AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 04-07-2024

Judgment delivered on 18-07-2024

ITA No. 6 of 2005

1. Deputy Commissioner of Income Tax (Assessment) Special Range Bhilai District Durg Chhattisgarh.

---- Appellant

Versus

1. Surendra Kumar Jain (Dead) Through Legal Heirs

1) Smt. Poonam Jain (Wife) W/o Lt. S.K. Jain, Aged About 70 Years R/o House No. B-5, Maharani Bagh, Sriniwaspuri S.O. South Delhi, New Delhi- 65

2) Ms. Geetika Jain (Daughter) D/o Lt. S.K. Jain, Aged About 45 Years R/o House No. B-5, Maharani Bagh, Sriniwaspuri, S.O. South Delhi, New Delhi- 65

---- Respondent

ITA No. 7 of 2005

1. Deputy Commissioner of Income Tax (Assessment) Special Range Bhilai District Durg Chhattisgarh

---- Appellant

Versus

1. Surendra Kumar Jain (Dead) Through Legal Heirs

1) Smt. Poonam Jain (Wife) W/o Lt. S.K. Jain, Aged About 70 Years R/o House No. B-5, Maharani Bagh, Sriniwaspuri S.O. South Delhi, New Delhi- 65

2) Ms. Geetika Jain (Daughter) D/o Lt. S.K. Jain, Aged About 45 Years R/o House No. B-5, Maharani Bagh, Sriniwaspuri, S.O. South Delhi, New Delhi- 65

---- Respondent

ITA No. 8 of 2005

1. Deputy Commissioner of Income Tax (Assessment) Special Range Bhilai District Durg Chhattisgarh

---- Appellant

Versus

1. Surendra Kumar Jain (Dead) Through Legal Heirs

1) Smt. Poonam Jain (Wife) W/o Lt. S.K. Jain, Aged About 70 Years R/o House No. B-5, Maharani Bagh, Sriniwaspuri S.O. South Delhi, New Delhi- 65

2) Ms. Geetika Jain (Daughter) D/o Lt. S.K. Jain, Aged About 45 Years R/o House No. B-5, Maharani Bagh, Sriniwaspuri, S.O. South Delhi, New Delhi- 65

---- Respondent

ITA No. 9 of 2005

1. Deputy Commissioner of Income Tax (Assessment) Special Range Bhilai District Durg Chhattisgarh

---- Appellant

Versus

1. Surendra Kumar Jain (Dead) Through Legal Heirs

1) Smt. Poonam Jain (Wife) W/o Lt. S.K. Jain, Aged About 70 Years R/o House No. B-5, Maharani Bagh, Sriniwaspuri S.O. South Delhi, New Delhi- 65

2) Ms. Geetika Jain (Daughter) D/o Lt. S.K. Jain, Aged About 45 Years R/o House No. B-5, Maharani Bagh, Sriniwaspuri, S.O. South Delhi, New Delhi- 65

---- Respondent

TAXC No. 28 of 2010

1. Deputy Commissioner of Income Tax (Assessment) Special Range Bhilai, District Drug Chhattisgarh.

---- Appellant

Versus

1. Surendra Kumar Jain (Dead) Through Legal Heirs

1) Smt. Poonam Jain (Wife) W/o Lt. S.K. Jain, Aged About 70 Years R/o House No. B-5, Maharani Bagh, Sriniwaspuri S.O. South Delhi, New Delhi- 65

2) Ms. Geetika Jain (Daughter) D/o Lt. S.K. Jain, Aged About 45 Years R/o House No. B-5, Maharani Bagh, Sriniwaspuri, S.O. South Delhi, New Delhi- 65

---- Respondents

For Appellant (Revenue)	Mr. Ramakant Mishra, Dy. Solicitor General with Mr. Rishabh Dev Singh, Ms Jyoti Singh and Ms Shweta Rai, Advocates
For Respondent (Assessee)	Mr. Ajay Vohra, Sr. Advocate (through Video Conferencing) with Mr. Vaibhav Shukla, Ms Astha Shukla, Mr. Himanshu Yadu, Mr. Rohit Jain, Mr. Aniket D. Agrawal and Mr. Abhishek Singhvi Advocates

Hon'ble Mr. Justice Goutam Bhaduri &
Hon'ble Mr. Justice Sanjay Kumar Jaiswal

CAV Judgment

Per Goutam Bhaduri, J.

1. Five appeals filed by the assessee against the order passed by the Commissioner of Income Tax (Appeals) {for brevity 'the CIT(A)'} before the Income Tax Appellate Tribunal, Nagpur (for brevity 'the ITAT'). Since common issue was involved, all the appeals were considered and decided by the ITAT by a consolidated order dated 31-8-2004 by which the appeals preferred by the assessee were partly allowed whereas the appeal preferred by the Revenue was dismissed. Against the order passed by the ITAT, the Revenue preferred these appeals and the assessee has preferred the cross appeal.

2. Since all the appeals are arising out of same order dated 31-8-2004 passed by the ITAT they are being heard and decided together by this common judgment along with cross-objection.

3. In order to avoid repetition of facts and for the sake of convenience, the documents annexed in ITA No.6 of 2005 are being referred :

4. The facts of the case are that :

a) The assessment year pertains to 1988-89, 1989-90, 1990-91, 1991-92 and 1992-93. Initially Surendra Kumar Jain (since deceased) filed the aforesaid returns; the same were accepted; and intimations were issued under Section 143(1)(a) of the Income Tax Act, 1961 (for brevity 'the IT Act').

b) Original assessee derived income from salary as Managing Director of M/s Bhilai Engineering Corporation Limited, share profits from firm in which he is partner and other sources.

c) Search and seizure operations were carried out by the Central Bureau of Investigation (for brevity 'the CBI') on 3-5-1991 at the residential premises of one J.K. Jain at Delhi, who was an employee of M/s BEC Impex International Pvt. Ltd., in which the assessee was also a Director. During such search operation certain documents were found apart from Indian currency of ₹ 58.5 lacs and foreign currency were found. It was also found one Shambhudayan Sharma, Hawala Operator, who had allegedly channelized funds. Photocopies of seized documents were handed over by the CBI to the Income Tax Department in February, 1994 for enquiries and investigation. Subsequently, the remaining seized documents were handed over by the CBI to the Directorate of Income Tax (Investigation) {for brevity 'the DIT (Inv.)'}, New Delhi, in the month of February, 1995, which was in response to

warrant of authorisation issued by the DIT (Inv.) under Section 132A of the IT Act. On 2-3-1995 statement of J.K. Jain was recorded by the DDIT (Inv.) under Section 131 of the IT Act. Letter sent by the DDIT (Inv.), Delhi, to the DCIT (Deputy Commissioner of Income Tax), Special Range, Bhilai, who is the Assessing Officer (for brevity 'the AO') for initiating reassessment proceedings. The relevant seized documents and set of papers were sent to the Commissioner of Income Tax (CIT), Jabalpur on 1-3-1995.

d) The documents so received by the AO at Bhilai included one spiral bound diary, which was marked as MR-71/91. In the said diary certain receipts and disbursement of money was found to be recorded. Statement of J.K. Jain from whose possession the said diary found was recorded by the CBI as well as Additional DIT (Inv.), New Delhi and according to the AO the said diary found in possession of J.K. Jain belonged to the assessee S.K. Jain and was maintained as per direction of the assessee.

e) Subsequently, the directions were received from the higher authorities. On the strength of the photocopies of aforesaid documents, notices were issued by the AO under Section 148 of the IT Act for the assessment year 1988-89 to 1992-93.

f) The proceeding under Section 143(3) read with Section 147 of the IT Act were completed and following income was assessed as under :

Assessment year	Income Assessed (₹)
1988-89	44,39,320=00
1989-90	2,58,94,870=00
1990-91	24,35,06,300=00
1991-92	23,69,02,210=00
1992-93	5,94,40,840=00

g) Being aggrieved by the assessment order the assessee preferred an appeal before the CIT(A) on various grounds including the validity of reassessment proceedings. The CIT(A) after hearing the parties vide its order upheld the order passed by the AO under Section 143(3) read with Section 147 of the IT Act for all the years under consideration except allowing the relief to the assessee on the issue relating to the levy of interest under Section 139(8) and Section 217 of the A.Y. 1988-89.

h) Feeling aggrieved by the order of the CIT(A) the assessee preferred appeal for the assessment year under consideration and the Revenue had also preferred cross appeal for AY 1988-89 bearing ITA No.585/Nag/97. The ITAT after going the facts and material available on record held that the assessment was completed by the AO on the dictates of higher authorities without application of mind whereas the ITAT also dismissed the contention of the assessee for initiation of reassessment proceeding and held that reassessment was not done by the AO as per the directions/ dictates of the superior authority. Consequently, assessment

in the assessment years was annulled, however, reassessment was upheld.

g) Against the order passed by the ITAT dated 31-8-2004 the Revenue has preferred the present appeals under Section 260-A of the IT Act wherein the following substantial question of law was framed by this Court on 13-12-2013 :

> i) Whether in the facts and circumstances of the case, the order of the Assessing Officer can be said to have been passed on the dictates/ directions of the superior authorities;
>
> ii) Even if it is taken that the order was passed on the dictates/directions of the superior authorities, then whether the order could be set aside by the Tribunal as it has been approved and validated by the order of the Commissioner of Income Tax (Appeals);
>
> iii) Whether the Tribunal, having upheld initiation of reassessment proceedings, was legally justified in not remanding the case back to the Assessing Officer for framing fresh assessment.

and; in respect of the cross-objection filed on behalf of the assessee on dated 8-7-2014 the following substantial question of law was framed by this Court on 17-9-2014 :

> 1) Whether on the facts and circumstances of the case, the Tribunal erred in law in upholding initiation of reassessment proceedings under Section 147/148 of the Act ?

5. (i) Learned counsel appearing for the Revenue would submit that though the finding has been recorded by the ITAT that the assessment was carried out at the direction/dictates of the higher

authorities but perusal of the assessment folder; order sheet; and the discussion it do not indicate the same. He would further submit that in the Income Tax Department there are various wings which functions independently and at some times in consortium with others. He would submit that it is quite normal that the information would travel from wing to other by the officers that cannot be lead to show that the AO was working under the dictates of higher authorities.

(ii) Learned counsel would submit that the AO being the part and parcel of the Income Tax Department has to take cognizance of the material supplied by the assessee for verification during the course of scrutiny proceedings and in the instant case the reassessment proceeding was initiated on the instance of material gathered which was collected by the CBI during the course of search conducted by them in connection with transfer of money to India through Hawala, therefore, unless such information received at higher end or transmitted and coordination is maintained the Department cannot function and in the instant case the similar things happened.

