IN THE COURT OF SPECIAL JUDGE XXXVI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BANGALORE

Spl. C.C. No: 208 of 2004

Selvi J Jayalalithaa .. Accused No.1

Vs.

The Supdt. of Police,
DV & AC,
Chennai. .. Complainant

MEMORANDUM OF WRITTEN ARGUMENTS FILED UNDER SEC. 314 OF Cr.P.C ON BEHALF OF ACCUSED NO.1

1) Accused No.1 has been charged with substantive offence U/s 13 (2) read with Sec 1 3 (i) (e) of the P.C. Act. She has also been charged for the offence of conspiracy u/s 120-(B) I.P.C. Accused No.2 to 4 the charge sheet alleges have abetted A1 in the offence u/s. 13 (i) (e) of the P.C Act. They are therefore charged also u/s 109 IPC.

2) A2 to A4 have never held any public office and therefore they had never been public servants. They are implicated as abettors and co-conspirators in this case, which is unjustified and utterly without justification or lawful basis. A1 is totally innocent and may be honourably acquitted.

3) The Accused No.1 was sworn in as Chief Minister of Tamil Nadu on 24.6.1991 and held that office for five years till 12.5.1996. DMK party, which is an arch political rival to the AIADMK party lead by A1 came to power in May 1996. The prosecution was launched against the Accused in utter malice and the proceedings were taken in total violation of the provisions of Cr.P.C and complete negation of her fundamental rights and fairness. These are detailed in subsequent paragraphs. The FIR in this case was launched against her on 18.09.1996 (Ex P-2266). The charge sheet was filed subsequently on

4.6.1997. The check period was taken as 1.7.1991 to 30.4.1996. The prosecution has enclosed along with charge sheet VII Annexures. (Ex.P2327 to 2333) listing out the properties allegedly acquired during the check period and also expenditure incurred by the accused. The charge sheet ultimately conclude the disproportionate asset in a sum of Rs.66,65,20,395/-. With a view to prove the charges, the prosecution examined 259 witnesses and have marked 2341 exhibits, besides material objects documents and exhibits in X series.

4) The Accused have examined 99 defence witnesses and have marked 384 exhibits on their behalf in proof of their defence. She had independently proved the extent of income as well as expenditure incurred by her.

5) The proceedings are contrary to mandatory requirements under Criminal Procedure Code and the Accused No.1 has been gravely prejudiced in her defence. Before dealing with the merits of the case, Accused No.1 seeks to highlight these aspects. They are briefly mentioned hereinafter:

ILLEGALITIES DURING INVESTIGATION AND REGISTERING AND FILING OF THE CASE

1) **THE REGISTRATION OF FIR P- 2266 DATED 18:09:1996 IS ILLEGAL**.

II) The above aspect arise and flow from the following undisputed facts.

i) PW-232 Dr. Subramaniam Swamy presented a petition before the Principal Sessions Judge (PSJ) in Crl.M.P.No.3238/1996, under Section 200 of the Code. Sworn statement of Dr. Subramaniam Swamy recorded by learned Principal District & Sessions Judge (PSJ for short) who was also at the time acting as a Special Court having

competence to try cases under P.C. Act. The petition of Dr. Subramaniam Swamy is Ex.P-2320.

ii) On 21:06:1996 PSJ passed an order directing an enquiry into the complaint by PW- 232 Dr. Subramaniam Swamy under Section 202 of the Code. The order directs PW-240 Lathika Charan then, Deputy Inspector General of Police in the Vigilance Anti-Corruption Department of Tamil Nadu to investigate and report to the Court in two months time.

iii) The PW-240 in her evidence states that she enlisted number of officers including Nallamma Naidu PW-259 for the purposes of investigation under Section 202 Cr.PC. (Whether the officers who made the investigation at the instance of PW-240, if empowered either under Section 17 or under Section 18 will be considered later).

iv) PW-240 in her evidence submits that they have gathered huge amount of documents and records from registration department, income tax department, banks and from other financial institutions.

v) In this regard both PW-240 and 259 admit in their evidence that in such an enquiry they examined more than 300 witnesses and recorded their statements.

vi) PW-240 also admits that the witnesses who examined were summoned to appear under Section 160 of the Code. One of the persons examined was Dr. Subramaniam Swamy (PW-232).

vii) In the meanwhile, the accused filed a revision to the High Court against the order of PSJ ordering an enquiry under Section 202. The revision was decided by High Court, Madras who did not find fault with learned PSJ ordering an enquiry under Section 202, but only stated that PSJ had no

jurisdiction to nominate any particular officer to investigate the case whereas the choice must be left to the Director of DVAC to decide upon it. The order of the High Court, Madras is Ex.D10.

viii) On receipt of the order under Ex.D10 of the High Court Madras the Director of DVAC V.C.Perumal examined as PW-241 nominated PW-259 to investigate. PW-240 was directed to supervise the work of PW-259 however PW-240 says she did not do so.

ix) PW-259 has been successively filing application before PSJ stating that they want further time to complete the enquiry and to file the report one such application is dated 08:09:199. In this application PW-259 sought for a further period of 4 months for completing the investigation under Section 202 and to file the report before PSJ.

x) It is important to note that PW-240 & 259 both admit that hundred of documents, bank records were perused and possession obtained from the banks, income tax, registration departments during the investigation under Section 202, but for none of them there are any seizure list or mahazar therefor.

III) **CIRCUMSTANCES LEADING TO REGISTRATION OF FIR**

i) While so, V.C.Perumal (PW241) admits in his deposition during cross examination on 27.01.2003 that as soon as he was promoted as “I.G. of Police” he received the file from PW-240 Tmt. Lathika Sharan. Then he says “the order came from Tamil Nadu Government. The order was given to me by the Department Director, Thiru Raghvan and I was

asked to file the FIR in this case. On the basis of legal opinion and I too was satisfied I filed the FIR in this case. The Government Order came from the Government Public Department. I remember the order was signed by either the Chief Secretary or Public Department Secretary". It is in evidence by letter dated 12.9.1996 addressed to PW241 by Chief Secretary, conveyed the government decision directing V.C.Perumal to register the FIR. Thus, it will be seen that even though the enquiry, as directed the Principal Sessions Judge, was pending, PW-241 had chosen to register the FIR on the directions from the Government. Thus it is submitted the registration of FIR is patently illegal.

ii) On the very evidence of PW-241 the following illegalities will render the registration of the FIR itself invalid and all further proceedings would stand vitiated.

a) Under Section 154 of Cr.P.C only the Station House Officer on his satisfaction can register an FIR.

b) If he does not perform his duties then a person aggrieved by the refusal or inaction can forward the substance of the information to the Superindent of Police. Thus, the Superindent is in the nature of Appellant Authority having supervisory capacity over SHO.

c) The State Government can never direct registration of an FIR as the Code does not give any such power to the Government.

IV) THE ABOVE ACTION OF THE GOVERNMENT IS INVALID AND CONTRARY TO SETTLED PRINCIPLES OF LAW.

a) When statute requires a thing to be done in a particular manner it has to be done in that manner only performance by any other mode is prohibited. 2014 (3) SCC 502 Para 60 & 61.

b) When PW-241 under the scheme of the Code is an Appellate Authority to the Station House Officer and therefore, he himself cannot exercise the power of the original authority namely that of SHO he can only correct their mistakes if any. This is laid down in the above decision 2014 (3) SCC 502 Para 63, 66, 68 & 69. This judgment is at Page 61 of Vol.1 Compilation of Judgments.

c) When the power of Act is entrusted to a particular body or person he must act and exercise the power independently and cannot be influenced by much less directed by another body even a superior. If he acts on external dictation then the exercise of power will be wholly invalid 1997 (7) SCC 622 Mansukhlal Vithaldas Chauhan V/s State of Gujarat Para 23 & 28 (the judgment was filed before the Court on 23:07:2014).

d) The decision reported in 1997 4 SCC 770 (Vol.1 Judgments Pg 106) Union of India V/s Susheel Kumar Modi need for the independent exercise a power by the police is emphasised and earlier judgment in Veeneth Narain case and quotation from Lord Denning cited. (Para 4, 5 & 10 may be seen).

e) The registration FIR Exp.2310 is also invalid and makes a strange reading. This document says informant is PW-241 and he registers his own information and says copy was given to him. PW-259 had to admit in the cross examination that in is 40 years experience as a Police Officer, this was the first time I.G. of Police had registered an FIR.

f) As stated earlier the registration FIR itself is malafide as the object of the Government directing the registration of FIR is to prevent the possibility of Principal Session Judge passing an order in the enquiry under Section 202 dropping the proceedings. The events narrated clearly shows that Principal

Session Judge was kept in dark all through. Thus, the registration FIR is patently contrary to the Code and malafide.

g) This has also to be viewed in the context when the Court ordered an enquiry under Section 202 the Court had taken cognizance of the case. The law on this point is explained by the Supreme Court of India in 2007 (12) SCC 641Dilawar Singh V/s State of Delhi (Judgment Vol.1, Pg18). In Para 18 “6, Section 156 falling within Chapter XII, deals with powers of police officers to investigate cognizable offences. Investigation envisaged in Section 202 contained in Chapter XV is different from the investigation contemplated under Section 156 of the Code.” It is further observed that the provisions of the 2 Chapters deal with different facets altogether. When a Magistrate orders investigation under Section 156(3) he does so before taking cognizance that investigation by the police is under Chapter XV and must result in filing a final report under Section 173(2) as held in the above case “But a Magistrate need not order any such investigation if he proposes to take cognizance of the offence. Once he takes cognizance of the offence he has to follow the procedure envisaged in Chapter XV of the Code. A reading of Section 202(1) of the Code makes the position clear that the investigation referred to therein is of a limited nature”.

V) GOVERNMENTS DIRECTION TO REGISTER FIR IS A FRAUD ON THE POWER.

a) Thus, the Government and PW-241 & PW-259 have played a fraud upon the Court by registering the FIR when they know full well that the Court of Principal Session Judge at Chennai had taken cognizance of the complaint by PW-232 and therefore has domain over the case. The Government in a written order

directed the registration of an FIR and PW-241 disregarding the provisions of the Code and his own position as an I.G. of Police immediately registered the FIR. This was done only to prevent the Court from exercising the power under Section 203 of the Code and dropping the proceedings. Object to the Government is to prevent the possible order under Section 203 of the Code. This fraud on the power vitiates all further proceedings. Kindly see the decision in 2005 7 SCC 605(Vol.2 Judgment, Page 88) Bhaurao Dagdu Paralkar V/s State of Maharashtra and others. Para 12 14 & 15.

b) 2012 1 SCC 476 UOI V/s Ramesh Gandhi (Vol.2 Judgments, Pg.98). For the above reasons FIR and other subsequent proceedings are illegal and amounts to unfair procedure within the meaning of Article 21 of the Constitution of India.

VI) <u>ILLEGALITIES IN INVESTIGATION:</u>
WHAT WAS DONE IN AN INVESTIGATION UNDER SECTION 202 Cr.P.C.

a) When the Principle Session Judge had ordered an enquiry under Section 202 of the Code, and nominated Lathika Charan D.I.G of Police in the Vigilance Department (PW-240) it will be seen she wholly exceeded the Limitation prescribed under Section 202 of Cr.P.C.

b) The investigation under Section 202 is extremely limited. Object of investigation under Section 202 is to find out whether the complaint is true or false with view to enable the Court “to proceed further”. The Court no doubt gets seisen of the case. The extremely limited nature of investigation under Section 202 has long been judicially recognized.

c) 1976 (3) SCC 252 (Judgment Vol.1, Pg.1) Paragraphs 12, 13, 14 & 17.

d) 2007 12 SCC 641 (Judgment Vol.1, Pg.18) Dilawar Singh V/s State of Delhi, Para 23 & 24.

e) 2006 1 SCC 627 Mohd. Yousuf V/s Afaq Jahan (SMT) & Others (Vol.1, Page 8 – Judgments), Para 9.

f) While so disregarding the limited nature of the investigation under Section 202, PW-240 launched a full-fledged investigation. This she did and wholly ignored all the safeguards in favour all accused in an investigation unclear Chapter XV. PW-240 had issued authorization under Section 17 to Nallamma Naidu PW-259. She had also enlisted other officers and they collected as stated in earlier huge volume of documents from banks, registration office, IT Department and others. They examined 300 witnesses this is so admitted by PW-240 PW-241 & PW-259. It is submitted this is wholly without jurisdiction given the extremely limited scope of investigation under Section 202 of the Code. Criminal Procedure Code could never have provided two investigation of the same nature to be done. The malafide investigation is also clear in that none of the details of the investigation was ever forwarded to the Principle Session Judge. On the contrarily he was kept in dark right through. PW-259 had repeatedly filed applications for extension of time to file the report as originally ordered by the Principle Session Judge. Thus, the police have deliberately misused the authority to investigate given by the Court under Section 202 of the Code.

g) As stated earlier when huge volume of material from various authorities as aforesaid was collected the police did not followed the requirements of Section 91, 94 or Section 100 as Cr.P.C.

The collection of material was not under any seizure list nor was there any mahazar.

h) While recording the statement from about 300 persons the said statements however, were not shown that they were being recorded under any power in the Code. Thus, at one stroke the police have avoided all the safeguards provided in the Code while recording statement of witnesses. Under Section 161 (2) of the Code, the person summoned must speak the truth. Section 162 says for what use the statement can be put to Section 163 states that the police shall not offer any inducement or threat. Thus, the statements recorded from 300 witnesses or without any safeguards provided under the Cr.PC.

i) Now PW-241 in his evidence before the Court says that he directed PW-259 to take all the documents collected during the enquiry under Section 202, as such when investigation was done under Chapter XII after the registration of the FIR. As regards the statement of 300 witnesses, they were also taken and treated as if they were recorded during investigation under Chapter XII of the Code. There is no material produced by the prosecution that these 300 persons were examined again in the investigation after registering the FIR. This can be viewed in another angle. If the above said 300 witnesses had been re-examined after registration of the FIR them it would have been necessary and inevitable to have supplied to the accused both the statements namely, the one recorded during the investigation under Section 202, which would be under Chapter XV of Cr.P.C. and also the second statement which would be under the powers in Chapter XII of Cr.P.C. In respect of not even one of the 300 witnesses are there two statements of any these witnesses. Further, PW-259 who takes up the

investigation after registering the FIR does not say that he or any officers examined any of the above 300 witnesses once over again. Thus, the illegality above mentioned stands established.

j) Thus, it is clear that all material gathered during an investigation under Chapter XV had been used as if it were done under Chapter XII. The prosecution has deliberately misguided and misled the Court, taking cognizance of the case. They have also misled the accused by forwarding all the materials to them under Section 207 of the Cr.P.C. Thus, this is total negation of the Code.

VII) <u>COGNIZANCE TAKEN OF THE CASE STANDS VITIATED</u>

a) The PW-259 as I.O had forwarded to the Court whole of the investigation and the documents recovered by PW-240 and later when he investigated the case after registration of the FIR from 18:09:1996 altogether to the Court along with the final report under Section 173(2) of the Code. The petitioner say and submit that the documents submitted to the special Court under Section 173(5) of the Code did not say that the 300 witnesses and huge volume of documents as having been procured and gathered during an enquiry under Section 202 of the Code. On the contrary the prosecution has deliberately misled the Court by treating all those materials as product of investigation under Chapter XII of the Code. It has been pointed out above that the recording of statements from 300 witnesses was not under Chapter XII nor any safeguards while recording a statement under Chapter XII ever followed or observed. Thus, the Learned Spl. Judge has also been misled.

b) For the sake of completeness, the petitioner list out some of list of witnesses who were examined only during in enquiry under Section 202 but, whose statements were furnished along with 173(5) papers to the accused.

c) The accused has made a list which will show that LW.4, 5, 8, 9, 10, 71, 85, 86, 89, 91, 92, 95, 99, 103, 104, 105, 107, 108, 110, 112, 116, 117, 121, 122, 131, 134, 135, 137, 138, 140, 144, 145, 151, 154, 155, 156, 157, 159, 162, 163, 164, 165, 169, 175, 177, 183, 186, 187, 188, 189, 190, 191, 193, 197, 201, 202, 203, 204, 205, 206, 207, 208, 209, 211, 216, 217, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 235, 236, 237, 244, 245, 246, 250, 251, 252, 253, 254, 255, 256, 257, 259, 265, 266, 268, 269, 270, 273, 274, 275, 276, 277 to 284, 286 to 290, 294, 296, 298. Several hundred witnesses were examined only under Section 202 and no further examination has been done after registration of the FIR nor copy furnished to the accused. It is a matter of record and indisputable.

d) It is submitted that in law a Learned Magistrate is entitled to assume that the statements that were forwarded to him under Section 173(5) are the previous statements of witnesses under Section 161 and therefore, they are legally translatable into evidence as the same witnesses would also be examined in the Court. Thus, the Spl. Court, (it is only Court of Magistrate having the original jurisdiction) had been misled into believing statement of 300 witnesses who were all shown in the final report under the caption “list of witnesses” examined and huge volume of documents as product of investigation under Chapter XII. The petitioner

therefore, submits this feature vitiates a cognizance and therefore, the entire case. It cannot be predicated what the Learned Spl. Court would have done had it been appraised of the true facts. Petitioner submits therefore, the cognizance is vitiated and therefore, the entire trial is bad.

e) The police cannot forward along with the chargesheet any document or material that are not product of investigation under Chapter XII at all.

f) The petitioner says and submits the above feature also shows that the prosecution has laid a fraud upon the Court.

g) It is only after completing the investigation in the manner aforesaid charge sheet was filed on 14.6.1997 before the newly constituted Special Court and cognizance taken. The PSJ was completely kept in dark. No details of the enquiry were furnished from time to time nor any report filed.

h) In fact PW-259, as admitted in the cross examination has been continuously filing petitions before the Principal Sessions Judge, seeking extension of time to file the report under section 202. It is only after charge sheet is filed in this case before the then newly constituted special courts and cognizance taken did the prosecution inform The Principal Sessions Judge which was in the nature of faith accompli. Thus the prosecution for all intent and purposes forestalled and prevented the Principal Sessions Judge from exercising any of the options, under section 203 or under section 204 of the Cr.P.C. Thus the malafide ulterior motive of the Government is clear. Thus, the cognizance taken in this case is invalid.

VIII) VIOLATION OF THE REQUIREMENT OF SECTION 207 OF CR.P.C.

a) The accused has also been misled. Just as the Court was mislead in making it believe that all the documents including huge mass of document gathered during investigation under Section 202 and statements of 300 witnesses as one under Chapter XII the accused have also been mislead. All those materials were given to them under Section 207 without ever informing them that those materials are not the product of investigation under Chapter XII of the Code.

b) The accused has also been gravely prejudiced in as much as those 300 statements are not previous statements recorded under Section 161 and could not be used for the purpose of marking the contradiction under Section 145 of the Evidence Act. Thus, there has been a total negation of the provisions of Cr.P.C. It is submitted therefore, the proceedings are unfair and violate Article 21 of the Constitution of India.

c) The above violation of the Code came to the light only when the evidence of PW-240 and 241 were recorded by the Court at the fag end of the trial. It is also noteworthy that there is no Section 161 statement from PW-240, PW-241 and of course from PW-259. Thus, accused had no opportunity to challenge the cognizance and other violations during investigation before framing of the charge and commencement of the trial.

IX) FILING OF THE FINAL REPORT UNDER SECTION 173(2) READ WITH SECTION 170 IS ALSO VITIATED

a) PW-229, Devarajan was Secretary Public Department during the relevant time. He had mentioned about orders of the

Government dated 30:04:1997 and the opinion dated 08:05:1997 of Sri. R. Shanmuga Sundaram, the then State Public Prosecutor. He however, had not described it. The accused in the case summoned those documents from the public department under Section 91 of the Code. This Hon'ble Court called for those records, the records have since been marked produced and marked as Ex.D374. This shows that the final report or charge sheet as is also called had emanated from Director, of Directorate of Vigilance and Anti-Corruption, Chennai Mr. Raghavan I.P.S. He had stated that the Draft charge sheet enclosed by him in the said communication dated 30:04:1997 would be sent to Mr. N. Natarajan Senior Advocate and Spl. Public Prosecutor appointed for the case against A1 and that it will be finalized subject to any change the said Senior Advocate may suggest. The communication dated 08:05:1997 which is also part of the file marked as Ex.D374 says that the chargesheet has been approved by Senior Public Prosecutor Sri. N. Natarajan. The said documents further as the letter in opinion number 220/97, dated 08:05:1997 of Sri. R. Shanmugasundaram, State Public Prosecutor that the draft charge sheet is in order. The file in Ex.D374 has the draft charge sheet also. It is vital and important to note that PW-259 Nallamma Naidu Investigation Officer is no were in the picture. There is no reference to him in the entire proceedings.

b) Thus, it will be seen the final report has come from the Director Vigilance and is seen and approved by the State Public Prosecutor and the Spl. Public Prosecutor for this case. Thus, the final report is not on the …of the opinion of the investigation

officer or SHO. But, one i.e., by the Director and approved by prosecutors.

c) PW-259 when he submitted the charge sheet on the basis of which cognizance had been taken he had suppressed the whole of the above. It is filed as if that the final report had been prepared as per his opinion which it is not. It is submitted nothing can be more wrong and greater violation of the important provisions of the Code than the final report being not that of the investigation officer.

d) The petitioner states and submits that only the investigation officer and no one else can reach a conclusion about filing a charge sheet, against whom and what provisions of law this can never be by some other person.

e) In the constitution bench judgment reported AIR 1995 SC 196 Rishbud V/s State (Judgments Vol.1, Pg. 163) Para 5 It is held as follows: "It is also clear that the final step in the investigation, viz. the formation of the opinion as to whether or not there is a case to place the accused on trial is to be that of the officer in charge of the police station. There is no provision permitting delegation thereof but only a provision entitling superior officers to supervise or participate under Section 551".

f) In R. Sarala V/s T.S. Velu and others 2000 (4) SCC 459 Supreme Court has held a combined operation between investigation officers and Public Prosecutor is not contemplated while filing a final charge sheet. The Hon'ble Supreme Court in para 12 as stated

> It is not in the scheme of the Code for supporting or sponsoring any combined operation between the investigating officer and the Public Prosecutor for filing

the report in the Court.
In the same case in para 15 the Supreme Court has observed as under: In this context we may also point out that the investigating officer, though is subject to supervision by his superiors in rank is, not to take instructions regarding investigation of any particular case even from the executive Government of which he is a subordinate officer. This position which was well delineated by the celebrated Lord Denning has since been followed by this Court. In R. V. Metropolitan Police Commr. Lord Denning. The Hon'ble Supreme Court has extracted the decision of the House of Lords.

g) The same is the ratio in (2013) 2 SCC 1 - Akhilesh Yadav V/s Vishwanath Chathurvedi, para 37 may be seen. These accused therefore submit: That the charge sheet as submitted to the Court is vitiated as also the cognizance and the entire trial.

X) <u>ABSENCE OF PRELIMINARY ENQUIRY</u>

a) There has been no preliminary enquiry in this case. The Hon'ble Supreme Court of India in Serajuddin case – (1970) 1 SCC 595 (Compilation Vol.II at page 34) – has held that a preliminary enquiry is mandatory before registration of FIR. This view has been followed in a long line of decisions of the Hon'ble Supreme Court of India. The recent decision of the Hon'ble Supreme Court of India in Ashok Tshering Bhutia – (2011) 4 SCC 402 (Compilation of Vol.III at page 260) – has held that the necessity for holding a preliminary enquiry has become part of the law and failure to observe the same would be violative of Article 14 of the Constitution of India. The Hon'ble Supreme

Court of India further held in the said decision that it would be an illegality which is incurable under Section 465 Cr.P.C. It is submitted therefore that on this ground alone the entire prosecution against the Accused No.1 is liable to be nullified and held contrary to fair procedure and also violative of Art. 14 and 21 of the Constitution of India.

b) To the above view, the Hon'ble High Court of Madras in the case of G.Malliga and others Vs State 2007 MLJ Crl. Page.86 has further added that in case of offence under Sec. 13(1) (e) of P.C. Act, since the accused has a statutory right to satisfactorily explain the assets in her name, the preliminary enquiry must give an opportunity to the accused to explain the acquisition of the assets in her name. Failure in this regard was held to render the proceedings bad in law requiring the proceedings to be quashed and set aside. Thus there has been a wholesome violation of the necessity to hold a preliminary enquiry.

c) That the requirement of the Preliminary Enquiry is also laid down by the constitution bench judgment reported in 2014 (2) SCC 1 (judgment Vol.2 Pg.151. Para 120-6, 120-7 and 120-8 laid down the above point) Thus there has been clear violation of the mandate of the Hon'ble Supreme Court of India.

d) In this case as stated earlier when enquiry was being conducted under Section 202 the Government hurriedly directed the registration of FIR. No prosecution witness say that he under took the preliminary investigation nor does any prosecution witness say that he did any preliminary investigation and at whose instance. Secondly, if preliminary investigation had been done by somebody in the Vigilance Department there must be some other person to decide the result of such preliminary investigation. There is no evidence in this regard at all. It is

submitted that as held in Bhutia's case 2011 (4) SCC 402 (Judgments Vol.3, Pg. 260) para 17, where the Hon'ble Supreme Court after quoting P.Serajjudin's case (AIR 1971 SC 520) as held that not holding preliminary enquiry is an incurable defect and that to which the provisions of Section 465 has no application. The Supreme Court of India in para17 held as follows:

> This Court in P. Sirajuddin V. State of Madras and State of Haryana v. Bhajan Lal has categorically held that before a public servant is charged with an act of dishonesty which amounts to serious misdemeanour and an FIR is lodged against him, there must be some suitable preliminary enquiry into the allegations by a responsible officer. Such a course has not been on everyone in view of the provisions of Article 141 of the Constitution, an irregularity is not curable nor does it fall within the ambit of Section 465 Cr.PC.

Though, in that case Supreme Court did not invalidate the trial on account of the fact, that the argument was taken up only before the Supreme Court of India. But, in this case the petitioner had urged the same at the earliest point that is available to her the ratio of the judgment have to be applied and the entire trial or the proceedings of the prosecution, may have to be held as invalid and the accused acquitted on this ground alone. It is submitted but for such a course of action the mandatory requirement of law so held by the Hon'ble Supreme Court will then become a dead letter.

XI) FURTHER ILLEGALITIES IN THE INVESTIGATION

INVESTIGATION OFFICERS NOT EMPOWERED UNDER SECTION 17 AND 18 OF P.C. ACT.

Section 17 and 18 are two important provisions relating to investigation of the offence under Section 13 (1)(e) under the P.C. Act. Second proviso section 17 specifically provides where an offence is under clause e of sub section 1 of Section 13 in then that offence it shall not be investigated without the order of the Police Officer not below the rank of the Superindent of Police. It is submitted in this case this salutary and mandatory provision has been totally violated.

i) In this case PW-240 was required to investigate under section 202 of the code by the order passed by the Principal Sessions Judge on the private complaint filed by PW-232-Dr.Samy. In her evidence at Page-5 of the cross examination she names 13 officers below the rank of Superindent whom she had enlisted for investigation under section 202. She says that she gave orders under section 17 of the act she says that she issued orders under Sec 18 to Jeganathan, Datchina Moorthy, P.S.Sethuraman, G.Sankar, Shanmugavelandi, T.Janarthanan and S.Radhakrishnan but she had not issued the orders under section 17 to the said officers. She admits at Page-4 in cross examination that “I am not in a position even after looking into the case dairy, on what date and in what proceedings I have issued orders under section 17 of the act. The same answer is applicable to the proceedings issued under section 18 of the act. It is significant and important no order allegedly issued by her have been marked in evidence through her. It is submitted she being the author of the empowerment she alone would be competent to mark and speak about them had they existed.

ii) It is submitted the officers who have been examined like PW-243, 244 and 256 have not also produced during their examination that they were issued any orders by PW-240 either

under section 17 or 18 of the P.C. Act. Only PW-242 produces Ex.P-2306 allegedly an order under Section 17, dated 8.7.1996 allegedly by PW-240 during an enquiry under section 202 Cr.P.C. It is submitted this empowerment is invalid as it does not contain any reason why such empowerment has been made. The Supreme Court of India in long line of cases have held such a reasons exfacie on the face of the order itself is mandatory otherwise the order of empowerment would be invalid. These cases are dealt with infra.

iii) PW-240 however was admitted that all sorts of bank records pertaining to A1 to A4 and the firms were collected she specifically says Page-4 of her cross examination that she perused records of Canara Bank, Mylapore Branch, Indian Bank, Abhiramapuram Branch, Central Bank, Secunderabad, and Hyderabad Branch, Bank of Madura, Anna Nagar Branch, Canara Bank, Kellies Branch. She does not however says that she personally obtained those documents. Section 18 of the act it is mandatory that only the officer specially empowered under section 18 by the Superindent can secure the bank records. But, no such order issued by PW-240, empowering any officer under Section 18 of the P.C. Act is ever produced. Thus, all the bank records were collected in total contravention of Section 18 of the P.C. Act. Hence, all the documents must be excluded from consideration.

iv) From the above, it would be clear that there has been a total breach of the mandatory provisions of section 17 and 18 of the P.C. Act. It may be recalled that huge volume of document all bank records, other records from Registration Department, Income Tax Department and other Financial Institutions were

collected during the course of investigation under section 202. These documents were eventually relied upon when the charge sheet was filed.

v) It is submitted that question of orally empowering the officers under section 17 and 18 of P.C. Act is invalid. Such procedure is not contemplated in the P.C. Act. It is so held in the decision of the Supreme Court in 2006 (7) SCC 172 State of Andrapradesh Vs Suriya Sankaram Karre (Judgement Vol-2, Page-25).

vi) The crude attempt has been made by the prosecution to produce an order of empowerment in Ex-P.1308 and 1309 under section 17 and 18 allegedly given by PW-241, V.C.Perumal to PW-259. It is submitted this document was not produced along with charge sheet. Further PW-241 had earlier been examined he had not stated that issued any written order of empowerment under section 17 or 18 to Nallamma Naidu, PW-259. Further marking of the document has been objected to. Therefore Ex.2308 and Ex-2309 are created false documents and may not be taken into consideration.

ORDERS PASSED BY PW-241, V.C.PERUMAL UNDER SECTION 17 AND 18 OF P.C. ACT AND THEIR VALIDITY

PW-249 purports to grant empowerment under section 17 to various officers and has marked the following documents

Ex.P-2267 - Jayaprakash

Ex.P-2268 - Karunakaran

Ex.P-2269 - Jayapalan

Ex.P-2270 - Vivekanandan, Kovai

Ex.P.2271 - Sureshkumar, Trichy

Ex.P.2272 - Shanmugavelandi

Ex.P.2308, Ex.P.2309 both given to PW-259, Nallamma Naidu, which has been shown to be unreliable, created documents.

The purported empowerment is invalid for the following reasons.

a) Ex.P-2267 to Ex.P-2272 are shown as proceedings of V.C.Perumal but they do not specifically name anybody by name or designation in the body of the proceedings as the officer who is being empowered under section 17 of the P.C. Act. Hence these orders by no stretch of reasoning can be considered as one empowering a person with powers under Section 17.

b) Such order is contrary to and does not fulfill the requirements of section 15 of General Clauses Act, 1897. Section 15 is extracted for convenience.

> Where, by any or Regulation, a power to appoint any person to fill any office or execute an function is conferred, then, unless it is otherwise expressly provided, any such appointment, if it is made after the commencement of this Act, may be made either by name or by virtue of office.

c) Ordering investigation is not empowerment.

d) PW-241 had not spoken or given evidence in respect of the same.

e) **THE ORDERS ARE INVALID FOR LACK OF REASON.**

f) In any event the orders above mentioned are invalid as they do not contain any reason on the face of the order why officers of the lesser rank than Superindent are being empowered. Long line of Supreme Court judgments have laid down that unless

the orders under section 17 contain reasons on the face of it will be an invalid order. Leading case on this point is State of Haryana Vs Bajanlal 1992 Supp (1) SCC Page-335, Paragraph-121 to 131. (Compilation of Vol.I p.182) Quotes earlier decisions and hold that unless reasons are given on the face of the order it will be invalid.

> *"129. In the present case, there is absolutely no reason, given by the SP in directing the SHO to investigate and as such the order of the SP is directly in violation of the dictum laid down by this Court in several decisions which we have referred to above. Resultantly, we hold that appellant 3, SHO is not clothed with the requisite legal authority within the meaning of the second proviso of Section 5-A(1) of the Act to investigate the offence under clause (e) of Section 5(1) of the Act."*

g) Thus all the orders under section 17/18 of P.C. Act are invalid.

CONSEQUENCES OF INVALIDITY OF ORDERS UNDER SECTION 17 AND 18 OF PC ACT

The Hon'ble Supreme Court of India in Bajanlal's case has held that a valid empowerment under section 17 and 18 are mandatory in nature. Thus investigations done by officers in this case are tainted with illegality. It is submitted therefore the entirety of the evidence is liable to be excluded on the account of illegality there by vitiating the trial itself. In judgment in (2006) 7 SCC Page-172 State Inspector of Police, Vishakhaptnam Vs Surya Sankaram Karri (Judgment Vol-II, Page-25). The Hon'ble Supreme Court has held that investigation by Officer not empowered will have to be termed as unfair and would vitiate the trial. Para-21 makes this position clear.

> *"21. It is true that only on the basis of the illegal investigation a proceeding may not be quashed unless miscarriage of justice is shown, but, in this case, as we have noticed hereinbefore, the respondent had suffered miscarriage of justice as the investigation made by PW.41 was not fair."*

It may be further seen the above case is also in authority for the proposition that the burden is entirely on the prosecution to prove that there has been a proper authorisation for investigation under the P.C. Act. Otherwise investigation will have to be termed as unfair within the meaning of Article 21 of the Constitution of India.

It is submitted for all the above reasons the investigation of the trial are contrary to law substantially different from what is provided under the act and the code. Hence the trial itself is vitiated.

ABSENCE OF PRELIMINARY ENQUIRY

9) It is now a settled law after Sirajuddin case 1970 (1) SCC 595 that no FIR can be registered against a public servant, more so, of a public servant who held a very high office, nay, constitutional office, without a preliminary enquiry. In this case, the Learned Principal Sessions Judge, as stated earlier, has ordered for an enquiry. It is relatable to the power under Section 202 Cr.P.C. The preliminary enquiry was being done by PW-240 Tmt Lathika Sharan. It is in evidence and it is admitted by PW-240, PW-241 and PW-259, that the investigation officer during the enquiry gathered hundreds of documents and about 300 witnesses were examined. In fact PW-259 had applied on 9.9.1996 to the Principal Sessions Judge to grant extension of time by four months for completing the enquiry. But, within nine days thereafter, (i.e.) on 18.9.1996 on the Governmental instruction, the FIR has been registered. Thus, without concluding preliminary enquiry

FIR was registered at the instance of the then Government who are sworn political enemies of the Accused No.1.

10) The Accused No.1 says and submits that a preliminary enquiry is necessary and, on the analysis of the evidence and materials gathered during the enquiry, the SHO must be satisfied that there is a strong suspicion requiring registration of FIR and further enquiry. It is submitted that this vital principle has been observed in breach. Had not the Government intervened and directed the registration of FIR, preliminary enquiry would have revealed that there was no necessity to register a FIR or to proceed with any alleged case against the Accused No.1. Thus the Accused No.1 has been subjected to incalculable harm harassment and prejudice.

11) The Hon'ble Supreme Court of India in Serajuddin case – (1970) 1 SCC 595 – has held that a preliminary enquiry is mandatory before registration of FIR. This view has been followed in a long line of decisions of the Hon'ble Supreme Court of India. The recent decision of the Hon'ble Supreme Court of India in Ashok Tshering Bhutia – (2011) 4 SCC 402 – has held that the necessity for holding a preliminary enquiry has become part of the law and failure to observe the same would be violative of Article 14 of the Constitution of India. The Hon'ble Supreme Court of India further held in the said decision that it would be an illegality which is incurable under Section 465 Cr.P.C. It is submitted therefore that on this ground alone the entire prosecution against the Accused No.1 is liable to be nullified and held contrary to fair procedure and also violative of Art. 14 and 21 of the Constitution of India.

12) To the above view, the Hon'ble High Court of Madras in the case of G.Malliga and others Vs State 2007 MLJ Crl. Page.86 has further added

that in case of offence under Sec. 13(1) (e) of P.C. Act, since the accused has a statutory right to satisfactorily explain the assets in her name, the preliminary enquiry must give an opportunity to the accused to explain the acquisition of the assets in her name. Failure in this regard was held to render the proceedings bad in law requiring the proceedings to be quashed and set aside. Thus there has been a wholesome violation of the necessity to hold a preliminary enquiry.

VIOLATION OF REQUIREMENT OF SEC.207 CR.P.C.

13) As stated earlier, during the course of an enquiry, both PW-241 and PW-259 admitted that, they gathered a number of documents and also stated that about 300 witnesses were examined. PW-241 during cross examination on 20.7.2003 stated that 300 witnesses have been examined during enquiry, he had directed PW-259 to use the documents seized during the enquiry in this case. He further adds that the 300 witnesses have again been examined after registration of FIR by PW-259. But, PW-259 does not say that he examined those witnesses again nor does he say that he forwarded the statements so recorded to the court or given copies to the accused. It is submitted that when the police have enquired and recorded a statement it is referable to only the power under Section 161 Cr.P.C. If so, it is a mandate under Sec.207 Cr.P.C. that copies of all those documents should be forwarded to the court and also copies supplied to the accused. A failure in this regard is a compete negation of the basic requirement to furnish copies of Sec.161 statements to the accused. Thus a fundamental requirement of the code, which, in turn, is designed for a compliance of natural justice, has been violated. The Accused No.1 submits that, even if the version of PW-241 is correct that the 300 witnesses examined during the enquiry have again been examined by I.O. after registration of FIR, then also, the accused has

to be supplied with copies of both the first statement and also the second statement; that is the one recorded during the enquiry and the other supposedly recorded after registration of FIR. The two section 161 statements from the said 300 witnesses have admittedly been not supplied to the accused. Thus the entire trial is vitiated and the accused is gravely prejudiced.

ILLEGAL SEARCHES

14) The Accused No.1 was arrested on 7.12.1996 by CBCID in connection with another case in Crime No.21/96 and incarcerated in Central Prison, Chennai. (She was honorably acquired in that case). The Accused No.1 was so incarcerated up till 3.1.1997 when she was granted conditional bail. Due to ill health she had to be admitted to hospital immediately thereafter.

15) It may be mentioned that earlier A-2 was also arrested and incarcerated.

16) Deliberately, in the absence of A-1 the search of her residence at 36 Poes Garden and her building at 31-A, Poes Garden was done by PW-259. It is only knowing the information that A-1 would be arrested on 7.12.1996 PW-259 applied for warrant for search on 6.12.1996 and effected the search when A-1 was under incarceration. This is deliberate and wanton. It is also contrary to para 81 of DV & AC manual which specifically requires the search of residence and other building shall take place in the presence of the owner against whom the result of the search is intended to be used.

This is not all. PW-259 deliberately with a view to cause maximum embarrassment and discomfort to the Accused No.1 permitted private TV channels to video graph every portion of her house. Not even her private personal photo album was left untouched. Through there was a specific order by the Learned Principal Sessions

Judge, Chennai to take photographs and video graphs by the state films division only. In utter violation of the courts order the I.O. PW 259 permitted private TV channels, particularly, Sun TV which is run by close relatives of president of DMK party which is inimically disposed to the Accused No.1 and her A.I.A.D.M.K. repeatedly telecast all these photos and causing embarrassment, prejudicing the fair trial.

ILLEGAL SEARCHES VIOLATING RIGHT TO PRIVACY

a) The Accused No.1 was arrested on 7.12.1996 by CBCID in connection with another case in Crime No.21/96 and incarcerated in Central Prison, Chennai. (She was honorably acquired in that case). The Accused No.1 was so incarcerated up till 3.1.1997 when she was granted conditional bail. Due to ill health she had to be admitted to hospital immediately thereafter.

b) It may be mentioned that earlier A-2 was also arrested and incarcerated at the relevant time.

c) Deliberately, in the absence of A-1 the search of her residence at 36 Poes Garden and her building at 31-A, Poes Garden was done by PW-259. It is only knowing the information that A-1 would be arrested on 7.12.1996 PW-259 applied for warrant for search on 6.12.1996 and effected the search when A-1 was under incarceration. This is deliberate and wanton. It is also contrary to para 81(6) of DV & AC manual which specifically requires the search of residence and other building shall take place in the presence of the owner against whom the result of the search is intended to be used.

d) This is not all. PW-259 deliberately with a view to cause maximum embarrassment and discomfort to the Accused No.1

permitted private TV channels to video graph every portion of her house. Not even her private personal photo album was left untouched. Through there was a specific order by the Learned Principal Sessions Judge, Chennai to take photographs and video graphs by the state films division only. In utter violation of the courts order the I.O. PW 259 permitted private TV channels, particularly, Sun TV which is run by close relatives of president of DMK party which is inimically disposed to the Accused No.1 and her A.I.A.D.M.K. repeatedly telecast all these photos and causing embarrassment, prejudicing the fair trial.

e) The evidence of PW-259 cross examination at pages 33, 34, 39, 44 is clearly shows that deliberately the searches were conducted when both A1 & A2 were incarcerated. It is extraordinary that PW-259 had the complete possession of the entire house for whole 5 days from 07:12:1996 to 12:12:1996.

f) On behalf of the accused the newspaper the Hindu, Tamil Daily Newspapers “dinakaran” & “Dinamani” all dated 18:12:1996 have been marked as Exp.D12, D13 & D14 respectively. A perusal of the document would show that the police have recorded photographed and videographed every portion of the residence of A1 and the Gold Jewellery and other valuables. The police themselves it is recorded in all the 3 Newspapers had given. All the photographs and videographs requested them for publication. They have only stated that they wanted the details to be published to prevent speculative reporting. However, it is clear that the police have acted in complete disregard of the rights of the accused under the Code and her right to privacy. The police have acted on account of the political masters completely disregarding the rights of the accused. The action of

the police is not only contrary to the manual but, also on account of ulterior motive on his malafide.

g) Right to Privacy one's person, his family his residence are all recognized as flowing from Article 21 of the Constitution of India. Nobody can publish anything or broadcast whether it is intended to show the person in bad taste or laudatory. The decision of the Supreme Court reported in 1994 (6) SCC 632 Rajgopal V/s State (Judgment Vol.2 Pg.45) para 26(1) of the judgment.

Thus the searches were not only illegal and violative of the Code. But, also the binding instructions contained in the DVAC Manual. They have greatly infringed the constitutional protection of right to privacy under Article 21 of the Constitution of India.

XII) ILLEGAL ARREST

a) PW-259 has no answer why formal arrest of A1 was made in this case whereas, he had admitted in his evidence at Pg.35 thus "Generally, we do not arrest the person involved in disproportionate wealth cases". Contrary to this norm he not only arrested A1 but also opposed her bail application by filing a detailed counter. He had further arrested A2 & A3. Thus, the arrest of A1 to A3 are illegal unjustified and shows that the intention of the police are not bonafide but one accentuated by malice.

XIII) FAILURE TO FOLLOW THE PROVISION OF THE DVAC MANUAL WHICH ARE INTENDED FOR THE BENEFIT OF THE ACCUSED

a) Since decision reported in 1998 (1) SCC 226 Veenith Naraian V/s UOI Manual concerning the investigation agency must be scrupulously observed as otherwise the proceeding should be discriminatory and violate under Article 14 of the Constitution of India. This view has been quoted and followed in 2007 1 SCC 630 Shashicanth V/s UOI.

b) The Hon'ble Madras High Court has applied the above decisions of the Supreme Court of India and held that DVAC is similarly, required to follow the DV & AC Manual. In the decision reported in 2012 (3) MWN(Cr.) 380 in P.Paulraj V/s State has invalidated the trial for the failure to follow the provisions of DV & AC Manual.

