12-10-96 regarding his inspection of the building and the residence of Shri B C. Pegu.	This will prove that Shri B. Doley, ITO had directed his Inspector to enter, inspect and take measurements of the let out building and the residence of Shri B. C. Pegu . These directions are illegal as the ITO has no such power to direct.
5	Assessment order dt. 02-12-96 passed U/s 143(3) for the AY 1994-95.	The assessment order starts of with mention of the survey report of the Inspector. This survey is illegal and it appears that Shri B. Doley, ITO has sinister designs that if any eventuality or any complications arose later on he would be in a position to shift the blame to his Inspector. The assessment order also shows that Shri B. Doley ITO, has simply estimated the cost of construction of the building and investment in land, without having regard to even the years in which the investments were made, nor verifying from the past records. It also shows that these aspects of estimating the investments was not made known to Shri B.C. Pegu during the assessment proceedings.
6	Order sheet of the proceedings filed.	Perusal of the notings on the order sheet will show that Shri B. C. Pegu was not made known of the intention to make huge additions in the assessments on estimated and hypothetical cost of construction..
7	Petition of Shri B. C. Pegu dated 29-12-96 addressed to Shri B. Doley, ITO praying for review of IT assessments.	This shows that shri B. C. Pegu was totally unaware and was taken aback by the estimated additions made in the assessment.
8	Letters of Shri Pegu dt. 15-01-97 to Shri B. Doley, ITO.	These letters show that even though the assessment has been over and the subject matter cannot be covered under rectification still Shri Doley, ITO had required the assessee to furnish details in right from 1965.

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9	Report of the Inspector (Shri Raj Kr. Singha) dt. 16-01-97	This shows that the Inspector was directed by Shri Doley, ITO to enter and take measurement of the building belonging to Shri B.C. Pegu, the act of which was illegal.
10	Letter from Shri B. C. Pegu dated 30-01-97 addressed to Shri B. Doley, ITO.	Being taken aback by the huge additions in his assessment, Shri B. C. Pegu as a layman, did his best to convince Shri B. Doley, ITO that the estimation made in the assessment were very high and that major portion of the construction was done since 1969. Shri B. C. Pegu had also enclosed copies of cash memos since those years available with him to press his point.
11	Letter of Shri B. Doley, ITO dt. 31-6-97 addressed to the Branch Manager, UBI, Dhemaji.	The manner and language the respondent used is not proper nor accept of in official communications.
12	Rectification U/s 154 dt. 01-7-97	The contents and the discussion made in the order imply show that Shri B. Doley, ITO has over exceeded what was otherwise legally allowed for rectification under the Income-tax Act, as the matters and enquiries made thereto cannot be considered as being apparent from record.
13	Recovery attachment notice U/s 226(3) of the IT Act, dt. 02-7-98 addressed to the Principal, Dhemaji College.	Even though the assessment order and the rectification order were very biased and high pitched, Shri B. Doley, ITO, proceeded to attach even the salary which was a major source of income of the assessee.
14	Appellate order of the CIT(A) dt. 10-12-98	The learned CIT(A) had observed the high handedness and arbitrary manner of the assessment made. The major issues were set aside for fresh assessments and other issues were deleted.

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Article - V (In connection with the survey conducted on Shri Bikash Das by Shri B. Doley, ITO)

In addition to the documents mentioned earlier above, the following further documents :

1	Resume of the survey prepared by Shri B. Doley, ITO dt. 01-11-96.	The resume does not show any material reason for coducting the survey. Inventory of stock amounted to only Rs.86,114/- and cash found was only Rs.427/-
2	Notice U/s 142(1) of the IT Act dt. 09-01-97 addressed to Shri Bikash Das for the AY 1996-97	Even though the survey has been conducted for no apparent material reasons and with no incriminating finds, still then notice U/s 142(1) was issued calling for return of income to be filed.
3	Letter dt. 28-4-97 of shri Bikas Das addressed to Shri B. Doley, ITO.	In the letter, Shri Bikash Das has stated that he would not be having any taxable income as he had just started the business and even considering sales made he would not be having any taxable income, therefore, praying that proceedings U/s 142(1) be dropped.
4	Order sheet of the survey folder.	There are no reasons recorded as basis for having conducted the survey, and the proceedings initiated U/s 142(1) simply dropped on receipt of the letter from shri Bikas Das who was pressing his point that he would not be having any taxable income.

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ANNEXURE - IV

LIST OF WITHNESSES BY WHOM THE ARTICLES OF CHARGE FRAMED AGAINST SHRI B. DOLEY, INCOME-TAX OFFICER, NORTH LAKHIMPUR (NOW ITO, WARD-1, SIVASAGAR) ARE PROPOSED TO BE SUSTAINED

1	Shri Purna Kanta Pegu, Dhemaji Town, Ward No. 3, P.O. Dhemaji. - 787057 (Assam) Dhemaji College, Dhemaji.	(i) He will prove the complaint dt. 14-3-97 made by him and state the various allegations contained therein. (ii) The various enquiries and surveys made on him. (iii) The high pitched assessment made, and later even though he was granted relief by the CIT(A), yet Shri B. Doley did not give proper effect to the appellate order and instead still raised a huge tax demand, and further also proceeded to attach and recover from his salary income.
2	Shri Bhaben Ch. Pegu, Tonganapara Geen, P.O. Dhemaji. Ex. Principal, Tanganapara, Dhemaji - 787057	(i) he will also corroborate the allegatios made in the complaint of Shri Purna Kanta Pegu as well as his own complaint. (ii) He will also substantiate the various enquiries and surveys made in his case and the high pitched bias assessment order passed by Shri B. Doley, ITO, the attachment and recovery notices and that he eventually get relief only from the order of the CIT(A).
3	Shri Bikas Das, Prop. M/s Beauty Stores, Dhemaji.	(i)He will state how the survey action was conducted by Shri B. Doley, ITO, a few days after the price haggling. (ii) That proceedings U/s 142(1) was also then initiated just to harass.
4	Shri H. Rabha, ITI (then attached to ITO, North Lakhimpur)	He will prove and state of having been directed by Shri B. Doley, ITO to conduct various roving enquiries and surveys.
5	Shri Rajkumar Singha, ITI (then attached to ITO, North Lakhimpur).	do

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6	Shri N.K. Sharma, (Acting Secretary during 1996 Tax Bar Association, North Lakhimpur - 787001)	He will substantiate having written on behalf of the Tax Bar Association to the higher authorities, with a request to look into complaints against Shri B. Doley, ITO
7	Shri I.C. Jain, (Hon. General Secretary during 1996), Chamber of Commerce, North Lakhimpur, Assam.	He will substantiate having written to the higher authorities on behalf of the Chamber of Commerce with request to transfer ShriB. Doley, ITO and to make enquiries into the allegations made.

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ANNEXURE-- 6

F.NO. PER/E-15/2002-03/- 314
OFFICE OF THE INCOME-TAX OFFICER,
WARD-1, SIVASAGAR.

Dated 10th June, 2002.

To
The Commissioner of Income-tax (By name)
Aayakar Bhawan,Thana Road,
Jorhat.

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Sir,

Sub : Charge Sheet

Ref : Your letter F.No.VIG-1/BD/CON/ CIT/JRT/01-02/344 dt.May 15,2002

With humble submission I beg to reply as under for favour of your benign consideration and sympathetic action.

That Sir,the replies are annexure wise and article wise and para wise submitted as below.

ANNEXURE- 1

Article - I

I functioned as I.T.O. North Lakhimpur during 1995-98. I never exceeded and abused any official power and never caused any harassment to any assessee.Of course it is true that while I was at North Lakhimpur many complaints lodged against me by a vested circle who were acting as authority in my predecessor's time and still wanted to keep their hegemony and by some other parties whose cases were sincerely assessed by me.In defence of earlier complaints I wrote a letter to the Adl.CIT, Range -1, Red Cross Building, Guwahatti vide E-1/CON/NL/97-98/ dt.26.05.97 (Copy enclosed). The specific complaints of 1. Sri P.K.Pegu, not yet shown to me.
2. Sri Bikash Das, not yet shown to me.
3. Sri B.C.Pegu, a copy of the complaint was given to me and the same was replied vide my letter F.No.PER/P-15/98-99/02 dt. 11.01.99 (copy enclosed).The respective case records would show my hard labour, sincerity, integrity , and devotion to duty. I never behaved with them unbecoming of a Govt.Servant, all along acted courteously and helped and guided them which I will cite in relevant places.The records would show with reasoning how the assessment became high and high assessment does not mean harassment.

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Article- II

Sri P.K.Pegu's complaint letter is not given to me.I do not know exactly what he complained. If a bribe demand of Rs.10,000/- is the complaint,where did I made it ? It is the only instrument of the bad people to sling mud on a sincere officer who did not bow to them and did not dance to their tunes.Believe me Sir, I never uttered a single paise, it is totally fabricated to malign me and to harass me in revenge.

Sri B.C.Pegu's allegation of Rs.1,00,000/- bribe demand is also a malicious fabrication and my letter F.No.PER/P-15/98-99/02 dt.11.01.99 submitted to Adl.CIT,Dibrugarh is enough to explain the position.He alleged that he refused to pay the bribe and again written that he paid Rs.10,000/- . Where did Sri Pegu paid this Rs.10,000/- and where was the question of paying Rs.10,000/- after refusal.This amply proves that the bribe issue is concocted one.The allegation also talks of Rs.10,000/- paid to Sri H.Rabha, IIT to share with me at the rate of Rs.5,000/-. A man like me can not imagine indulging in such corrupt practices with my subordinate officials. So far I know, Sri H.Rabha,IIT is a sincere official, I do not believe that he had received Rs.10,000/- as bribe in my name. This allegations are totally concocted and malicious, misuse and abuse of freedom of expression.The high pitched assessment was as per records and informations collected. During all the proceedings I maintained absolute integrity,behaved courteously and not acted unbecoming of a Govt. Servant.

Article - III

That Sir, I did not act arbitrarily in the assessment of Sri P.K.Pegu for the A.Y. 1995-96 and there is no evidence of misconduct in the assessment records.The assessment was made as per materials and informations available.

1. At North Lakhimpur Office while I joined in May,1995 there was a bundle of proforma meant for collection of informations on buildings. It had no distinction of residential or commercial buildings and I noticed a number of such proforma survey was already done by my predecessor. I acted as my predecessor and authorised Sri H.Rabha,IIT u/s 133 B to collect informations on buildings with the proforma. That particular proforma is not available with me at present as to see to the legality or illegality.As this sort of survey authorisaton was not done by me first, my predecessor already carried out such surveys and there was no question or objection to such surveys and I also did it as I thought it was a convention of work and legal. In Feb,March 1995 I held the additional charge of ITO CIB cum Survey at Guwahati. We were two ITOs there. We deputed our IITs to collect informations on buildings with such proformae irrespective of commercial and residential buildings. Such information collection on buildings were done by other offices too. Sir, in the context of 1995 such collection of informations on buildings was not illegal. Still Sir,I beg your pardon if I committed a mistake in the process.

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2. That Sir, the survey was not enquiry u/s 133(6) but it was collection of informations on buildings as per the proforma authorised u/s 133 B.

3. That Sir, I had no sinister design or any motive behind drafting the assessment order that my inspector had done the survey. After all the IIT had not done the survey suo-moto but as per my order only,so I can not escape any responsibility.It is also not my nature to let down my subordinates for my fault. Candidly I sumbit that while drafting the assessment order not an iota of such thought as to push the blame to my subordinate came to my mind..

4. That Sir, I did not abuse the power of survey and also not trespassed upon the power to search by directing Sri H.Rabha IIT to take measurement of the plinth area of the buildings. This direction was not a survey nor a search, only an enquiry and collection of more detail informations in the course of assessment proceedings which an A.O. can do as he considers necessary.

5. That Sir, above listed No. 1 reply in Annexure -I should cover this point and once again I sincerely affirm you that there was no intention of abusing the power of survey.

6 That Sir, I made the addition considering the locality, nature of construction, year of construction etc. and I fairly discussed with the assessee about the cost of construction per Sq. Ft. to be taken in the assessment to which the assessee did not agree as to evade tax thereby.

7. That Sir, as the assessee's records are not available and not verifiable,now I do not remember the appeal order and the appeal effect made and by how many days the appeal effect was delayed.But I am sure it was done well in time. I followed all the direction of appeal order. Addition in the building construction said to be set aside. If I made the appeal effect in this point too, I think there was no valid reason to differ the cost of construction and hence the tax demand still existed.

8. That Sir, after the tax demand I issued the attachment notice for realisation of the demand as per the provisions of the laws,not for harassment and humiliation.Threfore, this act of mine should not amount to breach of integrity, non-devotion to duty,unbecoming of Govt.Servant and acting in a discourteous manner.

Article IV

That Sir,while working at North Lakhimpur Office I tried my utmost and diligently and sincerely I made the Office a standard one which was almost in mesh. In the assessment of Sri B.C.Pegu for the A.Y. 1994-95, I did not act arbitrarily and capriciously but all along the assessment proceedings, the assessee was trying to mislead and delude me with the impression that this boy (me) is very easy one and knows nothing. The assessment records should show my sincerity , diligence, devotion to duty.

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1. That Sir, above Article III , No. 1 reply should be sufficient for this point too.Whatever details were asked to be furnished by Sri B.C. Pegu might have been as per the proforma and the proforma is not with me now and I still do not know who devised that proforma and for what purpose if not for collection of informations on buildings.

2. That Sir, I generally ascertain and verify everything from the past IT records but in this case Sri B.C.Pegu never disclosed that he was filing I.T.returns previously. Only after the assessment was over he disclosed that he filed IT returns earlier. All along the assessment proceedings he acted as new assessee keeping me in dark about his earlier records.

3. That Sir, if such omission occurred inadvertently I only crave for forgiveness.

4. That Sir, above Article III , No. 4 reply should be sufficient for this point too.

5. That Sir, I did not make arbitrarily high pitched assessment by simply estimating the cost of construction of the building and did not estimate the cost of land as per whims and fancies. I determined the cost of construction of the building after proper application of my mind as to the locality, nature of construction, year of construction and the land value was determined after proper exercise of my mind and the land prices prevalent at that locality at different times.Sri B.C. Pegu was specifically informed of the cost of construction and the land value I was going to take while assessing his case and he requested to take the cost of construction at Rs.50/- to 60/- per Sq.Ft. which was not acceptable at all.He did not press much for the land valuation. In support of his claim of cost of construction Rs.50/- to 60/- once he brought a cement purchase voucher for 250 bags or so (I do not remember the number of bags exactly) but I still clearly remember the rod purchaser voucher which was for 70 Qt. both purchased from Shillong. He was giving me these two vouchers to keep but I guided him that " you might have brought these two vouchers from your college,generally an individual while constructing a building do not purchase such huge quantities of cements and rods." He understood my point and taken back the vouchers. Sir, I did not deny the assessee to natural justice.If I had the intention to harass him, I would not have guided him,my intention was only quality assessment.

6 That Sir, after the assessment I duly advised the assessee on many occasions that an assessment order is not final but it can be appealed before higher authorities.The assessee was very harsh and adamant that even he shouted at my residence saying that you can do all and everything, I do not want to go anywhere for appeal,you must do etc. Thereafter he also files a rectification petition pointing out some mistakes. On examination I found some apparent mistakes in the assessment which was not debatable, hence I did the rectification.

7 That Sir, rectification proceedings are part of the proceedings for assessment,it can not be termed as separate proceedings,so even at the stage of rectification proceedings , enquiries and gathering of informations may be done.

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8. That Sir, while I deputed Sri R.K.Singha,IIT to take measurement of plinth area of the let out building of the assessee, it was done at the assessment stage for obtaining detailed informations,it was in fact not a survey.

9. That Sir, I had no intention to exceed my power and also I have never exceeded my power by doing the rectification. If mistake is brought to the notice of the A.O. by the assessee, the A.O. can do rectification. In this case there occurred an apparent mistake in the assessment if I remember the assessee pointed out that some land was purchased by his father.

10. That Sir, I once again pray that sending of attachment notice should not be construed as for humiliation and harassment. It was done as per the provisions of laws.

11. That Sir, I do not remember what objectionable words I used in the correspondences with the Branch Manager, UBI,Dhemaji. Sir I sincerely affirm you that I had no intention to do such things

12 That Sir, CIT(A)'S remarks might have been justified if the assessee had earlier informed me that he had filed returns earlier. During all the proceedings the assessee was acting as new assessee and I also treated him as new assessee.Therefore Sir,I did not commit misconduct and misbehavior and did not fail to maintain integrity, did not fail to maintain devotion to duty, not acted unbecoming of a Govt. servant and not acted in a discourteous manner. Instead the assessee was deluding me though time and again I requested him to be fair.

Article V

That Sir, while being at North Lakhimpur,I did not act and initiated proceedings with vindictive manner against Sri Bikash Das.

1. That Sir, I did not know Sri Bikash Das or Beauty Store,not to talk of misusing and doing survey at his shop in a vindictive manner.Though I am a local resident of Dhemaji Town, I am just like outsider as I have been away from Dhemaji since years back and while I stay at home I rarely do shopping. In May,2002 I was on leave at Dhemaji and I visited three shops on three occasions for purchasing coca-cola. The half Lt. bottle coca-cola is priced at Rs.18/- but the shopkeepers asked Rs.20/-.I bargained that it is written only Rs.18/-, so they should charge Rs.18/- only. I bargained and one shop charged Rs. 18/- as per my bargain but the other two shops still charged Rs.19/-.At Dhemaji most of the shop-keepers charge higher then the written price. I do not remember the shops where from I purchased coca-cola and I do not know the Proprie-tors too. If I incidentally now happens to survey one of the shops, should it be justified to tell that I have done the survey in vindi-ctive manner. Sir,I pray that it should not be misconcieved that it is done vindictively. M/s.Beatuy Store was big or small, I had no idea. It is not always so that the survey is done after pre-survey. While

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we came to the spot the look of the shop was good, full of cosmetics and stationery items, who knows there may be more stocks in the back yard or godown. We made the survey approaching politely, not roughly or vindictively. Later I also heard that Sri B.C.Pegu and Sri P.K Pegu motivated Sri Bikash Das to file a complaint.

2. That Sir, if there occurred some omission in issuing the notice u/s 142(1) inadvertently, I crave for forgiveness as often such minor error occur to every human being.

3. That Sir, I did not misuse the power u/s 142(1).After the survey I ought to issue the notice as per provision of the law and so issued the notice.The assessee filed a written submission that so far he had no taxable income and during the survey also I found that his volume of business was not so big, so I thought it fit to drop the further proceedings. Frankly Sir, I had no vindictive motive, if I had vindictive motive, definitely I could pull him on.But Sir, it is Sri Bikash Das who has been vindictively motivated by some people. Therefore Sir, I have not contravened any CCS (Conduct) Rules 1964 as of integrity, devotion to duty, unbecoming of a Govt. servant and not acted discourteously.

ANNEXURE- II

Article- 1

During 1995-98 when I was functioning as ITO North Lakhimpur many complaints filed against me and many complaints already replied too. The complains were from the vested circle who wanted to act as authority over North Lakhimpur office which I did not allow. They filed the complaints in ingenuine manner, partisan way against me as I was undaunted and not dancing to their tunes.

The complaints of Sri P.K.Pegu (Rs.10,000/- demand, the complaint not yet shown to me), of Sri B.C.Pegu (Rs.1,00,000/- demand,Rs.20,000/- bribe paid) are all fabrication as they become offended on my sincere assessment of their black income.

Complaints of Sri Bikash Das is totally concocted and motivated and the complaint of Income-tax Practitioners,North Lakhimpur is ingenuine, vested and partisan.I knew that some Tax Practitioners of North Lakhimpur filed complaints and I also knew that some members did not approve it.Sir, you will find that all the members have not approved the complaints. The complaints of Chambers of Commerce, North Lakhimpur is not known to me but the person Sri I.C.Jain who is stated to be hon. General Secretary of the chamber is well known to me.He is an Income-tax Practitioner who wanted me to bow before them. I do

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not know the other members of the Chambers of Commerce and I had no deal with them. Filing two complaints by two practitioners at the same time in April,1996,amply proves that they conspired and misused the platforms of the I.T.Bar Association and the Chamber of Commerce in a vested way, in a partisan manner. There is none more unfortunate thing if such fake and partisan complaints can make an officer breach of service rules. Sir, I tried my best to keep the dignity of my office.

Article - II

The complaints of Sri P.K.Pegu is totally concocted to malign me being offended at my sincere assessment. I never asked a single paise.

That Sir, I never abused my power, whatever enquiries were made,made in the course of assessment proceedings and which were deemed necessary.Not being misled by the malicious complaints of the assessee, the department should look into my endeavor and sincere efforts engaged in the assessment.

That Sir, Sri B.C.Pegu's allegation of Rs.1,00,000/- bribe demand is also totally false and revengeful being offended at my sincere assessment and not bowing before him.The enquiries were made as I deemed fit and necessary.The bribe demand of Rs.1,00,000/- is so unimaginable and how an educated person also being in the education department so meanly resort to such false tactics- I just wonder !

The allegation of bribe demand is totally false,malicious and revengeful one. In fact Sir,I never asked them a single paise. While dealing with them I never misbehaved them and also I maintained integrity and dignity of my office.

Article III

A proforma was available there at North Lakhimpur office and my predecessor was doing such collection of informations on buildings by these proformae and I also deputed the IIT to collect informations on buildings with these proformae.Subsequent enquiries were not survey but only enquiries at the assessment stage.Plase also refer to Annexure-I Article III, No. 1 reply.

I discussed the cost of construction per Sq.Ft.area with the assessee and he knew the cost I was going to take per Sq.Ft.. In the appeal effect stage too, there was no valid ground to differ the cost of construction and hence the demand still rose. The attachment was as per provisions of law,not to harass or humiliate the assessee.

During all the proceedings I maintained good conduct and behaviour, integrity, decorum and devotion to my duty. I made the assessments with the thought of making it a quality one and for the benefit of the department.

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Article IV

That Sir, please refer to Annexure-I, Article-III No.1 reply.The subsequent enquiries were not survey, only enquiries in the assessment stage. In the assessment stage I deputed my IIT to take the exact plinth area of the building which I deemed necessary.

I did not ask Sri B.C. Pegu to furnish his assets,investments, sources of income since 1965 forcefully. So far I remember at the time of survey by the IIT with the proforma, Sri Pegu could not give some details and he submitted some additional particulars on a later date, may be he had submitted the above things suo-moto this time which I did not ask for. I never asked any thing to furnish by Sri B.C.Pegu before the assessment proceeding started.

Sir, for this para reply, please refer to annexure I Article V No. 2 reply.

That Sir, I discussed the method of estimation with the assessee and was given natural justice.

That Sir, I advised the assessee on many occasions but he was rude and rough and adamant. Please also refer to Annexure -I Article IV, No. 6 reply.

That Sir, the issue of notice u/s 226(3) was not done very quickly but after allowing of a reasonable time.

Sir, for this para please refer to Annexure I Article IV, No.11 reply.

That Sir, I never imposed or enforced Sri B.C.Pegu to furnish informations details of years together. I fairly discussed with him if this and that could be furnished by him, when he said he could, then only I asked him to furnish. Once in the course of hearing I asked him about the plot of his Guwahati land which he said that he had sold to a party from Narayanpur. I asked him to furnish the purchase and sale deeds. But he told me his inability to produce them saying that he had no copies of that. He also told me that the deal prices were not high enough. I did not believe him because Guwahati land price is always high and perhaps he was still deluding me and he might have even not sold the land.Still I did not press him for production of the papers. If I were vindictive and if I had the intention to harass him, I could press him for the particulars of Guwahati land deal. Coming to the verification of his I.T.records,I repeat that he was acting as new assessee till the assessment was over,so there was no scope on my part to verify his old records.

During all this assessment proceedings I was thinking of doing a quality assessment,I maintained integrity, devoted to my duty and did not misbehave the assessee and did not act discourteously.

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Article V

That Sir, sincerely I do affirm that the survey conducted at M/s.Beauty Store was not vindictive. Please also refer to Annexure I, Article V, No. 1 and No. 3 reply .

Sir, I never failed to maintain absolute integrity, devotion to duty, never acted as unbecoming of a Govt. Servant and in performance of my official duties never acted in a discourteous manner.

EXTRA SUBMISSION

Sir, while the department is questioning my integrity, devotion to duty and harassment and agony of the assessee, at the same time may I request the department to look into the credibility, back-ground and motive behind of the complainants. How an assessee can mis-use and abuse the freedom of expression by framing some frivolous and malicious allegations causing surprise and anguish to the officer.That time both the pegus were posing themselves as leaders of a political party.Many youths verbally alleged before me that these two Pegus were receiving bribe in thousands in the name of giving Govt.jobs to the unemployed youths. I asked them to file complaints in writing but none filed complaint letter saying that they were afraid of them.I felt it a moral duty on my part as a taxman to look into their assessment and I sincerely discharged my duty while assessing them with much labour and devotion and I naturally expected praise from my higher autho-rities for such assessment. Where I have never asked for a single paise, I have been maligned to have demanded a huge bribe of Rs.1,00,000/- and of Rs.10,000/-.Sir, I really put my sincerity, energy and devotion in assessing these cases and the demands came up as per the materials and informations collected and reasoning applied.

That Sir,I do not know the complaints of Sri P.K.Pegu in details as I have not been given a copy of the complaint.If Sri P.K.Pegu and Sri B.C.Pegu both not conspired how is it possible to corroborate the complaints of Sri P.K.Pegu by Sri B.C.Pegu as Sri P.K. Pegu's proceedings were done separately and not done keeping Sri B.C.Pegu as witness.This confirms that both they conspired against me being offended as I did not bow before them.

That Sir, Sri B.C.Pegu's complaint dated 10.09.1998 addressed to CIT,Guwahati, a copy is with me. As alleged that I made high-pitched assessment because the assessee did not concede to my bribe demand. If analysed properly , the second paragraph of the complaint letter itself proves that the allegations are all concocted one to malign me revengefully as the bribe demand issue came up in the month of January,1997 and February 1997 which are latter than the date of high-pitched assessment. If my aim was to ask for bribe I could well press the assessee before the passing of assessment. Before the assessment was passed, the assessee appeared before me

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several times. What debarred me to ask him the bribe in so many appearances? Moerover Sir, can a prudent and logical man imagine to demand bribe in front of a third person, in this case his wife ? This complaint itself proves it to be illogical and fabricated. In fact Sir, I did not meet his wife, Sri Pegu only met me at the godown.For details, please refer to F.No.PER/P-15/98-99/02 dt.11.01.99. (copy of the letter enclosed).

That Sir, when Sri B.C.Pegu came to my residence alongwith the assessment order admitted before me that he had shown the assessment order to his Tax Consultant and the Tax Consultant inform him that the assessment was very rigid and high standard one, it was only the ITO if he could help him.Therefore Sri Pegu insisted me to get the assessment order destroyed and make an assessment order afresh raising a demand of Rs.50,000/- only. First he was ready to offer me Rs.40,000/- for doing this and then the offer went up to Rs.60,000/-, still I refused him saying that destroying assessment order was a crime and I also informed him that if I had to destroy the assessment order, I had to destroy many other records which my conscience did not permit me at any cost. He desperately tried me to persuade and get all the relevant records destroyed and when he failed to persuade me he even became furious and shouted at me. It is surprising that the rigid and high standard assessmet has how become vindictive one now.

Sir, I received your letter F.No. VIG-1/BD/CON/CIT/JRT/01-02/344 dt. 15th May, 2002 only on 06.06.2002.

Sir, from the above clarifications and the enclosed copies of the earlier replies, you may well judge that there was a vested circle behind all these complaints and all the complaints being motivated ones. Whatever I did at North Lakhimpur was all for the benefit of the department not subduing myself under any pressure. Therefore Sir,I implore before your benign authority and generosity to drop the proceedings as fabricated and malicious one and relieve me from unnecessary anguish.Sir, I am ready to appear before you any time ,you call me.

I remain , Sir.

Yours faithfully

19/6/02

(B.Doley)
Income-tax Officer,
Ward-1
Sivasagar.

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Encls: 1. F.No. Per/P-15/98-99/02 dt 11-01-99
2. E-1/CON/NL/02-98 - 26-Feb-97.

ANNEXURE-- 7

भारत सरकार Govt of India
वित्त मंत्रालय Ministry of Finance
राजस्व विभाग Department of Revenue
आयकर आयुक्त का कार्यालय **Office of the Commissioner of Income-tax**
आयकर भवन, थाना रोड, Aayakar Bhawan,Thana Road,
जोरहाट, ७८५ ००१ Jorhat 785 001

दूरभाष/Ph
०३७६-२३२१६६२
0376-2321662
Fax/फैक्स
०३७६-२३२१६६२
0376-2321662

CONFIDENTIAL

File No:-VIG-1/CON/CIT/JRT/2003-04/2541 /Dated Jorhat the 11th Dec.,2003

To,
Shri B. Doley,
Income-Tax Officer,
Ward-1, Sivasagar

Sub:- Vigilence Inspection- Shri B. Doley, ITO, Ward-North Lakhmpur
Remedial Action- Matter Regarding

Please refer to the above.

I am directed to serve the copy of Vigilence Inspection Report on you. Please acknowledge the receipt of the same.

I am also directed to inform you that you may furnish your version on the Inspection Report within 21 days of service of the same.

I am also directed to inform you that no inspection of the record will be allowed to you, as per the Vigilence Manual.

You are hereby requested to show cause why necessary action in respect of different lapses mentioned in the Report , will not be taken against you ?

Your reply in this respect is requested within 21 (Twenty one) days for the date of the receipt of this letter, without fail.

Enclo:-Vigilence Inspection Report
In original (One set)

(S. C. DUTTA),
Assistant Commissioner of Income-Tax(Hqrs),
For Commissioner of Income-Tax,
Jorhat

05-12-2003

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VIGILANCE INSPECTION IN CASE OF SHRI B. DOLEY, ITO, WARD - NORTH LAKHIMPUR, F. NO.DIT(V)/E/KOL.COM-3/2001-02

In case of Shri B. Doley, ITO, Shivasagar, Ward-1, major penalty proceedings were initiated at the advice of CVC. While giving the said advice the CVC further suggested to carry out Vigilance Inspection in his case on sample basis. At that point of time the Officer was posted as ITO, Ward-North Lakhimpur. Therefore, assessment records have been obtained from the Officer on a sample basis through the ACIT(Vig), Guwahati.

2. The files have been examined and the detailed observation is enumerated below :-

1)	Assessee	:	M/s. Gupta Brothers ,
	PAN/GIR No.	:	G-326/NL
	Assessment year	:	1994-95
	Status	:	Registered Firm
	Date of order	:	26.03.1998 u/s. 143(3)
	Nature of Business:		Dealings in clothes, medicine and fisheries

On going through the Assessment record, it was found that the assessee did not file the Return of Income for the assessment year 1994-95. The AO issued notice u/s.148 on 27.09.1996 directing the assessee to file the Return by 26.10.1996. But the assessee did not file the Return within the stipulated date. The A.O then extended the time for furnishing the Return upto 09.12.1996. On 10.12.1996 the AR of the assessee requested for further extension of two weeks as his client was out of station. Still the Assessee did not file the Return within the extended time.

Since the assessee did not file the Return of income, the A.O started assessment proceedings by issuing notice u/s 142(1) on 02.01.1997 fixing the hearing on 28.01.1997. But none appeared on that date. The A.O refixed the hearing on 18.02.1997 and again on 17.06.1997. On 17.06.1997 the AR applied for adjournment upto March, 1998. On 16.03.1998 the assessee filed the Return showing loss of Rs.1,237.50. The A.O heard the case on 16.3.1998 when the AR of the Assessee was present.

From the Assessment record, it was found that the assessee firm was engaged in different types of Businesses like Pharmaceutical shop, Garments viz. (M/s. Ananda Medical Hall, Modern Dresses, R K Pharma,) and Fisheries for which separate Profit & Loss A/cs and Balance Sheets were prepared and filed along with the Return.

In the Profit & Loss Account of M/s. Ananda Medical Hall, he disclosed

Turn over	Rs.2,25,370/-
Purchase	Rs.1,90,950/-
Interest and bank Charges	Rs. 2,636/-
Salary	Rs. 8,000/-
Travelling	Rs. 1,215/-
Dokan Khorcha	Rs. 5,937/-

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Depreciation	Rs. 4,374/-
Gross Profit	Rs. 46,092/-
Net Profit	Rs. 22,037/-.

The combined *Profit & Loss account in respect of all business was as follows:*

Net Profit from Ananda Medical Hall	Rs.22,037/-
Net Profit from Modern Dresses	Rs.17,367/-
Net Profit from R.K.Pharma	Rs.18,932/-
Net Profit from Fisheries	Rs. 6,642/-
Salary to partners	Rs.20,400/-
Interest on capital	Rs.45,816/-
Net Loss	Rs. 1,240/-

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As per the order-sheet entry, the A/R of the assessee produced a ledger & Cash Book in respect of R.K.Pharma, which were checked with regard to purchase vouchers & sale bills in respect of pharmacy business produced. In respect of other businesses no books of accounts had be maintained.

Assessment u/s.143(3) order was passed on 26.03.1998. As the assessee could not produ any Books of Accounts regarding his other business, AO had rejected the estimated figures furnish and he added Rs.2,000/- to the income of the assessee. As a result total assessed income beco Rs.760/-.

Observation : (i) No action was taken for non -compliance or non-filing of the return by assessee.

(ii) The AO also processed the Return of Income for the AY 1996-97, but there was no trac either furnishing or processing of Return of Income for the AY 1995-96 and also no proof of ra any query was found.

(iii) No sale, purchase, closing stock was verified. Since the assessee could produce book accounts for only one part of his business, it was necessary to verify the sale and purchase thorou But no step was taken by the AO.

(iv) The AO did not even verify the bank pass books and neither any copy of those were k the assessment record, nor the account number or the branch of the bank for further verific Therefore, even the regular aspects of scrutiny assessment had been ignored.

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2) Assessee : Mahavir Transport Company
PAN/GIR NO. : M-330/NL
Assessment Year : 1995-96
Status : Company
Date of Order : 29.9.1997
Nature of Business: Transport Business

The assessee filed the Return of Income on 30.10.1995 declaring a total income of Rs.4,8

In the Profit & Loss Account, the assessee disclosed income as follows:

Haulage Charges received from IOC Ltd.
Against own tankers Rs.25,61,367/-
Against hired tankers Rs.21,79,220/-

Major heads of Expenditure are as follows:

Salary and other direct expences against own tankers Rs.23,19,600/-
Hire Charges against other tankers Rs.20,04,882/-
salary Rs.49,890/-
Telephone Expences Rs.35,227/-
Interest to partners Rs.83,824/-
Interest to Loan creditors Rs.1,28,281/-
Remuneration to partners Rs.44,032/-

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The assessee filed two TDS Certificates along with Return which are as follows:

Issuing Company	Gross Amount	TDS	Net Amount
Indian Oil Co, Noonmati	Rs.45,68,752/-	Rs.93,936/-	Rs.44,74,816/-
Indian Oil Co. Noonmati	Rs. 1,71,498/-	Rs. 3,430/-	Rs. 1,68,068/-
	Rs. 4,245/-	Rs. 85/-	Rs. 4,160/-
	Rs. 9,889/-	Rs. 198/-	Rs. 9,691/-

The assessee again submitted one TDS Certificate on 13.06.1996, showing the followi details :-

Indian Oil Co., Dhaligaon	Rs.2,630/-	Rs.53/-	Rs.2,577/-
	Rs.97,902/-	Rs.1,958/-	Rs.95,944/-
	Rs.25,398/-	Rs.508/-	Rs. 24,890/-
	Rs.58,480/-	Rs.1,170/-	Rs.57,310/-
	Rs.1,51,334/-	Rs.3027/-	Rs.1,48,307/-
	Rs.58,480/-	Rs.1,170/-	Rs.57,310/-
	Rs.1,65,043/-	Rs.3,301/-	Rs.1,61,742/-

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The processing u/s143(1)(a) was done on 14.06.1996 at an income of Rs.4,890/- raising refu Rs.1,06,880/-. Both of the copies of intimation u/s.143(1)(a) are in the assessment folder. The was selected for scrutiny and notices u/s.142(1) & 143(3) were issued on 17.6.1996.

Assessment u/s. 143(3) was done on 29.09.1997, an addition of Rs.20,000/- was mad account of excess expenditure claimed as running and maintenance charges. In the assessment o the ITO mentioned that expenditures were not fully supported by vouchers. At the time of proce u/s. 143(1)(a) as well as in the assessment order u/s.143(3) the AO considered one TDS Certifi submitted after filing of the Return and allowed the TDS without considering the income show that certificate.

No details, so far as the expenses incurred on tanker maintenance and tanker hire, B Statement, Reconciliation Statement for other expenditure, was obtained. The assessee shown to h paid Tanker Hire Charge of Rs.20,04,882/-, but no tax was found to have been deducted. From Tax Audit Report it may be found that the assessee deducted TDS (nature not mentioned), but particulars of payment to the Government Account and date were left blank. In the Balance Sheet the assessee the same was shown outstanding.

On assessed income of Rs.24,892/- a tax of Rs.9,956/- was raised which was adjusted w refund of Rs.1,08,836/-. A refund of Rs.98,880/- along with interest u/s. 244A of Rs.29,628/- w issued on 27.10.1997.

Observation : In the assessment order u/s.143(3) the AO has given credit to all the three TI Certificates, as a result of which a total refund of Rs.1,08,836/- was allowed. But from these thr Certificates, the Gross Receipt comes to Rs.53,13,651/-. But the assessee disclosed only a sum Rs.47,40,587/-. As a result, loss of revenue by way of under assessment of Rs.5,62,064/- and und charge of tax of Rs.2,29,229/- + refund allowed to the assessee as well as interest payable by th Assessee.

The date of deposit of the TDS was not verified and no consequential action was taken. In th Order Sheet noting, dated 26.08.1996 the AO mentioned *"They produced a Bank Pass book an three Bank Statements for verification which were verified and found correct."* This observation o the AO is not found to be correct, because the total receipt during the year was found more than the assessee disclosed in the Profit & Loss Account. On proper verification of the Bank account the AO could have noticed the same.

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Assessee	:	M/s. Dutta Mettal Stores
PAN/GIR NO.	:	D-338/NL
Assessment Year	:	1996-97
Status	:	Registered Firm
Date of Order	:	27.11.1997
Nature of Business:		Dealing in utensils

The Return of Income was filed on 25.03.1997 at a loss of Rs.13,200/-. The ITO selected t case for scrutiny with Order Sheet noting dated 26.05.1997 as " Case falls random scrutiny". In t Profit & Loss Account, the major source of income and expenditure of the Assessee were as follows

Income

Sales	Rs. 7,30,722/-

Expenditure

Purchase	Rs.6,53,871/-
Sales Tax	Rs. 38,006/-
Interest to Partners	Rs. 62,928/-

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Processing u/s.143(1)(a) was done on 23.5.1997 at the same loss.

There are only two partners, Shri Sambhunath Dutta and Shri Krishna Dutta.

The case was selected for scrutiny by issuing Notice u/s. 143(2) and 142(1) on 26.05.1997. As pe the order sheet entry on 12.06.1997 the AR of the Assessee produced Books of Accounts which wer examined partially and Purchase Vouchers with respect to the Ledger were also checked. O 21.08.1997 Sales Tax Challans, P T challans were produced and verified. The Assessing Officer als directed the AR to produce the Bank Statements. But the Assessee did not produce the same as ther was minimum balance in the account and there was no transaction for the preceding one year.

But on verification of the case records it is found that the cash balances in the account were a under :-

31.03.1994	Rs.1,111.67
31.03.1995	Rs.1,382.57
31.03.1996	Bank Account not appeared in the Balance Sheet
31.03.1997	Rs.1,346.15

It means the Assessee was operating the Bank Accounts continuously. It was necessary to verify the Bank Statement vis-a-vis the Books of Accounts which the Assessee carefully avoided.

The AO, during the course of verification, found that there was difference in Sales Tax payment of Rs.3,387/- which was disallowed during the course of assessment and Net Loss reduced to Rs.9,814/-. No verification of Purchase and Sale was made. No details of Closing Stock like stock

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inventory, month-wise sale & purchase was obtained. The assessee was filing loss return almost in every year. The reason for such loss was a subject matter of verification, but no attempt was made. No information as to the other activities of the partners was obtained. The Drawings shown by the Partners were only Rs.3,600/-. Whether the amount was sufficient to meet their household expenditure was not verified.

Observation : From the facts above it is clear that no attempt was made by the AO to assessee the actual income of the Assessee. Rather he has accepted the Return without any verification. The purpose of scrutiny was not served at all.

4) Assessee : M/s. Loknath Dresses
PAN/GIR NO. : L-603/NL
Assessment Year : 1996-97
Status : A O P
Date of Order : 19.08.1997
Nature of Business: Dealing in clothes

This is a Random Scrutiny case. The assessee filed the Return of Income on 14.03.1997 showing profit of Rs.40,760/-. Along with the Return of income, he furnished Profit & Loss Account, Balance Sheet and Members' Capital Accounts. In the Profit & Loss Account the major sources of incomes and expenditures are as follows:-

Income	
Sales	Rs.8,75,500/-
Expenditure	
Purchase	Rs.9,45,700/-
Salary	Rs. 11,000/-
Shop Rent	Rs. 8,800/-
General Expenses	Rs. 8,800/-

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Processing u/s.143(1)(a) was done on 12.5.1997 at the same income raising 'Nil' demand. It appears that it is the first year of the business activities of the AOP consists of two members.

During the Assessment proceedings the AR of the Assessee stated that the members of the AOP doing cloth business in weekly markets. They jointly opened the shop contributing the capital of Rs.80,915/- and Rs.64,935/- respectively in addition to stock of Rs.80,320/- and Rs.95,400/- respectively. In course of assessment proceedings the AR of the Assessee only filed Capital Account, Balance Sheet and Computation of Income of both the members of the AOP but there is no evidence of record to show that these were filed along with their Return. It is found from these computation

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that their income was below taxable limit. From the Order Sheet entry it appears that no Books Accounts were maintained by the AOP.

In the absence of books of accounts, the AO estimated income of the Assessee to Rs.42,000/- instead of Rs.40,760/-. As the Assessee was required to maintain books of accour u/s.44AA, the AO initiated Penalty proceedings u/s. 271A, read with Section 274, which w subsequently dropped on receipt of an explanation from the Assessee.

Since it was the first year of the business of the Assessee, it was necessary to obtain the deta of stock contributed by the members as a part of Opening Capital, its valuation, inventory of tl Closing Stock, Source of Cash contributed by the members as Initial Capital, details of sale an purchase. But no such attempt was made.

Observation : The Assessee stated to have maintained no books of accounts. The AO also did n try to check out whether he really maintains books of accounts. Only after one hearing,s he completed th assessment much before the end of time-barring period. The AO did not even inquired how he had estimate the total turnover, expenditure, Gross Profit as well as Net Profit from the business. Since the time-barrin period ends on 31.03.1999, therefore, the AO was in no such hurry in completion of the assessmen In the haste he even ignored the regular aspect of scrutiny assessment. The purpose of scrutiny wa not served in this case.

5)	Assessee	:	M/s. Laxminarayan Agarwalla & Sons Banderdewa, Arunachal Pradesh.
	PAN/GIR NO.	:	L-303/NL
	Assessment Year	:	1995-96
	Status	:	HUF(Specified)
	Date of Asst. Order	:	22.10.1997 u/s.144
	Nature of Business	:	Miscellaneous trading

The Assessee furnished Return of Income on 31.03.1997. Along with the Return of Income, he furnished only the computation of income. No Balance Sheet and Profit & Loss Account was found. But in the computation of income, the assessee has shown the Short Term Capital Gain, "As per Account". The major heads of income are as follows :-

Business Income	Rs.13,442/-
Capital Gain (Net)	Rs. 3,987/-
Income from Other Sources	Rs. 1,190/-

Processing u/s.143(1)(a) was done on 23.5.1997 at an income of Rs.18,620/- raising 'Nil' demand. The case was selected for scrutiny on random basis as found from the Order sheet notings and Notices u/s.143(2) and 142(1) were issued on 26.05.1997. But during the course of assessment proceedings, there was no compliance on the part of the assessee. Therefore, the AO completed the

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assessment u/s.144 after providing three more opportunities of being heard. In absence of the de of various income, the AO estimated the business income of Rs.15,000/- against disclosed incom Rs.13,442/-, Short term Capital Gain Rs.3,987/- and Interest & other income Rs.1,190/-, thus income of the assessee becomes to be Rs.20,180/-.

Observation : It is a unique case where the assessee has shown sheer disregard to Department. The address mentioned in all the Returns for different years available in the file apr to be incomplete. Though the assessee has shown his address in Arunachal Pradesh, but while sig the Return for Assessment Year 1995-96 & 1996-97, he has mentioned the address at N Lakhimpur. The Advance Tax Challan also suggests that the Advance Tax was paid at Dibrugarh.

The very basis of the Computation of Income was not furnished. The notices as well a re-fixation letters were duly served on the assessee. But there was no scope for the AO to make fu verification in absence of any details. But there was a scope for taking action for the delay in filin Return as well as for the non-compliance. But the AO did not take any such action and no basi estimation of the business income at Rs.15,000/- was given in the Assessment order. The Ass had further claimed deduction on agricultural income which was allowed. But no reason furnished against such claim.

Of course, there were difficulties for making proper investigation due to the geograp location and various disturbances in that area. But the very purpose of making scrutiny in the cas not served.

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6) Assessee : Shri Banshilal Lahoti (HUF)
PAN/GIR NO.: B-208/NL
Assessment Year : 1996-97
Status : HUF
Date of Order : 30.6.1997

The assessee filed the Return of income on 30.01.1997 declaring a total incor Rs.27,040/-.In the Return of Income assessee disclosed income from the following sources.

(i)	Interest received from Maheswari Trading	Rs.34,346/-
(ii)	Interest received from IVP	Rs.11,107/-
(iii)	Accrued Interest on KVP	Rs. 900/-
(iv)	Interest received from IVP	Rs. 1,857/-
(v)	Interest received from Fixed Deposit	Rs. 301/-
(vi)	Interest received from SBBJ (Savings Account)	Rs. 14/-

He also claimed to have paid interest to

(i)	Shri Bhagirath Baheti	Rs,19,817/-
(ii)	Shri Banshilal Lahoti (Indv)	Rs. 1,260/-

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The Return was processed u/s. 143(1)(a) on 05.3.1997 at the same income.

The AO heard the case on 06.05.1997 when the AR of the assessee appeared but without Books of Accounts. The AR produced Loan Confirmation of Bhagirath Baheti. The AO asked the AR to produce the Savings Bank Pass Books by 20.06.1997. On 20.06.1997 the particulars were discussed and bank pass books verified. The Assessment u/s.143(3) was made on 30.06.1997 at an income of Rs.27,040/- as disclosed by the assessee with Nil demand.

Observation : It is the first time the case was scrutinized. But no information was obtained regarding the whereabouts of co-personers of the HUF, the nature of their actual business, copy of the Bank Statement. The AO even failed to obtain the Bank Account Number and address of its Branch. Apparently, all the activities of the assessee was carried out in Rajasthan. But no details were obtained. No purpose of scrutiny was served.

In the Balance Sheet as on 31.03.1995, it is found that balance with Maheswari Trading Company was Rs.2,65,348/- and as on 31.03.1996 the balance was Rs.3,63,694/-. During the year the assessee gave Maheswari Trading co. Rs.10000/- on 15.12.1995, Rs.10000/- on 08.01.1996 and Rs.64,000/- on 22.01.1996. Out of these amount only Rs.20000/- was repaid on 26.3.1996. No query was raised as to how the transactions were made.

Though the AO claimed to have verified the bank pass books but no copy of those was kept in the assessment record, neither the account number nor the branch of the bank for further verification. Therefore, even the regular aspects of scrutiny assessment had been ignored.

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7)

Assessee	:	Malchand Maheshwari
PAN/GIR No.	:	M-221/NL
Assessment year	:	1995-96
Status	:	HUF(Specified)
Date of order	:	30.09.1997
Nature of Business:		Dealing in mustard seeds

The Assessee filed the Return of Income on 31.03.1997 at an income of Rs.18,330/-. Along with the Return of income, he furnished Income & Expenditure Account, Balance Sheet and Computation of Taxable Income. In the Income and Expenditure Account, the Assessee disclosed the major sources of income as follows:-

Income from M. Seeds business	*Rs. 4,100/-*
Interest on Deposits	*Rs.14,230/-*

No processing u/s.143(1)(a) seems to have done in this case as there is neither any intimation nor any entry in the order sheet was made in this regard.

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During the assessment proceedings, the AR of the Assessee stated that the HUF consists of three members, Shri Malchand Maheshwari, his wife and his son Shri Joy Dayal Bihani. The HUF earned income from Mustard seeds business and interest on deposit. The AO verified the deposits with Shri Malchand Maheshwari and Shri Durga Pd. Bihani from their respective folders.

The AO accepted the income from the business (Rs.4,100/-) as it was 15% above the Gross Sales. The AO considered the Drawing shown by the Assessee is very low. Therefore, he added Rs.5,00/- on this account.

Observation : The Assessee stated to have maintained no books of accounts. The AO also did not try to find out as to how the Assessee arrived at the income disclosed. Only after one date of hearing he completed the assessment much before the end of time-barring period. The AO did not even inquired how he had estimated the total turnover, expenditure, Gross Profit as well as Net Profit from the business. No particulars in respect of the Bank Account was obtained. In absence of such basic information the purpose of scrutiny assessment was not served.

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8)

Assessee	:	M/s. Indar Chand Jain & Sons
PAN/GIR No.	:	I-2/NL
Assessment year	:	1995-96
Status	:	HUF (Specified)
Date of order	:	30.06.1997
Nature of Business:		Dealing in local products.

This is a random scrutiny case. The assessee filed the Return of Income on 31.03.1997 at an income of Rs.18,470/-. Along with the Return of income, he furnished Computation of Income, Capital Account and Balance Sheet as on 31.03.1995. In the computation of income the Assessee showed total sales of Rs.2,25,000/-. He estimated Gross Profit @ 15% which comes to Rs.33,750/-. From Gross Profit he deducted business expenses of Rs.15,280/- and deduced Net Profit to be Rs.18,470/-. Processing u/s. 143(1)(a) was done on 02.006.1997 at the same income raising 'Nil' demand.

The case was selected for scrutiny by issuing Notices u/s. 143(2) and 142(1) was on 02.06.1997. The Karta of the HUF appeared without books of accounts and stated that the HUF is carrying a local product business of paddy through employee. There is no Books of accounts and the profit is prudently estimated. The AO, in absence of Books of accounts, estimated the income of the Assessee to be Rs.19,000/-.

Observation : The assessee did not maintain any books of accounts, but has claimed total sale of Rs.2,25,000/-. The question is how the assessee could arrive at the sale figure without the cost of goods sold. The AO, in his order mentioned that the Karta had stated that the profit was prudently

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estimated. All the things appear to be very superfluous when the AO estimated the total income a Rs.19,000/- as against disclosed income of Rs.18,470/-. The Karta stated that they are doing th business of local products through some employees against whom they have also claimed certai expenditure. But the AO should have inquired about the nature of those expenditure.

The AO was in no such hurry in completion of the assessment. In the haste he even ignored the regular aspect of scrutiny assessment.

9)

Assessee	:	Shri Tankeshwar Dutta
PAN/GIR No.	:	T-1006/NL
Assessment year	:	1996-97
Status	:	Individual
Date of order	:	12.02.1998
Nature of Business:		Dealing in clothes.

The assessee filed the Return of Income on 14.03.1997 showing income of Rs.40,214/-. Along with the Return of income, he furnished Computation of Income, Trading and Profit & Loss Account and Balance Sheet as on 31.03.1996. In the Return of Income he disclosed --

Income	
Sales	Rs.10,42,615/-
Bank interest.	Rs. 2,832/-
Expenditure	
Purchase	Rs.9,75,214/-
Staff Salaries	Rs. 16,800/-
Rent	Rs. 17,652/-
Travelling Expenses	Rs. 10,614/-
Shop Expenses	Rs. 9,948/-
Interest	Rs. 7,783/-

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This is a random scrutiny case. Processing u/s.143(1)(a) was done on 23.5.1997 at an income of 43,050/- raising 'Nil' demand. The case was selected for scrutiny by issuing Notices u/s. 143(2) and 142(1) on 26.05.1997. In course of assessment proceedings the AR of the assessee produced Books of accounts except Sale Bills. The Assessee was engaged in cloth business. During the course of the Assessment proceedings it was revealed that the Assessee maintained no Cash Memo in respect of sales in regular basis. The AO, in absence of Bills & Vouchers rejected the sales figures of the assessee and added Rs.2,000/- to Net Profit of the income from Business of the Assessee. Though the loans of the Assessee have been continuing since 1994-95, the Assessee has never produced any confirmation. There was no compliance in respect of loan creditors. Therefore, he added Rs.59,668/- as income of the Assessee from sources undisclosed. Thus total income of the Assessee assessed to be

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Rs.1,01,878/-. No information regarding the Bank Account, Bank Statement, Purchase & Sale were obtained as evident from the Assessment records.

From the Order Sheet entry it is found that subsequent to the original assessment the Assessee filed an application u/s.154. The order u/s. 143(3) was then rectified u/s. 154. But no such application and the order u/s. 154 is available on record.

Observation : Neither the AO has asked to produce the Bank Account of the Assessee and nor he ever intended to make any verification in this regard. Since the time-barring period ends on 31.03.1999, therefore, the AO was in hurry in completion of the assessment. In the haste he even ignored the regular aspect of scrutiny assessment.

An amount of Rs.59,668/- was added as Bogus Loan Creditors, but no Penalty Proceedings were initiated.

10) Assessee : Shri Sushil Kumar Agarwala
PAN/GIR No. : S-1959/NL
Assessment year : 1994-95 (both original and reassessment)
Status : Individual
Date of order : 27.08.1996 & 25.03.1998
Nature of Business: Dealings in Motor parts and machinery.

The assessee filed the Return of Income for the first time on 05.03.1996 showing income a Rs.33,310/-. This is the first Return of the assessee. Along with the Return, he furnished Tradin account & Balance Sheet for the financial years 1990-91,1991-92, 1992-93 & 1993-94 The turnover Net profit, the Drawings for different years were shown as follows:

Asst. Yr	Turnover	Net Profit	Drawing
1991-92	Rs.2,08,500/-	Rs.23,840/-,	Rs.7800
1992-93	Rs.2,17,500/-	Rs.24,670/	Rs.8200
1993-94	Rs.2,92,750/	Rs.26,762/-	Rs.6200
1994-95	Rs.3,15,800/-	Rs.33,310/-.	Rs.10380

The drawing was inclusive of Yearly premium of LIC of Rs.3,149.40.

In the balance sheet for the Assessment Year 1993-94, he had disclosed Cash at Bank (Centr Bank of India) as under --

1993-94 : Rs.37,799.00
1994-95 : Rs.37,779.21

In the Return, he had disclosed income from two sources, i) profit from business & ii) Ban Interest. The Return was processed on 25.09.1996 at the same income. The case was selected for

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scrutiny on random basis. The AO issued Notice u/s.142(1) and 143(2) on 25.04.1996 fixing hearing on 16.05.1996. But none appeared on that date. The AO refixed the hearing on 02.07.1996 and again on 30.07.1996. Since none appeared the AO completed assessment u/s144. During the assessment he made additions on two grounds.

(i) The assessee disclosed Net Profit of Rs.33,310/-. Since the same was not verifiable, the AO estimated the Net Profit of the assessee to be Rs.36,000/-.

(ii) The assessee has shown personal drawings of Rs.10,380/- but the AO estimated it should be Rs.15,000/- and therefore, added Rs.4,620/- to the income of the assessee.

The AO determined the total income of the assessee at Rs.40,620/-.

The assessee went to Appeal against the Assessment Order. The DCIT(A) set aside the assessment. The AO fixed the case on 18.11.1997 issuing notice u/s 142(1) but none appeared on that date and finally the AO refixed the hearing on 17.02.1998. On 17.02.1998 the AR of the assessee appeared. As per the order-sheet entry, the AO discussed about the estimation of the income of the assessee. The AR stated that the drawings is lower since the assessee is a bachelor and he often depends on relatives.

The AO observed that as the assessee had been in this business for a considerable period of time therefore the income from business as he estimated was justified. And he also observed that though the assessee claimed to have had his meal from his relatives very often, it involved a lot of travelling. Therefore, the drawings he AO estimated was justified. In this manner he estimated income of the assessee as per earlier order Rs.40,620/-.

Observation:

i) The assessee maintained a bank account as shown in the Balance Sheet, but no information regarding the account number, name of the branch, its address or the copy of the bank statement have been obtained.

ii) No information regarding purchase and sale have been collected.

iii) The Drawings shown by the assessee is inclusive of the LIC payment.

iv) At the time of fixation of the case, after the CIT(A)'s order, the ITO issued notice u/s.142(1) But no information was called for as required u/s.142(1). It is not know as to why the notice u/s.143(2) was not issued.

v) No books of accounts was produced, neither the AO mentioned anything about the books of accounts in the Order Sheet or in the body of the assessment / re-assessment order.

vi) The hearing was closed on 17.02.1998. But the assessment order was passed on 25.03.1998 resulting a delay of one month eight days.

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11) Assessee : Mrs. Anupama Majumder
PAN/GIR NO. : A-1088/NL
Assessment Year : 1996-97
Status : Individual
Date of Order : 25.2.1998
Source of Income : Business of local agricultural products.

The assessee furnished Return of Income on 08.05.1997 at an income of Rs.44,420/-. In the return of income she disclosed income from two sources :-

Income from Business & Profession	Rs.44, 420/-
Interest on Bank deposit	Rs. 2,269/-

She claimed deduction of Rs.2,269/- under Chapter VIA Section 80L. She paid self-assessment tax of Rs.150/-.

Along with the return of income the assessee did not furnish either the Balance Sheet or the Profit & Loss Account The processing u/s.143(1)(a) was done on 12.09.1997 at the same income. The case was selected for scrutiny on random basis. The assessment u/s.143(3) was done on 25.02.1998. Only one hearing was taken on 03.11.1997. The assessee could not produce any Books of Accounts and hence Rs.1,000/- was added to the income of the assessee. The Interest earned on Bank F D which was made out of regular saving, as mentioned the order sheet. No details were obtained from the Assessee.

Observation : Though the Assessee maintained no books of accounts on what basis she had arrived at such an income was never questioned. From the LIC premium receipt, it appears that the Majumdar Family owns a medicine shop at District Dhemaji. Being a housewife, how the assessee carried on the business and what type of item she dealt in were not questioned. No expenditure was claimed on account of the business activities, neither any evidence of the actual transaction was furnished.

Though the Assessee has claimed deduction u/s.80L on Bank F D, but no Savings Account was disclosed. Therefore, it was necessary to verify the same from the Bank. The AO did not take any step before finalising the assessment. Neither any books of account nor any bank pass books were produced or verified by A.O. The time-barring period for assessment ends on 31.03.1999, the reason for making such a hasty assessment in November, 1997 without conforming to the regular aspects of scrutiny assessment is best known to the AO.

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12) Assessee : Ramawtar Sharma
PAN/GIR NO : R-1323/NL
Assessment Year : 1996-97
Status : Individual
Date of Order : 30.03.1998
Source of Income : Salary & Dalaly

The assessee furnished Return of Income on 30.09.1997 showing income of Rs.41,750/-. In the Return of Income, he has disclosed salary income from

(i) Mahabir Transport Company Rs.15,000/-
(ii) Mahabir Enterprises Rs.13,200/-

And income from other sources from

(i) Interest from Shantilal Bakliwal Rs.16,350/-
(ii) Income from Dalaly Rs. 6,600/-

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With the Return of Income the assessee had furnished Computation of Income, Capital Account and Balance Sheet. In the Capital Account, he had disclosed Drawings Rs.12,000/- and LIC Premium payment Rs.1,940/-. In the Balance Sheet, in the Asset side he had disclosed Loan with Shantilal Bakliwal of Rs.1,25,350/- , Sanmati Kumar Bakliwal Rs.17,500/-, Sudhir Kumar Bakliwal Rs.19,000/- and Cash Balance Rs.57,376/-. In support of his income from salary, he did not furnish any Salary Certificate with the Return.

The Return was processed on 16.10.1997 at the same income. The case was selected for scrutiny. The AO heard the case on 10.02.1998 and 24.03.1998. On 10.02.1998 the AR of the assessee stated that the assessee is deriving income mainly from salary ; he derives some income from dalaly by arranging lorries and trucks for carriages. On 24.03.1998 the AR of the assessee produced salary certificates and loan confirmations. He also declared the assessee's wife also earns some income as priest's wife and therefore, the drawings are relatively lower.

The Assessment u/s.143(3) was done on 30.03.1998. During the course of assessment proceedings, he furnished two certificates from Mahabir Transport Co.and Mahabir Enterprises which certifies that he was paid salary of Rs.15,000/- and Rs.13,200/-, both of which are signed by one Sanmati Kumar Bakliwal. Since the assessee could not produce any Books of Accounts regarding the dalaly income of the assessee, the AO considered income from dalaly to be Rs.8,500/-. The AO considered all the other incomes same as disclosed by the assessee. Hence, totaf income of the assessee becomes Rs.43,650/-. The AR could not even furnish information regarding the size of the family of the Assessee.

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Observation : (I) The AO raised no question from whom the Assessee has received the Dal or whether there is any such reflection on the bank pass books. The Assessee did not furnish a information regarding his Bank Account. From the Balance Sheet it appears that the assessee did n maintain any Bank account.

On the other hand, the address shown by the assessee under Return is apparently incomplet In the Return the address was shown as Bantowgaon, North Lakhimpur, whereas in the LIC recei filed with the Return, the address was mentioned at Anupam Sales & Marketing Agency, Thakurb Road, North Lakhimpur. In course of assessment proceedings, the notices served were not receiv by the assessee. Shri I C Jain, who appeared on behalf of the assessee shown to have received t notices u/s.142(1) and 143(2) and in course of assessment proceedings the AR also stated that t assessee was out of station. No power of attorney for the Assessment Year 1996-97 was issued favour of Shri I C Jain, who appeared on behalf of the assessee. From all these it appears to be a ca where the existence of the assessee is questionable. The Bakliwals, with whom the assessee made h major investments, apparently are the persons behind this Return. Even the bank pass books of t Assessee were also not verified. Therefore, the regular aspects of scrutiny assessment was not tak under consideration.

(II) The assessee furnished salary certificate from Mahavir Transport Co. Mahavir Transport Co. also an assessee in this Jurisdiction. The AO could have verified whether Sri Sharma has receive salary from Mahavir Transport Co.

13)	Assessee	:	Md. Mobin
	PAN/GIR No.	:	M-1456/NL
	Assessment year	:	1995-96 &1996-97
	Status	:	Individual
	Date of orders	:	17.06.1997
	Business	:	Contract / Supply

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The assessee filed the Return of Income for the Assessment Year 1995-96 and A.Y.1996-9 on 31.03.1997 showing income of Rs.65,871/- and Rs.70,577/- respectively.

Assessment Year : 1995-96

Along with the Return of income, he furnished the Profit & Loss Account and Computation o Income. In the Return he disclosed

Income	
Gross Receipt	Rs.21,67,230/-
Expenditure	
Salary & Wages	Rs.17,19,709/-
Travelling Expenses	Rs. 1,05,875/-
Stock Material	Rs. 2,75,776/-

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Along with the Return of Income, he furnished two TDS Certiciates, the details of which a as follows :-

Issuing Company	Gross Amount	TDS
Gammon India Limited	Rs.6,10,036/-	Rs.6,832/-
	Rs.6,85,905/-	Rs.7,683/-
	Rs.2,62,618/-	Rs.2,941/-
	Rs.1,46,095/-	Rs.1,688/-
Gammon India Limited	Rs.1,56,641/-	Rs.1,753/-
	Rs.2,07,039/-	Rs.2,320/-
	Rs.98,895/-	Rs.1,108/-
Total	Rs.21,67,229/-	Rs.24,325/-

Processing u/s.143(1)(a) was done on 12.5.1997 at the same income raising refund of Rs.17,564/-. The case was selected for scrutiny by issuing Notices u/s. 143(2) and 142(1) on 28.05.1997. During the course of the Assessment proceedings, the AR of the Assessee produced Cash Book, Ledger, Wage Register and some vouchers. The Assessee is a subcontractor of Gamon India Ltd and filed two TDS Certificates of Gamon India Ltd. The AO had obtained confirmation of TDS Certificates from Gammon India Limited. The AO in absence of Bills & Vouchers which supports Registers, added a sum of Rs.8,000/- to Net Profit of the income from Business of the Assessee. Hence, the income of the Assessee assessed to have been Rs.73,870/- . Refund of Rs.15,164/- alongwith interest u/s.244A of Rs.1,208/- was issued to the assessee on 23.6.1997.

From the Assessment records it cannot be understood whether the Assessee has accepted the Additions made by the AO or appealed against the order.

Observation : (i) In the Return the assessee has not given his address. From the Profit & Loss Account and TDS certificates filed along with the Return it appears that the assessee is a resident of Arunachal Pradesh, but his complete address is not available anywhere. On the other hand the Return as filed showing the address of their Advocate. Even the notice u/s. 142(1) and 143(2), Assessment order, Demand Notice etc. were issued and served at the address of the Advocate.

ii) This being the first year of the assessee's business, at the time of scrutiny the AO should have verified the opening capital of the assessee, his nature of business, full particulars of the bank account with number, branch name and address. But no effort was made to obtain the same.

iii) From the TDS Certificates it appears that the assessee received some money from M/s. Gammon India Ltd. as sub-contractor. But in the expenditure side of the Profit & Loss Account the assessee has shown stock materials as one of the major expenditures. The assessee did not draw any Balance Sheet. However, at the bottom of the Profit & Loss Account he has shown three entries as under :-

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(i) Closing Stock Rs.10,500/-

(ii) Cash in hand Rs.1,40,000/-

(iii) Cash at Bank Rs.62,769/-

The AO did not make any effort to know what type of materials were purchased and to whom the salary and wages were paid.

iv) It is a case where no purpose was served by the scrutiny apart from making an estimated addition of Rs.10,000/-

Assessment Year : 1996-97

Along with the Return of income he furnished Profit & Loss Account and Computation of Income. In the Return of Income he disclosed

Income	
Gross Receipt	Rs.23,94,879.63
Expenditure	
Salary & Wages	Rs.19,01,056/-
Travelling Expenses	Rs. 1,12,472/-
Stock Material	Rs. 3,10,775/-

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Along with the Return of Income he furnished three TDS Certificates, the details of which are as follows :-

Issuing Company	Gross Amount	TDS
Gammon India Limited	Rs.2,19,553/-	Rs.2,457/-
	Rs.1,14,067/-	Rs.1,277/-
	Rs.1,83,247/-	Rs.2,053/-
	Rs.6,75,442/-	Rs.7,367/-
Gammon India Limited	Rs.15,714/-	Rs.176/-
	Rs.2,35,254/-	Rs.2,353/-
	Rs.1,52,288/-	Rs.1,523/-
	Rs.1,75,834/-	Rs.1,758/-
Gammon India Limited	Rs.4,45,802/-	Rs.4,458/-
	Rs.1,77,677/-	Rs.1,777/-
Total	Rs.23,94,878/-	Rs.25,199/-

The case was selected for scrutiny by issuing Notices u/s. 143(2) and 142(1) on 28.05.1997. During the course of the Assessment proceedings, the AR of the Assessee produced Cash Book, Ledger, Wage Register and some vouchers. The Assessee is a subcontractor of Gamon India Ltd and filed two TDS Certificates of Gamon India Ltd. The AO obtained confirmation of TDS Certificates from Gammon India Limited. The AO, in absence of Bills & Vouchers which supports Wage Registers added Rs.10,000/- to Net Profit of the income from Business of the Assessee. Hence, the

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income of the Assessee assessed to have been Rs.80,580/-. Refund of Rs.15025 along with interest u/s.244A of Rs.1200/- was issued to the assessee on 223.06.1997. From the Assessment records it cannot be understood whether the Assessee has accepted the findings of the AO or appealed against the order.

Observation : (i) In the Return the assessee has not given his address. From the Profit & Loss Account and TDS certificates filed along with the Return it appears that the assessee is a resident of Arunachal Pradesh, but his complete address is not available anywhere. On the other hand the Return as filed showing the address of their Advocate. Even the notice u/s. 142(1) and 143(2), Assessment order, Demand Notice etc. were issued and served at the address of the Advocate.

ii) This being the first year of the assessee's business, at the time of scrutiny the AO should have verified the opening capital of the assessee, his nature of business, full particulars of the bank account with number, branch name and address. But no effort was made to obtain the same.

iii) From the TDS Certificates it appears that the assessee received some money from M/s. Gammon India Ltd. as sub-contractor. But in the expenditure side of the Profit & Loss Account the assessee has shown stock materials as one of the major expenditures. The assessee did not draw any Balance Sheet. However, at the bottom of the Profit & Loss Account he has shown four entries as under :-

(i)	Closing Stock	Rs.60,550/-
(ii)	S B I, YAZALI (FDR)	Rs.1,50,000/-
(iii)	Cash in hand	Rs.15,000/-
(iv)	Cash at Bank	Rs.1,03,729/-

The AO did not make any effort to know what type of materials were purchased and to whom the salary and wages were paid.

iv) It is a case where no purpose was served by the scrutiny apart from making an estimated addition of Rs.10,000/-

14) Assessee : Sheikh Rasul
PAN/GIR No. : S-868/NL
Assessment year : 1996-97
Status : Individual
Date of order : 19.03.1998
Source of Income : Salary & Income from other sources

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The Assessee filed the Return of Income on 12.08.1997 at an income of Rs.52,818/-. Along with the Return of Income he furnished Computation of Incoane, Balance Sheet and Statement of Capital. In the Computation of Income he has revealed Taxable income in the following manner :-

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Gross Salary		Rs.70,128/-
Less :	U/s. 10(14) [SCA]	Rs. 6,000/-
		Rs.64,128/-
Less :	Standard Deduction u/s.16(i)	Rs.15,000/-
		Rs.49,128/-
Income from Other Sources		Rs.16,690/-
		Rs.65,818/-
Less:	u/s.80L	Rs.13,000/-
		Rs.52,818/-
Agricultural Income		Rs.10,000/-
		Rs.62,818/-

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During this year, the Assessee has paid towards GPF Rs.12,000/-, Group Insurance Rs.720/- and repayment of HBA Rs.12,000/-. In the Balance Sheet, he has shown to have received gift of Rs.3,80,000/- and earned Rs.10,000/- as Agricultural Income. But Processing u/s. 143(1)(a) was done on 16.1.1998 at a total income of Rs.50,000/- raisng 'Nil' demand. The case was selected for scrutiny by issuing Notices u/s.143(2) & 142(1) on 16.01.1998. During the course of Assessment proceeding, the Assessee has furnished ten Gift Deeds and one Deed of Purchase of Land. It was revealed that the Assessee maintained six Bank Accounts.

Name of the Bank	Account Number	Name of Holder
State Bank of India, A.T. Road, Code No.1518	C17/2699	Sheikh Rasul
Vijaya Bank, Itanagar	4383	Sheikh Rasul
UCO Bank, Itanagar	2139/13	Sheikh Rasul
UBI, Krishnai Chariali	4335	Sheikh Rasul
State Bank of India	5/263,Ledger No.5/15 Recurring Deposit A/c.	Sheikh Rasul, FNG of Miss Razia Sheikh
State Bank of India	5/2909, Ledger No.5/16 Recurring Deposit A/c.	Sheikh Rasul, FNG of Sheikh Arif Sajeed

The AO inquired about the Gift Deeds and asked to produce two donors for examination. The AR produced two donors, of which deposition of one donor was taken. The AO considered that the income of the Assessee from agricultural land was too low during this year, but during the year previous to that this income was Rs.39,000/- which was also an excessive one. Therefore, he added Rs.20,000/- as non-agricultural income. Therefore, the total income of the Assessee becomes Rs.72,830/-.

Observation : (i) The Assessee has submitted ten Gift Deeds, but none of them had furnished their Income Tax File No. and they belonged to the members of all communities. Ten declarations on Rs.10/- non-judicial stamp paper were submitted, but not in the form of affidavit. The AO has accepted the same and in course of assessment proceedings he has recorded the statement of two such persons. One Shri Prabhu Dayal Chowdhuri stated that he made the gift to Mr. Rasul on the occasion

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of his daughter's birthday, whereas his annual income was declared around Rs.35,000 / 36 ,0(But he made a gift of Rs.25,000/- to the assessee which apparently is abnormal. Apparently thi first year of the Return filed when the assessee has submitted Balance Sheet for Assessme 1989-90 onwards.

(ii) The Assessee, being a Government employee, posted in Itanagar, Arunachal Prades claimed to have carried out agricultural activities in Goalpara, Assam on Adhiar basis. But no verification was made.

(iii) During the year the assessee has shown deposit in a SBI Savings Bank account, Guv amounting to Rs.6,94,158/- and major portion was either by cash or by transfer from a account. In the UCO Bank Account a cash of Rs.30,000/- found to have been deposited duri year. Similarly, an amount of Rs.45,000/-, in cash found to have been deposited in UBI Ac But no satisfactory explanation was obtained from the assessee which mere an employee of Government.

