
(2012) 11 GAU CK 0015
In the Gauhati High Court
Case No : Writ Petition (C) No. 4347 of 2010

Syed Basit Doley@ Budheswar Doley	APPELLANT
Vs	
Union of India and Others	RESPONDENT

Date of Decision : 30-11-2012

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Constitution of India, 1950 — Article 226
Income Tax Act, 1961 — Section 133(6), 133A, 133B, 142(1), 142(2)

Citation : (2013) 1 GLT 488

Hon'ble Judges : I.A. Ansari, J; Anima Hazarika, J

Bench : Division Bench

Advocate : S. Banik, Ms. B. Sarma, Mr. K.N. Suri and Mr. P. Bhuiyan, for the Appellant; M. Bhagawati, for the Respondent

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—Heard Mr. S. Banik, learned counsel appearing for the petitioner, and Mr. M. Bhagawati, learned Central Govt. Counsel, appearing for the respondents. The petitioner, while functioning as the Income Tax Officer, at North Lakhimpur, was served with a memorandum, dated 15.5.2002, informing him that an enquiry was proposed to be held against him in terms of Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (in short, "CCA Rules"). Altogether five articles of charges were, initially, served on the petitioner. The petitioner submitted his reply denying the charges levelled against him. The petitioner was, then, served with a supplementary charge-sheet, which contained one article of charge, but this article of charge contained several allegations. The petitioner denied the allegations contained, in the article of charge, which the supplementary charge-sheet embodied.

2. As the reply of the petitioner was not found satisfactory, an enquiry was ordered. The enquiry was accordingly held. The enquiring authority did not find the Charge Nos. I and II proved; but it found the Charge Nos. III, IV and V

proved to the extent that the petitioner had exhibited lack of devotion to his duty. As regards the supplementary charge-sheet, the Inquiring Authority held that the charge of lack of devotion to his duty, on the part of the present petitioner, stood proved.

3. The disciplinary authority, having gone through the findings of the enquiring authority, invited the petitioner's comments on the findings of the enquiry. Having considered the enquiry report and the petitioner's comments thereon, the disciplinary authority agreed with the findings, which had been reached by the enquiring authority, on the Charges, as indicated hereinbefore and imposed minor penalty of withholding of an increment of pay, for a period of one year, without cumulative effect and without adversely affecting the petitioner's pension.

4. Aggrieved by the penalty, so imposed, the petitioner preferred an appeal. As the appeal did not yield any favourable result, the petitioner filed an application, u/s 19 of the Administrative Tribunal Act, 1985, which gave rise to the OA No. 198/2009.

5. By order, dated 10.6.2010, passed, in OA No. 198/2009, by the learned Central Administrative Tribunal, the learned Tribunal, having found no merit in the application, dismissed the same. Aggrieved by the order, dated 10.6.2010, aforementioned, passed by the learned Tribunal, present writ application has been made, under Article 226 of the Constitution of India, by the petitioner putting to challenge the impugned order, dated 10.6.2010, passed by the learned Tribunal and also seeking to get set aside and quashed, inter alia, the impugned order imposing penalty on the petitioner as mentioned hereinabove as well as the orders, dated 28/31/7/2009 and 14.2.2008, passed by the appellate authority.

6. In order to appreciate the merit of this writ petition, we reproduce hereinbelow the Charge Nos. III, IV and V, as contained in the Article of Charges, which had been served on the petitioner and the findings of the enquiring authority, on the said charges, with reasons assigned therefor:

Statement of Article-III of Charge

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

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

This act confirms the allegations in other complaints received that Shri

Budheswar Doley, ITO had arbitrarily conducted survey with view to harass and intimidate the assesseees.

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

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

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

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

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

7. The impugned assessment order was challenged in appeal before the Commissioner of income tax (Appeals), and the learned CIT (Appeal) in his order dated 07.01.98 set-aside with directions the estimated additions in the building construction, and deleted the other additions.

However, Shri Budheswar Doley, delayed in the giving effect to the Appellate Order, and further did not follow the directions while given to the effect to the Appellate Order, thereby still raising a tax demand of Rs. 1,00,306/-.

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

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

3(1)(i)-Failed to maintain absolute integrity

3(1)(ii)-Failed to maintain devotion to duty

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

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

Statement of Imputation of Misconduct or Misbehaviour

Shri B. Doley had without any legal validity directed his Inspector to cause various enquiries and conduct survey as evident by the mention of the Inspector's survey reports dated 16.6.95, 04.4.96, 16.6.95. The power to survey U/s. 133A, of the income tax Act is not available in the case of salaried income assessee. Even otherwise it is not permissible that surveys be carried out as residential premises.

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

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

Findings

This article of charge contains 8 paras which in turn contain allegation of misconduct or misbehaviour against Shri Doley. These allegations are examined parwise below:

Para 1: That Shri Budheswar Doley, ITO had arbitrarily conducted survey with view to harass and intimidate the assessee.

The IT Act does not give power to the A.O. to take measurement of a residential house explicitly. At the same time taking measurement of a house the Assessing Officer is not prohibited either (certain actions such as removal of cash during survey u/s. 133A is prohibited by the I.T. Act). U/s. 142(2), the A.O. may make such inquiry as he considers necessary. Therefore, if the dimension of a house is taken for the limited purpose of estimating the cost of construction without any violation of privacy, it can not be treated as a serious case of excess. P.K. Pegu not aware of any survey conducted (Ref to Answer to Q. No. 3 of his statement recorded on 08.02.2006). This indicates that inconvenience caused to him, if any, when his house was being measured was very little.

Para 2. Even if the survey (in the residence of Shri P.K. Pegu) is considered as an

inquiry U/s. 133(6), it is illegal as there were no proceedings pending under the income tax Act as on that date against Shri Puma Kanta Pegu (assessee).

Shri Doley has not taken the plea that it was enquiry conducted u/s. 133A. Therefore, there is no need to go into this charge.

Para 3 That Shri B. Doley, ITO had mention that the survey was done by his Inspector with sinister designs in mind.

The allegation far fetched and could not be proved.

Para 4. That Shri B. Doley, ITO abused to power to survey and also blatantly trespassed upon the power to search.