VIOLATION OF DV & AC MANUAL:- Which has been marked as Ex. D.384

i) Para.60 of the manual requires DVAC officers to search the premises belonging to the accused only in their presence and if necessary the owner of the premises must be issued summons under Section 160 of the Code.

ii) Para 62(2) states "No publicity in the press should be given by detachment office," of the searches or result hereof.

iii) While evaluating immovable property paragraph 73 of the manual says detailed estimation basis should be adopted.

iv) Paragraph 81 of the manual says that it is essential to have the presence of the public servant during evaluation. A notice should be served on the public servant under acknowledgement regarding his presence at the particular time and place on the date of evaluation. Notice may also be served under 160 Cr.P.C.

v) In para 81 (3) DV&AC officials are required to ascertain details on actual or probable period of construction and inform the same to the evaluators.

vi) 81(4) provides executive engineer of PWD to make a report. Thus, other than the cadre of execute engineer others cannot by implication evaluate. It is so further provided in paragraph 81(8) also,

vii) Para 81(7) provides that to ensure all measurements are properly taken signature of the accused public servant in token of having accepted the measurements should be taken in every case of evaluation.

viii) Para 83 requires preliminary investigation have to be conducted before Registering of the regular case.

ix) Para 76 requires final opportunity notice to be given to the accused officers.

x) In para 60 of the manual specifically says that search as also seizure operations cannot be done after the dusk i.e., during the night time. Whereas, a perusal of exp.703 the Mahazar were search of the residence of A1 of 36 Poes Garden show that the proceedings were conducted between 15:30 hrs to on 20:12:1996 till 08:30 hrs on 21:12:1996. This is a violation of the manual. Secondly, in exp.709 the search of 31A Poes Garden as exhibit 709 dated 7:12:1996 show that the observation mahazar continued till 20:30 hrs on the day and as the above document shows it was recommenced at 9.00 pm on that day and continued throughout the night and stopped at 05.00 hrs on the morning of 08:12:1996. Again on 08:12:1996 recommenced at 8.00 am and continued till 13.00 hrs. It was recommenced at 21.30 hrs on 08:12:1996 and continued upto 05.00 hrs on 09:12:1996. Thus, there is total violation of the manual.

As can be seen from the evidence all the above wholesome procedures in favour of the accused have been observed in breach by the police in this case. Hence, on the basis of the decisions of the Supreme Court and on the ground that the procedure therefore has become unfair the investigation and the trial are vitiated.

Factually, all the above provisions have been violated in this case. It is submitted PW-259, at Pg- that no notice was given to the owner while making the search at Hyderabad under various places belonging to A2 in Chennai, Thanjavur and other places.

XIV) <u>DEFECTIVE FINAL OPPORTUNITY NOTICE</u>

a) PW.259 in his statement admits that the final opportunity notice was given to A1 on 14.4.1997 which showed the disproportionate asset at Rs.62,25,20,896. It is important to note that PW.181 was not examined at that stage nor the expenditure towards marriage of A3 included in the above said final opportunity notice. Thus knowing full well that the marriage expenditure relating to A3 had been done by the brides family. PW.259 had not included the same in the expenditure of A1. After giving the final opportunity notice as an afterthought the expenditure has been computed and included as an expenditure explainable by A1. Thus the final opportunity notice given in this case which is Ex.2318 is not indented to be meaningful or proper. When final charge sheet is laid the disproportionate asset is shown as Rs.66,65,20,395/-. Thus in law there cannot said to be a proper final opportunity notice given to the accused thereby prejudices her.

b) The procedure relating to this expenditure is also contrary to para 76 of the DVAC manual which requires investigation officer to communicate in writing to the charged official and record the detailed statement with regard to each and income expenditure. This is further required and emphasized in para 31 of DVAC manual. The accused has marked in DVAC manual through DW.99 as Ex.D384.

c) NON PUBLIC SERVANT BUT ACCUSED IN THIS CASE MUST ALSO BE GIVEN FINAL OPPORTUNITY NOTICE.

d) Petitioner submits that A2 & A4 have been implicated in this case as co-conspirators and abettors. If according to the prosecution they are holding the property on behalf of the public servant then, the other accused must also be given an opportunity to explain the acquisition of the properties in their name. It is submitted that session opportunity ought to be extended to the non public servant also as they are the apparent owners. This will be the plane requirement of natural justice. Admittedly, no such opportunity notice is given to A2 to Á4 before the final report was filed. Therefore, the proceedings are is ex facie invalid on this ground also

e) It is submitted that non public servant must also be given a final opportunity notice. As they also must have opportunity before they are included to explain the source of the property in their possession.

XV) <u>PROCEDURE IN VIOLATION OF ARTICLE 14 AND DISCRIMINATING THE ACCUSED.</u>

PW-259 I.O. writes to Government to constitute two committees to evaluate various buildings and constructions in this case. The

Government obliges and directs constitution of two committees. This is clear from proceedings of the Chief Engineer Ex-D310.

These two committee have been expressly told that they have to evaluate the buildings to be used as an evidence in the disproportionate assets case of former Chief Minister Selvi J. Jayalalithaa. This by itself has taken a way the independence of the experts and committee members.

How could the investigation officer write to Government to constitute committee for evaluation of the properties in this case. It is a duty of I.O. only. Nor can the government oblige PW-259 and use the Government machinery and the serving PWD officers to evaluate the buildings. In no other case of the disproportionate asset of a public servant has the Government constituted committee to evaluate the buildings. Thus, hostile discrimination is patent in this case. This by itself is discriminatory under Article 14 of the Constitution of India. Whole of the report of the two committee are liable to be eschewed from consideration.

All or anyone of the above aspect which shall vitiate the trial and have also caused grave prejudice to the accused.

XVI) ADVERSE INFERENCE TO BE DRAWN AGAINST THE PROSECUTION

PRELIMINARY SUBMISSIONS

a) The petitioner says and submits that in the celebrated book Principles of Statutory Interpretation by Justice GP Singh 13th Edition, 2012 at page 495 it is mentioned as follows:

> "It is an application of the same principle that unless there is a clearest provision to the contrary, Parliament is presumed not to legist contrary to Rule of Law which enforces "Minimum standards of fairness both

substantive and procedural thus a statutory power though conferred on wide terms as certain implied limitations."

b) The said learned author has quoted the decision of the House of Lords in Regina Vs. Secretary reported in 1997 3 All E.R.577 = 1997 (3) WLR 492 at page 505. This passage occurs

> "However widely the power is expressed in the statute, it does not authorize that power to be exercised otherwise than in accordance with fair procedure".

c) It is submitted this is also the law in our country as since Menaka Gandhi's case in 1978 the Hon'ble Supreme Court of India has laid down that every power must be exercised and must be judged on the touchstone of reasonableness, fairness and justness.

d) Every facet of investigation have violated this important principle. The following will some of them on the basis of the same it would be necessary to draw adverse inference against the prosecution.

i) The prosecution has added huge amount of money as having been expended in the constructions. The said A1 in this case is admittedly an income tax assessee long time for long number of years before commencement of the check period in 1991. She had incurred the expenditure for construction of the period at Chennai as well as at Hyderabad only through cheque except a negligible portion. She had filed returns including for the assessment year 1996-97 by October 1996. Kindly see Ex….. and …. which are the returns for the years 1995-96. Therefore these details were available earlier to the filing of the charge sheet which was done only on 4th June 1997. Therefore prosecution ought to have considered this aspect. Secondly, more importantly prosecution had collected and taken all the details of her

bank statement from Canara Bank, Mylapore Branch, Indian Bank, Abhiramapuram Branch, etc., the prosecution has deliberately omitted and over looked the expenses disclosed on the construction at Chennai and Hyderabad. If these details including bank statements had been properly seen, it would have given a complete picture of the expenditure incurred by A1 in the renovation of 36 Poes Garden, new construction at 31A Poes Garden and the construction of farm house at Hyderabad. As will be seen from the evidence of DW.64, the bank statements and her return were ultimately accepted by the income tax department.

b) In this regard, a bare perusal of Ex.D211 which is a letter written by the Auditor enclosing in the annexures the complete details of expenditure towards construction. These documents also show most of the bills, vouchers, invoices and supplies were made of various products like marble etc. were also furnished, the cheques given contemporaneously in 1995 have been detailed. This documents shows, among other things the following details:

i) Payment to Vijay Shankar, Architect of Rs.40,000/- in two cheques for the Madras and Hyderabad drawings. Instead of taking this amount imaginative figure of 7.5% of total value is shown as architect fee. This Vijay Shankar has been examined during investigation as LW.822. He was however not examined in Court. Further a perusal of his 161 statement, only for this purpose will show not even one question is asked as to what remuneration he received for making drawings for construction.

ii) The cheque have been issued by A1 even in the year 1995 towards construction as seen from Ex.D211 to the following persons:

Cheque date	Amount (Rs.)

a) BBL gallery	13.09.1995	1,28,530
b) A.Vijay Shankar	05.04.1995, 20.07.1995	40,000
c) Landscape gardening	13.7.1995	35,000
d) Senthil Traders	17.5.1995	3,490
e) New Diamond Granite Exports	20.8.1995, 1.9.1995	3,48,160
f) Pankaj Electricals	27.11.1995, 4.1.1996, 29.1.1996	1,04,495
g) S.Krishnamurthy & Sons	25.04.1995, 07.06.1995 29.09.1995, 10.11.1995 08.01.1996	1,27,570

iii) This Krishnamurthy who is the Contractor has been examined as LW.65. He was also not examined in Court. No reason is assigned by I.O. why they have not been examined. Thus no effort is made by the prosecution to ascertain the actual expenditure incurred by the accused. They have launched a speculative valuation by leading the evidence of valuators who are not independent and those reports are otherwise unreliable.

B) Huge amount of 6.45 crores is sought to be added on the ground that A1 has spent for the marriage of A3. Surprisingly only a few witnesses have been examined.

i) PW.259 says that he inspected all income tax records particularly of A1. It would have shown him that even the department immediately after marriage have stated that A1 had spent about 97 lakhs towards marriage and why that amount should not be added as an unexplained expenditure. Her contemporaneous explanation that she did not spend so much money and what amount was spent were all part of I.T. records. Instead of launching an a speculative expenditure PW.259 ought to have considered the basis on which income tax department originally estimated the amount of expenditure

as also her explanation. These materials were available in the year 1995. The defence has produced letter as Ex.D69.

ii) In this regard, prosecution examined Adhirajaram as LW.724 he was examined and had given a sworn statement before I.T. authorities regarding the marriage expenditure. This witness was also not examined by the prosecution.

iii) PW.181 is examined to show that the cost of marriage pandal was over five crores. He for his report relies upon what was told by six persons who are named in his report. Among them are the art director Thottadharani his assistant Ramesh Kumar and another art director Gopikanth. These persons are examined as LW..... respectively. None of them were examined in Court.

iv) In this regard, PW.200, K.P.Muthusamy says in evidence who are the pandal contractors and names them. Deliberately none of them are examined by police.

v) Huge expenditure is made on the ground of expenses towards food. Only one cook PW.224 is examined to show that he received certain moneys by bride's family. No supplier of cooking items examined.

vi) No member of bride's family is examined in Court. PW.259 though admits that he examined G.Ramkumar, uncle of the bride of A3 and also Prof. Narayanasamy the father-in-law of A3 during investigation, none of them examined in Court.

vii) A1 has received gifts during her birthday in 1992. In this regard, 75 witnesses were examined according to PW.259 during investigation and statement recorded. None of them examined in Court.

viii) Similarly for A2, A3 and A4 also no contractor is examined. No supplier of any building material examined. In the entire valuation reports not even one document relating to quotation or invoice to show the valuation of material is enclosed. Thus the prosecution has made a concerted effort to screen all relevant evidence and produce convoluted illegal valuation reports to somehow implicate A1 in this offence. In the evidence of PW.259 he does not give any reason why he had chosen not examined in the Court any of the above witnesses or mark in the documents above referred to which had undoubted relevance nay a decisive evidentiary value.

XVII) <u>LAW ON THE POINT OF NECESSITY TO DRAW ADVERSE INFERENCE AGAINST PROSECUTION</u>

i) It is submitted that it would be necessary and an inevitable consequences in law to draw adverse inference against prosecution. In the earliest judgment reported in AIR 1954 Supreme Court 51 (Vol. 41) Habeeb Mohammad Vs. State the Hon'ble Supreme Court has rendered as follows in para 11:

> "It is the bounden duty of the prosecution to examine a material witness, particularly when no allegation has been made that, if produced, he would not speak the truth. Not only does an adverse inference arise against the prosecution case from his non-production as a witness in view of illustration (g) to Section 114 of the Evidence Act, but the circumstances of his being withheld from the court casts a serious reflection on the fairness of the trial. AIR 1936 PC 289, Rel. on. AIR 1945 PC 42, Distinguished."

ii) This judgment is an authority for the proposition that not only adverse inference drawn against prosecution which flows from application of Section 114(g) of the Evidence Act, but also trial itself becomes unfair.

This judgment has been repeatedly followed.

AIR 1968 Supreme Court 1402 para 14 & 15

1987 Crl. Law Journal 180 (Kerala High Court Division Bench) Paragraph 11.

> "Thus it will be seen that not only illegalities were committed during investigation, filing of the charge sheet and the above aspect will show that illegalities continued even during trial. On account of it the entire substratum of the prosecution case has become unfair. This will violate Article 21 of the Constitution".

XVIII. EFFECT OF THE VIOLATIONS OF PROCEDURE IN THE CONDUCT OF THE CASE AS WELL AS IN THE INVESTIGATION AND ITS EFFECT

The petitioner submits that the above aspect has to be seen from two broad aspects:

a) The violations of procedure during investigation pointed out above are very grave totally violative of the police powers as well the provisions of the Criminal Procedure Code. Consequently the accused are being tried in a manner substantially different from that it is provided under the Cr.PC, therefore the trial is invalid. The accused must be acquitted on this basis alone. This is more so when cognizance itself is invalid as the Special Judge has been misled in the manner afore said in considering the 300 statements of witnesses as recorded under Section 161 Cr.PC when they were not.

b) The second aspect is this Hon'ble Court may have to, nay, it is submitted that as a duty to remedy and rectify the defects. In this regard, the question of the prejudice is caused to the accused on

account of the errors in procedure pointed out above would not arise. This is for two reasons:

XIX) <u>GRAVE PREJUDICE CAUSED TO ACCUSED.</u>

Petitioner says and submits that Section 465 of Cr.PC states that findings of sentence not reversible on account of error or irregularity in the procedure. It is submitted it is important to note that the said Section has no application when such errors of procedure are pointed out and shown before the trial court itself. The section only says that findings or sentence is not reversible in an appeal or proceedings for confirmation or revision unless the accused can show failure of justice has in fact been occasioned. Hence, plainly this section has no application where violation of procedures are pointed out in the trial court itself.

Secondly on account of the decision of the Constitution Bench reported in Rishbud Vs. State where the Supreme Court of India stated that (compilation of Vol.I page 163) where breach of monetary conditions is brought to the knowledge of the Court plainly the duty is cast on the grave to remedy it. The Supreme Court of India after noticing that in violation of Section 5A of the P.C. Act, 1947 found that the officers who investigated an offence under Section 5(1)(e) were not so authorised to investigate by the learned Magistrate and authorization subsequently obtained was of no consequence. In such circumstances, the Supreme Court of India set aside the charges and remanded the matter with the following observations.

> *"It is in the light of the above considerations that the validity or otherwise of the objection to the violation of Section 5(4) of the Act has to be decided and the course to be adopted in these proceedings determined."*

In this case also, it has been demonstrated that there has been no authorization to any other officers under Section 17 & 18 including to PW.259 and therefore the proceedings are equally vitiated as in the above said case of the Supreme Court of India.

The petitioner submits that she could not have brought these to the knowledge of this Hon'ble Court as these documents are brought to the Court and marked through PW.259 (Ex.P2308 and 2309). The other exhibits as mentioned earlier were also marked in that through PW.241 under the trial. Therefore the petitioner came to know about the violation only now and therefore the objections are taken.

The petitioner says and submits that the question of prejudice is not within the province of this Hon'ble Court as plainly Section 465 does not apply.

If the proceedings are held in a manner substantially different from the Code, the proceedings cannot be saved more so after Hon'ble Supreme Court of India has applied the requirement of fair procedure under Article 21 of the Constitution. The decision of the Privi Council reported in 1947 PC 67 Pullukuri Kottaya Vs. State may be seen. (paragraph 6 Vol. II page 82). Section 537 quoted therein in the judgment is the present 465 Cr.PC. As stated earlier, the said Section has no application therefore the judgment of Privi Council is understood in that light.

XX) INGREDIENTS OF OFFENCE UNDER SECTION 13(1)(e) AND THE EFFECT OF THE EXPLANATION

a) Before dealing with the merits of the case, the Accused No.1 deems it appropriate to briefly mention the ingredients of offence under Section 13(1) (e) of P.C. Act 1988 and the nature of burden of proof on the prosecution and the accused. The Hon'ble Supreme Court of India in its decision reported in 1992 (4) SCC 45 – M. Krishna Reddy Vs State mentions about the ingredients of offence as follows:

> "To substantiate a charge under Section 5(1)(e) of PC Act 1947, the prosecution must prove the following ingredients, namely, (1) the prosecution must establish that the accused is a public servant, (2) the nature and extent of the pecuniary resources or property which were found in his possession (3) it must be proved as to what were his known sources of income, i.e. known to the prosecution and (4) it must prove, quite objectively, that such resources or property found in possession of the accused were disproportionate to his own known sources of income. Once the above ingredients are satisfactorily established, the offence of criminal misconduct under Sec. 5(1) (e) P.C. Act 1947 is complete, unless the accused is able to account for such resources or property. In other words, only after the prosecution has proved the required ingredients, the burden of satisfactorily accounting for the possession of such resources or property shifts to the accused."

b) Thus it could be seen that only if the prosecution establishes that the accused has the assets the value of which must be established by proof beyond reasonable doubt, only then the burden of satisfactorily explaining them would shift to the accused. That burden of satisfactorily explaining is not so onerous as it is cast on the prosecution, but only that of in a civil case by preponderance of probabilities. The Hon'ble Supreme Court of India in – State of

Maharashtra Vs Wasudeo Ramachadra - (1981) 3 SCC 199 - explains it as follows:

> "The extent and nature of burden of proof resting on the public servant found to be in possession of disproportionate asset under Sec. 5(1)(e) of P.C. Act 1947 cannot be higher than the test laid down by the Court in Thingon case, (1935 A.C.462) that is to establish his case by preponderance of probabilities This position in law is also reiterated in later decisions including 1987 (Supp) SCC 379 – State Vs Pallonji – and the host of other cases".

c) The two aspects, one on the prosecution to prove their case beyond reasonable doubt and the other, the burden of the accused to satisfactorily explain only on the test of preponderance of probabilities may have to be kept in view as a loudstar.

d) Therefore the prosecution must establish each item of asset or expenditure beyond reasonable doubt. Unless the prosecution proves the value of assets beyond reasonable doubt, the burden to satisfactorily explain them will not shift to the accused.

e) Section 13 Criminal misconduct by a public servant:- 1) A public servant is said to commit the offence of criminal misconduct.

f) Section 13(1) (e) that if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

EXPLANATION:- For the purposes of this section, "known sources of income" means income received from any lawful source and such

receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.

i) As far as the main section is concerned the ingredients of the offence remain the same under the previous 1947 Act, Sec 5(1)(e) and Section 13(1)(e) of 1988 Act. The scope of the main Section is laid down by the Supreme Court of India in a series of cases and they have been given earlier. For the sake of completion, the references are given hereunder: (1977) 1 SCC 816 – Krishnanand Agnihotri Vs. The State of Madhya Pradesh, 2 (1981) 3 SCC 199 - State of Maharashtra vs. Wasudeo Ramachandra Kaidawar & 3 (1992) 4 SCC 45 – M. Krishna Reddy Vs. State Deputy Superintendent of Police, Hyderabad. These judgments were also quoted and followed in Bhajanlal V/s State of Haryana by the Hon'ble Supreme Court of India (1992) Supp. (1) SCC 335.

What does the explanation require to be established and what burden it passes on to an accused.

The issue can be considered in the following aspects.

EFFECT OF AND PURPOSE OF AN EXPLANATION. It appears to be a settled rule of interpretation that purpose of an explanation is to elucidate the main Section and not add to or vary the main section. The passage from the decision of the Supreme Court interpreting explanation VIII to CPC may be seen. The judgment is Sulochana Amma V/s Narayanan Nair reported in (1994) 2 SCC 14 is "It is settled law that explanation to a section is not a substantive provision by itself. It is entitled to explain the meaning of the words contained in the section or clarify certain ambiguities or clear them up. It becomes a part and parcel of the enactment. Its meaning must depend upon its terms. Sometimes it would be added to include something within it or to

exclude from the ambit of the main provision or some condition or words occurring in it. Therefore, the explanation normally should be so read as to harmonise with and to clear up any ambiguity in the same section". So, how to understand an explanation to the section is laid down in the above said authority.

ii) From the above it follows that the ingredients of Section 13(1)(e) is same as under Section 5(1)(e). The prosecution, even under Section 13(1)(e) has to prove beyond reasonable doubt the value of the property possessed by the public servant and show how it exceeds his known sources of income. This has to be done by prosecution by adducing evidence which must be of a degree to amount to proof beyond reasonable doubt. It is only on such proof the burden of explaining anything including as provided under the explanation would arise and shift to the accused.

iii) The explanation states the known sources of income received by a public servant should be a lawful source. Secondly, such receipt has been intimated in accordance with provision of any law, rules or orders for the time being applicable to a public servant. The petitioner has established that all her resources and income are lawful and is not shown by the Income Tax Authorities who went into this question in respect of each one of the item of income and have not held them to be from any unlawful source. Thus, not only the assertion of the accused but by judicial determination it has been held and that the income/receipt by the A1 to be lawful. Thirdly, no prosecution witness, not even the I.O, PW-259, have stated in respect of any income or receipt that A1 is not entitled to take that income/receipt into consideration on account of the same in any way being unlawful. Thus, the first ingredient of the explanation is fully satisfied.

iv) The second requirement of the explanation is “such receipt has been intimated in accordance with provisions of any law rules and order for the time being applicable to a public servant”.

v) The petitioner submits the prosecution has not marked any rule, regulation under which a Chief Minister of the State is required to intimate her income or property details to any authority or body to disproportionate the known source of income.

vi) Neither PW-259 nor any other I.O. in this case have deposed or spoken that A1had not given intimation as required of a Chief Minister of a State in accordance with any rules or orders for the time being in force or that she had not complied with the requirements of the explanation under Section 13(1)(e) of the Act. There is total lack of evidence in this regard.

vii) The petitioner further submits consequent to the above, when A1 was examined under Section 313 of the Code, no question has been put to her that she had failed to give an intimation as required of her under any rule or orders that was in force. Thus, neither the rules or orders have been brought on record nor any question asked to A1. Therefore, on a factual aspect prosecution is not entitled to, and have not, urged that there has been any contravention of the explanation to Section 13(1)(e) of the Act.

viii) Without prejudice to the above submission the petitioner, A1 submits that she was at all relevant times the Chief Minister of State of Tamil Nadu. She was no doubt a public servant. But, she could not be characterized as a Government servant as she was not appointed by the Government under any of its services. Thus, the Government conduct rules do not apply to a Chief Minister.

ix) The decision of the Madras High Court reported in CDJ 2002 MHC 782 = 2001 Supp CTC, Page 1 (J.Jayalalitha and five others V/s State represented by Additional Superintendent of Police, CBCID,

Chennai has gone into this question and Hon'ble Madras High Court has held that Government conduct rules (which was marked as an exhibit in that case) are non-statutory rules and therefore, are not enforcible. At the end of para 89, the Hon'ble Court held as follows: "The Code of Conduct does not contemplate any consequence of non-compliance of the Code and therefore, a non-statutory Code of Conduct will not give rise to any civil action. In fact, in the above judgment, the High Court has held that non-statutory rules are not enforceable".

x) In the said judgment, the Madras High Court has further quoted extensively from the Full Bench of the Andhra Pradesh High Court in Vidadala Harinadhababu V/s N.T. Ramarao reported in A.I.R, 1990 A.P.20, and held at the end of para 90 "I am in respectful agreement with the views expressed by the Full Bench of the Andhra Pradesh High Court and hold that the Code of Conduct cannot be enforced by the courts". This judgment is enclosed in compilation of judgments Vol.6, Page 1 onwards.

xi) This judgment of the Madras High Court has been affirmed by the Hon'ble Supreme Court of India in State of Tamil Nadu V/s J.Jayalalithaa reported in 2004 (2) SCC Pg……

xii) The petitioner says and submits that the explanation to Section 13(1)(e) has also been considered in depth by the recent decision by the Hon'ble Supreme Court of India reported in Ashok Tshering Bhutia V/s State of Sikkim reported in (2011) 4 SCC 402. (Compilation of Judgments Vol.3, Pg.260). In this case, the Hon'ble Supreme Court considered the effect of Rule 19 of 1981 Rules governing the Conduct of Government servants which require Government servants to file in the prescribed form the details of their income and property. The accused in that case at the instance of his superiors, that too after registration of FIR, alone filed the income and

assets statements on a plain paper. The Hon'ble Apex Court on facts found that the rules had not provided the form in which to file the return as afore said. The Hon'ble Supreme Court of India held in para 35 "The document Ex.D4 could not be rejected merely on the ground that he had been submitted the return after lodging of the FIR. The Hon'ble Supreme Court of India held:

xiii) Merely because the accused Government Servant had submitted the return of the income and assets as required of him under 1981 conduct rules after registration of the FIR.

xiv) In a plain paper and not in the prescribed form. Will not result in rejection of the accrual of income/receipts pleaded by him. The Hon'ble Supreme Court held if he had not complied with the conduct rules, perhaps it may expose him to the prescribed disciplinary proceedings. The violation, however, will not make the income/receipt not liable to be taken into consideration while dealing with a case under Section 13(1) (e) of P.C. Act.

xv) Having regard to the importance of this case, the operative portion of para 36 is extracted herein.

> "In this regard, we are of the considered view that the courts below have committed a grave error and the contents thereof should have been examined".

xvi) The Hon'ble Supreme Court of India in the said judgment has further held in para 40 as follows. Having regard to its importance, the entire para 40 is extracted herein.

> "*The contention of the respondents regarding non-compliance with the 1981 Rules adversely affecting the evidentiary value of Ext. D-4 must be rejected for at least two reasons:*
>
> *i) The 1981 Rules are not rules of evidence. The admissibility and probative value of evidence is determined under the provisions of the Evidence Act,*

1872. These Rules are merely service rules by which government servants in Sikkim are expected to abide. Consequently, the respondent has not been able to provide any cogent reason why the contents of Ext.D-4 should be disregarded; and

ii) Rule 19(i) of the 1981 Rules does undoubtedly require government servants to, on first appointment to any service or post and thereafter at the close of every financial year, submit to the Government the return of their assets and liabilities. However, it is to be noted that the said Rule envisages that public servants will submit such returns in a prescribed form despite being repeatedly questioned by this Court, the respondents were unable to produce such form. Thus, it cannot be said that the appellant did not comply with the said Rule as in the absence of such a form it was impossible for him to have done so (though no fault of his own). In any event, failing to submit such returns even if there had been no such a form, would make the appellant liable to face disciplinary proceedings under the service rules applicable at the relevant time. The provisions of the 1981 Rules cannot by any stretch of imagination be said to have the effect of rendering evidence inadmissible in criminal proceedings under the PC Act, 1988.

Thus, in such a fact situation, the appellant could not be fastened with criminal liability for want of compliance with the said requirement of the Rules".

xvii) It may be further seen that the explanation to Section 13(1)(e) also says receipt of income having been intimated in accordance with any law for the time being in force. A1 had filed the returns under the I.T Act in November 1992 and thereafter she had filed the returns for all subsequent years including for the assessment year 1996-1997 by October 1996. Even though there was some delay in filing the return under the I.T. Act, the reasons were assigned for late filing of the return which reasons and explanations have been found to be proper and justified by Income Tax Authorities

themselves. Those proceedings have also been marked in this case. Thus, A1 had disclosed the income and expenditure as per the provisions of the Income Tax Act, which have all accepted the returns filed by her substantially as correct.

XXI) EXPLANATION TO SECTION 13(1)(e) IS APPLICABLE TO GOVERNMENT SERVANT AND NOT TO OTHERS

It is submitted that as regards the other firms and other companies which are separate legal entities there is no obligations and explanation as no application to them. Even so, two firms Jaya Publication and Shashi Enterprises in which alone A1 is a partner, Income Tax returns have been filed, orders of assessment covering the entire check period has been filed. Thus, Section 13(1)(e) and its requirements have been fully complied with by the accused in this case.

It is submitted that the non-public servant including the entities like companies cannot be called upon to give any explanation. This is because the requirement to give an explanation in respect of the property would arise only if prosecution has led acceptable evidence that the property though nominally stands in the name of a non-public servant or entity like a company it really is the property of the public servant. In other words, if a non-public servant and entities like the companies prove that the source of funds for acquisition of property had not emanated from the public servant that itself would be sufficient.

XXII) THE BENAMI NATURE IN RESPECT OF THE PROPERTY IN THE NAME OF THE NON-PUBLIC SERVANT TO BE ESTABLISHED BY THE PROSECUTION

i) This accused submits that the burden is entirely on the prosecution to show that the property purchased by and standing in the name of non-public servant are benami properties of A1. Section 13(1)(e) says “if he or any person on his behalf is in possession of”. This section has been interpreted by long line of judgments of the Hon’ble Supreme Court of India and which have been followed by various judgments of the High Courts. All the judgments have uniformly taken the view that if a property stands in the name of a non-public servant, even if such a person is the close relative of the public servant still the prosecution has the initial burden to prove that the property so standing in the name of the relative or non-public servant is benami holding of the public servant. Thus the prosecution must affirmatively proved that the person in whose name the property stands is the benamidar of the public servant.

ii) What is required to prove benami character appears to be well settled. The proof of benami has to be led by the person who alleges the benami character of the holding is also well settled. The Hon’ble Supreme Court of India, being fully conscious of this position in law has stated that the difficulties in proving benami character of the holding, however could not relieve the prosecution of the heavy owners that lies upon them to prove the benami holding of the property by a non-public servant. In the earliest judgment Krishnanand Agnihotri Vs. State of M.P. reported in 1977 (1) SCC 816 (page 7 of Vol. III) of the Compilation of judgments.

> “The burden of showing that a particular transaction is benami and the appellant owner is not the real owner always rests on the person asserting it to be so and this burden has to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of benami or establish

> circumstance unerringly and reasonably raising an inference of that fact."

The said judgment has been followed in various subsequent cases of the Supreme Court of India.

iii) In M.Krishna Reddy Vs. State reported in 1992 4 SCC 45 (page 44 of the compilation). In para 19 of the judgment the Krishnanand Agnihotri case was cited and the very passage extracted above was quoted and the Hon'ble Supreme Court held that benami character has to be proved.

iv) This leaves to the question what requires to be established to prove benami character. The leading judgment on this question appears to be the decision in Jayadayal Poddar Vs. State reported in AIR 1994 . The following passage in the judgment has become lucas classicas on the topic. This extended passage is extracted herein for easy reference.

> "It is well settled that the burden of showing that a particular transaction is benami and the appellant owner is not the real owner always rests on the person asserting it to be so and thus burden has to be strictly discharged by adducing legal evidence of a definite character which would either directly prove the fact of benami or establish circumstances unerringly and reasonably raising an inference of that fact. The essence of benami is the intention of the parties and not unoften, such intention is shrouded in a thick veil which cannot be easily pierced though. But such difficulties do not relieve the person asserting the transaction to be benami of the serious onus that rests on him, nor justify the acceptance of mere conjectures or surmises as a substitute for proof".

It is submitted this dictum of what nature of proof is required to prove benami character has been accepted in all other subsequent judgments and it could be stated without fear of contradiction that the

said judgment as never been varied or anyway distinguished. The requirements to prove benami as per the above judgment is summarized as under:

Thus the initial burden in respect of each of the property or pecuniary resource standing in the name of non-public servant is on the prosecution to show the benami character in respect of the said property or pecuniary resource. This burden is to be discharged by leading evidence that would satisfy the above dictum. It is only where such evidence has been let in by the prosecution then, then only the burden of satisfactorily explaining the same could be placed on the public servant. It is submitted that the prosecution evidence in this regard he is wholly does not satisfy the above requirement of law. Therefore the owners of proof cannot said it to have been shifted to the accused at all. It is submitted this core issue will clearly show that every property and construction done in this case other than that which stands in the name of A1 herself, the burden of explaining the same could not be cast upon her.

CHARGES :- THE CORRECT TRANSLATION

The Special Court at Chennai framed charges in Tamil which was also understood by the accused that they are all familiar with Tamil. However after the case was transferred to Special Court at Bangalore all the depositions which were recorded only in Tamil language were translated into English. However the charge as such appears not to have been translated during that process.

While so, during the course of arguments for A1 will become clear that this Hon'ble Court had a translation said to have been done in 1998. The accused and their counsel came to know about the same

only while commenting upon the charges as were framed. It is only then an application was made and certified copy of the translated version of charges as was available in the court was obtained. The accused found the charges in the court was defective on material particulars. The correct translation of charges was therefore filed before this Hon'ble Court and were taken on file.

Petitioner says and submits that this Hon'ble Court ought to have received an official translation particularly when the accused have pointed out the translated charges available before this Hon'ble Court is highly defective. This becomes a core issue as there could not be a situation of the accused having a different then that of the Court.

The charges framed are highly defective and by this itself have gravely violated Section 212,213 & 218 such that the entire trial stands vitiated. Among other things the charges were framed is highly defective.

It is submitted for all any one of the reasons the charges framed is highly defective and does not give the accused a prescise case to meet. The prevent plea to alter the charges to make the same in accordance with the requirements of the code, it is submitted ought to have been accepted. Thus the accused have been gravely prejudiced.

16) The charge of abetment is and can only be an individual act of abetment. If so the charge ought to segregate the alleged property/pecuniary resource in respect of each of the accused. This is a bare minimum required of a valid charge.

17) The charge does not identify the names of the Business Enterprises which are alleged to have been floated in the names of A2 to A4. In fact the charge does not even mention the names of these Business Enterprises.

18) The learned Judge failed to see that even though charge No.1 is framed for the purposes of charging the accused with conspiracy, mere mention of the 32 business enterprises without even their names or identity would vitiate the charge in entirety.

19) The learned Judge failed to see that the charge does not put the petitioners/accused 2 to 4 on notice as to which alleged pecuniary resource or which property is being held as disproportionate asset and on behalf of A1.

20) The learned Judge failed to see that in an offence of disproportionate asset, especially where such assets are alleged to have been held by non-public servants on behalf of the public servant, it is absolutely necessary to put such non-public servant on notice as to which of the assets of the non-public servant are being attributed to the public servant as distinct from the assets of the non-public servants themselves, as otherwise such non-public servant Accused are seriously disadvantaged and misled whilst dealing with the charge.

21) The learned Judge failed to see that qua the assets of a non-public servant the law is that apparent is real and therefore there is no presumption that the assets which stand in the name of a non-public servant like the petitioners belong to A1. By not giving the particulars of the properties or pecuniary resources, the accused are deprived of a proper opportunity to deal with the charges.

XXIII) <u>SECONDARY EVIDENCE ADMITTED IN THIS CASE</u>

a) In this case, the accused have summoned various documents of the income tax department under Section 91 Cr.PC. Many of them were produced and also marked in evidence through the witness including an income tax officer. It is submitted that there could be no controversy on this aspect. Some of the documents and balance

sheets which have been sent for, have however not been produced. This Hon'ble Court while admitting those documents in evidence found that it was certified by the Auditor deals with the matter as true copy had noted in the deposition itself that the secondary evidence is admissible as the department had not produced the original copy with them and therefore the same is admissible as a secondary evidence.

b) It is submitted that as far as this Hon'ble Court is concerned, the decision taken to admit the secondary evidence cannot be reviewed.

In this regard, the petitioner seeks to rely upon the decision reported in (2003) 8 SCC 752 R.V.E.Venkatachala Gounder Vs. Arulmigu Visweswaran Temple. The Hon'ble Supreme Court and video copy of a certified copy of the decision given by the Geroge Commissioner was produced and marked in evidence and there was no objection at the time of marking of the document. In this context, the Supreme Court has observed as follows:

> "Page 764 in para 20 : Ordinarily, an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes: (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as "an exhibit", an objection as to its admissibility is not excluded and is available to the raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken when the evidence is tendered and once the document has been admitted in evidence and marked as

> an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The latter proposition is a rule of fair play".

There is a distinction between the admissibility as a mode of proof. The Hon'ble Supreme Court also held that where the objections have not taken into account to object the same at a later stage to render the proceedings unfair. This case has been subsequently followed. Hence the records and documents produced by the accused are admissible in evidence as mode of proof alone could be objected, but was not done at the time of marking. Hence the documents produced by the petitioner can be acted upon.

XXIV) EFFECT AND BINDING NATURE OF ORDERS PASSED UNDER THE INCOME TAX ACT

i) The accused 1 produced number of I.T. orders which have considered the income that has accrued to her as also the extent of expenditure incurred by her and sources from which she had met the same. These returns and orders many of them have been marked on behalf of the prosecution also. On behalf of A1 through her Auditor DW.64 number of orders have also been marked as exhibits in this case. None of them have been objected to at the time of marking.

ii) Nevertheless, having regard to importance of those orders and exhibits, the admissibility and binding nature are being dealt with as under.

iii) The first question to be considered is the orders of the Income Tax authorities pertaining to the accused in this case are admissible in evidence and if so under what provisions of law. First of all, Rule 5 of the DV&AC Manual (Ex.D384) itself provides for receipt of particulars from the Income Tax Department. Thereafter, the

prosecution has also examined witness from the Income Tax Department. Hence the relevancy of orders passed by the IT authorities is a relevant fact which can be relied upon.

a) The petitioner states when successive orders of the Income Tax Authorities have been marked by the prosecution itself without objection and similarly when the accused have marked Income Tax orders they have not been objected to by the prosecution, because they were relevant and they themselves have marked any such I.T. returns/orders.
b) Section 40-43 of the evidence act, deal with relevancy of judgments of Court of justice.
c) Section 40 says the judgment would be relevant if production of the judgment would have the effect of barring the cognizance of a suit or trial of an offence.
d) Section 41 makes what are known as *judgment in rem* as relevant. The *judgment in rem* are that which is made in exercise of probate, matrimonial, admiralty or insolvency jurisdiction.
e) Section 42 deals with judgments relating to matters of public nature.
f) Section 43 says judgments and orders other than those mentioned in Section 40-42 are irrelevant unless the existence of such judgments or order or decree is fact an issue or relevant under some other provisions of this Act.

Hence, it has to be seen what other provisions of the Evidence Act, would make the judgments admissible in evidence. This is because both the said T.Balasundaram and T.V.Ravi have not been examined as a witness in this case. It is submitted that Sections 13, 35, 76 of the Evidence Act, all will make judgment relating to a fact in issue

requires to be decided by this Hon'ble Court a relevant document and therefore, admissible.

i) Section 13 of the Evidence Act, says the question is as to the existence of any right or customs, the following facts are relevant.

ii) Any transaction by which the right in question was created claimed, modified, recognized, asserted or denied or which was inconsistence with existence.

iii) The particular instance which the right was claimed, recognized or exercised is relevant fact.

iv) In this case, another fact in issue is whether A1 had during the relevant check period income or what was her expenditure in respect of any construction or any renovation. A1 had claimed before I.T. Authorities that she had particular extent of agricultural income. The Income Tax Authorities are interested in denying the receipt of agricultural income as if the receipt is by way of agricultural income then, it would be exempted from imposition of tax. Thus, there is a claim and assertion of the nature of the income and it becomes recognized when a judicial authority like CIT (Appeals) or the Tribunal recognises it by upholding the claim of A1. Similarly, with regard to the extent of expenditure admitted by A1 and the determination thereof, by CIT (Appeals) or the tribunal. Thus, there is a claim of right assertion and recognition. Hence, orders of income tax authorities will fall under Section 13 of the Evidence Act.

Secondly, Section 35 of the Evidence Act. This Section entry in any public or official book stating a fact in issue or relevant fact made by a public servant in discharge of his official duty is itself a relevant fact. In this case I.T. Authorities including CIT (Appeals) and the

Tribunal are enjoined with a public duty to determine the contesting claims between the Assessee and I.T. Departments this they do in pursuant to the statutory power granted to them under the I.T. Act. Hence, the orders will also come under Section 35 of the Evidence Act, under admissible as such.

Thirdly, Section 76 deals with public documents. Orders of judicial forum are public documents.

Fourthly, the judgments will also come under Section 8 of the Evidence Act, as they are relevant facts relating to subject matter of proceedings of the trial. Thus, under more than one section of evidence act the judgments and orders of the I.T. Authorities become admissible in evidence.

If the returns and orders are admissible in evidence then what is the evidential value that could be attached to them is being considered.

The first submission is that Hon'ble Supreme Court of India in a matter under Section 13(1)(e) itself under P.C. Act have placed absolute reliance upon the income tax proceedings and orders and decided the case solely on that basis. The judgment in that regard is DSP, Chennai Vs. K.Inbasagaran (2006) 1 SCC page 420.

The first line of reasoning is that the Hon'ble Supreme Court has taken a view that such determination by the income tax authorities is final and is binding in a criminal case involving the same issue. The Accused seeks to rely upon (a) Inbasagaran case – reported in (2006) 1 SCC 420. The issue in that case was whether the large amount of cash seized from the house owned by the accused Inbasagaran or, as he contended, it belonged to his wife, who had some independent

business. The observation of the Supreme Court makes this position clear.

> "in view of the explanation given by the husband and when it has been substantiated by the evidence of the wife, the other witness who have been produced on behalf of the accused, coupled with the fact that the entire money has been treated in the hands of the wife and she has owned it too and she has been assessed by income tax authorities, it will not be proper to hold the accused guilty in the Prevention of Corruption Act as his explanation appears to be plausible and justifiable."

The same view has been taken by Madras High Court also in a case arising under P.C. Act which is enclosed in the compilation of judgments. R.Markandan (dead) Vs State reported in 2012 (2) L.W (Crl) 39. In that case it was held that decision of the tribunal concludes the issue that the accused had received the income during the check period. That the criminal court is bound by the same. It was further held in the said judgment that the order of the Income Tax Tribunal can be straight away marked even in the appellate stage and formal proof is not required. Thus on the basis of these decisions, it may have to be held that Income Tax decisions are binding on this Hon'ble Court.

K.T.M.S. Mohammed Vs. Union of India reported in AIR 1992 Supreme Court page 1831

The Hon'ble Supreme Court of India was considering the prosecution under the Income Tax Act as well as IPC and was dealing with an offence under the Income Tax Act as also an offence under Section 193 IPC and 120B IPC. The Supreme Court of India admitted the decision of the tribunal and the Income Tax Act which in fact came into existence after conviction of the appellant by the trial court. The

Supreme Court took into consideration the order of the Income Tax Appellate Tribunal which was produced before the Supreme Court of India by way of annexure. In paragraph 50 of the judgment the Hon'ble Supreme Court of India relied upon the same and came to the conclusion that the substratum of the prosecution case is nullified and therefore acquitted the appellant. Thus the above two Supreme Court judgments have relied upon the orders of the Income Tax authorities and given effect to the same while considering the issue before the Criminal Procedure Code.

On the basis of the above judgments, it is submitted that the orders of the Income Tax authorities are admissible and have binding effect on this Hon'ble Court.

The group of these sections was the subject matter of deep consideration by the Hon'ble Supreme Court of India, which reviewed all the case laws up till that time on a reference to a larger bench – reported in (2002) 8 SCC 87 - K. G. Premshankar Vs Inspector of Police. Paras 30 and 31 lay down the ratio. The Hon'ble Supreme Court stated that the court has to decide as to what extent the judgment is binding and conclusive with regard to the matter (s) decided thereon. They give an example - In a Civil Suit between A and B, A is held to be the owner and in possession of the property. This judgment of the Civil Court is binding on a criminal court and a conviction of B for trespass could be made only on the basis of the Civil Court's decision. The Supreme Court therefore observed

> "Hence in each and every case, the first question which would require consideration is whether the judgment, order or decree, is relevant. If relevant, what effect? It may be relevant for a limited purpose such as motive or as a fact in issue."

The above judgment was also followed in a recent decision of the Hon'ble Supreme Court of India reported in 2010 SCC (IV)

This would depend upon the facts of the case or fact in issue. In this view also, the decisions rendered by the Income Tax authorities would be binding and conclusive as they have decided an important fact in issue, namely, what is the income and the expenditure of the Accused during the check period.

What is the expenditure incurred by the Accused No.1, be it, expenditure towards construction or expenditure towards marriage of A-3. These facts in issue have been decided by authorities in favour of the Accused on the entirety of the evidence available before it. It could be seen that even the evidence gathered by DV & AC were forwarded to the Income Tax authorities and the decisions in favour of the Accused have been arrived at by the Income Tax authorities after considering all the evidence including the investigation details from the DV & AC authorities also.