(iv) To substantiate his fluctuation of agricultural income the Assessee has furnished one Af from Mehrunessa, wife of Late Ainal Haque Patgiri, owner of the 22 bighas of land, that the As cultivates on Adhiar basis and this practice has been continuing since 1984. But, neither the As nor Mehrunessa could furnish any documentary agreement.

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15)

Assessee	:	Anil Kumar Srivastava
PAN/GIR No.	:	A-1185/NL
Assessment year	:	1996-97
Status	:	Individual
Date of order	:	06.06.1997
Source of Income	:	Supply Business & Truck Plying

The Assessee has filed the Return of Income on 31.12.1996 declaring income of Rs.41,5 Along with the Return of Income he has furnished only the Computation of income. I Computation of Income, he has shown Gross Turnover from supply business was Rs.1,74,450/- estimated Net Profit to be Rs.17,550/- and income from truck Rs.25,000/-. During the yea Assesee has earned agricultural income of Rs.14,000/-. Processing u/s.143(1)(a) was don 05.03.1997 at the same income. The case was selected for scrutiny by issuing Notices u/s. 143(142(1) on 05.03.1997. The Assessee maintained no Books of accounts. The AO considere income from supply business to be Rs.19,000/- instead of Rs.17,550/- and estimated total incon the Assessee to be Rs.43,000/-.

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Observation : (i) The Assessee did not maintained any Books of Accounts. No proof of his income from supply business from any company was furnished. On going through the Return for asstt. year 1995-96, which was also filed on the same date, it was found that the assessee used to supply materials to the Executive Engineer, Nahar Lagun, Division, A. P. Similiar income shown to have been earned in the earlier year too. But in the computation, for asstt. year 1996-97 assessee mentioned that no tax was deducted which is found to be abnormal. At the time of scrutiny assessment, it was the basic requirements to collect information regarding the source of the receipt shown under the head 'supply' and corresponding expenses claimed. But no such effort was made . .

(ii) There was no Profit & Loss Account but a Balance-sheet showing certain assets and liabilities have been along with the computation. Without providing any details assessee shown to be earned income of Rs. 24,000/- from truck operation How the said amount was calculated was not questioned. At the same time in the Balance-sheet deprecation on the truck at the rate of 40% was claimed. Thus the Balance-sheet drawn was quite arbitrary and not supported any by any fact.

(iii) In the Balance-sheet the assessee has shown liability under the heads A.E. Co-operative Apex Bank amounting to Rs. 36,965/- and one xerox copy filed at the time of assessment so that the bank had charged interest from time to time which were shown as liability. But in the letter the number of the account, name of the A/c. holder etc. were not mentioned. In the Balance-sheet of yhe no loan from the said bank was shown. But in the computation sheet and in the order sheet the I.T.O. had noted the same as 'verified'. Thus, the very nature of verification is questionable.

(iv) In the Balance-sheet there was no reference of any bank account. Since the assessee is earning income from Govt. concern the existence of Bank A/c. were very necessary. But no question was asked.

(v) The assessee shown to have purchased land in U.P. from where agricultural income was shown. In the immediate preceding year the assessee shown to have purchased one plat of land at the cost of Rs. 3,48,790/-. This information was filed along with the Return for assessment year 1995-96. In the information filed, it was mentioned that the investment was made by the assessee but the land was purchased in the name of three other persons. This action attract Gift-tax Act. But no step was taken for initiating any proceedings under the Gift-tax Act.

16) Assessee : Ms. Lata Agarwala
PAN/GIR No. : L-874/NL
Assessment year : 1996-97
Status : Individual
Date of order : 27.01.1998 u/s. 144

The assessee furnished the return of income on 29.11.1996 at a total income of Rs.72,760/- . In the Trading and Profit & Loss account the assesssee showed a turnover of Rs.2,37,715/-. The major heads of expenditure are as follows :-

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Purchases	Rs.1,67,072/-
Expenses	Rs. 22,910/-

The major sources of the income of the assessee are as follows :-

Business income	Rs. 47,733/-
Interest Income from Syndicate Bank	Rs. 49/-
Interest Income from Bank of India	Rs. 50/-
Interest Income from Sunil Kumar Ajay Kumar	Rs. 25,026/-

Processing u/s. 143(1)(a) was made on 29.11.1997 at the same income raising Nil demand This is a random scrutiny case Notices under section 142(1) & 143(2) were issued to the assessee o 5.3.97 fixing the case for hearing on 26.03.97. But the registered letter was returned unserved wit postal remarks 'not known'. Again re-fixintion letter was issued fixing the case on 20.08.97 followe by another set of notices under section 142(1) and 143(2). But all subsequent letter returne 'unserved' Thereafter the I.T.O. served another letter on the A.R. of the assessee providing fin opportunity but none appeared and the I.T.O. finalised the order u/s. 144 adding a hump-sum amoun of about Rs. 2,000/- creating demand of Rs. 614/- only. But no penalty proceedings fo non-compliance have been initiated.

The asssessee, in her Return has shown her address as C/0. Sri Sanjoy Kumar Agsrwala Dhemaji, Assam whereras the notices issued for the first time mentioning the address as Miss Lat Agarwala, d/0 Bhagwati Pd. Jasarasaria, Dhemaji. In the second and the third refixation letters th same addresses were issued. but the letter issued on 24.09.97 and 3.11.97, 25.11.97 her address wa shown as wife of Sanjoy Kr. Agarwala. But in the refixation letter issued on 11.12.97 issued an served at the adderwss of the A.R. of the assessee

It appears that in the Return the address mentioned by the assessee was incomplete. Xero copy of L.I.C. premium filed with the return indicates the address of the assessee as 'C/o. M/s. Om Prakash Shiv Kumar, Garikhana, Shillong, Meghalaya'. The N.S.C. purchase on 26.03.96 has also shown the same address. Meanwhile the assessee filed the return for assessment year for 1997-98 wherein a confirmation letter in respect of loan advanced by the assessee was filed. In the confirmation letter the address of the assessee was mentioned as wife of Sri Sanjoy Kr. Agarwala, North Lakhimpur, Assam.

Had the made some efforts to find out the exact address of the assessee, the was possible either to verify from his own records or from the bank which were shown in the Balance-sheet. But no such steps were taken and only after making some nominal additions, he completed the assessment.

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Observation : The AO completed the Assessment on 20.08.1999 without making prope inquiry, but there was sufficient time till 31.03.2001 for completion of detailed scrutiny. The Assesse furnished copy of two bank accounts, but the AO made no further inquiry whether those banl accounts really belong to the assessee or whether the Assessee maintained any other bank account through which major transactions were made.

17) Assessee : Pawan Kumar Sarda
PAN/GIR NO. : P-730/NL
Assessment Year : 1996-97
Status : Individual
Date of Order : 18.06.1997
Nature of Business: Broker

The assessee furnished Return of Income on 31.01.1997 at an income of Rs.55,220/-. In the Return of Income, the assessee disclosed income from the following sources :-

(i)	Brokerage & Commission		Rs.32,820/-
(ii)	Interest		
	Prakash Kabra	Rs.9,648/-	
	N C Jaikishan	Rs.9,941/-	
	Finolex Popedeb.	Rs. 316/-	
	UBI, NL	Rs. 68/-	
	SBI, Sujangarh	Rs. 51/-	
	Basanta Rice Flower & Oil Mills	Rs.2,354/-	
(iii)	Income Tax Refund	Rs. 140/-	
(iv)	Dividend	Rs. 172/-	Rs.22,694/-
			Rs.55,514/-
	Less : U/s.80L		Rs. 294/-
			Rs.55,220/-

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Tax payable was shown at Rs.3,044/- and Rebate claimed Rs.3,086/-.

It was a random scrutiny case. The AO issued Notice u/s. 142(1) & 143(2) on 31.03.1997, followed by a refixation letter. The AR of the assessee appeared on 05.05.1997 without any Books of Accounts. As per the order sheet entry, the AR stated that the assessee is an introducer of suppliers to Gammon India and also a mediator in purchasing of goods by the officers of NEEPCO. In that way he earns commission. The AR produced Bank pass books before the AO, who verified those. But no copy of the Bank accounts were obtained, neither the account number and address of the Branch were noted.

Since the assessee did not maintain any Books of Accounts, the AO estimated the income under the Head Brokerage & Commission to be Rs.44,820/-. As a result total income estimated to be Rs.67,220/-. No details or documents so far as assessee's business activities, expenditure, if any have been obtained.

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Observation : Three loan confirmations filed along with the Return indicate that he ha business connection with parties in Rajasthan. Xerox copy of one NSC filed with the Return als shows assessee's address at New Sujangarh, Rajasthan. One of his bank accounts with SBI was als with Sujangarh Branch. It was therefore, necessary to verify the assessee's exact whereabouts.

The assessee has shown personal expenses of Rs.11,000/- only. It was thus necessary to verif his family size and other related expenses as well as expenses on account of travelling. But no ste was taken.

The Return was filed on 31.01.1997 and the assessment was completed on 18.06.1997, onl after one hearing and without obtaining any information on record.

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18) Assessee : Md. Izahar Hussain
PAN/GIR NO. : I-776/NLP
Assessment Year : 1995-96 &1997-98
Status : Individual
Date of Order : 27.02.1998
Nature of Business: Dealing in Logs

Assessment Year-1995-96

The Assessee filed the Return of Income on 02.04.1996 showing income of Rs.1,59,260/-. Along with the Return, he had furnished Computation of Income.

He has also submitted three TDS Certificates, the details of which is as follows :-

Person deducting TAX	Gross Amount (Rs)	TDS
Banderdewa Saw Mill & Plywood Industries	304,535	6,822
Banderdewa Saw Mill & Plywood Industries	336,194	7,531
Banderdewa Saw Mill & Plywood Industries	1,350,021	30,244
Total	1,990,750	44,597

He estimated profit @ 8% of gross receipt which comes to 159,260/-.

Processing u/s.143(1)(a) was done on 25.4.1996 at the same income. It was a sample scrutiny case. Notices u/s. 142(1) & 143(2) were issued on 25.04.1996. The A/R of the assessee did not produce any books of accounts. The AO accepted the submission of the assessee & contention of A/R and assessed the income of the assessee to be Rs.1,59,260/-.

Observation : It is difficult to understand the basis of the estimation of the Assessing Officer, as it was done by the assessee. No books of accounts were verified, no details obtained. What type of expenditure incurred by the assessee is not known. As it was basically payment made by Plywood industry, payments might have been made by cheque. But no details of bank account were furnished. In the computation the assessee has shown Stock - Nil and Cash - Rs.40,000/-. But Bank Balance etc., if any was not reflected.

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Assessment Year-1997-98

The Assessee has filed the Return on 31.08.1997 showing income of Rs.95,827/-. Along with the Return he furnished Computation of Taxable Income and details of Salary paid, Elephant expenses, truck expenses and labour charges. He disclosed his major sources of income & expenditure are as follows :-

Income

Gross Receipt from Log Business	Rs.35,87,327/-

Expenditure

Travelling Expenses	Rs. 50,000/-
Salary to Chowkidar	Rs. 1,74,960/-
Elephant Charges	Rs.12,80,000/-
Truck Carrying Charges	Rs.14,15,000/-
Instrument charges for cutting trees	Rs. 2,20,000/-
Labour Wages	Rs. 2,70,000/-
Work side temporary sheds for labour	Rs. 80,000/-

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He has also submitted five TDS Certificates, the details of which is as follows :-

Person deducting TAX	Gross Amt(Rs)	TDS
Banderdewa Saw Mill & Plywood Industries	2,133,653	42,673
Banderdewa Saw Mill & Plywood Industries		5,349
Banderdewa Saw Mill & Plywood Industries	343,382	6,868
Banderdewa Saw Mill & Plywood Industries	439,487	9,845
Banderdewa Saw Mill & Plywood Industries	403,348	9,035

In the details submitted with the Return, the truck expenses was found to have been Rs.15,15,000/- and similarly the elephant charges were Rs.13,80,000/- paid to 13 persons. It was a compulsory scrutiny case and notices u/s. 143(2) & 142(1) were issued on 03.10.1997. In response to the Notices the Assessee appeared on 20.10.1997 with one Labour Register, Register for payment to elephant owners, one Register for payment on account of truck, original money receipts of truck-owners, original money receipts of elephant owners. He also produced some vouchers of tarpaulin and related materials purchase The AO checked and examined the books of accounts produced. During the course of Assessment proceedings, it was revealed that the flow of work stopped from December, 1996 due to order of Court regarding cutting of trees. As a result, there was sudden discontinuance of business and lot of other troubles. He also stated to have been kidnapped by some terrorists outfits and after being released, his brother looked after the business. He also stated that *his Bank Pass Books and Cash book were taken by the militants and yet to be returned.* Expenditures regarding cutting instruments were made on the basis of fair estimation. He stated that he had a Savings Bank account No.2510/12 in UCO Bank, Banderdewa Branch. The AO, at the time

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of Assessment, considered that the Assessee has claimed excess expenditure regarding purchase of instrument for cutting and added back Rs.25,000/- to the income of the Assessee.

Observation : There was a clear discrepancies of the expenses claimed on account of Truck and Elephant hiring charges between the computation of income and certain cash receipts enclosed with the Return. It can be found from the computation of income that originally in the computation the figure of Rs.15,15,000/- and Rs.1,38,000/- were typed. But subsequently, the figures were changed with ink and in both the cases Rs.1,00,000/- each was reduced. Similarly, in case of receipt the original figures were typed as Rs.37,87,323/-. But subsequently, he changed it to Rs.35,87,327/-. But he has forgotten to reduce the Cash Voucher he prepared to claim the expenditure. Had the AO examined the books of accounts with reference to these discrepancies, he could have understood the reason for doing so.

(ii) The copy of the bank accounts could have been obtained from the Bank, if the assessee's Pass Book was taken away by the militants. The AO did not ask any question as to why all the payments were made in cash.

(iii) Since it was a case of individual, it was very much necessary to examine the withdrawals of the assessee with reference to size of the family and status.

(iv) No address of the person to whom the payments were made have been obtained in the money receipts filed with the Return.

(v) The AO did not verify whether the assessee was actually kidnapped by the militant. The same was verifiable from the Police Station and other local inquiry. If he was actually kidnapped, the ransom paid to the militants for his release and the source of that money was also a subject matter of verification. No effort was made to find out whether the assessee had any other source of income by way of interest on investment, bank FD etc. which is very much common and specially in such troublesome area.

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19) *Assessee* : *Md. A. Rahim Talukdar*
PAN/GIR NO. : *A-1174/NLP*
Assessment Year : *1995-96*
Status : *Individual*
Date of Order : *30.9.1997*
Nature of Business: *Contractor*

The assesse filed the Return on 02.11.1995 disclosing a total income of Rs.98,764/-. He did n furnish any Profit & Loss Account or Balance Sheet. The assessee shown to have received money a contractor from different concerns and in support of the same , he furnished TDS Certificat Along with the Return, he submitted 9 TDS certificates from Bengal Tea & Fabrics Ltd.; 1 TDS

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certificate from Sri S.C.Somani, AEE, GE(AF), Chabua, 1 TDS certificate from Major R.K.Mehra, AEE, GE(AF), Tezpur. In the computation of income, the Assessee had disclosed income only from 9 TDS certificates and estimated the profit @ 8% on the total receipt of Rs.12,27,493/- which comes to Rs.Rs.98,199/-. During the proceedings U/s.143(1)(a), the AO added the income from remaining 2 TDS certificates amounting to Rs..62,053/- and as a result, the income of the assessee raised to Rs.1,60,820/-.

In course of assessment proceedings U/s. 143(3), the A.O had written letters to various banks for supplying the Bank Statement of the assessee . Only the Allahabad Bank ,North Lakhimpur Branch had supplied the Bank Statement . On the other hand, the U.B.I. North Lokhimpur, S.B.I, North Lokhimpur stated that the assessee did not maintain any accounts with those banks. On examination, the Allahabad Bank Account, the A.O. found there was an excess balance of Rs. 391371 than the amount claimed to have been shown as his receipt. In course of hearing,the A/R stated that some loans from the colleagues and contractors were raised and the A/R also stated –

" there is no record of these and it also been related to F.Y. 1994-95 , the records or evidence cannot be produced now, moreover this being a case of non-recorded and no-account maintained case" (sic).

The A.O. had accepted this submission and added Rs.62,053/- with the turnover and applying 8% as Net Profit , he finalised the assessment . As a result, the assessed income became Rs. 1,03,725/. against the returned income of Rs. 98,764/-.. Refund of Rs.626/- was issued to the Assessee on 28.10.1997.

Observation :

(I) Since it is a case where no Books of Accounts were maintained , it was necessary to examine to Bank accounts of the assessee to cross-cheque the amount received from contract job. Instead of, asking Bank Statements from different banks , initially it was necessary to obtain the particulars of the Bank Accounts from assessee,. The same was not done.

On the other hand, Bank Statement collected appears not to have been examined properly. If, the amount receipts as shown in the T.D.S. Certificates it will be found that only amount as receipts in five certificates found deposited in the Allahabad Bank Account. It is not known where the assessee had deposited the remaining amounts of Rs. —— .As per the T.D.S. Certificates, the assessee shown to have receipts the following amounts .

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Sl.No.	Date	Gross amount.	T.D.S.	Net Amount	Remarks
1	14.7.94	46,021/-	784/-	45,237/-	30.7.94
2	18.7.94	16.032/-	335/-	15,697/-	Not found
3	19.8.94	11,848/-	237/-	11,611/-	18.8.94
4	18.9.94	43,000/-	860/-	42,140/-	18.11.94
5	12.2.95	37,050/-	741/-	36,309/-	Not found
6	16.2.95	1,27,500/-	2,550/-	1,24,950/-	16.2.95
7	17.2.95	1,25,660/-	2,513/-	1,23,147/-	17.2.95
8	18.2.95	3,05,745/-	6,115/-	2,99,630/-	Not found
9	19.3.95	1,56,608/-	3,132/-	1,53,476/-	Not found
10	31.3.95	2,56,082/-	5,122/-	2,50,960/-	Not found
11	16.10.94 & 5.10.94	1,02,000/- & 62,000/-	3,280/-	1,60,720/-	Not found

It means, that out of the total receipt of Rs. 12,89,546/- only Rs.3,47,628/- was found credited in this Bank A/c. and remaining 9,16,792/- was not reflected in this A/c.

4. Apart from, the above figures the following amounts are also not reflected in the Bank A/c of the assessee.

Sl.No.	Date	Amount credited
1	16.04.1994	30,000/-
2	28.04.1994	24,118/-
3	12.05.1994	61,030/-
4	07.06.1994	13,950/-
5	22.06.1994	13,200/-
6	29.06.1994	5,400/-
7	07.07.1994	50,000/-
8	21.07.1994	33,643/-
9	09.08.1994	20,655/-
10	30.08.1994	50,000/-
11	05.09.1994	9,920/-
12	12.09.1994	94,140/-
13	12.09.1994	12,612/-
14	26.09.1994	9,520/-
15	08.10.1994	60,760/-
16	16.10.1994	30,000/-
17	20.10.1994	49,960/-
18	22.10.1994	30,000/-
19	28.10.1994	16,195/-
20	05.12.1994	30,000/-
21	10.12.1994	45,000/-
22	16.12.1994	15,000/-
23	21.12.1994	13,188/-
24	26.12.1994	50,000/-
25	19.01.1995	4,760/-
26	20.01.1995	15,000/-
27	23.01.1995	10,200/-
28	23.01.1995	4,760/-
29	30.01.1995	30,000/-
30	01.02.1995	35,000/-
31	11.02.1995	20,000/-
32	11.02.1995	3,000/-
33	15.02.1995	76,309/-
34	18.02.1995	1,09,630/-
35	07.03.1995	50,000/-
36	20.03.1995	1,08,476/-
37	21.03.1995	12,110/-
38	23.03.1995	24,500/-

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The sum total of this amount is 13,15,841/- which was not explained at the time of assessment proceedings . If the T.D.S. Certificates and this Bank A/c. is examined together, it will clearly show that this total receipt from various source was at least Rs. 26,05,397/- which was not been considered.

It was also found that assessee was allowed refund for assessment year 1994-95 on 11.01.1995 which includes interest of Rs. 565/- which would have reflected in the computation of income but same was not shown. The same thing happened in the subsequent years too. Interest received from the Income Tax Department was never shown the assessee in his computation .

In the Bank A/c. mentioned above, the opening balance of the assessee was shown at Rs. 699.62. and closing balance as on 31.03.1995 was Rs.45,980.02. But in the particulars filed with the return no bank balance was shown either in assessment year 1994-95 or in assessment year 1995-96 . No bank balance was shown.

(ii) The AO even did not obtain the Account No. and Branch of the Bank so that any further query can be made. The AO could have examined the Bank Account of the Assessee thoroughly and verify whether the statement of the Assessee is correct. As the Assessee could not produce any Books of accounts, examination of the Bank Accounts was very much important.

(iii) The AO also estimated the profit @ 8% of the turn over but no reason was forwarded for accepting the claim of the assessee when the assessment was u/s.144.

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20) Assessee : Sri Ram Gopal Malpani
PAN/GIR NO. : R-723/NL
Assessment Year : 1996-97
Status : Individual
Date of Order : 04.09.1997
Source of Income : Share from Registered Firm, Interest and Dividend

The assessee furnished Return of Income on 27.03.1997 disclosing income of Rs.1,21,490/-. Along with the Return, he furnished Computation of Assessable income, details of interest income, details of dividend received, particulars of rebate claimed u/s.88, cash and bank balance, investment and deposits. In the Computation of Income, he disclosed –

Income From R.Firm M/s. Assam Iron Traders

Commission	Rs.54,347/-
Interest Income	Rs. 7,313/-
Interest received and accrued	Rs.36,593/-
Dividend	Rs.36,240/-

He had paid advance tax of Rs.1,000/- on 14.09.1995, Rs.2,000/- on 14.12.1995 and Rs.3000/- on 13.3.1996. He had also paid Self Assessment Tax of Rs.5,810/- on 07.03.1997. Along with the Return he

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furnished copy of five NSC VIII Issue of Rs.10,000/- each purchased during the year. During the year, he had contributed Rs.4,000/- to UTI, Rs.4,450/- and Rs.2,750/- towards payment of LIC premium.

The case was selected on random basis for scrutiny by issuing Notices u/s. 143(2) and 142 (1) on 02.06.1997. During the Assessment proceedings, the Assessee submitted details of receipt of Dividend from UTI (Rs.14,614/-) which is under Re-investment Plan. He had also submitted two statements from UTI revealing Dividend accrued amounting to Rs.5,163/- and Rs.5,112/-. He also invested in Indian Bank Mutual Fund of Rs.6,066/-. During the Assessment proceedings, the Assessee was requested to furnish the proofs for receiving Dividend from UTI Unit 64, Ind Jyoti (Plan B). The AO, being satisfied with the submission and discussion with the Assessee, assessed the income of the Assessee to be Rs.1,21,490/- i.e. at the income at which the Return was furnished.

Observation : The Assessee received commission and interest income from a Registered Firm. No copy of Accounts, Balance Sheet or computation of income was filed or obtained in course of assessment proceedings to substantiate his claim of receiving commission and interest from the firm.

The assessee claimed exemption on share profit of the firm. But it is not known whether any tax was paid by the firm or filed their Return at all. The AO did not verify these aspects.

The Assessee made huge investment in different forms, but the particulars of assessee's withdrawal, his size of the family and expenditure on account of family maintenance was not obtained.

The AO did not verify the bank pass books neither any copy of those were kept in the assessment record, nor the account number or the branch of the bank for future verification. Therefore, even the regular aspects of scrutiny assessment had been ignored.

21)	Assessee	:	Sudhir Dutta
	PAN/GIR NO.	:	S-1302/NL
	Assessment Year	:	1995-96
	Status	:	Individual
	Date of Order	:	20.08.1996 (u/s.144)
	Nature of Business:		Hardware

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The assessee filed the Return of Income on 21.09.1995 disclosing income of Rs.93,444/-. Along with the Return of Income, he furnished Computation of Income, Capital Account and Balance Sheet. In the Computation of Taxable Income, the assessee showed the following receipts and expenditures.

1. Contract works by Gross Received from North Lakhimpur P.W.D. Building Dvn.		*Rs.11,47,059.00*
Less stock Recovery (-)		*Rs. 1,53,021.00*
		Rs. 9,94,038.00
2.	*From N.B.C.C. B Charali*	*Rs. 5,22,658.63*
3.	*Both Truck Income No.As-07-1031/ & A.M.M.1175. Extra Carrage etc. Excluding own Contract Works.*	*Rs. 1,94,960.00*

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Intt. Received from F/D.	*Rs. 11,557.00*
Intt. Received from Old N.S.C.	*Rs. 3,334.00*
Intt. Received from I. Tax dept.	*Rs. 6,999.00*
Total Gross Received	*Rs.17,33,546.63*
Less U/S.88 & U/S.80L (-)	*Rs. 13,334.00*
	Rs.17,20,212.63
Less Materials Purchased and Labours Wages (-)	*Rs.12,66,980.00*
Gross Profit Before Expenses	*Rs. 4,53,232.63*

Out of the above Gross Profit the assessee claimed to have made different expenditures on account Engineer & Staff Salary, Truck Drivers' Salary, Insurance on account of Truck, Bank Interest, Travelling expenses and collection charge, Truck fuel etc. and after claiming total expenditure of Rs.3,59,788/-. The Assessee shown to have Net Taxable income of Rs.93,444/- in the Return.

At the time of assessment, the AO made requisition of books of accounts, Bank Pass Book etc. u/s.142(1). On 25.10.1995 the assessee, in a letter stated that *" I beg to state that , I have the honour to inform you that, you are hereby take necessary action as per fundamental act & Rule for the I.T. act 1961, which was the Newly Amendment Rule for Contract Works and Trucks Lumsum profit Rs.24,000/- per truck. Yearly income not more and contract works Maximum Profit @8% of the gross received value as per I.T. act and the contractor showing above mention % pursentum for his submitting return, than does not arrised Books of account produce for varification"(sic)*

Thereafter, the AO issued two more refixation letters on 26.10.1995 and 19.12.1995. In response to the letter dated 19.12.1995 the assessee filed a letter dated 12.01.1996 which is reproduced below :-

" I have the honour to inform you that, you are fixing any case for the assessment year 1995-96 on 4/1/96 but in this connection my Authorised representative also discussed you for the same on 3/1/96 in your office and you are kindly highly request to you as per discussion assessed my above mention Financial year at an early date for favour of your kind consideration and favourable order."(sic)

But from the order sheet, it is found that no such discussion was recorded thereon. Thus on 20.08.1996 the AO passed the order u/s. 144 of the I T Act, taking into account the 8% profit on contract business of Rs.15,16,696/- which comes to Rs.1,21,328/- and profit from per truck Rs.2,000/- per month which comes to Rs.48,000/-. At the same time, the income from other sources, as found in the submission made by the Assessee was Rs.21,890/-. After allowing deduction u/s.80L of Rs.10,000/-, the taxable income was computed at Rs.1,81,218/-.

So far as the assessment made, the assessment order was seemed to be at per with the submission made by the assessee on 12.10.1995.

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But after the assessment was made, the assessee shown to have filed one rectification petition u/s. 154 on 05.11.1996. In his application the assessee stated --

"That Sir, contract of (myself) after all expenses first class (A) maximum profit 5% to 6% maximum as per schedule." (sic)

On the other hand, for the first time the assessee mentioned that in his case one truck was in operation for twelve months and another truck (AMM-1175), was suffered an accident in September, 1995 and was in operation for two months only. He informed the said incident to the District Motor Vehicle Department and the xerox copy of the same has been filed along with the Return. The truck was thus in operation for six months only. But inadvertently the AO has taken income for the full period. Thus the assessee requested for a rectification accordingly.

The AO passed a rectification order on 20.01.1997 u/s.154 considering the income from the damaged truck for four months and allowed a relief of Rs16,000/-. But he did not interfere with the income already assessed from the contract business. Thus the revised income of the assessee determined to Rs.1,65,220/-.

From the xerox copy filed with the return, it is found that the assessee informed that due to damage of chassis of the truck was not in operation since 02.11.1994 and in his application he himself stated that he earned income from the truck only for six months. However, the AO had taken the income from the truck for four months only, meaning thereby, according to the ITO, the truck was not in operation for eight months which goes beyond the submission of the Assessee.

Against the order dated 20.01.1997, a Revision Petition was filed u/s.264 challenging the order u/s.144 and estimation of income from contract business as well as from the Truck operation. But the CIT, Guwahati, in his order u/s 264 had rejected the revision petition in respect of order u/s.144 as well as estimation of income from truck operation but has set aside the order so far as income from contract business is concerned.

Now, on 22.03.2002, Shri R N Dey, present ITO, gave effect to the order u/s.264. In his order he has estimated the income from the truck operation @ 4.43%, as taken in Assessment Year 1994-95, which comes to Rs.67,194/- and income from truck operation of Rs.16,000/- only. No income from other sources was added neither any deduction u/s.80L was allowed and directed to rebate u/s.88 which was allowed at Rs.9,048/-.

In the body of the order the ITO mentioned --

" In this case original asstt. was completed u/s.144 on 20.08.96. The assessee aggrieved with the assessment and filed a revision petition before the Commissioner of Income-tax, Guwahati. The CIT, Guwahati-1 as set aside a part of the assessing officer's order vide his No.3/264/NL/97-98 dt. 22.1.2002 and directed to reframe the order. As directed a letter was issued to the fixing the case for hearing

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on 18.3.2002. Sri S. Chakraborty, Accountant appeared with books of a/c. etc. But as the assessee maintained combined a/c. for contract work as well as truck plying business, it is not possible to befuricate. The Income from Contract separately. Hence the rate of profit from contract works is taken as adopted in the preceding year. The assessee produced all document of expenses & other relevant vouchers etc., Sri S. Chakraborty, Accountant was heard & case was discussed with him."

Observation:

Now, it is important to mention here that while giving effect to the order u/s.264, the assessee made a fresh submission showing his taxable income of Rs.93,445/-. But ITO in his computation has reduced it to Rs.83,190/-. On the other hand, the AO has taken the income from truck at Rs.16,000/- only whereas it was Rs.32,000/- in the order u/s.144/154 dated 20.01.1997. Since the AO claimed to have examined the books of account of the assessee as mentioned in the Assessment order, it was his responsibility to determine the income as per the books of accounts without estimating the same at a rate shown in the earlier year, when the assessee himself stated that in his case, it should not be more than 5 to 6% of the gross receipt. Thus Shri R N Dey did not apply his mind, neither examined the case records properly and there is no evidence on record that books of accounts were properly examined.

As per the submission of the Assessee dated 18.03.2002, as well as the information filed along with the Return, the Assessee's Gross Receipt from Contract business was Rs.11,47,059/- plus Rs.5,22,658, which comes to Rs.16,69,717/-. Shri R N Dey, the ITO should have applied this figure while he had adopted the concept of net profit on turnover basis.

On the other hand in the aforesaid submission from the contract business, the Assessee has calculated the Gross Profit of Rs.2,00,046/-. But the basis of the calculation was not given and at the time of filing of the Return, the Gross Profit was shown at Rs.4,53,980/-. None of the ITO asked the question of these discrepancies. Without examining the Bank A/cs and and cross verification of the particulars submitted by the Assessee,the Assessment order was made and finally, the Income was assessed at a lower figure than the Assessee had shown in the Return.

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Similarly the assessee filed the Return on 20.12.1996, declaring income of Rs.1,37,315/-. Notice u/s.143/142(1) was issued simultaneously fixing the hearing on 18.03.1997. As per the order sheet entry, dated 18.03.1997, at the time of hearing the assessee produced Cash Book, Ledger, Labour Payment Register and some vouchers which were examined. Some vouchers were not available. After the hearing dated 18.03.1997, when the case was discussed, the assessment order was passed on 26.11.1997. In the assessment order the AO made lump sum addition of Rs.15,000/- as the AO felt that the expenditures were not fully vouched.

Like Assessment year 1995-96, the assessee shown cheque receipt of Rs.33,78,090/- after reducing the gross receipt by Rs.4,20,432/- as stock recovery. But as per the TDS Certificates his gross receipt during the year was Rs.38,99,721/-, as shown below. What was the nature of stock recovery has not been explained, neither any question was raised.

Date of Credit	Gross Amount	T.D.S.	Net Amount
02.03.1996	298,296	7,156	291,140
5/95, 12/95 & 1/96	3,083,631	65,910	3,017,721
12.07.1995	220,398	5,069	215,329
20.09.1995	193,918	4,460	189,458
29.11.1995	103,478	2,381	101,097
Total	3,899,721	84,976	3,814,745

On the other hand this time assessee filed one page xerox copy of SBI Current A/c. No.4/660 where only the following amounts should to have been credited. But no question was asked as to where the balance amounts received on contract work were encashed.

Date of Credit	Amount
05.05.1995	46,861
28.07.1995	78,958
28.05.1995	196,142
27.12.1995	80,550
18.03.1996	66,516

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As per the Balance sheet filed with the Return the assessee shown to have purchased one house at Gohpur, but no question was asked on this investment. The assessee also arranged overdraft facility with the SBI, Tejpur Branch where a Debit Balance as on 31.03.1996 was shown at Rs.2,30,979/-. The AO did not ask any question regarding the security arranged for this.

Thus, various basic information requires verification at the time of scrutiny assessment were overlooked.

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22) *Assessee* : *Parsaram Sharma*
PAN/GIR NO. : *P-1090/NL*
Assessment Year : *1996-97*
Status : *Individual*
Date of Order : *29.09.1997*
Nature of Business: *Local product business*

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The assessee furnished Return on 31.03.1997 showing income of Rs.40,300/-. Along with the Return, he furnished Computation of Assessable Income and one Income & Expenditure Account. In the Computation of Income, the Assessee shown to have earned

Income from local produce business	Rs.27,800/-
Income from Brokerage & Commisaion	Rs.12,500/-

Total sales of the Assessee during the year was Rs.1,64,100/-. The Assessee claimed to have fairly estimated Gross Profit on sales was Rs.32,500/- and estimated Net Profit to be Rs.27,800/-. The case was selected for scrutiny and Notices u/s. 143(2) and 142(1) dated 13.08.1997 were issued. In response to the Notices, the AR of the Assessee did not produce any books of accounts. During the course of Assessment proceedings, it was stated that the Assessee did some brokerage works during the year in purchase and sale of general goods for various parties. The Assessee declared that he had neither land property nor any bank account.

The AO estimated the income of the Assessee from the business of local products to be Rs.29,000/- instead of Rs.27,800/- but accepted the income from brokerage and commission of Rs.12,500/-.

Observation : The Assessee stated to have maintained no books of accounts. The AO did not ask as to how the profit was computed without Book of Accounts or bank account. The AO did not even inquired as to how he had estimated the total turnover, expenditure, Gross Profit as well as Net Profit from the business.

No question regarding the withdrawal, size of the family, their activities, right on the house where he is residing, nature of business, from whom the brokerage and commission was earned Only after one hearing he completed the assessment without obtaining any relevant data. The purpose of the scrutiny was not served by the order.

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23) *Assessee* : *Smt. Lalita Devi Maheswari*
PAN/GIR NO. : *L-850/NL*
Assessment Year : *1995-96*
Status : *Individual*
Date of Order : *07.08.1997*
Source of Income : *Dealing in local products and stitching*

The assessee furnished Return on 28.02.1997 declaring income Rs.37,800/-. Along with the Return, she furnished Computation of Income and Income & Expenditure Account, details of local products business and Balance Sheet.

In the business, the turnover of the Assessee during the year was shown at Rs.1,95,000/-. The Assessee estimated the Gross Profit from this business to be Rs.36,500/- and after claiming expenses incidental to the business was Rs.5,500/-, net profit shown to have earned to Rs. 31,000/-. She also disclosed income from stitching and knitting etc. to be Rs.6,800/-. The case was selected for scrutiny and issued Notices u/s. 143(2) & 142(1) on 02.06.1997. During the assessment proceedings, it was stated that the assessee was doing business of local products as well as some stitching & knitting business. In course of assessment proceeding, the Assessee did not produce any books of accounts and stressed that the income shown was on fair estimation. The AO, during the assessment proceeding estimated the income of the Assessee to be Rs.39,000/- instead of Rs.37,800/-.

Observation : The Assessee stated to have maintained no books of accounts. The AO did no try to obtain any bank account, Bank statement. The AO did not even inquired how he had estimate the total turnover, expenditure, Gross Profit as well as Net Profit from the business.

During the assessment proceedings, no question was asked on the details of her family husband, children, their family business, her own property, and other assets. Being a housewife, hov she conducted the business of local products as well as earned income from stitching & knitting, fo whom did she work, her knowledge and experience was not gathered. for business. Only after on hearing he completed the assessment.

24) Assessee : Sukharanjan Dutta
PAN/GIR NO. : S-920/NL
Assessment Year : 1996-97
Status : Individual
Date of Order : 08.08.1997
Nature of Business: Hardware

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The assessee furnished Return of Income on 31.03.1997 at an income of Rs.49,860/-. In th Return of Income the Assessee disclosed income from two sources.

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Profits and Gains from Business & Profession	Rs.49,857/-
Interest	Rs. 1,276/-

In the Profit & Loss Account, the Gross Profit of the Assessee was shown as Rs.78,097/- and Net Profit Rs.51,133/-. In the Balance Sheet, Drawings for self was shown as Rs.17,100/- and withdrawal for construction of building Rs.15,000/-, for LIC premium Rs.12,993/-.

Processing u/s. 143(1)(a) was done on the same day at the income of Rs.49,860/-. The cas was selected for scrutiny and Notice u/s.142(1) and 143(2) were issued on 26.05.1997. Th Accountant of the Assessee produced copies of five Sales Tax Payment Challans. They also produce the Books of Accounts which were checked and examined with respect to various purchases recorded in the Order sheet. The AO also verified the transaction with Sundry Creditors and foun that those are genuine. The AR stated that the Assessee had around four bighas of agricultural lar where beatle and beatle-nuts are cultivated. But the land was still without patta. In absence of Ca Memos, the sales of the Assessee could not be verified and the AO added Rs.1,200/- on estima basis.

Observation : At the time of scrutiny assessment no particulars relating to sale & purcha Sundry Creditors were obtained. No query was raised regarding the withdrawal vis-a- corresponding expenses for family maintenance.

Though the AO claimed to have verified the bank pass books, but no copy of those were k in the assessment record, neither the account number nor the branch of the bank for furt verification.

The assessee claimed to have shown some income from agriculture, but no particulars of land was obtained.

No inventory of the closing stock was collected or examined. In this type of cases examination of the bank account and verification of the nature of the entries are necessary but after one hearing the case was disposed of. At the same time, the hearing was closed on 12.06.1 but assessment order was passed on 08.08.1997, i.e. after a delay of almost two months which is unnatural. Thus, he ignored the regular aspects of scrutiny assessment.

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25) Assessee : Shri Rama Kant Pathak
PAN/GIR NO. : R-741/NL
Assessment Year : 1997-98
Status : Individual
Date of Order : 17.03.1998
Nature of Business: Salary, Commission & Audio-Visual

The Assessee filed the Return of Income on 26.08.1997. Along with the Return, he submitted Balance Sheet as on 31.03.1997 and Computation of Income. He disclosed income from three sources viz. Salary Income, Income from Business & Profession and Income from Other Sources. He has also shown some agricultural income amounting to Rs.15,000/-.

From all these sources his Net Taxable Income for the year was Rs.61,250/-. The case was selected for scrutiny issuing Notices u/s. 143(2) & 142(1) on 16.01.1998. The Assessee has received gifts from his father, father-in-law and from two other persons who were not his relatives and total such receipts were Rs.94,764/-. His father was a Railway Employee, receiving pension at present and his father-in-law was a school teacher. But the other two donors are not relatives. He furnished Memorandum of Gift from Shri Hira Nando Pathak, Bansh Gopal Pathak, Shri Sunil Kumar Pathak and Shri Ram Kumar Pathak along with the Return. The Assessee has enclosed copies of various Bills & Vouchers in support of his claim of expenditure for audio-visual business. But it is found from the bills that the items were purchased from New Delhi from M/s. Master Audio-Visual Systems, House No.4/4055, Kaseruwalan, Pahargunj, New Delhi. But no evidence was filed, either with the Return or at the time of assessment to establish the relation between the assessee and this M/s. Master Audio-Visual Systems He also furnished Land Purchase Deed showing the agricultural land in UP. The AR also submitted the Salary Certificates from Yomgo Valley Syndicate of Rs.28,800/- and Indian Trading Company of Rs.34,800/-. In comparison with the Balance Sheet of the earlier year, it is found that the employers were shown as Debtors during the Financial Year 1995-96. But this time the assessee claimed that he had taken loan from his employers amounting to Rs.1,80,000/-. In addition to the above, some fresh loan from Ram Kumar Pathak, Sunil Kumar Pathak, Arun Kumar Pathak and S. Nath Pathak were shown.

The AO, in absence of proper details, estimated income from commission and audio-visual business to be Rs.15,000/-, instead of Rs.12,650/-.

Observation : In this particular year the Assessee has received gift of Rs.94,764/-. The AO only made inquiry regarding from whom he has received this gift, but made no further inquiry as to the capacity or the donor or the actual transaction whether the amount of gift has also been reflected in the Account of the person making he gift.

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The huge transaction in addition to his salary etc. no verification was made regarding amount received from his employers and fresh loan received.

Apart from purchase of land and visiting Delhi the assessee is a resident of Azamgarh, where he still maintains LIC Policy and his place of work was Arunachal Pradesh. It means during year he had travelled from one part of the country to the other for purchase of land, purchas Audio-visual items, purchase of a commercial unit at Noida, but his cash withdrawal for the w year was only Rs.15,342/-. No question was raised or made by the AO at the time of assessment.

In the Balance Sheet of the assessee every year is shown Cash more than one lakh in h when he is maintaining different Bank accounts as shown in the Balance Sheet. But no question asked on this point. No information obtained regarding the Bank accounts of the assessee. In ca scrutiny assessment which is must and at the same time while the assessee has shown huge fina transactions during the year and most of which were in cash.

Both of his employers were shown from the same place as there are common telep numbers and the assessee had also financial transaction as a Debtor and as a Creditor. Therefo was necessary to verify the relationship between the assessee and the so-called employer. But no attempt of cross-verification was made.

GENERAL REMARKS

1. On going through the above observations, it is clear that in almost all the cases Returns not filed within the due dates and there was abnormal delay in some cases. In some cases, ther no response to the notice issued u/s. 142(1). Even, in most of the cases the assessee did not re to notice u/s.143(2). But for all such lapses, no action was initiated by the AO.

2. In most of the cases, the AO issued notices u/s.143(2) and 142(1) simultaneously and such cases a common requisition with a rubber stamp impression on the back side of notice u/s.1 was made. But at the time of hearing, except one or two cases, no details / information were obt AO recorded the proceedings in the order-sheet. In normal scrutiny cases some basic particulars, Bank accounts of the assessee with account number, branch, name of the holder etc.; particul assessee's properties / assets / Investments, list of debtors and creditors are obtained which ma for future recovery. But the AO did not make any such attempt. Most of the cases were dispo after single brief hearing.

3. Even, in the cases scrutinize for the first time, no basic information was obtained. Norm a new case, where scrutiny is made for the first time, the opening capital of the assessee, his activ

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properties, investment, size of the family, withdrawals, children education, tours & travels etc. are examined. But the AO did not examine the matter. In case of M/s. Lokenath Dresses, both the partners claimed to have contributed stock as their capital along with cash, but no stock inventory was examined, no question was asked on the mode of valuation of such stock, sources of the opening capital was verified.

4. In most of the cases the assessee did not maintain any books of accounts. In such cases, the examination of the assessee's assets, bank accounts etc. were very much necessary but the AO failed to do so. In some of the cases, the expenditure, net profit, even the turn over was estimated. But the AO did not ask any question regarding the basis of such estimation. Apparently, some of the cases were capital building case and to regularize the ill-gotten money of the assessee utilising the Income Tax channel. The case of Lalita Devi Maheswari, Parsaram Sharma, Sheikh Rasul are the example of such cases. Within one year the assessee Sheikh Rasul deposited Rs.7.70 lakh case in a bank whose gross salary for the year was only Rs.70,128/-. At the time of assessment, the assessee claimed to have received gift from different parties. Without proper verification the same was accepted by the AO.

5. Even it was found that documents filed with the Returns were not properly examined and cross-verified. Had the AO examined the details filed along with the Return in a proper manner, he could have found various discrepancies, some of which are mentioned below :-

(i) In the case of Mahavir Transport Co.[M-330/NL], the assessee submitted one TDS certificate after submission of return. The AO considered the TDS and allowed the refund of Rs.1,08,836/-. If the income reflected in the TDS certificate was considered, then instead of refund a huge demand would have been raised.

(ii) In the case of Md.Izahar Hussain [I-776/NL], in the Income & Expenditure Accoun the assessee claimed to have paid Rs.12,80,000/- towards Elephant Charges and Rs.14,15,000/ towards Truck Carrying Charges. But in the documents attached, he furnished details of payment o Rs.13,80,000/- & Rs.15,15,000/- respectively.

(iii) In the case of Md. A Rahim Talukdar [A-1171/NL] the AO found discrepancies to t tune of Rs.3,91,371/- in the Bank Accounts. On inquiry the assessee could not offer any explanati other than non account maintained cash. The AO could have easily considered the amount as inco from undisclosed source and made further enquiry. As discussed hereinabove, the act discrepancies was much more than the figure calculated by the AO.

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In that process of shortening his work without going into details or checking bank accounts, after obtaining it from the assessee, the AO tried in a few cases to reach at a hasty conclusion by making assessment while enough time was there for completion of the assessment.

6. In some cases payments made in cash was not questioned as if in Md. Izahar Hussain and even withdrawals were not checked. In the case of Md. Mobin, the notices and Assessment order with Demand Notice were issued and served at the address of the Advocate.

7. In the matter of TDS, proper inquiry was not made in the following cases –

(i) Mahavir Transport Company

(ii) Md. Mobin

In agricultural income related cases, verification was not done instead of having substantial scope and point of verification.

(i) M/s. Laxminarayan Agarwalla & Sons
(ii) Sheikh Rasul
(iii) Sukharanjan Dutta

8. In the cases related to non-maintenance of books of accounts, the AO could not ask for details of information in relation to Bank accounts and on other related information. Even the AO could not ask the basis of estimation or even he could not record any reason for arriving at an estimated income. The AO could have easily gone through inquiries for arriving at the actual and reasonable income having an adequate basis in the cases listed below :-

(i) M/s. Lokenath Dresses
(ii) Malchand Maheswari
(iii) M/s. Inderchand Jain & Sons
(iv) Shri Sushil Kr. Agarwala
(v) Mrs. Anupama Majumdar
(vii) Anil Kr. Srivastava
(viii) Md. Izahar Hussain
(ix) Md. A Rahim Talukdar
(x) Sri Ram Gopal Malpani
(xi) Parsaram Sharma
(xii) Smt. Lalita Devi Maheswari

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In the cases of Parsaram Sharma and Smt. Lalita Devi Maheswari the AO even did not inquire on the derivation of turnover by the assessees.

9. In some cases Sale, Purchase, Closing stock were not verified inspite of having opportunity to inquire as the revenue potentiality is there –

(i) Gupta Brothers
(ii) M/s. Dutta Metal Stores
(iii) Sukharanjan Dutta

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10. In cases of contractors, no consistency was maintained to determine their income. When no books of accounts are maintained, income has to be taken at least @ 8% under the Law. But it is found that expenditures were claimed on estimate basis which were also allowed. Even in some of the cases, the receipt shown in the TDS Certificates were not taken into consideration.

ACTION PROPOSED

Thus, in most of the cases inspected above, the common point of lapse on the part of the AO is that he miserably fails to understand the revenue implication in those cases. The AO did not understand the impact of loss of revenue. In these cases, he did not make any inquiry. The case records suggest that there were lot scope to make different enquiries from the AO as well as from other agencies. But the AO did not even proceed with the materials on record and for this lackadaisical and casual approach, he not only missed the opportunity of making good cases out of those assessments, but it also resulted substantial loss of revenue. In most of the cases, he failed to make any verification from outside and also he did not cross verify the information available at his possession. The concerned CIT may be requested for remedial action in respect of the different lapses mentioned in the report and a Show Cause letter may be issued to the officer for his version.

[S R SIKDER] 2/1/03
Addl. Director of Income Tax (Vig)
East , Kolkata

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ANNEXURE--8

F.NO.PER/E-152003-2004/ 1757
OFFICE OF THE INCOME-TAX OFFICER,
WARD-I, SIBSAGAR,
DATED SIBSAGAR, THE 31ST DECEMBER 2003.
2ND JANUARY'2004

To,
The Additional Director of Income-tax(Vig),
East Calcutta.

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Through,

The Commissioner of Income-tax,
Ayakar Bhavan,
Jorhat.

Sir,

Sub:Vigilance Inspection in respect of Shri B.Doley, then ITO, Ward-North Lakhimpur vide your F.No.DIT/E/KOLCON-3/2001-2002 signed on 02.12.2003.

Kindly refer to your above referred letter which replies are submitted as per the enclosed 8 nos of sheets.

I received the above referred report on 15.12.2003 vide File No.VIG-1/CON/CIT/JRT/2003-2004/2541 dt 11.12.2003 and I was really taken aback on receipt of the same as the cases pertain to 6 to 9 years back.

1.That Sir, I joined at North Lakhimpur Ward in the month of May1995 as new Assessing Officer and being direct recruit Inspector, though I had some theoretical knowledge but I did not have much of practcal knowledge.When practically I started work as an Assessing Officer, I did not even know which notices to be issued in different situations and after issue of a particular notice, which notice follows and there being single officer, I had none to consult with.To consult some officers of outside, the phone connection was also not easily available.Finding no way, once in July or Auguust1995 I wrote to Shri J.K.Bhattacharjee, then ITO posted at Dibrugarh(now ACIT). The objections are mostly of improper checking of bank accounts, not noting of bank account particulars.How to check a bank account, there is no guidelines as such and I was not trained too. Infact I was checking the bank accounts balances with regard to the balances shown in the return.

2.That Sir, with your kind permission if I may express that whatever assessment I made, I did not do it as trained and experienced person but after studying many cases of the same nature. There are many cases assessed in this similar ways but it is not known to me such vigilance proceedings in their cases or will there be vigilance proceedings in allthese cases.

3.That Sir, I have noticed Assessing Officers doing wrong totalling in genuine additions like writing Rs.102000/-instead of writing Rs.172000/- and raising less demand incurring revenue losses thereby. This is a sheer example of carelessness which is more serious than the objections raised against me committed due to lack of training and experience.

4.That Sir, even there are cases like that of Shri R.N.Dey's in the case of Sudhir Dutta,AY.1995-96 assessing the income below the returned income which is so absurd and illogical but no vigilance proceedings heard of.

5.That Sir, at North Lakhimpur, I did some quite good assessment uncompromisingly causing inspections and inquiries and unearthing concealed and black income but there too I earned bad names from the assessees and even from the Department as harrassing the public and not maintaining good public relation. In one case I unearthed arrear rent in lacs of ruppees and I assessed it on receipt basis.There was hullabaloo for this assessment too and the assessee went to appeal. The CIT(A) set aside the case and directed me to compute applying splitting provision as is done in case of arrear salary u/s 89. I was reluctant to follow the direction as I thought it was a wrong direction and I referred the matter to RTI, Calcutta and even to Board. I was not rewarded for this but a provision was inserted in the I.T.Act u/s 25B just as I dealt the matter, wef 01.04.2001.

6.That Sir, what the section 143(3) says about scrutiny assessment is quoted hereunder:

Quote:

143(3).On the day specified in the notice issued under sub-section (2), or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the Assessing Officer may require on specified points, and after taking into account all relevant material which he has gathered, the Assessing Officer shall, by an order in writing, make an assessment of the total income or loss of the assessee, and determine the sum payable by him or refund of any amount due to him on the basis of such assessment.

Unquote:

I made the assessments after taking into account all relevant material which I had gathered and accordingly I made the assessment of the total income or loss of and also determined the sum payable by him or refund due to him. "Taking into account all relevant material which he gathers.." may varey from one

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officer to another as this 'relevant material' is not like a movable or immovable asset but it comes up on the application of the individual officer's mind. A material which an officer thinks as relevant and important, may be, the same is not so relevant and important for an another officer. Infact, there was no lapses at all in my assessments which were done after taking into account of all relevant materials which I could gather.

7. That Sir, so far, there is no scrutiny guidelines. Scrutiny involves checking and investigations. How an officer checks and investigates, where he checks and investigates, which he checks and investigates, which he gives more weightage and where from he starts checking and investigations, there is no set of work-frame.It depends upon the individual officer how he checks and investigates,which he takes as relevant and important, which he notes and keeps records and ultimately how he delivers his judgement. While passing an order, an Assessing Officer assume the role of a quasi-judicial authority and in such role, the Assessing Officer is to pass the assessment according to his own application of mind, own conscience. On the facts and material gathered by by me, I passed the assessment orders applying my mind and conscience and there was no wrong at all..

8.That Sir, as the paper was signed by you only on 02.12.2003, with your kind permission, may I ask what prompted to do this vigilance proceedings and why after lapse of 6 to 9 years of the assessment years and why I have only been singled out ?

9.That Sir,I have only been given 21 days for the reply when normally one month time is given.

10.That Sir, still if there occurred some minor lapses or wrong in the assessment owing to my lack of knowledge and experience as new Assessing Officer,, this could have been taken up in Revenue or Department Audit Inspection and necessary rectification could be done as is always done in other cases too and I assuredly feel that this vigilance proceeding was not necessary for this at all.Therefore Sir, I implore your benign authority to drop this proceedings generously.

Yours faithfully,

02.01.2004.

(B. Doley)
Income-tax Officer,
Ward-I, Sibsagar.

Received copy
Addl. Advt
02-01-04

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REPLY SHEETS.

Reply on the Inspection.

1.M/s Gupta Brothers, AY 1994-95.

Reply on the observations.

(i)There was no non compliance or non-filing of return as the return was filed after the start of the proceedings.during the course of the proceedings.

(ii) If I processed the return of income for the AY 1996-97 but no trace of the return furnished or processed for the AY 1995-96, it might be that return of AY 1995-96 was processed in loose or at the time of signing an assessment year's return it is always not such that the A.O looks back to if the preceding year's return was processed or not.

(iii) In absence of books of accounts and other relevant records, it was not possible to verify sale, purchase and closing stock.Hence the income was estimated.

(iv) Generally the bank statement /pass books were verefied if the assessee's balance-sheet shows any. Sometimes even after cheking and verifications of the bank statement /pass books, nothing was recorded if there were nothing discrepancy.

2.Mahavir Transport Company, A.Y.1995-96

The payment of Rs.2004882/- was tanker hire charges paid, it was not a sub-contract, hence TDS provision was not applicable.The TDS amount outstanding were on loans and advances.

Reply on the observations.

If the gross receipt of the additional TDS certificate was already included in the gross receipt of the return, then this additional TDS certificate could be accepted and given credit even after the return was furnished. If the gross receipt of this TDS certificate was not already included in the gross receipt shown on the return but the same was given credit by me, then there was a lapse but this doesn't mean an underassessment of the entire gross receipt shown in the TDS certificate. The profit percentange found out on the return gross receipt would be applied to the gross receipt of the additional TDS certificate to find out the underassessment.These sorts of lapses/mistakes are often committed and the audit inspections point out such mistakes/omissions and retrifications are carried out. if such things are taken up for vigilance cases, there will be immumerable such cases.

It is always not possible on the part of the A.O. to verify bits and bits, many TDS certificates are not properly filled in by the TDS issuing authority and still they are acted upon.The bank pass book and the bank statements receipts checked and verified..

3.M/s Dutta Metal Stores,A.Y.1996-97

Seeing the minimum balance and trusting assessee's words, I did not check or verify the pass books. I applied my own mind and took liberty to ignore this which I thought to be not inportant and helpful.in the proceedings.

From the books of accounts, purchase and sales were sample checked. There was no unnatural facts for the loss. The drawings of the partners were looked into.

Reply on the observations.

Attempt was always made to assess the reasonable income of the assessee.The purpose of scrutiny was always adhered to.

4.M/s Loknath Dresses.A.Y.1996-97

When the AOP members started business, even their incomes were below taxable, could their earnings of the back years enable them to contribute that much of capital and that much of stocks, these points were looked into. It is not always such that the businessmen maintain records and books of accounts.
This was not the first year of the business of the assessee.Their opening capital, cash contribution were taken into account after considering their past years business activities and it was found reasonable.

Reply on the observations.

The assessee stated to have no books of accounts and it was accepted. This was a simple case, even one hearing was sufficient. I did the assessment as a matter of duty, without any consideration whether it was time barred or not. The purpose of scrutiny was always kept in mind, though in this case no high pitched assessment made.

5.M/s Laxminarayan Agarwala & Sons,A.Y.1995-96

Reply on the observations.

As it is stated in the inspection report itself that the assessee furnished return of income on 31.03.1997. No action was necessery for delay in filing the return, the assessee could furnish the return upto 31.03.1997. The basis of determining the business income at Rs.15000/- was on fair estimation. As it is clear from the inspection report that the assessment was done u/s 144, hence there was no scope for ascertaning what sort of agri income was this, therefore as per claim of the assessee it was allowed.In this circumstances, it was fairly a good scrutiny and the very parpose of scrutiny was served.

6.Shri Banshilal Lahoty (HUF), A.Y.1996-97

Reply on the observations.

Balance with Maheswari Trading Co. as on 31.03.1995.....Rs.265348/-

Deposit	Rs. 84000/-
Interest	Rs. 34346/-
	Rs.118346/-

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B/f	Rs.118346/-	Rs.265348/-
Repayment	Rs. 20000/-	
	Rs. 98346/-	+ Rs. 98346/-
Balance as on 31.03.1996		Rs.363694/-

Many queries and checking, if found not wrong or discrepancy, I often skipped noting. I certainly queried the nature of transations and checked the bank pass books and that there might have been no wrong or any discrepancy for which I skipped noting and keeping of records of the bank pass books. At no point of time I ignored the regular aspects of scrutiny. In other officers cases also I have noticed simple noting as "Books of accounts produced, sample cheking and verefication carried out, case heard".

7.Malchand Maheswari, A.Y.1995-96

Reply on the observations.

This quite was a simple case, one hearing was sufficent to dispose the case. While disposing the case I never thought of time-barring or not. When an assessee maintains no books of accounts or cannot produce any books of accounts, I always ask or discuss how he arrived at the verious figures like purchases, sales etc. Some assessees reply as on the basis of some rough records, some reply on the basis of goods purchased and on the basis of daily sales. After all in all such circumstances, the income arrived at is not based on books of accounts and proper records but on estimation. Assessee's estimation was here acceptable as the gross profit on the sales was quite high and the interest on deposit was also in normal way. If any assessee has a bank account, I always call for it and check it(Some assessees do not have bank account). If this assessee had bank account but I did not record any, there might have been no wrong.

8.M/s Inder Chand Jain & Sons,A.Y.1995-96

Reply on the observations.

The assessee maintained no books of accounts but still he arrived at a total sales of Rs.225000/- .This he arrived at on esimation only basing on the average daily sales. His profit was arrived at after excluding the expenses incurred in paying the employee and other incidental expenses thereto. As his total sales itself was not based on proper accounting but on estimation only, so I also estimated his income. I also looked into the expenses which were relevant and natural in such a business which was done through paid employee. I never thought of making haste or ignoring something but as far as possible I always do assessment as early as possible after complection of hearing .

9.Shri Tankeswar Dutta, A.Y.1996-97

If no application u/s 154 and order u/s154 are on the records, this might be for mishandling and misplacing by the dealing staff.

Reply on the observations.

If the assessee has bank account I always call for it and check it, if no wrong or discrepancy is detected, no recording is done.Whenever I complete hearing I complete assessment as early as possible, time-barring or not, this aspect never came to my mind.

For the addition of bogus loan of Rs.59668/-, if I did not initiate penalty procedings, I definitely committed a lapse due to oversight or work pressure for which I may be condoned.

10.Shri Sushil Kumar Agarwala,A.Y.1994-95

Reply on the observations.

i)As the difference in the balance in the preceding year and the concern year was very little, I ignored it as of not much importance and also there was no scope to verify it as the assessment was completed u/s 144. Scrutiny is the application of mind of the officer concern, one thing that an officer considers as important, another officer may not consider it as important and relevant..

ii)The income was assessed on estimation basis, This was a no books of account case, hence the assessee was not in a position to give purchase and sales figures and as it was only an estmated case, the purchase and sale figures were not so relevant.

iii)Some assessees show LIC, other personal savings and also personal drawings together.

iv)In such situation, generally 142(1) is issued if non issuing of 143(2) was a lapse, this may kindly be condoned.

v)If this were a books of accounts case, "Books of accounts produced and checked……" Noting would have been there. This was a no books of accounts case, sometimes some notings were not done as were considered not much of importance. However it should be clear from the situation and records that this was a no books of accounts case.

vi)If hearing closed on 17.02.1998 and assessment completed on 25.03.1998, this should not be treated as delay

11.Mrs.Anupama Majunder,A.Y.1996-97

Reply on the observations.

This is not the single case, there are many housewives doing income from business and profession as per return furnished in the department. This housewife shown business income through paid employee and also from kintting works carried on at home. Sometimes the nature of the business and profession is avaliable in the return itself. I certainly asked in the hearing the business activities and the income how determined, though notings not recorded. Sometimes, "The case heard" or "The case discussed" is noted without details.

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After excluding all incidental expenses, the assessee arived at the income on estimate basis. As the income was based on estimation, not on books of accounts or records, hence books of accounts or details of receipts and expenditures were of not much help and in such sitution, generally the assessment is completed on fair estamation by all officers and I also did the same.

Some assessees have F.D. but no savings bank account. As there was no mention of savings account, I accepted that the assessee did not have any. As the assessee had no books of accounts and no savings account, so no verification was necessary. If the hearing was done on 03.11.1997 and assessment completed on 25.02.1998, then I did not do any hurry in disposing the case.I usually do assessment at the earliest possible after the hearing is over.

12.Ramawtar Sharma, A.Y.1996-97

Reply on the observations.

i)I vividly remember that I asked the A/R from whom the assessee received dalali income.The A/R stated that from various parties whoever contacts for hiring lorries and trucks. The assessee did not disclose bank account and declared to have none.

Many assessees papers contain different addresses for many reasons. Some they furnish at the residential address and some at office or business address. Therefore, in this case too, the assessee had two addressees which I did not object but I always insist the assessees to furnish one and specific address. Here Shri I.C.Jain was the practitioner of the assessee. Generally the practitioners represent the assessees even if they are out of station or not. If the authorisation was not obtained in this case, this might have been due to oversight and I apologise for this minor omission. As there was no bank account, hence no verification was done.Therefore, it would not be fair to say that the regulat aspects of scrutiny were not takn care of , the aspects of scrutiny were always there in my mind.

ii)The salary certificate was the evidence of Shri Sharma's salary received from Mahavir Transport Company

13.Md. Mobin, A.Y.1995-96 & 1996-97

A.Y.1995-96

Reply on the observations.

i)The assessee's address in care of the practitioner was discussed and the A/R stated that the assessee being a contractor and also the communication being very irregular in Arunachal Pradesh, the assessee preferred the practioner's address in care of for easy communaction. This is not the single case, infact, there are many returns furnished at the care of addresses of many practioners. As the address of the assessee was in the care of address of the practitioner, so the notices were served in that address. Personally I donot encourage such practices.

ii)The assessee did not furnish any balance sheet, so the opening capital was nowhere to verify. His nature of business was discused, a contractor in civil construction doing canal and tunnel making. Whenever an assessee shows bank accounts, I always call for them and in this case too, I certainly checked the bank accounts and if nothing was noted, then there might have been no wrong or any discrepancy in the bank accounts.

iii)As the assessee was a contractor,without meterials he couldnot execute his works, the ledger reflected his materials expenses like rods, cement etc.The salary and wages were also reflected in the ledger paid to his employees and labourers.

iv)I still believe that the purpose of scrutiny was served in this case.

A.Y.1996-97

Reply on the observations.

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iv)I still believe that the purpose of scrutiny was served in this case.

14.Sheikh Rasul,A.Y.1996-97

Reply on the observations.

i)In my view the gifts were acceptable and hence I accepted. So far I remember for sample checking, I called two persons for recording of statements.The gift of Rs.25000/- by Prabhu Dayal Choudhari was not just from the previous year income of Rs35000/36000/-.I discussed this matter with Sri Choudhari who stated

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to have been earning since years back.

ii)It is not abnormal that a government servant cannot carry on agri activities. The A/R of the assessee, in course of the hearing and discussion told me that the assessee's parents were looking after the agri activities. The evidence of agri activities was substituted by the written statement furnished from Mehrunessa, so cross verification was not felt relevant and necessery.

iii)The deposits and sources were checked and the A/R explained them satisfactorily.

iv)In villages many people carry on agri activities just on mere words and mutual faith.They hardly make written or documentary agreement, hence in this circuumstance, Mehrunessa's affidavit was sufficient .

15.Anil Kumar Srivastava,A.Y.1996-97

Reply on the observations.

i)No tax deduction was attracted if the assessee's materials supply was a purchase by the department. So far I remember, in the return for the A.Y.1996-97, nothing was stated as materials supplied to Excutive Engineer, Naharlagan, it was simply materials supplied to sundry parties and some income earned therefrom.

ii)The income of Rs.24000/- from truck was furnished on estmation, so providing details was not so material and relevant as there was no books of accounts or other records.The claim of 40% depreciation was as per rule so there was nothing arbitrary in drawing of the balance sheet.

iii)This observation is not clear as it is mentioned that in the balance sheet a liability from the Co.op Apex bank amounting Rs.36965/- and again it is quoted that in the balance sheet, no loan from the said bank was shown. I do not remember exactly how was the situation in this case. There was a case who did not accept the amount of the loan claimed by the bank and was under litigation in the court and hence the loan was not shown in the balance sheet. I certainly called for the liablities shown and the interest charged by the bank and verified them. If the account number and the account holder's name were not there, this lapse was on the part of the concern bank and on my part an oversight.

iv)I was not aware that the assessee was earning from government concern and was in receipt of account payee cheque. In this particular case, in the return of A.Y.1996-97, no fact of this sort was found.It also heppens that many govt.department draw the supply bills themselves and pay cash to the suppliers.

v)As the proceeding was for the AY 1996-97, the information of the AY 1995-96 leading to Gift-tax proceeding was omitted due to oversight. I may be condoned for this omission.

16.Ms.Lata Agarwala,A.Y.1996-97

The declarations in the returns of assessees are found as "Son/Daughter of " and seeing the father's name, the issuing clerk might have issued the first letter as D/o Bhagwati Pd.Jasarasaria. The sccound and the third letter were issued as per the return address.As the letters were not served, the fourth letters served through the A/R of the assessee. Some assessees have different addresses and stay at that different addresses at one point of time or the other. These assessee also being a lady it was not known wheather she was staying with her father or husband. Most of the times, the ITO has no time to look to the addresses of the notices and letters while signing them. These sorts of address anomalies and problems are often found, this should not be treated as lapse on the part of the ITO.

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Reply on the observations.

It was not my habit to keep a case pending till time barring month without any reason. To my mind this was a simple case and the bank account too had little balance to inquire about. Not devoting much time and energy in such simple case, more time and energy can be found out for big cases.Process and ways of scrutiny differs from individual to individual, what one thinks a thing to pursue might be a time waste for another.

17) Pawan Kumar Sarda, AY1996-97,

The assessee was an introducer of suppliers to Gammon India and a mediator in purchasing goods by NEEPCO officers. In the course of hearing I discussed how he got the peoples' contact for doing such business.The A/R stated that since the assessee was in this bussines for quite some time and so many people know him and approach him for deal. Neither agreement nor any other paper was made for the deal. The bank pass books were of nominal balances and generally if no wrong or discrepancy detected, no recording was done.

Reply on the observations.

It is not the single case, many assessees return papers bear different addresses and when questioned, they reply that they have houses and businesses at those different places and they even stay at those places at different time.

I usually verify the assessee's personal drawing. I got some cases that some assesees stay aolne like bachelor. I certainly verified the reasonability of the assessee's drawing. I always look into different factors, family size, earning members in the family etc and after judging all these if the drawing is found unreasonble and low, I always add.

There should not be any objection to the assessment on 18.06.97 as there was no other reason but it was done as per my usual practice of not keeping any assessment pending till time-barring mopnth.

18) Md Izahar Hussain,AY 1995-96 & 1997-98.

AY.1995-96.

Reply on the observations.

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For estimation one cannot always attribute to a particular or special basis. 'Income furinished on estimation' or 'Income assessed on estimation' should be understood in common parlance. Its estimation was based on the reasonable percentage of 8%..No books were produced, so no verification was done. When income is on estimation, the assessee doesnot maintain details of expenses and generally the details of expenses are not requisitioned and the assessee also cannot give the same in absence of books of accounts and other records.. However, in this case, the expenses were discussed which were stated to be salary and wages to employees and labourers engaged in cutting and pulling out trees, elephant and lorry charges etc. No bank account was disclosed, the assessee stated to have received payments all in cash.

Md Izahar Hussain AY.1997-98.

Reply on the observations.

(i)As the gross receipt was reduced by 2 lacs and the expenditure also reduced by 2 lacs (1 lakh each in elephant and truck charges), I had nothing to object. The cash vouchers were produced by the assessee himself and if there was higher entries as per cash vouchers, it is always not that an Assessing Officer check the total of expenses and each and every cash vouchers but only sample checking is carried out.

ii)The assessee when appeared before me, he was found to have been physically and mentally harrassed and he was deppressed too.Being sympathetic and agrieved with him, I relied him and did not proceed to bank for further proceedings.

(iii) His drawing was discussed and found reasonable.

(iv) I asked the assessee about the addresses of the parties.The asssessee replied that he had never asked their exact addresses but they were all from the nearby localities, they were not on permanent basis , they work and receive their charges.

(v) When a person get kidnapped he only knows the physical and mental sufferings. I learnt from the A/R that the assessee was kidnapped and also from the local people.Many times , the kidnaps go unreported to police for own safety reasons.The assessee denied to have paid any ransom.Was their any ransom deal, this investigation would have been a complicated investigations meeting and interviewing many and others and this should not be objected as there was no time and man power to investigate into it was not so relevant where the assessee denied to have paid any ransom.

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19) Md A.Rahim Talukdar,AY.1995-96.

Reply on the observations

(i)I initially asked the A/R about the bank accounts, and the A/R disclosed only one and therefore, to be sure I wrote to other banks.I had properly examined the bank statements produced to the llevel I could. Why should I go for asking bank accounts from the various banks if I had no sincere intention to examine the bank accounts.

Pageno.(29), no.4. quoted a table of 38 nos of figures, it is not clear where from these figures came while it was mentioned in the beginning paragraph that there were 9 TDS certificates and another two furnished with the return.

The interest received from the Income-tax Department should have been shown by the assessee.If I also did not take it into account, it was because being more concern with the relevant scrutiny assessment year only and being busy, it was not always possible to go back to earlier years records of the assessee in details.Such omission could be met by Audit Inspection and was not necessary for vigilance proceedings.

As there was no balance sheet furnished, hence the opening balance of Rs.699.62 and the closing balance of Rs.45980.02 was not discussed or objected.

(ii) The bank account of the assessee was checked and I had the sincere intention to do the checking properly as I could, otherwise I would not have written to other banks calling for bank accounts of the assessee.

(iii) The basis of estimation was at a reasonable percentage of 8.

20) Shri Ram Gopal Malpani, AY1996-97.

Reply on the observations

The registered firm M/s Assam Iron Traders was also in the same Ward. The assessee's receipt from this firm was cross verified.

The firm filed return and duly paid tax and was cross verified.

The assessee's withdrawal was looked into, the assessee lived in a joint family and he not only was the earning member.I did not keep records of many things or I did not note many things which I thought not of importance or things which I found not to be wrong or of any disrepancy.

I verified the bank pass books too.

21) Sudhir Dutta,AY.1995-96.

I remember the letter dt. 12.01.96 of the assessee which referred to a discussion of 03.01.96. Infact, the assessee's part time accountant came to my office on 03.01.96 and requested me to dispose off the case without having had to appear with books of accounts and hearing.This was not a formal hearing but a request which was informal and was not recorded in the file as hearing or discussion.

In the report, page no.33, lines 6 and 7, it is reported that accident occurred in Sept'95, no disallwance could be claimed in AY1995-96. It might be such that I considered the assessee's claim of 'operation for two months' as reported in page no.33, line no.7 and however not sticking to the assessee's claim, I considered it for four months and relief allowed for eight months.

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Reply on the observations

No comments on Shri R.N.Dey's assessment at a lower figure than the returned income.

No comments on Shri R.N.Dey's adoption of net profit and turnover.

The submission of 18.03.2002 and the gross profit shown at Rs.200046/- were not during my time.During my time if the gross profit was at Rs.453980/- and after me if the gross profit was at Rs.200046/, there was no chance on my part to question this discrepancy. I made the assessment u/s144, so not much of verification was possible but the case was disposed as per materials available on the records.

Sudhir Dutta,AY1996-97.