(iii) Learned counsel would also submit that the Supreme Court in the matter of ***Vineet Narain & Others v Union of India & Another***[1] had directed the Government agencies to fairly, properly and fully investigate into every accusation against every person and all the agencies were directed to timely report to the Supreme

1 WP(Cri.) No.340-343 of 1993 (dated 30-1-1996)

Court regarding the progress achieved in the matter of investigation, therefore, the entire proceeding of the CBI and the Income Tax Department was being monitored by the Supreme Court. Under the circumstances the AO, who was taking cognizance of the development has to gather information and was required to be in liasioning with the officers including higher one. Thus, the correspondence of coordination in between the officers were made and no extraneous inference or apprehension is required to be drawn and the assessment cannot be said to be completed on the direction/dictates of higher authorities.

(iv) Learned counsel would submit that the conclusion reached by the ITAT is based on the irrelevant considerations and inference has been drawn and on presumption the findings have been recorded. He would next submit that since the reassessment proceeding was one of the action in connection with Hawala transaction and parallel proceeding going on with other authorities as per the IT Act, as such, the parallel proceeding carried out by the other officers of the Department cannot be linked with the reassessment proceedings. Consequently, the circumstances itself would show that there is no instance of any dictation to frame the assessment in a particular way.

(v) Learned counsel would submit that even if it is found that the AO was acting on the dictates/directions of the superior authorities then the only course left to the ITAT was to remand

back the case to the AO for conducting fresh assessment and the question regarding initiation of reassessment proceeding has attained finality and the direction of reassessment cannot be said to be as per the dictates of superior authorities. He would submit that even if it is found that on the basis of various correspondence, which is produced by the ITAT the proper course could have been to consider the reassessment order of merits and after considering the material available on record, the ITAT should have passed the order on merits before giving factual finding and alternatively ought to have remanded back the matter to the AO for conducting the assessment afresh. He would also submit that in the instant case since no explanation has been given by the assessee with respect to the proposed addition, but on the contrary raised objection and avoided the reassessment proceedings from being proceeded for framing of assessment. As such, the addition made by the AO ought to have been upheld by the ITAT instead of annulling the same.

(vi) Learned counsel would submit that there is a difference between lack of jurisdiction and irregular exercise of power/jurisdiction by the AO. If the jurisdiction exercised by the AO was held to be proper, holding the reassessment proceedings to be valid then by no stretch of imagination the order passed by the AO can be annulled and the order could have been annulled only on the ground when it lacks of jurisdiction. In the instant case, admittedly, the AO had the entire jurisdiction, therefore, the

question of law is required to be answered in favour of the Revenue.

(vii) To buttress his contention, learned counsel would place reliance upon the decision rendered by the Supreme Court in the matter of ***Omar Salay Mohamed Sait v Commissioner of Income Tax***[2], decision rendered by the High Court of Allahabad in the matter of ***S.K. Gupta & Co. v Income Tax & Anr.***[3] and the High Court of Bombay in the matter of ***Commissioner of Income Tax v Bharatkumar Modi & Ors.***[4] and would submit that when the finding of fact can be interfered when it is based on conjectures and surmises or improper rejection of relevant evidence, is liable to be interfered with in reference jurisdiction. Further, the High Court of Allahabad in ***S.K. Gupta & Co.*** (supra) would submit that when the AO had reason to believe under Section 147 that any income chargeable to tax and has escaped in any assessment year he may assess or reassess such income and AO should have the reason to believe and sub-section (2) of Section 148 provides that before issuing a notice for an intended assessment/reassessment under Section 147, the AO shall record his reason for doing so and in the case at hand reasons have been recorded the same should not have been interfered.

(viii) Further reference is made to the decision to the decision rendered by the High Court of Bombay in the matter of ***Bharatkumar Modi*** (supra) to submit that when the proper

2 (1959) 37 ITR 151 (SC)
3 (2001) 165 CTR (All) 565 = (2000) 246 ITR 560 (All)
4 (2000) 164 CTR (Bom) 273 = (2000) 246 ITR 693 (Bom) = (2000) 113 TAXMAN 386 (Bom)

opportunity of hearing has been given to the assessee the entire annulment of assessment cannot be justified and even if certain wrong is committed the entirety of the assessment order cannot be said to be annulled. Therefore, the question of law is required to be answered in favour of the Revenue. Learned counsel would also place reliance upon the decision rendered by the Supreme Court in the matter of ***Commissioner of Police, Bombay v Gordhandas Bhanji***[5]. He would submit that under the circumstances at the most the case required to be remanded back.

6. (A) Learned counsel appearing for the assessee, *ex-adverso*, would submit the ITAT has passed its order after perusal of the documents annexed and material available on record, which only shows that reassessments were completed on the directions/ dictates of the higher authorities, which is not permissible in law. He would submit that starting of reassessment was also at the dictates of higher officials, which could not have been done. It is settled proposition of law that the order of assessment must be passed by the AO, based on its independent application of mind, uninfluenced by the directions/dictates by any other authority and an order passed on the dictates of any superior authority would be a null and void and *non est*.

(B) Learned counsel would further submit that the ITAT had directed to place on record the correspondence of the Revenue and when the same were produced the ITAT came to a conclusion that

5 1951 SCC OnLine SC 70

the proceedings relating to case of assessee were illegally conducted and influenced by the higher authorities, who had no jurisdiction to do so under the law. Referring to various dates, learned counsel would submit that under Section 148 of the IT Act proceedings were initiated by the AO vide its order dated 30-3-1995 and it was only on the basis of part of seized documents which was considered relevant by the DDIT (Inv.) and in the aforesaid letter dated 20-3-1995, AO was also directed to start reassessment proceeding, therefore, there was no option left with the AO. On the contrary, the AO, who is the quasi judicial authority and is required to act independently and judiciously, could not have done so.

(C) Learned counsel would submit that the return was filed under protest in June, 1995 and the entire denial was made with respect to any action or nexus with the seized documents. Thereafter, the Investigation Department at Delhi illegally usurped the power over the entire assessment proceedings to the complete exclusion of the AO, who was placed at Bhilai, Durg and it is the Delhi Investigation Department recorded various statements on which the reassessment was thought for and ordered. He would also submit that in terms of Section 132A(3) read with Section 132(9A) of the IT Act, the DDIT (Inv.) was the requisition officer and was required to transfer the documents requisitioned to the AO within the statutory period of 15 days and subsequent to it the authority was seized to exercise its jurisdiction.

(D) Reference is made to the decision rendered by the Supreme Court in the matter of ***CIT v K.V. Krishnaswamy Naidu***[6]**,** to submit that the authorised officer, the Director (Inv.), was only confined to carry out search and seizure, but was not the Income-Tax Officer who could pass an order under sub-section (5) of Section 132 and could not retain the seized document beyond 15 days. He could not have moved a proposal under sub-section (8) for further retention of documents beyond 180 days. Learned counsel would submit that since the only part and parcel of documents were sent to the AO on 20-3-1995 though it was received on 7-2-1995, the statutory period of 15 days had passed. He would submit that the DDIT (Inv.) forwarded the document requisitioned from the CBI under Section 132A much after expiry of statutory period of 15 days provided under Section 132(9A) of the IT Act and that too only part of the documents have been forwarded and the DDIT (Inv.) got involved in the matter of investigation, who had no jurisdiction.

(E) Learned counsel would submit that during the period from 6-6-1995 to December, 1995 the Investigation Department, Delhi, continued to illegally exercise jurisdiction over the entire assessment proceedings to complete exclusion of the AO. He would submit that during the period as has been reflected in the order of the ITAT, the AO was not even involved in the assessment proceeding, but was controlled by the Investigation Department at

6 (2001) 9 SCC 767

Delhi. He would submit that record of assessment proceeding before the AO from 5-2-1996 to 16-4-1996 were requisitioned and was produced and the order sheet would show that each and every stage of assessment proceedings, the AO received instructions/ directions from the Investigation Department at Delhi. Even for grant of adjournment the instruction was sought for. Further reference is made to letter dated 30-1-1996 written by the AO addressed to the CIT, Jabalpur, who is the administrative head of the AO to say that it is clearly been established that even the cross-examination was not allowed at the behest of the direction of the investigation agency at Delhi, therefore, the AO was completely working under the instructions of the higher authorities.

(F) Learned counsel would further submit that the letter dated 20-3-1995 would show that selectively papers were sent by the Investigation Department, Delhi, therefore, no independent application of mind by the AO was applied about relevancy or non-relevancy of such paper. He would submit that at the instructions of superior officers of the CIT (A), the reopening was made and even the reasons were worked out and the note sheet would show, which is apparent from the order of the ITAT, that the AO did not form any opinion to reopen and the action of reassessment was suggested.

(G) Learned counsel would submit that as per Section 153A of the IT Act (*as then prevailing was*) the reassessment should have been completed within two years and in the instant case the assessment year 1988-89 to 1992-93 continuously and notice under Section 148 was issued on 30-3-1995 so the proceedings of assessment further would be barred after March, 1997. Therefore, as on today this Court cannot lift the bar of limitation by ordering *de novo* reassessment afresh. He would submit that the Tribunal having held the initiation of reassessment was valid is contradictory inasmuch as the original inception of reassessment was bad in law, therefore, this cannot cure the defect on behalf of the Revenue and accordingly question No.3 should be answered in favour of the assessee.

(H) In support of his contention, learned counsel would place reliance upon the decisions rendered in the matters of ***Vineet Narain*** (supra), ***Sirpur Paper Mill Ltd. v Commissioner of Wealth-Tax, Andhra Pradesh***[7]***, The Purtabpur Company Ltd. v Cane Commissioner of Bihar and Others***[8]***, State of U.P. v. Maharaja Dharmander Prasad Singh***[9]***, State of NCT & Anr. v Sanjeev Bittoo***[10]***, Jawahar Lal v Competent Authority, Range-II, New Delhi***[11] ***Sheo Narain Jaiswal v ITO***[12]***,Yashwant Talkies v***

7 (1970) 1 SCC 795 : (1970) 77 ITR 6
8 AIR 1970 SC 1896
9 (1989) 2 SCC 505
10 AIR 2005 SC 2080
11 137 ITR 605 (Del)
12 ITO 176 ITR 352

CIT[13]***, CIT v T.R. Rajkumari***[14]***, Rajputana Mining Agencies v ITO***[15]*, and ***Rajesh Jhaveri Stock Brokers (P) Ltd. v ACIT***[16].