It may be seen that under the Income Tax Act an under-statement of expenditure can be brought to tax as an unexplained income under Sec 69 (C) of Income Tax Act. Hence Income Tax authorities have to determine the actual expenditure. Income Tax authorities have to determine the total income to bring it to tax. If the income is not referable to the business or from agriculture there is a provision under the Income Tax Act in Section 56 to charge the receipt as income from other sources. Thus the determination of income or determination of expenditure are provided under the Income Tax Act and have great validity and statutory force.

There is yet another way the issue can be approached. Many text books have quoted Phipson on Evidence (Pg.987 15th Edition).

Wherein the Learned author States “Judgments being public transactions of a solemn nature or presumed to be faithfully recorded”. Every judgment is therefore, conclusive evidence for or against all persons whether parties or privies or strangers of its own existence date and legal effect.

The third line of reasoning : this is the principle based upon the decision of the Hon’ble Supreme Court of India in Radeshayam Kejriwal reported in (2011) 3 SCC 581 (compilation of judgment Vol.III page 224) and host of other cases. The decision says that the exoneration by the adjudicating authorities in any enactment like Customs Act, Foreign Exchange Regulation Act or Income Tax Act in the adjudication proceedings would render the prosecution in a criminal court for the same contravention unsustainable and the criminal prosecution is liable to be quashed. This is on the basis that the adjudicating authority who decides the case considers materials on the test of preponderance of probabilities, and if, in that criterion could not find a person as having contravened the Act, then, there could not be in a prosecution which requires much higher degree of proof namely ‘proof beyond reasonable doubt’ from succeeding. In this view, the criminal prosecution must be quashed.

It is submitted a series of decisions in this regard have all been noted in the above said judgment and the Accused has filed the same in the compilation of judgments.

The above views have a significant impact in the present proceedings. As far as the Accused is concerned Income Tax authorities have accepted the income returned by her particularly from agriculture, which judgment has been upheld upto the tribunal level.

XXV) <u>INCOME TAX AUTHORITIES CONSIDERED THE SAME</u>

PROSECUTION MATERIALS AND HAVE REJECTED THE SAME

25.1) It must also be further viewed in the context that a notice under Section 263 of Income Tax Act was issued by the Commissioner of Income Tax which is marked as Exp.D.70. (Page-418 of Volume – III) This notice is issued on the basis of the evidence gathered by DV & AC and supplied to the income tax authorities. The annexure to the notice under Section 263 of the income tax act makes this position clear. After considering the materials supplied by DV & AC, the Hon'ble Appellate Tribunal under the Income Tax Act has held the notice to be invalid. It has also gone into the question on merits. The return filed by her has been accepted after full scrutiny. Thus, since on the same evidence, the income tax authorities have come to the conclusion that there is no warrant or justification to hold that the Accused has incurred an expenditure (a) for the marriage of A-3, (b) incurred an expenditure towards purchase of jewelry, sarees and footwear during the check period and had not incurred any expenditure more than what is returned by her towards construction. The conclusion has been reached that there is no justification to make an addition of the above heads of expenditure even by the test of preponderance of probabilities. Therefore, in a criminal case before this Hon'ble Court where the prosecution has to establish the expenditure by proof beyond reasonable doubt the proceedings before the income tax act would be binding and conclusive on the facts in issue decided as above referred to.

25.2) Hence the decision of the income tax authorities is binding and conclusive on this Hon'ble Court. The Accused therefore submits that the order of C.I.T (Appeals) and the Tribunal orders in favour of the Accused are themselves a piece of Evidence of unimpeachable

character which by itself has the effect of rebutting the prosecution evidence. The findings of the Tribunal are on the basis of contemporaneous records and accounts, bank statements duly maintained by the Assessee. Thus the decision of the Tribunal and the decision of Income Tax authorities, even though after the check period and even after the criminal case is registered, still have relevance and govern the issues since the decision have been rendered on the basis of the then contemporaneous materials and records. It may be mentioned under the scheme of Income Tax Act itself the return is required by law to be filed only after the close of financial year. The accused have placed reliance upon the decision of the Hon'ble High Court Madras reported in 2012 (2) L.W. Crl R.Markendan (died) appellant Vs State. (Compilation of judgment Vol.V page 9).

25.3) As regards the income determined by the income tax authorities it is equally binding and conclusive in as much as in the proceedings before the income tax authorities and in the proceedings before this Hon'ble Court, the Accused No.1 need only to prove the income by preponderance of probabilities . If so, the decision of income tax authorities on the same set of facts would be binding and conclusive on this Hon'ble Court.

25.4) Thus looking from different point of view the conclusion is inescapable that the decisions rendered by the income tax authorities produced on behalf of the accused are binding and conclusive on this Hon'ble Court.

XXVI) CONCEPT OF ISSUE ESTOPPEL

ADMISSIBILITY OF INCOME TAX PROCEEDINGS.

26.1) Fourth line of reasoning is based on the principle of Issue Estoppel. This is recognized under Article 20 (3) of the Constitution of

India, Section 300 Cr.P.C. The Section 40 of the Evidence Act makes the judgment or orders of courts and authorities which has effect of preventing the court from taking cognizance of a suit or proceed with the conduct of a trial before a Criminal Court as admissible in evidence. In this case the income tax orders are passed when the state through the income tax department contested the proceedings of claim of income by A1 or the extent of expenditure by her. DVAC is also wing of the State Government as the I.T. Department is the wing of Central Government. Without doubt both are stated within the meaning of Article 12 of the Constitution of India. Thus, in a properly constituted proceedings a judicial body namely CIT(Appeals) or the Tribunal under I.T. Act pass a judicial order on contest. It is passed in law in the presence of the State under Article 12 of the Constitution of India. Hence, the principle of issue estoppel will forbid the re-agitation of the same issue before a criminal court and would equally forbid this Hon'ble Court from reaching a contrary conclusion. Thus, if an issue for example, what is the extent of an agricultural income realized by A1 is issue that had been decided and judgment under by a judicial forum before which forum the state through the I.T Department had contested the same, it would operate as issue estoppels preventing re-agitation of the same issue for what extent A1 derived agricultural income in a given year. In this view also were any income or expenditure as already been decided in favour of the assessee by a judicial or quasi judicial forum the same would operate as issue estoppel, in the later proceedings of trial as far as that issue is concerned.

26.2) That the forum which decided the issue initially as the distinction of the judicial forum or court or course of limitation jurisdiction has no validity is clear from the decision of the Supreme

Court of India Sulochana amma V/s Narayanan Nair in 1994 (2) SCC 14.

26.3) The concept of the issue estoppels has been explained by the Supreme Court in the leading case Preetham Singh V/s State of Assam reported in 1956 SC Pg 415.

SUBMISSIONS ON MERITS

XXVII) <u>EXPENDITURE OF A1 AS PER PROSECUTION</u>

As regards the expenditure, as far as the A1 is concerned, can be conveniently grouped in the following heads:

i) Expenditure relating to renovation of 36 Poes Garden construction of a new house at 31A Poes Garden total Rs.7,24,98,000/-.

ii) Construction of a farm house at Jeedi Metla village at Hyderabad is Rs.6,40,33,901/-.

iii) Marriage expenses of A3 is Rs.6,45,04,222/-. The expenditure towards jewellery, sarees, watches and footwear is Rs…..

House hold expenditure Rs.16,15,500/-. These major items of expenditure and the untenability of prosecution evidence in this regard are being dealt with as under.

XXVIII) <u>PROSECUTION EVIDENCE ON THE EXPENDITURE INCURRED BY A1 RELATING TO A RENOVATION, OF 36 POES GARDEN, CONSTRUCTION OF NEW HOUSE AT 31A POES GARDEN AND CONSTRUCTION OF FARM HOUSE AT JEEDI METLA VILLAGE, HYDERABAD.</u>

According to the prosecution, following are the expenditure: A1 must have incurred on an estimation basis.

Sl.No.	Description	Value (Rs.)
1.	Fully renovated main building at No.36, Poes Garden	3,26,000.00
2.	Newly constructed five storied building at 31-A, Poes Garden	2,33,59,000.00
3.	Construction of two storied building at No.36, Poes Garden	42,63,000.00
4.	Construction of rooms for security	10,56,000.00
5.	Compound wall	6,95,000.00
6.	Inner and outer electrical installations and electrical equipments	1,05,25,000.00
	Total	7,24,98,000.00

HOW THE EVIDENCE OF EXPERTS REQUIRES TO BE APPRECIATED

28.1) In this case the prosecution heavily relies upon the constructions made allegedly by the accused. The prosecution has wantonly and deliberately inflated the cost of construction to boost up the value of assets possessed by the accused. The Accused have demonstrated both by cross examination of the PWD valuers, as well as by leading defence evidence that the valuation given by the prosecution is demonstrably wrong. In this regard, it is necessary to briefly mention the law on the aspect 'how evidence of an expert requires to be appreciated by this Hon'ble Court". The law on the evidence of experts revolves around the following questions:

a. Who is an expert?

b. Evidence of an expert is only advisory

c. When will the court believe in an evidence of an expert and rely upon it?

d. Is not evidence of an expert depends upon the data he produces and the structured reasoning of his report?

The Accused No.1 seeks to briefly mention the leading decisions on experts' evidence;

XXIX) <u>HOW TO JUDGE THE OPINION OF AN EXPERT</u>

Before considering this aspect, two things must be kept in view:

a) Evidence of an expert is an opinion or advisory in character

b) If so such an opinion or advisory in character is and cannot be a substantive evidence. This can only corroborate other substantive evidence. In this case in respect of all the evaluations this important requirement is not observed by the prosecution. The opinion of the expert itself is sought to be used as a substantive evidence which is impermissible and wrong.

c) It is a settled law that the evidence of an expert is only advisory in character and the court has to be satisfied on the reasons and the data produced and must independently consider the same before accepting the opinion of the expert. Having regard to the importance of this point in this case, what is quoted by the Hon'ble Supreme Court of India in its judgment is extracted below:

> "Thus the idea that is proposed in its crux means that the importance of an opinion is decided on the basis of the credibility of the expert and the relevant facts supporting the opinion so that its accuracy can be cross checked. Therefore the emphasis has been on the data on the basis of which opinion is formed. The same is clear from the following inference;
>
> "Mere assertion without mentioning the data or basis is not evidence, even if it comes from an expert. Where the experts give no real data in support of their opinion, the evidence even though admissible, maybe excluded from consideration as affording no assistance in arriving at the correct value".

d) The above decision of the Hon'ble Supreme Court of India is in accordance with other judgments of the Supreme Court.

AIR 1959 SC 488 - Haji Md Vs. State Vol.III p.54

(1999) 7 SCC 280 State of H.P Vs Jai Lal Vol.III p.58

(2009) SCC 221 - Maly Kumar Ganguli Vs. Dr. Kumar p.102

(2010) 6 SCC 1 - Manu Sharma Vs. State Vol.IV p.1

e) Thus the above view has been consistently taken by the Hon'ble Supreme Court of India including discussion on this question in paragraph 15 and 16 of the judgment reported in 1995 Supreme Court 840 Special Land Acquisition Officer Vs. Sithappa which binds from Karnataka High Court (given in separate compilation along with the written submissions).

XXX) <u>EXPERT EVIDENCE NOT ADMISSIBLE UNLESS EXPERT IS EXAMINED IN COURT</u>

30.1) It must however be mentioned that where an expert is not examined but his report alone is marked, then, the report becomes wholly inadmissible. This view is laid down in a long line of judgments. It is based on the requirement to offer the expert for cross examination on behalf of the accused: The decisions are:

(1999) 7 SCC 280 Para 19

(2009) 9 SCC 709 Para 16

(2010) 9 SCC 286 Para 16, 17

30.2) In this case except Thiruthavaraj PW.220, who had evaluated the electrical installations at 36 and 31A, no other evaluator of electricity installation have been examined. Therefore all the amounts relating to electrical installations are liable to be excluded.

30.3) The evidence of Thiruthavaraj, PW.220 himself is liable to be excluded since he is only assistant Executive Engineer. Under the G.O. of the Government has noted in Ex.D305 Assistant Executive

Engineer are not competent to evaluate electrical installations which is over 15000. The letter of Tublin H Sam requesting that he may not be involving the job of evaluation as he is only an Assistant Executive Engineer. Therefore the evidence of PW.220 is also liable to be excluded.

30.4) As submitted the prefatory submission, the burden is on the prosecution to prove affirmatively the quantum of expenditure further it must be proved by proof beyond reasonable doubt. Only where it is proved by the said standard the burden will shift to the accused. In this view the entire expenditure towards electricity installation are liable to be excluded.

XXXI) <u>PROSECUTION CASE RELATING TO THE PROPERTIES AND THE CONSTRUCTIONS MADE BY A1</u>

31.1) She purchased only one property during the entire check period it is shown as Item 18 in Annexure II (Ex.P2328). According to the prosecution she had one construction and one renovation. Prosecution has given the value in Annexure II as under:

31.2) Item 181 new and additional construction of Door No.36 and 31A Poes Garden = Rs.7,24,98,000/-.

31.3) The construction of farm house at Jeedi Metla village, A.P. = Rs.6,40,33,901/-.

31.4) As regards the acquisition of house property, it is not in dispute. While so, the petitioner had in the income tax proceedings admitted the cost of construction and renovation as under. This has been accepted after in depth scrutiny and accepted upto the Tribunal level. The amount of expenditure admitted by the petitioner as under:

31.5) The amount of expenditure incurred by the Accused No.1 is as follows as per her return of income:

Renovation of 36 Poes Garden	76,74,900
Construction at 31-A Poes Garden	1,35,10,500
Hyderabad Farmhouse addition	1,39,62,300
Compound wall for Hyderabad Farmhouse	11,00,000
	3,62,47,700

whereas under the two valuation reports above mentioned the prosecution has estimated the cost of construction at a huge figure of Rs.13,68,31,901. This is patently wrong, as has been explained above.

31.6) The Accused says and submits that the evidence of prosecution witnesses who have evaluated the building and constructions are unreliable as they are not supported by verifiable data. This will give rise to one important consequence namely the burden of explaining any of the expenditure towards construction will not shift to the accused at all. These aspects will be explained more fully infra.

31.7) Even as per the prosecution evidence the (A-1) has acquired only one immovable property for a total consideration of Rs.10 Lakhs during the check period. The sale deed is Exp. P-1. The recitals of consideration is also admitted by Rajaram, the vendor of the property; examined as PW-1.

31.8) The Accused No.1 had constructed upon the said property a building which bears Door No.31-A, Poes Garden.

31.9) The prosecution had also stated that she had renovated the old building at Door No.36, Poes Garden. The prosecution has examined Jayapal as PW-116 (PWD-Engineer) and marked a valuation report through him which is Ex. P. 671. The prosecution has also

valued the construction of a new farm house at Jeedi Metla Village near Hyderabad and marked the valuation report of the property. It is Exp.645.

31.10) The valuation of the constructions by the prosecution are clearly wrong, wantonly inflated and it is demonstrably so.

31.11) The Accused No.1 had countered the prosecution case in two ways.

Firstly, the Accused No.1 has marked the Income Tax Department proceedings in which the cost of constructions, as returned by her, has been accepted after an in depth and full scrutiny. The well reasoned order of the Commissioner of Income Tax (Appeals) has been accepted by the Tribunal after independent consideration of the evidence produced in the case. Under the scheme of Income Tax Act, Tribunal is the ultimate fact finding authority. The decision of Tribunal, therefore, will not be interfered with even by superior courts like High Court or the Supreme Court on facts. It may be binding on this Hon'ble Court and in any event would show that the value declared by the Assessee alone is liable to be acted upon.

Secondly the petitioner/accused would demonstrate the prosecution evidence in this regard of valuation is not liable to be acted upon.

XXXII) THE PROSECUTION EVIDENCE REGARDING RENOVATION OF NO.36, POES GARDEN AND CONSTRUCTION OF A NEW BUILDING AT NO.31-A, POES GARDEN AND THEIR UNTENABILITY

****

32.1) PW-116 Jayapal is examined his report and Exp.P.671 is marked, which is the alleged valuation report of renovation of 36 Poes Garden as well as construction of a new building at 31-A Poes Garden.

The total cost according to the report Exp.P.671 is Rs.7,24,98,000/- for both the constructions. Prosecution has examined PW-98, Velayudham, PWD Engineer, who is said to have evaluated the construction at Jeedi Metla Village. He has valued the construction at Rs.6,40,33,901/- shown in item No.179 in Annexure – II. In item No.181 in Annexure II filed along with the charge sheet the cost of construction for both the buildings at Poes Garden is estimated at Rs.7,24,98,000/-. For the construction of farmhouse at Jeedi Metla Village as per Exp.P.645 valuation report the cost works out to Rs.6,40,33,901/-.

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32.2) Thus the prosecution has alleged that this accused has incurred a total expenditure on the head of construction a sum of Rs.13,65,31,909/-.

XXXIII) CARDINAL DEFECTS IN PROSECUTION VALUATION

33.1) The Accused No.1 says and submits that the valuation is wholly unacceptable and the prosecution cannot be said to have proved the value of the construction and therefore the burden of proof of explaining the cost of construction will not shift to the accused at all. The Accused has examined DW-95 who is a retired chief engineer Appendarajan who has stated five cardinal defects in the valuations by the PWD engineers (please refer Ex-D-306). His evidence would equally apply to the valuation report Exp.P.671 and P.645. Having regard to the importance of his evidence the five defects pointed out by him are reproduced.

1) With respect to its method of measurement.
2) Method of valuation.
3) Fixation of age of the building and its constructed period
4) Valuation regarding non-scheduled items.

5) Non fixation of value for the construction from 30.4.1996 to 29.10.1996.

a. To calculate the total quantity of the construction, basic data in terms of length and breadth are not given. Therefore, it is not possible to verify the quantum of construction. Where the detailed estimate is the basis of calculation, as each Exhibit purports to say then, not only length, breadth, depth/ height and the plan with cross section must be given. (Except Ex.P.673 wherein, floor plan alone furnished). In other words, the measurements shall not be only based on the floor plans but also must include the cross section. Otherwise, it is impossible to calculate the quantum of each item of works. Absence of these details has robed the report of its validity.

b. Secondly, the age of the building or the period of construction must be initially determined, as valuation of building would largely depend upon this factor. All the reports in this regard are silent, how it has arrived at the period of construction without conducting any scientific and / or lab tests. Hence, the period of construction stated in the report is arbitrary.

c. Thirdly, calculation for price of non scheduled items used in the construction is highly defective as it does not contain the basis for calculating the price of non scheduled items. This is one of the most serious defects in all the reports filed by prosecution witnesses, he perused. When the rate at which the owner purchased the non scheduled items is not known, market enquiries must be done at least from 3 suppliers and

the lowest value should have been adopted. In all the reports the said methodology has not been followed.

d. Fourthly, the method of valuation on a detailed estimation basis suffers from the great defect wherein the schedule of rates prescribed by the Government PWD, which will be published each year, is not enclosed to verify what rate is adopted for scheduled items. Similarly, the Standard Data Book, which is the basic document in arriving at the rate of standard item of works, has also not been appended with the valuation report. Therefore, the reports under all the above Exhibits are liable to discarded as it does not contain verifiable details.

e. Fifthly, it is seen from all the above 8 reports, which have been marked as Exhibits P641, 642, 643, 644, 61, 668, 669 and 673 in the case, the inspection by the Team of PWD Engineers was done in October 1996. The requirement is to calculate the value of construction up till 30.04.1996. So, the evaluators must have addressed this issue if there was construction between 30.04.1996 and October 1996, a period of nearly 6 months. They should have then calculated the cost of construction in the aforesaid period of six months and deducted the same from the total cost of construction. Alternatively, they must come to a conclusion, which must be on strong and upon verifiable material that no construction was made after 30.04.1996. It should have been expressly stated in the reports supported by the materials. None of the reports contained any statement on the above aspects. Hence, the only conclusion possible is that the PWD evaluators have totally overlooked and not

addressed themselves on this vital issue. These features render the reports under the above Exhibits without value.

f. Sixthly in para 81 of DVAC Manual, it is specifically provided that owner must be given a notice before the evaluation of a building is undertaken. If the owner does not appear, then it would be necessary to obtain a warrant from the Court and issue summons under Section 160 of the Code to the said owner. The measurements must be taken in the presence of the owner only and counter signature of the owner must be obtained. This has not been done in any of the evaluations done in this case.

g. As regards evaluation of the house at 36 Poes Garden and the construction at 31A Poes Garden they were deliberately done when A1 and A2 were suffering incarceration at Central Prison, Chennai. No notice was admittedly issued to them in violation of the Manual.

h. Seventhly the Chief Engineer, Public Works Department (General and Buildings), Madras in Circular No. Memo No.WKS11(3)91451/81/CP dated 6.6.1981 has stated in all vigilance enquiries procedure of calculating the value on plinth area rate method should not be adopted, but only the detailed estimation basis must be adopted. In violation of this binding circular, most of the buildings have been estimated on plinth area basis and not detailed estimate method.

i. Eighthly PW.259 has deposed that he had written to the Government for appointment of a committee to evaluate the buildings in this case. It is submitted that PW.259 is unjustified. He has abdicated his power in favour of the

Government as I.O. he alone can take the help of any expert for evaluation.

j. Ninthly the Government appointed a committee to evaluate. It appears to be a settled law that where a committee is appointed it must act in unison and as a body. The evaluation reports in this case show that this has not been done. Each have signed the report at different dates. This itself invalidates the report.

k. Tenthly the objective is to find out the actual cost of construction therefore what A1 spent should have been found out. In this case, it is an evidence that A1 had spent all the monies towards renovation and construction only through cheque. Even though bank records have been collected by the prosecution deliberately the expenditure shown towards construction have been ignored. It may be mentioned that income tax department have analysed the bank records and have come to the conclusion that the expenditure disclosed therein are correct and true after in depth scrutiny. Thus the prosecution is motivated, malafide and designedly misleading.

XXXIV) <u>VALUEUR NOT INDEPENDENT</u>

a) The valuation has a fundamental defect in that the Government PWD engineers who evaluated the building are not independent experts and therefore the reports filed by them computing the cost of construction is liable to be rejected.

b) An expert evidence presented to the Court must be and seen to be in independent product of the export uninfluenced by the exigencies of a litigation. This fundamental principle of law is laid

down in the decision of the House of Lords reported in White House Vs. Jardan 1981 1 All. E.R. 267 which is also referred and followed in Toth vs. Jarman 2006 All England report 271 is equally applicable in India also.

c) In this case the evaluation is not uninfluenced by the exigency of the case. In fact whole procedure is contrary to the Code and fair procedure.

i) PW.259, I.O. in this case deposes that he had written to the Government to constitute a committee to evaluate various buildings which according to him belong to A1 or constructed upon by A2 to A4. The Government thereafter passes a G.O. constituting two committees consisting of a number of PWD current employees to evaluate the buildings. Ex.D305 clearly shows that the Government have directed constitution of two committees. Evidence of PW-259 in terms admits the same in his cross examination.

ii) This procedure is contrary to the Code. PW.259 had surrendered the power and discretion vested in him to the Government. The Government in turn had no right to interfere in an investigation and appoint a committee for evaluation. Thus the procedure is clearly wrong. It is loaded against the accused.

iii) In doing so the independence of the expert is seriously compromised nay manipulated by the Government. These facts make this position clear. All the members of the two committees are Government employees. b) The order appointing them states that the committee is being appointed to evaluate the constructions for the purposes of the case of Selvi J Jayalalithaa disproportionate asset case. Thus the very order appointing the committee tells the experts what is expected of them and for what purpose the committee is being

appointed and what the Government expects of them. These facts by themselves show that the evaluation is not by an independent person hence their evaluation reports are liable to be rejected.

iii) The petitioner submits that PW.259 ought to have taken the experts from among those PWD engineers with several years of experience who have retired from the Government service and therefore no longer obliged to Government in any manner. After all the evaluation of buildings does not require any scientific test or access to sophisticated lab to give the report.

iv) Further there are valuers with rich experience in evaluation of constructions who have been statutorily appointed and registered as valuers under Income Tax Act/Wealth Tax Act. The service of such persons should have been sought for to maintain independence of an expert. Thus all these facts have been deliberately overlooked by PW.259. He has acted in collusion with the then Government led by the rival DMK party whose only agenda is to somehow involve A1 in a criminal case and keep her tied to the same.

v) The above facts clearly show all the valuations are clearly malafide and the valuation reports are vitiated as they cannot said to be by independent experts.

XXXV) <u>FURTHER DEFECTS IN THE VALUATIONS</u>

35.1) It has been earlier pointed out several case law are held that the reliability of valuation and on which the Court could place reliance upon depends upon the structured reasoning and how it is supported by very reliable data which in turn are supported by documentary evidence of unimpeachable character. Having been regard to the importance one more judgment is cited as under:

"The importance of data supporting the opinion of the expert has been repeatedly emphasized in the judgment of the Supreme Court above mentioned in particular the judgment of the Supreme Court of India reported in AIR 1995 Supreme Court 840 Special Land Acquisition Officer Vs. Sri Sithappa paragraph 15 may be seen. Having regard to the importance the relevant portion is extracted herein.

I. *"Whenever valuation report made by an expert is produced in court, the opinion on the value of the acquired land given by such expert can be of no assistance in determining the market value of such land, unless such opinion is formed on relevant factual data or material, which is also produced before the court and proved to be genuine and reliable, as any other evidence. Besides, if the method of valuation of acquired land adopted by the expert in his report is found to be not in consonance with the recognized methods of valuation of similar lands, then also, the opinion expressed in his report and his evidence can be of no real assistance to the court in determining the market value of the acquired land."*

XXXVI) <u>NO CONSENSUS IN THE PREPARATION OF VALUATION REPORTS</u>

Exp.671 says that a team of engineers was deputed to evaluate the constructions. It is clear that the engineers have not functioned as a team at all. The report is signed by the Assistant Engineer and two others on 23.12.1996. The Executive Engineer has signed it on 31.12.1996 and the Assistant Engineer on 22.12.1996, which means that they have not acted as a team and therefore the entire report is liable to be rejected.

Without prejudice to the above submission, it is submitted as follows:

XXXVII) EVALUATION OF 36 & 31A OF POES GARDEN

According to the prosecution, following are the expenditure:

Sl.No.	Description	Value (Rs.)
1.	Fully renovated main building at No.36, Poes Garden	3,26,000.00
2.	Newly constructed five storied building at 31-A, Poes Garden	2,33,59,000.00
3.	Construction of two storied building at No.36, Poes Garden	42,63,000.00
4.	Construction of rooms for security	10,56,000.00
5.	Compound wall	6,95,000.00
6.	Inner and outer electrical installations and electrical equipments	1,05,25,000.00
	Total	7,24,98,000.00

XXXVIII) EVIDENCE OF PW.116

38.1) As regards renovation of 36, Poes garden the admissions in the cross examination done on 13.1.2000 and further cross examination after being recalled again on 30.12.2012, 21.2.2003 will render the report in Exp.P.671 unreliable. In the cross examination it can be seen at page 38 and 50 of Deposition of PW.116 he had not given the data relating to length, breadth and height such that the quantum of construction cannot be verified.

38.2) At page 51 he admits schedule of rates prescribed by the department was not enclosed. At page 52 he admits that the renovation could have been made 7 or 8 years prior to his date of inspection - which was in October 1996. At page 53 he says that a compound wall could have been constructed in 1968 and no measurements were taken of the area of use of marbles, tiles and granites. At page 54 he admits that no separate valuation was done for construction materials used in the first floor and car shed as

required, that 25 % of the cost is to be deducted for self supervision which he had not done, 9% architect fees is also deductible. He further says in his cross examination that they have obtained the value of Non-schedule items like marbles, marble claddings, granites, bath room fittings from various shop keepers but he had torn those details written on a piece of paper.

38.3) PW.116 Jeyapal has given the evaluation report Ex.670 this report contains as many as 9 cardinal-defects above referred to for the sake of brevity they are not re-posted herein.

38.4) It is necessary to point out that apart from serious defects in the evaluation three aspects requires to be mentioned in particular. Firstly effort has not been made to find out what was the expenditure incurred by A1. As earlier mentioned this expenditure could easily have been computed by the prosecution from the bank records themselves as most of the expenditure have been done through cheque paid to suppliers and to the contractors. This is clear from Ex.D211 marked through auditor DW.64. This also would have shown that most of the important items like granites, marbles and the like were purchased from Mumbai for whom payments have been made by cheque. Those suppliers ought to have been enquired to find out the price at which they supplied the material which were ultimately used in the construction. This has not been done.

Secondly the evaluation report does not contain even a single invoice or quotation from any supplier of items like marbles, granites or wood nor even any enquiry detail furnished.

Thirdly PW.116 and one of the committee members examined by the defence as DW.78 admit that there existed a working sheet in which measurement details were taken, but this working sheet is not

enclosed along with the report under Ex.P871. These defects of fundamental nature render the evaluation report unreliable.

ii) He had given the value of renovation of 36 Poes Garden at Rs.3,26,00,000/- and according him the building is wholely renovated. However, it is nobody's case that the old building is demolished entirely and new construction made. What portions are renovated is not mentioned. Hence it is totally unreliable.

iii) PW.116 has not fixed the year of renovation without which whole valuation cannot be correct.

iv) If plinth area rate is adopted (which is wrong), then it will include the cost of internal water supply, hence separate addition at 7.5% of the cost is unjustified. So is the cost of 10% towards electrical installations.

v) He had valued the teak furniture and ornamental almirahs and wooden items and included 14,63,250/- this is wholely wrong for the following reasons:

a) He is not qualified to evaluate furniture and wooden items. He is not an expert in that field, hence his evidence is inadmissible in as far as the valuation of furniture and wooden items are concerned.

i) It is only in realization that qua wood items forest officials alone are competent to evaluate, Director DVAC in Ex.P2323 wrote a letter to principal of conservator of forests to depute a suitable officer from the forest department to evaluate the wooden articles and that he should come on 10.12.1996.

ii) PW.259 Mr.Nallamma Naidu, I.O. at page 43 admits as follows:

"The officials from the forest department also participated in the search conducted at 36 Poes Garden. These forest officials may have given a report to engineers to assess the value of the buildings and they may have included it in the building assessment, but there is no mention of such report of forest department personnel in the document relating to buildings". Thus PW.116 is incompetent to evaluate wooden furniture becomes clear. Further whatever report given by forest officials has been suppressed leading to the requirement to draw adverse inference. It may be mentioned that PW.242 who is said to have examined the valuers does not say anything about valuation done by forest officials.

b) PW.116 had deposed that he had asked the price of furniture but without showing the articles. Further whatever price that is given by Spencers is not produced before Court, whereas he says they were torn and thrown away. Adverse inference must be drawn against PW.116.

vi) He had added Rs.26,68,163/- towards plans, drawings and estimate. I.O. has stated in his evidence that all the drawings done by Vijaysankar Architect. He should have been enquired to find out what was the actually paid to him. Thus it is all mechanically made at the instance of the prosecution and unreliable.

i) In this regard, it has been detailed earlier that Vijay Shankar LW.822 has been deliberately withheld from being examined in Court.

ii) In Annexure IV expenditure prosecution as against payment to Vijay Shankar prosecution has put the expenditure of Rs.80,000/- (all by cheque). How could PW.116 add amounts towards architectural fees that too on an imaginative percentage basis. Thus the

prosecution has been inherently unfair PW.116 and PW.259 are reckless in adding huge amounts.

d) PW.116 has added Rs.6,77,072/- for foot path lawn artificial water fountain at main building. He did not have any evidence whether these items were done during the check period. He is not competent to evaluate these items only horticulture officer can do it. No basis is mentioned in this report for these amounts. In this view, he cannot be considered as an expert. So his evidence is inadmissible. Apart from this, Ex.D211 shows that A1 had through cheque incurred expenditure of Rs.35,000/- towards landscape garden. Thus when actual amount of expenditure is available, prosecution is deliberately overlooked the same.

XXXIX) <u>NEWLY CONSTRUCTED TWO STORIED BUILDING FOR VEHICLE PARKING AND ROOMS AT 36 POES GARDEN</u>

39.1) PW.116 has added Rs.42,63,000/- under the above head. In this cost of building was only Rs.12,72,806/- the balance amount of Rs.29,90,194/- is mentioned as amount towards furniture and ornamental wooden works. It is submitted the building is being renovated. A1 had been the resident of the place since her childhood unless there is an evident to show that the furniture were newly purchased or newly made no amount can be added on the head of furniture and ornamental wooden work. If it is a wooden door or windows, the cost of it, even if it is made of teak would stand included in the plinth rate area. Hence separately including the value would not arise. It is inconceivable that there can be a plinth rate area which does not evade for doors and windows in the inclusive costs.

Further as stated earlier, PW.116 is not competent to evaluate furniture and ornamental wooden work to that extent he cannot said to be an expert hence it is inadmissible in evidence.

i) In this he had taken Rs.5,35,600/- as LS provision (lump sum) no details how LS is calculated is given therefore the expenditure is inadmissible. A pure guess work is not acceptable in a Court of Law as an opinion of an expert. An unreasoned opinion has no place in a Court of Justice.

ii) He had added Rs.3,29,130/- i.e. 9% of the total value towards drawings and supervision charges. This is not justified. PW.259 has submitted for all the buildings architect was Mr.Vijaysankar (NE). The actual payment met Vijaysankar alone should have been taken. For the reasons stated in the earlier paragraph, this amount also requires to be deleted.

iii) He had added Rs.37,167/- towards cost of internal water supply this is incorrect that a calculation of plinth area method would include the provision for internal water supply and sanitary arrangement. Hence separately adding a figure is clearly wrong.

XL) <u>CONSTRUCTION OF SECURITY ROOMS</u>

PW.116 has added Rs.10,56,000/- under the above head

i) He has evaluated it under plinth area method contrary to specific instructions of PWD which has said only detailed evaluation method must be used in all evaluation in respect of vigilance cases. He had added Rs.72,856/- i.e. 7.5% of the total value towards consultation charges this is wrong for two reasons.

a) In case of plinth area rate, this amount already get incorporated into the rate

b) It should have been based at on actuals.

ii) The total value is = Rs.10,56,000/-

cost of civil construction = Rs.5,28,966/-

balance : Rs.5,27,034/- . this has been made as an expenditure towards tiles on the flooring and walls, but no details were given how the expenditure or the value of the items arrived at. Hence it could not be said there is an opinion of an expert as it is not based verifiable facts.

XLI) <u>CONSTRUCTION OF COMPOUND WALL AT 36 POES GARDEN</u>

i) The evaluation is wrong as it is assumed that the wall has been newly constructed which is not. It is submitted unless there in an acceptable material based on data or enquiry whose reliability is also established PW.116 is not entitled to add any amount towards construction of compound wall which admittedly was already inexistence. It is made out that there was an increase in the height of the existing compound wall. The report does not give the extent of construction the report mentions about ornamental gates, doors, etc. but no separate valuation is given. In the absence of any supportive material, the cost cannot be accepted.

ii) In the above estimation, PW.116 has taken Rs.48,289/-, being 7.5% of the total cost towards preparation of drawings etc. This is wrong for two reasons:

a) Plinth rate area would include this cost.

b) It should have been waste only on actual cost incurred and the architect Vijaysankar should have been examined.

XLII) <u>VALUATION OF ELECTRICAL INSTALLATIONS</u>

As far as the electrical items are concerned, an addition of Rs.1,05,25,000/- is sought to be added. PW.220 Thiruthuvaraj has

been examined in this connection. This amount is wholely not liable to be accepted for the following reasons:

i) Thiruthuvaraj under the PWD circular is not entitled to evaluate the electrical installations. Only Executive Engineer can do it. Hence he cannot be considered as an expert.

ii) PW.220 admits that he has adopted the rates for the electrical items prevailing in December 1996 the date of evaluation whereas the renovation is said to have been done in 1993 and 1994. He further admits (page 31) that the valuation was ascertained "as far as possible". It is settled law that whatever is approximate cannot be relied upon as evidence of an expert. This serious defect rendered the entire report unreliable.

iii) He further admits at page 13 that he does not even know that 36 Poes Garden was an old house, he does not know when 31A Poes Garden was built. He does not know when the wiring was done in the old house. Without even knowing these details, he has evaluated the entire wiring including that which was in existence much earlier to the check period.

XLIII) INVESTIGATION RELATING TO THE CONSTRUCTION IS BY POLICE OFFICERS WHO HAVE NO AUTHORISATION UNDER SECTION 17 OF P.C. ACT

i) PW.220, it is admitted by him, has not been examined at all by the police and there is no 161 statement from him. It is submitted this itself renders his evidence inadmissible. Reliance upon evidence is contrary to the Code. The accused denied effective cross examination by marking contradictions under Section 145 of the evidence.

ii) As regards PW.116 he said to have been examined by PW.242 Jeganathan, DSP. This Jeganathan is not authorised under Section 17 by PW.241 – V.C.Perumal. PW.242 only says that PW.240 Lathika Charan had given him authorization under Section 17 of the Act. It is submitted it is invalid for the following reasons:

a) Question of authorizing another to investigate under Section 17 would not arise in a proceeding under Section 202 hence this so called authorization under Section 17 said to have been given by PW.240 even if it existed would not make a difference. It is invalid and contrary to the Code.

b) PW.247 admits that he had not produced the so called order of PW.240 and does not remember if he had handed it over to PW.259.

c) Duty is cost on the prosecution to show that officer lesser in rank than Superintendent while investigating the case had power under Section 17 & 18 of the Act. In the absence of any written order, there cannot be said to be the proper authorization to PW.242.

d) It is in evidence that PW.242 Jeganathan has examined PW.1, 44, 116, 117, 115, 98, 189, 20, 94, 82, 92, 83, 19, 132 and 113. All these evidences are vitiated as PW.242 has no authorization to investigate an offence under Section 13(1)(e) under the P.C. Act. For these reasons evidence of PW.116 is also liable to be rejected.

The accused 1 through defence witnesses has shown that the expenditures have been incurred only by cheque and duly accounted for in the books of account and the same has been accepted by the income tax department after in depth scrutiny.

XLIV) <u>NEWLY CONSTRUCTED BUILDING AT 31A POES GARDEN</u>

The prosecution through PW.116 has sought to add

Value of the new building at 31A for construction = Rs.2,02,26,000/-

For furniture and ornamental wooden items = Rs. 25,35,400/-

Total :Rs.2,27,59,400/-

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i) The deposition of PW.116 is liable to be rejected as it has most of the 9 cardinal-defects above mentioned.

ii) One significant feature in the evaluation report is that it contains 29 items but for 21 items it is made on the basis of LS which means lump sum amount. LS means they are not able to correctly assess the value therefore assessed it on lump sum basis.

iii) The defence witness R.Raviraj, PW.78 has explained how lump sum payment cannot come in a detailed evaluation. Every expenditure towards construction should be verifiable expenditure. The items for which expenditure is made should be based on the contemporaneous price list which must be verified. And the basis on which such verification is done should be furnished along with the report. The Courts are not to accept the opinion of an expert unless he has furnished verifiable data and the basis on which he has gathered the data, otherwise it is not an expert's evidence and therefore would be inadmissible in evidence.

iv) A bare perusal of the report Éx.671 it is seen that even for the expenditure like "Eurocon", Wall tiles, ultra floor tiles, wall granite tiles, white marbles, sound proof device, fire fighting equipments, granite flooring, have not been verified as regards the value. Thus there is no basis for the lump sum provisions made.

v) PW.116 had made a lump sum amount and added Rs.30,000/- and Rs.21,085/- for metro water, sewerage board. This is

clearly wrong. He should have verified metro water and sewerage board as to what was paid at the time of getting the connection in 1993-94 instead of making a guess work.

vi) He had made an addition of Rs.15,72,459/- towards preparation of plan, drawings, design and supervising charges. As mentioned earlier, PW.259 admits that all the drawings of A1 was done by architect Vijayasankar. He was not examined though available.

vii) He had added Rs.25,33,400/- towards furniture and wooden items he is not competent nor an expert in that field. He had not given the basis for evaluation and hence his evidence is clearly inadmissible.

For all the above reasons, the evaluation made by PW.116 is liable to be rejected. The prosecution has not discharged the burden of establishing the amount of expenditure that had been incurred by A1. Hence the burden of satisfactory explanation would not get shifted to the accused.

In this regard, the evidence of DW.94 to be considered. He is one of the persons who had accompanied PW.116 for evaluation of 36 Poes Garden. In his evidence he has deposed that even though 11 engineers participated only seven have signed the report Ex.P671. The PWD schedule rates do not cover special items like marbles, granites, bath fittings, etc. He deposes about the requirement to get quotation from 3 local suppliers to ascertain the price that it must be enclosed with report. No such things were done in that case. That he is not able to speak about the correctness as measurements are not given that the working sheet containing the details are not enclosed along with the report. He had further stated that in case of old building internal water supply, internal sanitary arrangements, internal

electricity arrangements ought not to be taken into consideration that they are incompetent to value wooden items. That Ex.P671 was not prepared in consultation with all.

It may be mentioned in the cross examination the existence of the working sheet is not specifically denied. No suggestion to this effect has been made. The evidence of DW.78, it is submitted remains unshaken on most of the vital aspects deposed by him.

Without prejudice to the above, the 1st accused had found the actual expenditure by defence evidence and how the income tax department had computed the value which has been upheld upto the tribunal level.

XLV) ANALYSIS OF THE COST OF CONSTRUCTION OF JEEDI METLA VILLAGE, ANDHRA PRADESH.

In item 179 of statement II, which relates to the expenditure during the check period the prosecution wants to add Rs.6,40,33,901/- This is said to be the total cost of construction of 5 items as per the report of PW.98 M.Velayutham, PWD engineer whose report is Ex.P645. According to the prosecution the evaluation done in respect of the following 5 items:

1. Compound wall
2. New building with ground floor only
3. Renovation of old building consisting of ground and first floor
4. Buildings for garages, drivers, quarters, manager's office cum residence, generators room and watchmen shed and
5. Old servant quarters

PRELIMINARY SUBMISSIONS

I. The report in Ex.P645 suffers from following grave defects such that the entire report is liable to be rejected.

a) It is a requirement of para 81 of DVAC manual that evaluation should be done only in the presence of the owner of the building. Para 81 provides that DVAC must give a written notice to the owner. If the owner is not present, despite the notice, then she must be issued a notice of summons under Section 160 without complying with this procedure no evaluation can take place. In this case PW.259 and PW.256 Kathiresan, Deputy Superintendent of Police do not say that they had issued any such notice requiring her presence to A1.

b) PW.259 states that he had obtained along with 78 other warrants a warrant for search of the building at Jeedi Metla village in Andhra Pradesh from the Court of Principal Sessions Judge, Chennai. It is submitted this itself is wrong procedure. PSJ, Chennai, cannot exercise jurisdiction and issued a warrant for searching a premises situated outside State of Tamil Nadu and outside his territorial jurisdiction. Hence the warrant will not cloth. PW.259 with jurisdiction to search. Petitioner states Section 78 of the Cr.P.C. a warrant is to be executed outside the local jurisdiction of the court issuing it has to be forwarded to the Executive Magistrate or District Superindent of Police within local jurisdiction the warrant is to be executed. Then, such Executive Magistrate or District Superindent shall endorse his name and cause it to be executed. It is provided in Section 99 of Cr.P.C. that provisions of Section 77, 78 & 79 shall so far as may be applicable while executing warrant for search.

c) The warrant as PW.259 admits was in his name. It is provided in the Crl. Rules of Practice, a statutory rule that only the person in whose name the warrant is issued could execute and search the warrant. In this case PW.259 deputed PW.256 Kathiresan to search the premises at Jeedi Metla. This itself is invalid.

d) PW.256 Kathiresan, it is submitted that does not have an authorisation to investigate under Section 17 of the P.C. Act. This is

without prejudice to this submission that all section 17 and 18 authorizations given in this case and marked in evidence are invalid as they do not, on the face of the authorisation contain any reason why a subordinate is being given the power. Thus the procedure is clearly invalid.

