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OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX - 1(1)
"Aayakar Bhawan", Hoshangabad Road, Bhopal - 462 011

INCOME TAX DEPARTMENT

Name of the Assessee	:	Shri Narottam Mishra
Address	:	B-6, Char Imli, Bhopal
PAN	:	AJBPM8023B
Status	:	Individual
Previous Year	:	2008-09
Assessment Year	:	2009-10
Order under Section	:	143(3) of the Income-tax Act, 1961
Date of Order	:	30-12-2011

ASSESSMENT ORDER

The return declaring total income of Rs.3,55,440/- was filed on 28/7/2009 and agriculture income of Rs. 228428/-. Notice was served on the assessee on 26-09-2010. The authorized representative of Assessee attended the hearing on 27th September 2010. The hearing was first attended by Sri Sanjay Mishra and then Sri Pranav Pathak and Sri Rohit Pathak attended the proceedings from Time to Time. The Assessee was served with a detail specific Questionnaire under Section 142(1) of Income Tax Act, 1961 on 10th December 2010. Assessee further submitted reply from time to time. Then again assessee was given a detailed hearing through Authorized Representative on 9th December 2011. Assessee again submitted a detailed submission on admissibility of diaries as evidence on 15th December 2011. The farmers were called on summons under Section 131 on 20th December 2011. Their statement was taken on 27th December 2011 alongwith their submissions, affidavits and returns of Income. Guidance was sought from Joint Commissioner of Income Tax under Section 144A which was duly received and kept on record on 28th December 2011. The Assessee also applied and challenged the jurisdiction of the Assessing Officer under section 124(4) which was duly considered and replied to Assessee in light of Section 124(3) of Income Tax Act, 1961 holding the jurisdiction to be valid and lawful. This process of enquiry and two searches under section 132 of Income Tax Act, 1961 on Shri Mukesh Sharma and Shri Usman Khan resulted in set of evidences. These set of evidences are divided into two tables. First table is that of primary evidences whereas second table comprises of corroborative evidence and then evidences are appraised and assessed.

TABLE OF PRIMARY EVIDENCE

S No.	Panchnama and other	Truth disclosed by this evidence	Relevance of Evidence in the present case of assessee
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Page 1 of 31 of Assessment Order of Sri Narottam Mishra

TRUE - COPY

Signature

Deputy Commissioner of Income Tax

1 (1), Bhopal

TRUE - COPY

Deputy Commissioner of Income Tax

1 (1), Bhopal

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<p>Primay Evidence Number 1</p>	<p>Details of Evidence Collection</p> <p>Operations of search & seizure u/s 132 of the Income Tax Act were carried out at the office & residential premises of Shri Mukesh Sharma who was at that time residing at B-99, Raj Vaidh Colony, Kolar Road, Bhopal. The documents found at Residence of Mukesh Sharma are considered true in view of Section 292C of Income Tax Act, 1961.</p> <p>(i) documents relating to requests for transfer & posting of officials/officers of Urban Development Department</p> <p>(ii) documents relating to requests for funds allocation in the Urban</p>	<p>Link of Assessee with Sri Mukesh Sharma with Minister of Urban Development</p>	<p>The number of documents is very large. These documents have been found in the residence & office of private individual. These documents conclusively prove that Shri Mukesh Sharma was yielding substantial influence in the Urban Development Department and was in a so powerful position as to influence transfer/postings, award of contracts/tenders etc. <u>You were asked following questions which have been denied by you:</u></p> <p>(i) Whether you know or have ever known Shri Mukesh Sharma.</p> <p>(ii) Have you ever met him? If so, how many times and what was the purpose of such meetings.</p> <p>(iii) Whether he used to visit your residence & office. If so, how many times and what was the purpose of such visits.</p> <p>(iv) Whether you & your family members ever visited his office or residence. If so, how many times and what was the purpose of such visits.</p> <p>(v) Have you ever talked to him on landline or mobile phones. If so, how many times and what was the purpose of such calls.</p> <p>(vi) Have you ever talked to him on mobile nos. If so, how many times and what was the purpose of such calls.</p> <p>(vii) Whether you or your family members ever had any financial transactions with him. Please give details.</p> <p>Though you have denied the above questions in submission but it was proved to the contrary. It is found</p>
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	<p>Development Department (iii) documents relating to incurring of expenditure by Shri Mukesh Sharam for travel & stay of officials/officers of Urban Development Department (iv) documents relating to illegal gratification paid to officials/officers of Urban Development Department (vi) documents relating to tenders/contracts of various Nagar Nigams/ Nagar Palikas etc.</p>		<p>from the documents seized through Search Action on Sri Mukesh Sharma under Section 132 of Income Tax Act, 1961 that he was an intermediary for facilitating the the work from The Ministers and Officers of Department of Urban Development. Sri Mukesh Sharma has been found to be a liaisioning intermediary for the practices of transfer and posting and fund allocation. The documents in his possession are proving him to be a liaisioning intermediary.</p>
<p>Primay Evidence Number 2</p>	<p>Loose Paper Sheets 1/1, page from Matrix Pad, Collected from Residence of Mukesh Sharma (B- 99, Rajved Colony, Kolar Road Bhopal</p>	<p>The evidence contains two pages of spiral pad. Top page shows the calculation which is detailed in second page through exact figures.</p> <ul style="list-style-type: none"> i. The word "mayor" is clearly written on this piece of evidence. ii. "M" & 'Netaji' mentioned in these 	<p>Number 267 has been corroborated with perfect proof. The percentage figure of 6% is Rs. 16.02 Crore which has been proved to be transferred from nagarjuna construction company through an elaborate chain of persons. This evidentrary proof of transfer of fund is described in detail in subsequent paragraphs.</p> <p>The word mayor is clearly written against 1.0 therefore it is the second</p>

documents refers to the 'Minister Urban Development, M.P.' because Shri Mukesh Sharma addressed the then Minister of Urban Development as 'Netaji'.

iii. 'P' mentioned in these documents refers to Principal Secretary, Urban Development Department, M.P.

iv. The 'C' mentioned in these documents refers to Commissioner.

v. The number 267 is having monetary value in rupee and in crores. This amount of 267 is exactly matching with the amount of contract awarded to Nagarjuna Construction Company for Sewerage Work in Indore supervised out by Nagar Nigam Indore.

vi. The figure in percentages are exactly matching with the computed figures of 16.02 Crores, 3.337 Crores, 1.3350 Crores, 2.67 Crores and 1.3350 Crores

M in the second page. Therefore first M has to be a person from chain of hierarchy. The Evidence No. 3 is clearly showing the word commissioner. The interpretation of C is taken as Commissioner. Therefore this vertical arrangements of alphabets are describing the chain of hierarchy is the setup of Government of Madhya Pradesh. The amount of money which is received is highest for the word M written at top which is 6% of total amount. Therefore this person M has to be a person who is occupying the top place in the hierarchy.

The top place is occupied by Minister. Therefore following 3 inferences are leading to interpretation of word M as Minister of Urban Development.

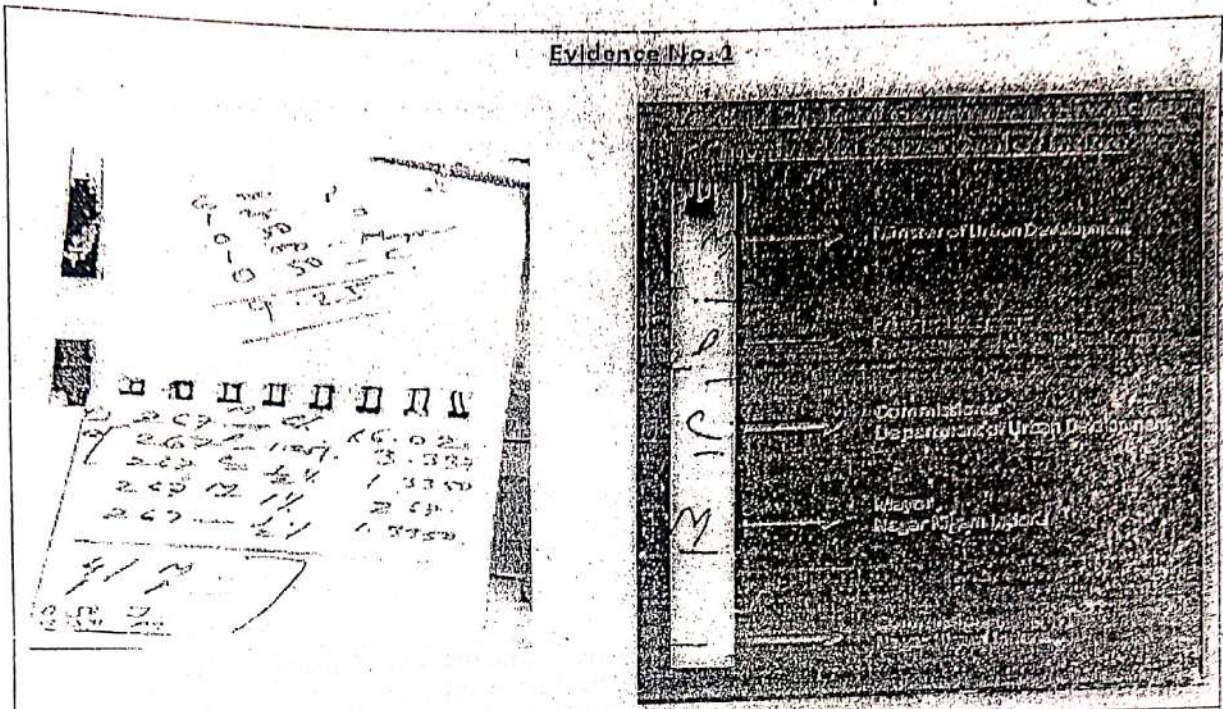
1. The existence of Words "mayor" and existence of word "commissioner" is showing this vertical arrangement of words to be a government hierarchy.
2. The relative weightage of money distribution is assigning the relative post which is described by this hierarchy. The highest share has gone to person referred by 'M' who has agreed to receive Rs. 16.02 Crore from Shri Mukesh Sharma.
3. The second person who is being referred is P is the principal secretary who is the second person in hierarchy. The Principal secretary has agree to receive Rs. 3.33 Crore from Shri Mukesh Sharma.
4. The third person referred to

			<p>as C is the Commissioner of urban development whose office is located in Bhopal. The share of 1/2 percent shows his relatively lesser involvement in the deal but however he agreed to receive this amount.</p> <p>5. The fourth person who has been referred is 3rd M which is written clearly as Mayor of Nagar Nigam Indore who is the inspecting and approving authority for the work of sewerage. The mayor has agreed to receive Rs. 2.67 Crore.</p> <p>6. The 5th Person whose name has not been referred is commissioner of Nagar Nigam indore who has agreed to receive Rs. 1.33 Crore. This name of commissioner of nagar nigam has not been written in this place. But the vertical chain of arrangement of government hierarchy is clearly indicating this missing person to be the commissioner of nagar nigam Indore.</p>
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Evidence No. 1



<p>Primary Evidence Number 3</p>	<p>Loose Paper Sheets 1/1, page from Matrix Pad. Collected from Residence of Mukesh Sharma (B- 99, Rajved Colony, Kolar Road Bhopal</p>	<p>This contains the acronym of nagar and simplex. The number written against them are expressed in the monetary value in Rupees in crore. This amount is exactly matching with amount of awarded contract.</p>	<p>This second evidentiary paper is showing the amount of contract money which is being corroborated by 1st evidence. This Rs 266.87 crore has been rounded off and shown as Rs. 267 crore in the 1st evidence.</p>
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Evidence No. 2



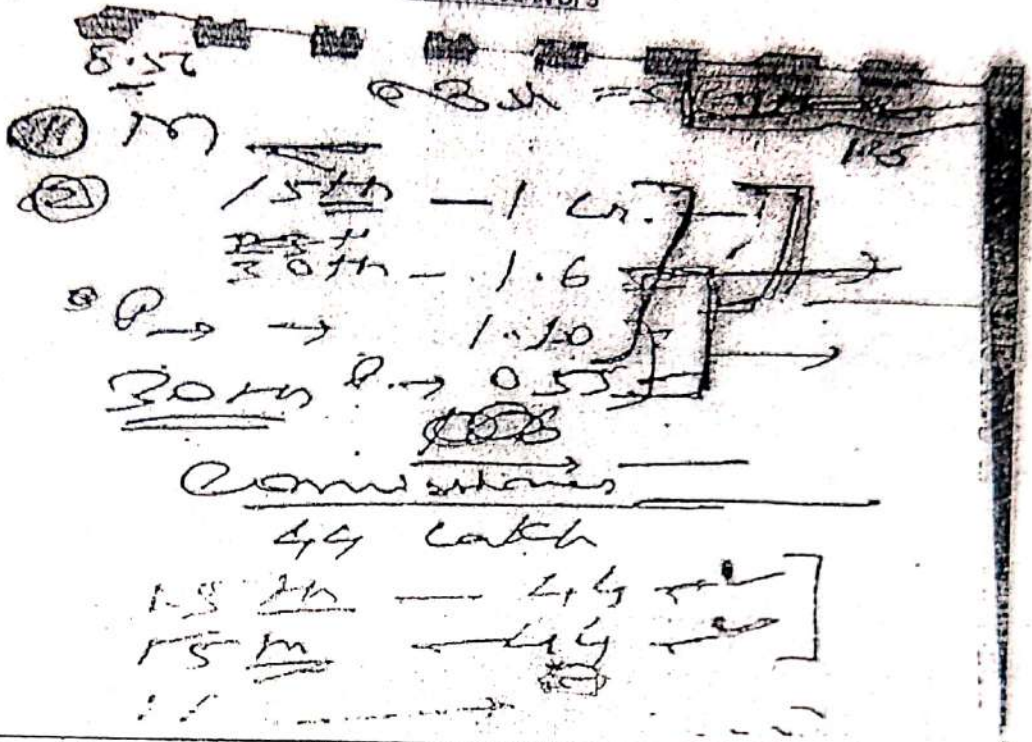
 Nagari — 266.87

 Simplex — 175.34

 442.21

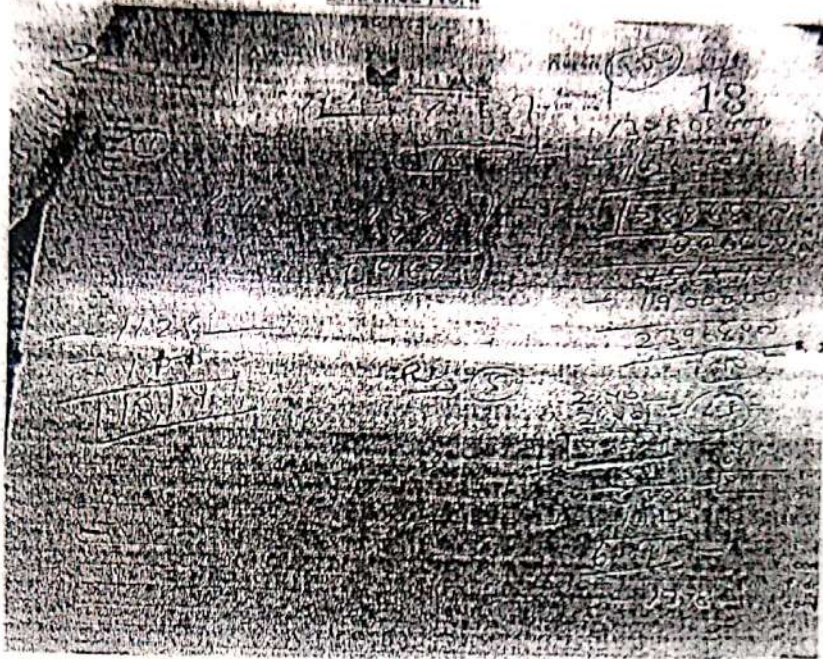
Primary Evidence Number 4	Loose Paper Sheets 1/1, page from Matrix Pad, Collected from Residence of Mukesh Sharma (B- 99, Rajved Colony, Kolar Road Bhopal	This evidence shows the letter M, letter P and word commissioner. The use of numbers 15 th and 30 th are inferred to be the dates. The use of acronym or shows to be Crore. It implies the relation of Rs. One Crore on 15 th with reference to Minister. Similarly 30 th is also having a relation with Rupees 1.6 Crore. Similarly the commissioner is also having linkages with Rs 44 lakh on 15 th and another tranche of Rs. 44 lakh on 30 th .	This evidence proves that vertical arrangement of letters denotes the bureaucratic hierarchy of urban development department.
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Evidence No. 3