It is true that one survey report by Shri H. Rabha has been mentioned by Shri Doley in his assessment order. But exactly what was done during the "Survey" is not clear. It is also not clear whether Shri Rabha entered the house of Shri Pegu. The department could not produce the relevant assessment records. It appears that Shri Rabha merely took measurement of the house without causing much inconvenience to Shri P.K. Pegu. It is further seen from that statement of Shri P.K. Pegu that he was not aware of any survey conducted in his house (Please refer to answer to Qn. No. 3 of his statement recorded on 08.02.2006). This indicates that inconvenience caused to him, if any, when his house was being measured was very little.

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

The department could not produced the report of the inspector dtd. 16-06-1995 on which it sought to rely. But it does appear from the statement of Shri R.K. Singh, ITI dtd. 10.02.2006 recorded in the course of the proceedings that measurement of house was taken in other cases also. But it also appears that there was no serious invasion of privacy while such measurement was taken. It is further seen from that statement of Shri P.K. Pegu that he was not aware of survey conducted in his house (Please refer to answer to Que, No. 3 of his statement recorded on 08.02.2006). This indicates that inconvenience caused him if any when his house was being measured was very little.

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

The department could not produce the relevant assessment records. But it is clear from the assessment order that Shri Doley did not provide the assessee opportunity of being heard on many major issues. For example, while making addition on investment of house property, Shri Doley did not call for assessee's

explanation on the issue though substantial additions were made on this point. Shri Doley denied to the assessee the very basic right of opportunity of being heard and the right to natural justice; As a quasi judicial authority, it was his duty to ensure that the basic principles of justice are not violated. The omission is clearly attributable to casual attitude on the part of Shri Doley. In failing to ensure that, he exhibited lack of devotion to his duty.

Para 7. The impugned assessment order was challenged in appeal before the Commissioner of income tax (Appeals), and the learned CIT (Appeal) in his order dated 07.01.98 set-aside with directions the estimated additions in the building construction, and deleted the other additions. However, Shri Budheswar Doley, delayed in the giving effect to the Appellate Order, and further did not follow the directions while given to the effect to the Appellate Order, thereby still raising a tax demand of Rs. 1,00,306/-.

The Department could not produce the relevant assessment records. It could not state when the appellate order was received by Shri Doley and the date on which it was given effect to. Nor could it be established that the directions of the CIT(A) were not followed while giving effect to the Appellate Order in absence of records. The P.O. argued that that the directions of the CIT(A) were not followed can be inferred from the quantum of demand that still remained after "appeal effect" was given. In my view, though it does appear that the directions of the CIT(A) were not followed, it is not possible to draw any such inference conclusively.

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

The A.O. cannot be faulted for attaching the salary. Whether or not the demand was based on proper facts was besides the point, Shri Doley was merely following the Departmental policy on recovery in what was obviously a dossier case.

To sum up, I am of the view that Shri Doley denied to the assessee the very basic right of opportunity of being heard and the right to natural justice. As a quasi judicial authority, it was his duty to ensure that the basic principles of justice are not violated. In failing to ensure that, he exhibited lack of devotion to his duty. The other charges are not proved.

Statement of Article-TV of Charge

That during the aforesaid period and while functioning in the aforesaid office the said Shri Budheswar Doley, ITO, acted arbitrarily and capriciously in the assessment of Shri Bhaben Ch. Pegu (assessee) for the A Y 1994-95 as

evidenced from the assessment records. The acts of misconduct of which are listed here in under:

1. Shri B. Doley, ITO abused and overstepped the power to survey when he directed his Inspector to cause enquiry, as evidenced from the Inspector's report dated 06.6.95, and also required Shri B.C. Pegu to furnish various details of assets as evidenced from the proforma that was asked to be submitted by Shri Pegu dated 07.6.95.

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

3. Shri B. Doley, ITO initiated the assessment proceeding in the case of Shri B.C. Pegu (assessee) for the AY 1994-95 by issuing of notice U/s. 142(1) dated 27.7.95/02.8.95 of the LT, Act, 1961 calling for return of income to be filed. Though he has used a standard departmental form to issue the notice, yet he had not applied his mind in that the items not applicable were not struck off. This would hare created confusion to the assessee.

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

5. Shri B. Doley, ITO passed the assessment order on 01.12.96 and has made arbitrarily high-pitched assessment by simply estimating cost of construction of the building, and estimated cost of land as per his whims and fancies. There does not appear in the records any prior intimation to the assessee of his intended basis for estimated valuation. Shri B. Doley, ITO has, therefore, denied the assessee the opportunity to be heard on the issue, and the right to natural justice.

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

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

7. Shri B. Doley, ITO did not choose or advise the assessee properly and instead after the assessment has been completed, in the name of rectification, he

conducted and caused detailed enquiries trespassing beyond his statutory jurisdiction and thereby causing further mental agony to the assessee.

8. Shri B. Doley, ITO, again abused and over stepped the power to survey when he deputed his Inspector (Shri Rajkumar Singha) to visit and enter the building premises belonging to the assessee, and to take measurements, as evidenced from the Inspector's report dated 16-01.97.

9. Shri B. Doley, ITO has over-exceeded his power as an assessing officer in the rectification order passed dated 01.7.97, as none of the issues were "mistakes apparent from records".

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

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

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

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

3(1)(i)-Failed to maintain absolute integrity

3(1)(ii)-Failed to maintain devotion to duty

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

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

Statement of Imputation of Misconduct or Misbehaviour

(in the assessment of Shri B.C. Pegu)

Here too, Shri B. Doley had abused and overstepped the power to cause enquiries and conduct surveys, as is evident by the Inspector's reports dated 06.6.95, 12.10.96, 16.01.97. The power to cause survey is not available in case of salaried income assessee. Also it is not permissible to enter residential houses, not to speak taking measurement and to estimate the value of

construction.

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

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

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

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

Shri B. Doley, rro does 110t re-examine the assessment made by him, and is very quick to use his powers by sending attachment and recovery notices U/s. 226(3) of I.T. Act.

In his correspondences with the Branch Manager, United Bank of India, Dhemaaji, he calls clarification of matters of several years ago, of which the then incumbent Branch Manager could not have been possibility aware of The language use in the correspondences is also unbecoming of official communication as is evident in the letter dt. 27.6.97.