II. The evaluation done by PW.98 apart from the above containing the following grave defects which render the report under Ex.P645 an unreliable document.

a) He had evaluated on the basis of plinth area rate. The evaluation has to be made only on the basis of detailed estimation.

b) He importantly states that the schedule of rates on the basis of which the valuation has been done is the schedule of rates of Andhra Pradesh which according to him was given to him by the Vigilance police during the course of the evaluation proceedings. This vital document from which alone the verification of the rates would be made is not produced or made part of Ex.P645. It is submitted adverse inference must be drawn against the prosecution.

c) PW.98 admits in the cross examination that the vigilance police gave him a drawing which is not an approved drawing of the building at Jeedi Metla which was used by him for calculating the extent of construction. This important drawing has also been not annexed to the report. PW.256 does not say that he or anybody from the vigilance police gave such a drawing to PW.98 or how they obtain such a drawing.

d) A valuation would largely depend upon the period of construction. In this case PW.98 says that he estimated the period of construction with his experience. He further says that he obtained the information by examining some persons whom he does not name. He also says that it was also gathered by noting the date of electricity connection obtained for a first time but he does not say that what is

the date in which electricity connection was given to the new building. Importantly he says that the details were noted then and there in writing and that he is keeping the writing. But he has not produced the same in the court. The non-production of the important document shows such a document does not exist or that he is telling a falsehood to the Court or if it exists, it will be contrary to his evidence. In either view the report Ex.P695 is liable to be rejected.

e) Again without prejudice to the above submission, the petitioner submits if the analysis of his report is taken, it will be seen that he had taken the period of renovation as 1995-96 on the following five points:

1. As stated by Ram Vijayan
2. From the EB records of the building
3. From the building plan furnished by vigilance
4. From local enquiry by the Evaluation Officer and
5. By his experience

It could be demonstrated that all the five aspects are either not proved or do not exist. He admits that he had not taken anything in writing from Ram Vijayan. Nor this Ram Vijayan had been examined by the prosecution to show what he conveyed to PW.98.

ii) No record produced to show when EB connection was taken. PW.98 also admits in his examination in the Court that it is possible that after many months electricity connection could have been obtained. If it is renovation of old building that electricity connection would have been already there and therefore nothing will turn on this aspect.

iii) Building plan submitted by vigilance police is not enclosed along with the report. PW.98 and PW.256 both admit that it was not any sanctioned plan. Hence the so called plan which is not before the Court could not have given any basis to fix the period of construction.

iv) In his evidence, PW.98 says he did not go out of the compound of the building to enquire anybody.

f) PW.259 has not independently analysed the document or tried to verify the contents, which it is his duty. He admits he had not asked or verify whether and which state valuation detail was taken in the valuation. He admits that apart from Ex.P645 no other document was annexed to the report. For all the above reasons, the evaluation report by PW.98 is liable to be rejected. In this view, prosecution cannot said it to have proved the expenditure towards construction of the new building at Jeedi Metla Village consequently the accused have no obligation to explain any expenditure incurred by them in the construction at Jeedi Metla Village.

III. Analysis of evaluation, item-wise

i) Civil construction of new building: According to the report, it is Rs.4,88,32,540/-.

a) for the reasons mentioned above, the valuation is liable to be rejected.

i) In item 4, there is a calculation mistake. PW.98 has stated in the report that cement concrete mortar at the rate of Rs.5,000/- per square meter for 825 sq. meters amounted to Rs.82,50,500/-. The calculation is wrong as it can only be for Rs.41,25,000/-.

ii) PW.98 report is not based on any verifiable data and therefore it could not be accepted in evidence. For instance for wall panelling report says that export quality marble has been used for the entire 1282 sq. meters and has arrived at the value of Rs.2,58,32,300/- only for wall panelling. At this calculation the marble used will amount to Rs.20,150/- per sq. meter. This is extraordinary. This expenditure itself amounts to 30% of the total cost. What is significant is that the report does not enclose by what process and from where they have calculated the cost of marble at Rs.20,150/- per

sq meter. Merely stating that the marble is export quality will not relieve the obligation to furnish the data on which the value is computed for sq. meter. But no such detail is available. This itself renders the report unreliable. It may be mentioned that A1 had purchased the marble from a seller in Mumbai and the payments have been effected to him contemporaneously only in cheque. The bank details of A1 have been obtained by the prosecution even during the enquiry under Section 202. Hence the prosecution should have relied upon for the actual cost from the actual purchase. In fact the Income Tax department has made in depth investigation into the matter and has arrived at the correct value of construction at Jeedi Metla which has also been confirmed by the Tribunal. The petitioner has detailed the same under the heading defence evidence.

iii) The report under item 7 provides a lump sum amount of Rs.33,000/- for dining hall arrangements. Similarly items 9, 11, 22 and 23 he had provided lump sum amount. Lump sum amount means mere estimate without any details or verifiable data available. These cannot be relied upon.

iv) Item 4 the report includes Rs.8,85,300/- as extra cost of 137 sq. meters of a architect fixtures. He calculates it at the rate of Rs.6,458/- per sq. meter. No detail is available how this rate is arrived at. Nor PW.98 competent or has the expertise to evaluate wooden structures.

v) There is a calculation error in item 18 wherein report mentions Rs.4,13,000/- whereas the total amount should have been only Rs.3,18,600/- Thus an amount of Rs.31,400/- have to be deleted even as per the valuation report.

vi) Under item 19, he had added Rs.22,32,500/- towards Korean grass. He had taken the value as Rs.950/- per sq. meters. He does not say on what basis. PW.98 is incompetent to evaluate the

cost of Korean grass as he had no expertise nor is he a horticulturist. For all the above reasons, the evaluation report is liable to be rejected.

XLVI) Renovation of old building at Hyderabad

PW.98 in his valuation report Ex.P645 has included an amount Rs.55,15,984/- for renovation of a old building. Petitioner submits that there was never a case that the old building at Hyderabad was ever renovated during the check period.

a) When asking for warrant, PW.259 mentioned only to evaluate the construction of a new building. He did not mention anything about renovation of the old building.

b) In the item of expenditure in Annexure II, there is no separate heading that the old building at Hyderabad had been renovated during the check period.

c) A1, when questioned under Section 313 of the Code has not been asked any question if she had renovated the old building and if so the cost. The prosecution is not entitled to rely upon any factor which he was not questioned and had no opportunity to explain under Section 313 of the Code. Thus the entire amount of Rs.55,15,984/- allegedly the expenditure for renovation of the building is liable to be excluded and deducted.

d) Without prejudice to the above submission, the petitioner submits that even in respect of the renovation of the old house the report Ex.P645 contains all the defects pointed out above which render it unreliable. In addition to the above, there is no material to show that the renovation was done during the check period. Firstly the income tax department which went it to the question of expenditure relating to construction at Jeedi Metla village after due inspection did not find any renovation of the old house no amount was added on this head. Secondly the inspection by PW.98 was seven months after the

end of the check period. PW.98 had only stated that the renovation should have been done by the end of 1996 that he will not be able to say the exact period during which the renovation could have been done. He says that he had taken 1995-96 as a period of renovation. Thirdly in his further cross examination after he was recalled at Chennai he had given a complete go by to his chief examination as well as the first cross examination. This petitioner had detailed how this second cross examination stands unchallenged. Hence his evidence is patently unrelated.

i) Experience: In the cross examination, PW.98 admits he cannot say from experience when it could have been renovated, it can only be approximate that he had stated it would have been before 31st 1996. Thus there is no basis that there was a renovation or that it was done during the check period.

ii) Moreover along with Ex.P645 no working sheet has been enclosed without this primary evidence whole of the report Ex.P645 is unreliable and not a report of an expert. This will be contrary to the best evidence rule.

iii) Without prejudice to the above, one of the item is cost of Saha Tiles which he says was put on 501.3 sq. meters. The value calculated is Rs.7,51,950/- at this amount the rate works out to 1500 sq. meters. This appears to be extraordinary. PW.98 has not shown how and on what basis he had arrived at the figure of 1500 per sq. meters without necessary data to support his conclusions the report itself, it is submitted could be inadmissible in evidence. Hence the entire amount of so called renovation expenditure of Rs.55,15,984/- is liable to be excluded.

XLVII) <u>CONSTRUCTION OF SENTRY SHED</u>

Ex.P645 adds a total amount of Rs.3,80,180/-. At this it works out to Rs.3,385/- under the plinth rate method as stated earlier no basis for arriving at this plinth area rate. As stated earlier, the Andhra Pradesh rates have not been enclosed along with the report. Therefore there is no basis on which reliance can be based.

XLVIII) GARAGE AND SERVANT QUARTERS

Under this head, PW.98, in Ex.P645 has sought to include Rs.10,51,521/-. This works out to almost 3,000 per sq. meter. Since Andhra Pradesh rates are not enclosed along with the report. No basis is disclosed in the report. Hence Ex.P645 is unreliable in this regard.

i) Similarly for generating room, manager and other officers room, pump room for water tank

ii) A/C sheet roof for servant quarters and toilet are valued at Rs.2,130/- and Rs.1580 per sq. meter respectively under plinth area rate, but in the absence of the rate at Andhra Pradesh these calculations are also unreliable as they are not based on any verifiable data.

XLVIX) COMPOUND WALL

PW.98 has added a total cost of Rs.31,15,237/- this works out to a rate of Rs.2433/- per sq. meter. The report has a basic defect compound wall is normally measured only in running meter but PW.98 has calculated by ordinary sq. meter with this it would be impossible to calculate the construction quantity of compound wall. PW.259 I.O. has not verified any of these aspects. As submitted earlier, he had not even chosen to verify what the rates for various years in Andhra Pradesh PWD.

L) ELECTRICAL ITEMS

PW.98 says that electrical items were evaluated by D.Udayasuriyan, Asst. Electrical Engineer. But the said person has not

been examined as witness. It is settled law that where the expert was not examined then his report is inadmissible in evidence. The case law on the point has been quoted earlier.

Without prejudice to the above submission, the report of electrical installations under different heads is an unreliable document. The report under the caption general (page 39) says that installations form part of permanent fixtures and fittings in the building cost of construction of the buildings include these items. Even so these items are also included and not shown to have been excluded in computation valuation.

The report speaks about renovated building. As earlier stated, there is no such renovation of any old building at all.

The whole of the report does not even say how the vague for each item like a light point fan point two-pin plug point were calculated. Was it on the basis of rate prevailing in Andhra Pradesh if so for what year is not mentioned nor detail even mentioned PW.245 one of the police officers who is said to have gone to Hyderabad does not say he gave the details. Hence the entire report is liable to be rejected.

He mentions about movable electrical items like Dish Antenna set, Sony colour TV, 5 KV voltage stabilizer, wall mounted fan, etc. In no case he has described the items as to what year it is made what capacity and how he ascertained the price whether the price quoted in the report is one that prevailed at Andhra Pradesh or Tamil Nadu. None of the details are available. Hence the non-examination of the electrical installation expert therefore have gravely prejudiced the accused deprived them of the opportunity to challenge the report. For

all the above reasons, total amount by way of electrical installations in a sum of Rs.41,53,653/- is liable to be excluded in any view.

LI) INVESTIGATION RELATING TO THE CONSTRUCTION IS BY POLICE OFFICERS WHO HAVE NO AUTHORISATION UNDER SECTION 17 OF P.C. ACT

i) PW.220, it is admitted by him, has not been examined at all by the police and there is no 161 statement from him. It is submitted this itself renders his evidence inadmissible. Reliance upon evidence is contrary to the Code. The accused denied effective cross examination by marking contradictions under Section 145 of the evidence.

ii) As regards PW.116 he said to have been examined by PW.242 Jeganathan, DSP. This Jeganathan is not authorised under Section 17 by PW.241 – V.C.Perumal. PW.242 only says that PW.240 Lathika Charan had given him authorization under Section 17 of the Act. It is submitted it is invalid for the following reasons:

a) Question of authorizing another to investigate under Section 17 would not arise in a proceeding under Section 202 hence this so called authorization under Section 17 said to have been given by PW.240 even if it existed would not make a difference. It is invalid and contrary to the Code.

b) PW.247 admits that he had not produced the so called order of PW.240 and does not remember if he had handed it over to PW.259.

c) Duty is cost on the prosecution to show that officer lesser in rank than Superintendent while investigating the case had power under Section 17 & 18 of the Act. In the absence of any written order, there cannot be said to be the proper authorization to PW.242.

d) It is in evidence that PW.242 Jeganathan has examined PW.1, 44, 116, 117, 115, 98, 189, 20, 94, 82, 92, 83, 19, 132 and 113. All these evidences are vitiated as PW.242 has no authorization to investigate an offence under Section 13(1)(e) under the P.C. Act. For these reasons evidence of PW.116 is also liable to be rejected.

The accused 1 through defence witnesses has shown that the expenditures have been incurred only by cheque and duly accounted for in the books of account and the same has been accepted by the income tax department after in depth scrutiny.

LII) <u>FURTHER GRAVE ILLEGALITY WHILE EXAMINING THE WITNESS DURING INVESTIGATION</u>

i) PW.98 was examined under Section 161 by PW.242 P.Jeganathan who was then DSP of Police. He was not authorized to investigate under Section 17 second proviso in the P.C. Act. Therefore the entire evidence of PW.98 is not liable to be acted upon. Secondly the examination under Section 161 was perfunctory and not one done in the normal course of investigation. PW.242 Jeganathan had examined him and reduced the examination to write in on 18.12.1996 whereas the evaluation report is prepared and is dated 3.1.1997. Thus even without before receiving the evaluation report, PW.242 had examined PW.98.

ii) It is in evidence and it is also noted in statement I item 3 that in 1968 itself under sale deed the mother of the 1st accused had purchased a grape garden at Jeedi Metla village. The description of what was purchased (as mentioned in Item 3 of statement 1 itself) is “two farm houses”, servant quarters and other building within grape garden. Therefore those items ought to have been excluded by the prosecution. They have malafidely included servant quarters and other sheds in the valuation report in Ex.P645.

iii) Thus the valuation has noted in Ex.P645 is clearly unacceptable and liable to be rejected.

iv) The accused had disclosed all the constructions done at Jeedi Metla village and the returns filed by her for the year 1994-95, 1995-96 & 1996-97 the amount of expenditure incurred by her. As discussed under the heading defence evidence re-construction clearly show what was returned by her has been accepted after in depth scrutiny by the I.T. authorities and ultimately confirmed by the highest fact finding authority and the income tax act as true.

For all the above reasons, it is submitted the prosecution has not established any amount as an expenditure for renovation and construction of new building at 31A. Therefore the burden of explaining the cost of construction/renovation cannot be shifted to the accused.

LIII) EVIDENCE OF PW.116 AND PW.98 AND THEIR VIOLATIONS LIABLE TO BE DISCARDED IN THE LIGHT OF THEIR ANSWERS IN THE CROSS EXAMINATION IN THE RECALLED CROSS EXAMINATION IN THE YEAR 2003.

The Accused says and submits that PW -116 and PW 98 and few other witnesses have been recalled in December 2002 and in January 2003 and further cross examination on behalf of the defence. During such cross examination the prosecution witnesses have resiled from many of their statements in the chief examination and admitted several facts in favour of the accused.

LIV) EFFECT OF THE ORDER OF THE SUPREME COURT OF INDIA AND THE PROCEDURE ADOPTED AT KARNATAKA WHILE EXAMINING THE RECALLED WITNESSES: HOW THE SAME IS INVALID

i) When the Hon'ble Supreme Court of India transferred this case to the State of Karnataka reported in (2004) SCC (Crl) 882 it is expressly stated in the direction in Para 34 (f) of the judgment that

> " special public prosecutor would be at liberty to apply to the court to have these witnesses declared hostile and to seek permission to cross examine them. Any such application if made to the special court shall be allowed"

The learned special public prosecutor Shri.B.V.Acharya, Senior Advocate filed I.A.321/2010 under Sec 311 Cr.P.C and sought to recall 45 witnesses including PW 116 and PW 98. But examined only 23 witnesses. The Learned Special Public Prosecutor did not declare PW-116 and PW-98 and others as hostile nor did he seek to cross examine them. But the Learned Special Public Prosecutor had sought permission only to re-examine them. This permission was granted by this Hon'ble Court on 18.1.2011 in I.A.321/2010. The Learned Special Public Prosecutor put only one question in the re-examination to PW - 116. The only question asked was "In your examination in chief you have given the year of construction of various buildings covered by Ex. P. 666 to 672. But in cross examination you have given contradictory statement giving the year of construction outside the check period which one of the two versions is correct." PW 116 at Karnataka had stated that the year of construction given by him in the chief examination alone is correct. Significantly, no other question is put to PW 116 by the Special Public Prosecutor.

ii) It is submitted that the whole procedure is illegal and gravely prejudicial to the Accused. Firstly, the Hon'ble Supreme Court of India while transferring the case to Karnataka, gave liberty to the Special Public Prosecutor expressly stating that he is enabled to recall the witnesses for the purpose of declaring them hostile and cross examine

them. The Learned Special Public Prosecutor having made only a “re-examination” is therefore contrary to the direction of the Hon'ble Supreme Court of India.

iii) It also appears to be well settled that re-examination partakes the nature of chief examination. Therefore in re-examination no leading questions can be asked. Section 142 of the Evidence Act, stated that leading questions must not he asked in chief examination or re-examination, except with permission in the court. No such permission was sought by the prosecution nor such a permission grantable in the facts of this case. The question that in put by the Special Public Prosecutor at Karnataka by way of re-examination is on the face of it is a leading question. This ought not to have been permitted. If such questions and answers are permitted it would amount to conducting the case by a procedure contrary to Evidence Act and the code. Hence the answer given by recalled witnesses namely PW 46, 71, 76, 84, 87, 93, 98, 115, 116, 117, 126, 134, 135, 144, 153, 155, 179, 183, 184, 186, 198, 205, 237 has to be rejected in toto.

iv) The question asked by the Special Public Prosecutor in re-examination is not the one that can be put to a witness in re-examination. It is a settled law that re-examination is permissible only to clarify an ambiguity in the answer given by a witness. Hence the procedure permitted by the Honourable court and what was done by the Special Public Prosecutor are plainly wrong.

v) What is the consequence of putting a leading questions in re-examination when it is expressly prohibited U/s 142 of the Evidence Act?

The Hon'ble Supreme Court of India in the judgment reported in 1993 (Supp) 3 SCC 745 has held in (Para 11) as follows:-

> "Section 142 does not give such power to the prosecutor to put leading questions on the material part of the evidence which the witness intends to speak against the accused and the prosecutor shall not be allowed to frame questions in such a manner to which the witness answer merely "yes" or "no"; but he shall be directed to give evidence which he witnessed"
>
> "The counsel must leave the witness to tell unvarnished tale of his own account. Sample leading questions extracted hereinbefore clearly show the fact that the prosecutor led the witnesses to what he intended that they should say on the material part of the prosecution case to prove against the appellant which is illegal and obviously unfair to the appellant offending his right to fair trial enshrined under Article 21 of the constitution. It is not a curable irregularity"

In the light of the above Supreme Court judgment the illegality committed by the Special Public Prosecutor by putting leading question has two important legal consequences as it is illegal.

(a) As held in the above Supreme Court judgment. The procedure would violate the provisions of section 142 of the evidence act and also the requirement of fair procedure under Art 21 of the constitution. It is not a curable defect. Hence the entire trial is vitiated.

(b) Secondly in any view the entire re-examination of the recalled witnesses done at Karnataka and the answers given by them are liable to be excluded from consideration as the re-examination as violated to basic principles above mentioned.

LV) HOWEVER, SINCE NO CROSS EXAMINATION HAS TAKEN PLACE, VARIOUS ANSWERS GIVEN BY HIM IN THE SECOND CROSS EXAMINATION AT CHENNAI REMAINS WITH FULL FORCE.

It appears to be settled law that where a prosecution witness says things which are in favour of the accused, but is not treated "as hostile" then, his evidence has full force and binds the prosecution.

(2005) 5 SCC 272

(2004) 4 SCC Crl 882

(2002) 9 SCC 639 - Jagan M Seshadri Vs. State of Tamil Nadu (Para 9)

As stated earlier the evidence of PW -116 shows that Exp.P.671 is unreliable as it does not contain data required for cross verifying the quantum of construction, value of the special items used in the construction. Consequently Exp.P.671 cannot be relied upon. If so, there is no material to determine the value of construction made at 36 and 31-A Poes Garden. Hence the burden will not shift to the accused at all to disprove any value of construction.

LVI) EFFECT AND BINDING NATURE OF ORDERS PASSED UNDER INCOME TAX ACT

56.1) The Accused submits that number of orders have been marked as exhibits in which the Commissioner of income Tax (Appeals) and the Hon'ble Tribunal under the Income Tax Act have determined the income, valuation and also the quantum of expenditure, particularly, as regards marriage expenditure of A-3. The Accused submits that the orders, passed by the income tax authorities under scrutiny assessment procedure and after deep and pervasive

analysis of various materials produced, are binding and conclusive on this Hon'ble Court.

56.2) The Accused says and submits this aspect can be viewed with three different approaches, all of which would lead to the conclusion that the orders passed by the income tax authorities and marked in evidence are binding on this Hon'ble Court.

56.3) The first line of reasoning is that the Hon'ble Supreme Court has taken a view that such determination by the income tax authorities is final and is binding in a criminal case involving the same issue. The Accused seeks to rely upon (a) Inbasagaran case – reported in (2006) 1 SCC 420. The issue in that case was whether the large amount of cash seized from the house owned by the accused Inbasakaran or, as he contended, it belonged to his wife, who had some independent business. The observation of the Supreme Court makes this position clear.

> "in view of the explanation given by the husband and when it has been substantiated by the evidence of the wife, the other witness who have been produced on behalf of the accused, coupled with the fact that the entire money has been treated in the hands of the wife and she has owned it too and she has been assessed by income tax authorities, it will not be proper to hold the accused guilty in the Prevention of Corruption Act as his explanation appears to be plausible and justifiable."

56.4) The same view has been taken by Madras High Court also in a case arising under P.C. Act which is enclosed in the compilation of judgments. R.Markandan (dead) Vs State reported in 2012 (2) L.W (Crl) 39. In that case it was held that decision of the tribunal concludes the issue that the accused had received the income during the check period. That the criminal court is bound by the same. It was further held in the said judgment that the order of the Income Tax

Tribunal can be straight away marked even in the appellate stage and formal proof is not required. Thus on the basis of these decisions, it may have to be held that Income Tax decision are binding this Hon'ble Court.

56.5) The second line of reasoning is under section 40 of the Evidence Act, existence of any previous judgment which has the effect of preventing a suit from being taken cognizance of or holding a trial is relevant. Section 41 relates to judgments in rem. Section 42, judgments, orders and decree other than those mentioned in Section 41 are relevant provided they relate to matters of public nature. The group of these sections was the subject matter of deep consideration by the Hon'ble Supreme Court of India, which reviewed all the case law up till that time on a reference to a larger bench – reported in (2002) 8 SCC 87 - K. G. Premshankar Vs Inspector of Police. Para 30 and 31 lay down the ratio. The Hon'ble Supreme Court stated that the court has to decide as to what extent the judgment is binding and conclusive with regard to the matter (s) decided thereon. They give an example - In a Civil Suit between A and B, A is held to be the owner and in possession of the property. This judgment of the Civil Court is binding on a criminal court and a conviction of B for trespass could be made only on the basis of the Civil Court's decision. The Supreme Court therefore observed

> "Hence in each and every case, the first question which would require consideration is whether the judgment, order or decree, is relevant. If relevant, what effect? It may be relevant for a limited purpose such as motive or as a fact in issue."

56.6) This would depend upon the facts of the case or fact in issue. In this view also, the decisions rendered by the income tax authorities would be binding and conclusive as they have decided an

important fact in issue, namely, what is the income and the expenditure of the Accused during the check period.

56.7) What is the expenditure incurred by the Accused No.1, be it, expenditure towards construction or expenditure towards marriage of A-3. These facts in issue have been decided by authorities in favour of the Accused on the entirety of the evidence available before it. It could be seen that even the evidence gathered by DV & AC were forwarded to the income tax authorities and the decisions in favour of the Accused have been arrived at by the income tax authorities after considering all the evidence including the investigation details from the DV & AC authorities also.

56.8) It may be seen that under the income tax act an under-statement of expenditure can be brought to tax as an unexplained income under Sec 69 (c) of Income Tax Act. Hence income tax authorities have to determine the actual expenditure. Income Tax authorities have to determine the total income to bring it to tax. If the income is not referable to the business or from agriculture there is a provision under the income tax act in Section 56 to charge the receipt as income from other sources. Thus the determination of income or determination of expenditure are provided under the Income Tax Act and have great validity and statutory force.

56.9) The third line of reasoning : this is the principle based upon the decision of the Hon'ble Supreme Court of India in Radeshayam Kejriwal reported in (2011) 3 SCC 581 and host of other cases. The decision says that the exoneration by the adjudicating authorities in any enactment like Customs Act, Foreign Exchange Regulation Act or Income Tax Act in the adjudication proceedings would render the prosecution in a criminal court for the same

contravention unsustainable and the criminal prosecution is liable to be quashed. This is on the basis that the adjudicating authority who decides the case considers materials on the test of preponderance of probabilities, and if, in that criterion could not find a person as having contravened the Act, then, there could not be in a prosecution which requires much higher degree of proof namely 'proof beyond reasonable doubt' from succeeding. In this view, the criminal prosecution must be quashed.

56.10) It is submitted a series of decisions in this regard have all been noted in the above said judgment and the Accused has filed the same in the compilation of judgments.

56.11) The above views have a significant impact in the present proceedings. As far as the Accused is concerned income tax authorities have accepted the income returned by her particularly from agriculture, which judgment has been upheld upto the tribunal level.

56.12) It must also be further viewed in the context that a notice under Section 263 of Income Tax Act was issued by the Commissioner of Income Tax which is marked as Exp.D.70. (Page-418 of Volume – III) This notice is issued on the basis of the evidence gathered by DV & AC and supplied to the income tax authorities. The annexure to the notice under Section 263 of the income tax act makes this position clear. After considering the materials supplied by DV & AC, the Hon'ble Appellate Tribunal under the Income Tax Act has held the notice to be invalid. It has also gone into the question on merits. The return filed by her has been accepted after full scrutiny. Thus, since on the same evidence, the income tax authorities have come to the conclusion that there is no warrant or justification to hold that the Accused has incurred an expenditure (a) for the marriage of A-3, (b)

incurred an expenditure towards purchase of jewelry, sarees and footwear during the check period and had not incurred any expenditure more than what is returned by her towards construction. The conclusion has been reached that there is no justification to make an addition of the above heads of expenditure even by the test of preponderance of probabilities. Therefore, in a criminal case before this Hon'ble Court where the prosecution has to establish the expenditure by proof beyond reasonable doubt the proceedings before the income tax act would be binding and conclusive on the facts in issue decided as above referred to.

56.13) Hence the decision of the income tax authorities are binding and conclusive on this Hon'ble Court. The Accused therefore submits that the order of C.I.T (Appeals) and the Tribunal orders in favour of the Accused are themselves a piece of Evidence of unimpeachable character which by itself has the effect of rebutting the prosecution evidence. The findings of the Tribunal are on the basis of contemporaneous records and accounts, bank statements duly maintained by the Assessee. Thus the decision of the Tribunal. The decision of Income Tax authorities, even though after the check period and even after the criminal case is registered, still have relevance and govern the issues since the decision have been rendered on the basis of the then contemporaneous materials and records. It may be mentioned under the scheme of Income Tax Act itself the return is required by law to be filed only after the close of financial year. The accused have placed reliance upon the decision of the Hon'ble High Court Madras reported in 2012 (2) L.W. Crl R.Markendan (died) appellant Vs State.

56.14) As regards the income determined by the income tax authorities it is equally binding and conclusive in as much as in the

proceedings before the income tax authorities and in the proceedings before this Hon'ble Court, the Accused No.1 need only to prove the income by preponderance of probabilities . If so, the decision of income tax authorities on the same set of facts would be binding and conclusive on this Hon'ble Court.

56.15) Thus looking from different point of view the conclusion is inescapable that the decisions rendered by the income tax authorities produced on behalf of the accused are binding and conclusive on this Hon'ble Court.

LVII) INCOME TAX PROCEEDINGS OF A1 ON THE COST OF CONSTRUCTION

Without prejudice to the above submissions the Accused No.1 has by defence evidence shown the cost of construction. Before dealing with this aspect, the accused No.1 deems fit to point out that the income tax returns were not manipulated nor it was possible as the assessments were made on then existing contemporaneous records. This aspect is dealt with as under:

LVIII) A NOTE ON RETURNS FILED BY A1 HOW THE DELAY DOES NOT LEAD TO MANIPULATION

It is submitted that A1 filed the returns for 1987-88 to 1992-93 in November 1992. The prosecution itself has marked the returns and assessment orders as follows.

Ex.P.2123 – Ass. Year – 1987-88

Ex.P2126 – Ass. order – 1987-88

Ex.P.2127 – Ass. Year – 1988-89.

Ex.P.2130 – Ass. Order – 1988-89

Ex.P.2131 – Ass. Year – 1989-90.

Ex.P.2133 – Ass. Order – 1989-90.

Ex.P.2135 – Ass. Year – 1990-91

Ex.P.2137 – Ass. Order – 1990-91.

Ex.P.2021 – Ass. Year – 1991-92

Ex.P.2030 – Ass. Order – 1991-92

Ex.P.2139 – Ass. Year – 1992-93

Ex.P.2140 – Ass. Order – 1992-93

Ex.P.2143 – Ass. Year – 1993-94

Return for assessment year 1994-95 = filed on 23.9.1996

Return for assessment year 1995-96 = filed on 8.11.1996

Return for assessment year 1996-97 = filed on 18.11.1996

Thus, it will be seen though there was some delay in filing the returns were made and assessment order completed in the year 1993-94 for all these years.

DW-64 auditor for A1 at that time, has deposed and shown that the returns for the year 1994-95 to 1996-97 were all filed on the dates mentioned above.

One factor may be noted which will conclusively show that A1 did not and could not have manipulated the returns to suit the purpose of the returns.

a) In this case the FIR Ex.P.2266 came to be registered on 18:9:1996. However, as per the accepted practice same was kept as

secret. A1 was arrested on 7:12:1996 and incarcerated in some other case. She was formally arrested in this case in or about 17:12:1996.

Thus almost three months before A1 came to have the knowledge about the filing of the case of the relevant returns under I.T. Act upto 31.3.1996 had been filed before the I.T. authorities.

b) The income tax proceedings relating to the construction is duly supported by all the bills and vouchers. Payments were made only by cheque except a very small minor portion of the expense. That two volumes of bills and vouchers have been filed before I.T. authorities and each of the items verified by them is noted in Ex.D211. Thus the assessment orders were made on the basis of contemporaneous documents that were in existence at the time of construction.

c) As regards wealth tax returns, they were not filed jewellery, silver and other valuables were seized by DVAC. Under the Wealth Tax Act, A1 and A2 are required to file the wealth tax return along with the certificate issued by the registered valuer under the Wealth Tax Act certifying the value at the end of the assessment year. A1 and A2 could not file wealth tax return, since it is not possible for them to produce the certificate from the registered valuer certifying the value since goods were in Court custody further. The evaluators in this case viz. PW.125 – Vasudevan is not a registered valuer under the Wealth Tax Act the income tax department in its written answer have said the valuation by PW.125 is not acceptable for filing the return under the Wealth Tax Act. Therefore the department accepted that the petitioner could not file the returns of wealth since 1993-94.

d) Moreover the proceedings initiated for late filing of return under the Income tax Act have been condoned the penalty originally levied was cancelled which is one of the appeals in Ex.D64.

e) Without prejudice to the above submission, the Accused No.1 states that on a consideration of the evidence let in by the prosecution as regards the above items it could be seen that they are not worthy of acceptance.

f) The Accused No.1 states that she has been assessed to income tax for long number of years much earlier to the check period. Under income tax act understated expenditure would be brought to tax as unexplained investment. Hence the one renovation and two constructions, as aforesaid, were the subject matter of deep scrutiny by the Income Tax Department and under various orders the expenditure returned has been accepted.

g) The Accused No.1 is always assessed only under the Central Circle II, Chennai, of the Income Tax Department. All assessments under Central Circle II would only be Section 143 (3) of the Income Tax Act. Section 143(3) are scrutiny assessments. In simple terms, it means every piece of income and every piece of expenditure will be subjected to deep and pervasive scrutiny and then only it will be accepted.

h) The amount of expenditure incurred by the Accused No.1 is as follows as per her return of income:

Renovation of 36 Poes Garden	76,74,900
Construction at 31-A Poes Garden	1,35,10,500
Hyderabad Farmhouse addition	1,39,62,300
Compound wall for Hyderabad Farmhouse	11,00,000
	3,62,47,700

whereas under the two valuation reports above mentioned the prosecution has estimated the cost of construction at a huge figure of Rs.13,68,31,901. This is patently wrong, as has been explained above.

i) It may be mentioned that the auditors of A1 under Ex.D211 have written a detailed letter during the court of assessment proceedings to Deputy Commissioner of Income Tax. After detailing the expenditure incurred Ex.D-211 contains the following statement. It is extracted for convenience of reference and having regard to its importance.

> "Party-wise and Cheque-wise break up details of each construction account has been detailed in Annexures. We have already furnished copies of most of the bills pertaining to the construction account of Madras and major bills of Hyderabad vide Volume II of the Paper Book with respect to the quantum appeal filed for the assessment year 1994-95. We request you to refer the same to avoid duplication. The construction bills so furnished includes cash bills also. In case you require any further details, we shall provide the same on hearing from you".

This document encloses the bank statement which showed how contemporaneously in the year 1995 most of the expenditure have been incurred and by cheque. The bank details have been gathered by the prosecution even at the initial stage of investigation under Section 202 Cr.P.C. this had been done by PW-240-Mrs. Lathika Charan D.I.G. Still the prosecution had not chosen to enquire and verify even single supplier or contractor to ascertain the actual cost of construction. Adverse inference must be drawn against prosecution.

Object of prosecution must be to ascertain the real cost and not to estimate on a speculative basis the cost of construction.

j) In the income tax proceedings the Income Tax department appointed a departmental valuer (DVO) who inspected the properties, took measurements of the constructions and submitted a valuation report. It is Ex.D…. The Accused No.1 on her behalf had appointed a registered valuer Messrs. Anbu Sivam who had also valued the constructions and submitted a report. The report is Ex.D… The whole of the matter was discussed fully by the Commissioner of Income Tax (Appeals) Chennai in his very detailed order, marked Exp. D.61.

k) The said order of the Commissioner of Income Tax (Appeals) was appealed against by the income tax department to the Income Tax Appellate Tribunal in I.T.A.No.1836 and batch, marked as Exp.D-64. In that appeal the cost of constructions was considered in depth and the Hon'ble Tribunal came to the conclusion that the conclusions of the Commissioner of Income Tax (Appeals) was perfectly in order and dismissed the appeal preferred by the Revenue. A small addition made by the Commissioner of Income (Appeals) of Rs.2 lakhs per construction was also deleted by the Tribunal. Thus, the Accused succeeded in the Tribunal in its entirety.

l) A perusal of Ex.D 61 which is the order of the Commissioner of Income Tax (Appeals) would reveal the logical manner in which expenditure towards the value of construction was determined. There was no dispute between the Accused No.1 and the DVO of the Income Tax Department as far as the extent of construction or plinth area or cost of construction of the structure are concerned.

m) The Commissioner of Income Tax (Appeals) found that the difference in value arose only on account of the fact that the marbles used have been valued excessively whereas the Assessee has given details of purchase of these items at much lower rate.

n) It may be of importance to note that while dealing with the appeal, the Commissioner of Income Tax (Appeals) wrote to the Assessing Officer, Dr.B.Senthil Kumar, I.R.S., that the contentions in the appeal cannot be decided satisfactorily unless the value of marbles supplied is ascertained and that he would be much happier if the Assessing Officer, Dr.B.Senthil Kumar, himself, undertook the verification of the price of marbles supplied. This letter of the Commissioner of Income Tax (Appeals) to the Assessing Officer is marked as Exp. D-209.

o) The Assessing Officer, in pursuant to such a direction, visited Mumbai and according to the evidence of DW-64 he was also present in Mumbai at that time. It is then the said Assessing Officer enquired Madasamy, partner of New Diamond Granite Export, DW-96 and obtained the invoices under which the marbles had been supplied to A-1. The evidence of Madasamy, partner of New Diamond Granite Export, DW-96 has confirmed the same. He had further stated that a statement was also recorded from him by the Assessing Officer under Section 131 of the Income Tax Act. The income Tax Department had not produced the said statement despite summons under Section 91 Cr.P.C.

p) The other suppliers of marbles were also enquired into, and, they have also confirmed the same.

q) In fact DW-96 Madasamy, partner of New Diamond Granite Export, has also stated that it is at the same rate he had supplied marbles to various other parties during the relevant period.

r) Further Madasamy, partner of New Diamond Granite Export, has also given details of the transporter and the Road Way Bills -

Annexure 1 to 40 to Exp. D-210 under which the marbles were transported from Mumbai to Jeedi Metla Village in Hyderabad.

m) DW-64 has also produced before this Hon'ble Court the statement of account and bank details it is marked as Ex-D211 along with Annexures under which payments were effected for supply of marbles by New Diamond Granite Export. All these records were also shown to the District Valuation Officer and his comments were also received.

n) The District Valuation Officer has also arrived at the cost of marbles at an enormously inflated rate. He had done so on the basis of a quotation purportedly received from Elegant Marbles and Granite Industries Limited, Mumbai. The Assessing Officer, Dr.B.Senthil Kumar, I.R.S., while at Mumbai, had enquired the said Elegant Marbles and Granites Industries Ltd., also. The said person had given a letter which is marked as Exp.D-68. The Director of Elegant Marbles and Granites Ltd has stated in that letter that the quotation relied upon by the District Valuation Officer was not given by them and that the document filed by the District Valuation Officer is utterly suspicious. It shows that Elegant Marbles and Granites Limited had not given any quotation and given a photo copy of their letter head to show that what was relied upon by the District Valuation Officer could not be a genuine document.

o) Simplex Enterprises represented by its partner Mr.K.K.Mistry, had supplied marbles to the construction/ renovation of properties at Chennai. The assessing officer had collected the invoices from the said firm, when he personally visited the office of the said Simplex Enterprises at Mumbai. The assessing officer in his report to the Commissioner of Income Tax (Appeals) – marked as Exp. D. 210 dated

10.12.1999 has stated that he had also recorded a statement from Mr.K.K.Mistry, who confirmed that the marbles had been supplied to the Accused No.1 at the rate of Rs.80 per sq.ft. as she had made bulk order of more than 10,000 sq.ft. These documents have been compendiously marked as it forms part of the report of the assessing officer marked as Exp.D.210. The report also shows that he had collected quotations from Pacific Marbles.

p) Armed with all these materials, the Commissioner of Income Tax (Appeals) in his order dated 29.12.1999 Exp.D.63 as faultlessly reasoned in the following manner. He found that the valuation given by the District Valuation Officer and the Accused as far as civil constructions are concerned is the same. Certain items like lift, generator, air conditioner, etc., are also the same. The difference pertained only to the value of marbles. It is in this regard, the learned authority accepted the value returned by the Accused for the construction at Chennai and Hyderabad. The detailed reasons contained in para 64 of the order of Commissioner of Income Tax (Appeals) in I.T.A. 67 and 65/1999-2000 dated 29.12.1999 marked as Ex-D-63 clearly accepts the expenditure as returned by the Accused.

q) If the valuation of the marbles is taken at Rs.80 per sq. ft., as, in indeed, it must be, then, the valuation given by the Accused alone would be correct. It is submitted that the methodology adopted and the faultless logical reasons of the Commissioner of Income Tax (Appeal) will show that the cost of construction was only as returned by the Accused.

r) It is submitted that, since it has been accepted by the Tribunal, the same is not only a highly relevant document but bind this Hon'ble Court also. The Accused has cited case law on this aspect

above to show that the decision arrived at by the income tax authorities is conclusive and binding on this Hon'ble Court. The valuation report given by the prosecution witness is therefore liable to be rejected.

LIX) INDEPENDENT EVIDENCE LET IN BY THE DEFENCE ON VALUATION

80) The Accused has also adduced independent evidence before this Hon'ble Court apart from relying upon Exp.D-63 as to how the cost of construction was, as stated by her.

a) The Accused has examined DW-64 her auditor and marked through him a statement of accounts for the construction which shows the payments through cheques made contemporaneously in 1995 itself. It is marked as Exp.D-211. This document has two annexures. These show the cheque payment made to the contractor suppliers which includes new diamond, granite & exports. The document also shows that the assessee (A1) had filed before the I.T. authorities all the bills and vouchers and documents showing supply of building materials in two volumes. CIT appeals only on perusal of these documents accepted the extent of expenditure as returned by the assessee.

b) The Accused has examined Madasamy, partner of New Diamond Granite Export, as DW-96 who had confirmed the supply of marbles at the rate of Rs.80 per sq. ft. Under Ex.D210 the assessing officer Dr.B.Senthilkumar had in response to previous direction had submitted a report to the CIT appeals. This document shows that he had enquired K.Madasamy, Partner and recorded the statement from him who had deposed before him, on oath that he had supplied marble at the rate between 80 & 225 per sq. ft. That the said K.Madasamy had also furnished the invoices raised in respect of the same item to some other clients and at the same rate of Rs.80 to 110 per. Sq. ft.

59.1) The accused (A1) had summoned the partner of New Diamond Granite Export K.M. Samy @ Madasamy and examined him as DW.96 he had deposed in detail, about the proceedings before I.T. authorities wherein he has given a sworn statement and he had also produced various delivery challans and also lorry receipts. Thus what is mentioned in the income tax orders was confirmed and corroborated by this witness.

59.2) Apart from the same, he had also identified Ex.D210 series as invoices pertaining to supply and corresponding delivery challans under Ex.D210 series that these documents also contains his signature which he also identified. He had also deposed that for others also he had supplied at the same rate. Those are Ex.D321 to D324, being invoices of supply of marbles to others. He also stated that his firm never used to deal in cash. In the cross examination he had stated that A1 had made the payment through cheque he had identified and accepted the summons originally issued by I.T. department to him as Ex.D230.

59.3) Thus the accused not only showed how the evidence of expenditure was duly accepted and verified by the income tax department the petitioner had also independently proved the same by examining one of the important suppliers.

59.4) DW-64 has also described how every one of the items of expenditure was verified by Income Tax department and accepted by them after in-depth scrutiny.

59.5) Thus, apart from the order of Commissioner of Income Tax (Appeals) Exp.D.63 and appellate order of the Income Tax Appellate Tribunal, Exp.D.64, the Accused has let in independent evidence before this Hon'ble Court to what was the actual cost of construction.

Thus in any view of the matter, the total cost of construction can only be

According to the prosecution for both

36 & 31A and the construction at Hyderabad ---- 13,68,31,901

As per the I.T. and defence evidence

Expenditure is only Rs.3,62,47,700

10,05,84,201

Thus the said amount is liable to be deducted.

LX) EXPENDITURE TOWARDS **JEWELLERY, SAREES, FOOTWEAR & WATCHES, THEIR UNTENABILITY**

60.1) The prosecution has included in Annexure IV the following amounts as expenditure incurred and wanted to show them as assets to be explained by the Accused. They are at ;

Item No.	Description	Value in Rs.
278	value of footwear	2,00,092
279	value of 914 silk sarees	61,13,700
280	value of 6195 other sarees	27,08,720
282	value of 7 costly watches	9,03,000
283	value of 91 wrist watches	6,87,350
286	value of 26 items of jewels	19,30,852
288	value of 41 items of jewels	23,90,058
289	value of 228 items of jewel	1,40,75,958
290	value of 3194 items jewels	3,12,67,725
291	value of 1116 kg of silver art	48,80,000
	Total	5,63,35,035

60.2) The Accused seeks to urge the following major aspects:

The search and the alleged recovery show a clear abuse of power by the prosecution for the following reasons:

a) The search: At the time of search, the Accused No.1 as well as A2 were remand prisoners incarcerated in Central Prison, Chennai. It appears to be a requirement of law that search particularly of her residence shall have to be undertaken only in the presence of the owner of the house. The search was done in this case after keeping A1 and A2 in prison. The FIR was registered on 18.9.1996 whereas the arrest of A-1 was on 7.12.1996. Thus the prosecution had the time to search. Still they did not. Only after incarcerating her, the prosecution chose to search the residential premises and the farm house at Hyderabad. Thus *mala fide* is apparent. Therefore the search is violative of the settled norms for a fair search. The DV&AC manual, which has been marked as Exp 380 (para 81) also provides that the search must take place only in the presence of the owners of the property. It is settled law that such manual is also requires to be strictly followed by the Investigation Agency. The Hon'ble Supreme Court of India in Vineeth Narayan case (1998 (4) SCC) Vol. Page has held that the CBI is required to strictly adhere to the manual governing their investigation. In the same analogy the prosecution ought to have strictly followed the requirement of DV&AC manual.

Secondly the search warrant was obtained only for searching 36 Poes Garden whereas search had also been conducted at 31A Poes Garden which is an independent house, also being assessed separately by the Corporation for the purposes of imposing property tax. Moreover prosecution in Annexure II has taken 36, and 31A as two

different assets belonging to A1. Thus the search and seizure from 31A is clearly unauthorized. It is illegal and the proceedings are therefore not in accordance with the code and it is unfair.