The assessee was a contractor, his recovery was discussed and stated to be cement and rods supplied by the department and the recovery figure was on the certificate.The house purchased at Gohpur was discussed. If I did not record any thing on this score, then there might have been no objectionable facts in this deal. In such deal, I generally call for the deed and the deed should be very much there on the records.The balance as per return and the balance as per bank statements were checked.The assessee's overdraft was also discussed, the accountant of the assessee stated that no particular security was there but the assessee being a contractor of reputation, the bank was allowing the overdraft facility.

The various aspects required to look into at the time of scrutiny was certainly done which I thought as relevant and necessary.

22) Parsaram Sharma,AY.1996-97.

Reply on the observations

This was a small businessman having no books of accounts. When a small businessman furnish income on estimation, there remains not much to ask for details as he is not maintaining any books or records and in such situations, the estimate itself is the only basis for arriving at the income. I queried how the income was arrived at, the A/R stated that on fair estimation, the basis was on the average daily sales and expenses.
The assessee did not furnish any balance sheet or capital account and no any drawing amount reasonable or unreasonable was shown, hence this issue was not discussed If discussed too, in such situation,, the assessee always disclose a reasonable drawing which becomes practically immaterial there being no balance sheet or capital account

23) Lalita Devi Maheswari,AY.1995-96.

Reply on the observations

There was no books of accounts produced..It was queried how the income was arrived at. The A/R stated that on the basis of estimation of the total turnover and the incidental expenses incurred thereto. If in the balnce sheet any bank account was disclosed, I certainly checked it and there being no discrepancy, no noting done.

The local product business was stated to have been carried through paid employee. I asked about the knitting and stitching business to which the A/R replied that the assessee was a self trained lady and doing the busineess at her home itself in a small way.

Her drawing aspect was discussed and it was revealed that she only was not the earning member , her husband too was earning. Her drawing was found reasonable and so no addition made.

24) Shri Sukharanjan Dutta, AY1996-97.

Reply on the observations

The sale, purchase and sundry creditors particulars were very much there in the books of accounts produced by the assessee's accountant. I certainly discussed the withdrawal and expenses for family maintenance of the assessee and it was found reasonable.
I checked the bank pass book but as nothing was found wrong, I did not record any.
In fact, in village areas many people have land without patta but under their occupation where they carry on agri activities.

This being a books of accounts case, the closing stock was recorded in the ledger. This being a small and simple case, one hearing was enough to spare more time in other big cases and other works. After the hearing, doing assessment after about a two months is not abnormal and unnatural as there might have been other cases and other works to do.

25) Shri Rama Kanta Pathak,AY1997-98.

Reply on the observations

I donot remember exactly if all the donors were assessees but some of them were assessees and I cross verified and in respect of all donors I also questioned and discussed their capabilities. Moreover, the memorandum of gifts were there on the records.

Salary certificates were furnished from the employers and the loan transactions was also discussed.
The assesse used to purchase Audio-visual items from New Delhi and in such trips he sometimes availed visiting house too. His drawing was looked into. After all his drawing was considered as sufficient as he was living in a joint family with other earning members.

This assessee was questioned as to why he shows high cash balance while having bank accounts, the reply was that the cash was more handy. I certainly checked the bank accounts and if nothing found wrong I usually skipped noting.

It was not the first year of the assessee receiving salary from the two concerns, he received salary from the two concerns since earlier years.

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REPLY ON THE GENERAL REMARKS.

1.For returns not filed within due dates, interest u/s.234A was charged. M/s Laxminarayan Agarwala & Sons,AY1995-96 and Sudhir Dutta, AY.1995-96, assessment was done u/s144.When there is non-compliance of hearing , exparte assessment was the end, I thought as I have nowhere noticed penalty proceedings in such exparte assessment cases. I may be condoned for this if there was a lapse here.

2.The bank accounts were checked in a routine way. If found nothing wrong, sometimes nothing was noted or no records kept. Particulars of assessee's properties/assets/investments/list of debtors and creditors were certainly recorded if the assessee had any except the bank accounts which I usually used to tally the balances.

3.In a new case where scrutiny was done for the first time, the opening capital was certainly looked into.What is the opening capital, from where the opening capital came, how many years the assessee was in business prior to it etc were considered before accepting the opening capital.

4.When no books of accounts maintained, income arrived on estmate basing on the daily sales and expenses etc.Most of the no books of accounts cases, they represent themselves as simple cases when asked of their properties, assets, investments etc, they say no properties, no assets except the small investment in the business by which the small income is earned as in the case of Lalita Devi Maheswari, Parsaram Sharma. Sheikh Rasul had deposited lakhs of rupees in the single year but his sources of deposits were discussed with the A/R and the A/R clearly explained the sources where from the deposits came. His gifts were supported by gift deeds and sample checking in respect of the donors were done on oath and they confirmed the gifts

5.(i)If the TDS certificate for Rs.559267/- furnished after the return filed and was not included in the gross reciept of Mahavir Transport Ccmpany at the time of return filed but I accepted and allowed it, then that entire amount can not be treated as under-assessment but the pro-rata percentage of profit should have been applied on Rs.559267/- and added back.If I ommitted to do that, I may kindly be condoned for this omission which I have done due to oversight..

(ii)In the case of Md Izahar Hussain, as there was reduction of Rs.2 lacs in gross reciept and also reduction of Rs.2 lacs in the expenditure, 1 lakh each in elephant and truck carrying charges but no reduction in the respective vouchers were done by the assessee. The cash vouchers were produced by the assessee himself. If there was higher entries in the cash vouchers, it is not always that an AssessingOfficer check the total of cash vouchers or each and every vouchers.

(iii)In Md A.Rahim Talukdar's case, the detection of Rs.391371/- in the bank account was accepted as the A/R's submission was found reasonable as this was a no books of accounts case.The bank account was checked with regard to balances in the return and the bank accounts.

6. Md. Izahar Hussain's cash payment was questioned but he stated to have received his payments in cash.

7.(i) The TDS certificates of Mahavir Transport company were from reputed organisations like IOC and the assessee used to furnish such certificates in earlier years too as they were doing business there in earlier years too, hence much verification was not sought for. In fact, verification of TDS certificates depend upon the A.O. concern.

(iii) In case of Md. Mobin, I obtained confirmation on TDS certificates.

In agri income related cases

(i)There was no scope to verify as the case was disposed off u/s 144 as per materials available on records.

(ii)There was an affidavit that agri activites was carried on.

(iii) It is a fact that in Assam, still some lands have no patta but they are under occupation of some one or the other and agri activities being done.

8. In no books of accounts cases, I always discuss how the income or the various figures are arrived at. Some assessees reply that on the basis of daily sales and expenses and thereby arriving at a monthly and yearly sales and expenses. Some assessees even directly furnish the estimated income without furnishing any estimated details of income and expenditure. In fact, in such cases, the estimation itself becomes a basis for arriving at the income and these estimations varies according to the volume of transactions of the assessees. As there is no books of accounts or any records in these no-books of accounts-estimated cases, it becomes almost useless to ask for details like purchases, sales. expenses and other details. In the light of the above facts, I estimated the income of the following assessees fairly on estimate basis:

(i) M/s Loknath Dresses.
(ii) Malchand Maheswari.
(iii) M/s Inderchand Jain & sons.
(iv) Shri Sushil Kumar Agarwala.
(v)Mrs. Anupama Majumdar.
(vi) Shri Anil Kumar Shrivastava.
(vii) Md. Izahar Hussain.
(viii) Md. A. Rahim Talukdar.
(ix) Shri Ram Gopal Malpani.
(x) Shri Parsaram Sharma.
(xi) Smt. Lalita Devi Maheswari.

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In the case of Parsaram Sharma and Smt. Lalita Devi Maheswari, I certainly discussed the turnover and the income derived at, the basis after all was on estimation based on the average daily sales and thereby coming to year's turnover and ultimately at the estimated income.

9(i) In the case of M/s Gupta Brothers, except the business of R.K. Pharma, no books of accounts was produced and in respect of R.K. Pharma, the sales, purchase and closing stock were verified from the ledger.

(ii) In the case of M/s Dutta Metal Store, the sale, purchase and closing stock were verified from the ledger.

(iii) In the case of Sukharanjan Dutta, the sales, purchase and closing stock verified from the books of accounts.

10. In cases of contractors, when there are no books of accounts, income was estimated at 8% as per law u/s 44AD, e.g. Md. Izahar Hussain, Sudhir Dutta.

REPLY ON THE ACTION PROPOSED

In most of the cases inspected above, the cases were of simple nature and no books of accounts cases and I justifiably assessed the cases on reasonable estimation and also made justifed addition in the fit cases. I did not make any loss of revenue.In the fit cases, I certainly did inguiries and cross verifications where necessary.

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भारत सरकार
वित्त मंत्रालय, राजस्व विभाग
आयकर आयुक्त गुवाहाटी-I का कार्यालय
सैकिया कमर्शियल कॉमप्लेक्स, श्रीनगर, जी. एस. रोड., गुवाहाटी - ७८१००५
GOVERNMENT OF INDIA
Ministry of Finance, Department of Revenue
OFFICE OF THE COMMISSIONER OF INCOME-TAX, GUWAHATI-I
Saikia Commercial Complex, Sreenagar, G.S. Road, Guwahati-781 005
दूरभाष /Phone : 2345117, Fax : 2345111 EPABX : 2269733 (Ext. 104)

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F. No. E-174/DP/CIT/GHY-I/ 2004-05/ 1849-51 Dated : 11-08- 2004

MEMORANDUM

The undersigned proposes to hold an inquiry against Shri Budheswar Doley, TRO-II, Guwahati under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The substance of the imputations of misconduct 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 imputation of misconduct in support of the article of charge is enclosed (Annexure-II). A list of documents by which, the article of charge are proposed to be sustained are also enclosed (Annexures-III). Central Vigilance Commission's first stage advice conveyed vide their O M No. 98/ITX/009-8196 dated 19-05-2004 is also enclosed.

2 Shri Doley is directed to submit within 10 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 Doley 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 Doley 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 Budheswar Doley 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(Conduce) Rules, 1964.

Contd. ... Page/2

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6 Shri Doley is informed that this is a supplementary chargesheet in continuation of the earlier chargesheet dated 15.05.2002 issued by Commissioner of Income-tax, Jorhat. The inquiry in respect of the present articles of charge will be conducted together with the inquiry in respect of the articles of charge contained in the chargesheet dated 15.05.2002.

7 The receipt of the Memorandum may be acknowledged.

(P K Ray)
Commissioner of Income Tax, Guwahati-I & DA,
Guwahati

To
Shri Budheswar Doley,
Tax Recovery Officer-II,Guwahati

Enclosed: As stated above

Copies forwarded to :

1. The Chief Commissioner of Income Tax, Guwahati
2. The Director of Income Tax (Vigilance), East Zone, Kolkata, Aayakar Bhawan, 8th Floor, P-7, Chowringhee Suare, Kolkata-700 069

(P K Ray)
Commissioner of Income Tax, Guwahati-I & DA,
Guwahati

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ANNEXURE – I

STATEMENT OF ARTICLE OF CHARGES AGAINST SHRI BUDHESWAR DOLEY, INCOME TAX OFFICER, WARD - NORTH LAKHIMPUR, ASSAM (PRESENTLY POSTED AS TAX RECOVERY OFFICER-II, GUWAHATI)

ARTICLE-I

That the said Shri Budheswar Doley, Income tax Officer, while functioning as ITO Ward - North Lakhimpur, Assam for the period for the period from 26.05.95 to 21.09.98, while making assessments u/s 143(3) or 144 of the I T Act, 1961, failed to conduct proper enquiry and investigation. In some cases he did not obtain any information from the assessee and did not scrutinize the books of accounts in some cases. In the cases, where information were obtained, he failed to utilize the same in proper manner and disposed of cases in a lackadaisical manner.

By the aforesaid act of omission and commission, Shri Budheswar Doley failed to maintain absolute integrity, and also showed lack of devotion to duty and exhibited conduct unbecoming of a government servant in terms of Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS(Conduct) Rules, 1964

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ANNEXURE II

STATEMENT OF IMPUTATION OF MISCONDUCT IN SUPPORT OF ARTICLE OF CHARGES AGAINST SHRI BUDHESWAR DOLEY, ITO, WARD - NORTH LAKHIMPUR, ASSAM (PRESENTLY POSTED AS TRO – II, GUWAHATI

In the case of Shri B. Doley, ITO, Vigilance Inspection was conducted of the work while he was posted as ITO, Ward-North Lakhimpur. In the inspection certain irregularities were found. Copy of the Inspection Report was forwarded to the concerned officer for his comments. Shri Doley furnished his version vide his letter dated 02.01.2004. Considering his reply the case wise observation are mentioned below: -

1)

Assessee : M/s. Gupta Brothers	Assessment year : 1994-95
GIR No. : G-326/NL	Date of order : 26.03.1998 u/s 143(3)
Status : Registered Firm	Nature of Business: Dealing in clothes, medicine& fisheries

On examination of the Assessment record, it was found that the assessee did not file the Return of Income for the assessment year 1994-95. The AO issued notice u/s.148 on 27.09.1996 directing the assessee to file the Return by 26.10.1996. But the assessee did not file the Return within the stipulated date. The A.O then extended the time for filing the Return up to 09.12.1996. On 10.12.1996 the AR of the assessee requested for further extension of two weeks as his client was out of station. Still the Assessee did not file the Return within the extended time.

Since the assessee did not file the Return of income, the A.O started assessment proceedings by issuing notice u/s 142(1) on 02.01.1997 fixing the hearing on 28.01.1997. But none appeared on that date. The A.O refixed the hearing on 18.02.1997 and again on 17.06.1997. On 17.06.1997 the AR applied for adjournment upto March, 1998. Only on 16.03.1998, the assessee filed the Return showing loss of Rs.1,237.50. The A.O heard the case on 16.3.1998 when the AR of the Assessee was present.

From the Assessment record, it was found that the assessee firm was engaged in different types of Businesses like running a Pharmaceutical shop, Garments business viz. (M/s. Ananda Medical Hall, Modern Dresses, R K Pharma,) and Fisheries for which separate Profit & Loss A/cs and Balance Sheets were prepared and filed along with the Return.

As per the order-sheet entry, in course of hearing, the A/R of the assessee produced a ledger & Cash Book in respect of R.K.Pharma, which were checked with regard to purchase vouchers & sale bills in respect of pharmacy business produced. In respect of other businesses no books of accounts had been maintained. Assessment u/s.143(3) order was passed on 26.03.1998. As the assessee could not produce any Books of Accounts regarding his other business, AO had rejected the estimated figures furnished and he added a sum of Rs.2,000/- to the income of the assessee. As a result total assessed income become Rs.760/-. Thus, it was found that : -

(i) No action was taken for non -compliance or non-filing of the return by the assessee.

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(ii) The AO also processed the Return of Income for the AY 1996-97, but there was no trace of either furnishing or processing of Return of Income for the AY 1995-96 and also no proof of raising any query was found.

(iii) No sale, purchase, closing stock was verified. Since the assessee could produce books of accounts for only one part of his business, it was necessary to verify the sale and purchase thoroughly. But no step was taken by the AO.

(iv) The AO did not verify the bank passbooks and neither any copy of those were kept in the assessment record, nor the account number or the branch of the bank for further verification.

In his submission, the ITO stated that there was no non-compliance on filing of Return as the Return was filed after initiation of the assessment proceedings. So far as the Return for AY 1995-96, the officer stated that the Return might have been processed in loose bunches and it was always not necessary to go beyond the present assessment year to verify whether the Return for earlier years or subsequent year was filed or not.

In absence of books of accounts, it was not possible for him to examine the sale, purchase, closing stock. When bank balances are shown in the Balance Sheet, generally bank accounts are examined in those cases and sometimes no record is kept of such examination.

Thus it means, the ITO failed to understand the meaning of non-compliance and non-filing of Returns. In the instant case the Return was not filed in time, even after the issuance of notice u/s.142(1). Secondly, in scrutiny assessment, generally the past year records are consulted to arrive at a logical conclusion. In the cases, where books of accounts are not maintained properly, it is necessary to examine the sale, purchase, sundry debtors, creditors, closing stock, bank accounts etc. to arrive at a reasonable conclusion. But without doing so, the ITO only made some nominal additions.

2.

Assessee : Mahabir Transport Company	**Assessment year : 1995-96**
GIR No. : M-336/NL	**Date of order : 29.09.1997**
Status : Registered Firm	**Nature of Business : Oil business**

The assessee filed the Return of Income on 30.10.1995 declaring a total income of Rs.4,890/-. In the Profit & Loss Account, the assessee disclosed his income as follows:

Haulage Charges received from IOC Ltd.	
Against own tankers	Rs.25,61,367/-
Against hired tankers	Rs.21,79,220/-
Major heads of Expenditure are as follows:	
Salary and other direct expences against own tankers	Rs.23,19,600/-
Hire Charges against other tankers	Rs.20,04,882/-
salary	Rs.49,890/-
Telephone Expences	Rs.35,227/-
Interest to partners	Rs.83,824/-
Interest to Loan creditors	Rs.1,28,281/-
Remuneration to partners	Rs.44,032/-

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The assessee filed two TDS Certificates along with Return, which are as follows:

Issuing Company	Gross Amount	T D S	Net Amount
Indian Oil Co, Noonmati	Rs.45,68,752/-	Rs.93,936/-	Rs.44,74,816/-
	Rs. 1,71,498/-	Rs. 3,430/-	Rs. 1,68,068/-
	Rs. 4,245/-	Rs. 85/-	Rs. 4,160/-
	Rs. 9,889/-	Rs. 198/-	Rs. 9,691/-

The assessee again submitted one TDS Certificate on 13.06.96, showing the following details :-

Indian Oil Co., Dhaligaon	Rs.2,630/-	Rs.53/-	Rs.2,577/-
	Rs.97,902/-	Rs.1,958/-	Rs.95,944/-
	Rs.25,398/-	Rs.508/-	Rs. 24,890/-
	Rs.58,480/-	Rs.1,170/-	Rs.57,310/-
	Rs.1,51,334/-	Rs.3027/-	Rs.1,48,307/-
	Rs.58,480/-	Rs.1,170/-	Rs.57,310/-
	Rs.1,65,043/-	Rs.3,301/-	Rs.1,61,742/-

The processing u/s143(1)(a) was done on 14.06.1996 at an income of Rs.4,890/- raising refund of Rs.1,06,880/-. Both of the copies of intimation u/s.143(1)(a) are lying in the assessment folder. The case was selected for scrutiny and notices u/s.142(1) & 143(3) were issued on 17.6.1996.

Assessment u/s. 143(3) was done on 29.09.1997. An addition of Rs.20,000/- was made on account of excess expenditure claimed as running and maintenance charges. In the assessment order the ITO mentioned that expenditures were not fully supported by vouchers. At the time of processing u/s. 143(1)(a) as well as in the assessment order u/s.143(3), the AO considered one TDS Certificate submitted after filing of the Return and allowed the TDS credit without considering the income/receipt shown in that certificate.

No details, so far as the expenses incurred on tanker maintenance and tanker hire, Bank Statement, Reconciliation Statement for other expenditure, was obtained. The assessee had shown to have paid Tanker Hire Charge of Rs.20,04,882/-, but no tax was found to have been deducted. From the Tax Audit Report it was found that the assessee deducted TDS (nature not mentioned), but the particulars of payment to the Government Account and date were left blank. In the Balance Sheet of the assessee, the same was shown outstanding.

On assessed income of Rs.24,892/-, a tax of Rs.9,956/- was raised which was adjusted with refund of Rs.1,08,836/-. A refund of Rs.98,880/- along with interest u/s. 244A of Rs.29,628/- was issued on 27.10.1997.

In view of the above, it is found that in the assessment order u/s.143(3), the AO has given credit to all the three TDS Certificates, as a result of which a total refund of Rs.1,08,836/- was allowed. But from these three Certificates, the Gross Receipt comes to Rs.53,13,651/-. But the assessee disclosed only a sum of Rs.47,40,587/-. As a result, loss of revenue occurred by way of under assessment of

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Rs.5,62,064/- and under charge of tax of Rs.2,29,229/- and finally refund was allowed to the assessee alongwith the interest payable to the Assessee.

The date of deposit of the TDS was not verified and no consequential action was taken. In the Order Sheet noting, dated 26.08.1996 the AO mentioned *"They produced a Bank Pass book and three Bank Statements for verification which were verified and found correct."* This observation of the AO was not found to be correct, because the total receipt during the year was found more than the assessee disclosed in the Profit & Loss Account. This should not have escaped the notice of the Officer had he properly verified the Bank accounts of the assessee.

In his submission, the AO stated that bank passbook and bank statement showing the receipts were checked and verified. In case of Tankers hire charges, there was no need to make deduction of Tax at Source. Regarding the excess TDS claimed resulting the excess refund, the AO stated that these lapses are very often committed and this cannot attract Vigilance action. The ITO also added that the whole amount of gross receipt, which was not shown by the Assessee cannot be treated as his income. At best, the GP can be added back. He also stated *"If the gross receipt of the additional TDS certificate was already included in the gross receipt of the return, then this additional TDS certificate could be accepted and given credit even after the return was furnished."(sic)*

The submission of the officer is not supported by the facts of the case. If the receipt is not shown as income, credit to the TDS amount cannot be given. On the other hand after claiming all expenditure, the assessee has shown the income. Thereafter, the balance of suppressed receipt is nothing but the assessee's income and the formula of gross profit cannot be applied here.

3.

Assessee : M/s. Dutta Metal Stores	**Assessment year : 1996-97**
GIR No. :D-338/NL	**Date of order : 27.11.1997**
Status : Registered Firm	**Nature of Business : Dealing in utensils**

The Return of Income was filed on 25.03.1997 at a loss of Rs.13,200/-. The ITO selected the case for scrutiny with Order Sheet noting dated 26.05.1997 as *"Case falls random scrutiny"*. In the Profit & Loss Account, the major source of income and expenditure of the Assessee were as follows:

Income	
Sales	Rs. 7,30,722/-
Expenditure	
Purchase	Rs.6,53,871/-
Sales Tax	Rs. 38,006/-
Interest to Partners	Rs. 62,928/-

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Processing u/s.143(1)(a) was done on 23.5.1997 at the same loss.There are only two partners of the firm, Shri Sambhunath Dutta and Shri Krishna Dutta. The case was selected for scrutiny by issuing Notice u/s. 143(2) and 142(1) on 26.05.1997. As per the order sheet entry on 12.06.1997, the AR of the Assessee produced Books of Accounts, which were examined partially and Purchase Vouchers with respect to the

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Ledger were also checked. On 21.08.1997 Sales Tax Challans, P T challans were produced and verified. The Assessing Officer also directed the AR to produce the Bank Statements. But the Assessee did not produce the same as there was minimum balance in the account and there was no transaction for the preceding one year.

But on verification of the case records, it is found that the cash balances in the account were as under :-

31.03.1994	Rs.1,111.67
31.03.1995	Rs.1,382.57
31.03.1996	Bank A/c not appeared in the Balance Sheet
31.03.1997	Rs.1,346.15
31.03.1998	

It means the Assessee was operating the Bank Accounts continuously. It was necessary to verify the Bank Statement vis-a-vis the Books of Accounts which the Assessee carefully avoided.

The AO, during the course of verification, found that there was difference in Sales Tax payment of Rs.3,387/- which was disallowed during the course of assessment and Net Loss reduced to Rs.9,814/-. No verification of Purchase and Sale was made. No details of Closing Stock like stock inventory, month-wise sale & purchase was obtained. The assessee was filing loss return almost in every year. The reason for such loss was a subject matter of verification, but no attempt was made. No information as to the other activities of the partners was obtained. The Drawings shown by the Partners were only Rs.3,600/-. Whether the amount was sufficient to meet their household expenditure was not verified.

It is clear that no attempt was made by the AO to assess the actual income of the Assessee. Rather he accepted the Return without any verification. The purpose of scrutiny was not served at all. But the AO stated that believing the assessee, he did not check the assessee's pass book and he applied his own mind while making the Assessment. On sample basis he checked the sale, purchase of the assessee and nothing unnatural was noticed. The drawings of the partners were also examined.

The submission of the officer is not supported by the facts. From the assessment record no evidence or information is found to draw the conclusion that the officer has examined all important aspects.

4)

Assessee : M/s. Loknath Dresses	**Assessment Year : 1996-97**
GIR NO. :L-603/NL	**Date of Order : 19.08.1997**
Status : A O P	**Nature of Business : Dealing in clothes**

This is a Random Scrutiny case. The assessee filed the Return of Income on 14.03.1997 showing income of Rs.40,760/-. Along with the Return of income, he furnished Profit & Loss Account, Balance Sheet and Members' Capital Accounts. In the Profit & Loss Account the major sources of incomes and expenditures are as follows:-

Income	
Sales	Rs.8,75,500/-

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Expenditure	
Purchase	Rs.9,45,700/-
Salary	Rs. 11,000/-
Shop Rent	Rs. 8,800/-
General Expenses	Rs. 8,800/-

Processing u/s.143(1)(a) was done on 12.5.1997 at the same income raising 'Nil' demand. It appears that it is the first year of the business activities of the AOP consisting of two members.During the Assessment proceedings, the AR of the Assessee stated that the members of the AOP were doing cloth business in weekly markets. They opened the shop jointly contributing the capital of Rs.80,915/- and Rs.64,935/- in addition to stock of Rs.80,320/- and Rs.95,400/- respectively. In course of assessment proceedings the AR of the Assessee only filed Capital Account, Balance Sheet and Computation of Income of both the members of the AOP. But there is no evidence on record to show that these were filed along with their Return. It is found from this computation that their income was below taxable limit. From the Order Sheet entry, it appears that no Books of Accounts were maintained by the AOP.

In the absence of books of accounts, the AO estimated income of the Assessee to be Rs.42,000/- instead of Rs.40,760/- shown in the Return. The AO initiated Penalty proceedings u/s. 271A, read with Section 274, which was subsequently dropped on receipt of an explanation from the Assessee.

Since it was the first year of the business of the Assessee, it was necessary to obtain the details of stock contributed by the members as a part of Opening Capital, its valuation, inventory of the Closing Stock, Source of Cash contributed by the members as Initial Capital, details of sale and purchase. But no such attempt was made.

The Assessee stated to have maintained no books of accounts. The AO also did not try to check out whether he really maintained books of accounts. Only after one hearing, he completed the assessment much before the end of time-barring period. The AO did not even inquire how he had estimated the total turnover, expenditure, Gross Profit as well as Net Profit of the business. Since the time-barring period was to end on 31.03.1999, therefore, there was no need to make such a hasty assessment. In haste, he even ignored the regular aspect of scrutiny assessment. The purpose of scrutiny was not served in this case.

On these issues Shri Doley had submitted that during the assessment proceedings he had examined the source of capitals of the AOP members and it was not the first year of their business. The Opening Capital, contribution of capital in the form of cash were examined by him and found to be reasonable. Since it was a very simple case, one hearing was sufficient to complete the assessment. The ITO completed the assessment as a part of his duty and the purpose of scrutiny assessment were also kept in mind.

The Officer's version is not correct as it was the first year of the assessee's business. Thus examination of the capital contribution, especially, when the same was in cash was very much necessary. Further the AO failed to examine this case from different angle.

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(5)

Assessee :M/s Laxminarayan Agarwalla & Sons	Assessment Year : 1995-96
GIR NO. : L-203/NL	Date of Order : 22.10.1997 u/s.144
Status :HUF(Specified)	Nature of Business : Miscellaneous trading

The Assessee furnished Return of Income on 31.03.1997. Along with the Return of Income, he furnished only the computation of income. No Balance Sheet and Profit & Loss Account was found. But in the computation of income, the assessee had shown the Short Term Capital Gain, *"As per Account"*. The major heads of income are as follows :-

Business Income	Rs.13,442/-
Capital Gain (Net)	Rs. 3,987/-
Income from Other Sources	Rs. 1,190/-

Processing u/s.143(1)(a) was done on 23.5.1997 on an income of Rs.18,620/- raising 'Nil' demand. The case was selected for scrutiny on random basis as found from the Order sheet notings and Notices u/s.143(2) and 142(1) were issued on 26.05.1997. But during the course of assessment proceedings, there was no compliance on the part of the assessee. Therefore, the AO completed the assessment u/s.144 after providing three more opportunities of being heard. In absence of the details of various income, the AO estimated the business income of Rs.15,000/- against disclosed income of Rs.13,442/-, Short term Capital Gain Rs.3,987/- and Interest & other income Rs.1,190/-, thus total income of the assessee became Rs.20,180/-.

It is a unique case where the assessee had shown sheer disregard to the Department. The address mentioned in all the Returns for different years available in the file was incomplete. Though the assessee had shown his address in Arunachal Pradesh, but while signing the Return for Assessment Year 1995-96 & 1996-97, he has mentioned the address as North Lakhimpur. The Advance Tax Challan also suggests that the Advance Tax was paid at Dibrugarh.

The very basis of the Computation of Income was not furnished. The notices as well as the re-fixation letters were duly served on the assessee. But there was no scope for the AO to make further verification in absence of any details. But there was a scope for taking action for the delay in filing the Return as well as for the non-compliance. But the AO did not take any such action and no basis for estimation of the business income at Rs.15,000/- was given in the Assessment order. The Assessee had further claimed deduction on agricultural income, which was allowed. But no reason was furnished for such a claim. The very purpose of making scrutiny in the case was not served.

The officer claimed it to be a good scrutiny order passed u/s.144 making an estimated addition of Rs.1,560/-. The ITO further added that no action was necessary, even if the Return was filed on 31.03.1997 for AY 1995-96. There was nothing irregular while he allowed the agricultural income, as claimed by the assessee.

The officer failed to realise that it was a belated Return. There was no need to complete the assessment u/s.144 on 22.10.1997 when the case was getting time barred only on 31-03-1998.

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6)

Assessee :Shri Banshilal Lahoti	Assessment Year : 1996-97
GIR NO. : B-208/NL	Date of Order : 30.6.1997
Status :HUF(Specified)	

The assessee filed the Return of income on 30.01.1997 declaring a total income of Rs.27,040/-.In the Return of Income assessee disclosed income from the following sources.

(i)	Interest received from Maheswari Trading	Rs.34,346/-
(ii)	Interest received from IVP	Rs.11,107/-
(iii)	Accrued Interest on KVP	Rs. 900/-
(iv)	Interest received from IVP	Rs. 1,857/-
(v)	Interest received from Fixed Deposit	Rs. 301/-
(vi)	Interest received from SBBJ (Savings Account)	Rs. 14/-

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He also claimed to have paid interest to

(i)	Shri Bhagirath Baheti	Rs,19,817/-
(ii)	Shri Banshilal Lahoti (Indv)	Rs. 1,260/-

The Return was processed u/s. 143(1)(a) on 05.3.1997 at the same income. The AO heard the case on 06.05.1997 when the AR of the assessee appeared but without Books of Accounts. The AR produced Loan Confirmation of Bhagirath Baheti. The AO asked the AR to produce the Savings Bank Pass Books by 20.06.1997. On 20.06.1997 the particulars were discussed and bank pass books were verified. The Assessment u/s.143(3) was made on 30.06.1997 at an income of Rs.27,040/- as disclosed by the assessee with Nil demand.

It was the first time the case was scrutinized. But no information was obtained regarding the whereabouts of co-parcenors of the HUF, the nature of their actual business, copy of the Bank Statement. The AO even failed to obtain the Bank Account Number and address of its Branch. The activities of the assessee were carried out in Rajasthan. But no details were obtained. Purpose of scrutiny was not served.

In the Balance Sheet as on 31.03.1995, it is found that balance with Maheswari Trading Company was Rs.2,65,348/- and as on 31.03.1996 the balance was Rs.3,63,694/-. During the year the assessee gave Maheswari Trading co. Rs.10000/- on 15.12.1995, Rs.10000/- on 08.01.1996 and Rs.64,000/- on 22.01.1996. Out of these amount only Rs.20000/- was repaid on 26.3.1996. No query was raised as to how the transactions were made.

Though the AO claimed to have verified the bank pass books but no copy of those was kept in the assessment record, neither of the account number nor the branch of the bank for further verification. Therefore, even the regular aspects of scrutiny assessment had been ignored.

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7)

Assessee : Malchand Maheshwari	**Assessment Year :1995-96**
GIR NO. : M-221/NL	**Date of Order : 30.09.1997**
Status : HUF(Specified)	**Nature of Business : Dealing in mustard seeds**

The Assessee filed the Return of Income on 31.03.1997 declaring income of Rs.18,330/-. Along with the Return of income, he furnished Income & Expenditure Account, Balance Sheet and Computation of Taxable Income. In the Income and Expenditure Account, the Assessee disclosed the major sources of income as follows:-

Income from M. Seeds business — *Rs. 4,100/-*
Interest on Deposits — *Rs.14,230/-*

No processing u/s.143(1)(a) seems to have done in this case as there is neither any intimation nor any entry in the order sheet was made in this regard.

During the assessment proceedings, the AR of the Assessee stated that the HUF consists of three members, Shri Malchand Maheshwari, his wife and his son Shri Joy Dayal Bihani. The HUF earned income from Mustard seeds business and interest on deposit. The AO verified the deposits with Shri Malchand Maheshwari and Shri Durga Pd. Bihani from their respective folders.

The AO accepted the income from the business (Rs.4,100/-) as it was 15% above the Gross Sales. The AO considered the Drawing shown by the Assessee is very low. Therefore, he added Rs.5,00/- on this account.

The Assessee stated to have maintained no books of accounts. The AO also did not try to find out as to how the Assessee arrived at the income disclosed. Only after one hearing, he completed the assessment much before the end of time-barring period. The AO did not even inquired how the assessee had estimated the total turnover, expenditure, Gross Profit as well as Net Profit from the business. No particulars in respect of the Bank Account was obtained. In absence of such basic information the purpose of scrutiny assessment was not served.

8)

Assessee : M/s Indar Chand Jain & Sons	**Assessment Year :1995-96**
GIR NO. : I-201/NL	**Date of Order : 30.06.1997**
Status : HUF(Specified)	**Nature of Business: Dealing in local products**

This is a random scrutiny case. The assessee filed the Return of Income on 31.03.1997 at an income of Rs.18,470/-. Along with the Return of income, he furnished Computation of Income, Capital Account and Balance Sheet as on 31.03.1995. In the computation of income, the Assessee had shown total sales of Rs.2,25,000/-. He estimated Gross Profit @ 15% on sale which comes to Rs.33,750/-. From Gross Profit he deducted business expenses of Rs.15,280/- and deduced Net Profit to be Rs.18,470/-. Processing u/s. 143(1)(a) was done on 02.006.1997 at the same income raising 'Nil' demand.

The case was selected for scrutiny by issuing Notices u/s. 143(2) and 142(1) was on 02.06.1997. The Karta of the HUF appeared without books of accounts and stated that the HUF is carrying a local

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product business of paddy through employees. There is no Books of accounts and the profit is prudently estimated. The AO, in absence of Books of accounts, estimated the income of the Assessee to be Rs.19,000/-.

It is found that the assessee did not maintain any books of accounts, but it claimed total sale of Rs.2,25,000/-. The question was as to how the assessee could arrive at the sales figure without the particulars of cost of goods purchased, rate of goods sold etc.. The AO, in his order mentioned that the Karta had stated that the profit was prudently estimated. All the things appear to be very superfluous when the AO estimated the total income at Rs.19,000/- as against disclosed income of Rs.18,470/-. The Karta stated that they are doing the business of local products through some employees against whom they have also claimed certain expenditure. But the AO did not inquire about the nature of those expenditure. The AO was in a hurry to complete the assessment and in such haste he even ignored the regular aspects of scrutiny assessment.

9)

Assessee : Shri Tankeswar Dutta	**Assessment Year :1996-97**
GIR NO. : T-1006/NL	**Date of Order :12.02.1998**
Status :Individual	**Nature of Business : Dealing in clothes**

The assessee filed the Return of Income on 14.03.1997 showing income of Rs.40,210/-. Along with the Return of income, he furnished Computation of Income, Trading and Profit & Loss Account and Balance Sheet as on 31.03.1996. In the Return of Income he disclosed --

Income

Sales	Rs.10,42,615/-
Bank interest.	Rs. 2,832/-

Expenditure

Purchase	Rs.9,75,214/-
Staff Salaries	Rs. 16,800/-
Rent	Rs. 17,652/-
Travelling Expenses	Rs. 10,614/-
Shop Expenses	Rs. 9,948/-
Interest	Rs. 7,783/-

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This is a random scrutiny case. Processing u/s.143(1)(a) was done on 23.5.1997 at an income of 43,050/- raising 'Nil' demand. The case was selected for scrutiny by issuing Notices u/s. 143(2) and 142(1) on 26.05.1997. In course of assessment proceedings, the AR of the assessee produced Books of accounts except Sale Bills. The Assessee was engaged in cloth business. During the course of the Assessment proceedings, it was revealed that the Assessee maintained no Cash Memo in respect of sales in regular basis. The AO, in absence of Bills & Vouchers rejected the sales figures of the assessee and added Rs.2,000/- to Net Profit of the income from Business of the Assessee. Though the loans of the Assessee have been continuing since 1994-95, the Assessee has never produced any confirmation. There was no compliance in respect of loan creditors. Therefore, he added Rs.59,668/- as income of the Assessee from sources undisclosed. Thus total income of the Assessee assessed to be Rs.1,01,880/-. No

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information regarding the Bank Account, Bank Statement, Purchase & Sale were obtained as evident from the Assessment records.

From the Order Sheet entry, it is found that subsequent to the original assessment the Assessee filed an application u/s.154. The order u/s. 143(3) was then rectified u/s. 154. But no such application and the order u/s. 154 is available on record.

The AO did not ask the assessee to produce the Bank Account Since the time-barring period ends on 31.03.1999, there was no need of such hurried action. In haste, he even ignored the regular aspect of scrutiny assessment. An amount of Rs.59,668/- was added as Bogus Loan Creditors, but no Penalty Proceedings were initiated.

10)

Assessee : Shri Sushil Kumar Agarwala	**Assessment Year : 1994-95**
GIR NO. : S-1959/NL	**Date of Order : 27.08.1996 & 25.03.1998**
Status :Individual	**Nature of Business: Dealing in Motor parts & m/c**

The assessee filed the Return of Income for the first time on 05.03.1996 showing income of Rs.33,310/-. This is the first Return of the assessee. Along with the Return, he furnished Trading account & Balance Sheet for the financial years 1990-91,1991-92, 1992-93 & 1993-94 The turnover, Net profit, the Drawings for different years were shown as follows:

Asst. Yr	Turnover	Net Profit	Drawing
1991-92	Rs.2,08,500/-	Rs.23,840/-,	Rs.7800
1992-93	Rs.2,17,500/-	Rs.24,670/	Rs.8200
1993-94	Rs.2,92,750/	Rs.26,762/-	Rs.6200
1994-95	Rs.3,15,800/-	Rs.33,310/-.	Rs.10380

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The drawing was inclusive of Yearly premium of LIC of Rs.3,149.40. In the balance sheet for the Assessment Year 1993-94, he had disclosed Cash at Bank (Central Bank of India) as under --

1993-94 : Rs.37,799.00
1994-95 : Rs.37,779.21

In the Return, he had disclosed income from two sources, i) profit from business & ii) Bank Interest. The Return was processed on 25.09.1996 at the same income. The case was selected for scrutiny on random basis. The AO issued Notice u/s.142(1) and 143(2) on 25.04.1996 fixing hearing on 16.05.1996. But none appeared on that date. The AO refixed the hearing on 02.07.1996 and again on 30.07.1996. Since none appeared, the AO completed assessment u/s144. In the assessment order, he made additions on two grounds.

(i) The assessee disclosed Net Profit of Rs.33,310/-. Since the same was not verifiable, the AO estimated the Net Profit of the assessee to be Rs.36,000/-.

(ii) The assessee has shown personal drawings of Rs.10,380/- but the AO estimated it should be Rs.15,000/- and therefore, added Rs.4,620/- to the income of the assessee.

The AO assessed the total income of the assessee at Rs.40,620/-.

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The assessee went to Appeal against the Assessment Order. The DCIT(A) set-aside the assessment. The AO fixed the case on 18.11.1997 issuing notice u/s 142(1) but none appeared on that date and finally the AO refixed the hearing on 17.02.1998. On 17.02.1998, the AR of the assessee appeared. As per the order-sheet entry, the AO discussed about the estimation of the income of the assessee. The AR stated that the drawings were lower since the assessee was a bachelor and he often depended on relatives.

The AO observed that as the assessee had been in this business for a considerable period of time, therefore the income from business as he estimated, was justified. And he also observed that though the assessee claimed to have had his meal from his relatives very often, it involved a lot of travelling. Therefore, the drawings, the AO, estimated was justified. In this manner he estimated income of the assessee as per earlier order Rs:40,620/-. Thus it was found: -

i) The assessee maintained a bank account as shown in the Balance Sheet, but no information regarding the account number, name of the branch, its address or the copy of the bank statement have been obtained.

ii) No information regarding purchase and sale was collected.

iii) The Drawings shown by the assessee included of the LIC payment.

iv) At the time of fixation of the case, after the DCIT(A)'s order, the ITO issued notice u/s.142(1). But no information was called for as required u/s.142(1). It is not known as to why the notice u/s.143(2) was not issued.

v) No books of accounts were produced, neither the AO mentioned anything about the books of accounts in the Order Sheet or in the body of the assessment / re-assessment order.

vi) The hearing was closed on 17.02.1998. But the assessment order was passed on 25.03.1998, resulting to a delay of one month eight days.

The ITO in his submission stated that the balance shown in the Bank Account was not verified as the differences of balance in different years were very small and there was no scope for verification as the assessment was completed u/s.144. It was a case where no books of accounts were maintained. Thus income was estimated and no question of sale-purchase verification arose. Regarding the issue of notice u/s 142(1) instead of 143(2), the ITO admitted a lapse on his part. He also admitted that there was a delay in passing the order after a gap of more than one month of conclusion of the hearing.

The Assessing Officer did not realize that when there were no books of accounts, it is important to examine the sale, purchase from their customers and suppliers. When the trace of existing bank accounts is found, the examination of the bank statement becomes an important factor to find out the exact whereabouts. The bank account can further throw light on the existence of more bank accounts, sources of other income, time deposits etc. of the assessee. The AO failed to understand the importance for the reasons best known to him. When the assessee had shown a very small amount as his drawing

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which is also inclusive of his LIC premium paid, it becomes important to know the size of the family, his life style, nature of expenses under different heads etc. But the AO failed to examine the same.

11)

Assessee : Mrs. Anupama Majumdar	**Assessment Year : 1996-97**
GIR NO. : A-1088/NL	**Date of Order : 25.2.1998**
Status : Individual	**Nature of Business: Business of local agricultural products**

The assessee furnished Return of Income on 08.05.1997 at an income of Rs.44,420/-. In the return of income she disclosed income from two sources :-

Income from Business & Profession	Rs.44, 420/-
Interest on Bank deposit	Rs. 2,269/-

She claimed deduction of Rs.2,269/- under Chapter VIA Section 80L. She paid self-assessment tax of Rs.150/-. Along with the return of income, the assessee did not furnish either the Balance Sheet or the Profit & Loss Account. The processing u/s.143(1)(a) was done on 12.09.1997 at the returned income. The case was selected for scrutiny on random basis. The assessment u/s.143(3) was done on 25.02.1998. Only one hearing was taken on 03.11.1997. The assessee could not produce any Books of Accounts, therefore Rs.1,000/- was added to the income of the assessee. The Interest earned on Bank F D, which was made out of regular savings, as mentioned in the order sheet. No details were obtained from the Assessee.

Though the Assessee did not maintain any books of accounts but on what basis she had arrived at such an income was never questioned. From the LIC premium receipt, it was found that the Majumdar Family owns a medicine shop at District Dhemaji. Being a housewife, how the assessee carried on the business and what type of item she dealt in, were not questioned. No expenditure was claimed on account of the business activities, neither any evidence of the actual transaction was furnished.

Though the Assessee has claimed deduction u/s.80L on Bank F D, but no Savings Account was disclosed. Therefore, it was necessary to verify the same from the Bank. The AO did not take any step before finalizing the assessment. Neither any books of account nor any bank passbooks were produced or verified by A.O. The time-barring period for assessment was to end on 31.03.1999, so the reason for making such a hasty assessment in Nov., 1997 without conforming to the regular aspects of scrutiny assessment is best known to the AO.

12)

Assessee : Ramawtar Sharma	**Assessment Year : 1996-97**
GIR NO.: R-1323/NL	**Date of Order : 30.03.1998**
Status :Individual	**Nature of Business : Salary & Dalaly**

The assessee furnished Return of Income on 30.09.1997 showing income of Rs.41.750/-. In the Return of Income, he has disclosed salary income from

(i)	Mahabir Transport Company	Rs.15,000/-
(ii)	Mahabir Enterprises	Rs.13,200/-

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And income from other sources from

(i)	Interest from Shantilal Bakliwal	Rs.16,350/-
(ii)	Income from Dalaly	Rs. 6,600/-

With the Return of Income, the assessee had furnished Computation of Income, Capital Account and Balance Sheet. In the Capital Account, he had disclosed Drawings Rs.12,000/- and LIC Premium payment Rs.1,940/-. In the Balance Sheet, on the Asset side, he had disclosed Loan with Shantilal Bakliwal of Rs.1,25,350/- , Sanmati Kumar Bakliwal Rs.17,500/-, Sudhir Kumar Bakliwal Rs.19,000/- and Cash Balance Rs.57,376/-. In support of his income from salary, he did not furnish any Salary Certificate with the Return.

The Return was processed on 16.10.1997 at the same income. The case was selected for scrutiny. The AO heard the case on 10.02.1998 and 24.03.1998. On 10.02.1998 the AR of the assessee stated that the assessee is deriving income mainly from salary; he derives some income from dalaly by arranging lorries and trucks for carriages. On 24.03.1998, the AR of the assessee produced salary certificates and loan confirmations. He declared that the assessee's wife also earns some income as priest's wife and therefore, the drawings are relatively lower.

The assessment u/s 143(3) was done on 30.03.1998. During the course of assessment proceedings, he furnished two certificates from Mahabir Transport Co.and Mahabir Enterprises which certifies that he was paid salary of Rs.15,000/- and Rs.13,200/-, both of which were signed by one Sanmati Kumar Bakliwal. Since the assessee could not produce any Books of Accounts regarding the dalaly income of the assessee, the AO considered income from dalaly to be Rs.8,500/-. The AO considered all the other incomes same as disclosed by the assessee. Hence, total income of the assessee becomes Rs.43,650/-. The AR could not even furnish information regarding the size of the family of the Assessee.

Thus it was found that: -

(i) The AO did not raise any question from whom the Assessee had received the Dalaly or whether there was any reflection of such receipt in his bank pass books. The Assessee did not furnish any information regarding his Bank Account. From the Balance Sheet, it was found that the assessee did not maintain any Bank account.

On the other hand, the address shown by the assessee in the Return is incomplete. In the Return, the address was shown as Bantowgaon, North Lakhimpur, whereas in the LIC receipt filed with the Return, the address was mentioned at Anupam Sales & Marketing Agency, Thakurbari Road, North Lakhimpur. The assessee did, not receive the notices served in course of assessment proceedings. Shri I C Jain, who appeared on behalf of the assessee shown to have received the notices u/s.142(1) and 143(2) and in course of assessment proceedings, the AR also stated that the assessee was out of station. No Power of attorney for the Assessment Year 1996-97 was given in favour of Shri I C Jain, who appeared

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on behalf of the assessee. From all these it appears to be a case where the existence of the assessee is questionable.

The Bakliwals, with whom the assessee made his major investments, apparently are the persons on behalf of whom this Return was filed. Even the bank passbooks of the Assessee were also not verified. Therefore, the regular aspects of scrutiny assessment were not taken under consideration.

(ii) The assessee furnished salary certificate from Mahavir Transport Co. that is also an assessee in this jurisdiction. The AO could have verified whether Sri Sharma had received salary from Mahavir Transport Co.

Regarding the issue of existence of the assessee, as mentioned in the Inspection Note, Shri Doley stated that the assessee might have shown many addresses and therefore, there was no point to reject the same. The practitioners represent the case in the absence of the assessee. As no bank account was disclosed, no verification was done and in course of assessment proceedings, the AR was asked to furnish the parties from whom dalali was received. The officer stated that salary certificate was the evidence of salary receipt from his employer.

13)

Assessee : Md. Mobin	**Assessment Year : 1995-96 &1996-97**
GIR NO. : M-1456/NL	**Date of Order :17.06.1997 & 17.06.1997**
Status : Individual	**Nature of Business : Contract / Supply**

The assessee filed the Return of Income for the Assessment Year 1995-96 and A.Y.1996-97 on 31.03.1997 showing income of Rs.65,870/- and Rs.70,580/- respectively.

Assessment Year : 1995-96

Along with the Return of income, he furnished the Profit & Loss Account and Computation of Income. In the Return he disclosed

Income	
Gross Receipt	Rs.21,67,230/-
Expenditure	
Salary & Wages	Rs.17,19,709/-
Travelling Expenses	Rs. 1,05,875/-
Stock Material	Rs. 2,75,776/-

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Along with the Return of Income, he furnished 2 TDS Certificates, the details of which are as follows :-

Issuing Company	Gross Amount	T D S
Gammon India Limited	Rs.6,10,036/-	Rs.6,832/-
	Rs.6,85,905/-	Rs.7,683/-
	Rs.2,62,618/-	Rs.2,941/-
	Rs.1,46,095/-	Rs.1,688/-
	Rs.1,56,641/-	Rs.1,753/-
	Rs.2,07,039/-	Rs.2,320/-
	Rs.98,895/-	Rs.1,108/-
T o t a l	**Rs.21,67,229/-**	**Rs.24,325/-**

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Processing u/s.143(1)(a) was done on 12.5.1997 at the same income raising refund of Rs.17,564/-. The case was selected for scrutiny issuing Notices u/s. 143(2) and 142(1) on 28.05.1997. During the course of the Assessment proceedings, the AR of the Assessee produced Cash Book, Ledger, Wage Register and some vouchers.

The Assessee is a sub-contractor, of Gamon India Ltd and filed two TDS Certificates from that company. The AO had obtained confirmation of TDS Certificates from Gammon India Limited. The AO, in absence of supporting Bills & Vouchers, added a sum of Rs.8,000/- to Net Profit from Business of the Assessee. Hence, the income of the Assessee assessed to Rs.73,870/- . Refund of Rs.15,164/- alongwith interest u/s.244A of Rs.1,208/- was issued to the assessee on 23.6.1997.

From the Assessment records it cannot be understood whether the Assessee has accepted the additions made by the AO or appealed against the order. Thus it was found that: -

(i) In the Return, the assessee did not give his complete address. From the Profit & Loss Account and TDS certificates filed along with the Return, it appears that the assessee is a resident of Arunachal Pradesh, but his complete address is not available anywhere. On the other hand, the address mentioned in the Return of Income was that of the Advocate. Even the notice u/s. 142(1) and 143(2), and the Assessment order, Demand Notice etc. were issued and served at the address of the Advocate.

ii) This being the first year of the assessee's business, at the time of scrutiny, the AO should have verified the opening capital of the assessee, his nature of business, full particulars of the bank account with number, branch name and address. But no effort was made to obtain the same.

iii) From the TDS Certificates, it appears that the assessee received some money from M/s. Gammon India Ltd. as a sub-contractor. But in the expenditure side of the Profit & Loss Account, the assessee has shown stock materials as one of the major expenditures. The assessee did not draw any Balance Sheet. However, at the bottom of the P & L Account he showed three entries as under:-

(i)	Closing Stock	Rs.10,500/-
(ii)	Cash in hand	Rs.1,40,000/-
(iii)	Cash at Bank	Rs.62,769/-

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The AO did not make any effort to know what type of materials were purchased and to whom salary and wages were paid.

iv) It is a case where no purpose was served by the scrutiny apart from making an estimated addition of Rs.10,000/-

Assessment Year : 1996-97

Along with the Return of income he furnished Profit & Loss Account and Computation of Income. In the Return of Income he disclosed

Income

Gross Receipt Rs.23,94,879.63

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Expenditure

Salary & Wages	Rs.19,01,056/-
Travelling Expenses	Rs. 1,12,472/-
Stock Material	Rs. 3,10,775/-

Along with the Return of Income he furnished 3 TDS Certificates, the details of which are as follows:

Issuing Company	Gross Amount	TDS
Gammon India Limited	Rs.2,19,553/-	Rs.2,457/-
	Rs.1,14,067/-	Rs.1,277/-
	Rs.1,83,247/-	Rs.2,053/-
	Rs.6,75,442/-	Rs.7,367/-
	Rs.15,714/-	Rs.176/-
	Rs.2,35,254/-	Rs.2,353/-
	Rs.1,52,288/-	Rs.1,523/-
	Rs.1,75,834/-	Rs.1,758/-
	Rs.4,45,802/-	Rs.4,458/-
	Rs.1,77,677/-	Rs.1,777/-
Total	**Rs.23,94,878/-**	**Rs.25,199/-**

The case was selected for scrutiny by issuing Notices u/s. 143(2) and 142(1) on 28.05.1997. During the course of the Assessment proceedings, the AR of the Assessee produced Cash Book, Ledger, Wage Register and some vouchers. The Assessee is a sub-contractor of Gammon India Ltd and filed two TDS Certificates of Gammon India Ltd. The AO obtained confirmation of TDS Certificates from Gammon India Limited. The AO, in absence of Bills & Vouchers which supports Wage Registers added Rs.10,000/- to Net Profit of the income from Business of the Assessee. Hence, the income of the Assessee assessed to have been Rs.80,580/-. Refund of Rs.15,025/- along with interest u/s.244A of Rs.1200/- was issued to the assessee on 23.06.1997. From the Assessment records it cannot be understood whether the Assessee had accepted the findings of the AO or appealed against the order.

It was found that:-

(i) In the Return, the assessee did not mention his complete address. From the Profit & Loss Account and TDS certificates filed along with the Return, it appears that the assessee is a resident of Arunachal Pradesh, but his complete address is not available anywhere. On the other hand, the address mentioned in the Return of Income was that of the Advocate. Even the notice u/s. 142(1) and 143(2), Assessment order, Demand Notice etc. were issued and served at the address of the Advocate.

ii) Since no regular books of accounts were maintained, at the time of scrutiny, the AO should have verified the Capital Account of the assessee, his nature of business, full particulars of the bank account with number, branch name and address. But no effort was made to obtain the same.

iii) From the TDS Certificates it appears that the assessee received some money from M/s. Gammon India Ltd. as sub-contractor. But in the expenditure side of the Profit & Loss Account the assessee has shown stock materials as one of the major expenditures. The assessee did not draw any Balance Sheet. However, at the bottom of the Profit & Loss Account he has shown four entries as under:-

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(i)	Closing Stock	Rs.60,550/-
(ii)	S B I, YAZALI (FDR)	Rs.1,50,000/-
(iii)	Cash in hand	Rs.15,000/-
(iv)	Cash at Bank	Rs.1,03,729/-

The AO did not make any effort to know what type of materials were purchased and to whom the salary and wages were paid.

iv) It is a case where no purpose was served by the scrutiny apart from making an estimated addition of Rs.10,000/-

14)

Assessee : Sheikh Rasul	Assessment Year : 1996-97
GIR NO.: S-868/NL	Date of Order : 19.03.1998
Status : Individual	Nature of Business : Salary & Income from other sources

The Assessee filed the Return of Income on 12.08.1997 showing an income of Rs.52,820/-. Along with the Return of Income, he furnished Computation of Income, Balance Sheet and Statement of Capital.

During this year, the Assessee has paid towards GPF Rs.12,000/-, Group Insurance Rs.720/- and repayment of HBA Rs.12,000/-. In the Balance Sheet, he has shown to have received gift of Rs.3,80,000/- and earned Rs.10,000/- as Agricultural Income. But Processing u/s. 143(1)(a) was done on 16.1.1998 at a total income of Rs.50,000/- raising 'Nil' demand. The case was selected for scrutiny by issuing Notices u/s.143(2) & 142(1) on 16.01.1998. During the course of Assessment proceedings, the Assessee furnished ten Gift Deeds and one Deed of Purchase of Land. It was revealed that the Assessee maintained six Bank Accounts.

Name of the Bank	Account Number	Name of Holder
State Bank of India, A.T. Road	C17/2699	Sheikh Rasul
Vijaya Bank, Itanagar	4383	Sheikh Rasul
UCO Bank, Itanagar	2139/13	Sheikh Rasul
UBI, Krishnai Chariali	4335	Sheikh Rasul
State Bank of India	5/263,Ledger No.5/15 Recurring Deposit A/c.	Sheikh Rasul, FNG of Miss Razia Sheikh
State Bank of India	5/2909, Ledger No.5/16 Recurring Deposit A/c.	Sheikh Rasul, FNG of Sheikh Arif Sajeed

The AO inquired about the Gift Deeds and asked to produce two donors for examination. The AR produced two donors. Deposition of one donor was taken. The AO considered that the income of the Assessee from agricultural land was too low during this year, but during the year previous to this, income was Rs.39,000/- which was also an excessive one. Therefore, he added Rs.20,000/- as non-agricultural income. Therefore, the total income of the Assessee became Rs.72,820/-.

Thus it was found that :-

(i) The Assessee has submitted ten Gift Deeds, but none of them had furnished their Income Tax File No. and they belonged to the members of all communities. Ten declarations on Rs.10/- non-judicial

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stamp paper were submitted, but not in the form of affidavit. The AO accepted the same and in course of assessment proceedings he recorded the statement of one such person. One Shri Prabin Dayal Chowdhuri stated that he made the gift to Mr. Rasul on the occasion of his daughter's birthday, whereas his annual income was declared around Rs.35,000 / 36 ,000 p.a. But he made a gift of Rs.25,000/- to the assessee which is abnormal. This seems to be the first the Return filed when the assessee has submitted Balance Sheet for Assessment Yar 1989-90 onwards.

(ii) The Assessee, being a Government employee, posted in Itanagar, Arunachal Pradesh claimed to carry out agricultural activities in Goalpara, Assam on Adhiar basis. But no cross verification was made.

(iii) During the year, the assessee has shown deposit in a SBI Savings Bank account, Guwahati, amounting to Rs.6,94,158/- and major portion was either by cash or by transfer from another account. In the UCO Bank Account, a cash of Rs.30,000/- found to have been deposited during the year. Similarly, an amount of Rs.45,000/-, in cash found to have been deposited in UBI Account. But no satisfactory explanation was obtained regarding the source of the money from the assessee who was mere an employee of State Government.

iv) To substantiate the fluctuation of agricultural income, the Assessee furnished one Affidavit from one Mehrunessa, wife of Late Ainal Haque Patgiri, owner of the 22 bighas of land, that the Assessee cultivates on Adhiar basis and this practice has been continuing since 1984. But, neither the Assessee nor Mehrunessa could furnish any documentary agreement. He did not verify the genuineness or existence of any such lady.

The ITO in his reply stated that he had accepted the gifts as it seemed to him that gifts were acceptable. He called two persons for recording of statements and discussed with the donor who stated to have been earning since years back. He also stated that a government servant can carry on agricultural activities. As the agricultural activities of the assessee's parents were substituted by the written statement furnished by the assessee, he did not feel it necessary to verify further. The deposits and sources were checked and were explained satisfactorily. As in villages, people carry on agricultural activities just on mere words and mutual faith; the ITO thought the affidavit of the landowner was sufficient.

The AO should have verified the life style, size of family, bank accounts etc. of the donor as it was quite abnormal for such persons, having only petty income, to make gift to a person at the occasion of his daughter's birthday .

As there was no documentary agreement between the landowner and the assessee and the parents of the assessee were looking after the agricultural activities, the agricultural income earned should have been treated as the income of the assessee's parents. Moreover, as the assessee was posted in Itanagar, Arunachal Pradesh, it was not possible for him to carry out agricultural activities in Assam.

The AO had replied in an evading manner on the observation regarding the deposits and sources. He did not verify the bank accounts of the assessee, the reason of which is best known to him, though the

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assessee, in spite of being a mere government employee, had deposited a huge amount in a savings bank account.

15)

Assessee: Anil Kumar Srivastava	Assessment Year : 1996-97
GIR NO.: A-1185/NL	Date of Order : 06.06.1997
Status : Individual	Nature of Business : Supply Business & Truck Plying

The Assessee has filed the Return of Income on 31.12.1996 declaring income of Rs.41,550/-. Along with the Return of Income, he has furnished only the Computation of income. In the Computation of Income, he has shown Gross Turnover from supply business was Rs.1,74,450/- and estimated Net Profit to be Rs.17,550/- and income from truck Rs.25,000/-. During the year the Assessee has earned agricultural income of Rs.14,000/-. Processing u/s.143(1)(a) was done on 05.03.1997 at the same income. The case was selected for scrutiny by issuing Notices u/s. 143(2) & 142(1) on 05.03.1997. The Assessee maintained no Books of accounts. The AO considered the income from supply business to be Rs.19,000/- instead of Rs.17,550/- and estimated total income of the Assessee to be Rs.43,000/-.

Thus it was found: -

(i) The Assessee did not maintained any Books of Accounts. No proof of his income from supply business was furnished. On going through the Return for asstt. year 1995-96, which was also filed on the same date, it was found that the assessee used to supply materials to the Executive Engineer, Nahar Lagun, Division, A. P. Similar income shown to have been earned in the earlier year too. But in the computation, for asstt. year 1996-97, the assessee mentioned that no tax was deducted which is found to be abnormal. At the time of scrutiny assessment, it was the basic requirements to collect information regarding the source of the receipt shown under the head 'supply' and corresponding expenses claimed. But no such effort was made. .

(ii) There was no Profit & Loss Account but a Balance-sheet showing certain assets and liabilities have been along with the computation. Without providing any details, assessee shown to have earned income of Rs. 24,000/- from truck operation How the said amount was calculated, was not questioned. At the same time, in the Balance-sheet, deprecation on the truck at the rate of 40% was claimed. Thus the Balance-sheet drawn was quite arbitrary and not supported any by any fact.

(iii) In the Balance-sheet, the assessee has shown liability under the heads A.E. Co-operative Apex Bank amounting to Rs. 36,965/- and one xerox copy filed at the time of assessment so that the bank had charged interest from time to time which were shown as liability. But in the letter the number of the account, name of the A/c. holder etc. were not mentioned. In the Balance-sheet, no loan from the said bank was shown. But in the computation sheet and in the order sheet the I.T.O. had noted the same as 'verified'. Thus, the very nature of verification is questionable.

(iv) In the Balance-sheet, there was no reference of any bank account. Since the assessee is earning income from Govt. concern, the maintenance of Bank A/c. was very necessary. But no question was asked.

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(v) The assessee had shown to have purchased land in U.P. from where agricultural income was shown. In the immediate preceding year, the assessee had shown to purchase one plat of land at the cost of Rs. 3,48,790/-. This information was filed along with the Return for assessment year 1995-96. In the information filed, it was mentioned that the assessee made the investment but the land was purchased in the name of three other persons. This action attracts Gift-tax Act. But no step was taken for initiating any proceedings under the Gift-tax Act.

The ITO in his reply stated that during this year, no material was supplied to the Executive Engineer, Nahar Lagun. The assessee supplied goods to various sundry parties. The TDS was not attributable. Moreover, he was not aware whether the assessee earned income from any Government Department. Sometimes the Government Department made payment in cash to their suppliers. Regarding the income from truck operation, there is nothing abnormal in estimating the income and allowing depreciation. Regarding the loan from Cooperative Bank, the ITO submitted that the assessee did not accept the claim of the Bank and the amount was disputed. So far as applicability of Gift Tax , the ITO accepted it as a mistake.

The subsequent record of the assessee also suggested that for supplying to the Government Department, tax was deducted and assessee filed TDS Certificate. There is nothing on record to substantiate the claim of the ITO that during this year supply was made to the sundry parties, not to the Government office.

Secondly, it is the imagination of the ITO that payment might have been made in cash. The AO requires verification and only after proper verification or obtaining information, the AO can arrive at such a conclusion. Regarding the loan from Cooperative bank it may be stated that if the principal amount was disputed, there was no need to charge interest thereon and disclose it in the Balance Sheet. Moreover, the officer did not obtain any information in the file.

16)

Assessee : Smt. Lata Agarwala	**Assessment Year : 1996-97**
GIR NO. : L-874/NL	**Date of Order : 27.01.1998**
Status :Individual	**Nature of Business : Ladies personal apparels**

The assessee furnished the return of income on 29.11.1996 at a total income of Rs.72,760/- . In the Trading and Profit & Loss account, the assesssee showed a turnover of Rs.2,37,715/-. The major heads of expenditure are as follows: -

Purchases	Rs.1,67,072/-
Expenses	Rs. 22,910/-

The major sources of the income of the assessee are as follows :-

Business income	Rs. 47,733/-
Interest Income from Syndicate Bank	Rs. 491-
Interest Income from Bank of India	Rs. 50/-
Interest Income from Sunil Kumar Ajay Kumar	Rs. 25,026/-

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Processing u/s. 143(1)(a) was made on 29.11.1997 at the same income raising Nil demand. This is a random scrutiny case Notices under section 142(1) & 143(2) were issued to the assessee on 5.3.97 fixing the case for hearing on 26.03.97. But the registered letter was returned unserved with postal remarks 'not known'. Again a re-fixintion letter was issued fixing the case on 20.08.97 followed by another set of notices under section 142(1) and 143(2). But all subsequent letters returned 'unserved'. Thereafter the I.T.O. served another letter on the A.R. of the assessee providing final opportunity but none appeared and the I.T.O. finalised the order u/s. 144 adding a lump-sum amount of about Rs. 2,000/- creating demand of Rs. 614/- only. But no penalty proceedings for non-compliance have been initiated.

The asssessee, in her Return has shown her address as C/0. Sri Sanjoy Kumar Agarwala, Dhemaji, Assam whereras the notices issued for the first time mentioning the address as Miss Lata Agarwala, d/o Bhagwati Pd. Jasarasaria, Dhemaji. In the second and the third refixation letters the same addresses were issued. but the letter issued on 24.09.97 and 3.11.97, 25.11.97 her address was shown as wife of Sanjoy Kr. Agarwala. But in the refixation letter issued on 11.12.97 issued and served at the adderwss of the A.R. of the assessee

It is found in the Return that, the address mentioned by the assessee was incomplete. Xerox copy of L.I.C. premium filed with the return indicates the address of the assessee as *'C/o. M/s. Om Prakash Shiv Kumar, Garikhana, Shillong, Meghalaya'*. The N.S.C. purchase on 26.03.96 has also shown the same address. Meanwhile, the assessee filed the return for assessment year for 1997-98 wherein a confirmation letter in respect of loan advanced by the assessee was filed. In the confirmation letter, the address of the assessee was mentioned as "wife of Sri Sanjoy Kr. Agarwala, North Lakhimpur, Assam".

Had the ITO made some efforts to find out the exact address of the assessee, this would have been possible either to verify from his own records or from the bank which were shown in the Balance-sheet. But no such steps were taken and only after making some nominal additions, he completed the assessment.

Thus, the AO completed the Assessment on 27.01.1998 without making proper inquiry, but there was sufficient time till 31.03.1999 for completion of detailed scrutiny. The Assessee furnished copy of two bank accounts, but the AO made no further inquiry whether the transactions in those bank accounts really belong to the assessee or whether the assessee maintained any other bank accounts through which major transactions were made.

Shri Doley in his reply regarding non-service of notices and refixation letters, stated that since the assessee was a lady, it was not known to him whether she was staying with her father or husband. Regarding completion of assessment u/s.144 without proper verification, ITO submitted that it was not his habit to keep the case pending till the time-barring month. To him, it was a simple case and in the Bank Account very small balances were shown. Therefore, not much time was devoted and he thought it wastage of time to examine the case further.

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If the AO cannot serve the notices on the Assessee, the assessment order becomes void. In the declaration, the assessee mentioned the name of her husband Shri Sanjoy Kumar Agarwala, not the name of her father. Since no notice could be served, there was further need of verification of her actual address either from the bank or from the documents filed along with the Return. But without doing so, the officer completed the assessment in haste. Verification of the bank a/c cannot depend on the closing balance shown in the Return. It is necessary to verify the various sources of income, existence of other bank accounts, other transactions, if any, made during the year. But the ITO failed to realise the importance of the same.

17)

Assessee : Pawan Kumar Sarda	**Assessment Year : 1996-97**
GIR NO. : P-730/NL	**Date of Order : 18.06.1997**
Status : Individual	**Nature of Business : Broker**

The assessee furnished Return of Income on 31.01.1997 at an income of Rs.55,220/-. In the Return of Income, the assessee disclosed income from the following sources :-

(i)	Brokerage & Commission			Rs.32,820/-
(ii)	Interest			
		Prakash Kabra	Rs.9,648/-	
		N C Jaikishan	Rs.9,941/-	
		Finolex Popedeb.	Rs. 316/-	
		UBI, NL	Rs. 68/-	
		SBI, Sujangarh	Rs. 51/-	
		Basanta Rice Flower & Oil Mills	Rs.2,354/-	
(iii)	Income Tax Refund		Rs. 140/-	
(iv)	Dividend		Rs. 172/-	Rs.22,694/-
				Rs.55,514/-
Less : U/s.80L				Rs. 294/-
				Rs.55,220/-

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Tax payable was shown at Rs.3,044/- and Rebate claimed Rs.3,086/-

It was a random scrutiny case. The AO issued Notice u/s. 142(1) & 143(2) on 31.03.1997, followed by a refixation letter. The AR of the assessee appeared on 05.05.1997 without any Books of Accounts. As per the order sheet entry, the AR stated that the assessee is an introducer of suppliers to Gammon India and also a mediator in purchasing of goods by the officers of NEEPCO. In that way he earns commission. The AR produced Bank passbooks before the AO, who verified those. But no copy of the Bank accounts were obtained, neither the account number nor the address of the Branch were noted.

Since the assessee did not maintain any Books of Accounts, the AO estimated the income under the Head Brokerage & Commission to be Rs.44,820/-. As a result, total income was estimated to be Rs.67,220/-. No details or documents so far as assessee's business activities, expenditure, if any has been obtained.

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It was found that three loan confirmations were filed along with the Return, which indicated that he had business connection with parties in Rajasthan. Xerox copy of one NSC filed with the Return also shows assessee's address at New Sujangarh, Rajasthan. One of his bank accounts with SBI was also with Sujangarh Branch. It was therefore, necessary to verify the assessee's exact whereabouts.The assessee has shown personal expenses of Rs.11,000/- only. It was thus necessary to verify his family size and other related expenses as well as expenses on account of travelling. But no step was taken.

The Return was filed on 31.01.1997 and the assessment was completed on 18.06.1997, only after one hearing and without obtaining any information on record.

Shri Doley submitted that he had examined the nature of activities of the assessee in course of assessment proceedings and many assessees shown different addresses in their Return. He further submitted that he examined the personal drawing in terms of family size, earning etc. of the assessee and there was nothing wrong in completion of the assessment after one hearing and immediately after filing of the Return.

It was found that the exact address of the assessee required verification. At the same time since the assessee's activities were in Rajasthan but he was staying in North-East. Hence it was necessary to examine his personal expenditure as the same was shown only to be Rs.11,000/-. Though the ITO stated that he has examined everything in course of assessment proceedings, but nothing is available on record.

18)

Assessee : Md. Izahar Hussain	**Assessment Year : 1995-96 & 1997-98**
GIR NO. : I-776/NLP	**Date of Order : 22.08.1996 & 27.02.1998**
Status : Individual	**Nature of Business : Contract & Dealing in Logs**

Assessment Year-1995-96

The Assessee filed the Return of Income on 02.04.1996 showing income of Rs.1,59,260/-. Along with the Return, he had furnished Computation of Income.

He has also submitted three TDS Certificates, the details of which is as follows --

Person deducting TAX	Gross Amount (Rs)	T D S
Banderdewa Saw Mill & Plywood Industries	304,535	6,822
Banderdewa Saw Mill & Plywood Industries	336,194	7,531
Banderdewa Saw Mill & Plywood Industries	1,350,021	30,244
Total	**1,990,750**	**44,597**

He estimated profit @ 8% of gross receipt which comes to Rs.1,59,260/-.

Processing u/s.143(1)(a) was done on 25.4.1996 at the same income. It was a sample scrutiny case. Notices u/s. 142(1) & 143(2) were issued on 25.04.1996. The A/R of the assessee did not produce any books of accounts. The AO accepted the submission of the assessee & contention of A/R and assessed the income of the assessee to be Rs.1,59,260/-.

The basis of the estimation by the Assessing Officer, in assessing the total income as per the submission of the assessee is not understood. No books of accounts were verified, no details obtained. What type of expenditure was incurred by the assessee is not known. As it was basically payment made

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by a Plywood industry, payments might have been made by cheque. But no details of bank account were furnished. In the computation, the assessee had shown Stock - Nil and Cash - Rs.40,000/-. But no Bank Balance etc, was not reflected.