7. We have heard learned counsel appearing for the parties and perused the record.

8. The assessment was of the year 1988-89, 1989-90, 1990-91, 1991-92 and 1992-93. The return of the income was filed by the assessee and were accepted by the Revenue and the intimation was issued under Section 143(1)(a) of the IT Act for the aforesaid years. A different search and seizure operation was carried out by the CBI on 3-5-1991 in the residential premises of J.K. Jain at New Delhi, who was an employee of M/s BEC Impex International Private Ltd., wherein S.K. Jain was one of the Director. Some of the loose sheets and diary were seized by the CBI. The AO, who is at Bhilai, Chhattisgarh, initiated the proceedings under Section 148 vide notice dated 30-3-1995 for the assessment years 1988-89 to 1992-93. In response to the notice issued under Section 148 of the IT Act, fresh return under protest were filed by the assessee on 6-6-1995. As has been the fact findings have been recorded that in between 6-6-1995 to December, 1995 the Investigation Department at Delhi issued notice to the assessee and other persons and recorded their statements, which would show that they were in hold of documents which were shared by the CBI.

13 157 ITR 103
14 96 ITR 78
15 118 ITR 585
16 284 ITR 593

9. Since the inception of case hinges upon the reassessment order the question of law, which is framed at the instance of the assessee would have a substantial effect to the entire germane. Therefore, we would first go into whether the initial reassessment proceeding itself was proper or not. As would be evident after the initial assessment which carried out from 1988-89 to 1992-93 and was accepted all proceedings at a dormant stage. The reassessment triggered when the CBI search was made at others premises, not the assessee and certain documents were found at the place of one J.K. Jain. This led to investigation and filing of charge sheet in criminal cases. Few of documents so seized during search and seizure by the CBI were later on handed over to the Income Tax Department at Delhi. The Revenue after receiving documents, thought about reassessment at the relevant time. The AO was at Bhilai, not at New Delhi, so whether the AO had applied its mind independently to reassess ? The correspondence which has been referred to by the ITAT in its order reflect that the Government agencies were under the impression that money has been swindled, which led to criminal cases. All these state of affairs remained stagnant and the Income Tax Department did not put up hammer on it. Subsequently, a PIL was filed by a journalist Vineet Narain after which the issue again caught fire and all issues came to fore.

10. In respect of subsequent criminal cases so filed the entire issue of criminality and involvement of people was challenged and were

adjudicated upon. On one of such issue the Supreme Court in the matter of ***Central Bureau of Investigation v V.C. Shukla & Others***[17] held that prosecution intended to prove the abetment of Jains'. Jains' committing the offence does not arise in such case. Reference of the same is relevant in the instant case as the nucleus of all facts leads to a diary bearing MR 71/91 was deliberated. Therefore, prejudice cannot be drawn on the submission of the Revenue that the proceeds of crime as money was received and it came to the hands of the assessee was not shown in the assessment. Such receipt of money was required to be independently proved. Though we are not in hold to deliberate on such facts, but to understand the connectivity or gulf it would be necessary to do so to test the mind of the AO, as to whether such reassessment order was independent by the AO at Bhilai or the investigation Department of Income Tax at Delhi had a domino effect.

11. The Supreme Court in the matter of ***Vineet Narain*** (supra), on the same subject, reiterated thus at as paras 3 & 4 :

> 3) The facts and circumstances of the present case do indicate that it is of utmost public importance that this matter is examined thoroughly by this Court to ensure that all government agencies, entrusted with the duty to discharge their functions and obligations in accordance with law, do so, bearing in mind constantly the concept of equality enshrined in the Constitution and the basic tenet of rule of law: "Be you ever so high, the law is above you." Investigation into every accusation made against

17 (1998) 3 SCC 410

> each and every person on a reasonable basis, irrespective of the position and status of that person, must be conducted and completed expeditiously. This is imperative to retain public confidence in the impartial working of the government agencies.
>
> 4) In this proceeding we are not concerned with the merits of the accusations or the individuals alleged to be involved, but only with the performance of the legal duty by the government agencies to fairly, properly and fully investigate into every such accusation against every person, and to take the logical final action in accordance with law.

12. Reading of both the principles laid down by the Supreme Court, it is manifest that merits of the accusations would not give leverage to the authorities, but performance of the legal duty by the Government agencies to fairly, properly and fully investigate into every such accusation against every person, and to take the logical final action in accordance with law.

13. Section 132A(3) of the IT Act would purport that where any books of account, other documents or assets have been delivered to the requisitioning officer, the provisions of sub-sections (4-A) to (14) (both inclusive) of Section 132 and Section 132B shall, so far as may be, apply as if such books of account, other documents or assets had been seized under sub-section (1) of Section 132 by the requisitioning officer from the custody of the person referred to in clause (a) or clause (b) or clause (c), as the case may be, of sub-section (1) of Section 132A and as if for the words "the authorised officer" occurring in any of the aforesaid sub-sections (4-A) to (14), the words "the requisitioning officer" were substituted.

14. Section 132(9A) of the IT Act speaks that where the authorised officer has no jurisdiction over the person referred i.e. assessee herein all the goods seized shall be handed over by the authorised officer to the Assessing Officer having jurisdiction over such person within a period of fifteen days (*as then prevailing was*) from the date on which the last of the authorisations for search was executed.

15. For brevity Section 132(9A) of the IT Act (*as then prevailing was*) is reproduced hereunder :

> (9A) Where the authorised officer has no jurisdiction over the person referred to in clause (a) or clause (b) or clause (c) of sub-section (1), the books of account or other documents, or assets seized under that sub-section shall be handed over by the authorised officer to the Assessing Officer having jurisdiction over such person within a period of fifteen days of such seizure and thereupon the powers exercisable by the authorised officer under sub-section (8) or sub-section (9) shall be exercisable by such Assessing Officer.

16. In the instant case certainly the Investigating Officer, who seized the goods on which the reassessment proceeded, did not share it with the AO at Bhilai within a period of fifteen days. The Supreme Court in the matter of ***K.V. Krishnaswamy Naidu*** (supra) held thus :

> Having heard the counsel for the parties and in view of the provisions of sub-section (9-A) of Section 132 of the Income Tax Act, 1961, we are in agreement with the judgment of the High Court reported as *K.V. Krishnaswamy Naidu & Co.* v. *CIT* [(1987) 166 ITR 244 (Mad)] that the

> Assistant Director of Inspection who was the authorised officer for the purposes of carrying out search and seizure but was not the Income Tax Officer who could pass an order under sub-section (5) of Section 132 could not retain the seized documents etc. beyond 15 days and, therefore, he could not moot a proposal under sub-section (8) for further retention of the documents beyond 180 days. This appeal is accordingly dismissed with costs.

17. The fact as has been shown in the order the part of the documents were sent to the AO on 20-3-1995 though it was received by him on 7-2-1995 i.e. beyond the statutory period of fifteen days and the DDIT (Inv.) forwarded the documents requisitioned from the CBI under Section 132A much after expiry of statutory period of fifteen days provided under Section 132(9A) and the part of documents were sent, therefore, the very inception of the proceeding in its entirety appears to be under the control of the DDIT (Inv.).

18. In the cross objection filed by the assessee, the substantial question of law was framed by this Court on 17-9-2014 that whether the ITAT erred in law in upholding initiation of reassessment proceeding under Section 147/148 of the IT Act ?

19. Perusal of the order of the ITAT would show that during the course of hearing before the ITAT the correspondence between the AO and the higher authorities including the DDIT (Inv.), New Delhi, and CIT, Jabalpur, who was the administrative controller of the AO of Bhilai, prior to date of initiation of reassessment proceeding were called for. The said proceeding was not provided

to the assessee as it was claimed to be confidential, however, before the ITAT when the correspondence was placed they were allowed to be inspected by the assessee.

20. Perusal of the record and order would show that the documents received by the AO from the DDIT (Inv.), New Delhi, including the documents seized from J.K. Jain, report of CBI, appraisal report ADIT, New Delhi, was not provided to the assessee and according to the order of the ITAT, the department filed copies of such entire material along with factual clarification in writing.

21. The ITAT while formulating whether the AO acted independently or at the behest of his superiors or at the dictation/ direction is essentially a question of fact. The Supreme Court in the matter of ***Sirpur Paper Mill Ltd.*** (surpa) while dealing with Section 25 of the Wealth Tax Act (Corresponding to Section 264 of the Act) set aside the order passed by the Commissioner of Wealth Tax on the ground that the CWT sought instructions from the Central Board. The Court held that the power conferred under Section 25 of the Wealth Tax Act was not administrative power but quasi judicial power and the Central Board could not give directions to CWT in exercise of such quasi judicial powers. In ***Sirpur Paper Mill Ltd.*** (supra) the Court held thus at paras 4, 11 & 12 :

> 4) Section 25 of the Wealth Tax Act provides insofar as it is material :
>
> > "(1) The Commissioner may, either of his own motion or on application made by an

assessee in this behalf, call for the record of any proceeding under this Act in which an order has been passed by any authority subordinate to him, and may make such inquiry, or cause such inquiry to be made, and, subject to the provisions of this Act, pass such order thereon, not being order prejudicial to the assessee, as the Commissioner thinks fit :

x x x x

The power conferred by Section 25 is not administrative : it is quasi-judicial. The expression "may make such inquiry and pass such order thereon" does not confer any absolute discretion on the Commissioner. In exercise of the power the Commissioner must bring to bear an unbiased mind, consider impartially the objections raised by the aggrieved party, and decide the dispute according to procedure consistent with the principles of natural justice : he cannot permit his judgment to be influenced by matters not disclosed to the assessee, nor by dictation of another authority. Section 13 of the Wealth Tax Act provides that all officers and other persons employed in the execution of this Act shall observe and follow the orders, instructions and directions of the Board. These instructions may control the exercise of the power of the officers of the Department in matters administrative but not quasi-judicial. The proviso to Section 13 is somewhat obscure in its import. It enacts that no orders, instructions or directions shall be given by the Board so as to interfere with the discretion of the Appellate Assistant Commissioner of Wealth Tax in the exercise of his appellate functions. It does not, however, imply that the Board may give any directions or instructions to the Wealth Tax Officer or to the Commissioner in exercise of his quasi-judicial function. Such an interpretation would be plainly contrary to the scheme of the Act and the nature of the power conferred upon the authorities invested with quasi-judicial power.

x x x x

11) It is unnecessary to refer to any more entries made in the case sheet maintained by the Commissioner of Wealth Tax. From the inception

> of the proceedings the Commissioner of Wealth Tax put himself in communication with the Board of Central Revenue and sought instructions from that authority as to how the revision applications filed before him should be decided. He exercised no independent judgment. The Commissioner also recorded that the case did not require a personal hearing but since the Director of the Company had made a personal request for an interview it was "thought desirable" from "the point of view of public relations to give an interview." Here also the Commissioner misconceived the nature and extent of his jurisdiction.
>
> 12) Counsel appearing on behalf of the Commissioner of Wealth Tax in these appeals has not attempted to support the order under appeal. We set aside the order passed by the Commissioner and direct that the revision applications be heard and disposed of according to law and uninfluenced by any instructions or directions given by the Board of Revenue….