Thirdly in this case, the search of farm house, servant quarters and other buildings within grape garden compound of A1 at Jeedi Metla Village, Rangareddy District, Andhra Pradesh is also ex facie illegal. The warrant of search of a place outside the local jurisdiction of the court is not enforceable as such. It has to be endorsed by the Executive Magistrate or the Superintendent of Police for execution. This can be dismissed with only in the case of the delay in obtaining such an endorsement will prevent the due execution of the warrant. Searching an immovable property the delay cannot be the reason that such a procedure is required to follow under Section 99 of Crl. Procedure Code. The prosecution has ignored the same as they have of many provisions under the Code.

Fourthly the mala fide of the prosecution is also clear from the fact that private TV channels particularly Sun TV channel which tows line of DMK party which is the main political party opposing the political party led by Accused No.1 herein was given full access to both buildings of Accused No.1. The said TV channel had been permitted to take video of all the houses and were also given access to private personal photo album of A1. This was telecast repeatedly causing grave embarrassment and prejudice to the Accused No.1. Besides being in bad taste in order to tarnish the image of A1, PW.259 I.O. in this case has also been questioned in this regard. His answers why such access to TV channels were given during the course of search was vague and unconvincing. Thus one irresistible conclusion that may have to be drawn is that I.O. has been used as a mere tool to

politically tarnish damage and to harass A1 in this case. This is a clear instance of mala fide and unfair investigation.

Fifthly while preparing the mahazar I.O. had not taken two independent respectable witnesses of the locality which is a mandatory requirement for conducting a valid search. PW.259, I.O. at page 51 of his evidence has clearly admitted the same.

Sixthly the I.O. even after A1 had come out of the prison on bail had not shown the article seized including jewelry, watches, etc and enquired A1 or other accused in this case as to their ownership and when they have been purchased. No such enquiry was done by him, giving opportunity to A1 to give explanation is also admitted by him in his deposition at page 53. For all the above reasons, the search and seizure are not reliable and therefore must be eschewed from consideration. Consequently no addition can be made on account of jewelry, sarees, watches, costly watches and footwear. The entire procedure followed in this case in contrary to the code of criminal procedure and Hence illegal. This had not only resulted in grave prejudice to the Accused but has resulted in miscarriage of justice. That apart the prosecution has also not shown or segregated the personnel possession like sarees, watches etc that are owned by A1 prior to the check period. Nor, the prosecution has proved the alleged acquisition of these items during check period.

60.2) Without prejudice to the above -submission, the Accused No.1 say and submit that no amount is liable to be added to the holding of A1 or A2 as the same would be clear from the vary

documents filed by the prosecution itself. It will also show how the prosecution case as regard jewellery is demonstrably false reckless utterly without any legal basis.

60.3) The search of residence of A1 namely 36 Poes Garden and 31A Poes Garden was searched 07:12:1996. The mahazar and inventory of jewellery found in 36 Poes Garden is Ex.P.698 this shows total quantity of gold jewellery as 23,113.23.

60.4) The mahazar and inventory of jewellery found at 31A Poes Garden is Ex.P.699. This is 4,475.94gms. Thus, the total quantity according to the above two exhibits is 27,589.17. The entrustment mahazar is Ex.P.700. This however, does not give any s eparate weight of jewellery.

60.5) The above two exhibits namely Ex.P.698 and Ex.P.699 are misleading. All the gold jewellery seized from 36 and 31A were entrusted to the court at which time there was separate weighment of gold jewellery which is noted in Ex.P.704. This mahazar of entrustment of the gold jewellery to the court lists 467 items of jewellery. Though the total value is not given each items of gold jewellery weight is given. We have very carefully calculated the total weight of gold jewellery as per Ex.P.704. This comes to 26,902.08 grams. This is the total weight of the gold jewellery seized and entrusted to the court as per Ex.P.704. The accused are to give explanation only to the above.

60.6) The case of A1 and A2 is that they already possessed the gold jewellery prior to check period. They did not acquire any fresh jewellery, nor is there any evidence of the prosecution that they expended any money to purchase the jewellery.

60.7) Long number of years assessed to wealth tax for 87-88 wealth tax return Ex.P.2124, dated 12:11:1992. This encloses valuation certificate issued by Keerthilal Kalidas & Co.

Jewellery already possessed

Prior to 1987	=	7,040 grams
Acquired in 1987-88	=	516.650
Thus total	=	7,556.650

Assessment order made as spoken by PW-213. Wealth tax return for 1988-99 is Ex.P.2128 this encloses valuation of Kirthilal Kalidas & Co.

Fresh gold jewellery acquired in that year was 1,026.000.

Hence total holding previous holding as on

31:3:1987	=	7556.650
Add new acquisition as on 31:3:1988	=	1026.000
Thus total as on 31:3:1988	=	8,582.650

Wealth tax assessment order for assessment year 1989-90 is Ex.P.2132.

Addition of jewellery was	=	4312.300
As on 31:3:1989	=	8582.650
Thus total as on 31:3:1989	=	12894.950

For wealth tax assessment for 1990-91 is Ex.P.2135. The assessment order for the same is Ex.P.2138

This shows the value of the jewellery as per the valuation report filed by the assesses is Rs. 141,18,091. This corresponds to valuation report Ex.860.

This shows that as on 31:3:1990

The increase in jewellery was	=	8385.350
Thus as on 31:3:1989	=	12894.950
Thus total on 31:3:1990	=	21280.300

for the assessment year for 1991-92 that is ending on 31:3:1991 the wealth tax return is Ex.P.2180 as can be seen this assessment order merely records as per Ex.P.860 that the total value of the jewellery as on 31:3:1991 is valued at Rs. 1,50,56,146. There is no addition to jewellery in that year. The above figure is arrived at on the basis of increase in value of gold and as per report of registered valuer Ex.P.860.

Thus, A1 had as on 31:3:1991 the quantity of gold jewellery including diamond studded whose net weight was 21,280.300.

This is undisputable and as per the prosecution document above mentioned and also wealth tax assessment orders and evidence of PW-227 and 213.

A2 had filed her wealth tax return in which the certificate of valuation made by Vummudi Bangaru Chetty is enclosed which shows she had as on 31:3:1991 = 1445.150

Under certificate Ex.P.1014.

Under valuation certificate Ex.P.1015 = 224.850.

And as per Ex.P.1016 the total jewellery had by her as on 31:3:1991 was = 1912.150

This valuation certificate includes the quantity mentioned in Ex.P.1014 and 1015 also.

This is assessed as per wealth tax return which is Ex.P.2208. This shows that she held the above extent of gold jewellery as per Ex.P.1014, 1015 & 1016. The extent of net weight is as stated above.

The wealth tax assessment accepts the same as there is no addition as per Ex.2209. This is also the evidence of PW-227.

From the above it follows total jewellery net weight owned and possessed by A1 and A2 as on 31:3:1991 is as follows.

Owned and possessed by A1 is = 21,280.300

Owned and possessed by A2 is = 1,912.150

Total = 23,192.450

To this weight of mementos given by party men to A1 in her capacity as General Secretary of A.I.A.D.M.K. Party amounting to 3365.800 grams of gold mementos must be added. Thus the total will be = 23,192.450

= 3,365.800

Total = 26,558.250

As against this as per Ex.P.704 i.e., the entrustment mahazar to the court show the total weight of the seized gold jewellery was 26,902.08 grams which included mementos. Thus, the difference is only 344.830 grams.

This difference is insignificant having regard to the total quantity available.

This difference might have arisen out of faulty weighment. In this regard PW-125 says that he did not know who prepared the mahazar Ex.P698 & 699. He only prepared the valuation report and the entrustment mahazar Ex.P.704. The prosecution has not shown who made the mahazar Ex.698 & 699. It is submitted therefore, no additions on account of jewellery can be made against A1 & A2.

The jewelry are all made of gold. Many of them have diamond studded also. PW.125 Vasudevan is the valuation officer who is supposed to have valued the jewelry. He had however admitted that

he had not separately calculated weight of diamonds in various jewelries in terms of total carrots.

The valuation of jewelry however did not include mementos. The jewelry seized however includes mementos like sword, crown, scepter, etc. which belonged to A.I.A.D.M.K. party. The weight of such mementos is 3,365.800 grams. The Accused No.1 had examined DW-91 Dindigul Srinivasan, the then Treasurer of the party, who claimed mementos as aforesaid as belonging to AIADMK party and left with the Accused No.1, in her capacity as a General Secretary of the Party for safe custody. This fact has also been accepted by I.T. authorities. His letter to the I.T. department given at that time had been sent for under Section 91 Cr.PC and now marked as Exp. D. 250 and D.250(A). This quantity of mementos therefore, must be added to the total holding of A1 and A2 as they found part of the entrustment mahazar in Ex.P.704.

There is no prosecution evidence that the Accused No.1 or (A2) acquired any jewelry during the check period.

LXI) EVIDENCE OF PW 125 VASUDEVAN

60.1) The evidence of PW.125 Vasudevan who purportedly valued the jewelry seized under Ex.P703 may now be considered. The evidence of PW.125 does not have any relevance. In Ex.P2138, the wealth tax return as on 31.3.1990, and Ex.2142 wealth tax return as on 31.3.1992, show that the Accused No.1 had 701 carats of diamond embedded in the jewelry. PW.125 in his evidence clearly admits he had not calculated the carats in the jewelry evaluated by him.

Therefore it is only the weight of the gold that would matter in the absence of any evidence by the prosecution that there was excess of diamonds if so the valuation by PW.125 is not of any relevance.

60.2) The evidence of PW-125 is also not liable to be acted upon for the following further reasons:

60.3) The petitioner submits income tax department after gathering all the materials from DV & AC, the Mahazars, search details, valuation report of PW-125, etc., sought to reopen the assessment to include value of the jewellery as an unexplained investment. These were ultimately held in favour of the petitioner A1 confirmed by the decision upto tribunal level under the income tax. The proceedings under Section 263 as spoken to by DW-64 are briefly mentioned hereunder:

LXI) THE FURTHER PROSECUTION EVIDENCE LIABLE TO BE REJECTED

61.1) The petitioner states that prosecution when it has the returns of income under the wealth tax act, which are much several years earlier to the check period, ought to have taken the same into consideration and considered the seizure only in the light of the jewellery already owned by A1 & A2 before the check period.

61.2) The prosecution has also overlooked that PW-125 had not weighed the diamonds therefore, weight of the gold alone would matter. Hence, if A1 & A2 had before the check period the same weight of gold jewellery there would be of no basis for the prosecution to add any amount towards acquisition of jewellery. In this view valuation by PW-125 as no value or significance.

61.3) The evidence of PW-155 of Keerthilal & Kalidas & Co and Vummudi Bangaru Chetty PW-179 are at best useless and at worse manipulative. Nobody can identify from merely looking at the list and valuation certificates and identify the jewellery. It may be mentioned that both A1 & A2 have in their 313 statement have stated that many jewels have been remade into new design.

61.4) The following defects on the prosecution case makes it unworthy of acceptance.

i) Under mahazar Ex.P.698 total item of jewellery mentioned is 439, under Ex.P.699 total item mentioned is 138. Thus, it totals to 577 items. Whereas, when entrustment mahazar was made and the jewellery entrusted to court under Section 704 total items of jewellery mentioned is only 468. The difference is not explained by the prosecution.

ii) Now annexure II may be seen jewellery is mentioned from item 284 to 290. If all this items in annexure II are totaled it comes to 781. This is clearly wrong even as per prosecution document of mahazar Ex.P.698 & 699. PW-259 deletes only item 44 & 45 as jewellery owned by her before check period. This is plainly wrong and ignores the wealth tax returns and the order accepting the returns in a scrutiny assessment orders

iii) It can be seen in one another angle if according to the evidence of PW-155 & 179 in whose evidence they have stated that 79 items total jewellery seized were available with A1 & A2 before the

check period. If so, those 79 items should have been excluded from valuation report of PW-125 which has not been done. It is also not possible to do so today. Thus, prosecution evidence does not give any clear picture to impose huge liability on A1 on account of jewellery.

61.5) The both PWs.155 & 179 were recalled for further cross examination and they have deposed contrary to their previous evidence. This invalidates their entire evidence making it unreliable. It had been submitted earlier that despite the liberty having been given by the Hon'ble Supreme Court of India while transferring this case to Karnataka, the prosecution has not chosen to exercise their right to declare them as hostile and cross examined them. These aspects have been fully dealt with earlier. For these reasons also, the evidence of PWs.155 & 179 are not liable to be acted upon. Hence, the entire amount of jewellery, in a sum of Rs.3,12,67,725/- is liable to be excluded.

LXII) <u>PROCEEDINGS UNDER SEC. 263 OF INCOME TAX ACT</u>

62.1) It is necessary to mention the question whether A1 has acquired any new jewelry other than what she had already disclosed under Wealth Tax Act and if she acquired any new sarees of significant value, footwear or costly watches were also subject matter of serious and pervasive enquiry under the Income Tax Act. This enquiry itself was initiated by the Income tax authorities at the instance of and on account of the DV&AC.

62.2) The DV&AC forwarded to the Income tax department enclosing *the* mahazar for seizure of jewelry, footwear, sarees and costly watches which are all marked as Exp. D-71 to 73. These documents are marked in Tamil only. They are the mahazar for search of 36 & 31A Poes Garden as well as the inventory mahazar Ex.P704. Since all those documents have already been translated Ex.D71 to 73 were not separately translated. Ex.D71 corresponds to Ex.P….. Ex.D72 is the copy of Ex.P.---- Ex.D73 is copy of Ex.P.---- . to the income tax department requesting that they may add all these as unexplained expenditure of A1 and bring them to tax.

62.3) The Income tax department treating this as unexplained expenditure not duly disclosed by A1 in the returns filed by her utilized the provisions of Section 263 of the IT. Act to reopen the assessment which have already been completed. The letter of the Income tax department enclosing the mahazar above referred to is Ex.D. 71.

62.4) The Accused No.1 sent a detailed reply to the same objecting to the reopening and showing how untenable it is. The Commissioner (Income Tax) Central -II, Chennai however in proceedings No.1744(1)/2001-02 under Section 263/C-II dated 12.2.2002 set aside the previous orders of the assessment, and sought to add the above figures as alsoRs.3,23,11,859/- towards gold and diamond jewelry, sarees, wristwatches, etc,.. The said order has been marked as Ex.D- 74.

62.5) Aggrieved against the said order reopening the assessment the Accused No.1 filed an appeal to the Income Tax Appellate Tribunal, The Income Tax Appellate Tribunal in I.T.A. No.1277 and 1836/MDS/97 batch by an order dated 11.1.2008 set

aside the order of the Commissioner on merits. The said order of the Tribunal is marked as Ex.D-64. This aspect has been dealt with by the Tribunal elaborately in paragraph 117 to 126. The Hon'ble Tribunal came to the conclusion that the additions sought to be made on account of jewelry, vehicles, footwear and silk sarees were unjustified. The Tribunal has also considered the entire investigation done by DV&AC on merits also and came to the conclusion that there is no basis or justification to make any addition in the assessment of the Accused No.1. It is submitted that the decision of the Income Tax Tribunal under Exp.D-64 is binding and conclusive on this Hon'ble Court.

LXIII) <u>RE-SILVERWARE</u>

63.1) In Item 291 in statement II, I.O. has mentioned that value of silverware weight 1116 kilos (value of 700 kilos at Rs.4,000/= + 416 at Rs.5,000/- per kilo totaling Rs.48,80,000/-. Ex.701.

63.2) He had deducted item 46 in statement I700 kilos of silver valued at Rs.28,00,000/-.

63.3) It is submitted that the evidence of PW.125 and PW.259 alone deal with silver. There is no prosecution evidence that the accused purchased or otherwise acquired any silverware during the check period.

63.4) Ex.P2142 marked by PW.213 – Seetharaman, I.T.O will clinch issue in favour of the accused. This return and assessment for 1991-92 shows that A1 had 1250 kilos of silver which on that date was valued at Rs.6646 per kilo. Thus the value mentioned therein at Rs.70,61,400/-. Thus the holding of A1 before the check period was 1250 kilos of silver. Whereas the payment of silver in this case was

only 1116 kilos of silver. Thus there is no basis to add any amount on account of acquisition of any silver on behalf of the accused. The prosecution evidence itself makes this clear. PW.259 has not given any reason at all why he had chosen to overlook the same.

63.5) It is further submitted that the silver articles allegedly weighed were not marked in evidence. Hence the prosecution is not entitled to rely upon the same or add any value/expenditure by the accused on that account.

LXIV) <u>RE-ITEM 295 IN ANNEXURE II SAID TO BE GIFT OF SOME JEWELLERY BY A1 TO SATHYALAKSHMI THE BRIDE AT THE TIME OF BETROTHAL.</u>

64.1) The petitioner submits that there is total lack of evidence of the jewellery being gifted by A1 to Sathyalakshmi bride of A3. In this regard, PW.242 marks Ex.P705 in which he allegedly recovered from the house of Sathyalakshmi certain jewels and handed it over to the same person. PW.125 says he valued the items just above Rs. 11 lakhs. The jewellery were however not brought to Court at any time nor marked an evidence. No one had spoken about A1 presenting these jewels at the betrothal ceremony. In that there is not even an evidence when the betrothal was performed for all the above reasons, these items of expenditure cannot be said to have been to by the prosecution.

64.2) It is submitted the said finding of the Tribunal itself is sufficient to exclude the value of jewelry, sarees, footwear and wrist watches from Annexure II filed with the charge sheet.

LXV) <u>SAREES, FOOTWEAR AND WRIST WATCHES</u>

THESE EXPENSES NOT ACCEPTED BY INCOME TAX DEPARTMENT ON THE VERY SAME MATERIAL GATHERED BY THE PROSECUTION.

65.1) As has been stated earlier, the income tax department after in depth scrutiny has finally excluded all the above items from being included in the holding of A1. The decision of the Tribunal in this regard has been marked as Ex.D-64.

65.2) **PROSECUTION EVIDENCE**: Even so without prejudice to the above submission, the Accused No.1 seeks to point out that on a bare perusal of the prosecution evidence regarding those items will also show that they are unacceptable and would not furnish any reasonable basis to arrive at the value of those items. These aspects are briefly mentioned herein after.

65.3) One feature requires to be specifically noted. The prosecution has not let in any evidence to show when the watches were acquired by the Accused No.1. There has to be positive evidence to show that the watches or sarees or footwear were acquired during the check period. If the prosecution does not prove the fact beyond reasonable doubt, the burden of satisfactorily explaining the acquisition cannot be placed on the accused.

65.4) Again, without prejudice to the above, the Accused No.1 states as follows:

LXVI REGARDING WATCHES

66.1) PW.130 Maran has been examined to value 91 watches. His report is Exp.740. Separate M.O. numbers are given for the 91 watches they are M.O. 670 to 753. He had given the total value of the 91 watches at Rs.6,87,350/-.

66.2) The first issue is whether PW.130 can be considered as an expert within the meaning of Section 45 of the Evidence Act.

66.3) In his evidence, he says that he had studied ITI (Industrial Training Institute) which merely gives vocational training. He had learnt about making of wrist watches and wall clock. He says in chief examination itself that he has been an employee for the past 21 years in a shop called P.R.R. & Sons as a watch repairer. According to him, when customers bring watches for repair, they may say the value of the watches. With this experience he has evaluated the watches.

66.4) It is submitted that PW.130 cannot be considered as an expert. Who is an expert is now judicially determined, he must satisfy the following criteria (a) that the expert must be within a recognized field of expertise, (b) that the evidence must be based on reliable principles and (c) that the expert must be qualified in that discipline. (Ramesh Chandra Agrawal Vs. Regency Hospital Ltd. 2009 (9) SCC 709 (Vol.III para 16). A watch repairer cannot be an expert to know the price of watches particularly when those watches are not being sold in the shop in which he is working. He further admits that as regards watches manufactured in Switzerland he had not seen their price list. He further says he does not know on seeing the watches which year or what period they have been manufactured. He knows the price list of only 3 kinds of watches namely HMT, Titan and Accura watches. This position in law would also apply to the deposition of PW-129 who also cannot be considered as an expert. Hence, the

entire deposition and report of both PW-129 and 130 are liable to be rejected.

Without prejudice to the above the petitioners submits as follows.

LXVII) <u>ANALYSIS OF WRIST WATCHES FOUND AT POES GARDEN</u>

67.1) Prosecution under item 282 in statement-II seeks to add Rs.9,03,000/- as cost of 7 costly wrist watches. Under item 283 they seek to add Rs.6,87,350/- as a cost of 91 wrist watches. Thus the prosecution seeks to add a total amount to Rs.15,90,350/- towards under the heading watches found in the residence of A1.

67.2) PW.129 has been examined as an expert to evaluate the cost of the 7 wrist watches. He cannot be considered as an expert.

i) He is employed as watch repairer in a shop called Gani & Sons who sell and repair watches. A person who merely a watch repairer cannot be considered as an expert in valuation of watches. Besides above some of the watches according to him had gold straps and diamond studded. He obviously does not know to value of diamonds or artificial stones. Nor he shown to know how to determine the purity of any gold. He does not on his own evidence made any special study about gold, diamond or artificial stones.

ii) He admits that he cannot determine the year of manufacture of any of the watches. It is submitted without this detail it will be impossible to determine the value of watches.

iii) Some of the watches carry the name M.O.585 Christin Bernard which is a company which manufactures this similarly

M.O.586. The watches of those manufacturers are not being sold in Gani & Sons.

iv) 5 M.O.587 is a Rolex watch manufactured in Switzerland. This also he does not know. According to him this has 40 diamonds that he does not know and such watches are not sold in India. Though he says they have the price list of Rolex manufacturers, he had not given the price list to the police nor enclosed it with this report.

v) M.O.589 this is a Rado watch. According to him, such are not manufactured in India and it is not sold by them.

vi) M.O.590 is a watch manufactured in Switzerland. Such watches have not been dealt with in this shop. This company is pacc philipe that there is no connection between the said company and the shop and such watches are not sold.

vii) He further says that he had computed the value by taking the value as on the date of his report which is 7 months after the check period. He further says in 1991 the value would have been much lower.

67.3) A bare perusal of the deposition of PW.129 shows that he cannot be characterized as an expert. His evaluation is not based on any acceptable data or even experience such guess work cannot be evidence in a court of law. The watches are old and must have been acquired long earlier. In the absence of any acceptable assessment of value of the watches, no amount can be added requiring A1 to offer an explanation for the same.

LXVIII) <u>VALUATION IN RESPECT OF 91 WATCHES</u>

Prosecution has examined PW.130 Maran to evaluate the 91 watches. He is an employee of watch retailer by name P.Or.Or. &

Sons. He is also discrepant and does not give any basis for his valuations. The following will show that his evidence is liable to be rejected.

i) He has valued the watches as if it was purchased and the date of his report which is 7 months after the end of check period. On this ground alone, the valuation is liable to be rejected.

ii) He cannot be considered as an expert. He says that when watches come to the shop for the purposes of repair those persons bringing it for repair used to tell the value of those watches and that is the basis of his experience in valuing the watches. This explanation by itself renders his evidence inadmissible as he cannot be an expert.

iii) He further says that he cannot say in which year the watches have been manufactured that of the 91 watches only in respect of 3 manufacturers they have the price list. In respect of all other manufacturers, he is valuing the watches according to his experience. It is submitted these evidences like that of PW.129 is not based on any acceptable data.

68.1) The petitioner further submits that only Ex.P130 was examined under Section 161 by PW.251 G.Sankar. That he examined them as requested to by Additional Superintendent of Police, PW.251 however had not produced any authorisation to enable him to do any investigation under Section 13(i)(e) of the Act. So this examination itself is contrary to the Act.

68.2) The prosecution admits that in Poes Garden at that time apart from A2 to A4 wife of A3 Sathyalakshmi and the minor son Vivek were also in the house. In fact in Ex.P1962 there were 8 members residing in the house. There is no process of reasoning by which it

could be said that all these watches belong only to A1 and no other resident of the house.

68.3) One another feature may also be noted. PW.130 Maran says that he took 3 hours to evaluate 91 watches. This means he had valued each watch to less than 2 minutes. If 91 different watches were there, it is inconceivable that anybody will be able to value the same by taking only less than 2 minutes. Thus whole of this evidence is unbelievable, unlogical and based on no acceptable data or basis. Such evidence in the nature of this work cannot be considered as evidence in a court of law. In the absence of any acceptable evidence, no amount can be added on the head of watches.

LXIX) <u>REGARDING FOOTWEAR</u>

69.1) As regards the footwear the evidence of Jerold Wilson PW.131 and his report under Ex.P.741 wholly inadmissible in evidence.

69.2) PW.131 cannot be certified as an expert if the criteria of the Supreme Court above referred to is taken into consideration. Secondly he is employed as a Quality Control Officer in Tamil Nadu Leather Development Authority. He admits in the cross examination that the footwear which he valued are not the one that is manufactured by their organisation. He merely valued by observation and he does not know when they were manufactured.

He was recalled for further cross examination in December 2002 wherein he admitted the nature of his job in the office where he is employed, that he is not the person to fix the value for any goods. He admits that Ex.P-741 is not prepared by him and that he does not

know who wrote it. He admits that he had not given any other valuation before 17.12.1996 or thereafter. That the report does not contain the size of the footwear or the model or the date of manufacture. It is submitted that his answers in the cross examination therefore totally renders his evidence unreliable.

69.3) The Accused No.1 further submits that as regards footwear it must be mentioned that it contained footwear suitable only for males. The Accused No.1 happened to be the General Secretary of the party at all relevant time during check period and thereafter also. Therefore on any day there will be a constant stream of visitors and party carders. No effect is made by the prosecution to ascertain the size of the footwear to probablise that the footwear belonged to A1. Thus the prosecution evidence is wholly untenable.

LXX) <u>REGARDING SAREES</u>

70.1) As regards sarees the prosecution has examined PW.133 (Chengalvarayan). He had stated that he found 914 silk sarees and valued them at Rs.61,13,700/-.

70.2) There were other 6195 items of polyester sarees, cotton sarees, churidhars, nighties etc. which is valued at Rs.27,08,720. The report given is Ex P766 that is dated 11.2.1997.

70.3) It is submitted that the evidence of PW.133 is also wholly inadmissible and also unreliable. Apart from the question about his competency to claim to be an expert it has further serious defects. According to him inspection of sarees took place on 17.12.1996. The report relating to the value is however dated 11.2.1997 which is

almost 3 months thereafter. Admittedly after 17.12.1996 he had not seen the sarees or other material. If he had made the details on 17.12.1996 and on the basis of such details subsequently he prepared the report 3 months later then the noting which formed the basis should have been annexed with part of the report under Ex.P.766 without which the report will be an unreasoned report. Secondly, report says that evaluation work was done by a team consisting of himself and six others whose names are mentioned in the report. However the report is signed only by PW.P.133 and not by the others who constituted the team of evaluation. On the basis of the Ex.P.766, it is clear that if it is a report by the team consisting of 7 persons then if it is not signed by other persons then such a report would be only inadmissible. When the evaluation has been done by 7 persons working as a team all of them should subscribe their signature to the report to show that they agreed with what is mentioned therein. In this view the report under Ex.P.766 as well as evidence of PW-133 is liable to be rejected.

70.4) The Accused No.1 says and submits that the said witness PW-133 was recalled for further cross examination in December 2002 wherein he admitted that the report prepared by him consisting of 10 batches and it is not before the court and he had also stated he had not segregated the quality-wise sarees and he had not separately valued each of the sarees and he had not expressed any view as to the age of the sarees or when they were manufactured. For all these reasons, the evidence of prosecution is wholly unacceptable.

144) The Accused No.1 in her defence has examined Krishnamurthy DW-74 who was the part of the team constituted for evaluation of sarees, was a pattern maker with vast experience and also Presidential Award Winner for designing of sarees. He has deposed about how their family has been in the business of making sarees for generations. He had spoken in detail as to what steps are required for evaluation of silk sarees. His evidence clearly establishes that when they were taken to the residence of A-1 at 36 Poes Garden along with PW-133 they saw in the hall a stack of several sarees. This evidence is not even touched in the cross examination. This shows that the statement in the magazar as if the sarees were collected from various rooms in the house does not get established. It is significant that on this point there is no cross examination by the prosecution.

Secondly, he had stated that when they inspected the sarees both himself and PW-133 have taken certain notes with which to calculate the value of the silk sarees at a later point of time. This important data sheet is not produced thereby making the evidence of PW-133 valueless.

Thirdly DW-74 has also spoken that he did not sign the report marked by PW-133 as Exp.P.766 as he wanted PW-133 to show him the data sheet on which he had worked out the cost and that he must be satisfied with the same. This explanation of DW-74 shows that the report said to have been made only by PW -133 and not by others, even though, in the preamble portion of the report, it is stated that it was a collective report of the team which has present at the time of evaluation of the sarees.

70.5) DW-74 has also detailed what kind of test is requires to be done to find the purity of zari and whether silk sarees are pure silk or mixed with certain other yarn. His evidence further states how the value of zari, which will determine the value, is to be calculated and how the zari is to be measured and tested for the whole of the sarees. The methods of evaluating silk sarees as spoken by DW-74 has not at all been followed by PW-133. The report of PW-133 could not therefore be considered as a report of an expert at all as it contains no reasons. Further it also does not contain any data on which he had arrived at the value of the sarees. DW-74 has stated that it will take 2 to 3 hours to evaluate one silk saree. Thus in a matter of an hour the prosecution witness PW-133 could never have valued so many sarees. For all the above reasons it is submitted that there is no material before this Hon'ble Court to come to a conclusion as to the value of the sarees.

70.6) Polyester sarees: The Accused No.1 says and submits that as regards the valuation of polyester sarees both ordinary and chiffon polyester sarees, there is a separate report which is signed only by one T.Balasundaram calling himself Manager (Design). It is also countersigned by T.V.Ravi (Production Supervisor). It is submitted that this evaluation report mentioning the value at Rs.58,800/- for 125 sarees it is wholly inadmissible evidence. It is now a settled law and it is reiterated by a recent decision of the Supreme Court of India reported in 2010 (9) SCC 286 Vol.III - Keshv Dutt Vs State that unless the expert is examined his report would not be evidence in a Court.

70.7) The opinion of the expert without examining him will render the report wholly inadmissible in evidence. Hence the report pertaining to polyester sarees said to have been made by T.Balasundaram it is wholly inadmissible in evidence as the Mr.Balasundaram and T.V.Ravi have not been examined in the court.

70.8) The evidence of PW.129 and PW.130 who valued the watches and the evidence of PW.131 who speaks about the value of footwear and PW.133 who speaks about the value of the sarees suffer from one serious defect which renders the evidence of all these persons wholly untenable. None of the witnesses have given the necessary data from which the conclusion as to the value has been reached by them could be verified. It appears to be laid down as a proposition by the Hon'ble Supreme Court of India that every opinion of an expert must be capable of cross verification by the Hon'ble Court by reason of the complete data provided under the said report the observations of the Supreme Court of India in the leading decision Ramesh Chandra Agrawal Vs. Regency Hospital Ltd. reported in 2009 (9) SCC 709 Vol.III has been extracted earlier.

70.9) Therefore, the above prosecution evidences are liable to be rejected as contrary to Section 45 of the Evidence Act.

70.10) In 36 Poes Garden from where these goods are allegedly recovered or seized, there are 14 number of inmates in the house which is clear from Ex.P1962 and 1963 which is the electoral roll. Therefore when there are so many persons in the house, there is no process of reasoning by which it could be said that A1 was exclusive owner of these items, which is *sine quo non* require her to explain the possession.

LXXI) <u>Prosecution evidence as regards jewellery liable to be</u>

rejected

71.1) As regards jewelry, it had already been pointed out that the evidence of PW.125 is not worthy of acceptance more so he had not given the value of the jewelry (i) on the date of acquisition ii) even on the date of the end the check period viz. 30.4.1996, iii) he had not stated in his evidence that the M.O.s valued by him were acquired during check period, iv) he is not considered as an expert at all, since he admits that his qualification was an appraiser in the customs department and he has no appointment as an approved valuer and that he is not an approved valuer either in the Income Tax Act or under the Wealth Tax Act. In his evidence (internal page 28) he admits that he had not acquired any special qualification about gold/silver/diamonds that he is seeking to make the valuation only on account of four years experience, v) he admits that he had not mentioned in his report what was the value of gold even as on 9.12.1996 similarly he had not stated what was the value of silver on that date nor enclosed any official gold/silver rates prevailing on that date, vi) in his evidence he further admits that Ex.698 to P.701 were not prepared by him. For these reasons it is submitted that the evidence of PW.125 is liable to be rejected.

71.2) Thus the prosecution has not established that there was any addition of assets in the hands of the Accused No.1 by way of jewelry during check period.

LXXII MARRIAGE EXPENSES OF ACCUSED NO.3

72.1) The prosecution is seeking to include Rs.6,45,04,222/- towards expenditure for marriage of Accused No.3. The prosecution

under item 226 of Annexure IV has mentioned the following break up figures for the above said expenditure:

a.	Expenses incurred for erection of marriage pandal over and above the admitted/ recorded payment as estimated by PWD authorities	Rs.	5,21,23,532
b.	Expenditure incurred towards cost of food mineral water and thamboolam (as assessed based on available material)	...	1,14,96,125
c.	34 Nos. Titan watches purchased on cash payment	...	1,34,565
d.	Amount paid to Tailor Syed Bawaker towards stitching charges for wedding dress of V N Sudhagaran	...	1,26,000
e.	Amount paid for purchase of 100 silver plates paid by Tmt. Sasikala (but not admitted)	...	4,00,000
f.	Postal expenses for dispatch of 56000 wedding invitations	...	2,24,000
	Total		6,45,04,222

LXXIII) <u>PROSECUTION EVIDENCE; ITS UNTENABILITY</u>

73.1) In this regard it is necessary to note the evidence of Thangaraj examined as PW-181 and to reject his evidence and his report Ex.P1019. PW -181 Thangaraj has been examined only to show that huge pandal had been erected for the marriage and the cost of pandal itself was Rs.5,21,23,532.

73.2) The evidence of pw-181 is unacceptable as it is speculative, arbitrary and based on no verifiable data. Firstly he admits in his evidence he did not attend the marriage and that during 1995 (the marriage was on 7.9.1995)when the marriage took place he was in Virudhunagar which is 350 km away from Chennai where the marriage took place. PW-181 got transferred to Chennai only in 1997 and purports to calculate the cost of construction of marriage pandal which not only he had not admittedly seen. Secondly, he admitted

that he visited MRC Nagar in 1997 where the marriage had taken place and saw a vacant site. Thirdly he concedes that he has not seen any photograph of the marriage pandal to have an idea of how it looked. He further adds that in his 13 years of service, he had not estimated any marriage expenses.

73.3) PW 181 admittedly had not attended the marriage of A3. He had not seen any pandal or other marriage arrangements. According to him he gathered the details of the Pandal and other marriage arrangements by enquiring six persons of whom he names Vijayashankar, Thotta Tharani his assistants Ramesh and Gopikanth. He further states that the enquiry was done in the presence of Inspector Krishna Rao (PW-243). Prosecution has not chosen to examine any of the six persons to corroborate the version of PW181. The PW 243 (Krishna Rao) has also been not asked during his examination If the six persons were enquired by PW 181 in his presence. It is submitted its amounts to contradiction of PW 181 evidence by omission.

73.4) The accused have examined two of the six persons said to have been enquired by PW 181 to ascertain the measurement of the Pandal and Marriage arrangement. They are Thotta Tharani DW 24 and Gopikanth DW 54. It is significant no questions are asked to either of them if they were enquired by PW 181 as deposed by him. Thus the entire evidence of PW 181 is therefore utterly without any foundation and his evidence is speculative.

73.5) PW 181 has specifically stated that he wrote the enquiry details but he has not produced the same. Hence an adverse inference requires to be drawn. Moreover the Accused has examined DW 80 (B.Vasudevan) who according to PW 181 was present when he

examined the six persons and recorded their proceedings. The said witness DW 80 has stated that no such enquiry with the six persons was done in his presence. He had further denied that Vijayashankar (not examined) has ever given any plan. DW 80 has not been even suggested that the measurement were given by he said six persons.

73.6) PW.181 - he says in his evidence that he examined Vijaya Sankar architect of A-1 and that he gave a drawing and he took the measurements out of the drawing. Firstly this drawing is not mentioned as the basis in the report itself -report Exp. P 1019. Secondly, he had not included the drawing along with the report. Only during the course of deposition in the court so called drawing given by the architect Vijaya Sankar was marked. The drawing of architect Vijaya Sankar however as admitted by PW-181 himself does not contain the signature of Vijaya Sankar. Moreover, the plan is not a plan of marriage pandal. It is only a drawing of a dais and two rooms on either side of it. The auditor for A-1 Shanmugam who was examined as DW-64 has also clearly stated that the architect Vijaya Sankar was not engaged for any work connected with the marriage nor any payment made to architect in this connection. This evidence of DW-64 is not challenged in the cross examination of DW-64. Nor the prosecution chose to examine Vijaya Shankar - architect of A-1. For all the above reasons the evidence of PW-181 is liable to be rejected.

73.7) As regards item (b) shown in annexure 226 of Annexure IV by the prosecution which is relating to cost of food. mineral water and Thamboolam, no evidence has been let in by the prosecution in this behalf. The Accused has let in series of defence witnesses to show how the expenditure relating to food at the time of marriage was not incurred by her. These are fully dealt with *in fra.*

73.8) PW.181 had been cross examined at length which itself runs to about 150 pages. For most of the questions he had answers that he does not know. For brevity all of them are not reposted herein. Suffice it to say he had imagined all things and had given value for the imaginary features. For example, he says there existed in artificial fountains large grass lawn, VIP enclosure and how many chairs and tables must have been put, tube lights erected fans provided these are the imaginary. Even for the imaginary items he had again calculated the value without any verifiable data. He had not enquiried anybody cost of tube lights, cost of serial lights, hire charges for chairs and dining tables. What kind of false ceiling had been provided and what to be its cost. Thus the entire reports are full of materials for which there is no verifiable data. Hence his report is to be wholly rejected.

73.9) In this regard, the six persons whom PW.181 said to have enquired to get details about the marriage pandal/expense, should have been enquired to find out which contractor did the work to ascertain how much had been the cost and who paid the same. This important exercise the prosecution did not do. Moreover PW.200 had specifically named the contractors who did the work of pandal. Even those persons have not been examined by the prosecution. Thus the prosecution has violated the best evidence rule. Adverse inference requires to be drawn against the prosecution.

73.10) The prosecution wants to add Rs.1,14,96,125/- towards the cost of food, mineral water, thamboolam. The prosecution has examined only PW.224 the cook. He only speaks about the amount he received as wages and that he received it from G.Ramkumar. The prosecution has not examined any supplier of any of the cooking items or any supplier of mineral water or who made thamboolam bags (that

which is given at the end of the marriage to those who attend the marriage).

73.11) PW.259 however states that he gathered the details of expenditure from Ex.P2220 and 2221. It is submitted that this version of PW.259 is unacceptable.

i) The above two exhibits claim to have been recovered on a search of PW.228 Rajasekaran, the then Auditor of A1. These documents are not admissible in evidence, since the said PW.228, had not been offered for a cross examination despite the Court order therefor, hence his evidence is to be totally eschewed from consideration as also the documents recovered from him.

ii) These documents are in the form of bills. There is no material to show that who paid for those bills. There is nothing to indicate that A1 paid for them. Nor PW.259 had chosen to speak about any one of the bill or the persons who supplied anything under the said bill to show that there was indeed delivery of any goods. Thus not even one acceptable feature in the assertion of PW.259.

iii) Ex.P2221 is a two page letter allegedly containing the signature of A1 (nobody speaks about it) in which she is said to have written to the I.T. department within two months of the marriage in response to a letter from them that the total expenditure made by her towards marriage was Rs.25,98,521/-. That the expenditure has come out of her account with Canara Bank No.2018. That she had incurred a cash expenditure of Rs.3,94,340/-. It is submitted if so inclusion of other expenditure as done by her would be wrong. PW.259 however does not say anything on this. Thus there is no acceptable evidence to include the above huge figure as expenditure incurred by A1. These

items of expenditure, had been done by bride's family and has been so accepted after in depth scrutiny by the I.T. department.

73.12) As regards item (c) purchase of Titan watches no evidence has been let in by prosecution therefore this figure is also liable to be excluded.

73.13) As regards stitching charges to Syed Bawker – tailor - the Accused submits:

a) Agiz Ahamad of M/s. Syed Bawker has been examined as PW196. In his statement he has stated that he stitched cloth for A-3, the bridegroom, but the payment was made by the bride's side by Mr.Ramkumar, DW-1.

b) Ramkumar DW1 has filed a statement on 21.11.1995 marked as Ex D 355 in which he had stated he had paid by cheque Rs.1,41,025/- stitching the suit. The cheque details have also been given.

c) Cost of hundred silver plates. It is an expenditure said to have been incurred by A-2. In the income tax proceedings, this expenditure is considered under the heading "complements given along with invitation". In these proceedings as regards silver plates alone, on which the invitation is said to have been given to some of the invitees the prosecution seeks to say that this expenditure was incurred by A2. There is total lack of evidence. The prosecution has not examined any person nor marked any document to show A2 enquired this expenditure.

73.14) In the income tax proceedings, this was examined in the above heading. In fact I.T. department conducted a survey on the leading jewellery in Chennai Nathella Sampathu Chetty, a firm, but could not find any evidence of A1 or A2 having purchased any silver plates. In the I.T. proceedings only three persons among nine summoned have stated that they received the silver plates. Thus

there is not even evidence for the expenditure much less that A1 or A2 incurred the said expenditure.

73.15) Some of the complements in the shape of silver plates were given by the elder brother of A-3 Mr.V.Bhaskaran. He has stated so by a letter before the Income Tax Authorities which has been marked as Exp.D 69…The expenditure of Rs.5.60 lakhs incurred by the said V.Bhaskaran has also been accepted by the income tax department after due scrutiny. This is fully dealt with in the order of the Commissioner of Income Tax (Appeals) marked as Exp.D-63, paragraphs 7.3, 7.4.

73.16) What is mentioned in item (f) is postal expenditure of Rs.2,24,000/-. The prosecution has let in only evidence of S.S. Jawahar – PW-237. He was one of the secretaries to A-1 in her capacity as the Hon'ble Chief Minister of Tamil Nadu. His evidence is unacceptable as it is not shown that the postage expenditure was incurred for sending of marriage invitation. The expenditure was incurred in connection with party function. Thus it is submitted that on the very basis of the prosecution evidence no amount can be included as having been incurred by A-1 towards marriage expenses of A3.

LXXIV) DEFENCE EVIDENCE – REGARDING MARRIAGE EXPENSES

As if A3 Foster son of the Accused No.1:-

74.1) The Accused No.1 (A-1) has no obligation to incur any expenditure for the purpose of the marriage of A-3, nor A-3 foster son of A-1. No prosecution witnesses speak about A3 as the foster son of A1. Moreover in Ex-D-64 at paragraph 89 has observed thus. In Tribunal the learned counsel for the Assessee further submitted that, in fact the Hon'ble Tribunal had in its order in ITA No.GA6/MDS/200

dated 23.8.2005 held that the said Mr.Sudhakaran was not legally adopted by the Assessee and therefore, he has to be treated as stranger. In South India particularly in Tamil Nadu it is an invariable practice that only the bride's side will incur all the expenditure for marriage of a girl. Such a practice has been judicially recognized by the Hon'ble Supreme Court in Kishanand Agnihothri Vs State, reported in 1977 (1) SSC 816 Para 19. In this case it is in evidence that the bride's maternal uncle Ramkumar son of Sivaji Ganesan, the Cine Actor, had incurred the expenditure for marriage.

74.2) Apart from this the Accused No.1 had let in defence evidence which conclusively negatives any theory of A-1 having incurred expenditure towards marriage.

74.3) It may be further mentioned that PW.200, K.P.Muthusamy examined by the prosecution stated that he had supervised the construction of the marriage pandal and that the amount was paid by G.Ramkumar. He had further stated bride's father Narayanasamy had also spent moneys towards marriage.

74.4) PW.259 in his evidence admits that he had enquired Narayanasamy, who was then Professor of I.I.T., Madras and found out that the said Narayanasamy had spent about Rs.18 lakhs on his own towards marriage expenses. The prosecution in fairness should have examined the said Narayanasamy. Apart from one cook the prosecution has not chosen to examine any other person.