Shri B. Doley has asked 10 Shri Bhaben Ch. Pegu to furnish details of his assets and investments some 25 years back even since 1965. This would have been impossible for Shri Bhaben Ch. Pegu. Shri Doley does not hesitate to ask the assessee for details and records of decades together but when it comes 10 himself he doesn't even bother to find from own office records the available details of only a few years back in order to ascertain his suspicion about the assesses assets. Shri B. Daley did not practice nor exhibits even a fraction of what he a expected others to do. By the above acts of mis-conduct and mis-

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

Findings

This article of charge contain 12 paras which in turn contain allegation of misconduct or misbehaviour against Shri Doley. These allegation are examined parawise below (paras 6, 7, 8 & 9 are considered together):

Para 1. Shri B. Doley, JIO abused and overstepped the power to survey when he directed his inspector to cause enquiry, as evidenced from the Inspector's report dated 06.6.95, and also required Shri B.C. Pegu to furnish various details of assets as evidenced from the proforma that was asked to be submitted by Shri Pegu dated 07.6.95.

The department could not produce the Inspector's report dated 06.6.95 on which it sought to rely. Nor could the Department state what were the directions given by Shri Doley to the Inspector. The assessment order does mention a survey report by an Inspector, But, what exactly was done during the "survey" is not clear. It appears that the Inspector merely took external measurements of the house.

The IT Act does not give power to the A.O. to take measurement of a residential house explicitly. At the same time taking measurement of a house the Assessing Officer is not prohibited either (certain actions such as removal of cash during survey u/s. 133A is prohibited by the I.T. Act). U/s. 142(2), the A.O. may make such inquiry as he considers necessary. Therefore, if the dimension of a house is taken for the limited purpose of estimating the, cost of construction without any violation of privacy, it can not be treated as a serious case of excess.

As regards requiring Shri B.C. Pegu to furnish various details of assets, it is not clear whether or not the details were called for by Shri Doley. There appears to be no written requisition by Shri Doley. It is possible that the assessee submitted those details on his own.

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

The Department could not give specific instance where details which were available on records were called for by Shri Doley.

Para 3. Shri B. Doley, I.T.O. initiated the assessment proceeding in the case of Shri B.C. Pegu (assessee) for the AI" 1994-95 by issuing of notice U/s. 142(1) dated 27.7.95/02.8.95 of the LT. Act, 1961 calling for return of income to be filed Though he has used a standard departmental form to issue the notice, yet he

had not applied his mind in that the items not applicable were not struck off. This would have created confusion to the assessee.

The department could not produce the relevant notice. In any case, failure to strike off the not applicable portions cannot be considered a serious omission.

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

The department could not produce the Inspector's report dated 12.10.95 on which it sought to rely. Nor could the Department state what were the directions given by Shri Doley to the Inspector. The assessment order does mention a survey report by an Inspector. But, what exactly was done during the "survey" is not clear. It appears that the Inspector merely took external measurements of the house.

The IT Act does not give power to the A.O. to take measurement of a residential house explicitly. At the same time taking measurement of a house the Assessing Officer is not prohibited either (certain actions such as removal of cash during survey U/S. 133A is prohibited by the LT. Act). U/s. 142(2), the A.O. may make such inquiry as he considers necessary. Therefore, if the dimension of a house is taken for the limited purpose of estimating the cost of construction without any violation of privacy, it can not be treated as a serious case of excess.

Para 5. Shri B. Doley, ITO passed the assessment order on 01.12.96 and has made arbitrarily high-pitched assessment by simply estimating cost of construction of the building, and estimated cost of land as per his whims and fancies. There does not appear in the records any prior intimation to the assessee of his intended basis for estimated valuation, Shri B. Doley, ITO has, therefore, denied the assessee the opportunity to be heard on the issue, and the right to natural justice.

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

The department could not produced the relevant assessment records. But it is clear from assessment order that Shri Doley did not provide the assessee opportunity of being heard on many major issues. For example, while making addition on investment/aquisition of immovable properties, Shri Doley did not call for assessee's explanation on the issue though huge additions were made on these points. Shri Doley denied to the assessee the very basic right of opportunity of being heard and the right to natural justice. As a quasi judicial authority, it was his duty to ensure that the basic principles of justice are not violated. In failing to ensure that, he exhibited lack of devotion to his duty.

Paras 6, 7, 8, & 9. The assessee, being a layman, and having been taken aback by such high-pitched assessment, submitted a detailed revised petition dated 29.12.96 seeking for review of the income tax assessment. As the subject matter and reasoning were not within the purview of even a rectification, Shri B. Doley should have advised the assessee that the proper procedure was to approach the appropriate higher statutory authorities by filing appeal U/s. 246 before the CIT(A) or to file for revision petition U/s. 264 before the CIT.

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

Shri B. Doley, ITO, again abused and over stepped the power to survey when he deputed his Inspector (Shri Rajkumar Singha) to visit and enter the building premises belonging to the assessee, and to take measurements, as evidenced from the Inspector's report dated 16.01.97.

Shri B. Doley, ITO has over-exceeded his power as an assessing officer in the rectification order passed dated 01.7.97, as none of the issues were "mistakes apparent from records".

It is seen from records that in purported exercise of his power u/s. 154 of the I.T. Act, 1961, Shri Doley got a building measured by his Inspector and also collected information from its tenant and then recomputed its cost of construction, By this act, Shri Doley has clearly exceeded his power as an assessing Officer.

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

The A.O. cannot be faulted for attaching the salary. Whether or not the demand was based on proper facts was besides the point. Shri Doley was merely following the Departmental policy on recovery in what was obviously a dossier case.

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

The department could not produce the relevant.

12. The impugned assessment order was challenged in appeal before the CIT(A) and the learned CIT(A) vide his order dated 10-12-98 had observed the high-handedness and arbitrary manner of the assessment that had been done by Shri B. Doley, ITO by remarking in the appellater order" I feel that the A.O. should

have considered the appellant past assessment records especially when he was considering investment made in buildings, lands, etc by the appellant in the past and in failing to do so, he had failed to do justice to the appellant".

The Department could not furnish any example where Shri Doley failed to consider any fact which was available in the Assessment records of earlier years.