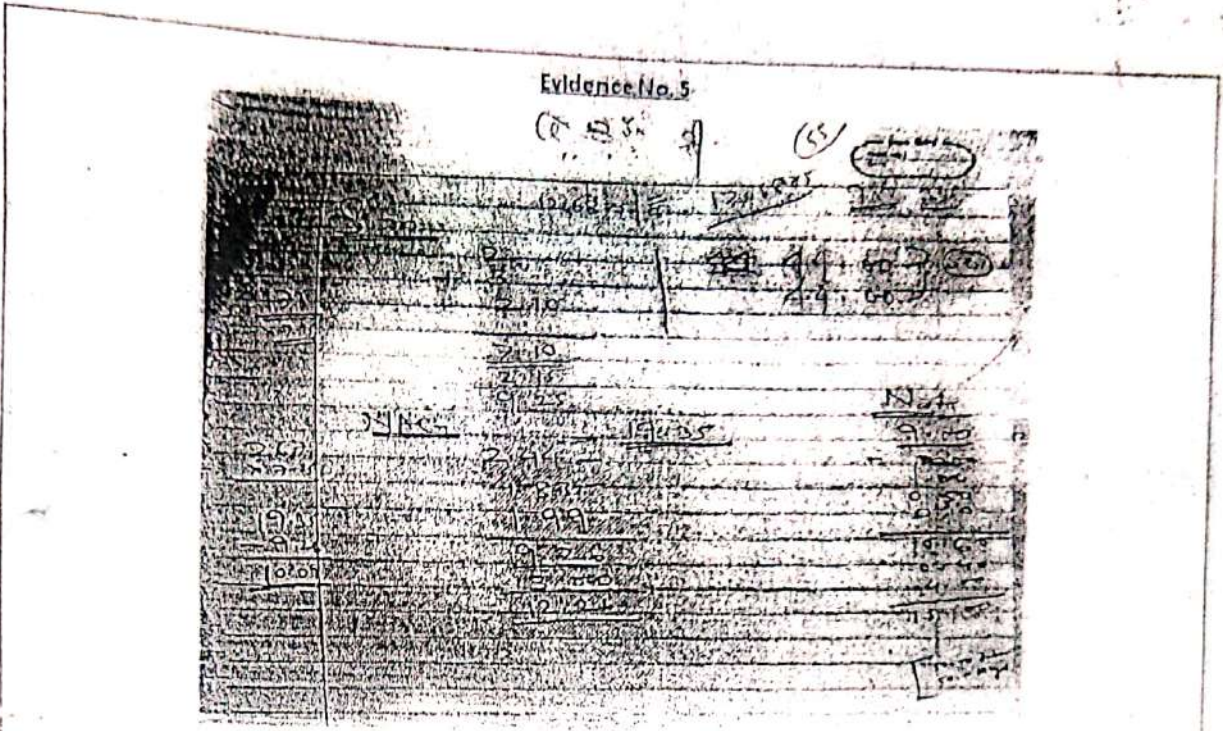


<p>Primary Evidence Number 5</p>	<p>Loose Paper Sheets 1/1, page from Matrix Pad. Collected from Residence of Mukesh Sharma (B- 99, Rajved Colony, Kolar Road Bhopal</p>	<p>The evidence scanned below shows detailed computation done by Sri Mukesh Sharma. The most striking display here is of use of word netajee.</p>	<p>This evidence proves that vertical arrangement of letters denotes the bureaucratic hierarchy of urban development department.</p>
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Evidence No. 4

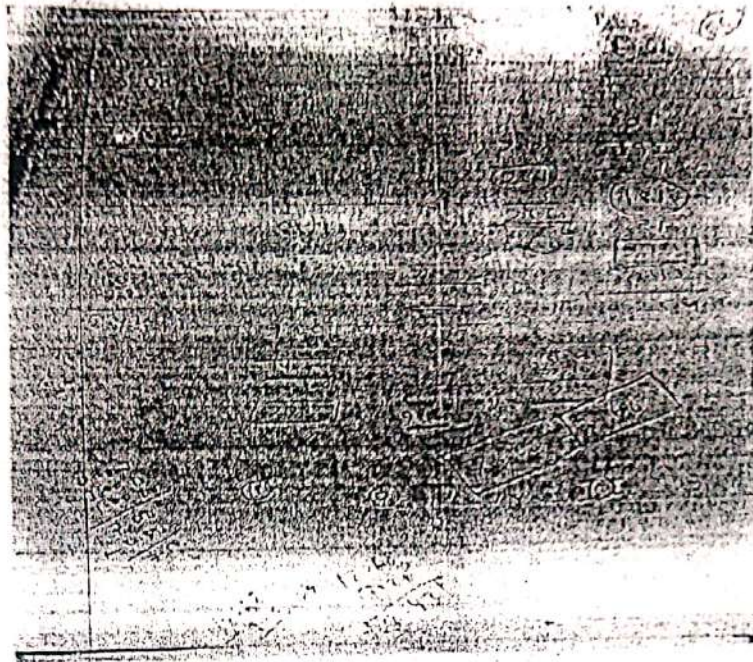


<p>Primary Evidence Number 6</p>	<p>Loose Paper Sheets 1/1, page from Matrix Pad, Collected from Residence of Mukesh Sharma (B- 99, Rajved Colony, Kolar Road Bhopal</p>	<p>These evidence calculations are showing the calculation of simplex and nagarjuna.</p>	<p>The elaborate enquiry by The DDIT (Investigation) has proved the flow of fund from nagarjuna construction company of Hyderabad to the chain of persons which ultimately ended up in the investment in land deal in ratanpur village of Bhopal.</p>
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<p>Primary Evidence Number 7</p>	<p>Loose Paper Sheets 1/1, page from Matrix Pad, Collected from Residence of Mukesh Sharma (B. 99, Rajved Colony, Kolar Road Bhopal</p>	<p>These evidence calculations are showing the the word netajee. The most striking words are of use of $09.00 + 5.00 = 14.0$</p>	<p>This evidence calculation is clearly matching with the ratanpur land deal. The 5 Crore is the stated value of deal in white money. The approximate component in black was of Rs. 9 Crore. This calculation is a critical evidentiary calculation which proves the involvement of black money.</p>
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Evidence No. 6



Primary Evidence Number 8	Loose Paper Sheets 1/1, page from Matrix Pad, Collected from Residence of Mukesh Sharma (B- 99, Rajved Colony, Kolar Road Bhopal	These evidence calculations are showing the the word netajec. The most striking words are of use of $09.00 + 5.00 = 14.0$	This evidence calculation is clearly matching with the ratanpur land deal. The 5 Crore is the stated value of deal in white money. The approximate component in black was of Rs. 9 Crore. This calculation is a critical evidentiary calculation which proves the involvement of black money.
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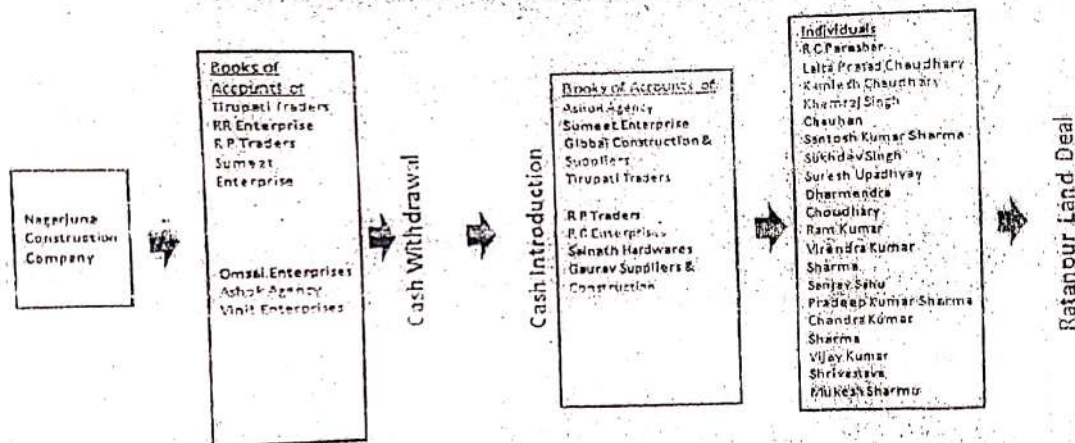
TABLE OF CORROBORATIVE EVIDENCE

S No.	Details of Evidence Collection	Truth disclosed by this evidence	Relevance of Evidence to the present case of assessee
Corroborative Evidence Number 1	Fund Transfer	Funds transfer from Nagarjuna Construction Company to 1. Tirupati Traders 2. R R Enterprise 3. R P Traders	These entities are bogus entities which were created only for the purpose of fund transfer.

		<ol style="list-style-type: none"> 4. Sumeet Enterprises 5. Onisai Enterprise 6. Ashok Agency 7. Vinu Enterprises 	
Corroborative Evidence Number 2	Cash Withdrawal	All cash was withdrawn from these agencies	This transaction is to bring anonymity to transaction
Corroborative Evidence Number 3	Cash Introduction	<p>All Cash was introduced in books of following agencies in their books of account:</p> <ol style="list-style-type: none"> 1. Ashok Agency 2. Sumeet Enterprise 3. Global Construction & Supplier 4. Titupati Traders 5. R P Traders 6. R R Enterprise 7. Sainath Hardware 8. Gaurav Supplies and Construction 	These entities are bogus entities which were created only for the purpose of fund transfer.
Corroborative Evidence Number 4	Fund Transfer	<p>Funds transfer from these 8 enterprises to following persons:</p> <ol style="list-style-type: none"> 1. R C Parashar 2. Lalta Prasad Chaudhary 3. Kamlesh Chaudhary 4. Khemraji Singh Chauhan 5. Santosh Kumar Sharma 6. Sukhdev Singh 7. Suresh Upadhyay 8. Dharmendra Chaudhary 9. Ram Kumar 10. Virendra Kumar Sharma 11. Sanjay Sahu 12. Pradeep Kumar Sharma 13. Chandra Kumar 	<p>This entities were bogus entity which was created only for the purpose of fund transfer. These persons are benami persons who does not have any source of income which justifies such a large transaction. These persons have filed return of income related to white money component of land. They have been examined on summon and their affidavit and statement was taken under section 131 of income tax act, 1961. They have denied these transactions.</p> <p>It is a natural phenomenon to deny such a large deal by benami persons. The assessment of these persons is yet to take place under income tax act.</p>

		Sharma 14. Vijay Kumar Shrivastava 15. Mukesh Sharma	
Corroborative Evidence Number 5	Purchase of Land in Ratanpur	The money which was transferred from Nagarjuna Construction Company finally was invested in the land belonging to Sri Vinod Vaish and his family members. The transactions was divided in 21 registries.	These 14 persons other than mukesh Sharma was the benami persons who does not have any capacity of purchase. They were merely brought to buy the land. They do not have any source of income which justifies this transaction. All these transactions took place from Gwalior and dabra. These purchases belong to dabra which is the constituency of assessee.

Graphical Display of Corroborative Evidences No. 1 to 5



Basis of Corroborative Evidence No. 4	ICICI Bank Account Number 005505006246	The bank account no.005505006246 of the Nagarjuna Construction Company Ltd. at ICICI bank Bhopal was called for and the same was examined. On analyzing the bank account, it was found that certain payments have been made out of this account from time to time to the 16 concerns shown	The withdrawals have been made in the month of March and April 2008 from the company's account. Some of the names of the concerns have been found in the diaries seized from the residence of Shri Mukesh Sharma. LPS 1/1 Residence of Mukesh Sharma - Pg 155 (XI(back) & (XI) - Names of RR Enterprise Indore & Om Sai Enterprise, indore is jotted in blank ink and name of RR enterprise is at page 155 XII also. This proves that he was very much aware of such concerns it shows that he was in habit of maintaining personal diary which used to reflect
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		below:	<p>true and fair picture of his work.</p> <p>Further, the trail of the above payments have been traced and it has been found that these concerns are only paper concerns or concerns which are not traceable at the stated addresses. The entire money has been ultimately withdrawn in cash out of the bank accounts of the concerns between the period 8.3.08 to 19.4.08, a part of which has subsequently been transferred to the account of the 14 persons at Dabra who are men of no means. The capacity of these persons is frugal beyond any reasonable doubts. Their case has already been referred for scrutiny under Section 153C to the jurisdictional Assessing Officer. The names of some of those persons which were involved in the routing of funds to these farmers are -</p> <ul style="list-style-type: none"> i. Ashok agency ii. Sumeet enterprises iii. Tirupati traders iv. RP traders v. RR enterprises
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Sl. No.	Date	Recipient concerns	Amount (Rs)	Vide. Cheque No.
01	07.03.08	Tirupati Traders	5141064.00	636320
02.	07.03.08	Vinit Enterprises	5141064.00	636319
03.	10.03.08	R. R. Enterprises	5141064.00	636339
04.	10.03.08	R. P. Traders	5141064.00	636338
05.	28.03.08	Sumeet Enterprises	7909360.00	636352
06.	28.03.08	R. R. Enterprises	7909360.00	636355

07.	28.03.08	R. P. Traders	7909360.00	636354
08.	28.03.08	Tirupati Traders	7909360.00	636353
09.	28.03.08	Omsai Enterprises	9181284.00	636356
10.	28.03.08	Ashok Agency	9181284.00	636357
11.	17.04.08	Ashok Agency	6777500.00	730106
12.	17.04.08	Omsai Enterprises	6777500.00	730105
13.	17.04.08	Tirupati Traders	2900000.00	730102
14.	17.04.08	Sumeet Enterprises	2900000.00	730101
15.	17.04.08	R. P. Traders	2900000.00	730103
16.	17.04.08	R. R. Enterprises	2900000.00	730104
Total			95719264.00	

Basis of Corroborative Evidence No. 5

The 14 persons at Dabra are co-purchasers of a costly land at Ratanpur, Misrod, Bhopal with Shri Mukesh Sharma. The source of payments for purchase of land by these persons is the cash deposits and DD/ Cheque deposit in their bank accounts immediately before making the payment for purchase of land. These deposits are nearly equal to the amount of payment made subsequently for purchase of land. This further proves that illegal expenditure has been paid by Nagarjuna Construction Co. Ltd to the Minister & Officers etc. The Search under Section 132 on the Nagarjuna Construction Company in Hyderabad has resulted into surrender of Rs. 9.62 Crore on accounts of Bogus Payments. This clearly implicate that evidence of this search has led to the director of Nagarjuna Construction to disclose the amount paid illegally. It was confessed before the Investigation Wing of Hyderabad by payer of money regarding these amounts.

Since The assessee was the Minister concerned during the relevant period of time and your constituency has been Dabra and you have failed to explain me convincingly therefore an adverse inference is hereby drawn that you were the recipient of the payments made by Nagarjun Construction Company Ltd. and the above said land has been purchased by you in the name of 14 persons at dabra and Shri Mukesh Sharma who had been instrumental in arranging these payments from Nagarjun Construction Company Ltd. and arranging the entire transactions of purchase of land.

