

CBI vs. Sh. Ashutosh Verma & Ors.
CC No. 192/19

01.09.2020

Present:- Sh. Brijesh Kumar Singh, Ld. Senior P.P for CBI.

Accused No. 1 Sh. Ashutosh Verma in person with Ld. Counsels Sh. P.K. Dubey, Ms. Smriti Sinha, Mr. Shri Singh, Mr. Gautam Khazanchi, Mr. Shiv Chopra, Mr. Anurag Andley, Mr. Gaganjyot Singh, Ms. Smriti Ravichandran, Sh. Prince Kumar and Ms. Pinky Dubey.

Accused No. 2 Sh. Suresh Nanda in person with Ld. Sr. Advocate Sh. Ramesh Gupta along with Sh. Sandeep Kapoor, Alok Sharma and Sh. Vivek Suri, Advocates.

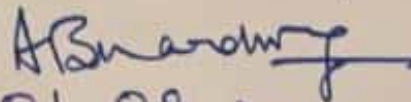
Accused No. 3 Sh. Bipin Shah in person with Ld. Counsel Sh. Anindya Malhotra.

(Through VC using Cisco Webex App.)

On the previous date, it was noted in the order sheet that the accused had suggested strict action against Suresh Nanda Group of Companies for evasion of tax liability upto 450 Crores. Sh. P.K. Dubey, Ld. Counsel for Accused No. 1 Sh. Ashutosh Verma submitted that Accused No. 1 has not recommended any particular amount as unaccounted money. He submitted that it was not the role of the accused as DIT (investigation) to specify and recommend by quantifying the unaccounted money. This role is performed by the Assessing Officer.

Ld. Counsel referred to Search and Seizure Rules of Income Tax Department and read Rule 6.41 to 6.49. He submitted that the Appraisal Report is examined by the Assessing Officer and Range Head and it is their joint effort to examine the Assessment Report.

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Ld. Counsel specifically pointed out Rule 6.43, which refers to disagreement between Assessing Officer and the Appraisal Report and submitted that in this case there was no such disagreement between Assessing Officer and the contents of Appraisal Report. He submitted that Appraisal Report is not final and Assessing Officer can arrive at an independent opinion on reassessment of the Appraisal Report. He submitted that the assessment orders of the Assessing Officer are not on record. They were brought on record neither by the prosecution nor defence. He submitted that it is noted in the previous order sheet that the Ld. Counsel for Accused No. 1 Sh. Ashutosh Verma shall address arguments about assessment order made by Assessing Officer on the basis of Appraisal Report and the decisions of Appellate Tribunal, Hon'ble High Court and Hon'ble Supreme Court.

He submitted that in terms of the observations recorded in the previous order sheet, he is referring to the assessment order, order of CIT, order of ITAT and Hon'ble Delhi High Court and Hon'ble Supreme Court.

Ld. Counsel referred from the order of Assessing Officer to show that the passport of Sh. Suresh Nanda was taken by CBI on 10.10.2006. He submitted that the Assessing Officer and CIT had passed orders treating the Accused Sh. Suresh Nanda as a Resident Indian and not as a Non-resident Indian. However, the ITAT found that his stay in India for all relevant years was less than 182 and therefore Sh. Suresh Nanda was not the Resident Indian but was a Non-resident Indian and the orders of the Assessing Officer and CIT with regard to unaccounted income were set aside/incomes were deleted from the assessment orders. Ld. Counsel submitted that arguments may be addressed in detail by Ld. Counsel for Sh. Suresh Nanda.

ABhardwaj
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Ld. Counsel submitted that the Appraisal Report given by the accused was not challenged in any form before any forum. What was under challenge was the order of Assessing Officer and not the Appraisal Report.

Ld. Counsel submitted that Accused No. 1 Sh. Ashutosh Verma had given the Appraisal Report on 22.02.2008 and he was arrested on 08.03.2008. The Income Tax Department knew about the arrest of their Senior Officer but still no reappraisal was made and no mistake was pointed out in the Appraisal Report given by Accused No. 1 at any stage. With this, the Ld. Counsel concluded his arguments with regard to Appraisal Report.

Next, the Ld. Counsel referred to the arrest of the accused persons from a Hotel Room in Bombay on 08.03.2008.

Ld. Counsel submitted that FIR in this case was registered on 08.03.2008 at 11:51 AM and the two officers PW-27 Inspector V.M. Mittal and PW-27 Surender Malik had already reached Bombay. However, it has not come on record on what basis these officers had already reached Bombay in anticipation of arresting the accused. There is no official order directing these officers to be present in Bombay on 08.03.2008. What was the purpose of their visit to Bombay is not on record. There is no entry for their departure from Delhi.

Ld. Counsel referred to the evidence of PW-27 Inspector V.M. Mittal, who deposed that during his cross-examination that he does not remember whether any incriminating material was recovered from the accused. The Raiding Officer was not having the arrest warrant. They had not received written orders to join the raid at Mumbai. The witness was not in possession of copy of FIR and was not having RC No. AC-1/2006/A-004. He deposed that he was not knowing the contents of this RC. The witness also deposed that his statement was not recorded under Section 161 Cr.P.C. by the IO.

Ld. Counsel submitted that only the FIR was registered and the accused were arrested without there being any incriminating evidence available with the IO of the case and therefore the arrest of the accused was illegal which is sufficient for their acquittal.

Next, Ld. Counsel submitted that he would address arguments with regard to evidence of PW-41 Sh. Surender Malik.

At this stage, Sh. Ramesh Gupta, Ld. Sr. Advocate representing Sh. Suresh Nanda submitted that the application has been moved on behalf of this accused seeking permission to travel abroad/UAE from 05.09.2020 to 20.10.2020 for compelling financial reasons mentioned in the application.

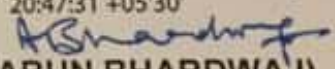
Let a copy of this application be given to the Sr. PP for CBI, who shall file the reply on 03.09.2020 at 2:15 PM and on that day the hearing would be on this application only.

The final arguments shall be heard further now on 04.09.2020 at 2:15 PM.

Let a copy of this order be sent by WhatsApp to the learned Senior PP for CBI, all the accused persons and their learned counsels.

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(ARUN BHARDWAJ)

Special Judge (P.C. Act)(CBI-05)
Rouse Avenue District Court,
New Delhi/01.09.2020

C. Case No. 248/2019

CBI Vs Umesh Sadhna & ors.

01.09.2020

Present: Sh.B.K.Singh, Ld.Sr.PP for CBI.

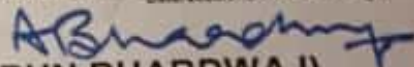
(Through VC using Cisco WebEx app.)

As per previous order dated 14.08.2020, Ahlmad of the Court has provided the CD containing the chargesheet and documents to the undersigned.

List on 15.09.2020 for order on cognizance.

Let a copy of this order be sent by WhatsApp to Ld. Sr.PP for CBI.

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(ARUN BHARDWAJ)
Special Judge, CBI-05 (PC Act),
RADC, New Delhi/ 01.09.2020

C.Case No. 247/2019
CBI Vs Durga Madhab & ors.

01.09.2020

Present: Sh.B.K.Singh, Ld.Sr.PP for CBI.

(Through VC using Cisco WebEx app.)

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List on 15.09.2020 for order on cognizance.

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(ARUN BHARDWAJ)
Special Judge, CBI-05 (PC Act),
RADC, New Delhi/ 01.09.2020