74.5) G Ramkumar has been examined as DW-1; he had deposed that on behalf of Sivaji Ganesan's family he incurred the expenditure towards the marriage and how the expenditure was funded. He had written a letter to the income tax authorities who enquired into the expenditure immediately after the marriage in

November 1995 itself. He had given details of expenditure incurred and how he had made the payments by cheque. Cheque details have also been given. This document has been marked as Exp.D.355.

74.6) The expenditure incurred by Ramkumar was the subject matter of deep and pervasive scrutiny by the income tax department and ultimately the Commissioner of Income Tax (Appeals) VI allowed the appeal and held that G.Ramkumar on behalf of Sivaji Ganesan family had incurred an expenditure of Rs.1,06,58,021/- for the marriage of Sathyalakshmi with V. N. Sudhakaran performed on 7.9.1995. The order of Commissioner of Income Tax (Appeals) in I.T.A. 28/02-03 dated 21.1.2004 has been marked as Exp.D.357.

74.7) Most unreasonably income tax department, what must be termed as virtual witch hunt, had issued notices directing the assessee G.Ramkumar and his brothers on how they received the money by foreign remittance which formed the bulk of the resource for the expenditure. This was also fully enquired into and ultimately upto Tribunal level accepted as proper. This shows how the I.T. department have made unusual enquiries when it is connected in their view to A1. The above documents have also been marked on the defence side through DW.91, the I.T. Officer.

74.8) Earlier the income tax department also without justification initiated penalty proceedings for concealment on the basis that there was an expenditure of Rs.4,89,830/- towards electricity charges, which had not been disclosed. Ultimately the order of the Tribunal in I.T.A. 1774/MD/07 set aside the penalty also which has been marked as Ex-D-358. Thus the expenditure was incurred by G. Ramkumar has been accepted by the department fully and up to Tribunal level.

74.9) PW.259 in his evidence admits that at the time of formal arrest, he served the copy of FIR on A1. Thus she had no knowledge of the case under Section 13(1)(e) earlier to December 1996. By end of September/November 1996, she had filed the returns including for 1996-97 which financial end on 31.3.1996. It is respectfully submitted that all the income tax returns and the annexure thereto must be considered as anti litum mottum on viewed in that context.

LXXV) INCOME TAX PROCEEDINGS IN FAVOUR OF THE ACCUSED NO.1 QUA MARRIAGE EXPENSES OF A3

75.1) In the income tax proceedings, the department issued notice seeking to add about 97 lakhs as expenditure incurred by A1 towards marriage of A3. Simultaneously the department wanted to reject the expenditure and the source with which bride's family, viz. actor Sivaji Ganesan's family incurred the expenditure. Ultimately upto Tribunal level the case of both A1 that she did not incur the expenditure for the marriage and that the version of G.Ramkumar have been accepted.

75.2) Before dealing with this aspect, it is necessary to point out that there has been no manipulation possible in the late filing of returns by A1 in the peculiar facts of this case.

75.3) In the income tax assessment proceedings relating to assessment year 1996/97 the Commissioner of Income Tax (Appeals) – Sri N. P. Tripathy, I.R.S., in a acutely reasoned judgment, which has been marked as Exp.D-63, has come to the conclusion that the marriage expenditure has not been incurred by A-1 except in a sum of Rs.3 lakhs towards provision of food to the party men who had attended the marriage.

75.4) The department as well as the appellant filed an appeal against the judgment. The Hon'ble Income Tax appellate Tribunal in I.T.A. 1277 and 1836 batch marked as D-64 has confirmed the order of the Commissioner of Income Tax Appeals in Exp.D.63. Further, the Tribunal allowed the Accused No.1's appeal and deleted the addition of Rs.3 Lakhs made by the C.I.T. Appeals.

75.5) The order of the Commissioner of Income Tax (Appeals) which is very elaborate and reasoned, adopted the heads of expenditure as was done by the Assessing Officer as follows:

a) Compliment along with invitation

b) Decoration of marriage site

c) Food for party men

and then discussed the issues.

Compliment along with invitation: It is submitted that this topic has already been dealt with supra.

75.6) Decoration of marriage site: Thotta Tharani, (DW 24) Art Director and G.Gopikanth, (DW54) also a cine art director, appeared before the I.T.O. and given sworn statement under Section 131 of Income Tax Act. Thotta Tharani has stated that he merely provided copies of drawing for façade of marriage pandal and that the execution was done by his assistant A K Ramesh, who left his services in 1996 and is not heard of since then. The said Thotta Tharani has been examined as DW 24 before this Court also. He had he did not receive any remuneration as the bride is granddaughter of famous cine actor Sivaji Ganesan. The said A.K.Ramesh has been examined by the income tax department and a sworn statement recorded from him and it has been marked as Ex.D-350. He had stated that the expenditure was incurred by Kanchi Panneerselvam and eleven others.

LXXVI) DECORATION OF FAÇADE OF MARRIAGE PANDAL

76.1) The Accused No.1 examined Kanchi Panneerselvam as DW-26. He had deposed how he and eleven others contributed Rs.5 Lakhs each for decoration of marriage façade. He also mentioned the names of the eleven persons. He had further mentioned how contribution was collected from numerous party workers. He had also identified Ex.D-46 as a joint letter dated 19.3.1999 submitted by him and eleven others to the Deputy Commissioner of Income Tax and the eleven others have also signed the same. He also identified the sworn statement recorded from him as Exp.D.47 wherein he had described how he and eleven others incurred the expenditure for the marriage facade. Among the 11 persons the Accused has examined T.Rathinavel as (DW 27) K.P.Raju as (DW 30) and C.Muthumani as (DW 29) who have accepted having made the contribution of 5 lakhs each and also identified that signature in the common letter given before IT authorities in Ex-D-46. DW 29 Muthumani had also confirmed the sworn statement recorded from him by IT Authorities as Ex-D-51. The Accused has also marked the sworn statement given in the year 1999 by Palanisamy as Ex-D327, sworn statement of Thangavel is marked as Ex-D-329. The said Thanigai Babu one of the contributor's to the Kanchi Panneerselvam DW 26 has died a few years back. Hence his statement is admissible in Evidence. Statement of Gandhi Rajan has been marked as Ex-D-328. DW-26 has explained that the said Gandhi Rajan had left AIADMK party had joined with DMK party which is inimically disposed against the Accused. These evidences clearly point out that the decoration of marriage site was done by Kanchee Panneerselvam and eleven others with the help of Thotta Tharani. Hence the expenditure in this regard cannot be attributed to A-1.

76.2) The Accused No.1 has also examined G.Gopekanth a Cine Art Director as DW-54 wherein he had stated that a portion of the marriage pandal decoration done by him and that cheque for Rs.12,98,000 was given by DW-1 Ramkumar. Another cheque for Rs.4 Lakhs was given for making a partition wall that he disclosed the receipt of money in his income tax return which has been accepted. Thus the petitioner has established to the hilt that expenditure regarding Pandal and Decoration of façade was not incurred by her and who had incurred the said expenditure".

76.3) There is no evidence to show that A-1 has incurred any expenditure. Without such evidence one cannot come to the conclusion that the expenditure of the marriage must be attributed to the A-1.

LXXVII) <u>Expenditure towards Food served in the Marriage:-</u>

77.1) As regards provision of food for the partymen who attended the marriage, the Commissioner of Income Tax (Appeals) in Exp.D.63 has come to the conclusion that the expenditure was incurred by three party functionaries. The Accused has examined the said three persons as DW-25 Thangamuthu DW-31 Adhi Rajaram and DW-84…..O.S.Maniam. DW-25 has stated in his deposition that since marriage façade decoration was done by Kanchi Panneerselvam and eleven others, he DW-31, DW-84 have undertaken provision of food to partymen who attended the marriage. He described how he engaged the cooks and how he provided provisions for the food. The joint letter given by him Adhi Rajaram and O.S.Maniam before the income tax authorities even in the year 1995 has been marked as Ex.D 133. He describes how the expenditure was incurred and how all the three of them incurred the expenditure individually and by collecting money

from party cadres. They have also deposed that the expenditure towards food was done voluntarily on their own and not at the instance of the Accused No.1. Thus the Accused No.1 has fully established how the marriage expenditure was met by the bride's family, and to some extent by the party cadre.

77.2) Suffice to show that the Accused No.1 had not incurred any expenditure towards the marriage of A-3 and therefore the entire amount under item 226 of Annexure IV amounting to Rs.6,45,04,222 is liable to be excluded.

LXXVIII) INCOME OF A1 AND DEFENCE EVIDENCE

The A1 had income under the following heads:

i) Agricultural income from her property Jeedi Metla village at Hyderabad

ii) Rental income

iii) Income by way of gift on her 44th birthday in 24.02.1992

iv) Interest income.

v) Drawings from Jaya Publications in her capacity as partner in the said firm.

It is submitted that all the above items were subject matter of deep enquiry under scrutiny assessment. They have been accepted upto Tribunal level, after pervasive scrutiny.

LXXIX AGRICULTURAL INCOME OF A1

79.1) The prosecution has submitted that A1 had the following extent of agricultural land being the land purchased by her mother even in the year 1968. In Annexure-I it is shown

Item 3 – 11.35 acres

Item 4 – 3.15 acres

Total : 14.50 acres.

The area is cultivated with grape vines there were also other cultivation of Rampal, Sitapal, coconut trees, etc. besides flowering plants like kanagambaram. PW.256 one of the I.O. who had visited the grape garden had deposed he found robust and well grown agricultural fields.

79.2) Even so on the basis of convolted reasoning and on the basis of Ex.P938 report Annexure III income from agricultural land for the entire five years for the check period in a sum of Rs.5,78,340/-. Whereas year after year since 1987 A1 had been declaring agricultural income which were accepted by the I.T. department. She had claimed on the basis of I.T. assessment orders total agricultural income during the check period in a sum of Rs.52,50,000/-. The evidence let in by the accused, supported by orders of I.T. authorities and faultless reasoning of CIT Appeals clearly establishes them.

79.3) It is necessary to point out that under Section 44-AA of the Income Tax Act several sources of income are required to maintain accounts. Agricultural income however is not included in the said Section such that there is no necessity to maintain account books in respect of either the income or the expenditure connected with the agriculture.

79.4) A1 has been declaring the Agricultural Income in her returns of Income and has always been accepted after scrutiny. In fact the assessing officer had made a personal inspection of grape garden at Hyderabad even on 27.1.1994. The portion of the

Agricultural Income claimed was however disallowed by the Assessing Officer against which A1 filed an Appeal 214/1997-1998 before the Commissioner Income Tax (Appeals). The order of the Commissioner of the Income Tax (Appeals) dated 31.3.1999 has been marked Ex D61. The appeal had been allowed in favour of the accused and the agricultural income returned by her has having been received by her was accepted in its entirety.

79.5) For the purpose of proper disposal of the appeal on this point of receipt of agricultural income the learned Commissioner of Income Tax (Appeals) directed the Assessing Officer to personally visit the grape garden and assess the yield and to determine the price at which the grapes were sold.

79.6) The assessing officer in pursuant to the said direction inspected the grape garden. DW 64 Auditor of A1 Mr. Shanmugam in his deposition he has stated that he was also present at the time of Inspection by A.O. The assessing officer physically counted the fell grown yielding grape wines. He counted 11,481 grape vines besides there was also yielding Trees like coconut, Rampal and Seethapal Trees.

79.7) The A.O. had also examined and recorded the statement of neighbouring grape garden owner Shri.Mallareddy and recorded his statement. The statement so recorded from Mallareddy is Ex-D-62. He had spoken above the yield per Acre and the price prevailing at the time. The assessing officer had also enquired from NABRD the price and yield details and field a report to C.I.T. Appeals. On a conspectus of all facts C.I.T. Appeals came to the conclusion that the Agricultural income claimed by the Accused No.1 for 1994-95 a sum of Rs.11,50,000/- as perfectly correct.

79.8) It may be mentioned that this issue was agitated by the Department filing an appeal to the Tribunal which was decided in I.T.A.1277 and 1836 Batch now marked as Ex-D-64. The Tribunal confirmed the finding in favour of the Accused No.1.

79.9) While so apparently at the instance of DVAC the Income Tax Department had issued a notice seeking to re-open the assessments from 1987-1988 to 1993-1994 on the allegation that the agricultural income has been wrongly allowed in favour of A1 for all those years. All the assessments were re-opened invoking the powers under Sec 148 of the I.T. Act. The Accused No.1 agitated the same by filing six appeals in I.T.A.T.No.67/2001-2002 and batch. The C.I.T. (Appeals) again elaborately went in question and discussed the report of A.O. above referred as also the statement of Mallareddy and accepted the agricultural Income as returned by the Accused No.1. The order of the C.I.T. appeals dated 31.1.2002 is marked as Ex D16.

79.10) Thus during the check period the Accused No.1 had derived a total Agricultural Income of Rs.52.50 lakhs has been fully determined after deep and pervasive scrutiny. This is accepted by Income Tax authorities in the orders marked as Ex.D-61, Ex.D-64 and Ex.D-16. Hence the income must be taken as available to A1 during the check period.

79.11) The petitioner briefly mentions hereunder, income tax returns admitting the receipt of agricultural income and acceptance of the same by I.T. Authorities under scrutiny assessments.

79.12) The income tax assessment show receipt of agricultural income duly declared and accepted in scrutiny assessment by the income tax department. The order of appellate authority under he IT Act has been marked as below. The report also enquired Malla Reddy

the neighbouring grape grower and also collected report from NABARD.

The following details will show the income tax returns.

Asst. year	Date of filing the return/total income returned	Date of assessment order/assessed total income	Returned agricultural income/assessed agricultural income
1987-88	Agricultural Income-ExP.2123, P2126 dated 13:11:1992	D65, D64, DW-64 dated 23:12:1994	Rs. 4,80,000/- Rs. 4,80,000/-
1988-89	Agricultural Income-ExP.2127, P2130 dated 13:11:1992	D65, D64, DW-64 dated 23:12:1994	Rs. 5,50,000/- Rs. 5,50,000/-
1989-90	Agricultural Income-ExP.2131, P2133 dated 16:11:1992	D65, D64, DW-64 dated 13:12:1995	Rs. 7,00,000/- Rs. 7,00,000/-
1990-91	Agricultural Income-ExP.2135, P2137 dated 20:11:1992	D65, D64, DW-64 dated 02:03:1995	Rs. 8,00,000/- Rs. 8,00,000/-
1991-92	Agricultural Income-ExP.2029, P2030 dated 20:11:1992	D65, D64, DW-64 dated 30:03:1994	Rs. 9,00,000/- Rs. 9,00,000/-
1992-93	Agricultural Income-ExP.2139, P2140 dated 23:11:1992	D65, D64, DW-64 dated 21:03:1995	Rs. 9,50,000/- Rs. 9,50,000/-

Asst. year	Agricultural income declared by A1	Date of assessment order/assessed total income	Remarks
1992-93	Agricultural Income Rs. 9,50,000/- in Ex.P.2139, P.2140	D65, D64, DW-64	Accepted by the appellate authority
1993-94	Agricultural Income Rs. 10,00,000/- in	D64, DW-64	IT Return not available

	Ex.P.2147,		
1994-95	Agricultural income Rs. 10,50,000/- in Ex.P.2173.	D61, DW 64, D62	IT return filed
1995-96	Agricultural income Rs. 11,00,000/- in Ex.P.2175	D63, D62, D64, DW-64	IT return filed
1996-97	Agricultural income Rs. 11,0,000/- in Ex.P2176	D63, D62, D64, DW-64	IT return filed
Total	Rs 52,50,000/-		

Thus, agricultural income of Rs. 52,50,000/- requires to be taken as income available to A1 during check period.

LXXX) <u>PROSECUTION EVIDENCE: RE-AGRICULTURAL INCOME OF A1:-</u>

80.1) The prosecution evidence in this regard is half hearted and perfunctory. They had examined PW 165 said to be a Horticulture Officer at Page 7 she admits “I have not mentioned in my report about the cost of production or probable Income from it”. Hence evidence of PW 165 does not further advance the prosecution case.

80.2) PW 166 has also been examined Agriculture office from Andhra Pradesh. In page 5 of his cross examination he states Ï have not mentioned about my personnel inspection in Ex-P-938”. He further admits “my evaluations are only approximate and probable one subject to higher or lower variation”. At page 6 he admits only at the request of Thiru. Kathiresan (PW256) I gave my evaluation report. Hence his evidence and report is liable to be rejected. In this regard the judgment of the Hon’ble Supreme Court of India reported in (2010) 6 SCC Page-1 held that where an opinion of an expert is only approximate then it requires to be rejected.

80.3) It is submitted since two authorities namely the Commissioner of Income Tax and the Tribunal after deep scrutiny accepted the income from agriculture, the prosecution seeking to discredit the same is to futile and unacceptable.

80.4) In annexure III item 33 annexed to the charge sheet the agricultural income is shown as Rs.5,78,340/-. Therefore a sum of Rs.46,71,670/- is to be added to the income.

LXXXI) <u>THE ACCUSED NO.1 IN FEBRUARY 1992, ON HER 44TH BIRTHDAY HAD RECEIVED BY WAY OF GIFTS IN THE FORM OF DRAFTS AND CASH. THESE ASPECTS REQUIRES TO BE CONSIDERED TO SHOW HOW THE AMOUNTS ARE LAWFUL INCOME AND RESOURCE OF A1.</u>

81.1) On February 1992, on her 44th birthday A1 had received by way of gifts following amounts. The receipt of this amount is indisputable. Three aspects are requires to be mentioned to show how the amounts are lawful income and resource available to A1.

81.2) Firstly, PW-259 the Investigation Officer has admitted the receipt of gifts and that his enquiries with as many as 75 persons who have given the gifts have also confirmed that they gave the gifts by way of drafts **and cash**. At page 49 of the deposition of PW-259 he states as follows:-

i) "In Tamil Nadu politics the respective party workers and ordinary people generally present articles, cash or cheques on the birth day by way of gifts. From our examination of 75 witnesses and 112 documents it has been recorded that a sum of Rs.1,94,90,012 was received through demand drafts as birth day gifts by J.

Jayalalitha on 24th January 1992. Further birth day gifts of Rs.15,00,000 in cash was given to her"

81.3) It is seen from these records that Rs. 29,00,000/- was received as gifts in the year 1991 (this will be before the check period). Thus PW-259 the I.O. has clearly admitted the receipt of income by way of gifts by A-1. His deposition does not contain any statement that the said gifts ought not to be counted as income in this case for any reason.

PW-259 the I.O. has further admitted in his deposition on page 50,

> "During investigation of the above said gifts none of the witnesses examined were brought to court and examined as witnesses. 112 documents mentioned have not been marked in court."

81.4) It has been shown in the Income Tax returns of the accused. Thus the receipt of the income stands fully admitted by the investigation officer himself. He has not stated any reason why, despite his investigation of the receipt of gifts, he has not chosen to include this as income available to the accused during the check period.

As regards foreign remittance received, the I.O. on page 50 as deposed

> "It has been shown in the Income Tax returns that the first accused received American Dollars equivalent to Rs.77,52,591/- in the form of a DD in the year 1992-93."

81.5) This receipt of foreign remittance has also been admitted by PW 259. Again he had not mentioned any reasons why, despite his investigation revealing receipt of the funds, he has not chosen to

include it in the income of A-1 while making the charge sheet. The receipt of the above amounts has also been spoken to by DW-64, auditor for A-1.

81.6) The second aspect that requires to be mentioned in this regard is that apart from this admission, the Accused No.1 has examined several persons from several districts of Tamil Nadu to show that they gave the drafts during the 44th birthday of A-1 and that the occasion was that as a General Secretary she had contested the election and the party came to power. The deposition of DW-9 to DW-30 clearly established the gifts that were given to A-1 on her 44th birthday, DW-6 to DW-20 establish the birth day gifts. DW 6, 7 and 8 spoke about the gifts even in the year 1990. Other persons spoke about the gifts in February 1992 on her 44th birthday. The defence witnesses have stated that they were holding one post or the other in the party and have collected the money which were given as a gift by DD from numerous local party workers. They have also stated that they have not held any public office. In the cross examination there was no challenge to this and it was merely suggested that they were deposing falsely in order to help the accused. The payment by way of drafts, as stated earlier, has been made even in February 1992 and therefore it could not be an afterthought for the purpose of this case. Thus without any justification the total amount of gifts received including foreign remittance in a sum of Rs.2.77 crores have been left out in the calculation of total income available to the A-1 during the check period. This also exemplifies *mala fide* investigation.

81.7) The third aspect that requires to be noted and considered is that the Central Bureau of Investigation filed a charge sheet against A-1 that some 31 persons among numerous persons who had given the gifts have had certain dealing with the Government and therefore it amounted to contravention of Section 11 of P.C. Act and started a

criminal prosecution against A-1 and few other persons. A-1 challenged the entire proceedings as invalid and unsustainable and also violative of Article 21 of the Constitution. The said criminal petition filed under Section 482 Cr.P.C. was allowed by the Hon'ble High Court of Madras. In an elaborate judgment, Madras High Court has quashed and set aside the prosecution initiated by CBI against A-1 regarding 31 gifts. The said judgment has been produced by A-1 along with her statement under Section 313 before this Hon'ble Court. These facts have also been spoken to by DW - 64 as can be seen from Para 49 of his deposition. The decision quashing the prosecution has since been reported in (2011) 2 L.W. (Crl.) 617. It forms in the list of compilation of judgments filed with a memo.

81.8) It may be mentioned therefore that for all the above reasons A-1 had an income of Rs.2,77,00,000/- during the check period.

LXXXII) <u>INTEREST INCOME</u>

82.1) The perusal of the income tax records including that which is produced by the prosecution, the following interest income was accrued to A1 during the check period:

1992-93 net interest Ex.2140 (Page 11)	: Rs.8,28,831/-
Ex.D64 – 1993-94	: Rs.33,41,804/-
Ex.D64 – 1994-95	: Rs.8,58,478/-
Ex.D64 – 1995-96	: Rs.10,63,071/-
Ex.D64 – 1996-97	: Rs.18,58,499/-
Total	: Rs.79,50,683/-

In the last year increase in interest was on account of repayment of loan in that year to the Canara Bank.

Rental income

a) Prosecution has shown Hyderabad property in Item 34 of Annexure III : Rs.3,42,520.40

b) St.Marys Road – 4000 per month for five years Every year assessment order accept this figure : Rs.2,40,000.00

Total : Rs.5,82,520.40

82.2) Thus on all the above heads, A1 had received total income of Rs……. which is declared and accepted by the I.T. authorities under scrutiny assessments. As against the same, the prosecution has taken only Rs. ……. as income of A1 under Annexure III which is incorrect.

LXXXIII) DRAWINGS FROM JAYA PUBLICATIONS:-

83.1) The Jaya Publications is a partnership firm of which A1 and A2 are equal partners. Qua partner A1 is entitled to and has drawn money from the partnership firm. The position is same with regard to the Sasi Enterprises, another partnership firm. The prosecution has not taken into consideration the amount drawn by A1 from these two firms. They are detailed herein:

83.2) In the subsequent paragraphs how Jaya Publications has the funds and money to enable A1 to draw there from have been detailed fully.

83.3) Jaya Publications started earlier to the check period had a printing press in which it was printing a daily newspaper titled Namadhu MGR.

LXXXIV) **JAYA PUBLICATIONS SUBSCRIPTION SCHEME**

DEPOSIT BUSINESS INCOME OF JAYA PUBLICATIONS

84.1) The assessment years above referred to for all the five years, show the business income earned by Jaya Publications in a sum of Rs.1,15,94,848.60. These are given in the form of tabular statement which is Annexure III. For the sake of brevity, they are not reposted herein.

84.2) One analysis has a barring even though there is an increasing printing of the Namadhu MGR daily newspaper it did not result in high degree of profit on account of the fact that large number of newspaper had to be supplied by way of free of cost. Thus it will be seen the business income mainly consisted upon three major items.

Agriculture income	: Rs. 2,45,665/-
Rental income of machinery hire	: Rs. 6,00,000/-
Rental income from properties	: Rs.45,30,642/-

Total	: Rs.53,76,307/-

84.3) It will also be seen that the expenditure which was in the region of Rs.1,19,15,371/- for the year 1991-92 had increased to Rs.2,83,78,693.60 for the year 1995-96. However it did not translate into higher profit on account of the above factor of the firm having to supply free copies. It is only on account of the same, the most of the deposits were returned in the later years as is noted in the assessment order of the Tribunal.

84.4) Even in the year 1990 before the check period in order to increase the circulation of the newspaper a Subscriber scheme deposit was introduced wherein a subscriber has an option of depositing a minimum of Rs.12,000, Rs.15,000 or Rs.18,000 with the firm and he would receive 4, 5 or 6 copies of the newspaper respectively daily free

of cost and the deposit is returnable within 15 days on demand therefore, that the person will continue to receive the paper free of cost not withstanding any increase in the price of the newspaper that may take place.

Subscriber scheme deposit was successful as many party cadres subscribed for the supply of the newspaper.

84.5) Jaya Publications had been assessed to Income Tax in Central Circle (II). As DW-88 explained, if it is Central Circle (II), then all assessments are scrutiny assessments under Section 143(3) of Income Tax Act. In simple terms, it means every income and every expenditure will be accepted only after in depth scrutiny.

LXXXV <u>SPECIAL AUDIT:-</u>

85.1) Having regard to the perceived complications in the assessment proceedings of Jaya Publications, the assessing officer invoked the power under Section 142 (2-A) of the Income Tax Act and appointed a special auditor M/s. P. B. Vijayaraghavan & Co., Chartered Accountants, for the assessment year 1994/95. A Special Auditor was appointed by the I.T Department after getting the approval of Chief Commissioner or Commissioner of Income Tax depending on the nature of business and volume of transaction.

85.2) When a special auditor is appointed he has a statutory power to inspect all the books and documents of the Assessee and also call for and inspect every other document which he may think necessary for proper evaluation of the account of the firm.

85.3) DW-88 says that he was present in Jaya Publications when the special auditor wanted the details and every detail, as required by the special auditor, was furnished to him and the special auditor had given a detailed report. It is marked as Exp. D 217. The special auditor was satisfied in Form 6-B that proper books of accounts

had been kept by the Assessee, Jaya Publications. He also verified the cash book, journal register, stock register, general ledger and documents to show the receipt income from business, separate cash book, journal register, journal ledger, pertaining to Agriculture income etc., Thus, it is clearly established that the firm has been maintaining proper and regular books of account which have been duly produced before the Income Tax authorities who have made the scrutiny assessment.

LXXXVI) INCOME TAX RETURNS OF JAYA PUBLICATIONS:-

86.1) DW-88 has been examined to show how after full scrutiny, the receipt of money under Subscriber scheme deposit has been accepted by the department. He had further deposed how the same has also been accepted by the Tribunal which under the scheme of Income Tax is the highest fact finding authority.

86.2) He had marked Exp. D. 218, D-219 and D-220 which are copies of income tax returns along with annexure for the assessment years 1991/92 to 1993/94. The documents marked as Exp.D-221, DW-222 and DW-223 are copies of Income Tax returns along with annexure submitted to the Income Tax department and they referred to the assessment years 1994/95 to 1996/97. Thus income tax returns along with annexures namely, balance sheet, profit and loss statement, and schedules have been produced and marked in the case. This covers all the five years of the check period.

86.3) The Accused No.1 and 2 say and submit that it is necessary to mention two broad aspects before dealing with this aspect of receipt of money under subscriber scheme deposit.

a) The monumental efforts taken by the Income Tax department to scrutinize the receipt of money under the

Subscriber scheme deposit and the efforts made by the Assessee before the income tax department to convince them on the propriety and validity of the Subscriber scheme deposit.

b) The second aspect is that the Accused No.1 had independently, by examination of various depositors and production of documents, which will be dealt with herein after, had shown the receipt of money under Subscriber scheme deposit

LXXXVII) <u>DEEP SCRUTINY BY INCOME TAX DEPARTMENT:-</u>

87.1) For the assessment years from 1991 to 1996, the Income Tax authorities had required the Assessee to produce a list of subscribers. On production of the list, the assessing officer, segregated the depositors district-wise and sent the list of district-wise subscribers to the District Deputy Commissioner of Income Tax of the respective districts requiring them to summon the depositors, enquire the genuineness of the deposits and record a statement from them under Section 131 of the Income Tax Act.

87.2) DW-88 has marked Exp.D.227 as one sample of such report from the Deputy Commissioner of Income Tax of Coimbatore District and the result of the enquiry and the statement recorded from various depositors. It will be seen that almost all the depositors have accepted the deposit of money under the subscriber scheme deposit and also given sworn statements to the above effect.

87.3) The Accused No.1 year after year had produced the list of subscribers in the format prescribed by the assessing officer. For the assessment year 1993, the list is Exp.D.228 and 229 (1) to (6).

87.4) In the volumes produced by the Income Tax Department in pursuant to notice under Section 91Cr.P.C to produce documents, the following entries were found. This is spoken to by DW-88. This shows the Accused No.1 has produced 417 confirmation letters under S. No. 88 and 286 confirmation letters under S.No.83 pertaining to the assessment year 1991-92 to 1993-94. 1005 confirmation letters have been produced under Serial No. 75.

87.5) The Income Tax Department has stated that all the confirmation letters filed by the Accused No.1 are not produced as it is voluminous.

Thus the Accused No.1 had done all she could do to establish the genuineness of the deposits.

LXXXVIII) <u>DEFENCE EVIDENCE:-</u>

88.1) As stated above the second aspect is that the Accused No.1 independently proved what they had given before the Income Tax authorities and has produced a list of subscribers along with their names and addresses in six volumes, which have been marked as Exp.D.229 to D.229(6). The Accused No.1 had also produced the applications given by the Subscriber scheme depositors. These applications are in eighteen files. These applications have been marked as Exp.D.230 (1) to D.230 (18). DW-88 has deposed that there are about 9000 names of subscribers in this document. All the forms under which deposits were received almost entirely were in the handwriting of the depositors themselves. All these deposit receipts numbering around 6000 have also been marked.

88.2) Apart from the above documents the Accused No.1 has examined before this Hon'ble Court DW 3 to 5, DW-3 to DW-39, DW-

44 to DW-53. DW-55 to DW-63. These defence witnesses have spoken that they have made the deposit, identified the application they had given, identified their signatures and stated that they had given the subscription amount and were receiving the newspapers daily. These witnesses have stated that they are members of AIADMK party and they are active members in politics and they have also stated that many persons in their places have made similar subscriptions for Namadhu MGR newspaper. In the cross examination except the suggestion that these persons are deposing falsely and they may not have the where withal to make the deposit. It is submitted that the evidence of these witness was not in any way discredited.

88.3) Thus, as it will be seen *infra* the Accused No.1 had not only established the genuineness of the subscriptions under subscribers scheme deposit in the proceedings before the Income Tax Authorities they have also shown before this Hon'ble Court that the subscribers scheme deposit receipts were genuine.

LXXXIX) <u>INCOME TAX ORDERS ACCEPTING SCHEME DEPOSIT:-</u>

89.1) DW-88 had deposed clearly supported by documents in the form of orders of various authorities including that of the Tribunal under the Income Tax Act where the receipt of money under subscribers' scheme deposit has been accepted after in depth and pervasive scrutiny. These orders are briefly mentioned herein after.

89.2) Exp.D-231 is the order passed by the Commissioner of Income Tax (Appeals) in I.T. appeal 144/2001-2002 it is for the assessment year 1991-1992. After elaborate consideration the appellate authority accepted the case of the Assessee regarding receipt of money under subscribers scheme deposit.

89.3) Exp.D-232 is the order of the Commissioner of Income Tax (Appeals) (Central Circle II) made in I.T.A. 143/2001-2002. This pertains to assessment year 1992/93 wherein also the money received under the subscribers scheme deposit has been accepted after full discussion.

89.4) Exp.D.233 is the order in I.T.A. 142/2001-2002 wherein also the Commissioner of Income Tax (Appeals) has accepted the receipt of money under the subscribers scheme deposit for the assessment year 1993/94.

89.5) Exp.D-234 is the order passed by the Income Tax Tribunal – B bench and it covers the remaining assessment years 1994/95 to 1996/97. The tribunal has given the judgment in I.T.A. No.1130/Mds/2003 batch. The tribunal dismissed the appeals filed by the department against the orders of Commissioner of Income Tax (Appeals) which are marked as D-231 to D-233. The Hon'ble Tribunal has accepted the receipt of money under subscribers scheme deposit for the years 1994/95 to 1996/97 in its order Exp.D.234. The tribunal found as a matter of fact that only in respect of 41 depositors there is a doubt if they had made the deposit and therefore since no opportunity was given to the Assessee Jaya Publications to cross examine the said 41 persons and the statement recorded from them, the tribunal remanded the enquiry by expressly confining the remanded enquiry only in respect of the above said 41 persons. The money received from the rest of the depositors have been accepted upto the tribunal level.

89.6) The total amount of deposit accepted during the check period as per the orders above referred amounts Rs.14,23,89,000/-. These amounts have been remitted to the current account No.2047 of

Jaya Publication and No.1952 with Canara Bank in the name of Namadhu MGR.

89.7) Thus the receipt of money under the subscribers scheme deposit has been accepted by the highest fact finding authority under the Income Tax namely the Tribunal. As stated earlier the Accused No.1 has also established the receipt of money under subscribers' scheme deposit before this Hon'ble Court by examining so many defence witnesses and marked huge number of documents.

89.8) Even though PW. 259, Investigation Officer was fully aware of the receipt of money under subscribers' scheme deposit and its availability to the Accused No.1 & 2, but he has not taken it into consideration deliberately and without any justifiable reason.

XC) <u>INCREASE IN EXPENDITURE DUE TO PRINTING OF MORE NUMBER OF COPIES:-</u>

90.1) Apart from the above, DW-88 has also spoken that the Jaya Publications through its sale of newspapers, advertisements and printing on job work basis, have also earned money. This income, in the nature of profit, has also been disclosed to the income tax authorities under successive years and accepted by them after in depth scrutiny. In the three orders of Commissioner of Income Tax (Appeals) under Exp.D.231 to D-233 these income have been accepted after scrutiny. The amount of profit during the check period for five years, from 1992/93 to 1996/97, amounted to Rs.1,15,94,860/-. These are the figures accepted by the Income Tax Department after scrutiny assessment.

90.2) The Accused No.1 says and submits that the increase in subscription on account of subscribers' scheme deposit necessitated

increase in the number of newspapers to be printed. The following statistics will reveal the same. The number of news papers for the printing of which strike order was given

During the year 1988	16,000 copies
During the year 1990	30,000 "
During the year 1995/96	60,000 "
During the year 1996/97	70,000 "

90.3) There was corresponding increase in the amount of printing paper and other raw materials. The Income Tax Department has also gone in this question fully and in the orders of the Commissioner of Income Tax (Appeals) this was also one of the issues and after scrutiny the increase in the number of news papers printing and the explanation therefore it has been accepted by the appellate authority in the orders referred to above. Thus there was increase in subscription and corresponding increase in the number of papers to be printed to effect the supply which again led to increase in consumption of newsprint paper. Thus the Accused No.1 and 2 has fully established every facet to show the due and lawful income as aforesaid. On behalf of this accused during the course of arguments, a one page chart was given showing the increase in expenditure, towards printing on account of higher deposit scheme membership. The chart is Annexure I to these written submissions.

XCI) <u>AGRICULTURAL INCOME OF JAYA PUBLICATIONS</u>

91.1) Jaya publications, the partnership firm was also carrying on agricultural operations by taking on lease the land belonging to the family of T.S.R. Vasudevan. The lands are situated at Poyyapakkam and Maharajapuram villages in Villupuram District. The agricultural operations were being carried on in the name of Sapthagiri Farms. The receipt of agricultural income was disclosed in the returns for all

the years during the check period and also earlier in the year 1990 and after in depth scrutiny accepted.

91.2) The Income Tax Department vigorously tried to disprove the receipt of agricultural income. In that effort they referred to the lease deed to the registration department to find out if the stamps had been duly issued and the register of the stamp vendor also was verified which showed the issuance of the stamp papers on which indeed the lease deed of T.S.R. Vasudevan is engrossed. The report of the Deputy Inspector General of registration is Exp. D. 235 produced to the Income Tax Department. The acceptance of agricultural income year after year was also the subject matter of the decision by Commissioner of Income Tax (Appeals). In Exp. D 231 to D-233 the agricultural income has been accepted after in depth scrutiny. The agricultural income was also accepted in Exp.D-234 which is the order of the Tribunal pertaining to the years 1994/95 to 1996/97. The year-wise break up figures for acceptance of the agricultural income for Jaya Publications is as follows:

Assessment Year	Agricultural income	Reference
1991/92	Rs.4,54,500	Exp.D.231
1992/93	Rs.9,31,000	Exp.D.232 para 11.8
1993/94	Rs.7,43,500	Exp.D.233 para 11.7
1994/95	Rs.7,43,500	Order of CIT(Appeals) dt.14.2.03
1995/96	Rs.14,84,960	Order of CIT(Appeals) dt.28.3.02
1996/97	Rs.15,02,310	ITA.57/2002 dt.9.4.02 para 8.4

	Rs.58,59,770	

91.3) As stated earlier the agricultural income for three years 1994/95 to 1996/97 was the subject matter to the Tribunal by the department. The decision is Exp.D.234. Under the said judgment in

para 11 the tribunal has held that “we are of the view that Commissioner of Income Tax (Appeals) has arrived at the figure of agricultural income after taking into account the entire spectrum of the case in all the years under consideration”. Thus the tribunal therefore dismissed all the appeals filed by the Department. Thus the total agricultural income realized has been fully accepted by the Income Tax Department upto the tribunal level.

91.4) The Accused No.1 and 2 say and submit that the decision of Commissioner of Income Tax (Appeals) and the Tribunal are all binding on this Hon’ble Court as there is no material to take a contrary view. The Income Tax Department considering the receipt of agricultural income have examined the said T.S.R.Vasudevan and his affidavit has been received in evidence. The assessing officer has also examined Selvam, a merchant, who had received the agricultural produce, particularly hybrid vegetables. His sworn statement has also been recorded wherein he had admitted the payment to Sapthagiri Farms (the name under which Jaya Publications was carrying on the agricultural operations). As stated earlier under Exp.D.217 the special auditor has confirmed the due maintenance of registers like daily activities register, journal entries, sales cash book by Jaya Publications. Due to the fact that almost 20 years have lapsed since that date, it is not possible now to call those persons and examine them before this Hon’ble Court. This exercise has been done by the Income Tax department and upto the tribunal level the receipt of agricultural income has been accepted.

XCII) <u>PROVISION OF LAW UNDER I.T. ACT THAT FOR AGRICULTURAL INCOME NO NEED TO MAINTAIN ACCOUNTS</u>

92.1) In this regard it is necessary to point out that Section 44AA of the I.T. Act only requires that persons carrying on legal, medical, engineering or architecture or interior decoration and any other profession as may be notified by the board in the official gazette shall keep and maintain such books of account as may enable the assessing officer to compute the total income. Sub section 2 says every person carrying on profession or business were income exceeds Rs.10 lakhs per annum is required to maintain books.

92.2) Thus books of account are not required to maintain qua agricultural income as is not specifically required under the I.T. Act. Hence, it may have to be held that Jaya Publications herein have received during the check period a total amount of RS.62,45,665/- towards agricultural income.

XCIII) <u>BUSINESS INCOME OF JAYA PUBLICATIONS – AN ANALYSIS</u>

93.1) The assessment years above referred to for all the five years, show the business income earned by Jaya Publications in a sum of Rs.1,15,94,848.60. These are given in the form of tabular statement which is Annexure III. For the sake of brevity, they are not reposted herein. These business income have always been duly disclosed to income tax authorities and accepted by them. As earlier mentioned the assessment orders are scrutiny assessments under 143(3) of the I.T. Act. Had income tax authorities disallowed any extent of the business income returned in all the five years, then to that extent it would have been assessed as unexplained investment or unexplained income. Such is not the case in all the assessment years for Jaya Publications. As stated earlier, the returns, balance sheet has also the orders of the appellate authorities have been filed for all the years of the check period.

93.2) One analysis has a bearing even though there is an increasing printing of the Namadhu MGR daily newspaper. It did not however result in higher profit. This is on account of the fact that large number of newspaper had to be supplied by way of free of cost. Thus it will be seen the business income mainly consisted upon three major items.

Agriculture income	: Rs. 62,45,665/-
Rental income of machinery hire	: Rs. 6,00,000/-
Rental income from properties	: Rs.45,30,642/-

Total	: Rs.1,13,76,307/-

93.3) Thus profit made out of the publication was not much having regard to the expenditure towards printing of the newspaper. It will also be seen that the expenditure which was in the region of Rs.1,19,15,371/- for the year 1991-92 had increased to Rs.2,83,78,693.60 for the year 1995-96. However it did not translate into higher profit on account of the above factor of the firm having to supply free copies. It is only on account of the same, the most of the deposits were returned in the later years as is noted in the assessment order of the Tribunal. All this shows the firm genuinely earned income and duly assessed by the income tax.

XCIV) THE DRAWINGS OF A1

94.1) A1 has drawn from the said Jaya Publications, as and he is entitled to, as a partner of the firm, the following amounts she had drawn from the Jaya Publications partnership firm a sum of Rs.2,70,82,900/-. In the calculation memo filed by A1 (which has the same format as annexure I to VII by the prosecution, to avoid

confusion) at page 22 shows the break up figure for the said sum. This has also these drawls are through bank only. Therefore these are duly reflected in the statement of affairs, filed with the return of income for the assessment year 1996-97 the return of income enclosing statement of affairs is filed by the prosecution in Ex.P2334. This has reflected at page 98 and 99 of the statement of affairs.

94.2) As stated earlier, there has been assessment in respect of the years during check period, all being scrutiny assessments. The A1 had filed the appellate orders for these reasons. The drawings are accepted by the income tax department, as otherwise, it would have been added as unexplained investment.

94.3) A1 is also a partner in another firm viz. Sasi Enterprises. At page 24 of the calculation memo filed by the petitioner, the details of the drawings are furnished. This has also reflected in the statement of affairs filed along with the return in Ex.P2334.

XCV) <u>MALAFIDE OF THE PROSECUTION:-</u>

95.1) PW-259 with mala fide intention has totally omitted to consider the income from Jaya Publications. PW-259 says that he had not seized the records of Jaya publications for the years 1.7.1991 to 30.4.1996 since these records have been taken by the Income Tax Department. He admits that though he has the power he did not send for the records from the Income Tax Department to ascertain the income and return particulars of Jaya Publications. Thus PW-259 deliberately omitted to consider the receipt of money under the subscribers' scheme deposit, profit earned during the check period and also the agricultural income realized during the check period by Jaya Publications. Thus the following amounts are to be included in the income that is available to A-1 and A-2.

a.	receipt of money under subscribers scheme deposit	Rs.14,23,89,000/-
b.	Net profit earned though Business by Jaya Publications which includes Agriculture income also	Rs. 1,15,94,849/-
	Total :	Rs.15,39,83,849/-

XCVI SASI ENTERPRISES

96.1) Sasi Enterprises is a partnership firm. After reconstitution in 1990 its partners are the Accused No.1, J. Jayalalithaa (A-1) and Sasikala (A-2). The firm was carrying on business under the name of Fax Universal and Fax STD Services, Xerox Services and printing of building plans.

96.2) It was also carrying on agricultural operations.

96.3) Sasi Enterprises has been assessed to income tax in Central Circle II. Therefore all its assessments are scrutiny assessments under Section 143 (1) of Income Tax Act. The balance sheet and profit and loss statement of Sasi Enterprises for the assessment year 1991/92 that is the year ending on 31.3.1991 is Exp.D.261. The assessment order was ultimately modified by Commissioner of Income Tax (Appeals) in I.T.A. 108/2001-02. It is Exp.D.260.

96.4) In the balance sheet – Ex. D. 261, Rs.17,91,000/- is shown as receivables for advances already made by the firm. Of this Rs.8,20,000/- was due from one Nagammal and Rs.2,75,000/- from Subramanaian. In the next assessment year the order of Commissioner of Income Tax (Appeals) in I.T.A. 107/2001-02 – Exp.D.263 – From this document the following has been accepted.

Advance from Infotech Computer Centre (Ex-D-274) Rs.54,000/-

Advance from A. Bhaskaran of Kumbakonam (Ex-D-265) Rs.40,000/-. Balance sheet and profit and loss account for the year 1992/93 are Exp.D-263.