To sum up, I am of the view that Shri Doley denied to the assessee the very basic right to be given opportunity to be heard and the right to natural justice. As a quasi judicial authority, it was his duty to ensure that the basic principles of justice are not violated. In failing to ensure that, he exhibited lack of devotion to his duty. Further, Shri Doley blatantly exceeded his powers as an assessing Officer while passing an order u/s. 154 of the LT. Act. Here again, he exhibited lack of devotion to his duty. The other charges are not proved.

Statement of Article-V of Charge

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

1. Due to not conceding to a price bargain which Shri B. Doley, ITO wanted as customer, Shri B. Doley, ITO then misused, with vindictive intention, the power to survey by conducting survey at the shop premises on 01.11.96; even though as an income tax authority he should have been aware that the shop being quite small in size, a survey was not at all warranted. The conduct of the survey was spiteful and with vindictive motive to humiliate Shri Bikash Das.
2. Shri B. Doley, ITO further initiated proceedings by issuing notice dated 09.01.97 U/s. 142(1) of the income tax Act calling for the return of income to be filed. Even while issuing the notice he did not apply his mind in that the irrelevant portion of the form were not struck off, and this would have created confusion in the mind of Shri Bikash Das.
3. Shri B. Doley, ITO had misused the powers U/s. 142(1) in that after initiating the proceedings, he simply dropped the proceedings on 29.04.97 on receiving a letter from Shri Bikash Das that he would not be having any taxable income. This indicates that Shri B. Doley, ITO misused the power U/s. 142(1) to achieve his vindictive motive against Shri Bikash Das and once the motive was achieved, the proceedings were dropped as there was no other reason to have conducted the survey.

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

3(1)(i)-Failed to maintain absolute integrity

3(1)(ii)-Failed to maintain devotion to duty

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

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

Statement of Imputation of Misconduct or Misbehaviour

The survey conducted on 01.11.98 was vindictive as a result of the price bargaining that Shri B. Doley, ITO wanted as customer. There was no reason to conduct such a survey. Even the initiation of proceedings by issue of notice U/s. 142(1) was unwarranted. This is apparent as eventually the proceedings had to be dropped. Shri B. Daley, ITO had thus failed to maintain absolute integrity, devotion to duty, acted unbecoming of a Government servant, and in the performance of his official duties acted in a discourteous manner, thereby contravening Rules 3(1)(i), (ii), (iii) and 3 A(a) of the CCS (conduct) Rules, 1964 in this instant case also.

Findings

This article of charge contains 3 paras which in turn contain allegation of misconduct or misbehaviour against Shri Doley. These allegations are examined parawise below:

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

The statement of Shri Bikash Das was recorded during the proceedings. In his statement, he did not make any complaint against Shri Doley. Earlier, on 26.10.1998, his version of the events were recorded by the Addl. CIT. The relevant portion of the order sheet is reproduced below:

Sometime before Durga Puja in 1996, Shri Doley came to my shop as customer to purchase a toy car for his child. The price quoted was Rs. 140/- and he bargained and wanted to pay Rs. 100/-. He finally revealed his identity and status and paid Rs. 100/- for his toy car. After about 20 days he came with his staff members and carried out survey of my shop. After about one month I received a notice from the ITO to file return of income. I verbally sought one year's time for filing of the return stating that I had started the shop in 1994 and was not earning enough income to be liable for tax. I have finally filed the return in February or March, 1998. My A/R is Shri Jaswant Singh. During the survey and thereafter also the ITO Shri Doley did not demand any money nor I have paid him any.

The department's contention is that Shri B. Doley conducted a survey with vindictive intention due to Shri Bikash Das not conceding to a price bargain which Shri Doley wanted. But from the statement of Shri Bikash Das recorded on

26.10.1998, it is seen that Shri Bikash Das had actually conceded to the price bargained when Shri Doley purchased the toy. Further the survey was otherwise as per law. Thus, he charge that the survey was conducted in the vindictive manner is not proved.

Para 2. Shri B. Doley, ITO further initiated proceedings by issuing notice dated 09.01.97 U/s. 142(1) of the income tax Act calling for the return of income to be filed Even while issuing the notice he did not apply his mind in that the irrelevant portion of the form were not struck off, and this would have created confusion in the mind of Shri Bikash Das.

The omission to strike off the in applicable portion of the notice can not be treated as a serious act of omission.

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

Shri Doley erred in dropping the proceedings on receiving a letter from Shri Bikash Das that he would not having taxable income. There is no provision for dropping the proceedings after notice u/s. 142(1) was issued. By this wrong action, Shri Doley exhibited lack of devotion to his duties. However, the allegation that Shri B. Doley, ITO misused the power U/s. 142(1) to achieve his vindictive motive against Shri Bikash Das is not proved because the department could not establish then Shri Doley had reason to be vindictive.

To sum up, it was found that Shri Doley dropped the proceedings after issuing the notice u/s. 142(1). No motive, however, could be established for this act. I, therefore hold that the mistake occurred due to his failure to maintain devotion to his duty. The other charges are not proved.

7. What emerged, in respect of Article HI of the Charge, was that the petitioner had made estimated additions towards investment in the construction of the residential building, in question; but before making such an addition, the petitioner did not provide the assessee with any opportunity of showing cause or hearing, though substantial additions had been made in the earlier assessment by the present petitioner. Even the assessee's comments, on the proposal to make newly estimated additions towards investment in the construction of the residential building, in question, had not been called for by the petitioner.

8. In short, the petitioner, as rightly concluded by the enquiring authority, denied to the assessee the very basic right of being heard and the right of natural justice. The enquiring authority observed that since the petitioner had exercised quasi-judicial authority, it was his duty to ensure that the basic principles of

natural justice were not violated and that the omission, on the part of the petitioner, was clearly attributable towards his casual attitude and thereby his lack of devotion to duty stood proved.

9. In respect of Article IV of the Charge, the enquiring authority found that the petitioner did not provide the assessee any opportunity of being heard on many major issues, such as, huge addition to the amount of investment, which was alleged to have been made in the construction of building, and without calling for any explanation or comments from the assessee or without serving any notice to show cause on the assessee.

10. The enquiring authority, therefore, concluded, in respect of Article IV of the Charge, that the petitioner had not only violated the basic principles of natural justice, but he had also blatantly exceeded his powers as an Assessing Officer, while making assessment, u/s 154 of the IT Act, and exhibited thereby lack of devotion to his duties.