Assessment Year-1997-98

The Assessee filed the Return on 31.08.1997 showing income of Rs.95,830/-. Along with the Return he furnished Computation of Taxable Income and details of Salary paid, Elephant expenses, truck expenses and labour charges. He disclosed his major sources of income & expenditure is as follows: -

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Income

Gross Receipt from Log Business	Rs.35,87,327/-

Expenditure

Travelling Expenses	Rs. 50,000/-
Salary to Chowkidar	Rs. 1,74,960/-
Elephant Charges	Rs.12,80,000/-
Truck Carrying Charges	Rs.14,15,000/-
Instrument charges for cutting trees	Rs. 2,20,000/-
Labour Wages	Rs. 2,70,000/-
Work side temporary sheds for labour	Rs. 80,000/-

He has also submitted five TDS Certificates, the details of which is as follows :-

Person deducting TAX	Gross Amt(Rs)	TDS
Banderdewa Saw Mill & Plywood Industries	2,133,653	42,673
Banderdewa Saw Mill & Plywood Industries	267,447	5,349
Banderdewa Saw Mill & Plywood Industries	343,382	6,868
Banderdewa Saw Mill & Plywood Industries	439,487	9,845
Banderdewa Saw Mill & Plywood Industries	403,348	9,035
Total	**3,587,317**	**73,770**

In the details submitted with the Return, the truck expenses was found to have been Rs.15,15,000/- and similarly the elephant charges were Rs.13,80,000/- paid to 13 persons. It was a compulsory scrutiny case and notices u/s. 143(2) & 142(1) were issued on 03.10.1997. In response to the Notices, the Assessee appeared on 20.10.1997 with one Labour Register, Register for payment to elephant owners, one Register for payment on account of truck, original money receipts of truck-owners, original money receipts of elephant owners. He also produced some vouchers of tarpaulin and related materials purchased. The AO checked and examined the books of accounts produced. During the course of Assessment proceedings, it was revealed that the flow of work stopped from December, 1996 due to order of Court regarding cutting of trees. As a result, there was sudden discontinuance of business and lot of other troubles started. He also stated to have been kidnapped by some terrorist outfits and after being released, his brother looked after the business. He also stated that *his Bank Pass Books and Cash book were taken by the militants and yet to be returned.* Expenditures regarding cutting instruments were made on the basis of fair estimation. He stated that he had a Savings Bank account No.2510/12 in UCO Bank,

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Banderdewa Branch. The AO, at the time of Assessment, considered that the Assessee has claimed excess expenditure regarding purchase of instrument for cutting and added back Rs.25,000/- to the income of the Assessee.

Thus, it was found that: -

(i) There was a clear discrepancy between the expenses claimed on account of Truck & Elephant hiring charges and computation of income and certain cash receipts as filed with the Return. It can be found from the computation of income that originally in the computation, the figure of Rs.15,15,000/- and Rs.1,38,000/- were typed. But subsequently, the figures were changed with ink and in both the cases Rs.1,00,000/- each was reduced. Similarly, in case of "Receipt", the original figures were typed as Rs.37,87,323/-. But subsequently, it was changed to Rs.35,87,327/-. But the assessee forgot to reduce the Cash Voucher he prepared to claim the expenditure. Had the AO examined the books of accounts with reference to these discrepancies, he could have understood the reason for doing so.

(ii) It was necessary to obtain the copy of the bank statement from the Bank, if the assessee's Pass Book was taken away by the militants. The AO did not ask any question as to why all the payments were made in cash.

(iii) Since it was a case of individual, it was necessary to examine the withdrawals of the assessee with reference to size of the family and status.

(iv) No address of the persons to whom the payments were made was obtained in the money receipts filed with the Return.

(v) The AO did not verify whether the assessee was actually kidnapped by the militant. The same was verifiable from the Police Station and other local inquiry. If he was actually kidnapped, the ransom, if any paid, to the militants for his release and the source of that money was also a subject matter of verification. No effort was made to find out whether the assessee had any other source of income by way of interest on investment, bank FD etc. which is very much common and specially in such troublesome area.

19)

Assessee : Md. A. Rahim Talukdar	**Assessment Year : 1995-96**
GIR NO.: A-1174/NLP	**Date of Order : 30.9.1997**
Status :Individual	**Nature of Business : Contractor**

The assesse filed the Return on 02.11.1995 disclosing a total income of Rs.98,760/-. He did not furnish any Profit & Loss Account or Balance Sheet. The assessee was shown to have received money as a contractor from different concerns and in support of the same, he furnished TDS Certificates Along with the Return, he submitted 9 TDS certificates from Bengal Tea & Fabrics Ltd.; 1 TDS certificate from Sri S.C.Somani, AEE, GE(AF), Chabua, 1 TDS certificate from Major R.K.Mehra, AEE, GE(AF), Tezpur. In the computation of income, the Assessee had disclosed income only from 9 TDS certificates and estimated the profit @ 8% on the total receipt of Rs.12,27,493/- which comes to Rs.Rs.98,199/-. During

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the proceedings U/s.143(1)(a), the AO added the income from remaining 2 TDS certificates amounting to Rs..62,053/- and as a result, the income of the assessee raised to Rs.1,60,820/-.

In course of assessment proceedings U/s. 143(3), the A.O had written letters to various banks for supplying the Bank Statement of the assessee. Only the Allahabad Bank ,North Lakhimpur Branch had supplied the Bank Statement . On the other hand, the U.B.I. North Lokhimpur, S.B.I., North Lokhimpur stated that the assessee did not maintain any accounts with those banks. On examination, the Allahabad Bank Account, the A.O. found there was an excess balance of Rs. 3,91,371- than the amount claimed to have been shown as his receipt. In course of hearing, the A/R stated that some loans from the colleagues and contractors were raised and the A/R also stated --

" there is no record of these and it also been related to F.Y. 1994-95 , the records or evidence cannot be produced now, moreover this being a case of non-recorded and no-account maintained case" (sic).

The A.O. had accepted this submission and added Rs.62,053/- with the turnover and applying 8% as Net Profit he finalised the assessment . As a result, the assessed income became Rs. 1,03,725/. against the returned income of Rs. 98,764/-.. Refund of Rs.626/- was issued to the Assessee on 28.10.1997.

So, it was found that: -

(i) Since it is a case where no Books of Accounts were maintained, it was necessary to examine the Bank accounts of the assessee to cross-check the amount received from contract job. Instead of, asking Bank Statements from different banks, initially it was necessary to obtain the particulars of the Bank Accounts from assessee,. The same was not done.

On the other hand, Bank Statement collected were not examined properly. If, the amount receipts as per the T.D.S. Certificates is compared with the Bank deposits,, it will be found that amount received in five certificates were deposited in the Allahabad Bank A/c. It is not known where the assessee had deposited the remaining amounts. As per the T.D.S. Certificates, the assessee was shown to have receipts the following amounts .

Sl.No.	Date	Gross amount	T.D.S.	Net Amount	Remarks
1	14.7.94	46,021/-	784/-	45,237/-	30.7.94
2	18.7.94	16.032/-	335/-	15,697/-	Not found
3	19.8.94	11,848/-	237/-	11,611/-	18.8.94
4	18.9.94	43,000/-	860/-	42,140/-	18.11.94
5	12.2.95	37,050/-	741/-	36,309/-	Not found
6	16.2.95	1,27,500/-	2,550/-	1,24,950/-	16.2.95
7	17.2.95	1,25,660/-	2,513/-	1,23,147/-	17.2.95
8	18.2.95	3,05,745/-	6,115/-	2,99,630/-	Not found
9	19.3.95	1,56,608/-	3,132/-	1,53,476/-	Not found
10	31.3.95	2,56,082/-	5,122/-	2,50,960/-	Not found
11	16.10.94 & 5.10.94	1,02,000/- & 62,000/-	3,280/-	1,60,720/-	Not found

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It means, that out of the total receipt of Rs. 12,89,546/-, only Rs.3,47,628/- was found credited in this Bank A/c. and remaining 9,16,792/- was not reflected in this A/c. Apart from, the above figures the following amounts are also found credited in the Bank A/c of the assessee.

Sl.No.	D a t e	Amount credited
1	16.04.1994	30,000/-
2	28.04.1994	24,118/-
3	12.05.1994	61,030/-
4	07.06.1994	13,950/-
5	22.06.1994	13,200/-
6	29.06.1994	5,400/-
7	07.07.1994	50,000/-
8	21.07.1994	33,643/-
9	09.08.1994	20,655/-
10	30.08.1994	50,000/-
11	05.09.1994	9,920/-
12	12.09.1994	94,140/-
13	12.09.1994	12,612/-
14	26.09.1994	9,520/-
15	08.10.1994	60,760/-
16	16.10.1994	30,000/-
17	20.10.1994	49,960/-
18	22.10.1994	30,000/-
19	28.10.1994	16,195/-
20	05.12.1994	30,000/-
21	10.12.1994	45,000/-
22	16.12.1994	15,000/-
23	21.12.1994	13,188/-
24	26.12.1994	50,000/-
25	19.01.1995	4,760/-
26	20.01.1995	15,000/-
27	23.01.1995	10,200/-
28	23.01.1995	4,760/-
29	30.01.1995	30,000/-
30	01.02.1995	35,000/-
31	11.02.1995	20,000/-
32	11.02.1995	3,000/-
33	15.02.1995	76,309/-
34	18.02.1995	1,09,630/-
35	07.03.1995	50,000/-
36	20.03.1995	1,08,476/-
37	21.03.1995	12,110/-
38	23.03.1995	24,500/-

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The sum total of this amount is 13,15,841/- , source of which was not explained at the time of assessment proceedings . If the T.D.S. Certificates and this Bank A/c. is examined together, it will clearly show that this total receipt from various sources was at least Rs. 26,05,397/-, which was not been considered.

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It was also found that assessee was allowed refund for assessment year 1994-95 on 11.01.1995 which includes interest of Rs. 565/- . This amount should have been reflected in the computation of income but same was not shown. The same thing happened in the subsequent years too. Interest received from the Income Tax Department was never shown as his income by the assessee in his computation.

In the Bank A/c. mentioned above, the opening balance of the assessee was shown at Rs.699.62. and closing balance as on 31.03.1995 was Rs.45,980.02. But in the particulars filed with the return no bank balance was disclosed either in assessment year 1994-95 or in assessment year 1995-96 .

ii) The AO did not obtain the Account Number and Branch of the Bank so that any further query can be made. The AO could have examined the Bank Account of the Assessee thoroughly and verify whether the statement of the Assessee is correct. As the Assessee could not produce any Books of accounts, examination of the Bank Accounts was very much important.

iii) The AO also estimated the profit @ 8% of the turn over but no reason was forwarded for accepting the claim of the assessee when the assessment was u/s.144.

The ITO submitted that he had initially asked the AR about the bank accounts and the A R disclosed only one bank account. As he had sincere intention to examine the bank accounts, he wrote letters to other banks to make him sure. As per his reply he could not understand the observation drawn on the basis of the Tables made above. He further submitted that he had not taken into account the interest received from the Income-tax Department, not shown by the Assessee, as he was busy and Audit Inspection could meet the omission without starting vigilance proceedings. Regarding the opening balance and closing Bank balances, he had not discussed or objected, as the Assessee furnished no balance sheet. To him the basis of estimation was at a reasonable percentage of 8.

On examination of the Bank statement Shri Doley could haverightly assessed the income of the assessee but he failed to do so.

20)

Assessee : Sri Ram Gopal Malpani	**Assessment Year : 1996-97**
GIR NO.: R-723/NL	**Date of Order : 04.09.1997**
Status : Individual	**Nature of Business : Share from Regd. Firms, Interest, etc.**

The assessee furnished Return of Income on 27.03.1997 disclosing income of Rs.1,21,490/-. Along with the Return, he furnished Computation of Assessable income, details of interest income, details of dividend received, particulars of rebate claimed u/s.88, cash and bank balance, investment and deposits. In the Computation of Income, he disclosed –

Income From R.Firm M/s. Assam Iron Traders

Commission	Rs.54,347/-
Interest Income	Rs. 7,313/-
Interest received and accrued	Rs.36,593/-
Dividend	Rs.36,240/-

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He had paid advance tax of Rs.1,000/- on 14.09.1995, Rs.2,000/- on 14.12.1995 and Rs.3000/- on 13.3.1996. He had also paid Self Assessment Tax of Rs.5,810/- on 07.03.1997. Along with the Return, he furnished copies of five NSC VIII Issue of Rs.10,000/- each purchased during the year. During the year, he had contributed Rs.4,000/- to UTI, Rs.4,450/- and Rs.2,750/- towards payment of LIC premium.

The case was selected on random basis for scrutiny by issuing Notices u/s. 143(2) and 142 (1) on 02.06.1997. During the Assessment proceedings, the Assessee submitted details of receipt of Dividend from UTI (Rs.14,614/-) which is under Re-investment Plan. He had also submitted two statements from UTI revealing Dividend accrued amounting to Rs.5,163/- and Rs.5,112/-. He also invested in Indian Bank Mutual Fund of Rs.6,066/-. During the Assessment proceedings, the Assessee was requested to furnish the proofs for receiving Dividend from UTI Unit 64, Ind Jyoti (Plan B). The AO, being satisfied with the submission and discussion with the Assessee, assessed the income of the Assessee to be Rs.1,21,490/- i.e. at the income at which the Return was furnished.

It was found that the Assessee received commission and interest income from a Registered Firm. No copy of Accounts, Balance Sheet or computation of income was filed or obtained in course of assessment proceedings to substantiate his claim of receiving commission and interest from the firm.

The Assessee made huge investment in different forms, but the particulars of assessee's withdrawal, his size of the family and expenditure on account of family maintenance was not obtained.

The AO did not verify the bank pass books, neither any copy of those were kept in the assessment record, nor the account number or the branch of the bank for future verification.

21)

Assessee : Sudhir Dutta	**Assessment Year : 1995-96**
GIR NO.: S-1302/NL	**Date of Order : 20.08.1996**
Status :Individual	**Nature of Business : Contract & Truck Plying**

The assessee filed the Return of Income on 21.09.1995 disclosing income of Rs.93,440/-. Along with the Return of Income, he furnished Computation of Income, Capital Account and Balance Sheet. In the Computation of Taxable Income, the assessee showed the following receipts and expenditures.

1.	*Contract works by Gross Received from North Lakhimpur P.W.D. Building Dvn.*	*Rs.11,47,059.00*
	Less stock Recovery (-)	*Rs. 1,53,021.00*
		Rs. 9,94,038.00
2.	*From N.B.C.C. B Charali*	*Rs. 5,22,658.63*
3.	*Both Truck Income No.As-07-1031/ & A.M.M.1175. Extra Carrage etc. Excluding own Contract Works.*	*Rs. 1,94,960.00*
4.	*Intt. Received from F/D.*	*Rs. 11,557.00*
	Intt. Received from Old N.S.C.	*Rs. 3,334.00*
	Intt. Received from I. Tax dept.	*Rs. 6,999.00*
	Total Gross Received	*Rs.17,33,546.63*
	Less U/S.88 & U/S.80L (-)	*Rs. 13,334.00*
		Rs.17,20,212.63
	Less Materials Purchased and Labours Wages (-)	*Rs.12,66,980.00*
	Gross Profit Before Expenses	*Rs. 4,53,232.63*

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Out of the above Gross Profit, the assessee claimed to have made different expenditures on account Engineer & Staff Salary, Truck Drivers' Salary, Insurance on account of Truck, Bank Interest, Travelling expenses and collection charge, Truck fuel etc. and after claiming total expenditure of Rs.3,59,788/-. The Assessee was shown to have Net Taxable income of Rs.93,444/- in the Return.

At the time of assessment, the AO made requisition of books of accounts, Bank Pass Book etc. u/s.142(1). On 25.10.1995 the assessee, in a letter stated that *" I beg to state that, I have the honour to inform you that, you are hereby take necessary action as per fundamental act & Rule for the I.T. act 1961, which was the Newly Amendment Rule for Contract Works and Trucks Lump sum profit Rs.24.000/- per truck. Yearly income not more and contract works Maximum Profit @8% of the gross received value as per I.T. act and the contractor showing above mention % per centum for his submitting return, than does not arrised Books of account produce for verification"(sic).*

Thereafter, the AO issued two more refixation letters on 26.10.1995 and 19.12.1995. In response to the letter dated 19.12.1995 the assessee filed a letter dated 12.01.1996 which is reproduced below: -

" I have the honour to inform you that, you are fixing any case for the assessment year 1995-96 on 4/1/96 but in this connection my Authorised representative also discussed you for the same on 3/1/96 in your office and you are kindly highly request to you as per discussion assessed my above mention Financial year at an early date for favour of your kind consideration and favourable order."(sic)

But from the order sheet, it is found that no such discussion was recorded thereon. Thus on 20.08.1996 the AO passed the order u/s. 144 of the I T Act, taking into account the 8% profit on contract business of Rs.15,16,696/- which comes to Rs.1,21,328/- and profit from per truck Rs.2,000/- per month which comes to Rs.48,000/-. At the same time, the income from other sources, as found in the submission made by the Assessee was Rs.21,890/-. After allowing deduction u/s.80L of Rs.10,000/-, the taxable income was computed at Rs.1,81,220/-. So far as the assessment made, the assessment order was seemed to be at per with the submission made by the assessee on 12.10.1995.

But after the assessment was made, the assessee shown to have filed one rectification petition u/s. 154 on 05.11.1996. In his application the assessee stated --

"That Sir, contract of (myself) after all expenses first class (A) maximum profit 5% to 6% maximum as per schedule." (sic)

On the other hand, for the first time the assessee mentioned that in his case one truck was in operation for twelve months. Another truck (AMM-1175), met with an accident in September, 1995 and was in operation for two months only. He informed the said incident to the District Motor Vehicle Dept. and copy of the same had been filed with the Return. The truck was thus in operation for six months only. The AO had taken the income for the full period. Thus the assessee requested for a rectification.

The AO passed a rectification order on 20.01.1997 u/s.154 considering the income from the damaged truck for four months and allowed a relief of Rs16,000/-. But he did not interfere with the

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income already assessed from the contract business. Thus the revised income of the assessee was determined to Rs.1,65,220/-.

From the xerox copy filed with the return, it is found that the assessee informed that due to damage of chassis of the truck was not in operation since 02.11.1994 and in his application he himself stated that he earned income from the truck only for six months. However, the AO had taken the income from the truck for four months only, meaning thereby, according to the ITO, the truck was not in operation for eight months, which goes beyond the submission of the Assessee.

Against the order dated 20.01.1997, a Revision Petition was filed u/s.264 challenging the order u/s.144 and thereby estimation of income from contract business as well as from the Truck operation. But the CIT, Guwahati, in his order u/s 264 had rejected the revision petition in respect of order u/s.144 as well as estimation of income from truck operation but set aside the order so far as income from contract business is concerned.

The ITO stated that he remembered the letter dt.12.01.96 of the Assessee and referred to a request from the Assessee's part time accountant to dispose off the case without having had to appear with books of accounts. He had not recorded the hearing, as it was informal. Regarding lines 6 and 7 of page no.33 he submitted that he did not stick to the Assessee's claim and considered the operation for four months and allowed relief for eight months.

Assessment Year : 1996-97

Similarly, the assessee filed the Return on 20.12.1996, declaring income of Rs.1,37,315/-. Notice u/s.143/142(1) was issued simultaneously fixing the hearing on 18.03.1997. As per the order sheet entry, dated 18.03.1997, at the time of hearing, the assessee produced Cash Book, Ledger, Labour Payment Register and some vouchers, which were examined. Some vouchers were not available. After the hearing dated 18.03.1997, when the case was discussed, the assessment order was passed on 26.11.1997. In the assessment order the AO made lump sum addition of Rs.15,000/- as the AO felt that the expenditures were not fully vouched.

Like Assessment year 1995-96, the assessee showed cheque receipt of Rs.33,78,090/- after reducing the gross receipt by Rs.4,20,432/- as stock recovery. But as per the TDS Certificates, his gross receipt during the year was Rs.38,99,721/-, as shown below. What was the nature of stock recovery had not been explained neither any question was raised.

Date of Credit	Gross Amount	T.D.S.	Net Amount
02.03.1996	298,296	7,156	291,140
5/95, 12/95 & 1/96	3,083,631	65,910	3,017,721
12.07.1995	220,398	5,069	215,329
20.09.1995	193,918	4,460	189,458
29.11.1995	103,478	2,381	101,097
Total	3,899,721	84,976	3,814,745

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On the other hand, this time assessee filed one page xerox copy of SBI Current A/c. No.4/660, where only the following amounts were found to have been credited. But no question was asked as to where the balance amounts received on contract work were encashed.

Date of Credit	Amount
05.05.1995	46,861
28.07.1995	78,958
28.05.1995	196,142
27.12.1995	80,550
18.03.1996	66,516

As per the Balance sheet filed with the Return, the assessee shown to have purchased one house at Gohpur, but no question was asked on this investment. The assessee also arranged overdraft facility with the SBI, Tejpur Branch where a Debit Balance as on 31.03.1996 was shown at Rs.2,30,979/-. The AO did not ask any question regarding the security arranged for this.

Thus, various basic information, which required verification at the time of scrutiny assessment were overlooked.

22)

Assessee : Parsaram Sharma	**Assessment Year : 1996-97**
GIR NO.: P-1090/NL	**Date of Order : 29.09.1997**
Status :Individual	**Nature of Business : Local product business**

The assessee furnished Return on 31.03.1997 showing income of Rs.40,300/-. Along with the Return, he furnished Computation of Assessable Income and one Income & Expenditure Account. In the Computation of Income, the Assessee was shown to have earned

Income from local produce business *Rs.27,800/-*
Income from Brokerage & Commission *Rs.12,500/-*

Total sales of the Assessee during the year was Rs.1,64,100/-. The Assessee claimed to have fairly estimated Gross Profit on sales was Rs.32,500/- and estimated Net Profit to be Rs.27,800/-. The case was selected for scrutiny and Notices u/s. 143(2) and 142(1) dated 13.08.1997 were issued. In response to the Notices, the AR of the Assessee did not produce any books of accounts. During the course of Assessment proceedings, it was stated that the Assessee did some brokerage works during the year in purchase and sale of general goods for various parties. The Assessee declared that he had neither land property nor any bank account.

The AO estimated the income of the Assessee from the business of local products to be Rs.29,000/- instead of Rs.27,800/- but accepted the income from brokerage and commission of Rs.12,500/-.

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The Assessee stated to have maintained no books of accounts. The AO did not ask as to how the profit was computed without Book of Accounts or bank account. The AO did not even inquire as to how he had estimated the total turnover, expenditure, Gross Profit as well as Net Profit from the business.

No question was asked regarding the withdrawal, size of the family, their activities, right on the house where he was residing, nature of business, from whom the brokerage and commission was earned Only after one hearing, he completed the assessment without obtaining any relevant data. The purpose of the scrutiny was not served by the order.

23)

Assessee : Smt. Lalita Devi Maheswari	**Assessment Year : 1995-96**
GIR NO.: L-850/NL	**Date of Order : 07.08.1997**
Status : Individual	**Nature of Business:Dealing in local products & stitching**

The assessee furnished Return on 28.02.1997 declaring income Rs.37,800/-. Along with the Return, she furnished Computation of Income and Income & Expenditure Account, details of local products business and Balance Sheet. In the business, the turnover of the Assessee during the year was shown at Rs.1,95,000/-. The Assessee estimated the Gross Profit from this business to be Rs.36,500/- and after claiming expenses incidental to the business was Rs.5,500/-, net profit was shown to have been earned to Rs. 31,000/-. She also disclosed income from stitching and knitting etc. to be Rs.6,800/-. The case was selected for scrutiny and issued Notices u/s. 143(2) & 142(1) on 02.06.1997. During the assessment proceedings, it was stated that the assessee was doing business of local products as well as some stitching & knitting business. In course of assessment proceeding, the Assessee did not produce any books of accounts and stressed that the income shown was on fair estimation. The AO, in the assessment proceedings, estimated the income of the Assessee to be Rs.39,000/- instead of Rs.37,800/-.

The Assessee stated to have maintained no books of accounts. The AO did not try to obtain any bank account, Bank statement. The AO did not inquire as to how she had estimated the total turnover, expenditure, Gross Profit as well as Net Profit from the business.

During the assessment proceedings, no question was asked on the details of her family members, their family business, her own property, and other assets. Being a housewife how she conducted the business of local products as well as earn income from stitching & knitting, for whom did she work, her knowledge and experience was not gathered. After one hearing only, he completed the assessment.

24)

Assessee : Sukharanjan Dutta	**Assessment Year : 1996-97**
GIR NO.: S-920/NL	**Date of Order : 08.08.1997**
Status :Individual	**Nature of Business : Hardware**

The assessee furnished Return of Income on 31.03.1997 at an income of Rs.49,860/-. In the Return of Income the Assessee disclosed income from two sources.

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Profits and Gains from Business & Profession	*Rs.49,857/-*
Interest	*Rs. 1,276/-*

In the Profit & Loss Account, the Gross Profit of the Assessee was shown as Rs.78,087/- and Net Profit Rs.51,133/-. In the Balance Sheet, Drawings for self was shown as Rs.17,100/- and withdrawal for construction of building Rs.15,000/-, for LIC premium Rs.12,993/-.

Processing u/s. 143(1)(a) was done on the same day at the income of Rs.49,860/-. The case was selected for scrutiny and Notice u/s.142(1) and 143(2) were issued on 26.05.1997. The Accountant of the Assessee produced copies of five Sales Tax Payment Challans. They also produced the Books of Accounts, which were checked and examined with respect to various purchases as recorded in the Order sheet. The AO also verified the transaction with Sundry Creditors and found that those are genuine. The AR stated that the Assessee had around four bighas of agricultural land where beatle and beatle-nuts are cultivated. But the land was still without patta. In absence of Cash Memos, the sales of the Assessee could not be verified and the AO added Rs.1,200/- on estimate basis.

At the time of scrutiny assessment, no particulars relating to sale & purchase, Sundry Creditors were obtained. No query was raised regarding the withdrawal vis-a-vis corresponding expenses for family maintenance.

Though the AO claimed to have verified the bank passbooks, but no copy of those were kept in the assessment record, neither the account number nor the branch of the bank for further verification. The assessee claimed to have shown some income from agriculture, but no particulars of his land were obtained.

No inventory of the closing stock was collected or examined. In this type of cases, the examination of the bank account and verification of the nature of the entries were necessary. But only after one hearing, the case was disposed of. At the same time, the hearing was closed on 12.06.1997, but assessment order was passed on 08.08.1997, i.e. after a delay of almost two months, which is quite unnatural.

In his reply Shri Doley submitted that sale, purchase and sundry creditors, were examined from the books of accounts produced by the Assessee's accountant and he found the withdrawal and family expenses of the Assessee reasonable, and he also discussed the same. He also checked the bank passbook but did not record the same, as nothing was found wrong. He further stated that in village areas, many people have land without patta but on good faith they carry on agricultural activities. Regarding closing stock, the ITO submitted that this being books of accounts case, the same was recorded in the ledger. To him, as it was a small and simple case, one hearing was enough and doing assessment after two months of hearing is not abnormal and unnatural as there might have been other cases and other works to do.

The ITO always states that he had verified everything, but if no abnormality is noticed, he thinks it is useless to make any noting. But from the file, nothing is found to prove that at least, some verification was made. There was no evidence on record of collection of any information or details

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regarding the activities of the assessee, except a small order sheet notings, where the AR provided some information.

25)

Assessee : Shri Rama Kant Pathak	Assessment Year : 1997-98
GIR NO.: R-741/NL	Date of Order : 17.03.1998
Status :Individual	Nature of Business : Salary, Commission & Audio-Visual

The Assessee filed the Return of Income on 26.08.1997. Along with the Return, he submitted Balance Sheet as on 31.03.1997 and Computation of Income. He disclosed income from three sources viz. Salary Income, Income from Business & Profession and Income from Other Sources. He has also shown some agricultural income amounting to Rs.15,000/-.

From all these sources, his Net Taxable Income for the year was Rs.61,250/-. The case was selected for scrutiny issuing Notices u/s. 143(2) & 142(1) on 16.01.1998. The Assessee has received gifts from his father, father-in-law and from two other persons who were not his relatives and total such receipts were Rs.94,764/-. His father was a Railway Employee, receiving pension at present and his father-in-law was a schoolteacher. But the other two donors are not relatives. He furnished Memorandum of Gift from Shri Hira Nando Pathak, Bansh Gopal Pathak, Shri Sunil Kumar Pathak and Shri Ram Kumar Pathak along with the Return.

The Assessee has enclosed copies of various Bills & Vouchers in support of his claim of expenditure for audio-visual business. But it is found from the bills that the items were purchased from New Delhi for M/s. Master Audio-Visual Systems, House No.4/4055, Kaseruwalan, Pahargunj, New Delhi. But no evidence was filed, either with the Return or at the time of assessment to establish the relation between the assessee and this M/s. Master Audio-Visual Systems. He also furnished Land Purchase Deed showing the agricultural land in UP. The AR also submitted the Salary Certificates from "Yomgo Valley Syndicate" of Rs.28,800/- and Indian Trading Company of Rs.34,800/-.

In comparison with the Balance Sheet of the earlier year, it is found that the employers were shown as Debtors during the Financial Year 1995-96. But this time the assessee claimed that he had taken loan from his employers amounting to Rs.1,80,000/-. In addition to the above, some fresh loans from Ram Kumar Pathak, Sunil Kumar Pathak, Arun Kumar Pathak and S. Nath Pathak were shown. The AO, in absence of proper details, estimated income from commission and audio-visual business to be Rs.15,000/-, instead of Rs.12,650/-.

It is found that in this particular year, the Assessee has received gift of Rs.94,764/-. The AO only asked from whom the those gifts were received, but made no further inquiry as to the capacity of the donor or the actual transaction or whether the amount of gift was also been reflected in the Account of the person making the gift.

No verification was made regarding he huge transactions made during the year in the form of loan received from his employers and fresh loan received from other parties. Apart from purchase of land and visiting Delhi, the assessee, who is a resident of Azamgarh, UP, where he still maintains LIC Policy,

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visited those places at different occasions but his place of working was shown as Arunachal Pradesh. means during the year, he had to travel from one part of the country to the other for purchase of land, purchase of Audio-visual items, purchase of a commercial unit at Noida, but his cash withdrawal for the whole year was only Rs.15,342/-. No question was raised or made by the AO at the time of assessment.

In the Balance Sheet of the assessee, in every year Cash balance more than one lakh is shown in hand, when he is maintaining different Bank accounts as reflected in the Balance Sheet. But no question was asked on this point. No information was obtained regarding the Bank accounts of the assessee, in case of scrutiny assessment, which is, must and at the same time while the assessee has shown huge financial transactions during the year and most of which were in cash.

Both of his employers were shown from the same place as there are common telephone numbers and the assessee had also financial transaction as a Debtor and as a Creditor. Therefore, it was necessary to verify the relationship between the assessee and the so-called employers. But no such attempt of cross-verification was made.

The above discussion is summarized as under:-

1. In almost all the cases Returns were not filed within the due dates.There was abnormal delay in some cases. In some cases, there was no response to the notice issued u/s. 148 or 142(1). In most of the cases, the assessee did not respond to notice u/s 143(2). But for such lapses, no action was initiated by the AO.

2. In most of the cases, the AO issued notices u/s 143(2) and 142(1) simultaneously and in all such cases a common requisition with a rubber stamp impression on the back side of notice u/s.142(1) was made. But at the time of hearing, except one or two cases, no details / information were obtained. AO recorded the proceedings in the order-sheet. In all normal scrutiny cases, some basic particulars, like -- Bank accounts with a/c no., branch, name of the holder etc.; particulars of assessee's properties / assets / Investments, list of debtors and creditors are obtained which may help for future recovery. But the AO did not make any such attempt. Most of the cases were disposed of after single brief hearing. Emphasis was given about this in Instruction No. 1937 to collect that information in course of assessment proceedings.

3. Even, in the cases scrutinized for the first time, no basic information was obtained. Normally in a new case, where scrutiny is made for the first time, the opening capital of the assessee, his activities, properties, investment, size of the family, withdrawals, children education, tours & travels etc. are examined. But the AO did not examine the matter. In case of M/s. Lokenath Dresses, both the partners claimed to have contributed stock as their capital along with cash, but no stock inventory was examined, no question was asked on the mode of valuation of such stock.

4. In most of the cases the assessee did not maintain any books of accounts. In such cases, the examination of the assessee's assets, bank accounts etc. were very much necessary but Shri Doley failed to do so. In some of the cases, the expenditure, net profit, even the turn over was estimated. But the AO

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did not ask any question regarding the basis of such estimation. Some of the cases were capital building cases and to regularize the ill-gotten money of the assessee utilising the Income Tax channel. The case of Lalita Devi Maheswari, Parsaram Sharma, Sheikh Rasul are the examples of such cases. Within one year the assessee, a State Govt. employee, Sheikh Rasul deposited Rs.7.70 lakh case in a bank whose gross salary for the year was only Rs.70,128/-. At the time of assessment, the assessee claimed to have received gift from different parties. Without proper verification the same was accepted by the AO.

5. Even it was found that documents filed with the Returns were not properly examined and cross-verified. Had the AO examined the details filed along with the Return in a proper manner, he would have found various discrepancies, some of which are mentioned below :-

(i) Mahavir Transport Co, submitted one TDS certificate after submission of return. The AO considered the TDS and allowed refund of Rs.1,08,836/-. If the income reflected in the TDS certificate was considered, then instead of refund huge demand would have been raised.

(ii) In the case of Md.Izahar Hussain [I-776/NL], in the Income & Expenditure Account the assessee claimed to have paid Rs.12,80,000/- towards Elephant Charges and Rs.14,15,000/- towards Truck Carrying Charges. But in the documents attached, he furnished details of payment of Rs.13,80,000/- & Rs.15,15,000/- respectively.

(iii) In the case of Md. A Rahim Talukdar [A-1171/NL] the AO found discrepancies to the tune of Rs.3,91,371/- in the Bank Accounts. On inquiry the assessee could not offer any explanation other than non-account maintained cash. The AO could have easily considered the amount as income from undisclosed source and made further enquiry. As discussed herein above, the actual discrepancies were much more than the figure calculated by the AO.

In that process of shortening his work, without going into details or checking bank accounts, after obtaining it from the assessee, the AO tried in a few cases to reach at a hasty conclusion by making assessment while enough time was there for completion of the assessment.

6. In the matter of TDS, proper inquiry was not made in the following cases --

(i) Mahavir Transport Company
(ii) Md. Mobin

In agricultural income related cases, verification was not done instead of having substantial scope and point of verification.

(i) M/s. Laxminarayan Agarwalla & Sons
(ii) Sheikh Rasul
(iii) Sukharanjan Dutta

7. In cases of contractors, no consistency was maintained to determine their income. When no books of accounts are maintained, income has to be taken at least @ 8% under the Law. But it is found that expenditures were claimed on estimate basis that were also allowed. Even in some of the cases, the receipt shown in the TDS Certificates were not taken into consideration.

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ANNEXURE III

LIST OF DOCUMENTS

1. **Assessment records in following cases** :-

Sl. No	Name of the Assessee	GIR No.	Assessment Year(s)	Records of Assessment Year(s) in the same folder
1	M/s. Gupta Brothers	G-326/NL	1994-95	1993-94, 1994-95
2	Mahabir Transport Company	M-336/NL	1995-96	1994-95, 1995-96
3	M/s. Dutta Metal Stores	D-338/NL	1996-97	1990-91 to 2000-2001
4	M/s. Loknath Dresses	L-603/NL	1996-97	1996-1997, 1997-1998
5	M/s Laxminarayan Agarwalla & Sons	L-203/NL	1995-96	1992-1993 to 1996-1997
6	Shri Banshilal Lahoti	B-208/NL	1996-97	1991-1992 to 2001-2002
7	Malchand Maheshwari	M-221/NL	1995-96	1990-1991 to 1993-1994 & 1995-96, 1996-1997, 1998-1999, 1999-2000
8	M/s. Indar Chand Jain & Sons	I-201/NL	1995-96	1994-1995 to 2000-2001
9	Shri Tankeswar Dutta	T-1006/NL	1996-97	1995-1996, 1996-1997
10	Shri Sushil Kumar Agarwala	S-1959/NL	1994-95 (both original and reassessment)	1994-1995, 1995-1996 & 1997-1998 to 1999-2000
11	Mrs. Anupama Majumdar	A-1088/NL	1996-97	1993-1994 to 1999-2000
12	Ramawtar Sharma	R-1323/NL	1996-97	1991-1992, 1993-1994, 1994-1995, 1996-1997
13	Md. Mobin	M-1456/NL	1995-96 & 1996-97	1995-1996, 1996-1997
14	Sheikh Rasul	S-868/NL	1996-97	1996-1997 to 1998-1999
15	Anil Kumar Srivastava	A-1185/NL	1996-97	1993-1994, 1995-1996 to 2000-2001
16	Smt. Lata Agarwala	L-874/NL	1996-97	1993-1994 to 1998-1999
17	Pawan Kumar Sarda	P-730/NL	1996-97	1995-1996 to 2001-2002
18	Md. Izahar Hussain	I-776/NLP	1995-96 & 1997-98	1995-1996, 1997-1998 & 2000-2001
19	Md. A. Rahim Talukdar	A-1174/NLP	1995-96	1995-1996
20	Sri Ram Gopal Malpani	R-723/NL	1996-97	1995-1996 to 1997-1998
21	Sudhir Dutta	S-1302/NL	1995-96	1995-1996
22	Parsaram Sharma	P-1090/NL	1996-97	1995-1996 to 1997-1998
23	Smt. Lalita Devi Maheswari	L-850/NL	1995-96	1990-1991, 1992-1993 to 2000-2001
24	Sukharanjan Dutta	S-920/NL	1996-97	1992-1993, 1994-1995 & 1996-1997
25	Shri Rama Kant Pathak	R-741/NL	1997-98	1991-1992 to 2000-2001

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ANNEXURE-- 10

NO.PER/E-15/2004-2005/160
OFFICE OF THE TAX RECOVERY OFFICER,
RANGE-2, SAIKIA COMMERCIAL COMPLEX,
SHREENAGAR, G.S.ROAD.
DATED GAUHATI, THE 16TH AUGUST 2004.

To,
The Commissioner of Income-tax-1, & DA,(By name)
Saikia Commercial Complex,
Shreenagar, G.S.Road,
Gauhati-5..

Sir,

Sub: Vigilance Inspection in respect of Syed Basit Doley, TRO-2.-vide Your letter F.No.E-174//DP/CIT/GHY-1/2004-2005/1849-51 dated 11.08.2004.

Kindly refer to your above referred letter which replies are submitted as per the enclosed Annexure-A and Annexure-B.

In fact, these Artcle and charges were receivved by me on 15.12.2003 in the style of Inspection Reports and Observations and their parawise replies were already submitted by me on 02.01.2004, to CIT, Jorhat.There is nothing new in these papers except the portion omitted from the No.21 case of Sudhir Dutta,AY 1995-96 in respect of Sri R.N.Dey, my successor ITO.The zerox copy of the same is enclosed herewith for your kind reference.After so many detail and elaborate replies and explanations furnished to the Department, I thought the matter ended there.The authority should show sympathy to me as there was no wrong done by me at all. Sir, if I may express myself that I am severely harassed and disturbed by this unwarranted proceedings. My personal, family and social duties and responsibilities have been very badly disturbed and dislocated and the loss and damage caused can not be compensated even by billions of rupees. I need a tranquil atmosphere to discharge my personal, family, official and social duties and obligations.

Sir, I would like to draw your kind attention to the following few lines:

1.That Sir, I joined at North Lakhimpur Ward in the month of May1995 as new Assessing Officer and being direct recruit Inspector, though I had some theoretical knowledge but I did not have much of practeal knowledge.When practically I started work as an Assessing Officer, I did not even know which notices to be issued in different situations and after issue of a particular notice, which notice follows and there being single officer, I had none to consult with.To consult some officers of outside, the phone connection was also not easily available.Finding no way, once in July or Auguust1995 I wrote to Shri J.K.Bhattacharjee, then ITO posted at Dibrugarh (now ACIT). The objections are mostly of improper checking of bank accounts, not noting of bank accounts particulars.How to check a bank account, there is no guidelines as such and I was not trained too, still I checked to the best of my knowledge and ability.

2.That Sir, with your kind permission if I may express that whatever assessment I made, I did not do it as trained and experienced person but after studying many cases of the same nature. There are many cases assessed in these similar ways but it is not known to me such vigilance proceedings in their cases or will there be vigilance proceedings in all these cases. The law should be equal to all.

3.That Sir, I have noticed Assessing Officers doing wrong totalling in genuine additions like writing Rs.102000/-instead of writing Rs.172000/- and raising less demand incurring revenue losses thereby. This is a sheer example of carelessness which is more serious than the objections raised against my bonafide mistakes committed due to lack of training and experience.

4.That Sir, even there are cases like that of Shri R.N.Dey's in the case of Sudhir Dutta,AY.1995-96 assessing the income below the returned income which is so absurd and illogical but no vigilance proceedings heard of.

5.That Sir, at North Lakhimpur, I did some quite good assessments uncompromisingly causing inspections and inquiries and unearthing concealed and black income but there too I earned bad names from the assessees and even from the Department as harassing the public and not maintaining good public relation. In one case I unearthed arrear rent in lacs of ruppees and I assessed it on receipt basis.There was hullabaloo for this assessment too and the assessee went to appeal. The CIT(A) set aside the case and directed me to compute applying splitting provision as is done in case of arrear salary u/s 89. I was reluctant to follow the direction as I thought it was a wrong direction and I referred the matter to RTI, Calcutta and even to Board.Even such high authority commits mistakes but no vigilance proceedings done.For detection and assessment of the arrear rent, the assessee and the public were also offended and called my bad names. I was not rewarded for this but a provision was inserted in the I.T.Act u/s 25B just as I dealt the matter, w.e.f 01.04.2001.

6.That Sir, what the section 143(3) says about scrutiny assessment is quoted hereunder:

Quote:

143(3).On the day specified in the notice issued under sub-section (2), or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the Assessing Officer may require on specified points, and after taking into account all relevant material which he has gathered, the

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Assessing Officer shall, by an order in writing, make an assessment of the total income or loss of the assessee, and determine the sum payable by him or refund of any amount due to him on the basis of such assessment.

Unquote:

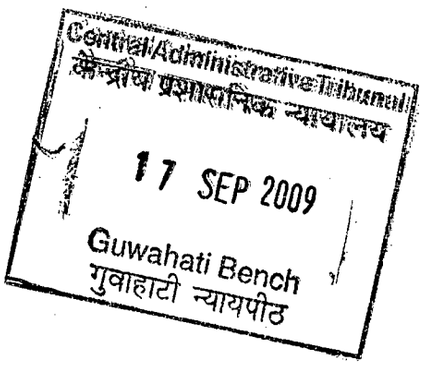
I made the assessments after taking into account all relevant material which I had gathered and accordingly I made the assessment of the total income or loss of and also determined the sum payable by him or refund due to him. "Taking into account all relevant material which he gathers.." may vary from one officer to another as this 'relevant material' is not like a movable or immovable asset but it comes up on the application of the individual officer's mind. A material which an officer thinks as relevant and important, may be, the same is not so relevant and important for an another officer. Infact, there was no lapses at all in my assessments which were done after taking into account of all relevant materials which I could gather.

7. That Sir, so far, there is no scrutiny guidelines. Scrutiny involves checking and investigations. How an officer checks and investigates, where he checks and investigates, which he checks and investigates, which he gives more weightage and where from he starts checking and investigations, there is no set of work-frame.It depends upon the individual officer how he checks and investigates,which he takes as relevant and important, which he notes and keeps records and ultimately how he delivers his judgement. While passing an order, an Assessing Officer assume the role of a quasi-judicial authority and in such role, the Assessing Officer is to pass the assessment according to his own application of mind, own conscience. On the facts and material gathered by by me, I passed the assessment orders applying my mind and conscience and there was no wrong at all..

8.That Sir, with your kind permission , may I ask what prompted to do this vigilance proceedings and why after lapse of 6 to 9 years of the assessment years and why I only have been singled out.If this proceeding is done as ancilliary to my case against complians, then I tell you that these complains were not tenable as these complains were lodged by persons who wanted grapes but could not get and later on cursed as grapes are sour and here too the authority charge sheeted me with no sympathy and logic.An example: A case which I assessed sincerely with labour and devotion and uncompromisingly.The assessee made a complain that I demanded him a bribe of Rs.1 lakh in presence of his wife at my father-in-law,s house.If I intended to do so, couldnot I demand him in my office room? Why in presence of a third party, here his wife? This seems not a complain but a big joke but this has become a big complain for the department.In fact, it is my own department people that the ants have been made elephants against me, otherwise these sorts of illogical complains would have been outrightly rejected instead of framing such inflated charge sheet.

9.That Sir,I have only been given 10 days for the reply when normally one month's time is given.

10.That Sir, still if there occurred some minor lapses or wrong in the assessment owing to my lack of knowledge and experience as new Assessing Officer, this could have been taken up in Revenue or Department Audit Inspection and necessary rectifications could be done as is always done in other cases too and I assuredly feel that this vigilance proceeding was not necessary for this at all.Whatever I have done, done in good faith and with best of my sincerity and devotions and if still some lapses and mistakes occurred, these were all bonafides and I discharged these all within the range of my power and jurisdiction, therfore, I am not liable for an error in judgement . for a bonafide mistake.Therefore Sir, I implore your generous authority to drop this proceedings generously.



Yours faithfully,

16.08.2004

(S. B. Doley)
Tax Recovery Officer,
Range-2,Gauhati.

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Annexure-A.

ARTICLE-1.

I, while functioning as ITO, Ward, North Lakhimpur, during 26-5-95 to 21.9.98, was a novice Assessing Officer with not much of experience but still I made assessments with proper inquiry and investigations in the cases which to the best of my knowledge and opinion called for such actions. It is stated that in some cases I did not obtain any information from the assessee and did not scrutinise the books of accounts. This allegation is entirely wrong and baseless. I certainly queried from the assessees many informations which I thought to be relevant for the particular assessee and also scrutinised their books of accounts After the queries, the things which I feel reasonable and material to note are noted. It is always not that all the things discussed and scrutinised are recorded or noted.The informations obtained were utilised to the best of my ability and disposed off the cases with my consciences. If still any omission and commission occurred, these were bonafide. I always tried to maintain perfect dignity and absolute integrity, sincere devotion to my duty and I never acted unbecoming of a Government servant.

Annexure-B.

1.M/s Gupta Brothers, AY 1994-95.

(i)There was no non compliance or non-filing of return as the return was filed after the start of the proceedings.during the course of the proceedings.

(ii) If I processed the return of income for the AY 1996-97 but no trace of the return furnished or processed for the AY 1995-96, it might be that return of AY 1995-96 was processed in loose or at the time of signing an assessment year's return it is always not such that the A.O looks back to if the preceding year's or succeeding year's return were processed or not.

(iii) In absence of books of accounts and other relevant records, it was not possible to verify sale, purchase and closing stock.Hence the income was estimated.

(iv) Generally the bank statements /pass books were verefied if the assessee's balance-sheet shows any. Sometimes even after cheking and verifications of the bank statement /pass books, nothing was recorded if there were nothing discrepancy.

My statement is wrongly produced here. I did not say 'it was not necessary to go beyond the present assessment year'. My statement was 'at the time of signing an assessment year's return it is always not such that the A.O looks back to if the preceding year's return was processed or not'.The matter in question was still more irrelevant as the the scrutiny was for the assessment year 1994-95 but the not looking back objection is for the assessment years 1995-96 and 1996-97.

There is no point to say that I failed to understand non-compliance and non filing of return.There is no specific mention u/s 142(1) or elsewhere in the I.T.Act not to accept the return if filed after the time allowed and such returns are acted upon. In the cases where books of accounts are not maintaned, the I.T.O. did not examine sale, purchase, sundry debtors etc are not acceptable as this allegation is without any base. On what basis a person can allege that the I.T.O. did not examine this or that things when there is no books of accounts of the assessee? Depending upon the cases, different aspects were certainly examined by me. Say, in case of sale, I examined the assessee as to the arrival of the gross sale, some says on rough records maintained, some says depending on the average daily sales. In such cases, basing on the facts and circumstances of the case,an estimated income is arrived at by addition of some estimated income.The Hon'ble Supreme Court, followed by many other High Courts clearly laid down that in treating an assessment or in other words in estimating an income, the A.O. can not bring relevant materials and evidences on records to estimate reasonable income of an assessee.

2.Mahavir Transport Company, A.Y.1995-96

The payment of Rs.2004882/- was tanker hire charges paid, it was not a sub-contract, hence TDS provision was not applicable.The TDS amount outstanding were on loans and advances.

If the gross receipt of the additional TDS certificate was already included in the gross receipt of the return, then this additional TDS certificate could be accepted and given credit even after the return was furnished. If the gross receipt of this TDS certificate was not already included in the gross receipt shown on the return but the same was given credit by me, then there was a lapse but this doesn't mean an underassessment of the entire gross receipt shown in the TDS certificate. The profit percentange found out on the return gross receipt would be applied to the gross receipt of the additional TDS certificate to find out the underassessment.These sorts of lapses/mistakes are often committed and even by mistakes sometimes a TDS certificate is given twice credit and the audit inspections point out such mistakes/omissions and rectifications are carried out..If such things are taken up for vigilance cases, there will be immumerable such cases.

It is always not possible on the part of the A.O. to verify bits and bits, many TDS certificates are not properly filled in by the TDS issuing authority and still they are acted upon.The bank pass book and the bank statements receipts checked and verified..My observation was not wrong. The total receipt in the pass book and statements are more than the total receipt of the Profit & Loss account because the Profit & Loss account reflected only the business receipts but the pass book and the statements included other receipts too.

"If the gross receipt of the additional TDS certificate was already included in the gross receipt of the return, then this additional TDS certificate could be accepted and given credit even after the return was furnished."- this was just a proposition and discussion, I never said that this was the fact of the case.As I already discussed above that sometimes a TDS certificate is even given twice credit due to mistakes, this should not be taken so seriously and meant for vigilance action.

17 SEP 2009
Guwahati Bench
(Patna)

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3.M/s Dutta Metal Stores,A.Y.1996-97

Seeing the minimum balance and trusting assessee's words, I did not check or verify the pass books. I applied my own mind and took liberty to ignore this which I thought to be not inportant and helpful in the proceedings.

From the books of accounts, purchase and sales were sample checked. There was no unnatural facts for the loss. The drawings of the partners were looked into.

Attempt was always made to assess the reasonable income of the assessee.The purpose of scrutiny was served certainly. It was reasonably assessed seeing all the relevant and justified facts of the case.

4.M/s Loknath Dresses.A.Y.1996-97

When the AOP members started business, even their incomes were below taxable, could their earnings of the back years enable them to contribute that much of capital and that much of stocks, these points were looked into. It is not always such that the businessmen maintain records and books of accounts.

This was not the first year of the business of the assessee.Their opening capital, cash contribution were taken into account after considering their past years business activities and it was found reasonable.

The assessee stated to have no books of accounts and it was accepted. This was a simple case, even one hearing was sufficient. I did the assessment as a matter of duty, without any consideration whether it was time barred or not. The purpose of scrutiny was always kept in mind, though in this case no high pitched assessment made.

"The Officer's version is not correct as it was the first year of the assessee's businness".- this remark is quite wrong as I vividly remember that this point was asked by me and the A/R replied that they were in business since earlier years and their earnings of back years were also looked into for the capital contribution.

5.M/s Laxminarayan Agarwala & Sons,A.Y.1995-96

As it is stated in the inspection report itself that the assessee furnished return of income on 31.03.1997. No action was necessery for delay in filing the return, the assessee could furnish the return upto 31.03.1997. The basis of determining the business income at Rs.15000/- was on fair estimation. As it is clear from the inspection report that the assessment was done u/s 144, hence there was no scope for ascertaning what sort of agri income was this, therefore as per claim of the assessee it was allowed.In this circumstances, it was fairly a good scrutiny and the very parpose of scrutiny was served.

The completion of assessment on 22.10.97 as it was time barred only on 31.03.98 is objected. There was nothing wromg in completing the assessment on 22.10.97 as one can not keep pending a case just for the fact that it was not complied by the assessee as there are other such many uncomplying cases.

6.Shri Banshilal Lahoty (HUF), A.Y.1996-97

Balance with Maheswari Trading Co. as on 31.03.1995.....		Rs.265348/-
Deposit	Rs. 84000/-	
Interest	Rs. 34346/-	
	Rs.118346/-	
Repayment	Rs. 20000/-	
	Rs. 98346/-	+ Rs. 98346/-
Balance as on 31.03.1996		Rs.363694/-

Many queries and checking, if found not wrong or discrepancy, I often skipped noting. I certainly queried the nature of transations and checked the bank pass books and that there might have been no wrong or any discrepancy for which I skipped noting and keeping of records of the bank pass books. At no point of time I ignored the regular aspects of scrutiny. In other officers cases also I have noticed simple noting as "Books of accounts produced, sample cheking and verefication carried out, case heard".

7.Malchand Maheswari, A.Y.1995-96

This quite was a simple case, one hearing was sufficent to dispose the case. While disposing the case I never thought of time-barring or not. When an assessee maintains no books of accounts or cannot produce any books of accounts, I always ask or discuss how he arrived at the verious figures like purchases, sales etc. Some assessees reply as on the basis of some rough records, some reply on the basis of goods purchased and on the basis of daily sales. After all in all such circumstances, the income arrived at is not based on books of accounts and proper records but on estimation. Assessee's estimation was here acceptable as the gross profit on the sales was quite high and the interest on deposit was also in normal way. If any assessee has a bank account, I always call for it and check it (Some assessees do not have bank account). If this assessee had bank account but I did not record any, there might have been no wrong.

8.M/s Inder Chand Jain & Sons,A.Y.1995-96

The assessee maintained no books of accounts but still he arrived at a total sales of Rs.225000/- .This he arrived at on esimation only basing on the average daily sales. His profit was arrived at after excluding the expenses incurred in paying the employee and other incidental expenses thereto. As his total sales itself was not based on proper accounting but on estimation only, so I also estimated his income. I also looked into the expenses which were relevant and natural in such a business which was done through paid employee. I never thought of making haste or ignoring something but as far as possible I always do assessment as early as possible after complection of hearing .

9.Shri Tankeswar Dutta, A.Y.1996-97

If no application u/s 154 and order u/s 154 are on the r ecords, this might be for mishandling and

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and misplacing by the dealing staff.

If the assessee has bank account I always call for it and check it, if no wrong or discrepancy is detected, no recording is done. Whenever I complete hearing I complete assessment as early as possible, time-barring or not, this aspect never came to my mind.

For the addition of bogus loan of Rs.59668/-, if I did not initiate penalty proceedings, I definitely committed a lapse due to oversight or work pressure for which there could have been an audit objection.

10. Shri Sushil Kumar Agarwala, A.Y.1994-95

i)As the difference in the balance in the preceding year and the concern year was very little, I ignored it as of not much importance and also there was no scope to verify it as the assessment was completed u/s 144. Scrutiny is the application of mind of the officer concern, one thing that an officer considers as important, another officer may not consider it as important and relevant..

ii)The income was assessed on estimation basis, This was a no books of account case, hence the assessee was not in a position to give purchase and sales figures and as it was only an estmated case, the purchase and sale figures were not so relevant.

iii)Some assessees show LIC, other personal savings and also personal drawings together and the drawing was reasonably estimated at Rs.15000/-.

iv)In such situation, generally 142(1) is issued if non issuing of 143(2) was a lapse, I feel it was not so material a point to attract such vigilance proceedings.

v)If this were a books of accounts case, "Books of accounts produced and checked....." noting would have been there. This was a no books of accounts case, sometimes some notings were not done as were considered not much of importance. However it should be clear from the situation and records that this was a no books of accounts case.

vi)If hearing closed on 17.02.1998 and assessment completed on 25.03.1998, this should not be treated as delay.

I do understand the importance of examining the sale, purchase etc in no books of accounts cases and these are done and depending on the facts of the case, an income is arrived at. I did not admit that there was delay but I only said that it should not be treated as delay and definitely a month's delay is not delay at all. Here the examination of bank account is too much cited upon but I donot remember whether this case had a bank account or not. In the circumstances of the case, how the concern officer takes the examination of the bank account, differs from officer to officer. I certainly make necessary examination of the bank accounts which I feel relevant and material.

Considering all facts and circumstances, his drawing was taken at Rs.15000/-.

11. Mrs. Anupama Majunder, A.Y.1996-97

This is not the single case, there are many housewives doing income from business and profession as per return furnished in the department. This housewife shown business income through paid employee and also from kintting works carried on at home. Sometimes the nature of the business and profession is avaliable in the return itself. I certainly asked in the hearing the business activities and the income how determined, though notings not recorded. Sometimes, "The case heard" or "The case discussed" is noted without details. After excluding all incidental expenses, the assessee arived at the income on estimate basis. As the income was based on estimation, not on books of accounts or records, hence books of accounts or details of receipts and expenditures were of not much help and in such sitution, generally the assessment is completed on fair estamation by all officers and I also did the same.

Some assessees have F.D. but no savings bank account. As there was no mention of savings account, I accepted that the assessee did not have any. As the assessee had no books of accounts and no savings account, so no verification was necessary. If the hearing was done on 03.11.1997 and assessment completed on 25.02.1998, then I did not do any hurry in disposing the case. I usually do assessment at the earliest possible after the hearing is over.

12. Ramawtar Sharma, A.Y.1996-97

i)I vividly remember that I asked the A/R from whom the assessee received dalali income. The A/R stated that from various parties whoever contacts for hiring lorries and trucks. The assessee did not disclose bank account and declared to have none.

Many assessees papers contain different addresses for many reasons. Some they furnish at the residential address and some at office or business address. Therefore, in this case too, the assessee had two addressees which I did not object but I always insist the assessees to furnish one and specific address. Here Shri I.C.Jain was the practitioner of the assessee. Generally the practitioners represent the assessees even if they are out of station or not. If the authorisation was not obtained in this case, this might have been due to oversight and I apologise for this minor omission. As there was no bank account, hence no verification was done. Therefore, it would not be fair to say that the regulat aspects of scrutiny were not taken care of , the aspects of scrutiny were always there in my mind.

ii)The salary certificate was the evidence of Shri Sharma's salary received from Mahavir Transport Company

13. Md. Mobin, A.Y.1995-96 & 1996-97

A.Y.1995-96

i)The assessee's address in care of the practitioner was discussed and the A/R stated that the assessee being a contractor and also the communication being very irregular in Arunachal Pradesh, the assessee

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preferred the practioner's address in care of for easy communaction. This is not the single case, infact, the are many returns furnished at the care of addresses of many practioners. As the address of the assessee w in the care of address of the practitioner, so the notices were served in that address. Personally I don encourage such practices.

ii)The assessee did not furnish any balance sheet, so the opening capital was nowhere to verify. H nature of business was discused, a contractor in civil construction doing canal and tunnel making. Whenev an assessee shows bank accounts, I always call for them and in this case too, I certainly checked the ban accounts and if nothing was noted, then there might have been no wrong or any discrepancy in the ban accounts.

iii)As the assessee was a contractor,without meterials he couldnot execute his works, the ledger reflecte his materials expenses like rods, cement etc.The salary and wages were also reflected in the ledger paid t his employees and labourers.

iv)I still believe that the purpose of scrutiny was served in this case.

A.Y.1996-97

i)The assessee's address in care of the practitioner was discussed and the A/R stated that the assesse being a contractor and also the communication being very irregular in Arunachal Pradesh, the assesse preferred the practioner's address in care of for easy communaction. This is not the single case, infact, ther are many returns furnished at the care of addresses of many practioners. As the address of the assessee wa in the care of address of the practitioner, so the notices were served in that address. Personally I dono encourage such practices.

ii)The assessee did not furnish any balance sheet, so the opening capital was nowhere to verify. His nature of business was discussed, a contractor in civil construction doing canal and tunnel making. Whenever an assessee shows bank accounts, I always call for them and in this case too, I certainly checked the bank accounts and if nothing was noted, then there might have been no wrong or any discrepancy in the bank accounts.

iii)As the assessee was a contractor, without meterials he couldnot execute his works, the ledger reflected his materials expenses like rods, cement etc.The salary and wages were also reflected in the ledger paid to his employees and labourers.

iv)I still believe that the purpose of scrutiny was served in this case.

14.Sheikh Rasul,A.Y.1996-97

i)In my view the gifts were acceptable and hence I accepted. So far I remember for sample checking, I called two persons for recording of statements.The gift of Rs.25000/- by Prabhu Dayal Choudhari was not just from the previous year income of Rs35000/36000/-.I discussed this matter with Sri Choudhari who stated to have been earning since years back.

ii)It is not abnormal that a government servant cannot carry on agri activities. The A/R of the assessee, in course of the hearing and discussion told me that the assessee's parents were looking after the agri activities. The evidence of agri activities was substituted by the written statement furnished from Mehrunessa, so cross verification was not felt relevant and necessery.

iii)The deposits and sources were checked and the A/R explained them satisfactorily.

iv)In villages many people carry on agri activities just on mere words and mutual faith.They hardly make written or documentary agreement, hence in this circuumstance, Mehrunessa's affidavit was sufficient.

The documentary agreement was not there, only oral agreement. The affidavit was the evidence of existence and genuineness of Meherunessa.

I have questioned the donors ability, their livelihood. The agri-income could not be treated as the parents' income as the parents were not the force behind the production of the agri-income, they were just like person engaged for supervision.He could carry on the agri-activities by his guidance and directions and occasional visit from Arunachal, as the A/R of the assessee told me.The assessee's bank account was produced before me and I checked it.

15.Anil Kumar Srivastava,A.Y.1996-97

i)No tax deduction was attracted if the assessee's materials supply was a purchase by the department. So far I remember, in the return for the A.Y.1996-97, nothing was stated as materials supplied to Executive Engineer, Naharlagan, it was simply materials supplied to sundry parties and some income earned therefrom.

ii)The income of Rs.24000/- from truck was furnished on estmation, so providing details was not so material and relevant as there was no books of accounts or other records.The claim of 40% depreciation was as per rule so there was nothing arbitrary in drawing of the balance sheet.

iii)This observation is not clear as it is mentioned that in the balance sheet a liability from the Co.op Apex bank amounting Rs.36965/- and again it is quoted that in the balance sheet, no loan from the said bank was shown. I do not remember exactly how was the situation in this case. There was a case who did not accept the amount of the loan claimed by the bank and was under litigation in the court and hence the loan was not shown in the balance sheet. I certainly called for the liabilities shown and the interest charged by the bank and verified them. If the account number and the account holder's name were not there, this lapse was on the part of the concern bank.

iv) In this particular case, in this particular year's return (AY.1996-97), no fact of this sort was found that the assessee was earning from government and received account payee cheque.The income shown was from supply made to sundry parties..

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v)As the proceeding was for the AY 1996-97, the information of the AY 1995-96 leading to Gift-tax proceeding was lapse due to oversight but for this bonafide omission I should not be harssed for a proceeding like this.

In the assessment year concern, the assessee had no Govt supply as disclosed by the assessee. I did not say or imagine that payment might have been made in cash in respect of this assessee. I only said that many govt.department draw the supply bills themselves and pay cash to the suppliers. It was just a mere discussion.

Statement (iii) is not clear at all.In the first line it is cited that " In the Balance-sheet, the assessee has shown liability under the heads A.E.Co-operative Apex Bank amounting to Rs.36965/- and again in the fourth line it is cited " In the Balance-sheet, no loan from the said bank was shown". It is silent about the interest either in the balance-sheet or in the letter.

16.Ms.Lata Agarwala,A.Y.1996-97

The declarations in the returns of assessees are found as "Son/Daughter of " and seeing the father's name, the issuing clerk might have issued the first letter as D/o Bhagwati Pd.Jasarasaria. The sccound and the third letter were issued as per the return address.As the letters were not served, the fourth letters served through the A/R of the assessee. Some assessees have different addresses and stay at those different addresses at one point of time or the other. These assessee also being a lady it was not known wheather she was staying with her father or husband. Most of the times, the ITO has no time to look to the addresses of the notices and letters while signing them. These sorts of address anomalies and problems are often found, this should not be treated as lapse on the part of the ITO.

It was not my habit to keep a case pending till time burring month without any reason. To my mind this was a simple case and the bank account too had little balance to inqure about. Not devoting much time and energy in such simple case, more time and energy can be found out for big cases.Process and ways of scrutiny differs from individual to individual, what one thinks a thing to pursue might be a time waste for another.

The assessee's addresses like Dhemaji, North Lakhimpur all were stated to be correct. When the A/R was served the notice of the assessee, she was stated to be staying at Shillong. So it would be wrong to say that I made no efforts to find out her whereabouts.

17) Pawan Kumar Sarda, AY1996-97.

The assessee was an introducer of suppliers to Gammon India and a mediator in purchasing goods by NEEPCO officers. In the course of hearing I discussed how he got the peoples' contact for doing such business.The A/R stated that since the assessee was in this bussines for quite some time and so many people know him and approach him for deal. Neither agreement nor any other paper was made for the deal. The bank pass books were of nominal balances and generally if no wrong or discrepancy detected, no recording was done.

It is not the single case, many assessees return papers bear different addresses and when questioned, they reply that they have houses and businesses at those different places and they even stay at those places at different time.

I usually verify the assessee's personal drawing. I got some cases that some assesees stay alone like bachelor and this assessee was one. I certainly verified the reasonability of the assessee's drawing. I always look into different factors, family size, earning members in the family etc and after judging all these if the drawing is found unreasonble and low, I always add.

There should not be any objection to the assessment on 18.06.97 as there was no other reason but it was done as per my usual practice of not keeping any assessment pending till time-barring month.There is no time as such that after completion of hearing when must to complete assessment, (except the time barring provision). As this being a no books of accouns case, though I examined many relevant materials, in estimating an income, it should be understood that many relevant materials and evidences can not be produced by the assessee on records and this fact is even supported by the court. It is not exception in my case, there are many cases having noting such as " the case elaborately discussed and heard and evidences checked" without specific recording and noting.

18) Md Izahar Hussain,AY 1995-96 & 1997-98.

AY.1995-96.

For estimation one cannot always attribute to a particular or special basis. 'Income furinished on estimation' or 'Income assessed on estimation' should be understood in common parlance. Its estimation was based on the reasonable percentage of 8%..No books were produced, so no verification was done. When income is on estimation, the assessee doesnot maintain details of expenses and generally the details of expenses are not requisitioned and the assessee also cannot give the same in absence of books of accounts and other records.. However, in this case, the expenses were discussed which were stated to be salary and wages to employees and labourers engaged in cutting and pulling out trees, elephant and lorry charges etc No bnnk account was disclosed, the assessee stated to have received payments all in cash.

Md Izahar Hussain AY.1997-98.

(i)As the gross receipt was reduced by 2 lacs and the expenditure also reduced by 2 lacs (1 lakh each in elephant and truck charges), I had nothing to object. The cash vouchers were produced by the assessee himself and if there was higher entries as per cash vouchers, it is always not that an Assessing Officer check the total of expenses and each and every cash vouchers but only sample checking is carried out.

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ii)The assessee when appeared before me, he was found to have been physically and mentally harassed and he was deppressed too.Being sympathetic and agrieved with him, I relied him and did not proceed to bank for further proceedings.

(iii) His drawing was discussed and found reasonable.

(iv) I asked the assessee about the addresses of the parties.The asssessee replied that he had never asked their exact addresses but they were all from the nearby localities, they were not on permanent basis , they work and receive their charges.

(v) When a person gets kidnapped he only knows the physical and mental sufferings. I learnt from the A/R that the assessee was kidnapped and also from the local people. Many times , the kidnaps go unreported to police for own safety reasons.The assessee denied to have paid any ransom.Was their any ransom deal, this investigation would have been a complicated investigations meeting and interviewing many and others and this should not be objected as there was no time and man power to investigate into it and it was also not so relevant when the assessee denied to have paid any ransom.

19) Md A.Rahim Talukdar,AY.1995-96.

(i)I initially asked the A/R about the bank accounts, and the A/R disclosed only one and therefore, to be sure I wrote to other banks. I had properly examined the bank statements produced to the level I could. Why should I go for asking bank accounts from the various banks if I had no absolute integrity, sincere intention to examine the bank accounts.

Page no.(28), quoted a table of 38 nos of figures, it is not clear where from these figures came while it was mentioned in the beginning paragraph that there were 9 TDS certificates and another two furnished with the return.

The interest received from the Income-tax Department should have been shown by the assessee.If I also did not take it into account, it was because being more concern with the relevant scrutiny assessment year only and being busy, it was not always possible to go back to earlier years records of the assessee in details.Such omission could be met by Audit Inspection and was not necessary for vigilance proceedings.

As there was no balance sheet furnished, hence the opening balance of Rs.699.62 and the closing balance of Rs.45980.02 was not objected.

(ii) The bank account of the assessee was checked and I had the sincere intention to do the checking properly as I could, otherwise I would not have written to other banks calling for bank accounts of the assessee and to the best of my ability I did the assessment and there is nothing abnormal and unnatural in the assessment and seeing the circumstances of the case, the income was reasonably assessed.

(iii) The basis of estimation was at a reasonable percentage of 8.

20) Shri Ram Gopal Malpani, AY1996-97.

The registered firm M/s Assam Iron Traders was also in the same Ward. The assessee's receipt from this firm was cross verified.

The firm filed return and duly paid tax and was cross verified.

The assessee's withdrawal was looked into, the assessee lived in a joint family and he not only was the earning member.I did not keep records of many things or I did not note many things which I thought not of importance or things which I found not to be wrong or of any disrepancy.

I verified the bank pass books too in original.

21) Sudhir Dutta,AY.1995-96.

I remember the letter dt. 12.01.96 of the assessee which referred to a discussion of 03.01.96. Infact, the assessee's part time accountant came to my office on 03.01.96 and requested me to dispose off the case without having had to appear with books of accounts and hearing.This was not a formal hearing but a request which was informal and was not recorded in the file as hearing or discussion.

Against the claim of the assessee's claim of the operation of the truck for two months only, not sticking to the assessee's claim, I considered it for four months and relief allowed for eight months.

No comments on Shri R.N.Dey's assessment at a lower figure than the returned income but will there be any vigilance proceedings here too as law should equal to all.

No comments on Shri R.N.Dey's adoption of net profit and turnover but this amply indicates that there are many officers committing mistakes.

The submission of 18.03.2002 and the gross profit shown at Rs.200046/- were not during my time.During my time if the gross profit was at Rs.453980/- and after me if the gross profit was at Rs.200046/, there was no chance on my part to question this discrepancy. I made the assessment u/s144, so not much of verification was possible but the case was disposed off as per materials available on the records.

No comments on Sri R.N.Dey's assessment without examining bank accounts and cross verification of the particulars submitted and assessment made at a lower income than the return income but this amply proves the seriousness of the mistakes heavier than mine but no harassment heard of like mine. Justice should be for all.

Sudhir Dutta,AY1996-97.

The assessee was a contractor, his recovery was discussed and stated to be cement and rods supplied by the department and the recovery figure was on the certificate.The house purchased at Gohpur was discussed. If I did not record any thing on this score, then there might have been no objectionable facts in this deal. In such deal, I generally call for the deed and the deed should be very much there on the records.The balance as per return and the balance as per bank statements were checked.The assessee's overdraft was also discussed.

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the accountant of the assessee stated that no particular security was there but the assessee being a contractor of reputation, the bank was allowing the overdraft facility.

The various aspects required to look into at the time of scrutiny was certainly done which I thought as relevant and necessary.

22) Parsaram Sharma,AY.1996-97.

This was a small businessman having no books of accounts.When a small businessman furnishes income on estimation, there remains not much to ask for details as he is not maintaining any books or records and in such situations, the estimate itself is the only basis for arriving at the income. I queried how the income was arrived at, the A/R stated that on fair estimation, the basis was on the average daily sales and expenses.

The assessee did not furnish any balance sheet or capital account and no any drawing amount reasonable or unreasonable was shown, hence this issue was not discussed If discussed too, in such situation,, the assessee always disclose a reasonable drawing which becomes practically immaterial there being no balance sheet or capital account

23) Lalita Devi Maheswari,AY.1995-96.

There was no books of accounts produced..It was queried how the income was arrived at. The A/R stated that on the basis of estimation of the total turnover and the incidental expenses incurred thereto. If in the balance sheet any bank account was disclosed, I certainly checked it and there being no discrepancy, no noting done.

The local product business was stated to have been carried through paid employee. I asked about the knitting and stitching business to which the A/R replied that the assessee was a self-trained lady and doing the busineess at her home itself in a small way.

Her drawing aspect was discussed and it was revealed that she only was not the earning member , her husband too was earning. Her drawing was found reasonable and so no addition made.

24) Shri Sukharanjan Dutta, AY1996-97.

The sale, purchase and sundry creditors' particulars were very much there in the books of accounts produced by the assessee's accountant. I certainly discussed the withdrawal and expenses for family maintenance of the assessee and it was found reasonable.

I checked the bank pass book but as nothing was found wrong, I did not record any.

In fact, in village areas many people have land without patta but under their occupation where they carry on agri activities.

This being a books of accounts case, the closing stock was recorded in the ledger. This being a small and simple case, one hearing was enough to spare more time in other big cases and other works. After the hearing, doing assessment after about a two months is not abnormal and unnatural as there might have been other cases and other works to do.

As the assessment works depend upon and vary from officer to officer and case to case, there can not be ground to say that this particular case needed the evidences of verifications on records. For example, if this case had no sundry creditors or debtors, then where was the point to place evidences of checking and verification of sundry creditors or debtors on records. I definitely collected informations and checked and verified the particulars which I thought relevant and necessary in the context of a particular case.