22. The Court while such setting aside the order found that the Commissioner of Wealth Tax put himself in communication with the Board of Central Revenue and sought instructions from that authority as to how the revision applications filed before him should be decided and he exercised no independent judgment. This course of procedure adopted in such case was not appreciated. The Court held that while exercising the quasi judicial power he cannot permit his judgment to be influenced by matters not disclosed to the assessee, not by dictation of another authority.

23. In the case at hand since the issue pertains to assessment and, as such, whether the reassessment was properly issued and was further carried out is required to be evaluated.

24. The ITAT in its detailed order has taken into consideration various letters/communications which were made between the Revenue office situated at Delhi, Jabalpur and Bhilai. One such letter is letter dated 20.03.95 which was written by the DDIT (Inv.) to Mr. K.M. Verma, Deputy Commissioner of Income Tax, Special Range, Bhilai. The contents of the letter is reproduced herein :-

To Dt.: 20.03.95

Mr. K.M. Verma, Deputy Commissioner of Income Tax,
Special Range, Bhilai, Madhya Pradesh.

Sir,

Sub:- Search operation by CBI against Shri J.K.Jain & others regarding.

Please find enclosed herewith photo copies of documents. A set of such documents was sent to CIT, Jabalpur on 1.3.95 vide this office letter No.DIT(Inv.) /U.I./DLH/95-96/1407. Same set of documents are being sent to you for consideration along with photo copies of the letter referred above and addressed to the CIT, Jabalpur. In this only relevant copies of statement of accused as per set X are being sent to you. Others being not presently material are not sent. This set would therefore contain statement of Shri.J.K.Jain, S.K.Jain, B.R.Jain and N.K.Jain.

As per discussion held with CIT, Jabalpur, you are requested to kindly initiate re assessment proceedings under the income tax and gift tax proceedings against Shri S.K.Jain, B.R.Jain, BECO or any other relevant persons for the relevant assessment years. For this purpose you may kindly go through the report of the CBI set out in Set IX identify the person in whose hands the proceedings under I.T. and G.T. Act had to be initiated, specify years where such income/gift would be taxable and work out reasons for reopening the assessment. You are also requested to please identify the items of root payments from the seized material which can be referred to regular books of account of BECO or other sister concerns of BECO so that quantum of receipt/payment can be cross checked and accordingly the seized material can be correctly deciphered. If considered necessary, matter can be discussed with the undersigned. We are also working out the case and we sent you copy of the investigation report at the earliest possible time.

25. The ITAT in its order has also given the account of the documents which were annexed with aforesaid letter. It is pertinent to mention here that these documents were same set of documents which were sent to CIT, Jabalpur by the DDIT (Inv.) on 1.3.95. The set of documents were as follows :

i) SET - I - Monthly receipts and payments having pages 1 – 32.

ii) SET - II - Containing detailed expenditure in firm and others having pages 1-30.

iii) SET - III - Titled as MR - 69/91 containing pages 1-8 showing summary of accounts in the diary.

iv) SET-IV - Summary of accounts of diary titled as MR - 70/91 having pages 1-30.

v) SET - V - Titled as MR - 72/91 showing details of payments etc. having 51 pages.

vi) SET - VI - Titled as MR - 73/91 having 50 pages.

vii) SET - VII - Titled as MR - 67/91 containing 11 pages representing ledger account of BECO, S.K. Jain.

viii) SET - VIII - copy of account of petition files before settlement commission by Shri J.K. Jain having 12 pages.

ix) SET - IX - report from CBI having 117 pages.

x) SET - X - Statement of accused recorded by CBI as containing 258 pages.

xi) SET - XI - Containing statements of witnesses by CBI having 125 pages.

xii) SET - XII - Containing a report sent by DDIT, Unit - I to DI about appraisal of some of the documents containing 18 pages.

26. Aforesaid letter dated 20.03.95 was received by the AO on 24.03.95. On 29.03.95 the AO wrote a letter the DDIT (Inv.) informing him that there are certain pages which are missing which could be relevant for consideration. The AO has recorded reasons for reopening of the assessments on 30.03.1995. The ITAT has also given record of proceedings. The relevant entries are for the period from 24.03.1995 when the AO received documents till 5.4.1995. The same would be necessary to assess whether there was an independent application of mind :

24.3.95 :

Received photocopies seized material, statement and report (CBI) by courier service (Ryp) at 5.00 PM

27.3.95:

Received phone call from Shri.P.C.Chhotary, DDIT(Inv.), Delhi, he desired to know the latest development in the matter of investigation/ reopening of the case of the persons to whose cases the seized materials relate. He is informed that this office has received the material/reports etc., only on 24.3.95 at 5.00 P.M. from Delhi Vide letter No. F.No.DDIT/Inv/U-I/T. W/DLH/95-96/1464 dated 20.3.95. Our position is being verified. The approval report of DDIT to DC contains Set No. XII shall be perused and action of reopening etc. as suggested shall be taken shortly. Our report shall be submitted to Honourable Settlement commission. He informed that their matters are fixed for hearing before Honourable Supreme Court.

28.3.95:

Received a phone call from D.G. Shri.G.P.Garg, Delhi. He informed of the_____ (not legible) aspect of the matter. Viz., (a) the reopening of the assessment of Shri S.K.Jain, B.R.Jain and BEC (b) submission of the report to settlement commission _____ (not legible) appraising them the factual position and (c) Submission of detailed report to CBDT through CCIT Bhopal, by week end.

28.3.95:

Received phone call from CIT Jabalpur who informed of his talk with Shri SP Garg, D.G. Delhi, he has been informed of the action to be taken. He expressed his satisfaction about the progress so far.

30.3.95:

Recorded the detailed reasons u/s.148(2), 17(1) & 16(1) of IT/WT/GT Act for issue of notices under various D.Taxes.

5.4.95:

Received a phone call from CIT/DDIT(Inv.) informing the visit of Shri. D.C.Agarwal. It is informed by Shri Abhey Damble, ACIT that in the case Action Taken Report (ATR) is to be submitted to the _____ (not legible) by the CIT and the said report to be submitted to the CIT showing action taken on the following aspects:

(a) reopening of the cases- reasons to work out;

(b) submission of the report to the settlement commission on the basis of the documents of seized material record for CBI. Summons to B.R: Jain, issued.

27. The aforesaid letter dated 20.03.95 which was written by DDIT (Inv.) to Mr. K.M. Verma, Deputy Commissioner of Income Tax (AO) in most indubitable way dictated him to initiate reassessment proceedings. In our view, this letter in unequivocal

terms the DDIT (Inv.) has exceeded its general power of superintendence and influenced the mind of the AO.

28. The AO has not applied his mind independently without any bias get further confirmed from the records of the order which shows that the officers sitting at Delhi and Jabalpur were constantly involved in the process when the AO was taking decision.

29. In the matter of ***Pancham Chand v. State of H.P.***[18], the Supreme Court has dealt with the situation wherein the Chief Minister of the state has communicated twice to the transport commissioner to grant of permit to the Respondent and to take further action and sent a compliance report to the office. The Supreme Court has held that Regional Transport Authority being the statutory authority can only act accordance with the statute. The Supreme Court held thus at para 19 :

> 19. Apart from the fact that nothing has been placed on record to show that the Chief Minister in his capacity even as a member of the Cabinet was authorised to deal with the matter of transport in his official capacity, he had even otherwise absolutely no business to interfere with the functioning of the Regional Transport Authority. The Regional Transport Authority being a statutory body is bound to act strictly in terms of the provisions thereof. It cannot act in derogation of the powers conferred upon it. While acting as a statutory authority it must act having regard to the procedures laid down in the Act. It cannot bypass or ignore the same.

30. In this case the Court held that even the high ranked public office bearer like Chief Minister has no business in interfering with the

18 (2008) 7 SCC 117

functioning of the statutory Authority. Even the appellate authority can only interfere when the Case comes before it for adjudication. At para 22 the Supreme Court has held as under :-

> 22. In the matter of grant of permit to individual applicant, the State has no say. The Chief Minister or any authority, other than the statutory authority, therefore, could not entertain an application for grant of permit nor could issue any order thereupon. Even any authority under the Act, including the appellate authority cannot issue any direction, except when the matter comes up before it under the statute.

31. The Supreme Court finally held that unwanted interference in the working of the statutory authority violates the constitutional scheme. The Court in para 20 held as under :

> 20. Factual matrix, as indicated hereinbefore, clearly goes to show that the fourth respondent filed the application before the Chief Minister straightaway. Office of the Chief Minister communicated the order of the Chief Minister, not once but twice. Respondent 2 acted thereupon. It advised the Regional Transport Authority to proceed, after obtaining a proper application from Respondent 4 in that behalf. This itself goes to show that prior thereto no proper application was filed before the Regional Transport Authority. Such an interference on the part of any authority upon whom the Act does not confer any jurisdiction, is wholly unwarranted in law. It violates the constitutional scheme. It interferes with the independent functioning of a quasi-judicial authority. A permit, if granted, confers a valuable right. An applicant must earn the same.

32. In democracy like us every authority may, however, high should only function within the four corners of law because the rule of law requires that all the machinery of State must function according to mandate of statute. The democracy requires the rule of law in State must be protected from becoming rule of man.

33. Rule of Law is of the elemental principle of Constitution of India. The Rule of Law requires Rule within the ambit of law and every statutory authority must function themselves as required under the law. The Constitution requires that Rule of Law must be upheld over the rule of Men. The rule of men refers to the arbitrary use of political authority for the betterment of individuals at the expense of others. In contrast, the rule of law means there are clear, reasonable and stable laws consistently applied across society. Where the rule of law is lacking, there is an inevitable decline into a regime of "might makes right." In such a situation, the rights of the weak are those most in jeopardy.

34. Thomas Paine who is considered as founding father of the America has advocated for the Law to be king in his pamphlet *Common Sense*. Originally published in 1776, this pamphlet lays out Paine's theory for why the American colonies should declare independence. (**THOMAS PAINE, COMMON SENSE (1776))**

> But where says some is the King of America? I'll tell you Friend, he reigns above, and doth not make havoc of mankind like the Royal Brute of Britain. Yet that we may not appear to be defective even in earthly honors, let a day be solemnly set apart for proclaiming the charter; let it be brought forth placed on the divine law, the word of God; let a crown be placed thereon, by which the world may know, that so far as we approve of monarchy, that in America the law is king. For as in absolute governments the King is law, so in free countries the law ought to be King; and there ought to be no other.