11. So far as the Charge No. V is concerned, the allegation against the petitioner was that the petitioner had gone to the shop of "person, namely, Shri Bikash Das, as a customer, to purchase a toy car, the price of the car being Rs. 140. The petitioner disclosed his identity and wanted to pay Rs. 100/- for the toy car. This clearly shows that the petitioner, being a customer, attempted to put pressure on the shopkeeper by making him reduce the price on the basis of his identity, which the petitioner had disclosed to the shop-keeper as the Income Tax Officer of the area concerned: After twenty days, thereafter, the petitioner came to the shop premises of Shri Bikash Das, carried on survey of the shop with the help of his staff and a month thereafter, Shri Bikash Das received notice, issued by the petitioner, for filing of return of income tax. Shri Das sought for time to file his return after one year and the petitioner, without assigning any reason whatsoever, accepted the request, though there is no provision for dropping the proceeding in the manner as had been done by the petitioner, when the notice, u/s 142(1) of the Income Tax Act, had already been issued. The enquiring authority, therefore, concluded that the petitioner exhibited lack of devotion to his duty.

12. Because of what have been observed and concluded by the enquiring authority on the Charge Nos. III, IV and V, which were served on the petitioner, the disciplinary authority, in our considered view, was wholly correct in accepting the findings of the enquiring authority and the appellate authority committed no error, legal or factual, in agreeing with the findings of the disciplinary authority.

13. As regards the Supplementary Charge-sheet, it has been already indicated above that there was only one Article of Charge. This Article of Charge read as under:

That the said Shri Budheswar Doley, income tax Officer, while functioning as ITO. Ward-North Lakhimpur, Assam for the period for the period from 26.05.95 to 21.09.98, while making assessments u/s. 143(3) or 144 of the IT Act, 1961,

failed to conduct proper inquiry and investigation. In some cases he did not obtain any information from the assessee and did not scrutinize the books of accounts in some cases. In the cases, where information were obtained, he failed to utilize the same in proper manner and disposed of cases in a lackadaisical manner.

By the aforesaid act of omission and commission, Shri Budheswar Doley failed to maintain absolute integrity, and also showed lack of devotion to duty and exhibited conduct unbecoming of a government servant in terms of Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules. 1964.

14. Under the above Article of Charge, there were as many as six allegations. In respect of the allegations, which had been made against the petitioner, the findings of the enquiring authority and the "ultimate conclusion, which had been reached by the enquiring authority, are reproduced below:

Allegation 1. In almost all the cases Returns were not filed within the due dates. There was abnormal delay in some cases. In some cases, there was no response to the notice issued u/s. 148 or 142(1). In most of the cases, the assessee did not respond to notice u/s. 143(2). But for such lapses, no action was initiated by Shri Doley.

My findings: There is no provision for taking action in case of delayed filing of return. Therefore, it is not correct to charge Shri Doley of inaction on this point. It is seen that there was non compliance on the part of the assessee to notice u/s. 148 by M/s. Gupta Brothers (AY. 1994-95). There were non-compliances to notices U/S. 142(3) by M/s. Gupta Brothers (AY. 1994-95). M/s. Laxminarayan Agarwalla & Sons (A.Y. 1995-96). Shri Sushil Kumar Agarwalla (AY. 1994-95) and Sudhir Dutta (AY. 1995-96). Further there were non-compliances to notice u/s. 143(2) by M/s. Laxminarayan Agarwalla & Sons (1995-96), Sushil Kr. Agarwalla (1994-95). Lala Agarwal (1996-97) and Sudhir Dutta (1995-96). Shri Doley did not initiate penalty proceedings in any of these cases for non compliance.

Shri Doley in his submission in the course of the inquiry replied that he was not aware that penalty proceedings can be initiated in such cases. I find his explanation totally unacceptable. Since the Act provides for penalty in such cases, Shri Doley should have initiate penalty proceedings.

Allegation 2. In most of the cases, Shri Doley issued notices u/s. 143(2) and 142(1) simultaneously and in all such cases a common requisition with a rubber stamp impression on the back side of notice us 142(1) was made. But at the time of hearing, except one or two cases, no details/information were obtained. Shri Doley recorded the proceedings in the order sheet. In all normal scrutiny cases, some basic particulars, like-bank accounts with ac no, branch name of the holder etc. particulars of assessee's properties/assets/investments, list of debtors and creditors are obtained which may help for future recover. But Shri Doley did not make any such attempt. Most of the cases were disposed of after single brief hearing. Emphasis was given about this in Instruction No. 1937 to

collect that information in course of assessment proceedings.

My findings: Shri Doley, in the course of the inquiry submitted that some assessments were disposed off in a single hearing because those were simple and small cases. He maintained that inquiry done by him was adequate considering the nature of the cases. He also stated that Bank accounts were checked as he deemed proper and necessary.

I find nothing wrong in issuing notice u/s. 142(1) and 143(2) simultaneously. As regards the other allegations, I find that the except in one or two cases, no details/information was obtained. Even basic details such as particulars of bank accounts, particulars of assets and investments, list of debtors and creditors were not obtained, Out of 26 assessments which were examined, at least 7 (seven) cases were disposed off in a single hearing (M/s. Loknath Dresses, Malchand Maheshwari, Anupama Majumdar, Pawan Kumar Sarda, Parsuram Sharma, Lalita Devi Maheshwari and Sukhan Dutta). Though Instruction No. 1937 dt. 25/03/1996 makes it mandatory for obtaining particulars of assets including name and address of the debtors, bank a/c, bank deposits etc., Shri Doley made no attempt to collect these details in most cases. I, therefore, find that his submissions are not supported by the records and the allegations are correct.

Allegation 3. Even, in the cases scrutinised for the first time, no basic information was obtained. Normally in a new case, where scrutiny is made for the first time, the opening capital of the assessee, his activities, properties investment, size of the family, withdrawals, children education. Tour & travels etc. are examined but Shri Doley did not examine the mailer. In case of M/s. Loknath Dresses, both the partners claimed to have contributed stock as their capital along with cash, but no stock inventory was examined, no question was asked on the mode of valuation of such stock:

My findings: Shri Doley, in submission during the inquiry stated that he did examine the Capital Account in all cases where scrutiny was done for the first time including the case of M/s. Loknath Dresses and therefore the allegation was wrong.