25) Shri Rama Kanta Pathak,AY1997-98.

I donot remember exactly if all the donors were assessees but some of them were assessees and I cross verified and in respect of all donors I also questioned and discussed their capabilities. Moreover, the memorandum of gifts were there on the records.

Salary certificates were furnished from the employers and the loan transactions was also discussed.

The assesse used to purchase Audio-visual items from New Delhi and in such trips he sometimes availed visiting house too. His drawing was looked into. After all his drawing was considered as sufficient as he was living in a joint family with other earning members.

This assessee was questioned as to why he shows high cash balance while having bank accounts, the reply was that the cash was more handy. I certainly checked the bank accounts and if nothing found wrong , I usually skipped noting.

It was not the first year of the assessee receiving salary from the two concerns, he received salary from the two concerns since earlier years.

REPLY ON THE SUMMARY.

1.For returns not filed within due dates, interest u/s 234A was charged. M/s Laxminarayan Agarwala & Sons,AY1995-96 and Sudhir Dutta, AY.1995-96, assessment was done u/s144.When there is non-compliance of hearing , exparte assessment was the end, I thought as I have nowhere noticed penalty proceedings in such exparte assessment cases and if this was a lapse, this was a bonafide mistake requiring no such proceedings

2.The bank accounts were checked as I deemed proper and necessary.If found nothing wrong, sometimes nothing was noted but mostly used to keep the zerox copies of the pass books. Particulars of assessee's properties/assets/investments/list of debtors and creditors were certainly recorded if the assessee had any. Most of the cases being small and of simple nature, one or two brief hearing was sufficient but in deserving cases , the hearing took place several times. So 'disposed of after single brief hearing ' is not acceptable. Scrutiny process can not be made a lump or something but it varies from case to case and individual officer to officer. The informations which I thought relevant and material were certainly asked for.

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3.In a new case where scrutiny was done for the first time, the opening capital was certainly looked into.What is the opening capital, from where the opening capital came, how many years the assessee was in business prior to it etc were considered before accepting the opening capital.In the case of M/s Loknath Dresses, I looked into the opening capital contribution of the partners and their past business activities and their capital contributions were found reasonable. Moreover, this case was no books of accounts case.So, the allegation that even in the cases scrutinised for the first time, no basic information was obtained is entirely wrong.

4.When no books of accounts maintained, income arrived on estmate basing on the daily sales and expenses etc.Most of the no books of accounts cases, they represent themselves as simple cases when asked of their properties, assets, investments etc, they say no properties, no assets except the small investment in the business by which the small income is earned as in the case of Lalita Devi Maheswari, Parsaram Sharma. Sheikh Rasul had deposited lakhs of rupees in the single year, his pass book was produced and the sources of deposits were discussed with the A/R and the A/R clearly explained the sources where from the deposits came. A similar type of case where the gift was around Rs.30 lakhs (the figure is exactly not in mind) was rejected and was added back but in appeal it was not sustained. Sheikh Rosul's gifts were supported by gift deeds and sample checking in respect of the donors were done on oath and they confirmed the gifts

5.(i) If the TDS certificate for Rs.559267/- furnished after the return filed and was not included in the gross reciept of Mahavir Transport Company at the time of return filed but I accepted and allowed it, then that entire amount can not be treated as under-assessment but the pro-rata percentage of profit should have been applied on Rs.559267/- and added back.As I have already cited above that even sometimes a TDS certifcate is given twice credit by mistake which are not wilful but bonafide mistakes due to oversight or work pressure. This sort of mistake can not be taken for vigilance proceedings but other remedial measures adopted.

(ii)In the case of Md Izahar Hussain, as there was reduction of Rs.2 lacs in gross reciept and also reduction of Rs.2 lacs in the expenditure, 1 lakh each in elephant and truck carrying charges but no reduction in the respective vouchers were done by the assessee. The cash vouchers were produced by the assessee himself. If there was higher entries in the cash vouchers, it is not always that an AssessingOfficer check the total of cash vouchers or each and every vouchers.

(iii)In Md A.Rahim Talukdar's case, the detection of Rs.391371/- in the bank account was accepted as the A/R's submission was found reasonable as this was a no books of accounts case.The explanation of the A/R could have been rejected if this case was books of accounts case.The bank account was checked with regard to balances in the return and the bank accounts.

There was no process of shortening works. I went into details where it was necessary and checked the bank accounts as I felt relevant and necessary.

6.(i) The TDS certificates of Mahavir Transport company were from reputed organisations like IOC and the assessee used to furnish such certificates in earlier years too as they were doing business there in earlier years too, hence much verification was not sought for. In fact, verification of TDS certificates depend upon the A.O. concern.

(iii) In case of Md. Mobin, I obtained confirmation on TDS certificates. Therefore, the allegation that proper inquiry was not made in respect of TDS is not correct.

<u>In agri income related cases</u>

(i)M/s Laxminarayan Agarwala & sons: There was no scope to verify as the case was disposed off u/s 144 as per materials available on records.

(ii)Sheikh Rasul: Verification as to who was doing the agri-activity was called for and as a result an affidavit was furnished.

(iii)Sukharanjan Dutta: The A/R was asksed to furnish the land patta to which he replied that there was no land patta. He stated that the land was inherited which was under occupation of the assessee's father since years back.It is a fact that in Assam, still some lands have no patta but they are under occupation of some one or the other and agri activities being done.

Therefore, in agri-related cases I did verification and there was no truth in saying that no verification was done.

7. In cases of the contractors, to determine the income, generally 8% was applied to the gross receipt in no books of accounts cases. In the books of account cases and considering some other factors with regard to the contract places and nature of the contract works, some expenditure claimed can be accepted and the income determining percentage varies. So there was no point in objecting to this.I always took care to see that the receipt in the TDS certificates are taken into account. If still some omission took place, that might certainly have been a bonafide mistake but not wilful. Therefore, a bonafide mistake should not be taken for any kind of harassment.

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ANNEXURE - 11

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भारत सरकार

मुख्य आयकर आयुक्त का कार्यालय, गुवाहाटी

सैकिया कमर्शियल कॉम्प्लेक्स, श्रीनगर, जी.एस. रोड, गुवाहाटी- ७८१००५

GOVERNMENT OF INDIA

OFFICE OF THE CHIEF COMMISSIONER OF INCOME TAX, GUWAHATI

Saikia Commercial Complex, Sreenagar, G.S. Road, Guwahati- 781005
Ph. 0361-2345116, Fax : 0361-2345118, EPBX : 2345646

O R D E R

Esstt::::::::::::::::::::::::::::Gazetted

Dated Guwahati the 28th October, 2005.

Consequent upon the Board's Order No. 160 of 2005 dated 26.10.2005 issued from F. No. A-32013/ 13 /2004-Ad-VI , promoting the following Income Tax Officers to the grade of Assistant Commissioner of Income-tax (Junior Time Scale) in the pay scale of Rs. 8,000-275-13,500/- purely on adhoc basis ,they are hereby posted as ACIT(OSD) under the same CIT/DIT charge/controlling officer where they were posted as ITO before their promotion as ACIT with immediate effect from the date they assume the charge of ACIT(OSD).

Sl. No.	Name of the Officer	Present Posting
1.	Shri Koushik Ranajn Deb,ITO	ITO, Ward-1, Nagaon
2.	Shri Dhiraj Kanti Sen, ITO	CIT, Guwahati-I,Guwahati
3.	Shri Subhra Jyoti Bhattachrjee, ITO	CIT, Shillong
4.	Shri Sudhendu Das, ITO	JCIT, Range-3,Guwahati
5.	Shri Sunil Kumar Agarwala,ITO	DIT(Inv.), NER, Guwahati
6.	Shri Arjun Chandra Sarkar,ITO	O/o the CIT-I,Guwahati TDS-I, Guwahati
7.	Shri Anderson Sangma, ITO	JCIT, Range- Bongaigaon

a) The adhoc promotion shall not confer any right to continue in the grade indefinitely or for promotion to next higher grade i.e. DCIT (Senior Time Scale) or to claim seniority in the grade of ACIT.

b) The adhoc appointments are liable to be terminated at any point of time without giving any reasons thereof.

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c) All the above officers shall be considered for transfer as per transfer policy.

d) All the above officers shall continue to perform the duties of posts which they had been holding immediately before their promotion in addition to their duties to be performed as ACIT(OSD) on assumption of charges until further orders.

This issues with the approval of the CCIT, Guwahati.

Sd/-
(Goufen Haugshing)
Addl. Commissioner of Income-tax, Hqrs.,
For Chief Commissioner of Income tax, Guwahati.

Memo No. E-168/DCIT-ACIT(Posting)/CCIT/GHY/2005-06/ '09 so '154 Dt. :- 28.10.2005

Copy to :-1. The Chief Commissioner of Income-tax, Shillong.
2. The Deputy Secretary, Ad.VI, CBDT, New Delhi
3. All the CsIT/CsIT(Appeals)/CIT(CO)/CIT(CBD/DIT(Inv.),NER,Guwahati.
4. The DIT(Vigilance), Kolkata/ ACIT(Vig.), O/o the CCIT, Guwahati
5. All the Addl.CsIT/DCsIT/ACsIT/ITOs/TROs of N.E. Region.
6. All other Heads of offices of N.E.R.
7. The ZAO, CBDT, Shillong..
8. All the FPUs of N.E.R.
9. The AD(OL), O/o the CCIT, Guwahati for Hindi version.
10. The General Secretary, IRS Assoc./ITGOA/ITEF, N.E. Region.
11. Officers concerned.

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(Dibyendu Kumar Deb)
Asstt. Commissioner of Income-tax, Hqrs.(Admn.),
For Chief Commissioner of Income tax, Guwahati.

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ANNEXURE-12

F.No.Per/E-15/TRO-2/GHY/2005-2006/09
OFFICE OF THE TAX RECOVERY OFFICER-2
RANGE-2, SAIKIA COMMERCIAL COMPLEX,
SREENAGAR, G.S.ROAD, GAUHATI-5.
DATED GAUHATI, THE 2ND NOVEMBER 2005.

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To,

The Chief Commissioner of Income Tax, (By name),
Guwahati.

(Through proper channel)

Subject: Promotion to the grade of ACIT – Matter Regarding.

Hon'ble Sir,

Most respectfully I beg to lay before you the following few lines on the above subject for favour of your sympathetic consideration and necessary action.

1] That sir, the promotion order to the grade of ACIT has been passed recently by the CBDT, New Delhi vide order No. 160 of 2005 dated 26-10-2005 vide F.No.A-32013/13/2004-Ad-VI and it appears that 7 (seven) ITOs from N.E. Region have been promoted.

2] That sir, I am one of the officials serving under your charge and I was promoted to the ITO grade in December'1994.

3] That sir, one of my junior, namely Shri Anderson Sangma has got promotion vide the aforesaid promotion order while I have not been promoted being even senior to him.

4] That sir, I have not been given any reason for this supercession and so far, to the best of my knowledge and belief, I have not done anything which could disqualify me for the said promotion. I cannot understand the reason behind my said ill luck. I am only aware of the fact that a vigilance proceeding is running in my case for which I submitted several letters/clarifications to the authority not to treat me as defaulting official as I have no any fault in the allegation.

5] That sir, the vigilance matter cannot deny/restrict my promotion as it has not become final and conclusive. Only the matter has been running with some false and motivated allegations. The matter also is not disposed of inspite of my several requests/submissions and even I submitted petitions before the authority stating my near promotion.

6] That sir, when the vigilance matter is not finalised, the said matter is absolutely remaining under surmises and conjecture and as such when the doubt is prevailing no punishable action should be taken. Even the benefit of doubt should come to me. But to my misfortune my promotion has been denied which is just an undeclared penalty imposed on me which is quite unjustified.

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7] That sir, I have rendered so many years of service to my department with all sincerity, devotion and uprightness and as such I am very much shocked that my junior has been promoted prior to me without any apparent and bonafide reasons.

8] That sir, under the above premises, I would request you for initiating necessary action at your end through administrative channel as procedurally prescribed so that I am not denied my right, my just and due promotion.

9] That sir, in case, however, my grievance is not redressed within a period of two months, I may be allowed to proceed for legal remedy for redressal of my grievance.

10] That sir, I most earnestly request you to kindly instruct the authority concern to dispose of my vigilance case at the earliest possible.

11] That sir, I most fervently implore you that you would be kind and sympathetic enough to me and take all action necessary for redressal of my grievance.

With warmest regards.

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Yours faithfully,

02.11.2005

(S.B. Doley)
Tax Recovery Officer-2,
Guwahati

Copy in advance submitted to the Chief Commissioner of Income Tax, Guwahati, for favour of his kind information and necessary action.

02.11.2005

(S.B. Doley)
Tax Recovery Officer-2,
Guwahati

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ANNEXURE - 13

CROSS EXAMINATION OF SHRI N.K. SARMA BY SHRI B. DOLEY, TRO2, GUWAHATI ON 07.03.2006 IN THE COURSE OF THE DISCIPLINARY PROCEEDINGS IN THE CASE OF SHRI B. DOLEY, TRO-2, GUWAHATI.

Shri Doley:- When the meeting of the Tax Bar Association as referred by you in your statement was held ?

Shri Sarma:- I don't remember but after I refer to the records of Tax Bar Association, I can tell the date.

Shri Doley:- How may members attended the meeting ?

Shri Sarma - All the 9 (Nine) members were present.

Shri Doley:- Whether they have signed the minutes ?

Shri Sarma:- Yes.

Shri Doley:- Whether any resolution was passed in the said meeting for lodging complaint against me ?

Shri Sarma:- Without resolution, no complaint could have been lodged.

Shri Doley:- I came to know from the some of the members that they were also asked to sign the complaint but they refused. Is it true ?

Shri Sarma:- Since the matter is very old, I am unable to say anything without referring to the records.

Shri Doley:- I came to know that some of the members didn't sign the resolution or also didn't attend the meeting. Is it true ?

Shri Sarma:- I can't say without referring to the records.

Shri Doley:- In answer to question No. 7 of the statement recorded today, you mentioned I issued TDS exemption certificates without specifying the amounts and without following the procedure. Can you give any specific instance ?

Shri Sarma:- No.

Shri Doley:- In answer to question No. 4 of the statement recorded today, you mentioned that some members complained that there were irregularies in issuing refunds by me. Would you please say what sorts of irregularies were complained how many members complained ?

Shri Sarma:- I don't remember.

The above cross examination is made by me.

7.3.2006

(Budheswar Doley)

The above cross examination has been recorded in my presence.

7/3/06.

(Santanu Kr. Saikia)
Inquiry Authority

07/03/06

7/3/2006

(Chanchal Nag)

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Q. No. 6:- What was the experience of members of your association in respect of surveys conducted by Shri Doley ?

Ans:- I don't remember.

Q. No. 7:- What was the experience of members of your association in respect of issuance of exemption of TDS certificate ?

Ans:- Randon certificates were issued without specifying the amount and without following the procedure.

Q. No. 8:- What was the experience of members of your association in respect of the assessment orders passed by him ?

Ans:- I have nothing to say.

Q. No. 9:- Do the members of your association experienced that Shri Doley was in the habit of asking any undue favour or harassing the assessee in any other way ?

Ans:- I have nothing to say.

Q. No. 10:- Do you have anything more to say ?

Ans:- No, nothing.

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The above statement is given by me voluntarily without any coercion or threat.

07/03/06
(N.K. Sarma)

The above statement is recorded by me.

(Santanu Kumar Saikia) 7/3/06
Inquiry Authority

The above statement is recorded in my presence.

7/3/2006
(Chanchal Nag)

7/03/2006
(Budheswar Doley)

ATTESTED
ADVOCATE

Statement of Shri Nila Kanta Sarma, S/o (L) G.C. Sarma aged about 53 years, resident of K.B. Road, North Lakhimpur, recorded on 07.03.2006 in the course of disciplinary proceedings in the case of Shri B. Doley, TRO- 2, Guwahati.

I Shri Nila Kanta Sarma, S/o (L) G.C. Sarma swear in the name of God that I shall speak the truth, the whole truth and nothing but the truth. So God help me.

07/03/06
Nila Kanta Sarma

The above oath is administered by me.

7/3/06.
Santanu Kumar Saikia,
Inquiry Authority

Central Administrative Tribunal
केन्द्रीय प्रशासनिक न्यायालय
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Guwahati Bench
गुवाहाटी न्यायपीठ

Q. No. 1:- Please identify yourself.

Ans:- I am Shri Nila Kanta Sarma, S/o. (L) G.C. Sarma aged about 53 years, resident of K.B. Road, North Lakhimpur. I was the secretary of Tax Bar Association, North Lakhimpur fro, 1995-1997 (approx.)

Q. No. 2:- Do you know him?

Ans:- Yes, I know him, he was earlier Income-Tax Officer, Ward- North Lakhimpur.

Q. No. 3:- Can you through some light on your experience during his tenure as Income-Tax Officer, North Lakhimpur ?

Ans:- I am an Income-Tax practitioner (ITP). I practice Income-Tax. In my personal capacity as ITP, I don't have any problem. However, other members of our association has complained before me. In the capacity of Secretary of the association I have lodged the complaint.

Q. No. 4:- Did you face any difficulty in receiving the refunds ?

Ans:- Our association has 9 (Nine) members. In the meeting of the association, some of the members complained that there were irregularities in issuing of refunds. Therefore, we have raised the complaint.

Q. No. 5:- Did the members of your association experienced that Shri Doley requisitioned particulars/details of assets during the course of proceedings U/s. 143(3)?

Ans:- Yes.

Cont. on P-2

07-03-06

7.3.2006

ATTESTED
ADVOCATE

CROSS EXAMINATION OF SHRI INDAR CHAND JAIN BY SHRI B. DOLEY, TRO-2, GUWAHATI ON 07.03.2006 IN THE COURSE OF THE DISCIPLINARY PROCEEDINGS IN THE CASE OF SHRI B. DOLEY, TRO- 2, GUWAHATI.

Shri Doley:- Was there any written complaint filed against surveys conducted by me?

Shri Jain:- No, only verbal complaints were lodged.

Shri Doley:- Can you give the names of the complainants ?

Shri Jain:- I do not remember.

The above cross examination is made by me.

7/3/2006

(I. C. Jain)

(Budheswar Doley)

The above cross examination has been recorded in my presence.

7/3/06

(Santanu Kr. Saikia)
Inquiry Authority

7/3/06

(Chanchal Nag)

Central Administrative Tribunal
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Guwahati Bench
गुवाहाटी न्यायपीठ

ATTESTED
ADVOCATE

Statement of Shri Indar Chand Jain, S/o (L) K.L. Jain aged about 51 years, resident of Ward No. 9, North Lakhimpur, Advocate, recorded on 07.03.2006 in the course of disciplinary proceedings in the case of Shri B. Doley, TRO- 2, Guwahati.

I Shri Indar Chand Jain, S/o (L) K.L. Jain swear in the name of God that I shall speak the truth, the whole truth and nothing but the truth. So God help me.

Indar Chand Jain 7/3/2006

The above oath is administered by me.

Santanu Kumar Saikia, 7/3/06
Inquiry Authority

Q. No. 1:- Please identify yourself.

Ans:- I am Shri Indar Chand Jain, Advocate S/o (L) K.L. Jain aged about 51 years , ~~S/o. (L) K. L. Jain~~, resident Ward No. 9, North Lakhimpur,. I was the secretary of Chamber of Commerce, North Lakhimpur.

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Q. No. 2:- Do you practice I.T. law ?
Ans:- Yes.
Q. No. 3:- Do you know Shri Doley ?
Ans:- Yes, he was the Income-Tax Officer, North Lakhimpur earlier.
Q. No. 4:- Can you through some light on your experience with Shri Doley as a practitioner and as the Secretary, Chamber of Commerce, North Lakhimpur ?
Ans:- I did not experience any difficulty while interacting with him in my capacity as advocate. But some of the members of the Chambers of Commerce complained that Shri Doley was conducting surveys at random.
Q. No. 5:- Was there any survey conducted by the Income-Tax Officer, North Lakhimpur other than Shri Doley.
Ans:- Yes.
Q. No. 6:- Was there any complaint against conduct of the survey by other Income-Tax Officers ?
Ans:- No.
Q. No. 7:- Please explain why complaint was lodged only against Shri Doley ?
Ans:- I cannot say anything.
Q. No. 8:- Did your members experienced any other difficulties ?
Ans:- No.
Q. No. 9:- Do you have anything to say ?
Ans:- No.

The above statement is given by me voluntarily without any coercion or threat.

07/03/2006
(Indar Chand Jain)

The above statement is recorded by me.

7/3/06
(Santanu Kumar Saikia)
Inquiry Authority

The above statement is recorded in my presence.

7/3/2006
(Chanchal Nag)

(Budheswar Doley)

ATTESTED
ADVOCATE

Shri Doley:- You have stated that you demanded the money back following failure of the negotiation. Please state with whom you made negotiation and where?

Shri Pegu:- Negotiation was made with your wife in your residence.

Shri Doley:- Was there any witness while money was paid to my wife or negotiation was made with my wife?

Shri Pegu:- No.

The above cross examination is made by me.

05.02.2006

(Budheswar Doley)

The above cross examination has been recorded in my presence.

08/02/2006

(Santanu Kr. Saikia)
Enquiry Authority

Bhabesh Ch. Pegu.
8/2/06.

8/2/2006

(Chanchal Nag)

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ATTESTED
ADVOCATE

Cross examination of Shri Bhaben Chandra Pegu by Shri Budheswar Doley, TRO-2, Guwahati on 08-02-2006 in course of Disciplinary Proceedings in the case of Shri Budheswar Doley, TRO-2, Guwahati.

Shri Doley:- In the course of assessment proceedings for A.Y. 1994-95 you never informed me that you had filed your return of income for earlier years. Is it true or not?

Shri Pegu:- I do not remember. My tax matter was handled by my advocate.

Shri Doley:- You never appear before me with any advocate. Is it true or not.?

Shri Pegu:- Yes. It is true.

Shri Doley:- You have stated that I have gone to your house alongwith Mr. Singh. Please state when I went to your house?

Shri Pegu:- You came to my house with Mr. Singh.

Shri Doley:- Did I asked for Rs. 1,00,000/- from you directly?

Shri Pegu:- Your wife told me that I should pay Rs. 1,00,000/-. My wife also told me that Shri Doley told her that Rs. 1,00,000/- should be paid to him.

Shri Doley:- After the order was passed raising the demand of Rs. 9,87,196/- you came to my house several times with a request to destroy the order and redo it. Is it true or not?

Shri Pegu:- Yes. It is true.

Shri Doley:- Did I demand bride of Rs. 1,00,000/- from you?

Shri Pegu:- You have never asked for bribe directly. The demand was made through my wife.

Shri Doley:- On what basis are you making allegation that I conveyed the message through your wife demanding Rs. 1 lakh from you?

Shri Pegu:- My wife told me so.

Shri Doley:- Did I met your wife on that occasion in my father-in-law?

Shri Pegu:- I went there with my wife to your father-in-law's house where you were also present. At that time you were working in the godown which is about 25 mtrs. away from the main house. I had gone to met you in the godown itself alone. I do not know whether my wife met you or not.

Shri Doley:- In your statement you have stated that you paid Rs. 10,000/- to me as bride. Whom did you pay and when?

Shri Pegu:- I paid to your wife at your residence in cash. However, at that time you were not present. I do not remember the exact date but I can remember that I was pay after assessment order was received by me. But when I demanded the money back following failure of negotiation you acknowledged that you received money but refused to money back.

08/02/2006

Bhaben Ch. Pegu
8/2/06

8/2/2006

C.S. (B. Doley)
TRO-2

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ATTESTED
ADVOCATE

The above statement is given by me voluntarily without any coercion or threat.

Bhaben Ch. Pegu 8/2/06
(Bhaben Chandra Pegu)

The above statement is recorded by me.

08/02/2006
(Santanu Saikia)
Enquiry Officer Authority

The above statement is recorded in my presence.

8/2/2006
(Chanchal Nag)

(Budheswar Doley)

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ATTESTED
ADVOCATE

Statement of Shri Bhaben Chandra Pegu, S/o Late Budheswar Pegu aged about 69 years, Residence of Tangana Para, Dehmaji, Retired Principal of Dhemaji College, Dhemaji

---

I Shri Bhaben Ch. Pegu S/o Late Budheswar Pegu swear in the name of God that I shall speak the truth, the whole truth and nothing but the truth. So God help me.

Bhaben Ch. Pegu.
Shri Bhaben Ch. Pegu 8/2/06

The above oath is administered by me.

08/02/2006
kv.
Santanu Saikia,
Enquiry Officer Authority

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Que:- Please describe the nature of your interaction with Shri Budheswar Doley, the then ITO of North Lakhimpur and your grievence if any?

Ans:- Sometimes after 1994 Shri Har Gobinda Rabha, Inspector of Income-tax came to Dhemaji and stayed in my residence two to three days during his visit to Dhemaji for official duty. Later on Shri R. Singh, Inspector of Income-tax visit my residence and told me that he looked to my house. Thereafter on another occasion Shri Doley, ITO alongwith Shri R. Singh, Inspector of Income-tax came to my residence. He took the dimension of the house. Then he went to my rented building which was let out to UBI. The building is located at Dhemaji Tiniali. There he surveyed the building. He told me that there is going to be income tax demand above Rs. 9 lacs in my case. He made the demand of Rs. 1 lakh at the residence of his father-in –law through my wife. Then I paid Rs. 10,000/- on one occasion at his residence. This amount was given to his wife. Earlier Shri H. Rabha during stay in my residence took Rs. 10,000/- from me. However, he was not satisfied the amount paid by me and assessment was completed by raising demand in excess of Rs. 9 lakh.

Que:- You have stated that your rented premise was surveyed by Shri Doley. Please state what was done?

Ans:- He took measurement my rented building.

Que:- Since when you know Mr. Doley?

Ans:- I know him from his childhood day. He also related to me when he married my aunts daughter.

Que:- Do you have anything to say?

Ans:- No.

08/02/2006

8/2/06 Bhaben Ch. Pegu.
8/2/06

CS-(B. Doley)
08/02/06

ATTESTED
ADVOCATE

Shri Pegu :- I happened to visit the shop day after the survey when Shri Bikash Das, Prop. of M/s Beauty Store narrated the incident to me and that is the basis of my allegation.

Shri Doley:- Where and from whom I have demanded Rs.10,000/- ?

Shri Pegu :- In course of survey in the shop premises of M/s Beauty Store you have demanded Rs.10,000/- from Shri Bikash Das, Prop. of M/s Beauty Store.

Shri Doley:- Are you not using Shri Bikash Das as your tool ?

Shri Pegu :- No.

The above cross examination is made by me.

8-2-2006

(Budheswar Doley)

The above cross examination has been recorded in my presence.

(Santanu Kr. Saikia) 08/02/2006.
Inquiry Authority

Shri Purna Kanta Pegu
08/02/06

8/2/2006
(Chanchal Nag)

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ATTESTED
ADVOCATE

Cross examination of Shri Purna Kanta Pegu by Shri Budheswar Doley, TRO-2, Guwahati on 08-02-2006 in course of Disciplinary Proceedings in the case of Shri Budheswar Doley, TRO-2, Guwahati.

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Shri Doley:- Is it true that I demanded a bribe of Rs.10,000/- from you ?

Shri Pegu:- Yes, you demanded..

Shri Doley:- Where did I demand the money and when.?

Shri Pegu:- In the course of assessment proceedings Shri Chikon Doley was sent by you asking for the said bribe on behalf of you.

Shri Doley:- Did I send Shri Chikon Doley ?

Shri Pegu:- Yes, Shri Chikon Doley told me that Shri B. Doley demanded Rs.10,000/- as bribe from me.

Shri Doley:- Do you have any proof that I sent Shri Chikon Doley and demanded Rs.10,000/- from you ?

Shri Pegu:- No, I do not have any evidence. No written note or sheet was sent to me.

Shri Doley:- Do you know where I instructed/authorized Shri Chikon Doley to collect money from you ?

Shri Pegu:- No, I cannot say

Shri Doley:- As Shri Chikon Doley is very close associate of you how I can send Shri Chikon Doley for asking bribe from you ? Are you not using Shri Chikon Doley as your tool ?

Shri Pegu:- Shri Chikon Doley appeared before you in the course of assessment proceedings. Shri Chikon Doley is well known to you also. Probably that is the reason why you have sent Shri Chikon Doley sending message asking bribe of Rs.10,000/- to be paid to you through him.

Shri Doley:- Did Shri Chikon Doley come to you to demand Rs.10,000/- before the assessment order was passed or after ?

Shri Pegu:- He came to me before the assessment order was passed.

Shri Doley:- Did the Inspector visited your residence for enquiry or other purposes ?

Shri Pegu :- No, never.

Shri Doley:- How far your allegation that I asked the Toy cost free from M/s Beauty Store and on not being given, next day I have conducted survey in that shop, is correct and what is the basis of this allegation ?

08/02/2006.

Cont on P2

Shri Purna Kanta Pegu

ATTESTED
ADVOCATE

investment made in the year 1993-94 without giving any opportunity of being heard.

Que :- Was there any personal reason for selecting your case for scrutiny ?

Abs :- Yes, only my case and the case of Shri Bhaben Chandra Pegu of Dhemaji College were selected for scrutiny leaving all the other teaching personal of Dhemaji College who were better off than us only because we had personal enimity with Shri Doley in connection with his marriage.

Que :- Are you aware of any corrupt practice done by Shri B. Doley ?

And :- Yes, for example, he has conducted a survey in one M/s Beauty Store, Dhemaji when the owner of the shop refused to give a Toy free of cost to Shri B. Doley. He demanded a sum of Rs.10,000/- as bribe and forced him to pay Rs.5,000/-. In another occasion he took measurement of the house of Shri Bhaben Chandra Pegu and demanded Rs.1 lac as bribe through Shri Doley's wife and ultimately Rs.10,000/- was paid.

Que :- Was your salary attached for collecting the demand raised by Shri Doley ?

Ans :- Yes, it was an harassment and a humiliation before all other collegue in my college.

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Que :- Do you have anything to say ?

Ans :- Yes, I want to brought to your notice that I have come here as a witness. Shri Doley abused me in objectionable language. I have never expected slang words and misbehaviour from an officer like Shri Doley. Further, I was interrupted by Shri Doley many times when I was giving my statement. I feel humiliated because of Shri Doley's behaviour.

The above statement is given by me voluntarily without any coercion or threat.

Purna Kanta Pegu

(Purna Kanta Pegu) 08/02/06

The above statement is recorded by me.

(Santanu Kumar Saikia) 08/02/2006.
Inquiry Authority

The above statement is recorded in my presence.

8/2/2006
(Chanchal Nag)

8.2.2006
(Budheswar Doley)

A. TESTED
ADVOCATE

Statement of Shri Bikas Das, S/o Kartik Das aged about 38 years, resident of Dhemaji, owner of Beauty Store recorded on 07.03.2006 in the course of disciplinary proceedings in the case of Shri B. Doley, TRO- 2, Guwahati.

I Shri Bikas Das, S/o Kartik Das swear in the name of God that I shall speak the truth, the whole truth and nothing but the truth. So God help me.

Bikash Das

Bikas Das

The above oath is administered by me.

Santanu Kumar Saikia,
Inquiry Authority

Q. No. 1:- Do you know Shri Doley ?

Ans:- Yes

Q. No. 2:- When did you meet him first ?

Ans:- Sometimes in the year 1996 he came to my shop as customer. During his visit, he introduced himself as Income-Tax Officer, North Lakhimpur. He purchased a toy and left.

Q. No. 3:- Did you meet him on any other occasion /

Ans:- Yes, a few days after his first visit, he came to my shop with a few staff members. He took inventory of the stock and advised me to file I.T. return. I eventually filed my return in the year 1998.

Q. No. 4:- Did you visit the I.T. office after that ?

Ans:- No.

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Q. No. 5:- How long did the survey in your shop continue ?

Ans:- For about 2 hours.

Q. No. 6:- Did Shri Doley seek any favour from you ?

Ans:- No. Nor did I pay him anything.

The above statement is given by me voluntarily without any coercion or threat.

Bikash Das
(Bikash Das)

The above statement is recorded by me.

(Santanu Kumar Saikia)
Inquiry Authority

The above statement is recorded in my presence.

7/3/2006

(CHANCHAL NAG)

(BUDHESWAR DOLEY)

A TESTED
ADVOCATE

Que :- Did you do any enquiry or survey in residential premises ?

Ans :- Yes, I faintly remember that in one occasion I had gone to one Bengali person's house in North Lakhimpur, whose name I do not remember. Where I took only the sketch of the building from the owner. Other than that I do not remember to have done any enquiry or survey in this residential premise.

Que :- How many times you used to go to Dhemaji for enquiry/survey ?

Ans :- Probably two or three times I visited Dhemaji only in connection with the let out building (to Bank) of Sri B C Pegu.

Que :- Did you take the measurement of the house of Shri Bhaben Chandra Pegu, Dhemaji.

Ans :- No, I only measured the let out premises i.e Bank building only.

Que : Do you have anything to say.

Ans : No, nothing

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The above statement is given by me voluntarily without any coercion or threat.

10/2/06

(Raj Kumar Singha)

The above statement is recorded by me.

10.2.06.

(Santanu Kumar Saikia)
Inquiry Authority

The above statement is recorded in my presence.

10/2/2006

(Chanchal Nag)

(Budheswar Doley)

ATTESTED
ADVOCATE

Statement of Shri Raj Kumar Singha, S/o Shri Raj Bihari Singha aged about 34 years, presently working as Inspector of Income-tax at O/o the ITO, CIB, Silchar in the course of Disciplinary Proceedings against Shri Budheswar Doley, TRO-2, Guwahati recorded on 10/02/2006.

I Shri Raj Kumar Singha, S/o Shri Raj Bihari Singha swear in the name of God that I shall speak the truth, the whole truth and nothing but the truth. So God help me.

Raj Kumar Singha
10/2/06

The above oath is administered by me.

Santanu Kumar Saikia,
Inquiry Authority
10.2.06

Central Administrative
केन्द्रीय प्रशासनिक न्य
17 SEP
Guwahati Bench
गुवाहाटी न्यायपीठ

Que:- Please identify yourself

Ans:- I am Shri Raj Kumar Singha, S/o Shri Raj Bihari Singha aged about 34 years, presently working as Inspector of Income-tax, O/o the ITO, CIB, Silchar.

Que:- How long did you work in North Lakhimpur?

Ans :- I was posted in North Lakhimpur in September,1996 and worked there till 1998. I worked under Shri Budheswar Doley , ITO, North Lakhimpur.

Que :- What were the works assigned to you ?

Ans :- I was assigned works like TDS enquiry, other enquires, surveys etc. I used to go to shops, mainly new shops asking about daily sales, investment etc, get the proforma filled i.e. door to door survey u/s 133B.

Que : What was the purpose of doing such door to door survey.

Ans : Notice u/s 142(1) was used to be issued in respect of the persons who are not assessees.

Que :- Is there any other enquiry and surveys that you used to do ?

Ans :- Yes, I was assigned to go to other enquiry such as in the case of Shri Bhaben Chandra Pegu, Dhemaji where I took the measurement of the Bank building in presence of the ITO as well as the party as per the order of the ITO.

10.2.06

10/2/06

10/2/06

ATTESTED
ADVOCATE

Que :- Did you perform any residential Survey in North Lakhimpur ?

Ans :- No, it was done only in Dhemaji as per the order of the ITO Sri Doley.

Que :- Have you conducted any survey in residential premises of Shri Purna Kanta Pegu and Shri Bhaben Chandra Pegu ?

Ans :- I do not remember about Shri Purna Kanta Pegu. However, I remember about Shri Bhaben Chandra Pegu where survey was done. The survey was confined mainly to the buildings only.

Que :- Did you ever collect any money for yourself on or behalf of your ITO ?

Ans :- No, never.

Que :- What are the other works done by you.

Ans :- Other enquires such as distribution of forms for bringing new assessee under Rs.1400/- scheme and TDS surveys.

Que :- What are the enquires/survey made in respect of Shri Bhaben Chandra Pegu and Shri Purna Kanta Pegu ?

Ans :- I have already stated that I do not remember anything in respect of Shri Purna Kanta Pegu. I have also stated that residential survey was done in respect of Shri Bhaben Chandra Pegu. Apart from that no other enquires/survey was done in respect of Shri Bhaben Chandra Pegu.

Que : Do you have any thing to say.

Ans : No, nothing.

The above statement is given by me voluntarily without any coercion or threat.

08/02/06
(Hargovinda Rabha)

The above statement is recorded by me.

08/02/2006
(Santanu Kumar Saikia)
Inquiry Authority

The above statement is recorded in my presence.

8/2/2006
(Chanchal Nag)

(Budheswar Doley)

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ATTESTED
ADVOCATE

Statement of Shri Hargovinda Rabha, S/o Shri Dwijen Chandra Rabha recorded on 08/02/2006 in the course of Disciplinary Proceedings against Shri Budheswar Doley, TRO-2, Guwahati.

I Shri Hargovinda Rabha, S/o Shri Dwijen Chandra Rabha swear in the name of God that I shall speak the truth, the whole truth and nothing but the truth. So God help me.

08/02/06
Shri Hargovinda Rabha

The above oath is administered by me.

08/02/2006
Santanu Kumar Saikia,
Inquiry Authority

Que:- Please identify yourself

Ans:- I am Shri Hargovinda Rabha, S/o Shri Dwijen Chandra Rabha presently working as Income-tax Officer, Ward-1(4), Guwahati.

Que:- How long did you work in North Lakhimpur ?

Ans :- I was posted in North Lakhimpur in January,1995 to 08/11/1996. Initially I worked under Shri K.K. Das, ITO. In around May,1995 Shri Budheswar Doley joined as ITO, North Lakhimpur from then onwards I worked under him till 08/11/1996. I worked there as ITI

Que :- Was there any other ITI ?

Ans :- Yes, there was another Inspector named as Smt. Nirmali Mazinder.

Que :- What was the work assigned to you ?

Ans :- I was assigned all the out door works such as enquiry, surveys etc by the ITO.

Que :- Was there any survey performed during the tenure of Shri K.K. Das, ITO ?

Ans :- No.

Que :- Whether there was any Survey performed during Shri B. Doley ?

Ans :- Yes.

Que :- Whether any residential survey was carried out by you during your tenure in North Lakhimpur

Ans :- Yes, it was done as per the written order of the ITO Sri Doley.

Que :- What kind of Survey was done in the residential premises.

Ans :- I used to go to the residential premises, get the proforma filled but no measurement was taken by me.

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08/02/2006

08/02/06

A. TESTED
ADVOCATE

189 ANNEXURE-16

CONFIDENTIAL

OFFICE OF THE COMMISSIONER OF INCOME-TAX (AUDIT),
Saikia Commercial Complex, Room No.303, 3rd Floor,
Sreenagar,G.S.Road,
GUWAHATI – 781005

F. No. Vig./CIT(Audit)/GHY/2007-08/ 594 **Dated : 16-11-2007**

To
The Income-tax Officer, Hqrs., (Audit) (By name)
O/o the Commissioner of Income-tax (Audit)
Saikia Commercial Complex, Sreenagar,
G. S. Road, Guwahati.

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Sub :- Disciplinary Proceedings –
Shri S. B Doley,ITO,Hqrs,(Audit),Guwahati – Notice under Rule 15(2)/16(1) of the CCS(CCA) Rules,1965- Regarding.

.....

With reference to the above and your written submissions vide letters dated 31-10-2007 and 02-11-2007, please find enclosed herewith a copy of the Enquiry Report dated 07-09-2006 together with a copy of CVC's advice dated 28-05-2007 for your comments. Please note that this notice is issued under Rule 15(2) of the CCS (CCA) Rules,1965. I also propose to impose minor penalty against you under Rule 15(3) read with Rule 16(1) of the CCS(CCA) Rules,1965 after considering the findings of the Enquiry Report and the Advice of the CVC and your representation as you may wish to make in this regard against the proposal.

You are therefore, requested to submit your comments or representation on or before 3rd December,2007 failing which it will be presumed that you have nothing to say in the matter.

(K. T. Zimik)
Commissioner of Income-tax (Audit),
Guwahati

16.11.2007

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REPORT OF THE INQUIRING AUTHORITY ON THE CHARGESHEET DATED 18/05/2002 AGAINST SHRI BUDDHESWAR DOLEY, INCOME TAX OFFICER, WARD-NORTH LAKHIMPUR, ASSAM (PRESENTLY POSTED AS TAX RECOVERY OFFICER-II, GUWAHATI)

The statement of Article of charges contains 5 (Five) articles. Each article is supported by article of imputation of misconduct or misbehaviour. My findings in respect of each of the articles of charge are given below :

STATEMENT OF ARTICLE-I OF CHARGE

That the said Shri Budheswar Doley while functioning as ITO, North Lakhimpur, during the period 1996- 98 exceeded and abused his official powers in several instances and caused undue harassment to various assessees that culminated in a number of complaints being lodged against him. Three such specific complaints of

1.Shri Purna Kanta Pegu, Dhemaji College, Station Road, Dhemaji
2. Shri Bikas Das, Prop. MIs Beauty Stores, Dhemaji and
3. Shri Bhaben Chandra Pegu, Vill. Tanganapara, Ward-3, P.O. & Dist. Dhemaji

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were looked into and the respective case records also verified, and it emerged that Shri Budheswar Doley, ITa had fuiled to maintain absolute integrity; did not display devotion to duty; acted unbecoming of a Government servant, and in the performance of his official duties acted in a discourteous manner, thereby contravening Rules 3(1)(i), 3(1)(ii), 3(1)(iii), and 3A(a) of the CCS (Conduct) Rules, 1964.

STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR

During the period 1996-98 when the said Shri Budheswar Doley was functioning as Income-tax Officer, North Lakhimpur, several complaints alleging of high handedness, harassment, and victimisation were received against him.

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The complaints of Shri Purna Kanta Pegu (listed as SD-l), Bhaben Chandra Pegu (listed as SD-3) were looked into and the relevant case records verified and it emerged that in the process of functioning in his duties, Shri B. Doley had misconducted himself

Other complaints also alleging of misconduct are regarding Shri Bikas Das (SD 1,4), complaint of Income-tax Practitioner of North Lakhimpur (SD-6), complaint of Chamber of Commerce, North Lakhimpur (SD-7).

By these complaints, and on verification of the verifiable allegations it has emerged that the said Shri B. Doley, ITO while discharging his functions and duties as a Government Servant had failed to maintain absolute integrity did not display devotion to duty, acted unbecoming of Government servant and in the governance of his official duties acted in a discourteous manner, thereby contravening Rules 3(1)(i), (ii), (iii) and 3A(a) of the CCS (Conduct) Rules, 1964.

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The statement of imputation of misconduct does not contain ANY his specific instance of misconduct and is mainly in the nature of allegation of general nature. There are some reference to complaints by Shri Bhaben Chndra Pegu, Shri Purna Kanta Pegu, Shri Bikas Das, Some Income tax Practioner of North Lakhimpur and Chamber of Commerce, North Lakhimpur. Separate article of charges have been framed in respect of Shri Bhaben Chndra Pegu, Shri Purna Kanta Pegu, Shri Bikas Das, therefore, charges in respect of the these three persons are not considered here.

The allegations contained in the complaint filed by some Income-tax Practitioners of North Lakhimpur and those by the chamber of Commerce, North Lakhimpur are identical and are as under :

That assessments in selected cases in which the I.T.O. is specially interested are done out of turn whereas others including pure refund cases enjoying exemption u/s 10(26) of the I.T. Act, 1961 are kept pending for very long period in the name of chronological order and thereby assessees are harassed on the one hand and govt. losses revenue by way of interest for delayed refunds on the other. We may substantiate it and when required.

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that assessees are asked to furnish irrelevant particulars of their assets even acquired long back and assessment for the years of acquisition completed u/s 143(3) without re-opening the case and without quoting any section of the Act empowering the I.T.O. to call such particulars. In such cases assessees were pressurised to appear personally. Later on, cases of those assessees who did not satisfy him were refereed to the Addl. Comm.(not to DCIT) for Direction u/s 144A even where there was no pendency of any proceeding under the I.T. Act causing those assessees unnecessary harassment, financial loss and mental anybody.

That the I.T.O. himself goes for survey and in the name of survey he conducts search and impress the person scratched as such to consult some particular tax practitioner which implies that these surveys/search are with unfair intention. In most of cases such illegal search ends with mutual settlement with parties.

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That contrary to Govt's stress of TDS our I.T.O. issued a so called open certificates of exemption u/s 10(26) of the I.T. Act certifying that persons named there in may enjoy the benefits of section 10(26) of the I.T. Act. Although there is specific provision and prescribed form for issuing certificates for payment without TDS. Such certificates are without any particulars of transaction but made valid for a fixed period. In this way, apart from causing loss of revenue he is misusing his official powers and bypassing statutory provisions.

That a number of petitions for certified couples of records are pending before him for about 2 months or more. He is neither issuing the certified copies nor rejections the petitions.

That, some complaints against him were filed at different levels earlier by some assessees. To counter these complaints he obtained using his official capacity signatures of assessees on blank papers and used them as certificates of appreciation.

That if one goes through assessments made by him u/s 143(3) it will be seen that cases are disposed off with minor addition while in other similar cases heavy additions are made, which smells some foul play.

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That for hearing u/s 143(3) he insists upon personal presence of assessees to put irrelevant quarries to pressurise them.

That sir, I.T.O. North Lakhimpur Shri B. Doley is always and openly asking for "Service charges" (bribe) from all tax consultants and without that he unwilling to listen any fact or material in any case.

That as per our information he has invested huge money in constructing his residential house at Dhemaji, Collecting construction material like cement, iron, rod free of cost from business community as service charge.

There are may more allegation against him which cannot be narrated here but may be explained personally if required.

In the course of the the proceedings, Shri Inderchand Jain, the earstwhile Secy. Chamber of Commerce, North Lakhimpur appeared as a witness and his statement was recorded under oath. When asked to narrate his experience with Shri Doley as a practitioner and as the Secretary, Chamber of Commerce, North Lakhimpur, he stated as under :

"Q.No. 4 Can you throw some light on your experience with Shri Doley as a practitioner and a Secretary, Chamber of Commerce, North Lakhimpur ?

Ans : I did not experience any difficulty while interacting with him in my capacity as advocate. But some of the members of the Chambers of Commerce complained that Shri Doley was conducting surveys at random.

Q.No. 5 Was there any survey conduted by the Income-tax Officer, North Lakhimpur other than Shri Doley.

Ans : Yes.

Q. No 6 Was there any complaint against conduct of the survey by other Income-Tax Officers

Ans : No.

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Q.No. 7 *Please explain why complaint was lodged only against Shri Doley ?*

Ans : *I can not say anything.*

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Q.No. 8 *Did your members experienced any ther difficulties ?*

Ans : *No.*

Q.No. 9 *Did you have anything to say ?*

Ans : *No."*

In the course of the the proceedings, Shri M.K. Sharma, Earstwhile Secretary of Tax Bar Association, North Lakhimpur appeared as a witness and his statement was recorded under oath. When asked to describe to his experience with Shri Doley during his tenure as Income tax Officer, North Lakhimpur, Shri Sharma stated as under :

" I am an Income-tax practioner (ITP) I practising Income-tax. In my personal capacity as ITP I dont have any problem. However, other members of our association has complained before me. In the capaity of the association I have lodged the complaint."

When asked whether he faced any difficulty he stated as under :

"Our association has 9(nine) members. In the meeing of the association, some of the members complained that there were irregularities in issuing of refunds. Therefore, we have raised the complaint."

When asked wherther members of his association experienced that Shri Doley requisitioned particulars/details of assets during the course of proceedings U/s 143(3), Shri Sharma replied in the affirmative.

When asked about the experience of members of his association in respect of surveys conducted by Shri Doley, Shri Sharma replied that he did not remember (any thing).

When asked about the experience of the members of the association in respect of issuience of exemption of TDS certificates Shri Sharma replied that random certificates were issued (By Shri Doley) without spacifying the amount and without the following procedure.

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When asked by Shri Doley during cross examination whether he can give any specific instance where TDS certificates were issued without specific the amounts and without the following the procedures, he replied in the negative.

When asked about the experience of the members of the association in respect of assessment orders passed by Shri Doley he stated that he had nothing to say.

When asked whether members of his association experienced that Shri Doley was in the habit asking for any undue favour or harrasing the asseessee in any other way, Shri Sharma stated that he is nothing to say.

When asked by Shri Doley during cross examination to state what sort of irregulatrities on issue of refunds were complained and how many members complained Shri Sharma stated that he did not remember.

It is seen that the department has relied solely on the witnesses in respect of allegation in the complaints filed. These complaints are general in nature. No specific of misconduct or misbehaviour has been mentioned in the complaints. Nor has the department produced any records in support of these complaints (except in the case of Shri B.C. Pegu and Shri P.K. Pegu). In the course of hearing of the case Shri Inderchand Jain and Shri N.K. Sharma could not corroborate these complaints made by them. Therefore, I hold that none of the charges in Article-I has been proved.

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STATEMENT OF ARTICLE-II OF CHARGE

In the separate complaint of Shri Purna Kanta Pegu it is alleged by the complainant that a bribe demand of Rs. 10,000/- was made during the course of the assessment proceedings for the AY 1994-95 but since the bribe was not conceeded to, a huge tax demand ofRs. 1,63,212/- was raised.

Also, that during the aforesaid period and while functioning in the aforesaid office, the said Shri Budheswar Doley, ITO is alleged to have demanded a bribe of Rs. 1,00,000 (one Lakh) only from another complainant Shri Bhaben Chandra Pegu during the course of the assessment proceedings for A Y 1994-95. Since only a a bribe amount of Rs. 10,000/- was paid first, and

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later on another Rs. 10,000/- , a high pitched assessment was made raising a huge tax demand of Rs. 9,87,196.

By these allegations of the complainants, Shri Budheswar Doley, ITO has contravened of the following provisions of the CCS (Conduct) Rules:

Rule 3(1)(i) - fuiled to maintain absolute integrity

Rule 3(1)(iii) - acted unbecoming ofa Government servant.

STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR

In the complaint of Shri Purna Kanta Pegu, it is alleged that Shri B. Doley, ITO in the assessment proceedings for AY 1994-95 had demanded a bribe ofRs. 10,000/-. As the bribe was not paid, a huge tax demand ofRs. 1,63,212/- was raised.

Verification of the relevant case records indeed show that Shri B. Doley unduly abused his powers to cause enquiries, and culminating in the unnecessarily high-pitched assessment made.

Also, in the salaried case of Shri Bhaben Ch. Pegu an allegation that due to the not conceding bribe demand of Rs. 1,00,000/- roving enquiries were made and unnecessarily high pitched assessment was done raising a huge tax demand ofRs. 9,87,196/-.

The above 2 assessments have been eventually set aside/ deleted by CIT(A) in the appellate order.

The above trend of instances show that the allegation of bribe demand as being the cause of harassment, lead to a strong implication of the allegation against Shri B. Doley and therefore, Shri B. Doley had failed to maintain absolute integrity and acted unbecoming of a Government Servant thereby contravening Rules 3(1)(i) & 3(l)(iii) of the CCS (Conduct) Rules, 1964.

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Shri P.K. Pegu, in his statement alleged that Shri Doley demanded Rs. 10,000/- from him through one person named Shri Chikon Doley. Shri Pegu further alleged that when the payment was not made a demand of more than Rs. 1 lakh was raised in his case.

During cross examination, Shri Pegu stated that Shri Chikon Doley told Shri Pegu that Shri B. Doley demanded the money. But he admitted that he don't have any evidence and that no written note was sent by Shri Doley.

The allegation that bribe was demanded is based solely on the statement of Shri P.K. Pegu. But Shri Pegu has stated that the demand was made through Shri Chikon Doley and not directly to him. I am of the view that the allegation lacks credibility since, among other things the credibility of Shri Chikon Doley is not established.

Since the allegation of demand of bribe could not be proved, the alleged consequential misconduct or misbehaviour is not inquired into.

As regards the allegation that Rs. 1 lakh was demanded as bribe from Shri Bhaben Pegu, it is seen that The charge that Shri Doley demanded bribe is completely based on the allegation of Shri Pegu. There is no other evidence. Shri Bhaben Pegu, appeared as a witness during the proceedings and statement was recorded. He stated that Shri Doley demanded Rs. 1 lakh as bribe. But during cross examination, Shri Pegu stated that Shri Doley did not ask for the money directly. Shri Pegu stated that the demand for money was conveyed through his (Shri Pegu's) wife. But Shri Pegu could not state exactly how Shri Doley conveyed his claim.

I am of the view that the allegation lacks credibility since, among other things the credibility of wife of Shri Pegu is not established.

Since the allegation of demand of bribe could not be proved, the alleged consequential misconduct or misbehaviour is not inquired into.

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As regards the allegation that Shri Pegu paid bribe of Rs. 10,000/- to Shri Doley through his wife, during cross examination, Shri Pegu stated that the payment to his wife was made when Shri Doley was not

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present (in his house). He further stated that he negotiated with Mr. Doley's wife (for reduction of his tax liabilities) and when it failed, he demanded his money back from Shri Doley but Shri Doley refused to return the money. In his answer to a question by Shri Doley, Shri Pegu stated that there was no witness when the cash was paid to Shri Doley's wife.

As regards the allegation that bribe was paid, it is seen that if at all any money was paid, it was handed over to Shri Doley's wife. There is no evidence that Shri Doley was aware of the transaction, if it took place at all. I, therefore hold that none of the charges in Article-II has been proved.

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STATEMENT OF ARTICLE-III OF CHARGE

That during the aforesaid period and while functioning in the aforesaid office, the said Shri Budheswar Doley, ITO acted arbitrarily in the assessment of Shri Purna Kanta Pegu (assessee) for the A Y 1995-96 as is evidenced from the assessment records; acts of misconduct of which are listed hereunder.

1. The assessment proceeding has been initiated after the survey report of the Inspector dated 16-6-95. The survey so authorised was illegal as the power to survey U/s 133A or 133B can be exercised only at a place at which for business or profession is carried on; whereas in these instance case the assessee is only a salaried person.
This act confirms the allegations in other complaints received that Shri Budheswar Doley, ITO had arbitrarily conducted survey with view to harass and intimidate the assessees.

2. Even if the survey is considered as an inquiry U/s 133(6), it is illegal as there were no proceedings pending under the Income-tax Act as on that date against Shri Purna Kanta Pegu (assessee).

3. By mentioning in the very first line of the assessment order that the survey was done by his Inspector, it appears that Shri Budheswar Doley, ITO had sinister designs in mind so that if in the eventuality of any complaints or complications later on, he would be in a position to push the blame to his subordinate.

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4. *Shri B. Doley, ITO has abused the power to survey and also blatently trespassed upon the power to search when he directed his Inspector (Shri H. Rabha) to enter inside the residential premises of the assessee and to observe and take measurement of the building, as is evidenced by the report of the Inspector dated 04-4-96.*

5. *Shri Budheswar Doley, ITO has time and again abused to power to survey when he directed his Inspector to make enquiries at several residential houses as is evidenced ftom the report of the Inspector dated 16-6-95.*

6. *Shri Budheswar Doley, ITO made huge estimated addition towards investment in construction of the residential building belonging to the assessee, without having given the assessee an inkling of the estimated method of valuation that he was to do. He, therefore, denied to the assessee the very basic right to be given opportunity to be heard and the right to natural justice.*

7. *The impugned assessment order was challenged in appeal before the Commissioner of Income-tax (Appeals), and the learned CIT (Appeal) in his order dated 07-01-98 set-aside with directions the estimated additions in the building construction, and deleted the other additions. However, Shri Budheswar Doley, delayed in the giving effect to the Appellate Order, and further did not follow the directions while given to the effect to the Appellate Order, thereby still raising a tax demand of Rs. 1,00,306/-.*

8. *Though the tax demand of Rs. 1,00,306/- after giving appellate effect was wrong, yet Shri Budheswar Doley issued recovery attachment notice D/s 226(3) dated 27-8-98 of the Income-tax Act, 1961 to the employer of the assessee, i.e. Principal of Dhemaji College, Dhemaji attaching an amount of Rs. 3000/- per month from the salary of the assessee, thereby causing undue harassment and humiliation to the assessee.*

By all these above acts Shri Budheswar Doley, ITO has willfully contravened the following provisions of the CCS (Conduct) Rules :

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3(1)(i) - Failed to maintain absolute integrity

3(1)(ii) - Failed to maintain devotion to duty

3(1)(iii) - acted unbecoming of a Government servant.

3A(a) - in the performance ofhis official duties, acted in a discourteous manner.

STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR

Shri B. Doley had without any legal validity directed his Inspector to cause various enquiries and conduct survey as evident by the mention of the Inspector's survey reports dated 16-6-95,04-4-96, 16-6-95. The power to survey U/s 133A.. of the Income-tax Act is not available in the case of salaried mcome assessees. Even otherwise it is not permissible that surveys be carried out as residetial premises.

Huge estimated additions have been made towards investment in the construction of the residential building, without having given the assessee an inkling of the estimated method of the valuation that he was to do. The very basic right of the assessee to natural justice has been denied, thereby belittling the assessment orders, and causing mental agony to the assessee. Even after the CIT(A) had set-aside as well as deleted the additions made in the assessment, Shri B. Doley, ITO did not given proper effect and still raised a huge tax demand of Rs. 1,00,306/-. To cause further injury and humiliation, he even further proceeded to attach and recover the salary income of the assessee, even though the demand was totally and legally wrong.

All the above acts show vindictiveness, high handedness and improper functioning in the discharge officer official duties and thereby, Shri B. Doley, ITO as willfully contravened Rules 3(1)(i), 3(1)(ii), 3(1)(iii) and 3A(a) of the CCS (conduct) Rules, 1964.

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This article of charge contain 8 paras which in turn contain allegation of misconduct or misbehaviour against Shri Doley. These allegation are examined parawise below:

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Para1: That Shri Budheswar Doley, ITO had arbitrarily conducted survey with view to harass and intimidate the assessees.

The IT Act does not give power to the A.O. to take measurement of a residential house explicitly. At the same time taking measurement of a house the Assessing Officer is not prohibited either (certain actions such as removal of cash during survey u/s 133A is prohibited by the I.T. Act). U/s 142(2), the A.O. may make such inquiry as he considers necessary. Therefore, if the dimension of a house is taken for the limited purpose of estimating the cost of construction without any violation of privacy, it can not be treated as a serious case of excess. P.K. Pegu not aware of any survey conducted (Ref to Answer to Q. No. 3 of his statement recorded on 08-02-2006). This indicates that inconvenience caused to him, if any, when his house was being measured was very little.

Para 2. Even if the survey (in the residence of Shri P.K. Pegu) is considered as an inquiry U/s 133(6), it is illegal as there were no proceedings pending under the Income-tax Act as on that date against Shri Purna Kanta Pegu (assessee).

Shri Doley has not taken the plea that it was enquiry conduced u/s 133A. Therefore, there is no need to go into this charge.

Para 3 That Shri B. Doley, ITO had mention that the survey was done by his Inspector with sinister designs in mind

The allegation far fetched and could not be proved.

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Para 4. That Shri B. Doley, ITO abused to power to survey and also blatently transgressed upon the power to search.

It is true that one survey report by Shri H. Rabha has been mentioned by Shri Doley in his assessment order. But exactly what was done during the "Survey" is not clear. It is also not clear

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whether Shri Rabha entered the house of Shri Pegu. The department could not produce the relevant assessment records. It appears that Shri Rabha merely took measurement of the house without causing much inconvenience to Shri P.K. Pegu. It is further seen from that statement of Shri P.K. Pegu that he was not aware of any survey conducted in his house (Please refer to answer to Qn. No. 3 of his statement recorded on 08-02-2006). This indicates that inconvenience caused to him, if any, when his house was being measured was very little.

Para 5 *That Shri Budheswar Doley, ITO has time and again abused to power to survey when he directed his Inspector to make enquiries at several residential houses as is evidenced ftom the report of the Inspector dated 16-6-95.*

The department could not produced the report of the inspector dtd. 16-06-1995 on which it sought to rely. But it does appear from the statement of Shri R.K. Singh, ITI dtd. 10-02-2006 recorded in the course of the procedings that measurement of house was taken in other cases also. But it also appears that there was no serious invasion of privacy while such measurement was taken. It is further seen from that statement of Shri P.K. Pegu that he was not aware of survey conducted in his house (Please refer to answer to Que. No. 3 of his statement recorded on 08-02-2006). This indicates that inconvenience caused him if any when his house was being measured was very little.

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Para 6. Shri Budheswar Doley, ITO made huge estimated addition towards investment in construction of the residential building belonging to the assessee, without having given the assessee an inkling of the estimated method of valuation that he was to do. He, therefore, denied to the assessee the very basic right to be given opportunity to be heard and the right to natural justice.

The department could not produced the relevant assessment records. But it is clear from the assessment order that Shri Doley did not provide the assessee opportunity of being heard on many major issues. For example, while making addition on investment of house property, Shri Doley did not call for assessee's explanation on the issue though substential additions were made on this point. Shri Doley denied to the assessee the very basic right of opportunity of being heard

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and the right to natural justice. As a quasi judicial authority, it was his duty to ensure that the basic principles of justice are not violated. The omission is clearly attributable to casual attitude on the part of Shri Doley. In failing to ensure that, he exhibited lack of devotion to his duty.

Para 7. The impugned assessment order was challenged in appeal before the Commissioner of Income-tax (Appeals), and the learned CIT (Appeal) in his order dated 07-01-98 set-aside with directions the estimated additions in the building construction, and deleted the other additions. However, Shri Budheswar Doley, delayed in the giving effect to the Appellate Order, and further did not follow the directions while given to the effect to the Appellate Order, thereby still raising a tax demand of Rs. 1,00,306/-.

The Department could not produce the relevent assessment records. It could not state when the appeallate order was received by Shri Doley and the date on which it was given effect to. Nor could it be established that the directions of the CIT(A) were not followed while giving effect to the Appellate Order in absence of records. The P.O. argued that that the directions of the CIT(A) were not followed can be inferred from the quantum of demand that still remained after "appeal effect" was given. In my view, though it does appear that the directions of the CIT(A) were not followed, it is not possible to draw any such inference conclusively.

Para 8. Though the tax demand of Rs. 1,00,306/- after giving appellate effect was wrong, yet Shri Budheswar Doley issued recovery attachment notice D/s 226(3) dated 27-8-98 of the Income-tax Act, 1961 to the employer of the assessee, i.e., Principal of Dhemaji College, Dhemaji attaching an amount of Rs. 3000/- per month from the salary of the assessee, thereby causing undue harassment and humiliation to the assessee.

The A.O. cannot be faulted for attaching the salary. Whether or not the demand was based on proper facts was besides the point. Shri Doley was merely following the Departmental policy on recovery in what was obviously a dossier case.

To sum up, I am of the view that Shri Doley denied to the assessee the very basic right of opportunityof being heard and the right to natural justice. As a quasi judicial authority, it was his

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duty to ensure that the basic principles of justice are not violated. In failing to ensure that, he exhibited lack of devotion to his duty. The other charges are not proved.

STATEMENT OF ARTICLE-IV OF CHARGE

That during the aforesaid period and while functioning in the aforesaid office the said Shri Budeswar Doley, ITO, acted arbitrarily and capriciously in the assessment of Shri Bhaben Ch. Pegu (assessee) for the A Y 1994-95 as evidenced from the assessment records. The acts of misconduct of which are listed hereinunder :

1. Shri B. Doley, ITO abused and over-stepped the power to survey when he directed his Inspector to cause enquiry, as evidenced from the Inspector's report dated 06-6-95, and also required Shri B. C. Pegu to furnish various details of assets as evidenced from the proforma that was asked to be submitted by Shri Pegu dated 07-6-95.

2. Shri B. Doley, ITO had caused enquiries into the properties without ascertaining and verifying from the past income-tax records, as has been the allegation in several complaints received against him, thereby causing undue harassment to the tax payers.

3. Shri B. Doley, ITO initiated the assessment proceeding in the case of Shri B. C. Pegu (assessee) for the AY 1994-95 by issuing of notice U/s 142(1) dated 27-7-95/02-8-95 of the LT. Act, 1961 calling for return of income to be filed. Though he has used a standard departmental form to issue the notice, yet he had not applied his mind in that the items not applicable were not struck off. This would have created confusion to the assessee.

4. Shri B. Doley, ITO, has misused and over-stepped the power to survey when he directed his Inspector to enter the building of the assessee, and also "to enter the residential house of the assessee and to observe a layout, nature of construction, and to take measurements and also to estimate the value of the construction, as is evidenced by the inspection report dated 12-10-96.

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contd.

5. *Shri B. Doley, ITO passed the assessment order on 01-12-96 and has made arbitrarily high-pitched assessment by simply estimating cost of construction of the building, and estimated cost of land as per his whims and fancies. There does not appear in the records any prior intimation to the assessee ofhis intended basis for estimated valuation. Shri B. Doley,ITO has, therefore, denied the assessee the opportunity to be heard on the issue, and the right to natural justice.*

Because of this act in the assessment order, high income-tax demand of Rs. 9,87,196/- was raised on the assessee causing the assessee undue mental pressure and agony.

6. *The assessee, being a layman, and having been taken aback by such high pitched assessment, submitted a detailed revised petition dated 29-12-96 seeking for review of the income-tax assessment. As the subject matter and reasoning were not within the purview of even a rectification, Shri B. Doley should have advised the assessee that the proper procedure was to approach the appropriate higher statutory authorities by filing appeal U/s 246 before the CIT(A) or to file for revision petition U/s 264 before the CIT.*

7. *Shri B. Doley, ITO did not choose or advise the assessee properly and instead after the assessment has been completed, in the name of rectification, he conducted and caused detailed enquiries trespassing beyond his statutory jurisdiction and thereby causing further mental agony to the assessee.*

8. *Shri B. Doley, ITO, again abused and over stepped the power to survey when he deputed his Inspector (Shri Rajkumar Singha) to visit and enter the building premises belonging to the assessee, and to take measurements, as evidenced from the Inspector's report dated 16-01-97.*

9. *Shri B. Doley, ITO has over-exceeded his power as an assessing officer in the rectification order passed dated 01-7-97, as none of the issues were "mistakes apparent from records".*

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10. Although the assessment was high pitched and undue harassment has been caused in the process, yet Shri B. Doley,ITO caused further humiliation by sending a recovery attachment notice U/s 226(3) of the I. T. Act, 1961 to the employer of the assessee, i.e. the Principal, Dhemaji College, Dhemaji

11. Shri B. Doley, ITO had made enquiries and correspondences with the Branch Manager, United Bank Of India, Dhemaji. The style and manner ill which he has conveyed his correspondences with the bank official is improper and not expected of, in official communications, as evidenced vide his letter dated 27-6-97 sent to the Bank Officer.

12. The impugned assessment order was challenged in appeal before the CIT(A) and the learned CIT(A) vide his order dated 10-12-98 had observed the high-handedness and arbitrary manner of the assessment that had been done by Shri B. Doley, ITO by remarking in the appellater order :I feel that the A.O should have considered the appellant past assessment records especially when he was considering investment made in buildings, lands, etc by the appellant in the past and in failing to do so, he had failed to do justice to the appellant".

By the above act of misconduct and misbehaviour, Shri B. Doley, ITO has willfully contravened the following Rules of the CCS (Conduct) Rules, 1964 viz:

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3(1)(i) - Failed to maintain absolute integrity

3(1)(ii) - Failed to maintain devotion to duty

3(1)(iii) - acted unbecoming of a Government servant.

3A(a) - in the performance of his official duties, acted in a discourteous manner

STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR

(in the assessment of Shri B.C. Pegu)

Here too, Shri B. Doley had abused and over-stepped the power to cause enquiries and conduct surveys, as is evident by the Inspector's reports dated 06-6-95, 12-10-96, 16-01-97. The

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power to cause survey is not available in case of salaried income assessees. Also it is not permissible to enter residential houses, not to speak taking measurement and to estimate the value of construction.

Even though there were no proceedings under the Income-tax Act as on 06-6-95 against Shri Bhaben Ch. Pegu, yet Shri B. Doley, ITO violated statutory powers under the I.T. Act and required Shri Bhaben Ch. Pegu to furnish details regarding his assets, investments made, an sources of income for several years even since 1965. The violation is evident as there does not appear to be any written communication addressed to Shri Bhaben Ch. Pegu requiring him to do so, nor any mention of the exercise under any particular provision of the I.T. Act. The entire exercise seems to have been verbal, until Shri Bhaben Ch. Pegu was made to submit the details in writing.

Though Shri B. Doley, ITO without much hesitation causes enquiries to be made and surveys to be conducted, yet in issuing simple statutory notice U/s 142(1) he does not apply his mind to delete the inapplicable portions, and therefore, the options/ requirements in the standard form being many, a lot of confusion and incomprehension would have arose in the mind of Shri Bhaben Ch. Pegu on receiving the notice.

No inkling of the method of estimation to be adopted in the assessment, was given to Shri Bhaben Ch. Pegu and therefore, denying right to proper opportunity and the right to natural justice. This most crucial as huge addition were made raising the huge income-tax demand of Rs. 9,87,196/-.

Shri B. Doley even after having passed the high pitched assessment order started even to transgress upon the statutory jurisdiction of the CIT and CIT(A) by not properly advising the assessee to file revision/appeal, and instead he choose to treat as rectification, and in the process got further occasion to cause further enquiries and surveys.

Shri B. Doley, ITO does not re-examine the assessment made by him, and is very quick to use his powers by sending attachment and recovery notices U/s 226(3) of I.T. Act.

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In his correspondences with the Branch Manager, United Bank of India, Dhemaj, he calls clarification of matters of several years ago, of which the then incumbent Branch Manager could not have been possibility aware of The language use in the correspondences is also unbecoming of official communication as is evident in the letter dtd. 27-6-97.

Shri B. Doley has asked to Shri Bhaben Ch. Pegu to furnish details of his assets and investments some 25 years back even since 1965. This would have been impossible for Shri Bhaben Ch. Pegu. Shri Doley does not hesitate to ask the assessee for details and records of decades together but when it comes to himself he doesn't even bother to find from own office records the available details of only a few years back in order to ascertain his suspicion about the assesses assets. Shri B. Doley did not practice nor exhibits even a fraction of what he a expected others to do By the above acts of mis-conduct and mis-behaviour Shri B. Doley, ITO had failed to maintained integrity, failed to maintained devotion to duty, acted of an unbecoming of Government servant, in the performance of official duties acted in a discourteous matter, thereby contravening Rules 3(1)(i), (ii), (iii) and 3A(a) of the CCS (Conduct) Rules, 1964.

FINDINGS

This article of charge contain 12 paras which in turn contain allegation of misconduct or misbehaviour against Shri Doley. These allegation are examined parawise below (paras 6,7,8 & 9 are considered together) :

Para 1. Shri B. Doley, ITO abused and over-stepped the power to survey when he directed his Inspector to cause enquiry, as evidenced from the Inspector's report dated 06-6-95, and also required Shri B. C. Pegu to furnish various details of assets as evidenced from the proforma that was asked to be submitted by Shri Pegu dated 07-6-95.

The department could not produce the Inspector's report dated 06-6-95 on which it sought to rely. Nor could the Department state what were the directions given by Shri Doley to the Inspector. The assessment order does mention a survey report by an Inspector. But, what exactly was done during the 'survey' is not clear. It appears that the Inspector merely took external measurements of the house.

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The IT Act does not give power to the A.O. to take measurement of a residential house explicitly. At the same time taking measurement of a house the Assessing Officer is not prohibited either (certain actions such as removal of cash during survey u/s 133A is prohibited by the I.T. Act). U/s 142(2), the A.O. may make such inquiry as he considers necessary. Therefore, if the dimension of a house is taken for the limited purpose of estimating the cost of construction without any violation of privacy, it can not be treated as a serious case of excess.

As regards requiring Shri B. C. Pegu to furnish various details of assets, it is not clear whether or not the details were called for by Shri Doley. There appears to be no written requisition by Shri Doley. It is possible that the assessee submitted those details on his own.

Para 2. Shri B. Doley, ITO had caused enquiries into the properties without ascertaining and verifying from the past income-tax records, as has been the allegation in several complaints received against him, thereby causing undue harassment to the tax payers.

The Department could not give specific instance where details which were available on records were called for by Shri Doley.

Para 3. Shri B. Doley, ITO initiated the assessment proceeding in the case of Shri B. C. Pegu (assessee) for the AY 1994-95 by issuing of notice U/s 142(1) dated 27-7-95/02-8-95 of the LT. Act, 1961 calling for return of income to be filed. Though he has used a standard departmental form to issue the notice, yet he had not applied his mind in that the items not applicable were not struck off. This would have created confusion to the assessee.

The department could not produce the relevent notice. In any case, failure to strike off the not applicable portions cannnot be considered a serious omission.

Para 4. Shri B. Doley, ITO, has misused and over-stepped the power to survey when he directed his Inspector to enter the building of the assessee, and also to enter the residential house of the

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assessee and to observe a layout, nature of construction, and to take measurements and also to estimate the value of the construction, as is evidenced by the inspection report dated 12-10-96.

The department could not produce the Inspector's report dated 12-10-95 on which it sought to rely. Nor could the Department state what were the directions given by Shri Doley to the Inspector. The assessment order does mention a survey report by an Inspector. But, what exactly was done during the 'survey' is not clear. It appears that the Inspector merely took external measurements of the house.