35. The Supreme Court in the matter of ***State of W.B. v. Vishnunarayan & Associates (P) Ltd.***[19], held that executive

19 (2002) 4 SCC 134

officers cannot interfere with the rights of others unless they can point to some specific provision of law, which authorises their acts.

> 10. It is the settled position of law that the State or its executive officers cannot interfere with the rights of others unless they can point to some specific provision of law, which authorises their acts. A Constitution Bench of this Court in Bishan Das v. State of Punjab [AIR 1961 SC 1570 : (1962) 2 SCR 69] held that the State or its executive officers did not have any right to take law into their own hands and remove a person by an executive order. The Court further observed: (SCR p. 80)
>
> > "Before we part with this case, we feel it our duty to say that executive action taken in this case by the State and its officers is destructive of the basic principle of the rule of law."

36. However it is equally true that when the authority is vested with the power it has duty to exercise it and adherence to said rule is important facet to administration of justice. The Revenue raised the argument that effective functioning of the revenue department requires coordination monitoring and superintendence. However what required to be seen is that General power of superintendence must be distinguished from the interference in the adjudication process. The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner the principle has been recognised by the Supreme Court in ***Maharaja Dharmander Prasad Singh*** (supra), held thus at para 55 :

55. It is true that in exercise of powers of revoking or cancelling the permission is akin to and partakes of a quasi-judicial complexion and that in exercising of the former power the authority must bring to bear an unbiased mind, consider impartially the objections raised by the aggrieved party and decide the matter consistent with the principles of natural justice. The authority cannot permit its decision to be influenced by the dictation of others as this would amount to abdication and surrender of its discretion. It would then not be the authority's discretion that is exercised, but someone else's. If an authority "hands over its discretion to another body it acts ultra vires". Such an interference by a person or body extraneous to the power would plainly be contrary to the nature of the power conferred upon the authority. De Smith sums up the position thus:

> "The relevant principles formulated by the courts may be broadly summarised as follows. The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it: it must not act under the dictation of another body or disable itself from exercising a discretion in each individual case. In the purported exercise of its discretion it must not do what it has been forbidden to do, nor must it do what it has not been authorised to do. It must act in good faith, must have regard to all relevant considerations and must not be swayed by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. Nor where a judgment must be made that certain facts exist can a discretion be validly exercised on the basis of an erroneous assumption about those facts. These several principles can conveniently be grouped in two main categories: failure to exercise a discretion, and excess or abuse of discretionary power. The two classes are not, however, mutually exclusive."

37. As referred earlier, the Supreme Court in the matter of ***Sirpur Paper Mills Ltd.*** (supra) highlighted that Wealth Commissioner following directions of Board of Revenue is "surrendered his judgment to the directions of the Board of Revenue" the Supreme Court has highlighted thus at para 5 :

> 5. The Commissioner appears, in our judgment, to have wholly misapprehended the true character of the jurisdiction with which he is by the Act entrusted and has surrendered his judgment to the directions of the Board of Revenue. The order sheet of the Commissioner (at pp. 10-36 of the printed Paper-Book) bears eloquent testimony to the manner in which the Commissioner has merely carried out the directions of the Board of Revenue, instead of deciding the case according to his own judgment.

38. The Tribunal in its order after considering the material available on records come to a wrong finding that the time gap the AO revived information and reasons recorded to reassess would not be fatal and despite the fact no reasons were recorded or evidence is available, which cannot be stated that reassessment was an independent decision. This finding of the ITAT fall short of the principles laid down when the events of facts have to be seen as a whole. One fact cannot be picked up to isolate the other set of facts like cherry picking. To start with thinking of reassessment, which ended into wrong reassessment procedure would be a continuing one and cannot be put into a single compartment as the state of mind is to be evaluated. It is not expected after going through the communication that the AO decided to reassess of his own. As initially when the assessment was completed, the AO was

not agile of the matter, but when the communications from higher up were received from Delhi, the AO decided for reassessment.

39. The true test is whether in the given facts and circumstances a person i.e. the AO, who is an employee of the Revenue, too had the capacity to disobey such instructions, therefore, a person with reasonable prudence can infer the bias from the records of proceedings. The combined reading of the letter dated 20.03.95 along with other material available on record it is clear that the AO has passed the order for reassessment under influence of his superiors.

40. In ***Ranjit Thakur v Union of India***[20], the Supreme Court held thus at para 17 :

> 17. As to the tests of the likelihood of bias what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. The proper approach for the Judge is not to look at his own mind and ask himself, however, honestly, "Am I biased?"; but to look at the mind of the party before him.

41. Therefore, the ITAT has erred in upholding initiation of reassessment proceedings under Sections 147/148 of the IT Act. Consequently, the answer to this question is given in favour of assessee to hold the decision of AO to reassess the assessee was not independent but was at the instance of superior officer.

42. Now next coming to the substantial questions of law which were admitted for hearing at the instance of Revenue on 13-2-2013, which have already been quoted in para 4 (G) of this judgment.

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20 (1987) 4 SCC 611

43. The principal argument of the assessee is that all these orders were passed by the AO at the dictate of the superior authority whereas according to the Revenue, the DIT (Inv.) was just monitoring the investigation as the matter was under consideration before the Supreme Court.

44. The position of law is settled that the foremost requirement of adjudication is that the adjudicator must be neutral and any one who is not neutral shall ceased to be adjudicator then only the principles of natural justice can be given true effect.

45. That, in the common law adherence to the principles of natural justice has been given utmost importance as it is a requirement of the adjudication that it must be just reasonable and fair to all the parties who comes for the adjudication. Requirement of neutrality in adjudication is requirement of due process. Biased decision maker constitutionally unacceptable but our system of the rule against bias is also aspect of Natural Justice which is based upon the maxim *Nemo judex in sua causais* ("no-one is a judge in his own cause which also give rise to the to the principle that justice must not only be done, but it must also be seen to be done. Lord **Hewart, C.J. in *R.* v. *Sussex JJ., ex p McCarthy*[21]** wherein he said:

> "… it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done."

21 [(1924) 1 KB 256], KB (p. 259)

46. The classic case which falls for consideration before the English Courts was ***Dimes* v. *Grand Junction Canal***[22], In the aforesaid case Lord Cottenham presided over a previous case in which a canal company brought a case in equity against a land owner. Lord Chancellor Cottenham heard the appeal against an order of the Vice-Chancellor and confirmed the order. The order went in favour of the defendant Company. A year later, Plaintiff discovered that Lord Chancellor Cottenham had shares in the defendant Company. He petitioned the Queen for her intervention. Eventually, the matter reached the House of Lords. The House of Lords held that participation of Lord Cottenham in the adjudicatory process was not justified. Though Lord Campbell observed:

> "… No one can suppose that Lord Cottenham could be, in the remotest degree, influenced by the interest he had in this concern: but, my Lords, it is of the last importance that the maxim that no man is to be a Judge in his own cause should be held sacred. And that is not to be confined to a cause in which he is a party, but applies to a cause in which he has an interest. … This will be a lesson to all inferior tribunals to take care not only that in their decrees they are not influenced by their personal interest, but to avoid the appearance of labouring under such an influence."

47. The English Courts have considered the question What is the test of apparent bias? In the beginning the English judges have laid down and applied a 'real likelihood' formula, holding that the test for dis- qualification is whether the facts, as appraise by the court, give rise to a real likelihood of bias; and this test has naturally

22 (1852) 3 HLC 759 : 10 ER 301

been emphasised in cases where the allegation of bias was far-fetched. Other judges have employed a 'reasonable suspicion' test, emphasising that justice must be seen to be done, and that no person should adjudicate in any way if it might reasonably be thought that he ought not to act because of some personal interest. However English Court later comes with the test called Real Danger test. ***Prof HWR Wade and C. F Forsyth in book Administrative Law (Tenth Edition)*** has concluded as follows :

> Since the jurisprudence of the European Convention on Human Rights insists that the appearance of bias, even if there is no actual bias, is sufficient to taint a decision as a breach of Article 6(1) the 'real danger' test, interpreted as in the first-mentioned case, introduced a discrepancy between the Convention and the common law in ensuring impartial decision-making. In addition it disregarded the hallowed principle that justice must be seen to be done. The House of Lords, in recognition of this discrepancy, has now made 'a modest adjustment to the real danger test and ensured consistency between the Convention and the common law. The case concerned a leading counsel, a recorder, who had been appointed by the Lord Chancellor to serve as a part-time judge in the Employment Appeal Tribunal. He was briefed to appear before an EAT which included lay members who had previously sat with him in his role as judge. The test of bias laid down was 'whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased'. Applying this test the House of Lords concluded that it was reasonably possible that that observer might consider that the recorder's submissions would carry particular weight, perhaps subconsciously, with the lay members with whom he had sat in the past.

48. Position of law is more or less similar in India the decision of the Supreme Court in ***N.K. Bajpai v. Union of India***[23] is worth reading :

23 (2012) 4 SCC 653

55. The courts have applied the tests of real likelihood and reasonable suspicion. These doctrines were discussed in *S. Parthasarathi* v. *State of A.P.* [(1974) 3 SCC 459 : 1973 SCC (L&S) 580] The Court found that "real likelihood" and "reasonable suspicion" were terms really inconsistent with each other and the court must make a determination, on the basis of the whole evidence before it, whether a reasonable man would, in the circumstance, infer that there is real likelihood of bias or not. The court has to examine the matter from the viewpoint of the people.

56. The term "bias" is used to denote a departure from the standing of even-handed justice. After discussing this law, another Bench of this Court in *State of Punjab* v. *V.K. Khanna* [(2001) 2 SCC 330 : 2001 SCC (L&S) 1010] , finally held as under: (SCC p. 339, para 8)

> "*8*. The test, therefore, is as to whether there is a mere apprehension of bias or there is a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom. In the event, however, the conclusion is otherwise that there is existing a real danger of bias, administrative action cannot be sustained. If on the other hand allegations pertain to rather fanciful apprehension in administrative action, question of declaring them to be unsustainable on the basis therefor, would not arise."