During the course of search and seizure action at the residence of Shri Mukesh Sharma at B-99 Rajved colony, Kolar, Bhopal on 21.7.08, certain documents along with the Memorandum of agreement to purchase land 1.9 Hect (approx 4.70 Acre land) at Ratanpur Misrod near Bhopal dated 24.5.08 were found. Thereafter during the post search enquiries, it was found that the same land has been shown to be purchased by him along with others on 23.6.08 by making 21 registries for a total sale consideration of Rs. 5,00,00,000/- and Rs. 49,18,335/- (roughly Rs 50 lakh) as registry charges, stamp and other fees as per the following details:

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S.N o.	Name of the Purchasers	Amount of Registry (Rs.)	Stamp Duty (Rs.)	Stamp Paper fee (Rs.)	Other Fees (Rs.)	Khasra No./ area	Total Area sold Hectare
1	RC Parashar	2700000	239625	600	21775	556 / (1.1800.100 Hectare)	1.100 Hectare
2	-do-	2595000	230310	280	20935	556 / (1.1800.080 Hectare)	0.080 Hectare
						557 / (0.4000.020 Hect.)	0.020 Hectare
3	Lalta Prasad Choudhary	2647000	235000	3000	21355	556 / (1.1800.100 Hectare)	1.100 Hectare
4	Kamlesh Choudhary	479000	42520	2500	4010	559/0.160 Hect.	0.020 Hect.
5	-do-	2168000	192500	3000	17520	557 / (0.4000.080 Hect.)	0.080 Hectare
6	-do-	2647000	235000	3000	21355	556 / (1.1800.100 Hectare)	1.100 Hectare
7	Khemraj Singh Chouhan	2647000	235000	3000	21355	556 / (1.1800.100 Hectare)	1.100 Hectare
8	-do-	1563000	138720	680	12680	558 / (1.1600.060 Hectare)	0.060 Hectare
9	-do-	1084000	96205	1000	8850	559/0.160 Hect.	0.040 Hect.

10	Santosh Kumar Sharma	2647000	235000	2500	21355	558 / (1.160 0.100 Hectare) Hectare
11	Sukhdev Singh	2647000	235000	3000	21355	557 / (0.400 0.100 Hectare) Hectare
12	Suresh Upadhyay	2647000	235000	3000	21355	556 / (1.180 0.100 Hectare) Hectare
13	Dharmendra Choudhary	2647000	235000	3000	21355	556 / (1.180 0.100 Hectare) Hectare
14	Ram Kumar	2647000	235000	2500	21355	557 / (0.400 0.100 Hectare) Hectare
15	Virendra Kumar Sharma	2647000	235000	2500	21355	557 / (0.400 0.100 Hectare) Hectare
16	Sanjay Sahu	2647000	235000	3000	21355	559 / (0.160 0.100 Hectare) Hectare
17	Pradeep Kumar Sharma	2647000	235000	3000	21355	556 / (1.180 0.100 Hectare) Hectare
18	Chandra Kumar sharma	2647000	235000	3000	21355	556 / (1.180 0.100 Hectare) Hectare
19	Vijay Kumar Srivastava	2647000	235000	3000	21355	556 / (1.180 0.100 Hectare) Hectare
	Total	45000000	3994880	45560	363385	
20	Mukesh Sharma	2500000	235000	900	21355	556 / (1.180 0.100 Hectare) Hectare
21	Mukesh Sharma	2500000	235000	900	21355	556 / (1.180 0.100 Hectare) Hectare
	Grand Total	50000000	4464880	47360	406095	54918335

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Thus there were 15 purchasers of land from Sh Vinod Vaish and his family members and for this deal, 21 registries have been made for the entire land at Misrod Bhopal. As per the registered deeds, an amount of Rs 5,00,00,000/- in total has been paid towards sale consideration [stated sale consideration] and a total of Rs 49,18,335/- as registration & other charges for the above 21 land deals. So the total stated [not actual] payments made in acquiring the land at Misrod is Rs 5,49,18,335/-. It clearly brought to the notice that the 14 persons other than Shri Mukesh Sharma are persons from Dabra. This close resemblance with the persons with your constituency is leading to adverse inference.

Seized document LPS 1/1 -Page No 71 to 73 is an agreement between Shri Vinod Vaish & family and Shri Mukesh Sharma for sale of land measuring 1.90 hectare at Ratanpur, Bhopal for Rs 5 Crore as per which an advance of Rs 50 lakhs has been paid by cheque to Shri Vaish on 23.5.2008. Seized document LPS 1/1 -Page No 74 & back contains actual detailed calculation of land deal with Shri Vinod Vaish. The details of registry & payments in each deal has been given. On back side, certain calculations have been mentioned. Seized document LPS 1/1 page 75 which contains jottings of certain calculations pertaining to payments made in connection with a particular land deal is reproduced below:

The image shows handwritten calculations on a document page. The calculations are as follows:

206910 Sq Feet	
x 660	
136560600	
+ 136560600	
50000000 Reg. Charges + Stamp + Rwp.	
141560600	
+ 90000000 Kanwar Charges	
142460600	

011	
118	
050	
461	
225	
225	
548	
548	
+ 461	
1009	

1424	
1009	
0415	

Below the calculations, there are some notes and a signature:

15 + 8 = 23

Signature

(Scanned copy of page having hand written jotting on page 75 LPS 1/1)

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कुल भूमि 1.90 हेक्टेयर
 कुल कीमत 5,00,00,000/- रुपये
 1 आरे की कीमत 2,62,157.89/- रुपये

1. 1.18 हेक्टेयर की कुल कीमत - 3,10,50,000/- रुपये
2. 0.400 हेक्टेयर की कुल कीमत - 1,05,30,000/- रुपये
3. 0.160 हेक्टेयर की कुल कीमत - 42,10,000/- रुपये
4. 0.160 हेक्टेयर की कुल कीमत - 42,10,000/- रुपये

संज्ञिक नं.	श्रेणी	क्रमांक	कुल भूमि	कुल कीमत
1	विनोद वेश	1	0.100 हेक्टेयर	26,47,000/- रुपये
2	विनोद वेश	2	0.100 हेक्टेयर	26,47,000/- रुपये
3	विनोद वेश	3	0.100 हेक्टेयर	26,47,000/- रुपये
4	विनोद वेश	4	0.100 हेक्टेयर	26,47,000/- रुपये
5	विनोद वेश	5	0.100 हेक्टेयर	26,47,000/- रुपये
6	विनोद वेश	6	0.100 हेक्टेयर	26,47,000/- रुपये
7	विनोद वेश	7	0.100 हेक्टेयर	26,47,000/- रुपये
8	विनोद वेश	8	0.100 हेक्टेयर	26,47,000/- रुपये
9	विनोद वेश	9	0.100 हेक्टेयर	26,47,000/- रुपये
10	किक्की वेश	2	0.100 हेक्टेयर	26,47,000/- रुपये
11	किक्की वेश	3	0.100 हेक्टेयर	26,47,000/- रुपये
12	किक्की वेश	4	0.100 हेक्टेयर	26,47,000/- रुपये
13	भरत वेश	5	0.100 हेक्टेयर	26,47,000/- रुपये
14	यामिनी वेश	6	0.100 हेक्टेयर	26,47,000/- रुपये
15	भरत वेश	7	0.100 हेक्टेयर	15,63,000/- रुपये
	यामिनी वेश			10,64,000/- रुपये
16	यामिनी वेश	8	0.100 हेक्टेयर	4,79,000/- रुपये
	किक्की वेश			21,60,000/- रुपये
17	किक्की वेश	9	0.100 हेक्टेयर	4,21,000/- रुपये
	भरत वेश			22,27,000/- रुपये
18	भरत वेश	10	0.100 हेक्टेयर	60,00,000/- रुपये
19	भरत वेश	10	0.100 हेक्टेयर	2,62,157.89/- रुपये

2647000

2647000

2647000

Handwritten signatures and notes at the bottom of the table, including a circled '3' and some illegible text.

(Scanned copy of page having hand written jotting on page 74 LPS I/1)

& payments in each deal has been given. On back side certain calculations have been mentioned.

- 206910 Sq ft @ 660 per Sq ft = 136560600 then below it is mentioned.

4.75A....	
011.00 B	
400.00 B	
050.00 Che	
<u>100.00</u>	
561.00	
<u>125.00 Che</u>	
686.00	
450	
<u>- 125</u>	
<u>325</u>	
<u>100</u>	
<u>425</u>	134491500
B .680	<u>112500000</u>
<u>- 425</u>	220
250	<u>184</u>
	15.00
	<u>2.50</u>
	17.50
	<u>4.25</u> 3.25
	<u>21.75</u> 1.00
	160
5.00	
1.50	
<u>2.00</u>	
<u>8.50</u>	

50

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Page No 75

4.75

₹ 43560

206910 Sq ft

660

136560600

5000000 (Reg kharch + stamp + receipt)

141560600

900000 (kaushal bhaiya)

142460600

011

400

0.50

361

225

323

245

548

+461

1009

1424

1009
0415
Indore - 15 + 5 = 20

500

-415

85

Indore

These entries have not been fully answered by you in your submission and therefore an

(3)

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adverse inference is being drawn against you. The fourteen other purchasers in whose names registries have been done; have been proved, during the post search enquiries, to be persons of no means who were not in a position to make such huge investment in purchase of land. Page No. 6 of document LPS-1/1 seized from the residence of Shri Mukesh Sharma is a letter head of Jila Sahakari bank, Gwalior on which, under the heading 'Sh Mukesh Sharma ji', 14 names have been written, who are the persons in whose names this land has been purchased along with himself from Shri Vinod Vaish. This clearly shows that these 14 persons were closely known to Shri Mukesh Sharma and were under his control. The results of the 'Examination of bank accounts of the purchasers' are summarized as under:

Examination of bank accounts of the purchasers

Name of the Bank: Jila Sahkari Maryadit Bank (MP)

Branch : Dabra & Bhitwar Head Office : Gwalior

S. No.	Purchaser's Name/Bank & A/C No.	Bank a/c opened on		Further Deposits in bank a/c made on			Withdrawals made from the bank a/c		
		Date	Amt (Rs.)	Date	Amt(Rs)	Mode	Date	Amt(Rs)	Mode
1	Suresh Kumar Upadhyay Branch Not Quoted, HQ - Gwalior A/C :16516	13/06/08	500000	18/06/08	155000	Cash	20/06/08	2650569	DDs to VV
				19/06/08	2497750	Clg -1			
2	Khemraj Singh Chouhan Branch Not Quoted, HQ - Gwalior A/C :16517	18/06/08	500000	18/06/08	155000	Cash	20/06/08	2650569	DDs

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			19/06/08	2497750	Clg-2				
3	Vijay Kumar Srivastava	14/06/08	500	14/06/08	2500000	Cash	19/06/08	2650569	DDs/ Memo from Dabra
	Branch Not Quoted, HQ - Gwalior A/C :5143			17/06/08	2500000	Clg-3	19/06/08	2349400	No Memo
4	Chandra Kumar Sharma	17/06/08	500	17/06/08	2000000	Cash	19/06/08	2650569	DDs/ Memo from Dabra
	Branch Not Quoted, HQ - Gwalior A/C :5149			17/06/08	2500000	Clg-4	19/06/08	2014400	Cheque "Yourself"
				19/06/08	165000	cash	19/06/08		
5	Sukhdev Singh	17/06/08	500	17/06/08	4000000	Cash	17/06/08	2700000	Cheque "Yourself"
	Branch Not Quoted, HQ - Gwalior A/C :5146						19/06/08	1300000	Cheque
6	Pradeep Kumar	18/06/08	50600	17/06/08	4000000	Cash	19/06/08	2805000	To

33

3.00

Branch - Dabra, HQ - Gwalior A/C :5150			8			8		Kamlesh Choudhar y
			18/06/0 8	2500000	Clg-6	26/06/0 8	100000	cash
			19/06/0 8	255000	cash			
			21/06/0 8	100000	cash			
A/C No. J- 1347						17/06/0 8	2700000	DD
7 Ramesh Chandra Parashar Branch -not quoted HQ - Gwalior A/C :16518	18/06/08	500	18/06/0 8	790000	Cash	20/06/0 8	5302138	DD
			19/06/0 8	2014400	Clg /cash			
			19/06/0 8	2497750	Clg-6			
8 Kamlesh Kumar Choudhary Branch -not quoted HQ - Gwalior A/C :16519	18/05/08 As per Ledger,	500	19/06/0 8	2805000	Cash	20/06/0 8	5302138	DD
	But as per Dep. slip it is 18/06/08		19/06/0 8	2497750	Clg-7			

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9	Sanjay Sahu Branch -not quoted HQ - Gwalior A/C :5152	19/06/08	500	19/06/08	2349400	Cash	19/06/08	2650569	DD
				19/06/08	301200	cash			
10	Ram Kumar Branch -not quoted HQ - Gwalior A/C :422	Old. Account	--	19/06/08	2650569	Cash	19/06/08	2650569	DD
11	Virendra Kumar Sharma Branch -- Mandi,Dabra A/C :1910	18/06/08	500	19/06/08	150570	Cash	19/06/08	2650569	DD
				19/06/08	2500000	Cltg 8 cash	19/06/08	2650569	DD
12	Lalta Prasad Choudhary Branch -- Bhitarwar HQ -Gwalior A/C :8676	22/04/08	500	19/06/08	2650569	Cash Memo from Dabra	19/06/08	2650569	DD
13	Dharmendra Kumar Choudhary Branch -- Bhitarwar HQ -Gwalior A/C :8752	17/06/08	500	17/06/08	2650569	Cash 2 Memo from Dabra	19/06/08	2650569	DD

Bank- UCO Bank, Dabra									
14	Santosh Kumar Sharma	01/01/2008	-----	18/06/08	2500000	Cfg-9	18/06/08	2651725	DD

In the chart given above, it is be noted that the source of payments by the purchasers is from cash deposits and DD/ Cheque deposit in their bank accounts immediately before making the payment for purchase of land . These deposits are nearly equal to the amount of payment made subsequently for purchase of land. It clearly indicates that there was some other person behind these purchasers who has made the entire investment. These deposits are in turn traceable to the illegal gratification paid by Nagarjuna Constuction Co. Ltd to the Minister & Officers etc. The amount of funds routed in these accounts show that this was part of the unauthorized receipt of money by the Minister. You was the Minster concerned during the relevant period of time and Assessecs constituency has been Dabra. Therefore an adverse inference is hereby being drawn that you were the recipient of the payments made by Nagarjun Construction Company Ltd. and the above said land has been purchased by you in the name of 14 persons at dabra and Shri Mukesh Sharma who had been instrumental in arranging these payments from Nagarjun Construction Company Ltd. and arranging the entire transactions of purchase of land

The seized documents discussed above clearly prove that actually, total payment of Rs.14,24,60,600/- has been made towards the land deal, out of which Rs.5,00,00,000/- is the stated purchase consideration, Rs. 49,18,335/- (roughly Rs 50 lakh) are the expenses towards registry charges, stamp & other fees and the balance amount has been paid in cash over and above the stated purchase consideration. The land admeasuring 4.75 acres which is equal to 43560 sq.feet was sold for actual sale consideration of Rs.13,65,60,600/- [@ Rs.660/- per sq.ft]; registry expenses of Rs.9,18,335/- (roughly Rs 50 lakh) were the expenses incurred towards registry charges, stamp & other fees and Rs.9 lakhs were paid to Kaushal bhaiya who arranged entries in the namesof various farmers from Dabra. Thus, actually total payment of Rs.14,24,60,600/- was made for purchasing this land.

The cheque payment of Rs. 50 lakhs mentioned on page 74-backside gets corroborated with the actual cheque payment of Rs.50 lakhs made on 23.5.2008. The area of the land and the registry expenses mentioned on these documents get corroborated with the actual area of land and actual expense incurred on registry. The amount of 225 & 323 mentioned on these documents are denoting the amount of Rs. 225 lakhs deposited by DD/cheque in the bank accounts of the 14 purchasers at Dabra and amount of Rs. 323 lakhs is the amount of cash deposited in the bank accounts of the 14 purchasers at Dabra plus the registry charges. The documents page 74-backside & 75 also corroborate each other. Therefore it is clearly proved that the entries contained on these documents are fully correct.

Thus payment of unaccounted money of Rs.8,75,42,265/- was made over and above the stated consideration for purchase of the abovesaid land. Under such facts & circumstances, you have failed to explain on this opportunity as to why this amount of Rs.14,24,60,600/- [including Rs.8,75,42,265/-] should not be considered while making assessment of your income

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The statements of farmers, the land registries, affidavits and other details emerging during summons proceedings with them were duly considered. The evidences were compared and they were not found satisfactorily explaining the receipt of money and their capacity to purchase such huge tract of land. The appearance of these persons was also indicating them from unaccountable means. Therefore the farmers are hereby considered to be benami transactions.