I find from the examination from records that out of the cases which were inspected, some were scrutinised for the first time. Example of such cases are:

- (i) Loknath Dresses A.Y. 1996-97
- (ii) Bansilal Lahoti (HUF) A.Y. 1996-97
- (iii) Sushil Kumar Agarwalla A.Y. 1994-95
- (iv) Md. Mobin A.Y. 1995-96

Since these were scrutinised for the first time it was necessary to bring basic information about the assessee such as activity of the assessee, his properties and investment, size of his family (where applicable), withdrawals, children

education (where applicable) etc. on record. But it was not done. Thus, he failed to do the ground work for carrying out investigation in these cases. In case of Loknath Dresses, both the partners claimed to have contributed stock as their capital along with cash, but no stock inventory was examined. Nor was any question was asked on the mode of valuation of closing stock. I, therefore, find that the claim of Shri Doley that the Capital Accounts were examined is not supported by records.

Allegation 4. In most of the cases the assessee did not maintain any book of accounts. In such cases, the examination of the assessee's assets, bank accounts etc. were very much necessary but Shri Doley failed to do so. In some of the cases, the expenditure, net profit, even the turnover was estimated. But Shri Doley did not ask any question regarding the basis of such estimation. Some of the cases were capital building cases and to regularise the ill-gotten money of the assessee utilising the Income tax channel. The case of Lalita Devi Maheshwari, Parasram Sharma. Sheikh Rasul and the examples of such cases. Within one year the assessee, a State Govt. Employee, Sheikh Rasul deposited Rs. 7.70 lakh cash in a bank Whose gross salary for the year was only Rs. 70,128/-. At the time of assessment, the assessee claimed to have received gift from different parries. Without proper verification the same" was accepted by Shri Doley.

My findings: In the course of inquiry Shri Doley submitted that most of the cases were books of accounts are not maintained, the assessee appeared themselves during hearing and when asked to give details of their assets, they replied that they had no properties except investment in the business. He stated that in the case of Sheikh Rasul, the source of the deposits in the bank were found to be satisfactorily explained.

I have examined the allegations and the submissions of Shri Doley. I find that in large number of cases no books of accounts were maintained. Such cases are listed as below:

Name of the assessee A.Y.

Gupta Brothers 1994-95

Loknath Dresses 1996-97

Banshilal Lahoti 1996-97

Malchand Maheshwari 1995-96"

Inderchand Jain & Co. 1995-96

Sushil Kr. Agarwalla 1994-95

Anupama Majumdar 1996-97

Anil Kr. Srivastav 1996-97

Pawan Kr. Sarda 1996-97

Izhar Hussain 1995-96

Rahim Talukdar 1995-96

Sudhir Dutt 1995-96

Parasram Sarma 1996-97

Lalita Devi Maheshwari 1995-96

In such cases the examination of assessee's assets, bank accounts etc. was very much necessary but Shri Doley failed to do so. In some of the cases the expenditure, net profit, even the turn over is estimated but the Shri Doley did not ask any question regarding the basis of such estimation.

Shri Doley's claim that he inquired about the assets of the assessee is not supported by the records.

In case of Shri Sheikh Rasul who is a State Govt. Employee, whose salary for the year was only Rs. 70,128/-, it was found that the assessee deposited Rs. 7.70 lakhs in cash in a bank. At the time of assessment the assessee claimed to have received gift from different parties. The same was accepted by Shri Doley merely on the basis of gift deeds without proper verification. Shri Doley did not examine the capacity of the purported donor to pay the amount and also the genuineness of the transaction. In my view, Shri Doley failed to apply his mind and act in a judicious manner in this case.

Allegation 5. It was found that in some cases, even the document filed with the return were not properly examined and cross verified. Had the assessee filed the details along with the return would have found various discrepancies some of which are mentioned below:

(i) Mahavir Transport Co., submitted one TDS certificate after submission of return. Shri Doley considered the TDS and allowed refund of Rs. 1,08,836/-. If the income reflected in the TDS certificate was considered, then instead of refund, huge demand would have been raised.

(ii) In the case of Md. Izhar Hussain (1-776 INL), in the Income & Expenditure Account, the assessee claimed to have paid Rs. 12,80,000/- towards Elephant charges and Rs. 14,15,000/- towards Truck carrying charges. But in the documents attached he furnished details of payment of Rs. 13,80,000/- and Rs. 15,15,000/- respectively.

(iii) In the case of Md A. Rahim Talukdar (A-117/NL), Shri Doley found discrepancies to the tune of Rs. 3,91,371/- in the Bank Accounts. On inquiry the assessee could not offer any explanation other than non-account maintained cash. Shri Doley could have easily considered the amount as income from undisclosed source and made further inquiry. As disclosed hereinabove, the actual discrepancies were much more than the figure calculated by Shri Doley.

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

My findings: In respect of the mistake relating to M's Mahabir Transport Co., Shri Doley in the course of inquiry submitted, inter-alia, that it was a bonafide mistake which occurred due to oversight.

I have examined the allegation and the submission of Shri Doley. I find that, in the case of M/s. Mahabir Transport Co., gross receipt shown in the Profit & Loss A/c is Rs. 47,40,587/-. The total receipt as per the IDS certificates including the one filed after filing of return comes to Rs. 52,25,533/-. Thus the gross receipt has been suppressed to the extent of Rs. 4,84,946/-. In my view, nothing could be done about it by the Assessing Officer (Shri Doley) in the processing stage, I find that in this case assessment was made U/S. 143(3). The Assessing Officer (Shri Doley) should have examined the gross receipt with reference to the TDS certificates and made suitable addition.

As regards the mistake pointed out in the case of Md. Izhar Hussain. Shri Doley argued that it will not always that the Assessing Officer check the total of cash vouchers for each and every voucher. I have examined the allegation and the submission of Shri Doley. I find that the irregularities mentioned in the allegations are correct. Shri Doley's contention that he cannot be expected to check the vouchers with reference to the expenses claimed is not acceptable.

As regards the allegation in the case of Md. A. Rahim Talukdar, Shri Doley stated that he found assessee's explanation regarding source of the deposits reasonable and that it being a case where no books of accounts, were maintained, the explanation of the assessee could not be rejected.