96.5) During this year Rs.4,50,000/- has been received from Nagammal. It is accepted by Commissioner of Income Tax (Appeals) in his order Exp.D.262. D-267 is the balance sheet and profit and loss account for the year ended 31.3.93 Commissioner of Income Tax (Appeals) in I.T.A. 106/2001 accepted the contentions of Sasi Enterprises. The order in appeal is Exp. D.266 records Rs.3,70,000/- has been received from Nagammal.

96.6) Rs.1,48,600/- has been received towards rent.

96.7) Exp.D.268 is the Income Tax return along with balance sheet. On the said return, order of assessment has been passed by the Assistant Commissioner of Income Tax (Circle II) as the assessing officer. The said assessment order accepts the following income

Rental income	1,41,000
Annual income (Profit)	1,94,806
Capital gains on sale of plant and machinery Tools, dies, and condemned stores from erstwhile TANSI Enamel wires	10,20,000

96.8) The income tax return along with balance sheet and profit and loss account statement for the year ended 31.3.1995 i.e. the assessment year 1995/96 is Exp.D.270. The assessment order there on is Exp.D.271. Under the assessment order the following income is accepted.

Rent	1,69,600
Net profit	44,895
Loan from Indian Bank	27,42,869

96.9) Exp.D.272 is the acknowledgment for receipt of return of income, balance sheet and profit and loss account for the year

1996/97 i.e. period ending 31.3.1996. The order of assessment passed by the Commissioner of Income Tax (Appeals) as assessing officer is Exp.D.275. This document shows the following income

Rental income	7,06,200/-
Sale of building materials pertaining to Industrial Estate Guindy	6,00,000/-
Loan from housing Real Estate Development Pvt, Ltd.	10,00,000/-

96.10) The said Housing Real Estate Development Pvt. Ltd, a company not connected with any of the accused have given a letter of confirmation having advanced Rs.10,00,000/- by way of cheques . The confirmation letter is filed before this Hon'ble Court Exp.D.274.

96.11) Sasi Enterprises was also carrying on agricultural operations. It had taken land on lease from T.S.R.Vasudevan. The lease agreement is Exp.D.258 dated 1.9.1991 between Sasi Enterprises and T.S.R.Vasudevan. Exp.D.259 is the certificate granted by Tahsildar that the land mentioned there is under the lease hold possession of Sasi Enterprises. The agricultural income realized each year is being disclosed and accepted by income tax authorities after scrutiny. The following are the agricultural income accepted after scrutiny.

1991/92	Exp. D.260	3,73,700
1992/93	Exp. D.262	5,40,700
1993/94	Exp. D.266	2,16,850
1994/95	Exp. D.269	65,000
1995/96	Exp. D.271	70,000
1996/97	Exp. D.275	80,000
		13,36,350

96.12) Thus Sasi Enterprises has received by way of agricultural income a total sum of Rs.13,36,350/- during the check period. All

these are duly accepted by orders passed by the Income Tax department above mentioned. It is submitted that without justification all these income have been overlooked by the investigation officer. Total income received by Sasi Enterprises under all these amounts to Rs. /-.

XCVII) <u>COST OF CONSTRUCTIONS OF RAJA NAGAR, NEELANGARAI, ECR ROAD:-</u>

97.1) The petitioner submits that she had already detailed how the valuations are unacceptable and no reliance could be based upon them. These clearly apply to the constructions allegedly made by Sasi Enterprises. The entire valuations reports are liable to be rejected for various reasons set out above. The petitioner submits therefore the amount of Rs.80,75,000/- is liable to be totally excluded.

97.2) Without prejudice to the above, the petitioner submits as follows:

The prosecution has valued the construction of Sasi Enterprises at Raja Nagar, E.C.R. Road under Ex-P-673 at Rs.80,75,000/-. The Accused have seriously Disputed the valuation. Before going into the validity of the valuation on the face of value report the following amount are liable to be deducted as they are not admissible in evidence.

(a) Cost of Block-1 which is estimate at Rs.10,47,446/- in this report at Page No.2 it is held as regards Block No.1 the construction would have been 4 or 5 years before 1993-1994. This would take the construction to 1989-1990. It is surprising after coming to this conclusion and stating the same in the report itself, PW.117 says that he calculated the value as at 1993-94 and says he had given 10%

depreciation to bring the value as on 1991-92. Whole of this procedure and is evidence is not merely illogical militates against all known principles of law and logic. He does not give any reason why he could not value as at the rate prevailing in 1991-92. What was the rate in 1991-92 is also not specified by him. What is the principle by which he gives 10% deduction to bring the value which admittedly he had arrived at in 1993-94 rate to that of 1991-92. It is submitted that the entire report is liable to be rejected.

97.3) Similarly the electrical installation for Block No.1 was computed Rs.2,15,532/- for the same reason it is also liable to be excluded. The electrical installation for the remaining two blocks of building amount to Rs.2,16,065/-, Rs.2,81,647.99/-, External Electrical Installation Rs.11,300/-. These electrical installations have been evaluated by Assistant Executive Engineer P.W.D. (electrical) by name Narayanan and Vadivelu, Assistant Engineers. Both the persons have not been examined to prove their report relating to value of electrical installation.

97.4) It is settled law that unless expert is examined his report is to be wholly in admissible (2010) 9 SCC 286 - Keshav Dutt Vs State at page 170 in the compilation of judgment.

97.5) Hence a total amount of Rs.17,71,990/- is liable to be excluded from Rs.80,75,000/-. Hence the value as per Ex-P-673 could only be Rs.63,03,010/- if at all. The owner of the building Sasi Enterprises had declared the cost of construction before I.T. authorities and the same has been accepted in a scrutiny assessment. This will be detailed below.

XCVIII) <u>EX.P.673 VALUATION REPORT – UNRELIABLE:-</u>

98.1) The question is whether Ex-P-673 could be relied upon by the prosecution for the alleged cost of construction at least to the extent above referred to the valuation Ex-P-673 suffer from ten cardinal defects pointed out earlier Paragraphs. This has also been duly spoken to by Mr. Appandarajan, DW 95 for the sake of brevity they are not reposted herein.

98.2) The prosecution has examined PW117. The report is wholly unacceptable as it does not contain any variable detail. This is so on two major aspects firstly schedule of rates as prescribed by the Government is said to have taken for calculation of cost of materials for which value has been provided by the Government. This basis has not been given along with the report.

98.3) Secondly as regards non-schedule item like Marble, Tiles, Porcelain Tiles, Teakwood, Shutters. No detail as to how the value has fixed when the value has not been fixed by the Government. In page 12 in his evidence he admits he enquired about Porcelain Tiles in the shop of one N.K.Ahamad through phone that he noted the price in a paper but that paper is not with him. For painting he enquired different shops but he has not kept the paper in which he noted the price. Thus none of the value mentioned for schedule items and non-scheduled items are capable of verification. Hence this cannot be expert evidence in the eye-of-law. It has been already referred in earlier paragraph about the Supreme Court Judgment without as to how without reason a report of an expert is liable to be rejected.

98.4) The report Ex.P673 is replete with mistakes and such guess work can never be accepted as a proper valuation. For instance in paragraph 5, item 27 fixing wardrobe with particle board he has added Rs.2,21,970/-. It must be characterized us fantastic. Firstly

how a wardrobe can be measured in terms of M^2. It can only be measurement of doors, shelves. He had likewise added 4,59,760/- towards adanga marbles. Adanga marbles are the lowest quality and how he had validated Rs.1000 per metre square is not made clear. Thus no feature in this report is capable of verification or based on data and therefore liable to be rejected.

XCIX) <u>INCOME TAX PROCEEDINGS</u>

99.1) Sasi Enterprises is assessed income tax Central Circle II, hence its assessments are scrutinized assessments. It may be seen that for the assessment year 1995-96 return filed is Ex.D270. This enclosures receipts and payment accounts and also balance sheet, the balance sheet shows that the property at Neelangarai amount spent towards construction was Rs.23,37,266.35. The assessment order is Ex.D271. It is significant that the assessment order does not add any amount towards construction as an unexplained expenditure, implying that the amount of expenditure returned towards construction at Neelangarai has been accepted.

99.2) The return for 1996-97 (for a period ending on 31.3.1996) the return is Ex.D272. This also enclosures receipts and payment accounts for the year ended on 31.3.1996. This shows that the additional cost towards construction was Rs.2,15,466. Thus the total cost of construction for the building at Neelangarai, ECR Road was only Rs.25,52,732.37. The return filed under 272 is also accepted by a scrutiny assessment order in Ex.D275. It is seen that there is no addition towards unexplained expenditure. On the contrary, this implies that the expenditure returned has been accepted after scrutiny.

99.3) PW.117 has been recalled and further cross examined wherein he had contradicted himself on material particulars. However he was recalled again at Karanataka and examined again. The petitioner has shown how the re-examination at Karanataka is wrong. For the same reasons, the evidence of PW.117 is also otherwise liable to be rejected.

99.4) In the above view prosecution cannot said to have established the expenditure towards construction hence the burden will not shift to the Accused to rebut it.

C) <u>DEFENCE EVIDENCE RE-CONSTRUCTIONS:-</u>

100.1) Without prejudice to the above submission, the Accused has also let defence evidence to show how the valuation is unacceptable. In the absence of reliable measurements of the extent of construction, the whole of the prosecution evidence is liable to be rejected.

CI) <u>CONSTRUCTIONS OF SHED AT GUINDY, INDUSTRIAL ESTATE:-</u>

101.1) As far as item 191 in Annexure-II is reconstruction of a shed at Guindy Industrial Estate. The prosecution has marked Ex-P-674. Report of RPW-117 he had valued at Rs.14,17,538/-. In this valuation cost of electrical installation as per the report is Rs.94,912/- +41,100/-=1,42,012/- as seen from page 13 of Ex-P-674. No Assistant Electrical Engineer who valued it has been examined. Hence valuation relating to electrical installations are inadmissible in evidence. Hence the cost of the electrical installation is liable to excluded.

101.2) An ordinary labour shed is deliberately valued as if PW.117 valuing a palace. Thus the prosecution is bent upon leading

false evidence and the valuators are the obliging witnesses in that scheme.

101.3) Without prejudice to the above submission, the valuation report of PW-117 (Ex-P-674) suffer from the ten cardinal defects point out by DW-95. Hence the report Ex-P-674 is not liable to be acted upon further PW117 has been recalled and examined in January 2003 wherein he had admitted that his report is gravely defective and that more than 60% of materials used are non-schedule item. These answers rob his chief examination of any credibility. This witness however was again recalled by the prosecution and subjected to re-examination. The procedure is illegal. This has been detailed and law quoted in earlier Paragraphs. The same would equally apply to this witness also.

101.4) Even in the re-examination only question as to the period construction has been asked other answers in the cross examination therefore remain with full force. Hence the report under Ex-P-674 is liable to be rejected.

CII) <u>INCOME TAX PROCEEDINGS ACCEPTED THE EXPENDITURE</u>

102.1) Without prejudice to the above submission the Sasi Enterprises has disclosed the actual of construction in the return filed for the Assessment year 1996-1997 marked as Ex-D-272. The cost of construction amount to Rs.4,76,525/- has been duly disclosed and accepted. The assessment being scrutiny assessment under Sec 143(3) of the Income Tax Act has great validity and it is binding and conclusive in this issue.

102.2) Hence in a sum of Rs.14,17,538/- shown by DVAC a sum of Rs.9,41,013/- is liable to be excluded.

C III) THE PROPERTIES ACQUIRED, INCOME AND EXPENDITURE OF A1 AT A GLANCE WHICH WAS NOT TAKEN INTO ACCOUNT BY DVAC

103.1 The properties acquired, Income and expenditure of A1 at a glance which was not taken into account by DVAC have been dealt with in the annexure to this written submission.

ANNEXURE - I			
PROPERTIES ACQUIRED BY ACCUSED NO.1 PRIOR TO CHECK PERIOD NOT TAKEN INTO ACCOUNT BY DVAC			
S.No.	**Description of property**	**Value**	**Exhibits and Evidence relied by Accused**
1	As per Balance Sheet for the Assessment year 1991-1992 ending on 31.3.1991 the amount available with Accused No.1	37,77,032	PW-210 Ex.P-2029
The properties value of A1 is Annexure-I According to DVAC was			**Rs.1,42,54,785.00**
As per Ex-2029, the amount available as on 31.3.1991 by A1 was Rs.37,77,032/- (Not taken into account by DVAC)			**(+)Rs.37,77,032.00**
			Rs.1,80,31,817.00
Hence the Assets value of A1 prior to check period should be taken into Account as			**Rs.1,80,31,817.00**

ANNEXURE - II **Disputed items and the value for the above items with relevant proof - Relating to Accused No.1**						
Disputed items in Annexure - II	**Value According to DVAC**	**Value as per defence**	**Evidence and Exhibits relied upon by Accused No.1.**		**Evidence and Exhibits relied upon by DVAC**	
			Exhibits	**DW's**	**Exhibits**	**DW's**
1 Land and Building at No. 36, Poes Garden , Chennai-86 (S. No. 1.567 of Teynampet Village) Purchased from R.Sarala	1,32,009.00	Acquired prior to check period. Hence whole amount to be excluded			**Ex.P-2327** Shown in Annexure - I, Item -1	
2 Door No. 8/3/1099 Ward No. 8, Block No. 3, in Plot No.36, to the extent of 651.18 Sq. mtr building in Srinagar officers Colony, Hyderabad city purchased from Koka Sambasiva Rao S/o. Hariprakasha Rao 8/3/1099, Sri Nagar Officers Colony, Hyderabad	50,000.00	Acquired prior to check period. Hence whole amount to be excluded			Shown in Annexure - I, Item -2	
3 Two Farm Houses, Servant Quarters and other building with in the Grape Garden Compound in Jeedimetla village and Pet Basheerabad, Qut bullapur (Mandal) Ranga Reddy Dist., S. No. 50 and 52/E of Jeedi Metla village and S.No.93E and 93U of Pet Basheerabad Village (Total Extent 11.35 Acres)	1,65,058.00	Acquired prior to check period. Hence whole amount to be excluded			Shown in Annexure - I, Item -3	

4 Land in Survey No.93/3, to the Natiyakala Nikethan extent of 3.15 Acres (1.36 Hectares) at Pet Basheerabad Village in Medchar Taluk, A.P	13,255.00	Acquired prior to check period. Hence whole amount to be excluded			Shown in Annexure - I, Item -4
5 Agricultural Land 3.43 Acres in Cheyyur village in S.No. 366/2.5.6.	17,060.00	Acquired prior to check period. Hence whole amount to be excluded			Shown in Annexure - I, Item -5
10 Land and Building at Door No.213/8, St.Marys Road, in S.No.72, New No.212 extent 1206 sq.ft	3,60,509.00	Acquired prior to check period. Hence whole amount to be excluded			Shown in Annexure - I, Item -10
11 Shop No.18 of 180 sq.ft.in ground Flloor at Door No. 602, Mound Road, together with 54/42656 th of undivided share of land in 17 grounds and 1856 sq.ft. in R.s.No.3/10 and 3/11. of Block No. 71 Mylapore village.	1,05,409.00	Acquired prior to check period. Hence whole amount to be excluded			Shown in Annexure - I, Item -11
Vehicles					
231 TMA 2466 (Maruthi 800 car) New	60,435.00	Purchased prior to check period			Shown in Annexure - I, Item 231
233 TSJ 7299 Trax Jeep	1,04,000.00	Purchased prior to check period			Shown in Annexure - I, Item -233

235 TSI 9090 (Swaraj) Mazda van	1,76,172.67	Purchased prior to check period			Shown in Annexure - I, Item -235
237 TN - 09 -0033 (Contessa Car)	2,56,238.00	Purchased prior to check period			Shown in Annexure - I, Item -237
240 TSJ 7200 Trax Jeep	1,04,000.00	Purchased prior to check period			Shown in Annexure - I, Item -240
Bank Deposits					
265 Fixed Deposit in Kothari Oriental Finance in the Name of Selvi J. Jayalalitha	1,00,000.00	Invested prior check period	Renewal Deposit		Shown in Annexure - I, Item -265
266 Fixed Deposit in Kothari Oriental Finance in the Name of Selvi J. Jayalalitha	1,00,000.00	Invested prior check period	Renewal Deposit		Shown in Annexure - I, Item -266
267 Fixed Deposit in Kothari Oriental Finance in the Name of Selvi J. Jayalalitha	1,00,000.00	Invested prior check period	Renewal Deposit		Shown in Annexure - I, Item -267
268 Fixed Deposit in Sriram Finance in the Name of Selvi J. Jayalalitha	3,00,000.00	Invested prior check period	Renewal Deposit		Shown in Annexure - I, Item -268
269 Fixed Deposit in Sriram Finance in the Name of Selvi J. Jayalalitha	30,00,000.00	Invested prior check period. Hence whole amount to be excluded	Renewal Deposit		Shown in Annexure - I, Item -269
271 Fixed Deposit in Sriram Finance in the Name of	5,00,000.00	Invested prior check period	Renewal Deposit		Shown in Annexure - I,

Selvi J. Jayalalitha					Item -271	
274 Fixed Deposit in Sriram Finance in the Name of Selvi J. Jayalalitha	20,00,000.00	Invested prior check period			Shown in Annexure - I, Item -274	
281 Value of 2140 old sarees and other dresses found at No.36 poes garden at the time of search	4,21,870.00	Prior to check period			Shown in Annexure - I, Item -281	
303 Amount deposited in MIDR 70/9 with cbi secunderabad alter renewal of earlier MIDRS 66/9 68/33 and 60/9 Sb account NO. 20614 of cbi secundarabad	3,00,000.00	Invested prior check period			Shown in Annexure - I, Item 303	
284 86 items of jewels of Selvi J. Jayalalitha of evaluated by M/s. VBC trust on 31.3.1991	17,50,031.00	Prior to check period			Shown in Annexure - I, Item -284	
286 26 items of Jewls selvi J. Jayalathia as evaluatd By M/s. Vbc Trust on 16/1/92	19,30,852.10	Acquired prior to check period. Hence whole amount to be excluded	P-857, P-858, P-859, P-860, P-1010, P-1011, P-1014, P-1015, D-250, D-250A, D-74	DW-64, DW-91	P-703	PW-125

288 41 items of Jewels of Selvi J Jayalalitha as evaluted by VBC trust on 31.3.1992	23,90,058.25	Acquired prior to check period. Hence whole amount to be excluded	P-857, P-858, P-859, P-860, P-1010, P-1011, P-1014, P-1015, D-250, D-250A, D-74	DW-64, DW-91	P-857	PW-155
289 228 items of Jewels of selvi J Jayalaitha as evalluated by M/s. Kirtilal Kalidas and co	140,75,958.00	Acquired prior to check period. Hence whole amount to be excluded	P-857, P-858, P-859, P-860, P-1010, P-1011, P-1014, P-1015, D-250, D-250A, D-74	DW-64, DW-91	P-858	PW-179

290 value of 394 items of jewels seized from the house of selvi j jayalalitha during 12/96 (after excluding 74 items of jewels out of 468 jewels alreay evaluated by M/s. kirtilal Kalidas and co (21 items of Jewels) and M/s. VBC Trust (53 items of Jewels)	312,67,725.00	Acquired prior to check period. Hence whole amount to be excluded	P-857, P-858, P-859, P-860, P-1010, P-1011, P-1014, P-1015, D-250, D-250A, D-74	DW-64, DW-91	P-698 to 705, P-1010 to 1012	PW-125
291 Silver ware weighing 1116 kgs the value of 700 kgs at Rs. 4000/- per kg + 416 Kgs at Rs. 5000/- Per Kg + Rs. 28,00,000 + Rs. 2080000/- (As per search list and Estimatio as observed during search)	48,80,000.00	Acquired prior to check period. Hence whole amount to be excluded	D-62, 63, 64, 70, 71, 72, 73, 74, D-2179, D-2180, D-2142	D-64	P-701, P-2030	210
295 Gold Jewellery plain/studded (studded with Diamond weigh 39.22 carets of diamond and 777.23 orams of gold presents to V.N. Sudhakaran and sathiyalakshmi at the time of their Betrothal By selvi J Jayalalitha on 12/6/95 Gold - 295061 and 899320 total 1194381	11,94,831.50	Gift to A3 by A1 is denied		DW1	No documents marked and no evidence adduced	
179 new/additional construction in the Building at the	640,33,901.00	1,50,62,300	D-62, 63, 64	DW-64	P-645	PW-98

grape Garden Faram House in the limits of jeedi metla and petpesherabad village in A.P			D-210(b) to D-210(q)	DW-96, DW-76		
181 new/additional construction in the Residential Building at D.No. 36 Poes Garden, chennai 88	724,98,000.00	2,11,85,400	D-62, 63, 64	DW-64, DW-76 DW-78	P-671 P-672	PW-116
278 Value of 389 pair of Foot wears both Gents and Ladies found in the poes Garden residence of Selvi J. Jayalalitha at the time of search	2,00,092.00	Improper value. Hence whole amount to be excluded	D-62, 63, 64, 70, 71, 72, 73, 74	DW-64	P-741	PW-131
279 value of 914 silk saress (New) found in the poes garden residence of Selvi J. Jayalalitha at the time of search	61,13,700.00	Improper value. Hence whole amount to be excluded	D-62, 63, 64, 70, 71, 72, 73, 74	DW-74, DW-64	P-766	PW-133
280 Value of 6195 other sarees (new) found in the poes Garden residence of J. Jayalalitha at the time search	27,08,720.00	Improper value. Hence whole amount to be excluded	D-62, 63, 64, 70, 71, 72, 73, 74	DW-74, DW-64	P-766	PW-133
282 value of seven costly wrist watches seized from poes garden on 21/12/1996	9,03,000.00	Improper value. Hence whole amount to be excluded	D-62, 63, 64, 70, 71, 72, 73,	DW-64	P-739	PW-129

			74			
283 value of 91 wrist watches seized during the house search at poes garden	6,87,350.00	Improper value. Hence whole amount to be excluded	D-62, 63, 64, 70, 71, 72, 73, 74	DW-64	P-740	PW-130

Note:-

The value of assets related to A1 shown in Annexure-II according to DVAC	Rs.24,29,40,490.00
Since item 1 to 11, 231, 233, 235, 237, 240, 265, 266, 267, 268, 271, 274, 281, 303, 284 are already shown in Annexure-I. It has not been taken into Account in the Annexure-II prepared by A1	
The value of the disuted items to be deducted from Annexure-II related to A1	Rs.17,67,52,534.52
Hence the Asset value acquired by A1 during check period	**Rs.6,61,87,955.48**

ANNEXURE - III **Resources available to Accused No.1 during check period but not taken into account by DVAC**		
Description of Income	**Evidence and Exhibits relied upon by Accused No.1.**	**Value**
<u>Agricultural Income:-</u> From Grape Garden, Hyderabad	Ex.D-62, D-63, D-64, D-65 DW-64	52,50,000
	According to DVAC Agricultural Income shown in Annexure III, Item-33	(-)5,78,340
	Total Amount to be taken in to Account	46,71,600
<u>Interest Income:-</u> From Fixed Deposits	Ex.D-62, D-63, D-64, D-65 DW-64	78,20,656
	According to DVAC Interest Income shown in Annexure-III as items 10 to 29, 31, 32, 35 and 36	(-) 58,82,710
	Total Amount to be taken in to Account	19,37,946
Income by way of Foreign Remittance	Ex.D-62, D-63, D-64, D-65 DW-64	77,52,591
<u>Rental Advance:-</u> Sri Nagar Colony, Hyderabad	Ex.D-62, D-63, D-64, D-65 DW-64	1,35,000
Welth Tax Refund	Ex.D-62, D-63, D-64, D-65 DW-64	1,35,631
User right granted to J.J. TV at 31A, Poes Garden	Ex.D-213 DW-64, DW-98	38,21,000
User right granted to Mrs.N.Sasikala at Grape Garden, Hyderabad	Ex.D-214 DW-64	31,78,000
Birthday gift by AIADMK party cadres	Ex.D-20 to D-25 DW-6 to DW-20, 64	2,15,00,012
1) Payment received from M/s. Jaya publication in the capacity of partner during check period Rs.3,33,42,900/- Payment repaid by A1 to Jaya Publication Rs.55,35,000/-	Ac. No.23832 of A1 with Canara Bank, Mylapore Branch, marked as Ex.P-1377 by PW 201 Ac.No.2018 of A1 with Canara Bank marked as Ex.P-1382 by PW 201 Current Ac.No.2047 of Jaya Publication with Canara Bank, Mylapore Branch marked as Ex-1903 by PW 201 Current Ac.No.1952 of	

	Namadhu MGR Canara Bank Mylapore, Branch marked as Ex-P-1635 by PW 201	
	Total Amount availed from Jaya Publication	2,78,07,900
2) Payment received from Jaya Publicaion and Sasi Enterprises partner N.Sasikala during check period Rs.1,91,00,000/- Payment repaid to Mrs.N.Sasikala Rs.35,00,000/-	Ac.No.23218 of N.Sasikala with Canara Bank, Mylapore Branch marked as Ex.P-1510 by PW 201 Current Ac.No.2196 of N.Sasikala with Canara Bank, Mylapore Branch marked as Ex.P-1519 by PW 201	
	Total Amount availed from N.Sasikala by A1	1,56,00,000
3) Payment received from Sasi Enterprises in the capacity of parnter during check period Rs.7,69,069/-	Current Ac.No.2061 of Sasi Enterprises with Canara Bank, Mylapore, Branch marked as Ex.P-1940 by PW 201	7,69,069
	Total	**8,73,08,749**

Disputed items to be deleted from Annexure - IV with relevant proof - Related to Accused No.1		
Disputed items in Annexure - IV	**Its value according to DVAC**	**Evidence and Exhibits relied upon by the Accused No.1 to delete the entries from Annexure - IV**
55 Amount paid by cash to TVI. Kapoors on 4.5.995 and 7.6.1995	44,264.00	Cash Payment - No Evidence adduced by Prosecution

142 Amount Debited from CA 2018 of Canara Bank, Mylapore of Selvi.J.Jayalalitha towards Indian Bank Government transactions on 28.08.1995	15,90,726.00	As per item 142 of Annexure - IV amount debited from CA.2018, Canara Bank, Mylapore from the Account of A1, Government Transaction on 28.8.1995 The same amount was refected in Item 178, 179 and 180 of Annexure - IV. It has been shown twice. Hence the amount is to be deleted.
225	16,15,500.00	Cash Payment, relating to salary paid to house keeping employees - No Evidence adduced by Prosecution
226	6,45,04,222.00	It is mentioned that the expenditure incurred in connection with Marriage of A3. To prove this prosecution examined PW-181, PW-200 and marked Exhibit P-1019 To disprove this defence examined DW-1, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 40, 41, 42, 43, 46, 54, 64, 77, 80, 84, 97 and Auditor DW-64 Defence document Exhibit D-15, 35, 35(a), 46, 46(a), 47, 47(a), 47(b), 48, 48(a) to (d), 46 (c), 46(d), 46(e), 49, 50, 51, 61, 64, 69, 133, 133(a), 134, 135, 136, 137, 137-A, 138, 139 to 150, 151, 152, 153, 154, 155, 355, 356, 357, 358 DW-1 Ramkumar deposed in the Court that all expenses done by him for the Marriage. For complements given along with invitation, decoration of marriage site, decoration of procession route and food expenses are met by Party Members. It was proved through defence witness, no expenditure made by A1 for the Marriage. Hence the entire amount is liable to be deleted
	6,77,54,712.00	

Abstract of Account for Accused No.1:-		
I	Income left out and to be included in Annexure-I (having possessed prior to check period)	Rs.37,77,032.00
II	Amount of property and construction possessed by A1 (As per the detailed estimate earlier given)	Rs.6,61,87,955.48
III	Expenditure after deduction in the manner earlier mentioned (Taken into account Annexure IV of DVAC) As per DVAC Rs.8,98,69,833/-(-) Rs.6,77,54,712/-	Rs.2,21,15,12100
IV	Income to be included not taken into Account by DVAC	Rs.8,73,08,749.00
	Add:- Amount accepted by DVAC relating to A1	Rs.1,43,94,408.00
		Rs.10,17,03,157.00
	Total Expenditure of item II & III mentioned above which requires to be explained	Rs.8,83,03,076.48
	Total Resource available (i.e.) adding Item I and IV above mentioned	Rs.10,54,80,189.00
	Hence the surplus is (without adding the value of Annexure-I shown by DVAC related to the properties acquired by A1 prior to check period)	**Rs.1,71,77,112.52**

10% MARGIN TO BE GIVEN

Without prejudice to the above contentment, it is necessary to mention that Hon'ble Supreme Court of India has held that in disproportionate asset cases 10% of the total income could be added as a rule as it is not possible to precisely estimate the income or expenditure incurred. It is laid down as a rule in three judgments of the Supreme Court.

1. Krishnanand Agnihothri Vs State 1977 (1) SCC, Page-816

2. M. Krishna Reddy Vs State 1992 (4) SCC, Page-45

3. Ashok Tesring Buttia Vs State 2011 (4) SCC, Page-402

In this case the total resource available to the accused including the drawings from the partnership firms amounted to Rs. 10% of the same would be Rs.

/- Thus this amount is must be deemed to be available to the A1 during the check period. Therefore for practical purposes income/resource available to the A1 must be considered as Rs. viewed from this angle the surplus available with A1 would be much larger than shown in the abstract account.

CIV) CHARGE OF CONSPIRACY AND ITS UNTENABILITY

104.1) The charge one framed relates to conspiracy between A1 and other accused. Conspiracy is also an offence under Indian Penal Code. It requires the same degree of proof as is required for any other offence under Indian Penal Code. Conspiracy is not a hybrid offence.

104.2) Conspiracy can be proved either by direct evidence or by circumstantial evidence. Courts have held that seldom direct evidence of conspiracy would be available. In this case also, it is submitted that there is no direct evidence of conspiracy available. As regards circumstantial evidence the well known parameters for judging a circumstantial evidence requires to be adopted for establishing conspiracy also. It is submitted that such consistent evidence of circumstances proving conspiracy is also absent in this case.

104.3) The petitioner submits that the conspiracy is agreement to do an unlawful act. According to the prosecution in this case the unlawful act is to contravene Section 13(1)(e) of the Act. This Section says where a public servant is unable to satisfactorily account for the pecuniary resources or the property held by him or her or by others on his or her behalf the offence is made out. Thus the fulcrum of Section 13(1)(e) is the inability of the public servant to satisfactorily account. It is submitted that A2 to A4 in no way can said to have conspired with A1 on this aspect. Mere acquisition of property or pecuniary resource either by the public servant or by others is not an offence simpliciter. Hence conspiracy is not established at all.

104.4) The petitioner says and submits that the prosecution has also not established circumstantial evidence as is required by law from which a conclusion of

agreement to do an unlawful thing could be inferred. Hence the offence of conspiracy is clearly not made out. The unlawful agreement which is sine quo non is not made out on the very evidence let in by the prosecution. There is no evidence that A2 to A4 by any conduct or words have abetted A1 in doing anything which is misconduct under Section 13 of the Act.

(2005) 12 SCC 631 – K.R.Purushothaman Vs. State of Kerala Vol. VI page 67 to 77.

CV) <u>COMPANIES</u>

105.1) The petitioner submits that the properties in the names of the following 6 companies are liable to be excluded.

105.2) The petitioner submits that charge as laid says that the firms floated in the names of A2 to A4, were used for keeping the properties of A1. Whereas even as per prosecution evidence the companies were preexisting companies and were not floated by the accused 2 to 4. Hence in the light of the charges framed all the 6 companies and the properties standing in their names mentioned below are liable to be excluded.

105.3) Secondly A1, the public servant was never a share holder and never a director at any point of time. Further to the companies no fund or pecuniary resource has been transferred by A1. Hence there is no process of reasoning by which the property standing in the namely companies can be attributed as that of A1.

105.4) Thirdly as stated earlier while dealing with the ingredients of the offence u/s 13(i)(e) it has been stated that law will treat apparent is not real. This is based on the principle of legality, a settled principle of interpretation. The following extract from the book Principle of interpretation by Justice G.P. Singh may be seen in thirteenth edition 2012 at Pg. 494,.

CVI) <u>PRINCIPLE OF LEGALITY</u>:

106.1) As statutes are not enacted in a vacuum, it is assumed that long standing principles of constitutional law and administrative law are not displaced by use of merely general words. This is styled as the principle of legality. In the words of Sir John Romilly: “The general words of the Act are not to be so construed as to alter the previous policy of the law, unless no sense or meaning can be applied to those words consistently with the intention of preserving the previous policy untouched”.

106.2) Hence if the properties purchased by A2 to A4 the law will treat them as the owners. If the properties are purchased by the companies, then the law will treat them as owners. It is for the prosecution to affirmatively establish that apparent state of affair is not the real but A2 to A4 are benamidars of A1. As far as the companies are concerned the onus of proof that will rest on the prosecution is as under:

106.3) The prosecution must establish that A2 to A4 in order to abet the offence of A1 have formed the companies and purchased the properties in the names of companies with the funds provided by A1. In other wards the prosecution must prove that the companies are in effect are benami’s of A2 to A4 who in turn are benami’s of A1. Thus the companies are to be benami’s of benamidars. A1 being twice removed. It is submitted no such concept exist in law. Hence the prosecution case is not only improbable but that which does not exist in fact and cannot exist conceptually**.**

106.4) The petitioner had in detail mentioned that important ingredient of Section 13(1)(e) is if the property stands in the name of persons other than the public servant then the burden would be on the prosecution to specifically prove that the property so held benami for the public servant. The petitioner had also quoted what kind of evidence is required to be adduced by the prosecution to prove benami character. It is submitted no such evidence has been given, in respect of the properties in the names of the companies. For the sake of brevity, the concept

of benami earlier mentioned in the written submissions under the heading "Ingredients of the Offence under Section 13(1)(e) and concept benami" are not being reposted herein. The same position would apply with regard to companies also.

106.5) The prosecution has included the properties acquired by the following companies to the Account of A1 and the value of all the properties have been included in the total assets. The companies are:-

1. Signora Business Enterprises (P) Ltd
2. Indo Doha Chemicals and Pharmaceuticals Pvt. Ltd.
3. Ramraj Agro Mills Limited
4. Meadow Agro Farms Pvt. Ltd.
5. Riverway Agro Products Pvt. Ltd.
6. Lex Property Development Pvt. Ltd.

106.7) The properties held by all the companies have been computed in Annexure II by the prosecution in a sum of Rs.4,60,24,439/-

106.8) The Accused No.1 says and submits that the whole all the properties and assets of the above said companies cannot legitimately be taken into consideration as it is settled law that the company is a separate entity having its independent existence. Therefore there is no process of reasoning by which the properties acquired by the companies in their own names could be considered as that of the accused in this case.

106.9) This decision reported in (1994) 4 S.C.C. 458 (CB) (Para 15 to 18) Electronics Corporation of India Ltd., & Others, Vs Secretary, Revenue Department Government of Andhra Pradesh & Others. Is an authority for the point that the company is an independent entity even apart from its shareholders. Thus, even company has only one shareholder namely the Central Government still the company cannot be equated to the Central Government.

106.10) In the decision J.Jayalalithaa and five others v/s State reported in CDJ 2001 MHC 782, the Hon'ble High Court was to consider whether Tamil Nadu

Small Industries Corporation Limited (for TANSI) can be equated to State of Tamil Nadu and therefore, purchase of the property from TANSI by Jaya Publication, a partnership firm of which A1 was a partner amounted to an offence under Section 169 of IPC. The Hon'ble High Court had elaborately gone into question, if TANSI registered as a company under the Companies Act, can be equated to the State of Tamil Nadu. Para 84 to 87 elaborately considered various judgments on the point and held that even though the entire shareholding in TANSI is held by the State Government, TANSI continued to be a separate entity it cannot be considered as an arm of the State Government. The position in law to the above effect is uncontestable.

106.11) Secondly the charges framed read that A2 to A4 had floated several firms and properties were acquired in their name. The word company itself is not mentioned. The charges framed does not even mention the names of the 32 firms. It is well known the term company and a firm would not mean the same. Further in none of the six companies mentioned above, A1 was ever a Director or a share holder or connected with those companies in any manner. There is total absence of evidence in this regard. It is submitted that the entire properties in the name of above 6 companies are liable to be excluded from consideration.

CVII) <u>WRONGFUL CLUBBING OF PROPERTIES</u>

a) Petitioner submits that the following insurmountable legal infirmities exist and hence the properties in the names of the companies could not be a disproportionate asset of the public servant – A1.

ii) Thus where the property stands in the name of the third party the burden of satisfactorily explaining the acquisition of the said property cannot be cast upon the accused in whose name the said property does not stand. It is submitted this flows from a plain reading of Section 13(1)(e) and the general principles of law above referred to.

(iii) Therefore this lead to a further question to come to the conclusion that the property which ostensibly stands in the name of the third party could be considered belonging to the public servant without the ostensible owner not having been made a party to the litigation. It is submitted that to do so would be a plain valuation of natural justice and contrary to fair play.

iv) In that event, this Hon'ble Court will have to reach a conclusion the property though nominally stands in the name of the third party actually belong to the public servant. Such a conclusion cannot be reached.

v) Since ostensible owner in whose the name the property stands is not a party to the litigation, whole of the procedure will be contrary to the natural justice of not giving opportunity to the who would be affected on the decisions.

B) The issue can be looked at from another point of view to show that the charge sheet as filed is totally not maintainable. In this case, this Hon'ble Court to apply Section 13(1)(e) to the public servant it has come to the conclusion that these companies have lent their name to screen the property belonging to the public servant and have acted in contravention of P.C. Act. If so it will undoubtedly amount to the companies by some process aiding or abetting the public servant in the offence under Section 13(1)(e) of the Act. This conclusion will inevitably affect the reputation of the companies. No proceedings can be initiated and continued which will affect the reputation of the company without making the company itself as a party to the proceedings. This position in law is now laid down by the Hon'ble Supreme Court of India in the leading decision Anitha Hada Vs. State 2012 SCC Criminal 661.

107.1) It is submitted that in the light of the judgment in Anitha Hada case, there can never be a discussion if the companies have abetted A1 by keeping the properties of A1 in their name. This cannot be gone into or agitated. This could not be done in the absence of the companies themselves made party to these proceedings. The decision in Anitha Hada case would therefore constitute a

complete bar even to the question whether the companies are keeping the properties of A1 in their name so as to abet her. In this view also, the prosecution adding various properties of the companies in the holding of the accused is clearly illegal and the entire prosecution case is not maintainable in law.

107.2) This is all the more relevant in that if the court comes to the conclusion then the effect will be to forfeit of property of the third party. This will violate Article 300A of the Constitution. Thus Section 13(1)(e) cannot be invoked and public servant directed to give explanation in respect of the property standing in the name of the third party. Therefore the properties standing in the name of third parties viz. M/s. Lex Property Development Pvt. Ltd., Meadow Agro Farm Pvt. Ltd., Signora Business Enterprises Pvt. Ltd. Anjaneya Printers Private Ltd., Riverway Agro Products Ltd., Ramraj Agro Pvt. Ltd., are all have to be excluded and the accused cannot be asked for any explanation in respect of the above properties.

CVIII) <u>SALE DEEDS IN THE NAMES OF THE COMPANIES NOT PROVED</u>

108.1) It is submitted along with this written submission contains list of properties and the corresponding sale deeds. These sale deeds have not been proved in a manner required by law. Hence the properties mentioned in those sale deeds are in any view, liable to be excluded.

a) The sale deeds mentioned hereunder in the names of these companies are mere certified copies of the sale deeds. For admission of secondary evidence, it is necessary to show that the person whose custody the sale deeds are available should have been issued notice requiring it to produce the sale deeds. Only on his refusal or failure to produce original sale deeds certified copy can be marked. In this case, the companies who are not accused in this case have not been issued any such notice to produce original sale deeds, hence marking certified copies of the sale deeds is clearly wrong and the same is inadmissible in evidence, since the foundation for reception of secondary evidence in the form of certified copy has not been made.

b) Assuming that the secondary evidence could be led, it is submitted that the contents of the sale deeds cannot said it to have been proved. It is settled law that marking of a document is one thing and proof of its content are entirely different. The contents of the documents can be spoken to only by a party to the document. Therefore prosecution ought to have examined the vendor of the document to prove the contents of the document. In the absence of such evidence, the properties allegedly subject matter of those sale deeds cannot said it to have been proved. Hence all those documents are liable to be excluded from consideration as disproportionate asset of A1. Hence …. number of sale deeds representing properties to the value of Rs. Rs.4,60,24,439/- is liable to be excluded. The petitioner seeks to rely upon the judgment of the Hon'ble Supreme Court of India in 2011 4 SCC 402 Ashok Tshering Bhutia Vs. State of Sikkim (Vol. III).

CIX) COMPANIES HAVE FUNDS OF THEIR OWN WHICH HAS NO REFERENCE TO A1.

109.1) Without prejudice to the above submission the Accused No.1 submits that the companies themselves have funds, which have not emanated from any of the accused in this case, with which they acquired the properties in their own names.

CV) PROVISIONS OF COMPANIES ACT AND I.T. ACT

110.1) The Accused have let defence evidence to show that the companies have filed their annual return which was available either with I.T. authorities or the Registrar of Companies (ROC) under the Companies Act. However, some of these returns were filed belatedly enclosing the balance sheet and profit and loss account statement as required under the Companies Act. Similarly there had been certain delay in filing the return under the I.T. Act.

What consequences flow therefrom requires to be considered.

110.2) It is submitted that Section 159 provides that every company having a share capital shall within 60 days from the date of each of the annual general

meeting as required under Section 166 file a return containing the particulars mentioned in Section 159 of the Act. Similarly Section 160 of the Act requires that after holding the annual general meeting has to file a return with Registrar. Section 162 provides that where the same was not filed within the stipulated time the same is punishable with fine for every day during which default continues.

110.3) The petitioner says and submits that the Companies Act itself provides the punishment for delayed filing of the returns and particulars under the above Sections. The returns if not filed within time provided under the Act, however thereby does not become either non-est or void. The return though filed belatedly has full force and effect and could be acted upon. Hence the documents filed by the defence in this case in the shape of various ROC records are perfectly receivable evidence and have full force and effect.

110.4) The accused deems fit to deal with one another aspect. In some of the companies like for example Lex Property Development Pvt. Ltd., share capital has been contributed by cash. Whether this is valid? It is submitted the law as then stood there is no bar expressly enacted under the Companies Act forbidding payment for purchase of shares by cash. The only provision then was Section 269 SS of the Income Tax Act. This only prohibited payment about 20,000/- by cash, when the same was a loan or a deposit. Since purchase of shares is not a loan or deposit, it has no application.

110.5) In the new Companies Act, 2013 which came into force on and with effect from 2013 Section 42 states that share capital in a company shall be invested only by a banking instrument. By implication it could not be done by cash. However this has no application to our case as this provision has come into force only in 2013. The petitioner seeks to rely upon the decision of the High Court of Delhi in Commissioner of Income Tax, Delhi IV appellant Vs. I.P. India Pvt. Ltd. Respondent wherein in paragraph 4 held as follows:

"In addition, the assessee relied on the judgment of the Madras High Court in Commissioner of Income Tax Rugmani Ram Rajav Spinners Pvt. Ltd. 2008 (304) ITR 417 wherein it was held that the money in cash by a company towards allotment of shares was neither a loan nor a deposit. The Delhi Court also affirmed the same in the above said judgment."

110.6) The Accused submits that the prosecution has not let in any evidence that any share capital was contributed by the 1st Accused to the above companies nor any money had flowed from her with which the companies acquired the properties. There is total lack of evidence in this regard. Hence the burden of explaining the acquisition of the properties by the companies will not at all shift to the Accused for her to satisfactorily explain them.

110.7) Without prejudice to the above the Accused No.1 seeks to analyse the income and expenditure of each of these companies to show that they have adequate funds of their own, which have not emanated from any of the accused in this case, to acquire the properties/make constructions with their own funds.

110.8) PW-86 Vaithiyanathan, Chartered Accountant, has been examined as he is the partner of firm of Chartered Accountants M/s. S. Venkatram & Co., who audited the accounts of various companies. His evidences briefly mentioned herein.