Corroborative Evidence No. 6	LPS 25 pg 9 Seized from Residence of Mukesh Sharma	Visiting Cards seized from Residence of Sri Mukesh Sharma	These cards establish that Sri Sharma was patently in touch with Officials of Nagarjuna Construction company
Corroborative Evidence Number 7	Warrant of Authorisation dtd. 26.09.2008 issued by the DIT(Inv.), Bhopal, the lockers at Axis Bank and The bank of Rajasthan Ltd belonging to Shri Usman Khan, the assessee, were sealed by the Authorized Officers in the presence of witness.	<p>1. Rs.73,41,000/- found & seized from the locker No.268 at Axis Bank, Zone-I, M.P.Nagar, Bhopal belonging to Shri Usman Khan</p> <p>2. Rs.21,00,000/- found & seized from the locker No.151 at The Bank of Rajasthan Ltd, Urja Bhawan, Near 5 No. Stop, Bhopal belonging to Shri Usman Khan</p> <p>3. Rs.29,00,000/- found & seized from the locker No.137 at The Bank of Rajasthan Ltd, Urja Bhawan, Near 5 No. Stop, Bhopal belonging to Shri Usman Khan</p>	<p>As a result of post search enquiries and the assessment proceedings, Shri Usman Khan appears to be a man of limited means who could not have earned such a large amount of income which could explain the cash found from his lockers. Out of a part of his unaccounted funds, he has jointly purchased a house at E-3/70 Arera Colony Bhopal with your mother-in-law Smt Rati Devi Gurbele and part payment for the said property has also been made by your wife Smt Gayatri Mishra. The ultimate source of the funds invested by Shri Usman Khan were the cash deposit made for purchasing a FDR against which loan was taken. Shri Usman Khan has informed that subsequently the said house has been sold to your mother-in-law Smt Rati Devi Gurbele for Rs.20,00,000/- and he has realized the cash consideration.</p> <p><u>In this regard you have denied the following questions:</u></p> <p>(i) Whether you know or have ever known Shri Usman Khan</p> <p>(ii) Have you ever met him? If so, how many times and what was the purpose of such meetings.</p>

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			<p>(iii) Whether he used to visit your residence & office. If so, how many times and what was the purpose of such visits.</p> <p>(iv) Have you ever talked to him on landline or mobile phones. If so, how many times and what was the purpose of such calls.</p> <p>(v) Have you ever talked to him on mobile nos. If so, how many times and what was the purpose of such calls.</p> <p>(vi) Whether you or your family members ever had any other financial transactions with him. Please give details.</p>
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Appraisal of Evidences

Appraisal of Evidence has been carried out in view of Section 34 of Indian Evidence Act, 1961 which reads as following:

34. Entries in books of account when relevant.- If Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability. Illustration A sues B for Rs. 1, 000, and shows entries in his account books showing B to be indebted to him to this amount. The entries are relevant, but are not sufficient, without other evidence, to prove the debt.

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The interpretation of this section has to be performed in view of guidelines established by Supreme Court of India in case of Central Bureau of Investigation vs. V.C. Shukla & others on 2nd March 1998 wherein the Jain Hawala Case was adjudicated. The operating paragraph from the judgment is as follows:

"After having held that the documents were neither books of account nor kept in the regular course of business the High Court observed that even if they were admissible under Section 34, they were not, in view of the plain language of the Section, sufficient enough to fasten the liability on the head of a person, against whom they were sought to be used. As, according to the High, the prosecution conceded that besides the alleged entries in the diaries and the loose sheets there was no other evidence it observed that the entire would not further the case of the prosecution. As regards the admissibility of the documents under Section 10 the High Court held that the materials collected during investigation did not raise a reasonable ground to believe that a conspiracy existed, far less, that the respondents were parties thereto and, therefore, those documents would not be admissible under Section 10 also.

Therefore the table of primary evidences provides the 10 rows containing details of 10 primary evidences which have formed the basis of enquiry in the instant assessment. The collection of information after the collection of primary evidence has been shown in the form of table of corroborative evidences. There is other evidence in the present case other than diary entries so as to charge the assessee with tax. The Assessee has placed reliance upon several cases. However I consider the Section 34 to interpret the 10 rows of table of primary evidences in light of 6 rows of corroborative evidences.

List of Additions

	Total income as per return	Rs.	355440/-
Addition No. 1	This addition is being done on account of Proceeds received from Nagarjuna Construction Company through a channel of person established through adverse Inference on basis of Primary Evidence No. 1-9 listed in table of primary evidence detailed above corroborated by Corroborating Evidence No. 1-6 detailed above in Table of Corrobarating Evidence	Rs.	14,24,60,600
Addition No. 2	This addition is being done on account of proceeds found in possession of Sri Usman Khan which are proceeds from Simplex Infrastructure Limited applied through the purchase of property through Family Relatives and Cash found in lockers of Usman Khan as detailed in Primary Evidence No. 1 to 5 and Corroborative Evidence No. 7	Rs.	1,53,41,000

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Total Assessed income	Rs.	15,81,57,040
Agriculture Income shown	Rs.	2,28,428

Assessed u/s 143(3) of the I.T. Act, 1961 at Rs. 158157040/- and agriculture income of Rs. 2,28,428/-. Issue necessary forms and give credit to prepaid taxes. Initiate penalty u/s 271(1)(c) of I.T. Act, 1961. Charge interest u/s 234A, B, C of I.T. Act, 1961.

(Signature)
(Girindra Pratap Singh)
Asstt. Commissioner of Income Tax-1(1)
Bhopal

Copy to the assessee

(Signature)
Asstt. Commissioner of Income Tax-1(1)
Bhopal

TRUE - COPY

(Signature)
Deputy Commissioner of Income Tax
1 (1), Bhopal

TRUE - COPY

(Signature)
Deputy Commissioner of Income Tax
1 (1), Bhopal

OFFICE OF THE COMMISSIONER OF INCOME TAX (APPEALS)
RAIPUR (C.G.) : CAMP : BHOPAL

Date of order	12.12.2012
Appeal No.	215/11-12
Date of institution of appeal	03.01.2012
Name & designation of the A.O. who made the assessment order	Shri G.P. Singh ACIT-1(1), Bhopal
Assessment Year	2009-10
Name & address of the Appellant	Shri Narottam Mishra B-6, Char Imli, Bhopal
PAN	AJBPM023B
Section under which order appealed against was made	Under sec. 143(3) of Income-tax Act, 1961.
Income assessed	Rs.15,81,57,040/-
Tax Demand	Rs.7,13,51,721/-
Last date of hearing	As per order sheet entry
Present for appellant	Shri A.K.Jain, CA and AR
Present for the Department	None

**APPELLATE ORDER AND GROUND OF DECISION**

(All sections referred to in this order relate to the Income-tax Act, 1961 unless otherwise stated)

Vide Notification No.1A/2012-13, dated 31.10.2012, the aforementioned appeal has been assigned to the undersigned for adjudication in exercise of concurrent jurisdiction with the Commissioner of Income Tax (Appeals)-I, Bhopal.

The appeal has been instituted against the assessment order passed by Shri G. P. Singh, ACIT-1(1), Bhopal. The appellant raised the following grounds of appeal for adjudication:

1. On the facts and circumstances of the case, the various observations made by the Id. AO in the impugned assessment order and ultimate conclusions arrived at, against the appellant, are opposed to facts and law on several grounds and hence, being unsustainable on facts and in law, may kindly be quashed.
2. With due respects and without prejudice to Ground No.1, the addition of Rs.14,24,60,600/- made by the Id.AO, being without any evidence, is unsustainable on facts and hence, the same may very kindly be deleted.
3. With due respects and without prejudice to Ground No.1, the addition of Rs.1,53,41,000/- made by the Id.AO, being without any evidence, is

TRUE - COPY

Deputy Commissioner of Income Tax

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TRUE - COPY

(4)

Shri Narottam Mishra, Bhopal
Appeal No.215/11-12. A.Yr.2009-10

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unsustainable on facts and in law and hence, the same may very kindly be deleted.

4. On the facts and the circumstances of the case, charging of interest u/s.234B and 234C of the IT Act, 1961, is factually and legally unsustainable and since the appellant denies the legal liability created under these sections, the interest so charged under these sections, may very kindly be deleted. Since no positive concealment was detected, initiation of proceedings u/s.271(1)(c) of the IT Act, 1961, is unsustainable on facts and in law.

3. Brief Facts.

The facts of the case are that the appellant is an MLA from Dabra Constituency and a sitting Cabinet Minister in the Govt. of Madhya Pradesh. He had filed the return of income for A.Yr.2009-10 on 28.07.2009 declaring total income at Rs.3,55,450/- and agricultural income at Rs.2,28,428/-. Subsequently, the assessment was completed u/s.143(3) of the Act and the total income was assessed at Rs.15,81,57,040/-. The present appeal is directed against the enhancement to the returned income. In the course of appeal proceedings, Shri A.K. Jain, FCA and AR for the appellant has attended the proceedings and filed written submissions. The observations of the A.O., submissions of appellant and the grounds raised by the appellant are adjudicated in the lines indicated below.

4. Ground No. 1 to 3:-

These grounds of appeal relate to the observations and conclusions drawn by the AO and the addition of Rs.14,24,60,600/- made as proceeds received from Nagarjuna Construction Co. Ltd. (NCCL). The AO has observed that in the process of inquiry and two searches conducted u/s.132 of the Act in the cases of Shri Mukesh Sharma and Shri Usman Khan, several documents were found and the same were tabled two sets; set-one, primary evidences and set-two corroborative evidences. The primary evidences relate to documents requesting for transfer/posting of officials/officers of Urban Development Department, Govt. of Madhya Pradesh, documents requesting for allocation of funds, documents relating to expenses incurred on travel and stay of officers/ officials of Urban Development Deptt., documents relating to illegal gratification paid to officers/ officials of Urban Development Deptt., document relating to tenders/ contracts of various Nagar Nigams/ Nagar Palikas and loose sheets of matrix pad. As per the Assessing Officer, these papers reveal links of the appellant



Shri Narottam Mishra, Bhopal
Appeal No. 215/11-12, A.Yr. 2009-10

OFFICE OF THE COMMISSIONER OF INCOME TAX (APPEALS)
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Last date of hearing	As per order sheet entry
Present for appellant	Shri A.K.Jain, CA and AR
Present for the Department	None



APPELLATE ORDER AND GROUND OF DECISION

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2. With due respects and without prejudice to Ground No.1, the addition of Rs.14,24,60,600/- made by the Id.AO, being without any evidence, is unsustainable on facts and hence, the same may very kindly be deleted.
3. With due respects and without prejudice to Ground No.1, the addition of Rs.1,53,41,000/- made by the Id.AO, being without any evidence, is

TRUE - COPY

Deputy Commissioner of Income Tax

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with Shri Mukesh Sharma, details of money received by various persons against award of contracts to NCCL for sewerage work in Indore, supervised by Nagar Nigam, Indore. The total contract work given to NCCL was of Rs.266.87 crores, which was rounded off as Rs.267 crores and the particulars of persons to whom the money paid are vertically arranged in codes as "M" Minister of Urban Development (6%), "P" for Principal Secretary, Department of Urban Development (1.25%), "C" for Commissioner of Urban Development (1/2%), "M" for Mayor Nagar Nigam, Indore (1%) and "C" for Commissioner Nagar Nigam, Indore (1/2%). The quantum of contracts awarded to NCCL and Simplex Infrastructure Ltd. is mentioned in acronym 'Nagar' 'Simplex' at evidence no.2. The money was transferred initially to seven companies, which was later on withdrawn in cash and later on re-deposited and again that was transferred to 14 persons, who invested it in purchase of land at Bhopal. The details of the evidence, entities and person-wise particulars are given in the assessment order. The AO has observed that Shri Mukesh Sharma was closely associated with the appellant and was influencing the transfer and postings and award of contracts, etc. in the Ministry of Urban Department. It was also held by the A.O. that search u/s.132 of the Act was conducted in the case of NCCL in Hyderabad and the said Company has surrendered an amount of Rs.9.62 crores on account of bogus payment towards illegal expenditure to Minister and Officers, etc. The AO inferred that since the appellant was the Minister of the concerned department at the relevant point of time, he was the recipient of the payments made by NCCL and that was invested in purchase of land in the name of 14 persons of Dabra and Shri Mukesh Sharma was instrumental in arranging the payments and transactions of purchase of land.

4.1 The Assessing Officer further held that during the course of search, certain documents were found along with memorandum of agreement dated 24.04.2008 for purchase of 1.9 hectares (approx 4.0 acres) land at Ratanpur, Misrod near Bhopal. In the post search enquiries, it was found that the land was purchased by Shri Mukesh Sharma along with 14 other persons of Dabra on 23.06.2008 through 21 registries for total sale consideration of Rs.5,00,00,000/- and Rs. 49,18,335/- (roughly Rs. 50,00,000/-) towards registration charges, stamp and other fees as per details given in the assessment order. It was held that the 14 persons, other than Shri Mukesh Sharma, from Dabra are the persons of the appellant's constituency. These persons are



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benami persons and they do not have any source of income to justify such large transactions. The A.O. relying on loose papers LPS 1/1, Page No. 71 to 75 giving calculations pertaining to payments made in connection with purchase of the land held that the total amount of the deal comes to Rs. 14,24,60,600/- and the statements of farmers, the land registries, affidavits and other details emerged during summons proceedings showed that the said persons were not found satisfactorily explaining the receipt of the money and they had no capacity to purchase such huge tract of land as they were men of meager means. Therefore, the farmers were considered to be the benamidars of the appellant and the sum of Rs. 14,24,60,600/- was added in the appellant's case as the proceeds received from NCCL.

4.2 In the course of appeal proceedings, the Ld. Counsel for the appellant has contended that the assessment proceedings were initiated in the appellant's case on the basis of searches conducted in the cases of other persons viz. Shri Mukesh Sharma and Shri Usman Khan. These persons are not related to the appellant. In the course of search in the case of Shri Mukesh Sharma, some loose papers marked as evidence No. 1 to 6, scanned copy of which are made part of the assessment order, were found. The AO has categorized these evidences as primary evidences and other evidences as corroborative evidences and on the basis of those purported evidences concluded that the appellant had received 6% of the amount of contract awarded to NCCL and SIL. The Id. Counsel has stated that neither Shri Mukesh Sharma nor the farmers relate to the appellant. The papers were not seized from the appellant's possession. The papers were not in the handwriting of the appellant. Therefore, AO can not apply any presumption against him. It was contended that the appellant's involvement was not proved beyond all shadows of doubt, much less the depositions made by the concerned persons from whom the papers were found / seized. It was also contended that all the persons purchasing the property have filed their IT returns and proceedings u/s 153C are contemplated in their cases. All the persons have confessed in clear terms that they have purchased the questioned property in their names from the sources stated in their depositions and these facts are evident from the assessment order. Therefore, according to the Id. AR, the AO has not brought on records any evidence to conclusively prove that the appellant had any connection and involvement in the questioned transactions of NCCL.

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4.3 The Id. Counsel for the Appellant stated that the notings of letter "M" and the word "Netaji" in the loose papers do not directly relate to the appellant and there are other letters "P" for Principal secretary, "C" for Commissioner, Urban Development Department, "M" for Mayor, Nagar Nigam, Indore and "C" for Commissioner, Nagar Nigam Indore, but no addition was made in their cases, though the A.O. has made such interpretation of the documents.

4.4 The Ld. AR contended that even the corroborative evidences were found from the premises of Shri Mukesh Sharma and not from the appellant. The assessment order nowhere states that the NCCL has paid the illegal gratification to the appellant through seven different companies. Copies of the statement of NCCL were not provided to the appellant. There is no evidence that amount deposited in the name of the companies was later on transferred to the appellant. In the assessment order passed u/s 153A r.w.s. 143(3) of the Act, dtd. 31.03.2010, in the case of Shri Mukesh Sharma, part of the on money was assessed in his hands and the balance amount was also proposed to be considered in the hands of 14 other persons of Dabra. The original investment for purchase of the land was shown and accepted in the case of Shri Mukesh Sharma on substantive basis. Therefore, the same cannot be added in the hands of the appellant. Similarly, the income tax returns of the other 14 persons were also filed and it was contended that they have shown the investment in their returns and the department has accepted the investments in their hands. It was also contended that it is established law that additions for on money, if any, should also be made in the hand of the persons to whom the land belongs. Therefore, the addition on account of on money should not have been made in the appellant's case.