I have considered the allegation and Shri Doley's explanation. In this case, Shri Doley, in the course of assessment proceedings found that the deposits in the bank account exceeded the gross receipt shown by Rs. 3,91,371/-. But he accepted the assessed's explanation that the excess credit represents loan/security money refunded by friends and relatives without obtaining any details/evidence. Shri Doley's contention that assessee's explanation regarding the source of the deposits could not be rejected because it was a case where no books were maintained is totally absurd. He should have obtained details of the deposits and called for evidence in support of details/evidence. Shri Doley's contention that assessee's explanation regarding the source of the assessee's claim.

Further, it was found that in this case that the total receipt as per the TDS certificates comes to Rs. 12,89,546/-. The receipt net of TDS comes to Rs. 12,63,877/-. Shri Doley was able to obtain bank statement of the assessee from only one bank, i.e., Allahabad Bank, North Lakhimpur Branch. It was also found that in the said account, there were total credit of Rs. 16,17,121/- out of which

only Rs. 3,47,628/- relates to the IDS certificates considered. This means that Rs. 12,70,036 (Rs. 16,17,121/- Rs. 3,47,628/-) were from some other source. Shri Doley failed to examine this aspect.

Allegation 6. In the matter of TDS, proper inquiry was not made in the following cases-

(i) Mahavir Transport Company

(ii) Md. Mobin

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

(i) M/s. Laxminarayan Agarwalla & Sons

(ii) Sheikh Rasul

(iii) Sukhranjan Dutta

My findings: In respect of the allegation in the case of Mahavir Transport Company, Shri Doley submitted that since the TDS certificates submitted by the assessee was from a reputed organisation i.e. I.O.C. Ltd. and the assessee had been doing business with I.O.C. Ltd. in earlier years also did not considered it necessary to clarify the TDS certificate I have considered the allegation and his submission. I find from the records that in this case the assessee has done substantial business with I.O.C. Ltd. Shri Doley should have obtained the statement of the assessee from I.O.C. Ltd. In this case also unsecured loans and trade creditors shown by the assessee was more than Rs. 30 lakhs, the genuineness of this should have been examined. I, therefore, find the allegation that no proper inquiry was done in this case is correct.

In respect of the allegation in the case of Md. Mobin, Shri Doley submitted that the genuineness of TDS certificates were confirmed. And, therefore, the allegation is not correct. I have considered the allegation and his submission. I find that the assess filed only the Profit & Loss A/c, No balance sheet was filed. Shri Doley should have obtained the balance sheet. Further the assess did substantial business with Gammon India Shri Doley Officer should have obtained the statement of the assess from Gammon India and examined the same. Further, it was the first year of assessee's business. Therefore, Shri Doley should have examined the source of opening balance in the Capital account. I, therefore, find the allegation that no proper inquiry was done in this case is correct.

In respect of the allegation in the case of M/s. Laxminarayan Agarwalla & Sons, Shri Doley submitted that there was no scope to verified as the case was disposed u/s. 144. I have considered the allegation and his submission. I agree with Shri Doley that since the assessment was done u/s. 144, it was not possible to obtain details.

In respect of the allegation in the case of Sheikh Rasul, Shri Doley submitted that verification as to who was doing the agricultural activity was called for and an affidavit was furnished. I have considered the allegation and his submission. Shri Doley has not been able to rebut the allegation that details of landholding was not obtained by him. In my view the land-holding is a most basic requirement for claiming income from agriculture and Shri Doley should have obtained these details.

In respect of the allegation in the case of Sukhranjan Dutta, Shri Doley submitted that in the course of assessment proceedings the assessee on being asked to furnish details of Land Patta stated that the land was inherited and there was no Patta. He further stated that in Assam there are many such cases where cultivation is done in land by persons without holding land Patta. I have considered the allegation and his submission. Even if the assessee's claim that he did not have land Patta Shri Doley should have obtained at least the locational details of the land.

Allegation 7, in cases of contractors, no consistency was maintained to determine their income. When no books of accounts are maintained, income has to be taken at least @ 8% under the Law. But it is found that expenditures were claimed on estimate basis that were also allowed. Even in some of the cases, the receipt shown in the TDS certificates were not taken in consideration.

My Findings: Shri Doley submitted that in the cases of contractors generally 8% was applied to the gross receipt in no books of accounts cases and in the books of accounts cases considering some other factors with regard to contract cases and nature of contract works some expenditure claimed can be accepted. I have considered the allegation and his submission.

I find that in the case of Shri Anil Kr. Srivastav for Asstt. year 1996-97, no books of accounts maintained. The gross receipt of supply business was shown at Rs. 1,74,450/-. The assessee showed income from the said business at Rs. 17,550/-, Shri Doley assessed the profit, at Rs. 19,000/-. Therefore, in this case there was no violation of the provision of the Act by Shri Doley. I further find that in this case the assessee made certain gifts during the previous year relevant to the Asst, Year 1995-96. No gifts tax proceedings were initiated. Shri Doley accepted failure to invoke gift tax proceedings.

In the case of Izahar Hussain for A.Y. 1995-96 no books were produced. Assessee estimated the profit at Rs. 8% of gross profit For asst. Year 1996-97, books of accounts produced.

In the case of Rahim Talukdar for A.Y. 1995-96, no books of accounts were maintained. The profit from business was shown at Rs. 98,200/- which comes to 8% of gross receipt. Therefore, the business income was found to be assessed as per the provisions of the Act.

In the case of Sudhir Dutta who had shown income from contract business in the

assessment year was completed u/s. 144. The profit estimated by Shri Doley at 8% for contract works. The profit of truck plying was taken @ Rs. 24,000/- per truck. But latter the assessee claimed that one of the truck was not plying for six months and file petition for rectification u/s. 154 there upon Shri Doley passed the order u/s. 154 taking income from the said truck for four months only.