49. Further the Supreme Court in the matter of ***Lal Sharma v. Managing Committee, Dr Hari Ram (Co-Education) Higher Secondary School***[24]**,** held as under :

> De Smith in his *Judicial Review of Administrative Action*, (1980) at page 262 has observed that a real likelihood of bias means at least substantial possibility of bias. In *R.* v. *Sunderland Justices* [(1901) 2 KB 357, 373] it has been held that the

24 (1993) 4 SCC 10

court will have to judge the matter as a reasonable man would judge of any matter in the conduct of his own business. In *R.* v. *Sussex Justices* [(1924) 1 KB 256, 259 : 1923 All ER Rep 233] it has been indicated that answer to the question whether there was a real likelihood of bias depends not upon what actually was done but upon what might appear to be done. In *Halsbury's Laws of England*, 4th Edn., Vol. 2, para 551, it has been indicated that the test of bias is whether a reasonable intelligent man, fully apprised of all the circumstances, would feel a serious apprehension of bias. The same principle has also been accepted by this Court in *Manak Lal* v. *Dr Prem Chand* [1957 SCR 575 : AIR 1957 SC 425] . This Court has laid down that the test is not whether in fact, a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him in the final decision of the tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done.

50. The Supreme Court in the matter of ***P.D. Dinakaran (1) v. Judges Inquiry Committee***[25]**,** (2011) 8 SCC 380 : held thus :

65. In *G. Sarana (Dr.)* v. *University of Lucknow* [(1976) 3 SCC 585 : 1976 SCC (L&S) 474] the Court referred to the judgments in *A.K. Kraipak* v. *Union of India* [(1969) 2 SCC 262] , *S. Parthasarathi* v. *State of A.P.* [(1974) 3 SCC 459 : 1973 SCC (L&S) 580] and observed: (*G. Sarana case* [(1976) 3 SCC 585 : 1976 SCC (L&S) 474] , SCC p. 590, para 11)

> "*11*. … the real question is not whether a member of an administrative board while exercising quasi-judicial powers or discharging quasi-judicial functions was biased, for it is difficult to prove the mind of a person. What has to be seen is whether there is a reasonable ground for believing that he was likely to have been biased. In deciding the question of bias, human probabilities and ordinary course of human conduct have to be taken into consideration."

25 (2011) 8 SCC 380

51. However, the proposition that No one can be judge in own cause and justice must not be done but seems to be done comes to serious quandary when applied in the Administrative law for the simple reason that sometimes the statute itself requires a officer to play dual role one as an agent of state and other as a independent adjudicator. For instance, income-tax officer, while he himself may charge an assessee with, the noncompliance of his notices under Section 143 and/or Section 143(3), and make a best judgment assessment; may even impose a penalty under various sections of the Income-tax Act, 1961. The M.C Jain Kagzi in his book Indian Administrative Law (Sixth edition) has summed up the position as follows :

> The rule that one should not be a judge in one's own cause is stressed with all rigidity by the system of law we have developed; and can also be inferred from the *maxim nemo debet esse judex in propria sua causa*. It is of fundamental importance that justice should not only be done, but should also manifestly and undoubtedly be seem to be done. Nevertheless, it is not possible to apply it fully in the case of the administrative adjudication carried on by the administrative authorities. For instance, the Appellate Assistant Commissioner of Income-tax and the Appellate Controller of Estate Duty are, respectively, Income-tax and Estate Duty authorities, yet they perform *quasi*-judicial functions. The Income-tax officer and the Appellate Commissioner are officers of the same department; but the latter hears appeals against the orders passed by the former. T*he position is worse in the case of the Income-tax officer, while he himself may charge an assessee with, say, the noncompliance of his notices under section 143 and / or section 143(3), and make a best judgment assessment; nay, may even impose a penalty under various sections of the Income-tax Act, 1961. Till the year 1939 the*

Income-tax Appellate Tribunal was not established; and the Commissioner of Income-tax used to hear appeals while he was a party to the departmental proceedings also. Till 1960, the Central Board of Revenue too had power to hear appeals in estate duty matters against the order passed by the Controller of Estate Duty in all cases wherein the deaths occurred before 1st July, 1960. The appellate functions of the Central Board of Revenue which was also the controlling estate duty authority were criticized by the Taxation Enquiry Commission which, however, recommended no change.

The Commission thought that the provisions laid down, that in his appellate functions, the Appellate Assistant Commissioner should be free from the control of the Board, and the latter should not give him any order, instruction, or direction were not sufficient, because, he could not be expected to get over the compulsion of being a part of the Department, as for his promotion he must be dependent on the Board. The Commission added as follows:—

> We think that the experiment begun in 1939 should be carried forward and the Appellate Assistant Commissioners should be removed from the control of the Commissioners and the Central Board of Revenue. Their leave, transfer and posting should be in the hands of the Tribunal.
>
> Here it may be worth stating that under the American Administrative Procedure Act it seems to have been made an advance in the direction of separating the department from the adjudicative agencies on the basis of the recommendations of the Attorney-General's Committee. The APA in section 5(c) lays down that
>
> > … No officer, employee or agent engaged in the performance of investigative or prosecuting functions for any agent in any case shall, in that or a factually related case, participate or advise in the decision…

This provision provides for the functional separation as against the structural separation within the same agency body, and is subject to

> *only a few exceptions.* The separation of functions is not possible in matters related to the disposal of applications for grant of initial licences, the proceedings for application of validity or applicability of rates, etc. When a Transport Authority decides to revoke a licence for bus transport business it frames charges, and on the basis of its investigation into them passes an order revoking the licence.

52. Mr. Kagzi has highlighted that the scheme of statute like this put emphasis on functional separation as against the structural separation within the same agency body. In our opinion when the Statute confers the authority with such dual function the courts must be even more cautious of the fact that process of adjudication should be free from bias.

53. It is just like a superintendence of power of the High Court, which deals in the administrative side and if the High Court interferes in the judicial decision even in the matter of Civil Judge or Magistrate it would be patent illegality. Though the evidence of this may not be availed directly but those are to be inferred from the communication, if any. In the instant case the communication, which has been placed on record, reproduced by the ITAT, is writ large to the fact that the AO, who was vested with the jurisdiction, completely succumbed to the will and wish of the higher authorities.

54. Therefore, in view of above discussion, the law on the point can be summed up as under :

i) The Statutory authority cannot permit its decision to be influenced by the dictation of others as this would amount to abdication and surrender of its discretion which is impermissible in law.

ii) General power of superintendence must be distinguished from the interference in the adjudication process. The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner.

iii) The Court must be mindful of the fact that the adjudication process must be free from any kind of bias. The true test of bias is not whether the judge is actually biased or not, but whether there is a real danger of bias from the view point of fair-minded and informed observer (***N.K. Bajpai Case)***

55. The common thread which passes through in all these questions is whether the AO has passed the final order in reassessment on the dictates/directions of the superior authority. The ITAT in its judgment has arrived to the finding considering various material available on record that the AO has passed the order against the assessee on the dictates of his superiors.

56. Learned counsel for the Revenue though argued that since the matter regarding the Jain dairy was pending before the Supreme

Court and as the Supreme Court has passed some specific directions in the ***Vineet Narain*** case, therefore, it was important for the officers sitting at Delhi and Jabalpur to have superintendence over the progress of the proceedings and the same cannot be said to be the interference or passing order on dictates.

57. Bare perusal of order shows that the Supreme Court has not directed to take action in any particular matter rather the intention of the Apex Court was that the proper investigation must be made over the issue which involves such a serious allegations.

58. It is quite pertinent to mention that how these proceedings against the assessee has been conducted the series of event started on 03.05.91 when the CBI has conducted the search in premises of J.K. Jain. After it the Income Tax Department in exercise of its power under Section 132A of the IT Act, called for these documents and material seized from the CBI. The assesee was asessesed at Bhilai, therefore, the said material was handed over to the AO sitting at Bhilai on 20.03.95.

59. The AO issued notice to assesee for reopening. The return of income was filled by the assesee on 06.06.95 however, the AO did not do anything till 20.12.95. On 20.12.95 the AO went to Delhi on receipt of some message of the DDIT (Inv.), amazingly the purpose of visit was for discussion about the case.

60. We may also like to give the account of proceedings which was conducted before the AO from 05.02.96 to the date on which he has passed the order which are as follows :

> 5.2.96: In response to statutory notice Shri G.C. Jain, Authorised Attorney appeared and filed a letter dated 5.2.96 from the Assessed, the contents of which have been discussed with him.
>
> 6.2.96: Received a telephonic message from Shri D.C. Agrawal, Addl.DIT(Delhi regarding the proceedings, who has since been appraised of the same. He desired to have the copy of reply of the 'a', to be sent by fax for perusal, the same is therefore sent to him vide letter F.No. DCIT(Ad...) BHI/reply/95-96 dated 6.2.96.
>
> 6.2.96: Shri D.C. Agrawal telephonically confirmed of having received the above, and instructed in the matter that a suitable reply to ‘a’’s letter be sent to him for the perusal of higher authorities and the be given one more opportunity of being hear in the matter.
>
> 15.2.96: The Honourble CIT who had been to Delhi in connection with meeting with DG for discussing the strategy of the settlement case instructed me at Jabalpur that the case is not required to further proceeded with till further instructions.
>
> 23.2.96: Shri D.C. Agrawal, Addl.DIT, Delhi informed that the case is to be proceeded with and assessment is to be framed as early as possible. He opined that there appears to be some communication gap in the message conveyed by Hon'ble CIT, Jabalpur.
>
> 27.2.96: Had a telephonic discussion with Hon'ble CIT who also communicated that the assessments for IT ad WT are to be completed. Only the assessments under the GT are to be kept pending. Accordingly a detailed reply to assessee's letter dated 5.2.96 is issued on the basis of draft letter received from Shri D.C. Agrawal, through CIT/Jabalpur through fax.
>
> 27.2.96: A sealed cover addressed to Shri D.C. Agrwal, Addl.DIT was handed over to Shri H.L. Vaddadi, ITI for delivering the same by speed post

at Raipur, Head Post Office. The sealed cover contains the replies to Shri S.K. Jain's letter (reply to notice) dt. 5.2.96 along with acknowledgment slip which has been duly sealed and signed.

28.2.96: Shri H.L.Vaddadi, ITI informed that the sealed envelope containing the above has been delivered to HPO for sending it to Addl.DIT, Shri Agrawal by Speed Post vide Ack.No.5358 dt. 28.2.96 which is placed on record.

29.2.96: Shri D.C.Agrawal, Addl.DIT, Delhi informed that he had not received the above till 6.00 PM who was informed by the undersigned that the delivery of the dak could be affected only by tomorrow by 12 noon. He desired to have a set of the contents of the envelope to be sent by FAX which has been so transmitted to him.