4.4 The further submissions of the appellant in nutshell are summarized as under:

- a. There is no direct nexus between the appellant and Shri Mukesh Sharma.
- b. The documents were found from Shri Mukesh Sharma and were written in his handwriting.
- c. The officials of NCCL never accepted payments of any money to the appellant.
- d. There is no direct nexus with the money given by NCCL and other persons that is added in the hand of the appellant.

The owners of the land including Shri Mukesh Sharma have accepted that they purchased the land out of their own sources.



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- f. The papers were found from Shri Mukesh Sharma and a rebuttable presumption lies against him u/s 132 and 292C of the Act. No such presumption can be made against the appellant without discharging the burden of proof by the department. In this regard, the appellant relied on the following cases:
- (i) Ramji Dawawale & Sons (P) Ltd. Vs. Innet Import - AIR (1981) SC 2085
 - (ii) CBI vs. VC Shukla 1998 SCC 410
 - (iii) Ishardas Jain vs. Sohanlal AIR 2000 Page 426 SC
 - (iv) CIT vs. MK Brothers (1987) 163 ITR 249 (Gujrat)
- g. The loose papers are only rough papers.
- h. The addition was made by the A.O. on the basis of wild guess attributing the letter 'M' and 'Netaji' relate to the appellant and to support his stand that no such addition can be made; the appellant relied on the following decisions
- (i) CIT vs. Atom Valves (P) Ltd. (2011) 332 ITR 408 P&H
 - (ii) Koonwale Gems vs. Joint CIT (2007) 288 ITR 10 (SC)
- i. Serious charges of illegal gratification cannot be leveled against any persons on the basis of mere jottings/letters.
- j. Presumption cannot be drawn against a third person on the basis of entries in books of accounts seized from a stranger.
- k. In this regard, the appellant further relied on the following cases:
- (i) DCIT vs. L.N.Goel (2004) 182 Taxation 65 (Tribunal Delhi)
 - (ii) CIT vbs. Chandra Chemouse P. Ltd. (2008) 298 ITR 98 (Raj)
 - (iii) Rama Traders vs. First ITO 25 ITD 599 (TM) (Pat)
 - (iv) In Straptex (India) P. Ltd. Vs. DCIT (2003) 84 ITD 320 (Mum)
 - (v) Ashwani Kumar v. ITO (1991) 39 ITD 183 (Del) and Daya Chand vs. CIT (2001) 250 ITR 327 (Del) SP Goel vs. DCIT (2002) 82 ITD 85 (Mum)
 - (vi) CIT vs. Khazan Singh & Bros (2008) 304 ITR 243 (P&H)

4.5 In Para 2 of the written submission, the Id. Counsel contented that detailed scrutiny of the bank accounts, investments of the appellant were made and not a single entry of undisclosed nature was found. No documents relating to receipt of commission from NCCL and SIL were found. There is no concrete evidence that NCCL has made payment of Rs 14,24,60,600/- to the appellant. The presumption made by the A'O without conducting any enquiry as per and under the law either from NCCL or from Shri Vinod Vaish is not proper. The Id. Counsel stated that the

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Appellant's name was dragged on the basis of loose papers, visiting cards, inter office memo of NCCL seized from Shri Mukesh Sharma or SMS sent by Shri Jadon to Shri Sharma or on alleged transaction between NCCL and the paper companies is not correct. Shri Mukesh Sharma was found to be making arrangements for travel by air, rail and roads and stay in hotels for family members of high officials of different departments of State Govt. He had purchased huge urban properties of more than 13 Acres in urban agglomerations showing petty consideration, therefore, these papers may relate to him. Relying upon section 33 of the Indian Evidence Act, the Id. counsel contended that these evidences are trivial and can hardly be treated as genuine. It was also contended that as per decision of Hon'ble Supreme Court in the case of CBI Vs V.C. Shukla (Supra), entries appearing in loose papers not seized from one person cannot form evidence for another person. He has also contended that for treating one person as benamidar of another person, the tests lay down by the courts need to be fulfilled and in this case, these tests were not fulfilled. Therefore, according to the appellant, the addition made by the AO is not correct.

6. With respect to the addition of Rs 1,53,41,000/-, the Id. Counsel for appellant contended that this addition was made on account of proceeds received from SIL found in the possession of Shri Usman Khan, applied in purchase of property through family members/relatives and found in the form of cash in different lockers in the name of Shri Usman Khan, but the addition is not correct. Shri Usman Khan has filed returns of income u/s 153A for different assessment years and had shown the cash found in the lockers in his returns and also paid taxes thereon. Subsequently, the DCIT-1(1) Bhopal has also completed the assessments in his case on 24/12/2010 on substantive basis. The said assessments have attained finality. Therefore, the same amount cannot be assessed in the hands of the appellant.

7. I have gone through the observations of the A.O. and submissions of the appellant. I have also considered the oral submissions made by the Ld. Counsel at the time of hearings. The A.O. has made the additions in the appellant's case mainly on the basis of following observations:-

"Since the assessee was the Minister concerned during the relevant period of time and your constituency has been Dabra and you have failed to explain me convincingly therefore an adverse inference is hereby drawn that you were the recipient of the payments made by Nagarjun Construction Company Ltd. and the above said land has been purchased by you in the name of 14 persons at



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payments from Nagarjun Construction Company Ltd. and arranging the entire transactions of purchase of land"

A close perusal of the above observations reveals that these observations are solely based on inferences and not on direct evidences demonstrating appellant's nexus with the alleged payments or investments. The alphabet "M" and the word "netaji" referred to in these loose seized papers may or may not refer to a class of persons i.e. minister or politician. But, the same cannot be construed and confirmed as they relate to the appellant with any amount of certainty. The A.O's inference that Shri Mukesh Sharma was enjoying substantial influence in Urban Development Department and was maneuvering staff transfers/award of contracts and the appellant was minister of that department, therefore, these terms relate to the appellant is farfetched inference and cannot be concluded as truth and ultimately inference only. The Id. AR's contention that there are several ministers, Central and State, Minister-in-charge of Indore District and other 'netas' in power and out of power and they, due to their personality and position, can influence administrative decisions and these terms may relate to any of them. As per the Ld Counsel, the appellant is popularly known by 'dada' (elder brother) and not as netaji and since name the appellant is not clearly mentioned in any of the papers, it is incorrect to treat that these terms relate to him and none others, carries substantial force. The works being related to Urban Development Department, certainly a suspicion arises that these terms may relate to the Minister of the concerned Department but as per settled law, no tax liability can be fastened merely on the basis of suspicion, how so ever strong it may be. In the case of Bansal Strips (P) Ltd. & Ors. vs. Assistant Commissioner of Income Tax (2006) 100 TTJ (Del) 665 : (2006) 99 ITD 177 (Del), while dealing with the issue, the Delhi Bench of the Hon'ble Tribunal has observed as under:

"23. We have carefully considered the rival submissions. The legal position in this respect is firmly settled by now. While completing an assessment the AO is not a Court. He is also not bound by technical rules of evidence. He may consider material which would be wholly inadmissible in a Court of law. He may draw his conclusion and inferences on the cumulative effect of various circumstances based upon the test of human probability. At the same time though technical rules of evidence do not apply, the AO is bound by the principles of natural justice. He cannot draw his inferences on the basis of suspicion, conjectures and surmises. Suspicion, howsoever strong, cannot take place of material in support of findings of the AO. The AO should



act in a judicial manner, proceed with a judicial spirit and come to a judicial conclusion, as held by Hon'ble Allahabad High Court in the case of Swadeshi Cotton Mills Co. Ltd. vs. ITO 1976 CTR (All) 6 : (1978) 112 ITR 1038 (All). While recognising that the AO is not fettered by technical rules of evidence, Hon'ble Supreme Court laid down as early as in the case of Dhakeshwari Cotton Mills Ltd. vs. CIT (1954) 26 ITR 775 (SC) that the AO has to act fairly as a reasonable person and not arbitrarily or capriciously."

Admittedly, these papers were found from the premises of Shri Mukesh Sharma. They are not in the handwriting of the appellant. The intermediaries, in whose accounts the money was transferred, did not belong to the appellant. Though the persons in whose names the investments were made are from Dabra, the appellant's constituency, they are not his relatives or employees. In the absence of any supporting direct evidence, the inference that those persons hail from Dabra and, therefore, they are benamidars of the appellant; seems to be a biased conclusion against the appellant. It is settled law that in order to hold a person as benamidar of another person, it needs to be established that the latter is the ultimate beneficiary and enjoying the fruits of the venture. This fundamental requirement of enjoying the fruits by someone other than the ostensible owner is missing in this case.

7.1 Similarly, regarding the addition relating to cash recovered from the lockers found in the name of Shri Usman Khan or his other investments, it is held that no direct evidence was brought on record to hold that the cash/assets actually belongs to the appellant. The addition is effectively based on the inferences drawn against the appellant with respect to the earlier grounds of appeal and that is not sufficient to saddle the appellant with any tax liability.

7.2 In view of the above discussion, after considering the facts and circumstances of the case and the submissions of the Id. Counsel for the appellant as also the case laws cited by the Id. Counsel and the settled legal position, I am of the considered opinion that both these additions were made only on the basis of inferences and suspicions and without substantiating any direct nexus with the appellant. Therefore, the same are not sustainable under the law, hence deleted. The appeal is allowed on both these grounds.

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GOVERNMENT OF INDIA
 MINISTRY OF FINANCE
 (DEPTT. OF REVENUE)
 OFFICE OF THE COMMISSIONER OF INCOME TAX
 AAYAKAR BHAWAN, HOSANGABAD ROAD, BHOPAL

Name & address of the assessee : Shri Narrotam Mishra
 B-6, Char Imli, Bhopal

Status : Individual

Assessment Year : 2009-10

Section & sub-section under which the order is made : 263 of the Income Tax Act 1961

Date of Order : 31/12/2012

Order under section 263 of the Income tax Act 1961

In the assessee's case order u/s 143(3) for assessment year 2009-10 was passed on 30.12.2011 of the I.T. Act, 1961 by Assistant Commissioner of Income Tax 1(1) Bhopal. On examination of records, it was found that the order u/s 143(3) dated 30.12.2011 passed by the Assessing Officer is erroneous and prejudicial to the interests of revenue.

2. During the search and seizure action u/s 132 of Income tax Act 1961 at the residence of Shri Mukesh Sharma on 21.07.2008 certain documents were found and seized. Based on these documents, detailed enquiries were carried by the Income tax authorities. The nature of these seized documents and the findings of these enquires are elaborately discussed in paras 9.1, 9.2, 10.1, 10.2, 10.3 and 10.4 (Pages 4-25) of notice u/s 142(1) dated 10.12.2010 issued by the Assessing Officer. These documents established receipt of certain amounts by the assessee being Minister of Urban Development and Administration, Govt. of Madhya Pradesh, from various companies to whom contracts were awarded by his Ministry.

2.1 On 13.12.2011 the assessing officer issued notice u/s 133(6) to Municipal Commissioner, Indore, Principal Secretary, Department of Urban Development Bhopal and the Commissioner, Urban Development, Bhopal. Through these notices, the assessing officer called for original files of award of contract of sewerage line to M/s Nagarjuna Construction Company Limited and M/s Simplex Infrastructure Limited along with a set of xeroxes of original files. These notices were not complied by these persons. The Assessing Officer also did not carry out any enquiries on this issue and completed the assessment without carrying out proper enquiries.

2.2 In the notice u/s 142(1) dated 10.12.2010 (Para 9.2, page 11) the Assessing Officer summarized the illegal gratification paid by M/s Nagarjuna Construction Company Limited to 5 persons detailed therein. As per the computation of the Assessing Officer the assessee's share worked out to Rs 16.02

TRUE

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Crores (@ 6% of total contract awarded of Rs 266.87 Crores rounded off to Rs. 267 Crores).

In the assessment order the Assessing Officer has elaborately discussed the 8 primary evidences unearthed during Search and Seizure Action u/s 132 at the residence of Shri Mukesh Sharma. While discussing the Primary Evidence 2 (Page 3 of the Assessment Order) the Assessing Officer has held, "Number 267 has been corroborated with perfect proof. The percentage figure of 6% is Rs. 16.02 Crores, which has been proved to be transferred from Nagarjuna Construction Company through an elaborate chain of persons. This evidentiary proof of transfer of funds is described in detail in subsequent paragraphs"

The Assessing Officer has further corroborated this finding based on 7 corroborative evidences elaborately discussed in the assessment order.

Thus it has been held by the Assessing Officer that the assessee had received illegal gratification @ 6% of total contract amount of Rs. 266.87 Crores awarded to M/s Nagarjuna Construction Company Ltd. during his tenure as Minister of Urban Development and Administration, Govt. of Madhya Pradesh. Amount of illegal gratification received @ 6% of contract amount works out to Rs. 16,02,00,000/-. However, the Assessing Officer has made an addition of only Rs.14,24,60,600/- on account of undisclosed investment in purchase of land. In view of above facts, it is apparent that the Assessing Officer has committed error and has under assessed income on this account.

2.3 In the notice u/s 142(1) dated 10.12.2010 (Para 11, page 25 of the notice) the Assessing Officer required the assessee to show cause as to why an addition of Rs. 10,50,00,000/- being amount of illegal gratification received from M/s Simplex Infrastructure Limited (at the rate of 6% of total contract awarded of Rs 175 Crores) not be made.

In the assessment order the Assessing Officer has elaborately discussed the 8 primary evidences unearthed during Search and Seizure Action u/s 132 at the residence of Shri Mukesh Sharma. While discussing the Primary Evidence 3 the Assessing Officer (Page 6 of the Assessment Order) the Assessing Officer has held, " This contains the Acronym of Nagar and Simplex. The number written against them are expressed in the monetary value in rupees in crore. This amount is exactly matching with the amount of awarded contract."

Further while discussing the primary evidence 6 the Assessing Officer has held, "... These evidence are showing the calculation of Simplex and Nagarjuna..." The document referred to in this discussion shows certain figures against Simplex Infrastructure Limited (Acronymed as Sim) and Nagarjuna Construction Company Limited (Acronymed as Nag). The total figure shown against Simplex Infrastructure Limited are clearly mentioned in the evidence number 5 reproduced on page 10 of assessment order.

The evidence available on record shows receipt of illegal gratification of Rs. 10,50,00,000/- from M/s Simplex Infrastructure Limited, however, in the Computation of Income the Assessing Officer has made an addition of Rs.1,53,41,000/- only on account of proceeds found in possession of Shri Usman

Shri Usman Khan which are applied in purchase of property and cash found in lockers of Shri Usman Khan. The Assessing Officer has not given any finding as to why he has restricted the addition to Rs 1,53,41,000/- on account of illegal gratification received from Simplex Infrastructure Limited instead of Rs.10,50,00,000/- (@ 6% of contract amount awarded to Simplex Infrastructure Limited). In view of above facts, it is apparent that the Assessing Officer has erroneously under-assessed the income on this account.

2.4 During the search and seizure action u/s 132 of Income tax Act 1961 at the residence of Shri Mukesh Sharma on 21.07.2008 certain documents were found and seized. The seized documents include the documents regarding award of contract for reorganization of water supply system of Ujjain City. The Assessing Officer did not carry out any enquiries on this issue and completed the assessment without carrying out proper enquiries.

3. The order dated 30.12.2011 passed by the AO u/s 143(3) was therefore considered to be erroneous in so far as it is prejudicial to the interest of the revenue. In view of this, a notice u/s 263(1) was issued to the assessee on 12.12.2012 and case was fixed for hearing on 18.12.2012. In compliance, the assessee's authorized representative Shri A.K. Jain, CA appeared on 18/12/2012 and submitted a letter seeking adjournment to prepare reply. The hearing was adjourned to 24.12.2012. The AR of the assessee attended on 28.12.2012 and submitted written arguments. He was also heard. The assessee's arguments are as under:

"..... In your notice u/s 263, you have discussed different paras and page numbers of the notice u/s 142(1) dated 10.12.2010 which are summarized as under:-

Para 9.1- In this para the list of documents found in the premises of Shri Mukesh Sharma during the course of search conducted on 21.7.2008 is given which includes the documents like request for transfer & posting, request for fund allocation, expenditure incurred by Shri Mukesh Sharma on account of travel and stay, documents relating to illegal gratification paid to officers and documents relating to tenders/contracts etc.