The IT Act does not give power to the A.O. to take measurement of a residential house explicitly. At the same time taking measurement of a house the Assessing Officer is not prohibited either (certain actions such as removal of cash during survey u/s 133A is prohibited by the I.T. Act). U/s 142(2), the A.O. may make such inquiry as he considers necessary. Therefore, if the dimension of a house is taken for the limited purpose of estimating the cost of construction without any violation of privacy, it can not be treated as a serious case of excess.

Para 5. Shri B. Doley, ITO passed the assessment order on 01-12-96 and has made arbitrarily high-pitched assessment by simply estimating cost of construction of the building, and estimated cost of land as per his whims and fancies. There does not appear in the records any prior intimation to the assessee ofhis intended basis for estimated valuation. Shri B. Doley,ITO has, therefore, denied the assessee the opportunity to be heard on the issue, and the right to natural justice.

Because of this act in the assessment order, high income-tax demand of Rs. 9,87,196/- was raised on the assessee causing the assessee undue mental pressure and agony.

The department could not produced the relevant assessment records. But it is clear from assessment order that Shri Doley did not provide the assessee opportunity of being heard on many major issues. For example, while making addition on investment/ aquisition of immovable

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properties, Shri Doley did not call for assessee's explanation on the issue though huge additions were made on these points. Shri Doley denied to the assessee the very basic right of opportunity of being heard and the right to natural justice. As a quasi judicial authority, it was his duty to ensure that the basic principles of justice are not violated. In failing to ensure that, he exhibited lack of devotion to his duty.

Paras 6,7,8,& 9. The assessee, being a layman, and having been taken aback by such high pitched assessment, submitted a detailed revised petition dated 29-12-96 seeking for review of the income-tax assessment. As the subject matter and reasoning were not within the purview of even a rectification, Shri B. Doley should have advised the assessee that the proper procedure was to approach the appropriate higher statutory authorities by filing appeal U/s 246 before the CIT(A) or to file for revision petition U/s 264 before the CIT.

Shri B. Doley, ITO did not choose or advise the assessee properly and instead after the assessment has been completed, in the name of rectification, he conducted and caused detailed enquiries trespassing beyond his statutory jurisdiction and thereby causing further mental agony to the assessee.

Shri B. Doley, ITO, again abused and over stepped the power to survey when he deputed his Inspector (Shri Rajkumar Singha) to visit and enter the building premises belonging to the assessee, and to take measurements, as evidenced from the Inspector's report dated 16-01-97.

Shri B. Doley, ITO has over-exceeded his power as an assessing officer in the rectification order passed dated 01-7-97, as none of the issues were "mistakes apparent from records".

It is seen from records that in purported exercise of his power u/s 154 of the I.T. Act, 1961, Shri Doley got a building measured by his Inspector and also collected information from its tenant and then recomputed its cost of construction. By this act, Shri Doley has clearly exceeded his power as an assessing Officer.

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10. Although the assessment was high pitched and undue harassment has been caused in the process, yet Shri B. Doley,ITO caused further humiliation by sending a recovery attachment notice U/s 226(3) of the I. T. Act, 1961 to the employer of the assessee, i.e. the Principal, Dhemaji College, Dhemaji

The A.O. cannot be faulted for attaching the salary. Whether or not the demand was based on proper facts was was besides the point. Shri Doley was merely following the Departmental policy on recovery in what was obviously a dossier case.

11. Shri B. Doley, ITO had made enquiries and correspondences with the Branch Manager, United Bank Of India, Dhemaji. The style and manner ill which he has conveyed his correspondences with the bank official is improper and not expected of, in official communications, as evidenced vide his letter dated 27-6-97 sent to the Bank Officer.

The department could not produce the relevant.

12. The impugned assessment order was challenged in appeal before the CIT(A) and the learned CIT(A) vide his order dated 10-12-98 had observed the high-handedness and arbitrary manner of the assessment that had been done by Shri B. Doley, ITO by remarking in the appellater order:"I feel that the A.O should have considered the appellant past assessment records especially when he was considering investment made in buildings, lands, etc by the appellant in the past and in failing to do so, he had failed to do justice to the appellant".

The Department could not furnish any example where Shri Doley failed to consider any fact which was available in the Assessment records of earlier years.

To sum up, I am of the view that Shri Doley denied to the assessee the very basic right to be given opportunity to be heard and the right to natural justice. As a quasi judicial authority, it was his duty to ensure that the basic principles of justice are not violated. In failing to ensure that, he exhibited lack of devotion to his duty. Further, Shri Doley blatently exceeded his powers as as an

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Assessing Officer while passing an order u/s 154 of the I.T. Act. Here again , he exhibited lack of devotion to his duty. The other charges are not proved.

STATEMENT OF ARTICLE-V OF CHARGE

That during the aforesaid period and while functioning in the aforesaid office, the said Shri B. Doley, ITO acted upon and initiated proceedings with vindictive motive against Shri Bikash Das (Proprietor of M/s Beauty Stores), Dhemaj, as is mentioned hereunder:

1. Due to not conceeding to a price bargain which Shri B. Doley, ITO wanted as customer, Shri B. Doley, ITO then misused, with vindictive intention, the power to survey by conducting survey at the shop premises on 01-11-96; even though as an Income-tax authority he should have been aware that the shop being quite small in size, a survey was not at all warranted. The conduct of the survey was spiteful and with vindictive motive to humiliate Shri Bikash Das.

2. Shri B. Doley, ITO further initiated proceedings by issuing notice dated 09-01-97 U/s 142(1) of the Income-tax Act calling for the return of income to be filed. Even while issuing the notice he did not apply his mind in that the irrelevant portion of the form were not struck of, and this would have created confusion in the mind of Shri Bikash Das.

3. Shri B. Doley, ITO had misused the powers U/s 142(1) in that after initiating the proceedings, he simply dropped the proceedings on 29-04-97 on receiving a letter ftom Shri Bikash Das that he would not be having any taxable income. This indicates that Shri B. Doley, ITO misused the power U/s 142(1) to achieve his vindictive motive against Shri Bikash Das and once the motive was achieved, the proceedings were dropped as there was no other reason to have conducted the survey.

By all these above acts Shri B. Doley, ITO has willingly contravened the following provisions of the CCS (Conduct) Rules, 1964 :

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3(1)(i) - Failed to maintain absolute integrity

3(1)(ii) - Failed to maintain devotion to duty

3(1)(iii) - acted unbecoming of a Government servant.

3A(a) - in the performance ofhis official duties, acted in a discourteous manner.

STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR

The survey conducted on 01-11-98 was vindictive as a result of the price bargaining that Shri B. Doley, ITO wanted as customer. There was no reason to conduct such a survey. Even the initiation of proceedings by issue of notice U/s 142(1) was unwarranted. This is apparent as eventually the proceedings had to be dropped. Shri B. Doley, ITO had thus failed to maintain absolute integrity devotion to duty, acted unbecoming of a Government servant, and in the performance of his official duties acted in a discourteous manner, thereby contravening Rules 3(1)(i), (ii), (iii) and 3A(a) of the CCS (conduct) Rules, 1964 in this instant case also.

FINDINGS

This article of charge contain 3 paras which in turn contain allegation of misconduct or misbehaviour against Shri Doley. These allegation are examined parawise below:

Para 1. Due to not conceeding to a price bargain which Shri B. Doley, ITO wanted as customer, Shri B. Doley, ITO then misused, with vindictive intention, the power to survey by conducting survey at the shop premises on 01-11-96; even though as an Income-tax authority he should have been aware that the shop being quite small in size, a survey was not at all warranted. The conduct of the survey was spiteful and with vindictive motive to humiliate Shri Bikash Das.

The statement of Shri Bikash Das was recorded during the proceedings. In his statement, he did not make any complaint against Shri Doley. Earlier, on 26/10/1998, his version of the events were recorded by the Addl. CIT . The relevent portion of the order sheet is reproduced below:

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"Sometime before Durga Puja in 1996, Shri Doley came to my shop as a customer to purchase a toy car for his child. The price quoted was Rs. 140/- and he burgained and wanted to pay Rs. 100/-. He finally revealed his identity and status and paid Rs. 100/- for his toy car. After about 20 days he came with his staff members and carried out survey of my shop. After about one month I received a notice from the ITO to filed return of income. I verbally sought one years time for filing of the return stating that I had started the shop in 1994 and was not earning enough income to be liable for tax. I have finally filed the return in February or March, 1998. My A/R is Shri Jaswant Singh. During the survery and thereafter also the ITO Shri Doley did not demand any money nor I have paid him any".

The department's contention is that Shri B. Doley conducted a survey with vindictive intention due to Shri Bikash Das not conceeding to a price burgain which Shri Doley wanted. But from the statement of Shri Bikash Das recorded on 26-10-1998, it is seen that Shri Bikash Das had actually conceeded to the price burgained when Shri Doley purchased the toy. Further the survey was otherwise as per law. Thus, he charge that the survey was conducted in the vindictive manner is not proved.

Para 2. Shri B. Doley, ITO further initiated proceedings by issuing notice dated 09-01-97 U/s 142(1) of the Income-tax Act calling for the return of income to be filed. Even while issuing the notice he did not apply his mind in that the irrelevant portion of the form were not struck of, and this would have created confusion in the mind of Shri Bikash Das.

The ommission to strike off the in applicable portion of the notice can not be treated as a serious act of ommission

Para 3. Shri B. Doley, ITO had misused the powers U/s 142(1) in that after initiating the proceedings, he simply dropped the proceedings on 29-04-97 on receiving a letter from Shri Bikash Das that he would not be having any taxable income. This indicates that Shri B. Doley, ITO misused the power U/s 142(1) to achieve his vindictive motive against Shri Bikash Das and once the motive was achieved, the proceedings were dropped as there was no other reason to have conducted the survey.

Shri Doley erred in dropping the proceedings on receiving a letter from Shri Bikash Das that he would not having taxable income. There is no provision for dropping the proceedings after notice u/s 142(1)

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was issued. By this wrong action, Shri Doley exhibited lack of devotion to his duties. However, the allegation that Shri B. Doley, ITO misused the power U/s 142(1) to achieve his vindictive motive against Shri Bikash Das is not proved because the department could not establish then Shri Doley had reason to be vindictive.

To sum up, it was found that Shri Doley dropped the proceedings after issuing the notice u/s 142(1). No motive, however, could be established for this act. I, therefore hold that the mistake occured due to his failure to maintain devotion to his duty. The other charges are not proved.

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REPORT ON THE THE SUPPLEMENTARY CHARGESHEET

The statement of article of charges in the supplementary chargesheet contain one article which is reproduced below:

"That the said Shri Budheswar Doley, Income-tax Officer, while functioning as ITO, Ward-North Lakhimpur, Assam for the period for the period from 26.05.95 to 21.09.98, while making assessments u/s 143(3) or 144 of the I.T Act,1961, failed to conduct proper inquiry and investigation. In some cases he did not obtain any information from the assessee and did not scrutinize the books of accounts in some cases. In the cases, where information were obtained, he failed to utilize the same in proper manner and disposed of cases in a lackadaisical manner.

By the aforesaid act of omission and commission, Shri Budheswar Doley failed to maintain absolute integrity and also showed lack of devotion to duty and exhibited conduct unbecoming of a government servant in terms of Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules, 1964."

The statement of imputation of misconduct in support of the article of charge contain certain irregularities found during vigilance inspection conducted in respect of work done by Shri Doley while he was posted as ITO, Ward- North Lakhimpur. In all records in respect of 25 persons were inspected (in some case more than one A.Y.)

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In the statement of imputation of misconduct, separate observations has been made for each person A.Y. wise and the observations have been summerised at the end.

I have examined the various allegations with reference to records. Only observation in respect of Sudhir Dutta for A.Y. 1996-97 could not be examined as the document was not listed in Annexure-III. In the course of the inquiry, Shri Doley was asked to give his explanation in respect of the allegations in the statement of imputation of misconduct. He stated that he relies on his written submissions before the CIT-I, Guwahati. My findings on each allegations are given below :

Allegation 1. *In almost all the cases Returns were not filed within the due dates. There was abnormal delay in some cases. In some cases, there was no response to the notice issued u/s 148 or 142(1). In most of the cases, the assessee did not respond to notice u/s 143(2). But for such lapses, no action was initiated by Shri Doley.*

My findings: There is no provision for taking action in case of delayed filing of return. Therefore, it is not correct to charge Shri Doley of inaction on this point. It is seen that there was non compliance on the part of the assessee to notice u/s 148 by M/s Gupta Brothers (A.Y.1994-95). There were non-compliances to notices u/s 142(1) by M/s Gupta Brothers (A.Y.1994-95), M/s Laxminarayan Agarwalla & Sons (A.Y. 1995-96), Shri Sushil Kumar Agarwalla (A.Y.1994-95) and Sudhir Dutta (A.Y. 1995-96). Further there were non-compliances to notice u/s 143(2) by /s Laxminarayan Agarwalla & Sons (1995-96), Sushil Kr. Agarwalla (1994-95), Lala Agarwal (1996-97) and Sudhir Dutta (1995-96). Shri Doley did not initiate penalty proceedings in any of these cases for non compliance.

Shri Doley in his submission in the course of the inquiry replied that he was not aware that penalty proceedings can be initiated in such cases. I find his explanation totally unacceptable. Since the Act provides for penalty in such cases, Shri Doley should have initiate penalty proceedings

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Allegation 2. *In most of the cases, Shri Doley issued notices u/s 143(2) and 142(1) simultaneously and in all such cases a common requisition with a rubber stamp impression on the back side of notice u/s 142(1) was made. But at the time of hearing, except one or two cases, no details/ information were obtained. Shri Doley recorded the proceedings in the order sheet. In all normal scrutiny cases, some basic particulars, like - bank accounts with a/c no., branch name of the holder etc. particulars of assessee's properties/ assets/ investments, list of debtors and creditors are obtained which may help for future recover. But Shri Doley did not make any such attempt. Most of the cases were disposed of after single brief hearing. Emphasis was given about this in Instruction No. 1937 to collect that information in course of assessment proceedings.*

My findings: Shri Doley, in the course of the inquiry submitted that some assessments were disposed off in a single hearing because those were simple and small cases. He maintained that inquiry done by him was adequate considering the nature of the cases. He also stated that Bank accounts were checked as he deemed proper and necessary.

I find nothing wrong in issuing notice u/s 142(1) and 143(2) simultaneously. As regards the other allegations, I find that the except in one or two cases, no details/information was obtained. Even basic details such as particulars of bank accounts, particulars of assets and investments, list of debtors and creditors were not obtained. Out of 26 assessments which were examined, at least 7 (seven) cases were disposed off in a single hearing (M/s Loknath Dresses, Malchand Maheshwari, Anupama Majumdar, Pawan Kumar Sarda, Parsuram Sharma, Lalita Devi Maheshwari and Sukhan Dutta). Though Instruction No. 1937 dt.25/03/1996 makes it mandatory for obtaining particulars of assets including name and address of the debtors, bank a/c, bank deposits etc., Shri Doley made no attempt to collect these details in most cases. I, therefore, find that his submissions are not supported by the records and the allegations are correct.

Allegation 3. *Even, in the cases scrutinised for the first time, no basic information was obtained. Normally in a new case, where scrutiny is made for the first time, the opening capital of the assessee, his activities, properties, investment, size of the family, withdrawals, children*

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education, tours & travels etc. are examined. But Shri Doley did not examine the matter. In case of M/s Loknath Dresses, both the partners claimed to have contributed stock as their capital along with cash, but no stock inventory was examined, no question was asked on the mode of valuation of such stock.

My findings: Shri Doley, in submission during the inquiry stated that he did examine the Capital Account in all cases where scrutiny was done for the first time including the case of M/s Loknath Dresses. and therefore the allegation was wrong.

I find from the examination from records that out of the cases which were inspected, some were scrutinised for the first time. Example of such cases are :

(i) Loknath Dresses A.Y. 1996-97

(ii) Bansilal Lahoti (HUF) A.Y. 1996-97

(iii) Sushil Kumar Agarwalla A.Y. 1994-95

(iv) Md. Mobin A.Y. 1995-96

Since these were scrutinised for the first time it was necessary to bring basic information about the assessee such as activity of the assessee, his properties and investment, size of his family (where applicable), withdrawals, children education (where applicable) etc. on record. But it was not done. Thus, he failed to do the ground work for carrying out investigation in these cases. In case of Loknath Dresses, both the partners claimed to have contributed stock as their capital along with cash, but no stock inventory was examined. Nor was any question was asked on the mode of valuation of closing stock. I, therefore, find that the claim of Shri Doley that the Capital Accounts were examined is not supported by records.

Allegation 4. *In most of the cases the assessee did not maintain any books of accounts. In such cases, the examination of the assessee's assets, bank accounts etc. were very much necessary but Shri Doley failed to do so. In some of the cases, the expenditure, net profit, even the turnover was estimated. But Shri Doley did not ask any question regarding the basis of such estimation. Some of the cases were capital building cases and to regularise the ill-gotten money of the assessee utilising the Income tax channel. The case of Lalita Devi Maheshwari, Parasram*

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Sharma, Sheikh Rasul and the examples of such cases. Within one year the assessee, a State Govt. Employee, Sheikh Rasul deposited Rs.7.70 lakh cash in a bank whose gross salary for the year was only Rs.70,128/-. At the time of assessment, the assessee claimed to have received gift from different parties. Without proper verification the same was accepted by Shri Doley.

My findings: In the course of inquiry Shri Doley submitted that most of the cases were books of accounts are not maintained, the assessee appeared themselves during hearing and when asked to give details of their assets, they replied that they had no properties except investment in the business. He stated that in the case of Sheikh Rasul, the source of the deposits in the bank were found to be satisfactorily explained.

I have examined the allegations and the submissions of Shri Doley. I find that in large number of cases no books of accounts were maintained. Such cases are listed as below :

Name of the assessee	A.Y.
Gupta Brothers	1994-95
Loknath Dresses	1996-97
Banshilal Lahoti	1996-97
Malchand Maheshwari	1995-96
Inderchand Jain & Co.	1995-96
Sushil Kr. Agarwalla	1994-95
Anupama Majumdar	1996-97
Anil Kr. Srivastav	1996-97
Pawan Kr. Sarda	1996-97
Izhar Hussain	1995-96
Rahim Talukdar	1995-96
Sudhir Dutt	1995-96
Parasram Sarma	1996-97
Lalita Devi Maheshwari	1995-96

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In such cases the examination of assessees assets, bank accounts etc. was very much necessary but Shri Doley failed to do so. In some of the cases the expenditure, net profit, even the turnover is estimated but the Shri Doley did not ask any question regarding the basis of such estimation.

Shri Doley's claim that he inquired about the assets of the assessees is not supported by the records.

In case of Shri Sheikh Rasul who is a State Govt. Employee, whose salary for the year was only Rs.70,128/-, it was found that the assessee deposited Rs.7.70 lakhs in cash in a bank. At the time of assessment the assessee claimed to have received gift from different parties. The same was accepted by Shri Doley merely on the basis of gift deeds without proper verification. Shri Doley did not examine the capacity of the purported donor to pay the amount and also the genuineness of the transaction. In my view, Shri Doley failed to apply his mind and act in a judicious manner in this case.

Allegation 5. *It was found that in some cases, even the document filed with the return were not properly examined and cross verified. Had the assessee filed the details along with the return would have found various discrepancies some of which are mentioned below:*

(i) Mahavir Transport Co., submitted one TDS certificate after submission of return. Shri Doley considered the TDS and allowed refund of Rs. 1,08,836/-. If the income reflected in the TDS certificate was considered, then instead of refund, huge demand have been raised.

(ii) In the case of Md. Izhar Hussain (I-776/NL), in the Income & Expenditure Account, the assessee claimed to have paid Rs.12,80,000/- towards Elephant charges and Rs.14,15,000/- towards Truck carrying charges. But in the documents attached, he furnished details of payment of Rs.13,80,000/- and Rs.15,15,000/- respectively.

(iii) In the case of Md. A. Rahim Talukdar (A-117/NL), Shri Doley found discrepancies to the tune of Rs.3,91,371/- in the Bank Accounts. On inquiry the assessee could not offer any

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explanation other than non-account maintained cash. Shri Doley could have easily considered the amount as income from undisclosed source and made further inquiry. As disclosed herein above, the actual discrepancies were much more than the figure calculated by Shri Doley.

In that process of shortening his work, without going into details or checking bank accounts, after obtaining it from the assessee, Shri Doley tried in a few cases to reach at a hasty conclusion by asking assessment while enough time was there fore completion of the assessment.

My findings: In respect of the mistake relating to M/s Mahabir Transport Co., Shri Doley in the course of inquiry submitted, inter-alia, that it was a bonafide mistake which occurred due to oversight.

I have examined the allegation and the submission of Shri Doley. I find that, in the case of M/s Mahabir Transport Co., gross receipt shown in the Profit & Loss A/c is Rs. 47,40,587/- . The total receipt as per the TDS certificates including the one filed after filing of return comes to Rs. 52,25,533/-. Thus the gross receipt has been suppressed to the extent of Rs. 4,84,946/-. In my view, nothing could be done about it by the Assessing Officer (Shri Doley) in the processing stage. I find that in this case assessment was made u/s 143(3). The Assessing Officer (Shri Doley) should have examined the gross receipt with reference to the TDS certificates and made suitable addition.

As regards the mistake pointed out in the case of Md. Izhar Hussain, Shri Doley argued that it will not always that the Assessing Officer check the total of cash vouchers for each and every voucher. I have examined the allegation and the submission of Shri Doley. I find that the irregularities mentioned in the allegations are correct. Shri Doley's contention that he cannot be expected to check the vouchers with reference to the expenses claimed is not acceptable.

As regards the allegation in the case of Md. A. Rahim Talukdar, Shri Doley stated that he found assessee's explanation regarding source of the deposits reasonable and that it being a case where no books of accounts were maintained, the explanation of the assessee could not be rejected.

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I have considered the allegation and Shri Doley's explanation. In this case, Shri Doley, in the course of assessment proceedings, found that the deposits in the bank account exceeded the gross receipt shown by Rs.3,91,371/-. But he accepted the assesse's explanation that the excess credit represents loan/security money refunded by friends and relatives without obtaining any details/evidence. Shri Doley's contention that assessee's explanation regarding the source of the deposits could not be rejected because it was a case where no books were maintained is totally absurd. He should have obtained details of the deposits and called for evidence in support of assessee's claim.

Further, it was found that in this case that the total receipt as per the TDS certificates comes to Rs.12,89,546/-. The receipt net of TDS comes to Rs. 12,63,877/-. Shri Doley was able to obtain bank statement of the assessee from only one bank, i.e., Allahabad Bank, North Lakhimpur Branch. It was also found that in the said account, there were total credit of Rs.16,17,121/- out of which only Rs.3,47,628/- relates to the TDS certificates considered. This means that Rs. 12,70,036 (Rs.16.17,121/- Rs.3,47,628/-) were from some other source. Shri Doley failed to examine this aspect.

Allegation 6. *In the matter of TDS, proper inquiry was not made in the following cases -*

(i) *Mahavir Transport Company*

(ii) *Md. Mobin*

In agricultural income related cases, verification was not done instead of having substantial scope and point of verification.

(i) *M/s Laxminarayan Agarwalla & Sons*

(ii) *Sheikh Rasul*

(iii) *Sukhranjan Dutta*

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My findings: In respect of the allegation in the case of Mahavir Transport Company, Shri Doley submitted that since the TDS certificates submitted by the assessee was from a reputed organisation i.e I.O.C. Ltd. and the assessee had been doing business with I.O.C. Ltd. in earlier

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years also he did not considered it necessary to clarify the TDS certificates. I have considered the allegation and his submission. I find from the records that in this case the assessee has done substantial business with I.O.C. Ltd. Shri Doley should have obtained the statement of the assessee from I.O.C. Ltd. In this case also unsecured loans and trade creditors shown by the assessee was more than Rs. 30 lakhs. The genuineness of this should have been examined. I, therefore, find the allegation that no proper inquiry was done in this case is correct.

In respect of the allegation in the case of Md. Mobin, Shri Doley submitted that the genuineness of TDS certificates were confirmed. And, therefore, the allegation is not correct. I have considered the allegation and his submission. I find that the assess filed only the Profit & Loss A/c. No balance sheet was filed. Shri Doley should have obtained the balance sheet. Further the assess did substantial business with Gammon India. Shri Doley Officer should have obtained the statement of the assess from Gammon India and examined the same. Further, it was the first year of assessee's business. Therefore, Shri Doley should have examined the source of opening balance in the Capital account. I, therefore, find the allegation that no proper inquiry was done in this case is correct.

In respect of the allegation in the case of Ms Laxminarayan Agarwalla & Sons, Shri Doley submitted that there was no scope to verified as the case was disposed u/s 144. I have considered the allegation and his submission. I agree with Shri Doley that since the assessment was done u/s 144, it was not possible to obtain details.

In respect of the allegation in the case of Sheikh Rasul, Shri Doley submitted that verification as to who was doing the agricultural activity was called for and an affidavit was furnished. I have considered the allegation and his submission. Shri Doley has not been able to rebut the allegation that details of landholding was not obtained by him. In my view the landholding is a most basic requirement for claiming income from agriculture and Shri Doley should have obtained these details.

In respect of the allegation in the case of Sukhranjan Dutta, Shri Doley submitted that in the course of assessment proceedings the assessee on being asked to furnished details of Land Patta

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stated that the land was inherited and there was no Patta. He further stated that in Assam there are many such cases where cultivation is done in land by persons without holding land Patta. I have considered the allegation and his submission. Even if the assessee's claim that he did not have land Patta Shri Doley should have obtained at least the locational details of the land.

Allegation 7. *In cases of contractors, no consistency was maintained to determine their income. When no books of accounts are maintained, income has to be taken at least @ 8% under the Law. But it is found that expenditures were claimed on estimate basis that were also allowed. Even in some of the cases, the receipt shown in the TDS certificates were not taken in consideration.*

My Findings : Shri Doley submitted that in the cases of contractors generally 8% was applied to the gross receipt in no books of accounts cases and in the books of accounts cases considering some other factors with regard to contract cases and nature of contract works some expenditure claimed can be accepted. I have considered the allegation and his submission.

I find that in the case of Shri Anil Kr. Srivastav for Asstt.year 1996-97, no books of accounts maintained. The gross receipt of supply business was shown at Rs.1,74,450/-. The assessee showed income from the said business at Rs.17,550/-. Shri Doley assessed the profit at Rs.19,000/-. Therefore, in this case there was no violation of the provision of the Act by Shri Doley. I further find that in this case the assessee made certain gifts during the previous year relevant to the Asst. Year 1995-96. No gifts tax proceedings were initiated. Shri Doley accepted failure to invoke gift tax proceedings.

In the case of Izahar Hussain for A.Y. 1995-96 no books were produced. Assessee estimated the profit at Rs. 8% of gross profit. For asst. Year 1996-97, books of accounts produced.

In the case of Rahim Talukdar for A. Y. 1995-96, no books of accounts were maintained. The profit from business was shown at Rs.98,200/- which comes to 8% of gross receipt. Therefore, the business income was found to be assessed as per the provisions of the Act.

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In the case of Sudhir Dutta who had shown income from contract business in the assessment year was completed u/s. 144. The profit estimated by Shri Doley at 8% for contract works. The profit of truck plying was taken @ Rs. 24,000/- per truck. But latter the assessee claimed that one of the truck was not plying for six months and file petition for rectification u/s 154 there upon Shri Doley passed the order u/s. 154 taking income from the said truck for four months only.

Conclusion: On the basis of the foregoing discussions, I find that the following omissions were made by Shri Doley :

1. He failed to initiate penalty proceedings in cases where the assessees failed to comply with notices issued under the Act.

2. While making scrutiny assessments, Shri Doley failed to collect basic details/ informations such as details of Bank accounts, list of debtors and creditors etc. A very large number of cases were disposed of in a single hearing. Though, Instruction No.1937 dt.25/03/1996 makes it mandatory for obtaining particulars of assets including name and address of the debtors, bank account etc. Shri Doley made no attempt to collect these in most cases.

3. Even in cases scrutinised for the first time, Shri Doley failed to collect the basic information about the assessee such as activity of the assessee, his property and investments, size of his family (where applicable), withdrawals, children education (where applicable). In atleast one such case no question was asked on the mode of valuation of the closing stock.

4. In 14 (fourteen) cases no books of accounts were found to be maintained. In such cases, it was necessary to examine the bank accounts but Shri Doley failed to do so. In some cases he failed to examine the basis of expenditure, net profit and turnover estimated by the assessee. In the case of Md. Sheikh Rasul one State Govt. Employee earning a modest salary, Shri Doley failed to examine the source of Rs.7.7 lakhs deposited in cash in a bank and accepted assessee's claim of gift received from different parties without proper verification.

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In the case of M/s Mahavir Transport Co., the gross receipts as per the TDS certificates exceeded the gross receipts shown in the profit and loss account by Rs.4,84,946/-. Shri Doley failed to examine this aspect. In case of Izahar Hussain, the details of expenses given were fur in excess of expenses shown in the profit & loss account. Shri Doley failed to examine this point. In case of Md. A. Rahim Talukdar, Shri Doley found that the deposit in the bank account exceeded the gross receipt shown by Rs.3,91,371/-. But he accepted the assesse's explanation that the excess credit represents loan/security money refunded by friends and relatives without obtaining any details/evidence.

Further, it was found that in this case, the total receipt as per the TDS certificates comes to Rs.12,89,546/-. The receipt net of TDS comes to Rs. 12,63,877/-. Shri Doley was able to obtain bank statement of the assessee from only one bank, i.e., Allahabad Bank, North Lakhimpur Branch. It was also found that in the said account, there were total credit of Rs.16,17,121/- out of which only Rs.3,47,628/- relates to the TDS certificates considered. This means that Rs. 12,70,036 (Rs.16,17,121/- Rs.3,47,628/-) were from some other source. Shri Doley failed to examine this aspect.

6. In the case of Mahavir Transport Co., Shri Doley failed to cause proper inquiry regarding the business transactions as well as the unsecured loans at the trade creditors. In the case of Md. Mobin, Shri Doley failed to cause proper inquiry regarding the business transactions as well as the source of opening balance in the capital account though, it was the first year of the assessee's business. He also failed to obtained the balance sheet of assessee's business.

In the cases where the assessee claimed to have earned agricultural income, Shri Doley failed to obtained basic details of land holdings and examine the claim.

7. In the case of Shri Sudhir Dutta, it was found that Shri Doley while passing an order u/s 154 give excess relief of Rs.4,000/- to the assessee.

Shri Doley in his explanation stated that he joined as ITO, Ward-North Lakhimpur on promotion. The job of Assessing Officer was new to him and that he lack experience and there is

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nobody with whom he could discuss the various issues relating to assessment. He further stated that he did the job to the best of his ability and the lapses on his part were bonafide mistakes committed due to lack of training and experience. He argued that the method and nature of investigation in the course of scrutiny are bound to vary from officer to officer and therefore, the allegations that in some cases the investigations done were inadequate are subjective.

The mistakes made by Shri Doley mentioned above do not contain any act of commission. They are all acts of commission. None of theses acts of commission proved lace of intrigity on the part of Shri Doley. No instance of Shri Doley acting in a manner unbecoming of a Govt. Servant could be established in course of inquiry. However, there were many instances where Shri Doley was found to complete the assessment in a perfunctory manner. Most of the scrutiny was completed without proper examination of records and no investigation was made at all. He even failed to consider the material on record while completing assessment. His plea that it was due to his inexperience which is not acceptable since he joined the department as a direct recruit Inspector in the year 30/01/1989 and was promoted as ITO on 01/01/1995 and the orders which are subject matter of this inquiry were mostly passed during the years 1997 and 1998. Further, mistakes made were simple mistakes and does not involve any complicated legal issue. I am therefore satisfied that mistakes were due to lake of devotion to duty on part of Shri Doley. Therefore, the charge of lack of devotion of duly against Shri Doley is proved.

(S.K.Saikia) 7.9.06
Enquirying Authrity
and Sr. A.R., ITAT, Gauhati Bench, Guwahati

Encl: (1) Statement of Shri H. Rabha
(2) Statement of Shri R. Singha
(3) Statement of Shri Bikas Das
(4) Statement of Shri Purna Kanta Pegu
(5) Cross examination of Shri Purna Kanta Pegu
(6) Statement of Shri B.C. Pegu with Cross examination
(7) Cross examination Shri B.C. Pegu
(8) Statement of Shri I.C. Jain
(9) Cross examination of Shri I.C. Jain
(10) Statement of Shri N.K. Sarma
(11) Cross examination of Shri N.K. Sarma

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ANNEXURE-- 15

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CONFIDENTIAL

F.No.Per-1/ITO,Hqrs/CIT(Audit)/Ghy/2007-2008/21
OFFICE OF THE COMMISSIONER OF INCOME-TAX(AUDIT),
SAIKIA COMMERCIAL COMPLEX, SHRINAGAR,G.S.ROAD,
DATED GAUHATI, THE 30TH NOVEMBER 2007.

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To,

The Commissioner of Income-tax,(Audit)
cum Discplinary Authority, (By name)
Gauhati.

Sir,

Sub:Disciplinary Proceedings – Shri S.B.Doley,ITO,Hqrs, O/O the Commissioner of Income-tax,(Audit), Gauhati.

With reference to your letter F.No.Vig/CIT(Audit)/Ghy/2007-2008/594 dated 16.11.2007, most humbly and respectfully I beg to represent my case as under.

1. **That sir, it is pleasing to note that I have been absolved from all the main charges which I have always been pleading before the Department that these charges were all motivated, false, concocted, malicious and even vindictive as I did not bow to the interest of the vested circles.**
2. **That sir, at the same time it is disheartening to note that I have been implicated as 'lack of devotion to duty' for no genuine reasons at all which will be crystal clear from the following paras.**
3. **That sir, the Inquiry authority's remarks by which he implicated me with 'lack of devotion to duty' are quoted herein below and my replies follow:**

A) Substantial addition made but denied the assessee the very basic right of opportunity of being heard and the right to natural justice (pages 13- 5th para, pages 14- 6th para, pages-21- 6th para, pages 23- 6th para)

This issue of the charge sheet was replied long back vide my letter F.No.Per/E-15/2002-2003/314 dated 10th June 2002 which are quoted here in toto.

Quote:

" That sir. I made the addition considering the localities, nature of construction, year of construction etc. and I fairly discussed with the assessee about the cost of construction per sq. ft. to be taken in

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the assessment to which the assessee did not agree as to evade tax thereby." (Annexure-I, page-3, article- III, serial no.6).

"That sir, I did not make arbitrarily high pitched assessment by simply estimating the cost of construction of the building and did not estimate the cost of land as per whims and fancies. I determined the cost of construction of the building after proper application of my mind as to the locality, nature of construction, year of construction and the land value was determined after proper exercise of my mind and the land prices prevalent at that locality at different times Shri B.C.Pegu was specifically informed of the cost of construction and the land value I was going to take while assessing his case and he requested to take the cost of construction at Rs.50/- to 60/- per sq. ft. which was not acceptable at all. He did not press much for the land valuation. In support of his claim of cost of construction at Rs.50/- to 60/-, once he brought a cement purchase voucher for 250 bags or so (I do not remember the number of bags exactly) but I still clearly remember the rod purchase voucher which was for 70 quintals, both purchased from Shillong. He was giving me these two vouchers to keep but I guided him that 'you might have brought these two vouchers from your college, generally, an individual while constructing a building do not purchase such huge quantities of cement and rod'. He understood my point and taken back the vouchers. Sir, I did not deny the assessee to natural justice. If I had the intention to harass him, I would not have guided him, my intention was only quality assessment". (Annexure-I, page-4, article-IV, serial no.5).

" I discussed the cost of construction per sq ft area with the assessee and he knew the cost I was going to take per sq ft . In the appeal effect stage too, there was no valid reason to differ the cost of construction and hence the demand still rose. The attachment was as per provisions of law, not to harass the assessee." (Annexure-II, page-7, article-III, 2nd para).

"That sir, I discussed the method of estimation with the assessee and was given natural justice". (Annexure-II, page-8, article-IV,4th para).

Unquote

The Inquiry authority, might have not gone through my representations thoroughly or might have over sighted these paras

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and so he attributed me not allowing opportunity of being heard and the right to natural justice.

In fact, sir, it is my practice to discuss the cost of construction of building with all assesses. In both the Pegus cases , I discussed the cost of construction fairly. In one of the hearings and order sheet noting, the assessee's opinion of cost of construction at Rs. 50/- to 60/- was noted to which I did not agree . To press upon his point the assessee brought the cement purchase voucher of 250 bags and rod purchase voucher of 70 quintals of his college building which year of construction was much before the years of construction of his building and the cost of items were much cheaper.

The assessment order is passed on a fair judgment on all works done, inquiries, discussions, hearing noting etc. and it is a compact culmination where all the works done, inquiries, discussions, hearing noting etc. can not be drafted into. The Inquiry authority merely based on the copy of the assessment order as not allowing the assessee of being heard which is not sufficient reasons at all as such as because the Inquiry authority never referred to my above mentioned representations nor he asked me if I allowed the assessee of being heard.

Therefore, sir, it is clear from the above that there was no denial of opportunity of being heard and natural justice to the assessee.

B) Shri Doley blatantly exceeded his power as an assessing officer while passing an order u/s 154 of the I.T. Act.(pages 22-6th para, pages 23-6th para)

This point was replied by my letter F. No. Per/E-15/2002-2003/314 dated 10th June,2002 which are quoted here in below.

Quoted:

" That, sir, after the assessment I duly advised the assessee that an assessment order is not final but it can be appealed before the higher authorities. The assessee was very harsh and adamant that even he shouted at my residence saying that you can do all and everything. I don't want to go anywhere for appeal, you must do etc. Thereafter he also filed a rectification petition pointing out some mistakes. On examination, I found some apparent mistakes in the assessment which were not debatable, hence I did the rectification." (Annexure I, page 4, article IV, serial no.6).

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" That sir, rectification proceedings are part of the proceedings for assessment, it can not be treated as separate proceedings, so even at the stage of rectification proceedings, enquiries and gathering of information may be done." (Annexure-I, page 4, article IV, serial no.7).

" That sir, I had no intention to exceed my power and also I have never exceeded my power by doing the rectification. If mistake is brought to notice of the Assessing Officer by the assessee, the Assessing Officer can do rectification. In this case, there occurred an apparent mistake in the assessment, if I remember the assessee pointed out that some land was purchased by his father." (Annexure I, page 5, article IV, serial no.9).

Unquote:

That sir, in this case, rectification u/s 154 was initiated by me as I noticed that the tax computation was wrongly done. There was no way but to issue notice u/s 154 to recompute the tax correctly, hence there was no violation of any laws or rules. The case should be understood in this perspective and in the mean time the assessee also came with a rectification petition pointing out that some land were purchased by his father. As there was already initiation of the proceeding u/s 154 by the Department, I also considered the claim of the assessee. Therefore, sir, there was no misuse of the section 154 but it was rightly initiated by me.

C) Shri Doley dropped the proceedings after issuing the notice u/s 142(1). (page 27- 2nd para).

This was replied vide my letter F.No, Per/E-15/2002-2003/314 dated 10th June 2002 which is quoted below:

Quote:

" That sir, I did not misuse the power u/s 142(1). After the survey, I ought to issue the notice as per provision of the law and so issued the notice. The assessee filed a written submission that so far he had no taxable income and during the survey also I found that his volume of business was not so big, so I thought it fit to drop the further proceedings." (Annexure I, page-6, article V, serial no.3).

Unquote: That sir, the law does not say that after issue of notice u/s 142(1) calling for return of income, the assessee must be compelled to file his return of income and end up in passing of an assessment order. Also there is no law or rule as that after

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issue of notice u/s 142(1), a case can not be dropped. In the instant case, as the assessee applied for not compelling him to file return as he declared to have no taxable income, it was most convenient and logical to drop the proceedings so as to save time and resources of the Department and the assessee both as it was a fit case to drop. Sir, I candidly feel that law should be applied for the convenience with logic for the benefit of the public and public office. Therefore, this dropping of the proceeding should not be treated as lack of devotion to duty but it was for more convenience, with better logic for more devotion to duty.

Reply on the supplementary charge sheet.

1.M/s Gupta Brothers, AY 1994-95.

It is alleged that there was non compliance on the part of the assessee to notices u/s 148 and 142(1). (page 28, 4th para).

That sir, there was no non compliance in this case. The first or second notices non-compliances can not be termed as non-compliance. The assessee complied to the subsequent notices and filed return and appeared and assessment was passed u/s 143(3).

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2. Th following four cases:

i. M/s Laxminarayan Agarwalla & sons, AY 1995-96,
ii. Sushil Kumar Agarwalla, AY 1994-95.
iii. Smt Lata Agarwala, AY 1996-97.
iv. Sudhir Dutta, AY 1995-96.

In these four cases it is alleged that there was no compliance to notices u/s 142(1) and 143(2) but not initiated penalty proceedings.(page 28, 4th para).

That sir, these cases were assessed u/s 144 as there was no compliance to notices. I studied other assessment files and I noticed that when there was no compliance to notices, assessments were passed exparte and no other further proceedings noticed in the cases I studied. As a novice Assessing Officer I thought assessment order passed u/s 144 was sufficient.

3) I find that except in one or two cases , no details/information was obtained . Even basic details such as particulars of bank accounts ,particulars of assets and

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investments , list of debtors and creditors were not obtained. Out of 26 assessments which were examined , atleast 7(seven) cases were disposed off in a single hearing(M/s Loknath Dresses , Malchand Maheswari, Anupama Mazumdar , Pawan Kumar Sarda, Parsram Sarma, Lalita Devi Maheswari and Sukharanjan Dutta).Though Instruction No. 1937 dated 25.03.1996 makes it mandatory for obtaining particulars of assets including name and address of the debtors , bank account , bank deposits etc., Sri Doley made no attempts to collect these details in most cases. I , therefore, find that his submissions are not supported by the records and the allegations are correct.'(page 29, 3rd para).

It is alleged that except in one or two cases, no details/information were obtained. In fact I did not go in one or two cases only for details/information but I did go in all the cases for details/information. Particulars of assessee's properties/ assets/ liabilities / other deposits/ debtors/creditors were certainly discussed and looked into in deserving cases, if the assessee had any. But when an assessee even does not have a bank account what details /information can be obtained by the ITO. Most of the cases being small and of simple nature, one or two hearing was sufficient ,but in deserving cases, the hearing took place several times(Ex: B.C.Pegu's case). The 7(seven) cases mentioned above were simple cases and one hearing was enough to dispose off the cases. Not only the list of debtors and creditors , even I wrote for confirmations of such transactions and also made cross verifications in deserving cases. Sir, your honour shall agree that the scrutiny process cannot be made a lump or something of definite but it varies from case to case. The information which I thought as relevant and material for the concerned case was certainly asked for. I always ask for the bank account in all cases and if the assessee had any bank account I checked it as I deemed proper and necessary. If found nothing wrong , nothing was noted but mostly photocopy of the pass book was kept. The Instruction No.1937 was not mentioned in the earlier papers signed by the Additional Director of Income-tax (Vig) , East , Calcutta, dated 2.11.2003. Sir, I pray that new points and new material should not be raised. While the Inquiry authority is making allegation that *even basic details such as particulars of bank account . . . were not obtained . . . . bank account, bank deposit etc Shri Doley made no attempt to collect these details . . . .* but the prosecutor itself had given evidence in the charge papers that " the A.O. made requisition of bank pass book etc." (21. Sudhir Dutta, AY 1995-96, page 31, 2nd para), " the A.O. had written letters to various

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banks for supplying the bank statements of the assessee."(19.Md A. Rahim Talukdar, AY 1995-96, page 27, 2nd para), " the A.O. verified the dposits with Shri Malchand Maheswari and Shri Durga Prasad Bihani from their respective folder.", (7. Malchand Maheswari, HUF(Sp), AY 1995-96, page 9, 3rd para), " the AR produced loan confirmation of Bhagirarth Bahetti. The A.O. asked the A.R. to produce the savings bank Pass Book by 20-06-1997 . On 20-06-1997, the particulars were discussed and Bank Pass Books were verified.", (6. Banshilal Lahoty, HUF(Sp), A.Y.1996-97, page 8, 2nd para), " the A.O. also verified the transactions with sundry creditors and found that those were genuine.", (24. Sukhranjan Dutta, A.Y 1996-97, page 35, 2nd para), these all disparove the allegation of the Inquiry Authority.

Therefore, sir, in the light of the above, the allegations are allegations just for the sake of allegations which are with no valid ground.

4) *'I find from the examination of record that out of the cases which were inspected, some scrutinized for the first time. Example of such cases are:-*

(i) Loknath Dresses, A.Y 1996-97
(ii) Bansilal Lahoti (HUF) A.Y 1996-97
(iii) Sushil Kumar Agarwalla A.Y.1994-95
(iv) Md Mobin A.Y 1995-96

Since these were scrutinesed for the first time, it was necessary to bring basic information about the assessee such as activity of the assessee, his properties and investment, size of his family (where applicable) ,withdrawals, children education (where applicable) etc. on record. But it was not done. Thus, he failed to do the ground work for carrying out investigation in these cases. In case of Loknath Dresses, both the parties claimed to have constributed stock as their capital along with cash, but no stock inventory was examined. Nor was any question asked on the mode of valuation of closing stock. I therefore, find that the claim of Shri Doley that the capital assets were examined is not supported by records'. (page-30,2nd para).

That sir, in the cases where scrutiny was done for the first time, the opening capital was discussed and looked into. What is the opening capital, from where and how the opening capital came , the assessee's past activities were always discussed and looked into. If in the course of discussion, the opening capital is found reasonable, it was accepted. In all the above mentioned cases, the past activities of the assesses , source of the opening capital were discussed and the assesses satisfactorily explained to me. M/s Loknath Dresses, both the partners past activities, their capacity to contribute capitals were

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discussed and looked into. There was no objectionable to note on records. This case had no books of accounts, so they did not furnish the inventory of closing stock but a fair estimation of the stock (cloth) was disclosed at the market price. -While the Inquiry authority alleged that claim of Shri Doley that the capital assets were examined is not supported by records- in contrary, the charge papers itself give proof that I looked into and called for capital explanation. Example:- In the case of M/s. Looknath Dresses, A.Y. 1996-97, I asked the A/R to file the details of capital, balance sheet and income of the members of the AOP. The proof is quoted here:-" in the course of assessment proceedings, the AR of the assessee only filed capital account, balance sheet and computation of income of both the members of the AOP." (4. M/s. Loknath Dresses,AY-1996-97,Page-6, 1st para).

<u>The proof of size of family/withdrawal</u> discussion quoted: "During the assessment proceedings, the AR of the assessee stated that the HUF consists of three members, Shri Malchand Maheswari, his wife and his son Shri Joy Dayal Bihani.",(7.Malchand Maheswari, HUF(Sp), AY.1995-96, page 9, 3rd para), " The AO considered the drawing shown by the assessee very low. Therefore, he added Rs.500/-on this account.", (7. Malchand Maheswari,AY.1995-96, page 9, 4th para), " the AR stated that the drawings were lower since the assessee was a bachelor and he often depended on relatives." (10. Sushil Kumar Agarwala, AY 1994-95, page 12, 1st para).

Therefore, sir, I fairly discussed and looked into the opening capital of all newly scruitinised cases, looked into family sizes, requirements of drawings etc., hence the allegation is not proper.

5 '*I find that in large number of cases no books of accounts were maintained. Such cases are listed below:*

Name of the Assessees	***A.Y***
Gupta Brothers	***1994-95***
Loknath Dresses	***1996-97***
Bansilal Lahoti	***1996-97***
Malchand Maheswari	***1995-96***
Inderchand Jain & Co.	***1995-96***
Sushil Kr. Agarwala	***1994-95***
Aunpama Majumdar	***1996-97***
Anil Kr. Srivastava	***1996-97***
Pawan Kr. Sarda	***1996-97***
Izhar Hussain	***1995-96***
Rahim Talukdar	***1995-96***
Sudhir Dutta	***1995-96***

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Parsram Sarma	***1996-97***
Lalita Devi Maheswari	***1995-96***

In such cases the examination of assessee's assets , bank accounts etc. was very much necessary but Sri Doley failed to do so. In some of the cases, the expenditure, even the net profit is estimated but Sri Doley did not ask any question regarding the basis of such estimation.

Sri Doley's claim that he enquired about the assets of the assessee is not supported by the records. (pages -31, 3rd para)

That sir, it is not understood as to on what basis the allegation is made that I did not ask any question regarding the basis of estimation. In such no books of accounts cases, as the figures of sales, purchases, expenditure etc.,are not as per books, I always asked for how these figures were arrived at and on what basis. Some assessees replied that on average daily sale basis the sales figure is arrived at, some replied that purely on fair and conscient estimation and some replied that they keep some rough entries etc.. In most of such cases, when asked of their properties, assets, investments, etc., they say no properties , no assets except the small investment in the business by which the small income is earned as in the case of Lalita Devi Maheswari , Parsram Sarma etc.. The charge papers itself contradicts the allegation of the Inquiry Authority. Example:-" As per the order sheet entry, the AO discussed about the estimation of income of the assessee.", (10. Sushil Kr. Agarwalla, AY 1994-95, page 12, 1st para). In fact, for estimation one can not always attribute to a particular or special basis, ' income furnished on estimation' or ' income assessed on estimation' should be understood in common parlance. Moreover, it is worthy to note that the Hon'ble Supreme Court clearly laid down that in treating an assessment or in other words in estimating an income , the AO can not bring relevant materials and evidences on records to estimate reasonable income of the assessee.

Therefore, sir, these allegations are also made with no ground at all.

6) ' *In the case of Sri Sheikh Rasul who is a state govt employee whose salary for the year was only Rs 70128/-, it was found that the assessee deposited Rs 7.70 lakhs in cash in a bank . At the time of assessment the assessee claimed to have received gifts from different parties. The same was accepted by Sri Doley merely on the the basis of gift deeds without proper verification. Sri Doley did not examine the capacity of the purported donor to pay the amount and also the*

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genuineness of the tranaction . In my view, Sri Doley failed to apply his mind in a judicious manner in this case'.(page 32, 2nd para).

That Sir, Sheikh Rasul's sources of deposit was clearly explained. Some money were received as gifts. The gifts were supported by gift deeds. While I was functioning as Inspector at Sibsagar such gifts were added back by the ITO but in appeal all were deleted. Moreover, it is not true that the capacity and the genuineness of the donors were not examined. The capacity and genuineness of the donors were test checked on oath which are certainly on the records.
Therefore, sir, in my judgment there was no reason to disallow the gifts and hence this allegation of the Inquiry authority is not acceptable at all.

7) ***' I find that in the case of M/s Mahavir Transport Co. gross receipt shown in the profit & loss account is Rs 4740587/-. The total receipt as per the TDS certificate including the one filed after filing of return comes to Rs 5225533/-. Thus the gross receipt has been suppressed to the extent of Rs 484946/-. In my view nothing could be done about it by the Assessing Officer (Sri Doley) in the processing stage. I find that in this case the assessment was made u/s 143(3) . The Assessing Officer (Sri Doley) should have examined the gross receipt with reference to the TDS certificate and made suitable additions, (page-33,3rd para).'***

That sir, in the case of M/s Mahavir Transport Co, if I omitted to take account of the TDS certificate filed after the filing of the return, candidly I express that it was a bonafide human error due to oversight. I have noticed that sometimes a TDS certificate is even given twice credit by mistake which is not willful. These sorts of mistakes are not taken for vigilance proceeding but other remedial measures adopted and in my case also I pray that this should not be taken for vigilance purpose.

8. 'As regards the mistake pointed out in the case of Md Izhar Hussain , Sri Doley argued that it will not always that the Assessing Officer check the total of cash voucher for each and every voucher. I have examined the allegation and submission of Sri Doley . I find that the irregularities mentioned in the allegation are correct . Sri Doley's contention that he cannot be expected to check the vouchers with reference to the expenses claimed is not acceptable'.(page - 33,4th para).

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That sir, in the case of Md Izhar Hussain, I noticed that the gross receipt was made Rs. 3587327/- instead of Rs.3787327/- and the expenses in the Elephant charges made Rs.1415000/- instead of Rs.1515000/- and in the Truck carring charges Rs.1280000/- instead of Rs.1380000/-. The assessee's gross receipt was as per the TDS certificates which total was Rs.3587000/- and the ITO had nothing to do if the figure is retyped or corrected it from Rs.3787000/- to Rs,3587000/- when the figure was tallying with the figures of the TDS certificates. The Inquiry authority has made two contradicting findings in this para as a) *'Sri Doley argued that it will not always that the Assessing Officer check the total of cash voucher for each and every voucher'* and b) *'Sri Doley's contention that he cannot be expected to check the vouchers with reference to the expenses claimed'*. Thus the Inquiry authority entirely misinterpreted my reply from check the total to check the voucher and concluded *'as not acceptable'*. My reply was as: " The cash vouchers were produced by the assessee himself and if there was higher entries as per cash vouchers, it is always not that an Assessing Officer check the total of expenses with each and every cash vouchers but only sample checking is carried out." In fact, the expenses vouchers were test checked with reference to the expenses but no totaling of the vouchers were done and the ITO can not be caught wrong for that as the ITO can not always sum up expenses vouchers produced. For sake of reasoning, if an Assessing Officer has to sum up to tally the purchase figures with respect to the purchase invoices, sales figures with respect to sales memos, expenses figures with respect to expenses vouchers, then there would be hardly ten scrutiny cases and no time for other works. Generally no Assessing Officer does it.

The above explanation clearly disprove the allegation of the Inquiry authority.

9.'As regards the allegation in the case of Md A.Rahim Talukdar , Sri Doley stated that he found assessee's explanation regarding source of the deposits reasonable and that it being a case where no books of accounts were maintained, the explanation of the assessee could not be rejected.'(page -33, 5th para).

'I have examined the allegation and Sri Doley's explanation. In this case, Sri Doley in the course of assessment proceedings found that the deposits in the bank account exceeded the gross receipt shown by Rs 391371/-. But he accepted the assessee's explanation that the excess credit represents loan/security money refunded by friends and relatives. Without obtaining any details/evidence. Shri Doley's contention that assessee's explanation regarding the source of deposits could not be rejected because it was a case where no books were maintained is totally absurd. He should have obtained details

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of the deposits and called for evidence in support of assessee's claim.'(page-34, Istpara).

That sir, in the case of Md A Rahim Talukdar, it would be relevant and proper to quote the submission of the assessee: '*there is no record of these and it also been related to FY 1994-95, the records or evidence can not be produced now, moreover this being a case of non-recorded and non-account maintained case*". The excess detection of Rs.391371/- was asked to be substantiated but the assessee told that some transactions are in mind and some already forgot as there being no records and details. The assessee also stated that at the time of transactions, if the receipts were asked for, the receipts could be easily collected but now if the receipts are asked for , the parties would be very reluctant and might raise many questions and also some parties already left Assam and having no business transactions with him. This being a no books of accounts case, the assessee's contention could not be rejected is termed as 'absurd' by the Inquiry authority. Before terming it as 'absurd', I feel, it was better to keep in mind that this case was a no books of accounts case and when the case is a no books of accounts case, the assessee does not keep records and details of receipts and expenses and in such no books of accounts cases, generally the details are not requisitioned and the assessee also can not furnish details. Moreover, in this context, I should also light that I was told that earlier the Assessing Officers just checked and verified the balances of bank pass books with respect to the balances shown in the returns but no such details checking and entries total were made and after joining there at North Lakhimpur I started my duty sincerely with devotion in accordance with rules but the vested circles were not used to such sincerity and decorum and so they became offended and started filing topsy-turvy complains against me and also instigated others to complain against me.(one example: the refund cheques were handed over to the practitioners instead of sending by registered post which practice I stopped) and in the mean time so many complains were already filed against my sincerity and devotion to duty. This being a no books of accounts case, the transactions being almost two years old and also in the situation cited above , in the totality of the circumstances , I accepted the version of the assessee as most reasonable and not absurd at all.

10) '*In respect of the allegations in the case of Mahavir Transport Co.,Shri Doley submitted that since the TDS certificates submitted by the assessee was from a reputed organization, i.e. IOC Ltd and the assessee had been doing transactions with IOC Ltd in earlier years also, he did not consider it necessary to clarify the TDS certificates. I have considered the allegation and his submission. I find from the*

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records that in this case the assesse has done substantial business with IOC Ltd.Shri Doley should hsve obtained the statement of the assessee from IOC Ltd. In this case also unsecured loans and trade creditors shown by the assessee was more than Rs.30 lakhs. The genuineness of this should have been examined. I, therefore, find the allegation that no proper inquiry was done in this case is correct.'(page-34, 4th para).

That sir,the Inquiry authority's remark as ' Shri Doley should have obtained the statement of the assessee from IOC Ltd ' was not in the charge sheet. I again pray that no new facts or materials be raised or brought into. The charge in this case was that no proper confirmation of TDS certificate was done. In fact, the verification and confirmation of TDS certificates depend upon the Assessing Officer concern. Mahavir Transport Co is a reputed and genuine assessee of North Lakhimpur and I know the assessee very well and I accepted their TDS certificates as genuine as in earlier years such TDS certificates confirmation of Mahavir Transport Co. with respect to IOC Ltd. was done and as Mahavir Transport Co. had been doing business with IOC Ltd. since years back, hence their TDS certificates confirmation was not much warranted. The points as loans and creditors of Rs.30 lakh was also not raised earlier. The loan /creditors/debtors confirmed and cross verified from files and also the position as to when these transactions started were also looked into. Examples of loans/creditors/debtors checking is already cited in serial no.3 above.

The cases where I felt that proper inquiry or confirmation were needed and necessary , surely I carried out proper inquiry or confirmation in such cases. The charged paper itself gives proof of it . Example:-" The AO obtained confirmation of TDS from Gammon India Ltd.", (13.Md.Mobin, AY.1995-96, page 16 2nd para, AY 1996-97, page 17, 2nd para). Proper inquiry just for the sake of inquiry is not necessary in all cases as in this instant case of Mahabir Transport Co.

In the light of the above, the allegation that no proper inquiry was made does not hold good.

11.***'In respect of the allegation in the case of Md Mobin, Shri Doley submitted that the genuineness of TDS certificates were confirmed.And, therefore,the the allegation is not correct. I have considered the allegation and his submission. I find that the assessee filed only the profit & loss account. No balance was filed. Shri Doley should have obtained the balance sheet. Further, the assessee did substantial business with Gammon India. Shri Doley should have***

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obtained the statement of the assessee from Gammon India and examined the same. Further, it was the first year of assessee's business. Therefore, Shri Doley should have examined the source of opening balance in the capital account. I, therefore, find the allegation that no proper inquiry was done in this case is correct.'(page-35, 2nd para).

That sir, this obtaining of statement from Gammon India was not an issue in the charge paper, so no reply was made in this regards. Still to reply that: it is the Assessing Officer to gather materials which he thinks relevant with respect to the case. Scrutiny process is not a generalized process that the same method or material or yardstick can be applied in all cases, it differs from case to case. In this particular case, it was not necessary as much as to call for statement from Gammon India as the assessee's gross receipt with respect to the total of his TDS certificates figures was tallying and the confirmation of the certificates werte obtained. The assessee's balance sheet and assets and liabilities were discussed. The assessee replied that no other assests and liabilities except the closing stock and the cash in hand and bank shown. In this instant case, the assessee did not furnish any balance sheet or stament of affairs, so there was nowhere to verify the opening capital. That I discussed about opening capital where it is relevant to do so, example is already cited in serial no.4, 3rd para).

In this context, this allegation is also made unreasonably without seeing and understanding the ground reality of the case

12) ***'In respect of the allegation in the case of Sheikh Rasul, Shri Doley submitted that verification as to who was doing the agricultural activity was collected for and an affidavit was furnished. I have considered the allegation and his submission. Shri Doley has not been able to rebut the allegation that details of land holding was not obtained by him. In my view, the land holding is a must basic requirement for claiming income from agriculture and Shri Doley should have obtained these details.'(page-35, 4th para).***

That sir, the Inquiry authority has again raised new point as Shri Doley has not been able to rebut the allegation that details of land holding was not obtained by him. There was no question of rebuting or non rebuting of land holding patta as this issue was not there in the charge papers at all. However for sake of reasoning I clarify that this allegation is based on misunderstanding and misconception of facts too. The cultivation was carried on other's land on adhiar basis and to that effect an affidavit was furnished which

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indicated that such agri-activities were carried on for years back since 1984. As reported in the Inquiry report that land holding is a must basic requirement for claiming income from agriculture is having no ground at all and not acceptable as such as many people earn agri income on adhiar basis. In this case the assessee was producing various vegetables which was a very rewarding cultivation.

13.*'in respect of the allegation in the case of Sukhranjan Dutta, Shri Doley submitted that in the course of assessment proceeding the assessee on being asked to furnish details of land patta stated that the land was inherited and there was no patta. He further stated that in Assam there are many such cases where cultivation is done in land by person without holding land patta. I have considered the allegation and his submission. Even if the assessee's claim that he did not have land patta, Shri Doley should have obtained at least the locational details of the land.'(page-35, 5th para).*

That sir, the Inquiry authority has again brought in new issues as in this case of Sukhranjan Dutta, obtaining of locational detils of the land was not mentioned in the charge papers, so no reply was made in this respect. I fairly discussed with the assessee about the agriculture activities of the assesse which was producing of betel nut and betel leaves and the location details of the land was asked which was at Boginadi.

14) *' I further find that in this case(Anil Kumar Srivastav) the assessee made certain gifts during the previous year relevant to the AY 1995-96. no Gift tax proceedings were initiated. Shri Doley accepted failure to invoke Gift-tax proceedings'. (page-36, 4th para)*

That sir, this was replied on receipt of the charge papers vide my letter F. No. Per/E-15/2004-2005/160 dated 16.08.2004 as under:

" As the proceeding was for the AY 1996-97, the information of the AY 1005-96 leading to Gift-tax proceeding was a lapse due to over sight but for this bonafide omission I should not be harassed for a proceeding like this."

In fact, sir, now a days processing is done in loose, linking up of every year's return is not done, so such omissions easily takes place.

EXTRA PRAYERS

1.That sir, whatever assessment I made at North Lakhimpur, I tried my best to earn revenue for the Department. As a novice officer I studied different cases and the cases are assessed the way how I

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assessed but no vigilance proceedings done in such cases. Law should be equal to all.

2.That sir, in the case of Sudhir Dutta, AY 1995-96, the inspection report revealed that the case was revised and Shri R.N. Dey, my successor ITO , assessed the income below the income declared by the assessee which is so absurd and totally unexpected of but no such vigilance proceeding initiated in this case. If here no vigilance proceeding is required, I pray that my cases are also not requiring any vigilance proceedings. Again it is needless to say that law should be equal to all.

3.That sir, the section 143(3) says – " . . . the Assessing Officer may require on specified points and taking into account all relevant materials which he has gathered, the Assessing Officer shall by an order in writing make an assessment . . " I made the assessment order after taking into account all relevant material which I had gathered. 'Taking into account all relevant material which he gathers' shall certainly vary from one officer to another. Also ' the relevant material ' gathered shall also be different from case to case. Some cases not had much material to be gathered (even not a bank pass book) and required not much of investigation and enquiry and these did not mean that I did the assessment in a perfunctory manner.

4.That sir, the cases were assessed long back now almost 10 years and I can not recall and memorise them all and I was not given the files to see again, so your honour shall surely appreciate my inconveniences and difficulties in replying them. It is pertinent to quote: " When the Department enquiry proceeding was initiated after long back and there was no satisfactory reasons for such delay, the Department proceeding to be quashed and set aside."- State of M. P. v Bani Singh, (1991), 16 ATC, 514.

5. That sir, my case proceedings in all respect was also unduly delayed. To quote : " When the chronological events show that there has been unconscionable delay of 18 months in framing the charges and 4 years was taken for enquiry to be completed, it was held that such delay can not be justified on any count,"- Trilochan Singh v Union of India, 1986 (2), SLR (CAT) 405 (Del). In my case, the starts of a vigilance proceeding was intimated to me vide D.O. F.No.CON 39/R-1/Ghy/420 dated 14.5.1997 and the charges framed vide F.No.Vig/BD/CON/CIT/JRT/01-02/344 dated 15.5.2002, i.e. after a gap of 5 years and hearing started on 7.12.2004, i.e. after a gap of 2 ½ years and last and final hearing was on 7.3.2006 and I was given the inquiry findings only on 16.11.2007 which is after a gap of more than 20 months and these undue delays have caused me lots of mental

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strain and loss of many service benefits. Here it would be worthwhile to quote: " These inordinate delays have entailed forefeiture of legitimate benefits in service that would have been available but for the proceedings and even resulted in infringement of the statutory principle of equality of opportunity and conduct of such enquiry was violative of all canons of justice and fair-play."- G.Ramachandran v Senior Superintendent of Post Offices, Madurai (1987), 3 ATC 629 (Mad).

6.That sir, the role of the Inquiry authority is to be impartial and confined to the charges only. To quote from the Disciplinary Proceedings – A Digest, the relevant portion: " the Inquiry Officer should take particular care while giving its findings on the charges to see that no part of the evidence which the accused Government servant was not given an opportunity to refute, examine or rebut has been relied on against him." No new point or issue is to be raised by the Inquiry authority, if he does so, he becomes partial and bias and deviates from justice. Many instances of new points which were not given me to rebut, explain or refute have been brought into and relied upon. The Inquiry authority, himself in the course of discussion told me that these mistakes were not requiring vigilance proceedings as such.

7. that sir, the charges framed in Annexure-I forwarded vide letter F. No. Vig-I/BD/CON/CIT/JRT/01-02/344 dated 15.05.2002 were on contravention of the CCS (Conduct) Rules such as 'failed to maintain integrity', 'failed to maintain devotion to duty', 'acted unbecoming of a Government servant' and ' acted in a discourteous manner'. These were based on the complains of Sri P K Pegu, Bikas Das and B C Pegu and all the complainants complain have been proved false and fabricated and the charges in Annexure-I all absolved and still on what ground/charges and on what and whose complain the 'lack of devotion to duty' is attributed to me – I just wonder. In fact, Bikas Das had not filed a single complain either orally or in writing, still his name was shown as a complainant which clearly establishes the sheer misuse of power and position by the framer of the charges which also amply exposes the partiality and by force imposition of the vigilance proceeding.

8.That sir, while all the complainants proved bogus and motivated and their complains proved all false and fabricated, I pray that it would be very unjustified and also technically wrong if I am imposed even a minor penalty depending only on some filmsy grounds as found out from my past assessment proceedings which remedies are not requiring any vigilance action.

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9. That sir, while the main tree is felled and dried up, the branches and leaves can not remain alive and green.

10. That sir, I have already suffered lots of agony and dislocations in my personal, family, social life and in official life my promotion to ACIT for the last three years (even not giving me the ad hoc promotion as per rules after two years of my due promotion). In fact, I have already suffered penalty more than a major one for no fault of me and in the totality of the case, imposing of any sorts of penalty is not warranted at all.

11. That sir, time and again, I have been pleading that I was innocent and I crave for justice and I implore your benevolent authority to drop the proceeding and not impose any penalty as I have already suffered a lot.

For the act of your kindness and justice I shall always be indebted and remaining ever grateful to you.

Yours faithfully,

30.11.2008

(S. B. Doley)
Income-tax Officer, Hqrs,
Office of the Commissioner of Income-tax, (Audit).
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ANNEXURE - 16

OFFICE OF THE COMMISSIONER OF INCOME TAX (AUDIT),
SAIKIA COMMERCIAL COMPLEX, G.S. ROAD, GUWAHATI-781005

Name & Designation of the officer : SHRI SYED BASIT DOLEY, ITO

File No: : Vig./CIT(Audit)/GHY/2007-08/

Order dated : 14-02-2008

ORDER UNDER RULE 15(3) READ WITH 16(1) OF CCS (CCA) RULES,1965

During the period 1996-98,Shri Syed Basit Doley (Bhudheshwar Doley) was posted as the ITO, North Lakhimpur. Penalty proceedings for imposing of major penalty were initiated against Shri S. B. Doley, ITO. In this case, two charge- sheets were issued relating to the same period. The original charge – sheet had been issued on the basis of certain complained on 15-05-2002 whereas the supplementary charge-sheet was issued on 11-08-2004 on the basis of Vigilance Inspection of some assessments made by him.

2. The Articles of Charge framed against him and findings/ conclusions of Enquiry Authority are reproduced here as under :-

STATEMENT OF ARTICLE-I OF CHARGE

That the said Shri Budheswar Doley while functioning as ITO, North Lakhimpur, during the period 1996- 98 exceeded and abused his official powers in several instances and caused undue harassment to various assessees that culminated in a number of complaints being lodged against him. Three such specific complaints of

1.Shri Purna Kanta Pegu, Dhemaji College, Station Road, Dhemaji
2. Shri Bikas Das, Prop. MIs Beauty Stores, Dhemaji and
3. Shri Bhaben Chandra Pegu, Vill. Tanganapara, Ward-3, P.O. & Dist. Dhemaji

were looked into and the respective case records also verified, and it emerged that Shri Budheswar Doley, ITa had fuiled to maintain absolute integrity; did not display devotion to duty; acted unbecoming of a Government servant, and in the performance of his official duties acted in a discourteous manner, thereby contravening Rules 3(1)(i), 3(1)(ii), 3(1)(iii), and 3A(a) of the CCS (Conduct) Rules, 1964.

14.02.2008

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STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR

During the period 1996-98 when the said Shri Budheswar Doley was functioning as Income-tax Officer, North Lakhimpur, several complaints alleging of high handedness, harassment, and victimisation were received against him.

The complaints of Shri Purna Kanta Pegu (listed as SD-l), Bhaben Chandra Pegu (listed as SD-3) were looked into and the relevant case records verified and it emerged that in the process of functioning in his duties, Shri B. Doley had misconducted himself

Other complaints also alleging of misconduct are regarding Shri Bikas Das (SD 1,4), complaint of Income-tax Practitioner of North Lakhimpur (SD-6), complaint of Chamber of Commerce, North Lakhimpur (SD-7).

By these complaints, and on verification of the verifiable allegations it has emerged that the said Shri B. Doley, ITO while discharging his functions and duties as a Government Servant had failed to maintain absolute integrity did not display devotion to duty, acted unbecoming of Government servant and in the governance of his official duties acted in a discourteous manner, thereby contravening Rules 3(l)(i), (ii), (iii) and 3A(a) of the CCS (Conduct) Rules, 1964.

The conclusion of the Enquiry Authority.

It is seen that the department has relied solely on the witnesses in respect of allegation in the complaints filed. These complaints are general in nature. No specific of misconduct or misbehaviour has been mentioned in the complaints. Nor has the department produced any records in support of these complaints (except in the case of Shri B.C. Pegu and Shri P.K. Pegu). In the course of hearing of the case Shri Inderchand Jain and Shri N.K. Sharma could not corroborate these complaints made by them. Therefore, I hold that none of the charges in Article-1 has been proved.

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STATEMENT OF ARTICLE-II OF CHARGE

In the separate complaint of Shri Purna Kanta Pegu it is alleged by the complainant that a bribe demand of Rs. 10,000/- was made during the course of the assessment proceedings for the AY 1994-95 but since the bribe was not conceeded to, a huge tax demand ofRs. 1,63,212/- was raised.

Also, that during the aforesaid period and while functioning in the aforesaid office, the said Shri Budheswar Doley, ITO is alleged to have demanded a bribe of Rs. 1,00,000 (one Lakh) only from another complainant Shri Bhaben Chandra Pegu during the course of the assessment proceedings for A Y 1994-95. Since only a a bribe amount of

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Rs. 10,000/- was paid first, and later on another Rs. 10,000/- , a high pitched assessment was made raising a huge tax demand of Rs. 9,87,196.

By these allegations of the complainants, Shri Budheswar Doley, ITO has contravened of the following provisions of the CCS (Conduct) Rules:

Rule 3(1)(i) - fuiled to maintain absolute integrity

Rule 3(1)(iii) - acted unbecoming ofa Government servant.

STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR

In the complaint of Shri Purna Kanta Pegu, it is alleged that Shri B. Doley, ITO in the assessment proceedings for AY 1994-95 had demanded a bribe ofRs. 10,000/-. As the bribe was not paid, a huge tax demand of Rs. 1,63,212/- was raised.

Verification of the relevant case records indeed show that Shri B. Doley unduly abused his powers to cause enquiries, and culminating in the unnecessarily high-pitched assessment made.

Also, in the salaried case of Shri Bhaben Ch. .Pegu an allegation that due to the not conceding bribe demand of Rs. 1,00,000/- roving enquiries were made and unnecessarily high pitched assessment was done raising a huge tax demand ofRs. 9,87,196/-.

The above 2 assessments have been eventually set aside/ deleted by CIT(A) in the appellate order.

0 *The above trend of instances show that the allegation of bribe demand as being the cause of harassment, lead to a strong implication of the allegation against Shri B. Doley and therefore, Shri B. Doley had failed to maintain absolute integrity and acted unbecoming of a Government Servant thereby contravening Rules 3(1)(i) & 3(l)(iii) of the CCS (Conduct) Rules, 1964.*

The conclusion of the Enquiry Authority.