1.3.96: Tried to contact Shri D.C.Agrawal n his telephone No.7527513 but there was no response. This was just done to have the confirmation of having received the sealed envelope as above. At about 4.30 PM the Hon'ble D.G. Shri G.P. Garg had a telephonic talk with undersigned who wanted to know about the delivery of the above material and its mode who has been informed of the facts narrated herein above. He instructed to get in tough with Shri D.C.Agrawal in this regard immediately, accordingly telephonically contacted and at the other end Shri C.L.Meena, Inspector informed that he had taken delivery of the said sealed envelope from the concerned post office who has been informed to deliver the same to Shri D.C. Agrawal at his residential address and also send a word to the Hon'ble D.G. in this regard.

4.3.96: Shri D.C.Agrawal, Addl.DIT(Inv.) telephonically informed that letter addressed to the Assessed bearing F.No. DCIT(Assmt.)BHI/S-777/95-96/dated 27.2.96 has been served upon the assessee at 1.30 A.M. today itself and further conveyed the DG’s instruction to draft the assessment order under Section 143(3) r.w.s. 147 presuming that the Assessee would not come with any explanation required from him so far as the assessment of his income is concerned.

8.3.96: Shri G.C.Jain, CA, Authorised Attorney of the assessee appeared and filed two letters from the assessee which are dated 7.3.96 and 8.3.96.

Through these letters, the assessee raised certain legal contentions in so far as the assessment proceedings in his case are concerned, and requested for time of at least one month. The contents of the letters were discussed with Shri Jain in general, who also requested that the assessee may be granted time requested for for the detailed legal contentions given in the letters. Shri G.C.Jain pointed out that the assessee was accused in as many as 24 criminal cases, list of which has been made out and filed along with the letters as also he has been served upon 8 show cause notices by the Enforcement Directorate on account of contravention of section 8, 9 & 14 of FERA.

9.3.96: Shri D.C.Agrawal, Addl.DIT (inv.) telephonically contacted at his residence No. and apprised of the contents of the letters filed by the assessee on 8.3.96. He comminuted that the copies of these letters be forwarded to him by FAX.

11.3.96: As desired, the copies of assessee's reply have been transmitted through FAX to the Directorate of Inspection (Investigation) along with the covering letter dated 10.3.1996.

20.3.96: Shri D.C.Agrawal, Addi.DIT(Inv.), Delhi telephonically informed that the case cannot be further prolonged on the basis of contentions raised by the assessee in his letters dated 7.3.96 and 8.3.96. He further communicated that the undersigned should camp at Delhi for the completion of the assessment orders, so that the assessment orders along with the demand notice, challan etc. be served upon the assessee in the first week of April, 96 as desired by the DG(Inv.), since the Hon'ble Supreme Court has posted the case for hearing on 9th April, 1996. It has been explained to him that in view of the other time barring assessments pending in this Range, it is very difficult for the undersigned to camp at Delhi from 25th as suggested by him.

22.3.96: The Hon'ble CIT, Jabalpur telephonically directed that I have to proceed to Delhi on 28th March, 96 as he has received the message from Higher Authorities in Delhi and Bhopal to that effect. He further directed that I should report on 29th March, 96 in the Investigation Directorate and

carry out the work of drafting of assessment orders in the case of Shri S.K.Jain on holidays i.e. 30.3.96, 31.3.96 and 1.4.96, which are required to be drafted with the guidance of DI, DG and Addl.DIT as they would approve the assessment orders to be framed. In this connection, the CIT, Jabalpur also directed that there is no need of the undersigned in attending the proceedings before the Hon'ble Settlement Commission in Bombay on 3rd & 4th April, 96 which were decided to be attended earlier.

25.3.96: The assessee's Authorised Attorney Shri G.C.Jain, CA appeared and filed letter dated 25.3.96 from the assessee in which also the facts and circumstances of the case were reiterated and requested for further time meanwhile further opportunities in accordance with the principles of natural justice as per directions contained in Hon'ble Supreme Court's Judgement in Dhirajlal Girdharilal's case. Copy of this letter along with covering letter of even date has been forwarded to Shri D.C.Agrawal, Addl.DIT(Inv.), Delhi and to the CIT, Jabalpur by FAX.

26.3.96: Shri D.C. Agrawal, Addl.DIT(Inv.) informed telephonically that he had received assessee's letter dated 25.3.96 and expressed his opinion that the assessment has to be framed, as the assessee has not raised any new point than what was raised earlier. However, he instructed that suitable reply to the assessee be sent rejecting the request for prolonging the assessment proceedings by meeting out his various contentions.

27.3.96: As communicated, a letter to the assessee Shri S.K. Jain issued whereby his applications dated 7.3.96, 8.3.96 and 25.3.96 have been turned down. It has been communicated to him in para-3 of the letter that he may have the inspection of the original diary MR-71/91 by making a request to the Special Court of Shri V.B.Gupta at Delhi. The contents of the letter have also been read over to Shri D.C.Agrawal, Addl.DIT(Inv.), Delhi over telephone as desired by him .

4.4.96: The assessee filed letter dated 2.4.96 wherein by and large the contents of the letters filed earlier i.e. on 7th, 8th & 25th March, 96 have been reiterated.

8.4.96: Proceeded to Delhi for finalizing the assessment order as per directions of the Hon'ble DI/DG, New Delhi.

16.4.96: Order passed u/s 143(3) r.w.s. 147. Copy of the order along with D.N. & Ch. Etc. have been handed over to Shri D.C. Agrawal for affecting the service upon the assessee.

61. The records of the proceedings clearly shows that the AO was taking instructions on each and every hearing and dictates was clearly given to him.

62. That, even more interesting account has been given in the letter dated 30.01.96 which was written to the Commissioner of Income Tax, Central Revenue Building, Napier Town Jabalpur same is reproduced herein :

To,
The Commissioner of Income Tax,
Central Revenue Building, Napier Town,
Jabalpur (MP).

Attention: Shri Abhay Damle, ACIT(Hqrs.).

Sir,

Sub-Monitoring of the assessment by Hon'ble CIT in the case of Shri S.K.Jain under Income tax, Wealth-tax and Gift-tax Deliberation of the conference with Hon'ble DG(Inv.), Delhi on 22nd December, 1995-Report-Regarding

As directed by the Higher Authorities of the Directorate of Investigation, Delhi as conveyed through Shri. D.C. Agrawal, Addl. DIT(Inv.), I had been to the Directorate from 21st Dec.95 to 29th Dec.,95 in connection with the taking over the seized material and other documents collected during the investigation by the Addl. DIT(Inv.). On 21st Dec., 95 at 3.30 PM I had a conference with the DIT alongwith Shri D.C.Agrawal to discuss the case of Shri S.K.Jain wherein the DIT had instructed me to go through the material available with the Addl. DIT(Inv.)

and segregate the same as pertaining to Shri S.K. Jain and BEC Ltd. etc. and take up the photo copies of the same. This was carried out on 21st and 22nd Dec., 95.

Another conference was held on 22nd Dec., 95 from 4.30 P.M. to 7.00 P.M. with the Hon'ble DG(Inv.) which was attended by Shri P.K.Kashyap, DIT(Inv.), Shri D.C.Agrawal, Addl.DIT(Inv.), Shri P.C.Chhotary, Addl.Director and myself. The strategy in the Jain group of cases was discussed during the conference, keeping in view the coordination, with other Investigation Agencies like CBI, FERA etc. It was decided during the course of discussion that for the time being the cases initiated under the Gift-tax Act were not required to be proceeded with, as the same would otherwise weaken the case of CBI where they have filed Charge Sheet against Jains and other Bureaucrats under the Prevention of Corruption Act and IPC.

At the same time it was decided that the cases under Income tax and Wealth-tax, particularly that of Shri S.K.Jain were required to be proceeded with vigorously in the light of Supreme Court's hearings which are taking place frequently. For this purpose, the A.O. was required to prepare the statutory notices alongwith detailed questionnaire u/s 142(1) and 143(2) of the Income-tax Act, 1961 and u/s 16(2) of Wealth-tax Act, 1957, and after getting the same approved by the DIT/DG the same was required to be served upon Shri SK Jain in Delhi allowing him time of a fortnight.

The spade work for preparation of notices was completed in the Directorate itself where various issues involved and investigated into were incorporated in detail including the detailed reasons for establishing the fact that the figures noted in the diary and allied documents were in the code of 'lakhs'. The rough sketch of the questionnaire was gone through by the DIT(Inv.) who instructed that the questionnaire should be prepared separately for all the assessment years by recapitulating the facts and reasons as incorporated in the notices issued by the Addl.DIT(Inv.), Delhi to the concerned assessee. After returning from Delhi, the said exercise was carried out and the notices weré prepared both under Income-tax and Wealth-tax and submitted to the DIT on 8.1.96 and 9.1.96, so that the service could be effected on or before 10.1.96, on which date the Hon'ble Supreme Court had fixed the case for hearing. The notices issued for assessment years 1988-89 to 92-93 under section 142(1) and 143(2) of Income-tax Act, 1961 alongwith detailed

questionnaire as also statutory notice u/s 16(2) alongwith detailed questionnaire under the Wealth-tax Act, 1957 have been kept in the Paper Book prepared for submission to the Hon'ble Settlement Commission, a copy of which has already been submitted to you.

Presently the hearing of the case both under Income- tax and Wealth-tax has been fixed on 5th February, 1996. As transpired in the conference with Hon'ble DG, these assessments are required to be completed expeditiously as far as possible by the end of February, 1996. However, the same would depend on the assessee's response to these notices. In this regard, I may mention that presently the evidences collected in the form of testimonies of various witnesses are utilized by the A.O. as it is, as decided in the conference, but in case the assessee demands cross examination, the said exercise would be required to be carried out here also, which may likely to delay the proceedings further. (underlining by us)

Further progress in the matter shall be communicated from time to time and on concluding the assessment proceedings, draft orders shall be submitted for CIT's kind approval."

Yours faithfully,
K.M.Verma
Dy. Commissioner of IT (Asst.)
Special Range, Bhilai.

63. The aforesaid letter clearly shows that even the questionnaire was prepared on instruction of his superiors and same was even sent to Delhi for confirmation this clearly shows how far the AO was taking directions from his superior and not acted independently.

64. Another is letter dated 10.03.96 which is addressed by the AO to the DDIT(Inv), New Delhi and same read as follows :-

To

Shri D.C. Agrawal, IRS,
Addl. Director of Income tax (Inv), Jhandewala Extention, New Delhi.

Sir,

Sub: Forwarding of the assessee's reply in response to notices issued under Income tax & Wealth tax Acts-Reg.-

In connection with the telephone talk I had with you yesterday the 9th March, 1996 on the captioned matter and as desired by you I am forwarding the copies of the assessee's reply filed by him on 8.3.1996 in response to this office letter F.No.DCIT(Assmt)/BHI/S-777/95-96 dated 27.2.1996.