Para 9.2- In this para, the list of documents found and seized from the office premises of Shri Mukesh Sharma namely- LPS-21 Page-55 & 56 and LPS-26 Page-122 and the diaries found and seized from the residence namely- LPS-1/1 Page-155 (ix) and (viii) backside, (xxi) backside are given.

Para 10.1- In this para, details of seized documents LPS 1/1 Page-71 to 7, LPS 1/1 Page-74 and back and LPS-1/1 Page-75 is given. This is mainly an agreement between Shri Vinod Vaish & family and Shri Mukesh Sharma for sale of land measuring 1.50 hectores at Ratanpur for Rs. 5 crores.

Para 10.3- In this para details of page No.26 of LPS-1/1 seized from the residence of Shri Mukesh Sharma is a letterhead of Jila Sahakari Bank, Gwalior is given. This contents the name of 14 persons who has purchased the land.

Para 10.4- In this para details of Rs.14,24,60,600/- paid to towards purchase of land, is given. It is also mentioned that out of above, Rs.5 crores is the purchase consideration and Rs.50 lakhs is the expense towards registry charges etc. It is also stated

absent-if the order of the AO is erroneous but is not prejudicial to the revenue or if it is

in this para that why the amount of Rs. 14,24,60,600/- the entire sale consideration be not added in your hand as income from undisclosed sources.

It is further submitted that in para 11 page 25 it is mentioned that why an amount of Rs. 10,50,00,000/-, being 6% of Rs. 175 crores which is the amount of work awarded to Simplex Infrastructure Ltd. may not be treated as income out of illegal gratification received from the said company.

It is submitted that in the assessment order, the AO has termed these documents as primary evidence S.No.1 to 8 and corroborative evidence No.1 to 7. Relying on these documents, the AO has made the addition in the assessment order as under:-

Addition No.1 - Addition on account of Proceeds Received from Nagarjuna Construction Company through a channel of person as discussed in primary evidences and corroborative evidences.	14,24,60,600/-
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Addition No.2 - Addition on account of proceeds found in Possession of Shri Usman Khan being received from Simplex Infrastructure Ltd. applied through the purchase of property in the name of family & relatives and cash founds in lockers of Shri Usman Khan	<u>1,53,41,000/-</u>
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Total	15,78,01,600/-
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Sir, it is worthwhile to mention that no search was conducted in the assessee premises and the entire assessment was based on the basis of search conducted in the premises of other persons i.e. Shri Mukesh Sharma and Shri Usman Khan. Further, during the course of assessment proceedings the assessee has replied to all the questions and queries raised during the course of assessment proceedings. This is evident from the copy of assessment order also where nowhere it is mentioned that the assessee has not complied anything.

Sir, as per the Act, the commissioner is empowered to revision of orders which are prejudicial to revenue as stated u/s 263 as under:-

263(1) The Commissioner may call for and examine and record of any proceeding under this Act, and if he considers that any order passed therein by the officer is erroneous in so far as it is prejudicial to the interest of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment.

Sir, a bare reading of section 263(1) makes it clear that the pre-requisite to exercise of jurisdiction by the Commissioner suo motu under it, is that the order of the AO is erroneous in so far as it is prejudicial to the interests of the Revenue. The Commissioner has to be satisfied with twin conditions, namely (i) the order of the AO sought to be revised is erroneous, and (ii) it is prejudicial to the interests of the Revenue. If one of them is absent-if the order of the AO is erroneous but is not prejudicial to the Revenue or if it is

not erroneous but is prejudicial to the Revenue-recourse cannot be had to section 263. [Malabar Industrial Co.Ltd. v CIT (2000) 243 ITR 83, 87 (SC)].

Further, the error envisaged by section 263 is not one which depends on possibility or guesswork, but it should be actually, an error either of fact or of law [CIT v Trustees of Anupam Charitable Trust (1987) 167 ITR 129 (Raj.)].

The expressions 'erroneous' 'erroneous assessment' and 'erroneous judgment' have been defined in Black's Law Dictionary, Sixth Edition, page 542. According to the definition, 'erroneous' means 'involving error, deviating from the law', 'Erroneous assessment' refers to an assessment that deviates from the law and is therefore invalid, and is a defect that is jurisdictional in its nature, and does not refer to the judgment of the Assessing Officer in fixing the amount of valuation of the property. Similarly, 'erroneous judgment' means 'one rendered according to course and practice of court, but contrary to law, upon mistaken view of law, or upon erroneous application of legal principles.'

From the aforesaid definitions, it is clear that an order cannot be termed as erroneous unless it is not in accordance with law. If an AO acting in accordance with law makes a certain assessment, the same cannot be branded as erroneous by the Commissioner simply because, according to him, the order should have been written more elaborately. Section 263 does not visualize a case of substitution of the judgment of the Commissioner for that of the AO, who passed the order, unless the decision is held to be erroneous.

Sir, it is held by various courts, that the revisional power is not meant to be exercised to correct every error of fact, but the error must be of such a nature that it is erroneous and prejudicial to the interest of the Revenue. Further, the power of revision is not to mean to be exercised for the purpose of directing the officer to hold an other investigation when the order of the officer was not found to be erroneous or further inquiry will not result to more revenue. [CIT vs Sakthi Charities (2000) 160 CTR Mad, 107].

Sir, it is further held that proceedings should not be initiated with a view to start fishing and roving enquiries in matters or orders which are already concluded. Such action will be against the well accepted policy of law that there must be point of finality in all legal proceedings, that state issues should not be reactivated beyond a particular stage and that lapse of time must induce response in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity (CIT Vs Gabriel India Ltd. (1993) 203 ITR 108 (Bom.).

Sir, in our case, the first appellate authority has deleted all the additions as made by the Assessing Officer. Further, setting aside the same issue on the same ground is not justified as per law. Sir, as held by various courts that after passing the order by CIT(A) the revisional power of Commissioner comes to an end because the entire order of the Commissioner and restoring that of the Assessing Officer.

Sir, it is humbly submitted that in our case, as apparent from the assessment order itself, all the discrepancies as stated in the notice u/s 263 has been considered by the Assessing Officer before passing the assessment order and are part and partial of the assessment order. Further detailed inquiry was made by the Assessing Officer before completing the assessment on different issues as mentioned in your notice u/s 263 and hence also action u/s 263 is not required.

Sir, out specific reply to the objection raised in your notice are as under:-

- (i) At the residence and office premises of Shri Mukesh Sharma, certain documents and loose papers were seized. These documents are discussed in the notice issued u/s 142(1) in para 9.1, 9.2, 10.1, 10.2, 10.3 and 10.4 (page 4-25). The assessee during the assessment proceedings, specifically replied point by point on all those issues which can be verified from the assessment record also.

Sir, when the AO has framed the assessment after considering all the issues, then, reconsidering the same by revision is not justified.

Sir, in your notice it is mentioned that summons u/s 133(6) were issued to various Government Officers but these notices were not complied by those officers. In his reference, it is submitted that the Assessing Officer has considered all these issue before framing the assessment and being all the officials to whom summons issued are Government Officers holding principal position, appropriate consideration must have been given in this issue.

- (ii) As stated, in the notice issued u/s 142(1) dated 10.12.2010, para 9.2 page 11, the Assessing Officers summarized the illegal gratification paid by M/s Nagarjuna Construction Company to 5 persons detailed therein. As per the computation worked out, the share of the assessee is Rs.16.02 Crores (Rs.6% of total contract of Rs.266.87 crores rounded off to Rs.267 crores.)

- (iii) As stated in notice issued u/s 263, in the notice u/s 142(1) dated 10.12.2010 (para 11, page 25) the Assessing Officer required to show cause, why an addition of Rs.10,50,00,000/- (being amount of illegal gratification received from M/s Simplex Infrastructure Ltd. (at the rate of 6% of total contract awarded of Rs.175 crores).

Sir, in this reference, it is submitted that the Assessing Officer has considered this issue in detail as apparent from the assessment order and finally added Rs.1,53,41,000/- being the proceeds of property and cash found during the course of search, in the premises of Shri Usman Khan.

- (iv) As stated in notice u/s 263, during the search and seizure action u/s 132 of the Income Tax Act, 1961 at the residence of Shri Mukesh Sharma on 21.07.2008 certain documents were found and seized which includes the documents regarding award of contract for re-organization of water supply system of Ujjain city.

Sir, in this reference, it is submitted that as stated in your notice itself the aforesaid document was found from the premises of Shri Mukesh Sharma. The assessee does not know anything about it then how, he can comment on these documents which are not belonging to him. Hence, this cannot be the base for revision.

Sir, it is further submitted that though your honour has proposed to further add the aforesaid different amount in the hands of the assessee, legally this should not be added in the hands of the assessee neither at the time of original assessment nor in the revisionary proceedings for the following reasons:-

- (i) That all the documents stated in your notice issued u/s 263 were found in the premises of Shri Mukesh Sharma and there is no direct nexus between the appellant and Shri Mukesh Sharma.
- (ii) The documents were found from Shri Mukesh Sharma and were written in his handwriting.

- (iii) The officials of Nagarjuna Construction Company never accepted payment of any money to the appellant as no copy of declaration or acceptance was provided to the assessee.
- (iv) The papers were found from Shri Mukesh Sharma and a rebuttable presumption lies against him u/s 132 and 292C of the Act. No such presumption can be made against the appellant without discharging the burden of proof by the department.
- (v) The loose papers are only rough papers.
- (vi) The addition proposed to merely on the basis of wild guess attributing the letter 'M' and 'Netaji' relate to the appellant and no other evidence is available to support the claim of the department.
- (vii) Serious charges of illegal gratification cannot leveled against any persons on the basis of mere jotting/letters.
- (viii) Presumption cannot be drawn against a third person on the basis of entries in books of account seized from a stranger.

Sir, lastly it is submitted that against the addition of Rs.14,24,60,600/- alleged to be received from M/s Nagarjuna Construction Company and Rs.1,53,41,000/- alleged to be received from Simplex Infrastructure Ltd. the assessee has filed an appeal before the Commissioner of Income Tax(A) Bhopal. The Commissioner of Income Tax(A) Bhopal vide order in appeal No.215/11-12 for A.Y. 2009-10 dated 12.12.2012 has deleted the entire addition made in this account. The final contents of the order of CIT(A) are enumerated here as under:-

the settled legal position, I am of the considered

7.2 In view of the above discussion, after considering the facts and circumstances of the case and the submissions of the Id.Counsel for the appellant as also the case laws cited by the Id.Counsel and opinion that both these additions were made only on the basis of inference and suspicions and without substantiating any direct nexus with the appellant. Therefore, the same are not sustainable under the law, hence deleted. The appeal is allowed in both these grounds.

Sir, both the additions of Rs.14,24,60,600/- and Rs.1,53,41,000/- is deleted by the CIT(A) stating that the additions were made only on the basis of inferences and suspicious and without substantiating any direct nexus with the appellant. Sir, from above, it is clear that part consideration was deleted by the CIT(A) on the same issues as proposed by your honour. Further proceedings for revision u/s 263 on the same issue is not justified.

Sir, it is also submitted that the assessee is Cabinet Minister in the M.P. Government having a repute amongst the society and any adverse inference drawn against him and that too without any concrete and cogent reason will be very harmful to him as his reputation will fall down from this action. "

4. I have carefully examined the records of the assessment proceedings, and explanations, submitted by the assessee, keeping in view the relevant provisions of law and judicial precedents.

The assessee has challenged the jurisdiction of section 263 mainly on the ground that the assessment order had been the subject matter of appeal which has already been decided by CIT (Appeals). This argument is not plausible for the reason that in the assessment order, in respect of which appeal has been decided by the CIT (Appeals), the additions were made on account of unaccounted investment of Rs. 14,24,60,600/- for purchase of land at Ratanpur and on account of unaccounted investment of Rs. 1,53,41,000/- in purchase of property and cash found in lockers of Shri Usman Khan. Thus, it is clear that the additions made in the assessment order were for unaccounted investments, while the income which have escaped assessment are unaccounted illegal gratification of Rs. 16,02,00,000/- received from M/s Nagarjuna Construction Company Ltd. and unaccounted illegal gratification of Rs. 10,50,00,000/- received from M/s Simplex Infrastructure Ltd. Thus, it is clear that the subject matter of present order u/s 263 is receipts of income, whereas the subject matter of the appeal were additions on account of unaccounted investments. In the case of CIT v/s K. C. Rajput (1987) 32 TAXMAN 326 (MP)(FB) the Hon'ble High Court of Madhya Pradesh (Full Bench) held that in a case where assessment order is subject matter of appeal, the Commissioner can make revision u/s 263 only of that part which was not subject matter of appeal. In the present case it is clear that the subject matter of appeal were unaccounted investments, whereas the subject matter of this order is receipts of unaccounted income.

Further, the Assessing Officer has not conducted enquiries on seized documents regarding award of contract for reorganization of water supply system of Ujjain city. This seized document read together with other seized documents gives a reason to believe that unaccounted gratification have been received in respect of this contract also. Thus, the assessment order is erroneous in so far as it is prejudicial to the interests of revenue on this count as well.

The other arguments of the assessee are also not plausible for the reasons that in view of the facts of the case, it is evident that the assessment order is erroneous in so far as it is prejudicial to the interests of revenue.

The assessee has relied on the ratio laid in Malabar Industrial Co. Ltd. v/s CIT 243 ITR 83 (SC). The conditions laid in the said judgement are duly satisfied in the assessee's case as the assessment order is not only erroneous but is also prejudicial to the interests of revenue.

The assessee has also relied on the ratio laid in CIT v/s Trustees of Anupam Charitable Trust (1987) 167 ITR 129 (Raj). The conditions laid in the said judgment are also duly satisfied in the assessee's case as errors subject matter of this order are not which depends on possibilities or guess work but is an actual error.

The facts of the case clearly show that fresh assessment will certainly result in more revenue. Hence conditions laid in CIT v/s Shakthi Charities (1987) 157 ITR 107 (MAD) are also duly satisfied.

The ratio laid down in CIT v/s Gabriel India Ltd. (1993) 203 ITR 107 (SC) is not applicable in the case of the assessee, since the enquiry in the assessment order are specific and are based on seized documents.

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In view of the above, I consider that the assessment order u/s 143(3) passed on 30/12/2011 is erroneous in so far as it is prejudicial to the interests of revenue and is therefore cancelled u/s 263 of the I T Act 1961. The Assessing Officer is directed to reframe the assessment after examining the above issues and affording sufficient opportunities of being heard to the assessee.

(S.C. SONKAR)

Commissioner of Income-tax
Bhopal

Copy to:

1. The Addl. CIT, Range-1, Bhopal
- ✓ 2. The Dy. Commissioner of Income Tax-1(1), Bhopal.
3. The Assessee

(S.L. Pathak)

Income-tax Officer (Tech.),
For Commissioner of Income-tax, Bhopal

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Bhauraj
Deputy Commissioner of Income Tax
1 (1), Bhopal

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AT-42

ANNEXTURE

A/4

Shri Dym 11/1

IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

Before: Shri P.K. Bansal, Accountant Member
and Shri Mukul Kr. Shrawat, Judicial Member

ITA No. 83/Ind/2013
Assessment Year 2009-10

विधान आयकर आयुक्त-1
आयकर
06 JAN 2015
5192
भोपाल

Shri Narottam Mishra, B-6, Char Imli, Bhopal. (Appellant) PAN: AJBPM8023B	Vs	Commissioner of Income Tax, Aaykar Bhawan, Hoshangabad Road, Bhopal (Respondent)
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Assessee by: Shri Sumit Nema
Revenue by: Shri A.K. Jain, A.R.
Shri Lal Chand, D.R.