As regards the allegation that bribe was paid, it is seen that if at all any money was paid, it was handed over to Shri Doley's wife. There is no evidence that Shri Doley was aware of the transaction, if it took place at all. I, therefore hold that none of the charges in Artcle-II has been proved.

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STATEMENT OF ARTICLE-III OF CHARGE

That during the aforesaid period and while functioning in the aforesaid office, the said Shri Budheswar Doley, ITO acted arbitrarily in the assessment of Shri Purna Kanta Pegu (assessee) for the A Y 1995-96 as is evidenced from the assessment records; acts of misconduct of which are listed hereunder.

1. The assessment proceeding has been initiated after the survey report of the Inspector dated 16-6-95. The survey so authorised was illegal as the power to survey U/s 133A or 133B can be exercised only at a place at which for business or profession is carried on; whereas in these instance case the assessee is only a salaried person.

This act confirms the allegations in other complaints received that Shri Budheswar Doley, ITO had arbitrarily conducted survey with view to harass and intimidate the assessees.

2. Even if the survey is considered as an inquiry U/s 133(6), it is illegal as there were no proceedings pending under the Income-tax Act as on that date against Shri Purna Kanta Pegu (assessee).

3. By mentioning in the very first line of the assessment order that the survey was done by his Inspector, it appears that Shri Budheswar Doley, ITO had sinister designs in mind so that if in the eventuality of any complaints or complications later on, he would be in a position to push the blame to his subordinate.

4. Shri B. Doley, ITO has abused the power to survey and also blatently trespassed upon the power to search when he directed his Inspector (Shri H. Rabha) to enter inside the residential premises of the assessee and to observe and take measurement of the building, as is evidenced by the report of the Inspector dated 04-4-96.

5. Shri Budheswar Doley, ITO has time and again abused to power to survey when he directed his Inspector to make enquiries at several residential houses as is evidenced ftom the report of the Inspector dated 16-6-95.

6. Shri Budheswar Doley, ITO made huge estimated addition towards investment in construction of the residential building belonging to the assessee, without having given the assessee an inkling of the estimated method of valuation that he was to do. He, therefore, denied to the assessee the very basic right to be given opportunity to be heard and the right to natural justice.

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7. The impugned assessment order was challenged in appeal before the Commissioner of Income-tax (Appeals), and the learned CIT (Appeal) in his order dated 07-01-98 set-aside with directions the estimated additions in the building construction, and deleted the other additions. However, Shri Budheswar Doley, delayed in the giving effect to the Appellate Order, and further did not follow the directions while given to the effect to the Appellate Order, thereby still raising a tax demand of Rs. 1,00,306/-.

8. Though the tax demand of Rs. 1,00,306/- after giving appellate effect was wrong, yet Shri Budheswar Doley issued recovery attachment notice D/s 226(3) dated 27-8-98 of the Income-tax Act, 1961 to the employer of the assessee, i.e. Principal of Dhemaji College, Dhemaji attaching an amount of Rs. 3000/- per month from the salary of the assessee, thereby causing undue harassment and humiliation to the assessee.

By all these above acts Shri Budheswar Doley, ITO has willfully contravened the following provisions of the CCS (Conduct) Rules :

3(1)(i) - Failed to maintain absolute integrity
3(1)(ii) - Failed to maintain devotion to duty
3(1)(iii) - acted unbecoming of a Government servant.
3A(a) - in the performance of his official duties, acted in a discourteous manner.

STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR

Shri B. Doley had without any legal validity directed his Inspector to cause various enquiries and conduct survey as evident by the mention of the Inspector's survey reports dated 16-6-95,04-4-96, 16-6-95. The power to survey U/s 133A.. of the Income-tax Act is not available in the case of salaried income assessees. Even otherwise it is not permissible that surveys be carried out as residential premises.

Huge estimated additions have been made towards investment in the construction of the residential building, without having given the assessee an inkling of the estimated method of the valuation that he was to do. The very basic right of the assessee to natural justice has been denied, thereby belittling the assessment orders, and causing mental agony to the assessee. Even after the CIT(A) had set-aside as well as deleted the additions made in the assessment, Shri B. Doley, ITO did not given proper effect and still raised a huge tax demand of Rs. 1,00,306/-. To cause further injury and humiliation, he even further proceeded to attach and recover the salary income of the assessee, even though the demand was totally and legally wrong.

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All the above acts show vindictiveness, high handedness and improper functioning in the discharge officer official duties and thereby, Shri B. Doley, ITO as willfully contravened Rules 3(1)(i), 3(1)(ii), 3(1)(iii) and 3A(a) of the CCS (conduct) Rules, 1964.

The conclusion of the Enquiry Authority.

*To sum up, I am of the view that Shri Doley denied to the assessee the very basic right to be given opportunity to be heard and the right to natural justice. As a quasi judicial authority, it was his duty to ensure that the basic principles of justice are not violated. **In failing to ensure that, he exhibited lack of devotion to his duty.** The other charges are not proved.*

STATEMENT OF ARTICLE-IV OF CHARGE

That during the aforesaid period and while functioning in the aforesaid office the said Shri Budeswar Doley, ITO, acted arbitrarily and capriciously in the assessment of Shri Bhaben Ch. Pegu (assessee) for the A Y 1994-95 as evidenced from the assessment records. The acts of misconduct of which are listed hereunder :

1. Shri B. Doley, ITO abused and over-stepped the power to survey when he directed his Inspector to cause enquiry, as evidenced from the Inspector's report dated 06-6-95, and also required Shri B. C. Pegu to furnish various details of assets as evidenced from the proforma that was asked to be submitted by Shri Pegu dated 07-6-95.

2. Shri B. Doley, ITO had caused enquiries into the properties without ascertaining and verifying from the past income-tax records, as has been the allegation in several complaints received against him, thereby causing undue harassment to the tax payers.

3. Shri B. Doley, ITO initiated the assessment proceeding in the case of Shri B. C. Pegu (assessee) for the AY 1994-95 by issuing of notice U/s 142(1) dated 27-7-95/02-8-95 of the LT. Act, 1961 calling for return of income to be filed. Though he has used a standard departmental form to issue the notice, yet he had not applied his mind in that the items not applicable were not struck off. This would have created confusion to the assessee.

4. Shri B. Doley, ITO, has misused and over-stepped the power to survey when he directed his Inspector to enter the building of the assessee, and also "to enter the residential house of the assessee and to observe a layout, nature of construction, and to take measurements and also to estimate the value of the construction, as is evidenced by the inspection report dated 12-10-96.

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5. Shri B. Doley, ITO passed the assessment order on 01-12-96 and has made arbitrarily high-pitched assessment by simply estimating cost of construction of the building, and estimated cost of land as per his whims and fancies. There does not appear in the records any prior intimation to the assessee ofhis intended basis for estimated valuation. Shri B. Doley,ITO has, therefore, denied the assessee the opportunity to be heard on the issue, and the right to natural justice.

Because of this act in the assessment order, high income-tax demand of Rs. 9,87,196/- was raised on the assessee causing the assessee undue mental pressure and agony.

6. The assessee, being a layman, and having been taken aback by such high pitched assessment, submitted a detailed revised petition dated 29-12-96 seeking for review of the income-tax assessment. As the subject matter and reasoning were not within the purview of even a rectification, Shri B. Doley should have advised the assessee that the proper procedure was to approach the appropriate higher statutory authorities by filing appeal U/s 246 before the CIT(A) or to file for revision petition U/s 264 before the CIT.

7. Shri B. Doley, ITO did not choose or advise the assessee properly and instead after the assessment has been completed, in the name of rectification, he conducted and caused detailed enquiries trespassing beyond his statutory jurisdiction and thereby causing further mental agony to the assessee.

8. Shri B. Doley, ITO, again abused and over stepped the power to survey when he deputed his Inspector (Shri Rajkumar Singha) to visit and enter the building premises belonging to the assessee, and to take measurements, as evidenced from the Inspector's report dated 16-01-97.

9. Shri B. Doley, ITO has over-exceeded his power as an assessing officer in the rectification order passed dated 01-7-97, as none of the issues were "mistakes apparent from records".

10. Although the assessment was high pitched and undue harassment has been caused in the process, yet Shri B. Doley,ITO caused further humiliation by sending a recovery attachment notice U/s 226(3) of the I. T. Act, 1961 to the employer of the assessee, i.e. the Principal, Dhemaji College, Dhemaji

11. Shri B. Doley, ITO had made enquiries and correspondences with the Branch Manager, United Bank Of India, Dhemaji. The style and manner ill which he has conveyed his correspondences with the bank official is improper and not expected of, in official communications, as evidenced vide his letter dated 27-6-97 sent to the Bank Officer.

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12. The impugned assessment order was challenged in appeal before the CIT(A) and the learned CIT(A) vide his order dated 10-12-98 had observed the high-handedness and arbitrary manner of the assessment that had been done by Shri B. Doley, ITO by remarking in the appellater order :I feel that the A.O should have considered the appellant past assessment records especially when he was considering investment made in buildings, lands, etc by the appellant in the past and in failing to do so, he had failed to do justice to the appellant".

By the above act of misconduct and misbehaviour, Shri B. Doley, ITO has willfully contravened the following Rules of the CCS (Conduct) Rules, 1964 viz:

3(1)(i) - Failed to maintain absolute integrity
3(1)(ii) - Failed to maintain devotion to duty
3(1)(iii) - acted unbecoming of a Government servant.
3A(a) - in the performance of his official duties, acted in a discourteous manner.

STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR ***(in the assessment of Shri B.C. Pegu)***

Here too, Shri B. Doley had abused and over-stepped the power to cause enquiries and conduct surveys, as is evident by the Inspector's reports dated 06-6-95, 12-10-96, 16-01-97. The power to cause survey is not available in case of salaried income assessees. Also it is not permissible to enter residential houses, not to speak taking measurement and to estimate the value of construction.

Even though there were no proceedings under the Income-tax Act as on 06-6-95 against Shri Bhaben Ch. Pegu, yet Shri B. Doley, ITO violated statutory powers under the LT. Act and required Shri Bhaben Ch. Pegu to furnish details regarding his assets, investments made, an sources of income for several years even since 1965. The violation is evident as there does not appear to be any written communication addressed to Shri Bhaben Ch. Pegu requiring him to do so, nor any mention of the exercise under any particular provision of the LT. Act. The entire exercise seems to have been verbal, until Shri Bhaben Ch. Pegu was made to submit the details in writing.

Though Shri B. Doley, ITO without much hesitation causes enquiries to be made and surveys to be conducted, yet in issuing simple statutory notice U/s 142(1) he does not apply his mind to delete the inapplicable portions, and therefore, the options/ requirements in the standard form being many, a lot of confusion and incomprehension would have arose in the mind of Shri Bhaben Ch. Pegu on receiving the notice.

No inkling of the method of estimation to be adopted in the assessment, was given to Shri Bhaben Ch. Pegu and therefore, denying right to proper opportunity and the right to natural justice. This most crucial as huge addition were made raising the huge income-tax demand of Rs. 9,87,196/-.

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Shri B. Doley even after having passed the high pitched assessment order started even to transgress upon the statutory jurisdiction of the CIT and CIT(A) by not properly advising the assessee to file revision/appeal, and instead he choose to treat as rectification, and in the process got further occasion to cause further enquiries and surveys.

Shri B. Doley, ITO does not re-examine the assessment made by him, and is very quick to use his powers by sending attachment and recovery notices U/s 226(3) ofI.T. Act.

In his correspondences with the Branch Manager, United Bank of India, Dhemaj, he calls clarification of matters of several years ago, of which the then incumbent Branch Manager could not have been possibility aware of The language use in the correspondences is also unbecoming of official communication as is evident in the letter dtd. 27-6-97.

Shri B. Doley has asked to Shri Bhaben Ch. Pegu to furnish details of his assets and investments some 25 years back even since 1965. This would have been impossible for Shri Bhaben Ch. Pegu. Shri Doley does not hesitate to ask the assessee for details and records of decades together but when it comes to himself he doesn't even bother to find from own office records the available details of only a few years back in order to ascertain his suspicion about the assesses assets. Shri B. Doley did not practice nor exhibits even a fraction of what he a expected others to do. By the above acts of mis-conduct and mis-behaviour Shri B. Doley, ITO had failed to maintained integrity, failed to maintained devotion to duty, acted of an unbecoming of Government servant, in the performance of official duties acted in a discourteous matter, thereby contravening Rules 3(1)(i), (ii), (iii) and 3A(a) of the CCS (Conduct) Rules, 1964.

The conclusion of the Enquiry Authority.

To sum up, I am of the view that Shri Doley denied to the assessee the very basic right to be given opportunity to be heard and the right to natural justice. As a quasi judicial authority, it was his duty to ensure that the basic principles of justice are not violated. ***In failing to ensure that, he exhibited lack of devotion to his duty.*** *Further, Shri Doley blatently exceeded his powers as as an assessing Officer while passing an order u/s 154 of the I.T. Act. Here again , he* ***exhibited lack of devotion to his duty.*** *The other charges are not proved.*

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STATEMENT OF ARTICLE-V OF CHARGE

That during the aforesaid period and while functioning in the aforesaid office, the said Shri B. Doley, ITO acted upon and initiated proceedings with vindictive motive against Shri Bikash Das (Proprietor of M/s Beauty Stores), Dhemaji, as is mentioned hereunder:

1. Due to not conceeding to a price bargain which Shri B. Doley, ITO wanted as customer, Shri B. Doley, ITO then misused, with vindictive intention, the power to survey by conducting survey at the shop premises on 01-11-96; even though as an Income-tax authority he should have been aware that the shop being quite small in size, a survey was not at all warranted. The conduct of the survey was spiteful and with vindictive motive to humiliate Shri Bikash Das.

2. Shri B. Doley, ITO further initiated proceedings by issuing notice dated 09-01-97 U/s 142(1) of the Income-tax Act calling for the return of income to be filed. Even while issuing the notice he did not apply his mind in that the irrelevant portion of the form were not struck of, and this would have created confusion in the mind of Shri Bikash Das.

3. Shri B. Doley, ITO had misused the powers U/s 142(1) in that after initiating the proceedings, he simply dropped the proceedings on 29-04-97 on receiving a letter ftom Shri Bikash Das that he would not be having any taxable income. This indicates that Shri B. Doley, ITO misused the power U/s 142(1) to achieve his vindictive motive against Shri Bikash Das and once the motive was achieved, the proceedings were dropped as there was no other reason to have conducted the survey.

By all these above acts Shri B. Doley, ITO has willingly contravened the following provisions of the CCS (Conduct) Rules, 1964 :

3(1)(i) - Failed to maintain absolute integrity
3(1)(ii) - Failed to maintain devotion to duty
3(1)(iii) - acted unbecoming of a Government servant.
3A(a) - in the performance of his official duties, acted in a discourteous manner

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STATEMENT OF IMPUTATION OF MISCONDUCT OR MISBEHAVIOUR

The survey conducted on 01-11-98 was vindictive as a result of the price bargaining that Shri B. Doley, ITO wanted as customer. There was no reason to conduct such a survey. Even the initiation of proceedings by issue of notice U/s 142(1) was unwarranted. This is apparent as eventually the proceedings had to be dropped. Shri B. Doley, ITO had thus failed to maintain absolute integrity devotion to duty, acted unbecoming of a Government servant, and in the performance of his official duties acted in a discourteous manner,

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thereby contravening Rules 3(1)(i), (ii), (iii) and 3A(a) of the CCS (conduct) Rules, 1964 in this instant case also.

To sum up, it was found that Shri doley dropped the proceedings after issuing the notice u/s 142(1). No motive, however, could be established for this act. I, therefore hold that the mistake occurred due to his failure to maintain devotion to his duty. The other charges are not proved.

REPORT ON THE SUPPLIMENTARY CHARGESHEET

The statement of article of charges in the supplementary charge sheet contain one article which is reproduces below :

" That the said Shri Budheswar Doley, Income-tax Officer, while functioning as ITO, Ward-North Lakhimpur, Assam for the period for the period from 26.05.95 to 21.09.98, while making assessments u/s. 143(3) or 144 of the I.T. Act, 1961, failed to conduct proper inquiry and investigation. In some cases he did not obtain any information from the assessee and did not scrutinize the books of accounts in some cases, where information were obtained he failed to utilize the same in proper manner and disposed of cases in a lackadaisical manner.

By the aforesaid act of omission and commission, Shri Budheswar Doley failed to maintain absolute integrity and also showed lack of devotion to duty and exhibited conduct unbecoming of a government servant in terms of Rules 3 (1) (i), 3(1)(ii) and 3(1) (iii) of the CCS (Conduct) Rules, 1964".

***CONCLUSION** : On the basis of the foregoing discussions, I find that the following omissions were made by Shri Doley :*

1. *He failed to initiate penalty proceedings in cases where the assesses failed to comply with notices issued under the Act.*

2. *While making scrutiny assessments, Shri Doley failed to collect basic details/ informations such as details of Bank accounts, list of debtors and creditors etc. A very large number of cases were disposed of in a single hearing. Through, Instruction No. 1937 dt. 25.03.1996 makes it mandatory for obtaining particulars of assets including name and address of the debtors, bank account etc. Shri Doley made no attempt to collect these in most cases.*

3. *Even in cases scrutinized for the first time, Shri Doley failed to collect the basic information about the assessee such as activity of the assessee, his property and investments, size of his family (where applicable), withdrawals, children education (where applicable). In atleast one such case no question was asked on the mode of valuation of the closing stock.*

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4. *In 14 (fourteen) cases on books of accounts were found to be maintained. In such cases, it was necessary to examine the bank accounts but Shri Doley failed to do so. In some cases he failed to examine the basis of expenditure, net profit and turnover estimated by the assessee. In the case of Md. Sheikh Rasul one State Govt. Employee earning a modest salary, Shri Doley failed to examine the source of Rs. 7.7. lakhs deposited in cash in a bank and accepted assessee's claim of gift received from different parties without proper verification.*

5. *In the case of M/s. Mahavir Transport Co. , the gross receipts as per the TDS certificates exceeded the gross receipts shown in the profit and loss account by Rs. 4,84,946/-. Shri Doley failed to examine this aspect. In case of Izahar Hussain, the details of expenses given were fur in excess of expenses shown in the profit & loss account . Shri Doley failed to examine this point . In the case of Md. A Rahim Talukdar, Shri Doley found that the deposit in the bank account exceeded the gross receipt shown by Rs. 3,91,371/-. But he accepted the assessee's explanation that the excess credit represents loan/security money refunded by friends and relatives without obtaining any details/ evidence.*

Further, It was found that in this case, the total receipt as per the TDS certificates comes to Rs. 12,89,546/-. The receipt net of TDS comes to Rs. 12,63,877/-. Shri Doley was able to obtain bank statement of the assessee from only one bank, i.e. Allahabad Bank, North Lakhimpur Branch. It was also found that in the said account, there were total credit of Rs. 16,17,121/- out of which only Rs. 3,47,628/- relates to the TDS certificates considered. This means that Rs. (Rs. 16,17,121/- Rs. 3,47,628/-) were from some other source. Shri Doley failed to examine this aspect.

6. *In the case of Mahavir Transport Co., Shri Doley failed to cause proper inquiry regarding the business transactions as well as the unsecured loans at the trade creditors. In the case f Md. Mobin, Shri Doley failed to cause proper inquiry regarding the business transactions as well as the source of opening balance in capital account though, it was the first year of the assessee's business. He also failed to obtained the balance sheet of assessee's business.*

In the cases where the assessee claimed to have earned agricultural income, Shri Doley failed to obtained basic details of land holdings and examine the claim.

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7. *In the case of Shri Sudhir Dutta, it was found that Shri Doley while passing an order u/s. 154 give excess relief of Rs. Rs. 4,000/- to the assessee.*

Shri Doley in his explanations stated that he joined as ITO, Ward-North Lakhimpur on promotion. The job of Assessing Officer was new to him and that he lack experience and there is nobody with whom he could discuss to various issues relating to assessment. He further stated that he did the job to the best of his ability and the lapses on his part were bonafide mistakes committed due to lack of training and experience. He argued that the method and nature of investigation in the course of scrutiny are bound to vary from officer and therefore, the allegations that in some cases the investigations done were inadequate are subjective.

The mistakes made by Shri Doley mentioned above do not contain any act of commission. They are all acts of commission. None of these acts of commissioner proved lace of intrigity on the part of Shri Doley. No instances of Shri Doley acting in manner unbecoming of a Govt. Servant could be established in course of inquiry. However, there were many instances where Shri Doley was found to complete the assessment in a perfunctory manner. Most of the scrutiny was completed without proper examination of records and no investigation was made at all. He even failed to consider the material on record while completing assessment. His plea that it was due to his inexperience which is not acceptable since he joined the department as a direct recruit Inspector in the 30.01.1989 and was promoted as ITO on 01.01.1995 and orders which are subject matter of this inquiry were mostly passed during the year 1997 and 1998. Further, mistakes made were simple mistakes and does not involve any complicated legal issue. I am therefore satisfied that mistakes were due to lack of devotion to duty on part of Shri Doley. Therefore, the charge of lack of devotion of duly against Shri Doley is proved.

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3. The above mentioned findings and conclusions of the Enquiry Officer had been carefully examined by the Commissioner of Income-tax, Guwahati-I, Guwahati who happened to be the Disciplinary Authority. In his written note dated 04.01.2007 addressed to the Director of Income-tax (Vigilance), East Zone, Kolkata, he had proposed minor penalty (other than censure) although major penalty charge sheets were issued in this case. For better and proper understanding of the case, the reasons recorded by him for recommending minor penalty are reproduced hereunder :

" Self- contained note on the inquiry report in the case of Shri B. Doley, TRO-2, Guwahati"

There were two charge-sheets in this case, both relating to the tenure of Shri B. Doley (the CO) as ITO, North Lakhimpur, Assam during the period 1995-98. While the original charge-sheet had been issued on the basis of certain complaints on 15.05.2002, the supplementary charge-sheet was issued on 11.08.2004 on the basis of vigilance inspection of some assessments made by him. The IO took up both the two charge-sheets together and submitted a consolidated report.

2. ***Copies of the charge-sheets, inquiry report as well as the inquiry records have been separately furnished. As such, the gist of each charge together with IO's findings thereon is briefly stated in the present report. The original charge-sheet is being taken up first.***

3. ***As far as the first article of charge is concerned, the imputations of misconduct are based on the allegations made by some assesses as well as by the Chamber of Commerce and Tax Bar Association. The IO has not discussed about the allegations of the specific assesses while examining this article, for he has dealt with their allegations in depth while examining the other articles were the same charges have been repeated. The other witness were examined/ cross-examined in course of the oral hearings. The allegations are mostly about harassments, i.e. delay in issuing refunds, calling for irrelevant particulars of assets, conducting unlawful surveys, issuing blanket exemption certificates in respect of TDS, making scrutiny assessments with minor additions, investments in house property, etc. However, neither Shri Inder Chand Jain, erstwhile Secretary, Chamber of Commerce, North Lakhimur nor Shri N. K. Sharma, erstwhile Secretary, Tax Bar Associatios, North Lakhimpur could cite any specific instance corroborating the allegations, when they were examined as withnesses. Moreover, both of them stated that personally they had faced no difficulties in their dealings with Shri Doley. I, therefore, agree with the IO that the complaints were general in nature and were not substantiated.***

4. ***As regards the second article of charge that bribe was demanded by Shri Doley from Shri P. K. Pegu and Shri B. C. Pegu, the IO has observed that***

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the same is based on the allegations of the complainants and there was no evidence. Shri P. K. Pegu stated that the demand was made through one Shri Chikon Doley. The nexus between Shri Chikon Doley and the CO is not established. Moreover, it is seen from the examination and cross-examination that Shri Chikon Doley was close associate of the complainant. The complainant also admitted that he had personal enmity with the CO in connection with his marriage. Similarly, Shri B. C. Pegu, who is related to the CO by marriage, stated that the bribe was demanded through his wife. He also stated that the bribe was paid to Shri Doley's wife when Shri Doley was not around. These are words of the mouth and unverifiable. The direct involvement of Shri Doley is not established. Moreover, due allowance has to be given to personal hostility. Hence, I do not find any reasons to disagree with the IO that the charges are not proved.

5. *As regards the third and fourth articles of charge that Shri Doley caused unlawful surveys to be made in the residential premises of Shri P.K. Pegu and Shri B. C. Pegu, made high –pitched assessments and attached the salaries for recovery of the outstanding taxes, the IO has held that in denying the assesses opportunities of being heard Shri Doley exhibited lack of devotion to duty. He also exceeded his powers be causing enquiries while disposing of a petition u/s. 154, which against amounted to lack of devotion to duty. The other elements of the charge were held as not proved. I agree with the IO that taking measurement of a house for the limited purpose of estimating the cost of construction without causing any violation of privacy cannot be treated as a case of excess. Similarly, taking recourse to recovery measures as per law cannot be faulted even when the assessment was challenged in the appellate forum. I, therefore, agree with the IO that the CO was guilty of lack of devotion to duty, but the other charges including lace of integrity are not proved.*

6. *As regards the fifth article of charge that Shri Doley conducted a survey in the shop of Shri Bikash Das with vindictive intention for not conceding to a price bargain, the IO has noted that Shri Das actually conceded to the price bargain and so Shri Doley had no reason to be vindictive. The survey was otherwise not unlawful either. He, however, observed that dropping of the proceedings after having issued a notice u/s 142(1) was a mistake on Shri Doley's part, amounting to lack of devotion to duty. The IO has held that the CO was not guilty of other charges, but in my view the whole matter of bargaining and the subsequent survey was in bad taste and speaks of behaviour unbecoming of a Government servant. However, there is no material to prove that the exercise was prompted by lack of integrity.*

7. *In the supplementary charge-sheet several inadequacies were pointed out in respect of scrutiny assessments made by the CO in the cases of a number of assesses. He did not initiate penalty proceedings in cases of non- compliance*

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by the assesses in terms of notices. He failed to collect basic details in most of the cases including the first year cases. He failed to examine the basis of expenditure in no- accounts cases. He even did not examine the available details in some cases. The IO observed that the charges of lack of integrity and conduct unbecoming of a Government servant were not proved in the circumstances of the cases. He was, however, of the opinion that Shri Doley had completed the assessments in a perfunctory manner without making any examination and investigation. Thus, only the charge of lack of devotion to duty, and no other charge, was proved against him.

8. *While agreeing with the findings of the IO, I feel that the shortcomings are basically the out come of ignorance and incompetence. Although the CO was promoted as an ITO in 1995 and the impugned assessments were made during the years 1997 and 1998, it is obvious that he did not grow during these years. He was posted in North Lakhimpur, which is a single-ITO charge, and his immediately supervising officer was stationed in Guwahati, about 500km away. So, it was not possible for him to seek guidance from his superior or to consult a colleague even if he was in doubt. Be that as it may, the shortcomings are too many to be grossed over. Failure to grow or to learn is also a dereliction of duty.*

9. *On the basis of the findings of the IO in respect of both the charge-sheets, with which I generally agree, the CO definitely deserves some punishment. But penalty has to be commensurate with the nature of the offence. Since lack of integrity has not been proved in respect of any article of charge discussed above, the case in my view does not warrant a major penalty. Any of the minor penalties other that censure should meet the ends of justice.*

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4. In this case, the advice of CVC was sought and obtained. In its O.M. 98/IIX/009-57705 dated 28.05.2007 addressed to DIT (Vigilance) East :Kolkata, the CVC had conveyed its concurrence with the recommendation of the Department and had advised imposition of minor penalty other than censure on Shri B. Doley, ITO.

5. In order to proceed with the case, notice under Rule 15(2) of the CCS(CCA) Rule, 1965 was issued to the Charged Officer (CO) vide F. No. Vig./CIT(Audit)/2007-08/594 dated 16-11-07 and copies of Enquiry Report dated 07-09-2006 and CVC's advice dated 28.05.2007 were furnished to him. The notice also mentioned the proposal to impose minor penalty under Rule 15(3) read with Rule 16(1) of the CCS(CCA) Rules and the request for his comments or representation in the matter.

6. In response to the above notice dated 16-11-2007, Shri S. B. Doley, ITO has submitted a detailed representation running into 18 pages vide his letter dated 30.11.2007. For the sake of brevity and convenience, the comments of the CO have not been reproduced here. In his representation, he has reiterated the points and arguments which he had submitted while replying to the main charge-sheets in which he had denied the charges.

7. As far as the supplementary charge- sheets are concerned, he has further submitted that the allegations contained in the charge-sheets are incorrect and based on flimsy grounds or the lapses pointed out in the charge-sheets can not attract vigilance action.

8. After careful consideration of the findings and conclusions of the Enquiry Officer, the written submissions of Shri S. B. Doley and the relevant materials on records, I concur with the view of the Department discussed above that Shri S. B. Doley deserves to be awarded minor penalty other than censure. As mentioned above, the charge-sheets regarding to lack of integrity have not been proved. The charge-sheet regarding Shri S. B. Doley acting in a manner unbecoming of a Govt. servant has not been fully established. However, the charge of lack of devotion to duty against Shri S. B. Doley has been proved thereby violating the provisions of Rule 3(1)(ii) of Central Civil Services (Conduct) Rules,1964 relating to conduct of every Govt. Servant who shall at all times maintain devotion to duty. While imposing the penalty on Shri S. B. Doley, one may, however, keep in mind the nature and gravity of the mistakes committed and the considerable time taken for completing the penalty proceedings which may have affected the career of the Charged Officer.

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9. Thus, taking into account of the above facts and circumstances of the case, I am of the view that this is the case where minor penalty of withholding increment of pay for a period of one year without cumulative effect and not adversely affecting his pension will meet the ends of justice. Accordingly, it is hereby ordered that the increment of pay of Shri S. B. Doley will be withheld for a period of one year from the date of next increment of pay, i.e. Ist April 2008 provided in Rule 11(1) of CCS (CCA) Rules,1965.

sd/-
(K. T. ZIMIK)

Disciplinary Authority
Commissioner of Income-tax (Audit)
Guwahati

Memo No. Vig./CIT(Audit)/GHY/2007-08/ 894-896 Dated : 14-02-2008

Copy to :

1. The Chief Commissioner of Income-tax, Guwahati with reference to the letter of the Dy. Commissioner of Income-tax (Vigilance) dated F. No. DP-45/BD/VG/CC/GHY/1589 dated 11-10-2007 and earlier correspondences on the subject.

2. The Director of Income-tax (Vigilance) East: Kolkata, P-7, Chowringhee Square, KOLKATA – 700069 for information and necessary action.

3. Shri S. B. Doley (Charged Officer), Income-tax Officer, (Hqrs) -Audit and DDO, Guwahati for information.

(K. T. ZIMIK)

Disciplinary Authority
Commissioner of Income-tax (Audit)
Guwahati

के. टी. जिमीक, भा.रा.से.
K. T. ZIMIK, I.R.S.
आयकर आयुक्त (लेखा परीक्षा)
COMMISSIONER OF INCOME-TAX (AUDIT)

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ANNEXURE--17

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Dated Guwahati, 29TH FEBRUARY 2008.

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To,

The Appellate Authority cum
The Chief Commissioner of Income-tax
Saikia Commercial Complex, G.S.Road,
Gauhati.

[Through the Commissioner of Income-tax (Audit), Saikia Commercial Complex, Gauhati].

Ref. No. Memo No.Vig./CIT (Audit)/Ghy / 2007-08 / 894-896 dated 14-02-2008.

Subject: Appeal under Rule 24 of CCS (CCA) Rules 1965 against the Order dated 14-02-2008 whereby the Disciplinary Authority cum Commissioner of Income Tax (Audit), Guwahati has imposed Minor Penalty on me by withholding one year increment as on 01.04.2008 under Rule 11 (1) of CCS (CCA) Rules 1965.

Hon'ble Sir,

Most humbly I beg to prefer this Appeal under Rule 24 of CCS (CCA), Rule 1965 against the Minor Penalty imposed on me by the Disciplinary Authority cum Commissioner of Income Tax (Audit), Guwahati on 14-02-2008 by withholding one year increment under Rule 11 (1) of CCS (CCA) Rules 1965.

I submit the following few lines before your Honour for your kind and sympathetic consideration of the matter. Your Honour also may be pleased to exonerate me from the Minor Penalty imposed by the Disciplinary Authority.

1. That Sir, I have been serving in this Department with utmost sincerity and honestly since my date of joining. I have not indulged myself in any kind of dishonesty in my service career till today. I also do not allow anybody to take undue favour from me. I am a very straight forward and uncompromising Officer of my Department. Therefore, I suffered a lot and ultimately some false and motivated charges were framed against me although those charges were absolved. However, I have been penalized with a Minor Penalty withholding a year's salary increment i.e. as on 01-04-2008 which ~~have~~ stands as a black spot in my service career. I am demoralized with the said Minor Penalty as the main charges were completely dropped as there are no iotas of evidences against me.

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2. That Sir, the Minor Penalty which has been imposed on me on the recommendation of Shri P. K. Ray, the erstwhile Commissioner of Income Tax, Guwahati-I and the CVC simply accepted it. The minor penalty has been thrust upon me forcibly on some flimsy ground based on:

i) Not considering (not reading at all or ignoring) my reply.

ii) Simply raised some commissions and omissions in an arbitrary and partisan way which are even contradicted by the Supplementary charge sheet dated 11.08.2004.

Sir, I beg to cite some instances of the above 2. i):

A) Substantial addition made but denied the assessee the very basic right of opportunity of being heard and the right to natural justice (pages 13- para 5, pages 14- para 6, pages-21- para 6, pages 23 para 6 of the Inquiry officer's report dated 07.09.2006 and the same fact is taken into account by the Disciplinary auothority for attrbuting lack of devotion in page 15, para 5, lines 5 & 6).

This issue of the charge sheet was replied long back vide my letter F.No.Per/E-15/2002-2003/314 dated 10th June 2002 which are quoted here in toto.

> "That sir, I made the addition considering the localities, nature of construction, year of construction etc. and I fairly discussed with the assessee about the cost of construction per sq. ft. to be taken in the assessment to which the assessee did not agree as to evade tax thereby." (Annexure-I, page-3, article- III, serial no.6).
>
> "That sir, I did not make arbitrarily high pitched assessment by simply estimating the cost of construction of the building and did not estimate the cost of land as per whims and fancies. I determined the cost of construction of the building after proper application of my mind as to the locality, nature of construction, year of construction and the land value was determined after proper exercise of my mind and the land prices prevalent at that locality at different times. Shri B.C.Pegu was specifically informed of the cost of construction and the land value I was going to take while assessing his case and he requested to take the cost of construction at Rs.50/- to 60/- per sq. ft. which was not

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acceptable at all. He did not press much for the land valuation. In support of his claim of cost of construction at Rs.50/- to 60/-, once he brought a cement purchase voucher for 250 bags or so (I do not remember the number of bags exactly) but I still clearly remember the rod purchase voucher which was for 70 quintals, both purchased from Shillong. He was giving me these two vouchers to keep but I guided him that 'you might have brought these two vouchers from your college, generally, an individual while constructing a building do not purchase such huge quantities of cement and rod'. He understood my point and taken back the vouchers. Sir, I did not deny the assessee the right to natural justice. If I had the intention to harass him, I would not have guided him, my intention was only quality assessment". (Annexure-I, page-4, article-IV, serial no.5).

" I discussed the cost of construction per sq ft area with the assessee and he knew the cost I was going to take per sq ft . In the appeal effect stage too, there was no valid reason to differ the cost of construction and hence the demand still rose. The attachment was as per provisions of law, not to harass the assessee." (Annexure-II, page-7, article-III, 2nd para).

"That sir, I discussed the method of estimation with the assessee and was given natural justice". (Annexure-II, page-8, article-IV, 4th para)."

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The Inquiry authority, while submitting its report, might not have taken into consideration my representations or might have over sighted these paras or simply ignored it and so he attributed me not allowing opportunity of being heard and the right to natural justice.

In fact, sir, it is my practice to discuss the cost of construction of building with all assesses. In both the Pegus cases, I discussed the cost of construction fairly. In one of the hearings and order sheet noting, the assessee's opinion of cost of construction at Rs. 50/- to 60/- was noted to which I did not agree. To press upon his point the assessee brought the cement purchase voucher of 250 bags and rod purchase voucher of 70 quintals of his college building which year of construction was much before the years of construction

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of his own building and the cost of items were much cheaper.

The assessment order is passed on a fair judgment on all works done, inquiries, discussions, hearing noting etc. and it is a compact culmination where all the works done, inquiries, discussions, hearing noting etc. can not be drafted into. The Inquiry authority merely based on the copy of the assessment order as not allowing the assessee of being heard which is not sufficient reason at all as such as because the Inquiry authority never referred to my above mentioned representations nor he asked me if I allowed the assessee of being heard.

Therefore, sir, it is clear from the above that there was no denial of opportunity of being heard and natural justice to the assessee.

B) Shri Doley blatantly exceeded his power as an assessing officer while passing an order u/s 154 of the I.T. Act.(pages 22, para 6, pages 23, para 6 of Inquiry officer's report dated 07.09.2006 and the same is accepted by the Disciplinary authority, page 15, para 5, lines 6 & 7)

This point was replied by my letter F. No. Per/E-15/2002-2003/314 dated 10th June,2002 which are quoted here in below.

> " That, sir, after the assessment I duly advised the assessee that an assessment order is not final but it can be appealed before the higher authorities. The assessee was very harsh and adamant that even he shouted at my residence saying that you can do all and everything. I don't want to go anywhere for appeal, you must do etc. Thereafter he also filed a rectification petition pointing out some mistakes. On examination, I found some apparent mistakes in the assessment which were not debatable, hence I did the rectification." (Annexure I, page 4, article IV, serial no.6)."
>
> "That sir, rectification proceedings are part of the proceedings for assessment, it can not be treated as separate proceedings, so even at the stage of rectification proceedings, enquiries and gathering of information may be done." (Annexure-I, page 4, article IV, serial no.7)."

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" That sir, I had no intention to exceed my power and also I have never exceeded my power by doing the rectification. If mistake is brought to notice of the Assessing Officer by the assessee, the Assessing Officer can do rectification. In this case, there occurred an apparent mistake in the assessment, if I remember the assessee pointed out that some land was purchased by his father." (Annexure I, page 5, article IV, serial no.9)."

That sir, in this case, rectification u/s 154 was initiated by me as I noticed that the tax computation was wrongly done. There was no way but to issue notice u/s 154 to recompute the tax correctly, hence there was no violation of any laws or rules. The case should be understood in this perspective and in the mean time the assessee also came with a rectification petition pointing out that some land were purchased by his father. As there was already initiation of the proceeding u/s 154 by the Department, I also considered the claim of the assessee. Therefore, sir, there was no misuse of the section 154 but it was rightly initiated by me.

C) Shri Doley dropped the proceedings after issuing the notice u/s 142(1). (page 27, para 2 of Inquire officer's report dated 07.09.2006 and the same is accepted by the Disciplinary authority, page 15, para 6, lines 5, 6 & 7).

This was replied vide my letter F.No, Per/E-15/2002-2003/314 dated 10th June 2002 which is quoted below:

" That sir, I did not misuse the power u/s 142(1). After the survey, I ought to issue the notice as per provision of the law and so issued the notice. The assessee filed a written submission that so far he had no taxable income and during the survey also I found that his volume of business was not so big, so I thought it a fit case to drop further proceedings." (Annexure I, page-6, article V, serial no.3)."

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That sir, the law does not say that after issue of notice u/s 142(1) calling for return of income, the assessee must be compelled to file his return of income and end up in passing of an assessment order. Also there is no law or rule as that after

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issue of notice u/s 142(1), a case can not be dropped. In the instant case, as the assessee applied for not compelling him to file the return of income as he declared to have no taxable income, it was most convenient and logical to drop the proceedings so as to save time and resources of the Department and the assessee both as it was a fit case to drop. Sir, I candidly feel that law should be applied for the convenience with logic for the benefit of the public and public office. Therefore, this dropping of the proceeding should not be treated as lack of devotion to duty but it was for more convenience, with better logic for more devotion to duty.

Reply on the supplementary charge sheet.

Sir, I also beg to cite some instances of the above 2. ii):

1.M/s Gupta Brothers, AY 1994-95.

It is alleged that there was non compliance on the part of the assessee to notices u/s 148 and 142(1). (page 28, para 4 of Inquiry officer's report dated 07.09.2006 and the same is accepted by th Disciplinary authority, page 15, para 7, line 3).

That sir, there was no non compliance in this case. The first or second notices non-compliances can not be termed as non-compliance. The assessee complied to the subsequent notices and filed return and appeared and assessment was passed u/s 143(3).

2. The following four cases:

i. M/s Laxminarayan Agarwalla & sons, AY 1995-96,

ii. Sushil Kumar Agarwalla, AY 1994-95.
iii. Smt Lata Agarwala, AY 1996-97.
iv. Sudhir Dutta, AY 1995-96.

In these four cases it is alleged that there was no compliance to notices u/s 142(1) and 143(2) but not initiated

penalty proceedings.(page 28, para 4 of Inquiry officer's report dated 07.09.2006 and the same is accepted by the Disciplinary authority, page 15, para 7, line 3).

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That sir, these cases were assessed u/s 144 as there was no compliance to notices. I studied other assessment files and I noticed that when there was no compliance to notices, assessments were passed exparte and no other further proceedings noticed in the cases I studied and no vigilance proceedings done on them for not initiating penalty proceedings. As a novice Assessing Officer I thought assessment order passed u/s 144 was sufficient.

3) 'I find that except in one or two cases , no details/information was obtained . Even basic details such as particulars of bank accounts ,particulars of assets and investments , list of debtors and creditors were not obtained. Out of 26 assessments which were examined , atleast 7(seven) cases were disposed off in a single hearing(M/s Loknath Dresses , Malchand Maheswari, Anupama Mazumdar , Pawan Kumar Sarda, Parsram Sarma, Lalita Devi Maheswari and Sukharanjan Dutta).Though Instruction No. 1937 dated 25.03.1996 makes it mandatory for obtaining particulars of assets including name and address of the debtors , bank account , bank deposits etc., Sri Doley made no attempts to collect these details in most cases. I , therefore, find that his submissions are not supported by the records and the allegations are correct.'(page 29, para 3 of Inquiry officer's report dated 07.09.2006 and the same is accepted by the Disciplinary authority , page 16, para 7, lines 1 & 2).

It is alleged that except in one or two cases, no details/information were obtained. In fact I did not go in one or two cases only for details/information but I did go in all the cases for details/information. Particulars of assessee's properties/ assets/ liabilities / other deposits/ debtors/creditors were certainly discussed and looked into in deserving cases, if the assessee had any. But when an assessee even does not have a bank account what details /information can be obtained by the ITO. Most of the cases being small and of simple nature, one or two hearing was sufficient, but in deserving cases, the hearing took place several times (Ex: B.C.Pegu's case). The 7(seven) cases mentioned above were simple cases and one hearing was enough to dispose off the cases. Not only the list of debtors and creditors , even I wrote for confirmations of such transactions and also made cross verifications in deserving cases. Sir, your honour shall agree that the

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scrutiny process cannot be made a lump or something of definite but it varies from case to case. The information which I thought as relevant and material for the concerned case was certainly asked for. I always ask for the bank account in all cases and if the assessee had any bank account I checked it as I deemed proper and necessary. If found nothing wrong , nothing was noted but mostly photocopy of the pass book was retained. The Instruction No.1937 was not mentioned in the earlier papers signed by the Additional Director of Income-tax,(Vig) , East, Calcutta, dated 2.11.2003. Sir, I pray that new points and new material should not be raised. While the Inquiry authority is making allegation that *even basic details such as particulars of bank account, particulars of assets and investments, list of debtors and creditors were not obtained. Shri Doley made no attempt to collect these details* but the prosecutor itself had given evidence in the Supplementary charge papers dated 11.08.2004 that " the A.O. made requisition of bank pass book etc." (21. Sudhir Dutta, AY 1995-96, page 31, para 2), " the A.O. had written letters to various banks for supplying the bank statements of the assessee."(19.Md A. Rahim Talukdar, AY 1995-96, page 27, para 2), " the A.O. verified the dposits with Shri Malchand Maheswari and Shri Durga Prasad Bihani from their respective folder.", (7. Malchand Maheswari, HUF(Sp), AY 1995-96, page 9, para 3), " the AR produced loan confirmation of Bhagirarth Bahetti. The A.O. asked the A.R. to produce the savings bank Pass Book by 20-06-1997 . On 20-06-1997, the particulars were discussed and Bank Pass Books were verified.", (6. Banshilal Lahoty, HUF(Sp), A.Y.1996-97, page 8, para 2), " the A.O. also verified the transactions with sundry creditors and found that those were genuine.", (24. Sukhranjan Dutta, A.Y 1996-97, page 35, para 2), <u>these all prove that the Inquiry officer had simply raised these commissions and omissions in an arbitrary and partisan way and these all, beyond doubt, disprove the allegation of the Inquiry Authority.</u>

Therefore, sir, in the light of the above, the allegations are allegations just for the sake of allegations which are with no valid ground.

4) ' *I find from the examination of record that out of the cases which were inspected, some scrutinized for the first time. Example of such cases are:-*

(i) Loknath Dresses, A.Y 1996-97

(ii) Bansilal Lahoti (HUF) A.Y 1996-97

(iii) Sushil Kumar Agarwalla A.Y.1994-95

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(iv) Md Mobin A.Y 1995-96

Since these were scrutinized for the first time, it was necessary to bring basic information about the assessee such as activity of the assessee, his properties and investment, size of his family (where applicable) ,withdrawals, children education (where applicable) etc. on record. But it was not done. Thus, he failed to do the ground work for carrying out investigation in these cases. In case of Loknath Dresses, both the parties claimed to have constributed stock as their capital along with cash, but no stock inventory was examined. Nor was any question asked on the mode of valuation of closing stock. I therefore, find that the claim of Shri Doley that the capital assets were examined is not supported by records'. (page-30, para 2 of the Inquiry officer's report dated 07.09.2006 and the same is accepted by the Disciplinarey authority, page 16, para 7, lines 1 & 2).

That sir, in the cases where scrutiny was done for the first time, the opening capital was discussed and looked into. What is the opening capital, from where and how the opening capital came , the assessee's past activities were always discussed and looked into. If in the course of discussion, the opening capital is found reasonable, it was accepted. In all the above mentioned cases, the past activities of the assesses , source of the opening capital were discussed and the assesses satisfactorily explained to me. M/s Loknath Dresses, both the partners past activities, their capacity to contribute capitals were discussed and looked into. There was no objectionable to note on records. This case had no books of accounts, so they did not furnish the inventory of closing stock but a fair estimation of the stock (cloth) was disclosed at the market price. While the Inquiry authority alleged that claim of Shri Doley that the capital assets were examined is not supported by records, in contrary, the Supplementary charge papers dated 11.08.2004 itself give proof that I looked into and called for capital explanation. Example:- In the case of M/s. Looknath Dresses, A.Y. 1996-97, I asked the A/R to file the details of capital, balance sheet and income of the members of the AOP. The proof is quoted here:-" in the course of assessment proceedings, the AR of the assessee only filed capital account, balance sheet and computation of income of both the members of the AOP." (4. M/s. Loknath Dresses,AY-1996-97,Page-6, para 1 of the

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Supplementary charge papers dated 11.08.2004).

The proof of size of family/withdrawal discussion quoted: "During the assessment proceedings, the AR of the assessee stated that the HUF consists of three members, Shri Malchand Maheswari, his wife and his son Shri Joy Dayal Bihani.",(7.Malchand Maheswari, HUF(Sp), AY.1995-96, page 9, para 3), " The AO considered the drawing shown by the assessee very low. Therefore, he added Rs.500/-on this account.", (7. Malchand Maheswari,AY.1995-96, page 9, para 4), " the AR stated that the drawings were lower since the assessee was a bachelor and he often depended on relatives." (10. Sushil Kumar Agarwala, AY 1994-95, page 12, para 1). These are all quoted from the Supplementary charge sheet dated 11.08.2004 which contradict the findings of the Inquiry authority and disprove his allegations as whimsical, baseless and arbitrary.

Therefore, sir, I fairly discussed and looked into the opening capital of all newly scrutinised cases, looked into family sizes, requirements of drawings etc., hence the allegation are not proper.

5 *'I find that in large number of cases no books of accounts were maintained . Such cases are listed below:*

Name of the Assessees	*A.Y*
Gupta Brothers	*1994-95*
Loknath Dresses	*1996-97*
Bansilal Lahoti	*1996-97*
Malchand Maheswari	*1995-96*
Inderchand Jain & Co.	*1995-96*
Sushil Kr. Agarwala	*1994-95*
Aunpama Majumdar	*1996-97*
Anil Kr. Srivastava	*1996-97*
Pawan Kr. Sarda	*1996-97*
Izhar Hussain	*1995-96*
Rahim Talukdar	*1995-96*
Sudhir Dutta	*1995-96*
Parsram Sarma	*1996-97*
Lalita Devi Maheswari	*1995-96*

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In such cases the examination of assessee's assets, bank accounts etc. was very much necessary but Sri Doley failed to do so. In some of the cases, the expenditure, even the net profit is estimated but Sri Doley did not ask any question regarding the basis of such estimation.

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Sri Doley's claim that he enquired about the assets of the assessee is not supported by the records.(pages -31, para 3 of Inquiry officer's report dated 07.09.2006 and the same is accepted by the Disciplinary authority, page 16, para 7, lines 2 & 3).

That sir, it is not understood as to on what basis the allegation is made that I did not ask any question regarding the basis of estimation. In such no books of accounts cases, as the figures of sales, purchases, expenditure etc., are not as per books, I always asked for how these figures were arrived at and on what basis. Some assessees replied that on average daily sale basis the sales figure is arrived at, some replied that purely on fair and conscient estimation and some replied that they keep some rough entries etc.. In most of such cases, when asked of their properties, assets, investments, etc., they say no properties , no assets except the small investment in the business by which the small income is earned as in the case of Lalita Devi Maheswari , Parsram Sarma etc.. The Supplementary charge papers dated 11.08.2004 itself contradicts the allegation of the Inquiry Authority. Example:-" As per the order sheet entry, the AO discussed about the estimation of income of the assessee", (10. Sushil Kr. Agarwalla, AY 1994-95, page 12, para 1). In fact, for estimation one can not always attribute to a particular or special basis, ' income furnished on estimation' or ' income assessed on estimation' should be understood in common parlance. Moreover, it is worthy to note that the Hon'ble Supreme Court clearly laid down that in treating an assessment or in other words in estimating an income , the AO can not bring relevant materials and evidences on records to estimate reasonable income of the assessee.

Therefore, sir, these allegations are also made with no ground at all but simply raised arbitrarily.

EXTRA PRAYERS

1. That sir, whatever assessment I made at North Lakhimpur, I tried my best to earn revenue for the Department. As a novice officer I studied different cases and the cases are assessed the way how I assessed but no vigilance proceedings done in such cases. Law should be equal to all.

That sir, in the case of Sudhir Dutta, AY 1995-96, the inspection report dated 02.11.2003 revealed that the case was revised and Shri R.N. Dey, my

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successor ITO , assessed the income below the income declared by the assessee which is so absurd and totally unexpected of but no such vigilance proceeding initiated in this case. If here no vigilance proceeding is required, I pray that my cases are also not requiring any vigilance proceedings. Again it is needless to say that law should be equal to all.

3. That sir, the section 143(3) says - " . . . the Assessing Officer may require on specified points and taking into account all relevant materials which he has gathered, the Assessing Officer shall by an order in writing make an assessment . . " I made the assessment order after taking into account all relevant material which I had gathered. 'Taking into account all relevant material which he gathers' shall certainly vary from one officer to another. Also ' the relevant material ' gathered shall also be different from case to case. Some cases not had much material to be gathered (even not a bank pass book) and required not much of investigation and enquiry and these did not mean that I did the assessment in a perfunctory manner.

4. That sir, the cases were assessed long back now almost 11 years and I can not recall and memorise them all and I was not given the files to see again, so your honour shall surely appreciate my inconveniences and difficulties in replying them. It is pertinent to quote: " When the Department enquiry proceeding was initiated after long back and there was no satisfactory reasons for such delay, the Department proceeding to be quashed and set aside."- State of M. P. v Bani Singh, (1991), 16 ATC, 514.

5. That sir, my case proceedings in all respect was also unduly delayed. To quote : " When the chronological events show that there has been unconscionable delay of 18 months in framing the charges and 4 years was taken for enquiry to be completed, it was held that such delay can not be justified on any count." - Trilochan Singh V Union of India,1986(2), SLR (CAT), 405 (Del). In my case, the vigilance proceeding started in May 1997 and the charges framed on 15.05.2002, i.e. after a gap of 5 years and hearing started on 7.12.2004, i.e. after a gap of 2 ½ years and last and final hearing was on 7.3.2006 and I was given the inquiry findings only on 16.11.2007 which is after a gap of more than 20 months and these undue delays have caused me lots of mental strain and loss of many service benefits. Here it would be worthwhile to quote: " These

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inordinate delays have entailed forefeiture of legitimate benefits in service that would have been available but for the proceedings and even resulted in infringement of the statutory principle of equality of opportunity and conduct of such enquiry was violative of all canons of justice and fair-play."- G.Ramachandran v Senior Superintendent of Post Offices, Madurai (1987), 3 ATC 629 (Mad).

6. That sir, the role of the Inquiry authority is to be impartial and confined to the charges only. To quote from the Disciplinary Proceedings - A Digest, the relevant portion: " the Inquiry Officer should take particular care while giving its findings on the charges to see that no part of the evidence which the accused Government servant was not given an opportunity to refute, examine or rebut has been relied on against him." No new point or issue is to be raised by the Inquiry authority, if he does so, he becomes partial and bias and deviates from justice. Many instances of new points which were not given me to rebut, explain or refute in the Supplementary charge sheet dated 11.08.2004 have been brought into and relied upon. The Inquiry authority, himself in the course of discussion told me that these mistakes were not requiring vigilance proceedings as such and yet he afflicted me the 'lack of devotion to duty' with no valid ground.

7. That sir, the charges framed in Annexure-I forwarded vide letter F. No. Vig-I/BD/CON/CIT/JRT/01-02/344 dated 15.05.2002 were on contravention of the CCS (Conduct) Rules such as 'failed to maintain integrity', 'failed to maintain devotion to duty', 'acted unbecoming of a Government servant' and ' acted in a discourteous manner'. These were based on the complains of Sri P K Pegu, Bikas Das and B C Pegu and all the complainants complains have been proved false and fabricated and the charges in Annexure-I all absolved and still on what ground/charges and on what and whose complain the 'lack of devotion to duty' is attributed to me - I just wonder since in the Supplementary charge sheet dated 11.08.2004, no charges as contravention of CCS(Conduct) Rules such as 'failed to maintain integrity', 'failed to maintain devotion to duty', 'acted unbecoming of a Government servant' and 'acted in a discourteous manner' were framed. In fact, Bikas Das had not filed a single complain either orally or in writing, still his name was shown as a complainant which clearly establishes the sheer misuse of power and position by the framer of the charges which also

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amply exposes the partiality and by force imposition of the vigilance proceeding.

8. That sir, while all the complainants proved bogus and motivated and their complains proved all false and fabricated, and the charges dropped, it is very unjustified to impose the penalty depending only on some flimsy ground while the major and whole complains proved motivated and bogus and charges in Annexure-I all dropped. It is said that while the main tree is felled and dried up, the branches and leaves can not remain alive and green.

9. That sir, I have already suffered lots of agony and dislocations in my personal, family, social life and in official life my promotion to ACIT for the last three years (even not giving me the ad hoc promotion as per rules after two years of my due promotion). In fact, I have already suffered penalty more than a major one for no fault of me and in the totality of the case, imposing of any sorts of penalty is not warranted at all.

10. That sir, I received the Inquiry officer's report only on 16.11.2007 and on the same day a proposal to impose a minor penalty was served by the CIT(Audit), Gauhati, the present Disciplinary authority vide letter F.No. Vig./CIT(audit)/2007-08/594 dated 16.11.2007 against which I was asked to represent. I represented against it vide my letter F.No.Per-1/ITO,Hqrs/CIT(Audit)/Ghy/2007-2008/21 dated 30.11.2007 and I proved it with facts and reasoning that the Inquiry officer's findings were all contradictory and whimsical and arbitrary and as such the proposal to impose a minor penalty was quite unjustified.

11. That sir, the present Disciplinary authority, in his penalty order dated 14.02.2008, referred to my representation dated 30.11.2007 in page 17, para 6 & 7, yet there was no specific material or definite reasoning by which my facts and reasonings were rejected but it simply stated - "After careful consideration of the findings of Enquiry officer, the written submissions of Shri S.B.Doley and the relevant materials on records, I concur with the view of the Department discussed above that Shri S.B.Doley deserves to be awarded minor penalty other than censure"- page 17, para 8, lines 1 to 4.

12. That sir, my junior was promoted to ACIT on 26.10.2005 and I should be given promotion with retrospective effect from October 2005 itself with

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the arrear payment of salary as, time and again, I have been pleading that I was innocent and I have been proved totally innocent and I crave for justice and implore your benevolent authority and generosity to waive the minor penalty imposed on me for which act of your kindness and generosity I shall ever be remaining indebted and grateful to you.

Enclo:1. CIT(Audit), Gauhati's (present Disciplinary authority) penalty order page 17 & 18.

2. CIT, Gauhati-I's (erstwhile Disciplinary authority) self contained report recommending minor penalty, page 14,15 & 16.

3. CVC's order dated 08.05.2007.

With warmest and sincerest regards.

Yours faithfully,

(S. B. Doley)
Income-tax Officer, Hqrs,
Office of the Commissioner of Income-tax,(Audi),
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3. The above mentioned findings and conclusions of the Enquiry Officer had been carefully examined by the Commissioner of Income-tax, Guwahati-I, Guwahati who happened to be the Disciplinary Authority. In his written note dated 04.01.2007 addressed to the Director of Income-tax (Vigilance), East Zone, Kolkata, he had proposed minor penalty (other than censure) although major penalty charge sheets were issued in this case. For better and proper understanding of the case, the reasons recorded by him for recommending minor penalty are reproduced hereunder :

" Self- contained note on the inquiry report in the case of Shri B. Doley, TRO-2, Guwahati"

There were two charge-sheets in this case, both relating to the tenure of Shri B. Doley (the CO) as ITO, North Lakhimpur, Assam during the period 1995-98. While the original charge-sheet had been issued on the basis of certain complaints on 15.05.2002, the supplementary charge-sheet was issued on 11.08.2004 on the basis of vigilance inspection of some assessments made by him. The IO took up both the two charge-sheets together and submitted a consolidated report.

2. ***Copies of the charge-sheets, inquiry report as well as the inquiry records have been separately furnished. As such, the gist of each charge together with IO's findings thereon is briefly stated in the present report. The original charge-sheet is being taken up first.***

3. ***As far as the first article of charge is concerned, the imputations of misconduct are based on the allegations made by some assesses as well as by the Chamber of Commerce and Tax Bar Association. The IO has not discussed about the allegations of the specific assesses while examining this article, for he has dealt with their allegations in depth while examining the other articles were the same charges have been repeated. The other witness were examined/ cross-examined in course of the oral hearings. The allegations are mostly about harassments, i.e. delay in issuing refunds, calling for irrelevant particulars of assets, conducting unlawful surveys, issuing blanket exemption certificates in respect of TDS, making scrutiny assessments with minor additions, investments in house property, etc. However, neither Shri Inder Chand Jain, erstwhile Secretary, Chamber of Commerce, North Lakhimur nor Shri N. K. Sharma, erstwhile Secretary, Tax Bar Associatios, North Lakhimpur could cite any specific instance corroborating the allegations, when they were examined as withnesses. Moreover, both of them stated that personally they had faced no difficulties in their dealings with Shri Doley. I, therefore, agree with the IO that the complaints were general in nature and were not substantiated.***

4. ***As regards the second article of charge that bribe was demanded by Shri Doley from Shri P. K. Pegu and Shri B. C. Pegu, the IO has observed that***

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the same is based on the allegations of the complainants and there was no evidence. Shri P. K. Pegu stated that the demand was made through one Shri Chikon Doley. The nexus between Shri Chikon Doley and the CO is not established. Moreover, it is seen from the examination and cross-examination that Shri Chikon Doley was close associate of the complainant. The complainant also admitted that he had personal enmity with the CO in connection with his marriage. Similarly, Shri B. C. Pegu, who is related to the CO by marriage, stated that the bribe was demanded through his wife. He also stated that the bribe was paid to Shri Doley's wife when Shri Doley was not around. These are words of the mouth and unverifiable. The direct involvement of Shri Doley is not established. Moreover, due allowance has to be given to personal hostility. Hence, I do not find any reasons to disagree with the IO that the charges are not proved.

5. *As regards the third and fourth articles of charge that Shri Doley caused unlawful surveys to be made in the residential premises of Shri P.K. Pegu and Shri B. C. Pegu, made high –pitched assessments and attached the salaries for recovery of the outstanding taxes, the IO has held that in denying the assesses opportunities of being heard Shri Doley exhibited lack of devotion to duty. He also exceeded his powers be causing enquiries while disposing of a petition u/s. 154, which against amounted to lack of devotion to duty. The other elements of the charge were held as not proved. I agree with the IO that taking measurement of a house for the limited purpose of estimating the cost of construction without causing any violation of privacy cannot be treated as a case of excess. Similarly, taking recourse to recovery measures as per law cannot be faulted even when the assessment was challenged in the appellate forum. I, therefore, agree with the IO that the CO was guilty of lack of devotion to duty, but the other charges including lace of integrity are not proved.*

6. *As regards the fifth article of charge that Shri Doley conducted a survey in the shop of Shri Bikash Das with vindictive intention for not conceding to a price bargain, the IO has noted that Shri Das actually conceded to the price bargain and so Shri Doley had no reason to be vindictive. The survey was otherwise not unlawful either. He, however, observed that dropping of the proceedings after having issued a notice u/s 142(1) was a mistake on Shri Doley's part, amounting to lack of devotion to duty. The IO has held that the CO was not guilty of other charges, but in my view the whole matter of bargaining and the subsequent survey was in bad taste and speaks of behaviour unbecoming of a Government servant. However, there is no material to prove that the exercise was prompted by lack of integrity.*

7. *In the supplementary charge-sheet several inadequacies were pointed out in respect of scrutiny assessments made by the CO in the cases of a number of assesses. He did not initiate penalty proceedings in cases of non- compliance*

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by the assesses in terms of notices. He failed to collect basic details in most of the cases including the first year cases. He failed to examine the basis of expenditure in no- accounts cases. He even did not examine the available details in some cases. The IO observed that the charges of lack of integrity and conduct unbecoming of a Government servant were not proved in the circumstances of the cases. He was, however, of the opinion that Shri Doley had completed the assessments in a perfunctory manner without making any examination and investigation. Thus, only the charge of lack of devotion to duty, and no other charge, was proved against him.

8. *While agreeing with the findings of the IO, I feel that the shortcomings are basically the out come of ignorance and incompetence. Although the CO was promoted as an ITO in 1995 and the impugned assessments were made during the years 1997 and 1998, it is obvious that he did not grow during these years. He was posted in North Lakhimpur, which is a single-ITO charge, and his immediately supervising officer was stationed in Guwahati, about 500km away. So, it was not possible for him to seek guidance from his superior or to consult a colleague even if he was in doubt. Be that as it may, the shortcomings are too many to be grossed over. Failure to grow or to learn is also a dereliction of duty.*

9. *On the basis of the findings of the IO in respect of both the charge-sheets, with which I generally agree, the CO definitely deserves some punishment. But penalty has to be commensurate with the nature of the offence. Since lack of integrity has not been proved in respect of any article of charge discussed above, the case in my view does not warrant a major penalty. Any of the minor penalties other that censure should meet the ends of justice.*

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4. In this case, the advice of CVC was sought and obtained. In its O.M. 98/IIX/009-57705 dated 28.05.2007 addressed to DIT (Vigilance) East :Kolkata, the CVC had conveyed its concurrence with the recommendation of the Department and had advised imposition of minor penalty other than censure on Shri B. Doley, ITO.

5. In order to proceed with the case, notice under Rule 15(2) of the CCS(CCA) Rule, 1965 was issued to the Charged Officer (CO) vide F. No. Vig./CIT(Audit)/2007-08/594 dated 16-11-07 and copies of Enquiry Report dated 07-09-2006 and CVC's advice dated 28.05.2007 were furnished to him. The notice also mentioned the proposal to impose minor penalty under Rule 15(3) read with Rule 16(1) of the CCS(CCA) Rules and the request for his comments or representation in the matter.

6. In response to the above notice dated 16-11-2007, Shri S. B. Doley, ITO has submitted a detailed representation running into 18 pages vide his letter dated 30.11.2007. For the sake of brevity and convenience, the comments of the CO have not been reproduced here. In his representation, he has reiterated the points and arguments which he had submitted while replying to the main charge-sheets in which he had denied the charges.

7. As far as the supplementary charge- sheets are concerned, he has further submitted that the allegations contained in the charge-sheets are incorrect and based on flimsy grounds or the lapses pointed out in the charge-sheets can not attract vigilance action.

8. After careful consideration of the findings and conclusions of the Enquiry Officer, the written submissions of Shri S. B. Doley and the relevant materials on records, I concur with the view of the Department discussed above that Shri S. B. Doley deserves to be awarded minor penalty other than censure. As mentioned above, the charge-sheets regarding to lack of integrity have not been proved. The charge-sheet regarding Shri S. B. Doley acting in a manner unbecoming of a Govt. servant has not been fully established. However, the charge of lack of devotion to duty against Shri S. B. Doley has been proved thereby violating the provisions of Rule 3(1)(ii) of Central Civil Services (Conduct) Rules,1964 relating to conduct of every Govt. Servant who shall at all times maintain devotion to duty. While imposing the penalty on Shri S. B. Doley, one may, however, keep in mind the nature and gravity of the mistakes committed and the considerable time taken for completing the penalty proceedings which may have affected the career of the Charged Officer.

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9. Thus, taking into account of the above facts and circumstances of the case, I am of the view that this is the case where minor penalty of withholding increment of pay for a period of one year without cumulative effect and not adversely affecting his pension will meet the ends of justice. Accordingly, it is hereby ordered that the increment of pay of Shri S. B. Doley will be withheld for a period of one year from the date of next increment of pay, i.e. Ist April 2008 provided in Rule 11(1) of CCS (CCA) Rules,1965.

sd/-
(K. T. ZIMIK)

Disciplinary Authority
Commissioner of Income-tax (Audit)
Guwahati

Memo No. Vig./CIT(Audit)/GHY/2007-08/ 894-896 Dated : 14-02-2008

Copy to :

1. The Chief Commissioner of Income-tax, Guwahati with reference to the letter of the Dy. Commissioner of Income-tax (Vigilance) dated F. No. DP-45/BD/VG/CC/GHY/1589 dated 11-10-2007 and earlier correspondences on the subject.

2. The Director of Income-tax (Vigilance) East: Kolkata, P-7, Chowringhee Square, KOLKATA – 700069 for information and necessary action.

3. Shri S. B. Doley (Charged Officer), Income-tax Officer, (Hqrs) -Audit and DDO, Guwahati for information.

(K. T. ZIMIK)

Disciplinary Authority
Commissioner of Income-tax (Audit)
Guwahati

के. टी. जिमीक, भा.रा.से.
K. T. ZIMIK, I.R.S.
आयकर आयुक्त (लेखा परीक्षा)
COMMISSIONER OF INCOME-TAX (AUDIT)

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Att. Sh. Vinod Khurana
DIT (Vig)

18 MAY 2007

OFFICE MEMORANDUM

Sub: Case against Shri B Doley, ITO.

*****

CBDT may refer to their U.O. Note No. DIT(V)/COM/3/06-07/179 dated 08/05/2007 on the subject cited above.

2. The Commission has perused the inquiry report, alongwith its relevant records, and the comments of the administrative authorities thereon. It concurs in the recommendation of the Department and would advise imposition of minor penalty other than censure on Shri B Doley, ITO.

3. Receipt of the Commission's OM may be acknowledged. Action taken in the matter may also be intimated.

14
18/5

(Ashok Kumar)
Director
T. No. 24693583

C.B.D.T.,
(Ms. Sunita Kalia, CVO),
Ist Floor, Dyal Singh Library Building,
1, Deen Dayal Upadhyay Marg,
New Delhi.

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ANNEXURE-- 18

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI
O.A.No. 37 of 2009

The 25th day of May 2009

Present: The Hon'ble Mr. Manoranjan Mohanty, Vice-Chairman
The Hon'ble Mr. N.D. Dayal, Member Administrative

Syed Basit Doley alias Budheswar Doley,
Son of Late Cheniram Doley,
Income-Tax Officer, [Headquarters],
Office of the Commissioner Income-Tax
[Audit], AYAKAR BHAWAN, G.S. Road,
Guwahati- 781 005

Applicant

By Advocates Mr. Adil Ahmed and Mr. N.Ahmed

Versus

1. The Union of India,
through the secretary
to the Government of India,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi- 110 001

2. The Chief Commissioner
of Income-Tax,
AYAKAR BHAWAN, G.S. Road,
Guwahati- 781 005.

3. The Commissioner of Income-Tax[Audit]
Gauhati-1, AYAKAR BHAWAN,
G.S. Road,
Guwahati- 781 05

Respondents

By Advocate Mrs Manjula Das, Addl. CGSC

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O.A.No.37/2009
ORAL ORDER.
25.05.2009

Manoranjan Mohanty, Vice-Chairman:-

Applicant, who joined the Government of India Services as an Inspector of Income-Tax during 1989, was promoted as an Income-Tax Officer on 16.12.1994. On receipt of a D.O.letter dated 14/15.05.1997 from Additional Commissioner of Income-Tax Range-I/Guwahati [in which he was charged with allegations of

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corruption]: the Applicant placed a reply on 26.05.1997. Additional Commissioner of Income-Tax/Dibrugarh also asked the Applicant, on 06.01.1999, to put up a reply on a complaint dated 10.09.1998. Applicant submitted his reply on 11/12.01.1999. Commissioner of Income-Tax/Jorhat, by his communication dated 15.05.2002, proposed to hold an enquiry against the Applicant under Rule 14 of CCS [CCA] Rules, 1965. Applicant placed his reply thereto on 10.06.2002. Commissioner of Income-Tax/Jorhat issued a letter, on 11.12.2003, intimating the Applicant about starting of a subsidiary proceeding/Vigilance Inspection. Applicant submitted a reply thereto on 31.12.2003/02.01.2004. Commissioner of Income-Tax/Guwahati-I sent Vigilance Inspection papers to the Applicant on 11.08.2004 and Applicant submitted his reply on 16.08.2004. Applicant, on 02.11.2005, submitted a representation challenging the order [of promotion of ITOs to the rank of Assistant Commissioner of Income-Tax] dated 28.10.2005 of Additional Commissioner of Income-Tax/Hqrs.. On 08/02, 10/02 & 07/03/2006 the I.O. conducted enquiry and Enquiry Report dated 07.09.2006 was supplied to the Applicant, on 16.11.2007, along with CVC's Advice dated 28.05.2007. Applicant submitted his representation on 30.11.2007 and a minor penalty was imposed on 14.02.2008. Applicant preferred an Appeal on 27.02.2008. Thereafter, on 16.02.2009, the Applicant has approached this Tribunal with the present Original Application filed under Section 19 of the Administrative Tribunals Act, 1985; wherein he has made the following prayers;-

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"8.1 To set aside and quash the impugned Memo No.Vig./CIT(Audit)/GHY/2007-08/894-896 dated 14.02.2008 passed by the Disciplinary Authority cum Commissioner of Income Tax (Audit), Guwahati whereby minor penalty has been imposed on the Applicant by withholding his increment of pay for a period of one year without cumulative effect and not adversely affecting pension under Rule 11 [1] of CCS [CCA] Rules, 1965.

8.2 To direct the Respondents to give the Applicant all consequential service benefits including his promotion to the post of Assistant Commissioner of Income-Tax from the date of his juniors were promoted.

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8.3 Pass such other order [s] as may be deemed fit and proper in the facts and circumstances of the case.

8.4 Pay the cost of the application."

He has also made the following interim prayers;-

The Applicant most humbly prayed before this Hon'ble Tribunal that as an interim measure the Respondents may be directed to take proper steps for disposal of Applicant Appeal dated 27.02.2008 under Rule 24 of CCS[CCA] Rules, 1965 which is pending before the Appellate Authority cum the Chief Commissioner of Income-Tax, Guwahati. This Hon'ble Tribunal may be pleased to pass any appropriate interim order [s] as may deem fit and proper."

Central Administrative Tribunal Guwahati

2. By way of filing a written statement [on 24.04.2009] on behalf of the Respondents, the Joint Commissioner [Vig./Hqrs] of the Office of the CCIT/Guwahati has stated as under;-

"3.1 That the applicant is presently working as the Income Tax Officer in the Office of the Commissioner of Income Tax (Audit), Guwahati. While the applicant was serving as the ITO, North Lakhimpur, during the period of 1996-1998 a lot of Written Complaints were lodged from different quarters which were received by the Respondent Authority. Thereafter more and more complaints were reaching the higher Authorities and to the Additional Commissioner of Income Tax, Guwahati. Accordingly, a Vigilance File was opened against the applicant. Thereafter the applicant was Charged of Corruption and a Disciplinary Proceeding was initiated against him vide Memorandum dated 15.05.02 on Articles of Charges. The Charges amongst others was of Imputation of Misconduct or Misbehavior and the Charge of Corruption. The applicant filed his reply dated 10.06.02 to the charges contained in the above Memorandum. Thereafter, an enquiry was held and the Vigilance Inspection was done. Further, the applicant was asked vide notice dated 11.12.03 as to show cause why necessary action would

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not be taken in respect of different lapses. That the applicant filed his reply dated 31.12.03/02.01.04 against the Vigilance Inspection reports.