Conclusion: On the basis of the foregoing discussions, I find that the following omissions were made by Shri Doley

1. He failed to initiate penalty proceedings in cases where the assessee failed to comply with notices issued under the Act.
2. While making scrutiny assessments, Shri Doley failed to collect basic details/informations such as details of Bank accounts, list of debtors and creditors etc. A very large number of cases were disposed of in a single hearing. Though, Instruction No. 1937 dt. 25/03/1996 makes it mandatory for obtaining particulars of assets including name and address of the debtors, bank account etc. Shri Doley made no attempt to collect these in most cases.
3. Even in cases scrutinised for the first time, Shri Doley failed to collect the basic information about the assessee such as activity of the assessee, his property and investments, size of his family (where applicable), withdrawals, children education (where applicable). In at least one such case no question was asked on the mode of valuation of the closing stock.
4. In 14 (fourteen) cases no books of accounts were found to be maintained. In such cases, it was necessary to examine the bank accounts but Shri Doley failed to do so. In some cases he failed to examine the basis of expenditure, net profit and turnover estimated by the assessee. In the case of Md. Sheikh Rasul one State Govt. Employee earning a modest salary, Shri Doley failed to examine the source of Rs. 7.7 lakhs deposited in cash in a bank and accepted assessee's claim of gift received from different parties without proper verification.

In the case of M/s. Mahavir Transport Co., the gross receipts as per the TDS certificates exceeded the gross receipts shown in the profit and loss account by Rs. 4,84,946/-, Shri Doley failed to examine this aspect. In case of Izahar Hussain, the details of expenses given were far in excess of expenses shown in the profit & loss account. Shri Doley failed to examine this point. In case of Md. A. Rahim Talukdar, Shri Doley found that the deposit in the bank account exceeded the gross receipt shown by Rs. 3,91,371/-. But he accepted the assessee's explanation that the excess credit represents loan/security money refunded by friends and relatives without obtaining any details/evidence.

Further, it was found that in this case, the total receipt as per the IDS certificates comes to Rs. 12,89,546/-. The receipt net of TDS comes to Rs. 12,63,877/-. Shri Doley was able to (obtain bank statement of the assessee from only one bank, i.e., Allahabad Bank, North Lakhimpur Branch. It was also found that in the said account, there were total credit of Rs. 16,17,121/- out of which only Rs.

3,47,628/- relates to the IDS certificates considered. This means that Rs. 12,70,036 (Rs. 16,17,121/- Rs. 3,47,628/-) were from some other source. Shri Doley failed to examine this aspect.

6. In the case of Mahavir Transport Co., Shri Doley failed to cause proper inquiry regarding the business transactions as well as the unsecured loans at the trade creditors. In the case of Md. Mobin, Shri Doley failed to cause proper inquiry regarding the business transactions as well as the source of opening balance in the capital account though, it was the first year of the assessee's business. He also failed to obtain the balance sheet of assessee's business.

In the cases where the assessee claimed to have earned agricultural income, Shri Doley failed to obtain basic details of land holdings and examine the claim.

7. In the case of Shri Sudhir Dutta, it was found that Shri Doley while passing an order u/s. 154 give excess relief of Rs. 4,000/- to the assessee.

Shri Doley in his explanation stated that he joined as ITO, Ward-North Lakhimpur on promotion. The job of Assessing Officer was new to him and that he lack experience and there is nobody with whom he could discuss the various issues relating to assessment. He further stated that he did the job to the best of his ability and the lapses on his part were bonafide mistakes committed due to lack of training and experience. He argued that the method and nature of investigation in the course of scrutiny are bound to vary from officer to officer and therefore, the allegations that in some cases the investigations done were inadequate are subjective.

The mistakes made by Shri Doley mentioned above do not contain any act of commission. They are all acts of commission. None of these acts of commission proved lack of integrity on the part of Shri Doley. No instance of Shri Doley acting in a manner unbecoming of a Govt. Servant could be established in course of inquiry. However, there were many instances where Shri Doley was found to complete the assessment in a perfunctory manner. Most of the scrutiny was completed without proper examination of records and no investigation was made at all. He even failed to consider the material on record while completing assessment. His plea that it was due to his inexperience which is not acceptable since he joined the department as a direct recruit Inspector in the year 30.01.1989 and was promoted as ITO on 01.01.1995 and the orders which are subject matter of this inquiry were mostly passed during the years 1997 and 1998. Further, mistakes made were simple mistakes and does not involve any complicated legal issue. I am therefore satisfied that mistakes were due to lack of devotion to duty on part of Shri Doley. Therefore, the charge of lack of devotion of duty against Shri Doley is proved.

15. As regards the allegation No. 1, the enquiring authority concluded that the petitioner's explanation that he was not aware of the fact that provisions for penalty proceedings could be initiated in the cases, which formed the basis of allegation No. 1, were totally unacceptable and the petitioner's omission to

initiate penalty proceeding exhibits his lack of devotion to duty.

16. So far as the allegation No. 2, contained in the Supplementary Charge-sheet, is concerned, a bare reading of the findings of the enquiring authority clearly shows that the petitioner, as rightly concluded by the enquiring authority, did not make any attempt to collect the necessary details, which the petitioner ought to have obtained and, therefore, the allegation was correct.

17. In respect of the allegation No. 3, the enquiring authority, for the reasons, which it had assigned, came to conclude that the petitioner's claim, that the Capital Account had been examined, was not supported by the materials on record.

18. As regards the allegation No. 4, the enquiring authority made a in-depth enquiry and came to conclude that the petitioner's claim that he had enquired about the assets of SSC, were not supported by the records.

19. Coming to the allegation No. 5 and 6, the findings of the enquiring authority are that the allegation Nos. 5 and 6 were true.

20. We do not find, having carefully perused the reasons, which the enquiring authority had assigned in respect of the conclusions, which it had reached, that the findings are perverse in the sense that the same had been reached without any material in support of the allegations made, or that the findings are wholly contrary to the materials available on record, or that the findings had been reached by ignoring any relevant provision of law.

21. In the backdrop of the facts as have been indicated above, the learned Tribunal rightly reached the conclusion that it (the learned Tribunal) does not act as the appellate authority and that the findings, reached by the enquiring authority, are analytical, reasoned and well considered and, hence, the grievance of the petitioner had no merit. We do not find that the conclusion, which the learned Tribunal so reached, suffers from any infirmity, legal or factual. In the result and for the reasons discussed, we do not find that the impugned order, dated 10.6.2010, calls for any interference by this Court in exercising into extra-ordinary jurisdiction under Article 226 of the constitution of India. The writ petition, therefore, fails and the same shall stand dismissed without cost.