Date of hearing : 12-09-2014
Date of pronouncement : 25-11-2014

आदेश/ORDER

PER : MUKUL KR. SHRAWAT, JUDICIAL MEMBER:-

This is an appeal filed by the assessee emanating from the order of Ld. CIT, passed u/s. 263 dated 31-12-2012. The appellant has raised several grounds however revolving around the main issue that the order passed u/s. 263 by the Ld. CIT was beyond his jurisdiction. The grounds raised are reproduced below:

"1. That on the facts and in the circumstances of the case, the learned Commissioner of Income Tax erred in passing the order u/s 263 of the Act by holding that the assessment order u/s 143(3) passed on 30.12.2011 is erroneous in so far it is prejudicial to the interest of revenue and hence

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[Signature]

Deputy Commissioner of Income Tax

cancelled the same. The learned Commissioner of Income Tax further erred in giving direction to the Assessing Officer to reframe the assessment without considering the explanation offered by the appellant that in such circumstances, action u/s 263 is not applicable for the following reasons:

(i) All the documents stated in the notice u/s 263 were found in the premises of Shri Mukesh Sharma who is a third person and the appellant has no nexus with him, Further, in the assessment order passed u/s 153A in case of Shri Mukesh Sharma, all the documents have been considered and no addition in this account is made in his hand.

(ii) The papers were found from Shri Mukesh Sharma and a rebuttable presumption lies against him u/s 132 and 292C of the Act. No such presumption can be made against the appellant without discharging the burden of proof by the department.

(iii) Presumption cannot be drawn against a third person on the basis of entries in books of account seized from a stranger.

(iv) Serious charges of illegal gratification cannot levied against any persons on the basis of mere jotting/ letters.

(v) The addition of Rs.14,24,60,600/- alleged to be received from M/s Nagarjuna Construction Company and Rs.1,53,41,000/- alleged to be received from M/s Simplex Infrastructure Ltd. has been deleted by the Commissioner Of Income Tax (Appeals)-1, Bhopal and further addition proposed on the same ground is not justified."

2. Facts in brief and the reason for the invocation of Section 263 as emerged from the order dated 31-12-2012 were that a search action u/s. 132 was carried out on one Shri Mukesh Sharma on 22-07-2008. Certain documents were seized and on the basis of those documents, it was alleged that the assessee, Mr Narottam Mishra being Minister of Urban Development and Administration, Government of Madhya Pradesh has received money from few companies in lieu of awarding few contract by his ministry.

2.1 Ld. CIT has further noted that the AO in the case of the assessee had issued notices u/s. 133(6) to few officers namely, Municipal Commissioner, Indore, Principal Secretary, Department of Urban Development, Bhopal, Commissioner, Urban Development, Bhopal; but those notices were not

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complied with by those persons. The AO has also asked in those notices to bring original files of award pertaining to sewage contract found to be awarded to one M/s. Nagarjuna Construction Co. Ltd and the other company viz. M/s. Simplex Infrastructure Ltd. The allegation of Ld. CIT is that although the AO had issued the notices but those were not complied with hence the AO did not carry out inquiries and the assessment was completed without proper inquiry, therefore, the said assessment order was prejudicial to the interest of the Revenue.

2.2 An another point has also been touched by Ld. CIT that the AO had not scrutinized an allegation of illegal gratification paid by one M/s. Nagarjuna Construction Company Ltd in which the assessee's share was alleged to be Rs. 16.02 crores. Ld. CIT has also referred a calculation that there was an award of Rs. 267 crores in favour of M/s. Nagarjuna Construction Company and in that connection there was an illegal gratification paid to 5 persons out of which the assessee had 6% share which was worked out to Rs. 16.02% crores. Ld. CIT mentioned that the AO had discussed about 8 primary evidences which were unearthed during search operation and on that basis the addition of the impugned amount was required to be made. However instead of making an addition of Rs. 16.02 crores, the AO had made the addition of Rs. 14.24 crores. Ld. CIT has given a finding in respect of M/s. Nagarjuna Construction Company as follows:

"Thus it has been held by the Assessing Officer that the assessee had received illegal gratification @ 6% of total contract amount of Rs. 266.87 crores awarded to M/s. Nagarjuna Construction Company Ltd. during his tenure as Minister of Urban Development and Administration, Govt of Madhya Pradesh. Amount of illegal gratification received 6% of contract amount works out to Rs. 16,02,00,000/-. However, the Assessing Officer has made an addition of only Rs. 14,24,60,600/- on account of undisclosed investment in purchase of land. In view of above facts, it is apparent that the Assessing officer has committed error and has under assessed income on this account."

2.3 An another point has also been noted by Ld. CIT that as per the notice issued by the AO it was mentioned as to why an addition of Rs. 10,50,00,000/-,

being the amount of illegal gratification, received from an another company viz. M/s. Simplex Infrastructure Ltd received by the assessee should not be assessed in the hands of the assessee. For this allegation it was noted by CIT that total contract amounted to M/s. Simplex Infrastructure was for Rs. 175 crores and the assessee had 6% share which was worked out at Rs. 10.50 crores alleged to be assessed in the hands of the assessee. In this regard, it was mentioned that the AO had discussed 8 primary evidences unearthed during search operation which was required to be seen by the AO while completing the assessment. The objection of the Ld. CIT was that although the records have shown illegal gratification of Rs. 10.5 crores, but the AO had made an addition of only Rs. 1.53 crores. The finding of the Ld. CIT was as under:-

"The evidence available on record shows receipt of illegal gratification of Rs. 10,50,00,000/- from M/s. Simplex Infrastructure Ltd, however, in the Computation of Income the Assessing Officer has made an addition of Rs. 1,53,41,000/- only on account of proceeds found in possession of Shri Usman Khan which are applied in purchase of property and cash found in lockers of Shri Usman Khan. The assessing Officer has not given any finding as to why he has restricted the addition of Rs. 1,53,41,000/- on account of illegal gratification received from Simplex Infrastructure Ltd instead of Rs. 10,50,00,000/- @ 6% of contract amount awarded to Simplex Infrastructure Ltd). In view of above facts, it is apparent that the Assessing Officer has erroneously under-assessed the income on this account."

2.4 One more point has also been taken up by Ld. CIT that in the seized documents there was a contract for water supply system of Ujjain City but no addition was made and no inquiry was conducted by the AO, hence the Assessment Order was erroneous.

2.5 In the light of the above three defects, as noted by Ld. CIT, he has held that the order passed by the AO u/s. 143(3) dated 30th December, 2011 was to be considered as an erroneous order in so far as it was prejudicial to the interest of the revenue.

2.6 The assessee had vehemently opposed such action of Ld. CIT and informed that after proper inquiry few additions were made and the main additions which were the subject matter of section 263 action were disused at length by the AO and finally assessed in the hands of the assessee as follows:

"It is submitted that in the assessment order, the AO has termed these documents as primary evidence S. No. 1 to 8 and corroborative evidence No. 1 to 7. Relying on these documents, the AO has made the addition the assessment order as under:-

Addition No. 1-Addition on account of Proceeds 14,24,60,600/-
Received from Nagarjuna Construction Company
through a channel of person as discussed in primary
evidences and corroborative evidences.

Addition No.2-Addition on account of proceeds found in
Possession of Shri Usman Khan being received from Simplex
Infrastructure Ltd applied through the purchase of property
in the name of family & relatives and cash founds in
lockers of Shri Usman Khan 1,53,41,000/-

Total 15,78,01,600/-"

2.7 It is argued that no search was conducted on the assessee premises and the Ld. CIT is trying to invoke section 263 of IT Act on the basis of a search conducted at the premises of one Shri Mukesh Sharma and the other Shri Usman Khan. Ld. CIT was not legally correct to review an assessment order on that basis alone.

2.8 One more important argument has been raised before Ld. CIT that the said assessment order of the AO was challenged before Ld. CIT(A) and both those additions have been deleted by Ld. CIT(A). The assessee's objection was as under:-

"Sir, both the additions of Rs. 14,24,60,600/- and Rs. 1,53,41,000/- is deleted by the CIT(A) stating that the additions were made only on the basis of inferences and suspicious and without substantiating any direct nexus with the appellant. Sir, from above, it is clear that part consideration was deleted by the CIT(A) on the same issues as proposed by our honour. Further proceedings for revision u/s. 263 on the same issue is not justified."

2.9 However Ld. CIT was not impressed by those arguments and finally directed the AO to reframe the assessment afresh, needless to say, after affording opportunity to the assessee. Relevant portion from the impugned order is reproduced below:

"4. I have carefully examined the records of the assessment proceedings, and explanations submitted by the assessee, keeping in view the relevant provisions of law and judicial precedents.

The assessee has challenged the jurisdiction of section 263 mainly on the ground that the assessment order had been the subject matter of appeal which has already been decided by CIT (Appeals). This argument is not plausible for the reason that in the assessment order, in respect of which appeal has been decided by the CIT (Appeals), the additions were made on account of unaccounted investment of Rs. 14,24,60,000/- for purchase of land at Ratanpur and on account of unaccounted investment of Rs. 1,53,41,000/- in purchase of property and cash found in lockers of Shri Usman Khan. Thus, it is clear that the additions made in the assessment order were for unaccounted investments, while the income which have escaped assessment are unaccounted illegal gratification of Rs. 16,02,00,000/- received from M/s Nagarjuna Construction Company Ltd and unaccounted illegal gratification of Rs. 10,50,00,000/- received from M/s Simplex Infrastructure Ltd. Thus, it is clear that the subject matter of present order u/s 263 is receipts of income, whereas the subject matter of the appeal were additions on account of unaccounted investments. In the case of CIT v/s K G. Rajput (1987) 32 TAXMAN 326 (MP)(FB) the Hon'ble High Court of Madhya Pradesh (Full Bench) held that in a case where assessment order is subject matter of appeal, the Commissioner can make revision u/s 263 only of that part which was not subject matter of appeal. In the present case it is clear that the subject matter of appeal were unaccounted investments, whereas the subject matter of this order is receipts of unaccounted income.

Further, the Assessing Officer has not conducted enquiries on seized documents regarding award of contract for reorganization of water supply system of Ujjain city. This seized document read together with other seized documents gives a reason to believe that unaccounted gratification have been received in respect of this contract also. Thus, the assessment order is erroneous in so far as it is prejudicial to the interests of revenue on this count as well.

The other arguments of the assessee are also not plausible for the reasons that in view of the facts of the case, it is evident that the assessment order is erroneous in so far as it is prejudicial to the interests of revenue.

With the aforesaid directions, the writ petition is disposed of."

3.1 In view of the above directions, this appeal is now fixed for disposal. Next, Ld. AR has pleaded that the order passed u/s. 263 was bad in law because the assessment order already got merged with the order of Ld. CIT(A) dated 12-12-2012. In support of the "theory of merger" Ld. AR has placed reliance on the decisions

1. CIT v. Shalimar Housing and Finance Ltd (2009) 320 ITR 157 (MP)
2. CIT v. K.C. Rajput (1987) 164 ITR 197 (MP) (Full Bench)
3. Ranka Jewellers v. ACIT (2010) 328 ITR 148 (Bombay)
4. CIT vs. Jain Construction D.B. Income Tax Appeal No. 60/2012 (at Jodhpur) order dated 24th March, 2012 (Rajasthan High Court)
5. C.K. Trade Ex. Pvt. V. ITO Kolkata (Kol. Trib) ITA No. 673/Kol/2014 A.Y. 09-10 order dated 21/07/2014

3.2 On merits Ld. AR has pleaded that the AO has passed an elaborate assessment order after dealing with the evidences etc. Ld. AR drawn our attention on the impugned assessment order passed u/s. 143(3) stated to be dated 29-12-2011 for A.Y. 2009-10 (Ld. CIT noted the dated as 30-12-2011). He has pointed out that it was categorically mentioned in the impugned assessment order that searches were conducted u/s. 132 on Shri Mukesh Sharma and Shri Usman Khan which resulted into two set of evidences; one was termed a "primary evidence" and second was termed as "corroborative evidences". The AO has reproduced in the order both the evidences and thereafter

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arrived at the conclusion that the said two additions were required to be made in the hands of the assessee.

3.3 According to Ld. AR the Impugned assessment order is running into 31 pages wherein the evidences collected in search were thoroughly discussed. It is not a case that the AO has not applied his mind on the evidences collected. In fact, as per Ld. AR, Ld. CIT is directing the AO to looking into those very evidences which have already been examined. Such a direction is not permissible in the eyes of law. Ld. AR has therefore placed reliance on few cases in which the scope and the powers of section 263 have been discussed.



- 1. Malabar Industrial Co. v. CIT (200) 243 ITR 83 (SC)
- 2. CIT v. Development Credit Bank (2011) 323 ITR 206 (Bom)
- 3. Manish Kumar v. CIT Indore (2011) 134 ITD 27 (Indore Trib)
- 4. Abdul Aziz v. CIT (Ahmedabad Trib) (ITA No. 895/Ahd/2007 order dated 09/10/2009)
- 5. Jet Electronics v. ACIT (Ahmedabad Trib) (ITA No. 1336/Ahd/2007 order dated 26/10/2007)
- 6. Technip v. ACIT (2006) 150 Taxman 13 (Delhi Trib)
- 7. Antala Sanjay Kumar v. CIT (2011) 135 ITD 506 (Rajkot Trib)

4. On the other hand from the side of the Revenue Ld. DR, Shri Lal Chand, has drawn our attention on the Impugned assessment order for the purpose that there was a table of primary evidence wherein there was a list of papers mentioning

the vertical chain of government hierarchy involved in the process of granting contract of sewer for Indore. He has mentioned that there were two contracts involved; one was awarded to M/s. Nagarjuna Construction Company amounting to Rs. 266.87 crores and the other was awarded to M/s. Simplex Infrastructure Ltd amounting to Rs. 175.34 crores. As per the abbreviated letters mentioned "M" stood for "Ministry of Urban Development". This evidence was directly on the issue that kick back amount was paid to the respected Minister, Principal Secretary, Commissioner, Mayor, etc. The AO was expected to thoroughly enquire from those persons who were involved in receiving the kick back in addition to the assessee. Since the AO faulted in not making a thorough investigation, therefore, Ld. CIT was empowered to invoke the provisions of section 263 of IT Act. He has pleaded that mere mentioning of evidences in the assessment order do not look into a conclusion that the AO has correctly applied his mind in those evidences. If according to CIT the evidences were mentioned but there was incorrect appreciation of those evidences then for lack of inquiry the Ld. CIT can direct the AO to further investigate those evidences and re-compute unaccounted income again. On these lines, the order passed u/s. 263 was passed by CIT, he has pleaded. In support of these arguments reliance was placed on the following decisions.

1. Commission of Income of Income Tax and Another vs. Infosys Technologies Ltd 341 ITR 293
2. Commissioner of Income Tax vs. Jawahar Bhattacharjee 341 ITR 434

1.1 An another point has also been raised by Ld. DR, Shri Lal Chand that the reason for invocation of the provisions of section 263 was not merely on the point of insufficient inquiry, but the Ld. CIT has invoked section 263 to compute the "unaccounted income" which was not taxed by the AO. The AO had simply made the addition considering "unaccounted investment". Since according to Ld. CIT, the AO had faulted in not taxing the unaccounted income which was unearthed consequence upon the search, therefore, the order was not erroneous but also it was prejudicial to the interest of the Revenue. Further elaborating his arguments, Ld. DR, Shri Lal Chand has pleaded that the subject matter of the appeal before Ld. CIT(A) was the addition made on the basis of "unaccounted investment" and since Ld. CIT has invoked the provision of section 263 directing the AO to assess "unaccounted income", therefore, the theory of merger shall not apply on the question of assessing "unaccounted income" which was not taxed by the AO. In support of this argument he has applied on CIT vs. Ratilal Bacharilal & Sons 282 ITR 457. Ld. DR has also argued that on the basis of the evidences, the AO was expected to make thorough inquiries. There was improper inquiry; rather lack of inquiry. There was non-application of mind which has resulted into an erroneous order passed by the AO. For this legal proposition, Ld. DR has placed reliance on the following decisions:-

1. Rampyari Devi Sarogi vs. CIT (1968) 67 ITR 84 (SC)
2. Malabar Industrial Company Ltd vs. CIT (2000) 243 ITR 83 (SC)

3. Swarup Vegetables Products Co. Ltd (No. 1) vs CIT (1991)
187 ITR 412
4. Vee Enterprises vs. ACIT and others vs. 99 ITR 375
(Delhi).