3.2 That the Respondent Nop.3 issued a Memorandum dated 11.08.04 whereby proposed to hold an enquiry against the applicant under Rule 14 of CCS [Classification, Control and Appeal] Rules,1965 into the Supplementary Charges of Imputation of Misconduct or Misbehavior and Charge of Corruption. The applicant was informed that the enquiry would be made only in respect of that Articles of Charges which is not admitted by the applicant. Further, he was asked to file his Written Statement of defence into the charges framed against him. The applicant was also informed as appears in paragraph 6 of the Memorandum that the said Memorandum contained the Supplementary Charge Sheet in continuation of earlier Charge Sheet dated 15.05.02.

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3.3 That the applicant submitted his Reply dated 16.08.04 to the above Memorandum of Supplementary Charges.

3.4 That at the relevant time of consideration of promotion of Group 'B' Officers to the Grade of Assistant Commissioner of Income Tax, the Disciplinary Proceeding into the Charge Sheets dated 15.05.02 and 11.08.04 was pending against the applicant.

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3.5 That after enquiry into the Proceedings and on the basis of findings of the Enquiry Officer in respect of both the Charge Sheets the Disciplinary Authority issued an order dated 14.02.08 by imposing minor penalty of withholding increment off pay for a period of one year from the date of 1st April 2008 without cumulative effect and not adversely affecting his pension.

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3.6 That the applicant thereafter preferred an appeal dated 27.02.08 against the said order dated 14.02.08 before the Appellate Authority. The Appellate Authority after examining the appeal filed by the applicant forwarded to the Director of Income Tax [Vig.], East, Kolkatta for his comments to dispose of the appeal at an

early date and accordingly the papers were sent to the Director of Income Tax [Vig.], East, Kolkatta on 23.12.08. In the meantime the Chief Commissioner of Income Tax [Appellate Authority] retired on superannuation on 31.12.08 and no regular Chief Commissioner of Income Tax [CCA] was posted in North East Region till 07.04.09 and the new Chief Commissioner of Income Tax was appointed on promotion and joined his service on 08.04.09. Hence, although the matter is in process the appeal preferred by the applicant has not yet been disposed of."

3. Heard Mr. N. Ahmed, learned Counsel appearing for the Applicant, and Mrs. Manjula Das, learned additional Standing Counsel representing the Respondents and perused the materials placed on record.

4. Since it is the positive case of both parties that the Appeal of the Applicant is still pending with the Appellate Authority, without any waste of time, this case is hereby disposed of by remitting the matter to the Respondents/the Appellate Authority with direction to take up the Appeal of the Applicant; consider the same and pass orders, as due and admissible under the Rules, within a period of 60 days from the date of receipt of a copy of this order.

5. With the above observations and directions, this case stands disposed of.

6. Send copies of this order to the Applicant and the Respondents, by Regd.Post, in the address given in the O.A.

7. Free copies of this order be supplied to the Advocates of both parties.

Sd/-
M.R.Mohanty
Vice-Chairman

Sd/-
N.D.Dayal
Member(A)

TRUE COPY
प्रतिलिपि

अनुभाग अधिकारी
Section Officer (Judl)
Central Administrative Tribunal
गुवाहाटी न्यायपीठ
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ANNEXURE-- 19

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OFFICE OF THE
COMMISSIONER OF INCOME-TAX (AUDIT), 3RD FLOOR,
CHRISTIAN BASTI, GUWAHATI-781005

F. No. Vig./CIT(Audit)/Ghy/2007-08/661 Dated : 16.10.2008

To
The Chief Commissioner of Income-tax,
Guwahati.

Sir

Sub :- Appeal under Rule 23(ii) of the CCS(CCA) Rules,1965 filed by Shri S. B. Doley, ITO- Regarding.

Kindly refer to your office letter No. DP-45/BD/VIG/CC/GHY/1972 dated 29.09.2008 on the above subject.

In this connection, I wish to state that the points raised in this appeal by the petitioner (the Charged Officer) are similar and identical to the ones he had submitted before the Enquiry Officer and the Disciplinary Authority. In the present petition, the applicant has not produced any new materials. The penalty order dated 14.02.2008 was passed by the undersigned after considering the Enquiry Report, the submissions of the Charged Officer and the relevant materials on record. Based on such materials on record, I have held that

(1) the charge –sheet regarding the lack integrity have not been proved.

(2) The charge-sheet regarding the Charged Officer having acted in a manner unbecoming of a Govt. servant has not been fully established.

(3) The charge of lack of devotion to duty against the Charged Officer has been proved.

If we carefully examine the findings of the Inquiry Officer (IO), the self-contained note of the then Disciplinary Authority (quoted in the penalty order) and the relevant materials on record, it will be observed that only the charge of lack of devotion to duty, and no other charge, was proved against the Charged Officer. Since lack of integrity was not proved in respect of any article of charge, the charged Officer was penalized by imposing a minor penalty of withholding increment of pay for a period of one year as per Rule 11(iv) of the CCS(CCA) Rules, 1965 (wrongly typed as Rule 11(1) in the penalty order).

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It may be further observed that the findings regarding to lack of devotion to duty against the CO were mostly based on Vigilance Inspection Reports on the assessments made by him. The mistakes committed by him appear to be on account of lack of experience and ignorance on his part while he was posted in a isolated single – *ITO* charge of North Lakhimpur.

Thus, considering the circumstances of the case and the conduct of the officer during the period under my charge, the petition of the applicant may be considered favourably and pass necessary order as deemed fit. I am enclosing the relevant records (three volumes) for your kind perusal and necessary action.

Yours faithfully,

(K. T. Zimik)
Commissioner of Income-tax (Audit), Guwahati

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ANNEXURE--20

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ANNEXURE-I

OFFICE OF THE CHIEF COMMISSIONER OF INCOME TAX (CCA), GUWAHATI 1ST FLOOR, AAYAKAR BHAWAN, G.S. ROAD, GUWAHATI - 781 005.

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Name & Designation of the officer	:	Shri. Syed Basit Doley, ITO (alias Shri Budheswar Doley)
File No.	:	DP-45/BD/VIG./CC/GHY/2008-09
Order under CCS (CCA), Rules	:	27 (2) (i) of CCS (CCA), Rules, 1965.
Date of Order	:	28th July, 2009

Shri Syed Basit Doley, alias Shri Budheswar Doley, (here-in-after referred to as Shri S. B. Doley), ITO has filed this appeal under Rule 24 of the CCS (CCA) Rules, 1965 against the order of the Disciplinary Authority, i.e. Commissioner of Income-Tax (Audit), Guwahati imposing on him minor penalty dated 14.02.2008 under Rule 11(iv) of the CCS (CCA) Rules, 1965. In the minor penalty order, his increment of pay for a period of 1 year was withheld without cumulative effect not adversely affecting his pension under Rule 11(iv) of the said Rule.

2. Aggrieved with the delay in the disposal of his appeal, Shri S. B. Doley has approached the Hon'ble CAT, Gauhati Bench, Guwahati who vide order O.M. No. 37/2009 dated 25-05-2009 directed the Appellate Authority (CCIT, Guwahati) to dispose of the Appeal within 60 days from the date of receipt of the order. The aforesaid order of the Hon'ble CAT was received in this office on 03-06-2009.

2.1 The hearing of the appeal was fixed on 25.05.2009. Shri S. B. Doley requested to adjourn the hearing vide his letter dated 21.05.2009 wherein he has submitted that he has been summoned as witness in a case on 25.05.2009 by the Special Judge, CBI, Guwahati. Accordingly, the case was posted for hearing on 27.05.2009. Shri. S. B. Doley appeared on 27.05.2009; however, the case was further adjourned as the fate of the Order dated 25.05.2009 of the Hon'ble CAT was not yet known to this office. Subsequently, the case was refixed for hearing on 11.06.2009 after receipt of the Hon'ble CAT, Guwahati Bench's interim order dated 25.05.2009.

2.2 On 11.06.2009 Shri. S. B. Doley appeared and filed written submissions. He submitted that he has no further submissions to make and wants to re-iterate what has been stated in his appeal papers. The case was adjourned to 12.06.2009. On 12.06.2009, Shri. S. B. Doley appeared and the case was further discussed. He was heard.

3. Briefly stated, Shri S.B. Doley, was posted as the Income tax officer, North Lakhimpur during the period 1996-98. During his tenure as ITO, North Lakhimpur, certain complaints were received by the Higher Authorities against Shri S.B. Doley that he exceeded and abused his official position to harass assessees. After preliminary verification of the facts and the case records, charge sheet was issued on 15.05.2002 against Shri S. B. Doley for imposition of major penalty on the ground of his alleged failure to maintain absolute integrity, failure to maintain devotion to duty, for acting in a manner which is unbecoming of a Government servant and acting in a discourteous manner while performing official duties and thereby contravening rules 3(1)(i), 3(1)(ii), 3(1)(iii) and 3-A(a) of the CCS (Conduct) Rules,1964 respectively.

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3.1 During the pendency of the enquiry relating to the five Articles of Charges mentioned in the Charge sheet, a supplementary charge sheet was issued against Shri S. B. Doley, ITO on 11.08.2004. The supplementary charge sheet was on the basis of vigilance inspection of some of the assessments made by Shri S.B. Doley during his tenure as ITO, North Lakhimpur. The Article of charge in this charge sheet was that Shri S.B. Doley while framing the assessments under section 143(3) or 144 of the I.T.Act,1961 failed to conduct proper enquiry and investigation as detailed in the statement of imputation of article of charges and therefore, by these acts of omission and commission as pointed out in the statement of imputation, failed to maintain absolute integrity and also showed lack of devotion to duty and exhibited conduct unbecoming of a Govt. servant in terms of Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules ,1964 respectively.

3.2 The Disciplinary Authority (Commissioner of Income-tax, Audit, Guwahati) considered the report of the Reporting Officer, self-contained note of the then Disciplinary Authority (Commissioner of Income-tax, Guwahati-1, Guwahati) and also the submissions of the Charged Officer and found that none except the charge of failure to maintain devotion to duty has been proved against the Charged Officer. The Disciplinary Authority (DA) also took into consideration the advice of the Central Vigilance Commission (CVC) and after careful consideration of all facts and circumstances of the case imposed the aforesaid minor penalty.

4. Shri S. B. Doley, the charged officer, was found guilty of failure to maintain devotion to duty in respect of the charges mentioned in Articles III, IV & V of the Charges and supplementary charges which are briefly mentioned below:

4.1 The third and fourth Articles of Charges are that Shri S. B. Doley caused unlawful survey in the residential premises of Shri P. K. Pegu and Shri B. C. Pegu, made high-pitched assessment and attached the salaries for recovery of the outstanding tax demands, denied the assesses opportunities of being heard and exceeded his power by causing enquiries while disposing of petition u/s 154.

4.2 The fifth Article of Charge was that Shri S.B. Doley dropped the proceeding after issuing notice u/s 142(1) in the case of Shri Bikash Das.

4.3 The supplementary charges pointed out several inadequacies in a number of scrutiny assessment made by the Charged Officer in the cases of a number of assesses. It was also stated that he did not initiate penalty proceeding for the assessees' non-compliance with the notices, failed to collect basic details in most of the cases including cases where the first scrutiny assessment were made by him.

5. In the written submissions, Shri S.B. Doley has stated inter-alia that:

5.1 Because of his honest, straightforward and uncompromising attitude, some false and motivated charges were framed against him and minor penalty was imposed even after the main charges were completely dropped due to lack of evidence against him.

5.2 The minor penalty has been thrust upon him forcibly on some flimsy grounds without considering his reply and based on some commissions and omissions in an arbitrary and partisan manner which are even contradicted by the supplementary charge sheet dated 11-08-2004.

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5.3 Against the charge that substantial addition was made without affording the assessee the very basic right of opportunity of being heard and the right to natural justice, he has contented that the additions were made considering the localities, nature of construction, year of construction etc. He has also stated that it is his practice to discuss the cost of construction of building with all assessees and that the assessment order was passed on a fair judgment on all works done, inquiries, discussions, hearing notings etc.

5.4 Against the charge that he exceeded his power as an AO while passing an order u/s 154 of the I.T.Act, he has relied on his submission to the original charge sheet dated 10-06-2002 *in toto.* He has submitted that the rectification u/s 154 was initiated by him as he noticed that the tax computation was wrongly done and in the meantime the assessee submitted that some land was also purchased by his father and that this claim was also considered by him in view of the pending proceeding u/s 154. He therefore states that there was no misuse of section 154 and that it was rightly initiated by him. He has further stated that "rectification proceedings are part of the proceedings for assessment, it cannot be treated as separate proceedings, so even at the stage of rectification proceedings, enquiries and gathering of information may be done".

5.5 As regards the charge that he dropped proceedings after issuing notice u/s 142(1), he has stated that this was replied vide his submission to the original charge sheet vide his reply dated 10-06-2002. He has submitted that the law does not say that after issue of notice u/s 142(1) calling for the return of income, the assessee must be compelled to file his return of income and end up in passing of an assessment order and that there is no law or rule to hold that after issue of notice u/s 142(1), a case cannot be dropped. That in the instant case, the proceedings were dropped as the assessee requested for not compelling him to file the return of income as he declared to have no taxable income and in order to save time and resources of the department as well as the assessee.

5.6 As regards the charge that there was non-compliance with notices u/s 148/142(1) in the case of M/s Gupta Brothers for A.Y. 1994-95, he has submitted that the assessee subsequently filed return and appeared and assessment was passed u/s 143(3). He is of the view that the first / second non-compliance with the notice cannot be termed as non-compliance as the subsequent notices were complied with.

5.7 As regards the charge that no penalty proceedings were initiated against four assessees who did not comply with the notices u/s 142(1) and 143(2) of the I.T.Act, he has stated that these cases were assessed u/s 144 as there was no compliance and after studying other files where *ex-parte* assessments were made without initiating penal proceedings, he thought his actions in completing assessment u/s 144 were sufficient.

5.8 As regards the charge that except in one or two cases, no details/information such as bank accounts, particulars of assets and investments, list of debtors and creditors were obtained and that out of 26 cases examined, 7 cases were disposed of in a single hearing and in circumvention of instruction No.1937 dated 25-03-1996, made no efforts to collect these details in most of the cases, he has submitted that the 7 cases were simple cases and one hearing was enough to dispose of the cases and that the information which he thought were relevant and material for the concerned case was certainly asked and called for. He has also stated that the instruction No.1937 was not mentioned in the earlier papers signed by the Addl. DIT (Vig), East, Kolkata dated

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02-11-2003 and therefore, new material should not be raised. He has also quoted from the supplementary charge papers dated 11-08-2004 to prove that various particulars were called for and that the inquiry officer has simply raised these commissions and omissions in an arbitrary and partisan way.

5.9 As regards the charge that even in cases which were being scrutinized for the first time, he did not collect basic information about the assessee such as activity of the assessee, his properties and investments, size of his family, withdrawals, children's education etc., on record, Shri S.B. Doley has again quoted extensively from the supplementary charge papers dated 11-08-2004 to prove that particulars were called for and placed on records and therefore the supplementary charge sheet dated 11-08-2004 contradicts the findings of the inquiry authority.

5.10 As regards the charge that in many cases where no books of accounts were maintained, he failed to examine the assessee's assets, bank accounts etc., and also did not inquire into the basis of estimation of income and expenditure, Shri S.B. Doley has submitted that in such cases, he has always asked the basis for arriving at the figures of sale, purchase, expenditure etc., He has also stated that the supplementary charge papers dated 11-08-2004 itself contradicts the allegation of the inquiry authority. He goes on to add that the 'Hon'ble Supreme Court clearly laid down that in treating an assessment or in other words in estimating an income, the AO cannot bring relevant materials and evidence on records to estimate reasonable income of the assessee'. No citation of the case law, if any, has, however, been given in support of this statement!

6. I have carefully gone through the order of the Disciplinary Authority as well as the submissions of the Charged Officer Shri S.B. Doley.

6.1 Regarding Articles III & IV of the Charge sheet dated 15.05.2002, where the Charged Officer has been held guilty of contravening provisions of Rule 3(1)(ii) of the CCS (Conduct) Rules,1964, on perusal of the assessment order dated 02.12.96 for the assessment year 1994-95 in the case of Shri Bhaben Chandra Pegu, it is seen that Shri. B. C. Pegu derives income from salary and house property. The assessment order discusses survey report by the Inspector submitted on 06-06-95. In the order u/s 143 (3) / 154 dated 01.07.97 it was stated that the Inspector was authorized to take measurement of the building. The authorization for survey tantamounts to abuse of power as the provisions of Section 133A & 133B do not authorize such action in places other than places where business or profession is carried on. Substantial additions of Rs.6, 68,000/- and Rs.2, 00,000/- (later reduced to Rs.1, 50,000/-) has been made on estimate on investment in building without proper verification. It is also stated that the construction was made between 1969 and 1993 but the addition was made in the assessment year 1994-95. In the order u/s 143(3) / 154, assessment cannot be made in respect of income earned / investment made, relating to so many years back. Another addition of Rs.1, 97,500/- was also made as estimated investment in land. In the order u/s 154, he had authorized his Inspector to verify rent agreement from the Branch Manager, UBI, Dhemaji (tenant of the assessee), which is legally incorrect as verification of rent agreement pre-supposes that there was no mistake apparent from records within the meaning of section 154. His contention that even in the rectification proceedings, enquiries and gathering of information may be done is outside the purview of the provision of the Income-Tax Act, 1961.

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6.2 For the purpose of valuation of the cost of construction of the building of the assessee, Shri S.B. Doley should have obtained the Valuer's report instead of making estimated valuation of the construction himself, he being not a technical person in this

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line. Based on the Valuer's report and past assessment records of the assessee, additions could have been made, which would have better chance to stand the test of appeals. Besides, before passing the final order, he should have communicated to the assessee his proposed additions on account of the cost of construction and should have given opportunity of being heard to the assessee, Shri. S. B. Doley did not do so. Therefore, he has denied the assessee the basic opportunity of being heard on the issue and the right to natural justice. Due to non-application of mind, Shri. S. B. Doley, has caused harassment to the assessee in the course of survey operation and in the assessment proceedings u/s 143(3) / 154. Besides, I also concur with the findings of the I.O. and the D.A. that Shri. S. B. Doley caused unlawful survey in the residential premises of Shri. P. K. Pegu and made high pitched assessment, without giving the assessee the opportunity of being heard which exhibited lack of devotion to duty on the part of the Charged Officer, Shri S.B. Doley.

6.3 Regarding Article V of the Charge sheet dated 15.05.2002, in my view, Shri. S.B. Doley should not have conducted survey at all without ascertaining first Shri Bikash Das' volume of business. Moreover, it transpires from the records that no further enquiry was carried out in respect of the assessee's taxable income during the year, assessee's movable and immovable assets, style of living, residence, family, bank accounts etc. Having initiated the proceedings u/s 142(1), Shri S. B. Doley should not have dropped the proceedings without bringing it to its logical conclusion. Closing the proceedings in undue haste tantamounts to lack of devotion to duty.

6.4 The supplementary charge sheet dated 11.08.2004 contains one Article of charge which is based on vigilance inspection of assessments which were completed by Shri S.B. Doley as Income tax Officer, North Lakhimpur. From amongst the cases cited in the supplementary charge sheet, Shri S.B. Doley chose to pick up a few cases only to refute the charge of lack of devotion of duty. For the sake of brevity, these are discussed here in a nutshell.

6.5 Regarding the Charge that except in one or two cases, no details / information were obtained, Shri S. B. Doley submitted in the appeal proceedings that he called for particulars in deserving cases. He has not cited any particular case to prove his point. Rather he argues that when an assessee does not have any bank account, there is no necessity to call for other particulars. The defense put forward by Shri S. B. Doley in this respect is not acceptable as it is found to be a general comment without any substance. Besides, the arguments put forward also amount to discriminatory treatment given to assessees who maintained bank accounts, apart from the fact that in scrutiny assessment, it is not only the bank account that needs verification. I find no merit in his submission.

6.6 In respect of cases where assessments were made u/s 144 and the allegation is that Shri S.B. Doley failed to initiate penalty proceeding for non-compliance with notices issued by the ITO, he argued that he had studied some other assessments made u/s 144 by other officers where also penalty proceeding were not initiated. He however, has not cited any specific case to press his point. Be that as it may, I find no force in his argument. Pointing figures at others is of no help to his own short comings. To follow bad precedents is bad in itself.

6.7 Some other instances of glaring mistakes mentioned in the charges against Shri S. B. Doley are that in the case of Shri Sheikh Rasul, on scrutiny Shri S.B. Doley found that assessee's income from salary was only Rs. 70,128/- whereas he was found to have deposited Rs. 7.70 Lakh in cash in Bank. Shri S. B. Doley accepted the claim of the

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assessee that he received gifts from various parties. Relying on the Gift Deeds. Shri S. B. Doley accepted the assessee's claim of the receipt of gift. The normal course of action in such cases should have been to issue summons u/s 131 of the Income-tax Act, 1961 to all such Donors and examine them under oath to find out the authenticity of such gifts and creditworthiness of the Donor(s). If necessary, assessment records of such donor(s), if any and Bank Statement should have been verified. This casual approach of Shri S.B. Doley only exhibits his lack of application of mind and devotion to duty. In appeal, his submission is silent about this case.

6.8 In the case of M/s Mahavir Transport Co. the assessee filed another TDS Certificate after filing the Return of Income. Shri S.B. Doley, without verifying whether gross receipt as shown in the return includes the gross receipts shown in the TDS Certificate submitted later on, readily issued the refund. As a result, gross receipt to the tune of Rs. 4,84,946/- was suppressed. When confronted with this finding, Shri S.B. Doley admitted his lapses before the Disciplinary Authority vide his submission dated 16-08-2004.

6.9 All told, I am in agreement with the Disciplinary Authority that lapses committed by Shri S.B. Doley are too many to be ignored. In my view, the Disciplinary Authority has taken appropriate stand by imposing minor penalty of withholding of increment of pay for one year without cumulative effect and not adversely affecting his pension under Rule 11 (iv) of the CCS (CCA) Rules, 1965. I, therefore, decline to interfere with the order of the Disciplinary Authority.

7. The Appeal is dismissed.

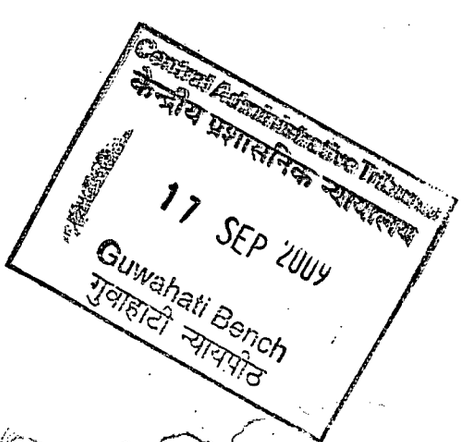
Sd/-

[T. Hangzo]
Chief Commissioner of Income-tax, Guwahati.
(Appellate Authority)
GUWAHATI

Memo. No. DP-45/BD/VIG/CCIT/GHY/2009-10/588-89 dated: 28th (31) July, 2009

Copy forwarded to :-

1. Commissioner of Income-tax (Audit), Ghy, for information and necessary action.
2. Shri. Syed Basit Doley, ITO, Ward -1(2), Guwahati for information.



[Bhaskar Chowdhury]
Deputy Commissioner of Income-tax (Vig.),
Guwahati.



Filed by:- The Respondents through... Mangalam Das Sr. C.G.S.C. 11/1/10

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH

Central Administrative Tribunal
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IN THE MATTER OF:

O.A. No. 198/09

Sri S.B. Doley @ Budheswar Doley

...Applicant

-Vs-

Union of India and ors.

...Respondents

-AND-

IN THE MATTER OF:

Written Statement on behalf of the Respondents

Imokaba Jamir
Joint Commissioner of Income Tax (Hqrs.)
O/o. Chief Commissioner of Income Tax, Guwahati
संयुक्त आयकर आयुक्त (मुख्या.)

(WRITTEN STATEMENT ON BEHALF OF RESPONDENTS)

I, Sri Imokaba Jamir., S/o Sri Imkongmeren Jamir, presently working as the Joint Commissioner of Income Tax (Vig.), Office of the Chief Commissioner of Income Tax, Guwahati-781007, Assam, do hereby solemnly state as follows :-

1. That, I am the Joint Commissioner of Income Tax (Vig.), Office of the Chief Commissioner of Income Tax, Guwahati-781007, Assam. Copies of the aforesaid Original Application have been served upon the Respondents. I have gone through the Original Application and have understood the contents thereof. Being the Joint Commissioner of Income Tax (Vig.), I am acquainted with the facts and circumstances of the case. I have been authorized to file this Written Statement on behalf of the respondents.

2. That, I do not admit any of the statements save and except which are specifically admitted hereinafter and the same are deemed as denied.

3. That before traversing various paragraphs of the present original application, the humble answering respondent would like to place the brief facts of the case.

11.1.2009

BRIEF FACTS :-

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3.1 That the applicant was initially appointed as Inspector of Income Tax under the Ministry of Finance, Government of India on 30.01.89. Thereafter he was promoted to Income Tax Officer (hereinafter 'I.T.O.' for short) on 06.12.94.

3.2 That the applicant while serving as I.T.O. at North Lakhimpur was informed vide letter dated 14.05.97 issued by the Additional Commissioner of Income Tax, Guwahati that since he held the charge of I.T.O. at North Lakhimpur, a lot of complaints from different quarters were received by the office. However, no serious inquiry was conducted against him. Unfortunately more and more complaints have been received by the higher authorities. He was informed that the higher authorities will back up only if he has made bona fide mistakes but that too could not be taken for granted. Further he was informed that a vigilance file has already been opened against him and his action will be closely monitored (Annexure 1 to the O.A.).

3.3 That thereafter the applicant made his reply by submitting a representation to the authority dated 26.05.97 and requested to arrange for his withdrawal from North Lakhimpur and post him anywhere else (Annexure-2 to the O.A.).

3.4 That the Additional Commissioner on 06.01.99 issued a letter to the applicant with a request to submit the written reply to the complaint lodged by Sri B.C. Pegu, Taganapara, Dhemaji, ex principal Dhemaji College, which was enclosed with the said letter dated 06.01.99 (Annexure 3 to the O.A.)

3.5 That applicant thereafter submitted his written reply dated 11/12.01.99 by denying the allegations (Annexure 4 to the O.A.).

3.6 That vide Memorandum dated 15.05.02 a Departmental proceeding was initiated by the Commissioner of Income Tax, Jorhat against the applicant into the five charges of misconduct or misbehavior set out in five Articles of Charges (Annexure 5 to O.A.).

3.7 That the applicant thereafter submitted his reply on 10.06.02 into the charges made against him (Annexure 6 to the O.A.).

3.8 That the respondent no. 3 vide letter dated 11.12.03 issued show cause as to why necessary action in respect of different lapses mentioned in the vigilance inspection report will not be taken against him. The said inspection report was enclosed with the letter. Further he was informed to furnish his version to the inspection report within 21 days (Annexure 7 to the O.A.). Against the said vigilance inspection report the applicant submitted his reply on 31.12.03/02.01.04 (Annexure 8 to O.A.).

Jamir
Joint Commissioner of Income Tax (HQ.)
O/o. Chief Commissioner of Income Tax, Guwahati
संयुक्त आयकर आयुक्त (मुख्या.)
मुख्य आयकर आयुक्त कार्यालय, गुवाहाटी

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3.9 That the respondent no. 3 vide Memo dated 11.08.04 proposed to hold an inquiry against the applicant under Rule 14 of the CCS (CCA) Rules, 1965. The inquiry which is proposed to be held was set out in the statement of articles of charges and the applicant was directed to submit his defence statement within ten days (Annexure 9 to O.A.). The list of documents was also annexed therewith.

3.10 That thereafter the applicant submitted his reply on 16.08.04 by requesting to drop the proceeding (Annexure 10 to O.A.).

3.11 That in the first chargesheet dated 15.05.02 five articles of charges were framed and there is only one article of charge in the supplementary chargesheet dated 18.08.04 filed based on the vigilance inspection report. By such articles of charges framed in the above chargesheets, charges relating to contravention of the provisions of Rules 3(i), (ii), (iii) and 3(A)(a) of the CCS (Conduct) Rules, 1964 by the applicant were inquired into in the Inquiry Report dated 07.09.06. The Inquiry Officer after considering all the materials on record and after detailed discussions in the Inquiry Report found the applicant guilty of not maintaining absolute devotion to duty under rule 3(1)(ii) of the CCS (Conduct) Rules, 1964 in respect of all the articles of charges including the charge in the supplementary chargesheet except article I and II of the chargesheet dated 15.05.02 (Annexure 14 to O.A.).

Joint Commissioner of Income Tax (Hqrs.)
O/o. Chief Commissioner of Income Tax, Guwahati
संयुक्त आयकर आयुक्त (मुख्या.)
मुख्य आयकर आयुक्त कार्यालय,गुवाहाटी

3.12 That having received the Inquiry Report, the Disciplinary Authority i.e. the respondent no. 3, addressed a letter dated 16.11.07 under no. F.No.Vig./CIT(Audit)/GHY/2007-08/594 to the applicant (Annexure 14 to the O.A.) enclosing the copy of Inquiry Report and a copy of the CVC's advice dated 28.05.07 for his comments. In the said letter the respondent no. 3 also intimated that he proposed to impose minor penalty against the applicant under Rule 15(3) read with Rule 16(1) of the CCS (CCA) Rules, 1965 after considering the finding of the Inquiry Report, the advice of the CVC and any representation that the application may wish to make. Further, the applicant was requested to submit his comments or representation on or before 03.12.07. Thereafter the applicant made his reply dated 30.11.07 to the Inquiry Report with a prayer to drop the proceeding and not to impose any penalty (Annexure 15 to O.A.).

3.13 That the Disciplinary Authority, by taking into account, the report as well as facts and circumstances of the case, imposed against the applicant minor penalty of withholding increment of pay for a period of one year from the date of next increment of pay i.e. 01.04.08 without cumulative effect and not adversely affecting his pension by order dated 14.02.08 (Annexure 16 to O.A.).

3.14 That the applicant preferred an appeal on 27.02.08 under Rule 24 of the CCS(CCA) Rules, 1965 before the Chief Commissioner of Income Tax cum Appellate

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Authority, i.e. the respondent no. 2 against the order dated 14.02.08 (Annexure 17 to the O.A.).

3.15 That the applicant filed an O.A. being No. 37 of 2009 whereby the Hon'ble Tribunal vide its order dated 25.05.09 was pleased to direct the Appellate Authority to take up the appeal of the applicant, consider the same and pass orders within a period of 60 days from the date of receipt of copy of order.

3.16 That vide order dated 28/31.07.09, the Appellate Authority i.e. the respondent no. 2 declined to interfere with the order of the Disciplinary Authority and dismissed the appeal of the applicant.

Joint Commissioner of Income Tax (Hqrs.)
O/o. Chief Commissioner of Income Tax, Guwahati
संयुक्त आयकर आयुक्त (मुख्या.)
मुख्य आयकर आयुक्त कार्यालय,गुवाहाटी

4. Reply to the facts of the case:

4.1 That with regard to the statements made in paragraph 4.1 of the application, the humble answering respondent begs to offer no comment.

4.2 That with regard to the statements made in paragraphs 4.2 to 4.12 of the application, the humble answering respondent begs to offer no comment as they are matters of records of the case. However, he does not admit any statement contrary to records.

4.3 That, with regard to the statements made in paragraph 4.13 of the application the humble answering respondent begs to state that the Central Board of Direct Taxes ('CBDT' in short) Order No. 160 of 2005 dated 26.10.05 ordered promotion of the seven officers in the grade of Assistant Commissioner of Income Tax ('ACIT' in short) from the grade of ITO Group B. Consequent upon the said order, the seven ITOs of the North Eastern Region who got the promotion to the grade of ACIT were posted as ACIT (OSD) under the same controlling officers where they were posted prior to their promotion. However, the name of the applicant did not figure in the said order of the CBDT, and it is for this reason that his name did not come in the placement order passed by the respondent no. 2, Chief Commissioner of Income Tax, Guwahati.

4.4 That with regard to the statements made in paragraph 4.14 of the application the humble answering respondent begs to offer no comment as they are matters of records of the case. However, he does not admit any statement contrary to records.

4.5 That with regard to the statements made in paragraph 4.15 of the application the humble answering respondent begs to state that as per the articles of charges framed, the applicant had willfully contravened the provisions of Rules 3(1)(i), 3(1)(ii), 3(1)(iii), 3(A)(a). In the Inquiry Report, all the articles of charges

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were considered by the Inquiry Officer. The Inquiry Officer after considering all the materials on record and after detailed discussion in his Inquiry Report found the applicant guilty of not maintaining absolute devotion to duty under Rule 3(1) (ii) of the CCS (Conduct) Rules, 1964 in respect of all the articles of charges except Article I and II of the chargesheet dated 15.05.02.

In respect of article I of the chargesheet dated 11.08.04, it is clearly brought out that the applicant while functioning as ITO North Lakhimpur during the period 1996-98 had acted arbitrarily in completing of assessments of several assesses. Evidences in the course of inquiry by the Inquiry Officer have established these articles of charges and the Disciplinary Authority has sustained such Article. In this regard, the Inquiry Officer has observed as under-

> "There were many instances where Shri Doley was found to complete the assessment in a perfunctory manner. Most of the scrutiny assessment was completed without proper examination of records and no investigation was made at all. He even failed to consider the material on record while completing assessment. His plea that it was due to his inexperience is not acceptable since he joined the Department as a direct recruit Inspector in the year 1989 and was promoted as Income Tax Officer on 01.01.1995. The orders, which were subject mater of inquiry, were mostly passed during the year 1997 and 1998. Further, mistake made were simple mistake and does not involve any complicated issues."

Joint Commissioner of Income Tax (Jt.)
O/o. Chief Commissioner of Income Tax, Guwahati
संयुक्त आयकर आयुक्त (मुख्या.)
मुख्य आयकर आयुक्त कार्यालय,गुवाहाटी

The Inquiry Officer therefore has pointed that such mistake were due to lack of devotion to duty on the part of the applicant. Moreover being a quasi-judicial authority the applicant was expected to give the assessee the very basic right of opportunity of being heard and the right to natural justice but he had denied the same to the assessees.

4.6 That with regard to the statements made in paragraphs 4.16 and 4.17 of the application the humble answering respondent begs to offer no comment as they are matters of records of the case. However, he does not admit any statement contrary to records.

4.7 That with regard to the statements made in paragraph 4.18 of the application the humble answering respondent begs to deny allegation of the applicant that the Disciplinary Authority imposed minor penalty on the applicant without following due process due to his failure to consider the applicant's representation dated 30.11.07. In fact, in the memo no. Vig./CIT(Audit)/GHY/2007-08/894-896 dated 14.02.08 issued by the Disciplinary Authority i.e. the respondent no. 3, wherein the minor penalty was imposed (Annexure 16 to the O.A.), it was specifically pointed out in paragraph 6 at page 17 of the memo that the applicant in his representation dated 30.11.07 had merely reiterated the points and arguments which had submitted while replying to the

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main chargesheet in which he had denied the charges. Further in paragraph 7 of the memo at page 17, it was pointed out by the respondent no. 3 that as regards the supplementary charge sheet, the applicant has submitted that the allegations contained the chargesheets are incorrect and based on flimsy grounds or the lapses pointed out in the chargesheets cannot attract vigilance action. From the said paragraphs 6 and 7 of the memo it is clear that the respondent no. 3 has gone through the applicant's representation thoroughly because otherwise he could not have been able to make the comments in the said paragraphs of the memo.

4.8 That with regard to the statements made in paragraphs 4.19 to 4.20 of the application the humble answering respondent begs to offer no comment as they are matters of records of the case. However, he does not admit any statement contrary to records.

4.9 That with regard to the statements made in paragraph 4.21 of the application the humble answering respondent begs to state that after careful examination of findings of the Inquiry Officer, submission of the charged officer i.e the applicant and the relevant materials on record, the charge of lack of devotion to duty against the charged officer has been proved and the charged officer was penalized by imposing minor penalty of withholding increment of pay for a period of one year.

Further, it appears from letter dated 16.10.08 sent by the respondent no. 3 to respondent no. 2 (Annexure 19 to O.A.) that an appeal had been filed by the applicant under Rule 23(ii) of the CCS (CCA) Rules, 1965 and a comment was sought by the respondent no. 2 from respondent no. 3 vide a letter dated 29.09.08. It was against this letter dated 29.09.08 that the respondent no. 3 addressed the said letter dated 16.10.08 to the respondent no. 2 and in page 2 of that letter the respondent no. 3 has merely expressed a personal view/suggestion by observing that mistakes committed by the applicant appeared to be on account of lack of experience and ignorance on his part. The view/suggestion so expressed can in no way be stated to be an admission from the authorities that the applicant had not done any offence attracting vigilance penalty. It was nothing but a view only which could and indeed was rejected by the appellate authority i.e. the respondent no. 3, the Chief Commissioner of Income Tax when he dismissed the applicant's appeal.

4.10 That with regard to the statements made in paragraph 4.22 of the application the humble answering respondent begs to deny the applicant's contention that there was not any application of mind or proper analysis on the part of the respondent no. 2. It is a mere allegation on the part of the applicant and the applicant has absolutely failed to bring forward a single shred of evidence that there has indeed been any non-application of mind or improper analysis on the part of respondent no. 2. Such an allegation without being backed up by any reason to support the same should not at all be considered by the Hon'ble Tribunal.

Joint Commissioner of Income Tax (Hqrs.)
O/o. Chief Commissioner of Income Tax, Guwahati
संयुक्त आयकर आयुक्त (मुख्या.)
मुख्य आयकर आयुक्त कार्यालय,गुवाहाटी

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The Appellate Authority i.e. the respondent no. 2 has observed that the lapses of the applicant, as evident from the order of the Disciplinary Authority i.e. the respondent no. 3, cannot be ignored. A mere perusal of the order of the appellate authority will show that the order was made after due consideration of the facts and proper application of mind.

4.11 That with regard to the statements made in paragraph 4.23 of the application the humble answering respondent begs to state that the findings of the Appellate Authority are absolutely in conformity with the Inquiry Officer's report and Disciplinary Authority's order. Moreover, the applicant has again failed to support his contention with any proof/evidences. It is submitted that mere allegations/contentions without proof has no merit at all in the eyes of law.

4.12 That with regard to the statements made in paragraphs 4.24 and 4.25 of the application the humble answering respondent begs to state that during the period of 1996-98 when the applicant was posted as ITO, North Lakhimpur, the higher officers of the department had received several complaints from various quarters against the applicant which apparently were neither anonymous not pseudo anonymous. Hence a letter under D.O. F.No.Con.39/R-1/Ghy/420 dated 14/15.05.97 was issued to the applicant by the then Additional CIT, Range-1, Guwahati to have a self introspection and thereby to rectify himself. However due to culmination of series of complaints having serious allegations against the applicant, the department initiated disciplinary proceedings against him. Accordingly vide Memo. No. F.No. VIG-1/BD/CON/CIT/JRT/01-02/344 dated 15.05.02 chargesheet was issued against the applicant based on these complaints. Subsequently another supplementary chargesheet dated 11.08.04 was also issued based on vigilance inspection of assessments completed by the applicant. The respondent no. 3 on 14.02.08 as Disciplinary Authority under Rule 15(3) read with Rule 16 (1) of the CCS(CCA) Rules, 1965 passed an order of minor penalty after due consideration of Inquiry Officer's report and on the representation submitted by the applicant. It is to be stated that there were no procedure lapses on the part of the department and the applicant was afforded full opportunity to defend himself before the imposing of the minor penalty by the Disciplinary Authority as can be borne out of the records. The Disciplinary Authority passed the penalty order on consultation with the CVC as per procedure laid down in the Rules. The submission of the applicant is not based on record. The charge of lack of devotion to duty was proved before the Disciplinary Authority. The comments of the Disciplinary Authority as referred to by the applicant relating to Annexure 19 to the O.A. is at best a suggestion/personal view while furnishing his comments on the appeal petition of the applicant as called for by the Appellate Authority. The Appellate Authority thereafter decided the appeal on the basis of materials available before him. The order of the Appellate Authority is very clear and is a speaking order. Hence the submission of the applicant for quashing the Disciplinary Authority's

Joint Commissioner of Income Tax (Hqrs.)
O/o. Chief Commissioner of Income Tax, Guwahati
संयुक्त आयकर आयुक्त (मुख्या.)
मुख्य आयकर आयुक्त कार्यालय,गुवाहाटी

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order dated 14.02.08 and the Appellate Authority's order dated 28/31.07.09 has no merit at all and therefore deserves rejection by the Hon'ble Tribunal.

4.13 That the application filed by the applicant has no merit at all and is liable to be dismissed.

VERIFICATION

I, Sri Imoaba Jamir, S/o Sri Imkongmeren Jamir, presently working as the Joint Commissioner of Income Tax (Vig.), Office of the Chief Commissioner of Income Tax, Guwahati-781007, Assam, do hereby solemnly state and verify as follows:

That the statements made in paragraphs 1, 2, 4:1 are true to my knowledge which I believe to be true and the statements made in paragraphs 3:1 to 3:16, 4:2 to 4:12 being matters derived from the records of the case are true to my knowledge and information derived therefrom which I believe to be true and the rest are my humble submissions before the Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this the 11 day of January 2010.

Imoaba Jamir
Signature
Joint Commissioner of Income Tax (Hqrs.)
O/o. Chief Commissioner of Income Tax, Guwahati
संयुक्त आयकर आयुक्त (मुख्या.)
मुख्य आयकर आयुक्त कार्यालय, गुवाहाटी

File ... Court on 1/2/10.....
Court Officer.

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FILED By
Sri Basit Doley Applicant
through Nizamuddin Ahmed
Advocate
01.02.2010

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

IN THE MATTER OF:

O.A. NO.198 OF 2009

Syed Basit Doley alias Budeswar Doley

Applicant

- Versus -

The Union of India and Others

Respondents

-AND-

IN THE MATTER OF:

Rejoinder filed by the Applicant to the written statement submitted by the Respondents.

The humble Applicant submits this Rejoinder as follows:

1. That with regard to the statement made in paragraph 1 to 3 of the written statement the Applicant has no comments to offer and beyond record nothing is admitted by the Applicant.

2. That with regard to Statement made in paragraph No.3.1 to 3.10 of the written statement the Applicant has no comments to offer and beyond record nothing is admitted by the Applicants.

3. That with regard to the statements made in paragraph 3.11 of the written statement the Applicant begs to state that the same are not true and misleading to this Hon'ble Tribunal. It is to be stated that there is no charge sheet dated 18.08.2004 against the Applicant. The charge sheet dated 15.05.2002 has 5 articles of charges and the charges

Syed Basit Doley.

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were all alike which cited the contraventions of the following 4 points as under:-

> "By all these acts, Shri Doley contravened the following provisions:
>
> 3(1)(i)- failed to maintain absolute integrity.
> 3(1)(ii)- failed to maintain devotion to duty.
> 3(1)(iii)- acted unbecoming of a Government servant.
> 3A(a)- in the performance of his official duties, acted in a discourteous manner."

Article of charges I, III, IV and V have all the above 4 points and the article of charges II has only the points 3(1)(i) and 3(1)(iii). The article of charge I and II are completely dropped. The Applicant is implicated with only one point, i.e. 3(1)(ii). The article of charges are alike, cumulative and not separate, while article of charges I includes the point 3(1)(ii) and both the article of charges I and II dropped completely, therefore, implicating the Applicant with 3(1)(ii) basing only on the article of charges III, IV and V are not justified.

4. That with regard to Statement made in paragraph 3.12 of the written statement the Applicant has no comments to offer and beyond record nothing is admitted by the Applicant.

5. That with regard to Statement made in paragraphs 3.13 of the written statement the Applicant begs to state that the Disciplinary authority only perused the report submitted by the Inquiry authority but did not go through the reply submitted by the Applicant while imposing minor penalty against the Applicant.

Syed Brait Doley.

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6. That with regard to Statement made in paragraph 3.14 and 3.15 of the written statement the Applicant has no comments to offer and beyond record nothing is admitted by the Applicant.

7. That with regard to Statement made in paragraph 3.16 of the written statement the Applicant begs to state that the rejection of the Appeal submitted by the Applicant is totally one sided, wrong and unjustified.

8. That with regard to the statements made in paragraph 4.1 and 4.2 of the written statement the Applicant has no comments to offer and beyond record nothing is admitted by the Applicant.

9. That with regard to Statement made in paragraph 4.3 of the written statement, the Applicant begs to state that the same are not true and misleading to this Hon'ble Tribunal. In general practice, the Central Board of Direct Taxes (CBDT in Short), New Delhi do not directly recommend the name of each Income Tax officer for promotion to the post of Assistant Commissioner of Income Tax but the respective Chief commissioner of Income Tax under their jurisdiction recommend the name of the Income Tax Officer for promotion to the post of Assistant Commissioner Of Income Tax before the CBDT, New Delhi. Therefore, the reasons cited by the Respondents that the Applicant's placement order could not be passed as his name did not figure in the CBDT's order No.160 of 2005 dated 26.10.2005 is misleading statement before this Hon'ble Tribunal. The Respondent No.2 in an arbitrary manner did not recommend the name of the Applicant to the post of Assistant Commissioner of Income Tax before the CBDT, New Delhi.

10. That with regard to the statements made in paragraph 4.4 of the written statement the applicant has no comments to offer and beyond record nothing is admitted by the Applicant.

Syed Basis Ahmed

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11. That with regard to the statement made in paragraph 4.5 of the written statement the Applicant begs to state that the Respondents have miserably failed to give counter and point to point reply against the statement made in paragraph 4.15 of the Original Application which was about complainants and witnesses and the Respondents in a willful manner avoided the vital points raised by the Applicant. The Applicant had served as Income Tax Officer at North Lakhimpur from the Year 1995 to 1998 not from the Year 1996 to 1998 as mentioned by the Respondents in the written statements, therefore, it seems that the Respondents in a casual manner, have filled the written statement before this Hon'ble Tribunal. All the cropped up allegations of omissions and commissions were replied by the Applicant vide Annexure-6, Annexure-8, Annexure-10, Annexure-15 and Annexure-17 of the O.A. But the authority did not consider the same and imposed the minor penalty simply ignoring his reply without giving any reasons and grounds for rejecting his replies.

Moreover, while an official discharges his duties as quasi-judicial authority, his function can be questioned only if his functioning is of doubtful integrity. In fact, the Applicant discharged his duties as quasi-judicial authority in an impartial manner, therefore, his integrity is cleared by the Inquiry authority. The Applicant was functioning as quasi-judicial authority, therefore, he should not be questioned and no penalty to be imposed on him.

The Applicant while functioning as quasi-judicial authority always gave the assesses the right of opportunity of being heard, this point was replied by the Applicant in all his earlier representations but the authority in a one-sided manner ignored the real facts of the case.

Syed Basit Ahmed

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12. That with regard to Statement made in paragraph 4.6 of the written statement the Applicant has no comments to offer and beyond record nothing is admitted by the Applicant.

13. That with regard to Statement made in paragraph 4.7 of the written statement the Applicant begs to state that when the matter and the allegation is the same, the representation is bound to get re-iteration of the same points and arguments and re-iteration of the same points and arguments can not make a representation null and void. The Respondents has got out of context as he replied that "the Disciplinary authority imposed minor penalty on the Applicant without following due process" but the context of this paragraph 4.18 was "the Disciplinary authority imposed a minor penalty on the Applicant without considering the representation submitted by the Applicant". There was no reason or grounds put forward by either the Inquiry authority or the Disciplinary authority rejecting the points and arguments of the Applicant's representation, instead, they simply ignored and sided the representation and with a pre-set mind imposed the minor penalty.

14. That with regard to Statement made in paragraph 4.8 of the written statement the Applicant has no comments to offer and beyond record nothing is admitted by the Applicant.

15. That with regard to the statement made in paragraph 4.9 of the written statement the Applicant begs to state that the Respondents is deviating from the facts and resorting colourable exercise of power while citing the official letter dated 16.10.2008 a mere personal view. The Disciplinary authority, vide letter dated 16.10.2008 recommended to the Appellate authority the case of the Applicant as "Considering the circumstances of the case and the conduct of the officer during the period under my

Syed Basit Ahmed

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charge, the Petition of the Applicant may be considered favorably".

16. That with regard to the statement made in paragraph 4.10 of the written statement the Applicant begs to state that the Respondents failed to apply proper mind and also failed to analyze the O.A. properly while protesting that this is a mere allegation as not a single evidence brought forward by the Applicant. Had the Respondents applied his mind and properly analyzed the O.A., he would have noticed many evidences viz. paragraphs 5.9, 5.10, 5.11, 5.12 etc. which are more than sufficient evidences to prove that the Appellate authority's order has been passed without due application of mind and proper analysis of the case.

17. That with regard to the statement made in paragraph 4.11 of the written statement the Applicant begs to state that the Respondents have failed to apply their mind and to analyze the O.A. properly, therefore, they have failed to go through the grounds cited in support of the fact that the Appellate authority order dated 29/31.07.2009 is beyond the Inquiry authority's report and Disciplinary authority's findings, viz. the grounds taken by the Applicant are paragraphs 5.10, 5.11, 5.12, 5.13, 5.16, 5.17 etc of the O.A.

18. That with regard to the statement made in paragraph 4.12 of the written statement the Applicant begs to state that the authority received complaints against the Applicant but these were not shown to the Applicant for a long period of 8 1/2 years till December 2005 though the Respondents have started the vigilance proceedings on 14/15.05.1997 against the Applicant. The Applicant is a sincere and uncompromising officer of the Department and his sincerity and good integrity stirred the nest of the vested circles which started filing false and motivated complaints to oust the Applicant from North Lakhimpur

Syed Basit Ahmed.

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office. The Applicant represented before the authority that these were all false and motivated complaints lodged by the vested person but the authority did not listen to the grievances of the Applicant and instituted inquiry against him which proved all the complaints were to be false. Thereafter, the authority finding nothing from the complaints and cropped up with some alleged omissions and commissions. The Applicant represented the cropped up allegations of omissions and commissions with citing of evidences and proper explanation but the authority simply sided and ignored them without putting forward any grounds or reasons for rejecting the representation of the Applicant and charged him with 'lack of devotion to duty' and imposed the minor penalty forcefully not caring equity and justice.

The Disciplinary authority's recommendation dated 16.10.2008 is totally ignored by the Appellate authority. The Respondents have simply cited that the order of the Appellate authority is clear and a speaking order but there is no specific reason(s) in support of their contention and the Respondents could not counter the paragraphs 5.15, 5.19, 5.21 etc of the O.A. which specifically rejects the Appellate order as vague and not speaking.

That the Respondents have totally failed to give reply to the grounds taken by the Applicant in Original Application No.198 of 2009. Therefore, the written statement filed by the Respondents is wholly bereft of substance and no credence ought to be given to it. Thus, in view of the abject failure of the Respondents to refute the contentions, averments, questions of law and grounds made by the Applicants in the Original Application filed by the Applicant deserved to be allowed by this Hon'ble Tribunal.

Syed Basit Ahmed.

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VERIFICATION

I, Syed Basit Doley alias Budheswar Doley Son of late Cheniram Doley aged about 52 years, Income-tax Officer, Ward-I (2), office of the Joint Commissioner of Income-tax, Range-I, AYAKAR BHAVAN, G.S. Road, Guwahati, PIN Code-781005 do hereby solemnly verify that the statements made in paragraph nos 1 to 18 are true to my knowledge and those made in paragraph nos ——— are being matters of record from true to my information derived therefrom which I believe to be true and rest are my humble submission before this Hon'ble Tribunal.

And I sign this verification on this the 1st day of February, 2010 at Guwahati.

Syed Basit Doley

DECLARANT

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Filed by :- The Respondents through Mangilal Das Sr. C.G.S.C. 5/5/2010

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06 MAY 2010
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH

IN THE MATTER OF:

O.A. No. 198/09

Sri Syed Basit Doley @ Budheswar Doley

...Applicant

-Vs-

Union of India and ors.

...Respondents

-AND-

IN THE MATTER OF:

Reply on behalf of the respondents to the rejoinder filed by the applicant

मुख्य आयकर आयुक्त कार्यालय, गुवाहाटी
संयुक्त आयकर आयुक्त (मुख्या.)
Joint Commissioner of Income Tax (Hqrs.)

(REPLY ON BEHALF OF THE RESPONDENTS TO THE REJOINDER FILED BY THE APPLICANT)

Received by N. Ahmed Advocate 5/5/10

I, Sri **Imokaba Jamir** S/o **Imkongmeren Jamir** presently working as the Joint Commissioner of Income Tax (Vig.), Office of the Chief Commissioner of Income Tax, Guwahati-781007, Assam, do hereby solemnly state as follows :-

1. That, I am the Joint Commissioner of Income Tax (Vig.), Office of the Chief Commissioner of Income Tax, Guwahati-781007, Assam. I have been impleaded as party respondent no. 3 in the present case. Copies of the aforesaid Rejoinder have been served upon the Respondents. I have gone through the Rejoinder and have understood the contents thereof. Being the Joint Commissioner of Income Tax (Vig.), I am acquainted with the facts and circumstances of the case. I have been authorized to file this Rejoinder on behalf of the other respondents.

2. That, I do not admit any of the statements made in the rejoinder save and except which are specifically admitted hereinafter and the same are deemed as denied.

3. That with respect to the statements made in paragraphs 1 and 2 of the rejoinder, the humble answering respondent has nothing to make comment on it.

4. That with respect to the statements made in paragraph 3 of the rejoinder, the humble answering respondent begs to state that there was indeed a supplementary chargesheet dated 11.08.04, though not 18.08.04 as wrongly but unintentionally stated in the written statement. The respondent apologizes before the Hon'ble Tribunal for the typographical error. However, the rest of paragraph 3.11 of the written statement, which the applicant has sought to deny in the paragraph 3 of the rejoinder, is factually true and hence the statements made in paragraph 3.11 are reiterated herein.

In fact, it is the applicant who is trying to suppress the material fact of the existence of supplementary chargesheet dated 11.08.04. Granted that there was a typological error in typing the date of the supplementary chargesheet, but the fact that there indeed existed a supplementary chargesheet cannot be ignored. However, the applicant has sought to imply in paragraph 3 of the rejoinder that there was not at all any supplementary chargesheet in existence, which is factually incorrect.

5. That with respect to the statement made in paragraph 4 of the rejoinder, the humble answering respondent has nothing to make comment on it.

6. That with respect to the statements made in paragraph 5 of the rejoinder, the humble answering respondent begs to state that the disciplinary authority at para 8, page no.17 of his order noted as follows:

> "After careful consideration of the findings and conclusions of Enquiry Officer, the written submissions of Shri S. B. Doley and the relevant materials on records, I concur with the view of the Department discussed above that Shri S.B.Doley deserves to be awarded minor penalty other than censure. As mentioned above, the charge sheets regarding to lack of integrity have not been proved. The charge sheet regarding Shri S.B.Doley acting in a manner unbecoming of a Govt. servant has not been fully established. However, the charge of lack of devotion to duty against Shri S.B.Doley has been proved thereby violating the provisions of Rule 3(1)(ii) of Central Civil Services (Conduct) Rules, 1964 relating to conduct of every Govt. Servant who shall at all times maintain devotion to duty. While imposing the penalty on Shri S.B.Doley, one may, however, keep in mind the nature and gravity of the mistakes committed and the considerable time taken for completing the penalty proceedings which may have affected the career of the Charged Officer."

These statements clearly show the balanced manner in which the disciplinary Authority has taken the decision and also it clearly reflects that the

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मुख्य आयकर आयुक्त कार्यालय, गुवाहाटी
Joint Commissioner of Income Tax (Hqrs.)

Disciplinary Authority has clearly taken into consideration the applicants arguments/replies also.

Moreover, it has to be noted that the applicant has merely alleged that the Disciplinary Authority has not perused the reply of the applicant. He has not provided in any indication/evidence, etc. as to how he could arrive at this conclusion. He is merely making an allegation without any shred of proof or evidence to back that up.

7. That with respect to the statements made in paragraph 6 of the rejoinder, the humble answering respondent has nothing to make comment on it.

8. That with respect to the statements made in paragraph 7 of the rejoinder, the humble answering respondent begs to state that the order passed by the appellate authority is a speaking order taking to consideration all aspects of the Disciplinary Authority's order. Hence, the allegation raised in rejoinder is baseless. A mere perusal of the order of the Appellate Authority will show that the order was passed after due consideration of the facts and circumstances of the case and after taking into consideration the views/replies of the applicant. Merely because the decision of the Appellate Authority has gone against the applicant does not make the order an one-sided one.

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मुख्य आयकर आयुक्त कार्यालय, गुवाहाटी

9. That with respect to the statements made in paragraph 8 of the rejoinder, the humble answering respondent has nothing to make comment on it.

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10. That with respect to the statements made in paragraph 9 of the rejoinder, the humble answering respondent begs to state that the applicant is attempting to mislead the Hon'ble Tribunal. Being a senior Income Tax Officer, the applicant is well aware of the fact that promotion to the grade of Assistant Commissioner of Income Tax ('ACIT' for short) from the grade of ITO, Gr.-B is made by Central Board of Direct Taxes ("CBDT" for short) on the basis of all India seniority list of ITO' and other criteria/suitability. There is no procedure/practice of recommending any name for promotion to the grade of ACIT from the grade of ITO by the respective Chief Commissioners. Therefore, allegations made in paragraph 9 of the rejoinder are completely baseless. Particularly, the statement made in paragraph 9 of the rejoinder "The respondent No. 2 in an arbitrary manner did not recommend the name of the Applicant to the post of Assistant Commissioner of Income Tax before the CBDT, New Delhi" is absolutely wild, baseless and meant to mislead the Hon'ble Tribunal.

11. That with respect to the statements made in paragraph 10 of the rejoinder, the humble answering respondent has nothing to make comment on it.

12. That with respect to the statements made in paragraph 11 of the rejoinder, the humble answering respondent begs to state that all the allegations of omissions and commissions as per the articles of charges were taken into consideration by the enquiry authority and his report (Annexure 14 of the O.A) elaborately discussed the same. The disciplinary authority also considered the enquiry officers report, submissions of the charged officer and relevant documents etc. while passing his order (Annexure 16 to the O.A). There are all facts available on records. Hence, the allegation of the applicant is unfounded and not acceptable.

13. That with respect to the statements made in paragraph 12 of the rejoinder, the humble answering respondent has nothing to make comment on it.

14. That with respect to the statements made in paragraph 13 of the rejoinder, the humble answering respondent begs to state that the Enquiry Authority's report is very elaborate. He dealt with each issue with case and passed a speaking order. The Disciplinary Authority also gave due opportunity to the applicant before imposing the penalty. In fact, it has to be remembered that the applicant is exonerated of the charges as far as Article of Charge I and II are concerned. That shows the balanced and non-biased mentality of the respondents. If at all, it was the mindset of the respondents to punish the applicant and harass him unnecessarily, then they would certainly not have let the applicant get exonerated regarding some of the charges and even the penalty given is a minor penalty. Therefore, there is no per-set mentality on the part of the respondents to somehow harass the applicant for some unknown, vague reasons which have not been clarified by the applicant.

15. That with respect to the statements made in paragraph 14 of the rejoinder, the humble answering respondent has nothing to make comment on it.

16. That with respect to the statements made in paragraph 15 of the rejoinder, the humble answering respondent beg to state that the appellate authority sought a view of the disciplinary authority on his penalty order. Any comment offered by the disciplinary authority beyond the penalty order can be considered his personal view and thus not binding on the appellate authority. Moreover, the appellate authority being a higher authority

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मुख्य आयकर आयुक्त कार्यालय, गुवाहाटी

than the disciplinary authority has to exercise his own wisdom and to view the case in his own perspective following due process of law. The appellate authority may or may not follow the advice/ suggestion of the disciplinary authority nor is the appellate authority in any way bound by the advice/suggestion so rendered by the disciplinary authority. Moreover, it has to be remembered that it was the same disciplinary authority that had actually imposed the minor penalty on the applicant. Moreover, the wording of the sentence in question is also very relevant. The sentence states as follows:

> "Considering the facts and circumstances of the case and the conduct of the officer during the period under my charge, the petition of the Applicant may be considered favorably."

The sentence does not indicate that the disciplinary authority is advising the appellate authority or completely exonerate the applicant, but rather to consider the petition 'favorably'. The wording of the sentence does not in any way indicate that the disciplinary authority was in favour of the applicant getting exonerated. Besides, in this case, from the phrase, "the conduct of the office during the period under my charge" clearly indicates that he is no longer speaking in his capacity as an enquiry officer but rather as a superior giving a good reference of his subordinate to a third party. Clearly, therefore, the said sentence is nothing but a personal opinion of the enquiry officer, that too in his capacity as a superior officer of the applicant and not in his capacity as an enquiry officer.

17. That with respect to the statements made in paragraphs 16 and 17 of the rejoinder, the humble answering respondent begs to state that the applicant has failed to bring any specific point where there is non-application of mind on the part of the respondents, It is humbly submitted that a mere allegation without specific point backed by proper reason does not deserve any consideration by the Hon'ble Tribunal.

18. That with respect to the statements made in paragraph 18 of the rejoinder, the humble answering respondent begs to state that there is no evidence at all that the complaints lodged by the persons of various quarters are false and motivated. Disciplinary authority considered the inquiry officer's report; representation submitted by the applicant and for equity and justice passed the order of minor penalty. The disciplinary authority in his letter dated. 16.10.08 has merely expressed his personal view/suggestion by observing that mistakes committed by the applicant appeared to be on account of lack of experience and ignorance on his part. This can in no way be stated to be admission from the authorities that the applicant had not done any offence attracting vigilance penalty.

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Joint Commissioner of Income Tax (Hqrs.)

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Further, the respondents also beg to reiterate and reaffirm, the statements made in paragraph 16 of this reply with regards to the statements made in paragraph 18 of the rejoinder.

19. That the original application has no merit at all and is liable to be dismissed.

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Joint Commissioner of Income Tax (Hqrs.)
O/o. Chief Commissioner of Income Tax, Guwahati

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VERIFICATION

I, Sri **Imokaba Jamir** S/o **Imkongmeren Jamir** presently working as the Joint Commissioner of Income Tax (Vig.), Office of the Chief Commissioner of Income Tax, Guwahati-781007, Assam, do hereby solemnly state and verify as follows:

That the statements made in paragraphs....1 to 5., 7 to 11, 13, 15, 16.....are true to my knowledge which I believe to be true and the statements made in paragraphs .....6., 12., 14., 18.....being matters derived from the records of the case are true to my knowledge and information derived therefrom which I believe to be true and the rest are my humble submissions before the Hon'ble Tribunal. I have not suppressed any material facts.

And I sign this verification on this the ..6th...day of ...May..... 2010.

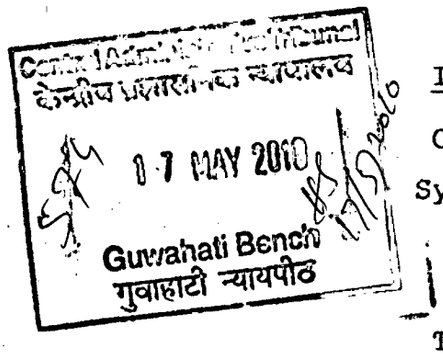
Signature

Imokaba Jamir

संयुक्त आयकर आयुक्त (मुख्या.)
मुख्य आयकर आयुक्त कार्यालय, गुवाहाटी
Joint Commissioner of Income Tax (Hqrs.)
O/o. Chief Commissioner of Income Tax, Guwahati

FILED By
Syed Basid Doley alias Budeswar Doley
...Applicant
through Tilly Kalita
Advocate
17.05.2010

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI



IN THE MATTER OF:

O.A. NO.198 OF 2009

Syed Basid Doley alias Budeswar Doley

Applicant

- Versus -

The Union of India and Others

Respondents

-AND-

IN THE MATTER OF:

Additional Rejoinder by the Applicant against the Reply submitted by the Respondents to the Rejoinder.

The humble Applicant submits his Additional Rejoinder as follows:

1. That before submitting additional Rejoinder, the Applicant most respectfully pray before this Hon'ble Tribunal that the reply to the Rejoinder submitted by the Respondent may be rejected as it is the repetition of the same facts as stated in the Written Statement to the Original Application. It is to be stated that the Respondents have failed to give details reply to each and every statement made in the Original Application by the Applicant and now the Respondents are trying to mislead this Hon'ble Tribunal by submitting the reply to the rejoinder.

2. That with regard to Statement made in paragraphs 1 to 3 of the reply to the Rejoinder, the Applicant have no comments to offer and beyond record nothing is admitted by the Applicant.

3. That with regard to statement made in paragraph 4 of the reply to the Rejoinder, the Applicant begs to state that the same are false and misleading to this Hon'ble Tribunal. In paragraph 3 of the Rejoinder the Applicant has stated that "there is no charge sheet dated 18.08.2004". The date is very specific and definite as 18.08.2004 and in fact there was no

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charge sheet of any kind which was dated 18.08.2004. The Applicant never stated that there was no supplementary charge sheet. The Rejoinder of the Applicant was not superficial but it was 'to the point' and exact which denied any charge sheet of a definite and specific date, i.e. 18.08.2004. Therefore there was no suppression of fact while submitting the 'to the point' Rejoinder.

4. That with regard to statement made in paragraph 5 of the reply to the Rejoinder, the Applicant has no comments to offer and beyond record nothing is admitted by the Applicant.

5. That with regard to statement made in paragraph 6 of the reply to the Rejoinder, the Applicant begs to state that the Disciplinary authority did not take the decision in a balanced manner. The Applicant submitted his representations before the Inquiry authority as well as before the Disciplinary authority but the Authority concerned did not perused the grounds and contentions made by the applicant in his Representation. The Respondents without application of proper mind and going to the depth of the matter passed the impugned order in a very casual and mechanical manner. The Respondents have failed to give solid reason (s) or ground(s) for non-acceptance of the Applicant representations. This amply proves that the authorities never considered the representations of the Applicant. For the only sake of prestige the Respondents have imposed the minor penalty one sided to the Applicant. Though the Disciplinary authority cited: "keep in mind the nature and gravity of the mistakes committed and the considerable time taken for completion of the proceedings which may have affected the career of the charged officer" but in practice they did not keep in mind the undeclared penalty of not getting promotion by the Applicant since the year 2005 because of this arbitrary and unduly delayed Departmental proceedings by the authority. If the authority is at all sincere and sympathetic towards the Applicant, they would not have taken 12 years of time in this Departmental proceedings and they would not have gone further for imposing the minor penalty considering the fact that the Applicant had already suffered loss of promotion since 2005 which is more than a major

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penalty. The Disciplinary authority had not pursued the reply of the Applicant is not a mere allegation. Without any solid ground the Respondents have rejected the Representation submitted by the Applicant against the findings.

6. That with regard to the statement made in paragraph 7 of the reply to the Rejoinder, the Applicant has no comments to offer and beyond record nothing is admitted by the Applicant.

7. That with regard to statement made in paragraph 8 of the reply to the Rejoinder, the Applicant begs to state that the Appellate order is non speaking order. Even the Respondent could not counter the grounds made in paragraphs 5.15, 5.19, 5.21 of the O.A. The Appellate order is not only a non-speaking order but it is also reveals non-application of mind as it deals with many absurd and out of the context and findings of the Disciplinary authority.

8. That with regard to the statement made in paragraph 9 of the reply to the Rejoinder, the Applicant has no comments to offer and beyond record nothing is admitted by the Applicant.

9. That with regard to statement made in paragraph 10 of the reply to the Rejoinder, the Applicant begs to state that the Applicant is not misleading the Hon'ble Tribunal. There are thousands of Income Tax Officers all over India under the respective Chief Commissioner of Income Tax. In the Written Statement the Respondents have cited that the Applicant's promotion order could not be passed as his name did not figure in the Central Board of direct Taxes Order No.160 of 2005 dated 26.10.2005. How would the name of the Applicant figure in the Central Board of Direct Taxes promotion order if the Chief Commissioner of Income Tax, Gauhati did not report or put up his name before the authority concern. Now it is clear that the Respondent is only trying to delude the Hon'ble Tribunal.

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10. That with regard to statement made in paragraph 11 of the reply to the Rejoinder, the Applicant has no comments to offer and beyond record nothing is admitted by the Applicant.

11. That with regard to statement made in paragraph 12 of the reply to Rejoinder, the Applicant begs to state that the cropped up allegations of omissions and commissions were replied by the Applicant vide Annexure-6, Annexure-8, Annexure-10,Annexure-15, and Annexure-17 of the O.A. but the authorities never countered or gave any reasons or grounds for rejection of the same, instead the authority simply ignored the Applicant and imposed the minor penalty by violating the Rules of equity and justice.

12. That with regard to statement made in paragraph 13 of the reply to the Rejoinder, the Applicant has no comments to offer and beyond record nothing is admitted by the Applicant.

13. That with regard to statement made in paragraph 14 of the reply to the Rejoinder, the Applicant begs to sate that the vigilance proceeding was started on 14.05.1997, the charge sheet for major penalty was served on 06.06.2002 and the Applicant replied the same on 10.06.2002. The supplementary proceedings started on 11.12.2003. From the reply of the main proceedings, the authority found that it was not enough to shoot the Applicant, so they started another proceedings in the name of supplementary proceedings after 1 ½ years of service of the main charge sheet. In general in the assessment cases any omissions and commissions are always remedied by audit, rectification and revision order and not taken for vigilance angle. But exceptionally in the assessment cases of the Applicant only so called cropped up omissions and commissions are taken for vigilance action which amply proves the arbitrary and pre-set mind of the authority to punish the Applicant.

14. That with regard to statement made in paragraph 15 of the reply to the Rejoinder, the Applicant has no comments to offer and beyond record nothing is admitted by the Applicant.

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15. That with regard to statement made in paragraph 16 of the reply to the Rejoinder, the Applicant begs to state that in this paragraph the Respondent has ended in total mess as most of the sentences convey no meaning. The Respondent himself is confirming that the same Disciplinary authority recommended as "the petition of the Applicant may be considered favorably". The Disciplinary authority even after imposing minor penalty, at the Appellate stage recommended to favour the petition of the Applicant, clearly proves that the minor penalty was unwarranted, otherwise how would the same authority who imposed the minor penalty recommend such a favour to the Applicant.The Respondent failed to maintain the minimum standard of reasoning while terming the Disciplinary authority's opinion as personal opinion and in the capacity as a superior officer. The Appellate authority sought the view of the disciplinary authority on the minor penalty order in official term and in the capacity as Disciplinary authority and Disciplinary authority also gave his recommendation officially and in the capacity as Disciplinary authority.

16. That with regard to statement made in paragraph 17 of the reply to the Rejoinder, the Applicant begs to state that the Respondent has alleged that the Applicant has failed to bring any specific point where there is non-application of mind on the part of the Respondent. The Applicant had extensively cited in the Rejoinder the paragraph nos. 5.9, 5.10, 5.11, 5.12, 5.13, 5.16, 5.17 etc of the O.A. in support of the non-application of mind on the part of the Respondents.

17. That with regard to statement made in paragraph 18 of the reply to the Rejoinder, the Applicant begs to state that the Applicant being one of the most honest and uncompromising officer ~~officer~~ of the department, his good integrity and sincerity stirred the nest of the vested circles which started filing false and motivated complains. In the course of inquiry these complains were all proved to be false and motivated. The vigilance was started from the complains and while all the complains proved false, naturally the proceedings should have

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been dropped in entirety and no penalty imposed at all. But the position was not to be so, the authority deviated from the complains and hatched up some omissions and commissions even starting a supplementary proceedings.

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VERIFICATION

I, Syed Basit Doley alias Budheswar Doley Son of late Cheniram Doley aged about 52 years, Income-tax Officer, Ward-I (2), office of the Joint Commissioner of Income-tax, Range-I, AYAKAR BHAVAN, G.S. Road, Guwahati, PIN Code-781005 do hereby solemnly verify that the statements made in paragraph nos. 1, 2, 3, 5, 7, 9, 11, 13, 15, 16, 17 are true to my knowledge and those made in paragraph nos. 4, 6, 8, 10, 12, 14 ——— are being matters of record from true to my information derived therefrom which I believe to be true and rest are my humble submission before this Hon'ble Tribunal.

And I sign this verification on this the 17th day of May, 2010 at Guwahati.

Syed Basit Doley

DECLARANT

VERIFICATION

I, Syed Basit Dilsey alias Kodinevan Dilsey son of late Chenikam Dilsey aged about 52 years, Income-tax Officer, Ward-1 (2), Office of the Joint Commissioner of Income-tax, Range I, AYANAR, do hereby solemnly affirm that the PIN code-781005 mentioned above is correct and that the statements made in the ..... are true to my knowledge and belief and nothing material has been concealed therefrom and that I am duly authorised to make this verification.

Verified at Guwahati on this the 1st day of May 2018 at Guwahati.

DECLARANT