2. As usual, I am forwarding the sample of the copies of reply for a.y. 1992-93 for Income tax and for a.y. 1991-92 under the Wealth-tax, since the remaining replies are exactly on the same lines. The assessee has filed in each case two letters one in dated 7th of March, 1996 and another in dated 8th of March, 1996. The contents of which are basically similar in nature except some changes here and there. The letter dated 7th March, 1996 mentions the assessee's view point in generality and appears to have been prepared in haste just to seek the adjournment of the case. The letter dated 8th March, 96 brings out some specific legal objections based on the authorities cited therein. In this letter following three points have been made out for seeking the adjournment of one month's time:-

That the assessee be supplied with or allowed to have an access to the original documents on the basis of which the assessment is proposed to be made;

The assessee requested for allowing him to cross examine the various witnesses on the testimony of which the inferences in the matter of making the assessment have been drawn;

It is emphasized upon by the assessee that the criminal cases which he is facing as per the list appended with the reply must take precedence over the Civil proceeding i.e. assessment proceedings under IT & WT.

Under these circumstances I solicit the valuable guidance of the higher authorities viz. DIT/DG(Inv) in the matter so that any legal infirmity in the assessment order be properly taken care of.

I may mention that I have drafted the basic skeleton of the order which could only be concluded after meeting out the various legal contentions raised by the assessee in

> his reply referred to above. On the basis of aforementioned facts I am of the opinion that the assessee may be allowed to get one more opportunity and by adjourning the case by one month as requested for by him. Further proceedings shall be taken after hearing from you which may kindly be expedited at your end." (underlining by us.)
>
> Yours faithfully,
> (K.M. Verma)
> Dy. Commissioner of IT,
> (Asst.) Special Range, Bhilai

65. In the said letter the AO has clearly written that though he has drafted the "skeleton of the order" but he want guidance of the "higher authorities so that legal infirmity in the assessment can be taken care of" these phrases speaks a dozen about how far the AO was conducting the proceedings independently and with open mind.

66. The Learned Tribunal has given the detail account of the series of event which has various instances how these proceedings were influenced by the superior authorities sitting at Delhi and Jabalpur.

67. The proceedings before the AO gets vitiated when he start discussing about the merits of the case or in which manner he should conduct the proceedings. The Supreme Court in ***CIT v Greenworld Corpn.***[26]**,** almost similar circumstances held as under

> 53. We may now consider the effect of the "noting". The noting of the assessing officer was specific. It was stated so in the proceeding sheet at the instance of the higher authorities itself. No doubt in terms of the circular letter issued by CBDT, the Commissioner or for that matter any other higher authority may have supervisory

26 (2009) 7 SCC 69

> jurisdiction but it is difficult to conceive that even the merit of the decision shall be discussed and the same shall be rendered at the instance of the higher authority who, as noticed hereinbefore, is a supervisory authority. It is one thing to say that while making the orders of assessment the assessing officer shall be bound by the statutory circulars issued by CBDT but it is another thing to say that the assessing authority exercising quasi-judicial function keeping in view the scheme contained in the Act, would lose its independence to pass an independent order of assessment.

68. That, the AO has duty to act judicially and independently and its judgment cannot be controlled by the superior authority. The Supreme Court in ***Orient Paper Mills Ltd. v. Union of India***[27]**,** held thus :

> 5. According to the learned Attorney-General the assessment proceedings are not of a quasi-judicial nature nor is the Assessing authority a quasi-judicial authority. We are unable to agree. It is apparent from the judgment referred to above and numerous other decisions of this Court delivered in respect of various taxation laws that the Assessing authorities exercise quasi-judicial functions and they have duty cast on them to act in a judicial and independent manner. If their judgment is controlled by the directions given by the Collector it cannot be said to be their independent judgment in any sense of the word. An appeal then to the Collector becomes an empty formality. In the previous decision of this Court mentioned above the appeal and the revision had been rejected by the Collector and the Central Government on the ground that a direction had been issued by the Central Board of Revenue to the effect that the paper in question be treated as belonging to a particular classification. This Court entertained no doubt that the direction given by the Board was invalid and it vitiated the proceedings before the Collector as well as the Government. Similarly in the present appeal the direction given by the Collector was invalid and

27 (1970) 3 SCC 76

> the proceedings before the Deputy Superintendent or the Assistant Collector were vitiated. This position obtains in all the appeals although the type and quality of paper are different. The Central Government merely affirmed the order made by the Collector in each case and did not give any independent reasons for upholding the levy of duty made in accordance with the directions of the Collector.

69. That, the officers sitting at Delhi and Jabalpur has even interfered in the order especially the guidance has been sought by the AO to deal with the grounds raised by the assesee. In ***Re Sawyer and Ontario Racing Commission***[28] the court held that it is improper for the prosecuting counsel to write reasons for the decision of tribunal which has found a person guilty of a breach of its rules and which has imposed a penalty for the breach. This is so even though Counsel Played no part in the decsion making process and even through the tribunal adopted Counsel's Draft reasons only after due consideration. Such Practice Amounts to denail of natural justice because it raises suspicion of bias.

70. Thus, the tribunal has rightly concluded that the AO has passed the order of reassessment on the dictates of the higher authorities sitting at Delhi and Jabalpur.

71. Once having held that the reassessment started at the dictation of the higher authorities and thereafter, during reassessment process too continuous instructions were imparted and even the AO obtained instructions, therefore, the end result would be same as the bias would exist. Decision of reassessment, reassessment

28 99 DLR (3d) 561 (Onterio Curt of Appeal)

thereafter is at the dictation of higher authorities then the order itself would be outcome of bias and authority having original jurisdiction would not be able to come to save them under the shell. The entirety of facts cannot be fragmented in peace meal and entire state of affairs are to be considered as a whole.

72. Now, next comes the question whether the Tribunal having upheld the initiation of reassessment proceedings, was legally justified in not remanding the case back to the asessing officer for fresh asessment. Since the order of initiation is declared void therefore the question does not arise for consideration.

73. Even otherwise the court cannot condone the delay of the proceedings which is not before it as limitation for framing of reassessment order section 147/143(3) which, in terms of section 153 of the Act (as then applicable) lapsed on 31.03.1997.

74. The Supreme Court in ***Popat Bahiru Govardhane v. Land Acquisition Officer***[29], held thus :

> 16. It is a settled legal proposition that law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes. The court has no power to extend the period of limitation on equitable grounds. The statutory provision may cause hardship or inconvenience to a particular party but the court has no choice but to enforce it giving full effect to the same. The legal maxim *dura lex sed lex* which means "the law is hard but it is the law", stands attracted in such a situation. It has consistently been held that, "inconvenience is not" a decisive factor to be considered while

29 (2013) 10 SCC 765

> interpreting a statute. "A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation." (See *Martin Burn Ltd.* v. *Corpn. of Calcutta* [AIR 1966 SC 529] , AIR p. 535, para 14 and *Rohitash Kumar* v. *Om Prakash Sharma* [(2012) 13 SCC 792 : AIR 2013 SC 30] .)

75. The Supreme Court in ***CIT v. U.K. Paints (Overseas) Ltd.***[30], held as under :-

> 1) In this batch of appeals, the assessments in case of each Assessee were under Section 153-C of the Income Tax Act, 1961 (for short, 'the Act'). As found by the High Court in none of the cases any incriminating material was found during the search either from the Assessee or from third party. In that view of the matter, as such, the assessments under Section 153-C of the Act are rightly set aside by the High Court. However, Shri N Venkataraman, learned ASG appearing on behalf of the Revenue, taking the clue from some of the observations made by this Court in the recent decision in the case of *Principal Commissioner of Income Tax, Central-3* v. *Abhisar Buildwell P. Ltd.*, Civil Appeal No. 6580/2021, more particularly, paragraphs 11 and 13, has prayed to observe that the Revenue may be permitted to initiate re-assessment proceedings under Section 147/148 of the Act as in the aforesaid decision, the powers of the re-assessment of the Revenue even in case of the block assessment under Section 153-A of the Act have been saved.
>
> 2) As observed hereinabove, as no incriminating material was found in case of any of the Assessees either from the Assessee or from the third party and the assessments were under Section 153-C of the Act, the High Court has rightly set aside the Assessment Order(s). Therefore, the impugned judgment and order(s) passed by the High Court do not require any interference by this Court. Hence, all these appeals deserve to the dismissed and are accordingly dismissed.

30 2023 SCC OnLine SC 818

3) However, so far as the prayer made on behalf of the Revenue to permit them to initiate the re-assessment proceedings is concerned, it is observed that it will be open for the Revenue to initiate the re-assessment proceedings in accordance with law and if it is permissible under the law.

76. Therefore, the question of law No.(iii) is held in favour of the assessee. The Revenue can initiate the proceedings in accordance with law, if it is permissible under the statute.

77. As an upshot, all the appeals preferred by the Revenue are dismissed and the cross-appeals filed by the assessee are allowed.

78. There shall be no order as to cost(s).

Sd/-

(Goutam Bhaduri)
Judge

Sd/-

(Sanjay Kumar Jaiswal)
Judge

Gowri

HEAD NOTE

(1) In democracy like ours every authority may, however high should function within four corners of law because the rule of law requires that all the machinery of state must function according to mandate of statute.

हमारे जैसे लोकतंत्र में सभी उच्च–प्राधिकारियों को विधि द्वारा विहित परिधि में कार्य करना चाहिये, क्योंकि विधि के अनुसार राज्य की सभी संस्थाओं को विधि के नियमों के अनुरूप कार्य करना चाहिये।

(2) Statutory authority cannot permit its decision to be influenced by dictation of superior as same would amount to surrendering of discretion.

वैधानिक प्राधिकारी अपने विनिश्चयों को अपने वरिष्ठ के आदेशों द्वारा प्रभावित होने की अनुज्ञा नहीं दे सकता, क्योंकि यह उसके विवेकाधिकार के हरण के समान होगा।

(3) General power of superintendence must be distinguished from the interference in the adjudication process.

अधीक्षण की सामान्य शक्ति को न्यायनिर्णयन प्रक्रिया में हस्तक्षेप से अलग किया जाना चाहिए।

(4) The true test of bias is not whether the judge is actually biased or not, but whether there is a real danger of bias from view point of fair minded and informed observer.

पूर्वाग्रह की वास्तविक परीक्षा यह नहीं है कि न्यायाधीश वास्तव में पक्षपाती है या नहीं, बल्कि यह है कि निष्पक्ष और वस्तुस्थिति से अवगत प्रेक्षक के दृष्टिकोण से पक्षपात का वास्तविक खतरा है या नहीं।