5. We have heard both the sides at length. We have perused the orders of authorities below in the light of the case laws cited from both the sides. First it is appropriate to discuss the merits of the issue that whether the AO has properly appreciated all the evidences and thereupon arrived at a conclusion said to be a plausible conclusion; as also a just and a viable conclusion. On perusal of the impugned assessment order, which is the subject matter of invocation of Section 263, we have noted that the AO was very much aware about the search conducted on Shri Mukesh Sharma and Usman Khan on 21-07-2008. He has mentioned the "primary evidences" so as to establish an alleged link of the assessee with Shri Mukesh Sharma. The allegation of the AO was that Shri Mukesh Sharma was found to be liaising with the Ministry to facilitate the award of contract from the Ministry. AO is also of the opinion that there was some proof of transfer of funds. Thereafter the AO has also mentioned certain corroborated evidences. There were mention of certain entities but according to AO those were bogus entities thereafter he has discussed few documents which were connected with the sale of land. But the AO was of the view that the names mentioned of certain farmers were in the nature of benami transactions thereupon he has concluded as under:

Appraisal of Evidences

"Appraisal of Evidence has been carried out in view of Section 34 of Indian Evidence Act, 1961 which reads as following:

34. Entries in books of account when relevant.- 1. Entries in books of account, regularly kept in the course of business, are relevant whenever they refer to a matter into which the Court has to inquire, but such statements shall not alone be sufficient evidence to charge any person with liability. Illustration A sues B for Rs. 1000, and shows entries in his account books showing B to be indebted to him to this amount. The entries are relevant, but are not sufficient, without other evidence, to prove the debt.

The interpretation of this section has to be performed in view of guidelines established by Supreme Court of India in case of Central Bureau of Investigation vs. V.C. Shukla & others on 2nd March 1998 wherein the Jain Hawala Case was adjudicated. The operating paragraph from the judgment is as follows:

"After having held that the documents were neither books of account nor kept in the regular course of business, the High Court observed that even if they were admissible under Section 34, they were not, in view of the plain language of the Section, sufficient enough to fasten the liability on the head of a person, against whom they were sought to be used. As, according to the High, the prosecution conceded that besides the alleged entries in the diaries and the loose sheets there was no other evidence, it observed that the entries would not further the case of the prosecution. As regards the admissibility of the documents under Section 34, the High Court held that the materials collected during investigation did not raise a reasonable ground to believe that a conspiracy existed, far less, that the respondents were parties thereto and, therefore, those documents would not be admissible under Section 10 also.

Therefore the table of primary evidences provides the 10 rows containing details of 10 primary evidences which have formed the basis of enquiry in the instant assessment. The collection of information after the collection of primary evidence has been shown in the form of table of corroborative evidences. There is other evidence in the present case other than diary entries so as to charge the assessee with tax. The Assessee has placed reliance upon several cases. However I consider the Section 34 to interpret the 10 rows of table of primary evidences in light of 6 rows of corroborative evidences.

	Total income as per return	Rs.	355440/-
Addition No. 1	This addition is being done on account of Proceeds received	Rs.	14,24,60,600/-



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of proceeds received from Nagarjuna Construction Company through a channel of persons. Likewise also he has held that a sum for Rs. 1,53,41,000/- is required to be added on account of proceeds found in the possession of Shri Usman Khan alleged to be the proceeds received from Simplex Infrastructure Ltd used for the purchase of property.

5.2 If the AO has examined all those evidence from all angles that too after thorough investigation; as also after applying his mind; and came to the conclusion that a particular amount, in this case it was a substantial amount; was to be taxed in a particular manner in the hand of the assessee; then in our humble opinion the said approach of the AO should not be held, as defaulted approach; specially to the extent of quashing the entire assessment order. We have noted that Ld. CIT has invoked the provisions of section 263 mainly for the reason that the investigation was not properly conducted by the AO. But considering the facts of this case this allegation is not appreciable because there is a limit of an investigation. There should be a justifiable investigation. Side by side there should be a limit for a reasonable investigation. Otherwise also, the line of investigation depends upon the investigating authority and it may differ from officer to officer. There is no particular standard or line of direction prescribed for an investigation, therefore; if the investigation is reasonable through which a proper result can be achieved, then such an investigation can be termed as a reasonable or a thorough investigation. From the contents of the order passed u/s. 263, relevant portion already reproduced (supra), It appears that the Ld. CIT wants



reinvestigation of the entire matter. But such a fishing or roving inquiries have never been encouraged by the Hon'ble Courts. In the likewise manner, we are also of the view that Ld. CIT was not correct in asking the AO to conduct inquiries afresh on the basis of those from seized documents which were already appreciated during the assessment proceedings. Even this is not the case of Ld. CIT that certain evidences were overlooked which were very much on record or in the knowledge of the AO. Even this is not the case of Ld. CIT that certain new facts or evidences were brought to the notice of the Revenue Department which were having the direct impact on the income assessed by the AO. Neither there was an escapement of evidence nor there was any evidence now brought to the notice of the revenue department, therefore, if that was not the position, then we are not inclined to give our approval to such directions.

5.3 Another aspect has been mentioned by Ld. CIT and also argued by Ld. DR that the AO had gone wrong in assessing the income as an "unaccounted investment". The AO should have assessed the income as "unaccounted income" received from those two entities. Prima facie according to us such suggestion is nothing but a change of opinion. On the basis of those very evidences now the Ld. CIT wanted that the receipts of "unaccounted income" was required to be taxed. But on the other hand the AO has appreciated those very evidences and then after due scrutiny and analysis have come to the conclusion that the unaccounted income shall be taxed in the hands of the assessee in the light of the "unaccounted

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investments" made by the assessee. Therefore we are of the view that the AO was very much justified in his prima facie conclusion about both the aspects that the unaccounted income was utilized in unaccounted investment which is to be taxed. According to us this approach of the AO appears to be reasonable. Rather it was a practical approach that in a situation when these are the information available to the Revenue Department that the assessee had the unaccounted income as well as unaccounted investment, then the principle to be applied is that the unaccounted income ought to have been utilized for such investment. We find no fallacy in this method or calculation the undeclared income in the hands of the assessee. We further hold that the suggestion of change of opinion as done by Ld. CIT was beyond the purview of provision

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Section 263 of IT Act



The discussion made so far, hereinabove, is subject to a remark that no part of it is going to effect the order passed by Ld. CIT(A) dated 12-12-2012 while deciding the fate of these two issues in quantum appeal Ld. CIT(A) in appeal no. 215/11-12 of the assessee i.e. Shri Narrotam Mishra order dated 12-12-2012 has concluded as follows as:

7. I have gone through the observations of the AO and submissions of the appellant. I have also considered the oral submissions made by the Ld. Counsel at the time of hearings. The AO has made the additions in the appellant's case mainly on the basis of following observations:-

"Since the assessee was the Minister concerned during the relevant period of time and your constituency has been Dabra and you have failed to explain me convincingly therefore an adverse inference is hereby drawn that you were the recipient of the payments made by Nagarjun Constructon Company Ltd and the

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above said land has been purchased by you in the name of 14 persons at dabra and Shri Mukesh Sharma who had been instrumental in arranging these payments from Nagarjun Construction Company Ltd. and arranging the entire transactions of purchase of land.

A close perusal of the above observations reveals that these observations are solely based on inferences and not on direct evidences demonstrating appellant's nexus with the alleged payments of investments. The alphabet "M" and the word "netaji" referred to in these loose seized papers may or may not refer to a class of persons i.e. minister or politician. But, the same cannot be construed and confirmed as they relate to the appellant with any amount of certainty. The A.O's inference that Shri Mukesh Sharma was enjoying substantial influence in Urban Development Department and was maneuvering staff transfers/award of contracts and the appellant was minister of that department, therefore these terms relate to the appellant is farfetched inference and cannot be concluded as truth and ultimately inference only. The Ld. AR's contention that there are several ministers, Central and State, Minister-in-charge of Indore District and other 'netas' in power and out of power and they, due to their personality and position, can influence administrative decisions and these terms may relate to any of them. As per the Ld. Counsel, the appellant is popularly known by 'dada'(elder brother) and not as netaji and since name the appellant is not clearly mentioned in any of the papers, it is incorrect to treat that these terms relate to him and none others, carries substantial force. The works being related to Urban Development Department, certainly a suspicion arises that these terms may relate to the Minister of the concerned Department but as per settled law, no tax liability can be fastened merely on the basis of suspicion, how so ever strong it may be. In the case of *Bansal Strips (P) Ltd & Ors vs. Assistant Commissioner of Income Tax (2006) 100 TTJ (Del) 665 : (2006) 99 ITD 177 (Del)*, while dealing with the issue, the Delhi Bench of the Hon'ble Tribunal has observed as under:

"23. We have carefully considered the rival submissions. The legal position in this respect is firmly settled by now. While completing an assessment the AO is not a Court. He is also not bound by technical rules of evidence. He may consider material which would be wholly inadmissible in a Court of Law. He may draw his conclusion and inferences on the cumulative effect of various circumstances based upon the test of human probability. At the same time though technical rules of evidence do not apply the AO bound is bound by the principles of natural justice. He cannot draw his inferences on the basis of suspicion, conjectures

and surmises. Suspicion, howsoever correct, cannot take place of material in support of findings of the AO. The AO should act in a judicial manner, proceed with judicial spirit and come to a judicial conclusion, as held by Hon'ble Allahabad High Court in the case of Swadeshi Cotton Mills Co. Ltd. vs. ITO 1976 CTR (All) 6: (1978) 112 ITR 1038 (All). While recognizing that the AO is not fettered by technical rules of evidence, Hon'ble Supreme Court laid down as early as in the case of Dhakeswari Cotton Mills Ltd vs. CIT (1954) 26 ITR 775 (SC) that the AO has to act fairly as a reasonable person and not arbitrarily or capriciously."

Admittedly, these papers were found from the premises of Shri Mukesh Sharma. They are not in the handwriting of the appellant. The intermediaries, in whose accounts the money was transferred did not belong to the appellant. Though the persons in whose names the investments were made are from Dabra, the appellant's constituency, they are not his relatives or employees. In the absence of any supporting direct evidence, the inference that those persons hail from Dabra and, therefore, they are benamidars of the appellant, seems to be a biased conclusion against the appellant. It is settled law that in order to hold a person as benamidar of another person, it needs to be established that the latter is the ultimate beneficiary and enjoying the fruits of the venture. This fundamental requirement of enjoying the fruits by someone other than the ostensible owner is missing in this case.

7.1 Similarly, regarding the addition relating to cash recovered from the lockers found in the name of "Shri Usman Khan or his other investments, it is held that no direct evidence was brought on record to hold that the cash/assets actually belongs to the appellant. The addition is effectively based on the inferences drawn against the appellant with respect to the earlier grounds of appeal and that is not sufficient to saddle the appellant with any tax liability.

7.2 In view of the above discussion, after considering the facts and circumstances of the case and the submissions of the Id. Counsel of the appellant as also the case laws cited by the Id. Counsel and the settled legal position, I am of the considered opinion that both these additions were made only on basis of inferences and suspicions and without substantiating any direct nexus with the appellant. Therefore, the same are not sustainable under the laws, hence deleted. The appeal is allowed in both these grounds."



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6.1 Ld. CIT(A) has allowed the appeal of the assessee primarily for the reason that the evidences have established that both additions were made ^{only} ~~by~~ on inferences and suspicions without substantiating any direct nexus with the appellants. No search was conducted on the assessee and those evidences were found at the premises of some other person. As far as legal position is concerned, the section 132(4A) prescribes that where the documents etc are found in possession or control of a person during the course of search, then it may be presumed that such documents etc belonged to such person. But in the case of this assessee even this presumption cannot be applied because no search was conducted on him. In this situation if the revenue department is unable to establish a clear-cut nexus then there is no miscarriage of justice in granting relief. However we hereby add that the said order of Ld. CIT(A) is not a subject matter of appeal before us, therefore, these passing remarks in no way has any impact in the said order. ~~We~~ ^{are} presently ~~are~~ on the issue that whether the order of the AO can be treated as "merged" with the order of CIT(A). We hereby hold that while deciding the appeal Ld. CIT(A) has taken into account overall position of the evidences which has included both the aspects i.e. the aspect of "unaccounted income" as well as the aspect of "unaccounted investment", hence the order of the AO has duly been merged with the said order of CIT(A). From the order of Ld. CIT(A), it is clear, as crystal, that the entire Assessment Order was the subject matter of appeal and that assessment order was proposed to be set aside u/s. 263, which is not permissible in law. It is not a case before us that a portion of the assessment

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order which was not the subject matter of appeal before CIT(A) is now required to be set aside by Ld. CIT u/s. 263 because that portion of the order was not merged with the order of Ld. CIT(A). But the facts have revealed that all those issues which stood decided by the order of Ld. CIT(A) are now attempted to be rejected in consequence of section 263 directions. Such an attempt on the part of the Revenue Department cannot be encouraged [refer CIT vs. KC Rajput 32 taxman 326 (MP)]. Keeping brevity in mind rest of the judgments as cited before us are not required to be discussed in detail. Rather our view gets support from the language of the statute itself, as prescribed in Sec. 263(1) Explanation (c) as under:-



"Where any order referred to in this sub-section and passed by the Assessing Officer had been the subject matter of any appeal [filed on or before or after the 1st day of June, 1988], the powers of the [Principal Commissioner or] Commissioner under this sub-section shall extend [and shall be deemed always to have extended] to such matters as had not been considered and decided in such appeal."

Likewise few case laws cited in respect of scope of power u/s. 263 are also not discussed in detail by us because the merits have already been discussed and thereupon we have noted that the revenue was not adversely effected by the order of AO.

6.2 An another development is also to be recorded that in the connected case of Shri Mukesh Sharma the ITAT Indore Bench in ITA No. 366-372/Ind/2013 for A.Y. 2003-04 to 09-2010 has held that the CIT was not correct in exercising the jurisdiction u/s. 263 of IT Act. So the consequence of that order of the Tribunal is that the premise on which the Ld. CIT wanted to invoke section 263 in the case of this assessee has already been demolished by the respected Indore Co-ordinate Bench hence there

was no justifiable legal reason to uphold CIT's revisional order in the present case.

6.3 We therefore hold that the order passed u/s. 263 by Ld. CIT is not sustainable in the eyes of law. Before we part with it is also necessary to express that the findings given by us hereinabove would not tantamount to express the merits of the case in quantum proceedings if pending before any higher forum. Resultantly, we hereby allow the grounds raised by the assessee.

7. In the result, assessee's appeal is allowed.

Order pronounced in open court on the date mentioned hereinabove at caption page by putting on notice board u/s. 34(4) of ITAT Rule, 1963

ACCOUNTANT MEMBER

Ahmedabad : Dated 11/11/2014

ak

(M. K. SHARMA)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.



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Deputy Commissioner of Income Tax

1 (1), Bhopal

By order/आदेश से,

उप/सहायक पंजीकार

आयकर अपीलीय अधिकरण,

अहमदाबाद

सहायक पंजीकार

Assistant Registrar

आयकर अपीलीय अधिकरण, अहमदाबाद
Income Tax Appellate Tribunal, Ahmedabad

Strengthened preparation & delivery of orders in the ITAT	
1) Date of dictation	07/11/2014
2) Date on which the typed draft is placed before the Dictating Member & Other Member	12/11/2014
3) Date on which the approved draft comes to the Sr. P.S./P.S.	1/11/2014
4) Date on which the fair order is placed before the Dictating Member for pronouncement	
5) Date on which the fair order comes back to the Sr. P.S./P.S.	
6) Date on which the file goes to the Bench Clerk	
7) Date on which the file goes to the Head Clerk	
8) Date on which the file goes to the Assistant Registrar for signature on the order	
9) Date of Dispatch of the order	



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[Signature]

Deputy Commissioner of Income Tax
1 (1), Bhopal