CXI MEADOW AGRO FARMS PVT. LTD.,

111.1) According to prosecution during the check period the above said company, Meadow Agro Farms Pvt. Ltd. has acquired the following properties in its name. They are shown in Annexure – II as follows:-

M/S MEDOW AGRO FARMS P LTD				
Description of the Property	**Reference of Document**	**Owner of the property**	**Item No in Annexure II**	**Value of the property Rs.**
12.70 Acres in S.No.701/2,854/8,605/4,685/5,9,583/8,601/7,198/6,199/2,594/2,688/2,in Uthukkadu village	22/12/1994	M/s. Meadow Agro Farms P Ltd	111	150660

14.42 Acres in S.No.685,693/4,698/1,685/8, 687/48,689/6,1,692,698/3, in Uthukkadu village	22/12/1994	M/s. Meadow Agro Farms P Ltd	112	168280
8.60 acres in S.No.136/1,2,3,137,138/3,139,172/3a ,4a,173/2a,2c in Uthukkadu village	22/12/1994	M/s. Meadow Agro Farms P Ltd	113	106343
6 acres in S.No. 597/1,370/1,375/6,377/2,671/5,671/ 7,610/2 in Uthukkadu village	01-12-1995	M/s. Meadow Agro Farms P Ltd	133	73796
11.66 acres in S.No.650/2, 646/4, 4b, 316/3, 9, 148/1, 337/7, 5, 368/1, 371/2, 375/4, 6, 11, 9, 369/9, 384/9, 330/1e, 1f, 1b, 1i, 2, 365/1c, 1d, 1a, 1b, 2, 3, 4, 646/4b, 4j	01-12-1995	M/s. Meadow Agro Farms P Ltd	134	141507
9.65 acres in Uthukkadu village in S.No.596/6,7,8 658/2, 150/1A, 1 B, 1c, 1d, 187, 200/38 in Uthukkadu village	13/2/1995	M/s. Meadow Agro Farms P Ltd	136	113803
10.29 acres in s.no.336/12,336/12,368/10 16, 145/12,146/4,609/1,609/2,610/1,595 /1,596/2,3,5,638/2,6 in Uthukkadu village	13/2/1995	M/s. Meadow Agro Farms P Ltd	137	125386
8.32 acres in s.no.351/7,189/2,195/2,199/7,649/4, 574/10 of Uthukkadu village	03-08-1995	M/s. Meadow Agro Farms P Ltd	142	99353
8.65 acres in S.No.334/1,338/10,359/3,653/1,654/ 1,590/3,213/10,369/7,369/7,9,330/1a ,1f,357/6,365/1,369/8,605/1,2,3,371/ 1 of Uthukkadu village	03-08-1995	M/s. Meadow Agro Farms P Ltd	143	103242
1.08 acres in S.No.612/2a2 of Uthukkadu village	17/3/1995	M/s. Meadow Agro Farms P Ltd	144	16004
1.08 acres in S.No.612/2a1 of Uthukkadu village	17/3/1995	M/s. Meadow Agro Farms P Ltd	148	12764
1.80 acres in S.No.612/1 in Uthukkadu village	17/3/1995	M/s. Meadow Agro Farms P Ltd	149	21173
11.25 acres in S.No.611/2 of Uthukkadu village	17/3/1995	M/s. Meadow Agro Farms P Ltd	151	131649
6.40 acres 1/2 acres in S.No.577/4,2, 322/1,360/13,332/5,2 366/5 577/6,370/3 of Uthukkadu village	17/3/1995	M/s. Meadow Agro Farms P Ltd	152	77203
7.11 1/2 acres and in S.No. 239/9, 10, 11, 244/6 293/48 384/1 596/9 605/4 632/1a 680/1 of Uthukkadu village	05-04-1995	M/s. Meadow Agro Farms P Ltd	164	84784

15.71 acres in S.No.591/2,322/7,8,5 226/10 649/4 150/8 349/1,3, 333/5,6,7 370/5,6 576/1 585/2 331/5 595/4 597/1 596/12 595/7 589/5,6,7 578/2,3,4 583/8,4,6 360/3,5 215/5 216/2 in Uthukkadu village	05-04-1995	M/s. Meadow Agro Farms P Ltd	165	188572
9.50 acres in s.no.324,681/6,360/9,184/3,632/2,239/5,309/5 in Uthukkadu village	13/6/1995	M/s. Meadow Agro Farms P Ltd	167	112213
20.33 acres in S.No.198/180f in velakapuram village	07-03-1995	M/s. Meadow Agro Farms P Ltd	168	40197
20.89 acres in S.No.198/180/f8 and other nos in velagapuram village	03.07.1995	M/s. Meadow Agro Farms P Ltd	169	40197
cash Balance as on 30/4/96 in CA 1113 of IB Abirampuram opened on 13/9/94	30/4/1996	M/s. Meadow Agro Farms P Ltd	225	359
TOTAL				**18,07,485**

111.2) DW-86 has marked the Income Tax return Exp.D-187, balance sheet for the year ended 31.3.1996 which is Exp.D-188. The balance sheet consists of a schedule showing the list of share holders. The certified copy of the schedule to the balance sheet (Annual Return) to the balance sheet is produced by the Registrar of Companies under Section 91 Cr.P.C. and marked Exp.D.189. None of the accused in this case is a share holder in the said company. The share holders (other than the accused in this case, who are not the share holders) have contributed Rs.1,06,55,000/-

In this regard two questions requires to be considered.

a) can there be purchase of shares by cash.

b) Whether I.T. Authorities considered the issue. Whether the persons who contributed in cash for the purchase of the shares in the company or the genuine and had the resources to make the purchase.

111.3) These two issues were considered in the earlier paragraphs and law on the point mentioned. Hence there can be purchase of shares the payment being made by cash. Section 269 SS does not get violated since purchase of shares is neither a loan nor a deposit to attract the prohibition under the said Section.

i) As regards a second question the schedule of depositors were all enquired into by the Income Tax Department as is clear from Ex-D190.

At page 2 of the order it is specifically noted that the individual shareholders who had invested the money have filed affidavits affirming how they applied for allotment of shares, source of such money having come out of their agricultural earnings and business resources. They have also filed proof of their agricultural holdings. In the said order in Ex-D190 the Income Tax Officer at Page 1 of the order has come to the conclusion and held as follows.

> "It is to be noted that the assessee have discharged the onus of proving the existence of share holders and thereby according to them they have fulfilled the conditions as laid in the full bench decisions in the case of CIT V/s Sophia Finance Ltd., (20 ITR 98)".

111.4) With the above funds available to it, the company had purchased /invested in lands to an extent of Rs.21,53,732/- It also invested Rs.21,09,000/- on the shares of other companies. DW-86 has further mentioned that the said Meadow Agro Farms Pvt. Ltd. had given the following amounts as advance towards purchase of property and as loan.

To V.K.Sasikala	Rs.32,90,000/-
To Jaya Publications	Rs.62,50,000/-

Having regard to the funds possessed by the company, these advances/investments have been made.

111.5) The said company Meadow Agro Farms Pvt. Ltd. is also assessed to income tax and the note over is Exp.D.190. Under the said order, there was an effort to reopen the assessment by issuing a notice under Section 148 of Income Tax Act. To the said notice, the Assessee, Meadow Agro Farms Pvt. Ltd., sent a detailed reply showing cause against the attempt to reopen the assessment under Section 148 of Income Tax Act. The explanation given by the company was accepted and under the order Exp.D-190, the assessing officer has held that "basically there is no action warranted as of now in the file and hence dropping of the action necessitated at page 3 of the order he had also considered that

comments and note containing 95 & 96 that is for the previous years was also duly considered. Thus the assessing officer had considered the assessment for the year 1995-96 also and found there is no warrant to reopen the proceedings.

111.6) The assessment orders relating to 1995-96 though require to be produced under Section 91, the income tax department had not done so.

Thus it will be seen that in a scrutiny assessment under Section 143 (3) the income and expenditure of the said company has been accepted as proper, lawful and correct.

111.7) The prosecution has marked Ex-p.660 and also examined PW-220 this witness says that Meadow Agro applied for allotment of barren land for the purposes of taking up Papaya cultivation. The witness says as per Ex.p-660 the Government ultimately did not allocated any land. Thus, the company genuinely wanted to start certain cultivation under long scale becomes apparent. Thus, the company is genuine and intended to start large scale cultivation becomes clear.

111.8) One aspect requires to be explained in the order of assessment for the assessment year 1996-97 K.Krishnakumar Reddy and K.Anilkumar Reddy as shown as Directors. It is submitted that the two persons have been appointed as Additional Director on and effect from 11.5.1995 this is clear Ex.P600. A3 and A4 who became Additional Directors of the Company have resigned with effect from 3.6.1996 as can be seen from Ex.P601. That is why names of Krishnakumar Reddy and Anilkumar Reddy have filed the return of income and assessment orders show them as the Directors. It could not be otherwise.

Thus all the above properties enumerated above are to be excluded.

CXII) <u>RIVERWAY AGRO PRODUCTS LTD.</u>

112.1) DW-86 was the auditor who handled the accounts of this company on behalf of S. Venkatram & Co., of which he is a partner. He had also deposed that he had handled all the accounts of the said company. Exp.D.191 is the return of income for the assessment year 1996-97. Exp.D.192 is the balance sheet for the

year ending 31.3.1996. Exp.D.193 is the certified copy of the annual return filed by the said company, Riverway Agro Products Ltd.

112.2) A perusal of Ex-D.192 balance sheet for 1996-97, would show that during 1:4:1994 to 31:3:1995 – share application money received =

Rs. 99,50,000

Share application money received

during 1:4:1995 to 31:3:1996 = Rs. 33,40,000/-

Hence, share allotted = Rs. 1,32,90,000/-

112.3) From the records produced by Registrar of Companies is Ex-D.193. The list of shareholders will indicate the accused in this case are not the shareholders. The shareholders were called and enquired by the I.T.O who were satisfied with their genuineness this order is Ex.D-194. Under this order the effort to reopen the assessment under Section 148 of the I.T. Act, was ultimately dropped after due enquiry.

112.4) As regards the deployment of funds by the company are as follows.

Cost of acquisition of land Rs.33,88,517/-

Advance paid to N.Sasikala(A2) for purchase

Of land at Payanur under Ex-D.301 is

Note: bank statement of account of Riverway

is Ex-1298 which shows the following amounts

were received by cheque.

18:2:1995 Rs.10,00,000/-

08:05:1995 Rs.40,00,000/-

08:05:1995 Rs.15,00,000/-

Total = Rs.65,00,000/-

After repayment amount outstanding is Rs. 52,00,000/-

112.5) The said documents contain the list of share holders who contributed shares to the company. This list of share holders of the company have subscribed to the share capital of Rs.1,32,95,00/-. From the list of shareholders, DW-86 has deposed, as it could be seen, that none of the accused in this case are the shareholders of the company.

112.6) For the reasons earlier mentioned the investment in shares is valid and is in accordance with law. In fact, this aspect has also been gone into by the ITO and had fully satisfied with the genuiness of investment in the shares of the company.

112.7) From Exp.D.192 it can be seen that the company had given amounts are advance towards purchase of property and as loan:

To V.K.Sasikala	Rs.52,00,000/-
To Jaya Publications	Rs. 3,00,000/-
To Coromandel India Group	Rs.30,00,000/-
To Lex Property Development Pvt. Ltd.	Rs. 2,25,000/-
To Meadow Agro Farms Pvt. Ltd.	Rs. 4,75,000/-

112.8) Besides the above, the company had invested in acquisition of land a sum of Rs.33,88,517/- which are all shown in the books of accounts as fixed assets, refers to above.

112.9) The income tax return has been accepted as in order. The order under Exp.D.194 shows an effort to reopen the assessment under Section 148 of the income tax act was also repelled and given up. In the said order closing the proceedings, the A.O. has remarked “basically there is no action warranted as of

now in this company file. Hence dropping of action initiated". Thus there is not only a scrutiny assessment which had accepted the affairs of the company as correct, there was also an effort to reopen the assessment under Section 148 of the I.T. Act, which was also closed after due scrutiny, thus ensuring there is no escapement of any tax. Thus the properties belong only to the company which had acquired the properties with its own funds. The money have not emanated from A1. Hence all the properties are liable to be excluded.

112.10) As per Ex.P193 the annual return which encloses the order seeking to reopen the assessment under Section 148 shows that the order is made in the name of G.Prabakar Reddy and P.Raghuraman. It is shown that they are the shareholders & Directors in the said order. As per Ex.P579 (Form 32) A3 and A4 were appointed as Additional Directors on 15.7.1994. As per Ex.P581 (Form 32) Raghuraman and Prabakar Reddy resigned from Directorship with effect from 18.7.1994. As per Ex.P584 (Form 32) V.N.B.Sharma and V.Babu were appointed as Additional Directors with effect from 9.2.1996 and 16.2.1996 respectively. While they were continuing, as per Ex.P585 (Form 32) A3 and A4 resigned with effect from 30.5.1996 and thereafter A3 and A4 had nothing to do with the company. Thereafter the original two Directors Raghuraman and Prabakar Reddy have become Directors of the company.

M/S RIVERWAY AGRO PRODUCTS LTD				
Description of the Property	**Reference of Document**	**Owner of the property**	**Item No in Annexure II**	**Value of the property Rs.**
53 Acres 66 cents in S.No.436/6,467/3, 468/2,472/5, 401/8, 462/8, 472/5, 401/8, 462/8, 467/2, 484/1a, 484/1c, 489/1, 462/3, 466/4, 462/7, 468/2, 490/1, 467/1, 464/1, in cherrakulam village, S.No.188/3, 221/1, in vallakulam village	22-08-1994	M/s. Riverway Agro Products P Limited	86	121389

73 acres 90 cents in S.No.471, 494/18,495/2, 405/16,464,462/9,2,831/4a,4c,262/2,494/18,495/2,405/237,405/23c,401/202,601,2c1c,468/8,469/8,489/1c,405/19,405/20a,409/20,462/62,402/12,405/10,497/501,457,498/2,1,491/11,492/2,389/1,467/3,466/6,469/2,495,466/6, 497, 501, 5989/2, 498, 601/1, 602/1A, 601/2A6, 476/5, 4, 484/3, 4, 465/11A, 11, 11CA, 12C, 13, 60, 14, 16, 406/3 in Cherrakulam Village	17/11/1994	M/s. Riverway Agro Products P Limited	105	167126
69.78 acres in 406/2,485/2,460/8,598/1,460/6,467/3,487/1,455/9,485/9,487/1,467/3,367/3,466/6,466/6,469/2,463/1,406/16,463/58,469/2,464/4,405/16,460/4,274/18,462/9,462/9,464/5,467/2,598/1,398/7,467/3,474/5,487/3c,464/3,469/9,262/2,468/2,490/1 in cherakulam	17/11/1994	M/s. Riverway Agro Products P Limited	106	157820
Extent 60 acres 65-1/2 cents in 486,495/4,453/2,422/2,459/2,602/2c,602/2a3a,603/1,602/2c,604/2b,495/2,462/4,912,259/2,472/9,471,496/1,491/1,496/3,491/2,4,5,10,495/2,491,492/2 in cherkulam village	17/11/1994	M/s. Riverway Agro Products P Limited	107	137204
42 acres 31 cents in S.No.823/9,817/10,827/5,823/3,817/2c,35,36,159,37/3,149/2,149/3,37/2,130/2,110/2,817/5,373/4,382/3,374/1,378/4,1072/10,11,817/2,2,1073/1,1075/7,822/7,543/11,543 in meerkulam village	17/11/1994	M/s. Riverway Agro Products P Limited	108	95740
34 Acres and 81-1/2 cents in Vallakulam village in 221/4,218/9A,90,225/2,204/2,204/7,220/2,681/6,210/5,223/2,224/5a,224/5,6,197/4,484.198/1,217/2,618/7,220/4,220/1,221/5,225/1,219/4,213/5,225/1,224/2a,222/2b	17/11/1994	M/s. Riverway Agro Products P Limited	109	78801
6.98 Acres in S.No.386/2,402/1,293/4a,294/2a, 224/2b in Kalavai village	22/12/1994	M/s. Riverway Agro Products P Limited	114	15888
55.00 1/2 acres ub S.No.682/6,203/6 in vallakulam village	22/12/1994	M/s. Riverway Agro Products P Limited	115	124433
57.01 acres in S.No.224/48.204/2 in vallakulam village	22/12/1994	M/s. Riverway Agro Products P Limited	116	128963
89.62 acres in S.No.496, 221/3, 217/8 and other Nos in vallakulam village	22/12/1994	M/s. Riverway Agro Products P Limited	117	202658
80.95 1/2 acres in S.No,470/3 504/2b and other nos. in cherakulam village	22/12/1994	M/s. Riverway Agro Products P Limited	118	183076
71.57 acres in S.No.262/1c, 103/2c,260/2a, and other nos. in Cherakkulam village	22/12/1994	M/s. Riverway Agro Products P Limited	119	171183

68.09 1/2 acres in S.No. 374 1/3, 378/4, 333 and other nos. in Meerankulam village	22/12/1994	M/s. Riverway Agro Products P Limited	120	154009
78.09 1/2 in S.No.832/1, 527/5, 536/2a, and other nos. in Meerankulam village	22/12/1994	M/s. Riverway Agro Products P Limited	121	176609
48.95 acres in S.No.252,264/24,250,255/1,494/3,495/3,499/3,504/2,505/1,507/1,543/2,599/3,173,602,603/3, 605/3,251,297/1,250/1,401,468,258/1, 468/3,461/1,54,25,254,255 in cherakulam village	01-06-1995	M/s. Riverway Agro Products P Limited	124	110738
54.98 acres in S.No.62,68/2,59/2,69/3,78/2,75/1,78/7, 212/3,484/1, 484,492,67/3,206/6,85/2,59,491 in vallakulam village	01-06-1995	M/s. Riverway Agro Products P Limited	125	124370
62.65 acres in S.No.130, 823/9 in cherakulam village and S.No.830/5, 6 729/24, 168/1,169/3,5, 452/3,815/12,15,822/3,4, 817/4,321/7,137/6.138/3,9,326/7,420,425,393/3,133,136/1,2,669,392/5,6,393/6,816/2,814/5,97/3,99/11,1,490/3,68/2,84/6,62,130/1,149/4,813/8, 374/7, 374/9, 384/7, 94/1, 96/4, 804, 420/9, 539/1, 804/1, 816/2, 117/5, 417/4, 347/1, 542/4 of Meerankulam Village	01-06-1995	M/s. Riverway Agro Products P Limited	126	114301
16.51 acres in S.No.26075,462/10,464/3,465/5,462/8, 401/9,464/2,262,257,401/4,407/2,9/3a, of cherakulam village	21/2/1995	M/s. Riverway Agro Products P Limited	138	37693
30.75 acres in s.no.199/4,218/18,221/8,36/1,182/1,205/2a,220/1,204/5,6,215/1,13,224/17,210/3,194/7,198/3,199/5,97/10 in vallakulam village	21/2/1995	M/s. Riverway Agro Products P Limited	139	76745
51.40 Acres ub S.No.385/3, 288/4,543/88,536/4a,416/88,832/3,825/1,827/7a,313/38,817/8,831/6,543/8,849/2,848,830/48,829/3a,825/8827/11,418/6,310/11,822/3,536/1,530/5,149/5, 543/13b,543/10,543/11,413/2,817/5,813,2b,535/4,17,5/2,823/8,538/3 in meerankulam vil	21/2/1995	M/s. Riverway Agro Products P Limited	140	117016

59.82 acres in S.No.535/20,13,14,10,828/6,829/7,814/4,816/58/40,414/28,413/4,416/3,418/3,367/3,8,388/1,1072,1072/5,6,1072,1072/12,367/4,1072/8,172/10,820/2,370/6,335/4a,158,61/1,137/8,346/2,358/3,7/8,374/12,132/1a,132/1c,112/4c, 48,132/1b,112/4a,111/68,341/1, 350/7, 341/3, 345/3, 346/1, 1066/12, 1068, 349/2, 249/6, 1068/6, 9, 180/8, 0380/1A, 7, 17, 543/15, 347/3, 154/2A2, 416	21/2/1995	M/s. Riverway Agro Products P Limited	141	136491
Building bore wells with electrical motors and (5) separate power connection under self financing scheme, and pumps located at s.No.466 461/1, and 467/2 at cherankulam village V O C district	Evaluation Report	M/s. Riverway Agro Products P Limited	192	758160
cash Balance as on 30/4/96 in CA 1095 IB Abiramapuram Opened on 6/8/94	30/4/1996	M/s. Riverway Agro Products P Limited	226	2917
Dry Land 5.53 acres in Survey No. 490/3a 490/3a2 490/3a3 of cherankulan village in pallavan regn, dist,	18-07-1994	M/s. Riverway Agro Products P Limited	305	21830
TOTAL				**3415160**

112.11) The properties purchased by the company in its name are liable to be excluded from consideration in view of the fact that none of the accused in this case are the shareholders of the company and moneys have not emanated from them.

CXIII) <u>LEX PROPERTY DEVELOPMENT PVT. LTD.</u>

113.1) This is also one of the companies audited by the firm S.Venkatram & Co., DW-86 as a partner of the said firm, has deposed. The return of income filed for the assessment year 1996-97 is Exp.D.195. The Assessee Company's annual return for the year ended 31.3.1996 is Exp.D.196. This is a certified copy obtained from the Registrar of Companies. The balance sheet shows that the share application money received was Rs.46,00,000/-. The company had borrowed a sum of Rs.84,07,172/- as loan from the Indian Bank. This is revealed from Ex-D.295 also. The interest paid is shown as item no.8=Rs.17,52,069/- and as against item no. 11 interest paid was 1,45,320/-. The amounts received under the caption "sundry creditors" is Rs.2,04,98,350/-.

113.2) Of the share application money, a sum of Rs.41,35,000/- has been received from Bharani Beach Resorts Pvt. Ltd., by way of share application money. Exp.D.197 is the certified copy of confirmation letter given by the said Bharani Beach Resorts Pvt. Ltd., to the Income Tax Department, which has been produced by the Income Tax Department on summons under Section 91 Cr.PC. The said Lex Property Development Pvt. Ltd. has also received an Inter Corporate Deposit (ICD) from Kalyani Constructions Pvt. Ltd., during the year ending 31.3.1996 a sum of Rs.1,56,67,000/-. The certified copy of confirmation letter given by Kalyani Constructions to the Income Tax Department is Exp.D.198. The said document has been produced by the Income Tax Department under Sec.91 Cr.P.C. The company had also received Rs.45,00,000/- from Altaf Constructions Pvt. A certified copy of the confirmation letter given by the said Altaf Constructions Pvt. Ltd., to the income tax department and produced by them is Exp.D.199. All the funds referred above have been received by cheque and are banking transactions.

113.3) It may be mentioned all those entities who have given confirmation letters for having made the payment by way of cheque or other banking instruments are themselves assesses under the I.T. Act, and their returns have also been cross verified as those lenders themselves were assesses with the same assessing officer. Petitioner submits if it is not genuine the amount would have been added as an income from unexplained source. That the assessment order made under Section 143(3), a scrutiny assessment becomes important.

113.4) The said company, Lex Property Development Pvt. Ltd., have made the following advances:

V.N.Sudhagaran (A-3)	Rs.29,98,500/-
J Farm House	Rs. 6,00,000/-
Meadow Agro Farms Pvt. Ltd.	Rs. 2,00,000/-
Sasi Enterprises	Rs. 2,00,000/-

113.5) The said Lex Property Development Pvt. Ltd. has made an investment in immovable property to an extent of Rs.2,63,49,857/- It is shown as fixed asset in the balance sheet which have been shown below, as stated by prosecution

M/S LEX PROPERTY				
Description of the Property	**Reference of Document**	**Owner of the Property**	**Item No in Annexure II**	**Value of the property Rs.**
2 ground and 1237 sq.ft. with a built up area of 2150 sq.ft. at door no. 149 ttk road, in the ground floor and 2150 sq.ft. in the first floor in s.no.3705 part of sriram nagar, ttk road, chennai -18	24/2/1994	M/s. Lex Property development (P) Ltd	67	5700040
6 grounds 1087 sq.ft in this 581 sq.ft. Undivided share of land in S.No. 61/1, 62, 66/2 in plot No. 17, 17-A and 18, Wallace Garden in Nungambakkam village	28/4/1994	M/s. Lex Property development (P) Ltd	75	284008
6 grounds 1087 sq.ft in this 581 sq.ft. un divided share of land in S.No. 61/1, 62, 66/2 in plot No. 17, 17-A and 18, Wallace Garden in Nungambakkam village	29-04-1994	M/s. Lex Property development (P) Ltd	76	284008
6 grounds 1087 sq.ft in this 581 sq.ft. undivided share of land in S.No. 61/1, 62, 66/2 in plot No. 17, 17-A and 18, Wallace Garden in Nungambakkam village	03-05-1994	M/s. Lex Property development (P) Ltd	77	284008
6 grounds 1087 sq.ft in this 581 sq.ft. undivided share of land in S.No. 61/1, 62, 66/2 in plot No. 17, 17-A and 18, Wallace Garden in Nungambakkam village	04-05-1994	M/s. Lex Property development (P) Ltd	78	284008
2 Ground and 733 sq.ft. land and building in door No. 150 ttk road T R.S.No. 37051 plot 1 - a	29/9/94	M/s. Lex Property development (P) Ltd	94	5928050
amount paid over and above the document value in respect of lex property covered by document nos. 293/95 and 294/95 dt. 4.4.1995 SRO north madras (item no. 160 and 161 of annexure - II)	04-04-1995	M/s. Lex Property development (P) Ltd	150	1000000
11 cents land and building in S.No.74/1 in Nellankarai village	04-04-1995	M/s. Lex Property development (P) Ltd	160	798945
11 cents land and building in S.No.74/1 in Nellankarai village	04-04-1995	M/s. Lex Property development (P) Ltd	161	949995

land and building to the extent of 26540 sq.ft. with a super structure in T.S. no. 3077 to 3079 which is known as no.30 VOC Nagar, Tajnore town	19/4/1995	M/s. Lex Property development (P) Ltd	163	1903088
New additional construction in Building at 149-150 of TTK road, Sriram Nagar, Chennai -18	Evaluation Report	M/s. Lex Property development (P) Ltd	182	2959000
cash Balance as on 3-04-1996 in ca 1107 of IB Abiramapuram opened on 31/8/1994	30/4/1996	M/s. Lex Property development (P) Ltd	196	85342
Cost of acquisition and renovation of two flats on the fourth floor at door No. 1 Wallace Garden I street, Chennai 34 owned by M.s Lex Property development (p) ltd (covered by document no. 370/94 to 373/94 of SRO thousand lights cost of Acquisition 11,36,032 (cost of construction 23,10,000/-)	1994	M/s. Lex Property development (P) Ltd	302	3446032
		TOTAL		**23906524**

113.6) Thus the total expenditure including the advances amounted to Rs.3,03,48,357/-. Having regard to the funds available to the company, it had the adequate amount for the expenditure incurred by it.

113.7) Lex Property Development Pvt. Ltd., was also assessed to income tax and the scrutiny assessment order accepting the return filed by the company is Exp. D. 200. Thus, no funds or contribution has been made by the accused in this case for the acquisition of the properties in the name of the company. Therefore all the above said properties are to be excluded from consideration.

113.8) In the prosecution in Annexure II has given the purchase of property at Wallace Garden. Items 75-78 are the acquisitions by the company. They have purchased under four sale deeds the dates of acquisition of properties are as follows.

Ex.P-647 – Sale deed dated 28:4:1994.

Ex.P-648 – Do dated 29:4:1994.

Ex.P-649 – Do dated 03:05:1994.

Ex.P-650 – Do dated 04:05:1994.

113.9) It may be mentioned that these purchases were made before A3 and A4 joined as Directors of Lex Property Development Private Limited. They became directors as can be seen from Form No32 which is Ex.P-569 only on 17:08:1994.

The cost of acquisition of the property at Wallace Garden under 4 sale deeds is Rs. 11,36,032/-.

113.10) Whereas, it is repeated in item 302 of Annexure II. Under Annexure 302 (1) cost of acquisition is mentioned as 11,36,032/-. This is repetition of entry item 75-78 of the same list II. Therefore, item 302 (1) requires to be deleted as it amounts to double entry. As far as item 302 (ii) the amount is shown as Rs.23,10,000/- and it is shown as cost of construction.

114.11) It is submitted there is no proof for the same. In this regard prosecution has examined PW-100 who says he is a manager of Raghavendra Builders. According to him as cost of 2 apartments they received a payment of Rs.30,00,580/-. Beyond that he does not give any other detail nor the bank statement. PW-259, I.O., does not say on what basis they have put the value of construction at Rs. 23,10,000/-. Thus, the entire amount shown under item 302 in Annexure II totaling 11,36,032/- and Rs. 23,10,000/- totaling Rs. 34,46,032/- is to be deleted. The expenditure as against item 75-78 alone requires to be retained.

114.12) Lex Property Dev. Pvt. Ltd. was registered on 25.9.1990 and as per Ex.P568 Srinivasa Reddy and D.Ravikumar were the founder Directors. As per Ex.P569 (Form 32) A3 and A4 were included as Additional Directors from 17.8.1994 and as per the very same exhibit Srinivasa Reddy and D.Ravikumar resigned with effect from 29.8.1994. As per Ex.P.571 Dev Anand and Vipin Aggarwal joined as Additional Directors with effect from 7.2.1996 and 15.2.1996. While they were continuing, A3 and A4 resigned as per Ex.P572 with effect from 4.3.1996 and 14.3.1996 respectively, that is even before the end of the check period. Thereafter A3 and A4 had nothing to do with the above said company.

CXV) <u>SIGNORA BUSINESS ENTERPRISES</u>

115.1) DW-87 Srikanth, who is an auditor attached to both S.Venkatram & Co., and also G. Nataraj Associates, both are auditing firms. He has spoken on the accounts of Signora Business Enterprises Pvt. Ltd., Exp. P. 586 marked by the prosecution is a ROC record to show the registration of the company. Exp.P.590 is Form 32 filed by the said company before the Registrar of Companies, Chennai. This shows that A-3 V.N.Sudhagaran and A-4 J. Ilavarasi have become additional directors only on 17.8.1994. Exp.P.588 is the Articles of Association of the said company. Para 15 on page 4 of the Articles of Association shows that 'share holding is not a qualification for a person to be appointed as a director of the company. A-3 and A-4 have never held any share in the company. The company held lands in its name which shown in Annexure-II as below:

M/S SIGNORA BUSINESS				
Description of the Property	**Reference of Document**	**Owner of the Property**	**Item No in Annexure II**	**Value of the property Rs.**
4.90 Acres of dry lands in S.No.366/4 and 366/1 of Cheyyur village	26/5/1993	M/s. Signora Business Enterprises (P) Limited Chennai	27	139562
3.30 Acres of Dry Land in S,No. 365/3 of Cheyyur village	25/6/1993	M/s. Signora Business Enterprises (P) Limited Chennai	28	100830
1.65 acres of dry land in S.No.365/1 of Cheyyur Village	25/6/1993	M/s. Signora Business Enterprises (P) Limited Chennai	29	50495
2.22 Acres of dry Land in S.NO.365/2 of Cheyyur village	25/6/1993	M/s. Signora Business Enterprises (P) Limited Chennai	30	66485
63 cents of dry land in S.No.364 of Cheyyur village	12-08-1993	M/s. Signora Business Enterprises (P) Limited Chennai	49	31340
2.02 Acres of dry Land in S/No364/3 and 364/9 of cheyyur village	02-01-1994	M/s. Signora Business Enterprises (P) Limited Chennai	58	1,03,360
54 cents of dry land in s.no.364 of cheyyur village	02-01-1994	M/s. Signora Business Enterprises (P) Limited Chennai	59	20,550

cash balance as on 30/4/1996 of ca 1134 of IB abiramapuram opened on 23/11/1994	30/4/1996	J. Elavarasi M/s. Signora Business Enterprises (P) Limited Chennai	194	167
TOTAL				**512789**

115.2) Thus it will be seen that these properties were acquired by the said company M/s. Signora Business Enterprises Pvt. Ltd., long earlier to A-3 and A-4 becoming additional directors in the company. Since A-3 and A-4 have not contributed any share capital to the company and admittedly no money emanated from them and they have no connection with the purchase of these properties, the whole of the properties are to be excluded.

115.3) The petitioner submits that A1 had nothing to do with his company. There is no prosecution evidence in any way implicating A1 with the above company. Thus, the expenditure incurred by the said company could not be subject matter, of this case requiring A1 to give an explanation on behalf of the said company. In this way also the expenditure of the company is liable to be excluded.

115.4) Signora Business Enterprises Pvt. Ltd. was registered as per Ex.P586 on 22.10.1990 and the founder Directors were Sai Baskara Reddy and Narayanarao. A3 and A4 joined the company as Additional Directors. As per Ex.P590 A3 and A4 joined as Additional Directors on 7.9.1994 and 17.8.1994 respectively and Narayanarao and Sai Baskara Reddy resigned with effect from 29.8.1994. As per Ex.P592 (Form 32) … were appointed as Additional Directors with effect from 17.2.1996 and 5.2.1996 respectively. While they were continuing as Directors, as per Ex.P593 A3 and A4 resigned from the company with effect from 5.3.1996 and 12.3.1996 respectively, even before the end of the check period. Thereafter A3 and A4 had nothing to do with the above said company.

CXVI) <u>RAMRAJ AGRO PRODUCTS LIMITED</u>

116.1) DW-87 has deposed that Exp.D.205 is a certified copy of the schedule obtained from the Registrar of Companies and it shows that the company was incorporated even in the year 1986 and it has paid up capital. As per Exp.P.1350

A-3 and A-4 were appointed as additional directors of the company on 23.11.1994. The balance sheet of the company for the year 1994-95 with its attachments for the year ending on 31.3.1995 is Exp.D.206. This Hon'ble Court while recording the deposition of DW-87 was pleased to permit the certified true copy of the balance sheet produced by the auditor to be marked as secondary evidence, since the Income Tax Department did not produce the balance sheet despite summons under Sec. 91 Cr.P.C. The balance sheet for the year 1994-95 shows that the company had made an investment of Rs.14,39,446/- in purchase of land. The said properties are shown in Annexure-II, as below:-

M/S RAMRAJ AGRO MILLS LTD				
Description of the Property	**Reference of Document**	**Owner of the Property**	**Item No in Annexure II**	**Value of the property Rs.**
3.11 acres in S.No.79 in Vandampalai village	01-11-1995	M/s. Ram Raj Agro Mills Ltd	128	74471
4.44 Acres in S.No.80,88/1 in Vandampalai village	01-11-1995	M/s. Ram Raj Agro Mills Ltd	129	106269
1.31 acres ub S.No.81/1, 2 in Keeladavathukudi village and 5.19 acres in S.No.84/1. 1c in Vandampalai village	01-11-1995	M/s. Ram Raj Agro Mills Ltd	130	153201
8.91 acres in S.No.77/18 . 1a, 1 c, 81/1a, 82/18 pt in vandampalai village and keelagavanthukudi village	01-11-1995	M/s. Ram Raj Agro Mills Ltd	131	213061
3.84 acres in S.No.81/4 in Vandampalai village	01-11-1995	M/s. Ram Raj Agro Mills Ltd	132	98,293
8.10 acres tn.s.no.78/1,2,75,7675,2a,77/1d in vandampalai village	31/1/1995	M/s. Ram Raj Agro Mills Ltd	135	193820
cost of acqusition of Ramaraj Agro Mills (p) ltd., at vandampalai village In Nannilam Taluk (i.e subsequent payment made to SIPCOT by Ramaraj Agro Mills) Rs. 723806/- from 23/11/1995 Rs.357000/- on 20/1/96 and Rs. 400000/- on 6/4/96	23/11/1995, 20/01/1996 06/04/1996	M/s. Ram Raj Agro Mills Ltd	145	1480806

cost of construction of labour quarters (five) In ground floor and (five) in first floor , 10 numbers in ground floor and 10 numbers in first floor , construction of first floor for guest house, over the existing ground floor and construction of platform in Ramraj Agro Mills Campus at Vandampallai Village	1994-95	M/s. Ram Raj Agro Mills Ltd	146	5719800
cost of construction of compound wall, twin house, staff quarters for eight numbers and md building	1994-95	M/s. RamRaj Agro Mills Ltd	147	8341000
		TOTAL		**16380721**

116.2) Exp.D.207 is the balance along with profit and loss account statement and schedules for the assessment year 1995-96. The company has received the following amount as reflected in the balance sheet.

Secured loans from banks during 1994-95 Rs.1,43,87,336/-

Unsecured loans Rs. 75,30,561/-

116.3) During 1995-96 the company had received from Mangutta Investment Private Limited a sum of Rs.1,00,00,000/-. The confirmation letter given by Mangutta Investment Private Limited is Exp.D.208. The company had received back from Government a sum of Rs.40,00,000/- from the deposit made in earlier years. The sanction letter for sanctioning 1.65 crores loan dated 24:3:1995 is Ex.P.1352. The further loan granted by Indian Bank is revealed by Ex.P.1353. Thus the company had funds to the tune of Rs.2,59,17,897/-.

116.4) The company had spent as per the books Rs.62,57,000/- towards construction at Thanjavur in 1994-95 – 1995-96. Thus the accused in this case have not put in any money into Ramraj Agro Mills Limited. Whatever expenditure incurred by the said public limited company is through its own funds generated in the manner aforesaid.

The prosecution version as per Annexure II item no.135….

Cost of land alone is Rs. 14,39,446/-

Cost of construction of labour quarters

Compound wall, twin house are total

Of this item 146 labour quarters is	Rs. 57,19,800/-
Item 147 Compound wall, twin house	Rs. 83,41,000/-
Total	Rs. 1,40,60,800/-.

In the balance sheet and profit and loss account for a period upto 31:3:1995 is Ex-D206.

Balance sheet and profit and loss account for a period upto 31:3:1996 is Ex-D207.

As per the said exhibits the company had spent towards building construction upto 31:3:1995 = Rs. 40,57,000/-

Add construction upto 31:3:1996 = Rs. 22,00,000/-

Total Rs. 62,57,000/-.

This is the total cost of construction as reflected in the books of account.

116.5) As stated earlier the company had received in the year 1994-95 a sum of Rs.1,43,87,336/- from banks and financial institutions. The company had received a secured loan in the year 1995-96 from the banks in a sum of Rs. 75,30,561/-. This is reflected in the Indian Bank statement item 8 in Ex-D295. Apart from this the company had received from Maguntha Investments Rs. 1,00,00,000/- by way of cheque. The confirmation letter from the said Maguntha Investments is Ex-D208. This is as per the evidence of auditor DW-87 Mr. Srikanth. There is hardly, any cross examination challenging the above. The above is also matter of evidence. Thus, the company had the total amount of Rs. 2,19,17,897/-. Thus, whatever expenditure that is attributed to the company can and has come out of the shown resources and borrowals with which A1 is not concerned at all in any manner.

116.6) Without prejudice to the above submission the petitioner states that the evidence of the prosecution in PW-153 and the Ex.P.822, the valuation report are not liable to be acted upon for the following reasons.

a) A1 was never a shareholder and never a director in Ramraj Agro Limited, which is a public limited company. Hence, burden cannot be cast upon her to explain the expenditure of the company.

b) This cannot be done in any view without impleading the company itself as a party. The same is required as per the decision in Aneeta Hada V/s Godfather Travels reported in 2012 (5) SCC 661 compilation of judgments vol.2, pg.122.

c) Not impleading will also violate natural justice and also impossible burden on A1 to explain somebody else expenditure.

d) Without prejudice to the above submission the petitioner has shown that the company had funds of its own to meet the expenditure.

116.7) On the face of the evidence of the prosecution the burden of proving the cost of construction as revealed from Ex.P.822 is unacceptable and not liable to be acted upon for the following reasons.

i) The owner of the mill or responsible officer of the mill was not associated with the valuation, nothing was done in the presence of the officers of the company.

ii) No court order enabled PW-153 to go on the property and evaluate the same.

iii) The report contains interpretation on crucial aspects as to what data of the year was taken into consideration while computing the value. This vitiates the entire valuation.

iv) As per Annexure 146 & 147 the period of construction is shown as 1994-95, whereas the valuation report gives the year of construction as 1995-96.

v) The accused have examined DW-81 who had deposed on many aspects which will totally invalidate the valuation. The evidence of DW-81 remains valid and unshaken by the prosecution.

116.8) PW-153 had been recalled and cross examined for the 2nd time in 2003 at Chennai. In the said second recalled cross examination he had given a complete go-by to his previous evidence in this case.

116.9) However, in pursuant to the order of the Hon'ble Supreme Court of India transferring the case to Karnataka PW-153 was recalled and re-examined by the Slpp. Public Prosecutor. The answer given by PW-153 is he was not allowed read the statement before signing the same at Chennai court. It is submitted such an answer by PW-153 ought not to have been recorded. Whatever that takes place before court is sacrosanct. Not liable to be challenged before some other presiding officer or even before a higher forum. If indeed there was any mistake in recording his deposition the only method of correcting the same is by filing an affidavit by the witness before the same Learned Judge who had recorded the deposition. Thus, the answers given by PW-153 could not be considered as valid. Hence, the evidence recorded from him at Chennai remains with full force and validity. Therefore, the entire evidence of PW-153 and Ex.P.822 are liable to be rejected, as also the valuation made there under.

116.10) Ramraj Agro Mills Ltd. was registered on 28.5.1986 as per Ex.P606. The first directors were V.R.Venkatachalam, Senthamilselvan and Thillainayagam. As per Ex.P613 A3, A4, S.Prabha and T.V.Sundaravadanam were appointed as Additional Directors with effect from 23.11.1994. As per Ex.P615 A3, A4 and Prabha have resigned from the company with effect from 8.5.1996, 22.2.1996 and 22.2.1996 respectively. In the same Form 32, Ganesh Rajan, Karthikeyan and Sabarinathan were appointed as Additional Directors from 22.2.1996.

116.11) As per Ex.P616 Ganesh Rajan, Karthikeyan and Sabarinathan have resigned on 21.8.1997 and A.Kuppusamy and A.Mariasamy were appointed as Additional Directors on 21.8.1997. A3 and A4 after their resignation they had nothing to do with the above said company.

CXVII) <u>INDO DOHA CHEMICALS & PHARMACEUTICALS PVT. LTD.</u>

117.1) This is also one of the companies audited by G. Nataraj Associates, Chartered Accountants. DW. 87 being one of the auditors who is associated with the said auditing firms, has deposed and is competent to do so. According to him, the company had as on 31.3.1995 paid up share capital of Rs.97,00,000/- as can

be seen from the balance sheet Exp.D.201. In respect of the said company, an order has been passed by the Commissioner of Income Tax Appeals in I.T.A. No.144/99-2000 preferred by the company. Under the said order, the entire share capital of 9,69,400/- shares of a face value of Rs.10 each has been purchased at Rs.6 per share and registered in the name of A-2 V. K. Sasikala in this case. The remaining 600 shares were purchased by six other persons. It is seen that the entire sale consideration of 9,69,400 x Rs.6 = Rs.58,16,400/- has been paid by A-3 V. N. Sudhagaran.

117.2) In Item 52 of Annexure-III, while mentioning about the income that accrued during check period, it is mentioned total Income available in Indo Doha is only Rs.30,40,000/- This is wrong.

117.3) The Balance Sheet of Indo Doha filed as marked as Ex-D-201 and the order passed by C.I.T Appeals is marked as Ex-D-202 and the Profit and Loss Account 1994-95, 1995-96 are marked as Ex-D-203. A ready of these exhibits will be shown the acquisition of share as above described further the entire factoring and machines are leased out to SPIC from SPIC. In 1994 an advance of Rs.45,00,000/- had been received in 1995-1996 towards lease renal of entire factory and machinery a total sum of Rs.1,39,08,584/-. The total income received by the company was Rs.1,84,08,584/-. Out of the advance of Rs.45,00,000/- from SPIC the company Indo Doha had advanced Rs25,00,000/- to M/s.Meadow Agro Farm (P) Ltd and paid Rs.20,00,000/- to James Frederick. Out of the remaining amount there had been a repayment of loan availed earlier from SIPCOT to sum of Rs.72,00,000/- towards Principal and Interest. Balance available will be Rs.57,08,584/- Thus the item 52 in Annexure-III, must read as Rs.57,08,584/-

117.4) Thus all the properties acquired and constructions made by the above said first five companies are liable to be excluded totally from consideration. The total value of the properties in the name of the companies and constructions made amount to Rs.4,60,24,439/- is liable to be excluded.

117.5) Thus it will be seen that A1 has enough income and resource with which to purchase one property and do three constructions during the check period. The properties in the name of the companies cannot be attributed to A1. For the all

the above reasons it is submitted for the charges against her not established and she may be honourably acquitted and thus justice be rendered.

PRAYER:

Hence, it is most humbly prayed that this Hon'ble Court may be honourably acquitted all the accused and thus render justice.

S.SENTHIL

Place : Bangalore

Date : 27.08.2014. K.C.PANNEER SELVAM

COUNSEL FOR ACCUSED No.1